Planning Inspectorate

ERRATA SHEET – HELIOS RENEWABLE ENERGY PROJECT Ref. EN010140

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 3 September 2025

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

Page No.	Para	Error	Correction
21	3.4.13	Para numbering sequence – there are no paragraphs 3.4.14 and 3.4.15. Tables (3.4.14 and 3.4.15) have been sequenced as paras	Number sequencing – Renumber paragraph 3.4.16 as 3.4.14
26	3.5.6	Para numbering sequence – there are no paragraphs 3.5.7 and 3.5.8. Tables (3.5.1 and 3.5.2) have been sequenced as paragraphs	Number sequencing – Renumber paragraph 3.5.9 as 3.5.7
39	3.7.11	Para numbering sequence – there is no paragraph 3.7.12. Tables (3.7.1) has been sequenced as paragraph	Number sequencing – Renumber paragraph 3.7.13 as 3.7.12
45	3.8.14	Para numbering sequence – there are no paragraphs 3.8.15 and 3.8.16. Tables (3.8.1 and 3.8.2) have been sequenced as paragraph	Number sequencing – Renumber paragraph 3.8.17 as 3.8.15

53	3.9.9	Para numbering sequence – there are no paragraphs 3.9.10 and 3.9.11. Tables (3.9.1 and 3.9.2) have been sequenced as paragraph	Number sequencing – Renumber paragraph 3.9.12 as 3.9.10
56	3.10.8	Para numbering sequence – there are no paragraphs 3.10.9 and 3.10.11. Tables (3.10.1 and 3.10.2) have been sequenced as paragraph	Number sequencing – Renumber paragraph 3.10.11 as 3.10.9
60	3.11.13	Para numbering sequence – there is no paragraph 3.11.14. Tables (3.11.1 and 3.11.2) have been sequenced as paragraph	Number sequencing – Renumber paragraph 3.11.15 as 3.11.14
64	3.12.9	Para numbering sequence – there is no paragraph 3.12.10. Tables (3.12.1 and 3.12.2) have been sequenced as paragraph	Number sequencing – Renumber paragraph 3.12.11 as 3.11.10
69	3.13.12	Para numbering sequence – there are no paragraphs 3.13.13 - 3.13.34. Tables (3.13.1 and 3.13.2) have been sequenced as paragraphs.	Number sequencing – Renumber paragraph 3.13.35 as 3.13.13
75	4.2	"likley"	Typographical – should be *"likely"*

Planning Inspectorate

The Planning Act 2008

Helios Renewable Energy Project

Examining Authority's Report

of Findings and Conclusions

and

Recommendation to the Secretary of State for

Energy Security and Net Zero

Examining Authority

Philip Brewer BSc (Hons), PhD, MIOA

3 September 2025

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OVERVIEW

Planning Inspectorate reference: EN010140

The application, dated 1 July 2024, was made under section 37 of the Planning Act 2008, and was received by the Planning Inspectorate on 2 July 2024.

The applicant is Enso Green Holdings D Limited.

The application was accepted for examination on 30 July 2024.

The examination of the application began on 3 December 2024 and was completed on 3 June 2025.

The Helios Renewable Energy Project (the proposed development) includes the construction, operation, maintenance and decommissioning of a solar photovoltaic power generating station.

This comprises ground mounted solar panels, inverters, transformers and switchgear, with a rated output of over 50 megawatts. Associated development includes battery energy storage, substation and connection to the National Electricity Transmission System. The connection agreement would allow a 190 megawatt connection at the Drax substation. The Order would have an area of approximately 475 hectares of agricultural land in North Yorkshire.

Summary of Recommendation

The Examining Authority recommends that the Secretary of State for Energy Security and Net Zero should make the Order in the form attached.

TABLE OF CONTENTS

1. INTRODUCTION

1.1. BACKGROUND TO THE EXAMINATION

1.1.1. The application for development consent is for the Helios Renewable Energy Project (the proposed development). The application was submitted by Enso Green Holdings D Limited (the applicant) to the Planning Inspectorate.

1.1.2. The proposed development includes a power generating station with a rated output of over 50 megawatts. It falls within section (s)15(2) of the Planning Act 2008 (PA2008). It meets the definition of a Nationally Significant Infrastructure Project set out in s14(1) of the PA2008. In accordance with s31 of the PA2008 the proposed development requires development consent, for which an application must be made under s37 of the PA2008. The Planning Inspectorate accepted the application for examination under s55 of the PA2008.

1.1.3. The Examination Library provides a record of all application documents and submissions to the examination. Each item is given a unique reference number, for example [APP-001]. The reference numbers are provided as hyperlinks in the report so they can be accessed directly. The Examining Authority (ExA) has given full regard to all important and relevant matters arising from the material in this report.

1.2. APPOINTMENT OF THE EXAMINING AUTHORITY

1.2.1. Under s78 and s79 of the PA2008 Mr Ken Taylor was appointed as the single appointed person to handle the application on 31 July 2024. Under s82 of the PA2008 Dr Philip Brewer was appointed as the replacement single appointed person to handle the application on 11 February 2025 [PD-004].

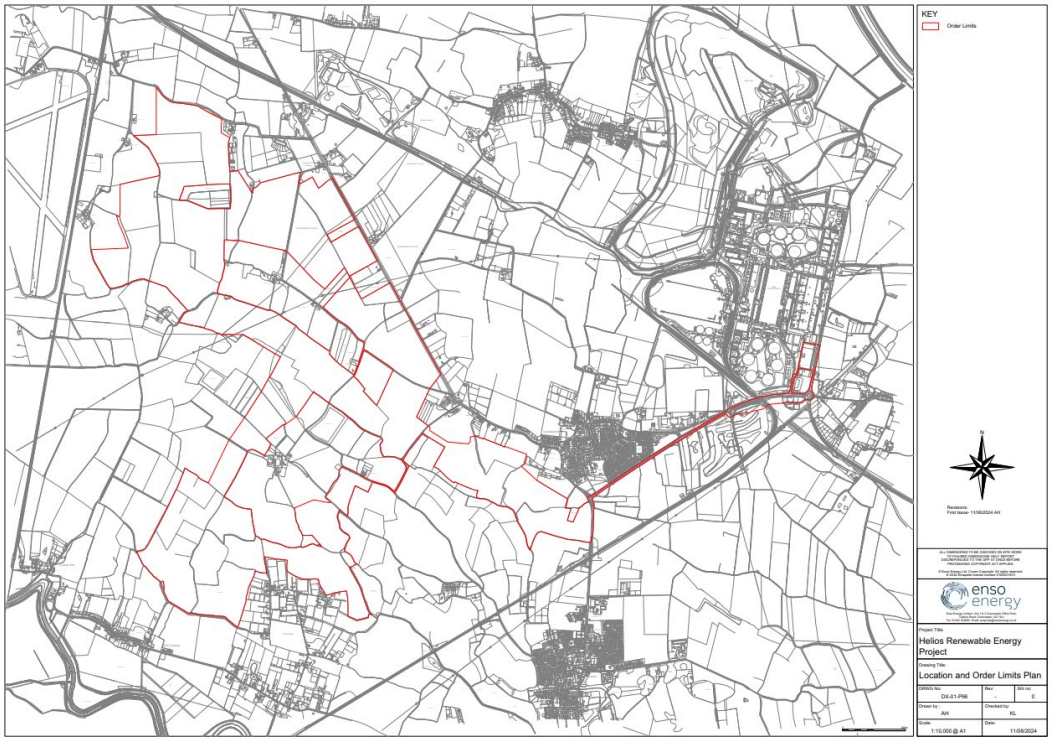
1.3. THE APPLICATION

Location of the proposed development

1.3.1. The proposed development is located approximately 1.5 km south of Selby, within the county of North Yorkshire.

The location of the proposed development is described in the Environmental Statement (ES) Chapter 3 - Site and Development Description [APP-023]. It is also shown in the Location and Order Limits Plan [APP-013], the ES Non-Technical Summary [AS-014] (extract shown in Figure 1.3.1 below) and the final version of the Land Plan [REP4-003].

Figure 1.3.1 Location and Order limits plan [AS-014]



Description of the proposed development

1.3.2. The proposed development is described in schedule 1 of the applicant's final draft Development Consent Order (dDCO) [REP9-003] and can be summarised as:

- Work No. 1 – a ground mounted solar photovoltaic generating station
- Work No. 2 – a battery energy storage system
- Work No. 3 – works in connection with an onsite substation
- Work No. 4, 4A, 5, and 8A – electrical cable connections, and works relating to existing utilities, land enclosure, access and drainage
- Work No. 6 and 6A – works relating to National Grid Electricity Transmission's existing Drax substation
- Work No. 7 – temporary construction compounds
- Work No. 8 – works to facilitate access for all works
- Work No. 9 – works for areas of green infrastructure

1.3.3. Further description of the proposed development can be found in the ES Chapter 3 - Site and Development Description [APP-023] and shown in the Works plans [APP-015].

1.3.4. Paragraph 2.10.16 of the National Policy Statement for Renewable Energy Infrastructure states that associated development should be considered on a case-by case basis, giving examples of energy storage, flood defences, and security arrangements such as fencing, lighting, and surveillance.

1.3.5. I consider that associated development listed as Work No.2 to Work No.9 inclusive at paragraph 1.3.2, is included appropriately, as, in accordance with s115 of the PA2008, paragraph 1.3.11 of the Overarching National Policy Statement for Energy, paragraph 2.10.16 of the National Policy Statement for Renewable Energy

Infrastructure, and Planning Act 2008 associated development applications for major infrastructure projects:

- it is associated with and subordinate to the principal development
- it would either support the construction or operation of the principal development, or help address its impacts
- it is proportionate to the nature and scale of the principal development and is not only necessary as a source of additional revenue for the applicant.

Relevant planning history

1.3.6. The relevant planning history is described in the Planning Statement [APP-228]. This summarises that there little evidence of planning applications or proposed development within or near the Order limits as the locality is largely in agricultural use. It describes Town and Country Planning Act 1990 applications that have red line boundaries that overlap with the below ground electrical line connection corridor to the National Grid Electricity Transmission's Drax substation. Any cumulative effects are described in the relevant sections of chapter 3 of this report.

1.4. THE EXAMINATION

Local authority

1.4.1. The proposed development is located wholly within the English administrative area of North Yorkshire Council which has unitary status.

Timetable

1.4.2. The preliminary meeting took place on 3 December 2024 [PD-001].The ExA's procedural decisions and the examination timetable took full account of matters raised at the preliminary meeting. They were provided in the Rule 8 Letter dated 11 December 2024 [PD-002].

1.4.3. The examination began on 3 December 2024. The examination concluded on 3 June 2025. The principal components of and events around the examination are summarised below.

Procedural decisions

1.4.4. The procedural decisions taken by the ExA are recorded in the examination library. They describe the ExA's decisions relating to the examination procedure and were broadly discharged as intended. They dealt with the unforeseen issues which led to the decision to cancel the first round of ExA written questions and the replacement of the single appointed person as the ExA, [PD-003] and [PD-004] respectively.

Statements of common ground

1.4.5. By the close of the examination, the following interested parties had concluded and signed statements of common ground with the applicant with all matters agreed:

- Natural England [REP5-009]
- The Environment Agency [REP8-015]
- National Highways [REP2-016]
- Historic England [REP7-014]

1.4.6. By the end of the examination, the following parties had concluded and signed statements of common ground with the applicant with some matters outstanding:

- North Yorkshire Council [REP8-016]
- Burn Gliding Club [REP7-015]

1.4.7. The statements of common ground with the following parties remained unsigned at the end of the examination:

- North Yorkshire Fire and Rescue Service [PDA-006]
- Carlton Parish Council [REP2-018]
- Hirst Courtney and West Bank Parish Council [REP2-019]
- Camblesforth Parish Council [REP2-020]

1.4.8. The signed statements of common ground have been taken into account by the ExA in all relevant sections of this report. The weight to be afforded to unsigned statements of common ground is considered in the relevant sections of this report.

Written questions

1.4.9. The first round of written questions as timetabled in the Rule 8 letter, ExQ1, was cancelled with the timetable amended accordingly [PD-003]. The ExA asked two rounds of written questions:

- ExQ2 issued on 27 March 2025 [PD-005]
- ExQ3 issued on 2 May 2025 [PD-007]

Site inspections

1.4.10. The ExA carried out three unaccompanied site inspections, [EV5-001] on 2 and 5 December 2024, [EV9-001] on 4 March 2025 and [EV9-002] on 12 May 2025. One accompanied site inspection with notice to and in the company of interested parties [EV6-001] was carried out on 11 March 2025.

Hearings

1.4.11. The ExA held two issue specific hearings under s91 of the PA2008, [EV3-001] on 4 December 2024, and [EV8-001] on 11 and 12 March 2025. One compulsory acquisition hearing was held under s92 of the PA2008, [EV4-001] on 5 December 2024. Two open floor hearings were held under s93 of the PA2008, [EV2-001] on 3 December 2024 and [EV7-001] on 10 March 2025.

1.5. CHANGES TO THE APPLICATION

1.5.1. No formal changes to the application were requested by the applicant. General updates to documents and plans were made as the application progressed through the examination and these are identified in the Examination Library.

1.6. UNDERTAKINGS, OBLIGATIONS AND AGREEMENTS

1.6.1. No agreements have been entered into under s106 of the Town and Country Planning Act 1990 in connection with the proposed development.

1.6.2. The applicant entered into a bilateral connection agreement with National Grid Energy System Operator on 2 December 2020 [REP6-014], now the National

Energy System Operator, to connect to the National Electricity Transmission System via the National Grid Electricity Transmission 132kV substation at Drax.

1.6.3. These undertakings, obligations and agreements have been taken into account by the ExA in the relevant sections of this report.

1.7. OTHER CONSENTS

1.7.1. The applicant describes the other statutory consents and licenses that may be required to construct, operate, maintain and decommission the proposed development [APP-008].

1.8. STRUCTURE OF THIS REPORT

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

- **chapter 2** identifies how the application is to be determined, introduces the legislative and policy context, concludes on the adequacy of the Environmental Impact Assessment, and considers transboundary impacts
- **chapter 3** sets out my findings and conclusions on the planning issues arising from the application and during the Examination
- **chapter 4** provides a record of considerations relevant to the Habitats Regulations Assessment
- **chapter 5** sets out the balance of planning considerations and provides my reasoning and conclusions on the case for making a Development Consent Order
- **chapter 6** considers whether the land rights powers requested by the applicant should be granted
- **chapter 7** addresses the Development Consent Order
- **chapter 8** summarises my findings, conclusions, and recommendations
- **annex A** provides a list of abbreviations and acronyms
- **annex B** identifies relevant legislation
- **annex C** comprises my recommended Development Consent Order

2. HOW THE APPLICATION IS DETERMINED

2.1. INTRODUCTION

2.1.1. This chapter identifies the key legislation, policy, and local impact reports (LIR) that my recommendations are made against. It includes my consideration of the overall adequacy of the applicant's Environmental Impact Assessment, the Habitats Regulations Assessment (HRA), and transboundary effects.

2.2. LEGISLATION AND NATIONAL POLICY

The Planning Act 2008

2.2.1. Paragraph 1.1.2 identifies that the proposed development is a Nationally Significant Infrastructure Project (NSIP). It is therefore to be determined under the Planning Act 2008 (PA2008). The PA2008 provides different decision making processes for NSIP applications depending on whether a relevant National Policy Statement (NPS) is designated and has effect. Decisions in cases where an NPS has effect are made in accordance with the provisions set out in section (s)104. Decisions in cases where no NPS has effect are made in accordance with the provisions set out in s105.

2.2.2. The proposed development consists of the principal development, a solar photovoltaic generating station, and associated development. The principal development is within the scope of the Overarching National Policy Statement for Energy (EN-1) and the National Policy Statement for Renewable Energy Infrastructure (EN-3) as detailed below:

- EN-1 paragraph 3.3.60: "Known generation technologies that are included within the scope of this NPS … include… Solar PV"
- EN-3 paragraph 1.6.1: "This NPS covers the following types of nationally significant renewable electricity generating stations…solar photovoltaic (PV) (>50 MW in England)"

2.2.3. The proposed development is therefore considered against s104 of the PA2008.

2.2.4. Associated development includes a 132 kilovolt below ground electricity line to provide a connection to the National Electricity Transmission System. This is within the scope of the National Policy Statement for Electricity Networks Infrastructure (EN-5) as detailed below:

- EN-5 paragraph 1.6.4: "underground cables at any voltage,… where that infrastructure becomes subject to the 2008 Act in the following circumstances: if it constitutes associated development for which consent is sought along with an NSIP"

2.2.5. In deciding this application, s104(2) of the PA2008 requires the Secretary of State for Energy Security and Net Zero (the Secretary of State) to have regard to any:

- NPS which has effect in relation to development of the description to which the application relates (a 'relevant NPS')
- LIR within the meaning given by PA2008 s60(3) submitted to the Secretary of State before the specified deadline
- any matters prescribed in relation to development of the description to which the application relates

- any other matters the Secretary of State considers are both important and relevant to the decision

2.2.6. Section 104(3) of the PA2008 requires the Secretary of State to decide the application in accordance with any relevant NPS that has effect, subject to the following exceptions in s104(4) to (8):

- 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 Secretary of State being in breach of any duty imposed on them 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
- where any condition prescribed for deciding an application otherwise than in accordance with a NPS is met

2.2.7. This report sets out my findings, conclusions and recommendation taking these matters into account and applying s104 of the PA2008. I give more consideration to the application of s104 in chapter 5 of this report.

The Equality Act 2010

2.2.8. The Equality Act 2010 includes a Public Sector Equality Duty. The Secretary of State (as decision-maker) must pay due regard to the aims of the Public Sector Equality Duty. This must include consideration of all potential equality impacts highlighted during the examination. There can be detriment to affected parties but, if there is, it must be acknowledged and the impacts on equality must be considered.

2.2.9. I had due regard to this duty, including by holding blended meetings and hearings, producing guidance on holding those meetings, and ensuring that participants were provided with hard copy correspondence, where requested.

Other Legislation

2.2.10. Information on the Human Rights Act 1998 and the Climate Change Act 2008, and a list of other relevant legislation is provided in Annex B. Noting the inland location of the proposed development, I consider it unlikely there would be any impacts to the marine environment and consequently give no further consideration to marine legislation or policy in this report.

2.2.11. I have considered other applicable legislation as required. My findings, conclusions and recommendation are framed so as to identify, and enable the Secretary of State to discharge, all applicable statutory considerations or duties.

National Policy Statements for Energy Infrastructure

2.2.12. EN-1, EN-3 and EN-5 are relevant NPSs for the proposed development and provide the primary basis for determining whether consent should be granted.

2.2.13. The NPSs include policies relating to the planning issues including the assessment of potential benefits, disbenefits, and their avoidance or mitigation. These are addressed in chapter 3 of this report.

2.2.14. The NPSs also set out general policies and considerations in relation to the planning balance and the case for development. These are addressed in chapter 5 of this report.

Other National Policy and Guidance

2.2.15. The latest National Planning Policy Framework (NPPF) was published on 12 December 2024 and updated on 7 February 2025. The NPPF, and the accompanying Planning Practice Guidance, set out the planning policies for England and how these are to be applied. Paragraph 5 of the NPPF states that it does not contain specific policies for NSIPs as these are determined in accordance with the decision-making framework in the PA2008 and relevant NPSs.

2.2.16. In accordance with s104(2) of the PA2008, I have regard to other national policies and guidance to the extent I consider them to be important and relevant to the decision.

2.3. LOCAL IMPACT REPORTS

2.3.1. The Applicant summarises relevant local policies in its Planning Statement [APP-228]. North Yorkshire Council in its local impact report (LIR) [REP2-034] refers to local policies.

2.3.2. In accordance with s104(2) of the PA2008, I have regard to the matters raised in the LIR and refer to it under each planning issue discussed in chapter 3 of this report.

2.4. ENVIRONMENTAL IMPACT ASSESSMENT

2.4.1. The applicant provided a written notification under Regulation 8(1)(b) of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 (EIA Regulations) to the Secretary of State of its intention to provide an environmental statement (ES). In accordance with Regulation 6(2)(a) of the EIA Regulations, the proposed development was determined as 'EIA development' by the EIA Regulations.

2.4.2. The applicant submitted a scoping report dated June 2022 to the Secretary of State under Regulation 10 of the EIA Regulations [APP-111]. This requested an opinion about the scope of the ES to be prepared.

2.4.3. The Planning Inspectorate provided a scoping opinion dated 14 June 2022 [APP-112]. The environmental effects, including cumulative assessments, are summarised under each of the planning issues in chapter 3. I consider that the ES, as supplemented with additional information provided during the examination, is sufficient to enable the Secretary of State to take a decision in compliance with the EIA Regulations.

2.5. HABITATS REGULATIONS ASSESSMENT

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

2.5.2. As the proposed development has been identified as giving rise to the potential for likely significant effects on European sites it is subject to a HRA. To inform

Secretary of State decisions prepared under the PA2008, a separate record of this assessment is set out in chapter 4 of this report.

2.6. TRANSBOUNDARY EFFECTS

2.6.1. Under Regulation 32 of the EIA Regulations, on behalf of the Secretary of State, the Planning Inspectorate provided a transboundary screening opinion dated 14 June 2022 [APP-112]. This concluded that the proposed development would be unlikely to have a significant effect either alone or cumulatively on the environment in a European Economic Area State. I am satisfied, based on the information provided up to the point when the examination closed, there is no reason to change this opinion.

3. THE PLANNING ISSUES

3.1. INTRODUCTION

Background

3.1.1. The Environmental Impact Assessment (EIA) Regulations require an assessment of the likely significant effects of the proposed development on the environment, covering the direct effects and any indirect, secondary, cumulative, transboundary, short, medium, and long-term, permanent, and temporary, positive, and negative effects at all stages of the project. They also require consideration of measures for avoiding or mitigating adverse effects. I consider the applicant's assessment in this chapter.

3.1.2. Paragraph 4.1.5 of the Overarching National Policy Statement for Energy (EN-1) states that the Secretary of State for Energy Security and Net Zero (the Secretary of State) should:

- consider potential benefits including its contribution to meeting the need for energy infrastructure, job creation, reduction of geographical disparities, environmental enhancements, and any long-term or wider benefits
- consider potential adverse impacts, including on the environment, including long term and cumulative adverse impacts, as well as any measures to avoid, reduce, mitigate, or compensate for any adverse impacts, following the mitigation hierarchy

Initial assessment of principal issues (IAPI)

3.1.3. As required by section (s)88 of the Planning Act 2008 (PA2008) I made an IAPI arising from the application and the relevant representations submitted. The IAPI can be found in Annex C of the Rule 6 letter - Notification of the preliminary meeting and matters to be discussed [PD-001] and was as follows:

- Biodiversity and ecology
- Climate change and energy generation and storage
- Compulsory acquisition
- Development Consent Order (DCO) (and related control documents)
- General, cross topic and other planning matters
- Health, safety, accidents, and incidents
- Heritage
- Landscape and visual impact
- Noise, vibration, and air quality
- Socio-economic (including agriculture)
- Transport and access
- Water environment

The planning issues as reported

3.1.4. Compulsory acquisition and the DCO are reported in chapters 6 and 7 respectively. In the interests of clear and concise reporting, and the overarching nature of the need case and alternatives and site selection, the planning issues are reported as follows:

- Need case

- Alternatives and site selection
- Biodiversity and ecology
- Greenhouse gas emissions
- Health and safety
- Heritage
- Landscape and visual
- Noise and nuisance
- Socio-economic
- Soils and agriculture
- Traffic and transport
- Water

3.1.5. For many of the planning issues listed at 3.1.4, potential benefits would be realised, or adverse impacts would be avoided, mitigated or compensated for, through the use of requirements to be discharged by the local planning authority. Requirements are detailed in schedule 2 and secured by article 41 of my recommended Development Consent Order (rDCO) at Annex C. Documents to be certified are detailed in schedule 11 and secured by article 36 of my rDCO at Annex C.

3.1.6. To assist the reader and minimise repetition in the remainder of this chapter, and the report as a whole, the control framework outlined at paragraph 3.1.5 is detailed as follows:

- a detailed design required by rDCO requirement 3, to be approved by the local planning authority, and be in accordance with the documents to be certified, including the certified Outline Design Principles Document [REP7-021]
- a construction environmental management plan (CEMP) required by rDCO requirement 4, to be approved by the local planning authority in consultation with the Environment Agency, and be in accordance with the certified Outline Construction Environmental Management Plan [REP8-009]
- a decommissioning environmental management plan (DEMP) required by rDCO requirement 5, to be approved by the local planning authority, and be substantially in accordance with the certified Outline Decommissioning Environmental Management Plan [REP6-008]
- a construction traffic management plan (CTMP) required by rDCO requirement 6, to be approved by the local planning authority in consultation with the relevant highways authority, and be in accordance with the certified Outline Construction Traffic Management Plan [REP4-017]
- an operational environmental management plan (OEMP) required by rDCO requirement 7, to be approved by the local planning authority, and be in accordance with the certified Outline Operational Environmental Management Plan [REP6-010]
- a soil resource management plan required by rDCO requirement 8, to be approved by the local planning authority, and be substantially in accordance with the certified Outline Soil Resource Management Plan [REP2-011]
- a battery safety management plan required by rDCO requirement 9, to be approved by the local planning authority, and either be in accordance with the certified Outline Battery Safety Management Plan [REP4-013], or detail such changes as the undertaker considers are required, which shall not be approved by the local planning authority until it has consulted with the North Yorkshire Fire and Rescue Service
- a landscape and ecological management plan (LEMP) required by rDCO requirement 10, to be approved by the local planning authority in consultation

with Natural England, and be in accordance with the certified Outline Landscape and Ecological Management Plan [APP-143]
- a written scheme of investigation required by rDCO requirement 14, to be approved by the local planning authority, and be substantially in accordance with the certified Outline Archaeological Mitigation Strategy [APP-126]
- a supply chain, employment and skills plan required by rDCO requirement 22, to be approved by the local planning authority, and be in accordance with the certified Outline Supply Chain, Employment and Skills Plan [REP7-022]

3.1.7. Using the hierarchy of weight as set out in the EN-1 Glossary at page 175 as a basis I assign weight as follows to each planning issue:

Table 3.1.1 Hierarchy of weight

Description	EN-1	Chapters 3 and 5
neutral		neutral
lowest weight	limited	a little
	moderate	moderate
	great	great
	significant	very great
highest weight	substantial	substantial

3.1.8. For each planning issue I summarise the applicant's case and the examination of it. I report my findings and conclusions with reference to the degree of harm or benefit, the applicable NPSs, relevant legislation and anything else that I consider important and relevant.

3.1.9. Each planning issue section has the same structure. The amount of material presented under each sub-heading reflects the complexity of the subject matter and the amount of new evidence submitted by the parties.

3.1.10. The conclusions and weights for each planning issue are then taken forward to Chapter 5 for my overall consideration of the planning balance, and the case for making the DCO.

3.2. NEED CASE

Introduction

3.2.1. This section considers the need case for the proposed development.

The Application

3.2.2. The applicant sets out the need case for the proposed development in its Planning Statement [APP-228].

EN-1

3.2.3. The applicant explains that EN-1 emphasises the need to decrease dependency on high-carbon fossil fuels and transition to a low-carbon energy mix.

3.2.4. The applicant goes on to describe the policy framework objectives as set out in part 2 of EN-1, including meeting legally binding targets for reducing greenhouse gas emissions, transitioning to a net zero carbon economy, decarbonising the power sector, ensuring energy security, reforming the electricity market, and meeting the goals of sustainable development.

3.2.5. The applicant says that Part 3 of EN-1 explains why the government sees a need for significant amounts of new large-scale energy infrastructure to meet its energy objectives and why the government considers that the need for such infrastructure is urgent.

3.2.6. In Table 4.1 "National Policy Statement need references" [APP-228], under the heading "Secretary of State decision making", the applicant includes the following from EN-1:

- "3.2.6 The Secretary of State should assess all applications for development consent for the types of infrastructure covered by this NPS on the basis that the government has demonstrated that there is a need for those types of infrastructure, which is urgent, as described for each of them in this Part.
- 3.2.7 In addition, the Secretary of State has determined that substantial weight should be given to this need when considering applications for development consent under the Planning Act 2008.
- 3.2.8 The Secretary of State is not required to consider separately the specific contribution of any individual project to satisfying the need established in this NPS"

3.2.7. The applicant considers that 3.3.4 of EN-1 acknowledges the need for different types of electricity infrastructure, including electricity storage, to deliver the energy objectives. Paragraph 3.3.6 outlines that storage provides flexibility, so that output can be stored when there is excess production or supply electricity when domestic demand is higher than generation, supporting security of supply.

3.2.8. The applicant points out that EN-1 3.3.20 sets out the expectation that a secure, reliable, affordable, net zero consistent system in 2050 is likely to be composed primarily of wind and solar. As well as additional generating plants, new storage and interconnectors are required to provide increased flexibility.

3.2.9. The applicant goes on to say that paragraph 3.3.57 states that based on the Net Zero Strategy and the government's commitment to a 78% reduction in GHG emissions by 2035, all of our electricity needs to come from low carbon sources by 2035, while meeting a 40-60% increase in demand. Paragraph 3.3.58 therefore recognises that "there is an urgent need for new (and particularly low carbon) electricity NSIPs to be brought forward as soon as possible".

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

3.2.10. The applicant states that paragraph 1.1.2 of EN-3 summarises the central role that renewables will need to play in meeting the government's energy objectives. For example, generation from renewable sources is an essential element of the transition to net zero and meeting statutory targets for the sixth carbon budget. At the same time paragraph 1.1.2 suggests that demand for electricity is likely to more than double by 2050 which could require a fourfold increase in low carbon electricity generation, with most of this likely to come from renewables.

3.2.11. The applicant describes that section 2.10 explores the need for solar photovoltaic power generation in greater detail and specific policies. The applicant refers to paragraph 2.10.9 which states that solar is a key part of the government's strategy for low-cost decarbonisation of the energy sector and it expects a five-fold increase in solar deployment by 2035 (up to 75GW). The applicant also notes that EN-3 paragraph 2.10.10 states that solar has an important role in delivering the government's goals for greater energy independence.

3.2.12. Based on the policies set out in EN-1 and EN-3, the applicant concludes that there is an urgent need for large scale ground mounted solar to be developed due to their relative quick development timescales, affordability and contribution to the UK's energy security.

The Examination

Local planning authorities, other statutory consultees and parish councils

3.2.13. In their relevant representations, national statutory bodies, for example Natural England [RR-268], made no comment on the need case presented by the applicant.

3.2.14. In the 'Principle of Development' section of its local impact report (LIR) [REP2-034] North Yorkshire Council (NYC) noted the national need for energy security and provision and the national policy position contained in the National Policy Statements regarding renewable energy.

3.2.15. Carlton Parish Council in its relevant representation [RR-050] raised "concerns and reservations about the proposed Helios project which is considerably bigger that other solar projects in the area to which planning permission has been granted".

3.2.16. The applicant stated in its response [REP1-004] that it had made its need case for the proposed development in its Planning Statement [APP-228], which I have summarised above, and had nothing further to add.

Communities, individuals, businesses and ExA questions

3.2.17. A relevant representation [RR-257] Mrs Karen Senior included "there's not enough evidence of climate emergency to justify this level of destruction of our farmlands".

3.2.18. A relevant representation [RR-235] from Maynard Chase included "I am very concerned about climate change. Solar farms are an excellent option for making our energy more renewable and less polluting. I am very much in favour of these types of projects".

3.2.19. As described above, at paragraph 3.2.16, the applicant's response [REP1-004] to these relevant representations referred to its Planning Statement [APP-228] and had nothing further to add.

3.2.20. The written representation of Helios Agricultural Land Threat (HALT) [REP2-047] recognised "the importance of renewable energy in addressing climate change" but went on to say "this proposal raises significant concerns that outweigh its purported benefits".

3.2.21. The applicant's response [REP3-009] on this point referred to its response to relevant representations [REP1-004] and hence its Planning Statement [APP-228] with nothing further to add.

3.2.22. The principle and scope of the proposed development was on the agenda for Issue Specific Hearing One (ISH1) [EV3-001]. The applicant submitted its written summary of its oral submissions at ISH1 [REP1-007].

Findings and conclusions

3.2.23. I find that relevant representations either raised concerns about whether the disbenefits outweighed the benefits, taking into consideration the location of the proposed development, or expressed broad in principle support.

3.2.24. I find no submissions that questioned the principle of the need for the proposed development, or the weight that should be assigned to it.

3.2.25. I find that the applicant's responses [REP1-004] and [REP1-007] referred to matters that will be considered elsewhere in this chapter, rather than anything that supported the material in its planning statement [APP-228]. I consider this response was proportionate given that negligible argument was put forward with regard to need.

3.2.26. I will discuss the need for the solar photovoltaic generating station, the principal development and the battery energy storage system, associated development, in the context of the government's objectives for the energy system, EN-1 paragraph 3.2.1, which are to ensure energy supply always remains:

- secure, reliable, affordable, and consistent with net zero emissions in 2050

Solar photovoltaic generating station

3.2.27. With respect to the solar photovoltaic generating station:

- EN-1 paragraph 3.3.60 lists solar photovoltaic generation in the list of known generation technologies.

3.2.28. EN-1 paragraph 3.3.61 then goes on to say:

- "The need for all these types of infrastructure is established by this NPS and a combination of many or all of them is urgently required for both energy security and Net Zero, as set out above."

3.2.29. In terms of weight, EN-1 paragraph 3.2.7 states:

- "In addition, the Secretary of State has determined that substantial weight should be given to this need when considering applications for development consent under the Planning Act 2008."

Battery energy storage system

3.2.30. The role of electricity energy storage systems is discussed in EN-1 in paragraphs 3.3.4 to 3.3.6 and 3.3.25 to 3.3.31 for example:

- paragraph 3.3.6 says that storage can provide flexibility, meaning that less of the output of plant is wasted as it can either be stored when there is excess production. It can also supply electricity when domestic demand is higher than generation, supporting security of supply.
- paragraph 3.3.25 says that it has a key role to play in achieving net zero and providing flexibility to the energy system.
- paragraph 3.3.26 says that it is needed to reduce the costs of the electricity system and increase reliability by storing surplus electricity in times of low demand to provide electricity when demand is higher.

3.2.31. In conclusion I therefore assign substantial weight to the issue for the making of the Order.

3.3. ALTERNATIVES AND SITE SELECTION

Introduction

3.3.1. This section covers the consideration of alternative locations and the process of site selection for the proposed development, including the use of the best and most versatile (BMV) agricultural land, that is to say Agricultural Land Classification (ALC) grades 1, 2 and 3a. The detailed consideration of the impact on BMV agricultural land, including cumulative effects, of the proposed development is covered in section 3.11 on soils and agriculture.

The Application

3.3.2. The applicant sets out its approach to site selection in the following documents:

- Planning Statement Appendix 2: Alternative Site Assessment [APP-227]
- Environmental Statement (ES) Chapter 4 - Alternatives and Design Evolution [APP-024]
- ES Appendix 4.1 - Site Selection Mapping [APP-120]

3.3.3. The applicant states that a viable solar photovoltaic power generation scheme must be located near to existing grid infrastructure, so it is able to export the renewable electricity it has generated. It identifies a suitable connection point to the National Electricity Transmission System at the existing Drax 132kV substation.

3.3.4. The applicant considers 5km from the point of connection to be an appropriate search area for the site of a solar photovoltaic power station having regard to:

- environmental - longer cable routes would result in a larger area of land required and disturbance
- technical - longer cable routes would result in increased electrical transmission loss
- viability constraints - the further the site is located from the point of connection the more must be spend on the installation of cable and the greater the impact of the viability of the project

3.3.5. The applicant considers that the Agricultural Land Classification map included in the site selection mapping [APP-120] shows that the area around the Drax substation contains extensive areas of grades 1 and 2 agricultural land, with smaller areas of undifferentiated grade 3.

3.3.6. The applicant accounts for solar farm committed development in the area, including that which is situated on the remaining grade 3 land, and concludes that, based on its 5km search criterion, the site for the proposed development could not avoid BMV agricultural land.

3.3.7. In summary [APP-227], the applicant's main reasons for selecting the site for the proposed development are that the land chosen:

- is within a suitable distance from the identified point of connection
- is not located within internationally and nationally designated biodiversity sites
- is not located within designed Green belt, or other designated land from local policy
- avoids direct physical impact on designated heritage assets
- is capable of appropriately managing flood risk
- does not spatially conflict with other consented schemes or local plan designations
- does contain provisional grade 2 BMV land, however no alternative lesser grade was available and this BMV land would only be used temporarily and can be returned to its previous state upon decommissioning
- is situated away from major settlements
- has topography which meets the requirements for the proposed development to efficiently generate significant amounts of electricity
- has good transport access for construction
- is of suitable size to generate significant amounts of electricity
- is available to the applicant during the period of construction and operation of the scheme

3.3.8. Overall, [APP-024] the applicant considers its site selection assessment was thorough and took into consideration social, environmental, technical, and economical factors. The applicant restricted the location of the proposed development location to a 5km search radius around the grid connection because of what it states are technical and economic factors. The applicant considers that within its 5km search radius, the extent of the Drax power station, existing onshore windfarm, and the River Ouse and River Aire prevents the proposed development from being located to the north and east of the grid connection.

The Examination

Local planning authorities, other statutory consultees and parish councils

3.3.9. In its LIR [REP2-034] NYC sought to understand better the site selection process, in particular whether there were alternative grid connections available in the UK and if so are these in areas where soil quality was not BMV. If there were alternatives, NYC was seeking to understand why the Drax connection was chosen and alternatives discounted.

3.3.10. The applicant's response [REP3-010] to the NYC LIR concern referenced its Planning Statement Appendix 2 Alternative Site Assessment [APP-227] and its Environmental Statement (ES) Chapter 4 - Alternatives and Design Evolution [APP-024].

3.3.11. This remained an area of disagreement with NYC as shown in a draft and final (unsigned) statements of common ground (SoCG) with NYC [REP5-010] and [REP7-013] respectively.

3.3.12. In the final signed SoCG with NYC [REP8-016] it remained an area of disagreement. The applicant stated that it benefited from a 132kV grid connection at Drax and explained that based on that as a starting point, with reference to EN-3, paragraph 2.10.24, it had undertaken a detailed alternative site assessment. This had taken into consideration the extent and availability of land required, the site and surrounding land uses, known environmental designations, relevant policies and committed developments, resulting in the proposed location of the proposed development.

3.3.13. The applicant explained that its site selection process determined that the use of BMV was unavoidable, given alternative sites within proximity of the grid connection point were also classified as BMV, or unsuitable on the basis of land fragmentation, severance, environmental constraints or committed for other uses or development.

Communities, individuals, businesses and ExA questions

3.3.14. Almost half of relevant representations as recorded in the applicant's response to them [REP1-004] raised concerns over alternative locations for the proposed development, often related to the preferred use of non-BMV agricultural land. For example, they raised the possibility of using disused power station sites or brownfield land as alternative locations in the area.

3.3.15. The applicant responded to relevant representations [REP1-004] with references to their application documents, including those listed above at 3.3.2 re-iterating its position.

3.3.16. In its post-hearing submissions [REP5-030] (HALT) referred to the Secretary of State's response to a question from Richard Fuller MP about the policy on the use of BMV land. In its submission HALT say the response dated 17 February 2025 included: "there has been no change to the policy on the weighting attached to the use of BMV land. That planning policy and guidance makes clear that, wherever possible, developers should utilize brownfield, industrial, contaminated, or previously developed land. Where the development of agricultural land is shown to be necessary, lower-quality land should be preferred to higher-quality land (including "Best and Most Versatile" land). This he said was the policy of the last government and that there are no plans to change this policy."

3.3.17. The applicant's response to HALT's oral submissions submitted as [REP5-030] are contained within its response to the oral submissions made at OFH2 [REP5-011]. Within this [REP5-011] the applicant refers back to earlier responses where it says: "Issue Specific Hearing 1 [REP1-007], in The Applicant's Responses to Relevant Representations [REP1-004] and in The Applicant's Responses to Written Representations [REP3-009]."

Findings and conclusions

3.3.18. I understand submissions from communities and individuals reflect a concern that an area around a high capacity connection point, such as Drax, has become a magnet for solar farm development. The concerns appear to relate less to the need or principle of the use, but more to the density and thus cumulative effect of solar farms and loss of BMV land in the locality.

3.3.19. I find that the alternative sites advanced in some submissions did not contain sufficient evidence or information as to their availability and suitability for the proposed scheme. I have therefore afforded little weight to these in my findings.

3.3.20. I find that whilst the applicant provided little information about reasonable alternatives within its 5km search radius from the connection point it did nevertheless explain the process it followed in the selection of its chosen site and the criteria it applied. I find this explanation to be satisfactory.

3.3.21. With regard to policy, paragraph 4.3.9 EN-1 says that it does not contain any general requirement to consider alternatives or to establish whether the proposed project represents the best option from a policy perspective.

3.3.22. EN-1 goes on to say at 4.3.16 that applicants are obliged to include in their ES information about the reasonable alternatives they have studied and should explain the main reasons for the choice of site, including environmental effects and technical and commercial feasibility.

3.3.23. Paragraphs 4.3.22 to 4.3.29 provide guidance on Secretary of State decision making including:

- only alternatives that can meet infrastructure capacity (including energy security, climate change, and other environmental benefits) in the same timescale as the proposed development need to be considered
- alternative proposals which mean the necessary development could not proceed, for example because the alternative proposals are not commercially viable or alternative proposals for sites would not be physically suitable, can be excluded
- alternative proposals which are vague, or immature can be excluded

3.3.24. Paragraph 2.3.5 of EN-3 says that it is for applicants to decide what applications to bring forward and generally government does not seek to direct applicants to particular sites for renewable energy infrastructure.

3.3.25. Factors influencing site selection are covered by EN-3 in paragraphs 2.10.18 to 2.10.48 and these are listed as:

- Irradiance and site topography
- Network connection
- Proximity of a site to dwellings
- Agriculture land classification and land type
- Accessibility
- Public rights of ways
- Security and lighting

3.3.26. EN-3 paragraphs 2.10.28 to 2.10.34 address agricultural land classification and land type in the context of solar development. For example, 2.10.29 states “While land type should not be a predominating factor in determining the suitability of the site location applicants should, where possible, utilise suitable previously developed land, brownfield land, contaminated land and industrial land.”

3.3.27. Comparing the applicant’s approach with the EN-1 and EN-3 policy provisions I conclude there is good accordance and that the alternatives that were suggested by other interested parties can be excluded for the reasons set out in EN-1.

3.3.28. Before concluding overall on the issue, I will make reference to EN-5 paragraph 2.9.20, where, except for nationally designated landscapes, “it is the government’s position that overhead lines should be the strong starting presumption for electricity networks developments in general.”

3.3.29. The applicant provided no evidence that it had considered this as a factor in its site selection process which could have enabled it to widen its search area and potentially reduce the use of BMV agricultural land. With regard to this provision and its importance and relevance to the connection to the existing Drax substation, which forms part of the associated development, I conclude that the applicant's approach is not in accord with EN-5.

3.3.30. Overall, I conclude that despite the non-conformance with EN-5, in other respects the applicant's approach to alternatives is consistent with EN-1 and EN-3 and I assign a little weight to the issue against the making of the Order.

