

The Planning Act 2008

BYERS GILL SOLAR

Examining Authority's/ Inspector's Report
of Findings and Conclusions
and

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

Examining Authority

Andre Pinto BA, MA, MRTPI Lead Member of the Panel

Max Wiltshire BSc, MSc, CEng, MICE

Alex Oyebade MSc, FCILT

23 APRIL 2025



ERRATA SHEET – BYERS GILL SOLAR PROJECT [Ref. EN010139]

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 23 April 2025

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

PDF Page No.	Para	Error	Correction
15	3.1.7	Incorrect information.	Should be deleted.
26	3.2.64	Missing the word 'national'.	<i>"However, the ExA also notes that although local plan policies are important and relevant considerations for the SoSESNZ when carrying out the assessment of new nationally significant infrastructure projects, the adopted suit of national policy considerations form the basis for the SoS's and therefore should be given more weight when considering the need case.</i>
53	3.6.57	Incomplete sentence – <i>"in particular viewpoint analysis and village setting assessment, have been examined thoroughly throughout the course of thee."</i>	It should read: <i>"... have been examined thoroughly throughout the course of the Examination".</i>
62	3.7.10	Missing a full stop – <i>"ES Chapter 6 Biodiversity [APP-029] and ES Chapter 2 The proposed development...."</i>	It should read: <i>"[...] Chapter 2. The proposed development...."</i>
74	3.8.56	The title is not in bold and therefore inconsistent with other headings.	BISHOPTON VILLAGES ACTION GROUP (BVAG)
103	3.12.17	Incorrect information – <i>"8% (5.5Ha) of Panel F (North of</i>	It should read: <i>"8% (5.5Ha) of Panel F (North</i>

PDF Page No.	Para	Error	Correction
		<i>Bishopton) is in ALC 3a".</i>	<i>of Bishopton) is in ALCs 2 and 3a".</i>
126	4.2.1	"In arriving to the this conclusion..."	"In arriving to this conclusion..."
128	4.2.15	Contains a typo which makes it difficult to follow.	It should read: " The ExA considers that the embedded mitigation measures in the ES and DAD [REP8-022], assessed in line with the overall parameters for site size and layout, panel size, location of panel areas and location of the PV panels within each area, supporting infrastructure such as the Battery Energy Storage System (BESS) and proposed cabling, are in conformity with paragraphs 4.7.13 of NPS EN-1 and 135 of NPPF. Mitigation measures include an undertaking by the applicant to build flexibility in the design of the proposed development that would respond to future technological advancement in terms of curtailing the panel size and related area of occupation. This would minimise the design impact of the proposed development."
130	4.2.32	Incomplete sentence – "The ExA has also...."	N/A
132	4.3.2	Incomplete sentence.	It should read: "[...] but the SoSENZ may wish to do so. "

PDF Page No.	Para	Error	Correction
133	4.3.12	Typo.	It should read: <i>"In relation to the adverse landscape and visual effects, the EXA finds that the impacts would not be so damaging as to not be offset by the benefits (including need) of the project."</i>
174	7.3.1	Typo – "did not formally confirmed".	It should read: <i>"[...] did not formally confirm [...]"</i>

OVERVIEW

File Ref: EN010139

The application, dated 8 February 2024, was made under section 37 of the Planning Act 2008 and was received by The Planning Inspectorate on 9 February 2024.

The applicant is RWE Renewables UK Solar and Storage Limited.

The application was accepted for examination on 8 March 2024.

The examination of the application began on 23 July 2024 and was completed on 23 January 2025.

The proposed development comprises of a proposed solar farm with over 50MW capacity, Solar PV modules and associated mounting structures, inverters, transformers, switch gear and control equipment, a substation, energy storage equipment and underground on and off-site cabling.

Summary of Recommendation:

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

REPORT TABLE OF CONTENTS

1.	INTRODUCTION.....	1
1.1.	BACKGROUND TO THE EXAMINATION.....	1
1.2.	APPOINTMENT OF THE EXAMINING AUTHORITY.....	1
1.3.	THE APPLICATION	1
1.4.	THE EXAMINATION AND PROCEDURAL DECISIONS.....	5
1.5.	CHANGES TO THE APPLICATION.....	7
1.6.	OBLIGATIONS, AGREEMENTS AND OTHER CONSENTS	8
1.7.	STRUCTURE OF THIS REPORT	8
2.	HOW THE APPLICATION IS DETERMINED	10
2.1.	INTRODUCTION.....	10
2.2.	LEGISLATION AND POLICY	10
2.3.	POLICY CONSIDERATIONS.....	11
2.4.	OTHER RELEVANT NATIONAL POLICIES.....	12
2.5.	LOCAL IMPACT REPORTS.....	12
2.6.	ENVIRONMENTAL IMPACT ASSESSMENT (EIA)	13
2.7.	HABITATS REGULATIONS ASSESSMENT (HRA).....	13
2.8.	TRANSBOUNDARY EFFECTS.....	13
3.	INTRODUCTION TO THE PLANNING ISSUES.....	14
3.1.	INTRODUCTION.....	14
3.2.	THE PRINCIPLE OF THE DEVELOPMENT	16
3.3.	ALTERNATIVES AND SITE SELECTION.....	28
3.4.	GOOD DESIGN.....	37
3.5.	SOCIOECONOMICS.....	42
3.6.	LANDSCAPE AND VISUAL EFFECTS	45
3.7.	BIODIVERSITY	61
3.8.	HISTORIC ENVIRONMENT.....	67
3.9.	NOISE AND VIBRATION	81
3.10.	FLOOD RISK AND WATER ENVIRONMENT.....	87
3.11.	TRAFFIC AND TRANSPORT.....	95
3.12.	LAND USE	101
3.13.	OTHER PLANNING TOPICS	110
3.14.	CUMULATIVE EFFECTS.....	119
4.	CONCLUSION ON THE CASE FOR DEVELOPMENT CONSENT.....	126
4.1.	INTRODUCTION.....	126
4.2.	SUMMARY OF THE MAIN PLANNING ISSUES.....	126
4.3.	PLANNING BALANCE AND CONCLUSIONS.....	132
5.	LAND RIGHTS AND RELATED MATTERS.....	135
5.1.	INTRODUCTION.....	135
5.2.	LEGISLATIVE REQUIREMENTS.....	135
5.3.	THE REQUEST FOR CA AND TP POWERS	137
5.4.	THE PURPOSE FOR WHICH LAND IS REQUIRED AND THE SCOPE OF THE POWERS SOUGHT	138

5.5.	THE EXAMINATION OF THE CA AND TP CASE.....	139
5.6.	CONSIDERATION OF INDIVIDUAL OBJECTIONS AND ISSUES	141
5.7.	SPECIAL CATEGORY LAND.....	150
5.8.	CONCLUSIONS	151
6.	DRAFT DEVELOPMENT CONSENT ORDER AND RELATED MATTERS	153
6.1.	INTRODUCTION.....	153
6.2.	STRUCTURE AND FUNCTION OF THE DRAFT DCO	153
6.3.	EXAMINATION OF THE DRAFT DCO.....	155
6.4.	DCO MATTERS OF CONTENTION AND OBJECTIONS OUTSTANDING	164
6.5.	STATUTORY NUISANCE	170
6.6.	CONCLUSIONS	170
7.	SUMMARY OF FINDINGS, CONCLUSIONS AND RECOMMENDATIONS	172
7.1.	INTRODUCTION.....	172
7.2.	SUMMARY OF FINDINGS AND CONCLUSIONS	172
7.3.	MATTERS WHICH THE SoS MAY WISH TO CONSIDER	174
7.4.	RECOMMENDATION.....	174
	APPENDIX A: ABBREVIATION LIST.....	1
	APPENDIX B: KEY LEGISLATION AND POLICY	4
	APPENDIX C: FINDINGS AND CONCLUSIONS IN RELATION TO HABITATS REGULATIONS ASSESSMENT	9
C.1	INTRODUCTION.....	9
C.2	FINDINGS IN RELATION TO LIKELY SIGNIFICANT EFFECTS (LSE).....	10
	APPENDIX D: THE RECOMMENDED DCO	13

List of Tables

Table 1: Structure of the dDCO	154
Table 2: DCO Provisions and ExA's reasoning on proposed changes during examination.....	156
Table 3: DCO Provisions and ExA's reasoning on proposed changes after close of examination.....	167

1. INTRODUCTION

1.1. BACKGROUND TO THE EXAMINATION

- 1.1.1. An application for the Byers Gill Solar Project (the proposed development), reference EN010139, was submitted by RWE Renewables UK Solar and Storage Limited (the applicant) to the Planning Inspectorate on 09 February 2024 under section (s) 37 of the Planning Act 2008 (as amended) (PA2008) and accepted for Examination under s55 of the PA2008 on 08 March 2024 [\[PD-000\]](#). This report sets out the Examining Authority's (ExA) findings, conclusions and recommendations to the Secretary of State (SoS) for Energy Security and Net Zero.
- 1.1.2. The legislative tests for whether the proposed development is a Nationally Significant Infrastructure Project (NSIP) were considered by the SoS for the Department of Levelling Up, Housing and Communities in its decision to accept the application for Examination in accordance with s55 of the PA2008 [\[PD-000\]](#).
- 1.1.3. The proposed development comprises a ground mounted solar photovoltaic (PV) onshore generating station with a gross electrical output of over 50 megawatts (MW), on site Battery Energy Storage System (BESS) and associated infrastructure. It would be located wholly in England. As such, it meets the definition of a NSIP as set out in s14(1)(a) and s15(2) of the PA2008 and requires development consent in accordance with s31 of the PA2008.
- 1.1.4. The Examination Library (EL)¹ provides a record of all application documents and submissions to the Examination, each of which is given a unique reference number e.g. [\[APP-001\]](#). The reference numbers are used throughout this report.
- 1.1.5. This report does not contain extensive summaries of all documents and representations received, although full regard has been had to them and all important and relevant matters arising. Key written sources are set out further below.

1.2. APPOINTMENT OF THE EXAMINING AUTHORITY

- 1.2.1. On 09 April 2024 Mr André Pinto was appointed as Lead member of the Examining Authority, and Mr Max Wiltshire and Mr Alex Oyebade as members of the ExA for the application under s61 and s65 of the PA2008 [\[PD-001\]](#).

1.3. THE APPLICATION

LOCATION OF THE PROPOSED DEVELOPMENT

- 1.3.1. The proposed development is located in the north-east of England, within the administrative boundaries of Darlington Borough Council, Stockton-on-Tees Borough Council and Durham County Council. Environmental Statement (ES) Chapter 2 [\[APP-025\]](#) provides further detail in relation to the location of the proposed development and Figure 1.1. Location Plan identifies the location of the proposed development in relation to its wider context.

¹ [Examination Library - Byers Gill Solar \(EN010139\)](#)

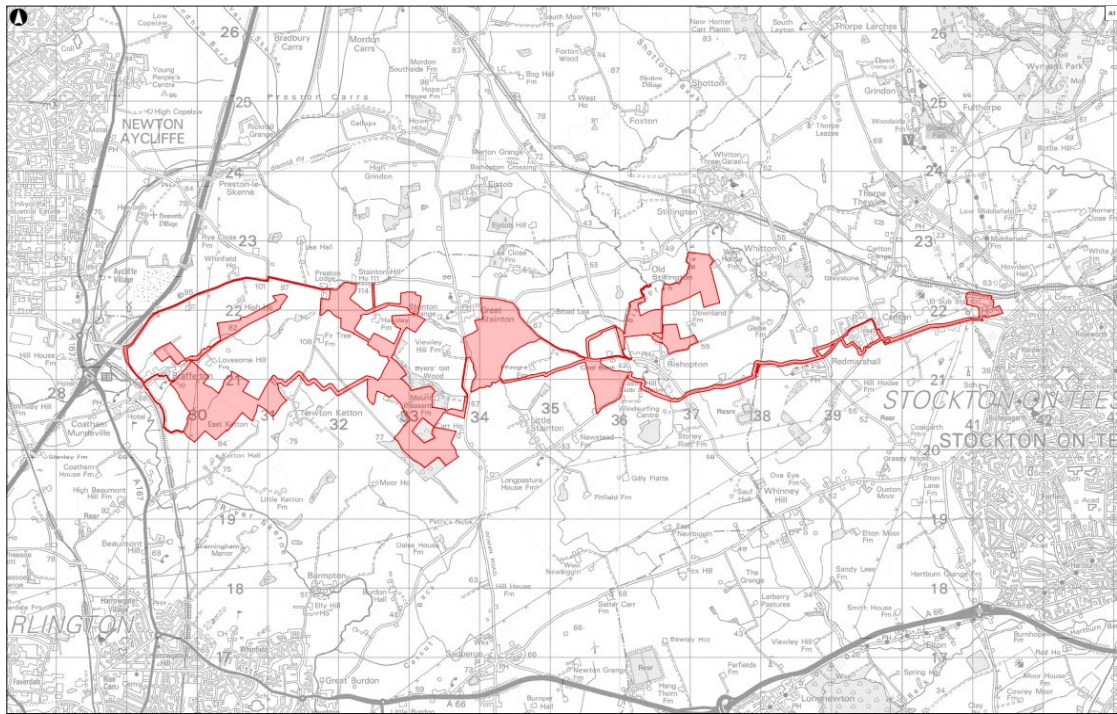


Figure 1.1 Location Plan (Extract from [\[REP6b-004\]](#))

1.3.2. The majority of the proposed development, including the solar PV modules, on-site substation, Norton Substation and BESS is located within the administrative boundary of Darlington Borough Council. Only the eastern part of the 132kilovolt (kV) cable route, which would be required to connect the proposed development from the on-site substation to the substation at Norton, would cross into the administrative boundary of Stockton-on-Tees Borough Council. The northern extent of the Order Limits lies within the borders of Durham County Council's administrative area in relation to underground cabling only.

1.3.3. The proposed development covers an area of approximately 490hectares (ha) comprised of agricultural fields, interspersed with individual trees, hedgerows, farm access tracks, woodlands, local farm holdings and several different Public Rights of Way (PRoW). There are several local villages located within close proximity to the proposed development, including Brafferton, Newton Ketton, Great Stainton, Bishopton and Old Stillington.

DESCRIPTION OF THE PROPOSED DEVELOPMENT

1.3.4. The proposed development is a renewable energy scheme comprising ground-mounted solar PV panels, on-site BESS and associated development including underground cable connections between panel areas and the existing National Grid Substation at Norton. It has been designed to deliver a generating capacity of 180MegaWatts (MW) alternating current (AC), as confirmed in the applicant's response to ExQ1 PPD1.1 [\[REP2-007\]](#). ES Chapter 2 [\[APP-025\]](#) provides a full description of the proposed development.

1.3.5. The main works are summarised below:

- The ground mounted solar PV generation station, with the strings of solar PV modules spread across six panel Areas and proposed to be aligned in east-west

rows with panels facing south at an angle of approximately 10 degrees to 30 degrees, and with a maximum height of up to 3.5metre(m);

- The BESS, consisting of lithium-ion batteries which would allow energy to be stored on site. The BESS would require associated heating, ventilation and cooling systems to ensure efficiency of the batteries;
- Electrical cabling which would include low voltage cabling required to connect solar PV modules and the BESS to the inverters, typically to be installed above ground. In addition, the proposed development would also require high voltage cables (33kV) to connect the inverters and other electrical infrastructure to the on-site substation and 132kV underground cabling to connect the on-site substation to the substation at Norton;
- On-site substation required to convert low voltages from the solar PV modules to high voltages suitable for the national grid;
- Additional electrical infrastructure within the National Grid substation at Norton and associated connection;
- Temporary construction and decommissioning of access tracks and compounds; and
- Areas of green infrastructure comprising soft landscaping and planting, including tree and hedgerow planting, habitat creation and management and the laying of permissive paths, signage and information boards.

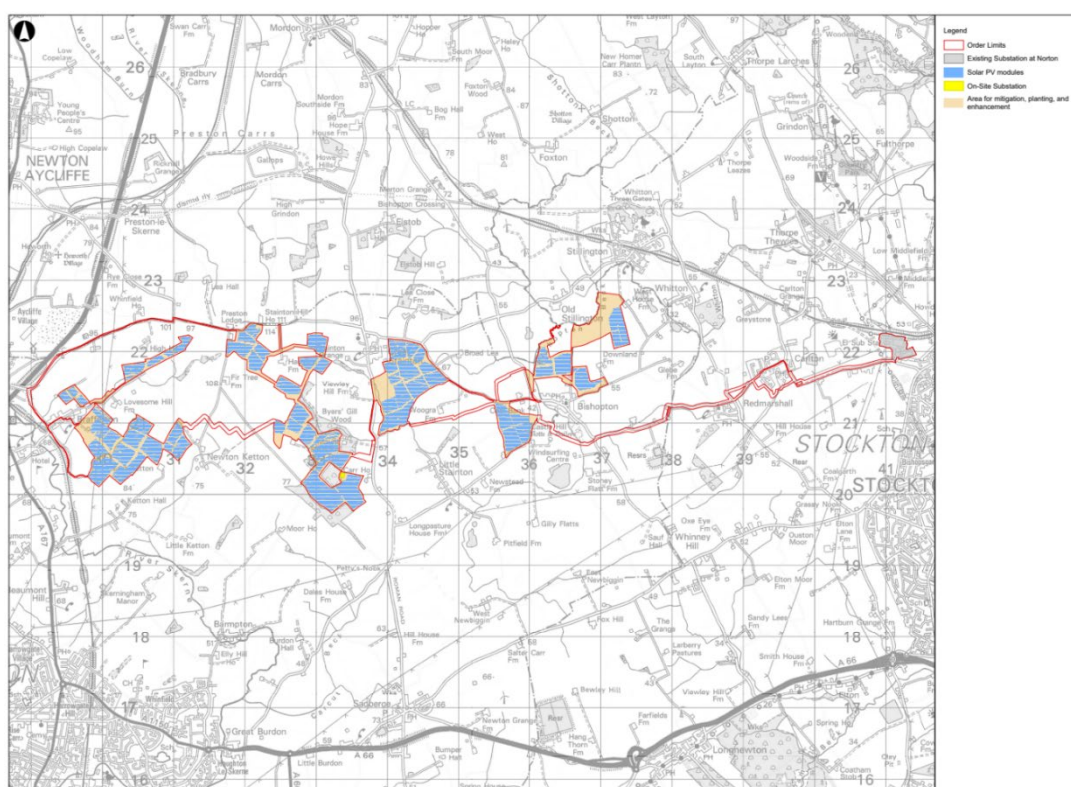


Figure 1.2 General Arrangement Scheme Wide (Extract from [\[REP2-015\]](#))

1.3.6.

The ground mounted solar PV generation station is organised into six different panel areas:

- Panel Area A: Brafferton - occupying an area of approximately 114.37ha;
- Panel Area B: Hauxley Farm - occupying an area of approximately 52.24ha;
- Panel Area C: Byers Gill Wood - occupying an area of approximately 77.16ha;
- Panel Area D: Great Stainton - occupying an area of approximately 75.86ha;

- Panel Area E: West of Bishopton - occupying an area of approximately 26.63ha; and
- Panel Area F: North of Bishopton - occupying an area of approximately 71.9ha.

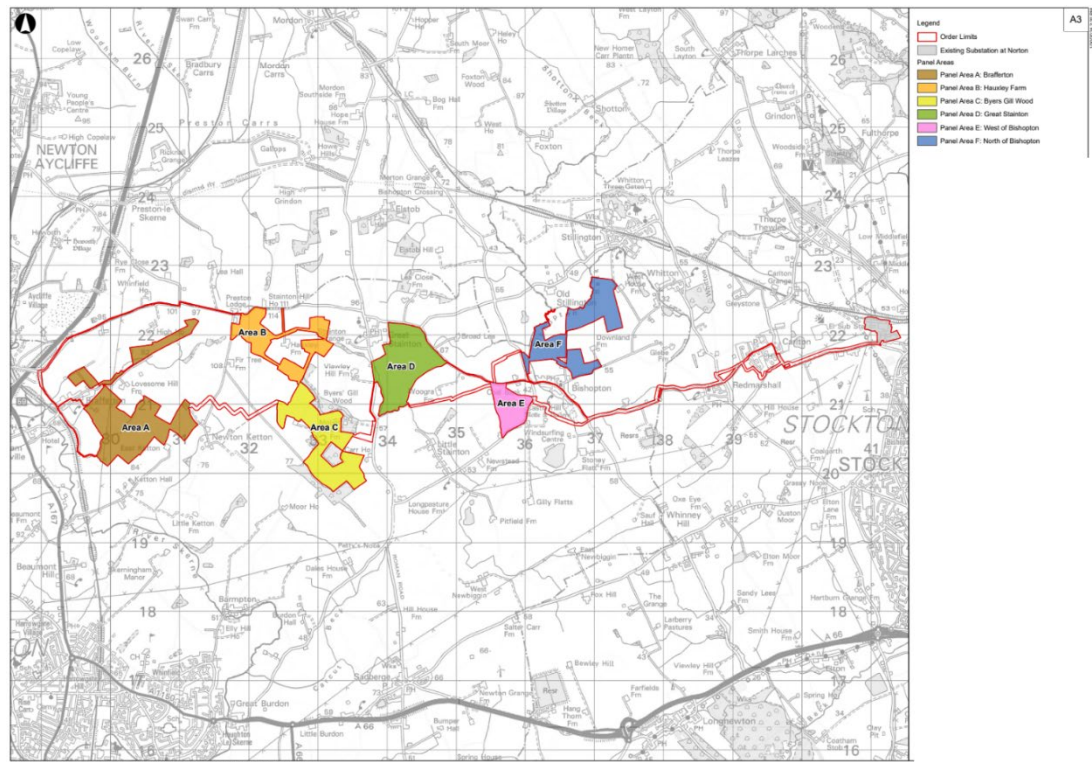


Figure 1.3 Panel Areas (extract from [\[APP-0391\]](#))

- 1.3.7. The proposed development includes approximately 32.5kilometres (km) of 33kV underground cabling which connects the six different Panel Areas and the on-site substation, as well as approximately 10km of 132kV underground cabling which connects the proposed development to the grid connection at the existing National Grid Norton substation. The cabling is proposed to be placed either within roads or through off-road options which would be determined during the detailed design. However, as it was confirmed by the applicant's response to ExQ2 DCO.2.2 [\[REP5-031\]](#), the proposed development would require a mixture of underground road and off-road cabling to be deliverable.
- 1.3.8. A perimeter security fence would be installed to enclose the 6 different operational areas of the proposed development. The fence would likely be a deer fence with a maximum height of 2m designed to allow small animals to pass through. Infra-red security detection cameras would also be mounted, on poles of up to 3m in height, and would be pointed directly within the Order Limits and away from any land outside of the Order Limits.
- 1.3.9. The proposed development would also include a range of environmental mitigation proposals and enhancement measures developed with the aim to avoid or reduce the adverse impacts. These would include landscape, biodiversity and cultural heritage mitigation and enhancements presented in the Landscape Concept Masterplan [\[APP-058\]](#) and detailed further in the Environmental Masterplan [\[REP8-008\]](#).
- 1.3.10. Due to rapidly changing and evolving solar and energy storage technology markets, the proposed development has been designed to maintain flexibility as to allow the

latest technology to be installed at the time of construction. Parameters have been set to support the need for flexibility with further details to be found in ES Chapter 2 [\[APP-025\]](#). Final details of the solar technology used for the proposed development are to be confirmed at detailed design stage, allowing for the applicant to take into account any further advancements of solar technology. Requirement 3 of the dDCO [\[REP9-005/006\]](#) outlines that no phase of the authorised development may commence until details of the various aspects of the proposed development have been submitted to and approved in writing by the relevant planning authority.

RELEVANT PLANNING HISTORY

- 1.3.11. There is no relevant planning history associated with the proposed development. However, Table 2.1 of ES Chapter 1 [\[APP-024\]](#) summarises the history of the applicant's approach to the proposed development and the steps the applicant took since the project was first introduced to local stakeholders and statutory consultees, in September 2022, when the applicant outlined the proposals and sought views and feedback on the viability of the proposed development.
- 1.3.12. Collaborative design workshops were then held with local community representatives and key stakeholders in November 2022 at the early stages of the design process, followed by on-going engagement and statutory consultation. Design refinement was then carried out following statutory consultation in June 2023 with further refinement during the summer 2023.
- 1.3.13. Existing and approved major developments within the Zone of Influence (Zol) of the proposed development were taken into consideration by the applicant and informed the applicant's cumulative assessment for each topic of the ES. The Zol for each environmental topic, identified as the study area, varies but it is presented in ES Figures 13.1 [\[APP-102\]](#), in relation to the long list of committed developments and 13.2 [\[REP6-027\]](#) in relation to the short list.
- 1.3.14. Table 13-3 of ES Chapter 13 [\[APP-036\]](#) sets out the process for the creation of the long list of 'other existing development and/or approved development', which in turn lead to the establishment of the short list of other existing development and/ or approved development. The short list identifies other developments that may give rise to significant cumulative effects by virtue of overlaps in temporal scope, due to the scale and nature of the 'other development' or receiving environment, or any other relevant factors.
- 1.3.15. Table 13-8 of ES Chapter 13 [\[APP-036\]](#) includes the shortlisted committed development and the topics considered against each of these. To note that three other NSIPs, namely the Lighthouse Green Fuels Project, the H2Teesside and The Net Zero Teesside Project fall partially within a 10km radius from the Order Limits.
- 1.3.16. There are also eight other Town and Country Planning Solar Farm projects located within a 5km radius of the Order Limits, with five of those located either wholly or in part within a 500m radius from the Order Limits. These are Gately Moor, California Farm, Whinfield, High Meadow 2 and Middlefield Farm, as detailed and included in ES Appendix 13.3 Short List of Committed Developments [\[REP6-028\]](#).

1.4. THE EXAMINATION AND PROCEDURAL DECISIONS

RELEVANT REPRESENTATIONS

- 1.4.1. A total of 553 Relevant Representations (RRs) were received by the Planning Inspectorate in relation to the application for Development Consent submitted to the

Planning Inspectorate on the 08 February 2024. All persons who made RRs received a letter under Rule 6 [\[PD-003\]](#) of the Infrastructure Planning (Examination Procedure) Rules 2010 (EPR) explaining the opportunity to become involved in the Examination as Interested Parties (IPs). One additional RR [\[RR-554\]](#), submitted by the Environment Agency, was received in relation to a Change Request [\[CR1-001\]](#) to [\[CR1-018\]](#), submitted by the applicant on the 18 October 2024. All RRs have been fully considered by the ExA and the issues they raise are considered in the relevant sections of this report.

START OF THE EXAMINATION

- 1.4.2. The Examination began on 23 July 2024 and concluded on 23 January 2024. The principal components of the Examination and details of the events held can be seen in the Examination timetable [\[PD-013\]](#) and are summarised below. No party requested to join or leave the Examination. The additional RR [\[RR-554\]](#) was submitted by the Environment Agency who were already part of the Examination via [\[RR-168\]](#).
- 1.4.3. The Preliminary Meeting (PM) took place on 23 July 2024 [\[PD-003\]](#). The Examination timetable took full account of matters raised at the PM. Details were then provided in the Rule 8 Letter [\[PD-005\]](#), dated 30 July 2024.

PROCEDURAL DECISIONS

- 1.4.4. The procedural decisions taken by the ExA are recorded in the EL referenced [\[PD-001\]](#) to [\[PD-016\]](#). They detail the ExA's decisions relating to the procedure of the Examination and did not bear on the ExA's consideration of the planning merits of the proposed development.
- 1.4.5. [\[PD-009\]](#) and [\[PD-013\]](#) both include a Procedural Decision from the ExA to amend the Examination timetable as previously established. This matter is further explained under 1.5 Changes to the Application.

STATEMENTS OF COMMON GROUND

- 1.4.6. By the end of the Examination, the following bodies had concluded and signed Statements of Common Ground (SoCGs) with the applicant:
- Durham County Council [\[REP8-028\]](#);
 - Darlington Borough Council [\[REP8-029\]](#);
 - Stockton-on-Tees Borough Council [\[REP8-030\]](#);
 - Tees Valley Combined Authority [\[REP2-026\]](#);
 - Historic England [\[REP6-003\]](#);
 - Environment Agency [\[REP8-031\]](#);
 - National Highways [\[REP1-008\]](#);
 - Bishopton Villages Action Group [\[REP8-034\]](#);
 - Redmarshall Parish Council [\[REP4-008\]](#);
 - Great Stainton Parish Meeting [\[REP7-007\]](#);
 - Stillington and Whitton Parish Council [\[REP3-009\]](#).
- 1.4.7. The signed SoCGs have been taken fully into account by the ExA in all relevant sections of this report. There were no unsigned SoCGs.

WRITTEN QUESTIONS, SITE INSPECTIONS AND HEARINGS

- 1.4.8. The ExA asked three rounds of Written Questions:

- ExQ1 [\[PD-004\]](#);
- ExQ2 [\[PD-011\]](#);
- ExQ3 [\[PD-014\]](#).

- 1.4.9. The ExA made two separate Procedural Decisions, [\[PD-012\]](#) and [\[PD-015\]](#), under Rule 17 of the EPR requesting further information in relation to the proposed development.
- 1.4.10. The ExA undertook an Unaccompanied Site Inspection (USI) [\[EV1-001\]](#) on 4 June 2024 and held one Accompanied Site Inspection (ASI) [\[EV8-001\]](#) on 17 October 2024 .
- 1.4.11. Nine Issue Specific Hearings (ISHs) [\[EV3-001\]](#), [\[EV3-003\]](#), [\[EV10-002\]](#), [\[EV10-004\]](#), [\[EV11-002\]](#), [\[EV11-004\]](#), [\[EV12-002\]](#), [\[EV12-004\]](#), [\[EV12-006\]](#), [\[EV13-002\]](#), [\[EV13-004\]](#), [\[EV14-002\]](#), [\[EV14-004\]](#), [\[EV15-002\]](#), [\[EV15-004\]](#), [\[EV18-003\]](#), [\[EV18-005\]](#), [\[EV18-007\]](#), [\[EV18-009\]](#), [\[EV18-011\]](#), [\[EV18-013\]](#), [\[EV18-015\]](#), [\[EV22-002\]](#), two Compulsory Acquisition Hearings (CAHs) [\[EV9-002\]](#), [\[EV22-002\]](#) and five Open Floor Hearings (OFHs) [\[EV4-001\]](#), [\[EV5-001\]](#), [\[EV16-001\]](#), [\[EV17-001\]](#), [\[EV22-002\]](#) were held.

1.5. CHANGES TO THE APPLICATION

- 1.5.1. Changes to the key application documents, including the wording of the draft Development Consent Order (dDCO), were submitted and updated during the Examination. The changes sought to address points raised by IPs 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 final Application Document Tracker (Revision 14) submitted at Deadline 9 [\[REP9-003\]](#). 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.

REQUEST FOR CHANGES

- 1.5.3. On 27 September 2024, the applicant gave notice to the ExA of its intention to submit a request for changes to the application [\[AS-021\]](#). The ExA used its discretion and accepted the change notification into the Examination and published the applicant's Notification of Intention to submit a request for changes. On the 11 October 2024 the ExA issued a procedural decision [\[PD-007\]](#) to provide comments on the notification letter and the applicant's proposed submission of a change application.
- 1.5.4. The applicant submitted a formal change request on 18 October 2024 [\[CR1-001 to CR1-018\]](#). Two changes were proposed, which are detailed in the Change Application Summary Report [\[CR1-012\]](#), with Change 1 being the inclusion of provisions in the dDCO for the compulsory acquisition of new rights over subsoil land beneath highway plots already within the Order limits and Change 2 being the extension of the Order limits and Work No.3 within Panel Area A to include and cover part of an existing private access track known as High House Lane.
- 1.5.5. The ExA, in [\[PD-009\]](#), reviewed the information submitted and found that neither one of the proposed changes, when considered individually or combined, were so material as to constitute a different project. However, the ExA agreed with the applicant that one of the proposed changes, Change 1, would engage the

provisions of the CA Regulations because it involved upgrading the applicant's powers of compulsory acquisition over various subsoil plots within the Order Limits.

1.5.6. As detailed in [\[PD-009\]](#), the ExA agreed with the applicant's assessment of the implications of Change 1 in relation to the CA Regulations and therefore requested for statutory consultation to be carried out. The ExA also requested additional information to be submitted alongside a Consultation Report in order to assist the ExA in assessing the quality and meaningfulness of the consultation.

1.5.7. On 18 December 2024, following from the applicant's submission of the Change Application [\[REP6b-001 to REP6b-026\]](#), the ExA's issued a procedural decision [\[PD-013\]](#) confirming that it had assessed the applicant's Change Application and that it has decided to accept the Change Application into the Examination.

1.6. OBLIGATIONS, AGREEMENTS AND OTHER CONSENTS

1.6.1. The applicant submitted Other Consents and Licences [\[REP9-008\]](#) document. This document summarises other consents, licences and agreements that are expected to be needed for the construction and operation of the proposed development. These obligations and agreements, as set out in Appendix A of [\[REP9-008\]](#) have been taken into account by the ExA in all relevant Chapters of this Recommendation, with weight given to them according to whether they have been fully completed or secured.

1.6.2. By the end of the Examination, no planning obligations had been formally secured under section 106 or any Heads of Terms agreed between the applicant and any of the relevant planning authorities. The applicant stated, in response to ExQ1 GCT.1.12 [\[REP2-007\]](#) that the Environmental Statement [\[APP-022 to APP-162\]](#) has not identified any mitigation or enhancement which requires section 106 as a securing mechanism. All mitigations and enhancements are secured via the dDCO.

1.6.3. The applicant submitted a Community Benefit Fund document [\[REP2-011\]](#) which provided additional information about the fund including the applicant's proposed approach to community consultation on the administration of the fund. The Community Benefit Fund has not been taken into consideration as part of the overall planning balance.

1.7. STRUCTURE OF THIS REPORT

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

- **Chapter 2** identifies the planning issues and summarises the key legislation and policy context.
- **Chapter 3** sets out the findings and conclusions in relation to the planning issues that arose from the application and during the Examination.
- **Chapter 4** sets out the balance of planning considerations arising from Chapter 3 in the light of important and relevant factual, legal and policy considerations.
- **Chapter 5** sets out the ExA's examination of land rights and related matters.
- **Chapter 6** considers the implications of the matters arising from the preceding chapters for the Development Consent Order (DCO).
- **Chapter 7** summarises all relevant considerations and sets out the ExA's recommendation to the SoSESNZ.

1.7.2. This report is supported by the following Appendices:

- [Appendix A](#) - List of Abbreviations

- [Appendix B](#) - Key Legislation and Policy
- [Appendix C](#) - Habitats Regulations Assessment
- [Appendix D](#) - The Recommended Development Consent Order (rDCO)

2. HOW THE APPLICATION IS DETERMINED

2.1. INTRODUCTION

- 2.1.1. This chapter identifies the key legislation, policy context and Local Impact Reports (LIRs) for the application and outlines relevant documents that the ExA considers to be important to its findings and recommendations to the Secretary of State for Energy Security and Net Zero (SoSESNZ).

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 SoSESNZ. More detail is provided in Appendix B to this report.

PLANNING ACT 2008

- 2.2.2. The application is a Nationally Significant Infrastructure Project (NSIP) under the Planning Act 2008 (PA2008) as a consequence of sections 14 and 15. It includes the construction or extension of a generating station in England, not generating electricity from wind and is not an offshore generating station, but has a capacity of more than 50MW.
- 2.2.3. The PA2008 provides a different basis for decision-making for NSIP applications where a relevant National Policy Statement (NPS) has effect (s104) and where no NPS has effect (s105).
- 2.2.4. For reasons expanded upon in section 2.3. below, this is an application to which s104 is applicable because it is subject to policy in a designated NPS.
- 2.2.5. Section 104(3) of the PA2008 requires the SoSESNZ 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
 - Where any condition prescribed for deciding an application otherwise than in accordance with a NPS is met.
- 2.2.6. S104(2) of the PA2008 sets out the matters to which the SoS must have regard in deciding an application. In summary, the matters set out include:
- any relevant policy considerations (NPSs);
 - any duly submitted Local Impact Reports (LIRs);
 - any matters prescribed in relation to development of the description to which the application relates; and
 - any other matters the SoSESNZ considers are both important and relevant to the decision.

- 2.2.7. This report sets out the ExA's findings, conclusions and recommendations taking these matters into account and applying s104 of the PA2008.
- 2.2.8. A full list of relevant legislation, including details of the Equalities Act 2010, Human Rights Act 1998 and the Climate Change Act 2008 (as amended), can be found in Appendix B of this report.

2.3. POLICY CONSIDERATIONS

- 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, the ExA considers that the Overarching National Policy Statement for Energy (NPS EN-1), National Policy Statement for Renewable Energy Infrastructure (NPS EN-3) and National Policy Statement for Electricity Networks Infrastructure (NPS EN-5) are relevant to the application, as designated on 17 January 2024.

Overarching National Policy Statement for Energy (NPS EN-1)

- 2.3.2. NPS EN-1 sets out general principles and the generic impacts to be taken into account in considering applications for energy NSIPs. All other energy NPSs sit within the policy framework provided by NPS EN-1.
- 2.3.3. Paragraph 1.3.4 sets out that for onshore electricity generating stations generating more than 50MW in England, the NPS EN-1 in conjunction with the relevant technology-specific NPS will be the primary basis for decision making.
- 2.3.4. Paragraph 3.3.24 of NPS EN-1 further confirms that applications for solar energy generating stations above 50MW will continue to be defined as NSIPs, therefore requiring consent from the SoSESNZ.

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

- 2.3.5. NPS EN-3 is a relevant technology-specific NPS to the proposed development, focusing on renewable energy generation projects and it includes technology specific considerations to be taken into account in addition to the impacts of issues generically covered in NSP EN-1.
- 2.3.6. Section 2.10 of NPS EN-3 relates specifically to solar photovoltaic energy generation and the impacts on matters that which are specific to this type of technology.

National Policy Statement for Electricity Networks Infrastructure (NPS EN-5)

- 2.3.7. NPS EN-5 focuses on infrastructure for electricity networks and it includes assessment criteria specific to electricity networks development. It includes additional policy on: factors influencing site selection and design; biodiversity and geological conservation; landscape and visual; noise and vibration; Electric and Magnetic Fields and Sulphur Hexafluoride.
- 2.3.8. NPS EN-5 paragraph 1.6.2 confirms that NPS EN-5 covers above ground electricity lines whose nominal voltage is expected to be 132kV, or above, and above ground electricity lines whose length is greater than 2km. Paragraph 1.6.4 confirms that, in England, underground cables at any voltage which constitute associated development for which consent is sought along with an NSIP such as a generating station will be covered by NPS EN-5.

- 2.3.9. The NPSs form the primary policy context for this Examination. This report sets out the ExA's findings, conclusions and recommendations taking these matters into account and applying the approach set out in s104 of the PA2008.

2.4. OTHER RELEVANT NATIONAL POLICIES

- 2.4.1. The ExA has taken into account other relevant Government policy which is considered to be both important and relevant to the SoS's decision in accordance with s104(2)(d) of the PA2008. This includes the following national policies:
- The National Planning Policy Framework;
 - Energy White Paper: powering our net-zero future (HM Government, 2020);
 - Net Zero Strategy: Build Back Greener (HM Government, 2021);
 - Powering up Britain: the net-zero growth plan (HM Government, 2023);
 - The Sixth Carbon Budget – The UK's path to Net Zero (CCC, 2020);
 - British Energy Security Strategy (HM Government, 2022);
 - Build Back Better: Our Plan for Growth (HM Treasury, 2021);
 - The Clean Growth Strategy: Leading the Way to a Low Carbon Future (DBEIS, 2017);
 - National Infrastructure Strategy (HM Government, 2020);
 - A Green Future: Our 25 Year Plan to Improve the Environment (HM Government, 2018);
 - Environmental Improvement Plan (DEFRA, 2023); and,
 - Written Ministerial Statement (WMS) 'Solar and Protecting our Food Security and Best Most Versatile (BMV) Land (May 2024).
- 2.4.2. The applicant has submitted a Planning Statement [\[APP-163\]](#) offering a schedule of all relevant national and local planning policy, as the applicant sees them. Document 7.1.1. Appendix A Policy Compliance Document [\[APP-164\]](#) provides further detail on how the applicant believes it has complied with relevant national plans and policies.
- ## **2.5. LOCAL IMPACT REPORTS**
- 2.5.1. There are three LIRs which were submitted into the Examination at Deadline 1. One was submitted by Darlington Borough Council (DBC) [\[REP1-023\]](#). The other was submitted by Stockton-on-Tees Borough Council [\[REP1-026\]](#). The third one was submitted by Durham County Council [\[REP1-025\]](#). The LIRs set out their respective local planning policy context and identify concerns relating to, but not limited to, the following issues:
- landscape and visual impact;
 - heritage assets;
 - land use, loss of agricultural land and socioeconomics;
 - glint and glare and residential amenity;
 - public rights of way (PRoW);
 - traffic and transport and impact on local highways network; and
 - cumulative impacts.
- 2.5.2. The issues raised are considered in further detail in relation to relevant planning issues in Chapter 3 of this report. Appendix B sets out the individual local policies that are relevant to the proposed development. Individual policies are referred to as required in Chapter 3 of this report.

2.6. ENVIRONMENTAL IMPACT ASSESSMENT (EIA)

- 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. An EIA Scoping Report for the proposed development was prepared and submitted by JBM Solar Projects UK Limited, now RWE, to PINS on the 27 October 2022 [\[APP-120\]](#). The Planning Inspectorate provided a Scoping Opinion on 6 December 2022 [\[APP-121\]](#).
- 2.6.3. Overall, the ExA considers that the Environmental Statement (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.
- 2.6.4. The ExA considers that changes to the documentation, comprising the ES during the Examination, together with the Change Application (Section 1.5 of this Recommendation) did not individually or cumulatively undermine the scope and assessment of the ES. Chapter 3 of this Recommendation will summarise the environmental effects under each topic section.

2.7. HABITATS REGULATIONS ASSESSMENT (HRA)

- 2.7.1. The SoSESNZ is the Competent Authority for the purposes of the Conservation of Habitats and Species Regulations 2017 (as amended) and the Conservation of Offshore environment Habitats and Species Regulations 2017 (as amended) ('the Habitats Regulations'). The Habitats Regulations were amended by The Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019.
- 2.7.2. The proposed development is development for which a Habitats Regulations Assessment (HRA) Report has been provided [\[APP-130\]](#).
- 2.7.3. Consideration is given to the adequacy of the HRA Report and associated information in Appendix C of this report.

2.8. TRANSBOUNDARY EFFECTS

- 2.8.1. The proposed development is of local and regional impact. Transboundary effects are those which would affect the environment in another state within the European Economic Area (EEA). On 06 December 2024, the Planning Inspectorate undertook a transboundary screening on behalf of the SoSESNZ for the purposes of Regulation 32 of the EIA Regulations 2017 following the applicant's request for an EIA Scoping Opinion. No significant effects that could impact on another EEA state in terms of extent, magnitude, probability, duration, frequency or reversibility were identified.

3. INTRODUCTION TO THE PLANNING ISSUES

3.1. INTRODUCTION

3.1.1. This chapter introduces the Examining Authority's (ExA) findings and conclusions on the planning issues. It reviews the initial assessment of principal issues (IAP) and explains how the issues identified there have been managed. Where new planning issues have arisen that were not identified in the IAP, these are outlined. Where planning issues that were identified in the IAP have changed during examination to a point where they are able to be addressed within the framework of another planning issue, this too is explained.

3.1.2. The planning issues considered in this report are addressed in individual issues-based chapters which follow on from this chapter. In each following chapter, the ExA will identify the policy background, followed by a summary of the Application as made, then report on the main issues for each topic. Findings and conclusions will then be drawn for each topic and whether the effects carry a little weight, moderate weight, great weight, or very great weight for/ against the making of the Development Consent Order (DCO).

INITIAL ASSESSMENT OF PRINCIPAL ISSUES (IAP)

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, the ExA made an IAP arising from the Application in advance of the Preliminary Meeting (PM). This formed an initial assessment of the issues based on the Application documents and submitted Relevant Representations (RR). The list of issues relates to all phases of the proposed development. The IAP was raised at the PM and no other key topics were identified during the Examination. The IAP can be found in Annex C of the Rule 6 letter [\[PD-003\]](#). The issues identified in the IAP are as follows:

- Principle of the proposed development
- Environmental Impact Assessment
- The case for Compulsory Acquisition (CA) and Temporary Possession (TP)
- Draft Development Consent Order (dDCO)
- Biodiversity, Ecology and the Natural Environment
- Design
- Health and Air Quality
- Historic Environment
- Landscape and Visual
- Land Use and Socioeconomics
- Noise and Vibration
- Traffic and Transport
- Water Environment and Flood Risk
- Cumulative Effects

3.1.4. The Application is also subject to a change that seeks additional land and rights, promoted by the applicant under the Infrastructure Planning (Compulsory Acquisition) Regulations 2010 (the CA Regs). As required by the CA Regs, the ExA also reviewed the IAP having regard to matters raised in relevant representations pertaining to the additional land and rights sought. The ExA concluded that no change to the IAP was required as a consequence of this change request.

THE PLANNING ISSUES IN THIS REPORT

- 3.1.5. The ExA considers that the issues raised by Interested Parties (IP) were broadly in line with the IAPI and were subject to written and oral questioning during the Examination. These are the issues that the ExA has used to structure most of the following sections in this report which address each issue in turn. To facilitate efficient consideration of the relationships between certain issues and to avoid repetition in analysis, the ExA has varied the order of its consideration of issues arising from the IAPI, however, where any change has occurred this is reflected in the chapter itself. It should also be noted that the IAPI is a high-level framework. 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.
- 3.1.6. The planning issues considered in this report are as follows:
- Chapter 3.2: The Principle of the Proposed Development
 - Chapter 3.3: Alternatives and Site Selection
 - Chapter 3.4: Good Design
 - Chapter 3.5: Socioeconomics
 - Chapter 3.6: Landscape and Visual effects
 - Chapter 3.7: Biodiversity
 - Chapter 3.8: Historic Environment
 - Chapter 3.9: Noise and Vibration
 - Chapter 3.10: Flood Risk and Water Environment
 - Chapter 3.11: Traffic and Transport
 - Chapter 3.12: Land Use
 - Chapter 3.13: Other Planning Topics
 - Chapter 3.14: Cumulative Effects
- 3.1.7. Provide any additional explanation that might be needed about the handling of issues or the relationship between issues in the IAPI, in the Examination and as included in this report.

3.2. THE PRINCIPLE OF THE DEVELOPMENT

INTRODUCTION

- 3.2.1. This chapter of the report deals with the need for, and the suitability of, large scale solar generation projects, the size of the proposed development and overall generating capacity. This chapter also partially covers issues linked with climate change and greenhouse gas emissions, but Climate Change adaption and resilience is also covered in Other Planning Topics in Section 3.13 of this Report.
- 3.2.2. Matters that relate to alternatives and site selection are dealt with in Chapter 3.3.
- 3.2.3. The applicant's case for need and in principle support for the proposed development is mainly detailed in the Planning Statement [\[APP-163\]](#), ES Chapter 2 The proposed development [\[APP-025\]](#) and ES Chapter 3 Alternatives and Design Iteration [\[APP-026\]](#). These are supported by the Appendix A Policy Compliance Document [\[APP-164\]](#) and the Design Approach Document (DAD), which the last version submitted to Examination of is [\[REP8-021/022\]](#). Following this, an Energy Generation and Design Evolution Document [\[REP2-010\]](#) was also submitted in support of the proposed development.
- 3.2.4. The applicant's main case for Climate Change is set out in Chapter 5 Climate Change [\[APP-028\]](#) which is then supported Appendix 5.1 Greenhouse Gas Assessment [\[APP-123\]](#) and Appendix 5.2 Climate Change Resilience Assessment [\[APP-124\]](#).

POLICY CONSIDERATIONS

NPS EN-1

- 3.2.5. NPS EN-1, which sets out the policy context for the development of nationally significant energy infrastructure, states that energy is vital to economic prosperity and social well-being and therefore important that the UK's supplies of energy remain secure, reliable and affordable. It also recognises the role that renewable electricity generation proposals, such as solar, can have in addressing the key challenges ahead in decarbonising energy.
- 3.2.6. Sections 2.2. and 2.3 of NPS EN-1 provide further information in relation to the need to decarbonise the power sector by referencing the Government's requirement for the UK to reduce Greenhouse Gases (GHG) emissions by 78 per cent by 2035² and the target to cut GHG emissions to net zero by 2050³. The NPS EN-1 acknowledges the need for a step change in the decarbonisation of the UK's energy system to achieve these.
- 3.2.7. The role of solar energy in achieving these objectives is acknowledged in paragraphs 3.3.20 to 3.3.24, where it is stated that wind and solar are the lowest cost ways of generating electricity therefore helping to reduce costs and providing a clean and secure sources of electricity supply. The NPS EN-1 also makes reference

² The Sixth Carbon Budget (2020) - theccc.org.uk/wp-content/uploads/2020/12/The-Sixth-Carbon-Budget-The-UKs-path-to-Net-Zero.pdf

³ [Net Zero Strategy: Build Back Greener - GOV.UK](#)

to the requirement included in the Energy White Paper: Powering our net zero future (2020)⁴ for sustained growth in solar energy, amongst others, in the next decade.

- 3.2.8. Paragraph 3.3.58 of the NPS EN-1 then goes on to clearly state that, given the urgent need for new electricity infrastructure and the time it takes for electricity NSIPs to move from design conception to operation, new, and particularly low carbon, electricity NSIPs need to be brought forward as soon as possible. The NPS EN-1 then goes on to say in paragraph 4.1.3 that, given the level of urgency of need identified, the SoS will start with a presumption in favour of granting consent when assessing applications for energy NSIPs, unless more specific and relevant policies set out in the relevant NPSs clearly indicate that consent should be refused.
- 3.2.9. Paragraphs 3.3.25 to 3.3.31 then focus on the role of electricity storage and recognise that the storage of surplus electricity in times of low demand to provide it when demand is higher, is key in achieving net zero and providing flexibility to the energy system.
- 3.2.10. The NPS EN-1, in paragraph 4.2.4 states that, due to the Government's commitment to fully decarbonising the power system by 2035 and to ensure that the UK is more energy independent, resilient and secure, the Government has concluded that there is a critical national priority (CNP) for the provision of nationally significant low carbon infrastructure. However, paragraph 4.2.7 clarifies that CNP policy does not create an additional or cumulative need case or weighting to that which is already outlined for each type of energy infrastructure. The policy instead applied following the normal consideration of the need case, the impacts of the project and the application of the mitigation strategy. Consequently, CNP will be further covered in Section 4 of this report and not considered here as part of the principle of the proposed development.

NPS EN-3

- 3.2.11. NPS EN-3 deals with renewable energy infrastructure and, alongside NPS EN-1, forms part of the basis for decisions on nationally significant renewable energy infrastructure. This includes solar photovoltaic (PV) electricity generating stations, of a capacity greater than 50MW, as confirmed in paragraph 1.6.1 of NPS EN-3.
- 3.2.12. Section 2.10 of NPS EN-3 deals specifically with solar PV generation. Paragraph 2.10.9 confirms that solar is a key part of the government's strategy for low-cost decarbonisation of the energy sector.
- 3.2.13. Paragraph 2.10.11 confirms that the government seeks large scale ground-mount solar deployment across the UK, mainly on brownfield, industrial and low and medium grade agricultural land and paragraph 2.10.15 confirms that solar farm proposals are likely to consist of solar panel arrays, mounting structures, piles, inverters, transformers and cables.
- 3.2.14. Paragraph 2.10.17 confirms that a solar farm requires between 2 to 4 acres for each MW output, with a 50MW solar farm consisting of around 100,000 to 150,000 panels and cover between 125 to 200 acres. However, the same paragraph also states that this is expected to change over time as technology develops while recognising that

4

assets.publishing.service.gov.uk/media/5f5dc61e2d3bf7f3a3bdc8cbf/201216_BEIS_EWP_Command_Paper_Accessible.pdf

the proposed scale of development will inevitably have impacts, particularly if sited in rural areas.

- 3.2.15. There is a recognition, in paragraph 2.10.55, that the installed generating capacity of a solar farm will decline over time and there is a range of degradation sources that developers need to consider as part of their decision-making process on what technology to use. To account for this degradation, overplanting of solar panel arrays may be considered. Footnote 92 then expands on this by stating overplanting means that the installed generating capacity is larger than the grid connection, so that the degradation of panel efficiency is factored-in and the grid connection is maximised across the lifetime of the development. Reasonable overplanting is acceptable as long as the electricity export does not exceed the installed capacity threshold throughout the operational life of the development, and the impacts are assessed on this basis.

NPS EN-5

- 3.2.16. NSP EN-5 relates to electricity networks infrastructure and supplements NPS EN-1 by providing technology specific information. In this case the proposed new substations, cable connections and associated infrastructure come within the scope the NPS EN-5.
- 3.2.17. Paragraphs 2.2.1 and 2.2.2 of NPS EN-5 state that the SoSES NZ should bear in mind that the initiating and terminating points of new electricity networks infrastructure are not substantially within the control of the applicant as these require a connection to the network, and/or system capacity and resilience requirements determined by the Electricity System Operator.

NATIONAL PLANNING POLICY FRAMEWORK (NPPF)

- 3.2.18. The NPPF's objective is to ensure that the planning system promotes sustainable development. So that this is pursued in a positive way, at the heart of the NPPF is a presumption in favour of sustainable development. In relation to decision making, this means approving development proposal that accord with an up-to-date development plan without delay.
- 3.2.19. Section 14 of the NPPF sets out the need for the planning system to support the transition to a low carbon future, including by supporting renewable and low carbon energy and associated infrastructure. It states, in paragraph 168, that when determining planning applications for all forms of renewable and low carbon energy developments and their associated infrastructure, local planning authorities should not require applicants to demonstrate overall need and should give significant weight to the benefits associated with renewable and low carbon energy generation, including contribution to a net zero future.
- 3.2.20. With regard to conserving and enhancing the natural environment, footnote 65 sets out 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.

DARLINGTON LOCAL PLAN 2016-2036 (LOCAL PLAN)

- 3.2.21. The Local Plan policies SD1 and IN9 deal directly with issues linked to sustainable development and renewable energy infrastructure.

- 3.2.22. Policy SD1 outlines the Council's positive approach to considering development proposals that reflect the presumption in favour of sustainable development contained in the National Planning Policy Framework, while Policy IN9 supports, in principle, renewable and low carbon energy developments where in accordance with the relevant criteria and that significant weight will be given to the achievement of wider social, economic and environment objectives when determining those projects.

THE APPLICATION

Need

- 3.2.23. The applicant recognises that there are two key aspects to the consideration of the principle of the proposed development, which are the need for the development and the location of the development, taking into account alternatives available. This chapter will deal with need and overall size of the proposed development, as alternatives and site selection will be considered in section 3.3 of this Report.
- 3.2.24. In Chapter 3 of the Planning Statement [\[APP-163\]](#) the applicant seeks to demonstrate the need for Byers Gill Solar by identifying how the delivery of the proposed development would align with legislation, policy and strategic priorities relating to decarbonisation, energy security and energy affordability.
- 3.2.25. Further information on this matter is also provided in the Energy Generation and Design Evolution Document [\[REP2-010\]](#) in which the applicant sets out its position on need and highlights that the starting point for all assessments of energy infrastructure applications is the overarching need case, which the Government has demonstrated an urgent need for in national policy and that substantial weight should be given to this need. The applicant also highlights that, in addition to the urgent need for nationally significant energy infrastructure, NPS EN-1 also states that "Government has therefore concluded that there is a critical national priority (CNP) for the provision of nationally significant low carbon infrastructure.
- 3.2.26. The applicant stresses this need is established in national legislative commitments, such as the Climate Change Act 2008, the Climate Change Act 2008 (2050 Amendment) Order 2019 and the Sixth Carbon Budget. The applicant also refers to the Government's Energy White Paper (2020), the Net Zero Strategy (2021), the Net-Zero Growth Plan (2023) and the British Energy Security Strategy (2022) and how these Government strategies aim to support the realisation of the 2050 net zero target and enable the transition to cleaner and greener energy.
- 3.2.27. The applicant particularly stresses that the Energy White Paper (2020) recognises that a net-zero energy generation system is likely to be comprised of predominantly wind and solar energy, which is required in order to tackle climate change, decarbonise the UK's electricity supply and meet the demands of electrification. It also quotes the Net-Zero Growth Plan (2023) and the Government's commitment to solar power as a necessary form of renewable energy to reach the UK's net-zero targets, including establishing a new Government/industry solar taskforce and developing a solar delivery roadmap to set out the deployment trajectory to achieve 70 GW of solar by 2035, as part of the target set by the Net Zero Strategy (2021) to decarbonise the electricity system by 2035.
- 3.2.28. The applicant also states, in paragraph 3.2.18, that there is a need to increase energy production in response to increased market demands and that solar energy, being the cheapest form of energy to produce and with increased reduction in cost,

is therefore well placed to contribute to lowering the cost of UK energy bills in the foreseeable future.

Size and generating capacity

- 3.2.29. In the Overview of the proposed development, as set out in ES Chapter 1 Introduction [\[APP-024\]](#), the applicant defines the proposed development as:

“a renewable energy scheme, located in the north-east of England, covering an area of approximately 490 hectares (ha), and comprising solar photovoltaic (PV) panels, on-site Battery Energy Storage Systems (BESS), associated infrastructure as well as underground cable connections between panel areas and to connect to the existing National Grid Substation at Norton. The proposed development will have the capacity to generate over 50 Megawatts (MW) alternating current (AC) of electricity.”

- 3.2.30. In relation to its overall size and generating capacity, the applicant then goes on to say, in ES Chapter 3 [\[APP-026\]](#) that the key crucial factor that defined and overall size and generating capacity of the proposed development was the limit of the connection capacity secured by the applicant in negotiations with the relevant Distribution Network Operator (DNO): Northern Power Grid (NPG).

- 3.2.31. The applicant states that a connection was available from the Norton substation and that an agreement has been secured for the generation of 180MW of electricity. The applicant goes on to state that the grid connection capacity has informed both the site location and the overall size of the proposed development, and that the proposed development has been sized for the availability of this connection capacity. In doing so, the proposal would seek to ensure that the delivery of solar energy would be provided to the national grid when the construction of the solar farm would be completed.

- 3.2.32. Table 2-2 of ES Chapter 2 [\[APP-025\]](#) Components of the proposed development presents the applicant's calculation in relation to the land identified as needed for the delivery of the different components of the proposed development.

Table 3.1 Components of the proposed development (adapted from Table 2-2 Components of the proposed development)

Component	Size	Local Authority
Panel Area A: Brafferton	114.37ha	Darlington Borough Council
Panel Area B: Hauxley Farm	52.24ha	
Panel Area C: Byers Gill Wood	77.16ha	
Panel Area D: Great Stainton	75.86ha	
Panel Area E: West of Bishopton	26.63ha	
Panel Area f: North of Bishopton	71.9ha	

Component	Size	Local Authority
Norton Substation	11.20ha	Stockton-on-Tees Borough Council
Underground cables	59.45ha	Darlington Borough Council Stockton-on-Tees Borough Council Durham County Council
Total	488.81ha	

- 3.2.33. The applicant also confirmed, in paragraph 2.5.3 of ES Chapter 2 [\[APP-025\]](#) that the Order Limits include the maximum extent of land that would be necessary to deliver the proposed development and that would be required for the substation, solar PV modules, hybrid and inverter containers, underground cables, the connection to Norton Substation, and associated infrastructure, as well as mitigation measures including biodiversity net gain, PRoW and landscape design.

Main benefits of the Proposal

- 3.2.34. The applicant states, in the Planning Statement [\[APP-163\]](#), that the main contribution that Byers Gill Solar would make would be a positive impact on the UK's energy market, by providing an expected 180MW of low-cost renewable electricity. It would also enable a flexible supply of energy to the grid through the provision of BESS.
- 3.2.35. 'Other benefits of the proposed development, both nationally and locally, are also set out in the Planning Statement [\[APP-163\]](#) and these would include, according to the applicant's case:
- biodiversity enhancements, namely:
 - new and enhanced hedgerows, planting and seeding between panel areas to provide habitats and pollination opportunities, new trees and biodiversity enhancement areas;
 - allocating two large fields in the Order Limits solely for habitat enhancement, which will be sown without fertiliser to help lower nutrients in the soil, and will be retained during the 40-year duration of the proposed development specifically for ground nesting birds, secured through the Development Consent Order and the Outline Landscape and Ecology Management Plan;
 - providing an anticipated 87% net gain of in area habitat Biodiversity Units (BUs) and a 108% net gain of hedgerow BUs;
 - and a community orchard in Bishopton.
 - access to approximately 3600m of permissive paths to be implemented during the construction stage and enhancing access to the local public right of way network with interpretation boards at certain points of interest being provided;
 - the displacement of over 4m tonnes of CO2 from equivalent fossil fuel energy which equates to taking approximately 101,000 cars off the road for a year;
 - the provision of a sensory garden and car park for the Bishopton Redmarshall Primary School;
 - £27m generated in business rates over the lifetime of the proposed development, alongside approximately 200 jobs during construction;

- And a community benefit fund of approximately 31.5 million across the lifecycle of the proposed development.

Climate Change

- 3.2.36. The applicant's approach to climate change, as set mainly in ES Chapter 5 Climate Change [\[APP-028\]](#), consisted of studying the potential effects of climate change on the proposed development and any required measures which would be needed to address potential impacts on climate change during construction, operation and decommissioning from the proposed development.
- 3.2.37. The assessment methodology used for this is set out in section 5.4 of ES Chapter 5 [\[APP-028\]](#) and consists mainly of two parts: the assessment of Greenhouse Gas (GHG) emissions and the Climate Change Resilience Assessment. These issues are also covered in greater detail under Other Planning Topics further down in this section of the report. However, for the purposes of this section, the ExA has looked at the proposed development's approach to GHG emissions when compared to other energy generating developments.
- 3.2.38. The applicant confirms, in paragraph 5.4.2, that the GHG emissions assessment followed a lifecycle approach, therefore calculating GHG emissions arising from the construction, operation and decommissioning phases of the proposed development. The applicant has scoped the key anticipated GHG emissions sources associated with the proposed development and considered the likely activities that will lead to GHG emissions at production, construction, operation and decommissioning phases. These are set out in Table 5-2 of ES Chapter 5 [\[APP-028\]](#).
- 3.2.39. Due to the nature of the proposed development, the applicant confirms that the energy generated during the operational phase has been considered within this GHG assessment based upon initial internal modelling, compared against a gas fired Combined Cycle Gas Turbine (CCGT) generating facility, which is currently the most carbon-efficient fossil-fuelled technology available.
- 3.2.40. The results of the applicant's GHG assessment are summarised in table 5-17 of ES Chapter 5 [\[APP-028\]](#) with the only significant effects identified being beneficial and related to the production of low carbon energy during operation stage. The applicant has, however, identified not significant minor adverse effects in relation to the release of GHG emissions during construction and emissions during decommissioning.
- 3.2.41. The applicant also clarifies the assumptions and limitations of the GHG assessment carried out, in paragraphs 5.5.1 to 5.5.4, which include, amongst others:
- that during the construction phase the solar PV modules and PV framework would be delivered via sea and Heavy Goods Vehicles (HGV) from China, whereas the rest of the materials are assumed to be sourced more locally;
 - that fuel would be consumed on-site during construction, both in generators and in plant and machinery. It is assumed that generators would run for 6 hours a day, 26 days a month over the 18 month construction phase;
 - that during the operational phase 10% of the solar PV modules will be replaced over the lifetime of the proposed development due to efficiency;
 - all supporting equipment is assumed to require replacement once with a further 50% requiring replacement twice, including all BESS, during the design life.

ISSUES CONSIDERED DURING EXAMINATION

ExA

- 3.2.42. The ExA's main concerns were in relation to the applicant's calculation of the likely energy generating capacity of the proposed development, the proposed overplanting and the implications of these two factors on its overall size and Order land. Consequently, the ExA asked a series of written questions to the applicant in relation to these points and explored these issues at ISH1 and ISH2.
- 3.2.43. Following from ISH1, the applicant provided an additional submission, a Energy Generation and Design Evolution document [\[REP2-010\]](#), in response to matters discussed at the hearing and action points issued post-hearing. section 3 of the Energy Generation and Design Evolution document [\[REP2-010\]](#) sets out in greater detail how the applicant has carried out its energy generation calculations and how the proposed development compares to a typical 50MW solar farm as set out in paragraph 2.10.17 of the NPS EN-3.

Overplanting

- 3.2.44. In paragraph 3.1.8 of the Energy Generation and Design Evolution document [\[REP2-010\]](#) the applicant confirms that at, an early stage, the land assembly sought to include enough land in the project to ensure that the secured grid connection of 180MW AC would be maximised across the lifetime of the solar farm.
- 3.2.45. The applicant then goes on to state that, to achieve this, enough land has been sought to the required Direct Current (DC) output of the solar panels to maximise the use of the 180MW AC connection, which includes land to meet the overplanting requirements. The proposed overplanting of photovoltaic (PV) panels is a ratio of 1.6, which the applicant believes is appropriate for this project. This ratio would then allow the applicant to produce 288MW DC of electricity.
- 3.2.46. The ExA queried the applicant's proposed overplanting ratio at several points during the examination, particularly at ISH1, ISH2 and via the ExQ2s (namely ExQ2 PPD.2.1). In response to the ExA's questioning, as set out in Fig. 1 of the Energy Generation and Design Evolution document [\[REP2-010\]](#), the applicant confirmed that overplanting is proposed because with no overplanting the solar farm would not reach the maximum export capacity, not even on an ideal day. This would mean that there would be no excess energy to be stored in the BESS and, consequently, the potential of the connection to Norton Substation would not be maximised 24 hours a day. The applicant was of the view, as stated in ISH2, that an overplanting of 1.6 would allow this and provide an opportunity for the additional energy stored in the BESS during daylight hours to be feed into the grid.

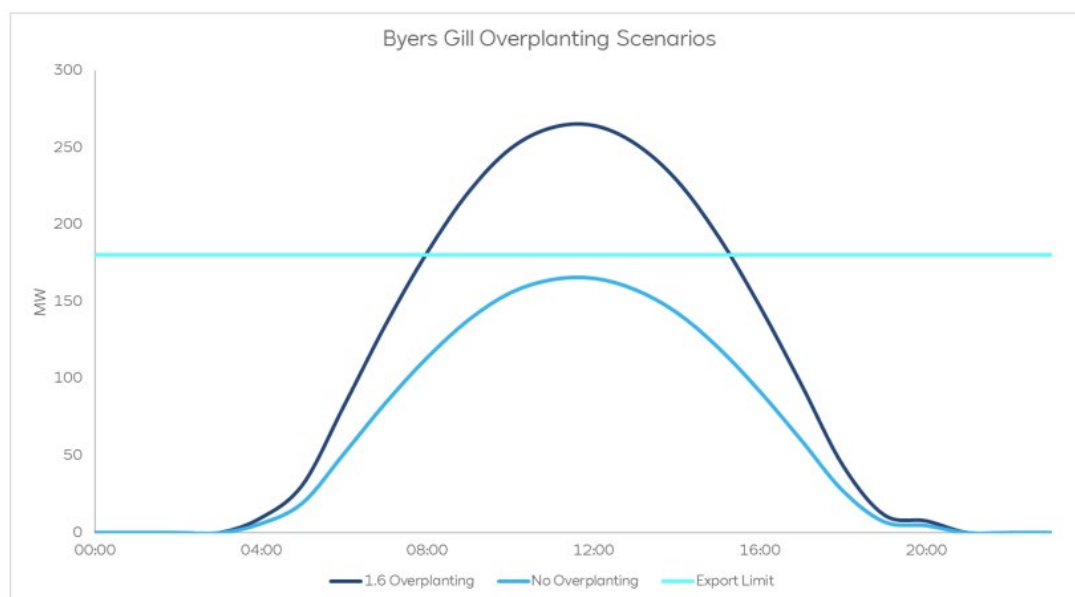


Fig. 3.1 – Byers Gill Solar Energy Generation calculation and need for overplanting (Fig. 1 extract from Energy Generation and Design Evolution document [REP2-010])

Energy generation capacity calculations

- 3.2.47. The ExA asked the applicant, at ISH1 and ExQ1 to provide further information and detail on the applicant's calculation of the proposed development's energy generation capacity, the assumptions behind these, and how the applicant's calculations compared to the ratios included in NPS EN-3, paragraph 2.10.17.
- 3.2.48. Paragraph 2.10.17 of the NPS EN-3 states that, along with associated infrastructure, a solar farm requires between 2 to 4 acres for each MW of output. The applicant states, in response to ExQ1 PPD.1.3 [\[REP2-007\]](#) and in section 3 of the Energy Generation and Design Evolution document [\[REP2-010\]](#), that the proposed development is comparable with the parameters suggested by NPS EN-3 with a ratio of 2.5 acres per MW DC of output.
- 3.2.49. The applicant goes on to expand further on this point. In paragraph 3.1.4 of Energy Generation and Design Evolution document [\[REP2-010\]](#) the applicant shows that the total acreage of the panelled areas (which includes supporting infrastructure) is 739 acres, or approximately 300 hectares (ha). Considering the proposed amount of overplanting, the applicant anticipates producing 288megawatts peak (MWp) of electricity, therefore having a ratio of the panelled areas of the proposed development to its Direct Current (DC) generation of 2.5 acres/MW DC generation. The applicant also assumes that the DC generation is the most relevant as solar panels generate electricity from the sun in DC which is then converted by inverters to AC which is used by the national grid.
- 3.2.50. The applicant then confirms, in paragraph 3.2.1 that, it is its view that in terms of generating capacity, the size of the proposed development has been reduced to the smallest possible land area whilst still being able to maximise the use of the secured grid connection export capacity across its operational lifetime.

Darlington Borough Council (DBC)

- 3.2.51. As set out in the last version of the Statement of Common Ground (SoCG) [\[REP8-029\]](#) DBC have concerns regarding the applicant's compliance with Darlington's Local Plan (DLP) Policy IN9 – Renewable Energy Infrastructure.
- 3.2.52. DLP Policy IN9 – Renewable Energy Infrastructure [\[REP2-031\]](#) states that, in principle, renewable and low carbon energy developments will be supported where proposals are in accordance with the relevant criteria and that significant weight will be given to the achievement of wider social, economic and environment objectives. Part B of Policy IN9 states that solar power developments will be approved if it can be demonstrated that criteria, including local environmental impacts as set out in the policy, have been accounted for with appropriate mitigation and/or compensation measures to address any identified effects proposed.
- 3.2.53. DBC is of the view that there are unacceptable impacts in relation to the visual impact of the proposed development that cannot otherwise be mitigated against, and therefore the proposed development does not comply with IN9 in that regard.
- 3.2.54. The applicant's response to this concern as detailed in the Statement of Common Ground (SoCG) [\[REP8-029\]](#) and in RWE's comments on LIR [\[REP2-008\]](#) is set out in the Planning Statement [\[APP-163\]](#) and the Policy Compliance Document [\[APP-164\]](#).
- 3.2.55. The applicant's Policy Compliance Document [\[APP-164\]](#), in relation to IN9, re-iterates the need case as set out in NPS EN-1 and NPS EN-3 with the applicant stating that ES Chapter 3 [\[APP-026\]](#) details the site selection process undertaken by the applicant in relation to the proposed development, which included consideration of irradiance and quality of agricultural land. The applicant also states that the Design Approach Document [\[REP8-022\]](#) sets out the overall approach to the design of the proposed development which has sought to mitigate visual impacts on the landscape.

Great Stainton Parish Meeting

- 3.2.56. In their SoCG [\[REP7-007\]](#), Great Stainton Parish Meeting raised concerns regarding the overall scale of the proposed development, namely that the panel areas B, C and D would effectively surround the village from 3 sides and that this would impacts property values.
- 3.2.57. The applicant's response to these concerns as per the SoCG [\[REP7-007\]](#), highlight that the visual and landscape impacts of panel areas B, C and D are addressed in the ES Chapter 7 Landscape and Visual [\[APP-030\]](#) and that effects would be residual following the application of the mitigation hierarchy, which aims to avoid or reduce effects wherever feasible. The applicant also confirms that, following from a meeting with BVAG and Great Stainton Parish Meeting group, the Design Approach document was updated [\[REP5-024/025\]](#) to include a commitment to review the design of the proposed development in the event that technological advancements in PV panel technology allow for a rationalisation of the proposed design. In such an event, the priority areas for review are included in Appendix 2 of the SoCG [\[REP7-007\]](#).

CONCLUSION

- 3.2.58. The ExA notes the concerns raised by DBC in relation to the Principle of the proposed development and while DBC does not dispute the overall need for

renewable energy generating projects, it raises concerns regarding unacceptable impacts in relation to the landscape and visual impact that, it believes, cannot be mitigated against. DBC quotes Policy IN9 in support of their position.

- 3.2.59. Consequently, the ExA is of the view that, in relation to overall need as set out in national policy, there isn't a 'in principle' objection to it from DBC. However, there are clearly concerns regarding the visual effects of the proposed development and its effects on landscape which are addressed and considered in section 3.6 of this report. In addition, section 3.3 also deals with alternatives and site location which are material to DBC's concerns in relation to the principle of the proposed development.
- 3.2.60. In relation to need, the ExA is satisfied that there is a compelling case for the delivery of renewable energy at pace, including solar, as set in this section and in accordance with the policies and aims included in NPS EN-1, NPS EN-3 and NPS EN-5. Solar generation will play an important role in securing the UK's supply of energy while also assisting the Government in reaching its target to cut GHG emissions to net zero by 2050. The ExA agrees that the proposed development will assist in this.
- 3.2.61. Paragraphs 3.3.58 of the NPS EN-1 stress the urgent need for new electricity infrastructure and paragraph 4.1.3 the presumption in favour of granting consent when assessing applications for energy NSIPs. The ExA notes the connection to Norton Substation and the agreement secured for the generation of 180MW of electricity which provides significant certainty in relation to deliverability at pace.
- 3.2.62. The ExA finds that the proposed development will play a significant role in assisting the Government with this objective in accordance with the objectives set out in paragraphs 3.3.20 to 3.3.24 of NPS-EN1.
- 3.2.63. National policy clearly states that, given the level of urgency of need identified, the SoS should start with a presumption in favour of granting development consent, unless more specific and relevant policies set out in the relevant NPSs clearly indicate that consent should be refused.
- 3.2.64. However, the ExA also notes that although local plan policies are important and relevant considerations for the SoSES NZ when carrying out the assessment of new nationally significant infrastructure projects, the adopted suit of policy considerations form the basis for the SoS's and therefore should be given more weight when considering the need case. For the reasons stated above in this section of the Report, the ExA find that the need case has been made for the proposed development.
- 3.2.65. In relation to the overall size of the proposed development and its generating capacity, the ExA find that the applicant has provided enough information to demonstrate that the proposed development meets the principle of maximising the use of the grid connection with appropriate levels of overplanting. The ExA also notes that the proposed development does seem to be comparable to the typical ratio set out in paragraph 2.10.17 of NPS EN-3 in relation to land take/solar energy production.
- 3.2.66. Essential to this and to facilitate the maximization of the grid connection, is the BESS. The BESS would serve a legitimate storage purpose that is supported by government in the current NPS and therefore an essential component of the proposed development, in accordance with Paragraphs 3.3.25 to 3.3.31 of the NPS

EN-1 with recognise that the storage of surplus electricity in times of low demand to provide it when demand is higher, is key in achieving net zero and providing flexibility to the energy system.

- 3.2.67. The ExA acknowledges that some of the detail of the proposed development would be subject to post-consent approval. In this regard, by setting out the overall parameters for site layout and design, flexibility has been retained and would allow the applicant to adjust and respond to any innovations in relation PV solar panel technology that might occur between the application and the construction phase. However, the ES assesses the worst-case scenario allowing adequate consideration of whether the proposed development would be acceptable in environmental terms.

Matters to be taken to Chapter 4 and the planning balance

- The proposed development is considered low carbon infrastructure under paragraph 4.2.5 of NPS EN-1. Furthermore, and in accordance with Sections 2.2. and 2.3 of NPS EN-1, it would assist in decarbonising the power sector, reduce Greenhouse Gases (GHG) emissions and assist in the achievement of the target to cut GHG emissions to net zero by 2050.
- paragraphs 3.2.6, 3.2.7 and 4.2.2 of NPS EN-1 establish an urgent need for the proposed development, which should be given substantial weight, for it assist the government in meeting its energy security and net zero ambitions.
- paragraph 3.3.26 of NPS EN-1 includes that the energy storage provided by the Battery Energy Storage System (BESS) is needed to reduce the costs of the electricity system and increase reliability.
- Accordingly, and subject to consideration of the specific impacts of the proposed development in the remainder of this Chapter, the ExA considers that the principle of the proposed development accords with national policy.
- The ExA therefore gives these matters very great weight in favour of making of the Order.

3.3. ALTERNATIVES AND SITE SELECTION

INTRODUCTION

- 3.3.1. This section of the report deals with alternatives, as these were considered by the applicant, in relation to site selection, layout, solar technology, cabling, the Battery Energy Storage System (BESS) and other supporting infrastructure. This chapter should be read in conjunction with Chapter 3.2 Principle of the Proposed Development which covers need, overall size, generating capacity and the time period for the proposed development, and Chapter 3.4 in relation to Design. The BESS is also covered further in 3.13 Other Planning Topics.
- 3.3.2. The applicant's approach to alternatives is mainly set out in ES Chapter 3 Alternatives and Design Iteration [\[APP-026\]](#) and the DAD [\[REP8-021\]](#). This was then further complemented by the Energy Generation and Design Evolution Document [\[REP2-010\]](#) received and submitted to the ExA during the Examination period.

POLICY CONSIDERATIONS

NPS EN-1

- 3.3.3. NPS EN-1 does not contain any general requirement to consider alternatives or to establish whether the proposed project represents the best option. However, as set in paragraph 4.3.15, applicants are required to include in its ES information about the main alternatives it has studied and include an indication of the main reasons for the choice made, taking into account the environmental, social and economic effects including technical and commercial feasibility.
- 3.3.4. Paragraphs 4.3.22 to 4.3.29 provide further information on how much weight the Secretary of State (SoS) should give to the consideration of alternatives. It states that, given the level and urgency of need for new energy infrastructure, the consideration of alternatives should be carried out in a proportionate manner and only alternatives that have a realistic prospective of being delivered at the same timescale and meet the objectives of the proposed development should be considered.
- 3.3.5. Paragraph 4.3.24 also confirms that the SoS should not refuse an application for development on one site simply because fewer adverse impacts would result from developing similar infrastructure on another suitable site, as it is possible that all suitable sites for energy infrastructure may be needed.
- 3.3.6. NPS EN-1 also provides the SoS with guidance in relation to network connection, in section 4.11 by recognising that the connection of a proposed electricity generation plant to the electricity network is an important consideration for applicants wanting to construct or extend a generation plant.

NPS EN-3

- 3.3.7. Section 2.3 of NPS EN-3 deals directly with site selection and design of renewable energy infrastructure.
- 3.3.8. Paragraph 2.3.5 confirms that it is for applicants to decide what applications to bring forward and that the government, in general, will not seek to direct applicants to particular sites as it recognises that most renewable energy resources can only be developed where the resource exists and where it is economically viable. Paragraph

2.3.9 also states that, due to the critical level of need established in NPS EN-1, the SoS should not use a consecutive approach in the consideration of renewable energy projects, such as solar.

- 3.3.9. Paragraphs 2.10.18 to 2.10.48 further address the factors influencing site selection and design. In relation to site selection, it is important to note that NPS EN-3 recognises that irradiance and site topography are key considerations for the applicant in identifying a potential site, as well as a suitable network connection. Paragraph 2.10.24 states, in relation to network connections, that the connection voltage, availability of network capacity and the distance from the solar farm to the existing network can have a significant effect on the commercial feasibility of it and therefore, to maximise existing grid infrastructure, minimise disruption to existing local community infrastructure or biodiversity and reduce overall costs, applicants may choose a site based on nearby available grid export capacity.

NPS EN-5

- 3.3.10. NPS EN-5 is relevant to the site selection in relation to the proposed substations and electricity cable connection, which constitute associated development for which consent is sought along with the solar PV generating station.
- 3.3.11. It states, in paragraphs 2.2.1 and 2.2.2 that the SoS should bear in mind that the initiating and terminating points of new electricity networks infrastructure is not substantially within the control of the applicant and that the siting is determined by, not only the location of new generating stations or other infrastructure requiring connection to the network, but also by the system capacity and resilience requirements.
- 3.3.12. However, NPS EN-5 also stresses, in paragraph 2.2.10 that applicants must take into account the duty placed on all electricity transmission and distribution licence holders, when formulating proposals for new electricity network infrastructure, to take reasonable steps to mitigate any effect which the proposals would have on the natural beauty of the countryside or on any such flora, fauna, features, sites, buildings or objects.

THE APPLICATION

Site Selection

- 3.3.13. In the ES Chapter 3 [\[APP-026\]](#) the applicant confirms that the location of the proposed development was selected through a staged process, which included the identification of a search corridor, consideration of environmental and planning constraints, land assembly and the identification of panel areas.
- 3.3.14. To facilitate site selection, an initial search corridor was defined based on two primary factors: irradiance and yield potential, and the availability of grid connection capacity. The north-east region was identified as a suitable location due to its sufficient irradiance levels, enabling a viable yield from current solar panel technology. This selection was also informed by the feasibility of the proposed development being contingent on access to the national grid. Engagement with the Northern Power Grid (NPG) resulted in a connection agreement being secured with NPG for the generation of 180MW of electricity.
- 3.3.15. A 6km search corridor was then established around the Norton Substation to identify potential sites for the proposed development.

- 3.3.16. Following from the establishment of this search corridor, the applicant looked at known constraints within the search corridor area and looked at the extent of constraints in relation to the area of search and the feasibility of deliverable environmental mitigation, based on previous experience, in order to assess potential locations for siting the proposed development.
- 3.3.17. Through the assessment of environmental and planning constraints, RWE identified a refined boundary of land parcels suitable for solar development. This was then used to start engagement with relevant landowners and secure expressions of interest with the aim to reduce or avoid completely the need for compulsory acquisition. Landowners with sufficient land for panel areas, mitigation, and enhancement were approached to enter into option agreements. These agreements were successfully secured, allowing the potential panel areas for the proposed development to be defined.
- 3.3.18. The site selection process confirmed that sufficient land could be secured within the search corridor, free from major constraints, while still ensuring the project could meet the grid connection capacity.
- 3.3.19. Although initially all secured land was considered for PV panel placement, a design refinement exercise was then undertaken which introduced setbacks from communities and landowner properties, adjusted panel configurations for local topography, and account for utility searches. Setbacks were applied to reduce proximity to the villages of Great Stainton, Bishopton and Brafferton. Other considerations which the applicant took into account at this stage were the proximity of proposed panel areas to Downland Farm and also the potential effects on Coatham Mundeville Conservation Area.
- 3.3.20. Following the establishment of the panel layout, substation locations were considered and an initial option selected, leading to further assessment of potential cable routes.
- 3.3.21. With the site selection process complete, the applicant identified a red line boundary, defining the panel areas and cable route options while considering high-level environmental constraints.

Site layouts

- 3.3.22. The applicant in the ES Chapter 3 [\[APP-026\]](#) states that alternative site layouts started to be considered in the early stages of the development of the proposal, with amendments being made prior to the Environmental Impact Assessment (EIA) Scoping Report. These amendments are detailed in paragraph 3.7.1 of ES Chapter 3 [\[APP-026\]](#), but they include the removal of a large panel area to the south of the overall proposed site, the addition of land to the north-west of Panel Area A, the addition of land to Panel Area B and changes to small areas of land in Panel Area C.
- 3.3.23. However, the final site layout was developed subsequently from these changes and it was informed by three key factors, as set out in paragraph 3.2.7 of the ES Non-Technical Summary [\[APP-022\]](#): statutory consultation feedback, landowner engagement and further technical assessment.
- 3.3.24. The main changes that occurred between the Preliminary Environmental Information Report (PEIR) and the application are summarised in Table 3-2 of ES Chapter 3 [\[APP-026\]](#), and these include, amongst others, a reduction in maximum

proposed solar PV panel height from 4.35m to 3.5m, increase setback of panels in Panel Area B and Panel Area F, relocation of BESS further from residential receptors, removal of some land parcels in Panel Area C and Panel Area D and reduction of the Order Limits in Panel Area F where land was deemed no longer required.

Cabling and cable routes

- 3.3.25. In relation to cabling and cable route alternatives, the applicant confirms, in paragraph 3.9.1 that there are two types of higher voltage cable required for the proposed development: 32.5km of 33kilovolt (kV) underground cabling which would connect the Panel Areas to the on-site substation, and 10km of 132kV underground cable which would connect the on-site substation to the National Grid Norton substation. It is this cabling, that would connect the on-site substation to the National Grid Norton substation that could be placed either within roads or through off-road options.
- 3.3.26. The applicant's preferred approach was to avoid on-road cable routes where feasible as to minimise disruption. This was due mainly to considerations of length and routing of the proposed cable, cost and programme issues, construction impacts and also consultation feedback. In relation to the consultation feedback, the applicant states in paragraph 3.9.19 of ES Chapter 3 [\[APP-026\]](#) that respondents expressed their concern or objection over potential road closures or diversions, as well as the potential impact of road works on the Bishopton Village Conservation Area. The use of the preferred off-road cable route would help to substantially address the concerns raised by the local communities and reduce such impacts.
- 3.3.27. However, it was recognised that off-road routes required voluntary land agreements, which had not all been secured at the time of the DCO application. It was therefore necessary to retain both on-road and off-road options within the Order Limits to ensure the deliverability of the proposed development. This was also reflected within the Development Consent Order (DCO) application which sought compulsory acquisition powers to enable the delivery of off-road routes where voluntary agreements could not be secured.
- 3.3.28. The applicant confirmed, in paragraph 3.9.7 of ES Chapter 3 [\[APP-026\]](#), that its intention is for the final routing to be determined post-consent. The applicant also confirmed Requirement 3 of the draft Development Consent Order (dDCO) seeks to ensure the mechanism through which the cable route would have to be agreed and approved post-consent.

BESS and other supporting infrastructure

- 3.3.29. The proposed development includes a Battery Energy Storage System (BESS) to store surplus energy on-site, alongside additional supporting infrastructure such as fencing, CCTV, lighting, access tracks, drainage, and storage containers. The applicant, in considering the placement of this infrastructure, followed key design principles to minimise environmental and community impacts. These are set out in paragraph 3.10.1 of ES Chapter 3 [\[APP-026\]](#) and included, amongst others:
- BESS to be sited at least 300m from residential properties due to potential to generate noise;
 - No night-time lighting to reduce visual and ecological disturbance;
 - CCTV cameras limited to panel areas to ensure privacy;
 - Access tracks designed with crushed gravel for durability and reduced environmental impact.

- 3.3.30. A further review was taken of the proposed location for the BESS due to noise and fire risk concerns being raised in relation to the BESS and its proximity to some residential receptors and the suitability of some proposed access tracks, such as the use of an existing access through Brafferton village. This led to the current proposed location.
- 3.3.31. As stated in paragraph 3.10.4 of ES Chapter 3 [\[APP-026\]](#) design principles for the BESS and supporting infrastructure are specified within the Design Approach Document (DAD) and secured through Requirement 3 of the dDCO [\[REP6-002\]](#) to ensure that they are reflected in the detailed design and eventual delivery of the proposed development.

Solar technologies

- 3.3.32. The applicant states, in paragraph 3.11.1 that the primary alternatives considered in relation to solar technologies were fixed panel or a tracking system panel. Following statutory consultation and further technical assessment, the applicant determined that a fixed solar panel system would be most appropriate for the proposed development.
- 3.3.33. Following from statutory consultation and technical assessments, the applicant arrived at the conclusion that, considering the potential energy generation of the two options, the overall viability of the proposed development and the need to avoid and reduce adverse effects such as landscape and visual impacts, that a fixed panel design would achieve the desired balance of reducing the potential for adverse environmental effects and maintaining operational viability of the proposed development.

ISSUES CONSIDERED DURING THE EXAMINATION

ExA

- 3.3.34. The ExA asked a series of written questions to the applicant in relation to alternatives, particularly on the proposed solar technology used (ExQ1 PPD.1.5, ExQ1 DES.1.3, EXQ1 DES.1.9), site layout (ExQ1 GCT.1.18) and cabling (ExQ1 GCT.1.11). The ExA also asked the applicant a series of questions at both ISH1 and ISH2, including, at ISH1 a question to the applicant on the design evolution and developed of the proposal.
- 3.3.35. As a result, the applicant submitted the Energy Generation and Design Evolution Document [\[REP2-010\]](#) with section 4 addressing specifically the Design evolution of the Proposed Development. Section 4.3 of the Energy Generation and Design Evolution Document [\[REP2-010\]](#) includes a comparative analysis carried out by the applicant of the changes made prior to EIA Scoping Report and Statutory Consultation, detailed in Figure 2 and Table 4-1. Figure 3 and Table 4-2 shows changes and reasons for changes to panel areas post statutory consultation.

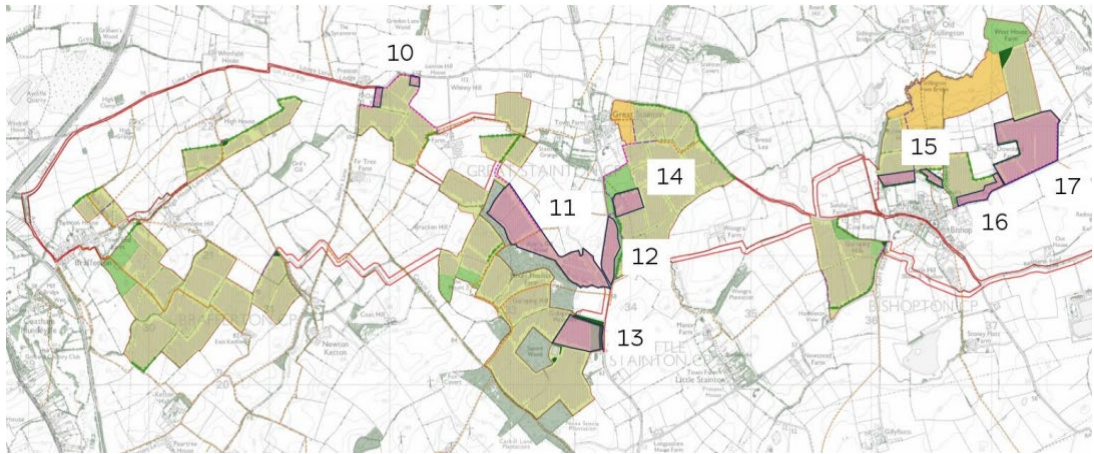


Fig. 3.2 – Panel areas removed (in pink) following statutory consultation (extract from Fig. 3 Energy Generation and Design Evolution Document [\[REP2-010\]](#))

- 3.3.36. During the examination there was a significant amount of debate in relation to the reasons for the removal of panel areas post statutory consultation as set out by the applicant in Table 4-2 of the Energy Generation and Design Evolution Document [\[REP2-010\]](#). However, the ExA is of the view that Figure 2 and Figure 3 of the Energy Generation and Design Evolution Document [\[REP2-010\]](#) still show and demonstrate changes and alternatives considered by the applicant and Table 4-1 and Table 4-2 of the Energy Generation and Design Evolution Document [\[REP2-010\]](#) present valid reasons for why choices were made in relation to the location of panel areas and the evolution of the applicant's approach, taking into account environmental, social and economic effects including technical and commercial feasibility of the proposed development.
- 3.3.37. ExQ1 PPD.1.5 asked for the applicant to confirm the specific type of PV panels that were being proposed, what alternatives were considered and why these alternatives were dismissed. The applicant's response, in [\[REP2-007\]](#), that the type of PV panels would be decided following Development Consent and will depend on the technology available at the time of construction. However, the applicant confirmed in its response that it assumes that bifacial panels will be used, which can harness irradiance from both sides of the panel, and that these would be N-type, as they perform better in low light environments. The applicant also explained, in its response to EXQ1 PPD.1.5 that P-type panels are not expected to be used as this type of panels have higher degradation rates leading to lower energy generation.
- 3.3.38. The applicant also confirmed that it considered two types of panel mounting structures during the development phase and that it chose fixed panels rather than tracking on the basis that tracker panels did not gain sufficiently greater yield to justify the greater cost compared to fixed panels.
- 3.3.39. In response to ExQ1.DES.1.3 [\[REP2-007\]](#) the applicant also stated that it did consider more powerful panels available as an alternative, but they are simply bigger, not more efficient. Using bigger panels could lead to a reduction in the total number of panels needed, however it would also lead to an increase in their overall height and therefore more difficult to mitigate against from a landscape and visual effects perspective. The applicant goes on to state that this alternative, was in fact considered and then dismissed in order to reduce landscape and visual effects.
- 3.3.40. In relation to site layout, the applicant confirmed, in its response to ExQ1.GCT.1.18, that section 7.2 of the DAD [\[APP-165\]](#) (the last submitted version of which is [\[REP8-](#)

[022\]](#) provides an account of the design response with regards to layout of technical infrastructure, such as panel configuration and layout which was in part driven by the requirements of ‘good design’, as well as safety requirements, manufacturing capabilities and/or industry standards, which the applicant also had to have regard to during its design process. Section 7.2 of the DAD [\[REP8-022\]](#) sets out the criteria that informed the applicant’s decision in relation to panel configuration or site layout and confirms, in paragraph 7.2.5 that the configuration of the Panel Areas has been revised from a north-south alignment to an east-west alignment in accordance with principles of good design and taking into account community views and the ability of people to enjoy the local area.

3.3.41. In relation to cabling and alternatives, the ExA’s main concerns were linked to the applicant’s assessment of both proposed cabling options (the on-road cabling and the off-road options) and, in the eventuality that some of the cabling would not be delivered via the off-road option, had the applicant fully assessed its implications. In response to ExQ1 GCT 1.11 [\[REP2-007\]](#) the applicant confirmed that, due to the nature of the cable route, the final route would likely be a combination of both on-road and off-road options and therefore it would be necessary to rely on a mixture of landowner agreements for sections of the off-road route but for other elements of the cable route rely on compulsory acquisition (for off road elements without landowner agreement) or use the on road option. However, that the applicant had identified its preference to use off-road cable routes where possible as set out in ES Chapter 3 [\[APP-026\]](#).

3.3.42. The ExA also raised further questions of the applicant at Hearings, namely at ISH2 [\[EV10-002\]](#), in relation to alternatives to the PV technology proposed to be used, how these informed and were taken into consideration as part of the development of the current proposal and site selection. The ExA also queries the applicant in relation to some assumptions made in relation to the proposed technology and how the applicant will ensure that the proposed development would be able to respond and adapt to any changes in solar technology brought upon by innovation. The applicant’s response to these queries is detailed in [\[REP4-010\]](#) with the applicant setting out their approach in relation to alternatives considered, in paragraphs 3.41 to 3.101.

Bishopton Villages Action Group (BVAG)

3.3.43. As indicated in the Statement of Common Ground (SoCG) between the applicant and BVAG [\[REP8-034\]](#), agreement has not been reached between the parties in relation to alternatives.

3.3.44. Concerns raised during the Examination are concentrated mainly on issues to do with site selection and site layout.

3.3.45. BVAG’s Deadline 8 [\[REP8-038\]](#) and Deadline 9 [\[REP9-014\]](#) submissions provide further detail on the main areas of disagreement in relation to alternatives, and state that BVAG considers that the proposed development has been pursued without due consideration of genuine alternatives. In [\[REP8-038\]](#) BVAG adds to this concern by stating that alternatives are not just about re-locating some panels from one field to another and that real alternatives should include consideration of where and how we best generate 180MW of solar energy with minimal or less harm. This concern is also raised in the SoCG [\[REP8-034\]](#) under reference BVAG5 – Alternatives. In response to this, included in [\[REP8-034\]](#), the applicant states that it believes that its approach as set out in ES Chapter 3 [\[APP-026\]](#) and in the Planning Statement [\[APP-163\]](#) provides a description of the reasonable alternatives it has studied in the

siting and design of the proposed development and provided an indication of the main reasons for the option chosen, taking into account the effects of the development on the environment.

Other IPs

- 3.3.46. In addition to this, and in relation to the location of the proposed BESS, concerns have also been raised by other IPs, such as Suzanne Springett [\[RR-510\]](#), and Paul Springett [\[RR-394\]](#), [\[REP1-050\]](#) and [\[REP4-029\]](#) in relation to the location of the proposed BESS and its proximity to existing properties. These concerns tended to be related with either visual and landscape effects, which are covered under item 3.6 of this Report or with matters of security, which are covered under item 3.13. However, questions were also asked in relation to the location of the BESS. The applicant's reply to these concerns, included in [\[REP1-004\]](#) and [\[REP4-010\]](#), details the overall considerations for the location of the BESS. However further information in relation to the criteria that presided to the location of the BESS are included in the DAD [\[REP8-022\]](#), in paragraphs 7.2.10 to 7.2.17.

CONCLUSION

- 3.3.47. The ExA acknowledges that several IPs raised general concerns regarding the applicant's approach to site selection as well as the applicant's consideration of renewable energy alternatives.
- 3.3.48. As stated in paragraph 4.3.9, the NPS EN-1 does not contain any general requirement to consider alternatives or to establish whether the proposed project represents the best option, but applicants are required to include in their ES information about the main alternatives they have studied and include an indication of the main reasons for the choice made, taking into account the environmental, social and economic effects including technical and commercial feasibility. Furthermore, paragraph 4.3.24 of the NPS EN-1 states that the SoS should not refuse an application for development on one site simply because fewer adverse impacts would result from developing similar infrastructure on another suitable site.
- 3.3.49. The applicant has included description of the main alternatives considered and the reasons for selecting the preferred options for the proposed development in ES Chapter 3 [\[APP-026\]](#). As set out above, these include the process and reasoning applied in relation to site selection, site layout, cabling and cable routes, the proposed solar technology, the proposed BESS and other supporting technology.
- 3.3.50. Through the examination process, the ExA was able to test some of the alternatives considered by the applicant as well as the main reasons that lead to the present proposal, particularly in relation to the proposed solar technology and how the applicant envisages the future proofing of the proposed development. The applicant clarified that different types of solar technology were considered and that the current proposal includes some degree of flexibility to incorporate or consider any future development that might occur. This is included as part of Requirement 3 of the dDCO.
- 3.3.51. Consideration should also be given to NPS EN-3, particularly paragraph 2.3.9 which states that due to the critical level of need established in the NPF EN-1, and on which the ExA has come to a position in section 3.2 of this report, the SoS should not use a consecutive approach in the consideration of renewable energy projects. Furthermore, and in line with paragraph 2.10.18 to 2.10.48 of the NPS EN-3 and paragraphs 2.2.1 and 2.2.2 of NPS EN-5 it is important to recognise that applicants are limited in relation to the location of new renewable energy generation facilities

due to external factors such as suitable network connection, system capability and resilience requirements. The applicant has demonstrated that it has considered and was limited by these factors in relation to site selection and alternatives.

- 3.3.52. It is the ExA's view that the applicant has provided adequate information on a range of alternative configurations and locations for the proposed development and associated works and infrastructure which meets the requirements set out in NPS EN-1, NPS EN-3, NPS EN-5, and the EIA Regulations 2017. Consequently, the ExA concludes that these requirements are satisfied. However, these conclusions will be balanced against other considerations in the Report's general conclusions. The planning balance is considered in Chapter 4 of this report.

Matters to be taken to Chapter 4 and the planning balance

- The applicant has provided adequate information on a range of alternative configurations and locations for the proposed development and associated works and infrastructure which meets the requirements set out in NPS EN-1, NPS EN-3, NPS EN-5, and the EIA Regulations 2017.
- The ExA was able to test some of the alternatives considered by the applicant as well as the main reasons that lead to the present proposal, particularly in relation to the proposed solar technology and how the applicant envisages the future proofing of the proposed development. The application includes some degree of flexibility to incorporate or consider any future development that might occur. This is included as part of Requirement 3 of the dDCO.
- Consequently, the ExA concludes that these requirements are satisfied.

3.4. GOOD DESIGN

INTRODUCTION

- 3.4.1. This section examines how the applicant has addressed the design element of the proposed development.

POLICY CONSIDERATIONS

NPS EN-1

- 3.4.2. Paragraph 4.7.12 of the overarching National Policy Statement (NPS) EN-1 states that in considering applications, the Secretary of State for Energy Security and Net Zero (SoSESNZ) should note that many of the wider impacts of a development, such as landscape and environmental, will be important factors in the design process. The next paragraph 4.7.13 specifies that the SoSESNZ should consider such impacts under the relevant policies in this NPS and, assessment of impacts must be for the stated design life of the scheme rather than a shorter time. Paragraph 4.7.14 then emphasises that the SoSESNZ should consider taking independent professional advice on the design aspects of a proposal, especially the Design Council.

NPS EN-3

- 3.4.3. It is mentioned in paragraph 2.5.2 of NPS EN-3 that proposals for renewable energy infrastructure should demonstrate good design, particularly in respect of landscape and visual amenity and in the design of the project to mitigate impacts such as noise and effects on ecology and heritage. The following paragraph 2.6.1 then advises that where details are still to be finalised, applicants should explain in the application which elements of the proposal have yet to be finalised, and the reason why this is the case.

OTHER LOCAL AND NATIONAL POLICIES

- 3.4.4. 'Paragraph 135 of the National Planning Policy Framework (NPPF) 2024 mentions that planning policies and decisions should ensure that developments
- will function well and add to the overall quality of the area, not just for the short term but over the lifetime of the development
 - are visually attractive as a result of good architecture, layout and, appropriate and effective landscaping
 - create places that are safe, inclusive and accessible and which promote health and well-being, with a high standard of amenity for existing and future users; and where crime and disorder, and the fear of crime, do not undermine the quality of life or community cohesion and resilience'
- 3.4.5. The succeeding paragraph 139 of NPPF 2024 emphasises that development that is not well designed should be refused, especially where it fails to reflect local design policies and government guidance on design, taking into account any local design guidance and supplementary planning documents such as design guides and codes.
- 3.4.6. 'It is stated in paragraph 5.1.1 of the plus the 2022 adopted Darlington Local Plan that all development will be required to have regard to the design principles in the Darlington Design of New Development Supplementary Planning Document and National Design Guide (or successors) by demonstrating that an analysis of the

constraints and opportunities of the site and the function of development has informed the principles of design including that the:

- detailed design responds positively to the local context, in terms of its scale, form, height, layout, materials, colouring, fenestration and architectural detailing
- proposal has taken account of the need to safeguard or enhance important views and vistas
- layout of the development maximises opportunities for natural surveillance'

THE APPLICATION

3.4.7. 'The assessment of the design aspect of the proposed development is discussed in ES Chapter 3 [\[APP-026\]](#). This document is supported by the following

- ES Chapter 2 The proposed development [APP-025]
- Design Approach Document (DAD) [REP8-022]
- Energy Generation And Design Evolution Document [REP2-010]
- various plans including [APP-047] to [APP-056], [APP-059], [REP2-015] and [REP2-022]'

3.4.8. Section 3.4 of ES Chapter 3 [\[APP-026\]](#) describes the applicant's engagement with the pertinent stakeholders through a series of collaborative design workshops, focused technical meetings with statutory bodies, and meetings with landowners and local people in response to requests. Feedback on the design of the proposed development was sought via the statutory consultation that was carried out between 05 May 2023 and 16 June 2023. The applicant also engaged with these stakeholders in finalising the design and assessment of the proposed development prior to submitting the application. The ES clarifies the alternatives explored in developing the siting and design of the proposed development, based on the site layout, cable routes, solar technologies, substation and energy storage facilities and other supporting infrastructure in section 3.5 of ES Chapter 3 [\[APP-026\]](#).

3.4.9. The rationale behind the proposed cable route options is given in section 3.9 of ES Chapter 3 [\[APP-026\]](#), with the fundamental factors stated to be the length and routing of cable, cost, duration of works, construction impacts and gravity of potential disruption to the local communities. section 3.10 of the same chapter discusses energy storage facilities and other supporting infrastructure including a BESS to store surplus energy on site, fencing and gates, CCTV, lighting' access tracks, drainage and storage containers. The ultimate siting of the BESS and access tracks was based on the results from statutory consultation and further technical evaluation, processes that are also detailed in the DAD [\[REP8-022\]](#).

3.4.10. Alternative solar technologies are considered in section 3.9 of ES Chapter 3 [\[APP-026\]](#), with the primary options being fixed panel or a tracking panel system. Factors contemplated are the potential energy generation of the two options, depicting the overall viability of the proposed development, alongside the need to avoid and reduce adverse effects such as landscape and visual impacts. By acknowledging the concerns raised at statutory consultation regarding the scale of the design presented in the preliminary environmental information report, the applicant considered that a 3.5metres fixed panel design would achieve the desired balance of reducing the potential for adverse environmental effects and maintaining operational viability. The configuration of the panel areas was subsequently changed from a north-south orientation to the south-facing east-west alignment.

DESIGN IMPACT AND MITIGATIONS

- 3.4.11. The ES notes that various mitigation measures were proposed to prevent, reduce or compensate for the likely significant adverse effects that were identified as part of the iterative design process of the proposed development. Table 7-1 of the DAD [\[REP8-022\]](#) describes the residual significant landscape and visual effects during the construction and operation of the proposed development. A summary of the proposed embedded mitigations at the design stage of the proposed development and associated monitoring and implementation procedures is provided in the Mitigation Route Map [\[APP-171\]](#).

ISSUES CONSIDERED DURING THE EXAMINATION

NEED FOR REDUCTION IN THE NUMBER OF PANELS AND RELATED OCCUPIED LAND

- 3.4.12. The final statements of common ground (SoCGs) of the host authorities Darlington Borough Council (DBC) [\[REP8-029\]](#), Durham County Council [\[REP8-028\]](#) and Stockton-on-Tees Borough Council (SBC) [\[REP8-030\]](#) do not show any discontent with the applicant's assessment. The SoCGs with outstanding reservations on this matter are those of Bishopton Villages Action Group (BVAG) [\[REP8-034\]](#) and Great Stainton Parish Meeting (GSPM) [\[REP7-007\]](#). At the Issue Specific Hearing (ISH) 8 on 14 January 2025, BVAG and GSPM sought revisions to the design of the proposed development in the form of reducing the number of the solar panels if, following the grant of consent application, advancements in solar technology that would trigger panel modifications occur. Both BVAG and GSPM agree that there should be equitable distribution of any potential reductions in the numbers of panel across Bishopton and Stainton villages, as each has its preferred priority areas.
- 3.4.13. Apart from highlighting the inclusion of this commitment in the DAD [\[REP8-022\]](#) in the ISH8, the applicant states in its SoCG with BVAG that it has discussed Requirement 3 and the provisions of the DAD with DBC and has agreed an approach to any potential reduction of panel areas, which would prioritise moving panels away from Great Stainton and Bishopton village boundaries and any available area for reduction would be distributed proportionately between the two villages. However, the applicant cautions that this would be subject to design constraints relating to the electrical requirements of the panel areas. The applicant has also added the suggested priority areas in paragraph 8.4.7 of the DAD [\[REP8-022\]](#), which would then inform the approval of the detailed design under Requirement 3, should consent be granted.

ADEQUACY OF THE APPLICATION OF THE DESIGN GUIDELINES

- 3.4.14. The ExA, in its first written questions (ExQ1) [\[PD-004\]](#), queried how the applicant has considered the National Infrastructure Commission Design Group's Project Level Design Principles Guidance (May 2024), in the design of the proposed development. The applicant responded [\[REP2-007\]](#) by providing information on how the scheme addressed the four principles of climate, people, places and value. PINS published design guidance on the government website (gov.uk) in October 2024 and the ExA subsequently asked the applicant [\[PD-011\]](#) to demonstrate how the proposed development met the guidance, particularly in relation to "establishing good design".
- 3.4.15. The applicant stated [\[REP5-031\]](#) that the DAD [\[REP8-022\]](#) combined with its answer to ExQ1 [\[DES.1.7 REP2-007\]](#) above, provides the answer noting that the PINS guidance states that the government has adopted these four principles, and

therefore, the applicant considers that the proposed development is also substantively in accordance with the new guidance. The applicant further explains that under 'establishing good design', the design process steps are expected to be illustrated and a short summary of how these steps have been complied with through the dDCO application has been provided in the table in the Examining Authority's second written questions (ExQ2) response [GCT.2.3 [REP5-031](#)].

- 3.4.16. The ExA identified the applicant's lack of engagement with the Design Council contrary to paragraph 4.7.14 of NPS EN-1. The applicant responded [\[REP2-007\]](#) that while the Design Council was not consulted at the pre-application stage as part of the design of the development, should the proposed development be granted consent, the applicant will engage with the Design Council during the detailed design stage. At the (ExQ2), the ExA asked how this would be secured and the applicant then amended the DAD [\[REP8-022\]](#) to add a commitment to engage with the Design Council prior to seeking the discharge of the detailed design via Requirement 3 of the dDCO.

PROXIMITY OF THE BESS TO RESIDENTIAL PROPERTIES

- 3.4.17. The DAD [\[REP8-022\]](#) states that the BESS would be placed less than 300m from some residential properties. At the Examining Authority's third written questions, the applicant was asked to highlight any extra mitigations that had been proposed to minimise the impact of such proximity. In its response [DES3.2 [REP7-010](#)], the applicant states that only two residential properties fall into this category, namely the livery property on Cobby Castle in Panel Area F, which is some 175m from the western edge of BESS units and Downland Farm that is approximately 222m from the eastern edge of BESS units. These are identified as existing sensitive receptor (ESR) 40, and ESRs 38/39 on ES Figure 11.1 [\[REP4-014\]](#) respectively. The BESS is located less than 300m in this location from these properties due to other constraints, such as to minimise visibility of the BESS from Bishopton Redmarshall Primary School and the Bishopton Village properties on Mill Lane.
- 3.4.18. The applicant then explained that the proposed community orchard and hedgerow planting to be located between the property at Cobby Castle and the BESS plus the setbacks of the panels from the property at Downland Farm combined with hedgerow infill, as demonstrated on Sheets 10 and 11 of the Environmental Masterplans [\[REP6b-008\]](#) would serve as visual and noise impact mitigation actions and that no additional mitigations relating specifically to the distance of the BESS would be necessary at these locations.

CONCLUSIONS

- 3.4.19. The ExA is satisfied that the ES has considered the design impacts of the proposed development and endeavoured to engage with the Design Council during the detailed design of the proposed development, in line with the requirements of paragraphs 4.7.13 and 4.7.14 of NPS EN-1 and 2.6.1 of NPS EN-3. The ExA is also satisfied that, by ensuring that the BESS would be placed at a reasonable distance from most of the adjacent residential properties and proposing the necessary mitigations in the limited areas closer to the BESS, the ES has fulfilled the needs of paragraphs 2.5.2 of NPS EN-3 and 135 of NPPF.
- 3.4.20. Moreover, the ExA is content that the applicant has carefully considered the potential impact of the cabling and panels by electing to carry out the less disruptive off-road cabling and associated cable plough installation method and executing series of panel design iterations to minimise the environmental effects of the

proposed panels, in conformity with paragraphs 4.7.14 of NPS EN-1 and 5.1.1 of the 2022 Darlington Local Plan.

3.4.21. In relation to the applicant's unresolved SoCG with BVAG) [\[REP8-034\]](#) and GSPM [\[REP7-007\]](#), the ExA, having regard to the proposed amendments to the DAD [\[REP8-022\]](#) and associated Requirement 3 of the dDCO, is content that the applicant has adequately assessed the proposed development's design aspect and demonstrated that it would not have any significant impact on its environment.

3.4.22. Furthermore, the ExA considers that, subject to the mitigation measures identified in the ES and DAD [\[REP8-022\]](#), the impacts of the proposed development during its construction and operation stages would sufficiently be mitigated. The ExA therefore considers that the assessment of the effect of the design aspect of the proposed development has met the requirements of the relevant policy tests.

Matters to be taken to Chapter 4 and the planning balance

- The ES has considered the environmental impact of the design aspect of the proposed development by adopting iterative design approach that adapt to consultation responses in the design and siting of the panels and associated electrical infrastructure, ensuring that the less disruptive cabling method would be implemented and, endeavouring to engage with the Design Council, in accordance with paragraphs 4.7.12 to 4.7.14 of NPS EN-1 and 2.5.2 and 2.6.1 of NPS EN-3.
- In addition, the ExA has considered that the embedded mitigation measures in the ES and DAD [\[REP8-022\]](#) including an undertaking by the applicant to build flexibility in the design of the proposed development that would respond to future technological advancement in terms of curtailing the panel size and related area of occupation, would minimise the design impact of the proposed development, in conformity with paragraphs 4.7.13 of NPS EN-1 and, 135 and 139 of NPPF.
- The ExA therefore deems that the evaluation of the impact of the design segment of the proposed development fulfils the requirements of the pertinent policy tests.

3.5. SOCIOECONOMICS

INTRODUCTION

- 3.5.1. This chapter covers the effects of the proposed development with regard to socioeconomics.

POLICY CONSIDERATIONS

- 3.5.2. The ExA has reviewed the Policy Compliance Document [\[APP-164\]](#) and considers it adequately reports policy requirements and compliance of the proposed development with individual policies.

NPS EN-1

- 3.5.3. The government's policy regarding socioeconomic impacts of energy projects is defined in the National Policy Statement (NPS) for Energy (EN-1) at section 5.13. SoS decision making is covered in paragraphs 5.13.9 to 11; the ExA's consideration of these is detailed within the Conclusions section below.

THE APPLICATION

- 3.5.4. This section provides a summary of the applicant's case at the start of the examination, focussing on the important and relevant matters to the 'Issues considered during the examination' and the 'Conclusion', below.

INTRODUCTION

- 3.5.5. The Application documents included ES Chapter 9 Land Use and Socioeconomics [\[APP-032\]](#) which provides an assessment of the proposed development in relation to its socioeconomic effects.

ASSESSMENT METHODOLOGY

- 3.5.6. ES Chapter 9 Section 9.4 [\[APP-032\]](#) outlines the methodology employed for assessing the likely significant effects on socioeconomics from the construction, operation and decommissioning of the proposed development.

POTENTIAL IMPACTS

- ~~3.5.7.~~ The proposed development has the potential to have a range of effects, as detailed in ES Chapter 9 Section 9.8 [\[APP-032\]](#), the majority of which are most likely to occur during the construction phase and therefore considered by the applicant to be temporary in nature.

MITIGATION

- 3.5.8. The proposed development has been designed to avoid and prevent adverse environmental effects on socioeconomics through the process of design development and consideration of good design principles, paragraph 9.9.1 ES Chapter 9 [\[APP-032\]](#).
- 3.5.9. Mitigation measures incorporated in the design and construction of the proposed development, considering the potential impacts, are reported as embedded mitigation in ES Chapter 2 The Proposed Development [\[APP-025\]](#), paragraphs 2.6.30-33, for example continued access to community facilities.

- 3.5.10. The effects of the proposed development are assessed considering embedded mitigation is in place and are reported in ES Chapter 9 Section 9.10 [\[APP-032\]](#). The main effects relate to economic benefits during construction and decommissioning, and maintaining access to community facilities during construction and operation.
- 3.5.11. The applicant is also providing a Community Benefit Fund of approximately £1.5m across the lifecycle of the proposed development.

ISSUES CONSIDERED DURING THE EXAMINATION

- 3.5.12. This section details the issues relating to socioeconomics considered during the examination. It focuses on matters that are considered important and relevant to the decision and have not been agreed or adequately justified by the applicant or are controversial.

MITIGATION

- 3.5.13. The ExA questioned the applicant concerning mitigation regarding boosting the local economy ExQ1, question LUS.1.8-10 [\[PD-004\]](#). In response the applicant referred to commitment LUSE1-CEMP of the outline Construction Environmental Management Plan [\[REP8-012\]](#) concerning engaging with local supply chains reference LUS.1.8 [\[REP2-007\]](#).

MONITORING

- 3.5.14. The ExA questioned the applicant regarding monitoring benefits from training and apprenticeships, and use of the community benefit provision for intended improvement schemes such as improved highway safety, outdoor play areas, picnic benches, community orchards, and rooftop solar for community buildings ExQ1, question LUS.1.13 [\[PD-004\]](#). In its response the applicant referenced the Community Benefit Fund note [\[REP2-011\]](#).
- 3.5.15. In its response to the ExA's request for further clarification of this matter the applicant stated that a third party administrator would be employed to set up, manage, and administer the Community Benefit Fund, reference LUS.2.2 [\[REP5-031\]](#). Additionally, the applicant stressed, as set out in the Planning Statement [\[APP-163\]](#) and the Community Benefit Fund Document [\[REP2-011\]](#), that the Community Benefit Fund cannot be taken into account as part of the overall planning balance to be considered by the decision-maker.

EMPLOYMENT

- 3.5.16. The ExA questioned the applicant regarding employment opportunities resulting from construction of the proposed development through written questions ExQ1, question LUS.1.7 [\[PD-004\]](#), ExQ3, question LUS.3.1 [\[PD-014\]](#) and during ISH6; [\[EV14-004\]](#).
- 3.5.17. In response to ExQ3 the applicant referred to the overall conclusions of ES Chapter 9 [\[APP-032\]](#) which reports a potential minor beneficial effect in relation to employment and supply-chain. This is not therefore reported as a 'significant' benefit in environmental impact assessment (EIA) terms and the applicant is not relying on this benefit in making a case for the proposed development. Statutory consultees, including Darlington Borough Council have not questioned this conclusion or sought anything further in terms of employment or supply chain commitments, reference LUS.3.1 [\[REP7-010\]](#).

CONCLUSIONS

- 3.5.18. NPS paragraphs 5.13.9 and 10 require that the applicant identifies potential socioeconomic impacts of the proposed development. It is the ExA's view that the applicant has considered these within ES Chapter 9 Land Use and Socioeconomics [\[APP-032\]](#), with supporting evidence provided as appropriate.
- 3.5.19. NPS paragraph 5.13.11 requires consideration of any relevant positive provisions the applicant has made or is proposing to make to mitigate impacts. It is the ExA's view that ES Chapter 9 Land Use and Socioeconomics [\[APP-032\]](#) adequately identifies the legacy benefits of the proposed development such as the provision of a £1.5m Community Benefit Fund.

Matters to be taken to Chapter 4 and the planning balance

- The ExA concludes that the proposed development complies with NPS EN-1 paragraphs 5.13.9 to 5.13.11 with regard to potential socioeconomic impacts and positive provisions to mitigate impacts.
- ES Chapter 9 Land Use and Socioeconomics identifies the legacy benefits of the proposed development such as the provision of a £1.5m Community Benefit Fund, paragraph 5.14.14 [\[APP-163\]](#), this has not been taken into consideration as part of the overall planning balance. The applicant concludes that the proposed development would provide beneficial effects relating to employment and supply chain opportunities, with no significant adverse effects identified, paragraph 5.15.15 [\[APP-163\]](#). The ExA agrees with this assessment.
- The ExA therefore concludes that the matter weighs for making the DCO and this gain has been attributed a little weight in the planning balance.

3.6. LANDSCAPE AND VISUAL EFFECTS

INTRODUCTION

- 3.6.1. This chapter covers the effects of the proposed development with regard to landscape and visual (L&V), and glint and glare.

POLICY CONSIDERATIONS

- 3.6.2. The policy tests highlighted below are relevant to the SoS decision making and are highlighted in order to facilitate the ExA's conclusions relating to landscape and visual effects at the end of this chapter.

NPS EN-1

- 3.6.3. The government's policy regarding landscape and visual effects of energy projects is defined in the National Policy Statement (NPS) for Energy (EN-1) at section 5.10 Landscape and Visual. Key policy requirements are quoted below.
- 3.6.4. Requirements for the applicant's assessment are considered in paragraphs 5.10.16 to 5.10.25 of EN-1. Paragraph 5.10.19 requires the applicant to consider landscape and visual matters in the early stages where site choices and design principles are being established, allowing the applicant to demonstrate in the ES how negative effects have been minimised.

MITIGATION

- 3.6.5. "... the SoS State may decide that the benefits of the mitigation to reduce the landscape and/or visual effects outweigh the marginal loss of function." (NPS-EN1 5.10.26).
- 3.6.6. "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." (NPS-EN1 5:10.37).

'SoS decision making'

- 3.6.7. "The SoS 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." (NPS-EN1 5.10.14).
- 3.6.8. "The Secretary of State should take into consideration the level of detailed design which the applicant has provided and is secured in the Development Consent Order, and the extent to which design details are subject to future approvals." (NPS-EN1 5.10.29).
- 3.6.9. "The Secretary of State should be satisfied that local authorities will have sufficient design content secured to ensure future consenting will meet landscape, visual and good design objectives." (NPS-EN1 5.10.30).
- 3.6.10. "In reaching a judgement, the Secretary of State should consider whether any adverse impact is temporary, such as during construction, and/or whether any adverse impact on the landscape will be capable of being reversed in a timescale that the Secretary of State considers reasonable." (NPS-EN1 5:10.36).

- 3.6.11. “The Secretary of State should consider whether requirements to the consent are needed requiring the incorporation of particular design details that are in keeping with the statutory and technical requirements for landscape and visual impacts.” (NPS-EN1 5:10.38).

NPS EN-3

- 3.6.12. The government’s policy regarding solar photovoltaic generation is defined in the NPS for Energy (EN-3) at section 2.10 Landscape and Visual. Key policy requirements are quoted below.

Mitigation

- 3.6.13. “When a quantitative glint and glare assessment is necessary, applicants are expected to ... provide an assessment of potential impact” (NPS-EN3 2.10.104).
- 3.6.14. “... the Secretary of State should assess the potential impact of glint and glare on nearby homes, motorists, public rights of way, and aviation infrastructure” (NPS-EN3 2.10.158).

THE APPLICATION

- 3.6.15. This section provides a summary of the applicant’s case at the start of the examination, focussing on the important and relevant matters to the ‘Issues considered during the examination’ and the ‘Conclusion’, below.

Methodology

- 3.6.16. The Application documents included a Landscape and Visual Impact Assessment at Chapter 7 of the Environmental Statement (ES) [\[APP-030\]](#). This chapter presents the findings of the Landscape and Visual Impact Assessment (LVIA) and likely significant effects arising from the construction, operation and decommissioning of the proposed development on landscape and visual receptors.
- 3.6.17. Chapter 7 summarises the regulatory and policy framework, details the methodology followed for the assessment and describes the existing environment in the area surrounding the proposed development. Following this, the design, mitigation and enhancement measures are described and effects are assessed.
- 3.6.18. Chapter 7 contains the assessment methodology at chapter 7.4 and is supported by a detailed methodology in ES Appendix 7.1 Methodology [\[APP-132\]](#).
- 3.6.19. Following pre-application engagement with Darlington Borough Council (DBC), ES Chapter 7 includes an assessment of village character, which has not generally been carried out for similar solar NSIPs.
- 3.6.20. In addition to Chapter 7 Landscape and Visual, the following application documents are relevant:
- Cumulative effects are assessed in ES Chapter 13 Cumulative [\[APP-036\]](#)
 - A glint and glare assessment has been undertaken and is provided in ES Appendix 2.2. Solar Photovoltaic Glint and Glare Study [\[APP-106\]](#)
 - ES Appendix 7.6 [\[APP-137\]](#) provides an assessment of effects on residential visual amenity, i.e. people within private property; which is a separate, though related to visual impact matters in the LVIA, planning matter

- ES Chapter 3 Alternatives and Design Iteration [\[APP-026\]](#) provides an account of the alternatives that have been studied by the applicant in developing the siting and design of the proposed development, including early consideration of matters such as landscape designation. It sets out how changes made to the design have sought to reduce landscape and visual effects, such as reducing the height of the proposed panels, increasing setbacks and removing panel areas. The Design Approach Document [\[APP-165\]](#) provides a detailed account of the approach to design taking into account the existing landscape context, and how this has informed the proposals for mitigation
- ES Chapter 2 describes the proposed development [\[APP-025\]](#)
- Environmental Masterplan [\[APP-011\]](#)
- ES Figure 2.20 Landscape Concept Masterplan [\[APP-058\]](#)
- ES Appendix 2.14 Outline Landscape and Ecology Management Plan [\[APP-118\]](#)
- ES Appendix 2.6 Outline Construction Environmental Management Plan [\[APP-110\]](#)
- Planning Statement [\[APP-163\]](#)

Mitigation

- 3.6.21. Mitigation measures incorporated in the design and construction of the proposed development and secured by requirement 3 of the draft Development Consent Order (dDCO), considering the potential impacts, are reported as embedded mitigation in ES Chapter 2 The proposed development [\[APP-025\]](#), paragraphs 2.6.6 – 2.6.53, and are detailed more fully in the Design Approach Document (DAD) [\[APP-165\]](#), and ES Figure 2.20 Landscape Concept Masterplan [\[APP-058\]](#) and the Environmental Masterplan [\[APP-011\]](#). The effects of the proposed development are assessed considering embedded mitigation is in place and are reported in ES Chapter 7.10.
- 3.6.22. Where further mitigation is deemed to be required as a result of potentially significant effects, this is termed essential mitigation and is set out as part of the assessment of effects in Section 7.10.
- 3.6.23. ES Figure 2.20 Landscape Concept Masterplan [\[APP-058\]](#) details the proposed planting and landscaping for the proposed development. Proposed embedded design measures which will be secured via the Outline LEMP [\[APP-118\]](#) and design parameters of the DAD [\[APP-165\]](#) include the following:
- reductions to the extent of the Panel Areas to mitigate effects on villages and views from homes – with particular consideration of the opportunities provided by topographic and vegetative screening
 - planting of tree lines along northern boundaries of the panel areas to reduce visibility where this can be achieved without shading panels by tree canopies
 - re-routing of footpaths that would pass through panel areas, so that routes would only have initially open views of solar panels to one side, and an established field boundary on the other
 - new hedgerow planting where existing hedgerows are sparse or where the panel area edge does not coincide with an existing field boundary
 - the proposed community orchard adjacent to Bishopton recreation ground and school to provide both mitigation and a community facility

Assessment of likely significant effects

- 3.6.24. ES Chapter 7.10 presents an assessment of the likely significant effects on landscape and visual receptors resulting from the construction, operation and

decommissioning of the proposed development. This takes into account the potential impacts to each receptor following the implementation of embedded mitigation. Where required to mitigate potentially significant effects, essential mitigation measures are outlined as part of the assessment, and the overall significance of residual effects set out.

- 3.6.25. Table 7-12 in ES Chapter 7 [\[APP-030\]](#) identifies significant adverse effects during construction and operation and decommissioning of the proposed development, relating to (in summary):
- the character of Landscape Character Area (LCA) Darlington 6 Great Stainton Farmland during operation
 - the character of Great Stainton village during operation
 - the character of Bishopton village during construction (if on-road cable route selected, only) and operation Years 1 to 10
 - views at Great Stainton (during operation) and Bishopton (during years 1 – 10 of operation, changing to a neutral, not significant effect for years 10 – 40 of operation)
 - views from Public Rights of Way (PRoW) within 1km:
 - Between A167, Salters Lane, Lea Hall and Little Ketton Farm
 - East of Salters Lane between Lea Hall, Newton Ketton, Elstob Lane and Hill House Lane
 - East of Elstob Lane and Hill House Lane, between Bleach House Bank, Stoney Flatt Farm and Gillyflatts
 - East of Bleach House Bank between Stillington, Redmarshall and Stoney Flatt Farm
- 3.6.26. The applicant maintains that all other sensitive receptors would not experience significant effects; however, a range of minor and moderate adverse effects are identified. The applicant has noted that following the pre-application engagement with DBC, and the additional assessment of village character, some of the significant effects reported have arisen through this additional level of assessment [paragraph 5.11.15, [APP-163](#)].
- 3.6.27. The applicant states that most of the significant adverse effects would arise during operation, however, they would be reversible following decommissioning. The applicant maintains that after decommissioning, the proposed development would leave a positive legacy of improved landscape fabric and character due to the denser hedgerows and maturing trees which would be left after the lifetime of the operational development. This may result in the enclosure of currently open views, however after the operational lifetime of the project, hedges could be reverted to lower heights to allow outward views over them if that is judged desirable [paragraph 5.11.16, [APP-163](#)].
- 3.6.28. In relation to the detailed design, requirement 3 of the dDCO secures the further detailed design of the proposed development, in line with controls in the DCO application such as the DAD [\[REP8-022\]](#). This would require that the local planning authority approves the detailed design of the relevant phase of the proposed development prior to commencement of that phase. Measures to ensure that new planting and management of existing vegetation meets the design intent, throughout the operational period are secured via ES Appendix 2.14 Outline Landscape and Ecology Management Plan (LEMP) [\[APP-118\]](#).

ISSUES CONSIDERED DURING THE EXAMINATION

Introduction

- 3.6.29. This section details the issues relating to landscape and visual effects considered during the examination. It focuses on matters that are considered important and relevant to the decision and have not been agreed or adequately justified by the applicant or are controversial.
- 3.6.30. DBC submitted a Local Impact Report - Landscape and Visual Amenity [\[REP1-021\]](#) which sets out the Council's response to the proposals and the predicted landscape and visual amenity effects described in the ES. A significant number of the issues considered during the examination related to matters raised in this report.
- 3.6.31. This section is divided into the following main sub-topics:
- methodology
 - mitigation
 - glint and glare

Methodology

- 3.6.32. Issues considered relating to the applicant's assessment methodology mainly centred around DBC's Local Impact Report - Landscape and Visual Amenity [\[REP1-021\]](#). This report questioned the applicant's viewpoint analysis and village setting assessment.
- 3.6.33. This methodology section is divided into the following main sub-headings:
- Initial questioning
 - DBC's issues with methodology
 - statements of common ground
 - ExA considerations regarding methodology

Initial questioning

- 3.6.34. The applicant's assessment of baseline conditions detailed within ES Chapter 7 Landscape and Visual were tested through the first round of ExA's questions as follows. The following summarises the main issues tested, the responses received, and the ExA's view regarding key responses.
- 3.6.35. The ExA questioned whether the Local Planning Authorities agreed with the Landscape and Visual Impact Assessment (LVIA) study area [\[ExQ1 LSV.1.1; PD-004\]](#), and the baseline conditions [\[ExQ1 LSV.1.2; PD-004\]](#).
- 3.6.36. DBC responded [\[REP2-031\]](#) referring to its Local Impact Report - Landscape and Visual Amenity [\[REP1-021\]](#). In particular DBC is concerned that the views provided around Great Stainton and views from the east-west highway route connecting the villages do not represent the reasonable worst-case scenario. This matter is considered under the sub-heading 'DBC's issues with methodology' below.
- 3.6.37. The ExA questioned which representative years the photomontages provided in ES Figure 7.9 [\[APP-071 to APP-074\]](#) were [\[ExQ1 LSV.1.3; PD-004\]](#), and whether they were winter views [\[ExQ1 LSV.1.4; PD-004\]](#). The applicant confirmed the representative years [\[REP2-007\]](#), and that they were winter views, see paragraph 3.55 of written submissions of oral cases [\[REP4-010\]](#). The ExA is satisfied with both these responses.

- 3.6.38. A maximum height of 3.5 metres (m) was assessed for elements of the proposed development within panel areas. The ExA questioned how this accounted for the substation (maximum height 8m) and the communications mast (height up to 15m) [ExQ1 LSV.1.5 and 1.6; [PD-004](#)].
- 3.6.39. DBC responded that it is of the view that the potential effects generated by the substation and transmitter mast are unlikely to be greater than the overwhelming effects generated by other major components of the development within the 3.0km study area and for that reason DBC considers the 3.5m maximum height to be acceptable even though they believe it may not represent the worst-case scenario [[REP2-031](#)].
- 3.6.40. Further, the applicant clarified in its responses to ExQ1 how the substation and mast were taken into account in the assessment [[REP3-004](#)]. In addition, the applicant confirmed that the substation and mast are included in visualisation 19 [[APP-073](#)], see paragraph 3.133 written submissions of oral cases [[REP4-010](#)]. The ExA considers that the applicant has adequately assessed the effects of the substation and transmitter mast.
- 3.6.41. The applicant was asked to provide usage figures for each of the public rights of way affected by the proposed development [EXQ1 LSV.1.8; [PD-004](#)]. The applicant explained that it has not carried out user count surveys for the PRow which interact with the proposed development [[REP2-007](#)].
- 3.6.42. At ISH 4 [[EV12-008](#)] the applicant was asked to clarify how the usage of the PRow network had been considered to inform the baseline for the environmental assessment. The applicant explained that usage does not inform the judgements of sensitivity, magnitude or significance of visual effects on users of PRow, as it is assumed that all routes are used, see ISH4-02 [[REP5-032](#)]. The ExA consider that the applicant's response is acceptable.

DBC's issues with methodology

- 3.6.43. The following relates particularly to the matters raised by DBC in its Local Impact Report - Landscape and Visual Amenity [[REP1-021](#)], as well as by the Bishopton Villages Action Group (BVAG).
- 3.6.44. DBC's Local Impact Report - Landscape and Visual Amenity states that 'This document is not an ES or Landscape and Visual Impact Assessment. It provides a review of the proposed development in relation to landscape and visual amenity and evaluates the baseline information and assessment of effects set out in the Developer's ES and supporting documents.' [paragraph 1.2, [REP1-021](#)].
- 3.6.45. In its 'Summary and Conclusion' at section 10 of the report DBC are critical of various aspects of the applicant's assessment of the L&V environmental impacts of the proposed development, including:
- the rationale behind certain design proposals. For example, clustering of panels around settlements and roads, dispersal of panels over a wide area, limited opportunity for expansion of panels on less sensitive land, and panels in open countryside with high visual amenity around Bishopton
 - although stating that the baseline methodology used to undertake the L&V assessment generally accords with guidelines, DBC also state that
- "... The Council also has major concerns about the selection/quality of photographic viewpoints presented in the ES and the representativeness of*

appearance in the visualisations. The Council is of the opinion ... that the photography provided in the ES does not represent a reasonable 'worst case' for some receptors such as Great Stainton The misinterpretation of the village settings and the absence of an assessment on the settings ... compounds the above weaknesses.” (paragraph 10.11)

“ ... DBC is of the view that significant impacts will occur on the setting of the villages (Great Stainton, Bishopton and Brafferton). ...” (paragraph 10.12)

- Paragraph 10.14 provides a ‘Summary of landscape and visual effects after mitigation considered by DBC to be significant (during operation).’ DBC highlight that the following of those listed are not assessed as significant in the ES:
 - Landscape effects on landscape character area Darlington 7: Bishopton Vale
 - Landscape effects on the setting of Bishopton
 - Landscape effects on the setting of Great Stainton
 - Landscape effects on the setting of Brafferton
 - Landscape effects on the character of Brafferton
 - Visual effects on all Public Rights of Way within 1km of the Development
 - Visual effects on the central east-route through the Study Area connecting villages
 - Visual effects on views from Brafferton

3.6.46. As a result of DBC’s concerns, particularly with regard to the representativeness of viewpoints, and assessment on the settings, the ExA questioned the applicant further through: ISH 4 [EV12-001]; ExQ2 [LSV.2.1 to LSV.2.9; PD-011] and ExQ3 [LSV.3.1 to LSV.3.6; PD-014].

3.6.47. Having reviewed the applicant’s answers the ExA was of the view that the applicant had neither firmly addressed nor rebutted the submissions by DBC and BVAG. Consequently, the ExA issued a Rule 17 Request, particularly in relation to the assessment of visual effects and the assessment of impacts to settlement character [PD-012].

3.6.48. The applicant’s response described at paragraph 2.1.4 [AS-031]:

“ ... provides a response to the Rule 17 Request which seeks to address the concerns raised and provide necessary clarification. This has been carried out through:

- *an addendum [AS-032] to the viewpoint analysis provided in the ES [APP-135] which provides an analysis of the additional viewpoints suggested by DBC in their post-ISH4 submission [REP5-036]*
- *a new ES appendix [AS-030] which:*
 - *separates out the settlement setting assessment such that effects on character of the setting of the village and effects on the character of the village are presented as two separate judgements, as expressly request by the Rule 17 Request*
 - *provides a description and summary of effects during early operation on visual receptors within the visual setting of each settlement (as recorded in the existing ES Chapter 7 [APP-030])*
- *an update to the ES Chapter 7 [AS-028] which reflects the above and additionally brings in changes relating to comments made by DBC and BVAG, ... [REP5-030]*

- *an updated ES Chapter 13 Cumulative Effects [AS-033] with amendments to clarify the relationship between the ES topic chapters, including landscape, and the cumulative assessment. ...”*

3.6.49. As a result, the applicant maintains a position stated at paragraph 2.1.2 [AS-031] that:

- *“the viewpoints presented in its landscape and visual assessment (LVIA) [APP-030] at the point of DCO Application are representative and enable the worst case effects on visual receptors to be identified. That assessment of likely effects is adequate and in line with policy and guidance requirements.*
- *there is no explicit requirement in policy or guidance to carry out a village setting assessment, however the applicant voluntarily included such an assessment in its ES chapter [APP-030] following engagement with DBC after publication of the Preliminary Environmental Information Report (PEIR).*
- *the residual concern of DBC in relation to the settings assessment is a matter of methodology and does not impact upon the conclusion of likely significant effects identified, including in relation to cumulative effects.”*

3.6.50. The applicant concludes at paragraph 2.1.7 [AS-031]:

“Having undertaken this exercise, the applicant identifies no new or different significant effects compared to its original DCO Application, ...”

3.6.51. ISH8 on Environmental Matters (landscape and visual and cumulative effects) [EV18-001] provided a final opportunity to explore further the key outstanding issues as stated at agenda item 4:

- the outstanding differences in the methodologies put ... by the applicant, DBC and the BVAG
- a demonstration of how the mitigation hierarchy has been fully applied, with a focus on identifying opportunities for further reducing panel areas close to sensitive visual receptors
- regarding the proposed level of overplanting, the ExA may explore options for further mitigation to reduce visual impacts of the proposed development

3.6.52. DBC submitted a post-hearing submission of oral case as heard at ISH8 [REP9a-002]. In this it summarised its position on the ES assessment of L&V effects including the following:

“The DBC Landscape and Visual Local Impact Report (REP1-021) highlighted a number of weaknesses in the LVIA (ES) and ES approach. Primarily, these related to worst-case views, (viewpoints are not representative of the receptors) cumulative effects, the setting of the villages, the lack of site analysis and design rationale in the Design Approach Document and the quality of the illustrative photography used in the visualisations. Following the examination of submitted information at the Hearings, oral presentations and the submission of additional information by the applicant, these initial concerns have not diminished. In fact, DBC now has additional concerns regarding the assessment of cumulative effects and setting which we believe make it unlikely that agreement will be reached in the SoCG on outstanding matters.”

3.6.53. The applicant submitted post-hearing submissions including written submissions of oral cases as heard at ISH8, [REP9a-001]. The applicant’s position remained the same.

Statements of Common Ground

- 3.6.54. The applicant submitted Statements of Common Ground (SoCG) with all the main parties concerned with L&V matters at the end of the examination as follows:
- with DBC [REP8-029] (signed)
 - with BVAG [REP8-034] (signed)
 - a landscape SoCG with BVAG [REP7-008] (un-signed) indicates that a number of disputed matters are now agreed. However, the final point in matters not agreed (paragraph 3.5) states:

“Whilst there is not agreement about certain aspects of methods, and all of the LVIA’s predicted levels of effects on landscape character areas, settlements, and visual receptors, these are not considered to be important-enough factors in the decision-making process to warrant detailed discussion.”

- with Great Stainton Parish Meeting [REP7-007] (signed)

- 3.6.55. Matters were not agreed by the parties regarding:

- glint and glare – these matters are dealt with later in this chapter
- cumulative effects – these matters are dealt with within the chapter entitled Cumulative Effects

ExA considerations regarding methodology

- 3.6.56. This sub-heading contains the ExA’s considerations regarding methodology which informs the Conclusions section at the end of this chapter. (References to the relevant paragraph in the NPS are provided in brackets).
- 3.6.57. Issues of concern raised by DBC and other Interested Parties (IPs) regarding methodology, in particular viewpoint analysis and village setting assessment, have been examined thoroughly throughout the course of thee. In response to the ExA’s Rule 17 request [PD-012] the applicant undertook an exercise to re-appraise conclusions of its L&V assessment based upon viewpoints and landscape assessment examples suggested by DBC. Having undertaken this exercise, the applicant stated at paragraph 2.1.7 [PD-012]:
- “ the applicant identifies no new or different significant effects compared to its original DCO Application, ...”*
- 3.6.58. The ExA agrees with the applicant’s further findings and therefore considers that there is no reason to question the significant adverse effects identified by the applicant in its original DCO Application.
- 3.6.59. ES Chapter 7 Landscape and Visual [AS-028] provides a satisfactory landscape and visual impact assessment, a landscape character assessment and a cumulative assessment, taking into account local and national planning policies. (EN1-5.10.16 &17)
- 3.6.60. ES Chapter 7 considers impacts on character, visual receptors, landscape fabric, and designations during construction, operation and decommissioning. Light pollution has not been assessed as there is no permanent lighting. ES Chapter 11 Noise and Vibration [APP-034] considers the effects with regard to noise. Measures to avoid and reduce effects from construction and operational activities is outlined in ES Appendix 2.6 Outline CEMP [REP8-012] (and ES Appendix 2.14 Outline LEMP [REP8-016]) (EN1-5.10.20 to 22).

3.6.61. The landscape management proposals can be found in ES Appendix 2.14 Outline LEMP [\[REP8-016\]](#) (EN-1 5.10.24).

3.6.62. Chapter 7 section 7.4 outlines the methodology applied to the assessment, including how magnitude has been defined, and is supported by a detailed methodology in ES Appendix 7.1 Methodology [\[APP-132\]](#). (EN1-5.10.25)

Mitigation

3.6.63. This mitigation section is divided into the following main sub-headings:

- design proposals;
- modifications to design proposals; and
- ExA considerations regarding mitigation

3.6.64. This section considers the effectiveness of mitigation, design and planting proposals relating to the proposed development and whether these are adequately secured in the dDCO.

3.6.65. Much of the examination focused on design proposals and the extent to which they mitigated significant effects on local receptors. The local community were active in engaging in discussions relating to modifications to the design in order locate panels away from sensitive local receptors.

Design proposals

3.6.66. The ExA questioned the applicant regarding mitigation, design and planting proposals relating to the proposed development. The following summarises the questions and answers provided.

3.6.67. ISH 4 examined issues linked with L&V matters focusing on how the proposed development mitigates significant adverse effects [\[EV12-001\]](#).

3.6.68. ExQ2 [\[PD-011\]](#) contains a range of questions including in relation to design proposals regarding mitigation works (LSV.2.1, 2.2, 2.7 and 2.9).

3.6.69. The applicant's responses to ExQ2 [\[REP5-031\]](#) provided mitigation quantities, and additional details of mitigation proposals.

3.6.70. The applicant responded to the ExA's questions regarding the criteria used to define the locations of panels around sensitive local receptors and why it has not been possible to locate the panels further away in order to reduce the impacts, reference LSV.1.9 to 1.11 [\[REP2-007\]](#).

3.6.71. The ExA questioned the applicant further regarding reducing panel areas close to sensitive receptors through ISH 4 [\[EV12-001\]](#). As an action from the ISH the applicant was asked to consider the feasibility of relocating (rather than removing) panels within the Order limits, for example to move panels and the on-site substation to Panel Area C in the vicinity of 'The Mount' on sheet 6 of the Works Plans [\[AS-013\]](#). The applicant responded this was not feasible at this stage due to underlying assessments and requirements for change requests during the examination, reference ISH4-09 [\[REP5-032\]](#).

3.6.72. The ExA was mindful of unresolved concerns voiced by IPs regarding reducing visual effects by moving or removing panels, for example BVAG [point 3.115, [REP4-](#)

[010](#)]. The ExA's view was that these matters were best explored during the final round of hearings.

3.6.73. ISH8 on Environmental Matters (landscape and visual and cumulative effects) [\[EV18-001\]](#) provided a final opportunity to explore further the key outstanding issues as stated at agenda item 4, including:

- a demonstration of how the mitigation hierarchy (reference section 4.6 of the DAD [\[REP8-022\]](#)) has been fully applied, with a focus on identifying opportunities for further reducing panel areas close to sensitive visual receptors
- regarding the proposed level of overplanting, the ExA may explore options for further mitigation to reduce visual impacts of the proposed development

3.6.74. The applicant submitted written submissions of oral cases as heard at ISH8 etc; a summary of the points relating to residual impacts and opportunities for further reducing panel areas are contained at paragraphs 4.73 – 4.98 [\[REP9a-001\]](#). The final positions of the parties are summarised below.

3.6.75. The applicant submitted SoCG with all the main parties concerned with L&V matters at the end of the examination, see paragraph 3.6.54 above. The following summarises matters relating to modifications to design proposals which were not agreed.

3.6.76. BVAG submitted responses to and comments on documents and submissions at Deadline 8, as well as relevant oral submissions made by BVAG during ISH8, and responses to the ExA's requests for action, information and clarification made during ISH8 [\[REP8-038\]](#).

3.6.77. In addition, a final SoCG with BVAG was submitted [\[REP8-034\]](#) which identified a number of priority areas which BVAG considers should be amended in the project design in order to reduce impacts on the local community, reference BVAG1. These have been included in the final DAD [\[REP8-022\]](#) at A.1.1 and A.1.2.

3.6.78. DBC submitted a document containing further information after ISH 8 [\[REP9-010\]](#) which included the following:

“... DBC notes that the latest version of the Design Approach Document ... refers at paragraphs 8.4.9 and 8.4.10 to illustrative suggestions from the local community ... which would be taken into consideration in this process at detailed design stage.

Further to this, DBC notes and would support the position of BVAG as set out in their final SoCG with the applicant submitted at Deadline 8 (BVAG1) which require assurances of the mechanisms for enforceability of the proposed panel modifications and the potential for a technological baseline to be established against which any proposals to reduce, or indeed not reduce panel areas, could be assessed.

... The setting of a technological baseline and/or the establishment of a set of criteria or technology thresholds would enable the LPA to assess whether they are in agreement with the applicant's position at the time regarding technology advancements, in the interests of fairness and transparency to all parties.”

ExA considerations regarding mitigation proposals

3.6.79. With regard to mitigation proposals the ExA considers the following. (References to the relevant paragraphs in the NPS are provided in brackets).

- 3.6.80. The DAD [\[REP8-022\]](#) provides a satisfactorily detailed account of the approach to delivering good design, taking into account the existing landscape context and any technical constraints relating to the construction and operation of the required infrastructure. Proposals to minimise harm, including by appropriate mitigation, are included. (EN-1 5.10.37).
- 3.6.81. ES Chapter 3 Alternatives and Design Iteration [\[APP-026\]](#) provides a satisfactory account of the alternatives that have been studied by the applicant in developing the proposed development. The DAD [\[REP8-022\]](#) additionally provides details of the approach to design. However, the ExA considers that the benefits of additional mitigation through suggested further panel area reductions close to sensitive receptors in order to reduce the landscape and/or visual effects outweigh the marginal loss of function. (EN-1 5.10.26). The ExA considers that the details included in the final DAD [\[REP8-022\]](#) adequately reflect the priority areas submitted by the local community and that these are adequately requirement 3 of the draft DCO.
- 3.6.82. Screening of the panel areas is proposed, as secured via the Environmental Masterplan [\[REP8-008\]](#). Measures to ensure that new planting and management of existing vegetation meets the design intent are secured via ES Appendix 2.14 Outline LEMP [\[REP8-016\]](#). (EN-3 2.10.95).
- ‘SoS decision making’**
- 3.6.83. ES Chapter 7 [\[AS-028\]](#) satisfactorily identifies significant adverse effects during construction and operation and decommissioning, relating to (in summary):
- the character of LCA Darlington 6, Great Stainton and Bishopton;
 - views at Great Stainton and Bishopton; and
 - views from PRow within 1km:
 - Between A167, Salters Lane, Lea Hall and Little Ketton Farm
 - East of Salters Lane between Lea Hall, Newton Ketton, Elstob Lane and Hill House Lane
 - East of Elstob Lane and Hill House Lane, between Bleach House Bank, Stoney Flatt Farm and Gillyflatts
 - East of Bleach House Bank between Stillington, Redmarshall and Stoney Flatt Farm
- The Planning Statement [\[APP-163\]](#) satisfactorily considers these effects within the overall planning balance, taking into account the position of the proposed development as critical national priority infrastructure. The applicant concludes that the benefits of and need for the proposed development outweigh the adverse landscape effects. (EN-1 5.10.14).
- 3.6.84. Requirement 3 of the draft DCO [\[REP9-006\]](#) secures the further detailed design of the proposed development, in line with controls such as the approach and parameters detailed in the DAD [\[REP8-022\]](#). This would require that the local planning authority approves the detailed design of each phase of the proposed development prior to commencement of that phase. (EN-1 5.10.29 & 30).
- 3.6.85. Measures to ensure that new planting and management of existing vegetation meets the design intent are secured via ES Appendix 2.14 Outline LEMP [\[REP8-016\]](#), whilst design parameters identified in the DAD are secured via requirement 3 of the draft DCO [\[REP9-006\]](#). (EN-1 5.10.38).

- 3.6.86. ES Chapter 7 Landscape and Visual [\[AS-028\]](#) states that most of the significant adverse effects would arise during operation, however, they would be reversible following decommissioning. The temporary (long term), 40-year operational period of the proposed development is secured via the DCO. After decommissioning, the applicant maintains that the proposed development would leave a positive legacy of improved landscape fabric and character due to the denser hedgerows and maturing trees which would be left after the lifetime of the operational development. (EN-1 5:10.36).

Glint and glare

- 3.6.87. DBC sought clarification from the ExA as to whether guidance produced by Pager Power should be considered the authoritative guidance to be used in assessing the submitted glint and glare study also prepared by Pager Power [paragraph 5.10.4; [REP1-023](#)]. At ISH 4 the ExA questioned the applicant regarding this and were satisfied that the guidance is an industry standard, reference paragraphs 3.112-3.114 [\[REP4-010\]](#).
- 3.6.88. Regarding securing proposed mitigation regarding glint and glare, the final SoCG with DBC [\[REP8-029\]](#); DBC084] recorded this item as not agreed. Specifically, DBC request that the Outline LEMP and the wording of Requirement 12 is strengthened to reflect their concerns to ensure that all the embedded mitigation is maintained and managed for the lifetime of the development. The applicant maintains that the approach taken is standard practice, and the drafting of Requirement 12 has been taken from existing made DCOs. The ExA agree with DBC that the Outline LEMP and the wording of Requirement 12 is strengthened to make sure that the conclusions of the ES are correct and reliable. Accordingly, the ExA has amended the wording of Requirement 12 of the dDCO and the Outline LEMP to ensure that all the embedded mitigation is maintained and managed for the lifetime of the development.
- 3.6.89. The final SoCG with BVAG recorded glint and glare as not agreed, reference row ID BVAG32 [\[REP8-034\]](#) with BVAG recommending that all relevant parties are consulted in respect of the risks associated with glint and glare. The applicant's position is that glint and glare modelling had been undertaken at several points in the design process such that the findings of the assessment informed the design of the proposed development, including measures such as screening. This included consultation on an initial assessment as part of the statutory consultation. The ExA is satisfied that the consultation was adequate.

ExA considerations regarding glint and glare

- 3.6.90. With regard to glint and glare the ExA considers the following. (References to the relevant paragraphs in the NPS are provided in brackets).
- 3.6.91. ES Appendix 2.2. Solar Photovoltaic Glint and Glare Study [\[APP-106\]](#) satisfactorily considers the potential impacts of the proposed development towards the identified receptors, including homes, motorists, public rights of way, and aviation infrastructure, by undertaking geometric calculations and intensity calculations. It identifies that a moderate impact is predicted on three sections of road and ten dwellings. The applicant concludes that with the planting and operational maintenance of that planting, as secured via the DCO, the impact would be reduced to low/none. The ExA is of the view that there should be strengthening of the Outline LEMP and the wording of Requirement 12 as detailed in Chapter 7 (EN-3 2.10.104 and 158).

CONCLUSIONS

Methodology

- 3.6.92. The ExA concludes that ES Chapter 7 Landscape and Visual [AS-028] provides a satisfactory landscape and visual impact assessment, a landscape character assessment and a cumulative assessment in accordance with paragraphs 5.10.16 and 17 of NPS EN-1.
- 3.6.93. The applicant has considered landscape and visual matters in the early stages of siting and design and has demonstrated in the ES how negative effects have been minimised in accordance with paragraph 5.10.19 of NPS EN-1.
- 3.6.94. The ExA concludes that ES Chapter 7 adequately considers impacts on landscape components and character, including potential impacts on views. Measures to avoid and reduce effects are outlined in ES Appendix 2.6 Outline CEMP [REP8-012] (and ES Appendix 2.14 Outline LEMP [REP8-016]) in accordance with paragraphs 5.10.20 to 22 of NPS EN-1.
- 3.6.95. The ExA concludes that the applicant has adequately considered how landscapes can be enhanced through landscape management proposals in ES Appendix 2.14 Outline LEMP [REP8-016] in accordance with paragraph 5.10.24 of NPS EN-1.
- 3.6.96. The ExA concludes that ES Chapter 7 section 7.4 adequately outlines how magnitude has been defined in accordance with paragraph 5.10.25 of NPS EN-1.

Mitigation

- 3.6.97. In accordance with paragraph 5.10.37 of NPS EN-1 the ExA concludes that generally the project has been designed carefully, taking account of environmental effects on the landscape and siting, operational and other relevant constraints, to reduce harm to the landscape, including by mitigation. The ExA notes the applicant's inclusion, at the end of the examination, of possible panel area reductions as a result of improved technology, this additional mitigation would contribute to minimising harm to the landscape.
- 3.6.98. Consequently, the ExA considers that the significant adverse effects identified constitute exceptional circumstances where the benefits of additional mitigation through suggested further panel area reductions close to sensitive receptors in order to reduce the landscape and/or visual effects outweigh the marginal loss of function in accordance with paragraph 5.10.26 of NPS EN-1.
- 3.6.99. The ExA concludes that the applicant has proposed effective screening to minimise the area of zone of visual influence in accordance with paragraph 2.10.95 of NPS EN-3.

SoS decision making

- 3.6.100. The ExA concludes that the applicant has satisfactorily identified significant adverse effects relating to (in summary):
- the character of LCA Darlington 6, Great Stainton and Bishopton
 - views at Great Stainton and Bishopton
 - views from PRow within 1km:
 - Between A167, Salters Lane, Lea Hall and Little Ketton Farm

- East of Salters Lane between Lea Hall, Newton Ketton, Elstob Lane and Hill House Lane
- East of Elstob Lane and Hill House Lane, between Bleach House Bank, Stoney Flatt Farm and Gillyflatts
- East of Bleach House Bank between Stillington, Redmarshall and Stoney Flatt Farm

Further, the ExA concludes that the Planning Statement satisfactorily considers these effects within the overall planning balance. The applicant concludes that the benefits of and need for the proposed development outweigh the adverse landscape effects. The ExA agrees with the applicant's conclusion that the benefits of the project outweigh the visual effects on sensitive receptors in accordance with paragraph 5.10.14 of NPS EN-1.

- 3.6.101. In accordance with paragraphs 5.10.29, 30 and 38 of NPS EN-1 the ExA considers that the level of detailed design which the applicant has provided and is secured by Requirement 3 of the dDCO [[REP9-006](#)] is acceptable; and that this provides the local authorities with sufficient design content secured to ensure future consenting would meet landscape, visual and good design objectives.
- 3.6.102. In accordance with paragraph 5.10.36 of NPS EN-1 the ExA considers that any adverse impact on the landscape is temporary (long term), during the 40-year operational period of the proposed development, and would be capable of being reversed in a timescale that the ExA considers reasonable.

Glint and glare

- 3.6.103. In accordance with paragraphs 2.10.104 and 158 of NPS EN-3 the ExA concludes that the moderate impact predicted on three sections of road and ten dwellings would be reduced to low/none with the planting proposed. However, the ExA has amended the wording of Requirement 12 of the dDCO to ensure that all the embedded mitigation is maintained and managed for the lifetime of the development.

Matters to be taken to Chapter 4 and the planning balance

- The ExA concludes that the proposed development complies with NPS EN-1 paragraphs 5.10.16, 5.10.17 and 5.10.19 in terms of assessment and how negative effects have been minimised.
- The ExA concludes that the proposed development complies with NPS EN-1 paragraphs 5.10.20 to 22 regarding impacts including measures to avoid and reduce effects.
- The ExA concludes that the proposed development complies with NPS EN-1 paragraph 5.10.24 regarding landscape enhancement and how magnitude has been defined in accordance with paragraph 5.10.25.
- The ExA concludes that the proposed development has been carefully designed in accordance with NPS EN-1 paragraph 5.10.37. Possible panel area reductions as a result of improved technology have been identified which the ExA considers would constitute exceptional circumstances where the benefits outweigh the marginal loss of function in accordance with paragraph 5.10.26 of NPS EN-1.
- The ExA concludes that the proposed development complies with NPS EN-3 paragraph 2.10.95 regarding effective screening.

- The ExA concludes that the level of detailed design secured by Requirement 3 of the dDCO complies with NPS EN-1 paragraphs 5.10.29, 30 and 38 is acceptable.
- The ExA concludes that any adverse impact is temporary (long term), during the 40-year operational period of the proposed development, and would be capable of being reversed in accordance with NPS EN-1 paragraph 5.10.36.
- The ExA concludes with regard to glint and glare that the proposed development complies with NPS EN-3 paragraphs 2.10.104 and 158. The ExA has amended the wording of Requirement 12 of the dDCO to ensure that all the embedded mitigation is maintained and managed for the lifetime of the development.
- The applicant identifies a number of residual significant adverse effects on landscape character and views from villages and PRoW arising from the proposed development, following the application of the mitigation hierarchy; the ExA agrees with this assessment. The ExA therefore concludes that the matter weighs against making the DCO and this harm has been attributed great weight in the planning balance.

3.7. BIODIVERSITY

INTRODUCTION

- 3.7.1. This chapter covers the effects of the proposed development with regard to biodiversity.

POLICY CONSIDERATIONS

- 3.7.2. The ExA has reviewed the Policy Compliance Document [\[APP-164\]](#) and considers it adequately reports policy requirements and compliance of the proposed development with individual policies.

NPS EN-1

- 3.7.3. The government's policy regarding biodiversity effects of energy projects is defined in the National Policy Statement (NPS) for Energy (EN-1) at section 5.4 Biodiversity. SoS decision making are covered in paragraphs 5.4.39 to 55; the ExA's consideration of these is detailed within the Conclusions section below.

NPS EN-3

- 3.7.4. The government's policy regarding solar photovoltaic generation is defined in the NPS for Energy (EN-3) at section 2.10 Biodiversity. Key policy requirements are quoted below, and are covered in paragraphs 2.10.76 to 90; the ExA's consideration of these is detailed within the Conclusions section below

THE APPLICATION

- 3.7.5. This section provides a summary of the applicant's case at the start of the examination, focussing on the important and relevant matters to the 'Issues considered during the examination' and the 'Conclusion', below.

Introduction

- 3.7.6. The application documents included a Biodiversity Assessment at Chapter 6 of the Environmental Statement (ES) [\[APP-029\]](#). This chapter presents the impact assessment and likely significant effects of the proposed development on Biodiversity.

Assessment methodology

- 3.7.7. ES Chapter 6 Biodiversity [\[APP-029\]](#) provides an assessment of effects on internationally, nationally, and locally designated sites of ecological or geological conservation importance, on protected species and on habitats and other species identified as being of principal importance for the conservation of biodiversity, including irreplaceable habitats.
- 3.7.8. This assessment and the design of the proposed development have been informed by desk-based data analysis and site surveys, including:
- a UK habitat survey (ES Appendix 6.1 and Figure 6.1 [\[APP-125, 126 and 061\]](#))
 - wintering bird surveys (ES Appendix 6.2, [\[APP-127\]](#))
 - breeding bird surveys (ES Appendix 6.3, [\[APP-128\]](#))
 - bat surveys (ES Appendix 6.4, [\[APP-129\]](#))

Potential impacts

- 3.7.9. Based on the design of the proposed development during operation and associated construction and decommissioning activities, the proposed development has the potential to impact on biodiversity during construction, operation and decommissioning.

Mitigation

- 3.7.10. ES Chapter 6 Biodiversity [APP-029] and ES Chapter 2 The proposed development [APP-025] identifies a range of mitigation and enhancement measures that would be delivered through the proposed development during construction, operation and decommissioning, and would also contribute to the delivery of biodiversity net gain. These are secured via the Outline Landscape and Ecology Management Plan (LEMP) [APP-118]. This includes:

- habitat creation and management
- new and improved native-species-rich hedgerows and hedgerow trees
- reduced cutting along existing hedgerows to benefit nesting birds and invertebrates
- enhancement of field margins
- sowing of land under and between Panel Areas with a legume rich mix or flower rich grassland mix

- 3.7.11. The effects of the proposed development are assessed considering embedded mitigation is in place and are reported in Section 6.10, (Assessment of likely significant effects) of Chapter 6 [APP-029]. This section presents the likely effects on biodiversity resulting from the construction, operation and decommissioning of the proposed development. The applicant concludes for each situation assessed that the effects are *'considered to be not significant.'*

- 3.7.12. The applicant predicts an 88% net gain in habitat biodiversity units and a 108% net gain in hedgerow biodiversity units. This is reported in ES Appendix 6.6 Biodiversity Net Gain Report [APP-131]. The ongoing maintenance of proposed planting and habitat creation is detailed in the Outline (LEMP) [APP-118] and secured via requirement 12 of the dDCO [REP9-006], and would provide maintenance for the 40-year operation of the proposed development. The ExA has amended the wording of Requirement 12 of the dDCO to ensure that all the embedded mitigation is maintained and managed for the lifetime of the development as detailed in chapter 3.6 landscape and visual effects.

ISSUES CONSIDERED DURING THE EXAMINATION

- 3.7.13. This section details the issues relating to biodiversity considered during the examination. It focuses on matters that are considered important and relevant to the decision and have not been agreed or adequately justified by the applicant or are controversial.

Impact of watercourse crossings on riverine species

- 3.7.14. The applicant was asked by the ExA to provide further details of watercourse crossings the ExA's First Written Questions (ExQ1), question BIO.1.2; [PD-004], and an update including where appropriate controls are in place to ensure that impacts to riverine species would inform appropriate water crossing design the ExA's Second Written Questions (ExQ2), question BIO.2.1 [PD-011] and the ExA's Third Written Questions (ExQ3), question BIO.3.1 [PD-014].

- 3.7.15. In responding to ExQ3 the applicant confirmed that it had engaged with DBC on this matter and had agreed to extend the commitment in the Outline Construction Environmental Management Plan (CEMP) to include for pre-commencement surveys of water vole in addition to otters (the only species present that could be impacted by the watercourse crossings) reference BIO.3.1 [\[REP7-010\]](#). This matter is confirmed as agreed in the SoCG with DBC reference DBC044 and 045 [\[REP8-029\]](#). This commitment is contained in the Outline CEMP reference ID BD20-CEMP [\[REP8-012\]](#); the Outline CEMP is secured via requirement 4 of the draft DCO [\[REP9-006\]](#).

Invasive non-native plant species

- 3.7.16. The applicant was asked to provide details regarding securing best practice measures in the DCO relating to invasive non-native plant species ExQ1, question BIO.1.3 [\[PD-004\]](#), ExQ2, question BIO.2.2 [\[PD-011\]](#), and ExQ3, question BIO.3.2 [\[PD-014\]](#).
- 3.7.17. The applicant responded that it would submit an updated Outline CEMP to include an outline of the best practice measures to be implemented as part of the Invasive Plant Species Method Statement it secures reference BIO.3.2 [\[REP7-010\]](#). This matter is confirmed as agreed in the SoCG with DBC [DBC016; [REP8-029](#)]. This commitment is contained in the Outline CEMP at paragraph 2.3.33 and references ID BD6 & 7-CEMP [\[REP8-012\]](#).

Drilling beneath watercourses

- 3.7.18. The applicant was asked by the ExA to explain where measures to control potential drilling fluid breakout from horizontal directional drilling are secured in the application ExQ1, question BIO.1.5 [\[PD-004\]](#).
- 3.7.19. In response the applicant has discussed and agreed appropriate mitigation measures to control potential drilling fluid breakout from horizontal directional drilling with the Environment Agency (EA) and agreed additional control measures within the Outline CEMP [\[REP8-012\]](#). Confirmation of agreement of this matter is contained in the SoCG with the reference EA 8 & 9 [\[REP8-031\]](#). These commitments are contained in the Outline CEMP references HFR21 & 22-CEMP [\[REP8-012\]](#).

Compliance with the Environment Act

- 3.7.20. In response to ExQ1 the applicant confirmed compliance with the Environment Act 2021 and the provision of Biodiversity Net Gain [BIO.1.6; [REP2-007](#)].

Post construction monitoring

- 3.7.21. The CPRE and Durham Bird Club submitted representations regarding the impact of the proposed development on birds, badger and bats [RR-143; [REP1-045](#), [047](#), [051](#) & [052](#); [REP3-017](#)]. In response the ExA requested the applicant to explain how the post-construction monitoring proposed would ensure the proposed development delivers the ecological and related plans ExQ2, question BIO.2.3 [\[PD-011\]](#).
- 3.7.22. The applicant responded that the monitoring was designed to be front loaded to ensure any remedial actions required can be delivered as soon as possible and during the operational phase reference BIO.2.3 [\[REP5-031\]](#). Post construction monitoring for birds, badgers and bats is incorporated at paragraph 8.1.2 of the Outline LEMP [\[REP8-016\]](#).

- 3.7.23. Additionally, the applicant has noted the lack of research raised by Durham Bird Club [\[REP3-017\]](#) regarding the impact of solar generating infrastructure on birds, and has committed to reporting any deceased species found on site as part of maintenance activity, for review by an ecologist to establish whether there is any link to bird strike [\[REP4-011\]](#). This is incorporated at paragraph 6.2.5 of the Outline LEMP [\[REP8-016\]](#).

CONCLUSIONS

ExA considerations regarding NPS EN-1 SoS decision making

- 3.7.24. NPS paragraphs 5.4.39 and 41 require that the applicant has regard to the Environment Act. The applicant states that the proposed development would provide an anticipated 88% net gain in habitat biodiversity units and 108% net gain in hedgerow biodiversity units, as reported in ES Appendix 6.6 Biodiversity Net Gain Report [\[APP-131\]](#). It is the ExA's view that the applicant has paid adequate regard to the Act.
- 3.7.25. NPS paragraph 5.4.43 requires that adequate mitigation is provided if significant harm is identified. ES Chapter 6 Biodiversity [\[APP-029\]](#) concludes that there would be no significant adverse effects resulting from the proposed development. The ExA agrees with this conclusion.
- 3.7.26. NPS paragraphs 5.4.44 and 47 require appropriate requirements to ensure delivery and maintenance of any mitigation or biodiversity net gain measures. The ongoing maintenance of proposed planting and habitat creation is detailed in the Outline LEMP [\[APP-118\]](#) and secured via requirement 13 of the dDCO [\[REP9-006\]](#).
- 3.7.27. NPS paragraph 5.4.45 requires the applicant to have agreed mitigation measures. Pre-application engagement with Natural England (NE) has been undertaken as reflected in the Potential Main Issues for examination (PMIE) [\[APP-169\]](#), in which it is identified that NE has no principal areas of disagreement with the applicant. The status of any permits, consents and licenses required is set out in Other Consents and Licenses [\[APP-166\]](#). NE has not raised any concerns regarding the future granting of relevant consents and licenses. The ExA is content with the agreements reached.
- 3.7.28. NPS paragraph 5.4.46 relates to opportunities for building-in beneficial biodiversity features. The ExA considers that adequate mitigation and enhancement measures have been incorporated into the proposed development, as set out in ES Chapter 6 Biodiversity [\[APP-029\]](#) and secured through schedule 13 of the dDCO [\[REP9-006\]](#).
- 3.7.29. NPS paragraph 5.4.48 relates to the conservation of biodiversity. ES Chapter 6 Biodiversity [\[APP-029\]](#) sets out the assessment methodology employed for assessing the likely significant effects on biodiversity arising from the proposed development, taking into account the nature of the effect and receptor. Additionally, the ExA has noted the applicant's satisfactory incorporation of the following issues considered during the examination in the Outline LEMP [\[REP8-016\]](#):
- impact of watercourse crossings on riverine species
 - invasive non-native plant species
 - drilling beneath watercourses
 - post construction monitoring to report any deceased bird species

- 3.7.30. NPS paragraphs 5.4.49 and 50 relate to protected sites. Findings and conclusions in relation to habitats regulations assessment are contained in Appendix C of this report.
- 3.7.31. NPS paragraph 5.4.52 relates to Regional and Local Sites. There are two Local Nature Reserves (LNR) within 2km of the Order Limits, and two Local Wildlife Sites (LWS) within 1 km of the Order Limits. ES Chapter 6 Biodiversity [\[APP-029\]](#) concludes that there would be no significant effects on the LNRs or LWS as a result of the proposed development. The ExA agrees with this conclusion.
- 3.7.32. NPS paragraph 5.4.53 relates to irreplaceable habitats. As confirmed in ES Appendix 7.7 Arboricultural Impact Assessment [\[APP-138\]](#), there is no ancient woodland with potential to be affected by the proposed development.
- 3.7.33. NPS paragraph 5.4.54 concerns protection and enhancement of habitats and species. Mitigation and enhancement measures proposed in the application are secured via the dDCO [\[REP9-006\]](#). This includes measures to protect species and habitats from adverse effects of development. The ExA considers these measures adequate.
- 3.7.34. NPS paragraph 5.4.55 relates to harm to biodiversity features. ES Chapter 6 Biodiversity [\[APP-029\]](#) concludes that there would be no significant adverse effects resulting from the proposed development. The ExA agrees with this conclusion.

ExA considerations regarding NPS EN-3

- 3.7.35. NPS paragraphs 2.10.76 to 79 relate to identifying any ecological risk. An assessment of the ecological effects of the proposed development is reported in ES Chapter 6 Biodiversity [\[APP-029\]](#). The assessment and the design have been informed by desk-based data analysis and site surveys, including a UK habitat survey, wintering and breeding bird surveys and bat surveys. Mitigation and enhancement have been developed in an iterative process taking into account the results of the environmental assessment, with ecologists informing and advising on the design of the proposed development. The ExA is satisfied with the applicant's assessment.
- 3.7.36. NPS paragraph 2.10.82 relates to security and lighting installations. CCTV to be installed along the security fencing associated with the onsite substation and energy storage system would utilise infrared technology. The CCTV cameras would be no taller than the solar panels and included within the panel fields. There is no permanent lighting proposed as part of the proposed development, except for the localised emergency security lighting in proximity to the substation and energy storage systems. Such lighting would be triggered by movement only or manually turned on, and so would not be active for all hours of darkness. The ExA considers that security and lighting installations would have minimal impact on the local ecology.
- 3.7.37. NPS paragraph 2.10.83 relates to management of site boundaries. As reported in ES Chapter 6 Biodiversity [\[APP-029\]](#), construction activities are predicted to result in the potential for the loss of 0.15km of hedgerow as a result of grid connection cables and access routes. Sections of hedgerow to be removed would be reinstated and replanted with native species elsewhere within the order limits. This would result in a hedgerow creation forecast of 11.73 km and hedgerow enhancement of 28.89 km. ES Appendix 2.6 Outline Construction Environmental Plan [\[REP5-013\]](#) (CEMP) secures pre-construction surveys to reconfirm the ecological baseline

conditions and identify any potential new ecological risk prior to commencing works. In total, the proposed development would deliver an anticipated net gain of 108% biodiversity units relating to hedgerows. The ExA considers these proposals acceptable.

- 3.7.38. NPS paragraphs 2.10.89 and 90 relate to enhancing biodiversity. The applicant has had regard to the Environment Act in preparing the application. The proposed development would contribute to delivery of the legally binding targets through providing an anticipated 88% net gain in habitat biodiversity units and 108% net gain in hedgerow biodiversity units. This is reported in ES Appendix 6.6 Biodiversity Net Gain Report [[APP-131](#)]. The ExA considers these proposals acceptable.

Matters to be taken to Chapter 4 and the planning balance

- The ExA concludes that the proposed development complies with NPS EN-1 paragraphs 5.4.39 and 41 with regard to the Environment Act.
- The ExA concludes that the proposed development complies with NPS EN-1 paragraphs 5.4.43 to 5.4.48 with regard to providing mitigation or biodiversity net gain measures. The applicant has incorporated beneficial biodiversity enhancement measures into the proposed development, although any weight given to gains is likely to be limited.
- The ExA concludes that the proposed development complies with NPS EN-1 paragraphs 5.4.52 to 5.4.55 with regard to Regional and Local Sites, irreplaceable habitats, and protection and enhancement of habitats and species.
- The ExA concludes that the proposed development complies with NPS EN-3 paragraphs 2.10.76 to 79 with regard to identifying ecological risk.
- The ExA concludes that the proposed development complies with NPS EN-3 paragraphs 2.10.82 and 83 with regard to security and lighting installations and management of site boundaries.
- The ExA concludes that the proposed development complies with NPS EN-3 paragraphs 2.10.89 and 90 with regard to enhancing biodiversity.
- The ExA therefore concludes that the matter weighs for making the DCO and this gain has been attributed a little weight in the planning balance.

3.8. HISTORIC ENVIRONMENT

INTRODUCTION

- 3.8.1. ES Chapter 8 Cultural Heritage and Archaeology [\[APP-031\]](#) sets out the applicant's approach and presents the impact assessment of the likely significant effects of the proposed development on Cultural Heritage and Archaeology. This is supported by ES Appendix 8.1 [\[APP-145\]](#) to 8.5 [\[APP-149\]](#) and Appendix Figures (Figs.) including plates [\[APP-139\]](#) to [\[APP-144\]](#).