3.4. BIODIVERSITY AND ECOLOGY

Introduction

3.4.1. This section considers the impact of the proposed development on biodiversity and ecology.

The Application

3.4.2. The applicant sets out its assessment of the biodiversity and ecology impact of the proposed development including cumulative effects. The applicant sets out its proposals for the avoidance, reduction or mitigation of any likely adverse effects. It also sets out the identification and quantification of any beneficial effects with regard to biodiversity. For all phases of the proposed development this is explained primarily in its ES Chapter 8 - Biodiversity [APP-028] supported by technical appendices referenced therein.

3.4.3. The applicant explains that its methodology follows that set out in the Chartered Institute of Ecology and Environmental Management guidelines.

3.4.4. The applicant considers that existing habitats within the site of the proposed development are dominated by open fields of arable farmland of limited biodiversity value, with species-poor hedgerow systems and dry and wet ditches, pond and occasional blocks of semi-natural broad-leaved woodland.

3.4.5. The applicant states that comprehensive ecological surveys were undertaken over several years of habitats along with protected species, such as otter, badger, water voles, breeding and non-breeding birds. This informed its assessment and the design of the proposed development, for example to avoid ecological features of value, such as hedgerows, woodland and ditches.

3.4.6. The applicant considers that habitat retention, creation and species enhancement measures would be incorporated to benefit biodiversity and key species, and would significantly enhance opportunities for wildlife within the site of the proposed development and the wider environment.

3.4.7. The applicant states that the site of the proposed development is not set within, or linked to, any statutory designated site for nature conservation. Furthermore, the applicant considers that extensive field surveys found no evidence of regular use of significant numbers of over-wintering or passage birds. It concludes that the proposed development would not negatively affect any such designation.

3.4.8. The applicant states that the proposed development would be designed to largely retain important ecological features, for example hedgerow networks, woodland, trees and ditches.

3.4.9. It goes on to say that significant habitat enhancement provisions would be managed for the benefit of wildlife over the long term and would provide biodiversity gains for a wide variety of species. In addition, the applicant would create diverse grasslands, undertake tree and hedgerow planting to deliver a quantifiable BNG. Using Defra's statutory biodiversity metric calculation tool, the applicant shows that the proposed development would result in a biodiversity net gain of 55.70% in habitat units, 61.11% in hedgerow units and 9.05% in watercourse units.

3.4.10. The applicant summarises that the habitat gain, combined with other measures, would provide new and enhanced features that can be used for breeding, foraging, overwintering and refuge by a range of species, from birds and bats to amphibians, reptiles and invertebrates. It considers that the cessation of the use of agricultural chemicals across the site of the proposed development would provide further benefit, in particular for invertebrate populations.

3.4.11. The applicant details its approach to the avoidance and mitigation of any significant adverse effects in section 8.5 [APP-028]. The applicant explains avoidance through the use of buffer zones, of appropriate size between the area to be developed and any feature to be protected, in the design and construction of the proposed development. In cases where this may not be possible, for example ground nesting birds, the applicant explains how the timing of construction works would mitigate risk.

3.4.12. The applicant takes into account the approval process for the detailed design of the proposed development secured by requirement 3 of the dDCO [REP9-003], a CEMP, a DEMP and a LEMP as detailed in section 3.1.

3.4.13. The applicant summarises the likely residual effects in terms of the proposed development and cumulative development. This is shown in the following tables:

Table 3.4.1 Proposed development

Phase	Residual effect	Detail
Construction	Negligible, minor adverse (not significant), major beneficial (significant)	Non-designated sites, breeding birds and habitats respectively
Operation	Moderate, moderate, major beneficial (all beneficial and significant)	Non-designated sites, breeding birds and habitats respectively
Decommissioning	Negligible, minor adverse, minor adverse (all not significant)	Non-designated sites, breeding birds and habitats respectively

Table 3.4.2 Cumulative development

Phase	Residual effect	Detail
Construction	Negligible, negligible, major beneficial (significant)	Non-designated sites, breeding birds and habitats respectively
Operation	Negligible, negligible, major beneficial (significant)	Non-designated sites, breeding birds and habitats respectively

The Examination

Local planning authorities, other statutory consultees and parish councils

3.4.16. Natural England in its relevant representation [RR-268] registered an interest in the proposed development which raised concerns about the impacts on internationally and nationally designated sites, and aspects of the Outline Soil Management Plan.

3.4.17. With regard to internationally designated sites Natural England concerns are discussed in chapter 4 of this report.

3.4.18. With regard to nationally designated sites Natural England was concerned about:

- overlapping internationally designated site impacts for the relevant sites of special scientific interest
- potential air quality impacts from construction traffic

3.4.19. For most of the concerns raised Natural England considered that further information was required to determine the impacts of the proposed development or to provide a sufficient confidence as to the efficacy applicant's mitigation or compensation proposals.

3.4.20. In the applicant's final statement of common ground (SoCG) with Natural England [REP5-009] all matters were agreed. Natural England's concerns were substantially resolved through the provision by the applicant of version 3 of its habitats regulation risk assessment as discussed in chapter 4. The applicant addressed remaining issues through its updating of schedule 2 requirement 10, of the dDCO [REP9-003], to secure NYC consultation with Natural England, to review final management and monitoring proposals.

3.4.21. In its LIR [REP2-034] NYC raised concerns with regard to detailed local biodiversity and ecological issues. For example, NYC considered that the detailed landscape and ecological management plan secured in the dDCO would need to provide further details on the management of the skylark plots, including the minimum number provided in each area per year. NYC considered that evidence would be required to confirm that the skylark plots were in place as planned and breeding bird surveys were undertaken to monitor the success of the compensation in addressing the adverse effect upon ground nesting breeding birds.

3.4.22. NYC was also concerned that the draft DCO did not provide any mechanism for securing the delivery, monitoring and long-term management of biodiversity net gain.

3.4.23. NYC's outstanding matters in the draft SoCG provided by the applicant [REP5-010] were that bird surveys should be undertaken in order to monitor the creation of skylark plots and that long-term monitoring of key indicator species such as bats was encouraged, in addition to monitoring of BNG and legal compliance.

3.4.24. In the applicant's final SoCG with NYC [REP8-016] all biodiversity and ecology matters were agreed with the exception that despite the applicant's proposals NYC considered that the impact on ground nesting birds would likely to be neutral, rather than beneficial as set out in the ES. It also sought a commitment to long term monitoring and management to provide evidence of biodiversity net gain and legal compliance.

Communities, individuals, businesses and ExA questions

3.4.25. Biodiversity and ecological concerns were raised in around a half of the 351 relevant representations made as recorded in the applicant's response to them [REP1-004].

3.4.26. Concerns raised included that the proposed development would harm wildlife, including red-listed birds, bats, badgers, moles, wild deer, and buzzards, despite claims of biodiversity benefits. Concerns were also raised about the removal of established plants affecting habitats of local bats, owls, and birds, and the potential for irreversible ecological damage to local flora and fauna, including bluebells, snowdrops, and hedgerows.

3.4.27. The applicant's responses to relevant representations [REP1-004] includes those from communities, individuals and businesses. With regard to these the applicant provides extracts from ES Chapter 8 - Biodiversity [APP-028] with further explanation or reference to other application documents as it considered necessary.

3.4.28. I asked about information that was missing from the habitats regulation assessment at second written questions (ExQ2) [PD-005]. I asked the applicant to:

- set out the potential geographical extent of the impacts identified in the habitats regulation assessment report
- provide a list of the qualifying features of the identified European sites and what impacts have been assessed for those features during which phases of the development
- update the habitats regulation assessment report to include the methodology used for assessing in-combination effects at the screening stage

3.4.29. The applicant responded to my ExQ2 question with version 4 [REP5-006] of its habitats regulation assessment which is discussed further in chapter 4 of this report.

3.4.30. With reference to the Heckington Fen Solar Park Order 17 February 2025 PINS EN010123, which included a quantified commitment to biodiversity net gain, I asked about this at ExQ3 [PD-007] and securing it within the dDCO.

3.4.31. In the applicant's response [REP8-020] regarding a quantified commitment to biodiversity net gain it agreed to include such a commitment in requirement 10 of the dDCO [REP9-003].

3.4.32. Natural England made further representations [REP8-024] in response to ExQ3 and the applicant's proposed changes to the dDCO, and finally [REP10-003] which confirmed the action set out in the final SoCG [REP5-009] had been dealt with.

Findings and conclusions

3.4.33. I am satisfied that the issues raised by representations from communities, individuals and businesses during the examination are addressed by the SoCGs between the applicant and Natural England and the applicant and NYC. I therefore find the applicant's response to their relevant representations [REP1-004] to be satisfactory.

3.4.34. I take into account the final SoCG between the applicant and Natural England with all matters agreed

3.4.35. The high degree of agreement between the applicant and NYC recorded in the final SoCG I also take into account.

3.4.36. I now go on to consider in detail the extent to which the proposed development accords with policy with respect to biodiversity and ecology.

3.4.37. The biodiversity considerations are set out in EN-1 section 4.6, generic impacts in 5.4 and those specific to photovoltaic generation set out in EN-3 paragraphs 2.10.75 to 2.10.92.

3.4.38. Included in section 4.6 is a statement, paragraph 4.6.6, that energy NSIP proposals should seek opportunities to contribute to and enhance the natural environment by providing net gains for biodiversity where possible.

3.4.39. It says, paragraph 4.6.7, that applicants are encouraged to use the latest version of the biodiversity metric to calculate their biodiversity baseline and present planned biodiversity net gain outcomes and should be presented in full as part of their application.

3.4.40. The generic biodiversity considerations are set out in EN-1 paragraphs 5.4.1 to 5.4.55 and those matters concerned with the Habitats Regulation Assessment of the proposed development are covered in chapter 4.

3.4.41. Under paragraph 5.4.21 it says that the design process should embed opportunities for nature inclusive design. It goes on to say that the scope of potential gains will be dependent on the type, scale, and location of each project.

3.4.42. Under paragraph 5.4.22 it says that the potential to affect mobile and migratory species across the UK requires consideration depending on the location of development.

3.4.43. In terms of mitigation EN-1 paragraph 5.4.35 includes that during construction:

- activities would be confined to the minimum areas required for the works
- the timing would be planned to avoid or limit disturbance
- best practice would be followed to ensure that risk of disturbance or damage to species or habitats is minimised, including as a consequence of transport access arrangements
- habitats would, where practicable, be restored after construction works have finished
- opportunities would be taken to enhance existing habitats rather than replace them, and where practicable, create new habitats of value within the site landscaping proposals

3.4.44. In terms of decision making paragraph 5.4.46 says that weight should be assigned accordingly, but with only a little weight likely to be assigned in cases where the biodiversity net gain is set to comply with a statutory requirement.

3.4.45. The EN-3 paragraphs 2.10.75 to 2.10.92 include detailed aspects relevant to photovoltaic generation that may be considered including

- the habitats of ground nesting birds, wintering and migratory birds, bats, dormice, reptiles, great crested newts, water voles and badgers
- using an advising ecologist during the design process to ensure that adverse impacts are avoided, minimised or mitigated in line with the mitigation hierarchy, and biodiversity enhancements are maximised
- using buffer strips between perimeter fencing and hedges fencing that for enables mammal, reptile and other fauna to access into the site if required to do so in the ecological report
- the potential for solar farms to increase the biodiversity value of a site, especially if the land was previously intensively managed

3.4.46. Comparing the applicant's approach and likely outcomes, summarised at 3.4.11 to 3.4.15, with the specific policy expectations set out above, I find that the proposed development is consistent with sections 4.6 and 5.4 of EN-1 and EN-3 paragraphs 2.10.75 to 2.10.92. In addition, I find that that the applicant predicts a substantial biodiversity net gain, and is bound by a quantified, though lesser amount in the absence of any statutory requirement.

3.4.47. In summary, on the matter of harm and benefit, during construction, operation and decommissioning of the proposed development including cumulative effects, I conclude that the applicant's assessment as summarised in Tables 3.4.1 and 3.4.2 above is reliable and that whilst significant beneficial effects would be likely, a lesser benefit would be secured in the final dDCO [REP9-003]. On the matter of consistency with policies EN-1 and EN-3, I conclude that the proposed development is in accordance with these and the final dDCO secures a quantified biodiversity net gain in the absence of any statutory requirement. In overall conclusion I therefore assign moderate weight to the issue for the making of the Order.

3.5. GREENHOUSE GASES

Introduction

3.5.1. This section considers the impact of the proposed development on greenhouse gas emissions. The resilience of the proposed development to the effects of climate change are considered under water in section 3.12.

The Application

3.5.2. The applicant sets out its approach to the impact of the proposed development on greenhouse gas emissions within its ES Chapter 12 - Climate Change [APP-032] supported by technical appendices referenced therein.

3.5.3. The applicant undertakes an assessment of the potential effects of the proposed development on climate change using a combination of the Greenhouse Gas protocol and Institute of Environmental Management and Assessment (IEMA) guidance.

3.5.4. The applicant takes into account a CTMP as detailed in section 3.1.

3.5.5. For example, the applicant calculates the operational emissions as representing a saving of approximately 36,558 tCO2e per year compared with the generation it could displace and emissions from construction vehicles as contributing 150 tCO2e for the construction period to illustrate the scale of the difference.

3.5.6. The applicant summarises the likely residual effects in terms of the proposed development and cumulative development for all phases except decommissioning where it considers the degree of uncertainty to be too great to undertake a meaningful assessment. This is shown in the following tables:

Table 3.5.1 Proposed development

Phase	Residual effect	Detail
Construction	Minor adverse - not significant	Construction vehicle emissions
Operation	Major beneficial – significant, minor beneficial – not significant	local level, national level respectively. carbon saving of 36,558 tCO2e pa and total saving of 1,462,334 tCO2e over the proposed development lifespan

Table 3.5.2 Cumulative development

Phase	Residual effect	Detail
Construction	Minor adverse - not significant	Construction vehicle emissions
Operation	Minor beneficial -not significant	local level and national level.

The Examination

Local planning authorities, other statutory consultees and parish councils

3.5.9. In its LIR [REP2-034] NYC referred to several local policies that were concerned with climate change but raised no concerns with the applicant's approach to greenhouse gas emissions.

3.5.10. ***Communities, individuals, businesses and ExA questions***

3.5.11. Greenhouse gas emission concerns were raised in around 10% of the 351 relevant representations made as recorded in the applicant's response to them [REP1-004].

3.5.12. Concerns raised included having regard to embedded carbon in relation to batteries, solar panels and construction materials. For example that submitted by Debra Jones [RR-103] asked: "What assessment regarding the impact on the carbon footprint has been carried out by Helios? For example, where & how are raw materials sourced, what happens to batteries and panels when they are no longer operational. How long will this massive site have to run before it makes up the carbon it has produced in its construction and operation?"

3.5.13. In its response [REP1-004] the applicant explained that it was difficult at this design stage to accurately quantify the embodied carbon as the exact materials and their sources have not been finalised. The applicant referred to measures in a CEMP that would minimise the creation of waste and maximise the use of alternative materials with lower embodied carbon.

3.5.14. I was satisfied with the applicant's approach, as set out in its application, and its responses to concerns raised by other interested parties, so did not ask any questions on the subject during the examination.

Findings and conclusions

3.5.15. I find the applicant's responses to relevant representations on the matter [REP1-004] satisfactory as they explained the limitations of the assessment around embodied carbon calculation and referred to measures such as a CEMP that would mitigate greenhouse gas emission during construction.

3.5.16. I have been given no reason to disagree with the applicant's calculation of greenhouse gas emissions and characterisation of it as a likely significant beneficial effect at local level.

3.5.17. EN-1 sections 4.3 and section 5.3 paragraphs 5.3.1 to 5.3.12 deal with greenhouse gas emissions. Paragraph 5.3.4 sets out that all proposals for energy infrastructure projects should include a greenhouse gas emissions assessment as part of their ES (See Section 4.3) and goes on to describe the specific elements of such an assessment, including measurement of embodied greenhouse gas emissions impact from the construction stage.

3.5.18. Under paragraph 5.3.5 on mitigation, it says that greenhouse gas emissions at every stage of the proposed development should be minimised as far as possible for the type of technology including at paragraph 5.3.7 woodland creation and hedgerow creation and restoration.

3.5.19. EN-3 has nothing further to add with regard to greenhouse gas emissions with regard to photovoltaic generation.

3.5.20. Comparing the applicant's approach, summarised at 3.5.5 to 3.5.8, with the specific policy expectations set out above, I find that the proposed development is generally consistent apart from the omission of an embodied carbon calculation. In the policy context of the proposed development, for example the absence of greenhouse gas emissions from the photovoltaic generation section in EN-3, I conclude that the applicant's assessment is proportionate.

3.5.21. In summary, on the matter of harm and benefit, during construction and operation of the proposed development including cumulative effects, I conclude that the applicant's assessment as summarised in Tables 3.5.1 and 3.5.2 above is reliable and that significant beneficial effects would be likely. On the matter of consistency

with policies EN-1 and EN-3, I conclude that the proposed development is in accordance with these. In overall conclusion I therefore assign great weight to the issue for the making of the Order.

3.6. HEALTH AND SAFETY

Introduction

3.6.1. This section considers the impact of the proposed development on public health, the safety of the battery energy storage system (BESS), and Burn Gliding Club aviation safety.

The Application

Public health

3.6.2. The applicant sets out its assessment of public health in the technical chapters of its ES as appropriate and its ES Appendix 2.6 - Population and Human Health Technical Note [APP-118].

3.6.3. The applicant explains that the technical note is in response to the comments provided by NYC during the statutory consultation period for the Preliminary Environmental Impact Report. NYC requested that further information regarding the potential effects to human health of the proposed development.

3.6.4. The applicant describes the baseline conditions, identifies sensitive receptor groups and summarises the health effects of the proposed development.

3.6.5. With reference to IEMA guidance 'Effective Scoping of Human Health in Environmental Impact Assessment' the applicant establishes whether the determinant is relevant if it is, whether it is already considered in the ES within the corresponding technical chapter, or is included in the technical note.

3.6.6. In its conclusion the applicant identifies no significant adverse effects during the construction, operation or decommissioning of the proposed development in relation to population and human health.

Battery energy storage system safety

3.6.7. The applicant sets out its approach to safety in relation to the battery energy storage system in its ES Appendix 3.1 - BESS Safety Management Plan [APP-119].

3.6.8. This document outlines the safety management system in relation to the battery energy storage system and how risks, including fire would be managed. The applicant explains that there would be alignment with prevailing industry guidance, both national and globally in the design and operation of the battery energy storage system.

3.6.9. The applicant summarises that at this early stage of the design, the foreseeable hazards associated with the use of Lithium-Ion storage systems had been identified and these would be managed as the design proceeds.

3.6.10. The applicant details the recommendations of the National Fire Chiefs Council and describes how these would be met by the battery energy storage system. These include that the distance from the units to occupied buildings & site boundaries

should be at least 25 metres and that separation of units should be at least 6 metres and areas within 10 metres should be maintained free of combustible vegetation.

3.6.11. The applicant explains that the safety management plan had been informed by discussions with North Yorkshire Fire and Rescue Service and that this would be recoded in a separate “Fire Liaison Framework document”.

3.6.12. The applicant concludes that successful implementation of the BESS Safety Management Plan would provide the necessary case and supporting evidence to claim that the residual safety risk had been reduced to the level that was as low as reasonably practicable.

3.6.13. A battery safety management plan would be secured in the dDCO [REP9-003] as described in section 3.1.

Burn Gliding Club aviation safety

3.6.14. An assessment of possible effects of glint and glare from the proposed development is reported by the applicant in its ES Appendix 2.5 - Solar Photovoltaic Glint and Glare Study [APP-117].

3.6.15. The applicant considers that UK guidelines produced by the Civil Aviation Authority with respect to solar developments and aviation activity are relatively high-level and do not prescribe a formal methodology. Hence the applicant uses more general existing planning guidelines and the available studies in the process of defining its own glint and glare assessment guidance and methodology.

3.6.16. The applicant reports that the Burn Airfield is an unlicensed aerodrome operated by Burn Gliding Club, primarily used for gliding operations. The applicant states that it would be standard practice to determine whether a solar reflection can be experienced by personnel within an air traffic control tower, although no such tower is present at Burn airfield.

3.6.17. The applicant assesses whether a solar reflection can be experienced on the approach paths for the associated runways as this is considered to be the most critical stage of the flight. The Burn Airfield has three operational runways with two associated approach paths, one for each bearing.

3.6.18. With regard to Burn Airfield the applicant concludes that solar reflections with potential for temporary after-image are predicted towards runways, 01, 07, 15, 19 and 33. However, following further assessment of the predicted reflections in an operational context, it concludes that the glare is operationally accommodatable.

3.6.19. With regard to runway 25 at Burn Airfield the applicant predicts that solar reflections from the proposed development with potential for temporary after-image are towards runway 25 approach. Following further assessment of the predicted reflections in an operational context, the impacts are considered significant so mitigation would be required. Potential mitigation for the proposed development could include fixing the single axis tracker system at a resting angle that would avoid significant effects at the times at which glare for the runway 25 approach is predicted.

3.6.20. The applicant concludes that the results of its assessment should be made available to the safeguarding team at Burn Airfield to discuss their position towards the proposed development.

The Examination

Public health

Local planning authorities, other statutory consultees and parish councils

3.6.21. The UK Health Security Agency stated [RR-345] that following its review of the submitted documentation it was "satisfied that the proposed development should not result in any significant adverse impact on public health".

3.6.22. In its LIR [REP2-034] NYC raised public health issues in the context of the NYC demographic profile, including that:

- the application needed to appropriately consider the potential impact the loss of high-quality landscape can have upon the population's obesity levels
- the impacts, independently or inn-combination, upon population and human health have not been considered adequately in the application
- the impact upon the aging population is likely to be greater than the rest of the population and should have been appropriately assessed
- it is entirely reasonable and would have been possible for the applicant to have undertaken a health impact assessment prior to progressing to this stage following the IEMA 2022 guidance, rather than relying on disparate discussion of health issues across the EIA Report

3.6.23. Overall, NYC concluded that despite the comments it has made, the application still did not appropriately consider and address public health issues. NYC considered that the applicant should complete an appropriate Health Impact Assessment that openly considered the impacts on the proposed development upon the community where it would take place and embed appropriate mitigation within the design. NYC considered that where mitigation was not possible the applicant should propose and implement alternative measures.

3.6.24. The applicant's response [REP3-010] stated that a standalone chapter on human health was scoped out of the ES as explained in its scoping decision [APP-112] on the basis that no likely significant effects on human health in respect of land contamination and air quality were anticipated. The applicant went on to say that the design would minimise any impacts on human health and other chapters would address human health as appropriate, for example noise and vibration. The applicant stated that this was agreed to be a proportionate approach by the UK Health Security Agency in their scoping response and human health was not identified as a topic likely to result in significant effects in NYC's scoping response.

3.6.25. In summary, and in response to NYC's overall conclusion on adequacy of the assessment, the applicant concluded that a robust, proportionate assessment of the likely significant effects of the proposed development on human health is included in the ES Appendix 2.6 - Population and Human Health Technical Note [APP-118].

3.6.26. NYC remained concerned [REP4-051] that public health has not been adequately scoped into the assessment. Its key concerns related to:

- assessment of vulnerable populations
- cumulative impacts and assessment of cumulative 'minor impacts'
- a lack of baseline data, specifically with regard to mental health and wellbeing
- absence of consideration of the impacts upon the population in relation to both mental and physical health and wellbeing

- the 100% leakage rate as it relates to the external workers being brought to site
- the additional demand on accommodation and services

3.6.27. In the applicant's final SoCG with NYC [REP8-016] these public health issues remained unresolved. NYC considered that as the ES was not accompanied by an appropriate assessment of the potential and likely impact of the proposed development on the population the applicant could not accurately conclude that it would not cause any likely significant effects.

Communities, individuals, businesses and ExA questions

3.6.28. Local health concerns were raised in a number of relevant representations made as recorded in the applicant's response to them [REP1-004] in relation to specific impacts such as noise and as a general concern.

3.6.29. Concerns raised included insufficient research on the long-term health impacts of living near a large solar farm, worries about risks to children from machinery and electrical charges, the presence of solar panels and batteries may lead to long-term health impacts on families, general unhappiness and stress in the community regarding the plans, a decline in mental health due to the loss of natural surroundings.

3.6.30. The applicant's response [REP1-004] made reference to its ES Appendix 2.6 - Population and Human Health Technical Note [APP-118] and technical assessments as relevant.

3.6.31. In the written summaries of oral submissions made at the hearings held on the week commencing 10 March 2025 [REP5-025] Pamela Joy Spreckley on behalf of HALT included "The World Health Organisation recommends that Solar Farms should be a minimum of 2 miles from residential properties."

3.6.32. I asked interested parties to comment on this statement at ExQ3.

3.6.33. In its response [REP8-020] the applicant stated that they did not recognise the recommendation and did not expect it to hold any weight in the examination.

3.6.34. In her response [REP8-027] Pamela Joy Spreckley cited What Is a Safe Distance to Live From a Solar Farm - Irish Solar as saying "according to the World Health Organization (WHO), despite extensive research, there's no evidence that low-level electromagnetic field exposure from facilities like solar farms harms human health. Nevertheless, for those who may still have concerns, authorities recommend maintaining a distance of at least 2 kilometres, roughly 1.2 miles, from a solar field".

Battery energy storage system safety

Local planning authorities, other statutory consultees and parish councils

3.6.35. Hirst Courtney and West Bank Parish Council raised concerns about health and safety risks posed by the battery energy storage system in its relevant representation [RR-142].

3.6.36. The applicant's response [REP1-004] made reference to its ES Appendix 3.1 - BESS Safety Management Plan [APP-119] saying that this has been produced to define the proposed safety strategy, requirements, and processes necessary to meet agreed safety objectives and to set a level of safety performance to be

measured against. It also provides the basis for the safety management processes and procedures required to satisfy the identified safety requirements for the battery energy storage system. It also referred to consultation and communication with North Yorkshire Fire and Rescue Service which had informed the outline battery energy storage system safety management plan.

3.6.37. Hirst Courtney and West Bank Parish Council's issues remained unresolved at the close of the examination, as shown by the applicant in the final unsigned draft SoCG [REP2-019].

Communities, individuals, businesses and ExA questions

3.6.38. About a third of the 351 relevant representations as recorded in the applicant's response to them [REP1-004] raised concerns over site safety including the battery energy storage system.

3.6.39. In summary, these said that housing 100 units near residential areas was seen as presenting a significant fire hazard with potential toxic emissions. There were worries about the impact of fires or industrial accidents on local residents and the environment and the danger of explosion or fire from battery storage posing potential health threats.

3.6.40. The applicant's response [REP1-004] made reference to its ES Appendix 3.1 - BESS Safety Management Plan [APP-119] and repeated its response to Hirst Courtney and West Bank Parish Council.

3.6.41. Further representations were made on this issue, including those of David Wilkinson for example [REP2-044], and HALT, for example [REP2-047].

3.6.42. These raised concerns, including that inclusion of battery energy storage systems in the proposed solar farm presents significant safety and environmental risks including that:

- lithium-ion batteries are prone to thermal runaway, leading to fires that are difficult to extinguish and may release toxic chemicals
- in the event of a fire, standard firefighting methods risk contaminating the soil and local water sources with hazardous substances from the battery chemicals and firefighting materials
- the application does not adequately address how such incidents would be managed without causing long-term damage to the ecological environment and the surrounding agricultural land
- this is a critical omission that raises serious questions about the site's safety and the preparedness of emergency services to handle such events

3.6.43. Battery energy storage system safety was included on the agenda of ISH2 [EV8-001]

3.6.44. I asked the applicant about guidance in relation to the location of battery energy storage systems and the minimum 25 metre separation [APP-119] to a building. The applicant confirmed that the distance from the battery energy storage system to the nearest house was more than 160 metres in its Written Summary of the Applicant's Oral Submissions – Issue Specific Hearing 2 [REP5-012].

3.6.45. I asked about safety regulation with regard to the battery energy storage system and the applicant responded [REP5-012] with reference to various safety related

legislation which meant that the legal duties "translated to conducting thorough risk assessments that address the specific hazards of battery technology (particularly thermal runaway risks), selecting appropriate battery chemistry with safer thermal characteristics where possible, ensuring all components meet relevant international safety standards such as IEC 62933-5-2:2020, eliminating foreseeable risks and planning for the safe integration of system elements with proper separation and thermal barriers including incorporating appropriate safety measures including thermal barriers, ventilation systems, and fire suppression equipment."

3.6.46. The applicant explained [REP5-012] that the North Yorkshire Fire and Rescue Service had not engaged with the outline Battery Fire Safety management Plan, save for directing the applicant to the National Fire Chiefs Council guidance and grid-scale best practice guidance. The applicant noted that battery energy storage system had been designed in accordance with NFCC guidance.

3.6.47. Pamela Joy Spreckley in her Response to: Applicants Written Summary of the Applicant's Oral Submissions - ISH 2 [REP6-042] questioned some of the applicant's comparisons with battery energy storage system fires elsewhere as the applicant's facility would be much larger, over ten times in terms of energy storage capacity. She considered that the investigation of that fire, that occurred in Liverpool in 2020, supported the view that the explosion potential and the lack of engineering standards to prevent thermal runaway may put control of battery fires beyond the knowledge, experience and capabilities of local fire and rescue services and new approaches to fire suppression and firefighter safety are needed.

3.6.48. The applicant in its response to deadline 6 submissions [REP7-020] said that it had no further comments on Pamela Joy Spreckley's representation [REP6-042].

3.6.49. The Health and Safety Executive made a representation to the Oaklands Farm Solar Project PINS ref EN010122 referred to in my schedule of proposed changes [PD-006] to the applicant's dDCO. In this the Health and Safety Executive said that there is no statutory requirement to consult Health and Safety Executive in relation to a Battery Safety Management Plan and Health and Safety Executive does not provide comment on them. It went on to say that Health and Safety Executive is a consultation body, for the purposes of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 and section 42 of the PA2008, providing public safety advice in respect of proposed NSIPs.

Burn Gliding Club aviation safety

Local planning authorities, other statutory consultees and parish councils

3.6.50. The UK Civil Aviation Authority's Airfield Advisory Team submitted a relevant representation [RR-072]. It said that the submission had been produced in response to a request by Burn Gliding Club. It concluded that Burn Gliding Club would likely be impacted by glint and glare caused by the proposed development, and it should be consulted with regard to how the impact could be mitigated. It also noted that development in the vicinity of an aerodrome can reduce emergency landing site options to pilots in the event of engine failure after take-off and how this would affect the likelihood of survival.

3.6.51. In its response [REP1-004] the applicant referred to its ES Appendix 2.5 - Solar Photovoltaic Glint and Glare Study [APP-117] and stated that it was undertaking additional assessment work in connection with the activities of Burn Gliding Club for submission later during the examination. The applicant said that glider launch failure

has been considered rather than engine failure after take-off due to the nature of the aircraft departing from the airfield and this is covered in appended technical report [REP4-045].

Communities, individuals, businesses and ExA questions

3.6.52. The British Gliding Association submitted a relevant representation [RR-039] in support of Burn Gliding Club. It concluded by saying its three main concerns were:

- insufficient information to establish the level of risk in relation to engine failure after take-off
- insufficient information to establish the level of risk in relation to glint and glare
- potential loss of utility should any risks related to these not be mitigated

3.6.53. It further concluded that "unless the applicants can clearly demonstrate that the first two issues can be satisfactorily addressed, then the application should be refused on the basis that the proposal has failed to demonstrate that the flight safety of aircraft operating from the airfield will be unaffected."

3.6.54. In its response [REP1-004] the applicant referred to additional assessment work in connection with the activities of Burn Gliding Club for submission later during the examination. It also referenced a technical report [REP4-045] that, with regard to engine failure after take-off, based on comparative approach to the existing conditions more than two thirds (68%) of areas within the defined areas would remain available for emergency landing in the event of glider launch failure.

3.6.55. The applicant stated [REP1-004] that glint and glare concerns would be addressed with further updates to the original Solar Photovoltaic Glint and Glare Study [APP-117] to include potential effects towards the visual circuits. It stated that mitigation can be implemented where it is concluded that there was a significant effect upon aviation activity as a result of glint and glare. It concluded that no significant impacts are predicted upon emergency landing procedures. Overall. the applicant did not agree that the level of risk would be unacceptable.

3.6.56. Burn Gliding Club submitted a relevant representation [RR-043]. It noted that it had been contacted by the applicant in December 2023, it had set out its concerns to the applicant and had received a report in February 2024. This had been followed by further discussions, but aviation safety concerns remained with regard to

- the impacts of glint and glare
- thermal updraughts
- engine failure after take-off

3.6.57. In its response [REP1-004] the applicant referred to additional assessment work it was undertaking with respect to glint and glare. It again made reference to the technical report [REP4-045] regarding glider launch failure which included details of land available for emergency landing relevant to each runway.

3.6.58. With regard to thermal updraughts the applicant considered [REP1-004] that any resultant thermal updraughts would not be significant because solar panels are designed to absorb as much energy from the sun. The applicant considered that any resultant updraught from the proposed development would be comparable to updraught already experienced by pilots from natural or manmade sources. It is therefore considered that the airbrakes, a main mechanism used by gliders to

counteract opposing forces during gliding, could also be used to counteract the effects of thermal updraught.

3.6.59. The applicant added a new requirement to the dDCO to secure a glint and glare mitigation strategy once the detailed design was complete [REP5-004]. This would be submitted to NYC for approval. It would be submitted to Burn Gliding Club at the same time.

3.6.60. In the Burn Gliding Club's written summaries of oral submissions made at the hearings held on the week commencing 10 March 2025 [REP5-024] it stated that it wished to see several 100m wide swathes left free of solar panels to provide emergency landing areas.

3.6.61. The applicant submitted a final SoCG with Burn Gliding Club [REP7-015]. Whilst some matters of principle were agreed the detail around the involvement of the club in the glint and glare mitigation strategy, the further details provided by the applicant with regard to thermal updraughts and matters regarding engine failure after take-off were not agreed.

Findings and conclusions

3.6.62. I report my findings and conclusions under the headings of public health, battery energy storage system safety, Burn Gliding Club aviation safety.

Public health

3.6.63. I find that the evidence used to support relevant representations from communities, individuals and businesses is insufficient to persuade me that the application material provided by the applicant may be unreliable. I therefore find the applicant's response to their relevant representations [REP1-004] satisfactory.

3.6.64. With regard to NYC's outstanding issues, I find the applicant's approach to be proportionate in the context of the scoping opinions and the submission of the UK Health Security Agency. I could find little in the submissions of NYC that indicated that the applicant's overall conclusion of no significant health effect on public health was unreliable.

3.6.65. With regard to the representation of HALT [REP5-025] and the further representation [REP8-027] I find no evidence or reference to evidence to support the assertions made around minimum distances attributed to the WHO. In addition, no previous decisions with regard to solar farm development made by the Secretary of State have been used to support assertions on such matters by any party involved in the examination. As a result, I give these submissions little weight.

3.6.66. EN-1 covers health in section 4.4. Under decision making in paragraph 4.4.7 it says that those aspects of energy infrastructure which are most likely to have a significantly detrimental impact on health are subject to separate regulation so that it is unlikely that health concerns will either by themselves constitute a reason to refuse consent or require specific mitigation under the PA2008.

3.6.67. I conclude that with regard to public health the proposed development is consistent with this policy position and assign neutral weight to the issue with regard to the making of the Order.

Battery energy storage system safety

3.6.68. I am not concerned that the SoCG [PDA-006] with North Yorkshire Fire and Rescue Service has not been finalised as the proposed development has yet to secure planning consent and matters of detailed design and operation are yet to be proposed and approved.

3.6.69. EN-1 section 4.12 deals with "Pollution Control and Other Environmental Regulatory Regimes." Paragraph 4.12.10, under decision making, says both that

"The Secretary of State should work on the assumption that the relevant pollution control regime….will be properly applied and enforced by the relevant regulator" and

"The Secretary of State should act to complement but not seek to duplicate them."

3.6.70. EN-1 section 4.13 deals with safety in paragraphs 4.13.1 to 4.13.8. and section 4.14 deals with hazardous substances in 4.14.1 to 4.14.7 including the role of the Health and Safety Executive in those regimes.

3.6.71. Paragraph 4.13.2 says that some technologies, for example major accident hazard pipelines, will be regulated by specific health and safety legislation and that the application of these regulations is set out in the technology specific NPSs where relevant.

3.6.72. Paragraph 4.13.3 explains that some energy infrastructure may come within the scope Control of Major Accident Hazards (COMAH) Regulations 2015 where the Health and Safety Executive and the Environment Agency act jointly as the competent authority. These regulations aim to prevent major accidents involving dangerous substances and limit the consequences to people and the environment of any that do occur.

3.6.73. Paragraph 4.14.1 says that establishments wishing to hold stocks of certain hazardous substances above a threshold need 'Hazardous Substances Consent'.

3.6.74. I have nothing before me to indicate that the proposed development falls within the scope of the specific safety hazard regimes referred to in EN-1 and I may reasonably assume that general safety regulatory regimes [REP5-012] are effective as they are within the scope of pollution control and other regulatory regimes referred to in EN-1 at paragraph 4.12.10.

3.6.75. I conclude that with regard to battery energy storage system safety the proposed development is in accord with EN-1 paragraph 4.12.10 and assign neutral weight to the issue with regard to the making of the Order.

Burn Gliding Club aviation safety

3.6.76. I find that the applicant's response [REP1-004] to matters relating to Burn Gliding Club aviation safety raised by the UK Civil Aviation Authority's Airfield Advisory Team satisfactory, as it provided further technical detail and an assurance that further work would be carried out and submitted during the examination. The UK Civil Aviation Authority made no further representations during the examination and declined my invitation to attend ISH2 [EV8-001] where the matter was discussed.

3.6.77. I find that the British Gliding Association, the Burn Gliding Club and the applicant agree that there would be some interaction between the operation of the club and the operation of the proposed development. They do not though agree on the

significance of that interaction or what could or should be done to address it. This is reflected in the final SoCG with the club [REP7-015].

3.6.78. I find that the applicant's response on glint and glare reasonable through the addition of a new requirement on a mitigation strategy to be approved by NYC [REP5-004]. I find that Burn Gliding Club would have the opportunity to comment on this before it is approved by NYC.

3.6.79. On the matter of engine failure after take-off I find that none of the parties provided any form of quantified risk assessment with and without the proposed development and how that would change, as noted in the UK Civil Aviation Authority's Airfield Advisory Team's relevant representation. I conclude that it would be unreasonable to require the applicant to reduce its solar panel coverage in the absence of such evidence.

3.6.80. On the matter of thermal updraughts, I am satisfied that the applicant's arguments reasonable and that the effects, should they occur at all, could be responded to by the glider pilots using the controls available to them.

3.6.81. With regard to policy, the interaction of energy infrastructure and aviation is included in in section 5.5 of EN-1.

3.6.82. Paragraph 5.5.14 sets out that the Civil Aviation Authority guidance recommends that the operators of aerodromes which are not officially safeguarded, as is the case for Burn airfield, should take steps to protect their aerodrome from the possible effects of development by establishing an agreed consultation procedure between themselves and the Local Planning Authorities.

3.6.83. Paragraph 5.5.16 says that the Civil Aviation Authority makes it clear that the responsibility for the safeguarding of general aviation aerodromes lies with the aerodrome operator.

3.6.84. In terms of assessment the relevant parts of paragraphs 5.5.37 to 5.5.42 include that

- an assessment of potential effects should be set out in the ES
- the applicant should consult the Civil Aviation Authority and any aerodrome – licensed or otherwise – likely to be affected by the proposed development in preparing an assessment of the proposal on aviation interests
- any assessment of effects on aviation, should include potential impacts of the project upon the operation of aerodrome operational procedures
- any assessment should consider the cumulative impact of the project with other relevant projects in relation to aviation

3.6.85. In summary paragraph 5.5.60 on decision making says that provided that the Secretary of State is satisfied that the impacts of the proposed energy development does not present risks to physical safety, and where it does, provided that the Secretary of State is satisfied that appropriate mitigation can be achieved, or appropriate requirements can be attached to any Development Consent Order to secure those mitigations, consent may be granted.

3.6.86. EN-3 at paragraph 2.10.159 says that whilst there is some evidence that glint and glare from solar farms can be experienced by pilots in certain conditions, there is no evidence that glint and glare from solar farms results in significant impairment on aircraft safety. Therefore, unless a significant impairment can be demonstrated, the

Secretary of State is unlikely to give any more than a little weight to claims of aviation interference because of glint and glare from solar farms.

3.6.87. I conclude that with regard to Burn Gliding Club aviation safety the proposed development is in accord with the relevant parts of EN-1 as outlined above. With regard to EN-3 I conclude there would likely be an adverse but not significantly adverse impact on the operation of Burn Gliding Club.

3.6.88. In summary, on the matter of harm and benefit, during construction and operation of the proposed development including cumulative effects, I conclude that across the areas of public health, the safety of the battery energy storage system safety and aviation safety in relation to Burn Gliding Club the only likely adverse impact is in relation to the gliding club. On the matter of consistency with policies EN-1 and EN-3, I conclude that the proposed development is in accordance with these. In overall conclusion I therefore assign a little weight to the issue against the making of the Order.

3.7. HERITAGE

Introduction

3.7.1. This section considers the impact of the proposed development on cultural heritage.

The Application

3.7.2. The applicant sets out its assessment of the impact of the proposed development on heritage assets including cumulative effects. The applicant also explains its proposals for the avoidance, reduction or mitigation of any likely adverse effects. For the phases of the proposed development this information is shown in the following documents:

- ES Chapter 6 - Cultural Heritage [APP-026]
- ES Figure 6.1 - Heritage Assets Considered within the ES [APP-063]
- ES Appendix 6.1 - Cultural Heritage Technical Appendix [APP-125]
- ES Appendix 6.2 - Archaeological Mitigation Strategy [APP-126]

3.7.3. The applicant identifies within its 3km study area for the proposed development the following heritage assets for initial assessment:

- Four scheduled monuments
- Five grade I listed buildings
- One grade II* listed building
- 65 grade II listed buildings
- Two conservation areas

3.7.4. The applicant identifies no designated heritage assets within the site of the proposed development. As a result of a sieving process the applicant further assesses the impact of the proposed development on three of the designated heritage assets, primarily because these are closest to Order limits:

- Camblesforth Hall grade I
- Carlton Towers grade I
- Manor Farmhouse grade II

3.7.5. With regard to Camblesforth Hall the applicant considers that the proposed development has the potential to cause some harm to the significance of the asset by introducing modern infrastructure into views from the upper storeys of the principal façade [APP-125].

3.7.6. With regard to Carlton Towers the applicant considers that the proposed development has the potential to cause some harm to the significance of the asset by introducing modern infrastructure into views from the upper floors of the clock tower where available [APP-125].

3.7.7. With regard to Manor Farmhouse the applicant considers that the proposed development would not cause harm to the significance of this asset, taking into factors including its orientation, relatively low height, and screening from other buildings [APP-125].

3.7.8. In its further assessment of Camblesforth Hall for the purposes of environmental impact assessment [APP-026] the applicant notes that the cooling towers of Drax are prominent in views from it and concludes that the effect on the heritage significance of the asset to be neutral. In its further assessment of Carlton Towers [APP-026] the applicant considers that certain views from the clock tower would be reduced but given the wide scope of views available within the panorama this would result in a minor adverse environmental effect.

3.7.9. With regards to impacts on archaeology within the Order limits the applicant identifies an archaeological mitigation strategy to mitigate any residual adverse effects. This is secured through requirement 14 of the final dDCO [REP9-003] based on the Outline archaeological mitigation strategy, a certified document listed under schedule 11.

3.7.10. The applicant takes into account the approval process for the detailed design of the proposed development secured by requirement 3 of the dDCO [REP9-003], a CEMP, a DEMP and a LEMP as detailed at paragraph 3.1.6 of this recommendation report.

3.7.11. The applicant describes in its Cultural Heritage Technical Appendix [APP-125] the likely residual harm in terms of the completed proposed development. The applicant considers that there would not be the potential for cumulative impacts as no designated assets are impacted by more than one development, including the proposed development.

Table 3.7.1 Proposed development

Designated Asset	**Residual harm**	**Detail**
Camblesforth Hall Grade I Listed Building	Less than substantial	Effect on the setting
Carlton Towers Grade I Listed Building	Less than substantial	Effect on the setting

Manor Farmhouse – Grade II Listed Building	None	Effect on the setting

The Examination

Local planning authorities, other statutory consultees and parish councils

3.7.13. Historic England in its relevant representation [RR-143] registered an interest in the proposed development because of the highly graded listed buildings nearby to the Order limits. It considered that the settings of Camblesforth Hall and Carlton Towers could be harmed by the proposed development.

3.7.14. In its written representation [REP2-028] Historic England noted that the applicant's assessment was split across the ES [APP-026] and the ES technical appendix [APP-125] rather than a single document as recommended in its pre-application advice. It did though accept the methodology and that the conclusions drawn from it are acceptable with regard to Carlton Towers and Camblesforth Hall.

3.7.15. The applicant's final SoCG with Historic England [REP7-014] shows all matters were agreed. In this statement Historic England confirmed its view that there was a low level of less than substantial harm to both Carlton Towers and Camblesforth Hall. Historic England considered that given such a low degree of harm this would likely be outweighed by the clear public benefit of the proposed development.

3.7.16. In its LIR [REP2-034] NYC raised concerns that construction of a solar farm may have a negative impact on sub-surface archaeological remains through direct impact from piling, cable trenching, construction works and foundations for sub-stations etc, along with access roads, security fencing and other related infrastructure.

3.7.17. In its LIR [REP2-034] NYC concluded that the archaeological potential of the site has been appropriately assessed and the mitigation strategy was suitable. It accepted the applicant's assessment of built heritage assets.

3.7.18. Heritage matters were progressed between the applicant and NYC to the extent that in the draft SoCG [REP5-010] all heritage matters were agreed.

3.7.19. The applicant's final SoCG with NYC [REP8-016] confirmed NYC's acceptance of the applicant's assessment of impact on built heritage and archaeology and, for the latter, the mitigation measures proposed and secured as set out at paragraph 3.1.6 of this recommendation report.

Communities, individuals, businesses and ExA questions

3.7.20. Heritage concerns were raised in several relevant representations as recorded in the applicant's response to them [REP1-004]. These included Camblesforth Hall and Grange which operates as a wedding venue [RR-048].

3.7.21. The applicant's response to representations from communities, individuals and businesses [REP1-004] referred to the ES documents set out above.

3.7.22. Whilst I did not ask any questions on the subject during the examination, given the degree of agreement reached relatively early during the examination, I visited the three designated heritage assets, Camblesforth Hall, Carlton Towers and Manor Farmhouse on 12 May 2025 [EV9-002]. This was done in order to gain a better understanding of the evidence presented to me and ensure the decision maker's statutory duties would be properly discharged.

Findings and conclusions

3.7.23. I am satisfied that the issues raised by representations from communities, individuals and businesses during the examination are addressed by the SoCGs between the applicant and Historic England and the applicant and NYC. I therefore find the applicant's response to their relevant representations [REP1-004] to be satisfactory.

3.7.24. I take into account the final SoCGs with all matters agreed with Historic England and with all heritage matters agreed with NYC. With regard to Historic England's comment on the splitting of the assessment [REP2-028] I find that the relationship between these documents could have been made clearer by the applicant to distinguish between environmental impact assessment and heritage impact assessment and to clarify the associated terminology.

3.7.25. Dealing in turn with the heritage impact assessment of the three designated heritage assets:

Camblesforth Hall

3.7.26. The south eastern corner of the proposed development would be located about 400 metres to the south west of Camblesforth Hall. Camblesforth Hall is a Grade I Listed Building of highest significance in national policy terms dating from the 1700s. The building has recently been sympathetically restored and now operates as a venue for weddings and other events. The building itself is of two storeys with attics. The site of the proposed development forms part of the wider agricultural setting of the listed building and contributes to its significance.

3.7.27. The proposed development would change the setting of the listed building by changing the appearance of the land to the west and I find that there would be the potential for glimpsed views of the proposed development from the upper storeys of the building. Whilst the proposed development would not affect the historic fabric of the listed building, the setting positively contributes to its significance and by changing it from arable land to a solar farm would cause less than substantial harm.

Carlton Towers

3.7.28. The southern part of proposed development would be located about 1400 metres to the north of Carlton Towers. Carlton Towers is a Grade I Listed Building of highest significance in national policy terms, the earliest parts dating from the 1600s, with major modifications made in the 1900s. The property is still in use today as a home, and a wedding and leisure venue. The building includes a clock tower from which there would be panoramic views of the surrounding area. The site of the proposed development forms part of the wider agricultural setting of the listed building and contributes to its significance.

3.7.29. The proposed development would change the setting of the listed building by changing the appearance of the land to the north and north west and I find that

there would be the potential for views of the proposed development from the clock tower. Whilst the proposed development would not affect the historic fabric of the listed building, the setting positively contributes to its significance and by changing it from arable land to a solar farm would cause less than substantial harm.

Manor Farmhouse

3.7.30. The south western part of proposed development would be located about 800 metres to the east of Manor Farmhouse. Manor Farmhouse is a Grade II Listed Building of less than highest significance in national policy terms, the earliest parts dating from the 1700s, with alterations made since. The property is still in use today as a farmhouse within a working farmyard and the building has two storeys. There are substantial agricultural buildings to the north of the farmhouse which itself faces south.

3.7.31. Whilst the proposed development would have the potential to change the setting of the listed building by changing the appearance of the land to the north and east, I find both that the setting contributes little to the significance of the asset and that it would be unlikely that there would be any glimpsed views of the proposed development from the farmhouse accounting for intervening buildings, vegetation and the orientation of the building itself. In the case of Manor Farmhouse, I therefore find that negligible harm would be caused by the proposed development.

3.7.32. Under s66 of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the 1990 Act) the Secretary of State has a duty, when considering whether to grant planning permission for development which affects a listed building or its setting, to have special regard to the desirability of preserving the building or its setting.

3.7.33. Under paragraph 215 of the National Policy Planning Framework 2024 (NPPF) where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal.

3.7.34. In terms of energy national policy statements, heritage matters are dealt with in EN-1 section 5.9 paragraphs 5.9.1 to 5.9.36 and considered in paragraphs 2.3.8, 2.10.107 to 2.10.119, and paragraphs 2.10.137, 2.10.138, 2.10.151 and 2.10.160 of EN-3.

3.7.35. Under assessment at paragraph 5.9.10 of EN-1 it says that the level of detail should be proportionate to the importance of the heritage assets and no more than is sufficient to understand the potential impact of the proposed development on their significance. As a minimum, the applicant should have consulted the relevant Historic Environment Record or Historic England and assessed the heritage assets themselves using expertise where necessary according to the proposed development's impact.

3.7.36. In terms of decision making 5.9.23 says that the Secretary of State must comply with the requirements on listed buildings, conservation areas and scheduled monuments, set out in Regulation 3 of the Infrastructure Planning (Decisions) Regulations 2010 and paragraph 5.9.32 says 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 proposed development.

3.7.37. EN-3 paragraph 2.10.109 in relation to photovoltaic generation says that below ground impacts, although generally limited, may include direct impacts on archaeological deposits through ground disturbance associated with trenching, cabling, foundations, fencing, temporary haul routes etc.

3.7.38. Paragraphs 2.10.18 explains that the significance of a heritage asset derives from both its physical presence and its setting, so careful consideration should be given to the impact of large-scale solar farms which may cause substantial harm to the significance of the asset.

3.7.39. Paragraph 2.10.119 goes on to say that applicants may need to include visualisations to demonstrate the effects of a proposed solar farm on the setting of heritage assets.

3.7.40. Paragraph 2.10.160 explains that solar farms are generally consented on the basis that they will be time-limited in operation, typically up to 40 years as stated at paragraph 2.10.149. Hence 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 should be accounted for.

3.7.41. I am satisfied that there would be no direct or physical harm to the designated heritage assets Camblesforth Hall (Grade I), Carlton Towers (Grade I) and Manor Farmhouse (Grade II) as they are all sufficiently outside of Order limits, hence they would all be preserved for the purposes of the 1990 Act.

3.7.42. Comparing the applicant's submissions with the policy provisions set out above in terms of secure mitigation I conclude that the proposed development accords with them, including the measures secured in the rDCO with regard to design approval and archaeology as detailed at paragraph 3.1.6 of this recommendation report.

3.7.43. Taking this into account, with regard to Manor Farmhouse, I am satisfied that there is no effect on the setting for the reasons explained above at paragraph 3.7.29. This agrees with the applicant's assessment for this asset as set out in Table 3.7.1.

3.7.44. With regard to Camblesforth Hall and Carlton Towers, I find that despite mitigation there would likely be some adverse effect on the settings of both and as setting contributes to their significance this would amount to less than substantial harm. This finding agrees with the position of Historic England and the applicant as set out in Table 3.7.1.

3.7.45. In accordance with EN-1 paragraph 5.9.32, and NPPF paragraph 215, as the proposed development would lead to less than substantial harm to the significance of these designated heritage assets, I need to weigh this harm against the public benefits of the proposed development in order to conclude on the matter. I therefore take this forward to Chapter 5 for further consideration.

3.8. LANDSCAPE AND VISUAL

Introduction

3.8.1. This section considers the landscape and visual impact of the proposed development by considering the effect on the landscape at the site of proposed development and the effect on the landscape character of the surrounding area, and the views experienced from publicly accessible locations and where appropriate, residential receptors.

The Application

3.8.2. The applicant sets out its assessment of the landscape and visual impact of the proposed development including cumulative effects. The applicant sets out its proposals for the avoidance, reduction or mitigation of any likely adverse effects. For all phases of the proposed development this is explained in its ES Chapter 7 - Landscape and Views [APP-027].

3.8.3. Supporting documents include:

- ES Appendix 7.1 - LVIA Methodology [APP-134].
- ES Appendix 7.4: Landscape Effects Table [APP-137]
- ES Appendix 7.8: Visual Effects Table [APP-142]
- ES Appendix 7.9: Outline Landscape and Ecological Management Plan [APP-143]
- Landscape strategy plan [APP-054]
- ES Figure 7.7 - Viewpoint Plan [APP-070]

3.8.4. Supporting documents also include ES Chapter 15 - Cumulative Effects [APP-035] which provide information in relation to which other projects contribute to cumulative landscape and visual effects and ES Figure 15.1 - Cumulative Schemes Plan [APP-109].

3.8.5. The applicant explains [APP-027] that in accordance with the IEMA Guidelines for Landscape and Visual Impact Assessment 3rd edition, its assessment addresses landscape and visual effects as separate issues. Landscape effects relate to both the effect on the physical features of the site of the proposed development, and on the landscape character of the site and surrounding area. Visual effects relate to the experience of views of the proposed development by visual receptors from publicly accessible vantage points in the study area. Where appropriate, the effects of the proposed development on residential receptors have also been assessed.

3.8.6. The applicant reports that in response to comments from NYC during consultation it:

- reviewed and updated its landscape strategy
- reviewed and updated its cumulative assessment
- added Viewpoints 30 and 31
- prepared for locations along the A1041 landscape cross sections to help illustrate the relationship between vehicles travelling along this route and the proposed development.

3.8.7. The applicant details the baseline landscape with reference to land use, landscape designations, national, county and local landscape character assessments and the features of the site of the proposed development. It goes on to identify sensitive receptors, describes visibility and views, and the characteristics of the proposed development.

3.8.8. For example, the applicant summarises that the site of the proposed development comprises an extensive area of arable farmland delineated by fragmented hedgerow and ditches with occasional trees and woodland and sub-divided by country lanes. It has a simple, open and strongly agricultural character with a strong industrial visual influence in the form of the existing Drax power station.

3.8.9. In addition, the applicant notes that the site of the proposed development is not designated in landscape terms, and there are no national designations for

landscape and scenic beauty within the study area. Local landscape designations are present within the wider area, with two Locally Important Landscape Areas to the west of Brayton.

3.8.10. The applicant states that the objectives of its landscape strategy are to:

- minimise the physical impact of the proposed development on the site's landscape features including vegetation, field pattern and wet features
- maximise opportunities to enhance the landscape of the site by reinforcing and reinstating pattern with extensive new planting that is characteristic to the receiving environment, by introduction of new valuable habitats, and by improved management and custodianship of the landscape resource
- visually and physically integrate the proposed development into the landscape as much as possible using a variety of natural features
- retain and where possible enhance the existing use of the site for public access
- reduce the visual impact of the proposed development on visual receptors, including views from residential properties, local roads and public rights of way

3.8.11. The applicant sets out how these objectives would be achieved and assesses the landscape and visual effects during all phases of the proposed development, including any cumulative effects.

3.8.12. With regard to visual effects the applicant explains [APP-027] that in the first year of operation phase of the proposed development would be expected to give rise to significant effects on a number of visual receptors groups. The visual receptors for which significant effects are predicted to occur would be either within or relatively close to Order limits. The most distant receptors outside of Order limits, from which significant effects are predicted would be located on the edge of Camblesforth, approximately 130m away. For the majority of receptors, the predicted effects on visual amenity would gradually reduce as the proposed landscape strategy establishes and matures. The applicant explains that exceptions to this are public rights of way within Order limits, where the screening potential of proposed planting would be limited.

3.8.13. The applicant takes into account the approval process for the detailed design of the proposed development secured by requirement 3 of the dDCO [REP9-003], a CEMP, a DEMP and a LEMP as detailed at paragraph 3.1.6.

3.8.14. The applicant summarises the likely residual effects in terms of the proposed development and cumulative development in terms of the effect on the landscape of the site, landscape character and visual receptors. The worst adverse effects are shown in the following tables.

Table 3.8.1 Proposed development

Phase	Residual effect	Detail
Construction	Moderate negative - not significant	Landscape of the site, landscape character and visual receptors

Operation	Moderate negative - not significant	Landscape of the site and landscape character.
Decommissioning	Moderate negative - not significant	Visual receptors

Table 3.8.2 Cumulative development

Phase	Residual effect	Detail
Construction	Moderate negative - not significant	Landscape character and visual receptors
Operation	Major negative - significant	Landscape character
Decommissioning	Minor negative - not significant	Landscape character and visual receptors

The Examination

Local planning authorities, other statutory consultees and parish councils

3.8.17. In its LIR [REP2-034] NYC raised concerns with regard to the applicant's assessment of the landscape and visual impact of the proposed development including cumulative effects and proposed mitigation.

3.8.18. NYC considered that the progress made to date with the applicant had not overcome the negative and significant cumulative impacts that are likely to arise given the overall size and scale of the proposed development and in combination with other major developments in the area, including NSIPs.

3.8.19. NYC said they welcomed the opportunity to further discuss development of landscape mitigation and local community benefits, to help offset likely significant adverse effects including cumulative effects.

3.8.20. With regard to landscape effects NYC considered that the assessment [APP-027] paragraphs 7.5.46 – 7.5.52 would likely to have understated and over-simplified the impacts, particularly in how this filters to reporting of significance and residual effects.

3.8.21. NYC said that they wished to see further clarity and consistency between assessment of receptors identified within the study area and geographical extents of effects. NYC considered that it was unclear how details are summarised to give and overall judgement and significance. NYC gave examples of there was inconsistency between assessments provided in the text and summarised in the tables or appendices.

3.8.22. With regard to cumulative effects NYC considered that the assessment of the landscape and visual impact of the proposed development does not follow a clear method and process for assessing cumulative landscape and visual effects within a

defined study area. It considered that cumulative visual effects in particular are likely to be understated because the assessment does not consider sequential views from one scheme to the next when travelling within a defined study area. It considered that landscape mitigation at a wider strategic scale and to resolve cumulative effects was insufficiently considered.

3.8.23. NYC considered that the proposed development in combination with other major schemes would likely be transformative to local communities given the proximity of the proposed scheme to settlement and the rapid pace of change due to recent energy-related development in this area.

3.8.24. NYC would wish to see further consideration for mitigating and offsetting cumulative effects such as partnership working and community compensation / offset packages to help offset the significant residual adverse effects identified in the landscape and visual impact assessment, including cumulative effect and was concerned that the applicant's consultation on this had not progressed beyond initial consultation stages.

3.8.25. In addition to management plans under development NYC wished to consideration to be given to develop clear design guidance parameters which can be secured alongside the parameters plan in the DCO.

3.8.26. The applicant's response [REP3-010] to the NYC LIR accepted some drafting errors and the existence of additional guidance. The applicant explained the relationships between various application documents and largely reiterated its position as represented in its application documents set out at 3.8.2 and 3.8.3 in this report.

3.8.27. On the matter of community benefit packages the applicant asserted [REP3-010] that such packages that include financial contributions are not a material consideration when determining planning applications and provided a reference to a judgement on the issue.

3.8.28. In the applicant's final SoCG with NYC [REP8-016] the following matters were not agreed:

- ES methodology
- Predicted impacts
- Design, mitigation and enhancement measures
- Cumulative residual effects

3.8.29. In the final SoCG NYC maintained its LIR [REP2-034] position that moderate negative adverse impacts on landscape character should be regarded as significant and that mitigation and wider landscape strategy to offset the visual harm identified should be provided to those affected communities associated with local environment, landscape and green infrastructure (including mitigation associated with overlapping health and well-being concerns), to help mitigate and offset the significant adverse cumulative effects.

3.8.30. Carlton Parish Council [RR-050] said that the type of panel proposed would not have been seen or tested in the UK before. It stated that larger panels would have a significant impact on the rural landscape as these new panels would sit over 2 metres from the ground, and would be visible when looking south from the A1041, next to residential properties, for a minimum of 15 years.

3.8.31. It went on to say that lesser applications are being dismissed on the grounds that the introduction of panels and other infrastructure, including transformers, inverters and fencing would inevitably introduce a fundamental change to agricultural land the major visual harm that would come with the project.

3.8.32. In its response [REP1-004] the applicant said that the type of solar panels proposed were widely used in the UK and the single axis tracker was also operational across the UK. It said that the height of the solar panels has accounted for into its assessment. It said that potential visibility of the proposed development had been a key consideration in the assessment process and had influenced the proposed landscape which would provide effective mitigation of the within 15 years.

3.8.33. Carlton Parish Council's concerns remained unresolved in the final unsigned SoCG provided by the applicant [REP2-018].

Communities, individuals, businesses and ExA questions

3.8.34. About half of the 351 relevant representations as recorded in the applicant's response to them [REP1-004] raised concerns over landscape and views.

3.8.35. These raised the concern that the proposed development would change the character of the landscape, fearing that the countryside would become industrialised. They considered that the landscape would be spoiled with steel racks, solar panels, and fences. This would detract from its natural appeal and clash with the rural character.

3.8.36. They also raised concerns that it would affect visual amenity for people living in the local villages. For example, it would change the views surrounding Camblesforth village, introducing visual pollution from solar panels and infrastructure, which would alter the area's character.

3.8.37. The relevant representation of Julie Butterworth [RR-179] stated "To put solar panels and battery storage onto farmland turns it into an industrial site. If the Helios

project is allowed, then that is what this area will become. … two other solar farms have already been approved …. If approved 800,000 solar panels will cover 476 hectares (1200 football pitches) This will drastically change the landscape and rural nature of the area."

3.8.38. In the applicant's response to relevant representations [REP1-004] it said that the proposed development would initially have a major to moderate, significant impact on the landscape character of the site, because to the introduction of solar PV panels and associated infrastructure. The applicant went on to explain that it's landscape strategy would reduce the impact over 15 years to a moderate adverse level, which it did not consider significant, given the reversible nature of the proposed development after its 40-year operational phase.

3.8.39. In response to concerns around visual amenity the applicant considered [REP1-004] that the scale of change attributable to the proposed development would remain small/negligible, perceived over a medium extent, resulting in a slight effect magnitude. It considered that in combination with the low sensitivity of receptors, this would result in a minor/negligible and not significant effect, particularly in the context of the baseline large scale industrial built form at Drax Power Station.

3.8.40. With regard to cumulative impact the applicant said [REP1-004] that its cumulative assessment had identified in relation to Camblesforth Farmland landscape character area, a significant adverse effect for the operational phase of the proposed development. The applicant considered this would be due to the concentration of development that are proposed within this landscape character area and the footprint they would occupy. The applicant considered that the proposed development would make a noticeable contribution to these effects, partly due to the extent of the solar PV panels, and partly due to the way it would extend the footprint of development away from the concentration of development around Drax

3.8.41. I undertook two unaccompanied site visits [EV5-001], on 2 and 5 December 2024, and [EV9-001] on 4 March 2025, within and around the site of the proposed development in order to gain a good understanding of the evidence presented during the examination including the visualisations provided by the applicant [APP-070].

3.8.42. I asked about the landscape and visual impact of the proposed development at ISH2 [EV8-001]. NYC confirmed their areas of concern as landscape, cumulative effects, Green Infrastructure Strategy, local landscape and visual effects [REP5-012]. I asked NYC what more they expected the applicant to do to address these outstanding areas of disagreement. In response NYC said that it had not yet submitted anything formal to the examination and explained a proposal it had sent to the applicant related to a mitigation fund.

3.8.43. NYC explained [REP5-012] the range of projects that the fund could support in a 5km priority area and the applicant responded that they would not address the adverse impacts of the scheme. The applicant considered that these projects were focussed on compensation and offsetting as part of a wider community benefit fund which it did not consider to be a material planning issue and would be dealt with post consent, should this be granted.

3.8.44. I asked NYC again about their concerns in ExQ2 [PD-005] and what could resolve the outstanding matters.

3.8.45. In its response to my ExQ2 [REP6-037] NYC confirmed that it was seeking what it referred to as a community mitigation fund secured by a s106 agreement. NYC provided a Landscape Mitigation Proposals document [REP5-017] to support its response. By way of supporting precedent, it provided the example agreed for the Drax re-powering NSIP PINS ref EN010091.

3.8.46. The applicant responded [REP7-020] that NYC's Landscape Mitigation Proposal did not provide details of projects that can be directly linked to the proposed development and that will offset the residual impacts of it. The applicant maintained its position that it used the design process and an iterative assessment process as an effective way to avoid and reduce potential landscape and visual effects consistent with national energy policy. It therefore considered that off-site mitigation was not required. The applicant compared this with Drax where five projects were identified and set out in the s106 agreement, together with a provision for any other works located within 3 kilometres of the Drax Repower Project, aimed at offsetting its effects.

Findings and conclusions

3.8.47. I am satisfied that the issues raised by representations from communities, individuals and businesses during the examination are included in the LIR provided by NYC [REP2-034] and addressed by the SoCGs between the applicant and NYC. I therefore find the applicant's response to their relevant representations [REP1-004] to be satisfactory.

3.8.48. I find that whereas the applicant accepts a significant effect on landscape character in its cumulative assessment it does not consider it significant for the proposed development on its own which it regards as a moderate negative effect and not significant. I find that NYC consider that the effect of the proposed development on its own should be regarded as significant in terms of effect on landscape character [REP8-016].

3.8.49. I note that the other schemes included in the applicant's cumulative assessment are consented solar farms at Land North and South of Camela Lane, Camblesforth (Ref: 2021/0788/EIA) and Land South of A645, Wade House Lane, Drax (Ref: 2023/0128/EIA).

3.8.50. I find that these schemes are respectively 113 ha and 166 ha and in proximity to the existing energy infrastructure near the village of Drax. I find them to be of much smaller area than the proposed development, 475 ha, and at locations affected to a larger degree by the presence of energy infrastructure, principally in the built form of Drax power station.

3.8.51. I therefore agree with NYC that the moderate negative impact of proposed development on its own should be regarded as significant in terms of effect on landscape character, in relation to the Camblesforth Farmland landscape character area. In this respect I agree with the representations that consider the character of the farmland area to the west of Camblesforth would change from arable farm land to industrial usage.

3.8.52. I can understand why NYC argued for a mitigation fund using Drax re-powering project as precedent, but I find that there are significant differences between the nature of that project and the proposed development. This means I give little weight to NYC's argument.

3.8.53. With regard to unresolved issues generally between the applicant and parish councils, including Carlton Parish Council [REP2-018] on the landscape and visual impacts caused by the proposed development I consider that some degree of disagreement is likely given the different perspectives of the parties and the nature of the assessment methodology. As a result, I am not concerned that agreement has not been reached between the applicant and the parish councils evidenced by the absence of final signed SoCGs with this matter resolved.

3.8.54. With regard to the visual impact on residential communities, most notably looking west from west Camblesforth, the part of the village closest to Order limits, represented by viewpoint 14 [APP-070]. I find the existing views to be very open including slight evidence of a hedge in the foreground and mature trees in the distance.

3.8.55. I find that the applicant has set back the solar panels from the far edge of the A1041 to the west of Camblesforth. Initially I find that these existing open views would change to views about 100 metres away of, in the reasonable worst case, vertical solar panels with very little screening provided by newly planted vegetation and with mature trees still visible. Over time, I find that the newly planted vegetation would mature so at somewhat less than that distance, at year 15, a substantial hedge would be visible with the mature trees still visible further away.

3.8.56. As the applicant has explained [APP-027] and [REP5-012] the newly planted vegetation would begin to provide screening before year 15. Whilst I understand this would be perceived as a change, I see no reason to disagree with the applicant's assessment that this would represent a moderate negative, but not significant visual effect, as set out in Tables 3.8.1 and 3.8.2.

3.8.57. With regard to the character of the village of Camblesforth, I find that whilst parts of it may still be linked to rural and farming activity it is dominated by post war development, probably supported by the development and operation of Drax power station nearby to the east. Therefore, I find that the village has an established non-rural character which would be unlikely to change significantly as the result of the construction or operation of the proposed development.

3.8.58. I now go on to consider the extent to which the proposed development accords with energy policy with respect to landscape and visual impact.

3.8.59. EN-1 paragraph 4.7.6 recognises that an applicant may not have any or very limited choice in the physical appearance of its energy infrastructure, but there may be opportunities for the applicant to demonstrate good design in terms of siting relative to existing landscape character, land form and vegetation.

3.8.60. EN-1 considers landscape and visual impact as a generic impact in section 5.10 with paragraph 5.10.5 recognising that virtually all nationally significant energy infrastructure projects will have adverse effects on the landscape, but there may also be beneficial landscape character impacts arising from mitigation. In addition, paragraph 5.10.13 accepts that energy infrastructure is likely to have visual effects for many receptors around proposed sites.

3.8.61. EN-1 paragraphs 5.10.16 to 5.10.28 deal with the applicant's assessment and mitigation including discussion of the use of guidance relating to landscape and visual impact assessment, sources of information on landscape character, effects on residential amenity, and any examples of existing permitted infrastructure they are aware of with a similar magnitude of impact on equally sensitive receptors.

3.8.62. In paragraphs 5.10.29 to 5.10.38 EN-1 deals with Secretary of State decision making and matters that he would need to be satisfied on, including:

- the extent to which design details are subject to future approvals
- that local authorities would have sufficient design content secured to ensure future consenting will meet landscape, visual and good design objectives
- whether any adverse impact on the landscape will be capable of being reversed in a timescale that the Secretary of State considers reasonable

3.8.63. EN-3 deals with landscape and visual impact in paragraphs 2.10.93 to 2.10.101 which add some further detail and guidance on the matters covered in EN-1.

3.8.64. In summary, on the matter of harm and benefit, during construction and operation of the proposed development including cumulative effects, I conclude that the applicant's assessment as summarised in Tables 3.8.1 and 3.8.2 understates the adverse impacts. I conclude and that a significant adverse effect on landscape character would be likely to be caused by the proposed development on its own. On the matter of consistency with policies EN-1 and EN-3, including the applicant's approach to assessment, detailed design and mitigation, I conclude that the proposed development is in accordance with these. In overall conclusion I therefore assign moderate weight to the issue against the making of the Order.

3.9. NOISE AND NUISANCE

Introduction

3.9.1. This section considers the environmental noise impact of the proposed development and noise nuisance matters.

The Application

3.9.2. The applicant sets out its assessment of the noise impact of the proposed development including cumulative effects. The applicant explains its proposals for the avoidance, reduction or mitigation of any likely adverse effects. For all phases of the proposed development this is described in its ES Chapter 11: Noise and Vibration [APP-031] supported by figures and appendices referenced therein.

3.9.3. The applicant provides a Statutory Nuisances Statement [APP-237].

3.9.4. The applicant reports on noise surveys to quantify the existing sound environment across the site of the proposed development and receptors, including residential areas, that have the potential to be acoustically affected.

3.9.5. The applicant uses available information on noise and vibration source levels and predictive modelling to assess noise and vibration effects caused during all phases of the proposed development using guidance which includes:

- British Standard 5228-1:2009+A1:2014 'Code of Practice for Noise and Vibration Control on Construction and Open Sites – Noise'
- British Standard 4142:2014+A1:2019 'Method for Rating and Assessing Industrial and Commercial Sound'
- Design Manual for Roads and Bridges document LA 111 'Noise and Vibration' (Rev 2)

3.9.6. The applicant also carries out an assessment of cumulative effects at receptors that have the potential to be affected by both the proposed development and other projects in the area.

3.9.7. The applicant summarises that during construction and decommissioning activities the residual noise and vibration effects of the proposed development would be short-term and temporary, and no greater than negligible at the closest noise sensitive receptors. This would include the impact caused by construction traffic.

3.9.8. For the proposed development's operation, the applicant assumes a set of worst-case source noise levels and summarises that the residual noise effects would be no worse than negligible at the assessed receptors.

3.9.9. The applicant takes into account the use of a CEMP, an OEMP a DEMP as described in section 3.1 to summarise the residual effects for the proposed development and cumulative development as shown in the following tables.

Table 3.9.1 Proposed development

Phase	Residual effect	Detail
Construction	Negligible - Not significant	Noise, traffic, vibration
Operation	Negligible - Not significant	Operational plant noise
Decommissioning	Negligible - Not significant	Noise, vibration

Table 3.9.2 Cumulative development

Phase	Residual effect	Detail
Construction	Negligible - Not significant	Noise
Operation	Negligible - Not significant	Operational plant noise

3.9.12. With regard to statutory noise nuisance the applicant concludes [APP-237]: "As informed by the ES, it is considered that no claim against statutory nuisance in respect of noise and vibration is therefore envisaged is respect of a statutory nuisance under section 79(1)(g) or (ga) of the" Environmental Protection Act 1990.

The Examination

Local planning authorities, other statutory consultees and parish councils

3.9.13. In its LIR [REP2-034] NYC was satisfied that the requested safeguards would be in place with regard to noise and vibration impacts during construction through the use of a CEMP secured in the dDCO.

3.9.14. This position remained in the final SoCG with NYC [REP8-016] where the matter is shown as agreed.

Communities, individuals, businesses and ExA questions

3.9.15. About a third of the relevant representations as recorded in the applicant's response to them [REP1-004] raised concerns over noise.

3.9.16. The concerns raised included that the proposed development would cause a continuous high-pitched buzz from the 100 Battery Energy Storage System units that would affect residents' health and well-being.

3.9.17. In the applicant's response to relevant representations [REP1-004] in addition to referring to ES Chapter 11: Noise and Vibration [APP-031] it did explain that while there may be a potential low-frequency bias at the source, the distance to dwellings and the existing acoustic environment would be likely to mask any significant tonal or low-frequency noise characteristics.

3.9.18. I did not ask any questions on the subject during the examination, given the degree of agreement reached relatively early during the examination with NYC. In my schedule of proposed changes to the DCO [PD-006] I did include an operational noise limit to secure, during the design and procurement process, any mitigation necessary to deal with characteristic noise. This was accepted by the applicant, and included as requirement 23 in its final dDCO [REP9-003].

Findings and conclusions

3.9.19. I find the applicant's response to relevant representations [REP1-004] which relied upon its ES Chapter 11: Noise and Vibration [APP-031] with additional explanation on characteristic noise to be satisfactory. This accounts for the absence of supporting evidence to the contrary and the applicant's response to my proposed changes to the DCO [PD-006].

3.9.20. The degree of agreement between the applicant and NYC which was evident in the early stages of the examination and recorded in the final SoCG [REP8-016] I also take into account.

3.9.21. As is the case with other pollutants some general policy principles are set out in section 4 of EN-1. Paragraph 4.12.10 says that the "Secretary of State should work on the assumption that the relevant pollution control regime and other environmental regulatory regimes…will be properly applied and enforced by the relevant regulator. The Secretary of State should act to complement but not seek to duplicate them"

3.9.22. The generic policy position with regard to noise is set out in EN-1 at section 5.12. Paragraph 5.12.6 to 5.12.11 address assessment and make reference to proportionality of the assessment and the use of guidance in the form of British Standards. Under mitigation at paragraph 5.12.14 it refers to reduction of noise at source and the siting of noise producing plant away from receptors. Under decision making at 5.12.17 it says that development consent should not be granted by the Secretary of State unless the proposed development would meet the aims of avoiding significant effects on health and quality of life, minimising adverse effects, and where possible improving health and quality of life resulting from noise effects.

3.9.23. Finally, paragraph 5.12.18 says that when preparing the DCO, the Secretary of State should consider including measurable requirements to ensure that noise levels do not exceed any limits specified in the development consent.

3.9.24. Statutory nuisance is covered under section 4.15 of EN-1. In particular 4.15.1 and 4.15.2 explain that Section 158 of the Planning Act 2008 provides statutory authority for the purpose of providing a defence in any civil or criminal proceedings for nuisance. This would include a defence for proceedings for nuisance under Part III of the Environmental Protection Act 1990, but only to the extent that the nuisance is the inevitable consequence of what has been authorised.

3.9.25. Paragraph 4.15.7 explains that the Secretary of State should note that the defence of statutory authority is subject to any contrary provision made by the Secretary of State in any particular case in a Development Consent Order.

3.9.26. Section 2.10 of EN-3 considers construction noise and operational noise with paragraph 2.10.162 concluding that the Secretary of State would be unlikely to give any more than a little weight to traffic and transport noise and vibration impacts from the operational phase of a project.

3.9.27. Comparing the applicant's submissions with the policy guidance summarised above I conclude that the proposed development is in accordance with EN-1 section 5.12.

3.9.28. With regard to noise nuisance, and protection from statutory nuisance claims I conclude that a noise nuisance would not be inevitable as a result of the proposed development hence s158 of the PA2008 would not provide a defence to claims of statutory nuisance.

3.9.29. The applicant proposes a contrary provision within principal powers, part 2, of the dDCO [REP9-003] under "Defence to proceedings in respect of statutory nuisance" which has the effect of weakening the provisions of the Environmental Protection Act 1990 with regard to public protection from nuisance, which I conclude is disproportionate, unnecessary and inconsistent with EN-1 at paragraph 4.12.10.

3.9.30. In summary, on the matter of harm and benefit, during construction, operation and decommissioning of the proposed development including cumulative effects, I conclude that the applicant's assessment as summarised in Tables 3.9.1 and 3.9.2 above is reliable and that likely effects would be negligible. On the matter of consistency with policies EN-1 and EN-3, I conclude that the proposed development is in accordance with these apart from as described at paragraph 3.9.29 above. In overall conclusion, having removed this provision in my rDCO I assign neutral weight to the issue with regard to the making of the Order.

3.9.31. However, if this provision "Defence to proceedings in respect of statutory nuisance" in the dDCO [REP9-003] was not removed, I would assign a little weight to the issue against the making of the Order.

3.9.32. As this provision is well precedented, with the applicant resisting my proposed change to the dDCO [REP8-020] I will discuss this further in my recommended changes to the dDCO in chapter 7.

3.10. SOCIO-ECONOMIC

Introduction

3.10.1. This section considers the socio-economic impact of the proposed development

The Application

3.10.2. The applicant sets out its assessment the socio-economic impact for all phases of the proposed development, including cumulative effects, in its ES Chapter 13 Socio-Economics [APP-033].

3.10.3. This is supported by

- ES Appendix 2.6 - Population and Human Health Technical Note [APP-118]
- ES Appendix 13.1 - Employment and Skills Plan [APP-170]

3.10.4. The applicant's socio-economic assessment [APP-033] considers the likely significant effects of the proposed development on:

- job creation
- economic contribution (measured through the creation of GVA)
- workforce expenditure
- local amenity (residential properties, local businesses, tourism and recreation uses)

3.10.5. The applicant states that existing agricultural use of the site of the proposed development would temporarily cease for the 40-year modelled operational lifespan of the proposed development. The applicant states that the site of the proposed development only represents 15% of the total land held by the existing farmers that farm the land within the site and that the 19 labourers currently working on the site of the proposed development would be retained by the farmers to work on the wider land holding.

3.10.6. The applicant considers that 200 full-time equivalent jobs would be supported directly through construction of the proposed development related to land preparation, installation and grid connection. The applicant is anticipates that the majority, if not all, of these jobs will be sourced from outside of the wider study area by the appointed contractor, and that a further 80 indirect jobs would be supported as a result of spin-off and multiplier effects in the supply chain.

3.10.7. The applicant estimates that the proposed development would create gross value added of £14.9m over the 12-month construction period outside of the wider study and expenditure of £156,000 locally through construction workforce spending. The applicant anticipates that the construction workforce would temporarily relocate to the area and would use the extensive stock of accommodation facilities, operating with capacity identified by the applicant.

3.10.8. The applicant summarises the likely residual effects in terms of the proposed development and cumulative development in terms of the effect on socio-economics. The beneficial effects are shown in the following tables with the corresponding issue detail.

Table 3.10.1 Proposed development

Phase	Residual effect	Detail
Construction	Minor beneficial - not significant	Workforce expenditure
Operation	Moderate beneficial - significant	Renewable energy generation
Decommissioning	Minor beneficial - not significant	Job creation, economic output, workforce expenditure

Table 3.10.2 Cumulative development

Phase	Residual effect	Detail
Construction	Minor beneficial - not significant	Workforce expenditure
Operation	Moderate beneficial - significant	Renewable energy generation

The Examination

Local planning authorities, other statutory consultees and parish councils

3.10.11. In its LIR [REP2-034] NYC raised concerns around the related issues of public rights of way, public health and agricultural land. These issues are examined respectively in sections 3.12 Traffic and transport, 3.6 Health and safety and 3.11 Soils and agriculture of this report.

Communities, individuals, businesses and ExA questions

3.10.12. Several relevant representations as recorded in the applicant's response to them [REP1-004] included concerns over property values, the local economy, local crime and community benefit.

3.10.13. With regard to property values [RR-018] submitted by Andrew Armeson said "As a family we are trying to sell the house that our dad lived in until he passed away, but since the solar farm has been more visible it has put people off from coming and viewing the property. This also worries me that the value of my own home is being devalued by this project."

3.10.14. With regard to crime [RR-273] Nicholas Thompson said "The development will alter the open countryside, potentially increasing the risk of crimes like fly-tipping. Currently, the openness of the landscape discourages such activities. However, the introduction of foliage and screening could create opportunities for criminal behaviour, leading to further strain on local resources and enforcement."

3.10.15. The applicant's response to them [REP1-004] included that it was not aware of any empirical evidence to suggest that the presence of solar farms affects nearby property values and that property value was in any event not a material planning consideration.

3.10.16. With regard to the local economy the applicant stated that direct on-site construction jobs would be necessary, creating employment opportunities across various occupations and skill levels and it would aim to prioritise sourcing labour locally wherever feasible.

3.10.17. The applicant responded that crime was discussed within the Population and Human Health Technical Note [APP-118] and that landscaping would be used to create a pleasant space, and the use of fencing and CCTV, would ensure the creation of a space in which crime and anti-social behaviour would be discouraged.

3.10.18. On the matter of community benefit the applicant said that whilst open to providing community benefits, it was not a material planning consideration so would be progressed should the DCO be granted.

3.10.19. In ExQ2 [PD-005] I raised the issue of including an outline supply chain, employment and skills plan to secure socio-economic benefits. The applicant accepted this, and it forms part of the control framework described at paragraph 3.1.6.

Findings and conclusions

3.10.20. I am satisfied that those issues relevant to planning raised by representations from communities, individuals and businesses during the examination are included in the LIR provided by NYC [REP2-034] and addressed by the SoCG between the applicant and NYC. These are described elsewhere in this recommendation report as detailed at paragraph 3.10.15 above. I therefore find the applicant's response to relevant representations [REP1-004] sufficient.

3.10.21. EN-1 covers the generic socio-economic impact of energy infrastructure in paragraphs 5.13.1 to 5.13.12.

3.10.22. Paragraphs 5.13.2 to 5.13.7 provide guidance including the need to engage with the local authority, and the consideration of direct and indirect impacts, job and training opportunities and accommodation requirements.

3.10.23. Paragraph 5.13.10 on decision making says that limited weight is to be given to assertions of socio-economic impacts that are not supported by evidence (particularly in view of the need for energy infrastructure as set out in this NPS).

3.10.24. Paragraph 5.13.12 says that it may be appropriate to include a requirement that specifies the approval by the local authority of an employment and skills plan.

3.10.25. In summary, on the matter of harm and benefit, during the construction and operation and decommissioning of the proposed development including cumulative effects, I conclude that the applicant's assessment as summarised in Tables 3.10.1 and 3.10.2 above is reliable and that there would likely be minor beneficial effects. On the matter of consistency with policies EN-1 and EN-3, I conclude that the proposed development is in accordance with these. In overall conclusion I therefore assign a little weight to the issue for the making of the Order.

3.11. SOILS AND AGRICULTURE

Introduction

3.11.1. This section considers the impact of the proposed development on soils and agriculture, including the use of highly graded agricultural land.

The Application

3.11.2. The applicant sets out the impact on agricultural land in the ES Chapter 14: Soils and Agricultural Land [APP-034] and considers the likely significant effects of the proposed development on agriculture at national and local level and any cumulative effects.

3.11.3. The applicant describes the ALC of the site in its EA Appendix 14.1: ALC of the Site [APP-171]. The applicant reports on a survey of 393.8 Ha of agricultural land at the site of the proposed development. The applicant considers that the classification is as follows:

- Grade 1: 14.8 Ha 3.8%
- Grade 2: 161.7 Ha 41.1%
- Grade 3a: 206.5 Ha 52.4%
- Grade 3b: 10.8 Ha 2.7%

3.11.4. The applicant described that it was not necessary to survey the cable route corridor as that would likely involve a trench 1.5 m deep by 20m wide and temporary movement and replacement of soils would not change their grade.