POLICY CONSIDERATION

NPS EN-1

- 3.8.2. Section 5.9 of NPS EN-1 provides advice on the historic environment and paragraph 5.9.1 states that the construction, operation and decommissioning of energy infrastructure has the potential to result in adverse impacts, at and below the surface of the ground, in relation to historic environment.
- 3.8.3. Paragraph 5.9.3 confirms that, in relation to heritage assets, significance of the asset derives not only from its physical presence, but also from its setting.
- 3.8.4. Paragraph 5.9.4 states that some heritage assets have a level of significance that justifies official designation, which includes, amongst others, scheduled monuments, listed buildings, registered parks and gardens and conservation areas. Paragraph 5.9.7 states that the SoSESNZ should also consider the impacts of energy infrastructure on non-designated heritage assets, including those that are locally listed, on the basis of clear evidence that such heritage assets have a significance that merits consideration even though of lesser significance than heritage assets.
- 3.8.5. In relation to the applicant's assessment, paragraph 5.9.9 states that the applicant should undertake an assessment of any likely significant heritage impacts of the proposed development and describe these along with how the mitigation hierarchy has been applied. This should include consideration of heritage assets above, at, and below the surface of the ground. Consideration will also need to be given to the possible impacts, including cumulative, on the wider historic environment.
- 3.8.6. Paragraph 5.9.15 states that applicants should look for opportunities for new development within conservation areas and within the setting of heritage assets, to enhance or better reveal their significance. Proposals that preserve those elements of the setting that made a positive contribution to the asset (or which better reveal its significance) should be treated favourably.
- 3.8.7. Paragraph 5.9.22 of the NPS EN-1 states that, in determining applications, the SoS should seek to identify and assess the particular significance of any heritage asset that may be affected by the proposed development, including by development affecting the setting of a heritage asset, taking account of:
- relevant information provided with the application;
 - any designation records;
 - historic landscape character records;
 - Historic Environment Records;
 - representations made by interested parties during the examination process;
 - expert advice where and when needed.

- 3.8.8. Paragraph 5.9.23 also clearly states that the SoS must also comply with the requirements on listed buildings, conservation areas and scheduled monuments set out in Regulation 3 of the Infrastructure Planning (Decisions) Regulations 2010 (Decisions Regulations)⁵
- 3.8.9. Paragraph 5.9.25 states that the SoS should consider the desirability of sustaining and, where appropriate, enhancing the significance of heritage assets, the contribution of their settings and the positive contribution that their conservation can make to sustainable communities.
- 3.8.10. Paragraph 5.9.27 goes on to state that, when considering the impact of a proposed development on the significance of designated heritage assets, the SoS should give great weight to the asset's conservation. 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.
- 3.8.11. Paragraph 5.9.28 reinforces this point by stating that the SoS should give considerable importance and weight to the desirability of preserving all heritage assets and that any harm or loss of significance of a designated heritage asset (from its alteration or destruction, or from development within its setting) should require clear and convincing justification.
- 3.8.12. Paragraph 5.9.30 adds that substantial harm to or loss of significance of assets of the highest significance, including Scheduled Monuments, Grade I and II listed buildings, should be wholly exceptional.
- 3.8.13. Paragraph 5.9.31 states that, where the proposed development will lead to substantial harm to (or total loss of significance of) a designated heritage asset, the SoS should refuse consent unless it can be demonstrated that the substantial harm to, or loss of, significance is necessary to achieve substantial public benefits that outweigh that harm or loss.
- 3.8.14. Paragraph 5.9.32 goes on to say that, where the proposed development will lead to less than substantial harm to the significance of the designated heritage asset, this harm should be weighed against the public benefits of the proposal.
- 3.8.15. Paragraph 5.9.36 states that, when considering applications for development affecting the setting of a designated heritage asset, the SoS should give appropriate weight to the desirability of its preservation and, when considering applications that do not do this, the SoS should give great weight to any negative effects, when weighing them against the wider benefits of the application. The greater the negative impact on the significance of the designated heritage asset, the greater the benefits that will be needed to justify approval.

NPS EN-3

- 3.8.16. Paragraph 2.10.108 of the NPS EN-3 clearly states that above ground impact of solar photovoltaic (PV) developments may include the effects on the setting of Listed Buildings and other designated heritage assets as well as on Historic Landscape Character, while paragraph 2.10.109 says that below ground impacts, although generally limited, may include direct impacts on archaeological deposits

⁵ [The Infrastructure Planning \(Decisions\) Regulations 2010 \(legislation.gov.uk\)](https://www.legislation.gov.uk/uksi/2010/2626/contents/make)

through ground disturbance associated with trenching, cabling, foundations, fencing, temporary haul routes, etc.

- 3.8.17. Paragraph 2.10.113 states that, where a site on which development is proposed includes, or has the potential to include, heritage assets with archaeological interest, the applicant should submit an appropriate desk-based assessment and, where necessary, a field evaluation. These should be carried out using expertise where necessary and in consultation with the local planning authority. These assessments should identify archaeological study areas and propose appropriate schemes of investigation, and design measures, to ensure the protection of relevant heritage assets.
- 3.8.18. Paragraph 2.10.118 states that, 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.
- 3.8.19. Paragraph 2.10.160 states 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.

NATIONAL PLANNING POLICY FRAMEWORK (NPPF)

- 3.8.20. Paragraphs 195 to 214 of the NPPF relate to conservation and enhancement of the historic environment and, in broad terms, confirm the same principles as set in the NPS EN-1 and NPS EN-3 with paragraph 195 stating that heritage assets are irreplaceable and should be conserved in a manner appropriate to their significance.
- 3.8.21. Paragraph 197 states that, when considering the designation of conservation areas, planning authorities should ensure that an area justifies such status because of its special architectural or historic interest, and that the concept of conservation is not devalued through the designation of areas that lack special interest.
- 3.8.22. Paragraph 201 states that planning authorities should identify and assess the particular significance of any heritage asset that may be affected by a proposal (including by development affecting the setting of a heritage asset) taking account of the available evidence and any necessary expertise and that they should avoid or minimise any conflict between the heritage asset's conservation and any aspect of the proposal.
- 3.8.23. The NPPF, in Paragraph 213 does provide further insight in relation to conservation areas by stating that not all elements of a conservation area will necessarily contribute to its significance. Loss of a building (or other element) which makes a positive contribution to the significance of the Conservation Area should be treated either as substantial harm under paragraph 207 or less than substantial harm under paragraph 208, as appropriate.

LOCAL DEVELOPMENT PLANS

- 3.8.24. Key policies identified are Darlington Local Plan (DLP) Policy ENV1 – Protecting and Enhancing Darlington's Historic Environment and Policy SD5 - Natural Built and Historic Environment and Policy HE2 – Conserving and Enhancing Stockton's

THE APPLICATION

- 3.8.25. As set in Section 8.6 of ES Chapter 8 [\[APP-031\]](#) the applicant states that a 2 km study area from the Order Limits has been used for the assessment of potential likely significant effects to below ground archaeological remains and designated and non-designated heritage asset upon their heritage significance. There are several designated heritage assets within the 2km study area. This study area allowed for archaeological information on heritage assets within close proximity to the proposed development location to be collected to fully understand the potential for as yet unrecorded heritage assets to be present within the area potentially affected by the construction of the solar farm.
- 3.8.26. For the assessment of indirect impacts, or effects on heritage assets due to a change in setting, a 5km study area around the Order Limits has been used to capture any highly designated assets, namely Grade I and Grade II* listed buildings and Grade I and Grade II* registered parks and gardens which have the potential to receive a likely significant effect upon their heritage significance.
- 3.8.27. As the applicant confirms in paragraph 8.6.3 of ES Chapter 8 [\[APP-031\]](#), there are no Grade II listed buildings with exceptional qualities which would be considered to have high heritage significance in the study area.
- 3.8.28. Taking into consideration the existing heritage and archaeological conditions in the study area, which were identified by the applicant and form the baseline described in section 8.7 of ES Chapter 8 [\[APP-031\]](#), the applicant the goes on to describe, in section 8.8 of the ES Chapter 8 [\[APP-031\]](#), the potential impacts of the proposed development on each receptor based on its design, during operation and associated construction and decommissioning activities.
- 3.8.29. The applicant also clarifies, in paragraph 8.8.2 and 8.8.3 that mitigation measures incorporated in the design and construction of the proposed development are reported as embedded mitigation in ES Chapter 2 The Proposed Development [\[APP-025\]](#) and will be taken into consideration when reporting potential impacts. Where further mitigation is deemed required, as a result of a potentially significant effect, this is termed essential mitigation.

ASSESSMENT OF LIKELY SIGNIFICANT EFFECTS

- 3.8.30. Section 8.10 of ES Chapter 8 [\[APP-031\]](#) sets out the applicant's assessment of likely significant effects on cultural heritage and archaeological receptors, with the overall significance of effects being set out after consideration has been given to both embedded and essential mitigations. The applicant's overall assessment is summarised in Table 8-5 Cultural Heritage and Archaeology assessment summary.
- 3.8.31. The effects of the proposed development, both direct and indirect effects, on identified cultural heritage and archaeological receptors during Construction phase, are set out in paragraphs 8.10.3 to 8.10.17.
- 3.8.32. At construction, most direct effects identified are deemed negligible. Two effects were identified as negligible to minor adverse effect, which are not significant for the purposes of the EIA. These are:

- linked to presence of remains that may be encountered during construction related to anomalies identified from the geophysical survey relating to possible or probable archaeology;
- linked to, as yet unknown, archaeological remains which could be of regional importance. Where remains of medium heritage significance are encountered, these will normally be mitigated through design measures set out in Appendix 8.5 Archaeological Management Strategy [\[APP-149\]](#) which will avoid any direct impacts on archaeological remains. Where remains of Low or Negligible significance are encountered, these will normally be mitigated through preservation by record.

3.8.33. In relation to indirect effects at construction stage, the applicant recognises that there would be an increase in noise and visibility of the construction works, however, these effects would be temporary and short terms and for the duration of the construction programme only.

3.8.34. Following from the application of the assessment methodology set out in section 8.4 of ES Chapter 8 [\[APP-031\]](#), the applicant considered the likely significant effects of the operation stage on:

- Asset Group Three: Bishopton
- Bishopton Conservation Area (Bishopton CA);
- The Scheduled Monument Motte and Bailey Castle 400m south-east of Bishopton (the Motte and Bailey Castle)

Asset Group Three: Bishopton

3.8.35. In relation to Asset Group Three Bishopton, its formed by Manor Farmhouse, Church of St Peter, Musgrave Headstone, Remains of Village Cross, Springfield House with Farm Building, St John's House and Bishopton War Memorial. The applicant describes the significance of these assets being vested primarily in the historic and architectural interest of the constituent listed buildings which range from medieval to 20th century in origin and attest to the longevity of settlement at Bishopton. The applicant also recognises that the setting makes a positive contribution to their significance which allows for an appreciation and understanding of their historic interest.

3.8.36. In relation to effects, the applicant argues that the proposed development may be visible from the asset group, however that visibility would not result in a material alteration of the key elements of significance nor how those elements are appreciated. The applicant also states that the proposed development would not intrude on any key views and it would not interrupt any understanding of the relationship between the listed buildings.

3.8.37. For the reasons stated above, the applicant finds that the proposed development would result in a negligible effect, which is not significant for the purposes of EIA.

Bishopton CA

3.8.38. In relation to Bishopton CA, the applicant acknowledges that the historic character of the conservation area is immediately appreciable when entering the settlement along one of the three primary roads that give access to the village, with the Green, the main thoroughfare of the village leading to Church View, lined with historic buildings on both sides separated from the road by small areas of grass, interspersed with mature trees. The applicant recognises that the character of the

village remains essentially unaltered throughout but notes that the most significant, visible change is at the junction between Church View and High Street where the road forks at the western edge of the Church of St Peter, with a greater proportion of modern buildings which do not follow the general character or appearance of the rest of the settlement. Bishopton CA continues south to encompass the Mott and Bailey Castle which sits adjacent to Bishopton Beck.

- 3.8.39. The applicant also notes in paragraphs 8.10.43 and 8.10.44 of ES Chapter 8 [\[APP-031\]](#), the setting of the conservation area is defined by certain identified key views which include, amongst others, views looking east along The Green, the view of St Peter's Church from the south along High Street, the view across the rural landscape towards the Scheduled Motte and Bailey Castle 400m south east of Bishopton from Church View/Mill Lane.
- 3.8.40. The applicant also recognises that the wider setting of the conservation area, beyond these identified views, comprises a generally rural landscape that has retained its rural character since the medieval period at least, although was significantly altered in the late 18th and early 19th centuries through enclosure.
- 3.8.41. The significance of the asset, as set out by the applicant, is derived from the conformity of architectural style and construction materials of the constituent elements which makes a positive contribution to the character and appearance of the conservation area. The setting of the conservation area also makes a positive contribution to its significance. The applicant particularly highlights the key view from Church View/Mill Lane looking to the south-west towards the Motte and Bailey where the appreciation of the longevity of the settlement is best understood. The applicant argues, in paragraph 8.10.51 that the remainder of the surrounding landscape whilst rural, does not make any great contribution to the character or appearance of the conservation area.
- 3.8.42. The effects of the proposed development on the Bishopton CA are noted by the applicant in paragraphs 8.10.52 to 8.10.60 of ES Chapter 8 [\[APP-031\]](#).
- 3.8.43. The applicant argues that proposed development would not affect the experience of the character and appearance of the conservation area along the footpath within the settlement boundaries and recognises that, while the solar PV panels will be a noticeable addition to the landscape between Bishopton and Old Stillington, this would not diminish or affect the character and appearance of the Bishopton CA, which is contained within the settlement core.
- 3.8.44. The applicant also argues that the two main areas where the proposed development will be more noticeable from are when moving along Church View/Mill Lane to the west, entering the limits of the settlement and when walking along the public footpath from Old Stillington south into Bishopton.
- 3.8.45. The applicant also states that at Church View/Mill Lane as solar PV panels will be constructed approximately 60m behind the existing hedgerows to the north, there will be very limited visibility, if any, of the solar PV panels.
- 3.8.46. In conclusion, the applicant finds that the proposed development would have a negligible effect, which is not significant for the purposes of EIA.

The Motte and Bailey Castle

- 3.8.47. In relation to its setting, the applicant recognises that the landscape around the asset has remained generally rural in character and that the Motte and Bailey Castle

is in a key strategic location in relation to the surrounding area, namely the south eastern edge of the settlement of Bishopton and Bishopton Beck, affording clear views across the surrounding landscape in almost all directions.

- 3.8.48. The significance of the Motte and Bailey Castle, according to the applicant, is derived from its archaeological interest and its historic interest, as a visible remaining element of the medieval landscape, the asset attests to the power and prowess of its former inhabitants and to the associated village of Bishopton.
- 3.8.49. The applicant also recognises the contributions that the setting makes to the significance of the asset particularly its relationship with the village which is key in understanding and appreciating the asset and its historic interest. The applicant also recognises the contribution of the wider landscape to significance through an ability to appreciate and understand further the power and influence asserted by the by the motte and its inhabitants over the wider area with the revenue of the surrounding rural and agricultural land being the primary source of wealth for any Lord.
- 3.8.50. The applicant recognises that the proposed development would introduce solar PV modules into the landscape around the Motte and Bailey Castle with the closest PV panels proposed to be located approximately 500 m west of it. The applicant also states that all panel areas will be either located at too far a distance to be considered within the setting of the asset, screened by vegetation and/or buildings, or not visible due to the land's topography. The applicant also states that the solar PV modules to the west of the asset, although located at a similar elevation will not be visible.
- 3.8.51. Due to the primary significance of the asset being defined by its archaeological interest, which would be unaffected by the proposed development and due to the fact that the changes in landscape around Bishopton would be neither noticeable nor appreciable from the asset, the applicant concludes that the proposed development would lead to a negligible magnitude of change on the asset which is of High heritage significance resulting in a Negligible Effect not significant for EIA purposes.

ISSUES CONSIDERED DURING EXAMINATION

HISTORIC ENGLAND (HE)

- 3.8.52. In its Relevant Representation (RR) [\[RR-207\]](#), HE raised concerns in relation to the impact of the proposed development on Bishopton, namely through the re-routing to the west of the Public Right of Way (PRoW) that presently connects the settlement of Bishopton with Old Stillington. This proposed re-routing would be along the proposed panel areas which would affect the experience of the conservation area in its rural setting through an urbanising effect.
- 3.8.53. Furthermore, HE also said that they disagreed with the applicant in relation to the rural landscape surrounding the conservation area not making any great contribution to its character and appearance given that its significance is drawn from it being a rural conservation area which is best appreciated by its surrounding countryside.
- 3.8.54. However, the Statement of Common Ground (SoCG) between the applicant and HE [\[REP6-003\]](#), signed at the end of the Examination, confirms their concerns have all been resolved and that, by the end of the Examination, there are no outstanding concerns in relation to the effects of the proposed development on the any of the historic or archeologic assets identified by the applicant. Furthermore, the SoCG

also confirm that there are no concerns regarding the assessment carried out by the applicant.

DARLINGTON BOROUGH COUNCIL (DBC)

3.8.55. DBC's Local Impact Report (LIR) [\[REP1-023\]](#) states that, although some harm has been identified to the Bishopton CA, DBC considers it to be less than significant and at the lower end of the scale of harm. DBC therefore found that the proposal is therefore considered to have neutral impact on heritage assets. As confirmed in the final version of the SoCG [\[REP8-029\]](#), there were no outstanding concerns in relation to the effects of the proposed development on heritage or archaeological assets by the end of the Examination.

3.8.56. BISHOPTON VILLAGES ACTION GROUP (BVAG)

3.8.57. As included in the SoCG [\[REP8-034\]](#), concerns have remained in relation to the effects of the proposed development on heritage and archaeological assets, namely the fact that the proposed development would lead to the permanent loss or damage to archaeological assets, particularly those linked to the Motte and Bailey Castle and the effects of the proposed development on Bishopton CA and Asset Group Three: Bishopton. BVAG's Written Representation (WR) [\[REP2-042\]](#) expands further on these concerns and confirms that BVAG differ from DBC LIR [\[REP1-023\]](#) conclusions and consider that the proposal has adverse impacts on assets of significance which are not mitigated against by either hedging or layout of the PV panels. BVAG's WR also states that there are strong concerns which remain unaddressed about possible damage to protected buildings due to trenching.

3.8.58. The applicant has responded to these concerns in [\[REP3-005\]](#) by stating that agreement had been reached with HE and DBC on the effects of the proposed development on Bishopton CA, the Motte and Bailey Castle and effects on archaeology and that these were deemed to be negligible effects not the significant for EIA purposes. The applicant also confirms that their assessment has demonstrated that the proposed development will not be visible within any of the identified key views and, consequently, cannot alter the character and appearance of the Conservation Area. The applicant also responded that its assessment does not identify any material alteration to the key elements of significance and that would not intrude on any key views from the Asset Group Three: Bishopton.

3.8.59. Specifically, in relation to the Motte and Bailey Castle and BVAG's concerns regarding potential the exclusion of this asset from the area wide geophysical survey, the applicant states that the submitted Archaeological Management Strategy [\[APP-149\]](#) includes provision for further archaeological investigation works when the final cable route is known. This would include, amongst other sources of information, geophysical surveys. BVAG have also raised concerns regarding the potentially significant harmful effect that the proposed development would have on the Motte and Bailey Castle with the applicant confirming, in [\[REP3-005\]](#) that it does not agree with that assessment and that the applicant's view was agreed with HE.

GREAT STANTON PARISH MEETING (GSPM)

3.8.60. As included in the SoCG [\[REP7-007\]](#), concerns have remained in relation to the effects of the proposed development on heritage and archaeological assets, namely Grade II listed buildings located within Great Stanton. The SoCG goes on to say that the character of these sites stems from the landscape which they are situated in and therefore the urbanisation of the landscape through the proposed development would have a detrimental effect on the setting of these heritage assets.

- 3.8.61. The applicant's response stresses that ES Chapter 8 [\[APP-031\]](#) concluded that there would be no effects on the setting of the heritage assets mentioned and that these assets were discussed included and discussed in Table 2 - Designated heritage assets of the Technical Appendix 8.2: Historic Environment Settings Assessment [\[APP-146\]](#). In this table, the applicant has found that the area of the Order Limits does not contribute towards the heritage significance of the assets. The applicant's view is this is due to the listed buildings deriving their heritage significance from their historic and architectural interests. Furthermore, the setting of these assets is confined to the cluster settlement along Elstob Lane and Glebe Road and, although there is some limited intervisibility between Glebe Road and the Order Limits, the setting of these assets is contained within the main streets and the area of the Order Limits does not contribute towards the heritage significance of the assets.

ExA

- 3.8.62. The ExA asked a series of written questions to the applicant in relation to the historic environment. Key concerns for the ExA were the impacts of the proposed development on Bishopton CA, the applicant's consideration of any harm or loss that may result from the development and the impact of proposed underground cabling works on the Motte and Bailey Castle (ExQ1 HEN.1.3, HEN.1.5., HEN.1.6, HEN.1.7) [\[PD-004\]](#). The ExA also had queries, at ExQ2 [\[PD-011\]](#) following from further exploration of the applicant's approach to the identification of harm at ISH2.
- 3.8.63. The applicant, in its response to HEN.1.3 [\[REP2-007\]](#), confirms that it does recognise that the setting of Bishopton's CA does make a positive contribution to its significance. However, the applicant confirms it has found that this is, in particular, derived from two key elements: the view from Church View/Mill Lane looking to the south-west towards the Scheduled Monument Motte and Bailey Castle, and when moving along High Street from Redmarshall Lane with the motte and bailey on the westerly side. The applicant further notes, in its response to HEN.1.3, that Paragraph 8.10.51 of ES Chapter 8 [\[APP-031\]](#) specifically notes that the rural surroundings do not make any great contribution to that significance.
- 3.8.64. In response to the ExA's concerns as set out in ExQ1 HEN.1.5 [\[PD-004\]](#), the applicant states that through its assessment it was able to establish that, although there is some theoretical visibility between the Scheduled Monument Motte and Bailey Castle, the visibility on the ground will be less than that suggested by the plan. It also goes on to state that, although it recognises that the wider setting of the Scheduled Monument Motte and Bailey Castle makes a contribution to the significance of the asset through the understanding of how power and influence was transferred to the lords through control of the land, that this would not be lost nor diminished through the introduction of the proposed development.
- 3.8.65. ExA's HEN.1.6 [\[PD-004\]](#) related to the proximity of the cable route to the Scheduled Monument Motte and Bailey Castle. The applicant introduced a series of changes to the Outline Construction Environmental Management Plan (oCEMP) [\[REP8-012\]](#), which included fencing off the scheduled monument area during construction including a 5m buffer to avoid accidental encroachment, toolbox talks prior to commencement of work to inform contractors of requirements and procedures and archaeological monitoring to take place during works in the vicinity of the monument. This would be secured through Requirement 4 of the dDCO [\[REP9-006\]](#). The applicant also confirmed that further archaeological work would be undertaken along the proposed cable routes should consent be granted, to refine

procedures to be included within the finalised Construction Environmental Management Plan (CEMP).

- 3.8.66. ExA's ExQ1 HEN.1.8 [\[PD-004\]](#) and ExQ2 HEN.2.3 [\[PD-011\]](#) related to the applicant's assessment in light of the requirements set in the Planning Act 2008 (PA2008). The ExA stressed in its written questions to the applicant that the PA2008 requires the decision-makers to have regard to the desirability of preserving the asset or its setting, including considering any harm or loss that may result from the development. The applicant assured the ExA, in its response to ExQ2 HEN.2.3 [\[REP5-031\]](#), that its assessment has concluded there will be no harm to the significance of any designated heritage assets through a change in their setting, considering the application of the mitigation measures set out within ES Technical Appendix 8.5 Archaeological Management Strategy [\[APP-149\]](#). In its response to ExQ1 HEN.1.8 [\[REP2-007\]](#) the applicant goes on to state that this approach is agreed with HE as set out in the Statement of Common Ground submitted at Deadline 1 [\[REP1-014\]](#), and is understood to be agreed with DBC based on the comments in the Local Impact Report [\[REP1-023\]](#).
- 3.8.67. The ExA asked further questions of the applicant's methodology for the assessment of significance of effects at ISH2, namely the applicant's apparent use of "negligible effect" to describe the same type of effect as "no effect". At ISH2, as set out in [\[EV10-006\]](#) and in response to action point ISH2-05 [\[REP5-032\]](#), the applicant confirmed that this was its approach and that, in relation to the assessment presented in ES Chapter 8 [\[APP-031\]](#) in all instances, where a Negligible Effect is reported, this equates to No Effect. It is also worth noting that HE, in its response to ExQ2 [\[REP5-040\]](#), has confirmed that the methodology used by the applicant in relation to "negligible effect" being used to describe the same type of effect as "no effect" is standard methodology that is common to many EIA projects and that HE understands that a negligible significance of effect to be a no impact or a neutral impact which may not require mitigation.

CONCLUSIONS

GENERAL CONSIDERATIONS

- 3.8.68. In reaching its conclusions, the ExA has had regard to the desirability of preserving any listed building, preserving or enhancing the character or appearance of conservation areas and preserving schedule monuments or their setting, as set out in Regulation 3 of the Infrastructure Planning (Decisions) Regulations 2010.
- 3.8.69. The ExA has also taken into consideration relevant national and local policy including the need to give considerable importance and weight to the desirability of preserving all heritage assets and its setting and opportunities for new development within the setting of heritage assets, to enhance or better reveal their significance.
- 3.8.70. The ExA also notes as per paragraph 5.9.36 of the NPS EN-1, when considering applications for development affecting the setting of a designated heritage asset, the SoSES NZ should give appropriate weight to the desirability of preserving the setting of such assets and treat favourably applications that preserve those elements of the setting that make a positive contribution to, or better reveal the significance of, the asset. When considering applications that do not do this, the Secretary of State should give great weight to any negative effects, when weighing them against the wider benefits of the application. The greater the negative impact on the significance of the designated heritage asset, the greater the benefits that will be needed to justify approval.

- 3.8.71. HE and DBC are content with the applicant's assessment methodology and have agreed it is appropriate. Overall, and as a whole, the ExA has no reason to disagree with the view and find that the applicant has undertaken an assessment of the likely significant heritage impacts of the proposed development and, in that regard, find there is compliance with paragraph 5.9.9, 5.9.22 of the NPS EN-1 and paragraphs 2.10.108, 2.10.109, 2.10.113, 2.10.118 and 2.10.160 of NPS EN-3.
- 3.8.72. Following the consideration of the methodology set out in ES Chapter 8 [\[APP-031\]](#), the applicant has not reported any significant effects in relation to the heritage assets identified. And as confirmed by the applicant, in the case of its assessment presented in ES Chapter 8 [\[APP-031\]](#) and in all instances, where a Negligible Effect has been reported, this equates to No Effect and should be interpreted by the ExA as such.

CONSTRUCTION

- 3.8.73. Mitigation for cultural heritage and archaeology assets during the construction stage is provided in the Outline CEMP [\[REP8-012/013\]](#) which includes additional mitigation, following from discussions during the Examination, to protect the Motte and Bailey Castle from proposed works during construction. Proposed mitigation is also proposed for known and unknown archaeological remains which includes the use of above ground foundations to remove any intrusive groundworks and, where mitigation by design is not possible or warranted, mitigation through preservation by record will be applied.
- 3.8.74. Having considered paragraphs 5.9.1 to 5.9.36 of NPS EN-1 and 2.10.107 to 2.10.119 of NPS EN-3, what would constitute a reasonable worst case scenario, the low likelihood of finding archaeological remains of any importance and the secured mitigation proposed in the eventuality that any archaeological remains were to be found, the ExA agrees with the applicant that there would be no effects from the proposed development on any heritage assets and even the potential discovery of unknown heritage assets has been suitably mitigated against to reduce any potential effects to no effect.

OPERATION

- 3.8.75. In relation to effects from the proposed development during the operation phase, the applicant has identified a series of assets for detailed assessment as the proposed development was deemed to have the potential to change (diminish or otherwise harm) either the asset or its setting.
- 3.8.76. Having reviewed the information submitted by the applicant in relation to those assets, namely, Asset Group Three: Bishopton, Bishopton Conservation Area and the Motte and Bailey Castle, the ExA agrees with the applicant's approach and overall conclusion in relation to the effects of the proposed development on these assets, as set out in Table 8-5 Cultural Heritage and Archaeology assessment summary of ES Chapter 8 [\[APP-031\]](#), in all cases apart from in relation to the Bishopton CA.

Bishopton CA

- 3.8.77. Although the ExA agrees with the applicant's overall methodology, the ExA is also aware that the applicant's own assessment confirms, in relation to the effects of the proposed development on the setting of Bishopton CA, that it would be a noticeable addition to the landscape.

- 3.8.78. Paragraph 5.9.28 of NPS EN-1 does state that any harm or loss of significance of a designated heritage asset, including from development within its setting, should require clear and convincing justification.
- 3.8.79. The applicant does not dispute that the setting of the Bishopton CA makes a positive contribution to its significance. However, the applicant argues, as set in paragraphs 8.10.49 to 8.10.51 of ES Chapter 8 [\[APP-031\]](#) that this is, for the most part, through the key view from Church View/Mill Lane looking to the south-west towards the motte and bailey. The applicant then goes on to state that the remainder of the surrounding landscape while rural, does not make any great contribution to the character and appearance of the conservation area.
- 3.8.80. Although the ExA agrees with the applicant that the view identified is key to the significance of Bishopton CA, the ExA finds that the surrounding landscape makes a smaller, but still valid, contribution to its significance. This is mostly due to the fact that surrounding rural and verdant landscape, because of its openness and unobstructed views towards the centre of Bishopton provides a clear contrast between the more built up centre of the village area and the openness of the rural landscape that surrounds it. This is particularly marked by the fact that the the centre of Bishopton village lies on slightly higher ground than the surrounding landscape, therefore enhancing and contributing to the setting of Bishopton CA. The topography of the land alongside with the contrast between the more built up centre of the village area and the openness of the rural landscape that surrounds, creates a sense of anticipation as one approaches Bishopton.
- 3.8.81. The proposed development, specifically Panel Area F [\[REP2-021\]](#), would extend fairly close to the edge of Bishopton CA [\[REP2-035\]](#) thereby affecting the appearance and sense of space of the rural area, which does make a contribution to the setting of the heritage asset. This change would be particularly noticeable from the proposed new diverted public footpath from Old Stillington south to Bishopton which would run alongside proposed Panel Area F.
- 3.8.82. As the proposed new diverted public footpath would cut through the middle of Panel Area F, it would be dominated by the proposed landscape screening on either side, as set out in Sheet 10 of [\[REP6b-008\]](#), which would need to be of sufficient height to provide effective screening and mitigation. This would create a considerably different approach to Bishopton CA for all users of the PRoW and would noticeably change the setting of a designated heritage asset.
- 3.8.83. As set in paragraph 5.9.28 of NSP EN-1, the SoSESNZ should give considerable importance and weight to the desirability of preserving all heritage assets and any harm or loss of significance, including from development in its setting, should require clear and convincing justification.
- 3.8.84. Considering that part of the significance of the asset, as the ExA has set out, comes from the contrast between the open rural green fields that surround it and the built-up centre of the village itself, it is the ExA's view that the proposal would cause harm to the significance of the heritage asset by virtue of development in its setting.
- 3.8.85. Bishopton's CA Character Appraisal [\[REP2-034\]](#) seems to further strengthens the ExA's view on this matter as it includes several references to the agricultural fields in the context of the historical development of the village, which is one of the defining features of its special interest.

- 3.8.86. The applicant justifies its assessment of negligible effect, or no effect, in paragraph 8.10.59 where it states that the proposed development would not affect the experience of the character and appearance of the conservation area along the footpath within the settlement boundaries. The applicant goes on to state that, while the solar PV panels will be a noticeable addition to the landscape between the two settlements, this would not diminish or affect the character and appearance of the Bishopton Conservation Area, which is contained within the settlement core.
- 3.8.87. However, it is the view of the ExA that it will affect the setting of the Conservation Area and that its setting, viewed from this PRoW, does make a valid positive contribution to the significance of Bishopton CA.
- 3.8.88. As set out in paragraph 5.9.28 of NSP EN-1, the SoSESNZ should give considerable importance and weight to the desirability of preserving all heritage assets and any harm or loss of significance, including from development in its setting. For the reasons above, it is the ExA's view that the proposed development would cause harm to the significance of the Bishopton CA because it is located and visible within its setting and the setting makes a positive contribution to its significance.
- 3.8.89. Having therefore considered the guidance set out in the NPS EN-1 and NPS EN-3 and taking into consideration the statutory approach to heritage assets and the proposed mitigation as set out in the Environmental Masterplan [REP6b-008], the ExA finds that there would be harm caused to a heritage asset, Bishopton's CA.
- 3.8.90. However, the ExA agrees with the applicant that this harm would be limited as it would not be to a key view or a key aspect of the setting of the Bishopton CA. The connection between the village and the surrounding agricultural fields would still be appreciated from most key points and key vistas from Bishopton CA. Furthermore, the fields can be re-instated to their agricultural use after the decommissioning of the proposed development. For these reasons, the ExA classifies this harm to be low level and less than substantial. This is also the view of HE and DBC as set out in response to ExQ2 HEN.2.3 in [REP5-040] and [REP5-037] which do seem to agree that any harm would be towards the lower and less than substantial with a neutral impact that would not alter the ES.
- 3.8.91. However low, where there is harm, the SoS must give that harm considerable importance and weight. Paragraph 5.9.32 of NPS EN-1 does require, where the proposed development would lead to less than substantial harm to the significance of designated heritage assets, this harm should be weighed against the public benefits of the proposal. This matter will be taken into consideration and addressed as part of Chapter 4, the planning balance.

Matters to be taken to Chapter 4 and the planning balance

- At construction phase, the ExA agrees with the applicant that there would be no effects from the proposed development on any heritage assets and even the potential discovery of unknown heritage assets has been suitably mitigated against to reduce any potential effects to no effect.
- At operation phase, the ExA agrees with the applicant's approach and overall conclusion in relation to the effects of the proposed development on all cases apart from in relation to the Bishopton CA.
- In relation to Bishopton CA, the ExA finds that the surrounding landscape makes a smaller, but still valid, contribution to its significance and that the

proposed development, specifically Panel Area F [\[REP2-021\]](#), would extend fairly close to the edge of Bishopton CA [\[REP2-035\]](#) thereby affecting the appearance and sense of space of the rural area, which does make a contribution to the setting of the heritage asset. As the proposed new diverted public footpath would cut through the middle of Panel Area F, it would be dominated by the proposed landscape screening on either side, creating a considerably different approach to Bishopton CA for all users of the PRow and noticeably changing the setting of a designated heritage asset.

- The ExA's is therefore of the view that the proposal would cause harm to the significance of the heritage asset.
- the less than substantial harm to designated heritage assets is 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.

3.9. NOISE AND VIBRATION

INTRODUCTION

- 3.9.1. This section examines the effects of the proposed development in relation to noise and vibration.

POLICY CONSIDERATIONS

- 3.9.2. 'Paragraph 5.12.13 of the overarching National Policy Statement (NPS) EN-1 states that the Secretary of State for Energy Security and Net Zero (SoSESNZ) should consider whether mitigation measures are needed for both operational and construction noise over and above any which may form part of the project application. In doing so the SoSESNZ may wish to impose mitigation measures. Any such mitigation measures should take account of the national planning policy framework (NPPF) or any successor to it and the planning practice guidance on noise. The succeeding paragraph 5.12.17 of NPS EN-1 advises that the SoSESNZ 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'

- 3.9.3. Paragraph 5.12.18 of NPS EN-1 emphasises that when preparing the Development Consent Order (DCO), the SoSESNZ should consider including measurable requirements or specifying the mitigation measures to be put in place to ensure that noise levels do not exceed any limits specified in the development consent. These requirements or mitigation measures may apply to the construction, operation, and decommissioning of the energy infrastructure development. It is also stipulated in paragraph 2.7.98 of NPS EN-3 that the SoSESNZ should consider the noise and vibration impacts according to section 5.12 of EN-1 and, be satisfied that noise and vibration will be adequately mitigated through requirements attached to the consent.

OTHER LOCAL AND NATIONAL POLICIES

- 3.9.4. Paragraph 187 of the NPPF 2024 mentions that Planning policies and decisions should contribute to and enhance the natural and local environment by preventing new and existing development from contributing to, being put at unacceptable risk from, or being adversely affected by, unacceptable levels of noise pollution. The succeeding paragraph 198 emphasises that that new developments should mitigate and reduce to a minimum potential adverse impact resulting from noise from new development and, avoid noise giving rise to significant adverse impacts on health and the quality of life.
- 3.9.5. It is stated in paragraph 5.3.7 of the 2022 adopted Darlington Local Plan that all new developments that may cause noise pollution, either individually or cumulatively, will be required to incorporate measures to prevent and reduce their pollution so as not to cause unacceptable impacts on the living conditions of all existing and potential future occupants of land and buildings. The later paragraph 5.4.1 advises that new development will be supported where it is suitably located and is acceptable in terms of noise, disturbance and vibration.

THE APPLICATION

- 3.9.6. 'The assessment of the noise and vibration aspect of the proposed development is discussed in environmental statement (ES) Chapter 11 noise and vibration [APP-034]. This document is supported by ES addendum - construction noise [REP4-012], design approach document (DAD) [REP8-022] plus the following ES appendices

- 2.6 Construction Environmental Management Plan (CEMP) [REP8-012]
- 2.7 Decommissioning Environmental Management Plan (DEMP) [REP5-015]
- 2.8 Construction Traffic Management Plan (CTMP) [REP8-014]
- 11.1 Noise and Vibration Guidance [APP-154]
- 11.2 Noise Monitoring Data [APP-155]
- 11.3 Details of Noise Model [APP-156]
- 11.4 BS4142 Assessment Calculations [APP-157]
- 11.5 Selection of Background Levels [APP-158]
- 12.1 Transport Statement [REP2-004]'

BASELINE

- 3.9.7. Section 11.7 of ES Chapter 11 [APP-034] describes the baseline conditions of existing sensitive receptors for each of the panel areas, comprising residential properties, local farms and ecological features. It also confirms that noise monitoring surveys were undertaken. Table 11-9 of ES Chapter 11 [APP-034] shows the noise monitoring sites including grouped residential receptors while the pertinent results are contained in Table 11-10. The study indicates that the average noise level that is exceeded 90 per cent of the time for the surveyed areas is 38db during the day and 28db at nighttime, the source of which is predominantly related to vehicular traffic.

CONSTRUCTION, OPERATION AND DECOMMISSIONING PHASES' IMPACTS

- 3.9.8. 'Section 11.8 of ES Chapter 11 [APP-034] examines the potential noise impacts of the proposed development during its construction, operational and decommissioning phases as follows

- **construction:** These effects are largely associated with construction vehicles traversing to and from the Order limits of the proposed development and construction activities encompassing preparatory works, installation of solar PV modules and supporting equipment, site clearance and ground excavation. It is envisaged that these noise impacts would be controlled by the CEMP [REP8-012], which is secured by Requirement 4 of the draft development control order (dDCO) [REP9-006]
- **operation:** This phase is projected to produce low noise levels relating to minimal vehicular traffic to and from the proposed development and, supporting infrastructure including inverters and transformers, battery energy storage system (BESS) and the on-site substation
- **decommissioning:** The effects would be like those of the construction stage and, would be managed through the DEMP, which would be secured by Requirement 5 of the dDCO [REP9-006]'

EMBEDDED MITIGATIONS

- 3.9.9. Section 11.9 of ES Chapter 11 [APP-034] explains that the mitigation measures incorporated into the design and construction of the proposed development are channelled towards avoiding and preventing adverse environmental effects. These comprise siting inverters and any other sources of noise accompanying the operational phase of the proposed development as far as reasonably possible to a

minimum of 300m from existing sensitive receptors. In addition, the inverters will be encapsulated in containers for further reduction in noise levels. These measures are incorporated in the DAD [\[REP8-022\]](#), which would be secured through the Requirement 3 of the dDCO [\[REP9-006\]](#).

LIKELY SIGNIFICANT EFFECTS (LSE) - CONSTRUCTION, OPERATION AND DECOMMISSIONING STAGES

CONSTRUCTION

- 3.9.10. The applicant describes the proposed development's LSE on noise and vibration during its construction, operation and decommissioning phases with relevant essential mitigation measures, plus the overall significance of the residual effects, in section 11.10 of ES Chapter 11 [\[APP-034\]](#). Various British Standards and Planning Practice Guidance detailed in ES Appendix 11.1 [\[APP-154\]](#) were used to predict the ambient noise levels and the noise readings above which construction activities may cause a significant impact, for each of the surveyed sites, as shown in Table 11-11 of ES Chapter 11 [\[APP-034\]](#). The LSE of noise relating to construction activities and related vehicular traffic in the construction stage is explained in paragraphs 11.10.3 to 11.10.13 of the same paper.
- 3.9.11. The applicant predicts that the construction actions of the proposed development would likely produce short-term increases in noise levels at the proximate receptors over the recommended limits in Table 11-11 mentioned above, but these would be dependent on the sound power levels of the machines used, the distance to the properties, the presence of screening or reflecting surfaces and the ability of the intervening ground to absorb the noise. The ES considers that the construction activities would likely create short-term moderate adverse effect, which is not significant and concludes that, with the proposed implementation of the best working practices detailed in the CEMP to minimise the levels of noise generated by the construction works, no essential mitigation is deemed necessary.
- 3.9.12. As for the LSE of vehicular traffic, the applicant states that while there may be immediate temporary noise impacts due to the low predicted traffic increase as outlined in ES Chapter 12 [\[APP-035\]](#), these would not be sufficient to constitute a significant effect owing to the temporary nature and relatively low volume of movements. Therefore, there is likely to be a short-term adverse effect, which is considered not significant, hence no essential mitigation is required.
- 3.9.13. Paragraphs 11.10.14 to 11.10.29 of ES Chapter 11 [\[APP-034\]](#) illustrate the LSE of vibration relating to construction activities. The most common form of vibration is linked with the proposed piling works. The ES states that the applicant's consultant's field trial measurements of ground vibration from construction machinery (worst-case scenario) was used to estimate the vibration levels (Table 11-12 of ES Chapter 11 [\[APP-034\]](#)). The ES then explains that while the British Standard BS6472: 2008 'Guide to Evaluation of Human Exposure to Vibration in Buildings' suggests that complaints due to continuous vibration are rare in residential situations below a Peak Particle Velocity (PPV) of 0.8mm per second (/sec), the proposed earthworks and construction works would be sporadic and that all the 5 machineries tested in the trial produced PPVs of less than or approximately 0.8mm/sec at the evaluated distances. The ES thus concludes that there is likely to be no effect, and no essential mitigation is therefore required.

OPERATION

- 3.9.14. The LSE of noise and vibration emanating from the proposed development during its operation phase are discussed in paragraphs 11.10.30 to 11.10.62 of ES Chapter 11 [\[APP-034\]](#). A noise model (SoundPLAN v8.2 software), detailed in ES Appendix 11.3 [\[APP-156\]](#), was used to predict the potential operation noise from the proposed development. The estimated noise levels were based on connected equipment (DC converter, battery, inverter and transformer), modelled on a worst-case scenario that all were operating at 100 per cent capacity, which reflects daytime and night-time assessment periods.
- 3.9.15. Background sound levels were measured throughout the daytime and night-time, with the average calculated for each monitoring site, as detailed in Table 11-13 of ES Chapter 11 [\[APP-034\]](#). The applicant then used the effect significance matrix in Table 11-8 of ES Chapter 11 [\[APP-034\]](#), which is based on professional judgement, to decide the significance of effect of the magnitude of change due to the proposed development and the evaluation of the sensitivity of the affected receptors. The ES subsequently concluded that the magnitude of change of noise and vibration would be negligible, with no significance of effect and consequently, no mitigation is required.

DECOMMISSIONING

- 3.9.16. As the intensity and duration of work at this stage are expected to be like those in the construction phase, the applicant has projected that the LSE of noise and vibration at this stage would be comparable to the construction phase. Therefore, the LSE on noise and vibration is likely to be a short-term moderate adverse effect, which would not be significant as to necessitate any essential mitigation.

MITIGATION MONITORING

- 3.9.17. Section 11.11 of ES Chapter 11 [\[APP-034\]](#) explains that the applicant has not proposed to undertake noise and vibration monitoring during the construction and operation of the proposed development, as relevant noise and vibration would be short-term and, due to the low predicted noise levels, monitoring is deemed unnecessary during its operation stage. The ES concludes that noise and vibration effects would be limited to short periods of time and not for longer than one month in any location given the transient nature of the construction. Mitigation measures are shown in Table 11.14 of ES Chapter 11 [\[APP-034\]](#) alongside the embedded mitigations in ES Chapter 2 [\[APP-025\]](#), secured via the design principles detailed in the DAD [\[REP8-022\]](#).

ISSUES CONSIDERED DURING THE EXAMINATION

INADEQUATE EVALUATION OF NOISE IMPACT ON OTHER SENSITIVE RECEPTORS

- 3.9.18. The final SoCGs of Darlington Borough Council (DBC) [\[REP8-029\]](#) and Durham County Council (DCC) [\[REP8-028\]](#) agree with the applicant's assessment. The SoCGs with outstanding reservations on this matter are those of Bishopton Villages Action Group (BVAG) [\[REP8-034\]](#), Great Stainton Parish Meeting (GSPM) [\[REP7-007\]](#) and Stockton-on-Tees Borough Council (SBC) [\[REP8-030\]](#). At the issue specific hearing (ISH) 6 conducted on 27 November 2024, queries were raised by BVAG and Bishopton Parish Council (BPC) in relation to the applicant's lack of detailed assessment of noise impact on horses, given that there are 8 livery stables maintaining over 200 horses in the vicinity of the proposed development. BVAG and

BPC also considered that the noise impact on horses would culminate in reduced business for the livery stables.

- 3.9.19. In response, the applicant referred to paragraphs 1.4.5 and 1.4.6 of the Noise and Vibration Addendum [\[REP4-012\]](#) which assessed the noise impact on the 2 identified equestrian-related businesses around Panel Area F and concludes that the LSE of noise on these receptors would be moderate for a period of time less than a month and, subsequently resulted in the inclusion of further mitigation measures in Table 4-7 of the CEMP [\[REP8-012\]](#). The applicant also stated that it is committed to engaging more with those businesses once the final construction methods are known. Additionally, the applicant considered that the assessment made was based on a worst-case piling method and there is the potential that a quieter procedure may be adopted. The applicant also added that the affected businesses may be encouraged to relocate horses during the noisiest periods of work.
- 3.9.20. At the ISH7, the ExA asked the applicant to clarify the in-combination effect statement made in paragraph 13.4.2 of ES Chapter 13 [\[APP-036\]](#) that human receptors in proximity to the works including recreational resources could experience multiple adverse or beneficial impacts associated with noise and vibration during the construction, operation and decommissioning stages. The applicant referred the ExA to Table 1-1 of ES Appendix 13.1 [\[APP-160\]](#), which considers the in-combination effects in detail and concludes that no significant effect of interactions is expected and that each individual effect is unlikely to work in combination to generate a significant effect.
- 3.9.21. The unresolved SoCG with SBC relates to its request that the applicant should have included properties within Stockton-on-Tees area in its noise impact assessments. The applicant considers that [\[REP8-029\]](#) the dwellings in Stockton-on-Tees are at distances that are greater than 300m from the Order limits of the proposed development and in any event, the submission of the CEMP secured under Requirement 4 of the dDCO [\[REP9-006\]](#) would be subject to consultation with SBC.

INTENSITY OF NOISE GENERATED BY THE ELECTRICAL INFRASTRUCTURE OF THE PROPOSED DEVELOPMENT

- 3.9.22. The ExA in its ExQ3 asked the applicant to confirm what the average typical levels of noise produced by the panels and the BESS would be during the operation stage of the proposed development and how these would compare with other levels of noises that interested parties are customarily accustomed to. The applicant stated [\[REP7-010\]](#) that the solar panels do not emit noise, but the main sources of noise would be from the cooling systems of the electrical infrastructure (transformers, inverters and BESS units) supporting the solar panels. The applicant also considered that the specific noise levels predicted at the nearby existing sensitive receptors (less than 40dB) would be equivalent to a noise level below that experienced in a typical quiet residential neighbourhood, or domestically of the vibration of a modern refrigerator. In this respect the ExA also notes that the specific noise concern raised by BPC [\[REP6-030\]](#) arises from humming from inverters.

CONCLUSIONS

- 3.9.23. The ExA is satisfied that the assessment set out in the ES meets the requirements of NPS EN-1 and NPS EN-3. The ExA is also satisfied that no significant noise and vibration effects are likely to arise from the proposed development. In relation to the applicant's unresolved SoCG with Bishopton Villages Action Group (BVAG) [\[REP8-](#)

[034](#)] and Great Stainton Parish Meeting (GSPM) [\[REP7-007\]](#), although the applicant's assessment concludes a moderate adverse effect resulting from construction noise, this impact is nevertheless restricted to momentary periods of daytime hours. The ExA has noted that this short-term effect would be managed by best working practices proposed in the CEMP in conformity with paragraph 5.12.17 of NPS EN-1.

- 3.9.24. Consequently, the ExA, having regard to the embedded mitigations in the DAD [\[REP8-022\]](#) plus the required obligations in the CEMP [\[REP8-012\]](#), DEMP [\[REP5-015\]](#) and CTMP [\[REP8-014\]](#), to be secured by Requirements 4, 5 and 6 of the dDCO [\[REP9-006\]](#) separately, is content that the ES has sufficiently evaluated the noise and vibration aspect of the proposed development and demonstrated that it would not have any significant impact. Furthermore, the ExA considers that, subject to the mitigation measures identified in the ES and DAD, the impacts of the proposed development during its construction, operation and decommissioning stages would be adequately mitigated, in line with paragraphs 5.12.13 and 5.12.18 of NPS EN-1 and 2.7.98 of NPS EN-3 plus paragraphs 187 and 198 of NPPF. The ExA therefore considers that the effect of noise and vibration from the proposed development would be neutral and does not weigh for or against the making of the Order.

Matters to be taken to Chapter 4 and the planning balance

- The ES has considered the environmental impact of the noise and vibration aspect of the proposed development in accordance with paragraphs 5.12.17 of NPS EN-1 and 2.7.98 of NPS EN-3 plus paragraph 187 of NPPF. Albeit the ES concludes a moderate adverse effect resulting from construction noise, this impact is nonetheless limited to momentary periods of daytime hours. The ExA has subsequently deemed that the embedded mitigation measures in the ES and DAD [\[REP8-022\]](#), plus the required obligations in the CEMP [\[REP8-012\]](#), DEMP [\[REP5-015\]](#) and CTMP [\[REP8-014\]](#), to be secured by Requirements 4, 5 and 6 of the dDCO [\[REP9-006\]](#) correspondingly, in conformity with paragraph 5.12.13 and 5.12.18 of NPS EN-1 and 198 of NPPF, would be adequate in mitigating any negative impacts to an acceptable level.
- The ExA therefore assigns this impact neutral weight in the planning balance in the making of the Order.

3.10. FLOOD RISK AND WATER ENVIRONMENT

INTRODUCTION

- 3.10.1. This section examines the effects of the proposed development in relation to flood risk and water environment.

POLICY CONSIDERATIONS

- 3.10.2. Paragraph 5.16.12 of the overarching National Policy Statement NPS-EN1 states that the Secretary of State for Energy Security and Net Zero (SoSESNZ) will need to give impacts on the water environment more weight where a project would have an adverse effect on the achievement of the environmental objectives established under the Water Environment (Water Framework Directive) (England and Wales) Regulations 2017.
- 3.10.3. It is also recommended in paragraph 5.16.16 of NPS EN-1 that the SoSESNZ should consider proposals to mitigate adverse effects on the water environment and any enhancement measures put forward by the applicant and whether appropriate requirements should be attached to any development consent 'and/ or' planning obligations are necessary.
- 3.10.4. As advised in paragraph 5.16.8 of NPS EN-1, the SoSESNZ should consider whether mitigation measures are needed over and above any which may form part of the project application. A construction management plan may help codify mitigation at that stage.
- 3.10.5. Paragraph 5.8.36 of NPS EN-1 prescribes that in determining an application for development consent, the SoSESNZ should be satisfied that where relevant:
- the application is supported by an appropriate flood risk assessment (FRA).
 - the sequential test has been applied and satisfied as part of site selection.
 - a sequential approach has been applied at the site level to minimise risk by directing the most vulnerable uses to areas of lowest flood risk.
 - the proposal is in line with any relevant national and local flood risk management strategy.
 - Sustainable Drainage System (SUDS) has been used unless there is clear evidence that its use would be inappropriate.
 - in flood risk areas the project is designed and constructed to remain safe and operational during its lifetime, without increasing flood risk elsewhere (subject to the exceptions set out in paragraph 5.8.42).
 - the project includes safe access and escape routes where required, as part of an agreed emergency plan, and that any residual risk can be safely managed over the lifetime of the development.
- 3.10.6. Paragraph 5.8.38 of NPS EN-1 specifies that the Development Consent Order (DCO), or any associated planning obligations, will need to make provision for appropriate operation and maintenance of any SUDS throughout the project's lifetime. Where this is secured through the adoption of any SUDS features, any necessary access rights to property will need to be granted. The following paragraph 5.8.39 requires that where relevant, the SoSESNZ should be satisfied that the most appropriate body is being given the responsibility for maintaining any SUDS, considering the nature and security of the infrastructure on the proposed site. Responsible bodies could include, for example the landowner, the relevant local flood authority or water and sewerage company (through the Ofwat-approved Sewerage Sector Guidance), or another body, such as an Internal Drainage Board.

- 3.10.7. Paragraph 5.8.42 of NPS EN-1 states that exceptionally, where an increase in flood risk elsewhere cannot be avoided or wholly mitigated, the SoSESNZ may grant consent if they are satisfied that the increase in present and future flood risk can be mitigated to an acceptable and safe level and taking account of the benefits of and need for nationally significant energy infrastructure.
- 3.10.8. Paragraph 2.10.84 of NPS EN-3 mentions that FRA will need to consider the impact of drainage, but as solar PV panels will drain to the existing ground, the impact will not generally be significant. Paragraph 2.10.85 goes on to say that where access tracks need to be provided, permeable tracks should be used, and localised SUDS, such as swales and infiltration trenches, should be used to control any run-off where recommended. Then, paragraph 2.10.86 of NPS EN-3 instructs that given the temporary nature of solar PV farms, sites should be configured or selected to avoid the need to impact on existing drainage systems and watercourses.
- 3.10.9. 'Paragraph 170 of the National Planning Policy Framework (NPPF) 2024 mentions that inappropriate development in areas at risk of flooding should be avoided by directing development away from areas at highest risk (whether existing or future) and the following paragraphs 173 to 175 state that all plans should apply a sequential, risk-based approach to the location of development, taking into account all sources of flood risk, to steer new development to areas with the lowest risk of flooding from any source. The later paragraphs 177 to 180 advise that having applied the sequential test, if it is not possible for development to be located in areas with a lower risk of flooding (taking into account wider sustainable development objectives), the exception test that meets the following criteria may have to be applied
- the development would provide wider sustainability benefits to the community that outweigh the flood risk
 - the development will be safe for its lifetime taking account of the vulnerability of its users, without increasing flood risk elsewhere, and, where possible, will reduce flood risk overall.'
- 3.10.10. Paragraphs 181 to 182 of NPPF 2024 emphasise that when determining any planning applications, local planning authorities should ensure that flood risk is not increased elsewhere and, applications which could affect drainage on or around the site should incorporate SUDS to control flow rates and reduce volumes of runoff and, which are proportionate to the nature and scale of the proposal. It is stated in paragraph 5.1.17 of the 2022 adopted Darlington Local Plan that new development will be focused in areas of low flood risk (Flood Zone 1) and, in considering development on sites in higher flood risk areas, the sequential and exception tests must be passed and the sequential approach applied on site.

THE APPLICATION

- 3.10.11. The evaluation of the Water Environment and Flood Risk aspect of the proposed development is discussed in Environmental Statement (ES) Chapter 10 [\[APP-033\]](#). This document is supported by the ES Chapter 2 [\[APP-025\]](#), ES Appendices 10.1 FRA and Drainage Strategy [\[REP8-019\]](#) and 10.2 Water Framework Directive (WFD) Assessment [\[REP7-004\]](#) plus ES Figures 10.1 Hydrological Features [\[APP-084\]](#) and 10.5 WFD Waterbodies and Catchments [\[APP-088\]](#).

BASELINE

- 3.10.12. The baseline water environment, in the area containing the Order limits of the proposed development [\[APP-079\]](#), is described in paragraph 10.4.2 of ES Chapter

10 [APP-033]. Site observations were undertaken on 16 and 17 February 2023 to compare mapped data to real baseline features and identify unmapped land drainage within the Order limits, which may not have been picked up in the desk study. The applicant describes the topography of the proposed panel areas and identifies the designated proximate Newton Ketton Meadow SSSI and the more distant Teesmouth and Cleveland Coast Ramsar site, SPA and SSSI that are hydrologically linked to the proposed development in paragraphs 10.7.10 to 10.7.12 of ES Chapter 10 [APP-033].

WATER QUALITY

- 3.10.13. The chemical and ecological conditions of the watercourses around the Order limits of the proposed development, which are designated as Water Framework Directive (WFD) water bodies, comprise the River Skerne, Newton Beck, Bishopton Beck and Whitton Beck are evaluated in paragraphs 10.7.21 to 10.7.25 of ES Chapter 10 [APP-033], with each of them confirmed as having poor overall status.
- 3.10.14. Paragraph 10.7.27 of ES Chapter 10 [APP-033] states that the proposed development is within a groundwater source protection zone but neither within nor drains through a drinking water safeguarded groundwater zone. None of the private supply locations in Darlington Borough Council (DBC) and Stockton-on-Tees Borough Council (SBC) explored by the applicant are within the drainage pathway of the proposed development and are therefore considered not relevant to this assessment. The presence of abstraction licences in the locality of the proposed development was also investigated, with one groundwater potable public water abstraction owned by Anglian Water, which is located outside the Order limits in Byers Gill Wood, established.

FLOOD RISK

- 3.10.15. The applicant has examined sources of flood risks that are pertinent to the proposed development comprising fluvial, surface water, groundwater, reservoir failure and sewerage in paragraphs 10.7.33 to 10.7.49 of ES Chapter 10 [APP-033]. Each of these is summarised below. The submitted FRA and Drainage Strategy [REP8-019] reviews flood risk to the proposed development in detail and provides recommendations for the management of surface water runoff on-site, utilising SUDS options where appropriate.
- 3.10.16. **Fluvial:** The applicant has used the Environment Agency (EA) flood maps to identify the proposed development as being predominantly in Flood Zone (FZ) 1, depicted as an area with less than a 1 in 1000 Annual Exceedance Probability (AEP) of flooding from the main rivers and consequently not deemed to be at a significant risk of river flooding. Panel areas (D & F) associated with Little Stainton Beck and Bishopton Beck respectively are the only two in FZ 3 (1 in 100 AEP of flooding). Even though the flood depth at these watercourses is 1metre, no new above watercourse crossings or ground raising are proposed in FZ 3. A sequential test aimed at channelling the development towards areas at little or no risk of flooding from any source was then carried out by the applicant, as set out in sections 3.7 and 3.8 of ES Appendix 10.1 [REP8-019]. This was supplemented with an exception test that concluded that the proposed development would create significant sustainability and community benefits, be safe for its lifetime and would not impact flood risk on or off site, in section 3.9.
- 3.10.17. **Surface water:** Based on EA mapping, the ES describes most of the proposed development area as being at low risk of surface water flooding (1 in 1,000 AEP FZ). While a 3m flood depth was detected at Panel Area C around Square Wood, a

detailed assessment of the surface water flood risk at this location, complemented with a site visit confirmed the presence of an extensive drainage system at this location. The applicant subsequently concluded that the recorded flood depth of 3m here was inaccurate.

3.10.18. **Groundwater:** The applicant's flood risk specialist's interrogation of mapping indicated that the proposed development is largely in an area with negligible risk of groundwater flooding, with moderate risk only found in Panel Area F.

3.10.19. **Reservoir and sewerage:** The risk of reservoir flooding is low in this area and, as no sewerage pipes run across the Order limits of the proposed development, the risk of sewerage flooding is believed to be negligible.

CONSTRUCTION, OPERATION AND DECOMMISSIONING PHASES' IMPACTS

3.10.20. Section 10.8 of the ES Chapter 10 [\[APP-033\]](#) considers the potential impacts of the proposed development on flood risk and water quality during the construction, operation and decommissioning stages of the proposed development.

FLOOD RISK

3.10.21. The following are the identified risks of impacts on the applicable receptors in the construction phase:

- Soil compaction from heavy construction vehicles causing increased surface water runoff from the Order limits.
- Increase in temporary impermeable area due to new construction buildings.
- The proposed layout of access tracks culminating in the creation of 2 new crossings over watercourses (River Skerne and Little Stainton Brook) and the adoption of 7 existing crossings.

3.10.22. During the operation phase of the proposed development, the impacts would be as listed below:

- Where solar panels are mounted on ballast slabs that sit on the surface instead of on piles that would penetrate the ground due to archaeological constraints, the presence of multiple slabs could add to the effective impermeable area of the site and limit infiltration or cause small rises in runoff rates and peak flood flows across the Order limits.
- The change of use from agriculture to solar PV modules and grassland can create a reduction in the chemical loading of waterways due to cessation of the use of nitrate, thereby reducing the number of nitrates entering nearby watercourses. This can be beneficial to ecological receptors and the overall health of the watercourse.
- The 2 new watercourse crossings, if not adequately designed, could lead to long term erosion of the stream bed, which could impact the natural morphology and subsequently cause increased risk of sediment pollution.

3.10.23. The potential impacts of the proposed development in its decommissioning stage are described as follows:

- Soil compaction emanating from regular use of heavy construction vehicles causing increased surface water runoff from the Order limits.
- Temporary increase in the impermeable area within the Order limits and altered flow pathways may have a long-term impact if the Order limits is not returned to pre-development conditions.

WATER QUALITY

- 3.10.24. The following form the identified impacts on the related receptors during the construction stage:
- The risk of chemical spills from construction vehicles or leaks creating run-off into the watercourses and Newton Ketton Meadow.
 - Ground disturbance from minor excavation could lead to exposed soils being washed into nearby watercourses during periods of heavy rain.
- 3.10.25. The impacts in the operation phase of the proposed development would be as follows:
- Increased hardstanding heightening the speed at which surface water runoff enters watercourses.
 - The long-term spread in impermeable area due to the construction of Battery Energy Storage Systems, inverters, transformers and a sub-station is also highlighted as likely to accentuate flood risk and, subsurface structures, primarily foundations intersecting with the groundwater aquifer may result in an impact on water quantity and quality.
 - Subsurface structures, primarily foundations intersecting with the groundwater aquifer may impact on water quantity and quality by altering flow paths.
- 3.10.26. In its decommissioning stage, the potential impacts would be:
- The risk of chemical spills from decommissioning vehicles or leaks caused by damaged solar PV modules during installation creating run-off into the watercourses and Newton Ketton Meadow.
 - Removal of structures relating to the associated development may lead to exposed soils which can be washed into nearby watercourses.
- 3.10.27. The ES Appendix 10.2 [\[REP7-004\]](#) contains the WFD assessment, which details the WFD water bodies and the effects the proposed development would have on them. The WFD assessment has concluded that the proposed development meets the WFD objectives and is not expected to increase pollution to the water bodies draining the Order limits. The ES also states that no significant effects on the water bodies have been identified and, the mitigation measures outlined in ES Chapters 2 [\[APP-025\]](#) and 10 [\[APP-033\]](#) have been deemed effective in ensuring that the WFD status of the water bodies are not affected.

EMBEDDED MITIGATIONS

- 3.10.28. Paragraphs 2.6.35 to 2.6.42 of ES Chapter 2 [\[APP-025\]](#) exhibits the proposed mitigation measures relevant to runoff and sediment management, construction pollution prevention and water quality monitoring including the provision of SUDS at source, that would make certain that surface water run-off is managed as per existing site conditions. These ameliorative actions are also detailed in ES Appendix 10.1 FRA and Drainage Strategy [\[REP8-019\]](#) and, summarised in Table 4-6 of ES Appendix 2.6 outline Construction Environmental Management Plan (CEMP) [\[REP8-012\]](#), which will be secured via Requirement 4 of the draft DCO (dDCO) [\[REP9-006\]](#).

LIKELY SIGNIFICANT EFFECTS (LSE) - CONSTRUCTION, OPERATION AND DECOMMISSIONING STAGES

- 3.10.29. Section 10.10 of ES Chapter 10 [\[APP-033\]](#) evaluates the LSE the proposed development would have on water quality and flood risk during its three stages,

focusing on the potential risks to watercourses, designated sites, groundwater, Public Water Supplies (PWS) and flood risk.

CONSTRUCTION AND DECOMMISSIONING

- 3.10.30. The LSE of the proposed development on watercourses, designated sites, groundwater, PWS and flood risk during its construction and operation phases are examined in paragraphs 10.10.3 to 10.10.65 of ES Chapter 10 [\[APP-033\]](#). The ES explains that watercourses, designated sites, groundwater and PWS have the potential to experience risk of rising pollution and, intensify flood risk downstream, consequential to chemical spills from construction vehicles or leaks emanating from damaged solar PV modules which could run-off into them. However, with the embedded and essential mitigations comprising the provision of 8m buffer zone around the watercourses near the Order limits and SUDS plus the reinstatement of temporary land take areas (construction compound, storage and laydown space, welfare facilities etc) during decommissioning, the LSE is considered to range from minor adverse to negligible.

OPERATION

- 3.10.31. As per the construction and decommissioning stages above, the LSE of the proposed development on the above receptors would largely be from minor adverse to negligible. Table 10-7 of ES Chapter 10 [\[APP-033\]](#) provides a summary of the LSE for these receptors.

MITIGATION MONITORING

- 3.10.32. Section 10.11 details the long-term monitoring of the proposed development comprising the monitoring and maintenance of vegetation beneath the solar PV panels to ensure that erosion is not raised, via the ES Appendix 2.14 Outline Landscape and Ecology Management Plan (LEMP) [\[REP8-016\]](#). Silt accumulation will be inspected and appropriately removed to ensure that no blockage to infiltration capacity occurs. This section also points to the drainage maintenance activities outlined in Table 4-2 of the ES Appendix 10.1 FRA and Drainage Strategy [\[REP8-019\]](#), to be included in the required Construction Surface Water Management Plan in the CEMP [\[REP8-012\]](#), which will be secured by way of Requirement 4 the dDCO [\[REP9-006\]](#).

ISSUES CONSIDERED DURING THE EXAMINATION

FLOOD RISK IMPACT ON EXISTING PLUVIAL FLOODING AROUND THE PROPOSED DEVELOPMENT

- 3.10.33. Several submissions were made by IPs throughout the examination, expressing concerns over flooding and associated risks. The final SoCGs of the host authorities (DBC [\[REP8-029\]](#), DCC [\[REP8-028\]](#), SBC [\[REP8-030\]](#)) and EA [\[REP8-031\]](#) show satisfaction with the applicant's assessment. The SoCGs with outstanding reservations on this matter are those of Bishopton Villages Action Group (BVAG) [\[REP8-034\]](#) and Great Stainton Parish Meeting (GSPM) [\[REP7-007\]](#). BVAG and GSPM were concerned that the site and surrounding areas including highways local access routes are prone to flooding. At the ISH3 that was conducted on 15 October 2024, BVAG mentioned that DBC as the lead local flood authority (LLFA) had tried to deal with the pluvial flooding problem in this locality for many years without success. The ExA asked the applicant to consider whether flood risk enhancement measures in addition to the proposed mitigation measures could be provided in existing buffer zones, to reduce surface water flooding in the key areas identified in BVAG's submissions [\[RR-416\]](#).

- 3.10.34. In its post-hearing submission [\[REP5-032\]](#), the applicant clarified that the outline LEMP [\[REP8-016\]](#) had been revised to include the introduction of a mix of grass and legumes to provide a dense vegetation surface to slow run off as an enhanced mitigation and, that the proposed seed mix when sown and managed correctly as per the measures in the LEMP [\[REP8-016\]](#) would provide a dense sward suitable to mitigate run-off as would any crop or grass field. Moreover, the applicant included further commitments in the Design Approach Document (DAD) [\[REP8-022\]](#) for the provision of enhancements to manage existing surface water run-off problems at Mill Lane and the junction of Folly Bank. The DAD [\[REP8-022\]](#) and LEMP [\[REP8-016\]](#) would be secured by Requirements 3 and 12 of the dDCO [\[REP9-006\]](#), separately.

VALIDITY OF THE APPLICANT'S FRA METHODOLOGY

- 3.10.35. The EA initially queried the applicant's method for understanding climate change impacts using the Meteorological Office's UK Climate Projections 2018 (UKCP18) data and this was explored by the ExA in examining authority's first written questions (ExQ1) [\[PD-004\]](#). The EA stated that the data needs to be applied to a detailed hydraulic modelling so that the impacts on water levels at the site could be properly quantified. At the ISH 3, the EA commented that where the panel areas encroach into flood zones, for example, panel areas D & F associated with Little Stainton Beck and Bishopton Beck respectively, the applicant had been asked to undertake a detailed hydraulic modelling [\[REP4-013\]](#) to provide a better understanding of flood depths in these areas to ensure the panels would be raised above the 1 in 100 AEP. The EA also stated that the hydraulic modelling also aids the understanding of the impacts that the solar panel support frames would have on flood risk, as they may impede flood flow and result in risen water levels.
- 3.10.36. The ExA then asked EA whether it considered the applicant's FRA acceptable, to which the EA confirmed that following a review of the applicant's hydraulic modelling results, the solar panel support frames would not exacerbate flood risk outside the Order limits, where they are placed in areas that are prone to flooding. In its earlier SOCG with the applicant, EA was also concerned that the applicant's FRA had not demonstrated that the sequential test, which seeks to direct development into the lowest flood risk zones, had been passed over the proposed development's lifetime of at least 75 years in line with Planning Policy Guidance. The applicant explained in its responses to ExQ1 [\[REP2-007\]](#) that the FRA had been updated to reflect how the sequential test has been addressed including undertaking modelling to assess fluvial flooding. At the ISH3 the applicant was then asked to demonstrate the sequential test modelling and the succeeding exception test that would ensure that the development would be safe for its lifetime. The EA confirmed that the applicant's sequential and exception tests were acceptable. The applicant was then asked by DBC to add the community benefits of the exception test as a revision of the FRA and drainage strategy.

CONCLUSIONS

- 3.10.37. The ExA is satisfied that the assessment set out in the ES meets the requirements of paragraphs 5.16.12 of NPS EN-1 plus 2.10.84 and 2.10.86 of NPS EN-3. The ExA is also satisfied that no significant flood risk and drainage effects are likely to arise from the proposed development. In relation to the applicant's FRA method and associated drainage strategies, the ExA, having regard to the comments made by DBC as the lead local flood authority, DCC, EA and SBC, is content that the applicant has adequately assessed flood risk and fulfilled the directions of paragraphs 5.8.36 and 5.8.39 of NPS EN-1 and 173 to 175 plus 177 to 180 of

NPPF. The ExA is also content that the FRA, having demonstrated that both the sequential and exception tests are passed, the ES has delivered the requirements of paragraphs 5.8.36 and 5.8.39 of NPS EN-1 and 173 to 175 plus 177 to 180 of NPPF. Moreover, the ExA is satisfied that the surface water body and groundwater body WFD assessment [REP7-004] has shown that the proposed development would not have any significant impact on the water bodies in its vicinity and will consequently not be detrimental to the objectives of the WFD water bodies, in line with paragraph 5.16.12 of NPS EN-1.

- 3.10.38. Furthermore, the ExA considers that, subject to the mitigation measures identified in the ES, FRA, DAD [REP8-022], CEMP [REP8-012] and LEMP [REP8-016], the proposed mitigation would sufficiently mitigate the impacts of the proposed development during construction, operation and decommissioning stages, in conformity with paragraphs 5.16.8, 5.16.16 and 5.16.42 of NPS EN-1 plus 2.10.85 of NPS EN-3. Additionally, as the EA has confirmed that the applicant's hydraulic modelling results has indicated that the solar panel support frames would not accentuate flood risk outside the Order limits, where they are placed in areas that are prone to flooding, the ExA is content that the ES has met the needs of paragraphs 5.8.36 of NPS EN-1 plus 170 and 181 to 182 of NPPF. The ExA therefore considers that the effect of the proposed development on matters of the water environment and flood risk would be neutral and does not weigh for or against the making of the Order.

Matters to be taken to Chapter 4 and the planning balance

- The ES has considered the environmental impact of the flood risk and water environment aspect of the proposed development and, the WFD assessment has concluded that the proposed development would not have any significant impact on the water bodies in its vicinity and will consequently not be detrimental to the objectives of the WFD water bodies, in accordance with paragraphs 5.16.12 of NPS EN-1 plus 2.10.84 and 2.10.86 of NPS EN-3. The FRA method and associated drainage strategies in the ES show that the applicant has adequately assessed flood risk and fulfilled the directions of paragraphs 5.8.36 and 5.8.39 of NPS EN-1 plus 170, 173 to 175 and 177 to 180 of NPPF. The ExA has subsequently deemed that taking into account also the EA comment, the embedded mitigation measures in the ES, FRA and DAD [REP8-022], plus the required obligations in the CEMP [REP8-012] and LEMP [REP8-016] that would be secured by Requirements 4 and 12 of the dDCO [REP9-006] separately, in conformity with paragraphs 5.16.8, 5.16.16 and 5.16.42 of NPS EN-1, 2.10.85 of NPS EN-3 and 181 to 182 of NPPF, would be sufficient in mitigating any negative impacts to an acceptable level.
- The ExA therefore attributes this impact neutral weight in the planning balance in the making of the Order.

3.11. TRAFFIC AND TRANSPORT

INTRODUCTION

- 3.11.1. This section examines the effects of the proposed development in relation to traffic and transport.

POLICY CONSIDERATIONS

- 3.11.2. Paragraph 5.14.15 of National Policy Statement (NPS) EN-1 states that the Secretary of State for Energy Security and Net Zero (SoSESNZ) should have regard to the cost-effectiveness of demand management measures compared to new transport infrastructure, as well as the aim to secure more sustainable patterns of transport development when considering mitigation measures. The next paragraph 5.14.17 advises that if an applicant suggests that the costs of meeting any obligations or requirements would make the proposal economically unviable this should not in itself justify the relaxation by the SoSESNZ of any obligations or requirements needed to secure the mitigation.
- 3.11.3. NPS EN-1 goes on to state that development consent should not be withheld provided that the applicant is willing to enter into planning obligations for funding new infrastructure or requirements can be imposed to mitigate transport impacts. In this situation the SoSESNZ should apply appropriately limited weight to residual effects on the surrounding transport infrastructure (paragraph 5.14.20).
- 3.11.4. Paragraph 2.7.72 of NPS EN-3 states that where existing access is inadequate and the applicant has proposed new infrastructure, the SoSESNZ will need to be satisfied that the impacts of the new infrastructure are acceptable as set out in section 5.14 of EN-1. The SoSESNZ is unlikely to give any more than limited weight to traffic and transport noise and vibration impacts from the operational phase of a project (paragraph 2.10.162).

OTHER LOCAL AND NATIONAL POLICIES

- 3.11.5. Paragraph 109 of the National Planning Policy Framework (NPPF) 2024 mentions that transport issues should be considered from the earliest stages of development proposals, using a vision-led approach to identify transport solutions that deliver well-designed, sustainable and popular places by:
- understanding and addressing the potential impacts of development on transport networks;
 - identifying and pursuing opportunities to promote walking, cycling and public transport use and;
 - identifying, assessing and considering the environmental impacts of traffic and transport infrastructure, including appropriate opportunities for avoiding and mitigating any adverse effects.
- 3.11.6. It is stated in paragraph 10.6.1 of the 2022 adopted Darlington Local Plan that the council expects development to promote accessibility and permeability by creating places that are well connected with each other and with existing transport networks and, consider the needs of non-motorised road users (NMUs), to reduce the need for travel by private vehicle.

THE APPLICATION

- 3.11.7. The assessment of the Traffic and Transport aspects of the proposed development is discussed in Environmental Statement ES Chapter 12 [\[APP-035\]](#). This document is supported by the ES Appendices:

- 2.6 Construction Environmental Management Plan (CEMP) [\[REP8-012\]](#);
- 2.7 Decommissioning Environmental Management Plan (DEMP) [\[REP5-015\]](#);
- 2.8 Construction Traffic Management Plan (CTMP) [\[REP8-014\]](#);
- 2.15 Public Rights of Way Management Plan [\[REP6b-022\]](#) and;
- 12.1 Transport Statement [\[REP2-004\]](#).

BASELINE

- 3.11.8. Paragraphs 12.4.2 to 12.4.3 of ES Chapter 12 [\[APP-035\]](#) indicate that traffic surveys were carried out to establish the baseline vehicular traffic flows. The ES Figure 12.3 Network Diagram [\[APP-101\]](#) shows the results of the traffic survey. Section 12.7 of ES Chapter 12 [\[APP-035\]](#) examines the baseline conditions of the existing traffic around each of the panel areas, focusing on accesses to these panel areas and the routing of construction traffic. Data relating to traffic accidents occurring in the vicinity of the proposed development from 2015 to 2019 is also analysed.
- 3.11.9. The results of the analyses of the traffic accidents, indicating that there is no specific accident pattern that would warrant ameliorative actions at this location, are explained in paragraphs 12.7.4 to 12.7.10. The ES also notes that while the traffic accident analyses had identified 5 serious accidents on the A689 Butterwick Road in the 4-year period, this road segment is not included in the proposed heavy goods vehicles (HGV) routes. Paragraphs 12.7.11 to 12.7.16 then illustrate future baseline conditions of traffic and transport in relation to the nearby committed developments, to assist the determination of the traffic and transport effects of the proposed development.

CONSTRUCTION, OPERATION AND DECOMMISSIONING PHASES' IMPACTS

- 3.11.10. Section 12.5 of ES Chapter 12 [\[APP-035\]](#) details the assumptions and limitations of the appraisal of traffic and transport impact of the proposed development. Paragraphs 12.5.2 to 12.5.4 state that 3 panel areas were assumed to be constructed at any given time during the construction phase of the proposed development and that construction trip rates have been derived from travel information from comparable solar farm sites, with construction expected to take up to two years. The ES assumes in paragraph 12.5.5 that construction workers would travel to the site in large cars with average 7-seat capacity. It also states in paragraph 12.5.9 that both on and off-road cable route options have been assessed, with the on-road cabling deemed as the worst-case scenario because of the necessary temporary road closures and diversions and associated traffic management.
- 3.11.11. The potential impacts of the proposed development on traffic and transport during its construction, operation and decommissioning stages are discussed in section 12.8 of the ES Chapter 12 [\[APP-035\]](#). The identified impacts in the construction and decommissioning phases have been cited as potential severance of NMUs, driver delay, changes to 'pedestrian, horse riding and cyclist amenity' plus highway safety. The ES also states that minimal level of effect is expected at the operation stage of the proposed development when infrequent maintenance car trips would take place.

EMBEDDED MITIGATIONS

- 3.11.12. Section 12.9 of the ES Chapter 12 [APP-035] refers to the embedded mitigations contained in paragraphs 2.6.51 to 2.6.52 of ES Chapter 2 [APP-025]. These include the creation of suitable accesses for construction and staff vehicles, scheduling of construction material and logistics and associated traffic movements on the local and strategic road network to outside the peak traffic hours and the use of designated routes into construction sites. These commitments will be secured by the Construction Traffic Management Plan (CTMP) [REP8-014] via Requirement 6 of the dDCO [REP9-006], to minimise any negative traffic and transport impacts.

LIKELY SIGNIFICANT EFFECTS (LSE) - CONSTRUCTION, OPERATION AND DECOMMISSIONING STAGES

- 3.11.13. The LSE of the proposed development on traffic and transport focuses on (section 12.10, ES Chapter 12 [APP-035]) construction vehicle delivery trips, construction workers' trips, severance of NMUs (pedestrians, cyclists etc), driver delay, NMU amenity and highway safety. The LSE of the proposed development during the construction and decommissioning phases were described as follows:
- **Construction delivery and service vehicle trips:** Table 0-5 of ES Chapter 12 [APP-035] shows the estimated HGV trips per panel area. It is forecasted that that on average, 6 deliveries per panel area would occur but only 3 panel areas would be constructed simultaneously. The ES then explains that on a worst-case scenario, should the 3 largest panel areas generate 8 HGV trips per day each be constructed at once, this would equate to a maximum of 24 HGV trips (48 two-way movements) per day. Thus, on a 10-hour operation time, this equates to 2 (4 two-way) HGV movements per hour. The ES also highlights that only 2 abnormal load deliveries of sub-station components to Panel Area C of the proposed development is expected, in addition to the HGV trips in the aforementioned Table 0-5.
 - **Construction workers' trips:** The ES estimates that each panel area would require up to 100 employees (300 on site at any one time), based on similar sites constructed. It is predicted that with the consolidation of the staff trips through joint use of car and light goods vehicles (LGV), which with 7 staff sharing one vehicle, would result in approximately 15 car/ LGV trips to each panel area, equating to 45 car tips (90 two-way movements) for the 3 panel areas being constructed in parallel.
 - **Severance of road users:** The ability of any rise in vehicle movements on the critical roads to create severance effects are considered in paragraphs 12.10.11 to 12.10.22 of ES Chapter 12 [APP-035]. The 7-day average traffic flow diagram (ES Figure 12.3 [APP-101] indicates that most of the adjoining roads would see an increase of less than 10% on the future baseline figures and, the two roads (Lime Lane and Aycliffe Lane) with 12% and 20% rise respectively already experience low traffic levels. The ES then concludes that overall, the upturn would amount to less than one additional vehicle per minute, on Lime Lane, in a twelve-hour period. Therefore, it is considered that the magnitude of impact is negligible and the overall effect of the proposed development on severance on the local road network (LRN) is not significant. The intensify of HGV vehicles on the strategic road network (SRN), at the construction phase, was also deemed not significant as the change is below the 30% threshold of change, as set out in the Institute of Environmental Assessment's "Guidelines for Environmental Impact Assessment 2023".
 - **Driver delay:** Paragraphs 12.10.23 to 12.10.32 of ES Chapter 12 [APP-035] conclude that the temporary increase in traffic is not expected to have a significant impact on driver delay. It is explained further that even if the road-

based cable route option that can cause delays was to be chosen instead of the preferred off-road cabling, the cabling works would be undertaken outside the peak traffic hours, with management. The ES also refers to the outline CTMP [REP8-014] which includes measures to manage vehicular movements to and from the site, comprising scheduling of the arrival and departure times of deliveries, use of banksmen to control HGVs at the proposed site accesses and appointment of community liaison officer and, subsequently considered that there would be a negligible effect on driver delay.

- **Pedestrian, horse riding and cyclist amenity:** The LSE of the proposed development on pedestrian, horse riding and cyclist amenity is discussed in paragraphs 12.10.33 to 12.10.37 and deemed not to be significant due to a negligible increase in traffic on the LRN. The ES then concludes that with the implementation of mitigation measures in the outline Public Rights of Way (PRoW) Management Plan [REP6b-022], the LSE on these amenities would be avoided.
- **Highway safety:** As the traffic accident analyses had shown that there is no evidence of recurring accidents in the proximity of the proposed development, the LSE of the increased traffic flow on highway safety is forecasted to be negligible and can be avoided with the mitigation measures in place.

- 3.11.14. Owing to the predicted 2 operational trips from 1 vehicle per day, the LSE during the operation stage of the proposed development was considered negligible.

MITIGATION MONITORING

- 3.11.15. Section 12.11 of the ES Chapter 12 [APP-035] states that no monitoring is proposed in relation to the traffic and transport effects, given the predicted minimal magnitude of change on the LRN/SRN. Table 0-6 of the ES Chapter 12 [APP-035] summarises the identified impacts, mitigation and likely effects of the proposed development on traffic and transport during its construction, operation and decommissioning stages.

ISSUES CONSIDERED DURING THE EXAMINATION

TRAFFIC FORECASTING METHODS

- 3.11.16. The final SoCGs of the host authorities Durham County Council (DCC) [REP8-028] and Stockton-on-Tees Borough Council (SBC) [REP8-030] agree with the applicant's assessment. The SoCGs with outstanding reservations on this matter are those that the applicant has with Darlington Borough Council (DBC) [REP8-029], Bishopston Villages Action Group (BVAG) [REP8-034] and Great Stainton Parish Meeting (GSPM) [REP7-007]. In its first written questions (ExQ1) [PD-004], the ExA queried the validity of the applicant's traffic estimation of 45 car trips (90 two-way movements) per day across three panel areas by 300 employees, based on an assumption that 7 staff would share one vehicle to travel to and from the proposed development, with no clear-cut commitment to provide vehicles with such capacity for the construction staff.
- 3.11.17. This concern was also raised by BVAG and DBC at the issue specific hearing 3 (ISH3) that was conducted on 15 October 2024. The applicant responded that the proposed use of minibuses to transport staff to and from the site has been informed by the methods adopted to construct other solar farm sites in the UK and, that the vehicles would be hire cars, which would therefore be more in the control of the applicant to encourage and enforce, rather than relying on the staff to own such vehicles. The applicant also stated that an updated CTMP [REP8-014] would be produced following the appointment of the principal contractor and this will need to be agreed with the Highway Authorities prior to the commencement of construction.

The use of shared transport by construction staff was subsequently included in the CEMP [\[REP8-012\]](#) and CTMP [\[REP8-014\]](#), which would be secured by Requirements 4 and 6 of the dDCO [\[REP9-006\]](#), separately.

CUMULATIVE EFFECTS

- 3.11.18. DBC raised the potential for cumulative effects [\[REP6-032\]](#) of the proposed development with an application submitted by Northumbrian Water Limited (NWL) which proposed the replacement of the main drinking water pipeline between Lartington Wastewater Treatment Reservoir in County Durham and Long Newton Service Reservoir in Stockton on Tees, with most of the works falling within DBC's administrative area. The scheme has a projected 39-month construction period between June 2025 and September 2028. DBC was also of the view that any cumulative impacts could potentially be much greater given the applicant's proposal to remove the respective Local Highway Authorities' controls over the NRSWA 1991 under Article 10(4) of the dDCO.
- 3.11.19. The ExA recognises that the level of traffic using A66 Bishopton Lane and Elstob Lane, which are access routes to and from Panel Areas C and D likely to be affected by the NWL scheme is 14HGVs per day (one-way), as indicated in Table 0-5 of ES Chapter 12 [\[APP-035\]](#), equating to some 3 two-way HGV movements per hour over the 10-hour operation times. In view of this small number of vehicular movements and the fact that the succeeding NWL application will need to consider the cumulative effect of Byers Gill traffic, the ExA agrees with the applicant's response to ExQ2 [\[REP5-031\]](#) that if any further mitigation is required, this would be highlighted in the cumulative impact assessment by the NWL proposal. Notwithstanding, the applicant also confirmed that the outline Construction Traffic Management Plan (CTMP) [\[REP8-014\]](#) details a communications strategy relating to having regular meetings with the appointed contractors to discuss any issues associated with travel to and from the panel areas, including relaying any restrictions and requirements which would need to be followed by those travelling to and from the site, including Panel Areas C and D.
- 3.11.20. Any impact the proposed development would have on the delivery of DBC's strategic northern relief road (SNRR) was also considered. DBC stated [\[REP8-029\]](#) that the project was not at an advanced stage where the design or alignment of the road was likely to be submitted before the end of the examination period and, noted that a signed SoCG had been agreed [\[REP2-026\]](#) between the applicant and the Tees Valley Combined Authority (TVCA). This states that as the SNRR does not yet have a formal preferred route and there is no certainty that it will be consented, should TVCA notify the applicant during the examination that the recommended route would impact land for the proposed development, the applicant would initiate discussions with TVCA regarding such impacts and any reasonable protections.