3.11.5. The applicant explains that IEMA guidance used to assess significance of impact is based on loss. This is described in table 3 of the IEMA guidance as "permanent, irreversible loss of one or more soil functions or soil volumes (including permanent sealing or land quality downgrading)". The applicant considers permanent, irreversible losses, with temporary, reversible loss of soil-related features, being identified as only a minor/low magnitude impact.

3.11.6. The applicant explains that under the IEMA guidance, one hectare of grades 1 or 2 land lost would amount to a moderate adverse significant impact. The applicant considers that this gives the impact a greater degree of significance than is realistic. The applicant states that Natural England estimated that the amount of land of grades 1 and 2 in active agricultural use in England on 1st June 2023 was 1.8 million hectares. The applicant considers that the loss of small areas in that context should not be significant in EIA terms. Accordingly, the applicant considers it appropriate that the assessment makes moderate significance impacts not "significant" in EIA terms.

3.11.7. The applicant goes on to describe the detailed variation of soil type across the site of the proposed development and the crops grown on the various farms and how this is not expected to change.

3.11.8. With regard to effects during the construction of the proposed development the applicant summarises that:

- the effect on soils from the installation of the solar PV panels would be negligible as any adverse effects would be short-term and capable of easy restoration. The effect of construction on soils would be negligible at a local level

- the installation of solar PV panels would not result in any sealing or irreversible downgrading of agricultural land quality. The applicant considers that whilst there is high quality land within the site of the proposed development, it would not be lost, and the grade would not be affected. There would be no loss of ALC grade land, and the effect would therefore be negligible (not significant) at a local level
- the approximate area of agricultural land affected temporarily by the installation of fixed equipment would amount to 10.0 ha of grades 1, 2 and 3a. Grades 1 and 2 are of very high sensitivity, and 7.0 ha is affected. The effect would be of low magnitude on a resource of very high sensitivity (grades 1 and 2), which would be a moderate adverse (not significant) effect, were the land to be "lost" or "sealed over". The applicant considers this would be a temporary effect, capable of being fully restored to the current status at decommissioning. In the applicant's final summary, it does though regard it as a significant effect because of the area of grades 1 and 2 land affected
- the soils are of moderate or low sensitivity and by implementation of a soil management plan, there would be only a very low magnitude of effect on soils of a moderate or low sensitivity, which would be a negligible adverse (not significant) effect at a local level

3.11.9. The applicant states for the construction of the proposed development at 14.9.3 "The effect is, overall, significant because of the effect on grade 1 and 2 agricultural land."

3.11.10. With regard to effects during the operation of the proposed development the applicant summarises that:

- the effects on occupying farm businesses would be of medium or low magnitude, on holdings of moderate or low sensitivity, leading to overall effects of minor or moderate significance, which is would not be significant at a local level
- there would be no adverse effect on agricultural land quality, which would not be significant at a national level
- there would be a benefit on soil health and its carbon-holding benefits, and this would be moderate beneficial, which is not significant at a national level
- there would be decreased arable crop production, but increased sheep. The use of land would remain agricultural, and the environmental effect would be neutral, which would not be significant at a local level

3.11.11. With regard to cumulative effects the applicant considers that whilst the collective total of BMV land sealed or irreversibly developed by the schemes considered would exceed 20 ha, and would amount to a major adverse effect, which would be significant, the proposed development does not contribute to that effect due to its temporary nature. The cumulative effect of the proposed development would therefore be considered negligible, which would not be significant, but the combined effect remains major adverse.

3.11.12. The applicant takes into account the design of the proposed development, and a soil management plan that forms part of the control framework detailed at paragraph 3.1.6 of this recommendation report.

3.11.13. The applicant summarises the likely residual effects in terms of the proposed development and cumulative development. The worst adverse effects are as shown in the following tables.

Table 3.11.1 Proposed development

Phase	Residual effect	Detail
Construction	Moderate adverse - not significant	Loss of BMV land
Operation	Moderate or minor adverse - not significant	Effects on farm business
Decommissioning	none	n/a

Table 3.11.2 Cumulative development

Phase	Residual effect	Detail
Construction	Moderate adverse - not significant	Loss of BMV land
Operation	none	Effect on soils
Decommissioning	none	Effect on soils

The Examination

Local planning authorities, other statutory consultees and parish councils

3.11.15. In its LIR [REP2-034] NYC was concerned that the area around the grid connection at Drax contains extensive areas of BMV agricultural land, within which the site is located. Whilst it notes that the applicant has sought to locate the development in areas of lower soil quality however it remains that the development will be constructed on BMV land.

3.11.16. The applicant's response [REP3-010] to the NYC LIR refers to figure 2.7 of its Alternative site assessment [APP-227] which shows the majority of the land within a 5km radius of the point of connection is either grade 1 or grade 2. The applicant considers that the majority of grade 3 land within the 5km radius is not available for development due to existing uses and planning applications in these areas.

3.11.17. The applicant submitted a final SoCG with NYC [REP8-016] with the use of BMV land not agreed.

Communities, individuals, businesses and ExA questions

3.11.18. Agricultural land concerns were raised in around two thirds of the 351 relevant representations made as recorded in the applicant's response to them [REP1-004].

3.11.19. These included the relevant representation of John Turner [RR-172] which said "I consider the installation of a solar farm on 1200 acres of highly productive arable land to be an absolute travesty and makes no logical sense whatsoever in my opinion. This application should be cancelled without any further delay, along with all similar schemes throughout the UK, which waste, indeed decimate, prime arable land as this does."

3.11.20. The applicant responded to these concerns [REP1-004] with reference to its application documents including its Planning Statement [APP-228] and Planning Statement Appendix 2: Alternative Site Assessment [APP-227], its ES Chapter 14 - Soils and Agricultural Land [APP-034], Appendix 14.2 - Farm Business Reports [APP-172] and Appendix 14.4 - Analysis of UK Food Security [APP-174].

3.11.21. I asked about the use of BMV Agricultural land at ISH1 [EV3-001], asking the applicant to justify its use. The applicant responded [REP1-007] "the ExA questioned why this site had been chosen for the proposed development if the vast majority is BMV land. In response, the applicant acknowledged that while there is policy that states that poorer quality land should be preferred to be used for developments such as this, there is no absolute requirement or sequential test approach requiring the avoidance of BMV land."

Findings and conclusions

3.11.22. I am satisfied that the issues raised by representations from communities, individuals and businesses during the examination are included in the LIR provided by NYC [REP2-034] and covered by the SoCGs between the applicant and NYC. I therefore find the applicant's response to their relevant representations [REP1-004] to be sufficient.

3.11.23. I find that the applicant relied on the EN-1 and EN-3 policy position that development on BMV land is not prohibited in response to my questions and those of NYC. I find that the applicant was not willing to review its assessment despite the lack of agreement with NYC on the matter.

3.11.24. I have concerns in the applicant's methods and hence conclusions on the effect of the proposed development on agricultural land in [APP-034] including:

- at paragraph 14.9.3 it says construction effects would be significant and in the summary table it says they would not
- the applicant concludes on cumulative construction effects nationally rather than locally, yet the other schemes are schemes local to the proposed development so the effect would be felt locally
- the applicant questions the IEMA guidance and whether it is realistic in the significance it gives to the loss of 1 hectare of grades 1 and 2 agricultural land as described in paragraph 3.11.6 of this report

3.11.25. I find that the applicant relies on its own judgement and interpretation of guidance to conclude that the effects on agricultural land would not be significant, and this interpretation is influenced by the duration of the proposed development as 40 years. It draws a contrast between temporary use of BMV land and permanent loss of BMV land.

3.11.26. I find that the proposed development would take out of use for 40 years, 176 hectares of grades 1 and 2 agricultural land, compared with guidance that says the

permanent loss of 1 hectare of such land should be considered a moderate adverse significant impact.

3.11.27. Policy on this matter us set out in EN-1 section 5.11 including at paragraph 5.11.12 which says that applicants should seek to minimise impacts on the best and most versatile agricultural land and preferably use land in areas of poorer quality with matters of soil management dealt with in paragraphs 5.11.13 and 5.11.14.

3.11.28. In terms of decision making at paragraph 5.11.34 “The Secretary of State should ensure that applicants do not site their scheme on the best and most versatile agricultural land without justification. Where schemes are to be sited on best and most versatile agricultural land the Secretary of State should take into account the economic and other benefits of that land.”

3.11.29. EN-3 provides further detailed guidance in paragraphs 2.10.29 to 2.10.34 in support of EN-1 including at 2.10.30 that “development of ground mounted solar arrays is not prohibited on BMV agricultural land”

3.11.30. Under decision making at 2.10.45 paragraph “The Secretary of State should take into account the economic and other benefits of the best and most versatile agricultural land. The Secretary of State should ensure that the applicant has put forward appropriate mitigation measures to minimise impacts on soils or soil resources.”

3.11.31. I find that the applicant’s approach is in accord with the policy in respect of a soil management plan secured in the dDCO [REP9-003] to minimise adverse impacts on soil quality during the construction of the proposed development.

3.11.32. I find that that the non-availability of almost 400 hectares of BMV land, of which 176 hectares is grades 1 and 2, for 40 years would amount to a significant adverse effect despite it being explained by the applicant as described above at section 3.3 on Alternatives.

3.11.33. In summary, on the matter of harm and benefit, during the construction and operation and decommissioning of the proposed development including cumulative effects, I conclude that the applicant’s assessment as summarised in Tables 3.11.1 and 3.11.2 above is unreliable to the extent that there would likely be a significant adverse effect because of the amount and period of loss of BMV agricultural land. On the matter of consistency with policies EN-1 and EN-3, I conclude that the proposed development is in accordance with these. In overall conclusion I therefore assign great weight to the issue against the making of the Order. I take this conclusion forward to chapter 5 to weigh against the benefits of the proposed development.

3.12. TRAFFIC AND TRANSPORT

Introduction

3.12.1. This section considers the impact of the proposed development on traffic and transport. This includes access to the site of the proposed development and the impact on public rights of way (PRoWs).

The Application

3.12.2. The applicant sets out its assessment of the impact of the proposed development on traffic and transport, including cumulative effects, during all its phases in its ES Chapter 10: Transport and Access [APP-030] supported by its Transport Assessment [AS-005]. The schemes the applicant considers relevant to its cumulative assessment are drawn from its ES chapter 15: [APP-035].

3.12.3. The applicant includes within its study area the following roads:

- M62 near Junction 36
- A614
- A645
- A1041 (Bawtry Road)
- Hardenshaw Lane
- Jowland Winn Lane

3.12.4. Based on IEMA guidance the effects the applicant considers are:

- road user and pedestrian safety
- severance of communities
- road vehicle driver and passenger delay
- non-motorised delay (incorporating delay to all non-motorised users)
- non-motorised user amenity
- fear and Intimidation
- hazardous loads and large loads

3.12.5. Using 2027 as the baseline construction year, the applicant considers that the modelled traffic for each of the roads within the study area only exceed the IEMA guidance threshold of a 30% increase on Jowland Winn Lane and Hardenshaw Lane but from a very low baseline.

3.12.6. The applicant identifies 17 PRoWs that run across the site of the proposed development. The applicant says that it would maintain access to all existing PRoWs during all phases except for short temporary closure to ensure the safety of PRoW users with the provision of alternate routes.

3.12.7. The applicant details traffic flows on the same road network within its study area arising from those schemes it considers relevant, in order to carry out a cumulative assessment.

3.12.8. The applicant takes into account the design of the proposed development, including the provision of a new vehicle access from the A1041 northbound, a CTMP forming part of the control framework as detailed at paragraph 3.1.6 and the approval of a public rights of way management plan as set out in Requirement 12 of the dDCO [REP9-003].

3.12.9. The applicant summarises the likely residual effects in terms of the proposed development and cumulative development. The worst adverse effects are as shown in the following tables.

Table 3.12.1 Proposed development

Phase	Residual effect	Detail
Construction	Minor adverse - not significant	Non-motorised user delay and amenity
Operation	Negligible - not significant	n/a
Decommissioning	Minor adverse - not significant	Non-motorised user delay and amenity

Table 3.12.2 Cumulative development

Phase	Residual effect	Detail
Construction	Minor adverse - not significant	Non-motorised user delay and amenity
Operation	Negligible - not significant	n/a
Decommissioning	Minor adverse - not significant	Non-motorised user delay and amenity

The Examination

Local planning authorities, other statutory consultees and parish councils

3.12.11. In their relevant representation [RR-267] National Highways:

- noted that 210 two-way trips are forecast for the peak day of construction, 52 of which are HGV trips. All trips are forecast to route via M62 J36 over an anticipated 12-month period of construction
- welcomed the travel planning and construction management plan measures being proposed to ensure that movements to and from the development site would be effectively managed
- considered that provided that these measures are delivered considered that the construction phase of this development would not result in a severe impact on the strategic road network
- noted that during the operational phase, there would be around five visits to the site per month for maintenance purposes and these would typically be made by light van or 4x4 type vehicles and accepted that the operational phase of the development would have a negligible impact on the strategic road network

- provided a requirement to protect their network during construction and decommissioning and requested that it, or suitably worded alternative, be applied to any grant of consent

3.12.12. In its response [REP1-004] the applicant referred to a CTMP as described in section 3.1 of this chapter and a decommissioning travel management plan included in requirement 5 of the dDCO [REP9-003].

3.12.13. The applicant submitted a final SoCG with National Highways with all matters agreed [REP2-016].

3.12.14. In its LIR [REP2-034] NYC raised concerns that it wished to see the construction phase of the scheme carefully managed to reduce the impact on the network. It considered that work on and around the minor roads, for example Hardenshaw Lane, would need to be managed to ensure safety, reduce congestion, avoid delays and prevent over running of the highway verges.

3.12.15. In its response [REP1-004] the applicant referred to a CTMP as described in section 3.1 of this chapter and outlined further analysis that it had shared with NYC that it considered did not change its assessment of impact.

3.12.16. The applicant's draft SoCG with NYC [REP4-042] shows all traffic and transport matters agreed and this remained the case in the final SoCG with NYC [REP8-016].

Communities, individuals, businesses and ExA questions

3.12.17. Traffic and transport concerns were raised in around a quarter of the 351 relevant representations made as recorded in the applicant's response to them [REP1-004].

3.12.18. The HALT relevant representation [RR-136] considered there was a real worry about the increase in HGV & LGV traffic in the area on roads which are mainly single track & not built to take a continuous stream of large vehicles. It said that roads and tracks are used regularly, daily by equestrians, cyclists & walkers if large metal fences are erected around the perimeter there will be no refuge areas to safely get out of the way of the big vehicles or any vehicles which will make them unusable for over 50 horses in the area.

3.12.19. In the applicant's response to this [REP1-004] it accepted that areas such as Jowland Winn Lane and Hardenshaw Lane, with low baseline traffic levels, may experience more noticeable increases in traffic compared with residential areas.

3.12.20. Whilst I did not ask any questions on the subject during the examination, given the degree of agreement reached relatively early on in the examination, I undertook two unaccompanied site visits [EV5-001], on 2 and 5 December 2024, and [EV9-001] on 4 March 2025, within and around the site of the proposed development. This enabled me to gain a good understanding of the evidence presented during the examination and an appreciation of the road and PRoW networks.

Findings and conclusions

3.12.21. I am satisfied that the issues raised by representations from communities, individuals and businesses during the examination are included in the LIR provided by NYC [REP2-034] and addressed by the SoCG between the applicant and NYC. I therefore find the applicant's response to their relevant representations [REP1-004] to be satisfactory.

3.12.22. Having said this, I find that the applicant readily accepted that the minor roads such as Hardenshaw Lane and Jowland Winn Lane would be used by construction traffic and that there would be a noticeable change both in volume and type with some adverse impact.

3.12.23. I find that the applicant's assessment [APP-030] makes it clear that it is the non-motorised user delay and non-motorised user amenity impacts for Hardenshaw Lane and Jowland Winn Lane that would give rise to the reported minor adverse effects. I hence find consistency between its assessment and the concerns raised by individuals and bodies such as HALT.

3.12.24. Traffic and transport is recognised as a generic impact of large scale energy infrastructure development as set out in EN-1 section 5.14.

3.12.25. With regard to the applicant's assessment and the paragraphs engaged by the proposed development, EN-1 paragraph 5.14.6 expects that National Highways and Highways Authorities would be consulted where it is expected to affect the strategic road network or have an impact on the local road network. I conclude that such consultation has taken place and that it has been effective evidenced by agreement on the matter with both parties.

3.12.26. In terms of mitigation set out in paragraphs EN-1 5.14.11 to 5.14.17 I conclude that the measures set out in 5.14.11, for example the timing and routing of construction traffic, would be included in a CTMP, and that the other paragraphs are not engaged by the proposed development.

3.12.27. I conclude that the applicant's assessment has considered any specific matters raised in EN-3 paragraphs 2.10.120 to 2.10.126, for example width and weight restrictions and cumulative effects.

3.12.28. In summary, on the matter of harm and benefit, during the construction and operation and decommissioning of the proposed development including cumulative effects, I conclude that the applicant's assessment as summarised in Tables 3.12.1 and 3.12.2 above is reliable and that there would likely be a minor adverse effect. On the matter of consistency with policies EN-1 and EN-3, I conclude that the proposed development is in accordance with these. In overall conclusion I therefore assign a little weight to the issue against the making of the Order.

3.13. WATER

Introduction

3.13.1. This section considers both the impact of the proposed development on the water environment and the impact of the water environment on the proposed development including the effects of climate change in terms of flood risk.

The Application

3.13.2. The applicant sets out its assessment of the impact of the proposed development on the water environment, including cumulative effects, during all its phases in its ES Chapter 9: Water Environment [APP-029].

3.13.3. This is supported by a flood risk assessment, including the effects of climate change, contained in the following documents:

- Flood Risk Assessment (Part 1 of 4) [APP-232]
- Flood Risk Assessment (Part 2 of 4) [APP-233]
- Flood Risk Assessment (Part 3 of 4) [APP-234]
- Flood Risk Assessment (Part 4 of 4) [APP-235]
- Flood Risk Assessment (Part 4 of 4) [AS-015]

3.13.4. The applicant also supports its ES water environment chapter with the following consultation documents:

- Lead local flood authority consultation [APP-154]
- Internal drainage board consultation [APP-155]
- Environment Agency consultation [APP-156]

3.13.5. The applicant explains [APP-029] that the flood risk assessment contains details of the methodology including:

- the flood risk to and from the site of the proposed development from all sources
- how flood risk will be managed over the proposed development's lifetime, taking climate change into account and with regard to the vulnerability of its users
- a site-specific flood model
- a drainage strategy
- the spatial scope of the assessment, recognising that drainage ditches and ordinary watercourses ultimately drain to the River Aire and River Ouse.
- sources of information
- how the significance of the effects is determined

3.13.6. The applicant goes on to describe:

- the context of the proposed development in terms of existing drainage, recognising that most of the site of the proposed development is in Flood Zone 3a meaning it has a high risk of flooding
- ground conditions and groundwater vulnerability areas within the site of the proposed development
- the flood hazards affecting the site of the proposed development taking into account the likely effects of climate change over its lifetime
- water quality in relation to sites designated for their nature conservation importance that are located in the vicinity of the site of the proposed development

3.13.7. The applicant concludes with a summary of the sensitivity and value of the receptors identified as part of the baseline and future baseline conditions.

3.13.8. In terms of cumulative effects of several developments in an area the applicant regards this is negligible on the basis of the mitigation measures provided by the proposed development acting in combination with mitigation measures proposed by other schemes.

3.13.9. The applicant takes into account the approval process for the detailed design of the proposed development secured by requirement 3, a CEMP, an OEMP, a DEMP and a LEMP as detailed at paragraph 3.1.6.

3.13.10. The applicant explains that the detailed design of the embedded mitigation measures would be informed by the results of the site-specific flood modelling that would be approved by the Environment Agency based on the principles established in the applicant's assessment.

3.13.11. The applicant summarises the likely residual effects in terms of the proposed development and cumulative development. The worst adverse effects are shown in the following tables.

3.13.12. **Table 3.13.1 Proposed development**

Phase	Residual effect	Detail
Construction	Moderate Adverse – Minor Adverse (significant - not significant)	Potentially polluting construction activities and spillage/leakage of polluting substances affecting groundwater bodies via direct flow
Operation	Minor Adverse (not significant)	Potentially polluting operational activities and spillage/leakage of polluting substances affecting groundwater bodies via direct flow
Decommissioning	Moderate Adverse – Minor Adverse (significant - not significant)	Potentially polluting decommissioning activities and spillage/leakage of polluting substances affecting groundwater bodies via direct flow

Table 3.13.2 Cumulative development

Phase	Residual effect	Detail
Construction	Minor Adverse – Negligible (not significant)	Potentially polluting construction activities and spillage/leakage of polluting substances affecting surface water and groundwater bodies
Operation	Negligible - not significant	n/a

Decommissioning	Minor Adverse – Negligible (not significant)	Potentially polluting decommissioning activities and spillage/leakage of polluting substances affecting surface water and groundwater bodies

The Examination

Local planning authorities, other statutory consultees and parish councils

3.13.35. The Environment Agency in its relevant representation [RR-117] registered an interest in the proposed development because of concerns which included:

- the need for a new requirement for a hydrogeological risk assessment and follow up actions to protect groundwater levels and flow
- the need for a new requirement for a piling risk assessment and follow up actions to protect groundwater quality
- a lack of detail as to how the flood risk compensation scheme would be secured to ensure the proposed development would not cause flood risk elsewhere, including during construction
- a lack of detail covering operation in times of flood, including clearance of debris and contingency in the event of failure of remote operation of solar panels
- The need for finished floor levels for the built development must be set at 300mm above the design flood
- a lack of calculations to confirm that the volume of flood water displaced by the solar panel supports would be negligible
- a lack of detail regarding operational pollution prevention measures in the routine management of drainage from BESS compound
- a lack of consideration of the potential need for water abstraction licences for consumptive uses, in addition to licences for dewatering

3.13.36. The applicant responded to an ISH1 action point [EV3-002] with a supplementary water assessment requested by the Environment Agency [REP4-049].

3.13.37. With the exception of protective provisions with regard to the Environment Agency's assets, the draft SoCG [REP6-032] shows all matters agreed as a result of the applicant's response to its concerns and requests for more information.

3.13.38. In the applicant's final SoCG with the Environment Agency [REP8-015] all matters were shown as agreed. Actions taken by the applicant included:

- the inclusion of a new requirement 18 for a hydrogeological risk assessment as per the wording agreed with the Environment Agency in the dDCO [REP9-003]
- the inclusion of a new requirement 19 for a piling risk assessment as per the wording agreed with the Environment Agency in the dDCO
- the inclusion of a new requirement 21 for a flood management strategy as per the wording agreed with the Environment Agency in the dDCO
- the provision of an update flood risk assessment [REP4-024] with further updates at deadlines 6 and 7

3.13.39. In its LIR [REP2-034] NYC considered that the applicant's proposals to use attenuation basins, flow control chambers fitted with remotely operated or

automated penstock valves, watercourse buffers, swales and flood defence bunds represented a suitable way to manage surface water on the site of the proposed development.

3.13.40. All water environment matters were shown as agreed in the draft SoCG with NYC [REP5-010] which remained the case in the final SoCG with NYC [REP8-016].

Communities, individuals, businesses and ExA questions

3.13.41. Water environment concerns were raised in around a fifth of the 351 relevant representations made as recorded in the applicant's response to them [REP1-004]. Concerns raised included increased flood risk and water contamination.

3.13.42. The applicant's responses to relevant representations [REP1-004] includes those from communities, individuals and businesses. With regard to these the applicant referenced its ES Chapter 9 - Water Environment [APP-029] and its flood risk assessment [APP-232].

3.13.43. The water environment was on the agenda for ISH1 [EV3-001]. The applicant submitted its written summary of its oral submissions at ISH1 [REP1-007]. The applicant responded to an ISH1 action point [EV3-002] with a supplementary water assessment requested by the Environment Agency [REP4-049].

Findings and conclusions

3.13.44. I am satisfied that the issues raised by representations from communities, individuals and businesses during the examination are addressed by the SoCGs between the applicant and the Environment Agency and the applicant and NYC. I therefore find the applicant's response to their relevant representations [REP1-004] to be satisfactory.

3.13.45. I find that the applicant has responded positively to the concerns and proposals put forward by the Environment Agency for additional requirements and I take into account the final SoCG with all matters agreed.

3.13.46. The degree of agreement between the applicant and NYC which was evident in the early stages of the examination and recorded in the final SoCG I also take into account.

3.13.47. I now go on to consider in detail the extent to which the proposed development accords with policy with respect to flood risk and water quality and resources.

Flood risk

3.13.48. The EN-1 position with respect to flood risk is set out in section 5.8.

3.13.49. The paragraphs 5.8.1 to 5.8.23 on assessment include that:

- a proportionate flood risk assessment should be provided that should identify and assess the risks of all forms of flooding to and from the project and demonstrate how these risks will be managed, taking climate change into account
- if the Environment Agency or another flood risk management authority has reasonable concerns about the proposal on flood risk grounds, the applicant should discuss these concerns with them and take all reasonable steps to agree

ways in which the proposal might be amended, or additional information provided, which would satisfy their concerns

3.13.50. Paragraphs 5.8.24 to 5.8.35 address mitigation and paragraph 5.8.25 refers to a range of sustainable approaches to surface water drainage management including:

- basins, ponds and tanks to hold excess water after rain and allow controlled discharge that avoids flooding
- swales, which are vegetated features that hold and drain water downhill mimicking natural drainage patterns

3.13.51. Paragraphs 5.8.36 to 5.8.42 deal with decision making including at 5.8.40:

- if the Environment Agency or another flood risk management authority continues to have concerns and objects to the grant of development consent on the grounds of flood risk, the Secretary of State can grant consent, but would need to be satisfied before deciding whether or not to do so that all reasonable steps have been taken by the applicant and the authority to try to resolve the concerns

3.13.52. With regard to EN-3 paragraphs 2.10.84 to 2.10.87 these recognise that as solar PV panels will drain to the existing ground, the impact will not, in general, be significant, sustainable drainage methods such as swales should be used, and the use of existing drainage systems and watercourses should be avoided.

3.13.53. With regard to flood risk, comparing the applicant's submissions with these policy expectations, I conclude that the proposed development is in accordance with the policy position as set out in sections 5.8 of EN-1 and EN-3 paragraphs 2.10.84 to 2.10.87 during all phases of the proposed development and accounting for cumulative development and the effects of climate change.

Water quality and resources

3.13.54. The EN-1 position with respect to water quality and resources is set out in section 5.16, with EN-3 having nothing further to add.

3.13.55. Paragraphs 5.16.3 to 5.16.7 include that the applicant should:

- undertake an assessment of the existing status of, and impacts of the proposed project on, water quality
- make early contact with the relevant regulators, including the local authority and the Environment Agency for relevant licensing and environmental permitting requirements
- describe any impacts of the proposed project source protection zones around potable groundwater abstractions

3.13.56. In terms of mitigation this is set out at paragraphs 5.16.8 to 5.16.10 which include that careful design can be used to achieve to good pollution control practice and that construction management plans may help codify mitigation during that phase.

3.13.57. Paragraphs 5.16.11 to 5.16.16 deal with decision making including at paragraph 5.16.11 that discharges to the water environment are subject to pollution control. The considerations set out in Section 4.12 on the interface between planning and pollution control therefore apply.

3.13.58. Paragraph 4.12.2 of EN-1 sets out that planning and pollution control systems are separate but complementary. Under decision making at paragraph 4.12.10 the

Secretary of State should work on the assumption that the relevant pollution control regime and other environmental regulatory regimes will be properly applied and enforced by the relevant regulator.

3.13.59. The applicant concludes [APP-029] that there remain potentially moderate adverse effects on groundwater despite all the measures that would be in place to prevent accidental discharge, in terms of design, management plans, and approvals processes secured in the dDCO [REP9-003]. I consider that the threat of enforcement action by the regulator should a pollution incident occur has the effect of reducing the residual risk as set out by the applicant, consistent with EN-1 4.12.10.

Overall - flood risk and water quality and resources

3.13.60. In summary, on the matter of harm and benefit, during the construction and operation and decommissioning of the proposed development including cumulative effects, I conclude that the applicant's assessment as summarised in Tables 3.13.1 and 3.13.2 above is reliable and that there would likely be a minor adverse effect. On the matter of consistency with policies EN-1 and EN-3, I conclude that the proposed development is in accordance with these. In overall conclusion having further accounted for the regulatory pollution control regime with respect to discharges to groundwater I assign neutral weight to the issue with regard to the making of the Order.

3.14. OTHER ISSUES

Air quality and emissions

3.14.1. NYC in its LIR [REP2-034] considers that air quality and emissions would be adequately controlled using the control framework detailed at paragraph 3.1.6. No evidence was put before me during the examination to cause me to question this position.

3.14.2. Whilst EN-1 considers air quality generically at section 5.12 I have nothing before me to suggest that the proposed development is engaged by that section and EN-3 has nothing further to add with regard to solar farm development.

3.14.3. With regard to air quality and emissions I therefore assign neutral weight to the issue with regard to the making of the Order.

Waste

3.14.4. Carlton Parish Council in its relevant representation [RR-050] raised the issue of decommissioning waste and how it would be dealt with. I find that pollution control regimes exist, for example the Waste Electrical and Electronic Equipment Regulations 2013, that would address this concern and may assume they are effective with reference to EN-1 section 4.12. I therefore assign neutral weight to the issue with regard to the making of the Order.

4. FINDINGS AND CONCLUSIONS IN RELATION TO HABITATS REGULATIONS ASSESSMENT

4.1. INTRODUCTION

4.1.1. This Chapter sets out my analysis and conclusions relevant to the Habitats Regulations Assessment (HRA). This will assist the Secretary of State for Energy Security and Net Zero (the Secretary of State), as the competent authority, in performing their duties under The Conservation of Habitats and Species Regulations 2017 (the Habitats Regulations).

4.1.2. This Chapter is structured as follows:

- Section 4.2: Findings in relation to Likely Significant Effects (LSE) on the UK National Site Network and other European sites
- Section 4.3: Conservation objectives for sites and features
- Section 4.4: Findings in relation to Adverse Effects on Integrity (AEoI)

4.1.3. In accordance with the precautionary principle embedded in the Habitats Regulations, consent for the proposed development may be granted only after having ascertained that it will not adversely affect the integrity of European site(s) and no reasonable scientific doubt remains (CJEU Case C-127/02 Waddenzee 7 September 2004).

4.1.4. For the purpose of this report, in line with the Habitats Regulations and relevant Government policy, the term 'European sites' includes 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.

4.1.5. Policy considerations and the legal obligations under the Habitats Regulations are described in Chapter 2 of this recommendation report.

4.1.6. I have been mindful throughout the examination of the need to ensure that the Secretary of State 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 Interested Parties (IPs), including Natural England as the Appropriate Nature Conservation Body (ANCB).

Report on the implications for European sites (RIES) and Consultation

4.1.7. I produced a RIES [PD-008] which compiled, documented, and signposted information relevant to the HRA contained in the Development Consent Order (DCO) application and representations up to deadline 7 on 24 April 2025. The RIES set out my understanding of the information relevant to the HRA and the position of the IPs in relation to the effects of the proposed development on European sites at that time. Consultation on the RIES took place between 02 May 2025 and 16 May 2025. Comments were received from the applicant [REP8-020] and Natural England [REP8-024]. Responses to these comments on the RIES were submitted by the applicant [REP9-012] and Natural England [REP10-003]. These comments have been taken into account in the drafting of this chapter.

4.1.8. My recommendation is that the RIES, and consultation on it, may be relied upon as an appropriate body of information to enable the Secretary of State to fulfil their duties of consultation under regulation 63(3) of the Habitats Regulations should the Secretary of State wish to do so.

Proposed Development Description and HRA Implications

4.1.9. The proposed development is described in chapter 1 of this recommendation report.

4.1.10. The spatial relationship between the Order limits of the proposed development and European sites is shown on figure 8.1 in Environmental Statement (ES) Appendix 8.1 [APP-144].

4.1.11. The proposed development is not directly connected with, or necessary to, the management of a European site. Therefore, the Secretary of State must make an 'appropriate assessment' of the implications of the proposed development on potentially affected European sites in light of their Conservation Objectives.

4.1.12. The applicant's assessment of effects is presented in its ES Appendix 8.9 - Information to inform a HRA [APP-151].

4.1.13. This was updated (and will be referred to in this report herein) as follows:

- HRA report v2 – submitted to Natural England at deadline 2 but not submitted into the examination
- HRA report v3 [REP4-021]
- HRA report v4 [REP5-006]
- HRA report v5 [REP6-012]
- HRA report v6 [REP8-013]

4.1.14. The applicant updated its HRA report in response to multiple queries from the ANCB as summarised in paragraph 1.3.1 of the RIES [PD-008]. This included a change to the LSE conclusions in HRA report v3 and subsequently an additional assessment of AEoI in HRA report v3. Following this, the conclusions of the assessments did not alter for the remainder of the examination. The further updated HRA Reports (v4 to v6) included additional information and amendments to support the conclusions of the assessments following queries from the ANCB and myself.

4.1.15. The applicant did not identify any LSE on non-UK European sites in European Economic Area (EEA) States in its HRA report [APP-151] or within its ES [APP-020 to APP-036]. Only European sites in the UK are addressed in this report. No such impacts were raised for discussion by any IPs during the examination.

4.2. FINDINGS IN RELATION TO LIKLEY SIGNIFICANT EFFECTS (LSE)

4.2.1. Under regulation 63 of the Habitats Regulations, the competent authority must consider whether a development will have LSE on a European site, either alone or in combination with other plans or projects. The purpose of the LSE test is to identify the need for an 'appropriate assessment' and the activities, sites or plans and projects to be included for further consideration in that assessment.

4.2.2. All qualifying features of the following European sites were considered in the applicant's assessment of LSE:

- River Derwent SAC
- Lower Derwent Valley SAC
- Humber Estuary SAC
- Skipworth Common SAC
- Thorne and Hatfield Moors SPA
- Humber Estuary SPA
- Humber Estuary Ramsar site
- Lower Derwent Valley SPA
- Lower Derwent Valley Ramsar site

4.2.3. The screening methodology is explained in section 4, paragraphs 4.1.1 to 4.1.3 of the HRA report v1 [APP-151]. The methodology identified European sites within 10km of the proposed development. The applicant identified impacts from the proposed development considered to have the potential to result in LSE from the project alone in section 4 of the HRA report [APP-151].

4.2.4. The applicant's HRA report [APP-151] concluded no LSE from the project alone and in combination on all features of all the identified sites listed in paragraph 1.2.2 above. The projects identified for the in-combination assessment are included in table 6.2 (incorrectly labelled table 10 but referred to as table 6.2 in the text) of HRA report v5 [REP6-012].This details the projects included in the in-combination assessment and which impact pathways are assessed. These are also depicted on figure 15.1 [APP-109].

4.2.5. I asked about information that was missing from the habitats regulation assessment at second written questions (ExQ2) [PD-005]. I asked the applicant to:

- set out the potential geographical extent of the impacts identified in the habitats regulation assessment report
- provide a list of the qualifying features of the identified European sites and what impacts have been assessed for those features during which phases of the development
- update the habitats regulation assessment report to include the methodology used for assessing in-combination effects at the screening stage

4.2.6. Natural England [RR-268 Ref N9] identified a number of issues to be resolved during the examination in relation to the LSE assessment:

- identification of an additional European site – Thorne Moors SAC
- presentation of information and clarification on which impacts are screened out or in for which sites and features
- methodology for the in-combination assessment
- identification of an additional impact pathway of air quality impacts from construction and operational traffic
- identification of an additional impact pathway from operational visual disturbance to functionally linked land associated with the Lower Derwent Valley SPA/Ramsar site and Humber Estuary SPA/Ramsar site
- conclusions of LSE from loss of habitat and impacts from noise and visual disturbance to functionally linked land associated with the Lower Derwent Valley SPA/Ramsar site and Humber Estuary SPA/Ramsar site.

4.2.7. The applicant provided multiple updates of its HRA report [REP4-021; REP5-006; REP6-012]; REP8-013] to resolve the above matters; this is documented in the RIES [PD-008]]. Natural England responded [REP8-024] to the RIES to confirm that it accurately reflected their views that all matters were agreed and there were no

outstanding disagreements on the conclusions of the final HRA report v6 [REP8-013].

Identification of an additional site – Thorne Moors SAC

4.2.8. Although Natural England confirmed agreement on the sites included in the screening assessment [RR-268 Ref NE1.3], the applicant's updated HRA report v3 [REP4-021] identified one additional European site within the UK National Site Network for inclusion within the assessment; Thorne Moors SAC which is located 9.09km from the proposed development. HRA report v3 [REP4-021] concluded there would be no LSE on Thorne Moors SAC. Natural England confirmed agreement with the conclusion of no LSE to Thorne Moors SAC in its final SOCG [REP5-009].

LSE from the Proposed Development In-Combination

4.2.9. The applicant initially addressed in-combination effects in section 5.4 of HRA report v1 [APP-151] but provided no methodology for the assessment. In ExQ2 [PD-005 Ref 5.0.2] I requested that the applicant explain the approach to assessing in-combination effects. Natural England [RR-268, REP2-031] also highlighted a lack of assessment for in-combination effects at sites where project alone impacts were ruled out and recommended this be assessed for construction and operation.

4.2.10. The applicant updated its HRA reports (v3 – v6) [REP4-021, REP5-006, REP6-012] to include a methodology for selecting and screening the in-combination developments. The projects identified are depicted on Figure 15.1 [APP-109] and are included in table 6.2 which details what impact pathways are assessed for which project.

4.2.11. Whilst in-combination effects are not considered separately in the screening assessment, I consider that the reasoning for screening out potential LSE from the project alone in the updated HRAs [REP4-021; REP5-006; REP6-012]] also applies to impacts in combination with other plans and projects. LSE are screened out on the basis of separation from the European site and a lack of connectivity and no evidence of associated features utilising the land impacted by the proposed development.

Clarity over the sites, features and impacts assessed

4.2.12. The submitted HRA report v1 [APP-151] did not explicitly list the sites and qualifying features and the impact pathways which could affect them and instead, cross referenced to ES Chapter 8.

4.2.13. Natural England [RR-268 Ref NE9] requested that relevant ES details be incorporated into the HRA for completeness. I also requested a table [PD-005] listing qualifying features, assessed impacts by development phase, and the geographical extent of those impacts.

4.2.14. I consider that the applicant addressed this appropriately in HRA report v5 [REP6-012] by adding a table in Annex 3 and clarifying in paragraph 4.6.1 that potential impacts were assessed using Natural England's risk zone tool for sites within 10km, with justifications for exclusions.

LSE from habitat loss of functionally linked land and indirect effects (noise and visual disturbance) to functionally linked land – alone and in-combination

4.2.15. The applicant's assessment of whether functionally linked land was present on site is presented in paragraphs 4.3.9 to 4.3.12 of the HRA report v1 [APP-151] which utilised the threshold of identifying >1% of the assessed SPA populations during two thirds of the surveys to determine whether land was functionally linked or not, for a species. None of the species surveys showed bird usage which breached this threshold and therefore the applicant concluded no functionally linked land was present on site.

4.2.16. Natural England [RR-268] initially considered insufficient evidence had been provided in the applicant's HRA report v1 [APP-151] to rule out LSE from the potential loss of functionally linked land on the Lower Derwent Valley and Humber Estuary SPA/Ramsar sites. Natural England [RR-268; REP2-031] clarified that the application of the 1% rule should be combined with assessments of bird usage, seasonal patterns, habitat characteristics, and factors like cropping regimes to evaluate how the site supports ornithological features. Additionally, it noted that whilst the 1% was applied to lapwing numbers, additional clarification is required around the peak count as it considered it is not clear where the peak is from a single visit, or a combined total from multiple survey days.

4.2.17. Natural England also identified the lack of data for surveys in August 2023, that only one year's worth of data is available for the site where two years' worth of data is recommended and queried the sufficiency of the nocturnal survey effort. It [REP4-040] highlighted that if functionally linked land is determined to be present on site, indirect operational impacts from visual disturbance and noise may be possible.

4.2.18. Whilst the applicant [REP2-015] initially disputed Natural England's suggested approach, it provided updated desk-based information [REP4-041] in relation to bird usage, seasonal patterns, habitat characteristics, and factors like cropping regimes as well as survey clarifications. This information was used to inform the decision as to whether functionally linked land was present on the site.

4.2.19. Whilst the applicant maintained in its updated HRA report v3 [REP4-021] that the site did not contain functionally linked land, it acknowledged that there is some evidence of limited use of the site by lapwing which is a declining component of the waterbird assemblage feature of the Humber Estuary and Lower Derwent Valley SPA and Ramsar sites. On this basis, it concluded potential for LSE to non-breeding ornithological features from impacts to functionally linked land from the following impact pathways:

- habitat loss
- noise disturbance during construction
- visual disturbance during construction and operation

4.2.20. Natural England [REP5-009] subsequently agreed with the conclusions of the LSE assessment in relation to functionally linked land. This was not disputed throughout the remainder of the examination.

LSE from air quality impacts from construction and operational traffic – alone and in-combination

4.2.21. Natural England [RR-268 Ref NE4] requested that the applicant update the HRA report [APP-151] to include information submitted to them outside of the examination in an air quality technical note to support the conclusion of no LSE from air quality on all sites and features both alone and in-combination effects.

4.2.22. The applicant provided an updated HRA report [REP4-021] to include operational and construction traffic annual average daily traffic flows and confirm that operational traffic is well below the screening threshold. In addition, there are no habitats within 200m of the construction traffic routes whereby ruling out potential LSE. Natural England [REP4-040] confirmed agreement that potential LSE from air quality impacts from construction and operational traffic could be screened out of further assessment and this was not disputed throughout the remainder of the examination.

LSE Assessment Outcomes

4.2.23. The applicant initially excluded LSE from all impacts to all sites and features as presented in paragraph 2.3.4 of the RIES and paragraph 4.2.2 of this chapter. Natural England disagreed with the conclusions of no LSE from habitat loss from functionally linked land in relation to ornithological features of the Humber Estuary and Lower Derwent Valley SPAs and Ramsar sites on the basis that the methodology for identifying functionally linked land was not appropriate. If functionally linked land was identified, Natural England also considered that there may be potential indirect effects to ornithological features from:

- noise and visual disturbance during construction
- visual disturbance during operation.

4.2.24. The applicant updated the HRA report v3 [REP4-021] to include the recommended methodology by Natural England and concluded a potential LSE to ornithological features from habitat loss to functionally linked land. Subsequently the applicant concluded potential indirect noise and visual effects on ornithological features using functionally linked land also represented LSE.

4.2.25. As detailed in 4.2.8 to 4.2.21 above, Natural England and I requested further information in the HRA report v1 [APP-151], in relation to the methodology, air quality and clarity over which features and impacts had been assessed, to support the LSE assessment. The applicant provided the requested information which did not alter the conclusions of the LSE assessment. Following the updates, Natural England [REP4-040] agreed with the conclusions of the LSE assessment.

4.2.26. The following impacts to qualifying ornithological features of the Humber Estuary SPA and Ramsar and Lower Derwent SPA and Ramsar were assessed by the applicant to determine if they could be subject to AEoI, as a result of the proposed development alone or in combination with other plans and projects, in view of their conservation objectives:

- loss of functionally linked land
- indirect noise effects during construction to functionally linked land
- indirect visual effects during construction and operation to functionally linked land

4.2.27. I am 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 LSE.

4.3. CONSERVATION OBJECTIVES

4.3.1. On submission of the DCO application, the HRA report v1 [APP-151] identified the conservation objectives for the Humber Estuary SPA and Lower Derwent Valley SPA sites only. Following consultation with Natural England and subsequent amendments to the assessment of impacts to functionally linked land, the applicant included the conservation objectives for all sites included in the screening assessment.

4.3.2. In ExQ3 [PD-007] I requested the conservation objectives for the Lower Derwent Valley and Humber Estuary Ramsar sites. The applicant provided Ramsar information sheets as Annex 4 [REP8-013] for completeness but confirmed that conservation objectives are not published for Ramsar sites. I note that there are no published conservation objectives for Ramsar sites but considers that the conservation objectives for the Lower Derwent Valley SPA and Humber Estuary SPA as a proxy.

4.3.3. In ExQ3 [PD-007] I requested the conservation status of the Lower Derwent Valley and Humber Estuary SPAs. The applicant [REP8-020] did not provide the conservation status, referencing that as the special interest features of the SSSIs underpinning the SPAs are not fully aligned with the qualifying features for the SPA, the proposed development would not have any impact on the condition of the SSSIs and therefore their condition is not relevant to the assessment. Nevertheless, I note that Natural England agree with the outcomes of the AEoI assessment and the proposed mitigation measures and have not raised concern with the conservation status of the SPAs. On this basis, I do not consider this a matter of concern. The conservation objectives for the following sites and their features are set out in section 4.4 of the applicant's HRA reports [REP4-021; REP6-012; REP8-013]

4.4. FINDINGS IN RELATION TO ADVERSE EFFECTS ON THE INTEGRITY (AEoI)

4.4.1. The Humber Estuary SPA and Ramsar site and Lower Derwent SPA and Ramsar site and qualifying features identified in paragraph 4.2.22 above were further assessed by the applicant to determine if they could be subject to AEoI from the proposed development, either alone or in-combination. The assessment of AEoI was made in light of the conservation objectives for the European sites.

4.4.2. Initially, the applicant did not include an assessment of AEoI on the basis that all impacts were screened out. Following discussion with Natural England in relation to the methodology for identifying functionally linked land (as discussed in section 4.2 of this Chapter), it was agreed that the impacts listed in paragraph 4.2.22 should be assessed for AEoI.

4.4.3. I am satisfied, based on the information provided that the correct impacts have been assessed. This section discusses the conclusions with respect to AEoI for each site.

4.4.4. The applicant's approach to the in-combination assessment is set out in section 6 of HRA report v5 [REP6-012] as discussed in paragraphs 4.2.8 to 4.2.10 of this chapter.

4.4.5. Based on the findings of the examination, I am satisfied that an assessment of AEoI from the proposed development in combination with other plans or projects can be based on this information and that no other plans or projects should be taken into account.

Sites for which the applicant concluded AEoI can be excluded

4.4.6. The applicant's HRA Report [REP4-021] concluded that the proposed development will not result in AEoI of the following European sites:

- Humber Estuary SPA
- Humber Estuary Ramsar site
- Lower Derwent SPA
- Lower Derwent Ramsar site

4.4.7. The applicant's omission of an assessment of AEoI in its submitted HRA report v1 [APP-151] was disputed by Natural England and formed the basis of discussion throughout the examination. The account of the examination of these matters is set out in the following sections.

Humber Estuary SPA and Ramsar site and Lower Derwent SPA and Ramsar site

4.4.8. A description of the European site and its qualifying features, and the potential effects resulting from the proposed development, are provided in section 4.10 and 5 of the applicant's HRA report v6 [REP8-013].

4.4.9. The applicant's HRA report provided an assessment which addressed the potential for AEoI resulting from:

- loss of habitat to functionally linked land affecting ornithological species
- indirect noise and visual effects during construction to functionally linked land affecting ornithological species
- indirect visual effects during construction to functionally linked land affecting ornithological species

Loss of habitat in functionally linked land to ornithological species – alone

4.4.10. Following discussion with Natural England [RR-268; REP2-031], the applicant updated its HRA report v3 [REP4-021] to include an assessment of AEoI from the loss of functionally linked land on ornithological features; this is provided in section 5.3. It concludes that there would be no AEoI on the basis that the site does not constitute functionally linked land (please see section 4.2 of this chapter). The applicant identifies that although the site is unlikely to be important for lapwings due to an absence of preferred (permanent pasture) habitat and limited cropping rotation, usage appears to vary between years so proposed precautionary mitigation.

4.4.11. The applicant included the precautionary mitigation in the updated HRA report v3 [REP4-021] and updated section 3.10 of the outline Landscape Environmental Management Plan (oLEMP) [REP4-019]. This used bird day calculations and cropping data to inform management of two fields (fields 29 and 33, as shown in figure 1 of Annex 2 of the report), comprising a total of 37.09 ha for foraging lapwing in the non-breeding season for the duration of the proposed development's lifetime. The management is secured through the oLEMP through Requirement 10 of the dDCO [REP9-003] and includes:

- crops to be maintained below 8-10 cm during the nonbreeding season (approximately October to March), such as wheat/barley during autumn/spring passage or fallow/newly tilled fields

- avoidance of deep ploughing
- the addition of manure, subject to a reasonable agricultural cycle
- the incorporation of a ley crop within the management rotation
- the inclusion of permanent grass margins to the fields

4.4.12. Natural England [REP5-009] confirmed that the measures were appropriate and agreed that there would be no AEoI from loss of functionally linked land on ornithological features of the Lower Derwent Valley and Humber Estuary SPA and Ramsar sites following its implementation.

Indirect noise and visual disturbance to ornithological species using functionally linked land – alone

4.4.13. Following discussion with Natural England [RR-268; REP2-031], the applicant updated its HRA report v3 [REP4-021] to include an assessment of AEoI from noise and visual disturbance to ornithological species using functionally linked land in section 5.4. The applicant concludes there would be no AEoI on the basis that the site does not constitute functionally linked land and has little to no value for qualifying ornithological species. However, the applicant's HRA report v3 did acknowledge that surveys demonstrate some limited use of the site by lapwing features.

4.4.14. Natural England [RR-268; REP2-031] highlighted that as a result of the change in criteria to determine whether functionally linked land is present, as discussed in paragraphs 4.2.14 to 4.2.19 of this HRA chapter, there may be potential AEoI to field 339 on the basis it is located within 200m of the proposed grid connection corridor and is frequently used by some species associated with the SPA/Ramsar site. The applicant addressed these concerns in paragraph 5.4.4 of HRA report v3 [REP4-021] which explains the number of qualifying ornithological features recorded in field 339 were below the defined threshold for functionally linked land criteria and that field 339 is shielded by a large area of farmland and mature woodland minimising the potential for disturbance.

4.4.15. It also confirmed in HRA report v4 [REP5-007] that there would be a negligible impact from noise and visual disturbance to lapwing and the lapwing mitigation sites on the basis of the degree of separation between the proposed mitigation sites and the construction activities and the proposed best practice measures to reduce noise and visual impacts secured in the oCEMP [REP4-015] through Requirement 4 of the dDCO [REP6-003]. These mitigation measures include avoidance of vegetation removal during bird breeding seasons, an ecological clerk of works to monitor works affecting nesting habitat and best practice measures to reduce impacts from noise and lighting.

4.4.16. Natural England [REP5-009] confirmed the mitigation was appropriate and agreed with the conclusion of no AEoI to functionally linked land from noise and visual disturbance for ornithological features of the Humber Estuary and Lower Derwent Valley SPA/Ramsar sites.

Indirect visual effects during operation to functionally linked land affecting ornithological species – alone

4.4.17. Following discussion with Natural England [RR-268; REP2-031], the applicant updated its HRA Report v3 [REP4-021] to include an assessment of AEoI from visual effects from disruption to flight paths due to glint and glare to ornithological features on adjacent functionally linked land in section 5.6.

4.4.18. The applicant concluded no AEoI on the basis that no functionally linked land was identified, and that there is no published evidence of waterbird collision with solar panels, and the configuration of the land parcels and solar panels is anticipated to reduce the likelihood of birds perceiving the panels as waterbodies thereby avoiding collision.

4.4.19. Natural England [REP5-009] confirmed agreement with the conclusion of no AEoI to ornithological features of the Humber Estuary and Lower Derwent Valley SPA/Ramsar sites as a result of disruption to flight paths from glint and glare to adjacent functionally linked land.

4.4.20. On the basis of the above information, the I am satisfied that this LSE pathway will not result in AEoI to the Humber Estuary and Lower Derwent Valley SPA and Ramsar sites from the proposed development alone.

4.4.21. **In-combination effects**

4.4.22. The applicant's HRA Report v1 [APP-151] initially did not assess AEoI from in-combination effects as discussed in section 4.2 of this chapter. Following discussion with Natural England [RR-268; REP2-031], the applicant updated its HRA report v3 [REP4-021] to include an assessment of AEoI from in-combination effects in section 6 with the other plans and projects listed in paragraph 6.1.1 and 6.1.2.

4.4.23. Natural England [RR-268; REP2-031] requested that more recent information relating to East Yorkshire Solar Farm was included in the assessment. The applicant [REP4-021] included the updated information relating to East Yorkshire Solar Farm in the HRA in-combination assessment which did not alter the conclusions of the assessment of AEoI.

4.4.24. In relation to the impacts of functionally linked land, the updated HRA report v5 [REP6-012] identifies that there would be no AEoI on features of the Humber Estuary and Lower Derwent Valley SPA/Ramsar sites on the basis that the combined levels of activity of identified species during passage and overwintering periods were below threshold levels for identifying functionally linked land, despite being based on a precautionary assessment; the same bird may be counted twice. Additionally, mitigation for lapwings also minimises potential impacts (please see paragraphs 4.4.12 to 4.4.14 of this chapter for further detail). Natural England [REP5-009] agreed with the conclusions of the in combination assessment that there would be no AEoI on ornithological features of the Humber Estuary and Lower Derwent Valley SPA and Ramsar sites.

4.4.25. I am satisfied that in-combination effects will not result in AEoI to the Humber Estuary and Lower Derwent Valley SPA and Ramsar sites.

AEoI Assessment Outcomes- Summary

4.4.26. Following a request from Natural England that it be consulted on the final LEMP the applicant updated Requirement 10 of the dDCO to secure this [REP5-004].

4.4.27. Natural England [REP8-024] advised that the wording of Requirement 10, which secures 10% biodiversity net gain, should be expanded to secure the habitat creation mitigation for SPA ornithological features. The applicant argued that this is already addressed through Requirement 10(2)(c) and (d) which mandate landscaping and habitat management plans to be approved in consultation with

Natural England, and it considered no revisions to the requirement were necessary to secure mitigation. Natural England [REP10-003]] confirmed that it considers the current wording of Requirement 10 of the DCO to be suitable.

4.4.28. The applicant's HRA Report concluded that AEoI can be excluded on the European site(s) listed in paragraph 4.4.9 of this chapter from the proposed development in combination with other plans and projects. These conclusions were agreed with Natural England [REP5-009]. Natural England [REP10-003]] also agreed with the wording of Requirement 10 of the dDCO [REP9-003] to secure the precautionary mitigation for lapwings.

4.4.29. Based on the findings of the examination, I am satisfied that AEoI on all qualifying features of the Humber Estuary and Lower Derwent Valley SPA and Ramsar sites can be excluded from the proposed development alone and in combination with other plans and projects.

5. CONCLUSION ON THE CASE FOR DEVELOPMENT CONSENT

5.1. INTRODUCTION

5.1.1. This chapter sets out my reasoning, findings and conclusions on whether there is a case for making a Development Consent Order (DCO) for the proposed development. It considers the primary legislation and policy to be taken into account and my conclusions on the planning issues, to reach an overall conclusion.

5.1.2. I introduced primary legislation, policy and guidance in chapters 2 and 3. This is listed with further legislation and policy in annex B. I considered the benefits and harms of the proposed development in chapter 3. I set out my findings and conclusions with regard to the Habitats Regulations Assessment (HRA) in chapter 4. My conclusions are based on my recommended DCO (rDCO) in annex C, which is discussed in chapter 7. Land rights matters are addressed in chapter 6.

5.1.3. My conclusions follow from my consideration of all evidence presented to the examination, including the Environmental Statement (ES), the HRA, the local impact Report (LIR), the Statements of Common Ground, and written and oral submissions.

5.2. PRIMARY LEGISLATION AND POLICY

5.2.1. In chapter 2 I explained which designated National Policy Statements (NPSs) have effect for the proposed development.

5.2.2. I considered the proposed development against section (s)104 of the Planning Act 2008 (PA2008) because it is within the scope of the Overarching National Policy Statement for Energy (EN-1), National Policy Statement for Renewable Energy Infrastructure (EN-3), and the National Policy Statement for Electricity Networks Infrastructure (EN-5).

5.2.3. Therefore, taken together, these NPSs provide the primary basis for the Secretary of State's decision as to whether development consent should be granted for the proposed development.

5.2.4. EN-1 says at paragraph 1.1.3 that under the PA2008, where an NPS has effect, the Secretary of State must also have regard to any local impact report submitted by a relevant local authority, any relevant matters prescribed in regulations, and any other matters which the Secretary of State thinks are both important and relevant to the planning decision.

5.2.5. EN-1 says at paragraph 1.1.4 that the PA2008 also requires that where an NPS has effect, the Secretary of State must decide an application for energy infrastructure in accordance with the relevant NPSs except to the extent the Secretary of State is satisfied that to do so would:

- lead to the UK being in breach of its international obligations
- be in breach of any statutory duty that applies to the Secretary of State or be unlawful
- result in adverse impacts from the development outweighing the benefits
- be contrary to regulations about how its decisions are to be taken

5.2.6. My conclusions on the case for making a DCO are therefore reached within the context of the NPSs relevant to the planning balance, in particular EN-1 under section 4 Assessment Principles 4.1 General Policies and Considerations:

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

subject to the matters set out above at 5.2.4 and 5.2.5.

5.3. CONCLUSIONS ON THE REGULATORY MATTERS AND PLANNING ISSUES

Environmental impact assessment (EIA)

5.3.1. In section 2.4 I concluded that the proposed development would be EIA development.

5.3.2. I considered the ES submitted with the application and as updated during the examination was sufficient to enable the Secretary of State to take a decision in compliance with the EIA Regulations. I find that updates to the ES during the examination do not individually or cumulatively prejudice the adequacy of the ES.

5.3.3. I am satisfied that the applicant adequately defines the Rochdale Envelope, and I consider that sufficient controls are secured by the rDCO in Annex C to appropriately mitigate the effects identified using the Rochdale Envelope.

5.3.4. I concluded in section 2.6 that the proposed development would be unlikely to have a significant effect either alone or cumulatively on the environment in a European Economic Area State. I am satisfied that no facts emerged before the close of the examination to change that conclusion.

Habitats regulations assessment

5.3.5. In section 2.5 I concluded that the proposed development would be HRA development.

5.3.6. As reported in chapter 4 I am satisfied that the correct European sites and qualifying features have been identified for the purposes of HRA assessment, and that all potential impacts which could give rise to significant effects have been identified.

5.3.7. I am satisfied that adverse effects on integrity on all qualifying features of the identified sites can be excluded from the proposed development alone and in combination with other plans and projects.

5.3.8. I am satisfied that there would be no likely significant effects on protected sites and that there is sufficient information before the Secretary of State to enable them to conclude that an appropriate assessment is not required.

5.3.9. I conclude that there is no reason for HRA matters to prevent the making of the Order.

The planning issues

5.3.10. Bringing forward my conclusions from chapter 3, I summarise the planning issues in relation to the proposed development as follows:

- need, greenhouse gases, biodiversity and ecology, and socio-economic issues weigh for the proposed development
- soils and agriculture, landscape and visual, alternatives, health and safety, heritage, traffic and transport issues weigh against the proposed development
- air quality and emissions, noise and nuisance, waste, and water carry neutral weight

5.3.11. Bringing forward those planning issues which carry weight and using the weight I assigned to them in chapter 3, I summarise in the table 5.3.1 below my conclusions with regard to the weighing of the determinative planning issues. I confirm that this accounts for the control framework described at paragraphs 3.1.5 and 3.1.6 and my rDCO at annex C.

Table 5.3.1 Conclusions on the determinative planning issues

Weighing against			Weighing for			
Great	**Moderate**	**A little**	**A little**	**Moderate**	**Great**	**Substantial**
Soils and agriculture	Landscape and visual	Alternatives	Socio-economic	Biodiversity and ecology	Greenhouse gases	Need
		Health and safety				
		Heritage				
		Traffic and transport				

5.4. FINDINGS AND CONCLUSION AGAINST S104 OF THE PA2008

5.4.1. In accordance with s104(2) of the PA2008, I have had regard to the relevant NPSs, the LIR, any matters prescribed in relation to the development, and any other matters which are both important and relevant to the decision. I have had regard to human rights and Public Sector Equality Duty. I have taken all other relevant law and policy into account.

5.4.2. S104(3) sets out that the Secretary of State must decide the application for the DCO in accordance with any relevant NPSs, except to the extent that one or more of subsections (4) to (8) applies, hence I now deal with these.

5.4.3. I see no reason why, based on what is before me, to find that deciding the application in accordance with any relevant NPSs would:

- lead to the United Kingdom being in breach of any of its international obligations, as set out in s104(4)
- lead to the Secretary of State being in breach of any duty imposed on the Secretary of State by or under any enactment, as set out in s104(5)

- be unlawful by virtue of any enactment, as set out in s104(6)
- meet any condition prescribed for deciding an application otherwise than in accordance with an NPS, as set out in s104(8)

5.4.4. With regard to s104(7), this sub-section would apply if the Secretary of State was satisfied that the adverse impact of the proposed development outweighs its benefit.

5.4.5. I find that the substantial weight I have assigned to the need for the proposed development taken with the great positive weight assigned to greenhouse gas emissions, and moderate and little weight respectively to biodiversity and ecology, and socio-economic issues amounts to a very high level of benefit. Whilst I have assigned great negative weight to soils and agriculture, moderate negative weight to landscape and visual and little weight to alternatives, health and safety, heritage and traffic and transport issues I find that taken together the harm would be insufficient to outweigh the benefit.

5.4.6. I therefore find that s104(4) to (8) of the PA2008 would not apply and conclude that there are no imperative reasons for the Secretary of State to determine the application other than in accordance with the relevant NPSs, consistent with s104(2) and s104(3) of the PA2008.

5.4.7. In chapter 3 at paragraph 3.7.45 I concluded that less than substantial harm would be caused to both designated grade 1 assets, Camblesforth Hall and Carlton Towers, because of the effect of the proposed development on the setting of each.

5.4.8. In making my recommendation to the Secretary of State and for the reasons given above, I am satisfied that the public benefits would outweigh the level of less than substantial harm to the two designated grade 1 assets Camblesforth Hall and Carlton Towers.

5.4.9. In making this recommendation, I have discharged my duties under s66 of the Planning (Listed Buildings and Conservation Areas) Act 1990, EN-1 paragraph 5.9.32, and the NPPF paragraph 215.

Conclusion

5.4.10. Overall, the ExA therefore concludes that the case for development consent has been made in the form of the rDCO at annex C.

6. LAND RIGHTS AND RELATED MATTERS

6.1. INTRODUCTION

6.1.1. The application includes proposals for the Compulsory Acquisition (CA) and Temporary Possession (TP) of land and rights over land. The case for CA and TP is examined in accordance with the tests in the Planning Act 2008 (PA2008).

6.1.2. This chapter sets out the:

- legislative requirements and guidance
- the applicant's request for CA and TP powers
- purposes for which land is required and the scope of the powers sought
- examination of the CA and TP case
- conclusions

6.2. LEGISLATIVE REQUIREMENTS AND GUIDANCE

PA2008

6.2.1. Section 122 sub-section 2 ((s)122 (2)) of the PA2008 provides that a Development Consent Order (DCO) may include provision authorising CA only if the Secretary of State for Energy Security and Net Zero (the Secretary of State) is satisfied any of the following conditions are met, that the land is:

- required for the development to which the development consent relates
- required to facilitate or is incidental to that development
- replacement land which is to be given in exchange for the Order land under s131 or s132

6.2.2. In addition, s122(3) requires that there must be a compelling case in the public interest for the land to be acquired compulsorily. For this to be met, the 'Planning Act 2008: guidance related to procedures for the compulsory acquisition of land' 2013 (the CA Guidance - published by the former Department for Communities and Local Government) indicates that the Secretary of State will need to be persuaded that there is compelling evidence that the public benefits that would be derived from the CA will outweigh the private loss that would be suffered by those whose land is to be acquired.

6.2.3. S123(1) requires the Secretary of State to be satisfied that any of the following conditions set out in s123(2) to s123(4) are met, that:

- the application for the order included a request for CA of the land to be authorised
- all persons with an interest in the land consent to the inclusion of the provision
- the prescribed procedure has been followed in relation to the land.

6.2.4. S127 of the PA2008 applies to SU's land. S127(2) and (3) state that an order granting development consent may include provisions authorising the CA of SU land only to the extent that the Secretary of State is satisfied that it can be purchased and not replaced without serious detriment to the carrying on of the undertaking or if purchased it can be replaced by other land belonging to, or available for acquisition by, the undertakers without serious detriment to the undertaking.

6.2.5. Similarly, s127(5) and s127(6) of the PA2008 provide that an order granting development consent may only include provision authorising the CA of rights over land belonging to SUs to the extent that the Secretary of State is satisfied that the right can be taken without serious detriment to the carrying out of the undertaking, or that any detriment can be made good by the SU by the use of other land belonging to or available for acquisition by them.

6.2.6. S138 of the PA2008 relates to the extinguishment of rights and the removal of apparatus on SU land. It states that an order may include a provision for the extinguishment of the relevant rights, or the removal of the relevant apparatus only if the Secretary of State is satisfied that the extinguishment or removal is necessary for the purposes of carrying out the development to which the order relates.

6.2.7. S115(2) of the PA2008 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.

6.2.8. TP powers are also capable of being within the scope of a DCO by virtue of Paragraph 2, Part 1 of Schedule 5 to the PA2008. This allows for, amongst other things, the suspension of interests in or rights over land compulsorily or by agreement. The PA2008 and the associated CA Guidance do not contain the same level of specification and tests to be met in relation to the granting of TP powers, as by definition such powers do not seek to permanently deprive or amend a person's interests in land. Further, such powers tend to be ancillary and contingent to the application proposal as a whole, in the sense that they are only capable of proceeding if the primary development is justified.

Neighbourhood Planning Act 2017

6.2.9. 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.

6.2.10. Part 2 Principal Powers “Disapplication and modification of legislative provisions” paragraph 8 (1) (b) of my recommended DCO (rDCO) (found at Annex C of this report) disapplies the provisions of the Act insofar as they relate to TP of land for carrying out the authorised development TP of land for maintaining the authorised development.

6.2.11. Whilst on this basis it is not necessary to assess the proposed development against these provisions, they provide a useful indication of how Parliament considers these matters should be addressed and how a balance can be struck between acquiring authorities and those whose interests are affected by the use of such powers.

The CA Guidance

6.2.12. In addition to the legislative requirements set out above, the CA Guidance sets out a number of general considerations which also have to be addressed including whether:

- all reasonable alternatives to CA have been explored
- the applicant has a clear idea of how it intends to use the land subject to CA powers

- the applicant can demonstrate that funds are available to meet the compensation liabilities that might flow from the exercise of CA powers
- the Secretary of State is satisfied that the purposes stated for the CA and TP are legitimate and sufficiently justify the inevitable interference with the human rights of those affected.

6.2.13. The ExA has taken all relevant legislation and guidance into account in the reasoning below and relevant conclusions are drawn at the end of this chapter.

6.3. THE APPLICANT'S REQUEST FOR CA AND TP POWERS

6.3.1. All versions of the applicant's draft DCO (dDCO) include provision for CA of freehold interests and private rights, the creation of new rights over land and provisions for the TP of land. The applicant's final dDCO [REP9-003] was submitted close to the end of the examination.

6.3.2. None of the land included in the CA request is Crown Land, National Trust Land, Open Space or common land.

6.3.3. The applicant sets out the land and rights it is seeking together with the related reasons and the basis under which compensation would be funded in the following documents:

- Statement of Reasons (SoR) final [REP9-008], and initial [APP-011] and [AS-011]
- Book of Reference (BoR) final [REP8-006]
- Land and Crown Land Plan [REP4-003]
- Works Plans [APP-015]
- Access and Rights of Way Plan [APP-016]
- Funding Statement [APP-012] supported by [AS-012]
- Explanatory Memorandum [APP-007]

6.3.4. The applicant tracks progress of negotiations with affected persons (APs) and SUs by means of a list of all objections to the grant of compulsory acquisition and/or temporary possession powers [REP9-010]

6.3.5. Land over which CA and TP powers are sought is referred to in this chapter as the Order land.

6.4. THE PURPOSES FOR WHICH LAND IS REQUIRED AND SCOPE OF POWERS SOUGHT

6.4.1. The applicant sets out the purposes for which land is required and scope of powers sought in its SoR document [AS-011].

6.4.2. The applicant explains that the purpose of the powers is to enable the proposed development to provide a meaningful and timely contribution to decarbonisation and security of supply. The applicant goes on to say that the proposed development would provide a vital opportunity to develop a large-scale low-carbon generation scheme that would support the achievement of carbon budgets and Net Zero 2050.

6.4.3. Whilst the applicant is not seeking to acquire the freehold of any land [AS-011] it is seeking the following powers:

- permanent acquisition of new rights (including restrictive covenants) (article 23 of the dDCO [REP9-003]) – shown edged red and shaded blue on the Land and Crown Land Plan [REP4-003]
- acquisition of subsoil (article 26 of the dDCO) – shown edged red and shaded blue on the Land and Crown Land Plan as it is presented together with new rights on the top section of the relevant plots
- temporary use of land to permit construction and maintenance where the applicant has not yet exercised powers of compulsory acquisition (articles 30 and 31 of the dDCO) – shown blue where for a specific plot both temporary possession and new rights are sought

6.4.4. The applicant considers that in the absence of these powers, the land and rights required to allow the proposed development to be constructed and operated may not be secured.

6.4.5. The applicant is seeking to acquire the relevant proprietary interests including new rights and temporary use of land by voluntary agreement, in order to ensure implementation of the proposed development. Whilst seeking compulsory acquisition powers, the applicant continues to seek to acquire use of the land, the rights and other interests in, on and over the land, the temporary use of land, as well as secure the removal of rights affecting the Order land that may impede the proposed development, by agreement wherever practicable.

6.4.6. The applicant considers that this approach of seeking powers of compulsory acquisition in the dDCO and, in parallel, conducting negotiations to acquire land by agreement, accords with paragraph 26 of the CA Guidance.

6.5. EXAMINATION OF THE CA AND TP CASE

The examination process

6.5.1. In examining the application, I considered all written material in respect of CA and TP. I asked questions of the applicant and SUs in ExQ2 [PD-005]. In addition, I held one CA hearing where oral representations were heard and relevant issues were explored in further detail [EV4-001].

6.5.2. I carried out unaccompanied site inspections [EV5-001], [EV9-001] and [EV9-002].

6.5.3. By the close of the examination, there were no outstanding objections from any AP or SU except Network Rail Infrastructure Limited (Network Rail) which is considered later in this chapter.

6.5.4. No APs or SUs requested to be heard at the CA hearing.

Summary of the applicant's case

6.5.5. The applicant's general case for CA and TP is set out in its SoR [AS-011] under the following headings:

- Source and Scope of Powers Sought in the DCO (Section 5)
- Purpose of the Powers (Section 6)
- Justification for the Compulsory Acquisition Powers (Section 7)
- Communications and Negotiations (Section 8)
- Human Rights (Section 9)
- Special Considerations Affecting the Order Limits (Section 10)

6.5.6. The applicant's conclusions [AS-011] include that:

- its SoR demonstrates that the inclusion of powers of compulsory acquisition in the draft DCO for the purposes of the proposed development meets the requirements of s122 of the PA2008 as well as the considerations in the CA Guidance
- the compulsory acquisition of rights over the Order land (including imposition of restrictive covenants), together with the overriding of interests, rights and restrictive covenants and the suspension or extinguishment of private rights, is required for the purposes of, to facilitate, or are incidental to, the proposed development and are proportionate and no more than is reasonably necessary
- there is a compelling case in the public interest for the rights over the land to be compulsorily acquired given the meaningful and timely contributions offered by the proposed development to UK decarbonisation and security of supply, while helping lower bills for consumers throughout its operational life
- it has explored all reasonable alternatives to compulsory acquisition. Whilst seeking compulsory acquisition powers, the applicant continues to seek to acquire the necessary interests in the land including the temporary use of land and the rights and other interests by agreement, as well as secure the removal of matters affecting the Order land that may impede the proposed development, wherever possible
- the proposed interference with the rights of those with an interest in the Order land is for a legitimate purpose, namely the construction and operation of the proposed development, which is a Nationally Significant Infrastructure Project, and is necessary and proportionate to that purpose. The applicant considers that the very substantial public benefits to be derived from the proposed compulsory acquisition would decisively outweigh the private loss that would be suffered by those whose land or interests would be acquired, and therefore justifies interfering with that land or rights
- it has explained how it is expected that the construction of the proposed development and the acquisition of the land or rights over the land would be funded, as well as compensation in respect of the exercise of powers of compulsory acquisition, which demonstrates that there is a reasonable prospect of the requisite funds being available
- the applicant has considered articles 1of the First Protocol to the European Convention on Human Rights (ECHR) and articles 6 and 8 of the ECHR. The applicant considers that the very substantial public benefits to be derived from proposed development would outweigh the private loss that would be suffered by those whose land is to be acquired or whose rights would be interfered with

Alternatives and site selection

6.5.7. The applicant considers that all reasonable alternatives to compulsory acquisition: negotiated agreements, alternative sites and modifications to the proposed development have been considered prior to making the application. The applicant's use of compulsory acquisition powers is intended to be proportionate. The applicant is not seeking powers to acquire the freehold of any of the Order land and where practicable, lesser powers of temporary possession would be used.

6.5.8. I concluded at 3.3.25 that there is good accordance regarding the consideration of alternatives and site selection by comparing the applicant's approach with the EN-1 and EN-3 policy position.

Availability and adequacy of funding

6.5.9. The applicant's funding statement [APP-012] explains that Enso Green Holdings D Limited is owned by Enso Green Holdings Limited of which Macquarie Group Limited is ultimately a joint venture partner via its standalone operating company Cero Generation.

6.5.10. The applicant provides the most recent consolidated accounts for Macquarie Group Limited are provided in Appendix 1 [AS-012]. The applicant states that Macquarie Group is committed to the delivery of the proposed development and to date has already invested approximately £2 million of its own capital in costs associated with preparing the application and securing land rights. It says that it will also be funding the cost of taking the application through examination.

6.5.11. The applicant explains that if the Secretary of State grants development consent for the proposed development, it would seek further funding with the support of its legal and financial advisors at Macquarie Group Limited. The applicant has no concerns that it would be unable to obtain finance for the construction, operation and decommissioning of the proposed development as the United Kingdom remains an attractive territory within which to invest in renewable technologies.

6.5.12. In order to ensure that sufficient funds are in place or security is provided prior to powers of compulsory acquisition being exercised, the applicant's dDCO [REP9-003] includes article 46, which prevents the exercise of the compulsory acquisition powers until the Secretary of State has approved a form of security from the applicant. This form of article is now common practice in privately funded development consent orders.

6.5.13. Based on the information provided, I am satisfied that the necessary funds would be available to the applicant to cover the likely costs of CA.

Statutory undertaker land, rights and apparatus

6.5.14. The draft Order includes provision to authorise the extinguishment of a relevant right, or the removal of relevant apparatus belonging to statutory undertakers, in connection with the delivery of the proposed development. The exercise of such powers would be carried out in accordance with the protective provisions contained in schedule 9 to the Order.

6.5.15. Section 10.3 of the applicant's SoR [AS-011] sets out the applicant's position in relation to s127 and s138 of the PA2008 on submission of the application. The applicant continued to engage with the SUs affected during the examination to address matters raised in representations. The positions reached at the close of the examination are included within the applicant's list of all objections to the grant of compulsory acquisition and/or temporary possession powers [REP9-010]. The positions reached with North Yorkshire Council, National Highways and the Environment Agency are recorded in the applicant's final Statement of Commonality [REP8-017] with no matters related to CA and TP outstanding.

6.5.16. Objections have been formally withdrawn by:

- National Grid Electricity Transmission plc [REP7-030]
- National Gas Transmission plc [REP7-028]
- Northern Powergrid [REP9-014]

6.5.17. Protective Provisions are set out in schedule 9 of the dDCO [REP9-003].

6.5.18. Other than those named in 6.5.23 and 6.5.24 these are for the protection of:

- electricity, gas, water and sewerage undertakers (Part 1)
- operators of electronic communications code networks (Part 2)
- drainage authorities (Part 3)

6.5.19. These are for the protection of and have been agreed by the applicant with:

- The Environment Agency (Part 4)
- National Gas Transmission plc as gas undertaker (Part 5)
- National Grid Electricity Transmission plc as electricity undertaker (Part 6)
- Northern Powergrid (Part 7)

6.5.20. These are for the protection of Network Rail, unless otherwise agreed in writing with the undertaker:

- railway interests (Part 8)

6.5.21. The only SU not to formally withdraw its objection at the close of the examination was Network Rail.

6.5.22. In its written representation [REP2-033] Network Rail said that it was discussion with the applicant as to the preservation of its rights and the applicant had confirmed that it did not intend to extinguish any of the rights. In order to be in a position to withdraw its objection, Network Rail said that it would require:

- suitable protective provisions to be included within the DCO to ensure that the applicant is obliged to preserve the rights and is restricted from exercising compulsory acquisition powers under the DCO which would have the effect of extinguishing the rights.
- a private agreement to be entered into with the promoter obliging the applicant to preserve the rights.

6.5.23. Network Rail was hopeful [REP2-033] that the parties would reach agreement by deadline 6 (9 April 2025) on these matters, but as confirmed by the applicant [REP9-010] despite further liaison between legal representatives of Network Rail there remained no agreement at the close of the examination.

6.5.24. The applicant explained [REP9-010] that its proposed protective provisions were based on the Network Rail standard protective provisions which were provided by email on the 22 May, and which are substantially the same as those on the recently granted East Yorkshire Solar Farm Order 2025 (Planning Inspectorate reference EN010143).

6.5.25. The applicant explained [REP9-013] the protective provisions (paragraph 92 (4)) maintain the complete prohibition on the applicant's ability to unilaterally extinguish Network Rail's rights over the relevant plots which it considered addressed the first concern raised by it in its representation [REP2-033] and therefore there would be no detriment to Network Rail and it's concerns should be considered resolved.

6.5.26. Despite the lack of a private agreement [REP2-033] I am satisfied that the applicant's proposed protective provisions would address Network Rail's other request and would be sufficient to protect it for the carrying out of its statutory

undertaking. I conclude that there would be no serious detriment to Network Rail who made no further submissions during the examination.

6.5.27. I find there are no outstanding important and relevant matters raised by any SU at this stage. I am satisfied that the relevant protective provisions contained within schedule 9 of the rDCO would ensure that an appropriate degree of protection would be given to the affected SUs, such that there would be no serious detriment to the carrying out of their undertakings.

6.5.28. Overall, I conclude that the tests set out in subsections 127(3) and 127(6) (as appropriate) would be met accounting for the applicant's protective provisions, including those proposed for railway interests, including Network Rail's.

6.5.29. In accordance with s138(4) I am satisfied that the extinguishment of the SU rights, or removal of the SU apparatus is necessary for the purpose of carrying out the development to which the Order relates.

Human Rights Act 1998 and Equality Act 2010

6.5.30. The Human Rights Act 1998 places the European Convention on Human Rights (ECHR) into UK statute. The ECHR is subscribed to by member states of the Council of Europe. ECHR rights are enforceable in the domestic courts but with final recourse to the European Court of Human Rights. The ECHR, the Council of Europe and the European Court of Human Rights are not EU institutions and are unaffected by the decision to leave the EU.

6.5.31. Relevant provisions of the ECHR that are normally engaged by CA or TP proposals include:

- Article 6 – the right to due process in civil proceedings, including a public hearing before an independent and impartial tribunal
- Article 8 – the right to respect for private and family life and the home is relevant where property that is a home is affected
- Protocol 1, Article 1 – the right to the peaceful enjoyment of property and not to be deprived of this other than in the public interest

6.5.32. The applicant's SoR [AS-011] deals with Human Rights in section 9. This includes consideration of compliance with the relevant provisions of the ECHR and fair compensation.

6.5.33. The applicant states that the Order has the potential to infringe the rights of persons who hold interests in land within the Order land under article 1 of the First Protocol. Such an infringement is authorised by law so long as:

- the statutory procedures for making the dDCO are followed and there is a compelling case in the public interest for the inclusion of powers of compulsory acquisition in the dDCO
- and the interference with the convention right is proportionate.

6.5.34. In relation to article 8, the applicant states that the Order limits do not include, and the proposed development does not require, the outright acquisition of any residential dwelling-houses or their curtilage. Consequently, as dwelling-houses will not be directly affected, it is not anticipated that the Convention rights protected by article 8 would be infringed.

6.5.35. I consider that there has been fair opportunity for written and oral representations as part of our examination, including through written representations and at the compulsory acquisition hearing 1 (CAH1) [EV4-001].

6.5.36. I have found above that there is a compelling case in the public interest for all of the land identified to be acquired compulsorily. Furthermore, I consider that the proposed interference with individuals' rights would be lawful, necessary, proportionate and justified in the public interest. I therefore consider the CA and TP powers sought are compatible with the Human Rights Act.

6.5.37. Section 149 of the Equality Act 2010 establishes a duty to eliminate discrimination, advance equality of opportunity and foster good relations between persons who share a protected characteristic and persons who do not. I have had regard to this duty throughout the examination and in my consideration of the issues raised in this report.

6.5.38. Overall, I find that the proposed development does not harm the interests of persons who share a protected characteristic or have any adverse effect on the relationships between such persons and persons who do not share a protected characteristic. On that basis, I have found no breach of the Public Sector Equality Duty.

Crown Land and Special Category Land

6.5.39. The applicant confirms in part 4 of the BoR [REP8-006] that there are no Crown Interests and consequently s135 of the PA2008 does not apply.

6.5.40. The applicant confirms in part 5 of the BoR that the CA proposals do not relate to any special category land and consequently s130, 131 and 132 of the PA2008 do not apply.

CA tests under s122 and s123 of the PA2008

6.5.41. In its response to my questions at CAH1 [EV4-001] the applicant submitted its written summary [REP1-006] that explained it was standard practice to seek powers over a relatively large area for cable corridors given the uncertainty over ground conditions at this stage of the design.

6.5.42. In terms of s122(2) PA 2008, the applicant stated [REP1-006] that the land rights being acquired are required for the proposed development to ensure connection to the grid and to be able to construct the inter array crossings. It concluded therefore, all the powers sought were required.

6.5.43. I was satisfied with the degree of consistency between the applicant's works plans [APP-015] and its land plans [REP4-003] and that these match with more detailed descriptions of the works provided in table 3 in its annex to its SoR [APP-011]. I found no plots of land where no works would take place.

6.5.44. I am satisfied that rights would be required over the plots of land identified whilst allowing for some flexibility, for example the routing of below ground connections between solar arrays, Works No.1, and the on-site substation Works No.2 and BESS Works No.3 as explained by the applicant. Hence, I find compliance with PA2008 under s122(2).

6.5.45. Given the EN-1 policy support for the proposed development I am satisfied that the PA2008 s122(3) condition is met with regard to there being a compelling case in the public interest for the inclusion of compulsory acquisition powers in the Order.

6.5.46. As the application for the Order includes a request that the compulsory acquisition of rights are authorised, I find that the PA2008 s123 condition is met.

6.5.47. With regard to CA tests under s122 and s123 of PA2008 I conclude that the proposed development would be compliant with these.

Land rights status at the close of the examination

6.5.48. At the close of the examination the applicant had options for leases secured with all those with a freehold interest in the land [REP9-008], with the exception of Drax Power Limited. The applicant is confident that agreement can be reached voluntarily with Drax Power Limited to agree an option for easement.

6.5.49. With the exception of Network Rail there were no objections to CA at the close of the examination [REP9-010].

6.6. CONCLUSIONS

6.6.1. Taking account of all the information, submissions and representations before me, including the matters considered above, I have reached the following conclusions:

- the application site has been appropriately selected
- all reasonable alternatives to CA have been explored
- the dDCO provides a clear mechanism whereby the necessary funding can be guaranteed
- there is a clear need for all the land included in the BoR to be subject to CA or TP
- there is a need to secure the land and rights required to construct 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
- the powers sought satisfy the conditions set out in s122 and s123 of the PA2008 as well as the CA Guidance
- The powers sought in relation to SUs meet the conditions set out in s127 and s138 of the PA2008 and the CA Guidance.

6.6.2. Considering all the above factors together, I conclude that there is a compelling case in the public interest for the CA and TP powers sought in respect of the relevant land shown in the land plans.

7. DRAFT DEVELOPMENT CONSENT ORDER AND RELATED MATTERS

7.1. INTRODUCTION

7.1.1. This chapter of the report is set out under the following headings:

- The draft Development Consent Order (dDCO) as submitted with the application
- Examination of the dDCO and changes made to it
- Consideration of outstanding DCO matters
- Findings and conclusions
- Recommended changes to the applicant's final dDCO

7.1.2. My recommended DCO (rDCO) can be found at annex C.

7.2. THE dDCO AS SUBMITTED WITH THE APPLICATION

7.2.1. The application for development consent was accompanied by a dDCO [APP-006] and an Explanatory Memorandum (EM) [APP-007]. Both documents were updated during the Examination. The applicant's final version of the dDCO is at [REP9-003] and the EM at [REP9-006]. Each version of the dDCO is in the form of a statutory instrument as required by section (s)117(4) of the Planning Act 2008 (PA2008).

7.2.2. The applicant explains [APP-007] that the Order consists of 46 operative provisions, known as articles, and 11 schedules. Whilst the Infrastructure Planning (Model Provisions) (England and Wales) Order 2009 has been repealed, the dDCO is based on the model provisions as well as other DCOs that have been made to date.