HIGHWAY SAFETY INITIATIVES

- 3.11.21. The question of whether all the construction vehicle routes presented would be able to withstand the weight of HGVs serving the proposed development was put to the applicant at ISH3. The applicant confirmed that a pre-condition survey had been established that all the roads can safely serve HGVs. The ExA also asked the applicant to confirm that any identified highway problems ensuing from the pre-condition survey results would be rectified at the applicant's expense and following completion of the proposed development, repair unconditionally any further deterioration in the highway. At the subsequent ISH8, DBC confirmed that it was satisfied that the applicant had modified Articles 11 and 12 of the dDCO [\[REP9-006\]](#)

to provide controls over the quality of and timeliness of reinstatements of the highway.

CAR PARKING IMPACT ON HIGHWAY SAFETY

- 3.11.22. At ISH3, the ExA explored the adequacy of the proposed number of car parking spaces and the method used to arrive at the 15 car parking spaces per panel area and, whether any thoughts had been given to the potential for overspill parking emanating from the under-estimation of the car parking provision. The applicant responded that the construction compounds would be sufficient to accommodate the proposed development's parking demand within the site based on the number of construction workers on each panel area.

CONCLUSIONS

- 3.11.23. The ExA is satisfied that the assessment set out in the ES meets the requirements of paragraphs 2.10.162 of NPS EN-3 and 109 of NPPF. The ExA is also satisfied that no significant traffic and transport effects are likely to arise from the proposed development. In relation to the applicant's unresolved SoCG with Darlington Borough Council [\[REP8-029\]](#), Bishopton Villages Action Group [\[REP8-034\]](#) and Great Stainton Parish Meeting [\[REP7-007\]](#), the ExA, having regard to the embedded mitigations in the Design Approach Document (DAD) [\[REP8-022\]](#) and, the required obligations in the CEMP [\[REP8-012\]](#), DEMP [\[REP5-015\]](#) and CTMP [\[REP8-014\]](#), all of which would be secured by the requirements in the dDCO [\[REP9-006\]](#), is content that the applicant has sufficiently evaluated the traffic and transport aspects of the proposed development and demonstrated that it would not have any significant impact on its environment.
- 3.11.24. Furthermore, the ExA considers that, subject to the mitigation measures identified in and controlled by the ES and DAD [\[REP8-022\]](#), the impacts of the proposed development during its construction, decommissioning and operation stages would adequately be mitigated, in line with paragraphs 5.14.15, 5.14.17 and 5.14.20 of NPS EN-1 and 2.7.72 of NPS EN-3. The ExA therefore considers that the effect of traffic and transport matters of the proposed development would be neutral and does not weigh for or against the making of the Order.

Matters to be taken to Chapter 4 and the planning balance

- The ES has considered the environmental impact of the traffic and transport element of the proposed development in accordance with paragraphs 2.10.162 of NPS EN-3 and 109 of NPPF and concluded that it would be negligible. The ExA has subsequently deemed that the embedded mitigation measures in the ES and DAD [\[REP8-022\]](#), the required obligations in the CEMP [\[REP8-012\]](#), DEMP [\[REP5-015\]](#) and CTMP [\[REP8-014\]](#), to be secured by Requirements 4, 5 and 6 of the dDCO [\[REP9-006\]](#) correspondingly, plus the modifications to the relevant articles of the dDCO [\[REP9-006\]](#) that would give the local highway authority controls over the quality of and timeliness of reinstatements of any damaged highway, would be adequate in mitigating any negative impacts to an acceptable level. The ExA considers that these mitigation measures conform with the needs of paragraphs 5.14.15, 5.14.17 and 5.14.20 of NPS EN-1 and 2.7.72 of NPS EN-3.
- The ExA therefore attributes this impact neutral weight in the planning balance in the making of the Order.

3.12. LAND USE

INTRODUCTION

- 3.12.1. This section examines the effects of the proposed development in relation to land use.

POLICY CONSIDERATIONS

- 3.12.2. Sections 5.11 and 5.13 of the overarching National Policy Statement (NPS) EN1 and section 2.10 of NPS- EN3 set out the policy for the assessment of impacts on land use. The following form the identified paragraphs relevant to this solar energy proposal.
- 3.12.3. Paragraph 5.11.24 of NPS EN-1 specifies that where green infrastructure is affected, the Secretary of State for Energy Security and Net Zero (SoSESNZ) should consider imposing requirements to ensure the functionality and connectivity of the green infrastructure network is maintained in the vicinity of the development
- 3.12.4. The following paragraph 5.11.25 of NPS EN-1 emphasises that the SoSESNZ should also consider whether any adverse effect on green infrastructure and other forms of open space is adequately mitigated or compensated by means of any planning obligations.
- 3.12.5. Paragraph 5.11.28 of NPS EN-1 explains that where a proposed development has an impact upon a mineral safeguarding area, the SoSESNZ should ensure that appropriate mitigation measures have been put in place to safeguard mineral resources, and paragraph 5.11.31 of NPS EN-1 instructs that the SoSESNZ should consider whether the mitigation measures put forward by an applicant are acceptable.
- 3.12.6. Paragraph 5.11.34 of NPS EN-1 advises that the SoSESNZ should ensure that applicants do not site their scheme on the best and most versatile (BMV) agricultural land without justification. Where schemes are to be sited on BMV agricultural land the SoSESNZ should consider the economic and other benefits of that land.
- 3.12.7. Paragraph 2.10.32 of NPS EN-3 states that where sited on agricultural land, consideration may be given as to whether the proposal allows for continued agricultural use and/ or can be co-located with other functions (for example, onshore wind generation, storage, hydrogen electrolyzers) to maximise the efficiency of land use.
- 3.12.8. The following paragraph 2.10.33 of NPS EN-3 mentions that the Agricultural Land Classification (ALC) is the only approved system for grading agricultural quality in England and Wales and, if necessary, field surveys should be used to establish the ALC grades in accordance with the current, or any successor to it, grading criteria and identify the soil types to inform soil management at the construction, operation, and decommissioning phases in line with 'Defra Construction Code of Practice for the Sustainable Use of Soils on Construction Sites'.
- 3.12.9. The other applicable paragraph 2.10.34 of NPS EN-3 emphasises that applicants are encouraged to develop and implement a Soil Resources and Management Plan which could help to use and manage soils sustainably and minimise adverse impacts on soil health and potential land contamination. This should be in line with the ambition set out in the Environmental Improvement Plan to bring at least 40% of

England's agricultural soils into sustainable management by 2028 and increase this up to 60% by 2030.

3.12.10. Paragraph 88 National Planning Policy Framework mentions that planning policies and decisions should enable the development and diversification of agricultural businesses and the later paragraph 187 states that planning policies and decisions should contribute to and enhance the natural and local environment by recognising other benefits of the BMV agricultural land. It is stated in paragraph 5.4.1 of the 2022 Darlington Local Plan that new development should be sited and laid out to protect the amenity of existing users of neighbouring land and buildings. The following paragraph 10.6.1 stipulates that all developments should provide safe access to the borough-wide cycling and walking network including links to the public rights of way network and leisure routes. It is also specified in paragraph 4.5.2 of the 2011 Tees Valley Joint Minerals and Waste Development Plan Document that within the minerals safeguarding areas, non-minerals development will only be permitted if:

- the development would not sterilise or prejudice the future extraction of the mineral resource; or
- the mineral will be extracted prior to development and, this will not significantly adversely affect the timing and viability of the non-minerals development; or
- the need for the non-mineral development can be demonstrated to outweigh the need for the mineral resource.

THE APPLICATION

3.12.11. The evaluation of the impact of the proposed development on land use in its immediate vicinity is discussed in ES Chapter 9 [\[APP-032\]](#). This chapter is supported by the following:

- ES Appendices 9.1 Agricultural Land Classification and Soil Resources [\[APP-150\]](#) and 9.2 Agricultural Land Assessment Criteria [\[APP-151\]](#); and
- ES Figures 9.1 Study Area [\[APP-079\]](#), 9.2 Other Land Uses [\[APP-080\]](#), 9.3 Existing Public Rights of Way (PRoW) [\[APP-081\]](#), 9.4 Community and Recreational Facilities [\[APP-082\]](#), Scoping Report [\[APP-120\]](#), Mitigation Route Map [\[APP-171\]](#) and Design Approach Document [\[REP8-022\]](#).

EXISTING BASELINE

3.12.12. Paragraphs 9.7.23 to 9.7.54 of the ES Chapter 9 [\[APP-032\]](#) illustrate the existing baseline conditions of agricultural land and soil resources around each of the proposed Panel Areas A to F and the cable routes. The date of the baseline following the grant of DCO consent, is estimated to be the beginning of the first or second year of the construction phase lasting up to 24 months, as defined in Table 4-2 of the ES Chapter 4 [\[APP-027\]](#).

3.12.13. The baseline conditions (nature of use, topography, climatic and soil type) of the portion of land occupied by each of the 6 panel areas including the component developments and the cable routes are then detailed in turn from paragraphs 9.7.24 to 9.7.53 of the ES Chapter 9 [\[APP-032\]](#), with full schedule of observations demonstrated in ES Appendix 9.1 [\[APP-150\]](#). The Scoping Report [\[APP-120\]](#) identifies the presence of farm holdings around most of the six panel areas of the proposed development, apart from Site E (west of Bishopton). It also states that most of the relevant landowners had signed up to a voluntary agreement with the applicant.

- 3.12.14. Consequently, the impacts of the proposed development on farm holdings were scoped out, having considered the potential negligible effects on the viability of their farm holdings. Nonetheless, the applicant did warn in paragraph 9.8.13 of Chapter 9 [\[APP-032\]](#) that as it was likely that signed voluntary agreements might not have been secured for some of the land required for the installation of the underground cables in time for the submission of the draft Development Control Order (dDCO) [\[REP9-006\]](#), temporary effects from installing the underground cables on those farm holdings had been assessed.

FUTURE BASELINE

- 3.12.15. The future baseline conditions of agricultural land and soil resources around each of the panel areas are described in paragraphs 9.7.55 to 9.7.58 the ES Chapter 9 [\[APP-032\]](#). The end of the second year of the construction stage, when the operation phase begins, assuming that the DCO consent is given, is projected to be the date of establishing the future baseline state, as shown in Table 4-2 of the ES Chapter 4 [\[APP-027\]](#).

AGRICULTURAL LAND CLASSIFICATION

- 3.12.16. In establishing the characteristics of land within the order limits, Section 3 of ES Appendix 9.1 [\[APP-150\]](#) describes the methodology used to establish the ALC for the land areas occupied by each of the panel areas, which follows the guidance for assessing the quality of agricultural land in England and Wales as set out in the Ministry of Agriculture, Fisheries and Food's 1988 guidelines and summarised in Natural England's (NE) Technical Information Note (TIN049). As the NE's TIN049 specifies that a definitive ALC grading should be based on a detailed survey density of one boring per hectare, the ES examined 413 soil profiles within the Order limits in 2023, with an additional 13 topsoil samples sent for laboratory analyses of particle size distribution, acidity (pH), organic matter and nutrient contents.
- 3.12.17. The proportions of each panel areas in ALCs 1, 2 and 3a (BMV) and 3b (moderate quality) are then shown in Table 9-6 (page 24) of the ES Chapter 9 [\[APP-032\]](#). There was no portion of land identified as ALC 1 in the order limits of the proposed development. Table 9-6 also indicates that 18.9Ha (16%) of the Panel Area A (Brafferton) is in ALC 3A, 3.4Ha (4%) of Panel D (Great Stainton) lies within ALC 2 and 8% (5.5Ha) of Panel F (North of Bishopton) is in ALC 3a. The extent of the BMV agricultural land size required for the proposed development therefore equates to 30ha (7%) out of the approximate total of 456ha of agricultural land in its Order limits.

OTHER LAND USES

- 3.12.18. In considering possible developments that may be affected by the order limits of the proposed development, paragraphs 9.7.12 to 9.7.15 of the ES Chapter 9 [\[APP-032\]](#) identify two future housing development sites in Darlington Borough Council's (DBC's) Local Plan namely Berrymead Farm and Skerningham, both of which are approximately 1 mile from the order limit's external boundary.
- 3.12.19. The applicant has also investigated the presence of mineral resources within the order limits, with paragraph 9.7.16 of the ES Chapter 9 [\[APP-032\]](#) stating that parts of the proposed development are within DBC's minerals safeguarding zones for limestone, hence it has the potential to impact on this natural resource. However, the encroached limestone land area represents only a small element of the overall limestone resource in the county.

3.12.20. Moreover, the applicant has undertaken an assessment of all the public rights of way (PRoW) that may be impacted by the order limits of the proposed development. Consequently, paragraphs 9.7.17 to 9.7.22 of the ES Chapter 9 [APP-032] describe the PRoW in the study area which have a legal status as identified by the definitive maps of the respective local authorities or are promoted for use by non-motorised travellers or have been detected through consultation. While Table 9-5 of the ES Chapter 9 [APP-032] depicts the existing PRoW that interact with the proposed development, paragraph 9.7.22 of the same paper cautions that this does not mean that they will all be directly affected by it. No National Cycle Network route was found in the study area, but the local road network is recognised as serving recreational cycling. Table 9-9 of the ES Chapter 9 [APP-032] identifies those PRoW that will be affected by the proposed development during its construction phase.

CONSTRUCTION, OPERATION AND DECOMMISSIONING PHASES' IMPACTS

3.12.21. Paragraph 9.4.16 of the ES Chapter 9 [APP-032] states that the assessment method is like that adopted in the Institute of Environmental Management and Assessment's (IEMA) guidance (A new perspective on land and soil in environmental impact assessment 2022). Section 9.8 of the ES Chapter 9 [APP-032] discusses the potential impacts of the proposed development on agricultural land and soil resource during the construction, operation and decommissioning stages of the proposed development. The following are the identified impacts on the pertinent receptors in the construction phase:

- **Agricultural land and soil resource:** It is indicated that agricultural uses including sheep grazing will cease within the panel and underground cabling areas. These activities may resume once construction is complete but not in the positions of the related equipment (on-site substation, operational access tracks and other infrastructure such as BESS, inverters, switchgear and spare containers). Notwithstanding, the intensity of land disturbance would be minimal given that the majority (93%) of the land required is moderate quality agricultural land or non-agricultural land and falls outside of the category of BMV quality and the proportion of BMV land affected by the associated developments is only 0.2ha of subgrade 3a land.
- **Development land:** The applicant has recognised the presence of and need to safeguard mineral resources around the proposed development but highlighted that the existing limestone in the order limits of the proposed development will not be permanently sterilised by it. DBC's minerals and waste policies do not currently identify proposals for mineral extraction in the area.
- **PRoW:** The applicant acknowledges the need to divert and/ or extinguish existing PRoW running through the proposed Panel Areas and maintaining connectivity, as far as it is safe and practicable.

3.12.22. As for the operation period of the proposed development, the effect on the receptors addressed above would primarily relate to maintenance and management activities, typical of short-term closures and/or temporary diversions of PRoW. Furthermore, the ES states while there are no direct effects on agricultural land or soil resources, the reduction of productive agricultural land, ensuing from the construction activities, may be minimised if grazing by livestock is continued beneath the panels.

3.12.23. The potential impacts of the proposed development in its decommissioning stage are described as follows:

- **Agricultural land and soil resource:** There is potential effect on the quality of agricultural land due to the disturbance caused to the land through the removal of the panels and associated infrastructure.
- **Development land:** It is stated that the limestone in the order limits of the proposed development would become available for extraction and the potential effects of this would then need to be assessed based on demand at that time.
- **PRoW:** These would remain on their operational alignment and would subsequently not revert to the baseline alignment. However, the applicant is open to discussions with the relevant landowners.

EMBEDDED MITIGATIONS

- 3.12.24. Section 9.9 of the ES Chapter 9 [\[APP-032\]](#) describes the embedded mitigations, referring to paragraphs 2.6.30 to 2.6.33 of ES Chapter 2 [\[APP-025\]](#) which explain that the proposed development has been designed to avoid, eliminate, or reduce potential impacts wherever possible, with certain mitigations built into its design. These include allowing continued access to recreational and community facilities, a commitment which will be detailed in the Construction Traffic Management Plan (CTMP) [\[REP8-014\]](#) that would be secured via Requirement 6 of the dDCO [\[REP9-006\]](#). Also, with the outline Soil Resources Management Plan secured through Requirement 10, built structures such as access tracks, substations and compounds that would require soil stripping and disturbance, would be channelled towards the lower quality land available (subgrade 3b) to avoid potential compaction or physical contamination of any BMV agricultural land.
- 3.12.25. In addition, an outline PRoW Management Plan [\[REP6b-022\]](#) that would safeguard the safe and uninhibited use of the PRoW, had been submitted, the final version of which will be secured through Requirement 14 in the dDCO [\[REP9-006\]](#). This document includes measures such as managing short-term closures of PRoW with minimal localised diversions where possible, and rerouting of PRoW where permanent diversions are required. The applicant has also proposed permissive trails (3.4km length in total) throughout the order limits of the proposed development as described in Table 4-3 of PRoW Management Plan [\[REP6b-022\]](#), that would foster a more cohesive PRoW network. However, based on an approximate calculation from the information submitted, the ExA has noted that majority (around 80%) of the proposed PRoW represent a re-provision of those that would be stopped up.

LIKELY SIGNIFICANT EFFECTS (LSE) - CONSTRUCTION, OPERATION AND DECOMMISSIONING STAGES

- 3.12.26. Paragraphs 9.10.14 to 9.10.30 and 9.10.45 to 9.10.76 of ES Chapter 9 [\[APP-032\]](#) evaluate the LSE of the proposed development on 'recreational and community facilities', development land, PRoW plus wider impact on farm holdings during construction, operation and decommissioning and concluded that insofar as embedded mitigations are in place they would be negligible and therefore, no essential mitigation is necessary. Table 9-9 of ES Chapter 9 [\[APP-032\]](#) shows analyses of the construction effects on all segments of the PRoW, detailing the relevant extent of impact, proposed mitigation and significance of effects. Effects on agricultural land and soil resources plus wider impact on farm holdings in the construction period are detailed in paragraphs 9.10.31 to 9.10.40 of ES Chapter 9 [\[APP-032\]](#).
- 3.12.27. On all agricultural land, the LSE of the proposed development is temporary, long-term moderate adverse, which is significant, while, on farm holdings, it is deemed to be low. No essential mitigation is therefore needed considering that the embedded

mitigations are in place. However, the comparison Table 1-5 in ES Appendix 9.2 [\[APP-151\]](#) shows that there would be slight adverse effect for the temporary loss of the total 456ha agricultural land and moderate or 'large to slight' adverse effects for the impermanent forfeiture of 30ha BMV agricultural land. The Mitigation Route Map [\[APP-171\]](#) provides the summary of the proposed embedded mitigations and associated implementation procedures.

ISSUES CONSIDERED DURING THE EXAMINATION

- 3.12.28. The main issues relate to the classification and loss of quality agricultural land as follows:

AGRICULTURAL LAND CLASSIFICATION

- 3.12.29. At the issue specific hearing 6 (ISH6) conducted on 27 November 2024, queries were raised Bishopton Villages Action Group (BVAG) in relation the soil sample size including inadequacy of the 13 (one in 30ha) that were sent to the laboratory for soil texture tests. BVAG asserts in its final SoCG with the applicant that the order land is higher quality and yields more than stated and the analyses carried out by the applicant only reflect the status of the agricultural land in question.

EFFECTS ON SOIL QUALITY

- 3.12.30. The applicant's contention that the proposed development would lead to significant beneficial effects on soils including sheep grazing in paragraph 9.10.55 of ES Chapter 9 [\[APP-032\]](#) was challenged by BVAG during the ISH6 and documented in its succeeding post-hearing submission [\[REP6-036\]](#). In its SoCG [\[REP7-007\]](#) with the applicant, Great Stainton Parish Meeting (GSPM) rejects the notion that sheep and poultry can graze the land in the panel areas claiming that grazing under objects that create a shadow is not nutritious and afterwards sought examples of the practicality of this activity on a site of this magnitude. Additionally, GSPM was unsure how the quality topsoil removed would be stored and had concerns about the impact of heavy construction machinery on the sub-strata of the soil during poor conditions, considering too that the decommissioning of the proposed development would take up to five years, with a further five to re-establish the land as productive agricultural land.
- 3.12.31. The ExA in its third written question [\[PD-014\]](#) explored the potential for the acquired BMV land area in the order limits of the proposed development to be reduced if grazing by livestock beneath the panels is encouraged and for the applicant to provide examples of where such methods had been used successfully. The applicant in its response [\[REP7-010\]](#) gave 12 examples of other solar schemes where sheep grazing occurs and highlighted the likelihood for such measures to be adopted for the proposed development. In relation to GSPM's concern with the storage of unearthed topsoil in the order limits, the ExA noted the applicant's submitted outline Materials Management Plan [\[APP-114\]](#), which explains how excavated materials generated while constructing the proposed development will be reused in a manner that is compatible with the Waste Framework Directive 2008 and associated regulations. In addition, at the ISH6, the applicant confirmed that the least intrusive plough cabling method that lifts the soil and simultaneously installs the cable before the machine plough backfills the lifted topsoil to cover the laid cable, will be adopted.
- 3.12.32. Additionally, BVAG questioned whether the applicant could provide evidence to support the claim that there would be a direct, long term, moderate beneficial effect on agricultural land. The applicant in Appendix A1 of its post ISH6 hearing

submission [\[REP6-020\]](#) confirmed that based on 25,000 samples examined, there is comprehensive, quantitative evidence of the benefits to soil health from converting from arable land to pasture.

LOSS OF BMV AGRICULTURAL LAND

- 3.12.33. Several submissions were made by interested parties (IPs) throughout the examination, expressing concerns over the loss of BMV agricultural land. The final statements of common ground (SoCGs) of the host authorities (DBC [\[REP8-029\]](#), DCC [\[REP8-028\]](#) and SBC [\[REP8-030\]](#)) are content with the applicant's assessment. The SoCGs with outstanding reservations on this matter are those that the applicant has with Bishopton Villages Action Group (BVAG) [\[REP8-034\]](#), GSPM [\[REP7-007\]](#) and Redmarshall Parish Council (RPC) [\[REP4-008\]](#). These three IPs consider that much of the land is valuable and irreplaceable farmland.
- 3.12.34. However, Natural England (NE) in its representation [\[RR-373\]](#) states that the proposed development is unlikely to result in a significant loss of BMV land and welcomes the requirement in the dDCO for the applicant to submit a final iteration of the outline Soil Resources Management Plan [\[APP-116\]](#), which sets out the overall approach to managing soil resources affected by the proposed development. NE also agrees with the applicant that while some components of the development like the substation may permanently affect agricultural land, the mitigation embedded into the proposed development's design whereby built structures such as access tracks, substations and compounds that would require soil stripping and disturbance have been directed toward the lower quality land present, would limit longer-term impacts to the small areas BMV agricultural land utilised.
- 3.12.35. The applicant was also asked to provide justifications for occupying the BMV land in the examining authority's first written question, to which it clarified that apart from the compelling need to provide low carbon energy generation, the portion of occupied Grade 3a land is focussed on the far north of the order limits in an area identified for proposed biodiversity enhancement while the Grade 2 land segment concentrates on a small section of land to the east of Bishopton Redmarshall Primary School and north of Mill Lane, part of which is proposed as forest school and associated car parking provision, with some biodiversity enhancement and some panel area, as shown in the Environmental Masterplan [\[AS-016\]](#).
- 3.12.36. At the ISH6, BVAG queried why the applicant had not taken steps to remove areas of BMV land from the order limits to reduce the panel areas around several parts of the villages. Similarly, the ExA investigated the potential for the applicant to move parts of the panel areas in BMV land to land with less quality in the order limits. The applicant then explained that it was not possible to move panels off areas of BMV land to unoccupied spaces within the order limits, as these free spots have been earmarked for the planned essential mitigation for the proposed development and have been strategically placed to bring wider benefits such as the proposed connections between the mitigation land in Panel Area C and the site of special scientific interest (SSSI) at the southern side of Catkill Lane.

CONCLUSIONS

- 3.12.37. The ExA is satisfied that the assessment set out in the ES meets the requirements of paragraphs 5.11.24, 5.11.25 5.11.28 and 5.11.31 of NPS EN-1 and 2.10.34 of NPS EN-3 by sufficiently evaluating the effects of the proposed development on green infrastructure and mineral resources and proposing necessary mitigations that would be secured through the appropriate requirements in the dDCO [\[REP9-006\]](#). The ExA is also satisfied that the ES has addressed paragraphs 5.11.34 of

NPS EN-1 and 2.10.32 of NPS EN-3 by ensuring that built structures necessitating soil stripping and disturbance would be directed towards the lower quality land to avoid potential compaction or physical contamination of any BMV quality agricultural land.

- 3.12.38. In relation to the applicant's agricultural land classification method including the evaluation of soil quality, the ExA is content that the ES has met the requirements in paragraph 2.10.33 of NPS EN-3 by adopting the appropriate method detailed in NE's TIN049 to obtain adequate samples and calculate the magnitude of the BMV agricultural land in the Order limits of the proposed development. In terms of the BVAG's concern with the sample size used, the ExA notes that BVAG has not provided any scientific evidence to support its view other than relying on local knowledge and, considered that given the identified limited number of soil types in the proposed development area, the samples chosen were sufficient.
- 3.12.39. Although the applicant's analyses have demonstrated that the LSE on the loss of the overall agricultural land and BMV agricultural land in isolation is moderate, the corresponding impacts as per the IEMA guidance indicates a reduction in the significance of the effects. Nonetheless, as negative impacts have been managed to an acceptable level, the ExA affords this little negative weight in the planning balance.
- 3.12.40. Regarding the effects of contamination of BMV land, the ExA is satisfied that the embedded mitigation actions in the Design Approach Document (DAD) [\[REP8-022\]](#) and included in Requirement 3 of the dDCO [\[REP9-006\]](#) would be sufficient to mitigate any negative impacts to an acceptable level. The ExA is also satisfied that the applicant has adopted an acceptable ALC method and largely justified the inclusion of the small amount of BMV agricultural land in the order limits of the proposed development, in line with paragraph 2.10.33 of NPS EN-3.
- 3.12.41. Concerning the effects on PRoW, the ExA has considered that the introduction of permissive trails throughout the order limits to facilitate a more cohesive PRoW network, in accordance with the design principles in the DAD and supported by the Implementation of PRoW Management Plan as part of the dDCO requirements, would minimise the proposed development's impact on this infrastructure. Also, the implementation of Construction Environmental Management Plan [\[REP8-012\]](#) and outline Decommissioning Environmental Management Plan [\[REP5-015\]](#), as secured by the relevant requirements in the dDCO [\[REP9-006\]](#) would safeguard continued access to PRoW and ultimately mitigate any negative impacts to an acceptable level. Overall, even though the proposed development would result in long-term but not irreversible or permanent loss of agricultural land, given that the BMV land to be lost would have served other agricultural activities in that lengthy lifetime of the proposed development, the ExA therefore ascribes the loss of BMV agricultural land a little negative weight.

Matters to be taken to Chapter 4 and the planning balance

- The ES has considered the environmental impact of the land use aspect of the proposed development by ensuring that most parts of the development including the built structures necessitating soil stripping and disturbance would be stationed on the lower quality land and, undertaking to re-provide and augment lost PRoW, in accordance with paragraphs 5.11.34 of NPS EN-1 and 2.10.32 of NPS EN-3. In addition, the ExA has considered that the embedded mitigation measures in the ES and DAD [\[REP8-022\]](#), secured by Requirement 3 of the dDCO [\[REP9-006\]](#) would be sufficient to mitigate any

negative impacts to an acceptable level, in conformity with paragraphs 5.11.24 to 5.11.25, 5.11.31 of NPS EN-1 and 2.10.34 of NPS EN-3.

- The ES has also adopted an acceptable ALC method in line with paragraph 2.10.33 of NPS EN-3 and, considered safeguarding the mineral resources in the Order limits to meet the needs of 5.11.28 of NPS EN-1. Overall, albeit the proposed development would result in long-term but not irreversible or permanent loss of agricultural land, given that the BMV land to be lost would have served other agricultural activities in that lengthy lifetime of the proposed development, the ExA therefore ascribes the loss of BMV agricultural land a little negative weight in the planning balance in the making of the Order.

3.13. OTHER PLANNING TOPICS

INTRODUCTION

3.13.1. This section considers the effects of the proposed development in relation to:

- Climate change adaptation and resilience
- Fire risk, safety and security
- Waste

CLIMATE CHANGE ADAPTATION AND RESILIENCE

INTRODUCTION

3.13.2. This part of the report considers the effects of climate change on the proposed development, including climate change and resilience. The effects of the proposed development on climate change, including GHG emissions, are addressed in Chapter 3 of this Report, as well as the implications of climate change on flooding.

POLICY CONSIDERATIONS

NPS EN-1

3.13.3. Section 4.10 of the NSP EN-1 requires consideration of climate change adaptation and resilience in the ES. applicants should assess the impacts on, and from, the proposed energy project across a range of climate change scenarios, using advice and guidance available.

3.13.4. Paragraph 4.10.13 states that SoS should be satisfied that applicants for new energy infrastructure have taken these into account and that, as per paragraph 4.10.15 that there are not features of the design of new energy infrastructure critical to its operation which may be seriously affected by more radical changes to the climate beyond that projected in the latest set of UK climate projections.

NPPF AND LOCAL POLICY

3.13.5. The National Planning Policy Framework (NPPF) seeks to minimise carbon dioxide emissions and ensure new development is resilient to the impacts of climate change. The Development Plan policies of host authorities contain similar requirements, namely Darlington's Local Plan Policy DC1.

THE APPLICATION

3.13.6. The evaluation of the impact of the proposed development and likely significant effects of Byers Gill Solar on climate change are set out in ES Chapter 5 [\[APP-028\]](#). This chapter is supported by Appendix 5.1 Greenhouse Gas (GHG) Assessment [\[APP-123\]](#) and Appendix 5.2 Climate Change Resilience Assessment [\[APP-124\]](#).

3.13.7. The applicant's assessment methodology is set out in section 5.4 of ES Chapter 5 [\[APP-028\]](#) and it includes a GHG Impact Assessment which followed a project lifecycle approach and a Climate Change Resilience Assessment which looked at the effects of climate change on the construction, operational and decommissioning phases of the proposed development.

3.13.8. Section 5.10 of ES Chapter 5 [\[APP-028\]](#) sets out the applicant's assessment of likely significant effects post embedded mitigation. These are summarised in Tables 5-14, 5-15 and 5-16 of ES Chapter 5 [\[APP-028\]](#) which detail the potential Climate

Change Impacts and relevant Embedded Adaptation/Resilience Measures for Construction, Operation and Decommissioning stages and then in Tables 5-17 and 5-18 which detail the GHG assessment summary and climate resilience assessment summary, correspondingly.

- 3.13.9. In relation to the potential Climate Change impacts, the applicant has classified all identified risks are low or very low. In relation to the GHG assessment, the significance of identified effects is minor adverse with the only significant effect being beneficial and linked to the production of low carbon energy during the operation stage. In relation to the applicant's climate resilience assessment, all effects have been assessed as of low or very low significance.

ISSUES CONSIDERED DURING THE EXAMINATION

- 3.13.10. No concerns were raised by any of the host local authorities in relation to the applicant's approach to Climate Change or the applicant's findings and conclusions as set out in ES Chapter 5 [\[APP-028\]](#).
- 3.13.11. The applicant's response to ExQ1 GCT 1.17 [\[REP2-007\]](#) confirmed that the applicant had taken into consideration the potential impacts of climate change on the proposed development, including the projected increase in the frequency of extreme weather events. The applicant stated that factors such as the occurrence of high temperatures, increased rainfall and increased storm intensity have all been considered as part of the scenarios included and assessed in ES Chapter 5 [\[APP-028\]](#).
- 3.13.12. The applicant went on to state that it has carried out an assessment of climate change resilience in ES Appendix 5.2 Climate Change Resilience Assessment [\[APP-124\]](#) and proposed mitigation measures to reduce risks during construction, operation and decommissioning, as listed in Tables 5-14, 5-15 and 5-16 of ES Chapter 5 [\[APP-028\]](#). These include measures embedded into the design of the proposed development, alongside measures secured via management plans such as the Outline CEMP, the latest version of which is [\[REP8-012/013\]](#).
- 3.13.13. ES Appendix 5.2 [\[APP-124\]](#) confirms that there are no climate risk ratings at moderate or above, and ES Chapter 5 [\[APP-028\]](#) concludes that the effect of climate change on the proposed development is therefore very low to low, which is not significant.
- 3.13.14. The final Statement of Common Ground (SoCG) with Bishopton Villages Action Group (BVAG) [\[REP8-034\]](#) confirms that agreement had not been reached between both parties in relation to the effects of the proposed development on climate change, namely that BVAG's concerns in relation to the absence of life cycle analysis (LCA) applied to the vast scale of the proposed energy generating infrastructure and the absence of assessment of scope 1, 2 and 3 emissions fall below best practice standards. The applicant responded that ES Chapter 4 [\[APP-027\]](#) sets out that the EIA has considered construction, operation and decommissioning effects of the proposed development and that ES Chapter 5 [\[APP-028\]](#) provides an assessment of the effects of the proposed development in relation to GHG emissions and resilience to climate change in accordance with relevant policy and guidance.

CONCLUSIONS

- 3.13.15. No substantive concerns have been raised in relation to the applicant's approach to climate change by any of the host local authorities or other statutory bodies. The

ExA's view is that the applicant's approach to the assessment of the climate effects of the proposed development is based on reasonable assumptions and is proportionate.

- 3.13.16. The ExA is of the view that the applicant has taken into consideration climate change adaptation and resilience and has assess the impacts on, and from, the proposed energy project across a range of climate change scenarios, using the guidance available, including IEMA guidance on climate change adaptation⁶ and GHG emissions⁷, and the Met Office UK climate projections 2018 (UKCP18)⁸.
- 3.13.17. Paragraph 4.10.13 states that SoS should be satisfied that applicants for new energy infrastructure have taken these into account and that, as per paragraph 4.10.15 that there are not features of the design of new energy infrastructure critical to its operation which may be seriously affected by more radical changes to the climate beyond that projected in the latest set of UK climate projections.
- 3.13.18. Consequently, the ExA concludes that these requirements are satisfied.

FIRE RISK, SAFETY AND SECURITY

INTRODUCTION

- 3.13.19. This part of the report considers effects in relation to fire risk, safety, and security.

POLICY CONSIDERATIONS

EIA REGULATIONS

- 3.13.20. Regulation 5(4) requires the assessment of expected significant effects arising from the proposed development's vulnerability to major accidents.

NPS EN-1

- 3.13.21. Section 4.4 of the NSP EN-1 requires consideration of health issues in relation to the development of new energy infrastructure and recognises that while access to energy is beneficial to society and health, it may also have negative impacts.
- 3.13.22. Paragraph 4.4.7 states that those aspects of energy infrastructure which are most likely to have a significantly detrimental impact on health are subject to separate regulation (for example for air pollution) which will constitute effective mitigation of them, so that it is unlikely that health concerns will either by themselves constitute a reason to refuse consent or require specific mitigation under the Planning Act 2008.
- 3.13.23. Paragraphs 4.12.2 deals with pollution controls and paragraph 4.13.5 states that applicants should consult with the Health and Safety Executive (HSE) on matters relating to safety.

NPS EN-3

- 3.13.24. Paragraphs 2.10.46 to 2.10.48 deal with security and lighting, with paragraph 2.10.46 stating that security is a key consideration for developers and that

⁶ IEMA, IEMA EIA Guide to: Climate Change Resilience and Adaptation, 2020.

⁷ Institution Of Environmental Management and Assessment (IEMA), Environmental Impact Assessment Guide to Assessing Greenhouse Gas Emissions and Evaluating their Significance, 2022

⁸ [UK Climate Projections \(UKCP\) - Met Office](#)

applicants may wish to consider not only the availability of natural defences such as steep gradients, hedging and rivers but also perimeter security measures such as fencing, electronic security, CCTV and lighting.

NPS EN-5

- 3.13.25. Paragraph 2.4.3 states that electricity network infrastructure must in the first instance be safe and secure and that functional design constraints of safety and security may limit an applicant's ability to influence the aesthetic appearance of that infrastructure.

THE APPLICATION

- 3.13.26. Appendix 2.5 Major Accidents and Disasters Assessment [\[APP-109\]](#), Appendix 2.13 outline Battery Fire Safety Management Plan (oBFSMP) [\[APP-117\]](#), alongside with ES Chapter 2 The Proposed Development [\[APP-025\]](#) set out the details of the applicant's approach to fire risk, safety and security.
- 3.13.27. Appendix 2.5 Major Accidents and Disasters Assessment [\[APP-109\]](#) provides an assessment of the major accidents and disasters issues including the potential for battery fire in the BESS and the potential for damage to existing utilities as a result of construction and decommissioning of the proposed development. Appendix 2.5 sets out the potential impacts of the issues covered and the mitigation measures included in the design of the proposed development which are then reflected in the oBFSMP [\[APP-117\]](#).
- 3.13.28. The approach taken by the applicant follows the IEMA guidance⁹ and looks at identifying hazards, receptors relevant to the identified hazard or risk, then looks at reasonable worst-case impacts on receptors resulting from the hazard or risk, describes primary and tertiary (embedded and best practice) mitigation plus any additional secondary mitigation proposed and finally provides a residual assessment of risks.
- 3.13.29. The applicant's baseline, as set out in paragraph 3.3.2 of Appendix 2.5 [\[APP-109\]](#) confirms that hazards leading to a fire in a BESS container, the relevant receptors identified include ecological receptors in habitats local to the BESS containers, human receptors, which include those residential dwellings closest to the BESS containers including the communities of Bishopton, Little Stainton, Great Stainton, Brafferton, other isolated dwellings within 300m of any containers and emergency responders.
- 3.13.30. In relation to the reasonable worst-case impacts, these included hazards resulting in potential battery fire, potential significant effects resulting from a battery fire and hazards resulting in potential flooding of BESS containers.
- 3.13.31. Mitigation measures proposed against the worst-case impacts are set out in Section 3.5 of Appendix 2.5 [\[APP-109\]](#). They include site design and layout measures, preventative measures, monitoring measure and suppression and containment measures.
- 3.13.32. The applicant confirms in Section 3.6 of Appendix 2.5 [\[APP-109\]](#) that the preventative measures included in the design of the BESS and associated systems are such that an uncontrolled battery fire event is highly unlikely, and as such a

⁹ Major Accidents and Disasters in EIA: a Primer, September 2020, IEMA

significant effect upon the identified receptor from such an event is unlikely in relation to major accidents and disasters.

In relation to utilities and utility providers, the applicant recognises that the primary risk is that of unplanned impacts to utilities where damage occurs. The reasonable worst -case scenarios identified were:

- for workers in the immediate vicinity of gas or high voltage electricity utility asset, with the potential impacts being physical injury or death;
- disruption to services provided by assets to communities dependent on the utility assets.

3.13.33. The mitigation proposed, as set out in Section 4.4 of Appendix 2.5 [\[APP-109\]](#) would, according to the applicant, reduce the likelihood of a utility strike to a level such that a utility strike is highly unlikely and a significant effect upon the identified receptors from such an event is unlikely.

3.13.34. The oBFSMP [\[APP-117\]](#) sets out the applicant's approach to minimising the changes of a battery fire event and fire spreading in the event of a fire. It covers the regulatory guidance, safety standards and battery management systems of the Battery Energy Storage Systems (BESS) during operational activities. It is expected that the oBFSMP [\[APP-117\]](#) would be produced by the operator of the proposed development, in liaison with the equipment suppliers.

3.13.35. The oBFSMP [\[APP-117\]](#) proposes a series of safety and control measures which will be incorporated into the proposed development to help reduce the risk of a major incident. These include:

- Adoption of industry standard and good practice design elements integrated including external access and maintenance points.
Adoption of current industry standard for the installation of Stationary Energy Storage System and the applicant also requires any system selected to comply with standards which demonstrates the fire propagation for Li-Ion batteries at cell, module unit level.
- Heating, Ventilation and Cooling to monitor, regulate, and control the operating temperature of the batteries with inbuilt isolation trips in case of temperature which deviates the approved allowance and cannot be rectified.
- Battery Management System monitoring which monitors the individual cells, modules, and racks.
- Aerosol fire suppression to reduce the chances of fire starting.
- Deflagration panels to ensure that any build-up of pressure is directed upwards as opposed to outwards.
- External access panels as opposed to internal.
- Layout design to limit the proximity of batteries to each other.
- Certification and testing of procured.
- Information Box at the site entrance for Local Fire Authorities detailing the site location, layout, and information relevant for the batteries.

3.13.36. In Section 5 of the oBFSMP [\[APP-117\]](#) the applicant also confirms that it has carried out consultation with County Durham and Darlington Fire and Rescue Service (CDDFRS). However, the applicant confirms, in paragraph 5.1.7 that engagement with CDDFRS is on-going and that agreement on the oBFSMP [\[APP-117\]](#) is outstanding.

ISSUES CONSIDERED DURING THE EXAMINATION

- 3.13.37. No concerns were raised by any of the host local authorities in relation to the applicant's approach to Fire Risk, Safety and Security or the applicant's findings and conclusions as set out in Appendix 2.5 Major Accidents and Disasters Assessment [\[APP-109\]](#), Appendix 2.13 oBFSMP [\[APP-117\]](#), and ES Chapter 2 [\[APP-025\]](#).
- 3.13.38. The ExA also notes that, by the end of the examination and in relation to the oBFSMP the SoCG with Darlington Borough Council [\[REP8-029\]](#) confirmed that there were no matters of disagreement outstanding in relation to the Battery Fire Safety Management Plan (BFSMP) or Requirement 11 (Battery Safety Management) which requires a BFSMP to be submitted to and approved by the relevant planning authority and that it should substantially in accordance with the oBFSMP.
- 3.13.39. Also, it is worth noting that the UK Health Security Agency (UK HAS) has submitted a Relevant Representation [RR-526] confirming that it is satisfied with the methodology used by the applicant in relation to the identification of issues which could significantly affect public health and confirms it is satisfied that the proposed development would not result in any significant adverse impacts on public health.
- 3.13.40. However, BVAG raised concerns, as set out in the SoCG [\[REP8-034\]](#) in relation to the impacts of the proposed development on health and wellbeing, namely the impacts on wellbeing of the local residents through imposing of changes onto the landscape, increase in solar crime which would increase levels of crime in the area, and the overall safety of the BESS. This matters were not agreed on by the end of the Examination.
- 3.13.41. The applicant has replied to these concerns in [\[REP8-034\]](#) and states, in relation to health and wellbeing, that human health was scoped out of the ES as only limited impacts on human health during the construction and operation of the proposed development would be anticipated. Also the applicant stated that aspects of human health are considered in other ES chapters, namely Landscape and Visual, Land Use and Socioeconomics.
- 3.13.42. In relation to crime the applicant stated, in response to BVAG14 point in [\[REP8-034\]](#) that the proposed development would include security measures such as CCTV to be installed along the security fencing associated with the onsite substation and energy storage system. The applicant also confirmed that it has consulted with the local police and crime commissioner.
- 3.13.43. In relation to the BESS and in response to the BVAG's concerns on this topic, the applicant confirmed the measures and status of Appendix 2.13 oBFSMP [\[APP-117\]](#) which mitigates against any fire or hazard from the BESS.
- 3.13.44. Similar concerns were also raised by other IPs in relation to the BESS and hazards from the BESS. Norman Melaney, at [\[REP4-027\]](#) raised concerns regarding fire safety in relation to the BESS. Similarly, Heather Hall [\[AS-025\]](#) at Deadline 6 [\[REP7-011\]](#) also raised similar concerns. The applicant in its replies [\[REP5-005\]](#) and [\[REP7-011\]](#) reiterated the validity of the oBFSMP [\[APP-117\]](#) in addressing those concerns and mitigating against possible hazards due to the presence of a BESS.
- 3.13.45. The ExA also asked question ExQ1 HAQ.1.2 in relation to Appendix 2.5 Major Accidents and Disasters Assessment [\[APP-109\]](#) and why the effects on human health had been scoped out. The applicant confirmed, in its response [\[REP2-007\]](#)

that a number of measures have been secured through the dDCO which ensure that significant effects upon human health are unlikely.

CONCLUSIONS

- 3.13.46. No substantive concerns have been raised in relation to the applicant's approach to climate change by any of the host local authorities or other statutory bodies. The CDDFRS and UK HAS have both been consulted by the applicant in relation to fire risk, safety risk including any danger to human health from hazards, and security. No concerns have been raised in these topics by any of those agencies.
- 3.13.47. In light of the above, the ExA's view is that the applicant's approach to the assessment of fire risk, safety and security is based on reasonable assumptions and is proportionate and therefore meets the required policy standard.
- 3.13.48. The ExA is of the view that the applicant has taken into consideration the potential risks and hazards associated with the BESS and has provided sufficient levels of mitigations across a range of reasonable worst-case scenarios and that given the measures secured in the dDCO, risk would be low and not significant during the construction and operation stages.
- 3.13.49. Consequently, the ExA concludes that these requirements are satisfied.

WASTE

INTRODUCTION

- 3.13.50. This part of the report considers waste and how the proposed development will deal with waste.

POLICY CONSIDERATIONS

NPS EN-1

- 3.13.51. Section 5.15 of NPS EN-1 deals with resources and waste. Paragraph 5.15.3 states that disposal of waste should only be considered where other waste management options are not available or where it is the best overall environmental outcome.
- 3.13.52. Paragraph 5.15.9 states that arrangements setting out the sustainable management of waste and use of resources should be described and should include information on how re-use and recycling will be maximised in addition to the proposed waste recovery and disposal system for all waste generated by the development.
- 3.13.53. In relation to the SoS decision making, paragraph 5.15.14 states that the SoSESNZ should consider the extent to which the applicant has proposed an effective system for managing hazardous and non-hazardous waste arising from construction, operation and decommissioning.
- 3.13.54. Paragraph 5.15.15 states that the SoSESNZ should be satisfied that any such waste would be properly managed, that the waste from the proposed facility can be dealt with appropriately and that adequate steps have been taken to minimise the volume of waste arisings.
- 3.13.55. Paragraphs 5.15.16 and 5.15.17 state that the SoSESNZ should use requirements or obligations to ensure that appropriate measures for waste management are applied and include a condition on revision of waste management plans at reasonable intervals when giving consent.

THE APPLICATION

- 3.13.56. Appendix 2.3 Assessment of Likely Waste Arisings [\[APP-107\]](#) and Appendix 2.11 outline Site Waste Management Plan (oSWMP) [\[APP-115\]](#), alongside with ES Chapter 2 The Proposed Development [\[APP-025\]](#) are the main documents that set out the details of the applicant's approach to waste. The Outline Materials Management Plan provides some detail in relation to waste, namely how excavated materials that will be generated in the course of the construction phase will be re-used.
- 3.13.57. The applicant confirms, in paragraph 2.7.21 of ES Chapter 2 [\[APP-025\]](#) that the proposed development is likely to generate waste comprising of general construction waste, including packaging waste from materials, and construction materials from access roads and supporting infrastructure. During operation, it is anticipated that waste generation would be minimal. Waste from the decommissioning of the proposed development would be disposed of responsibly and undertaken in alignment with the future principles of recycling available at that time. Construction, operation and decommissioning of the proposed development is therefore expected to generate minimal waste arisings.
- 3.13.58. Appendix 2.3 Assessment of Likely Waste Arisings [\[APP-107\]](#) provides further detail by looking at the effects of construction activities, operational activities and decommissioning activities of the proposed development. In it the applicant confirms, as set out in Table 1-4 likely waste streams from the proposed development, that it has considered the waste stream and the waste stream activity that would be generated at each one of the different phases and how waste could be managed, including consideration of hazardous and non-hazardous waste and inert waste.
- 3.13.59. Following from this, the applicant has identified which waste streams require disposal to landfill and the likely estimated construction waste disposal. In paragraph 1.13.1 of Appendix 2.3 [\[APP-107\]](#), the applicant confirms that proposed development would utilise approximately 0.004% of available inert landfill capacity in 2026, which equates to an effect of negligible magnitude and therefore non-significant in relation to landfill capacity.
- 3.13.60. The purpose of Appendix 2.11 oSWMP [\[APP-115\]](#) is to demonstrate that the applicant would manage site waste efficiently and effectively, with opportunities to reduce, reuse and recycle waste materials considered and optimised wherever possible, and to promote best practice and environmental awareness.
- 3.13.61. The applicant also confirms that Appendix 2.11 oSWMP [\[APP-115\]](#) broadly follow the approach outlined in the Site Waste Management Plan Regulations 2008 (the 2008 Regulations) and considers the waste management hierarchy as transposed into the Waste (England and Wales) Regulations 2011, which contain the waste hierarchy as Regulation 12 and also as set out in the Waste Management Plan for England (January 2021) (which sits beneath the Resources and Waste Strategy for England 2018), and provides an overview of waste management in England to fulfil the Waste (England and Wales) Regulations 2011.
- 3.13.62. The oSWMP considered waste generation and types of waste as part of its approach and how it should be implemented. The applicant confirms, in paragraph 3.3.1 that the detailed SWMP should include an overview of roles and responsibilities and how they interact with this plan once it's developed and that it will be kept under regular review to ensure that best practice is being maintained

and that any offsite treatment or recovery facilities are still the best choice for any particularly waste stream. This is secured in the dDCO under Requirement 9 [\[REP9-005/006\]](#).

ISSUES CONSIDERED DURING THE EXAMINATION

- 3.13.63. No concerns were raised by any of the host local authorities in relation to the applicant's approach to Waste or by any other statutory bodies.
- 3.13.64. ExQ1 EIA.1.2 [\[PD-004\]](#) did relate to waste in relation to how the applicant captured the worst case scenario for the proposed development in relation to replacement rates. The applicant's response, in [\[REP2-007\]](#) confirmed that the anticipated replacement rates were calculated using data provided directly by infrastructure manufacturers and based on the infrastructure forming the proposed development in order to identify the quantity of waste over its operational lifetime.

CONCLUSIONS

- 3.13.65. Noting that no concerns were raised by any of the host local authorities in relation to the applicant's approach to Waste, or by any other statutory bodies, the ExA finds that the waste assessment methodology, and the consideration given to recycling and waste management is satisfactory and addresses the requirement set in national policy, namely NPS EN-1.
- 3.13.66. The ExA also considers that appropriate mitigation is secured in the form of a Waste Management Strategy which would be developed in accordance with the oSWMP [\[APP-115\]](#) and secured via the DCO. The ExA is therefore satisfied that waste will be managed appropriately on-site and off-site, that adequate steps have been taken to minimise volume of waste arisings and that revisions of waste management plans would occur.
- 3.13.67. Consequently, the ExA concludes that these requirements are satisfied.

3.14. CUMULATIVE EFFECTS

INTRODUCTION

- 3.14.1. This chapter covers the effects of the proposed development with regard to cumulative effects.

POLICY CONSIDERATIONS

NPS EN-1

- 3.14.2. The government's policy regarding cumulative effects of energy projects is mainly contained within the topic sections of the National Policy Statement (NPS) for Energy (EN-1). The ExA's consideration of these is detailed within the Conclusions section below.

NPS EN-3

- 3.14.3. The government's policy regarding solar photovoltaic generation is defined in the NPS for Energy (EN-3) at section 2.10. The ExA's consideration of these is detailed within the Conclusions section below

THE APPLICATION

- 3.14.4. This section provides a summary of the applicant's case at the start of the examination, focussing on the important and relevant matters to the 'Issues considered during the examination' and the 'Conclusion', below.

Introduction

- 3.14.5. The application documents included Chapter 13 Cumulative Effects [\[APP-036\]](#), this chapter considered the potential for cumulative effects arising from the construction, operation and decommissioning of the proposed development.

Assessment methodology

- 3.14.6. Two categories of cumulative effects have been considered within the cumulative effects chapter [\[APP-036\]](#):

- In-combination effects from the interrelationship between different environmental effects of the proposed development (intra-project) (section 13.4), and
- Cumulative effects from the interrelationship between different projects along with the proposed development (inter-project) (section 13.5).

In-combination effects assessment (intra-project effects)

- 3.14.7. Some Environmental Statement (ES) topics intrinsically assess in-combination effects as part of their assessment approach by virtue of their methodologies. Table 13-2 [\[APP-036\]](#) provides a summary of the in-combination effects which have already been identified intrinsically as part of the assessments reported within the ES, and as such do not need to be drawn into further in-combination assessment.

- 3.14.8. These topics are:

- ES Chapter 6 Biodiversity [\[APP-029\]](#)
- ES Chapter 7 Landscape and Visual [\[APP-030\]](#)
- ES Chapter 8 Cultural Heritage and Archaeology [\[APP-031\]](#)

- ES Chapter 9 Land use and Socioeconomics [APP-032]
- ES Chapter 11 Noise and Vibration [APP-034]
- ES Chapter 12 Traffic and Transport [APP-035]

3.14.9. There is still the potential for other in-combination effects to arise which are not captured through topic assessments and as such need to be considered. Table 13-11 [APP-036] provides a summary of the identified in-combination effects of the proposed development, concluding that there would be no significant effects.

Cumulative effects assessment (inter-project effects)

3.14.10. The applicant has considered cumulative effects of the proposed development being carried out alongside other existing and/or approved developments. The systematic approach to assessing cumulative effects used has been based on PINS Advice Note 17, reference paragraph 13.5.2 [APP-036].

3.14.11. Table 13-10 [APP-036] provides a summary of the identified cumulative effects of the proposed development. This concludes that there would be no significant adverse effects in Environmental Impact Assessment (EIA) terms, except for temporary loss of agricultural land which is considered to be potentially significant in EIA terms. There is no essential mitigation available to reduce this effect.

ISSUES CONSIDERED DURING THE EXAMINATION

3.14.12. This section details the issues relating to cumulative effects considered during the examination. It focuses on matters that are considered important and relevant to the decision and have not been agreed or adequately justified by the applicant or are controversial.

Methodology

3.14.13. The ExA issued written questions relating to the applicant's methodology concerning surplus energy generation and how this would be managed in relation to the cumulative effects of other energy generation projects. In response the applicant provided satisfactory evidence of its engagement with Northern Power Grid, reference CU.1.1 [REP2-007], and an acceptable explanation regarding energy storage, reference CU.1.2 [REP2-007].

Intra-project effects

3.14.14. Matters relating to the following ES topics constituted the main issues discussed during the examination:

- land use
- landscape and visual

3.14.15. The other topics assessed regarding in-combination effects did not lead to significant discussion and are discussed under the heading 'Other ES topics' in the conclusions section below.

Land use

3.14.16. The applicant responded to ExQ1 CU.1.3 [REP2-007], that

"The cumulative temporary loss of agricultural land is still considered potentially significant due to the extent likely to be lost temporarily within the locality."

3.14.17. During ISH6 the applicant was asked to explain its proposals for mitigating significant cumulative effects resulting from the temporary loss of agricultural land. The applicant responded, reference 1.32 [\[REP6-017\]](#) referring to the Outline Soil Resources Management Plan [\[APP-116\]](#) and noted that several other schemes have similar management plans. The applicant stated that if the soil is managed properly, ES Chapter 13 records that there could be a cumulative benefit for improved soil health in the longer term when the soil is returned to agricultural use, paragraph 13.5.63 [\[AS-033\]](#).

3.14.18. Mr Philpott, for Great Stainton Parish Meeting, commented that although the solar farms are described as temporary because they would eventually revert to agricultural land, the operational period of 40 years would make the solar farms a permanent feature in the lives of local people, reference 1.91 [\[REP6-017\]](#).

Landscape and visual

3.14.19. In response to the ExA's question regarding the applicant's assessment of the cumulative effects of the proposed development on residential receptors, reference CU.1.6 [\[REP2-007\]](#), the applicant referenced the methodology set out in ES Chapter 13 Cumulative Effects [\[APP-036\]](#).

3.14.20. In its Local Impact Report - Landscape and Visual Amenity [\[REP1-021\]](#), Darlington Borough Council (DBC) stated at paragraph 10.12:

"... DBC is of the opinion that the combination of the Development and cumulative solar farms generates significant impacts on the rural highway network in the 3.0km Study Area, noting that the ES predicts visual effects on every individual section of road, ranging from moderate/minor to moderate... DBC is of the view, therefore, that such effects should be considered significant."

3.14.21. The ExA questioned the applicant further in relation to the assessment of landscape and visual, and cumulative effects through a Rule 17 request for further information [\[PD-012\]](#) and subsequently during ISH8 [\[EV18-001\]](#). The applicant's response to these matters is included within the 'Cumulative effects' sub-heading section below.

Cumulative effects

3.14.22. A significant focus of discussion of cumulative effects related to the interrelationship between different projects along with the proposed development (inter-project).

3.14.23. Regarding the applicant's Long and Short List of Committed Development [\[APP-102\]](#), the ExA sought confirmation from the local authorities and other interested parties if they were happy with the list provided or if there are any further projects that they wished to add, reference GCT.1.13 [\[PD-004\]](#).

3.14.24. DBC responded that it was generally happy with the list of developments and allocations within DBC's area, and advised a number of updates, reference GCT.1.3 [\[REP2-031\]](#).

3.14.25. The applicant acknowledged the update on these applications [\[REP3-004\]](#) and confirmed it would undertake a further sensitivity analysis to understand the implications for the cumulative assessment. This matter is discussed further below.

3.14.26. In response to the ExA's question relating to the impact of other generating facilities, in relation to need, located or proposed to be located within the vicinity of the proposed development, the applicant confirmed that the potential impact of those

facilities has been assessed via the cumulative effects assessment, reported in ES Chapter 13 [\[APP-036\]](#), reference CU.1.7 [\[REP2-007\]](#).

- 3.14.27. ISH 7 on cumulative effects focused on the applicant updating the examination regarding the Long and Short List of Committed Development and the further sensitivity analysis to understand the implications for the cumulative assessment in response to the development applications identified by DBC [\[EV15-001\]](#).
- 3.14.28. Further, during ISH7, the applicant was requested to update the ExA regarding how particular sites identified in the Statement of Common Ground (SoCG) with Great Stainton Parish Meeting [\[REP4-016\]](#), as well as the Cowley Complex solar plant identified by Mr Smith [\[REP1-036\]](#), have been considered in the assessment of cumulative effects.
- 3.14.29. Further to the applicant's update DBC agreed to submit written comments on the applicant's Cumulative Effects Sensitivity Analysis, reference action ISH7-01 [\[REP6-017\]](#).
- 3.14.30. DBC's response indicated general agreement with the applicant that the change in status of a number of planning applications is unlikely to affect the assessment already presented for most sites [\[REP6-032\]](#). However, DBC considers that the assessment already undertaken for the NWL water main was not sufficiently robust to conclude that there would not be any cumulative adverse impacts, and if such impacts were identified what mitigation measures might be necessary.
- 3.14.31. In response to the ExA's subsequent question on this matter, the applicant highlighted that from a cumulative perspective, the scheme would be built after the proposed development and therefore has considered the proposed development within its own cumulative assessment. Having reviewed the NWL cumulative assessment, the applicant agrees with the findings presented which indicate no likely cumulative impacts, reference CU.3.2 [\[REP7-010\]](#).
- 3.14.32. Mrs Tinkler for Bishopton Villages Action Group (BVAG) expressed concerns regarding the applicant's approach to the assessment of cumulative landscape and visual effects; these were submitted in writing [\[REP6-036\]](#).
- 3.14.33. The applicant responded that it had provided further information on the cumulative effects assessment in respect of landscape and visual, within the Landscape and Visual Assessment - Cumulative Effects Technical Note [\[REP6-021\]](#), which it considered addressed the points raised, and the applicant continues to discuss landscape matters with BVAG with a view to updating the SoCG with them prior to end of examination.
- 3.14.34. Towards the end of the examination the ExA issued a Rule 17 request for further information to address issues raised in relation to the applicant's assessment of landscape and visual effects [\[PD-012\]](#). This request included the requirement to update ES Statement Chapter 13 Cumulative Effects [\[APP-036\]](#) so as to take account of any changes resulting from the reassessment of landscape and visual effects.
- 3.14.35. The applicant's response described at paragraph 2.1.4 [\[AS-031\]](#):

"... an updated ES Chapter 13 Cumulative Effects [\[AS-033\]](#) with amendments to clarify the relationship between the ES topic chapters, including landscape, and the cumulative assessment. ..."

- 3.14.36. At paragraph 2.1.7 [\[AS-031\]](#) the applicant concludes:
- “Having undertaken this exercise, the applicant identifies no new or different significant effects compared to its original DCO Application, ...”*
- 3.14.37. In response to the ExA’s question regarding what work had been carried out in order to consider the cumulative effects of 11 current and pending solar power generation plants alongside the predicted effects of the proposed development, the applicant confirmed that these were considered in its Procedural Deadline A submission [\[PDA-003\]](#), as part of the EIA reported in the ES, reference CU.3.3 [\[REP7-010\]](#).
- 3.14.38. Outstanding issues with regard to cumulative effects were considered at agenda item 6 of ISH8 [\[EV18-001\]](#). Hearing Action Point 11 from ISH8 required the
- “Applicant to submit note explaining approach to cumulative assessment and compliance with the PINS Advice Note 17 and to define clearly what was included in the baseline and why it was included in the baseline, alongside what was included and considered as cumulative and why.”*
- 3.14.39. The applicant submitted post-hearing submissions including written submissions of oral cases as heard at ISH8, [\[REP9a-001\]](#).
- 3.14.40. In addition, the applicant submitted ISH8 Post-Hearing Cumulative Assessment Clarification Note [\[REP8-026\]](#). The applicant concludes at paragraph 1.4.5
- “This demonstrates how all schemes within the short list for cumulative assessment have been considered within the ES, either through individual topic chapters (as part of the dynamic or future baseline) or within ES Chapter 13, in line with Advice Note 17.”*
- 3.14.41. At the end of the examination the ExA notes the disagreement of the following parties with the applicant’s assessment of cumulative effects:
- DBC [\[REP8-029\]](#)
 - BVAG [\[REP8-034\]](#)
 - Great Stainton Parish Meeting [\[REP7-007\]](#).

CONCLUSIONS

ExA considerations regarding methodology

- 3.14.42. Regarding the network connection NPS EN-3 paragraph 2.10.26 requires that applicants should consider the cumulative impacts of situating a solar farm in proximity to other energy generating stations and infrastructure. It is the ExA’s view that cumulative inter-project impacts have been adequately considered as evidenced through ES Chapter 13 Cumulative Effects [\[AS-033\]](#).

ExA considerations regarding intra-project effects

- 3.14.43. NPS EN-1 paragraph 4.3.19 requires that the Secretary of State (SoS) should consider how the accumulation of, and interrelationship between, effects might affect the environment, economy, or community as a whole, even though they may be acceptable when considered on an individual basis with mitigation measures in place. It is the ExA’s view that ES Chapter 13 Cumulative Effects [\[AS-033\]](#) provides an adequate assessment of the proposed development’s in-combination effects.

Land use

- 3.14.44. Paragraph 5.11.14 of NPS EN-1 encourages applicants to develop and implement a soil management plan to minimise potential contamination and consider sustainable reuse of soils. The ExA notes that the applicant has developed an acceptable outline Soil Resources Management Plan [\[APP-116\]](#) and stated that several other schemes have similar management plans, reference 1.32 [\[REP6-017\]](#).

Landscape and visual

- 3.14.45. NPS EN-1 paragraph 5.10.16 requires the applicant to carry out a landscape and visual impact assessment and report it in the ES, including cumulative effects.
- 3.14.46. NPS EN-3 paragraph 2.10.157 requires the SoS to consider the landscape and visual impact of any proposed solar PV farm together with the possible cumulative effect with any existing or proposed development. An assessment of the effects of the proposed development on landscape and visual impacts is provided in ES Chapter 7 Landscape and Visual [\[AS-028\]](#). An assessment of cumulative effects is provided in ES Chapter 13 Cumulative Effects [\[AS-033\]](#). The ExA is content that cumulative effects are adequately considered in these assessments.

Traffic and transport

- 3.14.47. NPS EN-1 paragraph 5.14.21 states that the SoS should only consider refusing development on highways grounds if residual cumulative impacts on the road network would be severe. ES Chapter 13 Cumulative Effects [\[AS-033\]](#) concludes that there are no significant cumulative effects resulting from traffic and transport. The ExA agrees with this conclusion.
- 3.14.48. NPS EN-3 paragraph 2.10.126 requires cumulative transport impacts from multiple energy infrastructure projects to be assessed. As concluded in the traffic and transport topic chapter, ES Chapter 12 Traffic and Transport [\[APP-035\]](#) shows that the traffic modelling used for the proposed development has inherently assessed the cumulative impacts already for traffic and transport. It concludes there would be no significant effects arising from the proposed development, the ExA agrees with this conclusion.

Other ES topics

- 3.14.49. NPS EN-1 paragraph 4.4.5 states that the impacts of more than one development may affect people simultaneously, so the applicant should consider the cumulative impact on health in the ES where appropriate. As reported in ES Chapter 4 Approach to EIA [\[APP-027\]](#), a standalone chapter assessing effects of the proposed development on human health was scoped out of the ES, as it was anticipated that there would be limited impacts on human health during construction and operation. The ExA is content with this approach and considers the scoping out to be appropriate in this case.
- 3.14.50. NPS EN-1 paragraph 5.8.32 states that where development may contribute to a cumulative increase in flood risk elsewhere, the provision of multifunctional sustainable drainage systems, natural flood management and green infrastructure can also make a valuable contribution to mitigating this risk whilst providing wider benefits. The applicant considers that the proposed development would not contribute to a cumulative increase in flood risk elsewhere [\[APP-164\]](#), a position that the ExA agrees with.
- 3.14.51. NPS EN-1 paragraph 5.9.9 states that consideration will also need to be given to the possible impacts, including cumulative, on the wider historic environment. The

ExA is content that cumulative effects are adequately considered in ES Chapter 13 Cumulative Effects [\[AS-033\]](#).

- 3.14.52. NPS EN-1 paragraph 5.13.4 requires that the applicant's assessment should consider all relevant socioeconomic impacts, which may include cumulative effects. ExA is content that cumulative effects are adequately considered in ES Chapter 13 Cumulative Effects [\[AS-033\]](#).
- 3.14.53. With regard to water quality and resources NPS EN-1 paragraph 5.16.7 requires that the ES should describe any cumulative effects. The ExA is content that cumulative effects are adequately considered in ES Chapter 13 Cumulative Effects [\[AS-033\]](#).

ExA considerations regarding cumulative effects

- 3.14.54. NPS EN-1 paragraph 4.2.12 requires that the cumulative impacts of multiple developments with residual impacts should also be considered. It is the ExA's view that cumulative impacts have been adequately assessed as evidenced through ES Chapter 13 Cumulative Effects [\[AS-033\]](#). In addition, the ExA considers that the applicant has satisfactorily demonstrated that its assessment of cumulative effects complies with PINS Advice Note 17, as demonstrated in ISH8 Post-Hearing Cumulative Assessment Clarification Note [\[REP8-026\]](#).

Matters to be taken to Chapter 4 and the planning balance

- The ExA concludes that the proposed development complies with NPS EN-3 paragraph 2.10.26 with regard to considering the cumulative impacts in situating a solar farm in proximity to other energy generating stations.
- The ExA concludes that the proposed development complies with NPS EN-1 paragraphs 4.3.19, 5.11.14, 5.10.16, 5.14.21, 4.4.5, 5.8.32, 5.9.9, 5.13.4, and 5.16.7 with regard to intra-project effects.
- The ExA concludes that the proposed development complies with NPS EN-3 paragraph 2.10.157 with regard to landscape and visual effects.
- The ExA concludes that the proposed development complies with NPS EN-3 paragraph 2.10.126 with regard to transport impacts.
- The ExA concludes that the proposed development complies with NPS EN-1 paragraph 4.2.12 with regard to cumulative effects.
- The applicant concludes that with respect to in-combination effects (intra-project effects) adverse effects of most topics would not be significant in EIA terms; the ExA agrees with this assessment.
- The applicant concludes that with respect to cumulative effects (inter-project) there would be no significant effects in EIA terms; the ExA agrees with this assessment.
- The ExA therefore concludes that the matter of in-combination and cumulative effects weighs neither for or against making the DCO and therefore does not affect the planning balance.

4. CONCLUSION ON THE CASE FOR DEVELOPMENT CONSENT

4.1. INTRODUCTION

- 4.1.1. This chapter provides an evaluation of the planning merits and sets out whether there is a case for making a Development Consent Order (DCO) for the of the proposed development. It considers the matters to be taken into account as required by the Planning Act 2008 (PA2008) and other relevant legislation and policy, the principle of development and the need case, the planning issues, impacts, the planning balance, and conclusions.
- 4.1.2. Relevant legislation and policy are identified in Chapters 2 and 3, and Appendix B. The Examining Authority (ExA) consider the principle of development (including the need case) and the planning issues (including the assessment of potential benefits, adverse impacts, and mitigation) in Chapter 3. The ExA's conclusions are based on the recommended DCO (rDCO) in Appedix D, which is discussed in Chapter 6. Land rights matters are addressed in Chapter 5.
- 4.1.3. The conclusions follow from the consideration of all evidence presented to the Examination, including the Environmental Statement (ES), the Habitats Regulations Assessment (HRA), the Local Impact Reports (LIR), Statements of Common Ground, written and oral submissions, and site inspections. These are also detailed in Chapter 1 and Chapter 2 of this report.

4.2. SUMMARY OF THE MAIN PLANNING ISSUES

THE ENVIRONMENTAL STATEMENT

- 4.2.1. In Section 2.6 the ExA concluded that the proposed development is EIA development, that the ES submitted with the application, and as updated during the Examination, is sufficient to enable the SoS to take a decision in compliance with the EIA Regulations, and that updates to the ES during the Examination do not individually or cumulatively prejudice the adequacy of the ES. In arriving to the this conclusion, the ExA has also considered the Change Application as described in Section 1.5 of the report.
- 4.2.2. The ExA also found that the applicant adequately defines the Rochdale Envelope, and that sufficient controls are secured by the rDCO in Appendix D to appropriately mitigate the effects identified using the Rochdale Envelope.
- 4.2.3. Transboundary effects were considered in Section 2.8, noting the conclusions that the proposed development was unlikely to have a significant effect either alone or cumulatively on the environment in a European Economic Area State, and that I am satisfied that no facts have emerged up to the end of the Examination to change those conclusions.

HRA CONSIDERATIONS

- 4.2.4. Consideration was given to the adequacy of the HRA Report and associated information in Appendix C of this report.
- 4.2.5. In Appendix C, the ExA concluded that:

- The evidence indicates that the proposed development, either alone or in combination with other plans or projects, would not be likely to give rise to any adverse effects on the integrity on European Sites due to the lack of effective pathways; and
- There is sufficient information before the SoS 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.

The ExA sees no reason for Habitats Regulations Assessment matters to prevent the making of the Order.

THE PRINCIPLE OF DEVELOPMENT

- 4.2.6. The proposed development is considered 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, which should be given substantial weight, for it assists the government in meeting its energy security and net zero ambitions.
- 4.2.7. Furthermore, and in accordance with Sections 2.2. and 2.3 of NPS EN-1, the proposed development would assist in decarbonising the power sector, reduce Greenhouse Gases (GHG) emissions and assist in the achievement of the target to cut GHG emissions to net zero by 2050. This is in line with the wider government energy and climate objectives and the proposed development would make a meaningful contribution to meeting this need.
- 4.2.8. In meeting this need, the ExA found that the proposed development would do so at speed and would be able to maximise the secured grid connection across the anticipated 40-year lifetime of the development. The ExA has also found that the proposed level of overplanting is appropriate in relation to the overall size of the proposed development and the technical limitations of the grid connection.
- 4.2.9. In assessing impacts, much of the detail of the proposed development would be subject to post-consent approval. In this regard, by setting out the overall parameters for site size and layout, flexibility has been retained. This is appropriate particularly as it would allow for adjustments following from any innovations that might occur subsequently on photovoltaic technology. However, the Environmental Statement (ES) assesses the worst-case scenario allowing adequate consideration of whether the proposed development would be acceptable in environmental terms. In this sense the applicant has complied with the Rochdale Envelope approach set out in Advice Note 9.
- 4.2.10. The ExA considers, overall, that the principle of the proposed development accords with local and national policy. Consequently, the ExA gives very great weight in favour of making of the Order to the principle of the proposed development in terms of the renewable energy and net zero transition benefits it could deliver.

ALTERNATIVES AND SITE SELECTION

- 4.2.11. The applicant has provided adequate information on a range of alternative configurations and locations for the proposed development and associated works and infrastructure which meets the requirements set out in NPS EN-1, NPS EN-3, NPS EN-5, and the EIA Regulations 2017.

4.2.12. The ExA has found that the methodology used for the site selection and the consideration of alternatives, including different technologies, to be reasonable and proportionate. The ExA was able to test some of the alternatives considered by the applicant as well as the main reasons that lead to the present proposal, particularly in relation to the proposed Photovoltaic (PV) technology and how the applicant envisages the future proofing of the proposed development, which is secured via Requirement 3 of the dDCO [[REP9-006](#)].

4.2.13. Consequently, the ExA concludes that these requirements are satisfied.

GOOD DESIGN

4.2.14. The ExA has found that the applicant has adequately assessed the environmental impact of the design aspects of the proposed development by adopting an iterative design approach that was able to respond to consultation on design and siting of the panels and associated electrical infrastructure, including cabling. This is in accordance with paragraphs 4.7.12 to 4.7.14 of NPS EN-1 and 2.5.2 and 2.6.1 of NPS EN-3.

4.2.15. In conformity with paragraphs 4.7.13 of NPS EN-1 and, 135 of NPPF the ExA has considered that the embedded mitigation measures in the ES and DAD [[REP8-022](#)], assessed in line with the overall parameters for site size and layout, panel size, location of panel areas and of the PV panels within each area, and supporting infrastructure such as the Battery Energy Storage System (BESS) and proposed cabling. Mitigation measures include an undertaking by the applicant to build flexibility in the design of the proposed development that would respond to future technological advancement in terms of curtailing the panel size and related area of occupation. This would minimise the design impact of the proposed development.

4.2.16. Consequently, the ExA concludes that these requirements are satisfied.

SOCIOECONOMICS

4.2.17. The ExA concludes that the proposed development complies with NPS EN-1 paragraphs 5.13.9 to 5.13.11 with regard to potential socioeconomic impacts and positive provisions to mitigate impacts.

4.2.18. ES Chapter 9 Land Use and Socioeconomics identifies the legacy benefits of the proposed development such as the provision of a £1.5m Community Benefit Fund, as set out in paragraph 5.14.14 of the Planning Statement [[APP-163](#)]. The applicant concludes that the proposed development would provide beneficial effects relating to employment and supply chain opportunities, with no significant adverse effects identified, paragraph as set out in paragraph 5.15.15 [[APP-163](#)]. The ExA agrees with this assessment.

4.2.19. The ExA therefore concludes that the matter weighs for making the DCO and this gain has been attributed little weight in the planning balance.

LANDSCAPE AND VISUAL EFFECTS

4.2.20. The ExA has concluded that the proposed development complies with NPS EN-1 and NPS EN-3 in relation to the assessment of landscape and visual effects, how negative effects have been avoided or minimised, in relation to landscape enhancements, screening and how magnitude has been defined in accordance with paragraph 5.10.25 of NPS EN-1.

- 4.2.21. The ExA concludes that the level of detailed design secured by Requirement 3 of the dDCO [REP9-006] complies with NPS EN-1 paragraphs 5.10.29, 30 and 38 is acceptable.
- 4.2.22. Potential possible panel area reductions as a result of improved technology have also been identified which the ExA considers would constitute exceptional circumstances where the benefits outweigh the marginal loss of function in accordance with paragraph 5.10.26 of NPS EN-1. The possible panel areas reductions are identified in the Design Approach Document [REP8-022] and secured by Requirement 3 of the dDCO [REP9-006].
- 4.2.23. The ExA agrees with the applicant that significant adverse effects relating to the character of the areas, views from the villages and public rights of way have been identified. These include:
- the character of Landscape Character Area (LCA) Darlington 6, Great Stainton and Bishopton;
 - key identified views at Great Stainton and Bishopton;
 - key identified view from PRoW within 1 km of the proposed development.
- 4.2.24. However, despite these significant adverse effect having been identified, the ExA agrees with the applicant's conclusion that the benefits of the project outweigh the visual effects on sensitive receptors in accordance with paragraph 5.10.14 of NPS EN-1.
- 4.2.25. With regard to glint and glare, the ExA concludes that the proposed development complies with NPS EN-3 paragraphs 2.10.104 and 158. The ExA has amended the wording of Requirement 12 of the dDCO [REP9-006] to ensure that all the embedded mitigation is maintained and managed for the lifetime of the development.
- 4.2.26. The ExA concludes that any adverse impact is long term due to the 40-year operational period of the proposed development, but temporary as it would be capable of being reversed in accordance with NPS EN-1 paragraph 5.10.36.
- 4.2.27. Finally, due to the residual significant adverse landscape and visual effects the ExA concludes that the matter weighs against making the DCO and this harm has been attributed great weight in the planning balance.

BIODIVERSITY

- 4.2.28. Overall, the ExA is satisfied that biodiversity and ecology considerations have been adequately addressed in the ES and therefore concludes that the proposed development complies with the policies set out in NPS EN-1, NPS EN-3 and the Environment Act 2021.
- 4.2.29. In its assessment, the applicant has concluded that there would be no significant adverse effects resulting from the proposed development on biodiversity. The ExA sees no reason to disagree with the applicant's assessment on this issue and notes that no significant concerns have been raised by either Natural England (NE) or the host local authorities in relation to either the assessment carried out by the applicant or its conclusion of no adverse effects being identified
- 4.2.30. In addition, the ExA concludes that the proposed development complies with NPS EN-1 in regard to providing mitigation or biodiversity net gain measures, as a

biodiversity net gain of 88% in habitat biodiversity units and 108% in hedgerow biodiversity units is anticipated.

- 4.2.31. The ExA therefore concludes that the matter weighs for making the DCO and this gain has been attributed a little weight in the planning balance.

HISTORIC ENVIRONMENT

- 4.2.32. In reaching its conclusions, the ExA has had regard to the desirability of preserving any listed building, preserving or enhancing the character and appearance of conservation areas, and preserving scheduled monuments or their setting, as per Regulation 3 of The Infrastructure Planning (Decisions) Regulations 2010. The ExA has also
- 4.2.33. Overall, the ExA agrees with the applicant in relation to the assessment methodology used and finds there is compliance, in that regard, with NPS EN-1 and NPS EN-3. The ExA also agrees with the applicant's assessment of likely significant effects of the proposed development at the construction phase and finds that there would be no effects from the proposed development on any heritage assets and that the applicant has appropriately mitigated against the potential discovery of unknown heritage assets as to reduce any potential effects to no effect.
- 4.2.34. At operational stage, the ExA agrees with the applicant's approach and overall conclusion in relation to the effects of the proposed development on all cases apart from Bishopton Conservation Area (CA).
- 4.2.35. In relation to Bishopton CA, the ExA finds that the surrounding landscape makes a valid positive contribution to its significance and that the proposed development, particularly Panel Area F [\[REP2-021\]](#), would alter the current setting of the CA from one that is characterised by unobstructed country view, to one that will be dominated at points by landscape screening. This would create a considerably different approach to Bishopton CA for all users of the proposed new diverted PRow by virtue of development within the setting of a designated heritage asset.
- 4.2.36. The ExA is also of the view that the setting of Bishopton CA does make a positive contribution to its significance. As set out in paragraph 5.9.28 of NSP EN-1, the SoSESNZ should give considerable importance and weight to the desirability of preserving all heritage assets from any harm or loss of significance, including from development in its setting.
- 4.2.37. For the reasons above, and considering the proposed development is within the setting of the CA and will be visible as one approaches it, it is the ExA's view that the proposed development would cause some harm to Bishopton CA as its setting makes a positive contribution to its overall significance.
- 4.2.38. The harm to the heritage asset brings moderate weight against the making of the Order. The less than substantial harm to designated heritage assets is 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. This is set out in Section 5.4 of this report.

NOISE AND VIBRATION

- 4.2.39. The ES has considered the environmental impact of the noise and vibration aspect of the proposed development in accordance with the NPS EN-1, NPS EN-3 plus paragraph 187 of NPPF. Albeit the ES concludes a moderate adverse effect

resulting from construction noise, this impact is nonetheless limited to momentary periods of daytime hours. The ExA has subsequently deemed that the embedded mitigation measures in the ES and DAD, plus the required obligations in the CEMP [REP8-012], DEMP [REP5-015] and CTMP [REP8-014], to be secured by Requirements 4, 5 and 6 of the dDCO [REP9-006] correspondingly, in conformity with paragraphs 5.12.13 and 5.12.18 of NPS EN-1 and 198 of NPPF, would be adequate in mitigating any negative impacts to an acceptable level.

- 4.2.40. The ExA therefore assigns this impact neutral weight in the planning balance in the making of the Order.

FLOOD RISK AND WATER ENVIRONMENT

- 4.2.41. The ES has considered the environmental impact of the flood risk and water environment aspect of the proposed development and, the WFD assessment has concluded that the proposed development would not have any significant impact on the water bodies in its vicinity and would consequently not be detrimental to the objectives of the WFD water bodies, in accordance the NPS EN-1 and NPS EN-3. The Flood Risk Assessment (FRA) method and associated drainage strategies in the ES show that the applicant has adequately assessed flood risk. The ExA has subsequently deemed, taking into account also the EA comment, that the embedded mitigation measures in the ES, FRA and DAD, plus the required obligations in the CEMP [REP8-012] and LEMP [REP8-016] secured by Requirements 4 and 12 of the dDCO [REP9-006] separately, would be sufficient in mitigating any negative impacts to an acceptable level.

- 4.2.42. The ExA therefore attributes this impact neutral weight in the planning balance in the making of the Order.

TRAFFIC AND TRANSPORT

- 4.2.43. The ES has considered the environmental impact of the traffic and transport element of the proposed development in accordance with the NPS EN-1, NPS EN-3 and the NPPF and concluded that it would be negligible. The ExA has subsequently deemed that the embedded mitigation measures in the ES and DAD, the required obligations in the CEMP [REP8-012], DEMP [REP5-015] and CTMP [REP8-014], to be secured by Requirements 4, 5 and 6 of the dDCO [REP9-006] correspondingly, plus the modifications to the relevant articles of the dDCO [REP9-006] that would give the local highway authority controls over the quality of and timeliness of reinstatements of any damaged highway, would be adequate in mitigating any negative impacts to an acceptable level. The ExA considers that these mitigation measures conform with the needs set out in the NPS EN-1 and NPS EN-3.

- 4.2.44. The ExA therefore attributes this impact neutral weight in the planning balance in the making of the Order.

LAND USE

- 4.2.45. The ES has considered the environmental impact of the land use aspect of the proposed development by ensuring that most parts of the development, including the built structures necessitating soil stripping and disturbance, would be stationed on the lower quality land. In addition, the ExA has considered that the embedded mitigation measures in the ES and DAD [REP8-022], secured by Requirement 3 of the dDCO [REP9-006] would be sufficient to mitigate any negative impacts to an acceptable level, in conformity with the NPS EN-1 and NPS EN-3.

- 4.2.46. The ES has also adopted an acceptable Agricultural Land Classification method in line with paragraph 2.10.33 of NPS EN-3 and, considered safeguarding the mineral resources in the Order limits to meet the needs of paragraph 5.11.28 of NPS EN-1. Overall, albeit the proposed development would result in long-term but not irreversible or permanent loss of agricultural land, given that the BMV land to be lost would have served other agricultural activities in that lengthy lifetime of the proposed development, the ExA therefore ascribes the loss of BMV agricultural land little negative weight in the planning balance in the making of the Order.

CUMULATIVE EFFECTS

- 4.2.47. The ExA concludes that the proposed development complies with NPS EN-1 and NPS EN-3 with regard to in-combination (intra-project) effects. The applicant concludes that with respect to in-combination, adverse effects of most topics would not be significant in EIA terms; the ExA agrees with this assessment.
- 4.2.48. The ExA concludes that the proposed development complies with NPS EN-1 and NPS EN-3 with regard to cumulative (inter-project) effects. The applicant concludes that with respect to cumulative effects there would be no significant effects in EIA terms; the ExA agrees with this assessment.
- 4.2.49. The ExA therefore concludes that the matter of in-combination and cumulative effects weighs neither for or against making the DCO and therefore does not affect the planning balance.

4.3. PLANNING BALANCE AND CONCLUSIONS

- 4.3.1. This section deals with the residual adverse effects after mitigation against the benefits of the proposed development in accordance with paragraph 4.1.7 of NPS EN-1.
- 4.3.2. On 22 January 2025 the EA updated its [National Flood Risk Assessment](#). As the ExA was under a duty to complete the examination of the application by the end of the period of six month, on the 23 January 2025, the ExA was unable to take the EA's update fully into consideration and therefore our conclusions do not take account of this update, but the SoSESNZ.
- 4.3.3. The impacts in relation to the following issues bring neutral weight that does not affect the balance of the Order being made:
- Noise and vibration;
 - Flood risk and the wider water environment;
 - Traffic and transport;
 - Approach to and conclusions on cumulative effects.

MATTERS WEIGHING IN FAVOUR OF THE DCO BEING MADE

- 4.3.4. Paragraphs 3.2.6, 3.2.7 and 4.2.2 of the NPS EN-1 establish an urgent need for the proposed development to which substantial weight should be attributed to, considering the Government's energy security and net zero targets and ambitions, and the need for this type of renewable energy development to be delivered 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.
- 4.3.5. The ExA finds that:

- 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;
- The socioeconomic benefits of the proposed development in relation to employment and supply chain opportunities bring little weight for the making of the Order;
- The biodiversity net gain measures from the proposed development in relation to habitat biodiversity units and 108% in hedgerow biodiversity units brings little weight for the making of the Order.

MATTERS WEIGHING AGAINST THE DCO BEING MADE

4.3.6. The ExA finds that:

- The significant adverse effects identified in relation to the character of the areas, views from the villages and public rights of way weight against the DCO being made. Due to the significant level of the effects and the number of receptors that would be affected from a landscape and visual perspective, the ExA find this brings great weight against the DCO being made.
- The proposed development would result in the long-term loss of agricultural land, approximately 30ha, or 7%, of the approximate total agricultural land included within the Order. Given that the BMV land to be lost would have served other agricultural activities in that lengthy lifetime of the proposed development, the ExA finds this brings little weight against the DCO being made.
- Harm to heritage assets, namely the setting of Bishopton CA, brings moderate weight against the DCO being made.

THE PLANNING BALANCE

- 4.3.7. Paragraph 4.1.3 of NPS EN-1 establishes a presumption in favour of granting consent to energy NSIPs, and the ExA is satisfied that it applies to the proposed development.
- 4.3.8. The urgent need for the proposed development and beneficial impacts on climate change bring very great weight and are powerful factors for the making of the Order. These are supported by a little weight in relation to biodiversity and socio-economic benefits.
- 4.3.9. On the other side of the balance are landscape and visual impacts, which bring great weight against the DCO being made, harm to heritage assets which bring moderate weight against DCO being made and identified land use issues, namely the loss of BMV, which brings little weight against the DCO being made.
- 4.3.10. Taking the above into account, the ExA finds that the matters in favour of the DCO being made, including the urgent need, outweigh those against. Other matters bring both benefits and adverse effects, but none of those, either individually or cumulatively, lead to a different conclusion.
- 4.3.11. The ExA considers that the less than substantial harm to designated heritage assets are outweighed by the public benefits of the proposal and it is therefore satisfied that paragraphs 5.9.28, 5.9.32 and 5.9.36 of NPS EN-1 and paragraph 2.3.8 of NPS EN-3 are complied with.
- 4.3.12. In relation to the adverse landscape and visual effects, the EXA finds that the impacts would be so damaging as to not be offset by the benefits (including need) of

the project. In that regards, the ExA finds that paragraph 5.10.35 of NPS EN-1 is complied with. The adverse visual effects on sensitive receptors are outweighed by the benefits of the project and therefore the ExA is satisfied in relation to paragraph 5.10.14 of NPS EN-1.