7.2.3. The applicant states that the dDCO has been influenced by the following recent DCOs:

- Longfield Solar Farm Order 2023
- Hornsea Four Offshore Wind Farm 2023
- Awel y Môr Offshore Wind Farm Order 2023
- A417 Missing Link Development Consent Order 2022
- Little Crow Solar Park Order 2022
- Cleve Hill Solar Park Order 2020

7.2.4. The structure and content of the applicant's dDCO provided with its application [APP-006] and of final submitted dDCO [REP9-003] is set out below

Part 1	Preliminary provides for: • 1 Citation and commencement • 2 Interpretation
Part 2	Principal powers provide for: • 3 Grant of development consent • 4 Maintenance of authorised development • 5 Operation of generating station • 6 Benefit of the Order • 7 Planning Permission • 8 Disapplication and modification of legislative provisions

	• 9 Defence to proceedings in respect of statutory nuisance
Part 3	Powers regarding streets, 10 to 17, provide for the execution of works in or under streets, rights of way and related matters.
Part 4	Supplemental powers provide for: • 18 Discharge of water • 19 Protective works to buildings • 20 Authority to survey and investigate land
Part 5	Powers of acquisition, 21-35, provide for compulsory acquisition of land and land rights, and related matters.
Part 6	Miscellaneous and general powers provide for: • 36 Removal of human remains • 37 Operational land for the purposes of the 1990 Act • 38 Certification of plans, etc. • 39 Service of notices • 40 Felling or lopping of trees or removal of hedgerows • 41 Trees subject to tree preservation orders • 42 Arbitration • 43 Requirements, appeals etc. • 44 Application of landlord and tenant law • 45 Protective provisions • 46 Funding
Schedules 1-11	Contain information referred to in the articles: • 1 Authorised development • 2 Requirements • 3 Streets subject to street works • 4 Alteration of streets • 5 Access to works • 6 Public rights of way to be temporarily stopped up • 7 Land in which only new rights may be acquired • 8 Modification of compensation and compulsory purchase enactments for the creation of new rights and imposition of new restrictive covenants • 9 Protective provisions • 10 Arbitration rules • 11 Documents to be certified

7.2.5. With regard to article 7 on planning permission the applicant references [APP-007] article 8 of National Grid (Yorkshire Green Energy Enablement Project) Development Consent Order 2024.

7.2.6. The applicant notes [APP-007] that article 9 on statutory nuisance is a model provision. It considers that such noise is likely to arise and that provision to define its consequences in an appropriate and balanced manner would be needed. It considers this would be true of the authorised development, and for this reason it is necessary to include this article in the Order. The applicant notes that it is well precedented, for example the Longfield Solar Farm Order 2023.

7.2.7. The applicant explains [APP-007] that the effect of article 36 on the removal of human remains is to replace the existing and disparate for regulating the removal of

human remains and consolidate the applicable provisions into a single article in the Order. The applicant points to precedent in the form of article 12 of the Little Crow Solar Park Order 2022.

7.2.8. The applicant includes requirement 13 on construction hours which provides, subject to approved exceptions, that no construction works are to take place except between the hours of 8am and 6pm Monday to Friday, and 8am to 1pm on Saturdays, with no activity on Sundays or bank holidays.

7.2.9. The applicant includes lists of definitions within part 1, provision 2 and elsewhere in the dDCO.

7.3. EXAMINATION OF THE dDCO AND THE CHANGES MADE

7.3.1. In this section I report on material changes that the applicant made to the dDCO in response to submissions made during the examination by interested parties and questions and proposals from myself [PD-005] and [PD-006].

7.3.2. Several changes of an editorial, typographical, grammatical or clarifying nature were also made. The applicant provided a schedule of updates during the examination [REP9-005]. Changes to protective provisions for the benefit of particular statutory undertakers have already been reported in chapter 6 of this report.

Local planning authorities, other statutory consultees and parish councils

7.3.3. In response to concerns raised by the Environment Agency [REP1-004] the applicant provided an amended dDCO [REP4-004] which:

- amended article 2 to provide a more limited definition of site preparation works, which in summary no longer included any ground breaking activity
- amended article 18 (7) regarding the discharge of water
- amended schedule 2 part 1 requirement 4 to require consultation with the Environment Agency in the approval of the Construction Environmental Management Plan (CEMP) by North Yorkshire Council (NYC)
- amended schedule 2 part 1 adding requirements 19, 20 and 22 to provide for an approval process for hydrogeological risk assessment, foundation works piling method statement and flood management strategy respectively

7.3.4. In response to concerns raised by National Highways in its relevant representation [RR-267] the applicant amended schedule 2 part 1 requirement 5 to require consultation with National Highways in NYC's approval of a decommissioning traffic management plan as shown in the applicant's schedule of changes to the dDCO [REP2-003].

7.3.5. Further to discussions with Natural England the applicant amended schedule 2 part 1 requirement 10 to require consultation with Natural England in NYC's approval of the LEMP dDCO [REP5-003].

7.3.6. Consistent with the Health and Safety Executive's position as set out at paragraph 3.6.49 of this report the applicant removed it from any consultation on the Battery Safety Management Plan and modified requirement 9 accordingly.

Communities, individuals, businesses and ExA questions and proposals

7.3.7. The applicant amended schedule 2 part 1 to include a new requirement 21 to secure a glint and glare mitigation strategy at the design stage in response to concerns raised by Burn Gliding Club [RR-043].

7.3.8. Guidance on the preparation of a DCO is primarily in the form of Planning Act 2008: Content of a Development Consent Order required for Nationally Significant Infrastructure Projects - GOV.UK dated 30 April 2024 (DCO Guidance).

7.3.9. The Overarching National Policy Statement for Energy (EN-1) includes at paragraph 4.1.16 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.

7.3.10. In addition to these considerations the questions I asked on the dDCO included in ExQ2 [PD-005] were informed by precedent in the form of Heckington Fen Solar Park Order 2025, PINS reference EN010123 (Heckington Fen), which was a more recent solar farm made order than those cited by the applicant.

7.3.11. My questions [PD-005] and proposed changes to the dDCO [PD-006] covered a number of matters including:

- additional certified documents in the form of an outline design principles document and an outline supply chain, employment and skills plan - accepted by the applicant and NYC
- transferring construction site working hours from a requirement to a certified document - accepted by the applicant and NYC
- an additional requirement relating to operational noise - accepted by the applicant and NYC
- the need for and suitability of definitions – partially accepted by the applicant
- the need for article 9: Defence to proceedings in respect of statutory nuisance – not accepted by the applicant

7.4. CONSIDERATION OF OUTSTANDING DCO MATTERS

7.4.1. With regard to DCO matters outstanding with NYC [REP8-016], NYC requested that the notice of the date of final commissioning within each phase of Work No.1 was separated out into a separate requirement.

7.4.2. The Applicant did not consider this to be necessary as it did not, in their view, substantively affect the meaning of the requirement [REP8-016].

7.4.3. The Oaklands Farm Solar Project, PINS ref EN010122 made DCO (Oaklands) was made after the close of the examination. Within requirement paragraph 46 it requires under 46 (4) a notice of commissioning for each phase of Work No.1.

7.4.4. The East Yorkshire Solar Farm, PINS ref EN010143 DCO (East Yorkshire) was made during the period of the examination. Within requirement paragraph 3 it requires under 3 (4) that the undertaker must serve written notice of the date of final commissioning on both relevant planning authorities.

7.4.5. I find that neither Oaklands nor East Yorkshire separate out any notice of commissioning into a separate requirement, and NYC provided no evidence to

support their argument for this. Hence, I find no reason to recommend a change to requirement 2 in my rDCO.

7.4.6. In addition, NYC recommend [REP8-016] that an overall community liaison for the entire project would be preferable to one specific to each phase so that the public have a single point of reference.

7.4.7. In response [REP8-016] the applicant considered that although its dDCO and accompanying management plans were structured to allow development in phases there was an intention to build in one phase. The applicant therefore said that it required this drafting for consistency and flexibility.

7.4.8. East Yorkshire makes reference to the creation of a community liaison group and the Oaklands wording is the same as the applicant's, covering community liaison with reference to a CEMP.

7.4.9. In the absence of any supporting evidence from NYC including reference to East Yorkshire I find the applicant's position to be more consistent with EN-1 paragraph 4.1.16 regarding the use of requirements and Oaklands, so see no reason to change the corresponding requirement 4 in my rDCO.

Definitions

7.4.10. The applicant resisted [REP8-020] my proposed changes with regard to relying on the normal definition of apparatus as set out under Part 1 Preliminary article 2 Interpretation. In its response the applicant considers recently drafted solar DCOs Byers Gill: PINS ref EN010139 and Oaklands and the recently made solar DCOs Heckington Fen PINS ref EN010123 and East Yorkshire.

7.4.11. The applicant proposed that the definition should become: ""apparatus" has the same meaning as in Part 3 (street works in England and Wales) of the 1991 Act except that, unless otherwise provided, it further includes pipelines (and parts of them), aerial markers, cathodic protection test posts, field boundary markers, transformer rectifier kiosks, electricity cables, telecommunications equipment and electricity cabinets".

7.4.12. The applicant resisted [REP8-020] my proposal to remove from Schedule 1 Authorised development, the definitions of several engineering terms (inverter, solar panel, substation, switchgear, transformer, trenchless installation techniques) or to rely upon the Electricity Act 1989 (1989 Act) in the case of electrical cables. In doing so it pointed to precedent in the form of the Heckington Fen and East Yorkshire made DCOs.

Defence to proceedings in respect of statutory nuisance

The applicant resisted [REP8-020] my proposed deletion of Part 2 Principal powers article 9 Defence to proceedings in respect of statutory nuisance. In addition to its general explanation the applicant adds East Yorkshire to the list of precedents that I provided [PD-006]. The applicant considers that the article is necessary and as no interested party has raised any concerns and it is a heavily precedented article it should be retained in the DCO. The Applicant has therefore not removed it from the final dDCO [REP9-003].

7.5. FINDINGS AND CONCLUSIONS

7.5.1. I find no reason to disagree with the changes made to the DCO by the applicant in response to submissions made by the Environment Agency, National Highways, Natural England, statutory undertakers and Burn Gliding Club during the examination and the submission made by the Health and Safety Executive during the Oakland examination.

7.5.2. I find no reason to disagree with the changes made to the DCO by the applicant in response to submissions made by NYC as detailed in the applicant's schedule of changes [REP9-005].

7.5.3. During the examination there was relatively comment on the applicant's DCO and the applicant referred to previously made solar farm orders. The remainder of this section sets out my reasoning on matters where the applicant and I disagree and differences between the applicant's final dDCO and Oaklands.

Definitions

7.5.4. The DCO Guidance advises that common provisions included in the articles of a DCO are definitions of key terms in the DCO and provisions setting out how to interpret the DCO and goes on to say that definitions should be kept simple and not amount to effectively DCO provisions themselves.

7.5.5. I find that the term apparatus is used extensively in the dDCO in part 3 streets and is defined both in part 1 article 2 interpretation and several times in schedule 9 protective provisions. I find that the New Roads and Street Works Act 1991 (1991 Act) relies on the normal definition of apparatus as it says that ""apparatus" includes any structure for the lodging therein of apparatus or for gaining access to apparatus" The 1991 Act describes this as a minor definition and it does not narrow the definition of apparatus to any list or class of assets.

7.5.6. I find that in the context of protective provisions, defining apparatus with reference to assets associated with particular statutory utility undertakers, such as pipelines or cables, assists with clarifying asset types owned or maintained and associated risks.

7.5.7. In the context of the DCO, I find that the applicant's final proposal narrows the normal definition of apparatus. The normal definition would provide the undertaker with a necessary way of describing any kind of apparatus, not just that associated with utilities. For example, this would include anything that it needed to relocate during street works to enable the permitted development to take place.

7.5.8. I give greater weight to the approach adopted by the 1991 Act than I do to the, albeit widely precedented, approach adopted by the applicant.

7.5.9. I conclude that reliance on the normal definition of apparatus, in part 1 article 2 interpretation, provides better alignment with existing relevant legislation and the DCO Guidance on definitions.

7.5.10. I find that the terms inverter, solar panel, switchgear, transformer, trenchless installation techniques only appear in schedule 1 authorised development so in the context of the DCO do not find them to be key definitions. Whilst there is precedent

for this including East Yorkshire and Oaklands, they are all defined to describe their respective normal engineering functions, so I find nothing unusual and no need for them to be defined within the DCO. I conclude that the omission of these definitions would not affect the efficacy of the Order and would be better aligned with the DCO Guidance.

7.5.11. I find that the term substation to be defined beyond its engineering function and it appears in several schedules of the Order so conclude the need for its definition as proposed by the applicant is consistent with the DCO Guidance. This is consistent with East Yorkshire and Oaklands.

7.5.12. I find that the term electrical cables is defined beyond its engineering function, and it appears in several schedules of the Order so accept there is a need for its definition. I give more weight to its definition as electric line at s64 of the 1989 Act than the definition provided by the applicant. I also note that the applicant relies upon this definition in the context of protective provisions in the case of an electricity undertaker, electric lines or electrical plant (as defined in the 1989 Act) as detailed in schedule 9 part 1 paragraph 2.

7.5.13. I find that the applicant's approach is consistent with East Yorkshire, but that Oaklands does not define electrical cables.

7.5.14. I would also note with reference to 3.3 of this report, regarding alternatives, that it would draw attention to the importance and relevance of National Policy Statement for Electricity Networks Infrastructure (EN-5) to associated development required to connect the generating station to the National Electricity Transmission System.

7.5.15. I conclude that reliance on s64 of the 1989 Act to define electrical cables as electric line would provide better alignment with existing relevant legislation, policy in the form of EN-5 and be more consistent with the DCO Guidance on definitions.

Defence to proceedings in respect of statutory nuisance

7.5.16. I find that the effect of this article is to weaken the provisions of the Environmental Protection Act 1990 (the 1990 Act) that protect the public from noise nuisance. The applicant's proposal has the effect of a notice issued by a local planning authority (issued under s61 of the Control of Pollution Act 1974 (the 1974 Act)) providing a defence to a noise nuisance complaint brought before a magistrates' court by an aggrieved person under s82 of the 1990 Act.

7.5.17. The 1990 Act amended s61 of the 1974 Act through the provision of s61 (9) to say that a consent given under this section shall contain a statement to the effect that the consent does not of itself constitute any ground of defence against any proceedings instituted under s82 of the 1990 Act. The applicant's proposal disapplies this provision.

7.5.18. In terms of the undertaker's defence to proceedings in respect of statutory noise nuisance in the absence of article 9, the undertaker would still have the defence of best practicable means to actions brought under s82 of the 1990 Act which I find sufficient. I consider that best practicable means would be successful in the case of unforeseeable events that led to alleged nuisance and this addresses the reasons for the equivalent article's inclusion in the East Yorkshire recommendation report, see 7.8 of EN010143-001217-EYSF Report Final.pdf.

7.5.19. In its statutory nuisance statement [APP-237] the applicant explains that as its Environmental Statement (ES) concludes the noise and vibration impact is negligible it is considered that no claim against statutory nuisance in respect of noise and vibration is envisaged. In the applicant's justification for the power in the EM [APP-007] it considers that such noise is likely to arise and that provision to define its consequences in an appropriate and balanced manner would be needed. I find these positions to be inconsistent. As I have found no reason to disagree with the applicant's noise and vibration assessment in the ES, I find this article unnecessary and the power it confers is not justified.

7.5.20. I find that inclusion of this article would result in noise being given a little negative weight against the making of the Order in the form of the applicant's final draft DCO [REP9-003]. With its deletion as recommended I give the matter neutral weight as set out in chapters 3 and 5.

7.5.21. I therefore conclude that article 9 should be deleted and this is shown in the table of recommended changes and in my rDCO at annex C.

Oaklands

7.5.22. Compared with Oaklands I find that the more restricted definition of site preparation works, at part 1 preliminary 2 interpretation of the applicant's final draft DCO [REP9-003], to not include ground breaking activity, enables simplification of the control framework. For example, there is no longer a need for a LEMP for site preparation works in addition to after commencement. In this regard I favour the applicant's approach.

7.5.23. I do though find that Oaklands deleted article 36 Removal of human remains. I see no reason why this should not be deleted from the applicant's final dDCO [REP9-003].

7.6. CONCLUSION AND RECOMMENDED CHANGES TO THE APPLICANT'S FINAL dDCO

7.6.1. I conclude that the requirements provide mitigation for potential adverse effects identified and sufficiently address the issues raised during the course of the examination. They are also necessary, reasonable, enforceable and sufficiently precise as well as being relevant to planning and the proposed development.

7.6.2. Having regard to my conclusions set above, I recommend that the changes set out in the table below should be made to the applicant's final dDCO [REP9-003]. These changes are incorporated into my rDCO at annex C.

Table 7.6.1 Recommended changes to the applicant's final dDCO

Provision	Recommended change	Reasoning
Part 1 Preliminary Interpretation Article 2 (1)	~~"apparatus" has the same meaning as in Part 3 (street works in England and Wales) of the 1991~~	To align with the 1991 Act and DCO Guidance on the matter see

Provision	Recommended change	Reasoning
	~~Act except that, unless otherwise provided, it further includes pipelines (and parts of them), aerial markers, cathodic protection test posts, field boundary markers, transformer rectifier kiosks, electricity cables, telecommunications equipment and electricity cabinets;~~	paragraphs 7.5.5 to 7.5.9 of this report
Part 2 Principal powers Article 9 Defence to proceedings in respect of statutory nuisance	~~Defence to proceedings in respect of statutory nuisance 9.—(1) Where proceedings are brought under section 82(1) (summary proceedings brought by persons aggrieved by statutory nuisances) of the Environmental Protection Act 1990(d) 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~~	I do not consider the power to be justified, as explained at paragraphs 7.5.16 to 7.5.19 of this report

Provision	Recommended change	Reasoning
	~~construction sites), or a consent given under section 61 (prior consent for work on construction sites) of the Control of Pollution Act 1974(e); 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) 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.~~	

Part 6 Miscellaneous and general Article 36 Removal of human remains	~~Removal of human remains 36.—(1) Before the undertaker carries out any development or works which will or may disturb any human remains within the Order limits it must remove those human remains from the Order limits, or cause them to be removed, in accordance with the following provisions of this article. (2) Before any such remains are removed from the Order limits the undertaker must give notice of the intended removal describing the Order limits and stating the general effect of the following provisions of this article, by—(a) publishing a notice once in each of 2 successive weeks in a newspaper circulating in the area of the authorised development; and (b) displaying a notice in a conspicuous place within or near the Order limits. (3) As soon as reasonably practicable after the first publication of a notice under paragraph (2) the undertaker must send a copy of the notice to the local planning authority. (4) At any time within 56 days after the first publication of a notice under paragraph (2) any person who is a personal representative or relative of any deceased person whose remains are interred within the Order limits may give notice in writing to the undertaker of that person's intention to undertake the removal of the remains. (5) Where a person has given notice under paragraph (4), and~~	Consistency with recently made orders including Oaklands

	~~the remains in question can be identified, that person may cause such remains to be— (a) removed and re-interred in any burial ground or cemetery in which burials may legally take place; or (b) removed to, and cremated in, any crematorium, and that person must, as soon as reasonably practicable after such re-interment or cremation, provide to the undertaker a certificate for the purpose of enabling compliance with paragraph (10). (6) If the undertaker is not satisfied that any person giving notice under paragraph (4) is the personal representative or relative as that person claims to be, or that the remains in question can be identified, the question must be determined on the application of either party in a summary manner by the county court, and the court may make an order specifying who must remove the remains and as to the payment of the costs of the application. (7) The undertaker must pay the reasonable expenses of removing and re-interring or cremating the remains of any deceased person under this article. (8) If— (a) within the period of 56 days referred to in paragraph (4) no notice under that paragraph has been given to the undertaker in respect of any remains within the Order limits; or (b) such notice is given and no application is made under paragraph (6) within 56 days after the giving of~~	

	~~the notice but the person who gave the notice fails to remove the remains within a further period of 56 days; or (c) within 56 days after any order is made by the county court under paragraph (6) any person, other than the undertaker, specified in the order fails to remove the remains; or (d) it is determined that the remains to which any such notice relates cannot be identified, subject to paragraph (9) the undertaker must remove the remains and cause them to be re-interred in such burial ground or cemetery in which burials may legally take place as the undertaker thinks suitable for the purpose; and, so far as possible, remains from individual graves are to be reinterred in individual containers which must be identifiable by a record prepared with reference to the original position of burial of the remains that they contain. (9) If the undertaker is satisfied that any person giving notice under paragraph (4) is the personal representative or relative as that person claims to be and that the remains in question can be identified, but that person does not remove the remains, the undertaker must comply with any reasonable request that person may make in relation to the removal and re-internment or cremation of the remains. (10) On the re-internment or cremation of any remains under this article— (a) a certificate of~~	

	~~re-interment or cremation must be sent by the undertaker to the Registrar General giving the date of re-interment or cremation and identifying the place from which the remains were removed and the place in which they were re-interred or cremated; and (b) a copy of the certificate of re-interment or cremation and the record mentioned in paragraph (8) must be sent by the undertaker to the local authority mentioned in paragraph (3). (11) No notice is required under paragraph (2) before the removal of any human remains where the undertaker is satisfied— (a) that the remains were interred more than 100 years ago; and (b) that no relative or personal representative of the deceased is likely to object to the remains being removed in accordance with this article. (12) In this article references to a personal representative or relative of the deceased are to a person who— (a) is a husband, wife, civil partner, parent, grandparent, child or grandchild of the deceased; or (b) is, or is a child of, a brother, sister, uncle or aunt of the deceased; or (c) is the lawful executor of the estate of the deceased; or (d) is the lawful administrator of the estate of the deceased. (13) The removal of the remains of any deceased person under this article must be carried out in accordance~~	

Provision	Recommended change	Reasoning
	~~with any directions which may be given by the Secretary of State. (14) Any jurisdiction or function conferred on the county court by this article may be exercised by the district judge of the court. (15) Section 25 (offence of removal of body from burial ground) of the Burial Act 1857(a) is not to apply to a removal carried out in accordance with this article. (16) The Town and Country Planning (Churches, Places of Religious Worship and Burial Ground) Regulations 1950(b) do not apply to the authorised development.~~	
Schedule 1 Authorised development 1.		
	"electrical cables" means— electric line ~~as~~ as defined in section 64 of the 1989 Act;~~(a) 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; (b) excavations to install trenching, including storage of excavated material; and (c) 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,~~	To align with the 1989 Act, policy EN-5 and be more consistent with DCO Guidance on the matter, see paragraphs 7.5.12 to 7.5.15 of this report

Provision	Recommended change	Reasoning
	~~joint protection, manholes, kiosks, marker posts, underground cable marker, tiles and tape, send and receive pits for trenchless installation techniques, trenching, lighting, and a put or container to capture fluids associated with drilling;~~	
	~~"inverter" means electrical equipment required to convert direct current power to alternating current;~~	To better align with DCO Guidance on the matter see paragraph 7.5.10 of this report
	~~"solar panel" means a solar photovoltaic panel or module designed to convert solar irradiance to electrical energy;~~	To better align with DCO Guidance on the matter see paragraph 7.5.10 of this report
	~~"switchgear" means a combination of electrical disconnect switches, fuses or circuit breakers used to control, protect, and isolate electrical equipment;~~	To better align with DCO Guidance on the matter see paragraph 7.5.10 of this report
	~~"trenchless installation techniques" means the installation of new electrical cabling and/or associated equipment by means of boring techniques including horizontal directional drilling, auger boring and micro-tunnelling.~~	To better align with DCO Guidance on the matter see paragraph 7.5.10 of this report
Schedule 2 Requirements Part 1 Requirements		
Requirement 23 Operational Noise	Operational Noise 23. The rating level (LAr) of noise from the operation of the authorised development shall not exceed: 40 dB	To clarify that both values apply to the rating level, LAr, as defined in BS4142

Provision	Recommended change	Reasoning
	LAr for any fifteen-minute period between 23:00 and 07:00; and 50 dB LAr ~~LAeq~~ for any one-hour period between 07:00 and 23:00, determined one metre free-field external to any window or door of any existing permanent residential premises using the definitions and methods described in 'Methods for rating industrial and commercial sound' British Standards Institution BS4142 2014+A1:2019	

8. SUMMARY OF FINDINGS, CONCLUSIONS AND RECOMMENDATION

8.1. INTRODUCTION

8.1.1. This chapter summarises my conclusions arising from the report and sets out my recommendation to the Secretary of State for Energy Security and Net Zero (the Secretary of State).

8.1.2. This is an application where National Policy Statements (NPSs) have effect and accordingly falls to be determined under section (s)104 of the PA2008. As required by s104(2), in making this recommendation, I have had full regard to the relevant NPSs. For this case, NPS EN-1 is the overarching NPS, and NPSs EN-3 and EN-5 are also relevant.

8.1.3. I have also had regard to relevant planning policies in the local impact report from North Yorkshire Council (NYC). The ExA notes that NYC is generally supportive of the proposed development in its local impact report, with outstanding concerns at the close of the examination addressed in chapter 3 of this report.

8.2. SUMMARY OF FINDINGS AND CONCLUSIONS

8.2.1. My conclusions are subject to the provisions of the recommended Development Consent Order (rDCO) at annex C. With the mitigation and benefits secured by the rDCO, I find that the adverse impacts arising from the proposed development, including cumulatively with other developments, would not outweigh its benefits.

8.2.2. I consider the proposed development against s104 of the Planning Act 2008 as it is within the scope of the EN-1, the NPS for Renewable Energy Infrastructure EN-3 and the NPS for Electricity Networks Infrastructure EN-5. I find that these are relevant NPSs and have effect. I find no evidence that s104(4) to (8) of the PA2008 apply and as required by s104(3), I conclude that the application must be decided in accordance with the relevant NPSs.

8.2.3. I have had regard to matters arising from the local impact report from NYC, and to all matters that I consider to be both important and relevant in reaching my conclusions.

8.2.4. In relation to s104(2) and s104(3) of the PA2008, I conclude that making the rDCO would be in accord with the relevant NPSs. There are no matters which trigger s104(4) to (8) of the PA2008 such that the application should not be otherwise determined in accordance with the relevant NPSs.

8.2.5. I have regard to the Habitats Regulations Assessment and conclude that the proposed development would not be likely to give rise to adverse effects on the integrity of European Sites. I further conclude that there is sufficient information before the Secretary of State to enable them to conclude that an appropriate assessment is not required. I see no reason for Habitats Regulations Assessment matters to prevent the making of the Development Consent Order.

8.2.6. As required by the Planning (Listed Buildings and Conservation Areas) Act 1990, I have regard to the desirability of preserving listed buildings or their setting and any features of special architectural or historic interest which they possess, preserving or enhancing the character or appearance of conservation areas, and preserving

scheduled monuments or their setting. I am satisfied for the reasons set out in chapters 3 and 5 of this report that my statutory duty is discharged.

8.2.7. I have had regard to the Public Sector Equality Duty (PSED) throughout the Examination, including the method by which hearings and site inspections were undertaken, and in producing this report. The proposed development does not harm the interests of persons who share a protected characteristic or have any adverse effect on the relationships between such persons and persons who do not share a protected characteristic. On that basis, I conclude there is no breach of the PSED.

8.2.8. In relation to the application for Compulsory Acquisition (CA) and Temporary Possession (TP) powers, I conclude that:

- the application site has been appropriately selected and all reasonable alternatives to CA have been explored
- the applicant would have access to the necessary funds and my rDCO 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 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
- 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
- the powers sought satisfy the conditions set out in s122 and s123 of the PA2008 as well as the Department for Communities and Local Government CA Guidance (the CA Guidance)
- the powers sought in relation to statutory undertakers meet the conditions set out in s127 and s138 of the PA2008 and the CA Guidance
- that the case for CA and TP powers has been made out and that the proposed interference with the human rights of individuals would be for legitimate purposes that would justify such interference in the public interest and to a proportionate degree

8.3. RECOMMENDATION

8.3.1. The ExA recommends that the Secretary of State makes the Helios Renewable Energy Park Development Consent Order in the form attached at annex C.

8.4. CRITICAL NATIONAL PRIORITY

8.4.1. The proposed development does not involve fossil fuel combustion to generate electricity hence is covered by the critical national priority of low carbon infrastructure at paragraph 4.2.5 of EN-1.

8.4.2. As my recommendation is in favour of the proposed development it is not necessary for me to apply the further tests set out in EN-1 in relation to critical national priority.

8.4.3. In the event that the Secretary of State disagrees with my conclusions on the planning issues to the extent that they consider the harm outweighs the benefit then the EN-1 tests set out at section 4.2 on the critical national priority of low carbon infrastructure would apply.

8.4.4. If this is the case, then with regard to paragraph 4.2.15 of EN-1, I would advise the Secretary of State that they would need to be satisfied that none of the residual impacts caused by the proposed development would present an unacceptable risk to, or unacceptable interference with, human health and public safety, defence, flooding, irreplaceable habitats or unacceptable risk to the achievement of net zero.

ANNEX A LIST OF ABBREVIATIONS AND ACRONYMS

Abbreviation or acronym	Meaning
AEoI	Adverse Effects on Integrity
ALC	Agricultural Land Classification
AP	Affected Person
Art	Article
ASI	Accompanied Site Inspection
BESS	Battery energy storage system
BMV	Best and most versatile (in relation to agricultural land)
BNG	Biodiversity Net Gain
BoR	Book of Reference
BS	British Standard
CA	Compulsory Acquisition
CAH	Compulsory Acquisition Hearing
CEMP	Construction Environmental Management Plan
CIEEM	Chartered Institute of Ecology and Environmental Management
COMAH	Control of Major Accident Hazard Regulations 2015
CTMP	Construction Traffic Management Plan
DCLG	Department for Communities and Local Government
DCO	Development Consent Order
dDCO	draft Development Consent Order
DEFRA	Department for Environment, Food and Rural Affairs
DEMP	Decommissioning Environmental Management Plan
DESNZ	Department for Energy Security and Net Zero
DLUHC	Department for Levelling Up, Housing and Communities
EIA	Environmental Impact Assessment
EIA Regs	Infrastructure Planning (Environmental Impact Assessment) Regulations 2009 (as amended)
EL	Examination Library

EM	Explanatory Memorandum
EN-1	Overarching National Policy Statement for Energy (2024)
EN-3	National Policy Statement for Renewable Energy Infrastructure (2024)
EN-5	National Policy Statement for Electricity Networks Infrastructure (2024)
EPR	Infrastructure Planning (Examination Procedure) Rules 2010 (as amended)
ES	Environmental Statement
ExA	Examining Authority
ExQ1/2/3	ExA's first/second/third rounds of written questions
FLL	Functionally linked land
FRA	Flood Risk Assessment
GHG	Greenhouse gas
GLVIA3	Guidelines for Landscape and Visual Impact Assessment (3rd edition)
GVA	Gross value added
ha	Hectare(s)
HDD	Horizontal Directional Drilling
HER	Historic Environment Record
HGV	Heavy goods vehicle
HRA	Habitats Regulations Assessment
HSE	Health and Safety Executive
IAPI	Initial Assessment of Principal Issues
IDB	Inland drainage board
IEMA	Institute for Environmental Management and Assessment
ILA	Important Landscape Area
IP	Interested Party
ISH	Issue Specific Hearing
LCA	Local Character Area
LEMP	Landscape and Ecological Management Plan
LIR	Local Impact Report

LLFA	Lead local flood authority
LNR	Local Nature Reserve
LSE	Likely Significant Effect
LVIA	Landscape and Visual Impact Assessment
LWS	Local Wildlife Site
MW	Megawatt
NE	Natural England
NGET	National Grid Electricity Transmission Plc
NPPF	National Planning Policy Framework
NPS	National Policy Statement
NSIP	Nationally Significant Infrastructure Project
NSN	(UK) National Site Network
NYC	North Yorkshire Council
ODPS	Outline Design Principles Statement
OEMP	Operational Environmental Management Plan
OFH	Open Floor Hearing
OWSI	Overarching Written Scheme of Investigation
PA2008	Planning Act 2008 (as amended)
PM	Preliminary Meeting
PP	Protective Provision
PRoW	Public Right of Way
PRoWMP	Public Rights of Way Management Plan
PSED	Public Sector Equality Duty
PV	Photo-voltaic
R	Requirement
rDCO	ExA's recommended Development Consent Order
RIES	Report on the Implications for European Sites
RR	Relevant Representations
s106	Section 106 agreement under the Town and Country Planning Act 1990 (as amended)

SAC	Special Area of Conservation
SMP	Soil Management Plan
SNPS	Schedule of Negotiations and Powers Sought
SoCC	Statement of Community Consultation
SoCG	Statement of Common Ground
SoR	Statement of Reasons
SPA	Special Protection Area
SSSI	Site of Special Scientific Interest
SU	Statutory Undertaker
SUDS	Sustainable Drainage System
SWDS	Surface Water Drainage Strategy
TA	Transport Assessment
tCO2e	tonnes CO2 equivalent
TCPA 1990	Town and Country Planning Act 1990 (as amended)
TP	Temporary Possession
USI	Unaccompanied Site Inspection
WFD	Water Framework Directive
WHO	World Health Organisation
WMS	Written Ministerial Statement
ZTV	Zone of Theoretical Visibility

ANNEX B RELEVANT LEGISLATION

Legislation
• **Climate Change Act 2008 (as amended)** The Climate Change Act 2008 as amended by the Climate Change Act 2008 (2050 Target Amendment) Order 2019 establishes the legally binding framework to tackle climate change. It sets statutory climate change projections and carbon budgets. A key provision is the setting of legally binding targets greenhouse gas emission reductions in the UK of at least 100% by 2050. • **Conservation of Habitats and Species Regulations 2017 as amended by the Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019** The Habitats Regulations give effect to the Habitats Directive (92/43/EEC) and Wild Birds Directive (2009/147/EC). Following the UKs departure from the EU, these were amended by the Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019 in order to ensure they continue to operate effectively. • **Control of Pollution Act 1974** Section 60 and s61 of the Control of Pollution Act 1974 (CoPA) provide the main legislation regarding demolition and construction site noise and vibration. • **Countryside and Rights of Way Act 2000** The Act (as amended) includes provisions regarding PRoW and access to land. • **Environment Act 2021** The Environment Act 2021 provides targets, plans and policies for improving the natural environment. Schedule 15 makes provision for Biodiversity Net Gain in NSIPs. Whilst not yet in force, it contains a future target for 10% net gain. • **Environmental Protection Act 1990** Environmental Protection Act 1990 identifies a number of matters which are considered to be statutory nuisance. • **Equality Act 2010** The Equality Act 2010 establishes a duty (the Public Sector Equality Duty) to eliminate discrimination, advance equality of opportunity and foster good relations between persons who share a protected characteristic and persons who do not.

Legislation

- **Human Rights Act 1998**

  The Human Rights Act 1988 places the European Convention on Human Rights (ECHR) into UK statute. The Compulsory Acquisition of land can engage various relevant articles under the Human Rights Act 1998.

- **Natural Environment and Rural Communities Act 2006**

  The Natural Environment and Rural Communities Act 2006 makes provisions for bodies concerned with the natural environment and rural communities. It includes a duty that public bodies must have regard to the conservation of biodiversity in exercising functions insofar as is consistent with the proper exercising of those functions.

- **Water Environment (Water Framework Directive) (England and Wales) Regulations 2017**

  The WFD Regulations give effect to the Water Framework Directive which establishes a framework for water policy and water quality. The WFD Regulations seek to prevent the deterioration of surface water bodies, groundwater bodies and their ecosystems.

- **Wildlife and Countryside Act 1981 (as amended)**

  The Wildlife and Countryside Act 1981 (as amended) is the primary legislation that protects animals, plants and certain habitats. It provides for the notification and confirmation of SSSIs. The Act provides for and protects wildlife; nature conservation, countryside protection and National Parks; and PRoW. If a species protected under the Act is likely to be affected by development, a protected species licence will be required from Natural England.

Other relevant legislation

- Acquisition of Land Act 1981
- Ancient Monuments and Archaeological Areas Act 1979
- Arbitration Act 1996
- Burial Act 1857
- Carbon Budgets Order 2009 to 2021 (2021)
- Communications Act 2003
- Community Infrastructure Levy Regulations 2010
- Compulsory Purchase (Vesting Declarations) Act 1981
- Compulsory Purchase Act 1965
- Control of Major Accidents Hazard (COMAH) Regulations 2015
- Electricity Act 1989
- Environment Act 1995
- Environmental Permitting (England and Wales) Regulations 2016
- Environmental Permitting Regulations 2010
- European Union (Withdrawal Agreement) Act 2020
- Forestry Act 1967

Legislation
• Groundwater (Water Framework Directive) (England) Direction 2016 • Hazardous Waste Regulations (England and Wales) 2005 (as amended) • Hedgerows Regulations 1997 • Highways Act 1980 • Infrastructure Planning (Decisions) Regulations 2010 • Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 • Land Compensation Act 1961 • Land Drainage Act 1991 • Levelling Up and Regeneration Act 2023 • Modern Slavery Act 2015 • Neighbourhood Planning Act 2017 • New Roads and Street Works Act 1991 • Planning (Listed Buildings and Conservation Areas) Act 1990 • Protection of Badgers Act 1992 • Railways Act 1993 • Road Traffic Regulation Act 1984 • The Selby Area Internal Drainage District Order 2017 • Town and Country Planning (Tree Preservation) (England) Regulations 2012 • Town and Country Planning Act 1990 • Traffic Signs Regulations and General Directions 2016 • Waste from Electrical and Electronic Equipment (WEEE) Regulations 2013 • Water Industry Act 1991 • Water Resources Act 1991 • Wild Mammals (Protection) Act 1996 (as amended)

ANNEX C RECOMMENDED DEVELOPMENT CONSENT ORDER

STATUTORY INSTRUMENTS

202[•] No.

INFRASTRUCTURE PLANNING

The Helios Renewable Energy Project Order 202[•]

Made - - - -	***
Laid before Parliament	***
Coming into force	***

CONTENTS

PART 4
SUPPLEMENTAL POWERS

PART 5
POWERS OF ACQUISITION

PART 6
MISCELLANEOUS AND GENERAL

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 [2] [3] of Part 6 of the 2008 Act and carried out in accordance with Chapter 4 of Part 6 of the 2008 Act and the Infrastructure Planning (Examination Procedure) Rules 2010(**c**).

The Examining Authority, having considered the representations made and not withdrawn and the application together with the accompanying documents, in accordance with section [74] [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 [single appointed person] [panel], and taken into account the environmental information in accordance with regulation 4 of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017(**d**), has decided to make an Order granting development consent for the development described in the application [with modifications which

(**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.
(**c**) S.I. 2010/103, amended by S.I. 2012/635.
(**d**) S.I. 2017/572

in the opinion of the Secretary of State do not make any substantial changes to the proposals comprised in the application].

The Secretary of State, in exercise of the powers conferred by sections 114, 115, 120, 122, 123 and 140 of the 2008 Act, makes the following Order—

PART 1

PRELIMINARY

Citation and commencement

1.—(1) This Order may be cited as the Helios Renewable Energy Project Order 202[•] and comes into force on [•].

Interpretation

2.—(1) In this Order—

"the 1961 Act" means the Land Compensation Act 1961(**a**);

"the 1965 Act" means the Compulsory Purchase Act 1965(**b**);

"the 1980 Act" means the Highways Act 1980(**c**);

"the 1981 Act" means the Compulsory Purchase (Vesting Declarations) Act 1981(**d**);

"the 1989 Act" means the Electricity Act 1989(**e**);

"the 1990 Act" means the Town and Country Planning Act 1990(**f**);

"the 1991 Act" means the New Roads and Street Works Act 1991(**g**);

"the 2008 Act" means the Planning Act 2008(**h**);

"address" includes any number or address for the purposes of electronic transmission;

"access and rights of way plan" means the plan certified by the Secretary of State as the access and rights of way plan for the purposes of this Order under article 38 (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;

"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 this Order under article 36 (certification of plans, etc);

"CEMP" means the construction environmental management plan 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, and "commencement" and "commenced" must be construed accordingly;

(**a**) 1961 c.33
(**b**) 1965 c.56
(**c**) 1980 c.66
(**d**) 1981 c.66
(**e**) 1989 c.29
(**f**) 1990 c.8
(**g**) 1991 c.22. Section 48(3A) of the Local Transport Act 2008 (c.26). Sections 70(6), 74(7B), 74A(11) and 88(6) were amended by section 40 of, and Schedule 1 to, the Traffic Management Act 2005 (c.18)
(**h**) 2008 c.29

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

"DEMP" means the decommissioning environmental management plan to be submitted pursuant to requirement 5;

"electronic transmission" means a communication transmitted—

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

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

"environmental statement" means the document certified by the Secretary of State as the environmental statement for the purpose of this Order under article 36 (certification of plans, etc);

"flood risk assessment" means the document of that name identified in the table in Schedule 11 (Documents to be Certified) and certified by the Secretary of State as the flood risk assessment for the purposes of this Order under article 38 (certification of plans etc);

"generating station" has the same meaning as in Part 1 of the 1989 Act;

"highway" and "highway authority" have the same meaning as in the 1980 Act(**a**);

"land plans" means the plans certified by the Secretary of State as the land plans for the purposes of this Order under article 36 (certification of plans, etc);

"local planning authority" means the planning authority for the area to which the provision relates;

"LEMP" means the landscape and ecological plan to be submitted pursuant to requirement 10;

"location and order limits plan" means the plan certified by the Secretary of State as the location and order limits plan for the purposes of this Order under article 36 (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;

"NGET" means National Grid Electricity Transmission plc (company number 02366977) whose registered office is at 1-3 The Strand, London, WC2N 5EH;

"OEMP" means the operational environmental management plan to be submitted pursuant to requirement 7;

"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 archaeological mitigation strategy" means the document certified by the Secretary of State as the outline archaeological mitigation strategy for the purposes of this Order under article 36 (certification of plans, etc);

"outline battery safety management plan" means the document certified by the Secretary of State as the outline battery safety management plan for the purposes of this Order under article 36 (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 36 (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 this Order in accordance with article 36 (certification of plans, etc);

(**a**) "highway" is defined in section 328(1); for "highway authority" see section 1.

"outline DEMP" means the document certified by the Secretary of State as the outline decommissioning environmental management plan for the purposes of this Order in accordance with article 36 (certification of plans, etc);

"outline design principles document" means the document certified by the Secretary of State as the outline design principles document for the purposes of this Order in accordance with article 36 (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 36 (certification of plans, etc);

"outline OEMP" means the document certified by the Secretary of State as the outline operational environmental management plan for the purposes of this Order under article 36 (certification of plans, etc.);

"outline soil resource management plan" means the document certified by the Secretary of State as the outline soil resource management plan for the purposes of this Order under article 36 (certification of plans, etc.);

"outline supply chain, employment and skills plan" means the document certified by the Secretary of State as the outline supply chain, employment and skills plan for the purposes of this Order in accordance with article 36 (certification of plans, etc.);

"requirement" means those matters set out in Part 1 of Schedule 2 (requirements) and a reference to a numbered requirement is a reference to the requirement set out in the paragraph of that Part of that Schedule with the same number;

"site preparation works" means all or any of—

(a) above ground site preparation for temporary facilities for the use of contractors;

(b) the provision of temporary means of enclosure and site security for construction;

(c) the temporary display of site notices or advertisements; and

(d) site clearance (including vegetation removal along the A1041 to facilitate the site accesses as part of work No.8);

"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 2 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(**a**);

"undertaker" means Enso Green Holdings D Limited (company number 12762856), whose registered office is at 17th Floor Hylo, 103-105 Bunhill Row, London, United Kingdom, EC1Y 8LZ;

"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 (except where stated to the contrary);

"work" means a work set out in Schedule 1 (authorised development); 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 36 (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.

(**a**) "street authority" is defined in section 49, which was amended by paragraph 117 of Schedule 1 to the Infrastructure Act 2015 (c.7).

(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

3.—(1) Subject to the provisions of this Order, including the requirements, the undertaker is granted development consent for the authorised development to be carried out within the Order limits.

(2) Each numbered work must be situated within the corresponding numbered area shown on the works plans.

Maintenance of authorised development

4.—(1) The undertaker may at any time maintain the authorised development, except to the extent that this Order, or an agreement made under this Order, provides otherwise.

(2) This article only authorises the carrying out of maintenance works within the Order Limits;

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

Operation of generating station

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

(2) This article does not relieve the undertaker of any requirement to obtain any permit or licence under any other legislation that may be required from time to time to authorise the operation of an electricity generating station.

Benefit of the Order

6.—(1) Except as otherwise provided for in this Order, the provisions of this Order have effect solely for the benefit of the undertaker.

(2) Subject to paragraph (3), 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 (1) except where—

(a) the transferee or lessee is the holder of a licence under section 6 (licences authorising supplies etc.) of the 1989 Act;

(b) the transferee or lessee is a holding company or subsidiary of the undertaker; or

(c) the time limits for claims for compensation in respect of the acquisition of land or effects upon land under this Order have elapsed and—

(i) no such claims have been made;

(ii) any such claim has been made and has been compromised or withdrawn;

(iii) compensation has been paid in full and final settlement of any such claim;

(iv) payment of compensation into court has taken place in lieu of settlement of any such claim; or

(v) it has been determined by a tribunal or court of competent jurisdiction in respect of any such claim that no compensation is payable;

(d) the transfer or grant is made to—

(i) Northern Powergrid (Yorkshire) plc (company number 04112320) whose registered office is at Lloyds Court, 78 Grey Street, Newcastle Upon Tyne, NE1 6AF for the purposes of undertaking Work Nos. 3, 4(b), 5 and 6; and

(ii) National Grid Electricity Transmission plc (company number 02366977) whose registered office is at 1-3 Strand, London, WC2N 5EH for the purposes of undertaking Work No. 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 (1).

(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 7 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.

Planning Permission

7. If planning permission is granted under the powers conferred by the 1990 Act for development, any part of which is within the Order limits, following the coming into force of this Order that is—

(a) not itself a nationally significant infrastructure project under the 2008 Act or part of such a project; or

(b) required to complete or enable the use or operation of any part of the development authorised by this Order,

then the carrying out, use or operation of such development under the terms of the planning permission does not constitute a breach of the terms of this Order.

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 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**);

(b) the provisions of any byelaws made under section 66 (powers to make byelaws) of the Land Drainage Act 1991;

(c) regulation 12 (requirement for environmental permit) of the Environmental Permitting (England and Wales) Regulations 2016(**b**) in relation to the carrying on of a flood risk activity; and

(d) in so far as they relate to the temporary possession of land, the provisions of the Neighbourhood Planning Act 2017(**c**).

PART 3

STREETS

Street works

9.—(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.

(**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**) S.I. 2016/1154.
(**c**) 2017 c.20.

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

Power to alter layout, etc. of streets

10.—(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) 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 specified in column (2) of the table in Part 2 (temporary alteration of streets) 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 to the reasonable satisfaction of the street authority any street that has been temporarily altered under this article.

(4) The powers conferred by paragraph (2) must not be exercised without the consent of the street authority, but such consent is not to be unreasonably withheld or delayed.

(5) If a street authority which receives an application for consent under paragraph (4) fails to notify the undertaker of its decision before the end of the period of 28 days beginning with the date on which the application was made, it is deemed to have granted consent.

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 10 (power to alter layout, etc. of streets); and

(b) the temporary stopping up, temporary alteration or temporary diversion of a public right of way by the undertaker under article 13 (temporary stopping up of and permitting vehicular use on 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);

(**a**) Sections 55, 57, 60, 68, and 69 were amended by the Traffic Management Act 2004 (c. 18).

(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.

(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).

Construction and maintenance of altered streets

12.—(1) The permanent alterations of each of the streets specified in Part 1 (permanent alteration of layout) of Schedule 4 (alteration of streets) to this Order must be completed to the reasonable satisfaction of the highway authority and, unless otherwise agreed by the highway authority, the alterations must be maintained by and at the expense of the undertaker for a period of 12 months from their completion and from the expiry of that period by and at the expense of the highway authority.

(2) Subject to paragraph (3), the temporary alteration to each of the streets specified in Part 2 (temporary alteration of streets) of Schedule 4 (alteration of streets) must be completed to the reasonable satisfaction of the street authority, in a form reasonably required by the street authority, and, unless otherwise agreed by the street authority, the temporary alterations must be maintained by and at the expense of the undertaker for the duration that the temporary alterations are used by the undertaker for the purposes of construction or decommissioning of the authorised development.

(3) Those restoration works carried out pursuant to article 10(3) (power to alter layout, etc. of streets) must be completed to the reasonable satisfaction of the street authority, in a form reasonably required by the street authority, and must be maintained by the undertaker for a period of 12 months from their completion and from the expiry of that period by and at the expense of the street authority.

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

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

(a) the character of the street including the traffic which was reasonably to be expected to use it;

(b) the standard of maintenance appropriate for a street of that character and used by such traffic;

(c) the state of repair in which a reasonable person would have expected to find the street;

(d) whether the undertaker knew, or could reasonably have been expected to know, that the condition of the part of the street to which the action relates was likely to cause danger to users of the street; and

(e) where the undertaker could not reasonably have been expected to repair that part of the street before the cause of action arose, what warning notices of its condition had been displayed,

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

(6) Paragraphs (2) to (5) 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 and permitting vehicular use on public rights of way

13.—(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 within the Order limits and may for any reasonable time—

(a) authorise the use of motor vehicles on classes of public rights of way where, notwithstanding the provisions of this article, there is otherwise no public right to use motor vehicles; and

(b) subject to paragraph (3), prevent all persons from passing along the public right of way.

(2) Without limiting paragraph (1), the undertaker may use any public rights of way temporarily stopped up under the powers conferred by this article and within the Order limits as a temporary working site.

(3) 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, alteration or diversion of a public right of way under this article if there would otherwise be no such access.

(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 temporarily stopped up) to the extent specified in column (3) of that Schedule.

(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, but such consent is not to be unreasonably withheld or delayed.

(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.

Access to works

14.—(1) The undertaker may, for the purposes of the authorised development and in connection with the authorised development—

(a) form and lay out the permanent means of access, or improve existing means of access, in the locations specified in Schedule 6 (access to works); and

(b) with the prior approval of the local planning authority after consultation with the highway authority, form and lay out such other means of access or improve existing means of access, at such locations within the Order limits as the undertaker reasonably requires for the purposes of the authorised development.

(2) 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

15.—(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 highway authority of works—

(i) undertaken on a street which is existing public maintainable highway; or

(ii) which the undertaker and highway authority agree to be adopted as public maintainable highway.

(2) 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

16.—(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 (2) the undertaker must—

(a) consult with the chief officer of police in whose area the road is situated; and

(b) obtain the written consent of the traffic authority.

(4) The undertaker must not exercise the powers in paragraphs (1) or (2) unless it has—

(a) given not less than 4 weeks' notice in writing of its intention to do so to the chief officer of police and to the traffic authority in whose area the road is situated; and

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(**a**) S.I. 2011/935.

(b) not less than 7 days before the provision is to take effect published the undertaker's intention to make the provision in 1 or more newspaper circulating in the area in which any road to which the provision relates is situated.

(5) Any provision made under the powers conferred by paragraphs (1) or (2) of this article may be suspended, varied or revoked by the undertaker from time to time by subsequent exercise of the powers conferred in paragraph (1) or (2).

(6) Any provision made by the undertaker under paragraphs (1) or (2)—

(a) must be made by written instrument in such form as the undertaker considers appropriate;

(b) has effect as if duly made by the traffic authority in whose area the road is situated as a traffic regulation order under the 1984 Act and the instrument by which it is effected may specify specific savings and exemptions to which the provision is subject; and

(c) is deemed to be a traffic order for the purposes of Schedule 7 (road traffic contraventions subject to civil enforcement) to the Traffic Management Act 2004(**a**).

PART 4

SUPPLEMENTAL POWERS

Discharge of water

17.—(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 cause of or knowingly permit a water discharge activity or groundwater activity except under and to the extent authorised by and environmental permit under regulation 12(1) of the Environmental Permitting (England and Wales) Regulations 2016.

(8) In this article—

(**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.

(a) "public sewer or drain" means a sewer or drain which belongs to a sewerage undertaker, the Environment Agency, an internal drainage board or a local authority; and

(b) other expressions, excluding watercourse, used both in this article and in the Environmental Permitting (England and Wales) Regulations 2016 have the same meaning as in those Regulations.

(9) If a person who receives an application for consent 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

18.—(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 5 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 40 (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 5 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 land

19.—(1) The undertaker may for the purposes of this Order enter on any land shown within the Order limits or which may be affected by the authorised development and—

(a) survey or investigate the land;

(b) without prejudice to the generality of sub-paragraph (a), make trial holes in such positions on the land as the undertaker thinks fit to investigate the nature of the surface layer and subsoil and remove soil samples;

(c) without prejudice to the generality of sub-paragraph (a), carry out ecological or archaeological investigations on such land; and

(d) place on, leave on and remove from the land apparatus for use in connection with the survey and investigation of land 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 located within the highway boundary without the consent of the highway authority; or

(b) in a private street without the consent of the street authority,

but such consent must not be unreasonably withheld.

(5) The undertaker must compensate the owners and occupiers of the land for any loss or damage arising by reason of the exercise of the authority conferred by this article, such compensation to be determined, in case of dispute, under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

(6) If either a highway authority or a street authority which receives an application for consent fails to notify the undertaker of its decision within 28 days of receiving the application for consent—

(a) under paragraph (4)(a) in the case of a highway authority; or

(b) under paragraph (4)(b) in the case of a street authority,

that authority is deemed to have granted consent.

(7) Section 13 (refusal to give possession to acquiring authority) of the 1965 Act applies to the entry onto, or possession of lad 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

20.—(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 22 (compulsory acquisition of rights) and article 29 (temporary use of land for carrying out the authorised development).

Time limit for exercise of authority to acquire land compulsorily

21.—(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 24 (application of the 1981 Act).

(2) The authority conferred by article 29 (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

22.—(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 20 (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 23 (private rights) and article 31 (statutory undertakers), in the case of the Order land specified in column (1) of Schedule 7 (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 not in notice to treat) of the 1965 Act (as substituted by paragraph 10 of Schedule 8 (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 8 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

23.—(1) Subject to the provisions of this article, all private rights or restrictive covenants over land subject to compulsory acquisition under article 20 (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 20—

(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 22 (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 31 (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.

Application of the 1981 Act

24.—(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 (Grounds for application to High Court) of the Acquisition of Land Act 1981, the 3 year period mentioned in section 5A" substitute "section 118 (legal challenges relating to applications for orders granting development consent) of the 2008 Act, the 5 year period mentioned in article 21 (time limit for exercise of authority to acquire land compulsorily) of the Helios Renewable Energy Project Order 202[•]".

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

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

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

"(2) But see article 25(3) of the Helios Renewable Energy Project Order 202[•], which excludes the acquisition of subsoil only from this Schedule."

(10) References to the 1965 Act in the 1981 Act must be construed as references to the 1965 Act as applied by section 125 (application of compulsory acquisition provisions) of the 2008 Act (and as modified by article 27 (modification of Part 1 of the Compulsory Purchase Act 1965) to the compulsory acquisition of land under this Order.

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 20 (compulsory acquisition of land) or article 22 (compulsory acquisition of rights) as may be required for any purpose for which that land may be acquired under that provision instead of acquiring the whole of the land.

(2) Where the undertaker acquires any part of, or rights in, the subsoil of land under paragraph (1), the undertaker is not required to acquire an interest in any other part of the land.

(3) The following do not apply in connection with the exercise of the power under paragraph (1) in relation to subsoil only—

(a) Schedule 2A (counter-notice requiring purchase of land not in notice to treat) to the 1965 Act;

(b) Schedule A1 (counter-notice requiring purchase of land not in general vesting declaration) to the 1981 Act; and

(c) Section 153(4A) (reference of objection to Upper Tribunal: general) of the 1990 Act.

(4) Paragraphs (2) and (3) are to be disregarded where the undertaker acquires a cellar, vault, arch or other construction forming part of a house, building or manufactory.

Power to override easements and other rights

26.—(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

27.—(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), for "section 23 of the Acquisition of Land Act 1981 (grounds for application to the high court), the 3 year period mentioned in section 4" substitute "section 118 of the 2008 Act (legal challenges relating to applications for orders granting development consent), the 5 year period mentioned in article 21 (time limit for exercise of authority to acquire land compulsorily) of the Helios Renewable Energy Project Order 202[•]".

(3) In section 11A (powers of entry: further notices 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) (interests omitted from purchase), for "section 4 of this Act" substitute "article 21 (time limit for exercise of authority to acquire land compulsorily) of the Helios Renewable Energy Project Order 202[•]".

(5) In Schedule 2A (counter-notice requiring purchase of land not in notice to treat)—

(a) for paragraphs 1(2) and 14(2) substitute—

but see article 25(3) (acquisition of subsoil only) of the Helios Renewable Energy Project Order 202[•], which excludes the acquisition of subsoil only from this Schedule.

(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 18 (protective work to buildings), article 29 (temporary use of land for carrying out the authorised development) or article 30 (temporary use of land for maintaining the authorised development) of the Helios Renewable Energy Project Order 202[•]."

Rights under or over streets

28.—(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 of 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

29.—(1) The undertaker may, in connection with the carrying out of the authorised development—

(a) enter on and take temporary possession of any of the Order land in respect of which no notice of entry has been served under section 11 (powers of entry) of the 1965 Act and no declaration has been made under section 4 (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 1 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 3 (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 (5), 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 (5).

(9) Where the undertaker takes possession of land under this article, the undertaker is not required to acquire the land or any interest in it.

(10) Section 13 (refusal to give possession to acquiring authority) of the 1965 Act applies to the temporary use of land pursuant to this article to the same extent as it applies to the compulsory acquisition of land under this Order by virtue of section 125 (application of compulsory acquisition provisions) of the 2008 Act.

(11) Nothing in this article prevents the taking of temporary possession more than once in relation to any land that the undertaker takes temporary possession of under this article.

Temporary use of land for maintaining the authorised development

30.—(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

31.—(1) Subject to the provisions of Schedule 9 (protective provisions) the undertaker may—

(a) 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 36) 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

32. Where a street is altered or diverted or its use is temporarily prohibited or restricted under article 9 (street works), article 10 (power to alter layout, etc. of streets), article 12 (construction and maintenance of altered streets) or article 13 (temporary stopping up of and permitting vehicular use on public rights of way) any statutory undertaker whose apparatus is in, on, along or across the street has the same powers and rights in respect of that apparatus, subject to Schedule 9 (protective provisions), as if this Order had not been made.

Recovery of costs of new connections

33.—(1) Where any apparatus of a public utility undertaker or of a public communications provider is removed under article 31 (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 31 (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.

Compulsory acquisition of land – incorporation of minerals code

34. Parts 2 and 3 of Schedule 2 (minerals) to the Acquisition of Land Act 1981(**b**) are incorporated into this Order subject to modifications that—

(a) for "the acquiring authority" substitute "the undertaker";

(b) for "the undertaking" substitute "authorised development"; and

(c) paragraph 8(3) is not incorporated.

PART 6

MISCELLANEOUS AND GENERAL

Operational land for the purposes of the 1990 Act

35. 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.

(**a**) 2003 c.21.
(**b**) 1981 c.67.

Certification of plans, etc.

36.—(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 11 (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

37.—(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 is conspicuously affixed to some building or object on or near the land.

(5) Where a notice or other document required to be served or sent for the purposes of this Order is served or sent by electronic transmission the requirement is to be taken to be fulfilled only where—

(a) the recipient of the notice or other document to be transmitted has given consent to the use of electronic transmission in writing or by electronic transmission;

(b) the notice or document is capable of being accessed by the recipient;

(c) the notice or document is legible in all material respects; and

(d) the notice or document is in a form sufficiently permanent to be used for subsequent reference.

(6) Where the recipient of a notice or other document served or sent by electronic transmission notifies the sender within 7 days of receipt that the recipient requires a paper copy of all or part of that notice or other document the sender must provider such a copy as soon as reasonably practicable.

(**a**) 1978 c.30.

(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 that 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

38.—(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 or in connection with the authorised development, subject to paragraph (2) and requirement 10, undertake works to remove or manage any hedgerows within the Order limits.

(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—

"(k) for the carrying out or maintenance of development which has been authorised by the Helios Renewable Energy Project Order 202[•]."

(6) In this article "hedgerow" has the same meaning as in the Hedgerows Regulations 1997.

Trees subject to tree preservation orders

39.—(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**) S.I. 1997/1160.

(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 (determination of questions of disputed compensation) of the 1961 Act.

Arbitration

40.—(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 10 (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.

41.—(1) Where an application is made to, or a request is made of, the local planning authority or any other relevant person for any consent, agreement or approval required or contemplated by any of the provisions of this Order, such consent, agreement or approval must, to be validly given, be given in writing.

(2) Where paragraph (1) applies to any consent, agreement or approval, such consent, agreement or approval must not be unreasonably withheld or delayed.

(3) 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

42.—(1) This article applies to—

(a) any agreement for leasing to any person the whole or any part of the authorised development or the right to operate the same; and

(b) any agreement entered into by the undertaker with any person for the construction, maintenance, use or operation of the authorised development, or any part of it,

so far as any such agreement relates to the terms on which any land which is the subject of a lease granted by or under that agreement is to be provided for that person's use.

(2) No enactment or rule of law regulating the rights and obligations of landlords and tenants may prejudice the operation of any agreement to which this article applies.

(3) Accordingly, no such enactment or rule of law to which paragraph (2) applies in relation to the rights and obligations of the parties to any lease granted by or under any such agreement so as to—

(a) exclude or in any respect modify any of the rights and obligations of those parties under the terms of the lease, whether with respect to the termination of the tenancy or any other matter;

(b) confer or impose on any such party any right or obligation arising out of or connected with anything done or omitted on or in relation to land which is the subject of the lease, in addition to any such right or obligation provided for by the terms of the lease; or

(c) restrict the enforcement (whether by action for damages or otherwise) by any party to the lease of any obligation of any other party under the lease.

Protective provisions

43. Schedule 9 (protective provisions) has effect.

Funding

44.—(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 20 (compulsory acquisition of land);

(b) article 22 (compulsory acquisition of rights);

(c) article 23 (private rights);

(d) article 25 (acquisition of subsoil only);

(e) article 30 (rights under or over streets);

(f) article 29 (temporary use of land for carrying out the authorised development);

(g) article 30 (temporary use of land for maintaining the authorised development); and

(h) article 31 (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.

Signed by authority of the Secretary of State for Energy Security and Net Zero

Signed
Head of Energy Infrastructure Planning
Date Department for Energy Security and Net Zero

SCHEDULE 1

Article 3

AUTHORISED DEVELOPMENT

1. In this Schedule—

"balance of solar plant" means inverters, transformers and switchgear, comprising either—

(a) field stations being a station comprising centralised inverters, transformers and switchgear with each component for each field station comprising either—

(i) a "field station" located outside, with a concrete foundation on a gravel sub-base for each of the inverters and transformers and switchgear; or

(ii) housed together within a container sitting on a concrete foundation on a gravel sub-base; or

(b) string inverters attached either to mounting structures or a ground mounted frame switchgear and transformers on a concrete foundation on a gravel sub-base;

"battery energy storage" means equipment used for the storage and discharge of electrical energy by battery;

"electrical cables" means electric line as defined in section 64 of the 1989 Act;

"mounting structure" means a frame or rack made of galvanised steel, anodised aluminium or other material design to support the solar panels and provide for single-axis tracking, mounted on piles driven into the ground, piles rammed into a pre-drilled hole, or pillars fixed to a concrete foundation;

"permissive paths" means new access tracks providing restricted public access within the Order limits along the routes shown on the access and rights of way plan;

"substation" means a compound containing electrical equipment required to switch, transform, convert electricity and provide reactive power compensation with welfare facilities, means of access and other associated facilities;

2. In the administrative area of North Yorkshire Council 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 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—

(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—

(a) battery energy storage system units;

(b) auxiliary transformers and associated bunding;

(c) power conversion system units including inverters, switchgear, transformers and ancillary equipment;

(d) containers or enclosures housing all or any of Work Nos. 2(b) and (c) and ancillary equipment sitting on a concrete foundation on a gravel sub-base;

(e) monitoring and control systems;

(f) heating, ventilation and air conditioning systems;

(g) fire safety infrastructure including water storage in tanks or other containers, drainage and water containment features, bunding and associated infrastructure; and

(h) containers or similar structures to house control room, office and welfare facilities, and storage.

Work No. 3 – works in connection with an onsite substation comprising—

(a) substation, switch room buildings, concrete foundations and ancillary equipment including reactive power units;

(b) power conversion system units including inverters, switchgear, transformers and ancillary equipment;

(c) control building housing offices, storage containers and space, welfare facilities, waste storage within a fenced compound, car parking;

(d) monitoring and control systems;

(e) 132 kilovolt harmonic filter compound;

(f) electrical cables;

(g) deluge system including water tanks and fire suppression, and drainage and water containment features and associated infrastructure; and

(h) access gates and tracks, security palisade fencing and bunding.

Work No. 4 – works including—

(a) electrical cables up to 33 kilovolt connecting Work No. 1 and Work No. 2 to Work No. 3;

(b) electrical cables up to 132 kilovolt connecting Work No. 3 to Work No. 6;

(c) fencing, gates, boundary treatment and other means of enclosure;

(d) improvement, maintenance and use of existing private tracks;

(e) 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;

(f) works for the provision of security and monitoring measures such as closed circuit television security system (CCTV), columns, lighting, cameras, weather stations, communications infrastructure, and perimeter fencing;

(g) landscaping and biodiversity mitigation and enhancement measures including planting; and

(h) 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. 4A – works including—

(a) electrical cables up to 33 kilovolt connecting Work No. 1 and Work No. 2 to Work No. 3;

(b) fencing, gates, boundary treatment and other means of enclosure;

(c) 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

(d) 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. 5 – works including—

(a) electrical cables up to 132 kilovolt connecting Work No. 3 to Work No. 6;

(b) fencing, gates, boundary treatment and other means of enclosure;

(c) 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

(d) 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 NGET substation construction of electrical substation infrastructure including—

(a) 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;

(b) electrical cables; and

(c) 132 kilovolt connection bay located at the NGET Drax 132kV Substation including all associated electrical equipment and civil works necessary to enable the onward transmission of electricity.

Work No. 6A – access to the NGET substation for the construction, operation, maintenance and decommissioning of Work No. 6.

Work No.7 – temporary construction compounds comprising—

(a) works to excavate and store soil, clear vegetation and obstacles, level, shape and prepare surface for construction compounds to be installed, and civils investigations and works to reinforce ground with weight-bearing support infrastructure;

(b) creation of temporary construction compounds, laydown and working areas;

(c) storage of equipment and materials including waste skips;

(d) areas of hardstanding, car parking, site and welfare offices, canteens and workshops, area for download and turning, security infrastructure, site drainage and waste management infrastructure, and electricity, water, waste-water and telecommunications connections; and

(e) 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. 8 – works to facilitate access for all works, comprising—

(a) creation of accesses from or across the public highway;

(b) visibility splays;

(c) works to widen and surface the public highway; and

(d) installation of temporary traffic lights or facilities for manned traffic management.

Work No. 8A – works including—

(a) electrical cables up to 132 kilovolt connecting Work No. 3 to Work No. 6;

(b) works required for crossing the railway using trenchless installation techniques; and

(c) 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. 9 – works for areas of green infrastructure comprising—

(a) soft landscaping and planting, including tree and hedgerow planting;

(b) habitat creation management including earthworks, landscaping, means of enclosure and the laying and construction of drainage infrastructure; and

(c) 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—

(a) roads, ramps, watercourse and other temporary crossings, vehicular and pedestrian means of access including creation of temporary accesses, new tracks and paths, widening upgrades alterations and improvements of existing roads tracks and paths (including the installation of temporary traffic lights, visibility splays, banksmen or other measures to manage traffic);

(b) fencing, gates, boundary treatments and other means of enclosure;

(c) bunds, embankments, trenching and swales;

(d) provision of temporary and permanent ecological and environmental mitigation and compensation works, including landscaping works and habitat creation;

(e) working sites in connection with the construction of the authorised development including construction lay down areas, compounds, and spoil storage and associated control measures;

(f) works to the existing irrigation system and works to alter the position and extent of such irrigation system;

(g) surface water drainage systems, storm water attenuation systems including storage basins, oil water separators, including channelling and culverting and works to existing drainage networks;

(h) electrical, gas, water, foul water drainage and telecommunications infrastructure connections diversions and works to alter the position of such services and utilities connections;

(i) works to alter the course of or otherwise interfere with non-navigable rivers, streams or watercourses, and the temporary stopping up of watercourses for installation of culverts, drainage and other features to cross watercourses;

(j) 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;

(k) works for the benefit or protection of land affected by authorised development;

(l) works of restoration;

(m) tunnelling, boring and drilling works; and

(n) 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

Article 41

REQUIREMENTS

PART 1

REQUIREMENTS

Time limits

1. The authorised development must commence no later than the expiration of 5 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 local planning authority.

(2) The scheme submitted and approved pursuant to sub-paragraph (1) must be implemented as approved.

(3) Notice of the date of final commissioning with respect to each phase of Work No. 1 must be given to the local planning authority within 21 working days of the date of final commissioning for that phase.

(4) Nothing shall prevent the undertaker and the local planning authority agreeing to amend the written scheme setting out the proposed phases of construction.

(5) The approved written scheme may contain flexibility and optioneering for different proposed phases of construction provided that the undertaker notifies the local 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 local planning authority.

(2) The details submitted must accord with—

(a) the location and order limits plan;

(b) the works plans;

(c) the principles and assessments set out in the environmental statement; and

(d) the outline design principles document.

(3) The authorised development must be carried out in accordance with the approved details.

Construction environmental management plan (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 local planning authority, after consultation with the Environment Agency in relation to matters in relation to its statutory functions. 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) site and construction working hours including details of out of hours working procedures;

(b) community liaison;

(c) complaints procedures;

(d) nuisance management including measures to avoid or minimise the impacts of construction works (covering dust, noise and vibration);

(e) construction dust 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; and

(i) a protocol requiring consultation with the Environment Agency in the event that unexpected contaminated land is identified during ground investigation or construction.

Decommissioning and restoration

5.—(1) Decommissioning works must commence no later than 40 years following the date of the final commissioning of Work No. 1 that is the subject of the last notice given by the undertaker pursuant to requirement 2(3) (phasing of authorised development and date of final commissioning).

(2) No later than 12 months prior to the commencement of any decommissioning works for any part of the authorised development, the undertaker must—

(a) submit to the local planning authority for approval a decommissioning environmental management plan for that part; and

(b) submit to the local planning authority for approval in consultation with National Highways (or its successors) a decommissioning traffic management plan for that part.

(3) No later than year 15 of operation the undertaker must notify the local planning authority that the undertaker has put in place the requisite decommissioning security in the form as required by the landowners.

(4) The plans submitted and approved must under sub-paragraph (2) must be substantially in accordance with the relevant part of the outline DEMP.

(5) 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.

(6) No decommissioning works must be carried out until the local planning authority approves the plans submitted in relation to such works are approved as set out on subparagraph (2).

(7) The plans submitted to and approved pursuant to sub-paragraph (2) must be implemented as approved for the works required to decommission that phase of the authorised development unless otherwise approved in writing.

(8) This requirement is without prejudice to any other consents or permissions which may be required to decommission any part of the authorised development.

Construction traffic management plan (CTMP)

6.—(1) No phase of the authorised development may commence until a CTMP covering that phase and in accordance with the outline CTMP has been submitted to and approved by the local planning authority, in consultation with the highway authority for the highway(s) to which the CTMP for that phase relates.

(2) The CTMP submitted and approved pursuant to sub-paragraph (1) must be implemented as approved.

Operational environmental management plan (OEMP)

7.—(1) No phase of the authorised development may commence until an OEMP covering that phase and in accordance with the outline OEMP for that phase has been submitted to and approved by the local planning authority.

(2) The OEMP must include details of—

(a) nuisance management including measures to avoid or minimise the impacts of operational works (covering dust, noise and vibration); and

(b) associated traffic movements, including delivery vehicles and staff operation/vehicle movements.

(3) The OEMP submitted and approved pursuant to sub-paragraph (1) must be implemented as approved.

Soil management

8.—(1) No phase of the authorised development may commence until a soil resource management plan for that phase, which must be substantially in accordance with the outline soil resource management plan as relevant to construction activities, has been submitted to and approved by the local planning authority.

(2) All construction works associated with the authorised development must be carried out in accordance with the soil resource management plan submitted and approved pursuant to sub-paragraph (1).

(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 local planning authority.

(4) The operation of the authorised development must be carried out in accordance with the soil resource management plan submitted and approved pursuant to sub-paragraph (3).

(5) Prior to the commencement of 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 local planning authority.

(6) The decommissioning of the authorised development must be carried out in accordance with the soil resource management plan submitted and approved pursuant to sub-paragraph (5).

Battery safety management plan

9.—(1) Prior to the commencement of Work No. 2 as notified to the local planning authority by the undertaker pursuant to requirement 2 (phasing of the authorised development and date of final commissioning) a battery safety management plan must be submitted to and approved by the local planning authority.

(2) The submitted battery safety management plan must either accord with the outline battery safety management plan or detail such changes as the undertaker considers are required.

(3) In the event that the submitted battery safety management plan proposes changes to the outline battery safety management plan, the local planning authority must not approve the battery safety management plan until it has consulted with North Yorkshire Fire and Rescue Service.

(4) The outline battery safety management plan submitted and approved pursuant to sub-paragraph (1) must be implemented as approved.

Landscape and ecological management plan (LEMP)

10.—(1) No phase of the authorised development may commence until a LEMP covering that phase which accords with the outline LEMP has been submitted to and approved by the local planning authority in consultation with Natural England.

(2) The LEMP must include—

(a) details of the method of protection of existing landscape features and habitats during the construction, operation and decommissioning stages of the authorised development;

(b) details of habitat creation including how a minimum of 10% biodiversity net gain in habitat units, calculated using The Statutory Biodiversity Metric published by the Department for Environment, Food and Rural Affairs on 29 November 2023 (or such other biodiversity metric approved by the relevant planning authority in consultation with the relevant statutory nature conservation body), will be achieved during the operation of the authorised development;

(c) details of 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) a timetable for the landscape management of the land within the Order limits during the lifetime of the authorised development;

(e) landscaping details; and

(f) detailed arrangements for the monitoring of habitats for ground nesting birds in years 5 and 10 of the operation of the authorised development.

(3) The LEMP submitted and approved pursuant to sub-paragraph (1) must be implemented as approved.

Implementation and maintenance of landscaping

11.—(1) All landscaping works must be carried out in accordance with the LEMP approved under requirement 10 (landscape and ecological management plan), and in accordance with the relevant recommendations of the appropriate British Standards.

(2) Any tree or shrub planted as part of an approved landscaping management scheme that, within a period of 5 years after planting, is removed, dies or becomes, in the reasonable opinion of the local 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

12.—(1) No phase of the authorised development may commence and no decommissioning will be undertaken until a 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 local 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 public rights of way management plan must be implemented as approved unless otherwise agreed with the local planning authority, in consultation with the highway authority.

Fencing and other means of enclosure

13.—(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 local planning authority as part of the detailed design approval required by requirement 3(1) (detailed design approval).

(2) Any construction site must remain securely fenced in accordance with the approved details at all times during construction of the authorised development.

(3) Any temporary fencing must be removed on completion of the phase of construction of the authorised development for which it was used.

(4) Any approved permanent fencing must be completed before completion of the authorised development.

Archaeology

14.—(1) No phase within the authorised development may commence until a written scheme of investigation, substantially in accordance with the outline archaeological mitigation strategy, within that phase has been submitted to and approved by the local 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

15. Where the approval, agreement or confirmation of the Secretary of State, local planning authority or another person is required under a requirement that approval, agreement or confirmation must be given in writing.

Amendments to approved details

16.—(1) With respect to any requirement which requires the authorised development to be carried out in accordance with the details approved by the local planning authority, the approved details must be carried out as approved unless an amendment or variation has previously been approved in writing by the local planning authority in accordance with sub-paragraph (2).

(2) Any amendments to or variations from the approved details must be in accordance with the principles and assessments set out in the environmental statement. Such agreement may only be given in relation to immaterial changes where it has been demonstrated to the local planning authority that the subject matter of the agreement sought is unlikely to give rise to any materially new or materially different environmental effect from those assessed in the environmental statement.

(3) The approved details must be taken to include any amendments that may subsequently be approved in writing by the local planning authority.

Consultation

17. Where the local 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 other person or body prior to making an application to discharge the requirement.

Hydrogeological Risk Assessment

18. No phase of the authorised development which requires horizontal direct drilling or any other trenchless utility installation methods may commence until a hydrogeological risk assessment , the scope of which will be agreed in consultation with the Environment Agency, has been submitted to and approved by the local planning authority in consultation with the Environment Agency.

Foundation Works

19.—(1) No part of the authorised development is to commence until method statements for all foundation works which may impact the principal and/or secondary A aquifers present on the site, and a foundation works risk assessment for such works within zone 1 (inner) of a groundwater source protection zone, have been submitted to and approved in writing by the local planning authority in consultation with the Environment Agency.

(2) The method statements must include details of the proposed foundation construction methodology, including measures to minimise the potential for detrimental impact on groundwater quality to result from the stated activity.

(3) The foundation works risk assessment must include:

(a) options for the proposed piling method at each location where piling is proposed;

(b) for each piling method option at each location, mitigation measures to minimise detrimental impact on underlying groundwater resources.

(4) The authorised development must be carried out in accordance with the approved method statements and, where relevant, the approved risk assessment.

Glint and Glare Mitigation Strategy

20.—(1) No phase of the authorised development may commence until a Glint and Glare Mitigation Strategy for that phase has been submitted to and approved by the local planning authority.

(2) The Glint and Glare Mitigation Strategy shall be provided to Burn Gliding Club at the same time as it is submitted to the local planning authority for approval.

(3) The Glint and Glare Mitigation Strategy shall be implemented as approved.

Flood Management Strategy

21.—(1) Prior to the commencement of Work No.2 and Work No. 3 a flood management strategy must be submitted to and approved by the local planning authority in consultation with the Environment Agency.

(2) The flood management strategy submitted for approval must be in accordance with the flood risk assessment and include—

(a) details of the design of a suitable flood defence bund to provide protection works relating to Work No. 2and Work No.3 of the authorised development to ensure resilience to the design flood event with an allowance for climate change for the 2080s epoch as assessed by the approved site specific flood model referenced in the flood risk assessment over the lifetime of the authorised development to include the decommissioning phase;

(b) details of the design of a suitable ‘level for level’ and ‘volume for volume’ floodplain compensation scheme to mitigate the effect of the flood defence bund over the operational and decommissioning phases of the authorised development based on the scheme established in the flood risk assessment and informed by the approved site-specific flood model referenced in the flood risk assessment so as not to increase flood risk elsewhere; and

(c) details of the delivery and ongoing maintenance of the flood defence bund and floodplain compensation scheme over the lifetime of the development to include the operational and decommissioning phases.

(3) The flood management strategy must be implemented as approved.

Supply Chain, Employment and Skills Plan

22.—(1) No phase of the authorised development may commence until a supply chain, employment and skills plan in relation to that phase has been submitted to and approved by the local planning authority.

(2) The supply chain, employment and skills plan submitted under sub-paragraph (1) must be in accordance with the outline skills, supply chain and employment plan.

(3) The supply chain, employment and skills plan must be implemented as approved.

Operational Noise

23. The rating level (LAr) of noise from the operation of the authorised development shall not exceed: 40 dB LAr for any fifteen-minute period between 23:00 and 07:00; and 50 dB LAr for any one-hour period between 07:00 and 23:00, determined one metre free-field external to any window or door of any existing permanent residential premises using the definitions and methods described in 'Methods for rating industrial and commercial sound' British Standards Institution BS4142 2014+A1:2019.

PART 2

PROCEDURE FOR DISCHARGE OF REQUIREMENTS

Interpretation

24. 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(**a**).

Applications made under requirements

25.—(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 8 weeks, or such longer period as may be agreed in writing by the undertaker and the discharging authority, beginning with the later of—

(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 25, the day immediately following that on which the further information has been supplied by the undertaker.

(**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).

(2) In determining any application made to the discharging authority for any consent, agreement or approval required by a requirement contained in Part 1 of this Schedule, the discharging authority may subject to paragraphs 4 and 6—

(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.

(4) Any application made to the discharging authority pursuant to sub-paragraph (1) must include a statement to confirm whether it is likely that the subject matter of the application will give rise to any materially new or materially different environmental effects compared to those in the environmental statement and if it will then it must be accompanied by information setting out what those effects are.

(5) Where an application has been made to the discharging authority for any consent, agreement or approval required by a requirement included in this Order and the discharging authority does not determine the application within the period set out in sub-paragraph (1) and the application is accompanied by a report pursuant to sub-paragraph (3) which states that the subject matter of such application is likely to give rise to any materially new or materially different environmental effects compared to those in the environmental statement then the application is to be taken to have been refused by the relevant planning authority at the end of that period.

(6) Any applications made to the discharging authority pursuant to sub-paragraph (1) must include a statement confirming whether it is likely that the subject matter of the application, including any mitigation measures, will give rise to a change in the conclusions of the Secretary of State's habitats regulations assessment and if it will then it must be accompanied by information setting out what those changes are.

(7) Where an application has been made to the discharging authority for any consent agreement or approval requirement by a requirement included in this Order and the discharging authority does not determine that application within the period set out in sub-paragraph (1) and is accompanied by a report pursuant to sub-paragraph (5) which states that the subject matter of such application, including any mitigation measures, will give rise to a change in the conclusions of the Secretary of State's habitats regulations assessment then the application is to be taken to have been refused by the discharging authority at the end of that period.

Further information regarding requirements

26.—(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 1 of this Schedule does not specify that consultation with a consultee is required, the discharging authority must, within 28 days of receipt of the application, notify the undertaker in writing specifying the further information required.

(3) If the requirement concerned contained in Part 1 of this Schedule specifies that consultation with a consultee is required, the discharging authority must issue the application to the consultee within 14 days of receipt of the application, and notify the undertaker in writing specifying any further information requested by the consultee within 14 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

27.—(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 1 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 Control of Pollution Act 1974;

(d) on receipt of a request for further information pursuant to paragraph 26 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 25(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 1 of this Schedule;

(c) as soon as is practicable after receiving the appeal documentation, the Secretary of State must appoint a person to consider the appeal ("the appointed person") and must notify the appeal parties of the identity of the appointed person and the address to which all correspondence for the attention of the appointed person should be sent;

(d) the 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 14 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 14 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 10 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 14 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 1 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

28.—(1) Where an application is made to the local 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 local planning authority for each application.

(2) Any fee paid under this Schedule must be refunded to the undertaker within 4 weeks of—

(a) the application being rejected as invalidly made; or

(b) the local planning authority failing to determine the application within ten weeks from the relevant date in paragraph 25(1) unless—

(**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.

(i) within that period the undertaker agrees, in writing, that the fee is to be retained by the local 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 25(1) of this Schedule.