- 4.3.13. The ExA is satisfied that the proposed development, either alone and in-combination with other plans or projects, would not be likely to give rise to any adverse effects on the integrity on European sites and sees no reason for HRA matters to prevent the making of the DCO.

CRITICAL NATIONAL PRIORITY (CNP) CONSIDERATIONS

- 4.3.14. The NPS EN-1, in paragraph 4.2.4 states that, due to the Government's commitment to fully decarbonising the power system by 2035 and to ensure that the UK is more energy independent, resilient and secure, the Government has concluded that there is a critical national priority (CNP) for the provision of nationally significant low carbon infrastructure.
- 4.3.15. As set out in section 3.2 of this report, the ExA has concluded that the proposed development is low carbon energy infrastructure under paragraph 4.2.5 of the NPS EN-1 and therefore should be considered as CNP infrastructure in accordance with paragraph 3.3.62 of NPS EN-1.
- 4.3.16. Paragraph 3.3.63 of NPS EN-1 includes that subject to any legal requirements, the urgent need for 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.
- 4.3.17. Paragraph 4.1.7 of NPS EN-1 states that for CNP Infrastructure it is likely that the need case will outweigh the residual effects in all but the most exceptional cases, but that this presumption does not apply to residual impacts which present an unacceptable risk to, or interference with, human health and public safety, defence, irreplaceable habitats, or unacceptable risk to the achievement of net zero.
- 4.3.18. The ExA notes is it for the SoSESNZ to consider CNP and its application. The ExA is satisfied with the application of the mitigation hierarchy and with the identification of residual impacts and therefore finds no reason for the proposed development to fall outside the '*general outweighing*' set out in paragraphs 3.3.63.
- 4.3.19. However, if the SoSESNZ disagrees with the ExA and seeks to consider CNP and how it applies to the proposed development, the ExA does not find any reason why CNP should not apply.

5. LAND RIGHTS AND RELATED MATTERS

5.1. INTRODUCTION

- 5.1.1. the application includes proposals for the compulsory acquisition (CA) and temporary possession (TP) of land and rights over land. The applicant is seeking the power to acquire rights over land, the power to extinguish rights over land, the power to occupy land temporarily, and the power to impose restrictive covenants.
- 5.1.2. This chapter discusses whether the evidence before the Examination justifies the granting of those powers, having regard to all relevant legislation and guidance, before providing our conclusions and recommendations. Consideration is also given to statutory undertakers (SU) land, detriments to the undertakings of SU, and relevant protective provisions.
- 5.1.3. This Chapter follows the structure set out below:
- Legislative Requirements;
 - The request for CA and TP powers;
 - The purposes for which land is required and the scope of the powers sought;
 - The examination of the CA and TP case;
 - Consideration of individual objections and issues;
 - Statutory Undertakers (SU);
 - Special Category Land; and
 - Conclusions.

5.2. LEGISLATIVE REQUIREMENTS

PA2008

- 5.2.1. Section 122(2) states that the land subject to CA, including rights, must be required for the development to which the development consent relates or must be required to facilitate or be incidental to the development. [Planning Act 2008: guidance related to procedures for the compulsory acquisition of land \(CA Guidance\)](#) states that in respect of land required for the development, the land to be taken must be no more than is reasonably required and be proportionate.
- 5.2.2. Section 122(3) states that there must be a compelling case in the public interest to acquire the land, which means that the public benefit derived from the CA must outweigh the private loss that would be suffered by those whose land is affected. In balancing public interest against private loss, CA must be justified in its own right.
- 5.2.3. Section 123 requires that one of three procedural conditions in subsections (2) to (4) must be met, namely:
- (2) the application included a request for CA of the land to be authorised;
 - (3) all persons with an interest in the land consent to the inclusion of the provision;
 - (4) the prescribed procedure is followed in relation to the land.
- 5.2.4. Section 127 and s138 of the PA2008 are relevant to SU land, rights, and apparatus.
- 5.2.5. Section 127 has provisions in relation to CA of land or rights over SU's land. It includes provisions which state that, if a SU makes a representation that is not withdrawn before the end of the Examination, then CA may only be authorised if

there is no serious detriment to the carrying on of the undertaking or, if purchased, it can be replaced by other land belonging to, or available for acquisition by, the undertakers without serious detriment to the carrying on of the undertaking.

- 5.2.6. Section 138 has provisions for the extinguishment of SUs' rights and removal of apparatus if the Secretary of State for Energy Security and Net Zero (SoSESNZ) is satisfied that it is necessary for the purpose of carrying out the development to which the Order relates.
- 5.2.7. Section 115(2) provides that, in addition to the development for which consent is required, under Part 3 of the PA2008 (the principal development), consent may also be granted for associated development. The PA2008 defines associated development as development which is associated with the principal development.
- 5.2.8. Several general considerations also must be addressed, either as a result of following the applicable guidance or in accordance with legal duties on decision-makers:
- All reasonable alternatives to CA must have been explored;
 - The applicant must have a clear idea of how it intends to use the land subject to CA powers;
 - The applicant must be able to demonstrate that funds are available to meet the compensation liabilities that might flow from the exercise of CA powers; and
 - The decision-maker must be satisfied that the purposes stated for the CA are legitimate and sufficiently justify the inevitable interference with the human rights of those affected.
- 5.2.9. Powers are requested for the compulsory acquisition of rights over Open Space land. The CA of such rights is covered by paragraph Section 132 of the PA2008 which says that an Order granting development consent that authorises the CA of a right over open space would be subject to special parliamentary procedure unless the Secretary of State is satisfied that one of the subsections applies. Subsection 132(3) applies if the Order land, when burdened with the Order right, would be no less advantageous to the persons in whom it is vested, other persons entitled to rights of common or other rights, and the public.
- 5.2.10. No further powers are requested for National Trust land, Crown land or allotments, which are covered by paragraphs Sections 130 and 131, and therefore those paragraphs are not engaged, and I give them no more consideration.
- 5.2.11. Further to Part 1 of Schedule 5 of the PA2008 at paragraph 2, TP powers are capable of being within the scope of a DCO. 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. Based on the PA2008, TP requires:
- Justification that the TP powers are needed to enable the construction of the proposed development;
 - Demonstration that the TP powers are compatible with human rights tests; and
 - That there are suitable compensation provisions for interference with a relevant right of interest.

NEIGHBOURHOOD PLANNING ACT 2017

- 5.2.12. The Neighbourhood Planning Act 2017 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.
- 5.2.13. Article 7(1)(b) of the Examining Authority's (ExA) recommended DCO (rDCO) (found at Appendix D of this Report) disapplies the provisions of the Act insofar as they relate to TP of land under articles 30 (TP of land for carrying out the authorised development) and 31 (TP of land for maintaining the authorised development).
- 5.2.14. 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.

5.3. THE REQUEST FOR CA AND TP POWERS

- 5.3.1. The draft DCO (dDCO) first included with the application [\[APP-012\]](#) and all subsequent dDCOs submitted by the applicant to the Examination up to and including its latest draft version [\[REP9-005/006\]](#) include provisions intended to grant the applicant powers of CA and TP of land and rights over land.
- 5.3.2. The application was also accompanied by an Explanatory Memorandum (EM), the latest draft version of which is [\[REP8-004/005\]](#), a Book of Reference (BoR), the latest version of which is [\[REP8-010\]](#), a Statement of Reasons (SoR), the latest version of which is [\[REP6b-014/015\]](#), a Funding Statement, the latest version of which is [\[REP6b-017/018\]](#), Land Plans, the latest version of which is [\[REP6b-007\]](#), two CA Schedules [\[REP6-026\]](#) and another one linked to change application only [\[REP8-032/033\]](#) and a Statutory Undertakers Position Statement, the latest version of which is [\[REP8-023\]](#).
- 5.3.3. During the Examination, the applicant made a formal change request (the details of which can be found in Section 1.5 of this report). The additional land requested invoked the requirements of the Infrastructure Planning (Compulsory Acquisition) Regulations 2010 (CA Regulations). Following receipt of the Change Application and for the reasons set out in the ExA's letter of 18 December 2024 [\[PD-013\]](#), the ExA accepted the Change Application into the Examination.
- 5.3.4. The latest version of the documents mentioned above reflect the Change Application. However, the ExA requested a separate CA Schedule to be submitted which showed all the Affected Parties (AP) following from the acceptance of the Change Application only [\[REP6b-021\]](#).
- 5.3.5. These set out the land and rights sought by the applicant, together with the reasons for their requirement and compensation provisions. Taken together with submissions made to the Examination, they form the basis of the ExA's considerations in this chapter.
- 5.3.6. The application includes 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.

5.4. THE PURPOSE FOR WHICH LAND IS REQUIRED AND THE SCOPE OF THE POWERS SOUGHT

- 5.4.1. The purposes for which the CA and TP powers are required are set out in the SoR [\[REP6b-014/015\]](#).
- 5.4.2. The CA powers sought are limited to the off-road cable routes which the applicant has not yet been able to secure via voluntary negotiation along with powers for the acquisition of rights in sub-soil interests of the on-road cable routes. The purpose for acquiring land is to enable the applicant to construct the works and the maintenance of the works thereafter, ensuring that the applicant is able to fulfil its function as operator of the finished development.
- 5.4.3. The main powers authorising the CA of land and, or interests in, or rights over land, are contained in Articles 21 (compulsory acquisition of land), 23 (compulsory acquisition of rights) and 25 (Acquisition of subsoil only) of the dDCO [\[REP9-005/006\]](#).
- 5.4.4. Other CA powers sought by the applicant include those contained in Article 14 (Public rights of way) which allows for the extinguishment of public rights of way (PRoW), Article 24 (Private rights over land) which allows for extinguishment of all existing private rights over land, Article 27 (Power to override easements and other rights) and Article 29 (rights under or over streets).
- The applicant's principal justification for the use of powers of CA is set out in the section 5 of the SoR [\[REP6b-014/015\]](#). In general terms, it states that:
 - The powers are required to secure the delivery of the proposed development as the land subject to CA is either needed for the proposed development, needed to facilitate the proposed development or is incidental to the proposed development;
 - The proposed development would help meet the urgent need for new energy infrastructure in the UK, improve resilience, contribute to the UK Government's legally binding target to reach net-zero emissions by 2050 and respond to the projected increase in demand for electricity;
 - The land included in the dDCO is the minimum land take required to construct, operate, maintain and mitigate the scheme and is therefore necessary to achieve the objectives of the scheme;
 - The CA of rights for off-road cable routes are sought to ensure the proposed development is deliverable as a fall-back position should voluntary agreement not be forthcoming on all sites needed to secure the off-road cable route;
 - CA of rights are sought for the for the delivery of the on-road cables route, if needed, to the extent that any of the on-road cabling are eventually required to be provided and it would be provided within land beneath the extent of the existing highway strata.
- 5.4.5. The applicant confirms that it is of the view that all alternatives to compulsory acquisition have been explored as evidenced by the large proportion of land within the Order Limits which is already secured by the applicant via voluntary agreement. The applicant also confirms that negotiations to secure the remaining off-road cable route option via voluntary agreement are ongoing and that the applicant has also sought to acquire the on-road subsoil interests through voluntary agreements where possible.
- 5.4.6. The main powers authorising TP of land to carry out and maintain the proposed development are contained in Articles 30 (Temporary use of land for carrying out

the authorised development) and 31 (Temporary possession of land for maintaining the authorised development).

- 5.4.7. Article 30 would enable the applicant to enter and take temporary possession of any land within the Order Limits, so long as the applicant has not executed a general vesting declaration to vest the land in question in itself or entered the land in question following a notice of entry. The applicant would also be expressly authorised to take temporary possession of the land identified in Schedule 12, being those listed in Appendix A and shaded in green on the Land Plans [\[REP6b-007\]](#). Article 30 (5) provides that before giving up possession of any land the Applicant would be obliged to remove all temporary works and restore the land to the condition it was in on the date on which possession of the land was first taken or such other condition as may be agreed with the owners of the land.
- 5.4.8. Article 31 would enable the applicant to take temporary possession of any land within the Order limits, if reasonably required for the purpose of maintaining the scheme, at any time during the maintenance period. The powers to use land temporarily for maintaining the scheme ensures that the land is available for maintenance works during a five-year period from the date on which that part of the authorised development first exports electricity to the national electricity transmission network.

5.5. THE EXAMINATION OF THE CA AND TP CASE

The Examination Process

- 5.5.1. 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 Equalities Act 2010. In addition, and in light of the representations received and the evidence submitted, the ExA has also considered whether a compelling case has been made in the public interest, balancing the public interest against private loss.
- 5.5.2. In examining the Application, the ExA considered all written material in respect of CA and TP and asked written questions regarding the applicant's approach to CA/TP in the first written questions [\[PD-004\]](#), namely identification of land subject to CA, need for CA and consideration of Section 122 requirements and the compliance with Equality Act 2010. A further question was asked of the applicant at ExQ2 [\[PD-011\]](#) in relation to CA and Crown Land Interests, as a result of the proposed change.
- 5.5.3. To facilitate the examination of the CA and TP case, the ExA requested the submission of a CA Schedule. The applicant prepared a first version of this [\[REP1-019\]](#) with the last version being [\[REP6-026\]](#). As a result of the change application and identification of additional land subject to CA or TP powers, an additional CA Schedule [\[REP6b-021\]](#) was submitted by the applicant identifying those land interests affected by the applicant's change only. The final CA Schedule [\[REP8-032/033\]](#) shows all APs in one document.
- 5.5.4. In addition, the CA and TP issues were explored in further detail at Compulsory Acquisition Hearings, namely CAH1 [\[EV9-001\]](#) and CAH2 [\[EV21-001\]](#) which focused on the change application only.

- 5.5.5. By the end of the Examination agreements had not been reached with all SU, with a number of cases in which objections had not been withdrawn and differences remaining at the end of the Examination. Objections and concerns have also been raised by both APs and IPs regarding CA and TP matters. These are considered later in this Chapter.

The Applicant's Case

- 5.5.6. The applicant's case for the CA and TP powers sought is set out in section 5 (The Case for Compulsory Acquisition) of the SoR [\[REP6b-014/015\]](#) as well as the applicant's explanation of how it considers its proposals meet the tests set out in S.122 of PA2008. It also describes how the applicant considers it has demonstrated the general considerations of the CA Guidance.
- 5.5.7. In summary, and as previously mentioned, the applicant states that all the land included in the dDCO is the minimum land take required and is therefore necessary to achieve the scheme's objectives. The applicant confirms that it has sought to minimise private loss of land by only seeking compulsory acquisition powers for the minimum possible area and find that the granting of CA powers represents a proportionate and legitimate interference with private rights and to be in the public benefit.
- 5.5.8. In ES Chapter 3 Alternatives and Design Iteration [\[APP-026\]](#) the applicant also states that is seeking compulsory acquisition powers to enable delivery of an off-road route, as the alternative of a wholly on-road route is considered unviable given its impacts regarding cost, programme, environmental effects and impacts to the local community. It also states, in relation to site selection, that irradiance, yield and grid connection capacity were determining factors for the site selection which comprised of a 5-stage process, ultimately leading to the applicant's identification of a red line boundary, site layout and potential cable routes, taking account of high-level environmental constraints.
- 5.5.9. Entitlement to compensation is provided by the existing national Compensation Code and Article 46 and Schedule 9 of the dDCO [\[REP9-005/006\]](#) and any dispute in respect of the compensation payable can be referred to the Upper Tribunal (Lands Chamber).
- 5.5.10. The applicant also addresses potential infringements of human rights with respect to Article 1 of The First Protocol, Article 6 and Article 8 of the European Convention on Human Rights. In relation to Articles 1 and 8, it considers that there is a compelling public interest case for the CA powers. Regarding Article 6, it summarises the engagement with landowners and states that persons with an interest in the land have had full opportunity to comment on the proposal.
- 5.5.11. Finally, the applicant confirms that the type of acquisition sought is limited, such that permanent forms of acquisition are sought for the rights only, alongside temporary possession of land. Appendix A of the SoR [\[REP6b-014/015\]](#) provides a summary of the purposes for which each plot of land subject to CA and TP powers is required.
- 5.5.12. The Land Plans [\[REP6b-007\]](#) show the location of each plot and uses colour-coding to identify the land or rights proposed to be acquired permanently or used temporarily and the dDCO [\[REP9-005/006\]](#) provides a description of each Works number.

Availability and Adequacy of Funds

- 5.5.13. The applicant's Funding Statement [\[REP6b-017/18\]](#) and response to the ExQ1 GCT.1.14 [\[REP2-007\]](#) explain that the applicant has access to finance to fund the works to be authorised by the Order.
- 5.5.14. As confirmed in [\[REP6b-017/18\]](#), the applicant estimates that the construction cost of the proposed development would be approximately £200m. The applicant also confirms that the total figure includes £20 million for the construction of cable routes should it be required to use the on-road option. That cable route figure includes approximately £1.3m for the compulsory acquisition of rights, calculated with reference to easements being exercised at commercial rates.
- 5.5.15. The ExA also notes that Article 46 of the dDCO [\[REP9-005/006\]](#) would require a guarantee or other form of security approved by the SoS to be in place prior to the exercise of the CA powers.
- 5.5.16. Based on the information provided and the applicant's Funding Statement [\[REP6b-017/18\]](#), the ExA are satisfied that the necessary funds would be available to the applicant to cover the likely costs of CA.

5.6. CONSIDERATION OF INDIVIDUAL OBJECTIONS AND ISSUES

- 5.6.1. In relation to those APs and SUs that have been identified as landowners with land interests affected by the powers of CA sought since the beginning of the Examination, the ExA considers that the following have objected or raised concerns which could be construed as, when taken as a whole, a general opposition to the proposed development and, consequently, to the CA and/or TP of land. Concerns raised by the individuals below remained unresolved by the end of the Examination:

- Timothy and Victoria Jane Wood [\[RR-533\]](#), [\[REP2-059\]](#);

- 5.6.2. Additionally, following the submission and acceptance of the applicant's change application, an additional CA Schedule [\[REP6b-021\]](#) was submitted which included all of the newly affected APs and SUs only. Having reviewed the RRs and WRs submitted into Examination, the ExA considers the following APs to have objected or raised concerns about CA and TP proposals that remained unresolved by the end of the Examination:

- Christopher McKeown and Myra Vasey McKeown [\[RR-515\]](#), [\[REP2-051\]](#), [\[REP2-052\]](#), [\[REP2-053\]](#), [\[REP6-043\]](#), [\[REP6-044\]](#), [\[REP6-045\]](#);
- Ann Galvin and Peter Bernard Galvin [\[RR-362\]](#), [\[REP1-042\]](#), [\[REP6-047\]](#);
- Michael John Banks [\[RR-351\]](#);
- Alexandra Victoria Louise Swainston and Martin Graham Swainston [\[RR-011\]](#), [\[RR-334\]](#), [\[REP1-027\]](#), [\[REP4-030\]](#);
- Catherine Elizabeth Taylor and James David Daniel [\[RR-223\]](#), [\[RR-360\]](#), [\[REP7a-008\]](#);
- Angeline Marie Hutchinson and Stephen Anthony Hutchinson [\[RR-030\]](#), [\[RR-487\]](#);
- Brenda Gray [\[RR-054\]](#);
- Rosemary Diane Hodgson and Stewart Phillip Hodgson [\[RR-449\]](#), [\[RR-495\]](#);
- Dorothy Angela Morris [\[RR-139\]](#);
- Lynsey Anne Oman and Tristram Lindsey Oman [\[RR-323\]](#);
- Ian Smith [\[RR-210\]](#);

- Catherine Mary Brannen and Joseph Eric Brannen [\[RR-070\]](#), [\[RR-260\]](#);
- Paul Mason and Sarah Louise Gardner [\[RR-401\]](#);
- Carol Wade [\[RR-066\]](#);
- Jean Melville Hetherington and Norman Hetherington [\[RR-236\]](#), [\[RR-383\]](#);
- Nicholas Hetherington [\[RR-376\]](#);
- Demi Hetherington [\[RR-130\]](#).

5.6.3. The ExA was kept updated throughout the Examination on how matters were progressing with the APs and SUs, with a specific CAH2 [\[EV21-001\]](#) focused on the change application only and those additional APs identified as such as a result of the change application. In addition, the applicant also provided the ExA with regular updates on the status of the negotiations with SUs via a Statutory Undertakers Position Statement, the last version of which is [\[REP8-023\]](#). The Statutory Undertakers Position Statement confirmed that the only SU with outstanding matters not agreed was Northern Gas Networks Limited. Objections received from SU in relation to SU land, rights or apparatus are addressed further along in this Chapter.

5.6.4. All outstanding objections/representations to CA and TP are considered below.

Timothy and Victoria Jane Wood

Plot 11/3

5.6.5. A RR [\[RR-533\]](#) was submitted on behalf of Mr and Mrs Wood, which was then followed by a WR [\[REP2-059\]](#) providing further detail on the issues and concerns raised at RR in relation to technical or environmental matters. Although neither the RR nor the WR formally object to the CA and TP of land, having reviewed its content, the ExA is of the view that there is an opposition, in principle, to the proposed development and therefore is interpreting it as an opposition to the CA/TP of land.

5.6.6. The applicant responded to the RR in [\[REP1-004\]](#) that there were on-going discussions with the landowner, although the applicant did accept that the noise generating activities during construction would have an impact on horses stabled in close proximity to the panel areas. The applicant also suggests that either restricting construction activities to certain timing or alternative piling techniques could be used to minimise noise.

5.6.7. The applicant's response to [\[REP2-059\]](#) is included in [\[REP3-004\]](#). In this document the applicant addresses concerns raised in relation to noise, traffic, glint and glare and the viability of the existing Cobby Castle business. The applicant makes reference to proposed mitigation as set out in the outline Construction and Environmental Management Plan (CEMP) [\[REP8-012\]](#), outline Construction Traffic Management Plan (CTMP) [\[REP8-014\]](#), and the assessment carried out in relation to glint and glare. The applicant also confirmed that, at the time of their response, they were in negotiations with Cobby Castle Forge regarding relocation of stabling.

5.6.8. The APs also raised concerns regarding impact on valuations and property prices. The applicant has highlighted, in [\[REP1-004\]](#), that there isn't evidence that solar farms have any impacts on property valuations and furthermore impacts on property process are not a material planning consideration.

5.6.9. The SoR [\[REP6b-014/015\]](#) states that plot 11/3 is needed for Works No. 3 which are linked with the delivery of the 33kV and the 132kV underground cabling. The applicant is proposing the use of the land temporarily and the acquisition of rights to

the land permanently in order to secure the delivery of the cabling component of the proposed development.

- 5.6.10. Overall, the ExA is satisfied that this plot is required for the proposed development, to facilitate it or is incidental to it and as such meets the test set out in Section 1222(2) of the PA2008.
- 5.6.11. Accordingly, while we accept that the CA powers sought might result in some adverse impacts to the owner's private interests, in view of the established need for energy generation and the need to provide certainty in terms of project delivery, the ExA considers there is a compelling case in the public interest for that the land to be acquired compulsorily. The ExA is therefore satisfied that it meets the tests in s122(3) PA2008.

Alexandra Victoria Louise Swainston and Martin Graham Swainston

Plot 3/6

- 5.6.12. The landowners have submitted RRs [RR-011] and [RR-334] and WR [REP1-027] which objected, in principle, to the proposed development. As a consequence of the change application, both IPs became APs on relation to plot 3/6. Following from the change application, Mrs. Alexandra Swainston objected specifically to the CA/TP of land via [\[REP4-030\]](#) and raised concerns regarding wording of the letter and also implications of the works on other utilities.
- 5.6.13. The applicant responded to this objection in [\[REP5-005\]](#) acknowledging it. The applicant also states in [\[REP6b-020\]](#) that it responded via email to the concerns raised by Mr and Mrs Swainston on the 15 November 2024 clarifying the nature of the powers sought.
- 5.6.14. Schedule 11 - Protective Provisions of the dDCO [\[REP8-002/003\]](#) includes provisions which protect the interests of certain statutory undertakers. Art. 33 (Apparatus and rights of statutory undertakers in stopped streets) governs what happens to statutory utilities' apparatus (pipes, cables, etc.) under streets that are temporarily stopped up by the Order.
- 5.6.15. The SoR [\[REP6b-014/015\]](#) states that plot 3/6 is needed for Works No. 3 which are linked with the delivery of the 33kV and the 132kV underground cabling. The applicant is proposing the use of the land temporarily and the acquisition of rights to the land permanently in order to secure the delivery of the cabling component of the proposed development.
- 5.6.16. Overall, the ExA is satisfied that this plot is required for the proposed development, to facilitate it or is incidental to it and as such meets the test set out in Section 122(2) of the PA2008.
- 5.6.17. Accordingly, while the ExA accept that the CA powers sought might result in some adverse impacts to the owner's private interests, in view of the established need for energy generation and the need to provide certainty in terms of project delivery, the ExA considers there is a compelling case in the public interest for that the land to be acquired compulsorily. The ExA is therefore satisfied that it meets the tests in s122(3) PA2008.

Catherine Elizabeth Taylor and James David Daniel

Plot 3/6

- 5.6.18. The landowners have submitted RRs [\[RR-223\]](#) and [\[RR-360\]](#) which objected, in principle, to the proposed development. As a consequence of the change application, both IPs became APs on relation to plot 3/6. Following from the change application, Ms. Catherine Taylor objected specifically to the CA/TP of land via [\[REP7a-008\]](#) for the same reasons as stated in the RRs.
- 5.6.19. The applicant, in [\[REP1-004\]](#) failed to respond specifically to either one of the RRs submitted. [\[RR-223\]](#) raised concerns regarding the size of the proposed development, land use, its impacts on agricultural land and biodiversity. [\[RR-360\]](#) raised concerns regarding transport and traffic, land use, and impacts on property valuations. The applicant does cover these issues, in general terms, in [\[REP1-004\]](#) but failed to reference either one of the RRs specifically.
- 5.6.20. In relation to scale of the proposed development, the applicant does refer back to the ES Chapter 3 Alternatives and Design Iteration [\[APP-026\]](#) and the Design Approach Document [\[AS-004\]](#) which provide details of the approach to design, taking into account the existing landscape context and any technical constraints that lead to the proposed size. In relation to land use and agricultural land, the applicant states that only 6.1% of the total site area includes land considered Best and Most Versatile (BMV). The applicant also states that solar farms provide valuable income for farmers, and that soils taken by solar farms can still be used for grazing, supporting food production. In relation to biodiversity, the applicant refers back to the assessment and conclusions of ES Chapter 6 Biodiversity [\[APP-029\]](#) and that the proposed development will lead to a significant net gain in biodiversity of 87.85% in habitat biodiversity units and a 108.12% net gain in hedgerow biodiversity units.
- 5.6.21. In relation to traffic and transport, the applicant referred to the assessment and conclusions in ES Chapter 12 Traffic and Transport [\[APP-035\]](#) and the outline CTMP [\[REP8-014\]](#) which include measures to mitigate against potential impacts on traffic and transport. In relation to property valuations, generally the applicant acknowledged concerns relating to house prices, however it is of the view that private property value is not considered to be a material matter in the determination of planning consent.
- 5.6.22. The SoR [\[REP6b-014/015\]](#) states that plot 3/6 is needed for Works No. 3 which are linked with the delivery of the 33kV and the 132kV underground cabling. The applicant is proposing the use of the land temporarily and the acquisition of rights to the land permanently in order to secure the delivery of the cabling component of the proposed development.
- 5.6.23. Overall, the ExA is satisfied that this plot is required for the proposed development to facilitate it or is incidental to it and as such meets the test set out in Section 122(2) of the PA2008.
- 5.6.24. Accordingly, while the ExA accepts that the CA powers sought might result in some adverse impacts to the owner's private interests, in view of the established need for energy generation and the need to provide certainty in terms of project delivery, the ExA considers there is a compelling case in the public interest for that the land to be acquired compulsorily. The ExA is therefore satisfied that it meets the tests in s122(3) PA2008.

Christopher McKeown and Myra Vasey McKeown (Plot 1/2); Ann Galvin and Peter Bernard Galvin (Plot 2/2); Michael John Banks (Plot 2/2); Angeline Marie Hutchinson and Stephen Anthony Hutchinson (Plot 3/6)

Brenda Gray (Plot 3/6); Rosemary Diane Hodgson and Stewart Phillip Hodgson (Plot 3/6); Dorothy Angela Morris (Plot 9/6); Lynsey Anne Oman and Tristram Lindsey Oman (Plot 9/6); Ian Smith (Plot 9/6); Catherine Mary Brannen and Joseph Eric Brannen (Plot 11/1); Paul Mason and Sarah Louise Gardner (Plot 12/30); Carol Wade (Plot 12/7); Jean Melville Hetherington and Norman Hetherington (Plots 7/6 and 8/3); Nicholas Hetherington (Plots 7/6 and 8/3) and Demi Hetherington (Plots 7/6 and 8/3)

- 5.6.25. All of the landowners referenced above have submitted RRs which objected, in principle, to the proposed development as IPs. Following from the applicant's change application, the parties included above became APs with a registered interest in land that is proposed to be subject to CA/TP powers.
- 5.6.26. Having reviewed the RRs and WRs submitted into Examination and considering their change in status for the reasons set above, although these APs did not formally object to the CA and TP of land, having reviewed the content of their submissions, the ExA is of the view that there is an opposition, in principle, to the proposed development and therefore is interpreting it as an opposition to the CA/TP of land.
- 5.6.27. The ExA has considered the land requirements and powers being sought for each plot mentioned above individually. However, for the reasons set above and considering that all of the APs have objected to the proposed development based on technical or environmental considerations only and that all the plots mentioned above are being subject to the same CA/TP powers in order to facilitate the same works, the ExA is issuing its view on these plots simultaneously.
- 5.6.28. For the avoidance of doubt, The SoR [\[REP6b-014/015\]](#) states that plots 1/2, 2/2, 3/6, 7/6, 8/3, 9/6, 11/1, 12/7 and 12/30 are needed for Works No. 3 which are linked with the delivery of the 33kV and the 132kV underground cabling. The applicant is proposing the use of the land temporarily and the acquisition of rights to the land permanently in order to secure the delivery of the cabling component of the proposed development.
- 5.6.29. The applicant has responded to concerns raised by the APs in [\[RR-515\]](#), [\[RR-362\]](#), [\[RR-351\]](#), [\[RR-030\]](#), [\[RR-487\]](#), [\[RR-054\]](#), [\[RR-449\]](#), [\[RR-495\]](#), [\[RR-139\]](#), [\[RR-323\]](#), [\[RR-210\]](#), [\[RR-070\]](#), [\[RR-260\]](#), [\[RR-401\]](#), [\[RR-066\]](#), [\[RR-236\]](#), [\[RR-383\]](#), [\[RR-376\]](#), [\[RR-130\]](#) in [\[REP1-004\]](#) although it failed to respond specifically to each one of the RRs submitted. However, the applicant does cover the main concerns raised by the APs in their RRs, in general terms, even though it fails make specific reference to all of the RRs.
- 5.6.30. Further to their initial RRs, WRs were also submitted by Christopher McKeown and Myra Vasey McKeown, namely [\[REP2-051\]](#), [\[REP2-052\]](#), [\[REP2-053\]](#), [\[REP6-043\]](#), [\[REP6-044\]](#), [\[REP6-045\]](#), Ann Galvin and Peter Bernard Galvin [\[REP1-042\]](#), [\[REP6-047\]](#). The WRs mentioned above provided further detail on the nature of the concerns from these two parties in relation to the proposed development. The applicant responded to [\[REP1-042\]](#) in [\[REP2-009\]](#), acknowledging the representation and the issues raised. The applicant referred in essence to its previous response provided in [\[REP1-004\]](#) in which it stated that it would seek to understand whether construction activities can be timed to avoid impacts on the business and would look into alternative piling techniques to minimise the noise generated. The applicant also confirmed that it was not anticipated that the

proposed development would cause any flooding issues to the business and that impacts from potential fire/explosion in relation to the BESS has been assessed.

- 5.6.31. In [\[REP3-004\]](#) the applicant responded to [\[REP2-051\]](#), [\[REP2-052\]](#). [\[REP2-053\]](#) was in relation to the accuracy of the BoR only. The applicant's response addresses concerns regarding street labelling and classification as well as the accurate representation of existing Public Rights of Way (PRoW).
- 5.6.32. Myra McKeown, on behalf of the McKeown family, submitted further WRs in relation to the proposed development at Deadline 6, namely [\[REP6-043\]](#), [\[REP6-044\]](#), [\[REP6-045\]](#). The applicant replied to these in [\[REP7-011\]](#). They raise concerns regarding the change application and the impacts on these on biodiversity, cultural heritage, impacts of PRoW, flooding, transport and land use and socioeconomic factors. As per detailed in the applicant's response, these matters are addressed in the ES which include and consider proposed mitigation measures. The applicant also confirms that it has signed a Heads of Terms for a voluntary agreement with Myra McKeown which includes provisions for the management of stock on the lane during construction. The solar panel area would not be accessible from High House Lane due to fencing and gates and it is not anticipated that any driven sheep would be able to enter the panel area by accident.
- 5.6.33. The applicant also replied in [\[REP7-011\]](#) that it would be willing to enter on to an agreement with Mr. Galvin in order to address concerns regarding potential impact on the business and has issued Heads of Terms for this effect.
- 5.6.34. Having carefully reviewed 1/2, 2/2, 3/6, 7/6, 8/3, 9/6, 11/1, 12/7 and 12/30 and all the concerns raised by PAs, the ExA is satisfied that these plots are required for the proposed development, to facilitate it or are incidental to it and as such meet the test set out in Section 1222(2) of the PA2008.
- 5.6.35. Accordingly, while the ExA accepts that the CA powers sought might result in some adverse impacts to the owner's private interests, in view of the established need for energy generation and the need to provide certainty in terms of project delivery, the ExA considers there is a compelling case in the public interest for that the land to be acquired compulsorily. The ExA is therefore satisfied that it meets the tests in s122(3) PA2008.

STATUTORY UNDERTAKERS

- 5.6.36. Section 127 of the PA2008 applies to land acquired by SU for the purposes of their undertaking, and places restrictions on the CA, or CA of a new right, of such land where a representation is made in relation to a DCO application and is not withdrawn by the close of the Examination. The dDCO at Article 32, includes provision to authorise the CA of land and rights held by SUs for the purpose of their undertaking [\[REP9-005/006\]](#).
- 5.6.37. If Section 127 applies, CA of SU's land can only be authorised if the SoS is satisfied:
- that the land can be purchased and not replaced without serious detriment to the SU or, if purchased, can be replaced by other land belonging to or available for purchase by the undertakers without detriment (Section 127(3)); or
 - the right can be purchased without serious detriment to the SU, or any detriment to the SU, in consequence of the acquisition of the right, can be made good by

the undertaker by the use of other land belonging to or available for acquisition by them (section 127(6)).

- 5.6.38. The issues raised in the RRs cover several topics, including scale of the proposed development, agricultural land and soils, glint and glare, drainage and flooding, the impact and safety of the proposed BESS, traffic and transport, and landscape and visual effects.
- 5.6.39. Section 138 of the PA2008 applies where an Order authorises the acquisition of land (compulsorily or by agreement) and there subsists over the land a relevant right or there is on, under or over the land relevant apparatus.
- 5.6.40. Section 138(4) provides that an Order may include provision for the extinguishment of the relevant right or the removal of relevant apparatus only if the SoS is satisfied that the extinguishment, or removal, is necessary for the purpose of carrying out the development to which the Order relates. The dDCO (Article 32) [\[REP9-005/006\]](#) includes such a provision.
- 5.6.41. At the close of the Examination the applicant's position in relation to these matters is contained in the CA Schedule [\[REP6b-021\]](#) and the SU Position Statement [\[REP8-023\]](#). Where outstanding objections or issues remain, these matters are summarised below.
- 5.6.42. It is worth noting that Network Rail Infrastructure Limited [\[AS-026\]](#), National Gas Transmissions plc [\[REP9-011\]](#), National Grid Electricity Transmissions plc [\[REP9-012\]](#) and Northumbrian Water Limited [\[REP9-013\]](#) have formally withdraw their objections to the DCO being granted. Northern Power Grid, informed the ExA, via [\[REP9-015\]](#), that subject to the completion of an Asset Protection Agreement, it would withdraw their objection. However, by the close of the Examination, the ExA had not received confirmation from Northern Power Grid of objection being withdrawn.

Environment Agency (EA)

CA of new right in relation to plots 4/3 and 11/6

Rights which are not subject to CA in relation to plot 9/11

Interests: Category 1 in respect of plot 4/3, 9/11 and 11/6

- 5.6.43. The EA has not raised any concerns regarding CA or the rights being requested in respect of any of the plots mentioned above in any of its representations. The RR received from the EA [\[RR-168\]](#) did not mention any concerns, nor were any concerns raised in relation to the change request [\[RR-554\]](#). Furthermore, the EA has confirmed, in their response to ExQ1 CA.1.4 and CA.1.5 [\[REP2-048\]](#) that they were not aware of any inaccuracies in relation to the BoR [\[APP-015\]](#), in the SoR [\[APP-014\]](#) or in the Land Plans [\[AS-015\]](#).
- 5.6.44. Furthermore, the EA has confirmed, in their submission [\[REP8-036\]](#) that all issues raised by the EA during Pre-Examination and Examination, have been resolved. This is also confirmed by the applicant in the most recent version of the SU Position Statement [\[REP8-023\]](#) and the SoCG [\[REP8-031\]](#), which has been signed by both parties.
- 5.6.45. The ExA is therefore satisfied that the measures included in the dDCO [\[REP9-005/006\]](#) as discussed and agreed with the EA would be sufficient to ensure that there would be no serious detriment to the carrying on of its undertaking. As such,

the ExA considers that the tests set out in Section 127 and Section 138 of the PA2007 are met.

Northern Gas Networks Limited (NGN)

CA of new rights in relation to plots 1/2, 1/3, 3/6, 12/6, 12/7, 12/16, 12/18, 12/20, 12/21, 12/22, 12/25, 12/27, 12/30

Rights which are not subject to CA in relation to plot 3/3, 3/4, 3/10, 3/11

Interests: Category 1 in respect of all plots

- 5.6.46. NGN have not submitted a RR or WR into the Examination. However, the ExA has been kept informed of the negotiations and engagement between the applicant and Northern Gas Networks Limited via the SU Position Statement [\[REP8-023\]](#).
- 5.6.47. The SU Position Statement reports that, by the end of the Examination, there were matters still not agreed between the applicant and NGN, namely in relation to protective provisions for NGN. Appendix 2 of SU Position Statement [\[REP8-023\]](#) details these negotiations and confirms that, in the event that agreement in relation to protective provisions will only be reached after the close of the Examination, the applicant will write to the SoS to confirm this.
- 5.6.48. The main areas of disagreement seem to consist of detailed wording in relation to paragraphs 101, 104 and 105 of the Protective Provisions included in the dDCO [\[REP9-005/006\]](#). As mentioned, the ExA has not received any submission from NGN in order to explain the disagreement with the applicant.
- 5.6.49. The ExA is satisfied that Section 127 of the PA2008 is not engaged as no powers would be granted over land owned by NGN. The ExA considers that the powers sought by the applicant are necessary for the proposed development and consistent with Section 138 of the PA2008.
- 5.6.50. The applicant provides justification for why it believes that the proposed inclusions of text in relation to paragraph 101(3)(b) is not required. Based on the information presented, the ExA considers that the applicant provides reasonable justification for their position and why the proposed text is not agreed and should not be included. Furthermore the applicant confirms that it considers the proposed drafting included in the dDCO [\[REP9-005/006\]](#) would cause NGN to suffer serious detriment.
- 5.6.51. In relation to the proposed changes to paragraph 104(1), the applicant does not consider it reasonable or practicable for the protective provisions to require that NGN's reasonable expenses are to be paid on demand. Based on the information presented, the ExA considers that the applicant provides reasonable justification for their position and why the proposed text is not agreed and should not be included. Furthermore the applicant confirms that it considers the proposed drafting included in the dDCO [\[REP9-005/006\]](#) would cause NGN to suffer serious detriment.
- 5.6.52. In relation to the proposed changes to paragraph 105(5) suggested by NGN, the applicant states that the proposed additional drafting is not acceptable as it considers entirely reasonable and proportionate for the applicant to determine whether a third party claim or demand, for which it would be liable to indemnify NGN, is to be settled or compromised, and if requested to have the conduct of any necessary proceedings to resist the claim or demand. Based on the information presented, the ExA considers that the applicant provides reasonable justification for their position and why the proposed text is not agreed and should not be included.

Furthermore the applicant confirms that it considers the proposed drafting included in the dDCO [\[REP9-005/006\]](#) would cause NGN to suffer serious detriment.

Northern Power Grid

CA of new rights in relation to plots 1/1, 1/2, 1/3, 2/2, 2/4, 3/1, 3/6, 5/3, 8/5, 9/6, 9/16, 10/1, 10/2, 11/1, 11/3, 11/5, 11/7, 11/8, 11/14, 11/16, 11/18, 12/2, 12/4, 12/5, 12/6, 12/7, 12/13, 12/14, 12/15, 12/16, 12/18, 12/19, 12/20, 12/21, 12/22, 12/23, 12/25, 12/26, 12/27, 12/28, 12/29, 12/30, 13/1, 13/2, 13/3, 13/4, 13/5, 13/6, 13/8, 13/11, 13/12, 13/13, 13/15, 13/16, 13/17, 13/18.

Rights which are not subject to CA in relation to plot 2/3, 2/5, 3/8, 3/10, 3/11, 5/1, 6/3, 6/10, 8/2, 9/7, 10/4, 10/5, 10/8, 11/4, 13/19, 13/20, 13/21, 13/22.

Interests: Category 1 in respect of all plots except 2/5, 6/3, 11/4, 11/5, 11/18, 12/2, 12/6, 12/13, 12/26. Category 2 in relation to 2/5, 3/8, 5/1, 6/3, 9/16, 11/4, 11/5, 11/18, 12/2, 12/6, 12/13, 12/26, 13/6, 13/19

- 5.6.53. The RR submitted on behalf of Northern Powergrid [RR-536] stated that Northern Powergrid had concerns over the proposed protective provisions contained within the dDCO as these did not take into account site specific issues and that the DCO seeks to acquire land and interest which would adversely affect Northern Powergrid.
- 5.6.54. The SU Position Statement reports that, by the end of the Examination, all matters were agreed between the applicant and Northern Powergrid and no outstanding matters to be resolved. However, [\[REP9-015\]](#) confirmed that although good progress had been made on all matters and agreement had been reached, this was subject to the completion of a Asset Protection Agreement, with Northern Powergrid confirming that until the Asset Protection Agreement was complete, their objection to the proposed development was not withdrawn. As no confirmation of such an agreement was submitted to the ExA prior to the end of the Examination, the ExA considers that Northern Powergrid still objects to the proposed development.
- 5.6.55. The ExA is satisfied that Section 127 of the PA2008 is not engaged as no powers would be granted over land owned by Northern Powergrid. The ExA considers that the powers sought by the applicant are necessary for the proposed development and consistent with Section 138 of the PA2008.
- 5.6.56. The SU Position Statement [\[REP8-023\]](#) states that engagement in relation to the drafting of protective provisions resulted in agreement between both parties, as set out in Part 6 of Schedule 11 of the dDCO [\[REP9-005/006\]](#). The applicant is of the position that the form of protective provisions included is adequate to ensure the proposed development will not cause any serious detriment, within the meaning of the Planning Act 2008, to the undertaking of Northern Powergrid.
- 5.6.57. However, based on the information that Northern Powergrid did not formally confirmed agreement, the ExA recommends that the SoSESNZ may wish to seek an update as to whether Northern Powergrid is now content to withdraw its representation, as no formal withdrawal has been received.
- 5.6.58. Based on the information presented, the ExA considers that the applicant provides reasonable justification for their position. Furthermore the applicant confirms that it

considers the proposed drafting included in the dDCO [\[REP9-005/006\]](#) would cause to suffer serious detriment.

Other Statutory Undertakers

- 5.6.59. The ExA has not received an objection, or any other submission from other SUs, including those identified by the applicant [\[REP8-023\]](#). The ExA sees no evidence to be concerned in relation to the powers requested by the applicant, the protective provisions, or any serious detriments to the undertakings of other SUs.
- 5.6.60. The ExA is therefore satisfied that s127 of the PA2008 is not engaged as no powers would be granted over land owned by other SUs. The ExA considers that the powers sought by the applicant are necessary for the proposed development and consistent with s138 of the PA2008.

5.7. SPECIAL CATEGORY LAND

- 5.7.1. Section 132 of the PA2008 says that an Order granting development consent that authorises the CA of a right over open space would be subject to special parliamentary procedure unless the SoS is satisfied that one of the subsections applies. Subsection 132(3) applies if the Order land, when burdened with the Order right, would be no less advantageous to the persons in whom it is vested, other persons entitled to rights of common or other rights, and the public.
- 5.7.2. The Order land includes special category land, more specifically classed as open space, so Section 132 of the PA2008 is engaged. The land is designated as a Country Park is in the ownership of Stockton Borough Council and forms part of the southern extent of the Wynyard Woodland Park. As the Country Park is land used for the purposes of public recreation, it falls within the definition of Open Space. The relevant plots of land (13/14 and 13/16),. These are included in the BoR [\[REP8-010\]](#) and in the Land Plans [\[REP6b-007\]](#).
- 5.7.3. The plots comprise 1,644 square metres of land to be used temporarily with rights to be acquired permanently for the installation and thereafter the maintenance of off-road electrical cables in these plots.
- 5.7.4. The ExA agrees with the applicant, as set out in the SoR [\[REP6b-014/015\]](#) that the physical effect of the CA powers sought would be restricted to cable installation and maintenance and would be marginal, in terms of extent and duration.
- 5.7.5. The ExA also agrees with the applicant in relation to the nature of the Open Space Land not being affected by the rights given the sub-surface nature of the majority of proposals. Furthermore, the applicant confirms that in its outline PRoW Management Plan [\[REP6b-022/023\]](#) to keeping the route open either through management or use of Horizontal Directional Drilling (HDD) cabling technique.
- 5.7.6. Consequently, the ability for the public to access the land following construction would therefore be no different to the current situation. Accordingly, the land when burdened with the right, will be no less advantageous than it was before to the persons in whom it is vested or the public, and the exception in section 132(3) applies and replacement land is not necessary.
- 5.7.7. These works would be considered to fall under section 131(4b) given the land required is required for the proposed development which is a temporary (albeit long-lived) use of land and therefore the Order should not be subject to Special Parliamentary Procedure.

5.8. CONCLUSIONS

- 5.8.1. The approach taken by the ExA to the question of whether and what land rights powers the ExA should recommend that the SoS grant is to apply the relevant sections of the PA2008, including Section 122 and Section 123, the CA Guidance, the Human Rights Act 1998 and, in the light of the representations received, to consider whether a compelling case is made in the public interest, balancing the public interest against private loss.
- 5.8.2. The dDCO [\[REP9-005/006\]](#) deals with the proposed development itself and CA and TP powers. The case for CA and TP powers is not considered until the ExA forms a view on the case for the development overall. The ExA has considered the case for development in the preceding chapters and in Chapter 4 and has concluded that the case is made.
- 5.8.3. In considering whether there is a compelling case in the public interest to acquire the land (s122(3) of the PA2008), the ExA takes into account the applicant's case for CA and TP, the individual issues and objections raised, and all submissions made to the Examination, as set out above in the Chapter.
- 5.8.4. This Chapter deals with need for CA and TP, the purposes for which the powers are requested, alternatives to CA and TP, individual objections and issues, Statutory Undertakers and protective provisions, availability and adequacy of funds and potential impediments, and human rights and the compelling case in the public interest.
- 5.8.5. In relation to the application for CA and TP powers, the ExA finds:
- there is a clear need for all the land included in the BoR to be subject to CA and TP, the land sought for the proposed development and subject to CA would be land required for the purposes of Section 122(2)(a) and (b) of the PA2008 and that it meets the tests set out in that Section;
 - the application site is selected appropriately, all reasonable alternatives to CA have been explored and that there are no alternatives which ought to be preferred;
 - 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 extent of land over which powers are sought would be no more than is reasonably required and it is proportionate to the needs of the proposed development;
 - the private loss to those affected is in part mitigated through the selection of the land, minimisation of the extent of the rights and interests to be acquired and the inclusion, where relevant, of protective provisions in favour of those affected;
 - the proposed development represents a significant public benefit, and in all cases, relating to individual objections and issues, CA and TP is justified to enable its implementation;
 - in relation to all SUs, the ExA is satisfied that the measures included in the dDCO [\[REP9-005/006\]](#) are sufficient to ensure that there would be no serious detriment to the carrying on of the SUs undertaking. As such, the ExA considers that the tests set out in Section 127 and Section 138 of the PA2007 are met.
 - the powers sought by the applicant in relation to SUs are necessary for the proposed development and consistent with s138 of the PA2008;
 - adequate and secure funding would be likely to be available for CA;
 - the Examination has ensured a fair and public hearing and any interference with human rights arising from implementation of the proposed development would

be for a legitimate purpose that would justify such interference in the public interest and to a proportionate extent; and

- compensation would be available for quantifiable loss.

- 5.8.6. The ExA has had regard to the Human Rights Act 1998. In some cases, there would be interference with private and family life and home in contravention of Article 8, and interference in the peaceful enjoyment of possessions in contravention of Article 1 of the First Protocol of the Human Rights Act 1998. Regarding Article 6, 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 justifies the interference with human rights. The ExA therefore concludes that any interference with human rights arising from implementation of the proposed development would be proportionate and would strike a fair balance between the rights of the individual and the public interest.
- 5.8.7. Taking the above factors together, the ExA considers that the SoS can be satisfied that there is a compelling case in the public interest for CA and that the proposed development would comply with the PA2008 in this regard.
- 5.8.8. Concerns were raised in relation to the approach to alternatives, and the overall scale and extent of land required for the proposed development. However, the ExA concludes, for the reasons set above, that the applicant's approach to these matters complies with the CA Guidance in terms of being reasonable and proportionate. With regards the specific point about the flexibility sought within the Order land and the provisions for overplanting, the ExA has agreed that the flexibility sought is necessary to deliver the benefits of the proposed development.
- 5.8.9. The ExA is satisfied with the application for TP powers because the rights sought are for identified legitimate purposes and are compatible with human rights tests and considers that the rDCO (Appendix D) secures land rights powers appropriately in relation to the relevant legislation and policy.

6. DRAFT DEVELOPMENT CONSENT ORDER AND RELATED MATTERS

6.1. INTRODUCTION

- 6.1.1. This chapter provides an overview of the Development Consent Order (DCO), the applicant's updates to the draft DCO (dDCO) during the Examination, and the changes to the applicant's final dDCO [\[REP9-005/006\]](#) to arrive at the recommended DCO (rDCO), which is included in Appendix D.
- 6.1.2. A dDCO [\[APP-012\]](#) and an Explanatory Memorandum (EM) [\[APP-013\]](#) were submitted by the applicant with its application. The EM describes the purpose of the dDCO and its articles and schedules.
- 6.1.3. While the Infrastructure Planning (Model Provisions) (England and Wales) Order 2009, (the model provisions) is repealed, the application version of the dDCO draws on the model provisions as well as precedent set by made DCOs for other Nationally Significant Infrastructure Projects under the Planning Act 2008 (PA2008). There has been a change of approach to the use of model provisions since the Localism Act 2011, and although they provide a starting point for the consideration of the DCO, precedent cases are generally more appropriate. The dDCO is in the form of a Statutory Instrument as required by s117(4) of the PA2008.
- 6.1.4. The Overarching National Policy Statement for Energy (NPS EN-1) includes that the Secretary of State should only impose requirements that are necessary, relevant to planning, relevant to the development to be consented, enforceable, precise, and reasonable in all other respects. (Paragraph 4.1.16).
- 6.1.5. Guidance on the preparation of a DCO includes [Planning Act 2008: Content of a Development Consent Order required for Nationally Significant Infrastructure Projects \(30 April 2024\)](#), and [Nationally Significant Infrastructure Projects - Advice Note Fifteen: drafting Development Consent Orders \(1 July 2018\)](#).
- 6.1.6. The following sections of this chapter:
- Describe the structure and functions of the dDCO [\[REP9-006\]](#);
 - Summarise the processes used to examine the dDCO and the iterations to the dDCO [\[REP9-006\]](#) during Examination;
 - Report on the ExA's considerations of the dDCO [\[REP9-006\]](#) and relevant submissions made by the applicant and other parties;
 - Set out the changes made to the dDCO [\[REP9-006\]](#); and
 - Provide the recommended changes leading to the rDCO (Appendix D).

6.2. STRUCTURE AND FUNCTION OF THE DRAFT DCO

- 6.2.1. Each iteration of the applicant's dDCO contains articles and schedules including requirements and protective provisions. The articles are in six parts, which are briefly described here and in more detail in the final EM [\[REP8-005\]](#) submitted to the Examination. The rDCO (Appendix D) has the same structure as the dDCO:

Table 1: Structure of the dDCO

Part 1 – Preliminary	Includes Article (Art.) 1 and Art.2 which provide for the way in which the Order should be cited, when it takes effect and for the interpretation of the rest of the Order including schedules and definitions.
Part 2 – Principal Powers	Includes Art. 3 to 8 which set out the principal powers, provides for the grant of development consent, allows its construction, operation, maintenance and decommissioning, and sets out who has the benefit of the Order and how those powers can be transferred. It includes provisions in relation to maintenance, statutory nuisance and the disapplication and modification of provisions in the Land Drainage Act 1991, the Neighbourhood Planning Act 2017.
Part 3 – Streets	Includes Art. 9 to 17 which provides for the execution of works in or under the streets, the New Roads and Street Works Act (the 1991 Act) provisions that apply, powers to alter the layout of streets, the temporary and permanently stopping up of Public Rights of Way (PRoW) and the construction and maintenance of altered streets. It also includes provisions for the access to works, agreements with street authorities and related compensation provisions, and traffic regulation measures.
Part 4 – Supplemental Powers	Includes Art. 18 to Art. 20. Provides supplemental powers for the discharge of water, protective works to buildings and the authority to survey and investigate.
Part 5 – Powers of Acquisition	Includes Art. 21 to 34. Provides powers for the compulsory acquisition of land and rights and the temporary use of land. It includes provisions for time limits, the right to impose restrictive covenants, private rights, acquisition of subsoil only, rights under and over streets, statutory undertakers and their apparatus, the mineral code, and compensation provisions. Modifications would be made to the compulsory purchase and compensation provisions under general legislation, including the Compulsory Purchase Act 1965, the Compulsory Purchase (Vesting Declarations) Act 1981, the Acquisition of Land Act 1981, and the Town and Country Planning Act 1990.
Part 6 - General	Includes Art. 35 to 47 which detail miscellaneous and general provisions in relation to removal of human remains, operational land, certification, service of notices, felling or lopping of hedgerows and trees, arbitration, requirements and appeals, landlord and tenant law, crown rights, protective provisions, and funding.

Schedules 1-13	Contain information referred to in the articles, including the description of the authorised development, requirements, streets subject to street works, alteration of streets, permanent and temporary alteration of layout, public rights of way to be temporarily and permanently stopped up, permanent and temporary access to works, removal of hedgerows, land in which only new rights may be acquired, modification of compensation and compulsory purchase enactments for the creation of new rights and imposition of new restrictive covenants, land in which temporary possession may be taken, hedgerows, protective provisions, arbitration rules and documents to be certified.
----------------	--

6.3. EXAMINATION OF THE DRAFT DCO

6.3.1. All changes to the dDCO are recorded in the applicant's DCO Schedule of Changes [\[REP9-007\]](#) alongside the applicant's reason for amendment.

6.3.2. This section does not report on every change the applicant has made to the dDCO as several were because of typographical errors, to resolve grammatical inconsistencies, or were revisions that were not deemed controversial during Examination. Also, all queries that were considered adequately justified by the applicant and do not require any change to the dDCO [\[REP8-003\]](#) are not reported in this Chapter.

6.3.3. However, this Chapter does comment on those changes that the ExA considers are more significant because of their effect or because they gave rise to a number of submissions or questions.

6.3.4. Furthermore, and following from the applicant's final submission of the draft DCO dDCO [\[REP9-006\]](#), the ExA, having taken into consideration all the submissions made during the Examination and its position in relation to the issues covered within this Report, has made further changes to the any further changes to the dDCO [\[REP9-006\]](#). Further changes proposed by the ExA to the final dDCO [\[REP9-006\]](#) are also considered here.

CHANGES DURING EXAMINATION

6.3.5. During the Examination the applicant sought to make various changes to the dDCO, including changes made as a result of the change application made by the applicant to the Order Limits to facilitate the delivery of the on-street cabling option. There were also a number of changes made to the dDCO as a result of ongoing engagement with IPs and APs, including the host authorities.

6.3.6. The notable changes made to the dDCO during the Examination, and the reasons for them, are summarised in the table below, Table 2.

6.3.7. The ExA is satisfied that all of these changes are justified by the evidence and can be recommended for inclusion in the DCO if the Secretary of State (SoS) concludes that development consent should be granted.

6.3.8. In addition, the ExA is suggesting further changes to the dDCO [\[REP9-006\]](#) with the rDCO in Appendix D. Those changes are included in Table 3.

Table 2: DCO Provisions and ExA's reasoning on proposed changes during examination

Provision	Proposed Change	Why the change is necessary/ExA reasoning
Article 7 (Disapplication and modification of legislative provisions)	Delete “b) regulation 12 (requirements for environmental permit) of the Environmental Permitting (England and Wales) Regulation 2016(b) in relation to the carrying on of a flood risk activity and;”	Following engagement with the Environment Agency, the applicant no longer felt the need to disapply regulation 12. The ExA agrees with the justification provided.
Article 46 (Inconsistent planning permissions)	Article 46 added to the DCO. “46.—(1) Any planning permission which has been initiated prior to the commencement of the authorised development pursuant to this Order may continue to be lawfully implemented thereafter notwithstanding any physical incompatibility with the authorised development or inconsistency with any provision of this Order. (2) As from the date on which the authorised development is commenced any conditions of a planning permission granted pursuant to Part 3 (Control over Development) of the 1990 Act (whether express or otherwise) which relate to land within the Order limits or land adjacent to the Order limits cease to have effect to the extent they are inconsistent with the authorised development or with anything done or approved under the requirements in Part 1 (requirements) of Schedule 2. (3) As from the date of this Order where planning permission (whether express or otherwise) is granted (whether prior to the date of this Order or after) pursuant to Part 3 of the 1990 Act in respect of land within the Order limits for development not forming part of the authorised development, the carrying out of development pursuant to such planning permission is not to operate	Article 46 has been added to address any overlap of the Order with any other planning conditions and planning obligations, and to provide clarity in terms of enforcement and which consent has effect. This is following from the Hillside Park Limited v Snowdonia National Park Authority [2022] UKSC 30. In that case, the Supreme Court ruled that, unless there is an express provision otherwise, whether another planning permission may lawfully be implemented depends upon whether it remains physically possible to carry out the development authorised by the second permission considering what has already been done under the first permission. The ExA agrees with the justification provided.

Provision	Proposed Change	Why the change is necessary/ExA reasoning
	to prevent the undertaker from carrying out further works for the development of the authorised development pursuant to the terms of this Order. (4) Nothing in this Order restricts the undertaker from seeking or implementing, or the relevant planning authority from granting, planning permission for development within the Order limits. (5) Any development, or any part of a development within the Order limits which is constructed or used under the authority of a planning permission pursuant to Part 3 of the 1990 Act (whether express or otherwise) following the coming into force of this Order is to be disregarded at all times for the purposes of ascertaining whether or not an offence has been committed under the provisions of sections 160 (offences) or 161 (breach of terms of order granting development consent) of the 2008 Act.	
Schedule 2, Part 1, Requirement 4 (Construction environment management plans (CEMP))	Add to (1): “such approval to be in consultation with the Environment Agency” and replace “Environment Agency” with “relevant planning authority” in (2)(i)	Following comments from Darlington Borough Council (DBC), change has been made to the dDCO in order to improve accuracy and correctly reflect responsibilities of the Environment Agency (EA) and DBC. The ExA agrees with the justification provided.
Schedule 2, Part 1, Requirement 8 (Materials Management)	Replace in (1) “to which the materials management plan for that phase relates” with “with the Environment Agency”	Following comments from Darlington Borough Council (DBC), change has been made to the dDCO in order to improve accuracy and correctly reflect responsibilities of the Environment Agency (EA) and DBC. The ExA agrees with the justification provided.

Provision	Proposed Change	Why the change is necessary/ExA reasoning
Schedule 3 (Streets subject to street works)	Within column (3) Description of Works of the table of street works in Schedule 3, references to “highway” have been removed and references to “street” have been inserted.	Change made to the dDCO in order to improve drafting precision and for consistency with the references of “streets” within Article 9. The ExA agrees with the justification provided.
Schedule 3 (Streets subject to street works)	Add “Parish of Bishopton – Folly Bank - Cable works beneath the width of street as shown with reference CC5 on sheet 9 of the street works, public rights of way and access plans.” Add “Parish of Redmarshall - Redmarshall Road, in the vicinity of Morrington Bridge - Cable works beneath the width of street as shown with reference CC6 on sheet 11 of the street works, public rights of way and access plans.”	Change made to enable the carrying out of cabling works for the purpose of delivering the off-road cable route. The ExA agrees with the justification provided.
Schedule 3 (Streets subject to street works)	Delete “Parish of Bishopton – The Green - Cable works beneath the width of highway comprising a length of 330m as shown between points marked K and M on sheets 9 and 11 of the street works, public rights of way and access plans.” Delete “Parish of Bishopton – The Green - Cable works beneath the width of highway comprising a length of 700m as shown between points marked M and N on sheets 9 and 11 of the street works, public rights of way and access plans.”	Change made as cable route optionality in this location has been resolved in favour of the off-road route to the south of Bishopton Village and the Order limits have been updated to remove the on-road cable route through Bishopton. The ExA agrees with the justification provided.
Schedule 11, Part 4 (For the Protection of the Environment Agency)	Delete Part 4 (for the Protection of the environment Agency) of Schedule 11.	Following engagement with the Environment Agency, Part 4 of Schedule 11 has been removed as parties agree that the Protective Provisions previously included are redundant. The ExA agrees with the justification provided.

Provision	Proposed Change	Why the change is necessary/ExA reasoning
Article 25 (Acquisition of subsoil only)	Add: "Acquisition of subsoil only (25)(1) The undertaker may acquire compulsorily so much of, or such rights in, the subsoil of the land referred to in paragraph (1) of article 21 (compulsory acquisition of land) or article 23 (compulsory acquisition of rights) as may be required for any purpose for which that land may be acquired under that provision instead of acquiring the whole of the land. (2) Where the undertaker acquires any part of, or rights in, the subsoil of land, the undertaker is not required to acquire an interest in any other part of the land. (3) The following do not apply in connection with the exercise of the power under paragraph (1) in relation to subsoil only— (a) Schedule 2A (counter-notice requiring purchase of land not in notice to treat) to the 1965 Act as modified by Schedule 9 (modification of compensation and compulsory purchase enactments for the creation of new rights and imposition of new restrictive covenants); (b) Schedule A1 (counter-notice requiring purchase of land not in general vesting declaration) to the 1981 Act; and (c) section 153(4A) (blighted land: proposed acquisition of part interest, material detriment test) of the 1990 Act. (4) Paragraphs (2) and (3) are to be disregarded where the undertaker acquires a cellar, vault, arch or other construction forming part of a house, building or factory.	Following from Change 1 of the Change Application, this article was added by the applicant in order to enable the compulsory acquisition of subsoil required for the laying of cables along the on-road cable route. The ExA agrees with the justification provided and deems change to the dDCO necessary for the delivery of the proposed development.
Article 30 (Temporary use of land or carrying out the authorised project)	Add: "(10) Nothing in this article precludes the undertaker from— (a) creating and acquiring new rights or imposing restrictions over any part of the Order land identified in Schedule 8 (land in which only new rights etc. may be acquired); or (b) acquiring any part of the subsoil of (or rights in the subsoil of) that land under article 25 (acquisition of subsoil only) or any part of the subsoil of or airspace over	As a result of the addition of Article 25 in order to allow for the acquisition of subsoil only it was necessary to clarify Article 30 in relation to not precluding the undertaker's exercise of the rights included in Schedule 8 of the dDCO pursuant to the power in

Provision	Proposed Change	Why the change is necessary/ExA reasoning
	that land under article 29 (rights under or over streets)	Article 25 (Acquisition of subsoil only). The ExA agrees with the justification provided.
Article 46 (Funding)	Add: "(d) article 25 (acquisition of subsoil only)"	The amendment makes clear that, the undertaker must not exercise compulsory acquisition powers under Article 25 unless it has first provided the required guarantee or security under Article 46. The ExA agrees with the justification provided and deems change to the dDCO necessary for the delivery of the proposed development.
Schedule 5, Part 1, (Public rights of way to be temporarily stopped up)	Add "Parish of Brafferton – Footpath No.9 - Temporary management including temporary stopping up over the public right of way, referenced FP-Bfn.9, comprising a length of 613m as shown between points 11 and 11a on sheet 1 of the Street Works, Public Rights of Way and Access plans"	Following from Change 2 of the Change Application, this amendment is to authorise temporary management measures along Footpath No.9 on High House Lane. The ExA agrees with the justification provided and deems change to the dDCO necessary for the delivery of the proposed development.
Schedule 8 (Land in which only new rights etc. may be acquired)	Add: "1/1, 1/2, 2/2, 2/6, 3/1, 3/6, 8/6, 9/6, 9/8, 10/2" to Work No. 3	Following from Change 1 of the Change Application, these additional land plots were added by the applicant as these are now identified as land in which compulsory acquisition of subsoil rights is required for the laying of cables along the on-road cable route. The ExA agrees with the justification provided and deems change to the dDCO necessary for the

Provision	Proposed Change	Why the change is necessary/ExA reasoning
		delivery of the proposed development.
Schedule 8 (Land in which only new rights etc. may be acquired)	Add: "7/4, 7/5, 7/6, 8/3" to Work No. 3 and Work No. 5	<p>Following from Change 1 of the Change Application, these additional land plots were added by the applicant as these are now identified as land in which compulsory acquisition of subsoil rights is required for the laying of cables along the on-road cable route.</p> <p>The ExA agrees with the justification provided and deems change to the dDCO necessary for the delivery of the proposed development.</p>
Schedule 8 (Land in which only new rights	Add: "9/15, 11/1, 11/10, 11/11, 11/12, 11/16, 12/4, 12/7, 12/9, 12/10, 12/12, 12/14, 12/15, 12/16, 12/17, 12/18, 12/20, 12/23, 12/24, 12/25, 12/27, 12/30, 12/31, 12/32, 13/1, 13/3, 13/5, 13/8, 13/11, 13/13, 13/15, 13/17, 13/18	<p>Following from Change 1 of the Change Application, these additional land plots were added by the applicant as these are now identified as land in which compulsory acquisition of subsoil rights is required for the laying of cables along the on-road cable route.</p> <p>The ExA agrees with the justification provided and deems change to the dDCO necessary for the delivery of the proposed development.</p>
Introductory wording	Add: "The Secretary of State is satisfied that the land identified in the special category land plans and the book of reference as open space over which rights may be acquired compulsorily under this Order:(a) when burdened with any new rights authorised to be compulsorily acquired under this Order, will be no less advantageous than it was before to the persons in whom it is vested, other persons, if any, entitled	Stockton-on-Tees Borough Council (SBC) raised concerns regarding plots 13/14 and 13/16 being designated as a Country Park and therefore Special Category Land - Open Space. As the applicant seeks compulsory powers within the dDCO to acquire rights over the identified open

Provision	Proposed Change	Why the change is necessary/ExA reasoning
	to rights of common or other rights, and the public, and that, accordingly, section 132(3) of the 2008 Act applies; and further that (b) the identified open space land does not also form part of a common or fuel or field garden allotment, the rights authorised to be compulsorily acquired over the identified land under this Order are being acquired for a temporary (although possibly long-lived) purpose and that, accordingly, section 132(4B) of the 2008 Act also applies.	space plots, accordingly section 132 of the Planning Act 2008 applies by virtue of subsection 132(1). In accordance with subparagraph (b), this wording has been added to the dDCO for the Secretary of State to confirm, if the DCO is granted, that subsections 132(3) and 132(4B) apply. The ExA agrees with the justification provided.
Article 2 (Interpretation)	Add: ““special category land plans” means the document of that description listed in Schedule 13 (documents to be certified) and certified by the Secretary of State as the special category land plans for the purposes of this Order;”	Pursuant to the identification of open space land within the Order limits, definition was added. The ExA agrees with the justification provided.
Schedule 2, Part 1 (Requirements), Paragraph 5	Add to sub-paragraph (4) to read: “(4) No decommissioning works must be carried out until the relevant planning authority approves, in consultation with the relevant highway authority for the highway(s) to which the relevant decommissioning traffic management plan relates, the plans submitted in relation to such works.”	Amendment made in response to National Highway’s representation [REP3-015] which requested change to improve accuracy and clarity. The ExA agrees with the justification provided and deems change to the dDCO necessary for the delivery of the proposed development.
Schedule 5, Part 1 (Public rights of way to be temporarily stopped up)	Add “Parish of Carlton – Traffic-free cycle route - Temporary management of the public right of way including temporary stopping up over a traffic-free cycle route, comprising a length of 15m as shown between points 63 and 64 on sheet 13 of the street works, public rights of way and access plans.”	SBC identified this route as traffic-free cycle route near Carlton. The applicant states that it may require to temporarily manage the identified section of this route whilst carrying out works to lay off-road cabling. The ExA agrees with the justification provided and deems change to the

Provision	Proposed Change	Why the change is necessary/ExA reasoning
		dDCO necessary for the delivery of the proposed development.
Article 10 (Application of the 1991 Act)	Delete: “(4) The following provisions of the 1991 Act do not apply in relation to any works executed under the powers conferred by this Order— (a) section 56(d) (power to give directions as to timing of street works); (b) section 56A(e) (power to give directions as to placing of apparatus); (c) section 58(f) (restriction on works following substantial road works); (d) section 58A(g) restriction on works following substantial road works); (e) section 61 (protected streets); and (f) schedule 3A(h) (restriction on works following substantial street works)”	Following engagement with the DBC, Subparagraph 4 of Art. 10 has been deleted so that the provisions of the 1991 Act previously listed are no longer disapplied. The ExA agrees with the justification provided.
Article 11 (Power to alter layout, etc., of streets)	Add: “(3) The undertaker must restore any street that has been temporarily altered under this Order to the reasonable satisfaction of the street authority”.	Following engagement with the DBC, Subparagraph 3 of Art. 11 has been added in order to safeguard its position as Highways Authority. The ExA agrees with the justification provided.
Article 12 (Construction and maintenance of altered streets)	Add: “(3) Subject to paragraph (4), the temporary alterations to each of the streets specified in Part 2 (temporary alteration of layout) of Schedule 4 must be completed to the reasonable satisfaction of the street authority and the temporary alterations must be maintained by and at the expense of the undertaker. (4) Those restoration works carried out pursuant to article 11(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.”	Following engagement with the DBC, Subparagraphs 3 and 4 of Art. 12 has been added in order to safeguard its position as Highways Authority. The ExA agrees with the justification provided.

Provision	Proposed Change	Why the change is necessary/ExA reasoning
Article 13 (Temporary stopping up public rights of way)	Add: “(2) The undertaker must provide reasonable access for pedestrians going to or from premises abutting a public right of way affected by the temporary stopping up, prohibition, restriction, alteration or diversion of a public right of way under this article if there would otherwise be no such access.”	Following engagement with the DBC, Subparagraph 2 of Art. 13 has been added in order to safeguard its position as Highways Authority. The ExA agrees with the justification provided.
Schedule 2 (Requirements), Part 1, Requirement 5	Add: “(7) In this Part of this Schedule – (a) “solar farm works” means that part of the authorised development identified in Work No. 1, Work No.2, Work No.3 (but excluding Work No.3(b)) and Work No.4; and (b) “grid connection works” means that part of the authorised development identified in Work No.3(b) and Work No.5.”	Change made to the dDCO in order to improve drafting precision and clarify the meaning of the terms “solar farm works” and “grid connection works” in relation to Requirement 5. The ExA agrees with the justification provided.
Schedule 13 (Documents to be certified)	Add: “Location Plan – Volume 2, document reference 2.1”	The applicant suggested that the “Location Plan” should be added as part of the documents to be certified by the SoS as a consequence of subparagraph (2)(a) of Requirement 3 (Detailed design approval). The ExA believes that the Location Plan should be added to Requirement 3 – Detailed design approval as to provide in order to provide certainty in relation to the location of the proposed development. The ExA agrees with the justification provided.

6.4. DCO MATTERS OF CONTENTION AND OBJECTIONS OUTSTANDING

6.4.1. 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 [\[REP9-006\]](#).

6.4.2. Table 3 then sets out those DCO provisions that the ExA recommends are changed. For ease of reference, the text shown in bold and strikethrough in Table 3 identifies insertions, deletions or amendments of text. The recommended changes are reflected in the recommended DCO (rDCO) in Appendix D.

6.4.3. As confirmed within the Statement of Commonality [\[REP8-027\]](#) there were no matters outstanding in relation to the text proposed within the dDCO between the applicant and any of the parties included in the Statement of Commonality. Not all matters in relation to Statutory Undertakers are resolved, however, these are addressed in chapter 5 under Land Rights and Related Matters.

Requirement 3

6.4.4. Bishopton Villages Action Group (BVAG) have, in [\[REP9-014\]](#), has requested that community mitigation and design suggestions in the Design Approach Document (DAD) are included in the DCO.

6.4.5. The ExA has reviewed reference to the DAD in the dDCO and finds that the document has been updated to reflect further community mitigation and design suggestions, if developments in technology or any changes in the proposed development allow for a re-consideration of the location and layout of the proposed panel areas, as set in Work No. 1 of the works plans.

Change Application - Revision 3 of the dDCO

6.4.6. In [\[CR1-007\]](#) the applicant has included a series of changes to the dDCO [\[REP2-029/030\]](#) following from the submission of its Change Application [\[CR1-012\]](#). These changes are detailed in Table 1-1 Schedule of Changes to the draft DCO Change Application – Revision 3 of the dDCO.

6.4.7. The changes relate to the Change Application submitted, particularly Change 1 which included changes to the dDCO [\[REP2-029/030\]](#) and associated compulsory acquisition documents to allow the applicant to compulsorily acquire new rights over subsoil land beneath highway plots which are within the existing Order Limits. These additional compulsory acquisition powers are to guarantee that the applicant can acquire all interests in land that may be necessary to lay cabling within publicly adopted highways to deliver the proposed development.

6.4.8. The need for the inclusion of these powers into the dDCO [\[REP9-006\]](#) was raised by the ExA at the start of the examination, as set out in [\[PD-009\]](#) and [\[PD-013\]](#).

6.4.9. The ExA first raised concerns regarding the applicant's approach to CA on 09 May 2024 [\[PD-002\]](#) where it asked the applicant to consider its approach to land rights required to deliver the proposed on-road cable route, particularly in relation to subsoil rights. Subsequently, the ExA, at the Issue Specific Hearing 1 (ISH1) [\[PD-003\]](#), at the ExA's First Written Questions (ExQ1) [\[PD-004\]](#) and at CAH1 [\[EV9-001\]](#) raised again concerns regarding CA right and how these were reflected and include in the dDCO.

6.4.10. As such, the ExA does believe that the changes proposed to the dDCO [\[REP2-029/030\]](#) as detailed in Table 1-1 Schedule of Changes to the draft DCO Change Application – Revision 3 of the dDCO are appropriate and provide the applicant with the powers that are necessary to carry out the proposed development.

Article 35 (Removal of Human remains)

- 6.4.11. The ExA provided, in [\[PD-010\]](#), commentary on the dDCO [\[REP5-002/003\]](#). The applicant's response is detailed in [\[REP6-022\]](#).
- 6.4.12. In its commentary, the ExA proposed that Article 35 – Removal of Human remains should be deleted. The applicant in its response stated that it was of the view that Article 35 should be included in the dDCO as to replace the existing and disparate regimes for regulating the removal of human remains and consolidate the applicable provisions in a single article in the Order. The applicant did acknowledge that it is currently not aware of any human remains within the order limits, the applicant suggests that this article is appropriately included on a precautionary basis and it is substantially similar in form to that included in recent DCOs, such as Cottam Solar Project Order 2024.
- 6.4.13. Having reviewed the information submitted by the applicant in relation to Article 35, the ExA is still of the view that the inclusion of this article is not justified as it is unlikely that the proposed development will encounter human remains as part of the proposed works. The proposed works do include underground works. However, these works are not in the proximity of any known burial grounds, therefore the probability of human remains being disturbed is low.

Article 44 (Crown Rights)

- 6.4.14. At ExQ2 CA.2.1. the ExA asked the applicant to confirm if plot 12/30 of the Land Plans [\[REP6b-007\]](#) did not change the applicant's position in relation to Crown Land and, as such, if the Article required any redrafting. The applicant did state that was keeping the position in relation to plot 12/30 under review. However, in any event, the applicant stated that the article as drafted would have the effect of confirming the underlying position that the applicant could not exercise power of compulsory acquisition against any Crown interest without the consent of the relevant party.
- 6.4.15. Having reviewed the information submitted, the ExA agrees with the applicant's view, and therefore recommends that Article 44 remains in the dDCO [\[REP5-002/003\]](#), particularly in light of new subsoil rights being required in relation to plot 12/30, as a result of the Change Application.

Requirement 12 Landscape and ecological management plan (LEMP) Part 1, Schedule 2 (Requirements)

- 6.4.16. Although the ExA concluded that the applicant has adequately considered impacts on landscape components and character, including potential impacts on views, having considered the exact wording proposed by the applicant and taking into consideration the discussions held on this topic at ISH8, the ExA proposes that the wording of Requirement 12 Landscape and ecological management plan (LEMP) Part 1, Schedule 2 (Requirements) is strengthened as to provide additional clarity and certainty in relation to the LEMP and how it provides detail on how the proposed measures are secured for the lifetime of the proposed development, while removing any dubiousness around whether hedgerows are included or not when it refers to landscaping.

Requirement 13(2) (Implementation and maintenance of landscaping) Part 1, Schedule 2 (Requirements)

- 6.4.17. Following from ISH4 and then in [\[PD-010\]](#), the ExA requested the applicant to consider adding "or used" to Requirement 13(2) (Implementation and maintenance

of landscaping) to read: “(2) Any tree or shrub planted or used as part of an approved landscaping management scheme that, within a period of five years after planting, is removed, dies or becomes, in the opinion of the relevant planning authority, seriously damaged or diseased must be replaced in the first available planting season with a specimen of the same species and size as that originally planted”.

6.4.18. The applicant states in its response in [\[REP6-022\]](#) that, as per its response to ISH4-01 [\[REP5-036\]](#), since all landscaping works must be carried out in accordance with the LEMP and since the Outline LEMP [\[REP5-020/021\]](#) has been updated to more explicitly commit to replacing any existing planting, relied upon for mitigation, that is damaged, diseased or removed/dead within 5 years of operation, the applicant believes, on that basis that no amendment of Requirement 13(2) is necessary.

6.4.19. Having reviewed the information submitted and considered the applicant’s response, the ExA is of the view that, for clarity and completeness purposes, the proposed change should be included in the DCO in order to ensure that any trees or shrub used for the approved landscaping management scheme will be considered under Requirement 13 and also to ensure that the role of the relevant planning authority is not disputed.

PROPOSED CHANGES AFTER THE CLOSE OF THE EXAMINATION

6.4.20. In light of the ExA’s conclusions as set out above in relation to the changes during the examination and the DCO matters of contention and objections outstanding, the ExA proposes the following further changes to the dDCO [\[REP9-005/006\]](#).

Table 3: DCO Provisions and ExA’s reasoning on proposed changes after close of examination

Provision	Change	Why the change is necessary
Article 34 (Removal of Human remains)	Delete: Article 34 – removal of human remains	The inclusion of this article is not justified as it is unlikely that the proposed development will encounter human remains as part of the proposed works
Requirement 12 Landscape and ecological management plan (LEMP)	Add to 12(2): “details relevant for the phase of works in relation to” to read: “The LEMP must include details relevant for the phase of works in relation to”	For clarity purposes and to ensure that details of the LEMP accurately reflect each stage of the proposed development.
Requirement 12 Landscape and ecological management plan (LEMP)	Add to 12 to read: (d) how the landscaping and ecology measures will be managed, maintained, and monitored during the	For clarity purposes and to ensure that the LEMP secures the need to detail how the proposed measures are secured for the lifetime of the proposed development,

Provision	Change	Why the change is necessary
	operational life of the authorised development to the date on which the decommissioning and restoration plan is implemented pursuant to requirement 5 (decommissioning and restoration);	while removing any dubiousness around whether hedgerows are included or not when it refers to landscaping.
Requirement 12 Landscape and ecological management plan (LEMP)	<p>Requirement 12 to read:</p> <p>12.—(1) No phase of the authorised development is to be commenced until a LEMP covering that phase which accords with the outline LEMP has been submitted to and approved by the relevant planning authority.</p> <p>(2) The LEMP must include details relevant for the phase of works in relation to —</p> <p>(a) the method of protection of existing landscape features and habitats during the construction, operation and decommissioning stage of the authorised development;</p> <p>(b) habitat creation, including all new native hedgerow planting, replanting of any breaks (gaps) in excess of 1 metre in existing native hedgerows within the Order limits adjacent to the footpath and sowing of wildflower seed along the margins between the footpath and the hedgerow/security fence boundaries;</p> <p>(c) ongoing management including</p>	For clarity and sense purposes and to ensure that details of the LEMP accurately reflect each stage of the proposed development.

Provision	Change	Why the change is necessary
	<p>seasonal grazing regime and other measures including the annual review of the need for any additional mitigation planning work, during the lifetime of the authorised development;</p> <p>(d) how the landscaping and ecology measures will be managed, maintained, and monitored during the operational life of the authorised development to the date on which the decommissioning and restoration plan is implemented pursuant to requirement 5 (decommissioning and restoration);</p> <p>(e) a timetable for the landscape management of the land within the Order limits during the lifetime of the authorised development; and</p> <p>(f) landscaping details.</p> <p>(3) The LEMP must be implemented as approved.</p>	
Requirement 13(2) (Implementation and maintenance of landscaping) Part 1, Schedule 2 (Requirements)	Add: “or used” to read: “(2) Any tree or shrub planted or used as part of an approved landscaping management scheme that, within a period of five years after planting, is removed, dies or becomes, in the opinion of the relevant planning authority, seriously damaged or diseased must be replaced in the first available planting season with a specimen	for clarity and completeness purposes, the proposed change should be included in the DCO in order to ensure that any trees or shrub used for the approved landscaping management scheme will be considered under Requirement 13 and also to ensure that the role of the relevant planning authority is not disputed.

Provision	Change	Why the change is necessary
	of the same species and size as that originally planted”	

6.5. STATUTORY NUISANCE

- 6.5.1. The application is accompanied by a Statement of Statutory Nuisance (SSN) [\[APP-167\]](#) in accordance with regulation 5(2)(f) of the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009).
- 6.5.2. The assessment of the potential for these matters to result in statutory nuisance has considered the conclusions of the relevant assessments reported in the ES (Volume 6 of the DCO application) and taken into account the embedded and essential mitigation measures secured via the dDCO [\[REP9-005/006\]](#). These mitigation measures seek to prevent, reduce or avoid impacts which have a potential to result in statutory nuisance under Section 79(1) of the EPA.
- 6.5.3. The SSN concludes that it is not expected that the construction, operation or decommissioning of the proposed development would cause a statutory nuisance. Having reviewed the SSN, the ExA are content that the applicant has appropriately identified the scope of potential nuisance sources from the construction, operation and maintenance of the proposed development. The ExA agrees with this conclusion.
- 6.5.4. Taking a precautionary approach to do this, Art. 8 of the dDCO contains a defence to proceedings in respect of statutory nuisance of a type that is commonly provided for in NSIPs. The drafting is based on other made DCOs. The ExA agrees that the necessary steps to reduce the risk of nuisance events have been taken and that this provision is an appropriate provision against circumstances where unforeseen but unavoidable nuisance occurs.

6.6. CONCLUSIONS

- 6.6.1. Taking into consideration Section 120 of the Planning Act, the ExA have considered all versions of the dDCO and considered the degree to which the final dDCO [\[REP9-005/006\]](#) has addressed outstanding matters.
- 6.6.2. The ExA are satisfied that the Requirements set out in the final version of the dDCO [\[REP9-005/006\]](#) provide mitigation for potential adverse effects identified in the ES and sufficiently address the issues raised during the course of the Examination. The recommended DCO (rDCO) is in Appendix D and reflects the changes include in Table 3.
- 6.6.3. Taking all matters raised in this chapter and all matters relevant to the DCO raised in the remainder of this Report fully into account, if the SoSESNZ is minded to make the Order, the ExA recommend it should be made in the form set out in Appendix D.
- 6.6.4. The ExA considers that the rDCO includes Requirements that are necessary, relevant to planning, relevant to the development to be consented, enforceable, precise, and reasonable in line with the NPS EN1 (Paragraph 4.1.16).

7. SUMMARY OF FINDINGS, CONCLUSIONS AND RECOMMENDATIONS

7.1. INTRODUCTION

7.1.1. This chapter summarises the ExA's conclusions arising from the report and sets out the primary recommendation to the Secretary of State for Energy Security and Net Zero.

7.1.2. On 22 January 2025 the Environment Agency updated its [National Flood Risk Assessment](#). Due to the Examination having closed on the 23 January 2025, the ExA has not taken into account this update, but the Secretary of State for Energy Security and Net Zero (SoSESNZ) may wish to consider it.

7.2. SUMMARY OF FINDINGS AND CONCLUSIONS

7.2.1. The ExA's conclusions are subject to the provisions of the recommended Development Consent Order in Appendix D. With the mitigation secured by the recommended Development Consent Order (rDCO) in Appendix D, the adverse impacts arising from the proposed development, and cumulatively with other developments, would be unlikely to outweigh its benefits.

7.2.2. The ExA has considered the proposed development against s104 of the Planning Act 2008 as finds it is within the scope of the Overarching National Policy Statement for Energy, the National Policy Statement for Renewable Energy Infrastructure and the National Policy Statement for Electricity Networks Infrastructure. Consequently, these are relevant National Policy Statements and have effect. The ExA finds no evidence that s104(4) to (8) of the Planning Act 2008 apply and, as required by s104(3), concludes that the application should be decided in accordance with the relevant National Policy Statements.

7.2.3. As the ExA noted in Chapter 4 above, the urgent need for low carbon energy is established in relevant National Policy Statements and the proposed development would assist in its timely delivery. In relation to s104(2) and s104(3) of the Planning Act 2008, the ExA concludes that making the rDCO would be in accordance with the relevant National Policy Statements, relevant development plans, and other relevant policy.

7.2.4. In reaching the above conclusions, the ExA has had regard to the Local Impact Reports produced by Darlington Borough Council, Stockton-on-Tees Borough Council and Durham County Council. The ExA has also had regard to all matters that it considered to be both important and relevant in reaching its conclusions. The ExA have considered relevant legislation and guidance.

7.2.5. The ExA has had regard to the applicant's Habitats Regulations Assessment 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, the ExA concludes that the proposed development would not be likely to give rise to adverse effects on the integrity of European Sites. The ExA finds that there is sufficient information for the SoSESNZ to enable undertaking of an appropriate assessment and to fulfil its duty under the requirements under the Conservation of Habitats and Species Regulations 2017. The ExA sees no reason for Habitats Regulations Assessment matters to prevent the making of the Development Consent Order.

- 7.2.6. With regard to designated heritage assets and in consideration of Regulation 3 of the Infrastructure Planning (Decisions) Regulations 2010 (Decisions Regulations), the ExA has found the proposed development would result in less than substantial harm to designated heritage assets. However, those harms are outweighed by the very great public benefit from the provision of low carbon energy to meet the need identified in NPS EN-1 and by the other benefits of the application as summarised in Chapter 4.
- 7.2.7. In terms of biodiversity and considering Regulation 7 of the Decisions Regulations, the ExA has had regard to the United Nations Environmental Programme Convention on Biological Diversity of 1992 and is satisfied that biodiversity, ecological and nature conservation issues have been adequately assessed and the requirements of NPS EN-1 are met. Furthermore, the ExA considers the Biodiversity Net Gain arising from the proposed development would enhance biodiversity, as well as assist in enhancing ecological and nature conservation effects. As such, it considers that it has fulfilled its biodiversity duty in accordance with the Natural Environment and Rural Communities Act 2006.
- 7.2.8. In relation to the application for Compulsory Acquisition (CA) and Temporary Possession (TP) powers, the ExA concluded that:
- 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 Book of Reference (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;
 - The private loss to those affected has been mitigated through the selection of the land;
 - The minimisation of the extent of the rights and interests proposed to be acquired and the inclusion, where relevant, of protective provisions in favour of those affected;
 - That in all cases relating to individual objections and issues that 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.
- 7.2.9. The ExA has had regard to the provisions of the Human Rights Act 1998. In some cases, there would be interference with private and family life and home in contravention of Article 8, and interference in the peaceful enjoyment of possessions in contravention of Article 1 of the First Protocol 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. The ExA finds 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.
- 7.2.10. The ExA has had regard to the Public Sector Equality Duty (PSED). The ExA finds no harm to the interests of persons who share a protected characteristic or have

any adverse effect on the relationships between such persons and persons who do not share a protected characteristic. The ExA have found no breach of the PSED.

- 7.2.11. The ExA concludes that there is a compelling case in the public interest for the powers sought and that the benefits of the proposed development outweigh the harm to heritage assets, the adverse visual and adverse landscape effects and the loss of BMV.

7.3. MATTERS WHICH THE SoS MAY WISH TO CONSIDER

- 7.3.1. In relation to the Northern Powergrid and its position in relation to the CA of land and rights, as Northern Powergrid did not formally confirmed agreement with the applicant and no formal withdrawal has been received, the SoSESNZ may wish to seek an update as to whether Northern Powergrid is now content to withdraw its representation.

7.4. RECOMMENDATION

- 7.4.1. The ExA's findings and conclusions, which considered important and relevant matters and all submissions, are set out in this report. The ExA complies with all applicable legal duties and does not take account of any matters that are not relevant to the recommendations. The ExA finds no important and relevant matters that would individually or collectively lead to a different recommendation.
- 7.4.2. The ExA considers that the proposed development meets the tests in s104 of the Planning Act 2008. On that basis, the ExA recommend that the SoSESNZ makes the Byer Gill Solar Development Consent Order in the form attached at Appendix D.

APPENDICES

APPENDIX A: ABBREVIATION LIST	1
APPENDIX B: KEY LEGISLATION AND POLICY.....	4
APPENDIX C: FINDINGS AND CONCLUSIONS IN RELATION TO HABITATS REGULATIONS ASSESSMENT	9
APPENDIX D: THE RECOMMENDED DCO	13

APPENDIX A: ABBREVIATION LIST

Abbreviation or acronym	Reference
AA	Appropriate Assessment
AC	Alternating Current
AEP	Annual Exceedance Probability
ALC	Agricultural Land Classification
ANCB	Appropriate Nature Conservation Body
AP	Affected Parties
Art.	Article
ASI	Accompanied Site Inspection
BESS	Battery Energy Storage System
BMV	Best and most versatile
BoR	Book of Reference
BPC	Bishopton Parish Council
BVAG	Bishopton Villages Action Group
CA	Compulsory Acquisition
CAH	Compulsory Acquisition Hearing
CA Regs	Infrastructure Planning (Compulsory Acquisition) Regulations 2010 (as amended)
CCTV	Closed Circuit Television
CDP	County Durham Plan
CEMP	Construction Environmental Management Plan
CNP	Critical national priority
CO2	Carbon dioxide
CPRE	Campaign to Protect Rural England
CTMP	Construction Traffic Management Plan
DAD	Design Approach Document
DBC	Darlington Borough Council
DC	Direct Current
DCC	Durham County Council
DCO	Development Consent Order
dDCO	Draft Development Consent Order
DEFRA	Department for Environment, Food and Rural Affairs
DEMP	Decommissioning Environmental Management Plan
DNO	Distribution Network Operator
DLP	Darlington Local Plan
EA	Environment Agency
EEA	European Economic Area
EIA	Environmental Impact Assessment
EL	Examination Library
EM	Explanatory Memorandum
EPR	The Infrastructure Planning (Examination Procedure) Rules 2010 (as amended)
ES	Environmental Statement
ExA	Examining Authority

Abbreviation or acronym	Reference
ExQ1/2/3	The ExA's first, second, third etc rounds of written questions
FRA	Flood Risk Assessment
FZ	Flood Zone
GSPM	Great Stainton Parish Meeting
ha	Hectare(s)
HE	Historic England
HGV	Heavy goods vehicle
HRA	Habitats Regulations Assessment
IAP	Initial Assessment of Principal Issues
IEMA	Institute of Environmental Management and Assessment
IP	Interested Party
ISH	Issue Specific Hearing
km	Kilometres
kV	Kilovolt
LCA	Landscape Character Area
LEMP	Landscape and Ecology Management Plan
LIR(s)	Local Impact Report(s)
LLFA	Lead Local Flood Authority
LNR	Local Nature Reserve
LRN	Local Road Network
LSE	Likely Significant Effects
L&V	Landscape and Visual
LVIA	Landscape and Visual Impact Assessment
LWS	Local Wildlife Sites
MMP	Materials Management Plan
m	Metre
MW	Megawatts
MWp	Megawatts peak
NE	Natural England
NGN	Northern Gas Networks Limited
NMU(s)	Non-Motorised User(s)
NPG	Northern Power Grid
NPPF	National Planning Policy Framework
NPS(s)	National Policy Statement(s)
NPS EN-1	Overarching National Policy Statement for Energy
NPS EN-3	National Policy Statement for Renewable Energy Infrastructure
NPS EN-5	National Policy Statement for Electricity Networks Infrastructure
NRSA	New Road and Streetworks Acts
NSIP(s)	Nationally Significant Infrastructure Project(s)
NWL	Northumbrian Water Limited
oCEMP	Outline Construction Environmental Management Plan
OFH	Open Floor Hearing
PA2008	Planning Act 2008 (as amended)
PEIR	Preliminary Environmental Information Report
PINS	Planning Inspectorate
PM	Preliminary Meeting

Abbreviation or acronym	Reference
PPV	Peak Particle Velocity
PRoW	Public Rights of Way
PSED	Public Sector Equality Duty
PV	Photovoltaic
PWS	Public Water Supplies
rDCO	The ExA's recommended Development Consent Order
RIES	Report on the Implications for European Sites
RPC	Redmarshall Parish Council
RR	Relevant Representations
s	Section
SAC	Special Area of Conservation
SBC	Stockton-on-Tees Borough Council
SoCG	Statement of Common Ground
SoR	Statement of Reasons
SoS	Secretary of State
SoSESNZ	Secretary of State for Energy Security and Net Zero
SoTLP	Stockton on Tees Local Plan
SNRR	Strategic northern relief road
SPA	Special Protection Area
SRN	Strategic Road Network
SRMP	Soil Resources Management Plan
SSN	Statement of Statutory Nuisance
SSSI	Site of Special Scientific Interest
SU(s)	Statutory Undertakers
SBC	Stockton-on-Tees Borough Council SBC
SUDS	Sustainable Drainage Systems
TIN	Technical Information Note
TP	Temporary Possession
TVCA	Tees Valley Combined Authority
UKCP18	United Kingdom Climate Projections 2018
USI	Unaccompanied Site Inspection
WFD	Water Framework Directive
WMS	Written Ministerial Statement
WR	Written Representation
ZoI	Zone of Influence

APPENDIX B: KEY LEGISLATION AND POLICY

LEGISLATION

Key relevant legislation (including any amendments)
<p>Human Rights Act 1998</p> <p>The consideration of the land rights powers requested by the applicant can engage various relevant articles under the Human Rights Act 1998.</p>
<p>Climate Change Act 2008</p> <p>The Climate Change Act 2008 establishes statutory climate change projections and carbon budgets. The Climate Change Act 2008 (2050 Target Amendment) Order 2019 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.</p>
<p>Other key relevant legislation</p> <ul style="list-style-type: none"> • Acquisition of Land Act 1981 • 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 (as amended) and the Conservation of Offshore environment Habitats and Species Regulations 2017 (as amended) ('the Habitats Regulations') • The Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019 • 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 • Equality Act 2010 • 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 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 • European Commission Circular Economy Package Environmental Protection Act 1990 • European Landscape Convention (ELC) (Council of Europe, 2016) Hedgerow Regulations 1997

Key relevant legislation (including any amendments)
<ul style="list-style-type: none"> • 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 Coastal 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
<p>Overarching National Policy Statement for Energy (NPS EN-1) (dated November 2023, designated on 17 January 2024)</p> <p>NPS EN-1 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.</p>
<p>National Policy Statement for Renewable Energy (NPS EN-3) (dated November 2023, designated on 17 January 2024)</p> <p>NPS EN-3 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.</p>
<p>National Policy Statement for Electricity Networks Infrastructure (NPS EN-5) (dated November 2023, designated on 17 January 2024)</p> <p>NPS EN-5, amongst other things, provides policy for underground electricity distribution systems that constitute Associated Development to a solar photovoltaic NSIP.</p>
<ul style="list-style-type: none"> • A Green Future: Our 25 Year Plan to Improve the Environment (HM Government, 2018) • Air Quality Strategy (2023) • British Energy Security Strategy (2022) • Build Back Better: Our Plan for Growth (HM Treasury, 2021) • The Clean Growth Strategy: Leading the Way to a Low Carbon Future (DBEIS, 2017) • Clean Growth Strategy (2018) • Clean Power 2030 Action Plan (13 December 2024) • Energy White Paper: Powering our Net Zero Future (2020) • Environmental Improvement Plan (DEFRA 2023) • The Glasgow Pact (2021) • A Green Future: Our 25 Year Plan to Improve the Environment (HM Government, 2018) • Industrial Decarbonisation Strategy (2021) • The Kyoto Protocol (1997) • National Infrastructure Strategy (2020) • National Planning Policy Framework (2023) • Net-Zero Growth Plan (2023) • Net Zero Strategy: Build Back Greener (2022) • Noise Policy Statement for England (2010) • The Paris Agreement (2015) • The Sixth Carbon Budget – The UK’s path to Net Zero (CCC, 2020) • Powering Up Britain - Energy Security Plan (2023) • Written Ministerial Statement (WMS) ‘Solar and Protecting our Food Security and Best Most Versatile (BMV) Land (May 2024)

LOCAL POLICY

Local authority	Key relevant local policy
Darlington Borough Council	<p>Darlington Local Plan 2016-2036 (Local Plan)</p> <p>Policy SD1 Presumption in Favour of Sustainable Development</p> <p>Policy SH1 Settlement Hierarchy</p> <p>Policy DC1 Sustainable Design Principles and Climate Change</p> <p>Policy DC2 Flood Risk and Water Management</p> <p>Policy DC3 Health and Wellbeing</p> <p>Policy DC4 Safeguarding Amenity</p> <p>Policy DC5 Skills and Training</p> <p>Policy E4 Economic Development in the Open Countryside</p> <p>Policy ENV1 Protecting, Enhancing and Promoting Darlington's Historic Environment (Strategic Policy)</p> <p>Policy ENV3 Local Landscape Character (Strategic Policy)</p> <p>Policy ENV4 Green and Blue Infrastructure (Strategic Policy)</p> <p>Policy ENV5 Green Infrastructure Standards</p> <p>Policy ENV7 Biodiversity and Geodiversity and Development (Strategic Policy)</p> <p>Policy ENV8 Assessing a Development's Impact on Biodiversity</p> <p>Policy IN1 Delivering a Sustainable Transport Network (Strategic Policy)</p> <p>Policy IN2 Improving Access and Accessibility (Strategic Policy)</p> <p>Policy IN3 Transport Assessments and Travel Plans</p> <p>Policy IN4 Parking Provision including Electric Vehicle Charging</p> <p>Policy IN5 Airport Safety</p> <p>Policy IN9 Renewable Energy Infrastructure</p> <p>Policy IN10 Supporting the Delivery of Community and Social Infrastructure</p> <p>Policy MWC4 Safeguarding of Minerals Resources from Sterilisation</p> <p>The Darlington Landscape Character Assessment (2015)</p>
Stockton-on-Tees Borough Council	<p>Stockton-on-Tees Borough Council Local Plan</p> <p>Policy SD1 - Presumption in favour of Sustainable Development</p> <p>Policy SD2 – Strategic Development Needs</p> <p>Policy SD5 - Natural, Built and Historic Environment</p> <p>Policy SD8 – Sustainable Design Principles</p> <p>Policy ENV 2 - Renewable and Low Carbon Energy Generation</p> <p>Policy ENV4 - Reducing and Mitigating Flood Risk</p>

Local authority	Key relevant local policy
	<p>Policy ENV5 – Preserve, Protect and Enhance Ecological Networks, Biodiversity and Geodiversity</p> <p>Policy ENV6 - Green Infrastructure, Open Space, Green Wedges and Agricultural Land</p> <p>Policy ENV7 – Ground, Air, Water, Noise and Light Pollution</p> <p>Policy HE2 – Conserving and Enhancing Stockton’s Heritage Assets</p>
Durham County Council	<p>County Durham Plan</p> <p>CDP Policy 10 – Development in the countryside</p> <p>CDP Policy 14 – Best and Most Versatile Agricultural Land and Soil Resources</p> <p>CDP Policy 21 – Delivering Sustainable Transport</p> <p>CDP Policy 24 – Provision of Transport Infrastructure</p> <p>CDP Policy 26 – Green Infrastructure</p> <p>CDP Policy 28 – Safeguarded Areas</p> <p>CDP Policy 31 – Amenity and Pollution</p> <p>CDP Policy 33 – Renewable and Low Carbon Energy</p> <p>CDP Policy 35 – Water Management</p> <p>CDP Policy 39 – Landscape</p> <p>CDP Policy 40 – Trees, Woodlands and Hedges</p> <p>CDP Policy 41 – Biodiversity and Geodiversity</p> <p>CDP Policy 42 – Internationally Designated Sites</p> <p>CDP Policy 43 – Protected Species and Nationally and Locally Protected Sites</p> <p>CDP Policy 44 – Historic Environment</p> <p>CDP Policy 56 – Safeguarding Mineral Resources</p>
Tees Valley Combined Authority	<p>Tees Valley Joint Minerals and Waste Development Plan Document</p>

APPENDIX C: FINDINGS AND CONCLUSIONS IN RELATION TO HABITATS REGULATIONS ASSESSMENT

C.1 INTRODUCTION

- C.1.1 This Appendix sets out the Examining Authority's (ExA's) analysis and conclusions relevant to the Habitats Regulations Assessment (HRA). This will assist the Secretary of State for Energy Security and Net Zero (SoSESNZ), as the competent authority, in performing their duties under The Conservation of Habitats and Species Regulations 2017 ('The Habitats Regulations')
- C.1.2 In accordance with the precautionary principle embedded in The Habitats Regulations, consent for the proposed development may be granted only after having ascertained that it will not adversely affect the integrity of European sites and no reasonable scientific doubt remains (CJEU Case C-127/02 Waddenzee 7 September 2004).
- C.1.3 For the purpose of this report, in line with The Habitats Regulations and relevant Government policy, the term 'European sites' includes Special Areas of Conservation (SAC), candidate SACs, proposed SACs, Special Protection Areas (SPA), potential SPAs, listed and proposed Ramsar sites and sites identified or required as compensatory measures for adverse effects on any of these sites.
- C.1.4 Policy considerations and the legal obligations under The Habitats Regulations are described in Chapter 2 of this Report.
- C.1.5 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 Interested Parties (IPs), including Natural England (NE) as the Appropriate Nature Conservation Body (ANCB), through written questions and ISHs.

REIS AND CONSULTATION

- C.1.6 The applicant set out its assessment in Environmental Statement Appendix 6.5 Habitats Regulations Assessment No Significant Effects Report (HRA Report) [[APP-130](#)]. NE's RR [[RR-373](#)] stated agreement with the applicant's conclusions with regard to the European sites assessed and their qualifying features. No other evidence or comment against this was submitted by any other party, and therefore the ExA decided that a Report on the Implications for European Sites (RIES) compiling HRA-relevant information would not be required.

PROPOSED DEVELOPMENT DESCRIPTION AND HRA IMPLICATIONS

- C.1.7 The proposed development is described in Chapter 1 of this Report.
- C.1.8 The spatial relationship between the Order Limits of the proposed development and European sites is shown in figure 6.1 of the HRA Report [[APP-130](#)].
- C.1.9 The proposed development is not directly connected with, or necessary to, the management of a European site.

- C.1.10 The applicant's assessment of effects is presented in the following application document(s):
- Environmental Statement Appendix 6.5 Habitats Regulations Assessment No Significant Effects Report (HRA Report) [\[APP-130\]](#)
- C.1.11 During the examination, the applicant submitted a change request [\[AS-021\]](#) as described in Chapter 1 of this Report. These changes were accepted by the ExA as described in Chapter 1 of this Report.
- C.1.12 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 [\[APP-130\]](#). Only UK European sites are addressed in this Report. No such impacts were raised for discussion by any IPs during the examination.
- C.1.13 No matters of dispute were raised by the ExA or IPs including NE as the ANCB. NE [\[RR-373\]](#) agreed with the conclusions of the HRA Report in its relevant representation.

C.2 FINDINGS IN RELATION TO LIKELY SIGNIFICANT EFFECTS (LSE)

- C.2.1 Under regulation 63 of The Habitats Regulations, the competent authority must consider whether a development will have Likely Significant Effects (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.
- C.2.2 The European sites and qualifying features that were considered in the applicant's assessment of LSE are presented in section 4 of the HRA Report [\[APP-130\]](#). The applicant's HRA Report sets out the methodology applied to determining what would constitute a 'significant effect' in section 3.

LSE FROM THE PROPOSED DEVELOPMENT ALONE

- C.2.3 The applicant identified potential impacts of the proposed development considered to have the potential to result in likely significant effects (LSE) alone in sections 4.3, 4.4 and 4.4 of the HRA Report [\[APP-130\]](#).
- C.2.4 The applicant's HRA Report concluded no LSE from the proposed development alone on any of the qualifying features of:
- Teesmouth and Cleveland Coast SPA
 - Teesmouth and Cleveland Coast Ramsar and proposed Ramsar
 - Thrislington SAC.
- C.2.5 Table 1 and Table 2 of the HRA Report [\[APP-130\]](#) identify the qualifying features of the sites listed above and explain why there is no impact pathway for effect to each of these features. The reasoning provided includes:
- that the proposed development is located too far (over 5km at the nearest point) from the sites to lead to any potential impact pathways
 - no functionally linked land was identified on site through site surveys (breeding and overwintering bird surveys and phase 1 habitat survey)
 - areas where waterbird assemblages were surveyed are avoided with buffers actively maintained in accordance with the Construction Environmental

Management Plan (CEMP) and Landscape and Ecology Management Plans (LEMP) for water resources

- any potential operational impacts would be passive

C.2.6 Durham County Council [\[REP1-025\]](#) queried whether nutrient neutrality was relevant to the potential impacts to the Teesmouth and Cleveland Coast SPA and Ramsar sites. The applicant [\[REP3-007\]](#) confirmed that issues pertaining to nutrient neutrality are not considered to be relevant to the proposed development as agreed with NE. On this basis, Durham County Council [\[REP5-028; REP8-028\]](#) agreed it was content nutrient neutrality impacts were not relevant to this scheme.

C.2.7 No further matters were disputed by IPs or the ANCB. NE [\[RR-373; REP2-055\]](#) agreed with the conclusions of the screening assessment and that there would be no likely significant effects on any identified sites or features.

LSE FROM THE PROPOSED DEVELOPMENT IN COMBINATION

C.2.8 The applicant addressed potential in-combination effects arising from the proposed development within section 5 of the HRA Report [\[APP-130\]](#) which sets out the methodology applied. The methodology includes assessment of cumulative developments within 10km of the proposed development where there is potential for spatial and temporal overlapping.

C.2.9 The other plans and projects included in the in-combination assessment are set out in Table 3 of the HRA Report [\[APP-130\]](#). NE [\[RR-373; REP2-055\]](#) confirmed agreement with the identified cumulative developments.

C.2.10 No in-combination LSE have been identified for the sites and qualifying features where LSE were excluded from the proposed development alone. In-combination effects have been excluded because the implementation of best practice measures through the CEMP would minimise any potential impacts and therefore, there would be no impact pathway that would combine with the identified cumulative schemes.

C.2.11 Embedded measures included in the CEMP to minimise potential impacts include avoidance and retention of ecological features. The creation of biodiversity enhancement areas is also referenced in the HRA Report however, as this is an enhancement, the ExA does not consider this a matter of mitigation.

C.2.12 The ExA is satisfied that all plans and projects with potential to result in in-combination effects together with the proposed development have been identified and considered by the applicant.

LSE ASSESSMENT OUTCOMES

C.2.13 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 section 6 of the HRA Report [\[APP-130\]](#).

C.2.14 NE confirmed agreement on the conclusions of the screening assessment at Deadline 2 [\[REP2-055\]](#). The applicant's conclusions of potential LSE on the European sites and their qualifying features considered were not disputed by any IPs during the examination.

- C.2.15 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.
- C.2.16 The conservation objectives for the sites and features identified above are set out in section 3.2 of the applicant's HRA Report [\[APP-130\]](#).
- C.2.17 Paragraph 4.3.5 sets out the conservation objectives of the Teesmouth and Cleveland Coast SPA. HRA Report paragraph 4.4.2 states that as the features of the Teesmouth and Cleveland Coast Ramsar are also features of the SPA and therefore the conservation objectives are the same.
- C.2.18 HRA Report paragraph 3.2.2 identifies the conservation objectives for natural habitats which applies to Thrislington SAC.
- C.2.19 The conservation objectives were not disputed by IPs.
- C.2.20 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 SoS.
- C.2.21 Three European sites and their qualifying features were considered in the applicant's assessment of LSE: Teesmouth and Cleveland Coast SPA, Teesmouth and Cleveland Coast Ramsar and proposed Ramsar and Thrislington SAC. No LSE were identified for these sites both from the proposed development alone and in-combination with other plans or projects.
- C.2.22 The methodology of the applicant's screening for LSE on European sites was subject to one query, 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.
- C.2.23 The ExA's findings are that, AEoI on Teesmouth and Cleveland Coast SPA, Teesmouth and Cleveland Coast Ramsar and proposed Ramsar and Thrislington SAC from the proposed development when considered alone or in-combination with other plans or projects can be excluded from the impact-effect pathways assessed.

APPENDIX D: THE RECOMMENDED DCO

2021 No.

Comment [ERR1]:

Warning only Low impact
[e00017] The SI number is
invalid. Expecting 'No. ' followed
by between 1 and 4 digits

INFRASTRUCTURE PLANNING

The Byers Gill Solar Development Consent Order []

Made - - - - ***

Laid before Parliament ***

Coming into force ***

Comment [ERR2]:

The offending text for the
following warning is: '****'
Warning only High impact
[e00096] Please ensure the
asterisks are replaced by text /
dates
Warning only High impact
[e00023] The format of the Made
date paragraph is incorrect

CONTENTS

PART 1 PRELIMINARY

1. Citation and commencement
2. Interpretation

PART 2 PRINCIPAL POWERS

3. Development consent etc. granted by the Order
4. Maintenance of authorised development
5. Operation of generating stations
6. Consent to transfer benefit of Order
7. Disapplication and modification of legislative provisions
8. Defence to proceedings in respect of statutory nuisance

PART 3 STREETS

9. Street works
10. Application of the 1991 Act
11. Power to alter layout, etc., of streets
12. Construction and maintenance of altered streets
13. Temporary stopping up of public rights of way
14. Public rights of way
15. Access to works
16. Agreements with street authorities
17. Traffic regulation measures

Comment [ERR3]:

The offending text for the
following warning is: '****'
Warning only High impact
[e00096] Please ensure the
asterisks are replaced by text /
dates
Warning only High impact
[e00024] The format of the Laid
date paragraph is incorrect

Comment [ERR4]:

The offending text for the
following warning is: '****'
Warning only High impact
[e00096] Please ensure the
asterisks are replaced by text /
dates
Warning only High impact
[e00026] The format of the
Coming into Force date is
incorrect

PART 4
SUPPLEMENTAL POWERS

- 18. Discharge of water
- 19. Protective work to buildings
- 20. Authority to survey and investigate the land

PART 5
POWERS OF ACQUISITION

- 21. Compulsory acquisition of land
- 22. Time limit for exercise of authority to acquire land compulsorily
- 23. Compulsory acquisition of rights
- 24. Private rights
- 25. Acquisition of subsoil only
- 26. Application of the 1981 Act
- 27. Power to override easements and other rights
- 28. Modification of Part 1 of the Compulsory Purchase Act 1965
- 29. Rights under or over streets
- 30. Temporary use of land for carrying out the authorised development
- 31. Temporary use of land for maintaining authorised development
- 32. Statutory undertakers
- 33. Apparatus and rights of statutory undertakers in stopped up streets
- 34. Recovery of costs of new connections

PART 6
GENERAL

- 35. Operational land for the purposes of the 1990 Act
- 36. Certification of plans, etc.
- 37. Service of notices
- 38. Felling or lopping of trees or removal of hedgerows
- 39. Trees subject to tree preservation orders
- 40. Arbitration
- 41. Requirements, appeals, etc.
- 42. Application of landlord and tenant law
- 43. Crown rights
- 44. Protective provisions
- 45. Funding
- 46. Inconsistent planning permissions

SCHEDULE 1 — AUTHORISED DEVELOPMENT

SCHEDULE 2 — REQUIREMENTS

PART 1 — REQUIREMENTS

PART 2 — PROCEDURE FOR DISCHARGE OF REQUIREMENTS

SCHEDULE 3 — STREETS SUBJECT TO STREET WORKS

- SCHEDULE 4 — ALTERATION OF STREETS
 - PART 1 — PERMANENT ALTERATION OF LAYOUT AND MAINTAINED BY THE HIGHWAY AUTHORITY
 - PART 2 — TEMPORARY ALTERATION OF LAYOUT
- SCHEDULE 5 — PUBLIC RIGHTS OF WAY TO BE STOPPED UP
 - PART 1 — PUBLIC RIGHTS OF WAY TO BE TEMPORARILY STOPPED UP
 - PART 2 — PUBLIC RIGHTS OF WAY TO BE PERMANENTLY STOPPED UP
- SCHEDULE 6 — ACCESS TO WORKS
 - PART 1 — PERMANENT MEANS OF ACCESS TO WORKS
 - PART 2 — TEMPORARY MEANS OF ACCESS TO WORKS
- SCHEDULE 7 — REMOVAL OF HEDGEROWS
- SCHEDULE 8 — LAND IN WHICH ONLY NEW RIGHTS ETC. MAY BE ACQUIRED
- SCHEDULE 9 — MODIFICATION OF COMPENSATION AND COMPULSORY PURCHASE ENACTMENTS FOR THE CREATION OF NEW RIGHTS AND IMPOSITION OF NEW RESTRICTIVE COVENANTS
- SCHEDULE 10 — LAND OF WHICH TEMPORARY POSSESSION MAY BE TAKEN
- SCHEDULE 11 — PROTECTIVE PROVISIONS
 - PART 1 — PROTECTION FOR ELECTRICITY, GAS, WATER AND SEWERAGE UNDERTAKERS
 - PART 2 — FOR THE PROTECTION OF OPERATORS OF ELECTRONIC COMMUNICATIONS CODE NETWORKS
 - PART 3 — FOR THE PROTECTION OF THE DRAINAGE AUTHORITIES
 - PART 4 — FOR THE PROTECTION OF NATIONAL GRID ELECTRICITY TRANSMISSION PLC AS ELECTRICITY UNDERTAKER
 - PART 5 — FOR THE PROTECTION OF NATIONAL GAS TRANSMISSION PLC AS GAS UNDERTAKER
 - PART 6 — FOR THE PROTECTION OF NORTHERN POWERGRID
 - PART 7 — FOR THE PROTECTION OF NORTHUMBRIAN WATER LIMITED
 - PART 8 — FOR THE PROTECTION OF NORTHERN GAS NETWORK'S APPARATUS
- SCHEDULE 12 — ARBITRATION RULES
- SCHEDULE 13 — DOCUMENTS TO BE CERTIFIED

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

The application was examined by 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(a).

(a) 2008 c.29. Parts 1 to 7 were amended by Chapter 6 of Part 6 of the Localism Act 2011 (c.20).

(b) S.I. 2009/2264, amended by S.I. 2010/602, S.I. 2010/602, S.I. 2012/2732, S.I. 2013/522, S.I. 2013/755, S.I. 2015/377, S.I. 2017/572; modified by S.I. 2012/1659.

The Examining Authority having considered the representations made and not withdrawn and the application together with the accompanying documents, in accordance with section 83 of the 2008 Act, has submitted a report and recommendation to the Secretary of State.

The Secretary of State, having considered the representations made and not withdrawn, and the recommendations and report of the Examining Authority, and taken into account the environmental information in accordance with regulation 4 of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017^(b) has decided to make an Order granting development consent for the development described in the application with modifications which in the opinion of the Secretary of State do not make any substantial changes to the proposals comprised in the application.

The Secretary of State is satisfied that the land identified in the special category land plans and the book of reference as open space over which rights may be acquired compulsorily under this Order:

- (a) when burdened with any new rights authorised to be compulsorily acquired under this Order, will be no less advantageous than it was before to the persons in whom it is vested, other persons, if any, entitled to rights of common or other rights, and the public, and that, accordingly, section 132(3) of the 2008 Act applies; and further that
- (b) the identified open space land does not also form part of a common or fuel or field garden allotment, the rights authorised to be compulsorily acquired over the identified land under this Order are being acquired for a temporary (although possibly long-lived) purpose and that, accordingly, section 132(4B) of the 2008 Act also applies.

The Secretary of State, in exercise of the powers conferred by sections 114, 115, 120, 122 and 123 of the 2008 Act, makes the following Order—

PART 1

PRELIMINARY

Citation and commencement

2.—(1) This Order may be cited as the Byers Gill Solar Development Consent Order 20[•] and comes into force on [•].

Interpretation

3.—(1) In this Order except where provided otherwise—

“the 1961 Act” means the Land Compensation Act 1961^(c);

“the 1965 Act” means the Compulsory Purchase Act 1965^(d);

“the 1980 Act” means the Highways Act 1980^(e);

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

“the 1984 Act” means the Road Traffic Regulation Act 1984^(g);

“the 1989 Act” means the Electricity Act 1989^(h);

(c) S.I. 2010/103, amended by S.I. 2012/635.

(b) S.I. 2017/572.

(c) 1961 c.33.

(d) 1965 c.56.

(e) 1980 c.66.

(f) 1981 c.66.

(g) 1984 c.27.

(h) 1989 c.29.

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

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

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

“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, electrical cables, telecommunications equipment and electricity cabinets;

“arboricultural impact assessment” means the document certified as such by the Secretary of State for the purposes of this Order under article 37 (certification of plans, etc);

“archaeological management strategy” means the document certified as the archaeological management strategy for the purposes of this Order under article 37 (certification of plans, etc);

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

“battery energy storage” means equipment used for the storage of electrical energy by battery;

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

“the book of reference” means the book of reference certified by the Secretary of State as the book of reference for the purposes of the Order under article 37 (certification of plans, etc);

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

“CCTV” means a closed circuit television security system;

“CEMP” means the construction environmental management plans to be submitted pursuant to requirement 4;

“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 the site preparation works (except where stated to the contrary), and “commencement” and “commenced” must be construed accordingly;

“CTMP” means the construction traffic management plan to be submitted pursuant to requirement 6;

“date of final commissioning” means in respect of each phase of the authorised development as approved under requirement 2 the date on which each phase of the authorised development commences operation by generating electricity on a commercial basis but excluding the generation of electricity during commissioning and testing;

“definitive map and statement” has the same meaning as in Part III of the Wildlife and Countryside Act 1981(d);

“design approach document” means the document certified by the Secretary of State as the design approach document for the purposes of this Order under article 37 (certification of plans, etc);

“electronic transmission” means a communication transmitted—

(a) by means of an electronic communications network; or

(b) by other means but while in electronic form;

“Environment Agency” means the Environment Agency and any successor in name or function;

(a) 1990 c.8.

(b) 1991 c.22. Section 49(3A) was inserted by section 124(2) of the Local Transport Act 2008 (c.26). Sections 70(6), 74(7B), 74A(aa), and 88(6) were amended by section 40 of, and Schedule 1 to, the Traffic Management Act 2004 (c.18).

(c) 2008 c.29.

(d) 1981 c. 69.

“environmental masterplan” means the documents certified by the Secretary of State as such for the purposes of this Order under article 37 (certification of plans, etc);

“environmental statement” means the document certified by the Secretary of State as the environmental statement for the purposes of this Order under article 37 (certification of plans, etc);

“footpath” and “footway” have the same meaning as in the 1980 Act^(a);

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

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

“inverter” means electrical equipment required to convert direct current power generated by the solar panels to alternating current power;

“land plans” means the plans certified by the Secretary of State as the land plans for the purposes of this Order under article 37 (certification of plans, etc);

“LEMP” means the landscape and ecological plan to be submitted pursuant to requirement 12;

“location plan” means the plan certified by the Secretary of State as the location plan for the purposes of this Order under article 37 (certification of plans, etc);

“maintain” includes inspect, repair, adjust, alter, remove, refurbish, reconstruct, replace and improve any part of, but not remove, reconstruct or replace the whole of, the authorised development, and any derivative of “maintain” must be construed accordingly;

“National Grid” means National Grid Electricity Transmission Plc (Company Number 2366977) whose registered office is at 1-3 Strand, London, WC2N 5EH or any successor as a licence holder within the meaning of Part 1 of the 1989 Act;

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

“outline battery fire safety management plan” means the plan certified by the Secretary of State as such for the purposes of this Order under article 37 (certification of plans, etc);

“outline CEMP” means the document certified by the Secretary of State as the outline construction environmental management plan for the purposes of this Order in accordance with article 37 (certification of plans, etc);

“outline CTMP” means the document certified by the Secretary of State as the outline construction traffic management plan for the purposes of the Order in accordance with article 37 (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 under article 37 (certification of plans, etc);

“outline LEMP” means the document certified by the Secretary of State as the outline landscape and ecological management plan for the purposes of this Order in accordance with article 37 (certification of plans, etc);

“outline materials management plan” means the document certified as such by the Secretary of State for the purposes of this Order under article 37 (certification of plans, etc);

“outline pollution and spillage response plan” means the document certified as such by the Secretary of State for the purposes of this Order under article 37 (certification of plans, etc);

“outline public rights of way management plan” means the document certified as such by the Secretary of State for the purposes of this Order under article 37 (certification of plans, etc);

(a) “footpath” and “footway” are defined in section 329.

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

(c) 2006 c. 46.

“outline site waste management plan” means the document certified as such by the Secretary of State for the purposes of this Order under article 37 (certification of plans, etc);

“outline soil resource management plan” means the document certified as such by the Secretary of State for the purposes of this Order under article 37 (certification of plans, etc);

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

“plot” means any plot as may be identified by reference to a number and which is listed in the book of reference and shown on the land plans;

“public right of way” includes any public right of way that is added to the definitive map and statement after the making of the Order;

“relevant highway authority” means the highway authority for the area to which the provision relates;

“relevant planning authority” means the local planning authority for the area to which the provision relates;

“requirement” means those matters set out in Schedule 2 (requirements) and a reference to a numbered requirement is a reference to the requirement set out in the paragraph of that Part of that Schedule with the same number;

“site preparation works” means all or any of—

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

“solar panel” means a solar photovoltaic panel designed to convert solar irradiance to direct current electrical energy fitted to a mounted structure;

“special category land plans” means the plans certified as such by the Secretary of State for the purposes of this Order under article 37 (certification of plans, etc);

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

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

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

“street works, public rights of way and access plan” means the plan certified as such by the Secretary of State for the purposes of this Order under article 37 (certification of plans, etc)

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

“traffic authority” has the same meaning as in section 121A (traffic authorities) of the 1984 Act;

(a) 1981 c.67

(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).

(d) 2006 c. 46.

“transformer” means a structure containing electrical switch gear serving to transform electricity generated by the solar panels and imported and exported by the batteries to a higher voltage;

“trees and hedgerows to be removed plan” means the plan appended to the arboricultural impact assessment setting out the extent of trees and hedgerows to be removed;

“undertaker” means RWE Renewables UK Solar and Storage Limited (company registration number 14539260) whose registered address is Windmill Hill Business Park, Whitehill Way, Swindon, Wiltshire, SN5 6PB;

“watercourse” includes all rivers, streams, ditches, drains, canals, cuts, culverts, dykes, sluices, sewers and passages through which water flows except a public sewer or drain;

“work” means a work set out in Schedule 1 (authorised development); and

“working day” means any day other than a Saturday, Sunday or English bank or public holiday; and

“works plans” means the plans certified by the Secretary of State as the works plans for the purposes of this Order in accordance with article 37 (certification of plans, etc);

(2) All distances, directions, capacities and lengths referred to in this Order are approximate and distances between points on a work are taken to be measured along that work.

(3) Any reference in this Order to a work identified by the number of the work is to be construed as a reference to the work of that number authorised by this Order.

(4) In this Order “includes” must be construed without limitation unless the contrary intention appears.

(5) References in this Order to any statutory body include that body’s successor bodies as from time to time have jurisdiction in relation to the authorised development.

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

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

PART 2

PRINCIPAL POWERS

Development consent etc. granted by the Order

4.—(1) Subject to the provisions of this Order, including the requirements in Schedule 2 (requirements), the undertaker is granted development consent for the authorised development to be carried out within the Order limits.

(2) Any enactment applying to land within or adjacent to the Order limits has effect subject to the provisions of this order.

Maintenance of authorised development

5.—(1) The undertaker may at any time maintain the authorised development, except to the extent that this Order, or an agreement made under this Order, provides otherwise.

Operation of generating stations

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

(2) This article does not relieve the undertaker of any requirement to obtain any permit or licence under any other legislation that may be required from time to time to authorise the operation of an electricity generating station.

Consent to transfer benefit of Order

7.—(1) Except as otherwise provided in this Order, the provisions of this Order have effect solely for the benefit of the undertaker.

(2) Subject to the powers of this Order, the undertaker may with the written consent of the Secretary of State—

- (a) transfer to another person (“the transferee”) any or all of the benefit of the provisions of this Order and such related statutory rights as may be agreed between the undertaker and the transferee; and
- (b) grant to another person (“the lessee”) for a period agreed between the undertaker and the lessee any or all of the benefit of the provisions of this Order and such related statutory rights as may be so agreed.

(3) Where a transfer or grant has been made, references in this Order to the undertaker, except in paragraph (8), are to include references to the transferee or lessee.

(4) The consent of the Secretary of State is required for the exercise of the powers of paragraph (2) except where—

- (a) the transferee or lessee is the holder of a licence under section 6 (licences authorising supplies etc.) of the 1989 Act;
- (b) the transferee or lessee is a holding company or subsidiary of the undertaker; or
- (c) the time limits for claims for compensation in respect of the acquisition of land or effects upon land under this Order have elapsed and—
 - (i) no such claims have been made;
 - (ii) any such claim has been made and has been compromised or withdrawn;
 - (iii) compensation has been paid in full and final settlement of any such claim;
 - (iv) payment of compensation into court has taken place in lieu of settlement of any such claim; or
 - (v) it has been determined by a tribunal or court of competent jurisdiction in respect of any such claim that no compensation is payable.
- (d) The transfer or grant is made to—
 - (i) Northern Powergrid Holding Company (company registration number 03476201) whose registered office is at Lloyds Court, 78 Grey Street, Newcastle Upon Tyne, NE1 6AF for the purposes of undertaking Work No. 3(b), 4, 5, and 6.

(5) Where the consent of the Secretary of State is not required, the undertaker must notify the Secretary of State in writing before transferring or granting a benefit referred to in paragraph (2).

(6) The notification referred to in paragraph (5) must state—

- (a) the name and contact details the person to whom the benefit of the powers will be transferred or granted;
- (b) subject to paragraph (7), the date on which the transfer will take effect;
- (c) the powers to be transferred or granted;
- (d) pursuant to paragraph (9), 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.

(7) The date specified under paragraph (6)(b) must not be earlier than the expiry of five working days from the date of the receipt of the notification.

(8) 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.

(9) Where the undertaker has transferred any benefit, or for the duration of any period during which the undertaker has granted any benefit—

- (a) the benefit transferred or granted (“the transferred benefit”) must include any rights that are conferred, and any obligations that are imposed, by virtue of the provisions to which the benefit relates;
- (b) the transferred benefit will reside exclusively with the transferee or, as the case may be, the lessee and the transferred benefit will not be enforceable against the undertaker; and
- (c) the exercise by a person of any benefits or rights conferred in accordance with any transfer or grant is subject to the same restrictions, liabilities and obligations as would apply under this Order if those benefits or rights were exercised by the undertaker.

Disapplication 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 purpose of, or in connection with, the construction, operation, maintenance or decommissioning of any part of the authorised development—

- (a) section 23 (prohibition on obstructions etc. in watercourses) of the Land Drainage Act 1991(a); and
- (b) in so far as they relate to the temporary possession of land, the provisions of the Neighbourhood Planning Act 2017(b).

Defence to proceedings in respect of statutory nuisance

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

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

(2) Section 61(9) (prior consent for work on construction sites) or 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 maintenance or decommissioning of the authorised development.

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

(b) 2017 c.20.

(c) 1990 c.43.

(d) 1974 c.40. Section 61(9) was amended by Section 162 and paragraph 15 of Schedule 3 to the Environmental Protection Act 1990 (c.25). There are other amendments to the 1974 Act which are not relevant to this Order.

PART 3

STREETS

Street works

10.—(1) The undertaker may for the purposes of the authorised development, enter on so much of any of the streets specified in Schedule 3 (streets subject to street works) as is within the Order limits and may—

- (a) break up or open the street, or any sewer, drain or tunnel under it;
- (b) drill, tunnel or bore under the street;
- (c) place and keep apparatus under the street;
- (d) maintain apparatus in the street, change its position or remove it;
- (e) repair, replace or otherwise alter the surface or structure of it; 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 for the purposes of sections 48(3) (streets, street works and undertakers) and 51(1) (prohibition of unauthorised street works) of the 1991 Act.

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

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

Application of the 1991 Act

11.—(1) The provisions of the 1991 Act mentioned in paragraph (2) that apply in relation to the carrying out of street works under that Act and any regulations made or code of practice issued or approved under those provisions apply (with all necessary modifications) in relation to—

- (a) The carrying out of works under article 9 (street works); and
- (b) The temporary stopping up, temporary alteration or temporary diversion of a street by the undertaker under article 13 (temporary stopping up of public rights of way);

whether or not the carrying out of the works or the stopping up, alteration or diversion constitutes street works within the meaning of that Act.

(2) The provisions of the 1991 Act^(a) are—

- (a) subject to paragraph (3), section 55 (notice of starting date of works);
- (b) section 57 (notice of emergency works);
- (c) section 60 (general duty of undertakers to co-operate);
- (d) section 68 (facilities to be afforded to street authority);
- (e) section 69 (works likely to affect other apparatus in the street);
- (f) section 76 (liability for cost of temporary traffic regulation);
- (g) section 77 (liability for cost of use of alternative route; and
- (h) all provisions of that Act that apply for the purposes of the provisions referred to in sub-paragraphs (a) to (g).

(3) Section 55 of the 1991 Act as applied by paragraph (2) has effect as if references in section 57 of that Act to emergency works included a reference to a stopping up, alteration or diversion (as the case may be) required in a case of emergency.

^(a) Sections 55, 57, 60, 68, and 69 were amended by the Traffic Management Act 2004 (c. 18).

Power to alter layout, etc., of streets

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

- (a) in the case of the streets specified in column (2) of the table in Part 1 (permanent alteration of layout and maintained by the highway authority) of Schedule 4 (alteration of streets) permanently in the manner specified in relation to that street in column 3; and
- (b) in the case of the streets as specified in column (2) of the table in Part 2 (temporary alteration of layout) of Schedule 4 temporarily in the manner specified in relation to that street in column 3.

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

- (a) alter the level or increase the width of the carriageway by reducing the width of any kerb, footway, cycle track or verge within the street;
- (b) alter the level or increase the width of any such kerb, footway, cycle track, or verge;
- (c) reduce the width of the carriageway;
- (d) make and maintain passing places; and
- (e) alter, remove, replace and relocate any street furniture, including bollards, lighting columns, road signs and chevron signs.

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

(4) The powers conferred by paragraph (2)—

- (a) are exercisable on the giving of not less than 6 weeks notice to the street authority; and
- (b) are not to be exercised without the consent of the street authority where that authority is a public authority

(5) If a street authority which received an application for consent under paragraph (4) fails to notify the undertaker of its decision before the end of the period of 6 weeks beginning with the date on which the application was made, it is deemed to have granted consent.

(6) Any application to which this article applies must include a statement that the provisions of paragraph (5) apply to that application.

(7) Paragraphs (4), (5) and (6) 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) The permanent alterations to each of the streets specified in Part 1 (permanent alteration of layout and maintained by the highway authority) of Schedule 4 (alteration of streets) to this Order must be completed to the reasonable satisfaction of the relevant highway authority and, unless otherwise agreed by the relevant highway authority, the alterations including any culverts, bunding or other structures laid under it or supporting it must be maintained by and at the expense of the undertaker for a period of 12 months from their completion and from the expiry of that period by and at the expense of the relevant highway authority.

(2) Where a footpath or bridleway is constructed altered or diverted under this Order, the constructed altered or diverted part of that highway must be completed to the reasonable satisfaction of the relevant highway authority and, unless otherwise agreed in writing with the relevant highway authority, that part of the footpath or bridleway including any culverts, bunding or other structures laid under it or supporting it must be maintained by and at the expense of the undertaker for a period of 12 months from their completion and from the expiry of that period by and at the expense of the relevant highway authority;

(3) Subject to paragraph (4), the temporary alterations to each of the streets specified in Part 2 (temporary alteration of layout) of Schedule 4 must be completed to the reasonable satisfaction of the street authority and the temporary alterations must be maintained by and at the expense of the undertaker.

(4) Those restoration works carried out pursuant to article 11(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.

(5) 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.

(6) For the purposes of a defence under paragraph (5), 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.

(7) Paragraphs (1) to (6) do not apply where the undertaker is the street authority for a street in which the works are being carried out.

Temporary stopping up of public rights of way

14.—(1) The undertaker, during and for the purposes of constructing or maintaining the authorised development, may temporarily stop up, alter or divert any public rights of way and may for any reasonable time, subject to paragraph (3), prevent all persons from passing along the public rights of way.

(2) The undertaker must provide reasonable access for pedestrians going to or from premises abutting a public right of way affected by the temporary stopping up, prohibition, restriction, alteration or diversion of a public right of way under this article if there would otherwise be no such access.

(3) Without limiting paragraph (1), the undertaker may use any public rights of way temporarily stopped up under the powers conferred by this article within the Order limits as a temporary working site.

(4) Without limiting paragraph (1), the undertaker may temporarily stop up, alter or divert the public rights of way specified in column (2) of Part 1 of Schedule 5 (public rights of way to be stopped up) to the extent specified, by reference to the letters and numbers shown on the street works, public rights of way and access plan, in column (3) of those Schedules.

(5) The undertaker must not temporarily stop up, alter, divert or use as a temporary working site—

- (a) any public rights of way referred to in paragraph (4) without first consulting the street authority; and
 - (b) any other public rights of way without the consent of the street authority, which may attach reasonable conditions to the consent.
- (6) Any person who suffers loss by the suspension of any right of way 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.
- (7) If a street authority fails to notify the undertaker of its decision within 28 days of receiving an application for consent under paragraph (5)(b) that street authority is deemed to have granted consent.

Public rights of way

15.—(1) The public rights of way identified in columns (1) to (3) of Part 2 (public rights of way to be permanently stopped up) of Schedule 5 (public rights of way to be stopped up) and shown on the street works, public rights of way and access plan are to be extinguished on the date of the expiry of the notice given under paragraph (2).

(2) Prior to the extinguishment of each of the public rights of way identified in columns (1) to (3) of Part 2 of Schedule 5 and shown on the street works, public rights of way and access plan, the undertaker must erect a site notice at each end of the rights of way to be extinguished no less than 28 days prior to the extinguishment of that right of way.

(3) The notice to be erected under paragraph (2) must include—

- (a) details of the public rights of way to be extinguished;
- (b) the date on which the extinguishment will take effect;
- (c) details of any public rights of way being provided in substitution; and
- (d) details of the place where a copy of this Order and the documents listed in Schedule 13 (documents to be certified) may be inspected.

(4) No public rights of way specified in Part 2 of Schedule 5 being a public right of way which is to be permanently extinguished is to be wholly or partly stopped up under this article unless—

- (a) The new public right of way to be constructed and substituted for it, which is specified in column (4) of that Part of that Schedule has been completed to the reasonable satisfaction of the relevant highway authority and is open for use; or
- (b) a temporary alternative route for the passage of such users as could have used the public right of way to be stopped up is first provided and subsequently maintained by the undertaker, to the reasonable satisfaction of the relevant highway authority, between the commencement and termination points for the stopping up of the public right of way until the completion and opening of the new public right of way in accordance with subparagraph (a).

Access to works

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

- (a) form and lay out the permanent means of access, or improve existing means of access, in the locations specified in Part 1 (permanent means of access to works) of Schedule 6 (access to works);
- (b) form and lay out the temporary means of access in the location specified in Part 2 (temporary means of access to works) of Schedule 6; and
- (c) with the prior approval of the relevant planning authority after consultation with the relevant 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) The undertaker must restore any access that has been temporarily created under this Order to the reasonable satisfaction of the street authority.

Agreements with street authorities

- 17.—**(1) A street authority and the undertaker may enter into agreements with respect to—
- (a) the strengthening, improvement, repair or reconstruction of any street under the powers conferred by this Order;
 - (b) any stopping up, restriction, alteration or diversion of a street authorised by this Order;
 - (c) the carrying out in the street of any of the works referred to in article 9(1) (street works); or
 - (d) the adoption by a street authority which is the relevant highway authority of works—
 - (i) undertaken on a street which is existing public maintainable highway; or
 - (ii) which the undertaker and relevant highway authority agree to be adopted as public maintainable highway.
- (2) Such 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

- 18.—**(1) Subject to the provisions of this article, the undertaker may make temporary provision for the purposes of the construction or decommissioning of the authorised development—
- (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 or made, or having effect as if made, under the 1984 Act.
- (2) 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 Amendments) Regulations 2011^(a) when in accordance with regulation 3(5) of those regulations.
- (3) Before exercising the power conferred by paragraph (1) 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.
- (4) The undertaker must not exercise the powers in paragraph (1) unless it has—
- (a) given not less than 4 weeks' notice in writing of its intention to do so 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 newspapers circulating in the area in which any road to which the provision relates is situated.

^(a) S.I. 2011/935.

(5) Any provision made under the powers conferred by paragraph (1) of this article may be suspended, varied or revoked by the undertaker from time to time by subsequent exercise of the power conferred in paragraph (1).

(6) Any provision made by the undertaker under paragraphs (1)—

- (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 (road traffic contraventions subject to civil enforcement) to the Traffic Management Act 2004(a).

PART 4

SUPPLEMENTAL POWERS

Discharge of water

19.—(1) The undertaker may use any watercourse or any public sewer or drain for the drainage of water in connection with the carrying out or maintenance of the authorised development and for that purpose may lay down, take up and alter pipes and may, on any land within the Order limits, make openings into, and connections with, the watercourse, public sewer or drain subject to the obtaining of consent and approval respectively pursuant to paragraphs (3) and (4) below.

(2) Any dispute arising from the making of connections to or the use of a public sewer or drain by the undertaker pursuant to paragraph (1) is determined as if it were a dispute under section 106 (right to communicate with public sewers) of the Water Industry Act 1991(b).

(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; 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 pursuant to paragraph (1) 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.

(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 pursuant to 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 the entry into controlled waters of any matter whose entry or discharge into controlled waters is prohibited by regulation 12 (requirement for environmental permit) of the Environmental Permitting (England and Wales) Regulations 2016(c).

(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

(a) 2004 c.18.

(b) 1991 c.56. Section 106 was amended by section 35(8)(a) of the Competition and Service (Utilities) Act 1992 (c.43) and section 99 of the Water Act 2003 (c.37). There are other amendments to this section which are not relevant to this Order

(c) S.I. 2016/1154.

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

Protective work to buildings

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

(2) Protective works may be carried out—

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

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

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

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

(5) Before exercising—

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

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

(6) Where a notice is served under paragraph (5)(a), (c), or (d), the owner or occupier of the building or land concerned may, by serving a counter-notice within the period of 10 days beginning with the day on which the notice was served, require the question of whether it is necessary or expedient to carry out the protective works or to enter the building or land to be referred to arbitration under article 41 (arbitration).

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

(8) Where—

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

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

(9) Nothing in this article relieves the undertaker from any liability to pay compensation under section 152 (compensation in case where no right to claim in nuisance) of the 2008 Act.

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

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

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

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) 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 equipment for use in connection with the survey and investigation of land 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 on 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 held by or in right of the Crown without the consent of the Crown;
- (b) in land located within the highway boundary without the consent of the relevant highway authority; or
- (c) 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)(b) in the case of a highway authority; or
- (b) under paragraph (4)(c) in the case of a street authority,

that authority is deemed to have granted consent.

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

PART 5

POWERS OF ACQUISITION

Compulsory acquisition of land

22.—(1) The undertaker may acquire compulsorily so much of the Order land as is required for the authorised development or to facilitate, or is incidental, to it.

(2) This article is subject to paragraph (2) of article 23 (compulsory acquisition of rights), article 25 (acquisition of subsoil only) and article 30 (temporary use of land for carrying out the authorised development).

Time limit for exercise of authority to acquire land compulsorily

23.—(1) After the end of the period of 5 years beginning on the day on which the Order is made—

- (a) no notice to treat is to be served under Part 1 (compulsory purchase under Acquisition of Land Act 1946) of the 1965 Act; and
- (b) no declaration is to be executed under section 4 (execution of declaration) of the 1981 Act as applied by article 26 (application of the 1981 Act).

(2) The authority conferred by article 30 (temporary use of land for carrying out the authorised development) ceases at the end of the period referred to in paragraph (1), except that nothing in this paragraph prevents the undertaker remaining in possession of land after the end of that period, if the land was entered and possession was taken before the end of that period.

Compulsory acquisition of rights

24.—(1) Subject to paragraph (2), the undertaker may acquire compulsorily such rights or impose restrictive covenants over the Order land as may be required for any purpose for which that land may be acquired under article 21 (compulsory acquisition of land), by creating them as well as by acquiring rights already in existence.

(2) Subject to the provisions of this paragraph, article 24 (private rights) and article 32 (statutory undertakers), in the case of the Order land specified in column (1) of Schedule 8 (land in which only new rights etc. may be acquired) the undertaker's powers of compulsory acquisition are limited to the acquisition of such new rights and the imposition of restrictive covenants for the purpose specified in relation to that land in column (3) of that Schedule.

(3) Subject to section 8 (other provisions as to divided land) and Schedule 2A (counter-notice requiring purchase of land) of the 1965 Act (as substituted by paragraph 10 of Schedule 9 (modification of compensation and compulsory purchase enactments for the creation of new rights and imposition of new restrictive covenants)), where the undertaker creates or acquires an existing right over land or the benefit of a restrictive covenant under paragraph (1) or (2), the undertaker is not required to acquire a greater interest in that land.

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

(5) In any case where the acquisition of new rights or imposition of a restriction under paragraph (1) or (2) is required for the purpose of diverting, replacing or protecting apparatus of a statutory

undertaker, the undertaker may, with the consent of the Secretary of State, transfer the power to acquire such rights to the statutory undertaker in question.

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

Private rights

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

- (a) as from the date of acquisition of the land 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) (powers of entry) of the 1965 Act,

whichever is the earliest.

(2) Subject to the provisions of this article, all private rights or restrictive covenants over land subject to the compulsory acquisition of rights or the imposition of restrictive covenants under article 23 (compulsory acquisition of rights) cease to have effect in so far as their continuance would be inconsistent with the exercise of the right or compliance with the restrictive covenant—

- (a) as from the date of the acquisition of the right or the imposition of the restrictive covenant by the undertaker (whether the right is acquired compulsorily, by agreement or through the grant of lease of the land by agreement); or
- (b) on the date of entry on the land by the undertaker under section 11(1) of the 1965 Act (powers of entry) 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 are suspended and unenforceable, in so far as their continuance would be inconsistent with the purpose for which temporary possession is taken, for as long as the undertaker remains in lawful possession of the land.

(4) Any person who suffers loss by the extinguishment or suspension of any private right or restrictive covenant under this article is entitled to compensation in accordance with the terms of section 152 (compensation in case where no right to claim in nuisance) of the 2008 Act to be determined, in case of dispute, under Part 1 (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 article 32 (statutory undertakers) applies.

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

- (a) any notice given by the undertaker before—
 - (i) the completion of the acquisition of the land or the acquisition of rights or the imposition of restrictive covenants over or affecting the land;
 - (ii) the undertaker's appropriation of the land;
 - (iii) the undertaker's entry onto the land; or
 - (iv) the undertaker's taking temporary possession of the land,that any or all of those paragraphs do not apply to any right specified in the notice; or
- (b) any agreement made at any time between the undertaker and the person in or to whom the right in question is vested or belongs.

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

- (a) is made with a person in or to whom the right is vested or belongs; and
- (b) is expressed to have effect also for the benefit of those deriving title from or under that person,

the agreement is effective in respect of the persons so deriving title, whether 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 affect.

Acquisition of subsoil only

26.—(1) The undertaker may acquire compulsorily so much of, or such rights in, the subsoil of the land referred to in paragraph (1) of article 21 (compulsory acquisition of land) or article 23 (compulsory acquisition of rights) as may be required for any purpose for which that land may be acquired under that provision instead of acquiring the whole of the land.

(2) Where the undertaker acquires any part of, or rights in, the subsoil of land, the undertaker is not required to acquire an interest in any other part of the land.

(3) The following do not apply in connection with the exercise of the power under paragraph (1) in relation to subsoil only—

- (a) Schedule 2A (counter-notice requiring purchase of land not in notice to treat) to the 1965 Act as modified by Schedule 9 (modification of compensation and compulsory purchase enactments for the creation of new rights and imposition of new restrictive covenants);
- (b) Schedule A1 (counter-notice requiring purchase of land not in general vesting declaration) to the 1981 Act; and
- (c) Section 153(4A) (blighted land: proposed acquisition of part interest, material detriment test) of the 1990 Act.

(4) Paragraphs (2) and (3) are to be disregarded where the undertaker acquires a cellar, vault, arch or other construction forming part of a house, building or factory.

Application of the 1981 Act

27.—(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(2) (earliest date for execution of declaration) omit the words from “and this subsection” to the end.

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

(6) In section 5B(1) (extension of time limit during challenge) for “section 23 (Application to High Court in respect of compulsory purchase order) of the Acquisition of Land Act 1981, the three year period mentioned in section 5A” substitute “section 118 (legal challenges relating to applications for orders granting development consent) of the 2008 Act, the five year period mentioned in article 22 (time limit for exercise of authority to acquire land compulsorily) of the Byers Gill Solar Order 20[•].”.

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

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

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

(9) In Schedule A1 (counter-notice requiring purchase of land not in general vesting declaration), for paragraph 1(2) substitute — “(2) But see article 25(3) (acquisition of subsoil only) of the Byers Gill Solar Order 20[●], which excludes the acquisition of subsoil only from this Schedule.”

(10) References to the 1965 Act in the 1981 Act must be construed as references to the 1965 Act as applied by section 125 (application of compulsory acquisition provisions) of the 2008 Act (and as modified by article 28 (modification of Part 1 of the Compulsory Purchase Act 1965) to the compulsory acquisition of land under this Order.

Power to override easements and other rights

28.—(1) Any authorised activity which takes place on land within the Order limits (whether the activity is undertaken by the undertaker or by any person deriving title from the undertaker or by any contractors, servants or agents of the undertaker) is authorised by this Order if it is done in accordance with the terms of this Order, notwithstanding that it involves—

- (a) an interference with an interest or right to which this article applies; or
- (b) a breach of a restriction as to the user of land arising by virtue of a contract.

(2) In this article “authorised activity” means—

- (a) the erection, construction or maintenance of any part of the authorised development;
- (b) the exercise of any power authorised by the Order; or
- (c) the use of any land within the Order limits (including the temporary use of land).

(3) The interests and rights to which this article applies include any easement, liberty, privilege, right or advantage annexed to land and adversely affecting other land, including any natural right to support and include restrictions as to the user of land arising by the virtue of a contract.

(4) Where an interest, right or restriction is overridden by paragraph (1), compensation—

- (a) is payable under section 7 (measure of compensation in case of severance) or 10 (further provision as to compensation for injurious affection) of the 1965 Act; and
- (b) is to be assessed in the same manner and subject to the same rules as in the case of other compensation under those sections where—
 - (i) the compensation is to be estimated in connection with a purchase under that Act; or
 - (ii) the injury arises from the execution of works on or use of land acquired under that Act.

(5) Where a person deriving title under the undertaker by whom the land in question was acquired—

- (a) is liable to pay compensation by virtue of paragraph (4); and
- (b) fails to discharge that liability, the liability is enforceable against the undertaker.

(6) Nothing in this article is to be construed as authorising any act or omission on the part of any person which is actionable at the suit of any person on any grounds other than such an interference or breach as is mentioned in paragraph (1).

Modification of Part 1 of the Compulsory Purchase Act 1965

29.—(1) Part 1 (compulsory acquisition under Acquisition of Land Act 1946) 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.

(2) In section 4A(1) (extension of time limit during challenge)—

- “(a) for section 23 of the Acquisition of Land Act 1981 (application to High Court in respect of compulsory purchase order), the three year period mentioned in section 4” substitute “section 117 of the 2008 Act (legal challenges relating to applications

for orders granting development consent), the five year period mentioned in article 22 (time limit for exercise of authority to acquire land compulsorily) of the Byers Gills Solar Order 20[•]”.

(3) In section 11A (powers of entry: further notice of entry)—

- (a) in subsection (1)(a), after “land” insert “under that provision”; and
- (b) in subsection (2), after “land” insert “under that provision”.

(4) In section 22(2) (expiry of time limit for exercise of compulsory purchase power not to affect acquisition of interests omitted from purchase), for “section 4 of this Act” substitute “article 22 (time limit for exercise of authority to acquire land compulsorily) of the Byers Gill Solar Order 20[•]”.

(5) In Schedule 2A (counter-notice requiring purchase of land not in notice to treat)—

(a) For paragraphs 1(2) and 14(2) substitute—

“(2) But see article 25(3) (acquisition of subsoil only) of the Byers Gill Solar Order 20[•], which excludes the acquisition of subsoil only from this Schedule”; and

(b) after paragraph 29 insert—

“PART 4

INTERPRETATION

30. In this Schedule, references to entering on and taking possession of land do not include doing so under article 19 (protective works to buildings), article 30 (temporary use of land for carrying out the authorised development) or article 31 (temporary use of land for maintaining the authorised development) of the Byers Gill Solar Order 20[•].”.

Rights under or over streets

30.—(1) The undertaker may enter on, appropriate and use so much of the subsoil of or air-space over any street within the Order limits as may be required for the purposes of the authorised development and may use the subsoil or air-space for those purposes or any other purpose ancillary to the authorised development.

(2) Subject to paragraph (3), the undertaker may exercise any power conferred by paragraph (1) in relation to a street without being required to acquire any part of the street or any easement or right in the street.

(3) Paragraph (2) does not apply in relation to—

- (a) any subway or underground building; or
- (b) any cellar, vault, arch or other construction in, on or under a street which forms part of a building fronting onto the street.

(4) Subject to paragraph (5), any person who is an owner or occupier of land appropriated under paragraph (1) without the undertaker acquiring any part of the person’s interest in the land, and who suffers loss as a result, is entitled to compensation to be determined, in case of dispute, under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

(5) Compensation is not payable under paragraph (4) to any person who is an undertaker to whom section 85 (sharing cost of necessary measures) of the 1991 Act applies in respect of measures of which the allowable costs are to be borne in accordance with that section.

Temporary use of land for carrying out the authorised development

31.—(1) The undertaker may, in connection with the carrying out of the authorised development—

- (a) enter on and take temporary possession of—

- (i) so much of the land specified in column (1) of the table in Schedule 10 (land of which temporary possession may be taken) for the purpose specified in relation to the land in column (2) of that table; and
 - (ii) any of the Order land in respect of which no notice of entry has been served under section 11 (powers of entry) of the 1965 Act and no declaration has been made under section 4 (execution of declaration) of the 1981 Act;
 - (b) remove any buildings, agricultural plant and apparatus, drainage, fences, debris and vegetation from that land;
 - (c) construct temporary works, haul roads, security fencing, bridges, structures and buildings 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 mentioned in Part 1 of Schedule 1 (authorised development); and
 - (f) carry out mitigation works required pursuant to the requirements in Schedule 2.
- (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 must not remain in possession of any land under this article for longer than reasonably necessary and in any event must not, without the agreement of the owners of the land, remain in possession of any land under this article after the end of the period of one year beginning with the date of completion of the part of the authorised development for which temporary possession of the land was taken unless the undertaker has, before the end of that period, served a notice of entry under section 11 of the 1965 Act or made a declaration under section 4 of the 1981 Act in relation to that land.
- (5) Unless the undertaker has served notice of entry under section 11 of the 1965 Act or made a declaration under section 4 of the 1981 Act or otherwise acquired the land or rights over land subject to temporary possession, the undertaker must before giving up possession of land of which temporary possession has been taken under this article, remove all works and restore the land to the reasonable satisfaction of the owners of the land; but the undertaker is not required to—
- (a) replace any building, structure, drain or electric line removed under this article;
 - (b) remove any drainage works installed by the undertaker under this article;
 - (c) remove any new road surface or other improvements carried out under this article to any street specified in Schedule 2 (streets subject to street works); or
 - (d) restore the land on which any works have been carried out under paragraph (1)(f) insofar as the works relate to mitigation works identified in the environmental statement or required pursuant to the requirements in Schedule 2.
- (6) The undertaker must pay compensation to the owners and occupiers of land which temporary possession is taken under this article for any loss or damage arising from the exercise in relation to the land of the provisions of any power conferred by this article.
- (7) Any dispute as to a person's entitlement to compensation under paragraph (6), or as to the amount of the compensation, must be determined under Part 1 (determination of questions of disputed compensation) of the 1961 Act.
- (8) Nothing in this article affects any liability to pay compensation under section 152 (compensation in case where no right to claim in nuisance) of the 2008 Act or under any other enactment in respect of loss or damage arising from the carrying out of the authorised development, other than loss or damage for which compensation is payable under paragraph (6).

(9) Where the undertaker takes possession of land under this article, the undertaker is not required to acquire the land or any interest in it.

(10) Nothing in this article precludes the undertaker from—

- (a) creating and acquiring new rights or imposing restrictions over any part of the Order land identified in Schedule 8 (land in which only new rights etc. may be acquired); or
- (b) acquiring any part of the subsoil of (or rights in the subsoil of) that land under article 25 (acquisition of subsoil only) or any part of the subsoil of or airspace over that land under article 29 (rights under or over streets)

(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) Nothing in this article prevents the taking of temporary possession more than once in relation to any land that the undertaker takes temporary possession of under this article.

Temporary use of land for maintaining authorised development

32.—(1) Subject to paragraph (2), at any time during the maintenance period (as defined in paragraph (11)) relating to any part of the authorised development, the undertaker may—

- (a) enter on and take temporary possession of any land within the Order land if such possession is reasonably required for the purpose of maintaining the authorised development;
- (b) enter on any land within the Order land for the purpose of gaining such access as is reasonably required for the purpose of maintaining the authorised development; and
- (c) construct such temporary works and buildings on the land as may be reasonably necessary for that purpose.

(2) Paragraph (1) does not authorise the undertaker to take temporary possession of—

- (a) any house or garden belonging to a house; or
- (b) any building (other than a house) if it is for the time being occupied.

(3) Not less than 28 days before entering on and taking temporary possession of land under this article the undertaker must serve notice of the intended entry on the owners and occupiers of the land.

(4) The undertaker may only remain in possession of land under this article for so long as may be reasonably necessary to carry out the maintenance of the part of the authorised development for which possession of the land was taken.

(5) Before giving up possession of land of which temporary possession has been taken under this article, the undertaker must remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land.

(6) The undertaker must pay compensation to the owners and occupiers of land of which temporary possession is taken under this article for any loss or damage arising from the exercise in relation to the land of the provisions of this article.

(7) Any dispute as to a person's entitlement to compensation under paragraph (6), or as to the amount of the compensation, must be determined under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

(8) Nothing in this article affects any liability to pay compensation under section 152 of the 2008 Act (compensation in case where no right to claim in nuisance) or under any other enactment in respect of loss or damage arising from the maintenance of the authorised development, other than loss or damage for which compensation is payable under paragraph (6).

(9) Where the undertaker takes possession of land under this article, the undertaker is not required to acquire the land or any interest in it.

(10) Section 13 (refusal to give possession to acquiring authority) of the 1965 Act applies to the temporary use of land 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) In this article “the maintenance period” means the period of 5 years beginning with the date on which a phase of the authorised development first exports electricity to the national electricity transmission network.

Statutory undertakers

33.—(1) Subject to the provisions of Schedule 11 (protective provisions) the undertaker may—

- (a) acquire compulsorily, or acquire new rights or impose restrictive covenants over, the land belonging to statutory undertakers shown on the land plans (as certified by the Secretary of State in accordance with article 37) within the Order land; and
- (b) extinguish the rights of, remove, relocate the rights of or reposition the apparatus belonging to statutory undertakers over or within the Order land.

Apparatus and rights of statutory undertakers in stopped up streets

34. Where a street is altered or diverted or its use is temporarily prohibited or restricted under article 9 (street works), article 11 (power to alter layout, etc., of streets), article 12 (construction and maintenance of altered streets) or article 13 (temporary stopping up of public rights of way) any statutory undertaker whose apparatus is under, in, on, along or across the street has the same powers and rights in respect of that apparatus, subject to Schedule 11 (protective provisions), as if this Order had not been made.

Recovery of costs of new connections

35.—(1) Where any apparatus of a public utility undertaker or of a public communications provider is removed under article 32 (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 32 (statutory undertakers), any person who is—

- (a) the owner or occupier of premises the drains of which communicated with that sewer; or
- (b) the owner of a private sewer which communicated with that sewer,

is entitled to recover from the undertaker compensation in respect of expenditure reasonably incurred by that person, in consequence of the removal, for the purpose of making the drain or sewer belonging to that person communicate with any other public sewer or with a private sewerage disposal plant.

(3) This article does not have effect in relation to apparatus to which Part 3 (street works in England and Wales) of the 1991 Act applies.

(4) In this article—

- (a) “public communications provider” has the same meaning as in section 151(1) (interpretation of Chapter 1) of the Communications Act 2003^(a); and
- (b) “public utility undertaker” has the same meaning as in the 1980 Act.

^(a) 2003 c.21.

PART 6

GENERAL

Operational land for the purposes of the 1990 Act

36.—(1) Development consent granted by this Order is to be treated as specific planning permission for the purposes of section 264(3)(a) (cases in which land is to be treated as not being operational land) of the 1990 Act.

Certification of plans, etc.

37.—(1) The undertaker must, as soon as practicable after the making of this Order, submit to the Secretary of State copies of each of the plans and documents set out in Schedule 13 (documents to be certified) for certification that they are true copies of the plans and 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

38.—(1) A notice or other document required or authorised to be served for the purposes of this Order may be served—

- (a) by post;
- (b) by delivering it to the person on whom it is to be served or to whom it is to be given or supplied; or
- (c) with the consent of the recipient and subject to paragraphs (5) to (8) by electronic transmission.

(2) Where the person on whom a notice or other document to be served for the purposes of this Order is a body corporate, the notice or document is duly served if it is served on the secretary or clerk of that body.

(3) For the purposes of section 7 (references to service by post) of the Interpretation Act 1978^(a) as it applies for the purposes of this article, the proper address of any person in relation to the service on that person of a notice or document under paragraph (1) is, if that person has given an address for service, that address, and otherwise—

- (a) in the case of the secretary or clerk of a body corporate, the registered or principal office of that body; and
- (b) in any other case, the last known address of that person at the time of service.

(4) Where for the purposes of this Order a notice or other document is required or authorised to be served on a person as having an interest in, or as the occupier of, land and the name or address of that person cannot be ascertained after reasonable enquiry, the notice may be served by—

- (a) addressing it to that person by name or by the description of “owner”, or as the case may be “occupier”, of the land (describing it); and
- (b) either leaving it in the hands of a person who is or appears to be resident or employed on the land or leaving it conspicuously affixed to some building or object on or near the land.

(5) Where a notice or other document required to be served or sent for the purposes of this Order is served or sent by electronic transmission the requirement is to be taken to be fulfilled only where—

^(a) 1978 c.30.

- (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

39.—(1) The undertaker may fell or lop any tree, or shrub near any part of the authorised development, or cut back its roots, if it reasonably believes it to be necessary to do so to prevent the tree, or shrub—

- (a) from obstructing or interfering with the construction, maintenance operation or decommissioning of the authorised development or any apparatus used in connection with the authorised development;
- (b) from constituting a danger to persons using the authorised development; or
- (c) obstructing or interfering with the passage of construction vehicles to the extent necessary for the purposes of construction of the authorised development.

(2) In carrying out any activity authorised by paragraph (1), the undertaker must do no unnecessary damage to any tree, or shrub and must pay compensation to any person for any loss or damage arising from such activity.

(3) Any dispute as to a person’s entitlement to compensation under paragraph (2), or as to the amount of compensation, 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 hedgerows as are within the Order limits and specified in Schedule 7 (removal of hedgerows).

shown for illustrative purposes on the trees and hedgerows to be removed plan

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

^(a) S.I. 1997/1160.

“(k) or for the carrying out or maintenance of development which has been authorised by the Byers Gill Solar Development Consent Order 20[•].”

(6) In this article “hedgerow” has the same meaning as in the Hedgerow Regulations 1997(a).

Trees subject to tree preservation orders

40.—(1) The undertaker may fell or lop any tree within or overhanging land within the Order limits subject to a tree preservation order or cut back its roots, if it reasonably believes it to be necessary to do so in order to prevent the tree from obstructing or interfering with the construction, maintenance or operation of the authorised development or any apparatus used in connection with the authorised development.

(2) In carrying out any activity authorised by paragraph (1)—

- (a) the undertaker must do no unnecessary damage to any tree and must pay compensation to any person for any loss or damage arising from such activity; and
- (b) the duty contained in section 206(1) (replacement of trees) of the 1990 Act does not apply.

(3) The authority given by paragraph (1) constitutes a deemed consent under the relevant tree preservation order.

(4) Any dispute as to a person’s entitlement to compensation under paragraph (2), or as to the amount of compensation, will be determined under Part 1 of the 1961 Act.

Arbitration

41.—(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 12 (arbitration rules) of this Order, by a single arbitrator to be agreed upon by the parties, within 14 days of receipt of the notice of arbitration, or if the parties fail to agree within the time period stipulated, to be appointed on application of either party (after giving written notice to the other) by the Secretary of State.

(2) Any matter for which the consent or approval of the Secretary of State is required under any provision of this Order shall not be subject to arbitration.

Requirements, appeals, etc.

42.—(1) Where an application is made to, or a request is made of, the relevant planning authority or any other relevant person for any consent, agreement or approval required or contemplated by any of the provisions of this Order, such consent, agreement or approval must, to be validly 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 (requirements) of that Schedule.

Application of landlord and tenant law

43.—(1) This article applies to—

- (a) any agreement for leasing to any person the whole or any part of the authorised development or the right to operate the same; and
- (b) any agreement entered into by the undertaker with any person for the construction, maintenance, use or operation of the authorised development, or any part of it,

so far as any such agreement relates to the terms on which any land which is the subject of a lease granted by or under that agreement is to be provided for that person’s use.

(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.

Crown rights

44.—(1) Nothing in this Order affects prejudicially any estate, right, power, privilege, authority or exemption of the Crown and in particular, nothing in this Order authorises the undertaker or any licensee to take possession of, use, enter upon or in any manner interfere with any land or rights of any description (including any portion of the shore or bed of the sea or any river, channel, creek, bay or estuary)—

- (a) belonging to His Majesty in right of the Crown and forming part of the Crown Estate without the consent in writing of the Crown Estate Commissioners;
- (b) belonging to His Majesty in right of the Crown and not forming part of the Crown Estate without the consent in writing of the government department having the management of that land; or
- (c) belonging to a government department or held in trust for His Majesty for the purposes of a government department without the consent in writing of that government department.

(2) Paragraph (1) does not apply to the exercise of any right under this Order for the compulsory acquisition of an interest in any Crown land (as defined in the 2008) 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.

Protective provisions

45.—(1) Schedule 11 (protective provisions) has effect.

Funding

46.—(1) The undertaker must not exercise the powers conferred by the provisions referred to in paragraph (2) in relation to any Order land unless it has first put in place either—

- (a) a guarantee and the amount of that guarantee 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 and the amount of that security for that purpose 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 21 (compulsory acquisition of land);
- (b) article 23 (compulsory acquisition of rights);
- (c) article 24 (private rights);

- (d) article 25 (acquisition of subsoil only);
- (e) article 29 (rights under or over streets);
- (f) article 30 (temporary use of land for carrying out the authorised development);
- (g) article 31 (temporary use of land for maintaining the authorised development); and
- (h) article 32 (statutory undertakers).

(3) A guarantee or alternative form of security given in respect of any liability of the undertaker to pay compensation pursuant to the provisions referred to in paragraph (2) 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.

Inconsistent planning permissions

47.—(1) Any planning permission which has been initiated prior to the commencement of the authorised development pursuant to this Order may continue to be lawfully implemented thereafter notwithstanding any physical incompatibility with the authorised development or inconsistency with any provision of this Order.

(2) As from the date on which the authorised development is commenced any conditions of a planning permission granted pursuant to Part 3 (Control over Development) of the 1990 Act (whether express or otherwise) which relate to land within the Order limits or land adjacent to the Order limits cease to have effect to the extent they are inconsistent with the authorised development or with anything done or approved under the requirements in Part 1 (requirements) of Schedule 2.

(3) As from the date of this Order where planning permission (whether express or otherwise) is granted (whether prior to the date of this Order or after) pursuant to Part 3 of the 1990 Act in respect of land within the Order limits for development not forming part of the authorised development, the carrying out of development pursuant to such planning permission is not to operate to prevent the undertaker from carrying out further works for the development of the authorised development pursuant to the terms of this Order.

(4) Nothing in this Order restricts the undertaker from seeking or implementing, or the relevant planning authority from granting, planning permission for development within the Order limits.

(5) Any development, or any part of a development within the Order limits which is constructed or used under the authority of a planning permission pursuant to Part 3 of the 1990 Act (whether express or otherwise) following the coming into force of this Order is to be disregarded at all times for the purposes of ascertaining whether or not an offence has been committed under the provisions of sections 160 (offences) or 161 (breach of terms of order granting development consent) of the 2008 Act.

Signature

Address	<i>Name</i>
	Secretary of State
Date	Department for Energy Security and Net Zero

Comment [ERR5]:
Warning only Low impact
[e00120] GLOBAL The signature
date has not yet been completed

SCHEDULE 1

Article 3

AUTHORISED DEVELOPMENT

1. In this Schedule-

“balance of solar plant” means inverters, transformers, and switch gear and would be either—

- (a) solar stations being a station comprising centralised inverters, transformers and switch gear with each component for each solar station either—
 - (i) a “solar station” located outside, with a concrete foundation slab or placed on metal skids for each of the inverters and transformers and switch gear; or
 - (ii) housed together within a container sitting on a concrete foundation slab or placed on metal skids; or
- (b) string inverters attached either to mounting structures or a ground mounted frame switchgear and transformers on a concrete foundation slab or placed on metal skids;

“electrical cables” means—

- (c) cables of differing types and voltages installed for the purposes of conducting electricity, auxiliary cables, cables connecting to direct current (DC) boxes, earthing cables and optical fibre cables;
- (d) excavations to install trenching, including storage of excavated material;
- (e) provision of ducting or alternative means of conducting media including jointing pits hardstanding adjoining the jointing pits, combiner boxes, fibre bays, cable ducts, cable protections, joint protection, manholes, kiosks, marker posts, underground cable marker, tiles and tape, send and receive pits for horizontal directional drilling, trenching, lighting, and a put or container to capture fluids associated with drilling;

“energy storage” means equipment used for the storage of electrical energy;

“National Grid substation” means the existing 132kV substation located near Stockton-On-Tees owned and operated by National Grid;

“inverter” means electrical equipment required to convert direct current power to alternating current;

“mounting structure” means a frame or rack made of galvanised steel, anodised aluminium or other material design to support the solar panels and mounted on piles driven into the ground, piles rammed into a pre-drilled hole, a pillar attaching to a steel ground screw, or pillars fixed to a concrete foundation;

“panel areas” means panel areas A to F shown labelled as Work No. 1 on the works plans;

“permissive paths” means new access tracks providing restricted public access within the Order limits along the routes shown on the street works, public rights of way and access plans;

“solar panel” means a solar photovoltaic panel or module designed to convert solar irradiance to electrical energy;

“substation” means a substation containing electrical equipment required to switch, transform, convert electricity and provide reactive power compensation with welfare facilities, means of access and other associated facilities;;

“switch gear” means a combination of electrical disconnect switches, fuses or circuit breakers used to control, protect, and isolate electrical equipment; and

“transformer” means a structure serving to transform electricity to a higher voltage.

2. In the Boroughs of Darlington and Stockton-on-Tees and the County of Durham the construction, operation, maintenance and decommissioning of a nationally significant infrastructure project as defined in sections 14(1) and 15 of the 2008 Act with associated development under section 115(1)(b) of the 2008 Act.

3. The nationally significant infrastructure project authorised by this Order comprises a generating station with a gross electrical output of over 50 megawatts alternating current comprising all or any of the work numbers in this Schedule or any part of any work number in this Schedule—

Work No. 1 – a ground mounted solar photovoltaic generating station comprising—

Work No. 1A, 1B, 1C, 1D, 1E, and 1F: being panel areas A to F, comprising—

- (a) solar panels fitted to mounting structures;

(b) balance of solar plant,
and associated development within the meaning of Section 115(2) of the 2008 Act comprising—

Work No. 2 – a battery energy storage system comprising—

- (c) battery energy storage system units co-located with Work No. 1;
- (d) auxiliary transformers and associated bunding;
- (e) power conversion system units including inverters, switch gear, transformers and ancillary equipment;
- (f) containers or enclosures housing all or any of Work Nos. 2(b) and (c) and ancillary equipment sitting on a concrete foundation slab or placed on metal skids;
- (g) monitoring and control systems;
- (h) heating, ventilation and air conditioning systems;
- (i) fire safety infrastructure including water storage in tanks or other containers, and drainage and water containment features and associated infrastructure; and
- (j) containers or similar structures to house, control and welfare facilities, and storage.

Work No. 3 – works including—

- (k) 33 kilovolt electrical cables connecting Work No. 1 and Work No. 2 to Work No. 4;
- (l) 132 kilovolt electrical cables connecting Work No. 4 to Work No. 6 within panel areas;
- (m) fencing, gates, boundary treatment and other means of enclosure;
- (n) improvement, maintenance and use of existing private tracks;
- (o) laying down of internal access tracks, ramps, means of access, footpaths, permissive paths, roads, including the laying and construction of drainage infrastructure, signage and information boards;
- (p) works for the provision of security and monitoring measures such as CCTV columns, lighting columns and lighting, cameras, weather stations, communication infrastructure, and perimeter fencing;
- (q) landscaping and biodiversity mitigation and enhancement measures including planting; and
- (r) works required for crossing, moving re-routing or over/undergrounding of existing utility assets (including water, gas, sewer pipes, electricity distribution/transmission cabling, telecommunications etc.).

Work No. 4 – works in connection with an onsite substation comprising—

- (s) substation, switch room buildings, concrete foundations and ancillary equipment including reactive power units;
- (t) power conversion system units including inverters, switch gear, transformers and ancillary equipment;
- (u) control building housing offices, storage containers and space, welfare facilities, waste storage within a fenced compound, car parking;
- (v) monitoring and control systems for Work Nos. 1, 2 and 4;
- (w) 132 kilovolt harmonic filter compound;
- (x) electrical cables;
- (y) communications mast being not more than 15 metres in height;
- (z) deluge system including water tanks and fire suppression, and drainage and water containment features and associated infrastructure; and
- (aa) access gates and tracks, security palisade fencing and bunding.

Work No. 5 – works including—

- (bb) 132 kilovolt electrical cables connecting Work No. 4 to Work No. 6 outside of panel areas;
- (cc) fencing, gates, boundary treatment and other means of enclosure;
- (dd) laying down of internal access tracks, ramps, means of access, footpaths, roads, including the laying and construction of drainage infrastructure, signage and information boards; and
- (ee) works required for crossing, moving re-routing or over/undergrounding of existing utility assets (including water, gas, sewer pipes, electricity distribution/transmission cabling, telecommunications etc.)

Work No. 6 – within the National Grid substation construction of electrical substation infrastructure including:

- (ff) a compound for electrical works necessary for the onwards transmission of electricity containing, but not limited to, cable switchgear and electrical equipment including power transformers, reactive compensation equipment, filters, cooling equipment, control and welfare buildings, lightning rods, internal roads, security fencing, and other associated equipment, structures and buildings including noise-attenuation works;
- (gg) electrical cables;
- (hh) 132 kilovolt connection bay located at the Norton 132 kilovolt GIS switch room including all associated electrical equipment and civil works necessary to enable the onward transmission of electricity; and
- (ii) access gates and tracks.

Work No. 7 – temporary construction and decommissioning of access tracks and compounds comprising—

- (jj) works to improve existing farm access from public highway, and install temporary traffic lights, banksmen or other measures to manage traffic;
- (kk) works to excavate and store soil, clear vegetation and obstacles, level, shape and prepare surface for construction track to be installed;
- (ll) storage of equipment and materials including waste skips;
- (mm) civils investigations and works to reinforce ground with weight-bearing support infrastructure, maintain integrity of structures beneath road surface;
- (nn) creation of temporary construction access tracks, laydown and working areas;
- (oo) works required for crossing, moving, re-routing or over/undergrounding of existing utility assets (including water, gas, sewer pipes, electricity distribution/transmission cabling, telecommunications etc.);
- (pp) temporary stopping up of watercourses for installation of culverts, drainage and other features to cross water courses;
- (qq) areas of hardstanding;
- (rr) car parking;
- (ss) site and welfare offices, canteens and workshops;
- (tt) area for download and turning;
- (uu) security infrastructure;
- (vv) site drainage and waste management infrastructure; and
- (ww) electricity, water, waste-water and telecommunications connections.

Work No. 8 – works to facilitate access for all works, comprising—

- (xx) creation of accesses from or across the public highway;
- (yy) visibility splays;
- (zz) works to widen and surface the public highway; and

- (aaa) installation of temporary traffic lights or facilities for manned traffic management.

Work No. 9 – works for areas of green infrastructure comprising—

- (bbb) soft landscaping and planting, including tree and hedgerow planting;
- (ccc) habitat creation and management including earthworks, landscaping, means of enclosure and the laying and construction of drainage infrastructure; and
- (ddd) laying down of permissive paths, signage, and information boards.

In connection with the construction of Work Nos. 1-9 above and to the extent that they do not form any part of any such work, further associated development comprising such other works as may be necessary or expedient for the purpose of or in connection with the relevant part of the authorised development and which fall within the scope of work assessed by the environmental statement within the Order limits including—

- (eee) haul roads, ramps, watercourse and other temporary crossings, vehicular and pedestrian means of access including creation of new tracks and paths, widening upgrades alterations and improvements of existing roads tracks and paths;
- (fff) fencing, gates, boundary treatments and other means of enclosure;
- (ggg) bunds, embankments, trenching and swales;
- (hhh) provision of temporary and permanent ecological and environmental mitigation and compensation works, including landscaping works and habitat creation;
- (iii) working sites in connection with the construction of the authorised development including construction lay down areas, compounds, and spoil storage and associated control measures;
- (jjj) works to the existing irrigation system and works to alter the position and extent of such irrigation system;
- (kkk) surface water drainage systems, storm water attenuation systems including storage basins, oil water separators, including channelling and culverting and works to existing drainage networks;
- (lll) electrical, gas, water, foul water drainage and telecommunications infrastructure connections diversions and works to alter the position of such services and utilities connections;
- (mmm) works to alter the course of or otherwise interfere with non-navigable rivers, streams or watercourses;
- (nnn) site establishments and preparation works including site clearance (including vegetation removal, demolition of existing buildings and structure), earthworks (including soil stripping and storage and site levelling) and excavations, the alteration of the position of services and utilities and works for the protection of buildings and land;
- (ooo) works for the benefit or protection of land affected by authorised development;
- (ppp) works of restoration;
- (qqq) tunnelling, boring and drilling works; and
- (rrr) such other works as may be necessary or expedient for the purposes of or in connection with the relevant part of the authorised development.

SCHEDULE 2 REQUIREMENTS

Article 42

PART 1 REQUIREMENTS

Time limits

1. The authorised development must commence no later than the expiration of five years beginning with the date this Order comes into force.

Phases of authorised development and date of final commissioning

2.—(1) The authorised development may not be commenced until a written scheme setting out the proposed phases of construction of the authorised development has been submitted to and approved by the relevant planning authority.

(2) The scheme must be implemented as approved.

(3) Notice of the date of final commissioning with respect of the first phase of Work No. 1 to complete commissioning must be given to the relevant planning authority within 15 working days of the date of final commissioning for that phase.

(4) Nothing shall prevent the undertaker and the relevant planning authority agreeing from time to time to amend the written scheme setting out the proposed phases of construction.

(5) The agreed written scheme may contain flexibility and optioneering for different proposed phases of construction provided that the undertaker notifies the relevant planning authority of the final intended phasing prior to commencement.

Detailed design approval

3.—(1) No phase of the authorised development may commence until details of—

- (a) the layout;
- (b) scale;
- (c) proposed finished ground levels;
- (d) external appearance;
- (e) hard surfacing materials;
- (f) vehicular and pedestrian access, parking and circulation areas;
- (g) refuse or other storage units, signs and lighting;
- (h) drainage, water, power and communications cables and pipelines;
- (i) programme for landscaping works; and
- (j) fencing.

relating to that phase have been submitted to and approved in writing by the relevant planning authority.

(2) The details submitted must accord with—

- (a) the location plan;
- (b) the works plans;
- (c) the environmental masterplan;
- (d) the outline LEMP;
- (e) the principles and assessments set out in the environmental statement; and

- (f) the design approach document, or such variation thereof as may be approved by the relevant planning authority pursuant to requirement 19.
- (3) The authorised development must be carried out in accordance with the approved details.

Construction environmental management plans (CEMP)

4.—(1) No phase of the authorised development may commence until a CEMP for that phase has been submitted to and approved by the relevant planning authority, such approval to be in consultation with the Environment Agency. Any CEMP submitted for approval must be in accordance with the outline CEMP and any approved CEMP must be adhered to for the duration of the works in the phase of the authorised development to which the CEMP relates.

(2) The CEMP for each phase of the authorised development must provide details of—

- (a) community liaison;
- (b) complaints procedures;
- (c) nuisance management including measures to avoid or minimise the impacts of construction works (covering dust, noise and vibration);
- (d) construction dust assessment;
- (e) arboricultural impact assessment;
- (f) site waste and materials management measures;
- (g) pollution control measures to prevent the introduction of any hazardous substances;
- (h) security measures and use of artificial lighting;
- (i) a protocol requiring consultation with the relevant planning authority in the event that unexpected contaminated land is identified during ground investigation or construction; and
- (j) details of out of hours working procedures.

Decommissioning and restoration

5.—(1) Within 3 months of the date that the undertaker decides to decommission any part of the solar farm works and grid connection works, the undertaker must submit to the relevant planning authority for that part for approval a decommissioning environmental management plan and a decommissioning traffic management plan for that part. Decommissioning must commence no later than 40 years following the date of final commissioning of the first phase of Work No. 1 as notified by the undertaker pursuant to requirement 2 (phasing of the authorised development and date of final commissioning).

(2) Pursuant to paragraph 5(1) above, the plans submitted and approved must be substantially in accordance with the relevant part of the outline DEMP.

(3) The decommissioning environmental management plan submitted and approved must include a resource management plan that includes details of proposals to minimise the use of natural resources and unnecessary materials.

(4) No decommissioning works must be carried out until the relevant planning authority approves, in consultation with the Environment Agency and the relevant highway authority for the highway(s) to which the relevant decommissioning traffic management plan relates, the plans submitted in relation to such works.

(5) The plans must be implemented as approved.

(6) This requirement is without prejudice to any other consents or permissions which may be required to decommission any part of the authorised development.

(7) In this Part of this Schedule –

- (a) “solar farm works” means that part of the authorised development identified in Work No. 1, Work No.2, Work No.3 (but excluding Work No.3(b)) and Work No.4; and

- (b) “grid connection works” means that part of the authorised development identified in Work No.3(b) and Work No.5.

Construction traffic management plan (CTMP)

6.—(1) No phase of the authorised development is to be commenced until a CTMP covering that phase and in accordance with the outline CTMP for that phase has been submitted to and approved by the relevant planning authority in consultation with the highway authority for the highway(s) to which the CTMP for that phase relates.

- (2) The CTMP must be implemented as approved.

Pollution and Spillage

7.—(1) No phase of the authorised development is to be commenced until a pollution and spillage response plan covering that phase and in accordance with the outline pollution and spillage response plan for that phase has been submitted to and approved by the relevant planning authority to which the pollution and spillage response plan for that phase relates.

- (2) The pollution and spillage response plan must be implemented as approved.

Materials Management

8.—(1) No phase of the authorised development is to be commenced until a materials management plan covering that phase and in accordance with the outline materials management plan for that phase has been submitted to and approved by the relevant planning authority in consultation with the Environment Agency.

- (2) The materials management plan must be implemented as approved.

Site Waste

9.—(1) No phase of the authorised development is to be commenced until a site waste management plan covering that phase and in accordance with the outline site waste management plan for that phase has been submitted to and approved by the relevant planning authority in consultation to which the site waste management plan for that phase relates.

- (2) The site waste management plan must be implemented as approved.

Soil Management

10.—(1) No phase of the authorised development may commence until a soil resource management plan (which must be substantially in accordance with the outline soil resource management plan as relevant to construction activities) for that phase has been submitted to and approved by the relevant planning authority in consultation with Natural England.

(2) All construction works associated with the authorised development must be carried out in accordance with the approved soil resource management plan.

(3) Prior to the date of final commissioning for any phase of the authorised development, a soil resource management plan (which must be substantially in accordance with the outline soil resource management plan as relevant to operational activities) for that phase must be submitted to and approved by the relevant planning authority for that phase.

(4) The operation of the authorised development must be carried out in accordance with the approved soil resource management plan.

(5) Prior to the start of any decommissioning works for any phase of the authorised development, a soil resource management plan (which must be substantially in accordance with the outline soil resource management plan as relevant to decommissioning activities) for that phase must be submitted to and approved by the relevant planning authority for that phase.

(6) The decommissioning of the authorised development must be carried out in accordance with the approved soil resource management plan.

Battery safety management

11.—(1) Prior to the commencement of Work No. 2 as notified to the relevant planning authority by the undertaker pursuant to requirement 2 (phases of the authorised development and date of final commissioning) a battery fire safety management plan must be submitted to and approved by the relevant planning authority.

(2) The submitted battery fire safety management plan must either accord with the outline battery fire safety management plan or detail such changes as the undertaker considers are required.

(3) In the event that the submitted battery fire safety management plan proposes changes to the outline battery fire safety management plan the relevant planning authority must not approve the battery fire safety management plan until it has consulted with the County Durham and Darlington Fire and Rescue Service.

Landscape and ecological management plan (LEMP)

12.—(1) No phase of the authorised development is to be commenced until a LEMP covering that phase which accords with the outline LEMP has been submitted to and approved by the relevant planning authority.

(2) The LEMP must include details relevant for the phase of works in relation to —

- (a) the method of protection of existing landscape features and habitats during the construction, operation and decommissioning stage of the authorised development;
- (b) habitat creation, including all new native hedgerow planting, replanting of any breaks (gaps) in excess of 1 metre in existing native hedgerows within the Order limits adjacent to the footpath and sowing of wildflower seed along the margins between the footpath and the hedgerow/security fence boundaries;
- (c) ongoing management including seasonal grazing regime and other measures including the annual review of the need for any additional mitigation planning work, during the lifetime of the authorised development;
- (d) how the landscaping and ecology measures will be managed, maintained, and monitored during the operational life of the authorised development to the date on which the decommissioning and restoration plan is implemented pursuant to requirement 5 (decommissioning and restoration);
- (e) a timetable for the landscape management of the land within the Order limits during the lifetime of the authorised development; and
- (f) landscaping details.

(3) The LEMP must be implemented as approved.

Implementation and maintenance of landscaping

13.—(1) All landscaping works must be carried out in accordance with the LEMP approved under requirement 12 (landscape and ecological management plan), and in accordance with the relevant recommendations of appropriate British Standards.

(2) Any tree or shrub planted or used as part of an approved landscaping management scheme that, within a period of five years after planting, is removed, dies or becomes, in the opinion of the relevant planning authority, seriously damaged or diseased must be replaced in the first available planting season with a specimen of the same species and size as that originally planted.

Public rights of way diversions

14.—(1) No phase of the authorised development is to be commenced and no decommissioning will be undertaken until a public rights of way management plan substantially in accordance with the outline public rights of way management plan for any sections of public rights of way shown to be temporarily closed on the rights of way and access plans for that phase has been submitted to and approved by the relevant planning authority in consultation with the relevant highway authority.

(2) The plan must include details of—

- (a) measures to minimise the length of any sections of public rights of way to be temporarily closed; and
- (b) advance publicity and signage in respect of any sections of public rights of way to be temporarily closed.

(3) The plan must be implemented as approved unless otherwise agreed with the relevant planning authority in consultation with the highway authority.

Construction hours

15.—(1) Subject to sub-paragraph (2), no construction works are to take place except between the hours of—

- (a) 08:00 to 18:00 Monday to Friday; and
- (b) 08:00 to 13:00 on Saturday.

(2) With no activity on Sundays or bank holidays.

(3) The following works are permitted outside the hours referred to in sub-paragraph (1)—

- (a) emergency works; and
- (b) works which do not cause noise that is audible at the boundary of the Order limits.

(4) Any emergency works carried out under sub-paragraph (2)(a) must be notified to the relevant planning authority within 72 hours of their commencement.

Fencing and other means of enclosure

16.—(1) No phase of the authorised development may commence until written details of all proposed permanent and temporary fences, walls or other means of enclosure of the connection works for that phase have been submitted to and approved by the relevant planning authority as part of the detailed design approval required by requirement 3(1) (detailed design approval).

(2) For the purposes of requirement 16(1), “commence” includes any site preparation works.

(3) Any construction site must remain securely fenced in accordance with the approved details at all times during construction of the authorised development.

(4) Any temporary fencing must be removed on completion of the phase of construction of the authorised development for which it was used.

(5) Any approved permanent fencing must be completed before completion of the authorised development.

Archaeology

17.—(1) No phase within the authorised development is to be commenced until a written scheme of investigation, substantially in accordance with the outline archaeological management strategy, within that phase has been submitted to and approved by the relevant planning authority.

(2) Any archaeological works or programme of archaeological investigation carried out under the approved written scheme for investigation must be carried out by an organisation registered with the Chartered Institute for Archaeologists or by a member of that Institute.

(3) Any archaeological works or programme of archaeological investigation must be carried out in accordance with the approved scheme.

Requirement for written approval

18. Where the approval, agreement or confirmation of the Secretary of State, relevant planning authority or another person is required under a requirement that approval or confirmation must be given in writing.

Amendments to approved details

19.—(1) With respect to any requirement which requires the authorised development to be carried out in accordance with the details approved by the relevant planning authority, the approved details must be carried out as approved unless an amendment or variation has previously been approved in writing by the relevant planning authority in accordance with sub-paragraph (2).

(2) Any amendments to or variations from the approved details must be in accordance with the principles and assessments set out in the environmental statement. Such agreement may only be given in relation to immaterial changes where it has been demonstrated to the relevant planning authority that the subject matter of the agreement sought is unlikely to give rise to any materially new or materially different environmental effect from those assessed in the environmental statement.

(3) The approved details must be taken to include any amendments that may subsequently be approved in writing by the relevant planning authority.

Consultation

20. Where the relevant planning authority is required by this Order or other statute to consult with another person or body prior to discharging a requirement, the undertaker must consult with such person or body prior to making an application to discharge the requirement.

PART 2

PROCEDURE FOR DISCHARGE OF REQUIREMENTS

Interpretation

21. In this Part of this Schedule, “discharging authority” means—

- (a) any body responsible for giving any consent, agreement or approval required by a requirement included in Part 2 of this Schedule, or for giving any consent, agreement or approval further to any document referred to in any such requirement; or
- (b) the local authority in the exercise of its functions set out in sections 60 (control of noise on construction sites) and 61 (prior consent for work on construction sites) of the Control of Pollution Act 1974 subsequently referred to as “the 1974 Act”(a).

Applications made under requirements

22.—(1) Where an application has been made to the discharging authority for any consent, agreement or approval required by a requirement contained in Part 2 of this Schedule, or for any consent, agreement or approval further to any document referred to in any such requirement, the discharging authority must give notice to the undertaker of its decision on the application within a period of eight weeks beginning with—

(a) 1974 c. 40. Section 61 was amended by Schedule 7 to the Building Act 1984 (c.55), Schedule 15 to the Environmental Protection Act 1990 (c.43) and Schedule 24 to the Environment Act 1995 (c.25).

- (a) the day immediately following that on which the application is received by the discharging authority; or
 - (b) where further information is requested under paragraph 23, 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 discharging authority.
- (2) In determining any application made to the discharging authority for any consent, agreement or approval required by a requirement contained in Part 2 of this Schedule, the discharging 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 discharging authority must provide its reasons for that decision with the notice of the decision.
- (3) In the event the discharging authority does not determine an application within the period set out in sub-paragraph (1), the discharging authority is to be taken to have granted all parts of the application (without any condition or qualification) at the end of that period.

Further information regarding requirements

- 23.**—(1) In relation to any application referred to in paragraph 25, the discharging authority may request such further information from the undertaker as it considers necessary to enable it to consider the application.
- (2) If the discharging authority considers that further information is necessary and the requirement concerned contained in Part 2 of this Schedule does not specify that consultation with a consultee is required, the discharging authority must, within ten business days of receipt of the application, notify the undertaker in writing specifying the further information required.
- (3) If the requirement concerned contained in Part 2 of this Schedule specifies that consultation with a consultee is required, the discharging authority must issue the application to the consultee within five business days of receipt of the application, and notify the undertaker in writing specifying any further information requested by the consultee within five business days of receipt of such a request.
- (4) If the discharging authority does not give the notification within the period specified in sub-paragraph (2) or (3) it (and the consultee, as the case may be) is deemed to have sufficient information to consider the application and is not entitled to request further information without the prior agreement of the undertaker.

Appeals

- 24.**—(1) Where a person (“the applicant”) makes an application to a discharging authority, the applicant may appeal to the Secretary of State in the event that—
- (a) the discharging authority refuses an application for any consent, agreement or approval required by—
 - (i) a requirement contained in Part 2 of this Schedule; or
 - (ii) a document referred to in any requirement contained in Part 1 of this Schedule;
 - (b) the discharging authority grants such an application subject to conditions;
 - (c) the discharging authority issues a notice further to sections 60 (control of noise on construction sites) or 61 (prior consent for work on construction sites) of the 1974 Act;
 - (d) on receipt of a request for further information pursuant to paragraph 23 of this Part of this Schedule, the applicant considers that either the whole or part of the specified information requested by the discharging authority is not necessary for consideration of the application; or

- (e) on receipt of any further information requested, the discharging authority notifies the applicant that the information provided is inadequate and requests additional information which the applicant considers is not necessary for consideration of the application.
- (2) The appeal process is as follows—
- (a) any appeal by the applicant 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 22(1), giving rise to the appeal referred to in sub-paragraph (1);
 - (b) the applicant must submit the appeal documentation to the Secretary of State and must on the same day provide copies of the appeal documentation to the discharging authority and any consultee specified under the relevant requirement contained in Part 2 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 discharging authority and any consultee (if applicable) must submit their written representations together with any other representations to the appointed person in respect of the appeal within ten business days of the start date specified by the appointed person and must ensure that copies of their written representations and any other representations as sent to the appointed person are sent to each other and to the applicant on the day on which they are submitted to the appointed person;
 - (e) the applicant must make any counter-submissions to the appointed person within ten business days of receipt of written representations pursuant to sub-paragraph (d) above; and
 - (f) the appointed person must make a decision and notify it to the appeal parties, with reasons, as soon as reasonably practicable after the end of the ten day period for counter-submissions under sub-paragraph (e).
- (3) The appointment of the appointed person pursuant to sub-paragraph (2)(c) may be undertaken by a person appointed by the Secretary of State for this purpose instead of by the Secretary of State.
- (4) In the event that the appointed person considers that further information is necessary to enable the appointed person to consider the appeal the appointed person must as soon as practicable notify the appeal parties in writing specifying the further information required, the appeal party from whom the information is sought, and the date by which the information is to be submitted.
- (5) Any further information required pursuant to sub-paragraph (4) must be provided by the party from whom the information is sought to the appointed person and to the other appeal parties by the date specified by the appointed person. The appointed person must notify the appeal parties of the revised timetable for the appeal on or before that day. The revised timetable for the appeal must require submission of written representations to the appointed person within ten business days of the date specified by the appointed person, but must otherwise be in accordance with the process and time limits set out in sub-paragraphs (2)(c) to (e).
- (6) On an appeal under this paragraph, the appointed person may—
- (a) allow or dismiss the appeal; or
 - (b) reverse or vary any part of the decision of the discharging 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) If an approval is given by the appointed person pursuant to this Part of this Schedule, it is deemed to be an approval for the purpose of Part 2 of this Schedule as if it had been given by the discharging authority. The discharging authority may confirm any determination given by the appointed person in identical form in writing, but a failure to give such confirmation (or a failure to give it in identical form) is not to be taken to affect or invalidate the effect of the appointed person's determination.

(11) Save where a direction is given pursuant to sub-paragraph (12) requiring the costs of the appointed person to be paid by the discharging authority, the reasonable costs of the appointed person are to be met by the applicant.

(12) On application by the discharging authority or the applicant, 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 relevant guidance on the Planning Practice Guidance website or any official circular or guidance which may from time to time replace it.

Fees

25.—(1) Where an application is made to the relevant planning authority for written consent, agreement or approval in respect of a requirement, the fee prescribed under regulation 16(1)(b) of the Town and Country Planning (Fees for Applications, Deemed Applications, Requests and Site Visits) (England) Regulations 2012(a) (as may be amended or replaced from time to time) is to apply and must be paid to the relevant planning authority for each application.

(2) Any fee paid under this Schedule must be refunded to the undertaker within four weeks of—

- (a) the application being rejected as invalidly made; or
- (b) the relevant planning authority failing to determine the application within ten weeks from the relevant date in paragraph 2(1) unless—
 - (i) within that period the undertaker agrees, in writing, that the fee is to be retained by the relevant planning authority and credited in respect of a future application; or
 - (ii) a longer period of time for determining the application has been agreed pursuant to paragraph 2(1) of this Schedule.

SCHEDULE 3

Article 9

STREETS SUBJECT TO STREET WORKS

Interpretation

26. In this Schedule “cable works” means works to place, retain and maintain underground electrical and communications apparatus

(1) <i>Area</i>	(2) <i>Street</i>	(3) <i>Description of works</i>
--------------------	----------------------	------------------------------------

(a) S.I., amended by S.I. 2013/2153, S.I. 2014/357, S.I. 2014/643, S.I. 2017/1314 and S.I. 2019/1154.

Parish of Brafferton	Unnamed Road	Cable works beneath the width of street comprising a length of 320m as shown between points marked A and B on sheet 3 of the street works, public rights of way and access plans.
Parish of Brafferton	High House Lane	Cable works beneath the width of street comprising a length of 95m as shown between points marked B and C on sheet 3 of the street works, public rights of way and access plans.
Parish of Brafferton	The Green	Cable works beneath the width of street comprising a length of 140m as shown between points marked C and D on sheet 3 of the street works, public rights of way and access plans.
Parish of Brafferton	Aycliffe Lane	Cable works beneath the width of street comprising a length of 600m as shown between points marked D and E on sheets 1 and 3 of the street works, public rights of way and access plans.
Parish of Brafferton	Lime Lane	Cable works beneath the width of street comprising a length of 2420m as shown between points marked E and F on sheets 1 and 2 of the street works, public rights of way and access plans.
Parish of Brafferton	Lodge Lane	Cable works beneath the width of street comprising a length of 935m as shown between points marked F and G on sheets 2 and 5 of the street works, public rights of way and access plans.
Parish of Great Stainton	Elstob Lane	Cable works beneath the width of street comprising a length of 895m as shown between points marked H and I on sheets 7 and 8 of the street works, public rights of way and access plans.
Parish of Great Stainton	Unnamed Road running east – west between Great Stainton and Bishopton	Cable works beneath the width of street comprising a length of 1360m as shown between points marked J and K on sheets 8 and 9 of the street works, public rights of way and access plans.
Parish of Bishopton	Folly Bank	Cable works beneath the width of street as shown with reference CC5 on sheet 9 of the street works, public rights of way and access plans.
Parish of Bishopton	Unnamed Road running north – south to the west of Bishopton Beck	Cable works beneath the width of street comprising a length of 530m as shown between points marked K and L on sheets 9 and 10 of the street works, public rights of way and access plans.
Parish of Bishopton	Redmarshall Road	Cable works beneath the width of street comprising a length of 2110m as shown between points marked N and O on sheets 11 and 12 of the street works, public rights of way and access plans.
Parish of Redmarshall	Redmarshall Road, in the vicinity of Morrington Bridge	Cable works beneath the width of street as shown with reference CC6 on sheet 11 of the street works, public rights of way and access plans.
Parish of Redmarshall	Whitton Road	Cable works beneath the width of street comprising a length of 180m as shown between points marked O and P on sheet 12 of the street works, public rights of way and access plans.
Parish of Redmarshall	Kirk Hill	Cable works beneath the width of street comprising a length of 460m as shown between points marked O and Q on sheet 12 of the Street Works, Public Rights of Way and Access plans.
Parish of Redmarshall	Carlton Vlg	Cable works beneath the width of street comprising a length of 455m as shown between points marked Q and R on sheets 12 and 13 of the street works, public rights of way and access

		plans.
Parish of Carlton	Letch Lane	Cable works beneath the width of street comprising a length of 1850m as shown between points marked R and S on sheets 12 and 13 of the street works, public rights of way and access plans.
Parish of Brafferton	Footpath No.7	Cable works beneath the width of street, referenced FP-Bfn.7, comprising a length of 320m as shown between points marked 1 and 2 on sheet 1 of the street works, public rights of way and access plans.
Parish of Brafferton	Footpath No. 8	Cable works beneath the width of street comprising a length of 155m as shown between points marked 1 and 3 on sheet 1 of the street works, public rights of way and access plans.
Parish of Brafferton	Footpath No. 9	Cable works beneath the width of street, referenced FP-Bfn.9, comprising a length of 15m as shown between points marked 5 and 6 on sheets 1 and 3 of the street works, public rights of way and access plans.
Parish of Brafferton	Footpath No.10	Cable works beneath the width of street, referenced FP-Bfn.10) comprising a length of 50m as shown between points marked 7 and 8 on sheets 1 and 3 of the street works, public rights of way and access plans.
Parish of Brafferton	Bridleway No.14	Cable works beneath the width of street, referenced BR-Bfn.14, comprising a length of 1635m as shown between points 9 and 10 on sheet 3 of the street works, public rights of way and access plans.
Parish of Brafferton	Footpath No.9	Cable works beneath the width of street, referenced FP-Bfn.9, comprising a length of 135m as shown between points 11 and 12 on sheet 1 of the street works, public rights of way and access plans.
Parish of Brafferton	Footpath No.15	Cable works beneath the width of street, referenced FP-Bfn.15, comprising a length of 140m as shown between points 16 and 17 on sheet 4 of the street works, public rights of way and access plans.
Parish of Brafferton	Bridleway No.11	Cable works beneath the width of street, referenced BR-Bfn.11, comprising a length of 65m as shown between points 19 and 20 on sheet 4 of the street works, public rights of way and access plans.
Parish of Brafferton	Footpath No.12	Cable works beneath the width of street, referenced FP-Bfn.12, comprising a length of 260m as shown between points 21 and 22 on sheet 4 of the street works, public rights of way and access plans.
Parish of Brafferton	Footpath No. 12	Cable works beneath the width of street, referenced FP-Bfn.12, comprising a length of 80m as shown between points 23 and 24 on sheets 2, 5 and 6 of street works, public rights of way and access plans.
Parish of Brafferton	Bridleway No.13	Cable works beneath the width of street, referenced BR-Bfn.13, comprising a length of 55m as shown between points 25 and 26 on sheets 4 and 6 of the street works, public rights of way and access plans.
Parish of Great Stainton	Footpath No.4	Cable works beneath the width of street, referenced FP-GtStn.4 comprising a length of 315m as shown between points 27 and 28 on sheets 2 and 5 of the street works, public rights of way and access plans.

Parish of Great Stainton	Footpath No.6	Cable works beneath the width of street, referenced FP-GtStn.6, comprising a length of 300m as shown between points 29 and 30 on sheet 5 of the street works, public rights of way and access plans.
Parish of Great Stainton	Footpath No. 12	Cable works beneath the width of street, referenced FP-GtStn.12, comprising a length of 30m as shown between points 30 and 31 on sheet 5 of the street works, public rights of way and access plans.
Parish of Little Stainton	Footpath No.2	Cable works beneath the width of street, referenced FP-LtStn.2, comprising a length of 430m as shown between points 32 and 33 on sheet 6 of the street works, public rights of way and access plans.
Parish of Little Stainton	Footpath No.1	Cable works beneath the width of street, referenced FP-LtStn.1, comprising a length of 485m as shown between points 34 and 35 on sheets 6 and 7 of the street works, public rights of way and access plans.
Parish of Little Stainton	Footpath No.1	Cable works beneath the width of street, referenced FP-LtStn.1, comprising a length of 45m as shown between points 37 and 38 on sheet 7 of the street works, public rights of way and access plans.
Parish of Great Stainton	Footpath No.8	Cable works beneath the width of street, referenced FP-GtStn.8, comprising a length of 880m as shown between points 39 and 40 on sheets 7 and 8 of the street works, public rights of way and access plans
Parish of Great Stainton	Footpath No.3	Cable works beneath the width of street, referenced FP-GtStn.3, comprising a length of 375m as shown between points 42 and 43 on sheet 8 of the street works, public rights of way and access plans.
Parish of Bishopton	Footpath No.3	Cable works beneath the width of street, referenced FP-GtStn.3, comprising a length of 430m as shown between points 43 and 44 on sheet 8 of the street works, public rights of way and access plans.
Parish of Bishopton	Footpath No. 4	Cable works beneath the width of street, referenced FP-Btn.4, comprising a length of 610m as shown between points 49 and 50 on sheets 9, 10 and 11 of the street works, public rights of way and access plans.
Parish of Bishopton	Footpath No.7	Cable works beneath the width of street, referenced FP-Btn.7, comprising a length of 40m as shown between points 51 and 52 on sheet 11 of the street works, public rights of way and access plans.
Parish of Redmarshall	Footpath No.1	Cable works beneath the width of street, referenced FP-Rml.1, comprising a length of 40m as shown between points 53 and 54 on sheet 12 of the street works, public rights of way and access plans.
Parish of Redmarshall	Footpath No.2	Cable works beneath the width of street, referenced FP-Rml.2, comprising a length of 30m as shown between points 55 and 56 on sheet 12 of the street works, public rights of way and access plans
Parish of Carlton	Footpath No.7	Cable works beneath the width of street, referenced FP-Ctn.7, comprising a length of 55m as shown between points 57 and 58 on sheets 12 and 13 of the street works, public rights of way and access plans.
Parish of Carlton	Footpath No.6	Cable works beneath the width of street, referenced FP-Ctn.6, comprising a length of 35m as shown between points 59 and 60 on sheets 12 and 13 of the street works, public rights of way and access plans.

SCHEDULE 4

Article 11

ALTERATION OF STREETS

PART 1

PERMANENT ALTERATION OF LAYOUT AND MAINTAINED BY THE HIGHWAY AUTHORITY

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Street</i>	<i>(3)</i> <i>Description of permanent alteration</i>
Parish of Brafferton	High House Lane	Works for the provision of a permanent means of access to the authorised development from High House Lane as shown as point A3 on sheet 3 of the street works, public rights of way and access plans.
Parish of Brafferton	High House Lane	Works for the provision of a permanent means of access to the authorised development from High House Lane as shown as point A2 on sheets 1 and 3 of the street works, public rights of way and access plans.
Parish of Great Stainton	Lodge Lane	Works for the provision of a permanent means of access to the authorised development from Lodge Lane as shown as point B1 on sheets 2 and 5 of the street works, public rights of way and access plans.
Parish of Great Stainton	Bishopton Lane / Elstob Lane	Works for the provision of a permanent means of access to the authorised development from Bishopton Lane / Elstob Lane as shown as point C1 on sheet 7 of the street works public rights of way and access plans.
Parish of Great Stainton	Unnamed road between Great Stainton and Bishopton	Works for the provision of a permanent means of access to the authorised development from an unnamed road between Great Stainton and Bishopton as shown point D2 on sheet 8 of the street works, public rights of way and access plans.
Parish of Great Stainton	Elstob Lane	Works for the provision of a permanent means of access to the authorised development from Elstob Lane as shown as point D1 on sheet 8 of the street works public rights of way and access plans.
Parish of Great Stainton	Unnamed road to the west of The Green, Bishopton	Works for the provision of a permanent means of access to the authorised development from an unnamed road to the west of The Green, Bishopton, as shown as point E1 on sheet 9 of the street works, public rights of way and access plans.
Parish of Great Stainton	Unnamed road adjacent to Bishopton Beck	Works for the provision of a permanent means of access to the authorised development from an unnamed road adjacent to Bishopton Beck, Bishopton, as shown as point F1 on sheet 10 of the street works, public rights of way and access plans.

PART 2

TEMPORARY ALTERATION OF LAYOUT

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Street</i>	<i>(3)</i> <i>Description of permanent alteration</i>
Parish of Brafferton	Brafferton Lane	Works for the provision of a temporary means of access to the authorised development from Brafferton Lane as shown as point A1 on sheet 3 of the street works, public rights of way and

		access plans.
--	--	---------------

SCHEDULE 5

Articles 13 and 14

PUBLIC RIGHTS OF WAY TO BE STOPPED UP

PART 1

PUBLIC RIGHTS OF WAY TO BE TEMPORARILY STOPPED UP

(1) <i>Area</i>	(2) <i>Public right of way to be temporarily stopped up</i>	(3) <i>Extent of temporary stopping up</i>
Parish of Brafferton	Footpath No.7	Temporary management including temporary stopping up over the public right of way, referenced FP-Bfn.7, comprising a length of 320m as shown between points marked 1 and 2 on sheet 1 of the street works, public rights of way and access plans.
Parish of Brafferton	Footpath No. 8	Temporary management including temporary stopping up over the public right of way, referenced FP-Brn.8, comprising a length of 150m between points marked 1 and 3 on Sheet 1 of the street works, public rights of way and access plans.
Parish of Brafferton	Footpath No. 9	Temporary management including temporary stopping up over the public right of way, referenced FP-Bfn.9, comprising a length of 15m as shown between points marked 5 and 6 on sheet 1 of the street works, public rights of way and access plans.
Parish of Brafferton	Footpath No.10	Temporary management including temporary stopping up over the public right of way, referenced FP-Bfn.10, comprising a length of 50m as shown between points marked 7 and 8 on sheets 1 and 3 of the street works, public rights of way and access plans.
Parish of Brafferton	Bridleway No.14	Temporary management including temporary stopping up over the public right of way, referenced BR-Bfn.14, comprising a length of 1635m as shown between points 9 and 10 on sheet 3 of the street works, public rights of way and access plans.
Parish of Brafferton	Footpath No.9	Temporary management including temporary stopping up over the public right of way, referenced FP-Bfn.9, comprising a length of 613m as shown between points 11 and 11a on sheet 1 of the Street Works, Public Rights of Way and Access plans.
Parish of Brafferton	Footpath No.9	Temporary management including temporary stopping up over the public right of way, referenced FP-Bfn.9, comprising a length of 135m as shown between points 11 and 12 on sheet 1 of the Street Works, Public Rights of Way and Access plans.
Parish of Brafferton	Footpath No.20	Temporary management including temporary stopping up over the public right of way, referenced FP-Bfn.20, comprising a length of 50m as shown between points 13 and 14 on sheet 3 of the street works, public rights of way and access plans.
Parish of Brafferton	Footpath No.15	Temporary management including temporary stopping up over the public right of way, referenced FP-Bfn.15, comprising a length of 140m as shown between points 16 and 17 on sheet 4 of the street works, public rights of way and access plans.
Parish of	Bridleway	Temporary management including temporary stopping up over

Brafferton	No.11	the public right of way, referenced BR-Bfn.11, comprising a length of 65m as shown between points 19 and 20 on sheet 4 of the street works, public rights of way and access plans.
Parish of Brafferton	Footpath No.12	Temporary management including temporary stopping up over the public right of way, referenced FP-Bfn.12, comprising a length of 260m as shown between points 21 and 22 on sheet 4 of the street works, public rights of way and access plans.
Parish of Brafferton	Footpath No. 12	Temporary management including temporary stopping up over the public right of way, referenced FP-Bfn.12, comprising a length of 80m as shown between points 23 and 24 on sheet 5 of the street works, public rights of way and access plans.
Parish of Brafferton	Bridleway No.13	Temporary management including temporary stopping up over the public right of way, referenced BR-Bfn.13, comprising a length of 55m as shown between points 25 and 26 on sheets 4 and 6 of the street works, public rights of way and access plans.
Parish of Great Stainton	Footpath No.4	Temporary management including temporary stopping up over the public right of way, referenced FP-GtStn.4, comprising a length of 315m as shown between points 27 and 28 on sheets 2 and 5 of the street works, public rights of way and access plans.
Parish of Great Stainton	Footpath No.6	Temporary management including temporary stopping up over the public right of way, referenced FP-GtStn.6, comprising a length of 300m as shown between points 29 and 30 on sheet 5 of the street works, public rights of way and access plans.
Parish of Great Stainton	Footpath No. 12	Temporary management including temporary stopping up over the public right of way, referenced FP-GtStn.12, comprising a length of 30m as shown between points 30 and 31 on sheet 5 of the street works, public rights of way and access plans.
Parish of Little Stainton	Footpath No.2	Temporary management including temporary stopping up over the public right of way, referenced FP-LtStn.2, comprising a length of 430m as shown between points 32 and 33 on sheet 6 of the street works, public rights of way and access plans.
Parish of Little Stainton	Footpath No.1	Temporary management including temporary stopping up over the public right of way, referenced FP-LtStn.1, comprising a length of 485m as shown between points 34 and 35 on sheets 6 and 7 of the street works, public rights of way and access plans.
Parish of Little Stainton	Footpath No.1	Temporary management including temporary stopping up over the public right of way, referenced FP-LtStn.1, comprising a length of 45m as shown between points 37 and 38 on sheet 7 of the street works, public rights of way and access plans.
Parish of Great Stainton	Footpath No.8	Temporary management including temporary stopping up over the public right of way, referenced FP-GtStn.8, comprising a length of 876m as shown between points 39 and 40 on sheets 7 and 8 of the street works, public rights of way and access plans.
Parish of Great Stainton	Footpath No.3	Temporary management including temporary stopping up over the public right of way, referenced FP-GtStn.3, comprising a length of 805m as shown between points 42 and 44 on sheet 8 of the street works, public rights of way and access plans.
Parish of Bishopton	Footpath No. 2	Temporary management including temporary stopping up over the public right of way, referenced FP-Btn.2, comprising a length of 960m as shown between points 45 and 46 on sheet 9 of the street works, public rights of way and access plans.
Parish of Bishopton	Footpath No.3	Temporary management including temporary stopping up over the public right of way, referenced FP-Btn.3, comprising a length of 60m as shown between points 47 and 48 on sheet 9 of the street works, public rights of way and access plans.

Parish of Bishopton	Footpath No. 4	Temporary management including temporary stopping up over the public right of way, referenced FP-Btn.4, comprising a length of 610m as shown between points 49 and 50 on sheets 10 and 11 of the street works, public rights of way and access plans.
Parish of Bishopton	Footpath No.7	Temporary management including temporary stopping up over the public right of way, referenced FP-Btn.7, comprising a length of 40m as shown between points 51 and 52 on sheet 11 of the street works, public rights of way and access plans.
Parish of Redmarshall	Footpath No.1	Temporary management including temporary stopping up over the public right of way, referenced FP-Rml.1, comprising a length of 40m as shown between points 53 and 54 on sheet 12 of the street works, public rights of way and access plans.
Parish of Redmarshall	Footpath No.2	Temporary management including temporary stopping up over the public right of way, referenced FP-Rml.2, comprising a length of 30m as shown between points 55 and 56 on sheet 12 of the street works, public rights of way and access plans.
Parish of Carlton	Footpath No.7	Temporary management including temporary stopping up over the public right of way, referenced FP-Ctn.7, comprising a length of 55m as shown between points 57 and 58 on sheets 12 and 13 of the street works, public rights of way and access plans.
Parish of Carlton	Footpath No.6	Temporary management including temporary stopping up over the public right of way, referenced FP-Ctn.6, comprising a length of 35m as shown between points 59 and 60 on sheets 12 and 13 of the street works, public rights of way and access plans.
Parish of Carlton	Traffic-free cycle route	Temporary management of the public right of way including temporary stopping up over a traffic-free cycle route, comprising a length of 15m as shown between points 63 and 64 on sheet 13 of the street works, public rights of way and access plans.

PART 2

PUBLIC RIGHTS OF WAY TO BE PERMANENTLY STOPPED UP

(1) <i>Area</i>	(2) <i>Public right of way to be stopped up</i>	(3) <i>Extent of stopping up</i>	(4) <i>Extent of replacement</i>
Parish of Brafferton	Footpath No.8	The public right of way, referenced FP-Bfn.8, comprising a length of 205m, between points 3 and 4 on sheets 1 and 3 of the street works, public rights of way and access plans.	To be re-provided along Footpath No.7, referenced FP-Bfn.7, from its intersection with Footpath No.9, referenced FP-Bfn.9, and a new footpath comprising a length of 150m between points marked 1 and 3 on sheet 1 of the street works, public rights of way and access plans.
Parish of Brafferton	Footpath No.10	The public right of way, referenced FP-Bfn.10, comprising a length of 460m as shown between points 15 and 18 on sheet 4 of the street works,	To be re-provided along Footpath No.10, referenced FP-Bfn.10 from point 18 and along Bridleway No. 11, referenced BR-Bfn.11, and Footpath

		public rights of way and access plans.	No. 15, referenced FP-Bfn.15 to point 16 with a new length of footpath comprising a length of 235m as shown between points marked 15 and 16 on sheet 4 of the street works, public rights of way and access plans.
Parish of Little Stainton	Footpath No.1	The public right of way, referenced FP-LtStn.1, comprising a length of 185m between points 34 and 36 as shown on sheet 6 of the street works, public rights of way and access plans.	To be re-provided with a new length of footpath comprising a length of 200m as shown between points 34 and 36 on sheet 6 of the street works, public rights of way and access plans.
Parish of Great Stainton	Footpath No.8	The public right of way, referenced FP-GtStn.8, comprising its total length as shown between points 40 and 41 on sheets 8 and 7 of the street works, public rights of way and access plans.	To be re-provided with a new section of footpath comprising a length of 870m as shown between points 39 and 40 on sheets 7 and 8 of the street works, public rights of way and access plans.
Parish of Great Stainton	Footpath No.3	The public right of way, referenced FP-GTStn.3, comprising a length of 290m between points 42 and 43 on sheet 8 of the street works, public rights of way and access plans.	To be re-provided with a new section of footpath comprising a length of 375m as shown between points 42 and 43 on sheet 8 of the street works, public rights of way and access plans.
Parish of Bishopton	Footpath No.2	The public right of way, referenced FP-Btn.2, comprising a length of 490m as shown between points 45 and 46 on sheet 9 of the street works, public rights of way and access plans.	To be re-provided with a new section of footpath comprising a length of 960m, as shown between points 45 and 46 on sheet 9 of the street works, public rights of way and access plans.
Parish of Bishopton	Footpath No.4	The public right of way, referenced FP-Btn.4, comprising a length of 415m as shown between points 49 and 50 on sheets 10 and 11 of the street works, public rights of way and access plans.	To be re-provided with a new section of footpath comprising a length of 610m, as shown between points 49 and 50 on sheets 10 and 11 of the street works, public rights of way and access plans.

SCHEDULE 6

ACCESS TO WORKS

Article 15

PART 1

PERMANENT MEANS OF ACCESS TO WORKS

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Street</i>	<i>(3)</i> <i>Description of means of access</i>
Parish of Brafferton	High House Lane	The provision of a permanent means of access to the authorised development from High House Lane as shown as point A3 on sheet 3 of the street works, public rights of way and access plans.
Parish of Brafferton	High House Lane	The provision of a permanent means of access to the authorised development from High House Lane as shown as point A2 on sheets 1 and 3 of the street works, public rights of way and access plans.
Parish of Great Stainton	Lodge Lane	The provision of a permanent means of access to the authorised development from Lodge Lane as shown as point B1 on sheets 2 and 5 of the street works, public rights of way and access plans.
Parish of Great Stainton	Bishopton Lane / Elstob Lane	The provision of a permanent means of access to the authorised development from Bishopton Lane / Elstob Lane as shown as point C1 on sheet 7 of the street works public rights of way and access plans.
Parish of Great Stainton	Unnamed road between Great Stainton and Bishopton	The provision of a permanent means of access to the authorised development from an unnamed road between Great Stainton and Bishopton as shown point D2 on sheet 8 of the street works, public rights of way and access plans.
Parish of Great Stainton	Elstob Lane	The provision of a permanent means of access to the authorised development from Elstob Lane as shown as point D1 on sheet 8 of the street works public rights of way and access plans.
Parish of Great Stainton	Unnamed road to the west of The Green, Bishopton	The provision of a permanent means of access to the authorised development from an unnamed road to the west of The Green, Bishopton, as shown as point E1 on sheet 9 of the street works, public rights of way and access plans.
Parish of Great Stainton	Unnamed road adjacent to Bishopton Beck	The provision of a permanent means of access to the authorised development from an unnamed road adjacent to Bishopton Beck, Bishopton, as shown as point F1 on sheet 10 of the street works, public rights of way and access plans.

PART 2

TEMPORARY MEANS OF ACCESS TO WORKS

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Street</i>	<i>(3)</i> <i>Description of means of access</i>
Parish of Brafferton	Brafferton Lane	The provision of a temporary means of access to the authorised development from Brafferton Lane as shown as point A1 on sheet 3 of the

		street works, public rights of way and access plans.
--	--	--

SCHEDULE 7

Article 39

REMOVAL OF HEDGEROWS

<i>(1) Hedgerow</i>	<i>(2) Work</i>
Removal of that part of the trees shown approximately within the area identified by a black dashed line on the trees and hedgerows to be removed or managed plan, reference T1210	Work No. 3, and Work No. 8
Removal of that part of the trees shown approximately within the area identified by a black dashed line on the trees and hedgerows to be removed or managed plan, reference T540	Work No. 3
Removal of that part of the trees shown approximately within the area identified by a black dashed line on the trees and hedgerows to be removed or managed plan, reference T1124	Work No. 3
Removal of that part of the trees shown approximately within the area identified by a black dashed line on the trees and hedgerows to be removed or managed plan, reference T1207	Work No. 9
Removal of that part of the trees shown approximately within the area identified by a black dashed line on the trees and hedgerows to be removed or managed plan, reference T1679	Work No. 3
Removal of that part of the trees shown approximately within the area identified by a black dashed line on the trees and hedgerows to be removed or managed plan, reference T1689	Work No. 3
Removal of that part of the trees shown approximately within the area identified by a black dashed line on the trees and hedgerows to be removed or managed plan, reference T2650	Work No. 3
Removal of that part of the hedgerow shown approximately within the area identified by a black dashed line on the trees and hedgerows to be removed or managed plan, reference G971	Work No. 3
Removal of that part of the hedgerow shown approximately within the area identified by a black dashed line on the trees and hedgerows to be removed or managed plan, reference H1341	Work No. 3
Removal of that part of the hedgerow shown approximately within the area identified by a	Work No. 3

black dashed line on the trees and hedgerows to be removed or managed plan, reference H1385	
Removal of that part of the hedgerow shown approximately within the area identified by a black dashed line on the trees and hedgerows to be removed or managed plan, reference H1397	Work No. 3
Removal of that part of the hedgerow shown approximately within the area identified by a black dashed line on the trees and hedgerows to be removed or managed plan, reference G154	Work No. 3
Removal of that part of the hedgerow shown approximately within the area identified by a black dashed line on the trees and hedgerows to be removed or managed plan, reference H21	Work No. 3
Removal of that part of the hedgerow shown approximately within the area identified by a black dashed line on the trees and hedgerows to be removed or managed plan, reference H2655	Work No. 3
Removal of that part of the hedgerow shown approximately within the area identified by a black dashed line on the trees and hedgerows to be removed or managed plan, reference H2663	Work No. 3
Removal of that part of the hedgerow shown approximately within the area identified by a black dashed line on the trees and hedgerows to be removed or managed plan, reference G1753	Work No. 3
Removal of that part of the hedgerow shown approximately within the area identified by a black dashed line on the trees and hedgerows to be removed or managed plan, reference H467	Work No. 3
Removal of that part of the hedgerow shown approximately within the area identified by a black dashed line on the trees and hedgerows to be removed or managed plan, reference H547	Work No. 3
Removal of that part of the hedgerow shown approximately within the area identified by a black dashed line on the trees and hedgerows to be removed or managed plan, reference H366	Work No. 3
Removal of that part of the hedgerow shown approximately within the area identified by a black dashed line on the trees and hedgerows to be removed or managed plan, reference H1206	Work Nos. 3, 8
Removal of that part of the hedgerow shown approximately within the area identified by a black dashed line on the trees and hedgerows to be removed or managed plan, reference	Work Nos. 3, 8

SCHEDULE 8

Article 23

LAND IN WHICH ONLY NEW RIGHTS ETC. MAY BE ACQUIRED

(1) <i>Plot number(s)</i>	(2) <i>Work No.</i>	(3) <i>Purpose for which rights may be acquired</i>
1/1, 1/2, 2/2, 2/4, 2/6, 3/1, 3/6, 4/2, 4/3, 5/2, 5/3, 6/1, 6/2, 6/4, 6/6, 6/7, 8/6, 9/6, 9/8, 9/9, 10/1, 10/2, 11/3	Work No. 3	<p>(a) install, use, support, protect, inspect, alter, remove, replace, refurbish, reconstruct, 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 ancillary apparatus and structures (including but not limited to access chambers, manholes and marker posts) and any other works necessary together with the right to fell, trim or lop trees and bushes which may obstruct or interfere with the said cables, telecommunications and other ancillary apparatus;</p> <p>(b) 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;</p> <p>(c) continuous vertical and lateral support for the authorised development;</p> <p>(d) install, use, support, protect, inspect, alter, remove, replace, refurbish, reconstruct, retain, renew, improve and maintain sewers, drains, pipes, ducts, mains, conduits, services, flues and to drain into and manage waterflows in any drains, watercourses and culverts;</p> <p>(e) install, execute, implement, retain, repair, improve, renew, remove, relocate and plant trees, woodlands, shrubs, hedgerows, seeding, landscaping and other ecological measures together with the right to maintain, inspect and replant such trees, shrubs, hedgerows, landscaping and other ecological measures the right to pass and repass on foot, with or without vehicles, plant and machinery for all purposes in connection with the implementation and maintenance of landscaping and ecological mitigation or enhancement works;</p> <p>(f) install, use, support, protect, inspect, alter, remove, replace, refurbish, reconstruct, retain, renew, improve and maintain security fencing, gates, boundary treatment, public rights of way and any other ancillary apparatus and any other works as necessary; and</p> <p>(g) 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,</p>

		interrupt or interfere with the exercise of the rights or damage the authorised development.
7/3, 7/4, 7/5, 7/6, 7/8, 8/3, 8/4, 8/5, 9/2, 9/3, 9/4, 9/5	Work No. 3 and Work No. 5	<p>(h) install, use, support, protect, inspect, alter, remove, replace, refurbish, reconstruct, 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 ancillary apparatus and structures (including but not limited to access chambers, manholes and marker posts) and any other works necessary together with the right to fell, trim or lop trees and bushes which may obstruct or interfere with the said cables, telecommunications and other ancillary apparatus;</p> <p>(i) 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;</p> <p>(j) continuous vertical and lateral support for the authorised development;</p> <p>(k) install, use, support, protect, inspect, alter, remove, replace, refurbish, reconstruct, retain, renew, improve and maintain sewers, drains, pipes, ducts, mains, conduits, services, flues and to drain into and manage waterflows in any drains, watercourses and culverts;</p> <p>(l) install, execute, implement, retain, repair, improve, renew, remove, relocate and plant trees, woodlands, shrubs, hedgerows, seeding, landscaping and other ecological measures together with the right to maintain, inspect and replant such trees, shrubs, hedgerows, landscaping and other ecological measures the right to pass and repass on foot, with or without vehicles, plant and machinery for all purposes in connection with the implementation and maintenance of landscaping and ecological mitigation or enhancement works;</p> <p>(m) install, use, support, protect, inspect, alter, remove, replace, refurbish, reconstruct, retain, renew, improve and maintain security fencing, gates, boundary treatment, public rights of way and any other ancillary apparatus and any other works as necessary; and</p> <p>(n) 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</p>

		limited to blasting and piling) which may obstruct, interrupt or interfere with the exercise of the rights or damage the authorised development.
9/15, 9/16, 11/1, 11/5, 11/6, 11/7, 11/9, 11/10, 11/11, 11/12, 11/13, 11/14, 11/15, 11/16, 11/17, 11/18, 12/1, 12/2, 12/3, 12/4, 12/5, 12/6, 12/7, 12/8, 12/9, 12/10, 12/11, 12/12, 12/13, 12/14, 12/15, 12/16, 12/17, 12/18, 12/19, 12/20, 12/21, 12/22, 12/23, 12/24, 12/25, 12/26, 12/27, 12/28, 12/29, 12/30, 12/31, 12/32, 13/1, 13/2, 13/3, 13/4, 13/5, 13/6, 13/7, 13/8, 13/9, 13/10, 13/11, 13/12, 13/13, 13/14, 13/15, 13/16, 13/17, 13/18	Work No. 5	<ul style="list-style-type: none"> (o) install, use, support, protect, inspect, alter, remove, replace, refurbish, reconstruct, 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 ancillary apparatus and structures (including but not limited to access chambers, manholes and marker posts) and any other works necessary together with the right to fell, trim or lop trees and bushes which may obstruct or interfere with the said cables, telecommunications and other ancillary apparatus; (p) 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; (q) continuous vertical and lateral support for the authorised development; (r) install, use, support, protect, inspect, alter, remove, replace, refurbish, reconstruct, retain, renew, improve and maintain sewers, drains, pipes, ducts, mains, conduits, services, flues and to drain into and manage waterflows in any drains, watercourses and culverts; (s) install, execute, implement, retain, repair, improve, renew, remove, relocate and plant trees, woodlands, shrubs, hedgerows, seeding, landscaping and other ecological measures together with the right to maintain, inspect and replant such trees, shrubs, hedgerows, landscaping and other ecological measures the right to pass and repass on foot, with or without vehicles, plant and machinery for all purposes in connection with the implementation and maintenance of landscaping and ecological mitigation or enhancement works; (t) install, use, support, protect, inspect, alter, remove, replace, refurbish, reconstruct, retain, renew, improve and maintain security fencing, gates, boundary treatment, public rights of way and any other ancillary apparatus and any other works as necessary; and (u) 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 9

Article 23

MODIFICATION OF COMPENSATION AND COMPULSORY PURCHASE ENACTMENTS FOR THE CREATION OF NEW RIGHTS AND IMPOSITION OF NEW RESTRICTIVE COVENANTS

1.—(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 limitation to 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 (measure of compensation in case of severance) of the 1965 Act as substituted by paragraph 5

- (a) for the words “land is acquired or taken from” there is substituted the words “a right or restrictive covenant over land is purchased from or imposed on”; and
- (b) for the words “acquired or taken from him” there is substituted the words “over which the right is exercisable or the restrictive covenant enforceable”.

3.—(1) Without limitation on the scope of paragraph 1, the 1961 Act has effect subject to the modification set out in sub-paragraph (2).

(2) For section 5A(5A) (relevant valuation date) of the 1961 Act, substitute—

“(5a) If—

- (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 7 to the Byers Gill Solar Order 20[•])
- (b) the acquiring authority is subsequently required by a determination under paragraph 13 of Schedule 2A to the 1965 Act (as substituted by paragraph 10 of Schedule 7 the Byers Gill Solar Order 20[•]) to acquire an interest in the land; and
- (c) the acquiring authority enters on and takes possession of that land the authority is deemed for the purposes of subsection (3)(a) to have entered on that land where it entered on that land for the purpose of exercising that right.”.

(a) 1973 c.26.

Application of Part 1 of the 1965 Act

4.—(1) The 1965 Act is to have 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 are read (according to the requirements of the particular context) as referring to, or as including references to—

- (a) the right acquired or to be acquired, or the restriction imposed or to be imposed; or
- (b) the land over which the right is or is to be exercisable, or the restriction is to be enforceable.

(2) Without limitation on the scope of sub-paragraph (1), Part 1 (compulsory purchase under Acquisition of Land Act 1946) 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.

5. For section 7 (measure of compensation in the case of severance) of the 1965 Act there is substituted the following section—

“**7.** In assessing the compensation to be paid by the acquiring authority under this Act, regard shall 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) (failure by owners to convey);
- (b) paragraph 10(3) of Schedule 1 (owners under incapacity);
- (c) paragraph 2(3) of Schedule 2 (absent and untraced owners); and
- (d) paragraphs 2(3) and 7(2) of Schedule 4 (common land),

are so modified as 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 (powers of entry) of the 1965 Act is so modified as to secure that, as from the date on which the acquiring authority has served notice to treat in respect of any right or restrictive covenant, as well as the notice of entry required by subsection (1) of that section (as it applies to compulsory acquisition under article 22), 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 is modified correspondingly.

8. Section 20 (tenants at will, etc.) of the 1965 Act applies with the modifications necessary to secure that persons with such interests in land as are mentioned in that section are compensated in a manner corresponding to that in which they would be compensated on a compulsory acquisition under this Order of that land, but taking into account only the extent (if any) of such interference with such an interest as is actually caused, or likely to be caused, by the exercise of the right or the enforcement of the restrictive covenant in question.

9. Section 22 (interests omitted from purchase) of the 1965 Act as modified by article 22(4) is so modified as to enable the acquiring authority, in circumstances corresponding to those referred to in that section, to continue to be entitled to exercise the right acquired or restrictive

10. For Schedule 2A (counter notice requiring purchase of land not in notice to treat) to the 1965 Act substitute—

“SCHEDULE 2A COUNTER-NOTICE REQUIRING PURCHASE 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 26 (application of the 1981 Act) of the Byers Gill Solar Order 20[•] in respect of the land to which the notice to treat relates.

(2) But see article 25(3) (acquisition of subsoil only) of the Byers Gill Solar Order 20[•] which excludes the acquisition of subsoil only from this Schedule.

(3) 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 the Upper Tribunal

10. On a referral under paragraph 7, the Upper Tribunal must determine whether the acquisition of the right or the imposition of the restrictive covenant would—

- (a) in the case of a house, building or factory, cause material detriment to the house, building or factory, or
- (b) in the case of a park or garden, seriously affect the amenity or convenience of the house to which the park or garden belongs.

11. In making its determination, the Upper Tribunal must take into account—

- (a) the effect of the acquisition of the right or the imposition of the covenant,
- (b) the use to be made of the right or covenant proposed to be acquired or imposed, and
- (c) if the right or covenant is proposed to be acquired or imposed for works or other purposes extending to other land, the effect of the whole of the works and the use of the other land.

12. If the Upper Tribunal determines that the acquisition of the right or the imposition of the covenant would have either of the consequences described in paragraph 10, it must determine how much of the house, building or factory the authority ought to be required to take.

13. If the Upper Tribunal determines that the authority ought to be required to take some or all of the house, building or factory, the compulsory purchase order and the notice to treat are to have effect as if they included the owner's interest in that land.

14.—(1) If the Upper Tribunal determines that the authority ought to be required to take some or all of the house, building or factory, the authority may at any time within the period of 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 10

Article 30

LAND OF WHICH TEMPORARY POSSESSION MAY BE TAKEN

<i>(1) Plot reference number as shown on the land plans</i>	<i>(2) Purpose for which temporary possession may be taken</i>	<i>(3) Relevant part of the authorised development</i>
3/7	Land required temporarily to facilitate the construction of, provide working space for and facilitate access to Work Nos. 1- 9.	Work Nos. 1 – 9
3/14	Land required temporarily to facilitate the construction of, provide working space for and facilitate access to Work Nos. 1- 9.	Work Nos. 1 – 9
3/15	Land required temporarily to facilitate the construction of, provide working space for and	Work Nos. 1 – 9

SCHEDULE 11

PROTECTIVE PROVISIONS

Article 32

PART 1

PROTECTION FOR ELECTRICITY, GAS, WATER AND SEWERAGE UNDERTAKERS

Application

11. For the protection of the affected undertakers referred to in this Part of this Schedule the following provisions have effect, unless otherwise agreed in writing between the undertaker and the affected undertaker concerned.

12. In this Part of this Schedule—

“affected undertaker” means—

- (a) any licence holder within the meaning of Part 1 (electricity supply) of the 1989 Act;
- (b) a gas transporter within the meaning of Part 1 (gas supply) of the Gas Act 1986(a);
- (c) a water undertaker within the meaning of the Water Industry Act 1991(b); or
- (d) a sewerage undertaker within the meaning of Part 1 (preliminary) of the Water Industry Act 1991,

for the area of the authorised development but, for the avoidance of doubt, does not include the undertaker specified in Part 2 (National Grid) 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—

- (e) in the case of an electricity undertaker, electric lines or electrical plant (as defined in the 1989 Act), belonging to or maintained by that affected undertaker;
- (f) 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;
- (g) 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;
- (h) in the case of a sewerage undertaker—
 - (i) any drain or works vested in the affected undertaker under the Water Industry Act 1991; and

(a) 1986 c.44. A new section 7 was substituted by section 5 of the Gas Act 1995 (c.45) and was further amended by section 76 of the Utilities Act 2000 (c.27).
(b) 1991 c.56.

- (ii) any sewer which is so vested or is the subject of a notice of intention to adopt given under section 102(4) (adoption of sewers and disposal works) of that Act or an agreement to adopt made under section 104 of that Act,

and includes a sludge main, disposal main (within the meaning of section 219 (general interpretation) of that Act) or sewer outfall and any manholes, ventilating shafts, pumps or other accessories forming part of any such sewer, drain or works, and includes any structure in which apparatus is or is to be lodged or which gives or will give access to apparatus;

“functions” includes powers and duties; and

“in” in a context referring to apparatus or alternative apparatus in land includes a reference to apparatus or alternative apparatus under, over or upon land.

Precedence of the 1991 Act in respect of apparatus in the streets

13. This Part of this Schedule does not apply to apparatus in respect of which the relations between the undertaker and the affected undertaker are regulated by the provisions of Part 3 (water supply) of the 1991 Act.

No acquisition etc. except by agreement

14. Regardless of any provision in this Order or anything shown on the land plans, the undertaker must not acquire any apparatus otherwise than by agreement.

Removal of apparatus

15.—(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, that apparatus must not be removed under this Part of this Schedule and any right of an affected undertaker 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 the affected undertaker in question.

(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 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 (3), 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.

(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 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.

(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 affected undertaker in question and the undertaker or in default of agreement settled by arbitration in accordance with article 41 (arbitration).

(5) 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 41 (arbitration) and after the grant to the affected 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 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.

(7) Nothing in sub-paragraph (6) authorises the undertaker to execute the placing, installation, bedding, packing, removal, connection or disconnection of any apparatus, or execute any filling around the apparatus (where the apparatus is laid in a trench) within 300 millimetres of the apparatus.

Facilities and rights for alternative apparatus

16.—(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 41 (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

17.—(1) Not less than 28 days before starting the execution of any works of the type referred to in paragraph 5(2) that are near to, or will or may affect, any apparatus the removal of which has not been required by the undertaker under paragraph 5(2), 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 6 apply as if the removal of the apparatus had been required by the undertaker under paragraph 5(2).

(5) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 28 days before commencing the execution of any works, a new plan, section and description instead of the plan, section and description previously submitted, and having done so the provisions of this paragraph apply to and in respect of the new plan, section and description.

(6) The undertaker is not required to comply with sub-paragraph (1) in a case of emergency but in that case it must give to the 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

18.—(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 5(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 41 (arbitration) to be necessary, then, if such placing involves cost in the construction of works under this Part of this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to the affected undertaker in question by virtue of sub-paragraph (1) must be reduced by the amount of that excess.

(4) For the purposes of sub-paragraph (3)—

- (a) an extension of apparatus to a length greater than the length of existing apparatus is not to be treated as a placing of apparatus of greater dimensions than those of the existing apparatus; and
- (b) where the provision of a joint in a cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole is to be treated as if it also had been agreed or had been so determined.

(5) An amount which apart from this sub-paragraph would be payable to an affected undertaker in respect of works by virtue of sub-paragraph (1) must, if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on the affected undertaker any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, be reduced by the amount which represents that benefit.

19.—(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 5(2), any damage is caused to any apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works) or property of 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

20. 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

21. For the protection of any operator, the following provisions have effect, unless otherwise agreed in writing between the undertaker and the operator.

22. In this Part of this Schedule—

“the 2003 Act” means the Communications Act 2003(a);

“conduit system” has the same meaning as in the electronic communications code and references to providing a conduit system is construed in accordance with paragraph 1(3A) of that code;

“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(b);

“electronic communications code network” means—

(a) so much of an electronic communications network or conduit system provided by an electronic communications code operator as is not excluded from the application of the electronic communications code by a direction under section 106 of the 2003 Act; and

(b) an electronic communications network which the Secretary of State is providing or proposing to provide;

“electronic communications code operator” means a person in whose case the electronic communications code is applied by a direction under section 106 of the 2003 Act; and

“operator” means the operator of an electronic communications code network.

23. The exercise of the powers of article 32 (statutory undertakers) are subject to part 10 of Schedule 3A (Undertaker’s works affecting electronic communications apparatus) to the 2003 Act.

24.—(1) Subject to sub-paragraphs (2) to (4), if as the result of the authorised development or their construction, or of any subsidence resulting from any of those works—

(a) 2003 c. 21.

(b) See section 106.

- (a) any damage is caused to any electronic communications apparatus belonging to an operator (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works, or other property of an operator); or
 - (b) there is any interruption in the supply of the service provided by an operator, the undertaker must bear and pay the cost reasonably incurred by the operator in making good such damage or restoring the supply and must—
 - (i) make reasonable compensation to an operator for loss sustained by it; and
 - (ii) indemnify an operator against claims, demands, proceedings, costs, damages and expenses which may be made or taken against, or recovered from, or incurred by, an operator 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.
- (3) The operator must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise of the claim or demand 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.
- (4) Any difference arising between the undertaker and the operator under this paragraph must be referred to and settled by arbitration under article 41 (arbitration).

25. 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.

26. Nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and an operator in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

PART 3

FOR THE PROTECTION OF THE DRAINAGE AUTHORITIES

27. The provisions of this Part have effect for the protection of a drainage authority unless otherwise agreed in writing between undertaker and the drainage authority.

28. In this Part—

“commence” has the same meaning as in article 2 of this Order and commencement shall be construed to have the same meaning;

“construction” includes execution, placing, altering, replacing, relaying and removal; and “construct” and “constructed” must be construed accordingly;

“drainage authority” means the drainage board concerned within the meaning of section 23 of the Land Drainage Act 1991(a);

“drainage work” means any watercourse including any land that provides or is expected to provide flood storage capacity for any watercourse and any bank, wall, embankment or other structure, or any appliance, constructed or used for land drainage, flood defence, sea defence or tidal monitoring excluding the existing flood defence;

“ordinary watercourse” has the meaning given in the Land Drainage Act 1991(b);

(a) 1991 c.59.

(b) 1991 c.59, section 72(1).

“plans” includes sections, drawings, specifications and method statements;

“specified work” means so much of any work or operation authorised by this Order as is in, on, under, over or within 16 metres of a drainage work or is otherwise likely to—

- (a) affect any drainage work or the volumetric rate of flow of water in or flowing to or from any drainage work;
- (b) affect the flow, purity, or quality of water in any watercourse; or
- (c) affect the conservation, distribution or use of water resources.

29.—(1) Before beginning to construct any specified work, the undertaker must submit to the drainage authority plans of the specified work and such further particulars available to it as the drainage authority may within 28 days of the submission of the plans reasonably require.

(2) Any such specified work must not be constructed except in accordance with such plans as may be approved in writing by the drainage authority or determined under paragraph 27.

(3) Any approval of the drainage authority required under this paragraph—

- (a) must not be unreasonably withheld or delayed;
- (b) is deemed to have been given if it is neither given nor refused within 2 months of the submission of the plans for approval (or submission of further particulars if required by the drainage authority under sub-paragraph (1) or, in the case of a refusal, if it is not accompanied by a statement of the grounds of refusal; and
- (c) may be given subject to such reasonable requirements as the drainage authority may make for the protection of any drainage work.

(4) The drainage authority must use its reasonable endeavours to respond to the submission of any plans before the expiration of the period mentioned in sub-paragraph (3)(b).

30. Without limiting paragraph 19, the requirements which the drainage authority may make under that paragraph include conditions requiring the undertaker at its own expense to construct such protective works, whether temporary or permanent, during the construction of the specified work (including the provision of flood banks, walls or embankments or other new works and the strengthening, repair or renewal of existing banks, walls or embankments) as are reasonably necessary—

- (a) to safeguard any drainage work against damage; or
- (b) to secure that its efficiency for flood defence purposes is not impaired and that the risk of flooding is not otherwise increased,

by reason of any specified work.

31.—(1) Subject to sub-paragraph (2), any specified work, and all protective works required by the drainage authority under paragraph 20, must be constructed—

- (a) without unreasonable delay in accordance with the plans approved or deemed to have been approved or settled under this Part; and
- (b) to the reasonable satisfaction of the drainage authority,

and an officer of the drainage authority is entitled to watch and inspect the construction of such works.

(2) The undertaker must give to the drainage authority—

- (a) not less than 14 days’ notice in writing of its intention to commence construction of any specified work; and
- (b) notice in writing of its completion not later than 7 days after the date on which it is brought into use.

(3) If the drainage authority reasonably requires, the undertaker must construct all or part of the protective works so that they are in place before the construction of the specified work.

(4) If any part of a specified work or any protective work required by the drainage authority is constructed otherwise than in accordance with the requirements of this Part, the drainage authority

may by notice in writing require the undertaker at the undertaker's expense to comply with the requirements of this Part or (if the undertaker so elects and the drainage authority in writing consents, such consent not to be unreasonably withheld or delayed) to remove, alter or pull down the work and, where removal is required, to restore the site to its former condition to such extent and within such limits as the drainage authority reasonably requires.

(5) Subject to sub-paragraph (6), if within a reasonable period, being not less than 28 days from the date when a notice under sub-paragraph (4) is served on the undertaker, the undertaker has failed to begin taking steps to comply with the requirements of the notice and subsequently to make reasonably expeditious progress towards their implementation, the drainage authority may execute the works specified in the notice, and any expenditure incurred by it in so doing is recoverable from the undertaker.

(6) In the event of any dispute as to whether sub-paragraph (4) is properly applicable to any work in respect of which notice has been served under that sub-paragraph, or as to the reasonableness of any requirement of such a notice, the drainage authority must not except in emergency exercise the powers conferred by sub-paragraph (4) until the dispute has been finally determined.

32.—(1) Subject to sub-paragraph (5) the undertaker must from the commencement of the construction of any specified work maintain in good repair and condition and free from obstruction any drainage work that is situated within the limits of deviation on land held by the undertaker for the purposes of or in connection with the specified work, whether or not the drainage work is constructed under the powers conferred by this Order or is already in existence.

(2) If any drainage work that the undertaker is liable to maintain is not maintained to the reasonable satisfaction of the drainage authority, the drainage authority may by notice in writing require the undertaker to repair and restore the work, or any part of such work, or (if the undertaker so elects and the drainage authority in writing consents, such consent not to be unreasonably withheld or delayed), to remove the work and restore the site to its former condition, to such extent and within such limits as the drainage authority reasonably requires.

(3) If, within a reasonable period being not less than 28 days beginning with the date on which a notice in respect of any drainage work is served under sub-paragraph (2) on the undertaker, the undertaker has failed to begin taking steps to comply with the reasonable requirements of the notice and has not subsequently made reasonably expeditious progress towards their implementation, the drainage authority may do what is necessary for such compliance and may recover any expenditure reasonably incurred by it in so doing from the undertaker.

(4) In the event of any dispute as to the reasonableness of any requirement of a notice served under sub-paragraph (2), the drainage authority must not except in a case of emergency exercise the powers conferred by sub-paragraph (3) until the dispute has been finally determined.

(5) This paragraph does not apply to—

- (a) drainage works that are vested in the drainage authority or that the drainage authority or another person is liable to maintain and is not prevented by this Order from so doing; and
- (b) any obstruction of a drainage work for the purpose of a work or operation authorised by this Order and carried out in accordance with the provisions of this Part.

33. If by reason of the construction of any specified work or of the failure of any such work the efficiency of any drainage works for flood defence purpose is impaired, or the drainage work is otherwise damaged, the impairment or damage must be made good by the undertaker to the reasonable satisfaction of the drainage authority and, if the undertaker fails to do so, the drainage authority may make good the impairment or damage and recover from the undertaker the expense reasonably incurred by it in doing so.

34. The undertaker must indemnify the drainage authority in respect of all costs, charges and expenses that the drainage authority may reasonably incur, have to pay or may sustain—

- (a) in the examination or approval of plans under this Part;
- (b) in inspecting the construction of any specified work or any protective works required by the drainage authority under this Part; and

- (c) in carrying out of any surveys or tests by the drainage authority that are reasonably required in connection with the construction of the specified work.

35.—(1) Without limiting the other provisions of this Part, the undertaker must indemnify the drainage authority in respect of all claims, demands, proceedings, costs, damages, expenses or loss that may be made or taken against, recovered from or incurred by, the drainage authority by reason of—

- (a) any damage to any drainage work so as to impair its efficiency for the purposes of flood defence;
- (b) any raising or lowering of the water table in land adjoining the authorised development or any sewers, drains and watercourses; or
- (c) any flooding or increased flooding of any such land,

that is caused by the construction of any specified work or any act or omission of the undertaker, its contractors, agents or employees whilst engaged on the work.

(2) The drainage authority must give to the undertaker reasonable notice of any such claim or demand, and no settlement or compromise may be made without the agreement of the undertaker (such agreement not to be unreasonably withheld or delayed).

36. The fact that any work or thing has been executed or done by the undertaker in accordance with a plan approved or deemed to be approved by the drainage authority, or to its satisfaction, or in accordance with any directions or award of an arbitrator, does not relieve the undertaker from any liability under this Part.

37. Any dispute between the undertaker and the drainage authority under this Part, if the parties agree, must be determined by arbitration under article 41 (arbitration).

PART 4

FOR THE PROTECTION OF NATIONAL GRID ELECTRICITY TRANSMISSION PLC AS ELECTRICITY UNDERTAKER

Application

38.—(1) For the protection of National Grid Electricity Transmission Plc 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 Electricity Transmission Plc.

(2) Subject to sub-paragraph (3) or to the extent otherwise agreed in writing between the undertaker and National Grid Electricity Transmission Plc, where the benefit of this Order is transferred or granted to another person under article 6 (consent to transfer benefit of Order)—

- (a) any agreement of the type mentioned in subparagraph (1) has effect as if it had been made between National Grid Electricity Transmission Plc 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 Electricity Transmission Plc 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 Electricity Transmission Plc (but without prejudice to paragraph 39(3)(b)).

Interpretation

39. In this Part of this Schedule—

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

“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 £50,000,000.00 (fifty million pounds) per occurrence or series of occurrences arising out of one event. Such insurance shall be maintained (a) during the construction period of the authorised works; and (b) after the construction period of the authorised works in respect of any use and maintenance of the authorised works 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)—

- (a) a waiver of subrogation and an indemnity to principal clause in favour of National Grid Electricity Transmission Plc;
- (b) 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 £10,000,000.00 (ten million pounds) per occurrence or series of occurrences arising out of one event or £20,000,000.00 (twenty million pounds) in aggregate;

“acceptable security” means either—

- (c) a parent company guarantee from a parent company in favour of National Grid Electricity Transmission Plc to cover the undertaker’s liability to National Grid Electricity Transmission Plc to a total liability cap of £50,000,000.00 (fifty million pounds) (in a form reasonably satisfactory to National Grid Electricity Transmission Plc and where required by National Grid Electricity Transmission Plc, 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
- (d) a bank bond or letter of credit from an acceptable credit provider in favour of National Grid Electricity Transmission Plc to cover the undertaker’s liability to National Grid Electricity Transmission Plc for an amount of not less than £10,000,000.00 (ten million pounds) per asset per event up to a total liability cap of £50,000,000.00 (fifty million pounds) (in a form reasonably satisfactory to National Grid Electricity Transmission Plc);

“access works” means any works required to access Work No. 6 described in Schedule 1 of this Order (authorised development);

“alternative apparatus” means appropriate alternative apparatus to the satisfaction of National Grid Electricity Transmission Plc to enable National Grid Electricity Transmission Plc to fulfil its statutory functions in a manner no less efficient than previously;

“apparatus” means—

- (e) electric lines or electrical plant as defined in the 1989 Act, belonging to or maintained by National Grid Electricity Transmission Plc together with any replacement apparatus; and
- (f) such other apparatus constructed pursuant to the Order that becomes operational apparatus of the undertaker for the purposes of transmission, distribution and/or supply and includes any structure in which apparatus is or must be lodged or which gives or will give access to apparatus; and
- (g) any electrical lines or electrical plant as defined in the 1989 Act, any mains, pipes, plant or other apparatus belonging to, operated or maintained by National Grid Electricity Transmission Plc for the purposes of the construction, operation and maintenance of the EGL1 Project, whether temporary or permanent, and includes, where the context so requires, apparatus constructed as part of the authorised works and intended for the beneficial use by National Grid Electricity Transmission Plc (“EGL1 apparatus”);

“authorised works” has the same meaning as is given to the term “authorised development” in article 2(1) of this Order and includes any associated development authorised by the Order and for the purposes of this Part of this Schedule includes the use and maintenance of the authorised works and construction of any works authorised by this Schedule;

“commence” and “commencement” in this Part of this Schedule shall include any below ground surveys, monitoring, ground work operations or the receipt and erection of construction plant and equipment;

“deed of consent” means a deed of consent, crossing agreement, deed of variation or new deed of grant agreed between the parties acting reasonably in order to vary or replace existing easements, agreements, enactments and other such interests so as to secure land rights and interests as are necessary to carry out, maintain, operate and use the apparatus in a manner consistent with the terms of this Part of this Schedule;

“EGL1 Project” means the Eastern Green Link 1 high voltage direct current link to be located between Torness, East Lothian, Scotland and Hawthorn Pit, County Durham, England, overhead line works, utilities and watercourse crossings and associated works to be undertaken by National Grid Electricity Transmission Plc and any temporary construction compounds and laydown areas for such works;

“EGL1 Site” includes—

- (h) land on which any EGL1 apparatus is situated; and
- (i) land on which EGL1 apparatus is anticipated to be situated which is necessary for the construction, use or maintenance of the EGL1 Project (in so far as the same has been notified by National Grid Electricity Transmission plc in writing to the undertaker);

“functions” includes powers and duties;

“ground mitigation scheme” means a scheme approved by National Grid Electricity Transmission Plc (such approval not to be unreasonably withheld or delayed) setting out the necessary measures (if any) for a ground subsidence event;

“ground monitoring scheme” means a scheme for monitoring ground subsidence which sets out the apparatus which is to be subject to such monitoring, the extent of land to be monitored, the manner in which ground levels are to be monitored, the timescales of any monitoring activities and the extent of ground subsidence which, if exceeded, shall require the undertaker to submit for National Grid Electricity Transmission Plc’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 Electricity Transmission Plc Electricity Transmission plc receives under its electricity transmission licence which is caused by an event on its transmission system that causes electricity not to be supplied to a demand customer and which arises as a result of the authorised works;

“maintain” and “maintenance” shall include the ability and right to do any of the following in relation to any apparatus or alternative apparatus of National Grid Electricity Transmission Plc: construct, use, repair, alter, inspect, renew or remove the apparatus;

“National Grid Electricity Transmission Plc” means National Grid Electricity Transmission Plc (Company Number 2366977) whose registered office is at 1-3 Strand, London, WC2N 5EH or any successor as a licence holder within the meaning of Part 1 of the Electricity Act 1989;

“Norton Substation connection works” means any part of Work No. 6 described in Schedule 1 of this Order (authorised development)

“NGESO” means as defined in the STC;

“plan” or “plans” include all designs, drawings, specifications, method statements, soil reports, programmes, calculations, risk assessments and other documents that are reasonably necessary properly and sufficiently to describe and assess the works to be executed;

“parent company” means a parent company of the undertaker acceptable to and which shall have been approved by National Grid Electricity Transmission Plc acting reasonably;

“shared area works” means—

- (j) the Norton Substation connection works;

- (k) the access works; and
- (l) any part of the authorised works taking place on any land associated with the EGL1 Project (in so far as the same has been notified by National Grid Electricity Transmission plc in writing to the undertaker);

“specified works” means any of the authorised works or activities undertaken in association with the authorised works which—

- (m) will or may be situated over, or within 15 metres measured in any direction of any apparatus the removal of which has not been required by the undertaker under paragraph 35(2) or otherwise; and/or
- (n) may in any way adversely affect any apparatus the removal of which has not been required by the undertaker under paragraph 35(2) or otherwise; and/or
- (o) includes any of the activities that are referred to in development near overhead lines EN43- 8 and HSE’s guidance note 6 “Avoidance of Danger from Overhead Lines”.

“STC” means the System Operator Transmission Owner Code prepared by the electricity Transmission Owners and NGESO as modified from time to time;

“STC Claims” means any claim made under the STC against National Grid Electricity Transmission Plc 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 Electricity Transmission Plc’s transmission system which arises as a result of the authorised works;

“Transmission Owner” means as defined in the STC;

“undertaker” means the undertaker as defined in article 2(1) of this Order;

Interaction with the EGL1 Project

40. Without limiting any other provision of this Part of this Schedule, the undertaker must use reasonable endeavours to avoid any conflict arising between the construction, maintenance and operation of the authorised works and the EGL1 Project. For the purposes of this paragraph, “reasonable endeavours” means—

- (a) undertaking consultation on the detailed design and programming of the shared area works and all works associated with or ancillary to the shared area works to ensure that the design and programme for the Norton Substation connection works does not unreasonably impede or interfere with the EGL1 Project;
- (b) having regard to the proposed programme of works for the EGL1 Project as may be made available to the undertaker by National Grid Electricity Transmission Plc and facilitating a co-ordinated approach to the programme, land assembly, and the carrying out of the shared area works and the EGL1 Project;
- (c) providing a point of contact for continuing liaison and co-ordination throughout the construction and operation of the authorised works; and
- (d) keeping National Grid Electricity Transmission Plc informed on the programme of works for the authorised works.

On Street Apparatus

41. Except for paragraphs 32 (Apparatus of National Grid Electricity Transmission Plc in stopped up streets), 37 (Retained apparatus: protection of National Grid Electricity Transmission Plc as Electricity Undertaker), 38 (Expenses) and 39 (Indemnity) of this Schedule which will apply in respect of the exercise of all or any powers under the Order affecting the rights and apparatus of National Grid Electricity Transmission Plc, the other provisions of this Schedule do not apply to apparatus in respect of which the relations between the undertaker and National Grid Electricity Transmission Plc are regulated by the provisions of Part 3 of the 1991 Act.

Apparatus of National Grid Electricity Transmission Plc in stopped up streets

42.—(1) Where any street is stopped up under article 14 (public rights of way), if National Grid Electricity Transmission Plc has any apparatus in the street or accessed via that street National Grid Electricity Transmission Plc has the same rights in respect of that apparatus as it enjoyed immediately before the stopping up and the undertaker must grant to National Grid Electricity Transmission Plc, or procure the granting to National Grid Electricity Transmission Plc of, legal easements reasonably satisfactory to National Grid Electricity Transmission Plc in respect of such apparatus and access to it prior to the stopping up of any such street or highway but nothing in this paragraph affects any right of the undertaker or National Grid Electricity Transmission Plc to require the removal of that apparatus under paragraph 35 (Removal of apparatus) or the power of the undertaker, subject to compliance with this sub-paragraph, to carry out works under paragraph 37 (Retained apparatus: protection of National Grid Electricity Transmission Plc as Electricity Undertaker).

(2) Notwithstanding the temporary stopping up or diversion of any highway under the powers of article 13 (temporary stopping up of public rights of way), National Grid Electricity Transmission Plc is at liberty at all times to take all necessary access across any such stopped up highway and to execute and do all such works and things in, upon or under any such highway 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 highway.

Protective works to buildings

43. The undertaker, in the case of the powers conferred by article 19 (protective work to buildings), must exercise those powers so as not to obstruct or render less convenient the access to any apparatus or the EGL1 Site without the prior written consent of National Grid Electricity Transmission Plc which will not be unreasonably withheld.

Acquisition of land

44.—(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 Electricity Transmission Plc otherwise than by agreement (such agreement not to be unreasonably withheld or delayed).

(2) Regardless of any provision in this Order or anything shown on the land plans, the undertaker must not unless otherwise agreed in writing with National Grid Electricity Transmission Plc appropriate, acquire or take temporary possession of any land forming part of the EGL1 Site and/or any access thereto (such agreement not to be unreasonably withheld or delayed).

(3) 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 Electricity Transmission Plc 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 Electricity Transmission Plc or affect the provisions of any enactment or agreement regulating the relations between National Grid Electricity Transmission Plc 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 Electricity Transmission Plc reasonably requires enter into such deeds of consent upon such terms and conditions as may be agreed between National Grid Electricity Transmission Plc and the undertaker acting reasonably and which must be no less favourable on the whole to National Grid Electricity Transmission Plc unless otherwise agreed by National Grid Electricity Transmission Plc, 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.

(4) Save where otherwise agreed in writing between National Grid Electricity Transmission Plc and the undertaker the undertaker and National Grid Electricity Transmission Plc agree that where there is any inconsistency or duplication between the provisions set out in this Part of this Schedule relating to the relocation and/or removal of apparatus (including but not limited to the payment of costs and expenses relating to such relocation and/or removal of apparatus) and the provisions of any existing easement, rights, agreements and licences granted, used, enjoyed or exercised by National Grid Electricity Transmission Plc and/or other enactments relied upon by National Grid Electricity Transmission Plc as of right or other use in relation to the apparatus, then the provisions in this Schedule shall prevail.

(5) Any agreement or consent granted by National Grid Electricity Transmission Plc under paragraph 37 or any other paragraph of this Part of this Schedule, shall not be taken to constitute agreement under sub-paragraph (1).

Removal of apparatus

45.—(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 Electricity Transmission Plc 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 Electricity Transmission Plc 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 Electricity Transmission Plc a minimum of 56 days' advance written notice of that requirement, together with a plan of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order National Grid Electricity Transmission Plc 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 Electricity Transmission Plc to its satisfaction (taking into account paragraph 36(1) below) the necessary facilities and rights—

- (a) for the construction of alternative apparatus in other land of or land secured by the undertaker; and
- (b) subsequently for the maintenance of that apparatus.

(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of or land secured by the undertaker, or the undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraph (2) in the land in which the alternative apparatus or part of such apparatus is to be constructed, National Grid Electricity Transmission Plc must, on receipt of a written notice to that effect from the undertaker, take such steps as are reasonable in the circumstances to assist the undertaker to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed save that this obligation shall not extend to the requirement for National Grid Electricity Transmission Plc to use its compulsory purchase powers to this end unless it elects to so do.

(4) Any alternative apparatus to be constructed in land of or land secured by the undertaker under this Part of this Schedule must be constructed in such manner and in such line or situation as may be agreed between National Grid Electricity Transmission Plc and the undertaker.

(5) National Grid Electricity Transmission Plc 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 Electricity Transmission Plc 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

46.—(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to or secures for National Grid Electricity Transmission Plc 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 Electricity Transmission Plc and must be no less favourable on the whole to National Grid Electricity Transmission Plc than the facilities and rights enjoyed by it in respect of the apparatus to be removed unless otherwise agreed by National Grid Electricity Transmission Plc.

(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 Electricity Transmission Plc than the facilities and rights enjoyed by it in respect of the apparatus to be removed and the terms and conditions to which those facilities and rights are subject the matter may be referred to arbitration in accordance with paragraph 43 (Arbitration) of this Part of this Schedule and the arbitrator must make such provision for the payment of compensation by the undertaker to National Grid Electricity Transmission Plc as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

Retained apparatus: protection of National Grid Electricity Transmission Plc as Electricity Undertaker

47.—(1) Not less than 56 days before the commencement of any specified works the undertaker must submit to National Grid Electricity Transmission Plc a plan of the works to be executed and seek from National Grid Electricity Transmission Plc details of the underground extent of their electricity assets.

(2) In relation to specified works the plan to be submitted to National Grid Electricity Transmission Plc under sub-paragraph (1) must include a method statement and describe—

- (a) the exact position of the works;
- (b) the level at which these are proposed to be constructed or renewed;
- (c) the manner of their construction or renewal including details of excavation, positioning of plant;
- (d) the position of all apparatus;
- (e) by way of detailed drawings, every alteration proposed to be made to or close to any such apparatus;
- (f) any intended maintenance regimes; and
- (g) an assessment of risks of rise of earth issues.
- (h) a ground monitoring scheme, where required.

(3) In relation to any works which will or may be situated on, over, under or within 10 metres of any part of the foundations of an electricity tower or between any two or more electricity towers, the plan to be submitted under sub-paragraph (1) must, in addition to the matters set out in sub-paragraph (2), include a method statement describing—

- (a) details of any cable trench design including route, dimensions, clearance to pylon foundations;
- (b) demonstration that pylon foundations will not be affected prior to, during and post construction;
- (c) details of load bearing capacities of trenches;
- (d) details of any cable installation methodology including access arrangements, jointing bays and backfill methodology;
- (e) a written management plan for high voltage hazard during construction and ongoing maintenance of any cable route;

- (f) written details of the operations and maintenance regime for any cable, including frequency and method of access;
 - (g) assessment of earth rise potential if reasonably required by National Grid Electricity Transmission Plc'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 Electricity Transmission Plc has given written approval of the plan so submitted.
- (5) Any approval of National Grid Electricity Transmission Plc required under sub-paragraphs (4)—
- (a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraphs (6) or (8); and,
 - (b) may be given subject to such reasonable requirements as National Grid Electricity Transmission Plc may have in connection with safeguarding National Grid Electricity Transmission Plc's access to the EGL1 Site; and
 - (c) must not be unreasonably withheld or delayed.
- (6) In relation to a work to which sub-paragraph (2) or (3) applies, National Grid Electricity Transmission Plc 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 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 Electricity Transmission Plc and in accordance with such reasonable requirements as may be made in accordance with sub-paragraphs (5), (6), (8) or (9) by National Grid Electricity Transmission Plc for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and National Grid Electricity Transmission Plc will be entitled to watch and inspect the execution of those works.
- (8) Where National Grid Electricity Transmission Plc 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, such protective works must be carried out to National Grid Electricity Transmission Plc's satisfaction prior to the commencement of any authorised works (or any relevant part thereof) for which protective works are required and National Grid Electricity Transmission Plc shall give notice of its requirement for such works within 42 days of the date of submission of a plan pursuant to this paragraph (except in an emergency).
- (9) If National Grid Electricity Transmission Plc in accordance with sub-paragraphs (6) or (8) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, sub-paragraphs (1) to (3) and (6) to (8) apply as if the removal of the apparatus had been required by the undertaker under paragraph 35(1).
- (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 works, a new plan, instead of the plan previously submitted, and having done so the provisions of this paragraph shall apply to and in respect of the new plan.
- (11) The undertaker will not be required to comply with sub-paragraph (1) where it needs to carry out emergency works as defined in the 1991 Act but in that case it must give to National Grid Electricity Transmission Plc notice as soon as is reasonably practicable a plan of those works and must comply with sub-paragraphs (6), (7) and (8) insofar as is reasonably practicable in the circumstances and comply with sub-paragraph (12) at all times.
- (12) At all times when carrying out any works authorised under the Order, the undertaker must comply with National Grid Electricity Transmission Plc's policies for development near overhead lines EN43-8 and HSE's guidance note 6 "Avoidance of Danger from Overhead Lines".

Expenses

48.—(1) Save where otherwise agreed in writing between National Grid Electricity Transmission Plc and the undertaker and subject to the following provisions of this paragraph, the undertaker must pay to National Grid Electricity Transmission Plc within 30 days of receipt of an itemised invoice or claim from National Grid Electricity Transmission Plc all charges, costs and expenses reasonably anticipated within the following three months or reasonably and properly incurred by National Grid Electricity Transmission Plc 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 Electricity Transmission Plc 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 Electricity Transmission Plc as a consequence of National Grid Electricity Transmission Plc:
 - (i) using its own compulsory purchase powers to acquire any necessary rights under paragraph 35(3); or
 - (ii) exercising any compulsory purchase powers in the Order transferred to or benefitting National Grid Electricity Transmission Plc;
- (b) in connection with the cost of the carrying out of any diversion work or the provision of any alternative apparatus, where no written diversion agreement is otherwise in place;
- (c) the cutting off of any apparatus from any other apparatus or the making safe of redundant apparatus;
- (d) the approval of plans;
- (e) the carrying out of protective works, plus a capitalised sum to cover the cost of maintaining and renewing permanent protective works;
- (f) the survey of any land, apparatus or works, the inspection and monitoring of works or the installation or removal of any temporary works reasonably necessary in consequence of the execution of any such works referred to in this Part of this Schedule.

(2) There will be deducted from any sum payable under sub-paragraph (1) the value of any apparatus removed under the provisions of this Part of this Schedule and which is not re-used as part of the alternative apparatus, that value being calculated after removal.

(3) If in accordance with the provisions of this Part of this Schedule—

- (a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions; or
- (b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was situated,

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or, in default of agreement, is not determined by arbitration in accordance with paragraph 43 (arbitration) to be necessary, then, if such placing involves cost in the construction of works under this Part of this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to National Grid Electricity Transmission Plc 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 Electricity Transmission Plc 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 Electricity Transmission Plc 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

49.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any works authorised by this Part of this Schedule or in consequence of the construction, use maintenance or failure of any of the authorised works by or on behalf of the undertaker or in consequence of any act or default of the undertaker (or any person employed or authorised by him) in the course of carrying out such works, including without limitation works carried out by the undertaker under this Part of this Schedule or any subsidence resulting from any of these works, any damage is caused to any apparatus or alternative apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of the authorised works) or property of National Grid Electricity Transmission Plc, or there is any interruption in any service provided, or in the supply of any goods, by National Grid Electricity Transmission Plc, or National Grid Electricity Transmission Plc 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 Electricity Transmission Plc the cost reasonably and properly incurred by National Grid Electricity Transmission Plc in making good such damage or restoring the supply; and
- (b) indemnify National Grid Electricity Transmission Plc for any other expenses, loss, demands, proceedings, damages, claims, penalty or costs incurred by or recovered from National Grid Electricity Transmission Plc, by reason or in consequence of any such damage or interruption or National Grid Electricity Transmission Plc becoming liable to any third party and including STC Claims or an Incentive Deduction other than arising from any default of National Grid Electricity Transmission Plc.

(2) The fact that any act or thing may have been done by National Grid Electricity Transmission Plc on behalf of the undertaker or in accordance with a plan approved by National Grid Electricity Transmission Plc or in accordance with any requirement of National Grid Electricity Transmission Plc or under its supervision will not (unless sub-paragraph (3) applies), excuse the undertaker from liability under the provisions of this sub-paragraph (1) unless National Grid Electricity Transmission Plc fails to carry out and execute the works properly with due care and attention and in a skilful and workman like manner or in a manner that does not accord with the approved plan.

(3) Nothing in sub-paragraph (1) shall impose any liability on the undertaker in respect of—

- (a) any damage or interruption to the extent that it is attributable to the neglect or default of National Grid Electricity Transmission Plc, 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 Electricity Transmission Plc as an assignee, transferee or lessee of the undertaker with the benefit of the Order pursuant to section 156 of the Planning Act 2008 or article 6 (consent to transfer benefit of Order) subject to the proviso that once such works become apparatus (“new apparatus”), any authorised works yet to be executed and not falling within this sub-section 3(b) will be subject to the full terms of this Part of this Schedule including this paragraph in respect of such apparatus;

- (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 Electricity Transmission Plc must give the undertaker reasonable notice of any such third party claim or demand and, with the exception of any payment required in connection with a statutory compensation scheme, no settlement, admission of liability or compromise must, be made without first consulting with the undertaker and considering their representations.
- (5) National Grid Electricity Transmission Plc 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 Electricity Transmission Plc must use all 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 Electricity Transmission Plc'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 Electricity Transmission Plc's control and, if reasonably requested to do so by the undertaker, National Grid Electricity Transmission Plc must provide an explanation of how the claim has been minimised, where relevant.
- (7) The undertaker shall not commence construction (and not to permit the commencement of such construction) of the authorised works on any land owned by National Grid Electricity Transmission Plc or in respect of which National Grid Electricity Transmission Plc has an easement or wayleave for its apparatus or any other interest or to carry out any works within 15 metres of National Grid Electricity Transmission Plc's apparatus until the following conditions are satisfied—
 - (a) unless and until National Grid Electricity Transmission Plc is satisfied acting reasonably (but subject to all necessary regulatory constraints) that the undertaker has first provided the acceptable security (and provided evidence that it shall maintain such acceptable security for the construction period of the authorised works from the proposed date of commencement of construction of the authorised works) and National Grid Electricity Transmission Plc has confirmed the same to the undertaker in writing; and
 - (b) unless and until National Grid Electricity Transmission Plc is satisfied acting reasonably (but subject to all necessary regulatory constraints) that the undertaker has procured acceptable insurance (and provided evidence to National Grid Electricity Transmission Plc that it shall maintain such acceptable insurance for the construction period of the authorised works from the proposed date of commencement of construction of the authorised works) and National Grid Electricity Transmission Plc has confirmed the same in writing to the undertaker.
- (8) In the event that the undertaker fails to comply with paragraph 39(7) of this Part of this Schedule, nothing in this Part of this Schedule shall prevent National Grid Electricity Transmission Plc from seeking injunctive relief (or any other equitable remedy) in any court of competent jurisdiction.

Enactments and agreements

50. Save to the extent provided for to the contrary elsewhere in this Part of this Schedule or by agreement in writing between National Grid Electricity Transmission Plc 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 Electricity Transmission Plc 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

51.—(1) Where in consequence of the proposed construction of any part of the authorised works, the undertaker or National Grid Electricity Transmission Plc requires the removal of

apparatus under paragraph 35(2) or National Grid Electricity Transmission Plc makes requirements for the protection or alteration of apparatus under paragraph 37, the undertaker shall use its best endeavours to co-ordinate the execution of the works in the interests of safety and the efficient and economic execution of the authorised works and taking into account the need to ensure the safe and efficient operation of National Grid Electricity Transmission Plc's undertaking and National Grid Electricity Transmission Plc shall use its best endeavours to co-operate with the undertaker for that purpose.

(2) Whenever National Grid Electricity Transmission Plc'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

52. If in consequence of the agreement reached in accordance with paragraphs 34(1) and 34(2) or the powers granted under this Order the access to any apparatus and/or to the EGL1 Site is materially obstructed, the undertaker must provide such alternative means of access to such apparatus and/or to the EGL1 Site as will enable National Grid Electricity Transmission Plc to access, maintain or use the apparatus and/or the EGL1 Site no less effectively than was possible before such obstruction.

Arbitration

53. Save for differences or disputes arising under paragraphs 35(2), 35(4) and 37 any difference or dispute arising between the undertaker and National Grid Electricity Transmission Plc under this Part of this Schedule must, unless otherwise agreed in writing between the undertaker and National Grid Electricity Transmission Plc, be determined by arbitration in accordance with article 41 (arbitration).

Notices

54. Any plans submitted to National Grid Electricity Transmission Plc by the undertaker pursuant to this Part must be submitted using the LSBUD system (<https://lsbud.co.uk/>) or to such other address as National Grid Electricity Transmission Plc may from time to time appoint instead for that purpose and notify to the undertaker in writing.

PART 5

FOR THE PROTECTION OF NATIONAL GAS TRANSMISSION PLC AS GAS UNDERTAKER

Application

55.—(1) For the protection of National Gas as referred to in this Part of this Schedule the following provisions have effect, unless otherwise agreed in writing between the undertaker and National Gas.

(2) Subject to sub-paragraph (3) or to the extent otherwise agreed in writing between the undertaker and National Gas, where the benefit of this Order is transferred or granted to another person under article 6 (consent to transfer benefit of Order)—

- (a) any agreement of the type mentioned in subparagraph (1) has effect as if it had been made between National Gas and the transferee or grantee (as the case may be); and
- (b) written notice of the transfer or grant must be given to National Gas on or before the date of that transfer or grant.

(3) Sub-paragraph (2) does not apply where the benefit of the Order is transferred or granted to National Gas (but without prejudice to paragraph 55(3)(b)).

Interpretation

56. In this Part of this Schedule—

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

“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 £50,000,000.00 (fifty million pounds) per occurrence or series of occurrences arising out of one event. Such insurance shall be maintained (a) during the construction period of the authorised works; and (b) after the construction period of the authorised 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)—

- (a) a waiver of subrogation and an indemnity to principal clause in favour of National Gas;
- (b) 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 £10,000,000.00 (ten million pounds) per occurrence or series of occurrences arising out of one event or £20,000,000.00 (twenty million pounds) in aggregate;

“acceptable security” means either—

- (c) a parent company guarantee from a parent company in favour of National Gas to cover the undertaker’s liability to National Gas to a total liability cap of £50,000,000.00 (fifty million pounds) (in a form reasonably satisfactory to National Gas and where required by National Gas, 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
- (d) a bank bond or letter of credit from an acceptable credit provider in favour of National Gas to cover the undertaker’s liability to National Gas for an amount of not less than £10,000,000.00 (ten million pounds) per asset per event up to a total liability cap of £50,000,000.00 (fifty million pounds) (in a form reasonably satisfactory to National Gas);

“alternative apparatus” means appropriate alternative apparatus to the satisfaction of National Gas to enable National Gas to fulfil its statutory functions in a manner no less efficient than previously;

“apparatus” means any mains, pipes or other apparatus belonging to or maintained by National Gas for the purposes of gas supply together with any replacement apparatus and such other apparatus constructed pursuant to the Order that becomes operational apparatus of National Gas for the purposes of transmission, distribution and/or supply and includes any structure in which apparatus is or will be lodged or which gives or will give access to apparatus;

“authorised works” has the same meaning as is given to the term “authorised development” in article 2(1) of this Order and includes any associated development authorised by the Order and for the purposes of this Part of this Schedule includes the use and maintenance of the authorised works and construction of any works authorised by this Schedule;

“commence” and “commencement” in this Part of this Schedule shall include any below ground surveys, monitoring, ground work operations or the receipt and erection of construction plant and equipment;

“deed of consent” means a deed of consent, crossing agreement, deed of variation or new deed of grant agreed between the parties acting reasonably in order to vary or replace existing easements, agreements, enactments and other such interests so as to secure land rights and interests as are necessary to carry out, maintain, operate and use the apparatus in a manner consistent with the terms of this Part of this Schedule;

“functions” includes powers and duties;

“ground mitigation scheme” means a scheme approved by National Gas (such approval not to be unreasonably withheld or delayed) setting out the necessary measures (if any) for a ground subsidence event;

“ground monitoring scheme” means a scheme for monitoring ground subsidence which sets out the apparatus which is to be subject to such monitoring, the extent of land to be monitored, the manner in which ground levels are to be monitored, the timescales of any monitoring activities and the extent of ground subsidence which, if exceeded, shall require the undertaker to submit for National Gas’ approval a ground mitigation scheme;

“ground subsidence event” means any ground subsidence identified by the monitoring activities set out in the ground monitoring scheme that has exceeded the level described in the ground monitoring scheme as requiring a ground mitigation scheme;

“in” in a context referring to apparatus or alternative apparatus in land includes a reference to apparatus or alternative apparatus under, over, across, along or upon such land;

“maintain” and “maintenance” shall include the ability and right to do any of the following in relation to any apparatus or alternative apparatus of National Gas: construct, use, repair, alter, inspect, renew or remove the apparatus;

“National Gas” means National Gas Transmission plc (Company Number 02006000) whose registered office is at National Grid House, Warwick Technology Park, Gallows Hill, Warwick, CV34 6DA or any successor as a gas transporter within the meaning of Part 1 of the Gas Act 1986;

“Network Code” means the network code prepared by National Gas pursuant to Standard Special Condition A11(3) of its Gas Transporter’s Licence, which incorporates the Uniform Network Code, as defined in Standard Special Condition A11(6) of National Gas’ Gas Transporters Licence, as both documents are amended from time to time;

“Network Code Claims” means any claim made against National Gas by any person or loss suffered by National Gas under the Network Code arising out of or in connection with any failure by National Gas to make gas available for off take at, or a failure to accept gas tendered for delivery from, any entry point to or exit point from the gas national transmission system as a result of the authorised works or any costs and/or expenses incurred by National Gas as a result of or in connection with, it taking action (including purchase or buy back of capacity) for the purpose of managing constraint or potential constraint on the gas national transmission system which may arise as a result of the authorised works;

“plan” or “plans” include all designs, drawings, specifications, method statements, soil reports, programmes, calculations, risk assessments and other documents that are reasonably necessary properly and sufficiently to describe and assess the works to be executed;

“parent company” means a parent company of the undertaker acceptable to and which shall have been approved by National Gas acting reasonably;

“specified works” means any of the authorised works or activities undertaken in association with the authorised works which—

- (e) will or may be situated over, or within 15 metres measured in any direction of any apparatus the removal of which has not been required by the undertaker under paragraph 51(2) or otherwise; and/or
- (f) may in any way adversely affect any apparatus the removal of which has not been required by the undertaker under paragraph 51(2) or otherwise; and/or
- (g) includes any of the activities that are referred to in paragraph 8 of T/SP/SSW/22 (National Gas’ policies for safe working in proximity to gas apparatus Specification for safe working in the vicinity of National Grid, High pressure Gas pipelines and associated installation requirements for third parties T/SP/SSW/22.

“undertaker” means the undertaker as defined in article 2(1) of this Order.

On Street Apparatus

57. Except for paragraphs 48 (apparatus of National Gas in stopped up streets), 53 (retained apparatus: protection), 54 (expenses) and 55 (indemnity) of this Schedule which will apply in respect of the exercise of all or any powers under the Order affecting the rights and apparatus of National Gas, the other provisions of this Schedule do not apply to apparatus in respect of which the relations between the undertaker and National Gas are regulated by the provisions of Part 3 of the 1991 Act.

Apparatus of National Gas in stopped up streets

58. Where any street is stopped up under article 14 (public rights of way), if National Gas has any apparatus in the street or accessed via that street National Gas has the same rights in respect of that apparatus as it enjoyed immediately before the stopping up and the undertaker must grant to National Gas, or procure the granting to National Gas of, legal easements reasonably satisfactory to National Gas in respect of such apparatus and access to it prior to the stopping up of any such street or highway but nothing in this paragraph affects any right of the undertaker or National Gas to require the removal of that apparatus under paragraph 51 or the power of the undertaker, subject to compliance with this sub-paragraph, to carry out works under paragraph 53.

(1) Notwithstanding the temporary stopping up or diversion of any highway under the powers of article 13 (temporary stopping up of public rights of way), National Gas is at liberty at all times to take all necessary access across any such stopped up highway and to execute and do all such works and things in, upon or under any such highway 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 highway.

Protective works to buildings

59. The undertaker, in the case of the powers conferred by article 19 (protective work to buildings), must exercise those powers so as not to obstruct or render less convenient the access to any apparatus without the written consent of National Gas.

Acquisition of land

60.—(1) Regardless of any provision in this Order or anything shown on the land plans or contained in the book of reference to the Order, the undertaker may not (a) appropriate or acquire or take temporary possession of any land or apparatus or (b) appropriate, acquire, extinguish, interfere with or override any easement, other interest or right and/or apparatus of National Gas otherwise than by agreement.

(2) As a condition of an agreement between the parties in sub-paragraph (1), prior to the carrying out of any part of the authorised works (or in such other timeframe as may be agreed between National Gas and the undertaker) that is subject to the requirements of this Part of this Schedule that will cause any conflict with or breach the terms of any easement or other legal or land interest of National Gas or affect the provisions of any enactment or agreement regulating the relations between National Gas and the undertaker in respect of any apparatus laid or erected in land belonging to or secured by the undertaker, the undertaker must as National Gas reasonably requires enter into such deeds of consent upon such terms and conditions as may be agreed between National Gas and the undertaker acting reasonably and which must be no less favourable on the whole to National Gas unless otherwise agreed by National Gas, and it will be the responsibility of the undertaker to procure and/or secure the consent and entering into of such deeds and variations by all other third parties with an interest in the land at that time who are affected by such authorised works.

(3) Save where otherwise agreed in writing between National Gas and the undertaker the undertaker and National Gas agree that where there is any inconsistency or duplication between the provisions set out in this Part of this Schedule relating to the relocation and/or removal of apparatus (including but not limited to the payment of costs and expenses relating to such relocation and/or removal of apparatus) and the provisions of any existing easement, rights,

agreements and licences granted, used, enjoyed or exercised by National Gas and/or other enactments relied upon by National Gas as of right or other use in relation to the apparatus, then the provisions in this Schedule shall prevail.

(4) Any agreement or consent granted by National Gas under paragraph 53 or any other paragraph of this Part of this Schedule, shall not be taken to constitute agreement under sub-paragraph (1).

Removal of apparatus

61.—(1) If, in the exercise of the powers conferred by this Order, the undertaker acquires any interest in or possesses temporarily any land in which any apparatus is placed, that apparatus must not be removed under this Part of this Schedule and any right of National Gas to maintain that apparatus in that land must not be extinguished until alternative apparatus has been constructed, and is in operation to the reasonable satisfaction of National Gas in accordance with sub-paragraph (2) to (5).

(2) If, for the purpose of executing any works in, on, under or over any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, it must give to National Gas advance written notice of that requirement, together with a plan of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order National Gas reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph (3), secure any necessary consents for the alternative apparatus and afford to National Gas to its satisfaction (taking into account paragraph 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 Gas 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 shall not extend to the requirement for National Gas to use its compulsory purchase powers to this end unless it elects to so do.

(4) Any alternative apparatus to be constructed in land of or land secured by the undertaker under this Part of this Schedule must be constructed in such manner and in such line or situation as may be agreed between National Gas and the undertaker.

(5) National Gas must, after the alternative apparatus to be provided or constructed has been agreed, and subject to a written diversion agreement having been entered into between the parties and the grant to National Gas of any such facilities and rights as are referred to in sub-paragraph (2) or (3), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by the undertaker to be removed under the provisions of this Part of this Schedule.

Facilities and rights for alternative apparatus

62.—(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to or secures for National Gas facilities and rights in land for the construction, use, maintenance and protection of alternative apparatus in substitution for apparatus to be removed, those facilities and rights must be granted upon such terms and conditions as may be agreed between the undertaker and National Gas and must be no less favourable on the whole to National Gas than the facilities and rights enjoyed by it in respect of the apparatus to be removed unless otherwise agreed by National Gas.

(2) If the facilities and rights to be afforded by the undertaker in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are less favourable on the whole to National Gas than the facilities and rights enjoyed by it in respect of the apparatus to be removed and the terms and conditions to which those facilities and rights are subject the matter may be referred to arbitration in accordance with paragraph 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 Gas as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

Retained apparatus: protection

63.—(1) Not less than 56 days before the commencement of any specified works the undertaker must submit to National Gas a plan and, if reasonably required by National Gas, a ground monitoring scheme in respect of those works.

(2) In relation to specified works the plan to be submitted to National Gas under sub-paragraph (1) must include a method statement and describe—

- (a) the exact position of the works;
- (b) the level at which these are proposed to be constructed or renewed;
- (c) the manner of their construction or renewal including details of excavation, positioning of plant etc;
- (d) the position of all apparatus;
- (e) by way of detailed drawings, every alteration proposed to be made to or close to any such apparatus; and
- (f) any intended maintenance regimes.

(3) The undertaker must not commence any works to which sub-paragraphs (1) and (2) apply until National Gas has given written approval of the plan so submitted.

(4) Any approval of National Gas required under sub-paragraph (3)—

- (a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraphs (5) or (7); and,
- (b) must not be unreasonably withheld.

(5) In relation to any work to which sub-paragraphs (1) and/or (2) apply, National Gas may require such modifications to be made to the plans as may be reasonably necessary for the purpose of securing its apparatus against interference or risk of damage for the provision of protective works or for the purpose of providing or securing proper and convenient means of access to any apparatus.

(6) Works executed under sub-paragraphs (1) or (2) must be executed in accordance with the plan, submitted under sub-paragraph (1) or as relevant sub paragraph (5), as approved or as amended from time to time by agreement between the undertaker and National Gas and in accordance with such reasonable requirements as may be made in accordance with sub-paragraphs (5) or (7) by National Gas for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and National Gas will be entitled to watch and inspect the execution of those works.

(7) Where National Gas requires any protective works to be carried out by itself or by the undertaker (whether of a temporary or permanent nature) such protective works, inclusive of any measures or schemes required and approved as part of the plan approved pursuant to this paragraph, must be carried out to National Gas' satisfaction prior to the commencement of any specified works for which protective works are required and National Gas must give notice of its requirement for such works within 42 days of the date of submission of a plan pursuant to this paragraph (except in an emergency).

(8) If National Gas in accordance with sub-paragraphs (5) or (7) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives

written notice to the undertaker of that requirement, paragraphs 1 to 3 and 6 to 8 apply as if the removal of the apparatus had been required by the undertaker under paragraph 51(2).

(9) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 56 days before commencing the execution of the specified works, a new plan, instead of the plan previously submitted, and having done so the provisions of this paragraph will apply to and in respect of the new plan.

(10) The undertaker will not be required to comply with sub-paragraph (1) where it needs to carry out emergency works as defined in the 1991 Act but in that case it must give to National Gas notice as soon as is reasonably practicable and a plan of those works and must comply with sub-paragraphs (5), (6) and (7) insofar as is reasonably practicable in the circumstances and comply with sub paragraph (11) at all times;

(11) At all times when carrying out any works authorised under the Order the undertaker must comply with National Gas' policies for safe working in proximity to gas apparatus "Specification for safe working in the vicinity of National Grid, High pressure Gas pipelines and associated installation requirements for third parties T/SP/SSW22" and HSE's "HS(~G)47 Avoiding Danger from underground services".

(12) As soon as reasonably practicable after any ground subsidence event attributable to the authorised development the undertaker shall implement an appropriate ground mitigation scheme save that National Gas retains the right to carry out any further necessary protective works for the safeguarding of its apparatus and can recover any such costs in line with paragraph 54.

Expenses

64.—(1) Save where otherwise agreed in writing between National Gas and the undertaker and subject to the following provisions of this paragraph, the undertaker must pay to National Gas within 30 days of receipt of an itemised invoice or claim from National Gas all charges, costs and expenses reasonably anticipated within the following three months or reasonably and properly incurred by National Gas in, or in connection with, the inspection, removal, relaying or replacing, alteration or protection of any apparatus or the construction of any new or alternative apparatus which may be required in consequence of the execution of any authorised works including without limitation—

- (a) any costs reasonably incurred by or compensation properly paid by National Gas in connection with the acquisition of rights or the exercise of statutory powers for such apparatus including without limitation all costs incurred by National Gas as a consequence of National Gas;
 - (i) using its own compulsory purchase powers to acquire any necessary rights under paragraph 51(3); or
 - (ii) exercising any compulsory purchase powers in the Order transferred to or benefitting National Gas;
- (b) in connection with the cost of the carrying out of any diversion work or the provision of any alternative apparatus, where no written diversion agreement is otherwise in place;
- (c) the cutting off of any apparatus from any other apparatus or the making safe of redundant apparatus;
- (d) the approval of plans;
- (e) the carrying out of protective works, plus a capitalised sum to cover the cost of maintaining and renewing permanent protective works;
- (f) the survey of any land, apparatus or works, the inspection and monitoring of works or the installation or removal of any temporary works reasonably necessary in consequence of the execution of any such works referred to in this Part of this Schedule.

(2) There will be deducted from any sum payable under sub-paragraph (1) the value of any apparatus removed under the provisions of this Part of this Schedule and which is not re-used as part of the alternative apparatus, that value being calculated after removal.

(3) If in accordance with the provisions of this Part of this Schedule—

- (a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions; or
- (b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was situated,

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or, in default of agreement, is not determined by arbitration in accordance with paragraph 15 (arbitration) to be necessary, then, if such placing involves cost in the construction of works under this Part of this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to National Gas by virtue of sub-paragraph (1) will be reduced by the amount of that excess save to the extent that it is not possible in the circumstances to obtain the existing type of apparatus at the same capacity and dimensions or place at the existing depth in which case full costs will be borne by the undertaker.

(4) For the purposes of sub-paragraph (3)—

- (a) an extension of apparatus to a length greater than the length of existing apparatus will not be treated as a placing of apparatus of greater dimensions than those of the existing apparatus; and
- (b) where the provision of a joint in a pipe or cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole will be treated as if it also had been agreed or had been so determined.

(5) Any amount which apart from this sub-paragraph would be payable to National Gas in respect of works by virtue of sub-paragraph (1) will, if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on National Gas any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, be reduced by the amount which represents that benefit.

Indemnity

65.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any works authorised by this Part of this Schedule or in consequence of the construction, use maintenance or failure of any of the authorised works by or on behalf of the undertaker or in consequence of any act or default of the undertaker (or any person employed or authorised by him) in the course of carrying out such works, including without limitation works carried out by the undertaker under this Part of this Schedule or any subsidence resulting from any of these works, any damage is caused to any apparatus or alternative apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of the authorised works) or property of National Gas, or there is any interruption in any service provided, or in the supply of any goods or energy, by National Gas, or National Gas becomes liable to pay any amount to any third party, the undertaker will—

- (a) bear and pay on demand accompanied by an invoice or claim from National Gas the cost reasonably and properly incurred by National Gas in making good such damage or restoring the supply; and
- (b) indemnify National Gas for any other expenses, loss, demands, proceedings, damages, claims, penalty or costs incurred by or recovered from National Gas, by reason or in consequence of any such damage or interruption or National Gas becoming liable to any third party and including Network Code Claims other than arising from any default of National Gas.

(2) The fact that any act or thing may have been done by National Gas on behalf of the undertaker or in accordance with a plan approved by National Gas or in accordance with any requirement of National Gas or under its supervision will not (unless sub-paragraph (3) applies), excuse the undertaker from liability under the provisions of this sub-paragraph (1) unless National

Gas fails to carry out and execute the works properly with due care and attention and in a skilful and workman like manner or in a manner that does not accord with the approved plan.

(3) Nothing in sub-paragraph (1) shall impose any liability on the undertaker in respect of—

- (a) any damage or interruption to the extent that it is attributable to the neglect or default of National Gas, its officers, servants, contractors or agents;
- (b) any authorised works and/or any other works authorised by this Part of this Schedule carried out by National Gas as an assignee, transferee or lessee of the undertaker with the benefit of the Order pursuant to section 156 of the Planning Act 2008 or article 6 (consent to transfer benefit of Order) subject to the proviso that once such works become apparatus (“new apparatus”), any authorised works yet to be executed and not falling within this sub-paragraph 3(b) will be subject to the full terms of this Part of this Schedule including this paragraph 55; and/or
- (c) (any indirect or consequential loss of any third party (including but not limited to loss of use, revenue, profit, contract, production, increased cost of working or business interruption) arising from any such damage or interruption, which is not reasonably foreseeable;

(4) National Gas must give the undertaker reasonable notice of any such third party claim or demand and no settlement, admission of liability or compromise must, unless payment is required in connection with a statutory compensation scheme, be made without first consulting the undertaker and considering their representations.

(5) National Gas must, in respect of any matter covered by the indemnity given by the undertaker in this paragraph, at all times act reasonably and in the same manner as it would as if settling third party claims on its own behalf from its own funds.

(6) National Gas must use its reasonable endeavours to mitigate and to minimise any costs, expenses, loss, demands, and penalties to which the indemnity under this paragraph applies where it is within National Gas’ reasonable ability and control to do so and which expressly excludes any obligation to mitigate liability arising from third parties which is outside of ‘National Gas’ control and if reasonably requested to do so by the undertaker National Gas must provide an explanation of how the claim has been minimised, where relevant.

(7) The undertaker must not commence construction (and not to permit the commencement of such construction) of the authorised works on any land owned by National Gas or in respect of which National Gas has an easement or wayleave for its apparatus or any other interest or to carry out any works within 15 metres of National Gas’ apparatus until the following conditions are satisfied—

- (a) unless and until National Gas is satisfied acting reasonably (but subject to all necessary regulatory constraints) that the undertaker has first provided the acceptable security (and provided evidence that it shall maintain such acceptable security for the construction period of the authorised works from the proposed date of commencement of construction of the authorised works) and National Gas has confirmed the same to the undertaker in writing; and
- (b) unless and until National Gas is satisfied acting reasonably (but subject to all necessary regulatory constraints) that the undertaker has procured acceptable insurance (and provided evidence to National Gas that it shall maintain such acceptable insurance for the construction period of the authorised works from the proposed date of commencement of construction of the authorised works) and National Gas has confirmed the same in writing to the undertaker.

(8) In the event that the undertaker fails to comply with 55(7) of this Part of this Schedule, nothing in this Part of this Schedule shall prevent National Gas from seeking injunctive relief (or any other equitable remedy) in any court of competent jurisdiction.

Enactments and agreements

66. Save to the extent provided for to the contrary elsewhere in this Part of this Schedule or by agreement in writing between National Gas and the undertaker, nothing in this Part of this

Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and National Gas in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

Co-operation

67.—(1) Where in consequence of the proposed construction of any part of the authorised works, the undertaker or National Gas requires the removal of apparatus under paragraph 51(2) or National Gas makes requirements for the protection or alteration of apparatus under paragraph 53, the undertaker shall use its best endeavours to co-ordinate the execution of the works in the interests of safety and the efficient and economic execution of the authorised works and taking into account the need to ensure the safe and efficient operation of National Gas' undertaking and National Gas shall use its best endeavours to co-operate with the undertaker for that purpose.

(2) For the avoidance of doubt whenever National Gas' 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

68. If in consequence of the agreement reached in accordance with paragraph 50(1) or the powers granted under this Order the access to any apparatus is materially obstructed, the undertaker must provide such alternative means of access to such apparatus as will enable National Gas to maintain or use the apparatus no less effectively than was possible before such obstruction.

Arbitration

69. Save for differences or disputes arising under paragraph 51(2), 51(4), 52(1) and 53 any difference or dispute arising between the undertaker and National Gas under this Part of this Schedule must, unless otherwise agreed in writing between the undertaker and National Gas, be determined by arbitration in accordance with article 41 (arbitration).

Notices

70. Notwithstanding article 38 (service of notices), any plans submitted to National Gas by the undertaker pursuant to paragraph 53 must be submitted to <https://lsbud.co.uk/> or such other address as National Gas may from time to time appoint instead for that purpose and notify to the undertaker in writing.

PART 6

FOR THE PROTECTION OF NORTHERN POWERGRID

71. For the protection of Northern Powergrid the following provisions have effect, unless otherwise agreed in writing between the undertaker and Northern Powergrid.

72. In this Part of this Schedule—

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

“alternative apparatus” means alternative apparatus adequate to enable Northern Powergrid to fulfil its statutory functions in a manner not less efficient than previously;

“apparatus” means electric lines or electrical plant (as defined in the Electricity Act 1989), belonging to or maintained by Northern Powergrid and includes any structure in which apparatus is or is to be lodged or which gives or will give access to apparatus;

“authorised works” means so much of the works authorised by this Order which affect

existing Northern Powergrid's apparatus within the Order limits;

"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, 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 and shall include measures proposed by the undertaker to ensure the grant of sufficient land or rights in land necessary to mitigate the impacts of the works on Northern Powergrid's undertaking; and

"Northern Powergrid" means Northern Powergrid (Northeast) PLC (Company Number

02906593) whose registered address is Lloyds Court, 78 Grey Street, Newcastle upon Tyne

73. This Part of this Schedule does not apply to apparatus in respect of which the relations between the undertaker and Northern Powergrid are regulated by the provisions of Part 3 (street works in England and Wales) of the 1991 Act.

74. Regardless of the temporary prohibition or restriction of use of streets under the powers conferred by article 13 (Temporary stopping up of public rights of way), Northern Powergrid is at liberty at all times to take all necessary access across any such street and to execute and do all such works and things in, upon or under any such street as may be reasonably necessary or desirable to enable it to maintain any apparatus which at the time of the prohibition or restriction was in that street.

75. Regardless of any provision in this Order or anything shown on the land plans, or contained in the book of reference, the undertaker shall not acquire any apparatus, or override any easement or other interest of Northern Powergrid or create any new rights over the same otherwise than by agreement with Northern Powergrid such agreement not to be unreasonably withheld or delayed (having regard to Northern Powergrid's existing and known future requirements for such land and interests)

76. Regardless of any provision in the Order or anything shown on the land plans or contained in the book of reference, the undertaker shall not interfere with any communications cables or equipment used by Northern Powergrid in relation to its apparatus nor shall acquire or interfere with rights or interests supporting the use, maintenance or renewal of such equipment including any easements other than by agreement of Northern Powergrid (such agreement not to be unreasonably withheld or delayed) and having regard to Northern Powergrid's existing and known future requirements for such land or interests.

77.—(1) If, in the exercise of the powers conferred by this Order, the undertaker acquires any interest in any land in which any apparatus is placed or over which access to any apparatus is enjoyed or requires that Northern Powergrid's apparatus is relocated or diverted, that apparatus must not be removed under this Part of this Schedule, and any right of Northern Powergrid to maintain that apparatus in that land and to gain access to it must not be extinguished, until alternative apparatus has been constructed and is in operation, and access to it has been provided pursuant to a completed easement which shall include rights to retain and subsequently maintain the apparatus being replaced or diverted for the lifetime of that alternative apparatus, all to the reasonable satisfaction of Northern Powergrid in accordance with sub-paragraphs (2) to (5).

(2) If, for the purpose of executing any works in, on or under any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, the undertaker must give to Northern Powergrid 56 days' advance written notice of that requirement, together with a plan and section of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order Northern Powergrid reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph (3), afford to Northern Powergrid the necessary facilities and rights for the construction of alternative apparatus in other land of the undertaker and subsequently for the maintenance of that apparatus.

(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—

- (i) the undertaker must in the first instance use reasonable endeavours to acquire all necessary land interests or rights as Northern Powergrid may reasonably require for the relocation and construction of alternative apparatus and must use reasonable endeavours to procure all necessary rights to access and maintain Northern Powergrid's apparatus and alternative apparatus thereafter the terms of such access and maintenance to be agreed by Northern Powergrid (acting reasonably); and
- (ii) In the event that the undertaker is not able to procure the necessary land interest or rights referred to in the sub-paragraph (3) (i), Northern Powergrid must, on receipt of a written notice to that effect from the undertaker, as soon as reasonably practicable and at the cost of the undertaker (subject to prior approval by the undertaker of its estimate of costs of doing so) use reasonable endeavours to procure the necessary facilities and rights in the land in which the alternative apparatus is to be constructed save that this obligation shall not extend to the requirement for Northern Powergrid to use its compulsory purchase powers to this end.

(4) Any alternative apparatus to be constructed in land of the undertaker under this Part of this Schedule must be constructed in such manner and in such line or situation as may be agreed between Northern Powergrid and the undertaker or in default of agreement settled by arbitration in accordance with article 41 (arbitration).

(5) Northern Powergrid must, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with article 41, and after the grant to Northern Powergrid 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.

78.—(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to Northern Powergrid facilities and rights for the construction and maintenance in land of the undertaker of alternative apparatus in substitution for apparatus to be removed, those facilities and rights must be granted upon such terms and conditions as may be agreed between the undertaker and Northern Powergrid or in default of agreement settled by arbitration in accordance with article 41 (arbitration).

(2) If the facilities and rights to be afforded by the undertaker in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are in the opinion of the arbitrator less favourable on the whole to Northern Powergrid than the facilities and rights enjoyed by it in respect of the apparatus to be removed and the terms and conditions to which those facilities and rights are subject, the arbitrator must make such provision for the payment of compensation by the undertaker to Northern Powergrid as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

79.—(1) Not less than 56 days before starting the execution of any works in, on or under any land purchased, held, appropriated or used under this Order that are near to (including conducting any activities whether intentionally or unintentionally, through for example ground or machinery collapse, which may affect Northern Powergrid's apparatus or encroach on safety distances to live equipment) or will or may affect, any apparatus the removal of which has not been required by the undertaker under paragraph 67(2), the undertaker must submit to Northern Powergrid a plan, section and description of the works to be executed and any such information as Northern Powergrid reasonably required relating to those works.

(2) Those works must be executed only in accordance with the plan, section and description submitted under sub-paragraph (1) and in accordance with such reasonable requirements as may be made in accordance with sub-paragraph (3) by Northern Powergrid for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and Northern Powergrid is entitled to watch and inspect the execution of those works.

(3) Any requirements made by Northern Powergrid under sub-paragraph (2) must be made within a period of 35 days beginning with the date on which a plan, section and description under sub-paragraph (1) are submitted to it.

(4) If Northern Powergrid in accordance with sub-paragraph (3) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraphs 61 to 68 apply as if the removal of the apparatus had been required by the undertaker under paragraph 7(2).

(5) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 35 days before commencing the execution of any works, a new plan, section and description instead of the plan, section and description previously submitted, and having done so the provisions of this paragraph apply to and in respect of the new plan, section and description.

(6) The undertaker is not required to comply with sub-paragraph (1) in a case of emergency but in that case it must give to Northern Powergrid 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.

80.—(1) Subject to the following provisions of this paragraph, the undertaker must repay to Northern Powergrid within fifty (50) days of receipt of an itemised invoice or claim all reasonable and proper expenses costs or charges incurred by Northern Powergrid—

- (a) in, or in connection with, the inspection, removal, alteration or protection of any apparatus or the construction of any alternative apparatus which may be required in consequence of the execution of any such works as are referred to in paragraph 67(2) including without limitation—
 - (i) any costs reasonably incurred or compensation properly paid in connection with the acquisition of rights or the exercise of statutory powers for such apparatus including without limitation in the event that it is agreed Northern Powergrid elects to use compulsory purchase powers to acquire any necessary rights under paragraph 67(3) all costs reasonably incurred as a result of such action;
 - (ii) in connection with the cost of the carrying out of any diversion work or the provision of any alternative apparatus;
 - (iii) the cutting off of any apparatus from any other apparatus or the making safe of redundant apparatus;
 - (iv) the approval of plans;
 - (v) the carrying out of protective works, plus a capitalised sum to cover the cost of maintaining and renewing permanent protective works;
 - (vi) 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); and
- (b) in assessing and preparing a design for its apparatus to address and accommodate the proposals of the undertaker whether or not the undertaker proceeds to implement those proposals or alternative or none at all, provided that if it so prefers Northern Powergrid may abandon apparatus that the undertaker does not seek to remove in accordance with paragraph 7(1) having first decommissioned such apparatus.

(2) Where any payment falls due pursuant to paragraph 70(1), Northern Powergrid shall—

- (i) provide an itemised invoice or reasonable expenses claim to the undertaker.
- (ii) provide ‘reminder letters’ to the undertaker for payment to be made within the fifty days on the following days after the invoice or reasonable expenses claim to the undertaker—
 - 15 days (‘reminder letter 1’)
 - 29 days (‘reminder letter 2’)

43 days ('reminder letter 3'); and

- (iii) provided that sub-paragraphs (i) and (ii) have been complied with and the invoice or expenses have not been referred to arbitration, be entitled to commence debt proceedings to recover any unpaid itemised invoice or reasonable expenses claim after fifty one days of receipt of the same where payment has not been made.

(3) There is to be deducted from any sum payable under sub-paragraph (1) the value of any apparatus removed under the provisions of this Part of this Schedule, that value being calculated after removal and for the avoidance of doubt, if the apparatus removed under the provisions of this Part of this Schedule has nil value, no sum will be deducted from the amount payable under sub-paragraph (1).

(4) 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 41 (arbitration) to be necessary, then, if such placing involves cost in the construction of works under this Part of this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to Northern Powergrid by virtue of sub-paragraph (1) is to be reduced by the amount of that excess save where it is not possible on account of project time limits and/or supply issues to obtain the existing type of operations, capacity, dimensions or place at the existing depth in which case full costs shall be borne by the undertaker.

(5) For the purposes of sub-paragraph (3)—

- (a) an extension of apparatus to a length greater than the length of existing apparatus is not to be treated as a placing of apparatus of greater dimensions than those of the existing apparatus where such extension is required in consequence of the execution of any such works as are referred to in paragraph 67(2); and
- (b) where the provision of a joint in a cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole is to be treated as if it also had been agreed or had been so determined.

81.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any of the works referred to in paragraph 67(2), or in consequence of the, 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 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 those works) or property of Northern Powergrid, or there is any interruption in any service provided by Northern Powergrid, or Northern Powergrid becomes liable to pay any amount to a third party as a consequence of any default, negligence or omission by the undertaker in carrying out the authorised works, the undertaker must—

- (a) bear and pay the cost reasonably incurred by Northern Powergrid in making good such damage or restoring the supply; and
- (b) indemnify Northern Powergrid for any other expenses, loss, damages, penalty, proceedings, claims or costs incurred by or recovered from Northern Powergrid by reason or in consequence of any such damage or interruption or Northern Powergrid becoming liable to any third party.

(2) Nothing in sub-paragraph (1) imposes any liability on the undertaker with respect to any damage or interruption to the extent that it is attributable to the act, neglect or default of Northern Powergrid, its officers, employees, servants, contractors or agents.

(3) Northern Powergrid must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise is to be made without the consent of the undertaker which, if it withholds such consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

(4) Northern Powergrid 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 71 applies. If requested to do so by the undertaker, Northern Powergrid must provide an explanation of how the claim has been minimised or details to substantiate any cost or compensation claimed pursuant to sub-paragraph (1). The undertaker shall only be liable under this paragraph 71 for claims reasonably incurred by Northern Powergrid.

(5) Subject to sub-paragraphs (3) and (4), the fact that any act or thing may have been done by Northern Powergrid on behalf of the undertaker or in accordance with a plan approved by Northern Powergrid or in accordance with any requirement of Northern Powergrid as a consequence of the authorised development or under its supervision will not (unless sub-paragraph (2) applies), excuse the undertaker from liability under the provisions of this sub-paragraph (5) where the undertaker 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 materially accord with the approved plan or as otherwise agreed between the undertaker and the Northern Powergrid.

82. Nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and Northern Powergrid in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

83. Any difference under the provisions of this Part of the Schedule, unless otherwise agreed is to be referred to and settled by arbitration in accordance with article 41 (Arbitration).

84. Where in consequence of the proposed construction of any of the authorised development, the undertaker or Northern Powergrid requires the removal of apparatus under paragraph 67 or otherwise or Northern Powergrid makes requirements for the protection or alteration of apparatus under paragraph 69, the undertaker shall use its reasonable endeavours to co-ordinate the execution of the works in the interests of safety and the need to ensure the safe and efficient operation of Northern Powergrid's undertaking taking into account the undertaker's desire for the efficient and economic execution of the authorised development and the undertaker and Northern Powergrid shall use reasonable endeavours to co-operate with each other for those purposes.

85. If in consequence of an agreement reached in accordance with paragraph 65 or paragraph 66 or the powers granted under this Order the access to any apparatus or alternative apparatus is materially obstructed, the undertaker shall provide such alternative means of access to such apparatus or alternative apparatus as will enable Northern Powergrid to maintain or use the said apparatus no less effectively than was possible before such obstruction.

86. The plans submitted to Northern Powergrid by the undertaker pursuant to this Part of the Schedule must be sent to Northern Powergrid at property@northernpowergrid.com or such other address as Northern Powergrid may from time to time appoint instead for that purpose and notify to the undertaker in writing

87. Prior to carrying out any works within the Order Limits (as defined in the Order) NPG must give written notice of the proposed works to the undertaker, such notice to include full details of the location of the proposed works, their anticipated duration, access arrangements, depths of the works, and any other information that may impact upon the works consented by the Order.

88. Where practicable, the Undertaker and Northern Powergrid will make reasonable efforts to liaise and co-operate in respect of information that is relevant to the safe and efficient construction operation and maintenance of the authorised development. Such liaison shall be carried out where any works are—

- (a) within 15m of any above ground apparatus and / or
- (b) are to a depth of between 0 – 4m below ground level under any apparatus.

PART 7

FOR THE PROTECTION OF NORTHUMBRIAN WATER LIMITED

89. For the protection of NWL, the following provisions of this Part of this Schedule, unless otherwise agreed in writing between the undertaker and NWL, have effect.

90. In this Part of this Schedule—

“alternative apparatus” means alternative apparatus adequate to enable NWL to fulfil its statutory functions in no less efficient a manner than previously;

“apparatus” means the following items belonging to or maintained by NWL within the Order limits—

- (a) in the case of NWL’s water undertaking—
 - (i) mains, pipes, wells, boreholes, tanks, service reservoirs, pumping stations or other apparatus, structure, tunnel, shaft or treatment works or “accessories” (as defined in section 219(1) of the Water Industry Act 1991) belonging to or maintained or used by NWL for the purposes of water supply; and
 - (ii) any water mains or service pipes which are the subject of a notice of intention to adopt under section 51A of the Water Industry Act 1991; and
- (b) in the case of NWL’s sewerage undertaking—
 - (i) any sewer, drain or disposal works vested in NWL under the Water Industry Act 1991; and
 - (ii) any sewer, drain or disposal works which is so vested or is the subject of a notice of intention to adopt given under section 102(4) of that Act or an agreement to adopt made under section 104 of that Act, and includes a sludge main, “disposal main” (within the meaning of section 219 of that Act) or sewer outfall and any manholes, ventilating shafts, pumps or other accessories (as defined in section 219(1) of the Water Industry Act 1991) forming part of any such sewer, drain or works, 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;

“NWL” means Northumbrian Water Limited, company number 02366703, whose registered office is at Northumbria House, Abbey Road, Pity Me, Durham, DH1 5FJ;

“plan” includes sections, drawings, specifications and method statements; and

“the standard protection strips” means strips of land falling within the following distances to either side of the medial line of any relevant pipe or apparatus—

- (c) 2.25 metres where the diameter of the pipe is less than 150 millimetres;
- (d) 3 metres where the diameter of the pipe is between 150 and 450 millimetres;
- (e) 4.5 metres where the diameter of the pipe is between 450 and 750 millimetres;
- (f) 6 metres where the diameter of the pipe exceeds 750 millimetres; and
- (g) 6.5 metres where it is a sewer.

On street apparatus

91. Except for paragraph 89 (apparatus in stopped up streets), the provisions of this Part of this Schedule do not apply to apparatus in respect of which the relations between the undertaker and NWL are regulated by the provision of Part 3 of the 1991 Act.

Compulsory acquisition

92.—(1) The undertaker must not without express written agreement of NWL (such agreement not to be unreasonably withheld or delayed) exercise any power conferred by article 21 (compulsory acquisition of land) or article 23 (compulsory acquisition of rights) in respect of NWL's interests.

(2) In the situation, where in exercise of the powers conferred by the Order, the undertaker acquires any interest in any land in which any apparatus is placed and such apparatus is to be relocated, extended, removed or altered in any way, no alteration or extension shall take place until NWL has established to its reasonable satisfaction, without unnecessary delay, contingency arrangements in order to conduct its functions for the duration of the works to relocate, extend, remove or alter the apparatus.

(3) Regardless of any provision in this Order or anything shown on any plan, the undertaker must not acquire any apparatus otherwise than by agreement, and before extinguishing any existing rights for NWL to use, keep, inspect, renew and maintain its apparatus in the Order land, the undertaker must, with the agreement of NWL, create a new right to use, keep, inspect, renew and maintain the apparatus that is reasonably convenient for NWL, such agreement not to be unreasonably withheld or delayed.

Protection Strips

93. The undertaker must not within the standard protection strips interfere with or build over any apparatus within the Order limits or execute the placing, installation, bedding, packing, removal, connection or disconnection of any apparatus, or execute any filling around the apparatus (where the apparatus is laid in a trench) within the standard protection strips unless otherwise agreed in writing with NWL, such agreement not to be unreasonably withheld or delayed, and this provision must be brought to the attention of any contractor responsible for carrying out any part of the authorised development on behalf of the undertaker.

Alteration of NWL Apparatus

94.—(1) Without prejudice to the generality of the foregoing, the alteration, extension, removal or re-location of any apparatus shall not be implemented until:

(2) any requirement for any permits under the Environmental Permitting (England and Wales) Regulations 2016 or other replacement legislation and any other associated consents are obtained;

(3) if applicable, the undertaker has made the appropriate application under sections 106 (right to communicate with public sewers), 112 (requirement that proposed drain or sewer be constructed so as to form part of the general system) or 185 (duty to move pipes, etc. in certain cases) of the Water Industry Act 1991 as may be required by those provisions and has provided a plan of the works proposed to NWL and NWL has given the necessary consent or approval under the relevant provision, such agreement not to be unreasonably withheld or delayed; and

(4) in the event that such works are to be executed by the undertaker, they are 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 NWL for the alteration or otherwise for the protection of the apparatus, or for securing access to it.

Access

95. If in consequence of the exercise of the powers conferred by the Order the access to any apparatus is materially obstructed the undertaker shall provide such alternative means of access to

such apparatus as will enable NWL to maintain or use the apparatus no less effectively than was possible before such obstruction.

Protective Works to Buildings

96. The undertaker, in the case of the powers conferred by the Order for the protective work to buildings, must exercise those powers so as not to obstruct or render less convenient the access to any apparatus belonging to NWL without the written consent of NWL.

Removal of Apparatus

97.—(1) Without prejudice to paragraph 82(2) hereof if, in the exercise of the powers conferred by the Order, the undertaker acquires any interest in any land in which any apparatus is placed or requires that NWL's apparatus is relocated or diverted, that apparatus must not be removed, and any right of NWL to maintain that apparatus in that land must not be extinguished, until—

- (a) alternative apparatus has been constructed and is in operation to the reasonable satisfaction of NWL; and
- (b) facilities and rights have been secured for that alternative apparatus in accordance with paragraph 88.

(2) Without prejudice to the generality of the foregoing and subject always to the provisions of paragraph 84(1), if, for the purpose of executing any works in, on or under any land purchased, held, appropriated or used under the Order, the undertaker requires the removal of any of NWL's apparatus placed in that land, the undertaker must give to NWL 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 NWL reasonably needs to remove any of its apparatus) the undertaker must afford to NWL 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) NWL must, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with article 41 (arbitration), and after the grant to NWL of any such facilities and rights as are referred to in sub-paragraphs 87(2), proceed 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.

(4) Any alternative apparatus to be constructed in land of the undertaker pursuant to the terms hereof must be constructed in such manner and in such line or situation as may be agreed between NWL and the undertaker both acting reasonably with a view to securing the efficient implementation of the necessary work, the avoidance of unnecessary delay and the continued fulfilment by both parties of their service obligations or in default of agreement settled by arbitration in accordance with article 41 (arbitration).

(5) If NWL notifies the undertaker in writing that it desires the undertaker to execute any work, or part of any work in connection with the construction or removal of apparatus in any land of the undertaker, that work instead of being executed by NWL must be executed by the undertaker without unnecessary delay under the superintendence and to the reasonable satisfaction of NWL.

(6) If the undertaker gives notice in writing to NWL that the undertaker intends 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 NWL, may, subject to the written consent of NWL (which must not be unreasonably withheld) and in accordance with NWL's requirements and specifications, be executed by the undertaker without unnecessary delay under the superintendence, if given, and to the reasonable satisfaction of, NWL.

(7) Whenever alternative apparatus is to be or is being substituted for existing apparatus, the undertaker shall, before taking or requiring any further step in such substitution works, use reasonable endeavours to comply with NWL's reasonable requests for a reasonable period of time to enable NWL to—

- (a) make network contingency arrangements; or
- (b) bring such matters as it may consider reasonably necessary to the attention of end users of the utility in question.

Facilities and rights for alternative apparatus

98.—(1) Where, in accordance with the terms of the Order, the undertaker affords to NWL facilities and rights for the construction and maintenance in land of the undertaker of alternative apparatus in substitution for apparatus to be removed, those facilities and rights are to be granted upon such reasonable terms and conditions as may be agreed between the undertaker and NWL or in default of agreement settled by arbitration in accordance with article 41 (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 NWL 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 NWL as appears to the arbitrator to be reasonable having regard to all the circumstances

(3) Such facilities and rights as are set out in the preceding paragraph are deemed to include any statutory permits granted to the undertaker in respect of the apparatus in question, whether under the Environmental Permitting Regulations (England and Wales) Regulations 2016 or other legislation.

Apparatus in stopped up streets

99.—(1) Where in pursuance of the powers conferred by the Order any street is stopped up (permanent stopping up and restriction of use of streets and private means of access), where NWL has apparatus in the street or accessed by virtue of that street, it has the same powers and rights in respect of that apparatus as it enjoyed immediately before the stopping up and the undertaker must grant to NWL legal easements reasonably satisfactory to NWL in respect of such apparatus and access to it, subject to any right of the undertaker or NWL to require the removal of that apparatus under paragraph 87.

(2) Regardless of the temporary stopping up or diversion of any highway under the powers conferred by the Order (temporary alteration, diversion, prohibition and restriction of the use of streets), NWL is at liberty at all times to take all necessary access across any such stopped up highway and to execute and do all such works and things in, upon or under any such highway 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 highway subject to provision of reasonable prior notice to the undertaker (except in the case of emergency) and compliance at all times with the undertaker's reasonable site safety rules and health and safety law.

Unmapped sewers/other apparatus

100. Where the undertaker identifies any sewers, lateral drains or other apparatus which may belong to or be maintainable by NWL but which does not appear on any statutory map kept for the purpose by NWL, it shall inform NWL of the existence and location of the apparatus as soon as reasonably practicable and the apparatus shall be afforded the same protection as other NWL assets.

Expenses and costs

101.—(1) Subject to the following provisions of this paragraph and save where otherwise agreed in writing between NWL and the undertaker, the undertaker must repay to NWL all costs, charges and expenses which NWL may reasonably incur or have to pay or which it may sustain in, or in connection with—

- (a) the inspection, removal, alteration or protection of any apparatus which may be reasonably required in consequence of any works to construct the authorised development; and/or
 - (b) the construction of any alternative apparatus which may be required in consequence of the execution of any such works as are referred to in paragraphs 87(2) or 87(3).
- (2) The value of any apparatus removed under the provisions of this Part of this Schedule is to be deducted from any sum payable under sub-paragraph (1), 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 except where this has been solely due to using the nearest currently available type; 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 except where the placing of apparatus at a different depth is required solely to achieve an equivalent capability and function to the existing apparatus,

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 93 (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 NWL in question by virtue of sub-paragraph (1) is to be reduced by the amount of that excess.

(4) For the purposes of sub-paragraph (3)—

- (a) an extension of apparatus to a length greater than the length of existing apparatus is not to be treated as a placing of apparatus of greater dimensions than those of the existing apparatus;
- (b) the provision of additional manholes, valves or wash-out pipes, where required to comply with design standards, must not be treated as a placing of apparatus of better type, of greater capacity or of greater dimensions than those of the existing apparatus; and
- (c) where the provision of a joint in a pipe or cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole is to be treated as if it also had been agreed or had been so determined.

Indemnity

102.—(1) Subject to sub-paragraphs 92(3) and 92(5), if for any reason or in consequence of the construction of any of the works by or at the direction of the undertaker that is consequential to the terms hereof 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 NWL, or there is any interruption in any service provided, or in the supply of any goods, by NWL, the undertaker must indemnify and keep indemnified NWL against—

- (a) any cost reasonably incurred by NWL in making good any damage or restoring the supply;
- (b) any other expenses, loss, damages, penalty or costs incurred by NWL, by reason or in consequence of any such damage or interruption.

(2) NWL 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. If requested to do so by the undertaker, NWL must provide an explanation of how the claim has been minimised or details to substantiate any cost or compensation claimed pursuant to paragraph

92(1). The undertaker shall only be liable under this paragraph for claims reasonably incurred by NWL.

(3) The fact that any act or thing may have been done by NWL on behalf of the undertaker or in accordance with a plan approved by NWL or in accordance with any requirement of NWL or under its supervision does not, subject to paragraph 92(5), excuse the undertaker from liability under the provisions of sub-paragraph 92(1) unless NWL fails to carry out and execute the works properly with due care and attention and in a skilful and professional like manner or in a manner that does not accord with the approved plan.

(4) NWL must give the undertaker reasonable notice of any third party claim or demand and no settlement or compromise is to be made without the consent of the undertaker who, if withholding such consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

(5) Nothing in paragraph 92(1) imposes any liability on the undertaker with respect to—

- (a) any damage or interruption to the extent that it is attributable to the unlawful or unreasonable act, neglect or default of NWL, its officers, servants, contractors or agents; or
- (b) any indirect or consequential loss of any third party (including but not limited to indirect 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.

Arbitration

103. Any dispute arising between the undertaker and NWL under this Part of this Schedule must be referred to and settled by arbitration under article 41 (arbitration).

Duty to cooperate

104. Where in consequence of the proposed construction of any of the authorised development, the undertaker or NWL requires the removal of apparatus or NWL makes requirements for the protection or alteration of apparatus, the undertaker must use all reasonable endeavours to co-ordinate the execution of the works in the interests of safety and the efficient and economic execution of the authorised development and taking into account the need to ensure the safe and efficient operation of NWL's undertaking and NWL must use all reasonable endeavours to co-operate with the undertaker for that purpose.

Enactments and agreements

105. Nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and NWL in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

PART 8

FOR THE PROTECTION OF NORTHERN GAS NETWORK'S APPARATUS

Application

106. For the protection of the statutory undertaker the following provisions shall, unless otherwise agreed in writing between the Undertaker and the Statutory undertaker, have effect.

Interpretation

107. In this Schedule—

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

“alternative apparatus” means appropriate alternative apparatus to the reasonable satisfaction of the Statutory undertaker to enable the Statutory undertaker to fulfil its statutory functions in a manner no less efficient than previously;

“authorised works” has the same meaning as is given to the term “authorised development” in article 2(1) of this Order and includes any associated development authorised by the Order and for the purposes of this Part of this Schedule includes the use and maintenance of the authorised works and construction of any works authorised by this Schedule;

“commence” has the same meaning as in article 2 (interpretation) of the Order;

“functions” includes powers and duties;

“in” in a context referring to works, apparatus or alternative apparatus in land includes a reference to such works, apparatus or alternative apparatus under, over, across, along or upon such land;

“maintain” and “maintenance” shall include the ability and right to do any of the following: construct, use, repair, alter, inspect, renew or remove;

“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;

“statutory undertaker” means Northern Gas Networks Limited (Company Number 05167070) whose registered office is at 1100 Century Way, Colton, Leeds, LS15 8TU;

108. Except for paragraphs 99 (apparatus of Statutory undertaker in stopped up streets), 103 (retained apparatus: protection), 104 (expenses) and 105 (indemnity), this Schedule does not apply to apparatus in respect of which the relations between the Undertaker and the Statutory undertaker are regulated by the provisions of Part 3 of the 1991 Act.

Apparatus of Statutory undertaker in stopped up streets

109.—(1) Where any street is permanently stopped up under article 14 (Public rights of way), if the Statutory undertaker has apparatus in such street or accesses it via such street then the statutory undertaker shall be entitled to the same rights in respect of such apparatus in the stopped up street as it enjoyed immediately before the stopping up and the undertaker will grant to the statutory undertaker legal easements reasonably satisfactory to the statutory undertaker in respect of such apparatus and access to it prior to the stopping up of any such street or highway.

(2) Notwithstanding the temporary stopping up or diversion of any highway under the powers of article 13 (temporary stopping up of public rights of way), the statutory undertaker shall be at liberty at all times to take all necessary access across any such stopped up highway and/or to execute and do all such works and things in, upon or under any such highway 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 highway, subject always to the undertaker’s unimpeded ability to carry out the authorised works.

Acquisition of land

110. Regardless of any provision in the Order or anything shown on the land plans or contained in the book of reference, the undertaker shall not acquire any apparatus or override any easement or other interest of the Statutory undertaker otherwise than by agreement (such agreement not to be unreasonably withheld or delayed by the statutory undertaker).

Removal or diversion of apparatus

111.—(1) If the undertaker acquires any interest in land in which the statutory undertaker’s apparatus is placed, that apparatus shall not be removed and any right of a statutory undertaker to maintain that apparatus in that land shall not be extinguished until alternative apparatus has been constructed and is in operation to the reasonable satisfaction of the statutory undertaker, provided

that the statutory undertaker shall use all reasonable endeavours to construct and install such alternative apparatus as soon as reasonably practicable.

(2) If, for the purpose of executing any authorised works, the undertaker requires the removal or diversion of any apparatus, it shall give to the statutory undertaker written notice of that requirement, together with a plan of the authorised works and the removal or diversion works proposed, the proposed position of the alternative apparatus, and the proposed timeline for the works. The statutory undertaker shall reasonably approve these details within 28 days of receipt of such plan. The undertaker shall afford to the statutory undertaker to their reasonable satisfaction the necessary facilities and rights for

- (a) the construction of alternative apparatus in other land; and
- (b) the maintenance of that apparatus,

and the statutory undertaker shall complete the works using its reasonable endeavours to meet the undertaker's proposed timeline, and in any event without undue delay, in accordance with the details provided by the undertaker under this sub-paragraph or as otherwise reasonably agreed by the undertaker.

(3) If, in consequence of the authorised works carried out by the undertaker, the statutory undertaker reasonably needs to remove or divert any of its apparatus, it shall without undue delay give the undertaker written notice of that requirement, together with a plan of the work proposed, the proposed position of the alternative apparatus and the proposed timeline for the works. The undertaker shall reasonably approve these details and shall afford to the statutory undertaker to their reasonable satisfaction the necessary facilities and rights for

- (a) the construction of alternative apparatus; and
- (b) the maintenance of that apparatus

and the statutory undertaker shall complete the works without undue delay and in accordance with the approved details.

(4) 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-paragraphs (2) and (3), the statutory undertaker shall, on receipt of a written notice to that effect from the undertaker, take such steps as are reasonable in the circumstances in an endeavour to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed, but this obligation shall not require the statutory undertaker to use its compulsory purchase powers unless it elects to do so.

(5) Paragraphs 104 (Expenses) and 105 (Indemnity) of this Schedule apply to removal or diversions works under this paragraph 101, but the statutory undertaker must provide to the undertaker a reasonable cost estimate for works that it proposes to carry out for the undertaker's approval.

Facilities and rights for alternative apparatus

112.—(1) Where, in accordance with the provisions of this Schedule, the undertaker affords to the statutory undertaker facilities and rights for the construction and maintenance in the undertaker's land of alternative apparatus in substitution for apparatus to be removed, those facilities and rights shall be granted upon such terms and conditions as may be agreed between the undertaker and the statutory undertaker and shall be no less favourable on the whole to the Statutory undertaker than the facilities and rights enjoyed by it in respect of the apparatus to be removed, unless otherwise reasonably agreed.

(2) If the facilities and rights to be afforded by the undertaker in respect of any alternative apparatus in the undertaker's land are less favourable on the whole to the statutory undertaker than the facilities and rights enjoyed by it in respect of the apparatus to be removed, then the undertaker and the statutory undertaker shall agree appropriate compensation for the extent to which the new facilities and rights render the statutory undertaker less able to effectively carry out its undertaking or require it to do so at greater cost. If the amount of compensation cannot be agreed, then either the undertaker or the statutory undertaker may refer the matter to arbitration in accordance with

paragraph 14, and the arbitrator shall make such provision for the payment of compensation by the undertaker to the statutory undertaker as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

Retained apparatus: protection

113.—(1) Not less than 56 days before commencing the execution of any authorised works that will or may affect any apparatus, the removal or diversion of which has not been required by the undertaker under paragraph 101(2) or otherwise or by the statutory undertaker under paragraph 6(3), the undertaker shall submit to the statutory undertaker in question a plan showing the authorised works and the apparatus.

(2) In relation to works which will or may be situated on, over, under or within 15 metres measured in any direction of any apparatus, or (wherever situated) impose any load directly upon any apparatus or involve embankment works within 15 metres of any apparatus, the plan to be submitted to the statutory undertaker under sub-paragraph (1) shall be detailed including a method statement and describing—

- (a) the exact position of the authorised 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 etc;
- (d) the position of all apparatus; and
- (e) by way of detailed drawings, every alteration proposed to be made to or close to any apparatus.

(3) The Undertaker shall not commence the construction or renewal of any authorised works to which sub-paragraphs (1) or (2) apply until the statutory undertaker has given written approval of the plan so submitted.

(4) Any approval of the statutory undertaker required under sub-paragraph (3)—

- (a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraph (5) or (7); and
- (b) shall not be unreasonably withheld or delayed.

(5) In relation to works to which sub-paragraph (2) applies, the statutory undertaker may require such modifications to be made to the plans as may be reasonably necessary for the purpose of securing its system against interference or risk of damage or for the purpose of providing or securing proper and convenient means of access to any apparatus.

(6) Works executed under the Order to which this paragraph 8 applies shall be executed only in accordance with the relevant plan, notified under sub-paragraph (1) and approved (with conditions, if applicable) under sub-paragraph (4), as amended from time to time by agreement between the undertaker and the statutory undertaker. The statutory undertaker shall be entitled to watch and inspect the execution of those works.

(7) Where the statutory undertaker requires any protective works or subsidence monitoring to be carried out either by itself or by the undertaker (whether of a temporary or permanent nature), the statutory undertaker shall give the undertaker reasonable notice of such requirement in its approval under sub-paragraph (3), and

- (a) such protective works shall be carried out to the statutory undertakers' reasonable satisfaction prior to the carrying out of the relevant part of the authorised works;
- (b) ground subsidence monitoring shall be carried out in accordance with a scheme approved by the statutory undertaker (such approval not to be unreasonably withheld or delayed), which shall set out:
 - (i) the apparatus which is to be subject to such monitoring;
 - (ii) the extent of land to be monitored;
 - (iii) the manner in which ground levels are to be monitored;

- (iv) the timescales of any monitoring activities; and
 - (v) the extent of ground subsidence which, if exceeded, shall require the undertaker to submit for the statutory undertaker's approval a ground subsidence mitigation scheme in respect of such subsidence;
- (c) if a subsidence mitigation scheme is required, it shall be carried out as approved by the statutory undertaker (such approval not to be unreasonably withheld or delayed).
- (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 56 days before commencing the execution of the relevant authorised works, a new plan, instead of the plan previously submitted, and having done so the provisions of this paragraph shall apply to and in respect of the new plan.
- (9) The undertaker shall not be required to comply with sub-paragraphs (1) or (2) where it needs to carry out emergency works as defined in the 1991 Act, but in that case it shall give to the statutory undertaker notice as soon as is reasonably practicable and a plan of those works shall comply with the other requirements in this paragraph insofar as is reasonably practicable in the circumstances, provided that it always complies with sub-paragraph (11).
- (10) At all times when carrying out any works authorised under the Order that may or will affect the apparatus, the undertaker shall comply with the statutory undertaker's policies for safe working in proximity to gas apparatus including the "Specification for safe working in the vicinity of Northern Gas Networks, Gas pipelines and associated installation requirements for third parties "NGN/SPSSW22" and the Health and Safety Executive guidance document "HS(G)47 Avoiding Danger from underground services".

Expenses

114.—(1) Subject to the following provisions of this paragraph, the Undertaker shall repay to the Statutory undertaker as soon as reasonably practicable on receipt of an itemised invoice or claim from the Statutory undertaker all charges, costs and expenses reasonably incurred by the statutory undertaker in, or in connection with, the inspection, removal or diversion, relaying or replacing, alteration or protection of any apparatus or the construction of any new apparatus which may be reasonably required and necessary in consequence of the execution of the authorised works, including without limitation—

- (a) any costs reasonably incurred or compensation properly paid in connection with the acquisition of rights or the exercise of statutory powers for such apparatus, including without limitation in the event that the statutory undertaker elects to use compulsory purchase powers to acquire any necessary rights under paragraph 101(4);
- (b) in connection with the cost of the carrying out of any diversion work or the provision of any alternative apparatus;
- (c) the cutting off of any apparatus from any other apparatus or the making safe of redundant apparatus;
- (d) the approval of plans;
- (e) the carrying out of protective works;
- (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 works carried out pursuant to this Schedule; and
- (g) any statutory loss of supply payments under the 'Guaranteed Standards of Service' regime that the statutory undertaker may incur in consequence of the works, but in the event that such payments are likely to become payable, the statutory undertaker shall give the undertaker notice as soon as reasonably practicable of the payments and the likely amount.

(2) The statutory undertaker shall use its reasonable endeavours to mitigate in whole or in part, and in any event to minimise, any expenses capable of being claimed under sub-paragraph (1). If requested to do so by the undertaker, the statutory undertaker shall provide an explanation of how

the claimed expenses have been minimised. The undertaker shall only be liable to pay expenses that have been reasonably incurred.

(3) There shall be deducted from any sum payable under sub-paragraph (1) the value of any apparatus removed under the provisions of this Schedule and which is not re-used as part of the alternative apparatus, that value being calculated after removal and not including the costs (if any) of disposing that apparatus.

(4) If in accordance with the provisions of this part of this Schedule—

- (a) apparatus of greater capacity or of greater dimensions is placed in substitution for existing apparatus; 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,

then, if this incurs greater expense than would have been incurred by a like-for-like (or as close as practicable to like-for like) replacement at the same depth, the undertaker shall not be liable for this additional expense.

(5) For the purposes of sub-paragraph (4)—

- (a) an extension of apparatus to a length greater than the length of existing apparatus shall not be treated as a placing of apparatus of greater dimensions than those of the existing apparatus.

(6) An amount which apart from this sub-paragraph would be payable to the statutory undertaker in respect of works by virtue of sub-paragraph (1) will, if the works include the placing of alternative apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on the statutory 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.

Indemnity

115.—(1) Subject to sub-paragraphs (2),(3) and (4), and without detracting from paragraph 104 above, if by reason or in consequence of the construction of any works carried out under this Schedule or in consequence of the construction, use, maintenance or failure of any of the authorised works by or on behalf of the undertaker or in consequence of any act or default of the undertaker (or any person employed or authorised by him) in the course of carrying out such works, including any subsidence resulting from any of these works, any damage is caused to any apparatus or alternative apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works) or property of the statutory undertaker, or there is any interruption in any service provided, or in the supply of any goods, by the statutory undertaker, or the statutory undertaker becomes liable to pay any amount to any third party, the undertaker shall—

- (a) indemnify the statutory undertaker any costs reasonably incurred by the statutory undertaker in making good such damage or restoring the supply; and
- (b) indemnify the statutory undertaker for any other expenses, loss, demands, proceedings, damages, claims, penalty or costs (save to the extent that the same arises due to the sole, or complete act, neglect or default of the statutory undertaker) incurred by or recovered from the statutory undertaker.

(2) The fact that any act or thing may have been done by the statutory undertaker on behalf of the undertaker or in accordance with a plan approved by the statutory undertaker or in accordance with any requirement of the statutory undertaker or under its supervision shall not (subject to sub-paragraph (4)), excuse the undertaker from liability under the provisions of sub-paragraph (1).

(3) The statutory undertaker shall use its reasonable endeavours to mitigate in whole or in part, and in any event to minimise, any costs, expenses, loss, demands, penalties etc. capable of being claimed under sub-paragraph (1). If requested to do so by the undertaker, the statutory undertaker shall provide an explanation of how the claimed expenses have been minimised. The undertaker shall only be liable to pay expenses that have been reasonably incurred.

(4) Nothing in sub-paragraph (1) shall impose any liability on the undertaker with respect to:

- (a) any damage or interruption to the extent that it is attributable to the neglect or default of the statutory undertaker, its officers, servants, contractors or agents; or
- (b) 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.

(5) The statutory undertaker shall give the undertaker reasonable notice of any such claim or demand and no settlement or compromise is to be made without the consent of the undertaker, which, if it withholds such consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

Enactments and agreements

116. Nothing in this Schedule shall affect the provisions of any enactment or agreement regulating the relations between the undertaker and the statutory undertaker in respect of any apparatus laid or erected in land belonging to the Undertaker.

Co-operation

117.—(1) Where in consequence of the proposed construction of any of the authorised works the undertaker or the statutory undertaker requires the removal of apparatus in accordance with the provisions of this Part of this Schedule or the Statutory undertaker requires reasonable conditions in respect of the undertaker's proposed works under paragraph 103, each party shall use all reasonable endeavours to co-ordinate the execution of such works in the interests of safety and the efficient and economic execution of the authorised development, taking into account the absolute need to ensure the safe and efficient operation of the statutory undertaker's undertaking and its apparatus.

(2) Whenever the statutory undertaker's consent or approval is required under the provisions of this Part of this Schedule, such approval must not be unreasonably withheld or delayed, and any action, decision, cost or expense which may be claimed by the statutory undertaker under paragraphs 104 and 105 is subject to this requirement to act reasonably.

Access

118. If in consequence of the powers granted under the Order, the access to any apparatus is materially obstructed, the undertaker shall provide such alternative means of access to such apparatus as will enable the statutory undertaker to maintain or use the apparatus no less effectively than was possible before such obstruction.

Arbitration

119. Any difference or dispute arising between the undertaker and the statutory undertaker under this Schedule shall, unless otherwise agreed in writing between the undertaker and the statutory undertaker, be determined by arbitration in accordance with article 41 (Arbitration) of the Order.

Works falling outside of development authorised by the Order

120. Nothing in this Schedule shall require the undertaker to carry out works, or require the undertaker to enable the statutory undertaker to carry out works, that are not authorised by the Order. The statutory undertaker shall not request any alteration, diversion, protective work or any other work which is not authorised to be carried out under the Order (but for the avoidance of doubt, it may elect to carry out such works itself under any other planning permission, permitted development rights or statutory powers (including those of compulsory acquisition) available to it).

Cathodic protection testing

121. Where in the reasonable opinion of either party:

- (a) the authorised development might interfere with the existing cathodic protection forming part of the apparatus; or
- (b) the apparatus might interfere with the proposed or existing cathodic protection forming part of the authorised development;

the parties shall co-operate in undertaking the tests which they consider reasonably necessary for ascertaining the nature and extent of such interference and measures for providing or preserving cathodic protection.

SCHEDULE 12

Article 41

ARBITRATION RULES

Primary objective

1.—(1) The primary objective of these arbitration rules is to achieve a fair, impartial, final and binding award on the substantive difference between the parties (save as to costs) within 4 months from the date the arbitrator is appointed pursuant to article 41 of this Order.

(2) The arbitration will be 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 will include weekends, but not bank or public holidays.

(2) Time periods will be calculated from the day after the arbitrator is appointed which is either—

- (a) the date the arbitrator notifies the parties in writing of his/her acceptance of an appointment by agreement of the parties; or
- (b) the date the arbitrator is appointed by the Secretary of State.

Timetable

3.—(1) The timetable for the arbitration will be that set out in sub-paragraphs (2) to (4) below unless amended in accordance with paragraph 5(3).

(2) Within 14 days of the arbitrator being appointed, the Claimant will provide both the Respondent and the arbitrator with—

- (a) a written Statement of Claim which describes the nature of the difference between the parties, the legal and factual issues, the Claimant’s contentions as to those issues, the amount of its claim and/or the remedy it is seeking;
- (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 will provide the Claimant and the arbitrator with—

- (a) a written Statement of Defence responding to the Claimant’s Statement of Claim, its statement in respect of the nature of the difference, the legal and factual issues in the Claimant’s claim, its acceptance of any element(s) of the Claimant’s claim, its contentions as to those elements of the Claimant’s claim it does not accept;

- (b) all statements of evidence and copies of all documents on which it relies, including contractual documentation, correspondence (including electronic documents), legal precedents and expert witness reports;
 - (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 of the objections.
- (4) Within 7 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;
 - (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) will be concise. No single pleading will exceed 30 single sided A4 pages using 10pt Arial font.

(2) The arbitrator will make an award on the substantive difference(s) based solely on the written material submitted by the parties unless the arbitrator decides that a hearing is necessary to explain or resolve any matters.

(3) Either party may, within 2 days of delivery of the last submission, request a hearing giving specific reasons why it considers a hearing is required.

(4) Within 7 days of receiving the last submission, the arbitrator will notify the parties whether a hearing is to be held and the length of that hearing.

(5) Within 10 days of the arbitrator advising the parties that he/she will hold a hearing, the date and venue for the hearing will be fixed by agreement with the parties, save that if there is no agreement the arbitrator is to 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 must invite the parties to ask questions of the experts by way of clarification of any answers given by the expert(s) in response to the arbitrator's questions. Prior to the hearing the procedure for the expert(s) will be that—

- (a) at least 28 days before a hearing, the arbitrator will provide a list of issues to be addressed by the expert(s);
- (b) if more than one expert is called, they will jointly confer and produce a joint report or reports within 14 days of the issues being provided; and
- (c) the form and content of a joint report must be as directed by the arbitrator and must be provided at least 7 days before the hearing.

(8) Within 14 days of a hearing or a decision by the arbitrator that no hearing is to be held, the parties may by way of exchange provide the arbitrator with a final submission in connection with the matters in dispute and any submissions on costs. The arbitrator 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 4 months of the date on which he/she is appointed, unless both parties otherwise agree to an extension to the date for the award.

(10) If a party fails to comply with the timetable, procedure or any other direction then the arbitrator may continue in the absence of a party or submission or document, and may make a decision on the information before him/her attaching the appropriate weight to any evidence submitted beyond any timetable or in breach of any procedure and/or direction.

(11) The arbitrator's award must include reasons. The parties must accept that the extent to which reasons are given must be proportionate to the issues in dispute and the time available to the arbitrator to deliver the award.

Arbitrator's powers

5.—(1) The arbitrator has all the powers of the Arbitration Act 1996(a), including the non-mandatory sections, save where modified by these Rules in this Schedule.

(2) There must be no discovery or disclosure, except that the arbitrator is to have the power to order the parties to produce such documents as are reasonably requested by another party no later than the Statement of Reply, or by the arbitrator, where the documents are manifestly relevant, specifically identified and the burden of production is not excessive. Any application and orders should be made by way of a Redfern Schedule without any hearing.

(3) Any time limits fixed in accordance with this procedure or by the arbitrator may be varied by agreement between the parties, subject to any such variation being acceptable to and approved by the arbitrator. In the absence of agreement, the arbitrator may vary the timescales 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 then;

(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 are to bear them or in what proportion they are to be borne by the parties.

(4) The arbitrator will award recoverable costs on the general principle that each party should bear its own costs, having regard to all material circumstances, including such matters as exaggerated claims and/or defences, the degree of success for different elements of the claims, claims that have incurred substantial costs, the conduct of the parties and the degree of success of a party.

Confidentiality

7.—(1) The parties agree that any hearings in this arbitration are to take place in private.

(a) 1996 c. 23

(2) The parties and arbitrator agree that any matters, materials, documents, awards, expert reports and the like are confidential and must not be disclosed to any third party without prior written consent of the other party, save for any application to the Courts or where disclosure is required under any legislative or regulatory requirement.

SCHEDULE 13

Article 37

DOCUMENTS TO BE CERTIFIED

<i>(1) Document</i>	<i>(2) Application Document Reference</i>	<i>(3) Revision number</i>
arboricultural impact assessment	Volume 6, document reference 6.4.7.7	C01
archaeological management strategy	Volume 6, document reference 6.4.8.5	C01
book of reference	Volume 4, document reference 4.2	7
design approach document	Volume 7, document reference 7.2	4
environmental masterplan	Volume 2, document reference 2.5	5
environmental statement	Volume 6, document reference 6.1	C01
	Volume 6, document reference 6.2 (excluding chapters 7 and 13)	C01
	Volume 6, document reference 6.2.7 (chapter 7)	2
	Volume 6, document reference 6.2.13 (chapter 13)	2
	Volume 6, document reference 6.3 (excluding figures 2.2, 2.3, 2.4, 2.5, 2.6, 2.7, 2.8, 2.13, 11.1, 12.1, and 13.2)	C01
	Volume 6, document reference 6.3.2.2 to and including 6.3.2.8 (figures 2.2 to and including 2.8)	2
	Volume 6, document reference 6.3.2.13 (figure 2.13)	3
	Volume 6, document reference 6.3.11.1 (figure 11.1)	B
	Volume 6, document reference 6.3.12.1 (figure 12.1)	3
	Volume 6, document reference 6.3.13.3 (figure 13.2)	2
	Volume 6, document reference 6.4 (excluding appendices 7.6, 10.1, 10.2, 11.4, 12.1 and 13.3)	C01

	Volume 6, document reference 6.4.7.6 (appendix 7.6)	2
	Volume 6, document reference 6.4.10.1 (appendix 10.1)	6
	Volume 6, document reference 6.4.10.2 (appendix 10.2)	3
	Volume 6, document reference 6.4.11.4 (appendix 11.4)	2
	Volume 6, document reference 6.4.12.1 (appendix 12.1)	2
	Volume 6, document reference 6.4.13.3 (appendix 13.3)	2
land plans	Volume 2, document reference 2.4	4
location plan	Volume 2, document reference 2.1	4
outline battery fire safety management plan	Volume 6, document reference 6.4.2.13	C01
outline construction environmental management plan	Volume 6, document reference 6.4.2.6	3
outline construction traffic management plan	Volume 6, document reference 6.4.2.8	3
outline decommissioning environmental management plan	Volume 6, document reference 6.4.2.7	2
outline landscape and ecological management plan	Volume 6, document reference 6.4.2.14	3
outline materials management plan	Volume 6, document reference 6.4.2.10	C01
outline pollution and spillage response plan	Volume 6, document reference 6.4.2.9	C01
outline public rights of way management plan	Volume 6, document reference 6.4.2.15	5
outline site waste management plan	Volume 6, document reference 6.4.2.11	C01
outline soil resource management plan	Volume 6, document reference 6.4.2.12	C01
special category land plans	Volume 2, document reference 2.6	1
street works, public rights of way and access plan	Volume 2, document reference 2.3	8
works plans	Volume 2, document reference 2.2	4

EXPLANATORY NOTE

(This note is not part of the Order)

This Order grants development consent for, and authorises the construction, operation and maintenance of a solar generating station and battery energy storage facility on land within the Order limits together with associated development. This Order imposes requirements in connection with the development and authorises the compulsory purchase of land (including rights in land) and the right to use land and to override easements and other rights.

A copy of the plans and book of reference referred to in this Order and certified in accordance with article 37 (certification of plans and documents, etc.) may be inspected free of charge during working hours at the [x].