SCHEDULE 3

Article 9

STREETS SUBJECT TO STREET WORKS

(1) *Area*	*(2)* *Location/Street Description*
North Yorkshire Council	public footpath (35.14/12/1) situated to the east of Tranmore Cottages, Selby as shown on the access and rights of way plan
North Yorkshire Council	public footpath (35.14/11/3) situated to the south east of 1 Tranmore Cottages, Selby as shown on the access and rights of way plan
North Yorkshire Council	mixed public footpath (35.14/13/1) and private road situated to the north east of Bales Wood Plantation, Selby as shown on the access and rights of way plan
North Yorkshire Council	public footpath (35.14/14/2) situated to the east of Bales Wood Plantation, Selby as shown on the access and rights of way plan
North Yorkshire Council	mixed public footpath (35.14/14/1) and private road situated to the west of Bales Wood Plantation, Selby as shown on the access and rights of way plan
North Yorkshire Council	mixed public footpath (35.14/11/4) and private road situated to the south west of Bales Wood Plantation, Selby as shown on the access and rights of way plan
North Yorkshire Council	mixed public footpath (35.17/1/1) and private road situated to the east of Fair Oaks, Selby as shown on the access and rights of way plan
North Yorkshire Council	public adopted highway (Chester Court Road) situated to the east of Bales Wood, Selby as shown on the access and rights of way plan
North Yorkshire Council	public adopted highway (A1041) situated to the south west of Sandpit Farm, Selby as shown on the access and rights of way plan
North Yorkshire Council	public adopted highway (A1041) situated to the north east of Keeper`s Cottage, Selby as shown on the access and rights of way plan
North Yorkshire Council	public adopted highway (A1041) situated to the west of Cobble Croft Wood, Selby as shown on the access and rights of way plan
North Yorkshire Council	private road from Stapletons Wood to Barrfs Close Plantation, Selby as shown on the access and rights of way plan
North Yorkshire Council	public adopted highway (Jowland Winn Lane) situated to the east of Chestercourt House Farm, Selby as shown on the access and rights of way plan
North Yorkshire Council	public footpath (35.18/14/1) situated to the south of Chestercourt Hall Farm as shown on the access and rights of way plan
North Yorkshire Council	public adopted highway (Chester Court Road) situated to the west of Crossley Wood, Selby as shown on the access and rights of way plan
North Yorkshire Council	public adopted highway (Hardenshaw Lane) situated to the north east of Rosehill Farm, Selby as shown on the access and rights of way plan
North Yorkshire Council	public adopted highway (Sandwith Lane) situated to the south of Rosehill Farm, Selby as shown on the access and rights of way plan
North Yorkshire Council	public adopted bridleway (35.18/13/1) situated to the south west of Rosehill Farm as shown on the access and rights of way plan
North Yorkshire	public adopted highway (Race Lane) situated to the south west of

Council	Rosehill Farm, Selby as shown on the access and rights of way plan
North Yorkshire Council	public adopted highway (Claypit Lane) situated to the west of Chestnut Tree Cottage, Selby as shown on the access and rights of way plan
North Yorkshire Council	public adopted highway (Brick Lands Lane) situated to the east of Temple Hirst, Selby as shown on the access and rights of way plan
North Yorkshire Council	public footpath (35.38/2/1) situated to the north east of Manor Farm, Selby as shown on the access and rights of way plan
North Yorkshire Council	public adopted highway (Stockwith Lane) situated to the north west of Kerrick Spring Wood, Selby as shown on the access and rights of way plan
North Yorkshire Council	public footpath (35.17/9/1) situated to the west of Little Underwit Wood, Selby as shown on the access and rights of way plan
North Yorkshire Council	public footpath (35.18/6/1) situated to the west of Little Underwit Wood, Selby as shown on the access and rights of way plan
North Yorkshire Council	public adopted highway (Station Road) situated to the east and the south of Camblesforth Community Primary School, Selby
North Yorkshire Council	public footpath (35.17/6/1) situated to the north of Drax Golf Club, Selby as shown on the access and rights of way plan
North Yorkshire Council	private road situated to the south of Camblesforth substation, Selby as shown on the access and rights of way plan
North Yorkshire Council	private road situated to the south east of Drax Sports and Social Club, Main Road, Selby as shown on the access and rights of way plan
North Yorkshire Council	private road situated to the west of New Acres, Selby as shown on the access and rights of way plan
North Yorkshire Council	public adopted highway (New Road) situated to the west of Station House, Selby as shown on the access and rights of way plan

SCHEDULE 4

Article 10

ALTERATION OF STREETS

PART 1

PERMANENT ALTERATION OF LAYOUT

(1) *Area*	*(2)* *Street subject to alteration*	*(3)* *Description of Alteration*
North Yorkshire Council	public footpath (35.14/12/1) situated to the east of Tranmore Cottages, Selby as shown on the access and rights of way plan	Works for the provision of a permanent means of access to the authorised development
North Yorkshire Council	public footpath (35.14/11/3) situated to the south east of 1 Tranmore Cottages, Selby as shown on the access and rights of way plan	Works for the provision of a permanent means of access to the authorised development
North Yorkshire Council	mixed public footpath (35.14/13/1) and private road situated to the north east of Bales Wood Plantation, Selby as shown on the access and rights of way plan	Works for the provision of a permanent means of access to the authorised development
North Yorkshire Council	public footpath (35.14/14/2) situated to the east of Bales Wood Plantation, Selby as shown on the access and rights of way plan	Works for the provision of a permanent means of access to the authorised development
North Yorkshire Council	mixed public footpath (35.14/14/1) and private road situated to the west of Bales Wood Plantation, Selby as shown on the access and rights of way plan	Works for the provision of a permanent means of access to the authorised development
North Yorkshire Council	mixed public footpath (35.14/11/4) and private road situated to the south west of Bales Wood Plantation, Selby as shown on the access and rights of way plan	Works for the provision of a permanent means of access to the authorised development
North Yorkshire Council	mixed public footpath (35.17/1/1) and private road situated to the east of Fair Oaks, Selby as shown on	Works for the provision of a permanent means of access to the authorised development

	the access and rights of way plan	
North Yorkshire Council	public adopted highway (Chester Court Road) situated to the east of Bales Wood, Selby as shown on the access and rights of way plan	Works for the provision of a permanent means of access to the authorised development
North Yorkshire Council	public adopted highway (A1041) situated to the south west of Sandpit Farm, Selby as shown on the access and rights of way plan	Works for the provision of a permanent means of access to the authorised development
North Yorkshire Council	public adopted highway (A1041) situated to the north east of Keeper`s Cottage, Selby as shown on the access and rights of way plan	Works for the provision of a permanent means of access to the authorised development
North Yorkshire Council	public adopted highway (A1041) situated to the west of Cobble Croft Wood, Selby as shown on the access and rights of way plan	Works for the provision of a permanent means of access to the authorised development
North Yorkshire Council	private road from Stapletons Wood to Barrfs Close Plantation, Selby as shown on the access and rights of way plan	Works for the provision of a permanent means of access to the authorised development
North Yorkshire Council	public adopted highway (Jowland Winn Lane) situated to the east of Chestercourt House Farm, Selby as shown on the access and rights of way plan	Works for the provision of a permanent means of access to the authorised development
North Yorkshire Council	public footpath (35.18/14/1) situated to the south of Chestercourt Hall Farm as shown on the access and rights of way plan	Works for the provision of a permanent means of access to the authorised development
North Yorkshire Council	public adopted highway (Chester Court Road) situated to the west of Crossley Wood, Selby as shown on the access and rights of way plan	Works for the provision of a permanent means of access to the authorised development
North Yorkshire Council	public adopted highway (Hardenshaw Lane) situated to the north east of Rosehill Farm, Selby as shown on the access and rights of way plan	Works for the provision of a permanent means of access to the authorised development

North Yorkshire Council	public adopted highway (Sandwith Lane) situated to the south of Rosehill Farm, Selby as shown on the access and rights of way plan	Works for the provision of a permanent means of access to the authorised development
North Yorkshire Council	public adopted bridleway (35.18/13/1) situated to the south west of Rosehill Farm as shown on the access and rights of way plan	Works for the provision of a permanent means of access to the authorised development
North Yorkshire Council	public adopted highway (Race Lane) situated to the south west of Rosehill Farm, Selby as shown on the access and rights of way plan	Works for the provision of a permanent means of access to the authorised development
North Yorkshire Council	public adopted highway (Claypit Lane) situated to the west of Chestnut Tree Cottage, Selby as shown on the access and rights of way plan	Works for the provision of a permanent means of access to the authorised development
North Yorkshire Council	public adopted highway (Brick Lands Lane) situated to the east of Temple Hirst, Selby as shown on the access and rights of way plan	Works for the provision of a permanent means of access to the authorised development
North Yorkshire Council	public footpath (35.38/2/1) situated to the north east of Manor Farm, Selby as shown on the access and rights of way plan	Works for the provision of a permanent means of access to the authorised development
North Yorkshire Council	public adopted highway (Stockwith Lane) situated to the north west of Kerrick Spring Wood, Selby as shown on the access and rights of way plan	Works for the provision of a permanent means of access to the authorised development
North Yorkshire Council	public footpath (35.17/9/1) situated to the west of Little Underwit Wood, Selby as shown on the access and rights of way plan	Works for the provision of a permanent means of access to the authorised development
North Yorkshire Council	public footpath (35.18/6/1) situated to the west of Little Underwit Wood, Selby as shown on the access and rights of way plan	Works for the provision of a permanent means of access to the authorised development
North Yorkshire Council	public adopted highway (Station Road) situated to the east and the south of Camblesforth Community Primary School, Selby as	Works for the provision of a permanent means of access to the authorised development

	shown on the access and rights of way plan	
North Yorkshire Council	public footpath (35.17/6/1) situated to the north of Drax Golf Club, Selby as shown on the access and rights of way plan	Works for the provision of a permanent means of access to the authorised development
North Yorkshire Council	private road situated to the south of Camblesforth substation, Selby as shown on the access and rights of way plan	Works for the provision of a permanent means of access to the authorised development
North Yorkshire Council	private road situated to the south east of Drax Sports and Social Club, Main Road, Selby as shown on the access and rights of way plan	Works for the provision of a permanent means of access to the authorised development
North Yorkshire Council	private road situated to the west of New Acres, Selby as shown on the access and rights of way plan	Works for the provision of a permanent means of access to the authorised development
North Yorkshire Council	public adopted highway (New Road) situated to the west of Station House, Selby as shown on the access and rights of way plan	Works for the provision of a permanent means of access to the authorised development

PART 2

TEMPORARY ALTERATION OF STREETS

(1) *Area*	*(2)* *Street subject to alteration*	*(4)* *Description of alteration*
North Yorkshire Council	public footpath (35.14/12/1) situated to the east of Tranmore Cottages, Selby as shown on the access and rights of way plan	Works for the provision of a temporary means of access to the authorised development
North Yorkshire Council	public footpath (35.14/11/3) situated to the south east of 1 Tranmore Cottages, Selby as shown on the access and rights of way plan	Works for the provision of a temporary means of access to the authorised development
North Yorkshire Council	mixed public footpath (35.14/13/1) and private road situated to the north east of Bales Wood Plantation, Selby as shown on the access and rights of way plan	Works for the provision of a temporary means of access to the authorised development
North Yorkshire	public footpath	Works for the provision of a

Council	(35.14/14/2) situated to the east of Bales Wood Plantation, Selby as shown on the access and rights of way plan	temporary means of access to the authorised development
North Yorkshire Council	mixed public footpath (35.14/14/1) and private road situated to the west of Bales Wood Plantation, Selby as shown on the access and rights of way plan	Works for the provision of a temporary means of access to the authorised development
North Yorkshire Council	mixed public footpath (35.14/11/4) and private road situated to the south west of Bales Wood Plantation, Selby as shown on the access and rights of way plan	Works for the provision of a temporary means of access to the authorised development
North Yorkshire Council	mixed public footpath (35.17/1/1) and private road situated to the east of Fair Oaks, Selby as shown on the access and rights of way plan	Works for the provision of a temporary means of access to the authorised development
North Yorkshire Council	public adopted highway (Chester Court Road) situated to the east of Bales Wood, Selby as shown on the access and rights of way plan	Works for the provision of a temporary means of access to the authorised development
North Yorkshire Council	public adopted highway (A1041) situated to the south west of Sandpit Farm, Selby as shown on the access and rights of way plan	Works for the provision of a temporary means of access to the authorised development
North Yorkshire Council	public adopted highway (A1041) situated to the north east of Keeper`s Cottage, Selby as shown on the access and rights of way plan	Works for the provision of a temporary means of access to the authorised development
North Yorkshire Council	public adopted highway (A1041) situated to the west of Cobble Croft Wood, Selby as shown on the access and rights of way plan	Works for the provision of a temporary means of access to the authorised development
North Yorkshire Council	private road from Stapletons Wood to Barrfs Close Plantation, Selby as shown on the access and rights of way plan	Works for the provision of a temporary means of access to the authorised development
North Yorkshire Council	public adopted highway (Jowland Winn Lane) situated to the east of	Works for the provision of a temporary means of access to the authorised development

	Chestercourt House Farm, Selb as shown on the access and rights of way plan	
North Yorkshire Council	public footpath (35.18/14/1) situated to the south of Chestercourt Hall Farm as shown on the access and rights of way plan	Works for the provision of a temporary means of access to the authorised development
North Yorkshire Council	public adopted highway (Chester Court Road) situated to the west of Crossley Wood, Selby as shown on the access and rights of way plan	Works for the provision of a temporary means of access to the authorised development
North Yorkshire Council	public adopted highway (Hardenshaw Lane) situated to the north east of Rosehill Farm, Selby as shown on the access and rights of way plan	Works for the provision of a temporary means of access to the authorised development
North Yorkshire Council	public adopted highway (Sandwith Lane) situated to the south of Rosehill Farm, Selby as shown on the access and rights of way plan	Works for the provision of a temporary means of access to the authorised development
North Yorkshire Council	public adopted bridleway (35.18/13/1) situated to the south west of Rosehill Farm as shown on the access and rights of way plan	Works for the provision of a temporary means of access to the authorised development
North Yorkshire Council	public adopted highway (Race Lane) situated to the south west of Rosehill Farm, Selby as shown on the access and rights of way plan	Works for the provision of a temporary means of access to the authorised development
North Yorkshire Council	public adopted highway (Claypit Lane) situated to the west of Chestnut Tree Cottage, Selby as shown on the access and rights of way plan	Works for the provision of a temporary means of access to the authorised development
North Yorkshire Council	public adopted highway (Brick Lands Lane) situated to the east of Temple Hirst, Selby as shown on the access and rights of way plan	Works for the provision of a temporary means of access to the authorised development
North Yorkshire Council	public footpath (35.38/2/1) situated to the north east of Manor Farm, Selby as shown on the access and rights of way plan	Works for the provision of a temporary means of access to the authorised development

North Yorkshire Council	public adopted highway (Stockwith Lane) situated to the north west of Kerrick Spring Wood, Selby as shown on the access and rights of way plan	Works for the provision of a temporary means of access to the authorised development
North Yorkshire Council	public footpath (35.17/9/1) situated to the west of Little Underwit Wood, Selby as shown on the access and rights of way plan	Works for the provision of a temporary means of access to the authorised development
North Yorkshire Council	public footpath (35.18/6/1) situated to the west of Little Underwit Wood, Selby as shown on the access and rights of way plan	Works for the provision of a temporary means of access to the authorised development
North Yorkshire Council	public adopted highway (Station Road) situated to the east and the south of Camblesforth Community Primary School, Selby as shown on the access and rights of way plan	Works for the provision of a temporary means of access to the authorised development
North Yorkshire Council	public footpath (35.17/6/1) situated to the north of Drax Golf Club, Selby as shown on the access and rights of way plan	Works for the provision of a temporary means of access to the authorised development
North Yorkshire Council	private road situated to the south of Camblesforth substation, Selby as shown on the access and rights of way plan	Works for the provision of a temporary means of access to the authorised development
North Yorkshire Council	private road situated to the south east of Drax Sports and Social Club, Main Road, Selby as shown on the access and rights of way plan	Works for the provision of a temporary means of access to the authorised development
North Yorkshire Council	private road situated to the west of New Acres, Selby as shown on the access and rights of way plan	Works for the provision of a temporary means of access to the authorised development
North Yorkshire Council	public adopted highway (New Road) situated to the west of Station House, Selby as shown on the access and rights of way plan	Works for the provision of a temporary means of access to the authorised development

SCHEDULE 5

Article 13

PUBLIC RIGHTS OF WAY TO BE TEMPORARILY STOPPED UP

(1) *Area*	*(2)* *Public right of way to be temporarily stopped up*	*(3)* *Measures*
North Yorkshire Council	public footpath (35.14/12/1) as shown on the access and rights of way plan	Temporary management of the public footpath to facilitate the construction of the authorised development
North Yorkshire Council	public footpath (35.14/11/3) as shown on the access and rights of way plan	Temporary management of the public footpath to facilitate the construction of the authorised development
North Yorkshire Council	public footpath (35.14/13/1) and private road as shown on the access and rights of way plan	Temporary management of the public footpath to facilitate the construction of the authorised development
North Yorkshire Council	public footpath (35.14/14/2) as shown on the access and rights of way plan	Temporary management of the public footpath to facilitate the construction of the authorised development
North Yorkshire Council	public footpath (35.14/14/1) and private road as shown on the access and rights of way plan	Temporary management of the public footpath to facilitate the construction of the authorised development
North Yorkshire Council	public footpath (35.14/11/4) and private road as shown on the access and rights of way plan	Temporary management of the public footpath to facilitate the construction of the authorised development
North Yorkshire Council	public footpath (35.17/1/1) and private road as shown on the access and rights of way plan	Temporary management of the public footpath to facilitate the construction of the authorised development
North Yorkshire Council	public footpath (35.18/14/1) as shown on the access and rights of way plan	Temporary management of the public footpath to facilitate the construction of the authorised development
North Yorkshire Council	public bridleway (35.18/13/1) as shown on the access and rights of way plan	Temporary management of the public footpath to facilitate the construction of the authorised development
North Yorkshire Council	public footpath (35.38/2/1) as shown on the access and rights of way plan	Temporary management of the public footpath to facilitate the construction of the authorised development
North	public footpath	Temporary management of the public footpath to

Yorkshire Council	(35.17/9/1) as shown on the access and rights of way plan	facilitate the construction of the authorised development
North Yorkshire Council	public footpath (35.18/6/1) as shown on the access and rights of way plan	Temporary management of the public footpath to facilitate the construction of the authorised development
North Yorkshire Council	public footpath (35.17/6/1) as shown on the access and rights of way plan	Temporary management of the public footpath to facilitate the construction of the authorised development

SCHEDULE 6

Article 14

ACCESS TO WORKS

(1) *Area*	*(2)* *Street*	*(3)* *Description of means of access*
North Yorkshire Council	that part of Chester Court Road (west of New Close Plantation) as shown on the access and rights of way plan	The provision of a permanent means of vehicular access to the authorised development within the limits shown on the access and rights of way plan
North Yorkshire Council	that part of the A1041 (south west of Sandpit Farm, Selby) as shown on the access and rights of way plan	The provision of a permanent means of vehicular access to the authorised development within the limits shown on the access and rights of way plan
North Yorkshire Council	that part of the A1041 (west of Cobble Croft Wood, Selby) as shown on the access and rights of way plan	The provision of a permanent means of vehicular access to the authorised development within the limits shown on the access and rights of way plan
North Yorkshire Council	that part of Chester Court Road (east of Bales Wood, Selby) as shown on the access and rights of way plan	The provision of a permanent means of vehicular access to the authorised development within the limits shown on the access and rights of way plan
North Yorkshire Council	that part of Jowland Winn Lane (east of Chestercourt House Farm, Selby) as shown on the access and rights of way plan	The provision of a permanent means of vehicular access to the authorised development within the limits shown on the access and rights of way plan
North Yorkshire Council	that part of Hardenshaw Lane (north east of Rosehill Farm, Selby) as shown on the access and rights of way plan	The provision of a permanent means of vehicular access to the authorised development within the limits shown on the access and rights of way plan
North Yorkshire Council	that part of Claypit Lane (west of Chestnut Tree Cottage, Selby) as shown on the access and rights of way plan	The provision of a permanent means of vehicular access to the authorised development within the limits shown on the access and rights of way plan

North Yorkshire Council	that part of Race Lane (south west of Rosehill Farm, Selby) as shown on the access and rights of way plan	The provision of a permanent means of vehicular access to the authorised development within the limits shown on the access and rights of way plan
North Yorkshire Council	that part of Brick Lands Lane (east of Temple Hirst, Selby) as shown on the access and rights of way plan	The provision of a permanent means of vehicular access to the authorised development within the limits shown on the access and rights of way plan
North Yorkshire Council	that part of Stockwith Lane (north west of Kerrick Spring Wood, Selby) as shown on the access and rights of way plan	The provision of a permanent means of vehicular access to the authorised development within the limits shown on the access and rights of way plan
North Yorkshire Council	that part of Sandwith Lane (south of Rosehill Farm, Selby) as shown on the access and rights of way plan	The provision of a permanent means of vehicular access to the authorised development within the limits shown on the access and rights of way plan

SCHEDULE 7

Article 22

LAND IN WHICH ONLY NEW RIGHTS ETC. MAY BE ACQUIRED

1. In this Schedule—

"access rights" means rights over land to—

(a) alter, improve, form, maintain, retain, use (with or without vehicles, plant and machinery), remove, reinstate means of access to the authorised development including visibility splays and road widening and to remove impediments (including vegetation) to such access; and

(b) 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;

"cable rights" means rights over land to—

(a) install, use, support, protect, inspect, alter, remove, replace, retain, renew, improve and maintain electrical cables, earthing cables, optical fibre cables, data cables, telecommunications cables and other services, works associated with such cables including bays, ducts, protection and safety measures and equipment, and other apparatus and structures and to connect such cables and services to the on-site substation;

(b) install, use, support, protect, inspect, alter, remove, replace, retain, renew, improve and maintain watercourses, public sewers and drains and drainage apparatus and equipment;

(c) install, use, support, protect, inspect, alter, remove, replace, retain, renew, improve and maintain landscaping and biodiversity measures;

(d) remain, pass and repass on foot, with or without vehicles, plant and machinery (including rights to lay and use any temporary surface or form a temporary compound) for all purposes in connection with the authorised development; and

(e) 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;

"railway crossing rights" means rights over land to—

(a) install, use, support, protect, inspect, alter, remove, replace, retain, renew, improve and maintain electrical cables, earthing cables, optical fibre cables, data cables, telecommunications cables and other services, works associated with such cables including bays, ducts, protection and safety measures and equipment, and other apparatus and structures and to connect such cables and services to the NGET Drax 132kV Substation;

(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; and

(c) restrict and remove the erection of buildings or structures, restrict the altering of ground levels, restrict and remove the planting of trees or carrying out operations or actions (including but not limited to blasting and piling) which may obstruct, interrupt or interfere with the exercise of the rights or damage the authorised development;

"substation connection rights" means rights over land to—

(a) install, use, support, protect, inspect, alter, remove, replace, retain, renew, improve and maintain electrical cables, earthing cables, optical fibre cables, data cables, telecommunications cables and other services, works associated with such cables including bays, ducts, protection and safety measures and equipment, and other apparatus

and structures and to connect such cables and services to the NGET Drax 132kV Substation;

(b) install, use, support, protect, inspect, alter, remove, replace, retain, renew, improve and maintain watercourses, public sewers and drains and drainage apparatus and equipment;

(c) install, use, support, protect, inspect, alter, remove, replace, retain, renew, improve and maintain landscaping and biodiversity measures;

(d) remain, pass and repass on foot, with or without vehicles, plant and machinery (including rights to lay and use any temporary surface or form a temporary compound) for all purposes in connection with the authorised development; and

(e) restrict and remove the erection of buildings or structures, restrict the altering of ground levels, restrict and remove the planting of trees or carrying out operations or actions (including but not limited to blasting and piling) which may obstruct, interrupt or interfere with the exercise of the rights or damage the authorised development;

"vegetation maintenance rights" means rights over land to—

(a) plant, inspect, alter, remove, replace, retain, renew, improve and maintain vegetation and restrict or prevent the removal of vegetation for the purposes of the authorised development and in connection with the authorised development.

(1) *Plot number(s)*	*(2)* *Work No.*	*(3)* *Purpose for which rights may be acquired*
1	Work No. 1, 4 and 9	Access rights, cable rights, vegetation maintenance rights
2	Work No. 1, 4 and 9	Access rights, cable rights, vegetation maintenance rights
3	Work No. 1, 4 and 9	Access rights, cable rights, vegetation maintenance rights
4	Work No. 1, 4 and 9	Access rights, cable rights, vegetation maintenance rights
5	Work No. 4 and 9	Access rights, cable rights, vegetation maintenance rights
6	Work No. 1, 4 and 9	Access rights, cable rights, vegetation maintenance rights
7	Work No. 4 and 9	Access rights, cable rights, vegetation maintenance rights
8	Work No. 4 and 9	Access rights, cable rights, vegetation maintenance rights
9	Work No. 1, 4, 8 and 9	Access rights, cable rights, vegetation maintenance rights
10	Work No. 4, 8 and 9	Access rights, cable rights, vegetation maintenance rights
11	Work No. 1, 4, 7, 8 and 9	Access rights, cable rights, vegetation maintenance rights
12	Work No. 4, 8 and 9	Access rights, cable rights, vegetation maintenance rights
13	Work No. 4 and 9	Access rights, cable rights, vegetation maintenance rights
14	Work No. 1, 4, 7, 8 and 9	Access rights, cable rights, vegetation maintenance rights
15	Work No. 4 and 9	Access rights, cable rights, vegetation maintenance rights
16	Work No. 4, 8 and 9	Access rights, cable rights, vegetation maintenance rights
17	Work No. 4,	Access rights, cable rights, vegetation maintenance rights

	7, 8 and 9	
18	Work No. 4 and 8	Access rights, cable rights
19	Work No. 4, 4A, 8 and 9	Access rights, cable rights, vegetation maintenance rights
20	Work No. 4 and 4A	Access rights, cable rights
21	Work No. 4 and 9	Access rights, cable rights, vegetation maintenance rights
22	Work No. 4, 4A, 8 and 9	Access rights, cable rights, vegetation maintenance rights
23	Work No. 4, 8 and 9	Access rights, cable rights, vegetation maintenance rights
24	Work No. 1, 2, 3, 4, 8 and 9	Access rights, cable rights, vegetation maintenance rights
25	Work No. 1, 4 and 9	Access rights, cable rights, vegetation maintenance rights
26	Work No. 1, 4, 4A, 8 and 9	Access rights, cable rights, vegetation maintenance rights
27	Work No. 4, 8 and 9	Access rights, cable rights, vegetation maintenance rights
28	Work No. 4 and 9	Access rights, cable rights, vegetation maintenance rights
29	Work No. 1, 4, 8 and 9	Access rights, cable rights, vegetation maintenance rights
30	Work No. 1, 4, 8 and 9	Access rights, cable rights, vegetation maintenance rights
31	Work No. 1, 4, 8 and 9	Access rights, cable rights, vegetation maintenance rights
32	Work No. 1, 4, 8 and 9	Access rights, cable rights, vegetation maintenance rights
33	Work No. 1, 4, 8 and 9	Access rights, cable rights, vegetation maintenance rights
34	Work No. 1, 4 and 9	Access rights, cable rights, vegetation maintenance rights
35	Work No. 1, 4, 8 and 9	Access rights, cable rights, vegetation maintenance rights
36	Work No. 4, 8 and 9	Access rights, cable rights, vegetation maintenance rights
37	Work No. 4, 8 and 9	Access rights, cable rights, vegetation maintenance rights
38	Work No. 4 and 9	Access rights, cable rights, vegetation maintenance rights
39	Work No. 4, 8 and 9	Access rights, cable rights, vegetation maintenance rights
40	Work No. 1, 4, 8 and 9	Access rights, cable rights, vegetation maintenance rights
41	Work No. 4 and 8	Access rights, cable rights
42	Work No. 4, 8 and 9	Access rights, cable rights, vegetation maintenance rights
43	Work No. 1, 4, 8 and 9	Access rights, cable rights, vegetation maintenance rights

44	Work No. 4, 8 and 9	Access rights, cable rights, vegetation maintenance rights
45	Work No. 1, 4, 8 and 9	Access rights, cable rights, vegetation maintenance rights
46	Work No. 1, 4, 5, 8 and 9	Access rights, cable rights, vegetation maintenance rights
47	Work No. 1,4 and 9	Access rights, cable rights, vegetation maintenance rights
48	Work No. 4 and 5	Access rights, cable rights
49	Work No. 4 and 5	Access rights, cable rights
50	Work No. 5	Access rights, cable rights
51	Work No. 5 and 8A	Substation connection works
52	Work No. 5 and 8A	Access rights, cable rights, railway crossing rights
53	Work No. 5 and 8A	Substation connection works, railway crossing rights
54	Work No. 5 and 8A	Substation connection works, railway crossing rights
55	Work No. 5 and 8A	Access rights, cable rights, railway crossing rights
56	Work No. 5 and 8A	Substation connection works, railway crossing rights
57	Work No. 5 and 8A	Substation connection works, railway crossing rights
58	Work No. 5, 6A and 8A	Substation connection works, railway crossing rights
59	Work No. 5 and 8A	Substation connection works, railway crossing rights
60	Wok No. 5 and 8A	Substation connection works, railway crossing rights
61	Work No. 5	Access rights, cable rights
62	Work No. 5	Access rights, cable rights
63	Work No. 5	Access rights, cable rights
64	Work No. 5	Access rights, cable rights
65	Work No. 5	Substation connection works
66	Work No. 5, 6 and 6A	Substation connection works
67	Work No. 5	Substation connection works
68	Work No. 5, 6 and 6A	Substation connection works
69	Work No. 5 and 6	Substation connection works, railway crossing rights

SCHEDULE 8

Article 22

MODIFICATION OF COMPENSATION AND COMPULSORY PURCHASE ENACTMENTS FOR THE CREATION OF NEW RIGHTS AND IMPOSITION OF NEW RESTRICTIVE COVENANTS

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 to 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 8 to the Helios Renewable Energy Project Order 202[•]);

(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 8 to the Helios Renewable Energy Project Order 202[•]) to acquire an interest in the land; and

(c) the acquiring authority enters on and takes possession of that land

the authority is deemed for the purposes of subsection (3)(a) to have entered on that land where it entered on that land for the purpose of exercising that right."

Application of Part 1 of the 1965 Act

4.—(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.

(**a**) 1973 c.26.

(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) (refusal to convey, failure to make title, etc.);

(b) paragraph 10(3) of Schedule 1 (persons without power to sell their interests);

(c) paragraph 2(3) of Schedule 2 (absent and untraced owners); and

(d) paragraphs 2(3) and 7(2) of Schedule 4 (common land),

are 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 covenant imposed, subject to compliance with that section as respects compensation.

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 24 (application of the 1981 Act) of the Helios Renewable Energy Project Order 202[•] in respect of the land to which the notice to treat relates.

(2) But see article 25(3) (acquisition of subsoil only) of the Helios Renewable Energy Project Order 202[•] which excludes the acquisition of subsoil only from this Schedule.

2. In this Schedule, “house” includes any park or garden belonging to a house.

Counter-notice requiring purchase of land

3. A person who is able to sell the house, building or factory (“the owner”) may serve a counter-notice requiring the authority to purchase the owner’s interest in the house, building or factory.

4. A counter-notice under paragraph 3 must be served within the period of 28 days beginning with the day on which the notice to treat was served.

Response to counter-notice

5. On receiving a counter-notice, the acquiring authority must decide whether to—

(a) withdraw the notice to treat,

(b) accept the counter-notice, or

(c) refer the counter-notice to the Upper Tribunal.

6. The authority must serve notice of their decision on the owner within the period of 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 it 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 9

Article 43

PROTECTIVE PROVISIONS

PART 1

FOR THE PROTECTION OF ELECTRICITY, GAS, WATER AND SEWERAGE UNDERTAKERS

1. For the protection of the utility undertakers referred to in this part of this Schedule, the following provisions have effect, unless otherwise agreed in writing between the undertaker and the utility undertaker in question.

2. In this Part of this Schedule—

"alternative apparatus" means alternative apparatus adequate to enable the utility undertaker in question to fulfil its statutory functions in a manner no less efficient than previously;

"apparatus" means—

(a) in the case of an electricity undertaker, electric lines or electrical plant (as defined in the 1989 Act) belonging to or maintained by that licence holder;

(b) in the case of a gas undertaker, any mains, pipes or other apparatus belonging to or maintained by that gas transporter for the purposes of gas supply;

(c) in the case of a water undertaker, any mains, pipes or other apparatus belonging to or maintained by that water undertaker for the purposes of water supply; and

(d) in the case of a sewerage undertaker—

(i) any drain or works vested in the sewerage undertaker under the Water Industry Act 1991(**a**); and

(ii) any sewer which is so vested or is the subject of a notice of intention to adopt given under section 102(4) (adoption of sewers and disposal works) of that Act or an agreement to adopt made under section 104 (agreements to adopt sewer, drain or sewerage disposal works at future date) 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;

"in" in a context referring to apparatus or alternative apparatus in land includes a reference to apparatus or alternative apparatus under, over or upon land; and

"utility undertaker" means—

(a) any licence holder within the meaning of Part 1 of the 1989 Act;

(b) a gas transporter within the meaning of Part 1 of the Gas Act 1986(**b**);

(c) a water undertaker within the meaning of the Water Industry Act 1991; and

(d) a sewerage undertaker within the meaning of Part 1 of the Water Industry Act 1991,

for the area of the authorised development, and in relation to any apparatus, means the utility undertaker to whom it belongs or by whom it is maintained.

(**a**) 1991 c.56.
(**b**) 1986 c.44.

On street apparatus

3. This Part of this Schedule does not apply to apparatus in respect of which the relations between the undertaker and the utility undertaker are regulations by the provisions of Part 3 (street works in England and Wales) of the 1991 Act.

Acquisition of land

4. Regardless of any provision of this Order or anything shown on the land plans, the undertaker must not acquire any apparatus otherwise than by agreement.

Removal of apparatus

5.—(1) If, in the exercise of the powers conferred by this Order, the undertaker acquires any interest in any land in which any apparatus is placed or over which access to any apparatus is enjoyed or requires that the utility undertaker's apparatus is relocated or diverted, that apparatus must not be removed under this Part of this Schedule, and any right of a utility undertaker to maintain that apparatus in that land and to gain access to it must not be extinguished, until alternative apparatus has been constructed and is in operation to the reasonable satisfaction of the utility undertaker in question.

(2) If, for the purpose of executing any works in, on or under any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, the undertaker must give to the utility undertaker in question 28 days' written notice of that requirement, together with a plan and section of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order a utility undertaker reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph (3), afford to the utility undertaker the necessary facilities and rights for the construction of alternative apparatus in other land of the undertaker and subsequently for the maintenance of that apparatus.

(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of the undertaker, or the undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraph (2), in the land in which the alternative apparatus or part of such apparatus is to be constructed, the utility undertaker in question must, on receipt of a written notice to that effect from the undertaker, as soon as reasonably possible use reasonable endeavours to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed.

(4) Any alternative apparatus to be constructed in land of the undertaker under this Part of this Schedule must be constructed in such manner and in such line or situation as may be agreed between the utility undertaker in question and the undertaker or in default of agreement settled by arbitration in accordance with article 42 (arbitration).

(5) The utility undertaker in question must, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with article 42 (arbitration), and after the grant to the utility undertaker of any such facilities and rights as are referred to in sub-paragraph (2) or (3), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by the undertaker to be removed under the provisions of this Part of this Schedule.

(6) Regardless of anything in sub-paragraph (5), if the undertaker gives notice in writing to the utility undertaker in question that it desires itself to execute any work, or part of any work, in connection with the construction or removal of apparatus in any land controlled by the undertaker, that work, instead of being executed by the utility undertaker, must be executed by the undertaker without unnecessary delay under the superintendence, if given, and to the reasonable satisfaction of the utility undertaker.

(7) Nothing in sub-paragraph (6) authorises the undertaker to execute the placing, installation, bedding, packing, removal, connection or disconnection of any apparatus, or execute any filling

around the apparatus (where the apparatus is laid in a trench) within 300 millimetres of the apparatus.

Facilities and rights for alternative apparatus

6.—(1) Where, in accordance with the provisions of this part of this Schedule, the undertaker affords to a utility undertaker facilities and rights for the construction and maintenance in land of the undertaker of alternative apparatus in substitution for apparatus to be removed, those facilities and rights must be granted upon such terms and conditions as may be agreed between the undertaker and the utility undertaker in question or in default of agreement settled by arbitration in accordance with article 42 (arbitration).

(2) If the facilities and rights to be afforded by the undertaker in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are in the opinion of the arbitrator less favourable on the whole to the utility undertaker in question than the facilities and rights enjoyed by it in respect of the apparatus to be removed and the terms and conditions to which those facilities and rights are subject, the arbitrator must make such provision for the payment of compensation by the undertaker to that utility undertaker as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

Retained apparatus

7.—(1) Not less than 28 days before starting the execution of any works in, on or under any land purchased, held, appropriated or used under this Order that are near to, or will or may affect, any apparatus the removal of which has not been required by the undertaker under paragraph 5(2), the undertaker must submit to the utility undertaker in question a plan, section and description of the works to be executed.

(2) Those works must be executed only in accordance with the plan, section and description submitted under sub-paragraph (1) and in accordance with such reasonable requirements as may be made in accordance with sub-paragraph (3) by the utility undertaker for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and the utility undertaker is entitled to watch and inspect the execution of those works.

(3) Any requirements made by a utility undertaker under sub-paragraph (2) must be made within a period of 21 days beginning with the date on which a plan, section and description under sub-paragraph (1) are submitted to it.

(4) If a utility undertaker, in accordance with sub-paragraph (3) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, the provisions of this Part of this Schedule 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 those previously submitted, and having done so the provisions of this paragraph apply to and in respect of the new plan, section and description.

(6) The undertaker is not required to comply with sub-paragraph (1) in a case of emergency but in that case it must give to the utility undertaker in question notice as soon as is reasonably practicable and a plan, section and description of those works as soon as reasonably practicable subsequently and must comply with sub-paragraph (2) in so far as is reasonably practicable in the circumstances.

Expenses and costs

8.—(1) Subject to the following provisions of this paragraph, the undertaker must repay to a utility undertaker the reasonable expenses agreed with the undertaker in advance and reasonably incurred by that utility undertaker in, or in connection with, the inspection, removal, alteration or

protection of any apparatus or the construction of any new apparatus which may be required in consequence of the execution of any such works as are referred to in paragraph 5(2).

(2) There is to be deducted from any sum payable under sub-paragraph (1) the value of any apparatus removed under the provisions of this Part of this Schedule, that value being calculated after removal.

(3) If in accordance with the provisions of this Part of this Schedule—

(a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions; or

(b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was,

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or, in default of agreement, is not determined by arbitration in accordance with article 42 (arbitration) to be necessary, then, if such placing involves cost in the construction of works under this Part of this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to the utility undertaker in question by virtue of sub-paragraph (1) is to be reduced by the amount of that excess.

(4) For the purposes of sub-paragraph (3)—

(a) an extension of apparatus to a length greater than the length of existing apparatus must not be treated as a placing of apparatus of greater dimensions than those of the existing apparatus where such extension is required in consequence of the execution of any such works as are referred to in paragraph 5(2); and

(b) where the provision of a joint in a pipe or cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole must be treated as if it also had been agreed or had been so determined.

(5) An amount which apart from this sub-paragraph would be payable to a utility undertaker in respect of works by virtue of sub-paragraph (1), if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on the utility undertaker any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, is to be reduced by the amount which represents that benefit.

9.—(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 a utility undertaker, or there is any interruption in any service provided, or in the supply of any goods, by any utility undertaker, the undertaker must—

(a) bear and pay the cost reasonably incurred by that utility undertaker in making good such damage or restoring the supply; and

(b) make reasonable compensation to that utility undertaker for any other expenses, loss, damages, penalty or costs incurred by the utility undertaker,

by reason of or in consequence of any such damage or interruption.

(2) Nothing in sub-paragraph (1) imposes any liability on the undertaker with respect to—

(a) any damage or interruption to the extent that it is attributable to the act, neglect or default of a utility undertaker, its officers, servants, contractors or agents; or

(b) any indirect or consequential loss of the utility undertaker or 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.

(3) A utility undertaker must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise is to be made without the consent of the undertaker and, if such

consent is withheld, the undertaker has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

Enactments and agreements

10. Nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and a utility undertaker in respect of any apparatus 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

11. For the protection of any operator, the following provisions have effect, unless otherwise agreed in writing between the undertaker and the operator in question.

12. In this Part of this Schedule—

"the 2003 Act" means the Communications Act 2003(**a**);

"electronic communications apparatus" has the same meaning as in the electronic communications code;

"the electronic communications code" has the same meaning as in section 106 (application of the electronic communications code) of the 2003 Act;

"electronic communications code network" means—

(a) so much of an electronic communications network or conduit system provided by an electronic communications code operator as is not excluded from the application of the electronic communications code by a direction under section 106 of the 2003 Act;

(b) an electronic communications network which the undertaker is providing or proposing to provide;

"electronic communications code operator" means a person in whose case the electronic communications code is applied by a direction under section 106 of the 2003 Act; and

"operator" means the operator of an electronic communications code network.

13. The exercise of the powers of article 32 (statutory undertakers) is subject to Part 10 (undertakers' works affecting electronic communications apparatus) of the electronic communications code.

14.—(1) Subject to sub-paragraphs (2) to (4), if as the result of the authorised development or its construction, or of any subsidence resulting from the authorised development—

(a) any damage is caused to any electronic communications apparatus belonging to an operator (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of the authorised development), or other property of an operator; or

(b) there is any interruption in the supply of the service provided by an operator,

the undertaker must bear and pay the cost agreed by the undertaker in advance and reasonably incurred by the operator in making good such damage or restoring the supply and make reasonable compensation to that operator for any other expenses, loss, damages, penalty or costs incurred by it by reason, or in consequence of, any such damage or interruption.

(2) Nothing in sub-paragraph (1) imposes any liability on the undertaker with respect to—

(**a**) 2003 c.21.

(a) any damage or interruption to the extent that it is attributable to the act, neglect or default of a utility undertaker, its officers, servants, contractors or agents; or

(b) any indirect or consequential loss of the operator or 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.

(3) The operator 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 and, if such consent is withheld, the undertaker has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

(4) Any difference arising between the undertaker and the operator under this Part of this Schedule must be referred to and settled by arbitration under article 42 (arbitration).

15. This Part of this Schedule does not apply to—

(a) any apparatus in respect of which the relations between the undertaker and an operator are regulated by the provisions of Part 3 (street works in England and Wales) of the 1991 Act; or

(b) any damage, or any interruption, caused by electro-magnetic interference arising from the construction or use of the authorised development.

16. Nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and an operator in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

PART 3

FOR THE PROTECTION OF THE DRAINAGE AUTHORITIES

17. For the protection of any drainage authority, the following provisions have effect, unless otherwise agreed in writing between the undertaker and the drainage authority in question.

18. In this Part of this Schedule—

"construction" includes execution, placing, altering, replacing, relaying and removal, and "construct" and "constructed" must be construed accordingly;

"drainage authority" means in relation to an ordinary watercourse, the drainage board concerned within the meaning of section 23 (prohibition on obstructions etc. in watercourses) of the Land Drainage Act 1991;

"drainage work" means any ordinary watercourse and includes any bank, wall, embankment or other structure, or any appliance, constructed or used for land drainage or flood defence in connection with an ordinary watercourse which is the responsibility of the drainage authority;

"ordinary watercourse" has the meaning given by section 72 (interpretation) of the Land Drainage Act 1991;

"plans" includes sections, drawings, specifications and method statements; and

"specified work" means so much of any work or operation authorised by this Order as is in, on, under, over or within 7 metres of a drainage work or is otherwise likely to—

(a) affect any drainage work;

(b) affect the total volume or volumetric rate of flow of water in or flowing to or from any drainage work; or

(c) affect the conservation, distribution or use of water resources.

19.—(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 submission of the plans reasonably require.

(2) The undertaker must not commence construction of the specified work until approval, unconditionally or conditionally, has been given as provided in this paragraph.

(3) A specified work must not be constructed except in accordance with such plans as may be approved in writing by the drainage authority or determined under paragraph 26.

(4) 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 56 days of the submission of the plans for approval, or submission of further particulars (where required by the drainage authority under sub-paragraph (1)) whichever is the later; and

(c) may be given subject to such reasonable requirements as the drainage authority may make for the protection of any drainage work, for the protection of any ordinary watercourse or for the prevention of flooding.

(5) The drainage authority must use all reasonable endeavours to respond to the submission of any plans before the expiration of the period mentioned in sub-paragraph (4)(b).

(6) Any refusal under this paragraph must be accompanied by a statement of the reasons for refusal.

20. 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 by reason of any specified work; or

(b) to secure that the efficiency of any drainage work for flood defence and land drainage purposes is not impaired, and that the risk of flooding is not otherwise increased, by reason of any specified work.

21.—(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 of this Schedule; 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 of completion.

(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 of this Schedule, the drainage authority may by notice in writing require the undertaker at the undertaker's expense to comply with the requirements of this Part of this Schedule 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) and paragraphs 24 and 25, 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 or subsequently made reasonably expeditious progress towards their implementation, the drainage authority may execute the works specified in the notice, and any expenditure reasonably and properly incurred by it in so doing is recoverable from the undertaker.

(6) In the event of any dispute as to whether sub-paragraph (4) is properly applicable to any work in respect of which notice has been served under that sub-paragraph, or as to the reasonableness of any requirement of such a notice, the drainage authority must not except in an emergency exercise the powers conferred by sub-paragraph (5) until the dispute has been finally determined in accordance with paragraph 26.

22.—(1) Subject to sub-paragraph (5), the undertaker must from the commencement of the construction of the specified work maintain in good repair and condition and free from obstruction any drainage work which is situated within the Order Limits on land held by the undertaker for the purposes of or in connection with the specified work, whether or not the drainage work is constructed under the powers conferred by this Order or is already in existence.

(2) If any drainage work which the undertaker is liable to maintain is not maintained to the reasonable satisfaction of the drainage authority, the drainage authority may by notice in writing require the undertaker to repair and restore the work, or any part of 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 specified work and restore the site to its former condition, to such extent and within such limits as the drainage authority reasonably requires.

(3) Subject to sub-paragraph (4), 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, subject to paragraphs 24 and 25, recover any expenditure reasonably and properly 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 in accordance with paragraph 26.

(5) This paragraph does not apply to—

(a) drainage works which are vested in the drainage authority, or which the drainage authority or another person is liable to maintain and is not prevented by this Order from so doing; and

(b) any obstruction of a drainage work for the purpose of a work or operation authorised by this Order and carried out in accordance with the provisions of this Part of this Schedule provided that any obstruction is removed as soon as reasonably practicable.

23. Subject to paragraphs 24 and 25 and paragraph 22(5)(b), if by reason of the construction of any specified work or of the failure of any such work the efficiency of any drainage work for flood defence purposes or land drainage is impaired, or that drainage work is otherwise damaged, the impairment or damage must be made good by the undertaker as soon as reasonably practicable to the reasonable satisfaction of the drainage authority and, if the undertaker fails to do so, the drainage authority may make good the impairment or damage and recover from the undertaker the expense reasonably and properly incurred by it in doing so.

24. The undertaker must compensate the drainage authority in respect of all costs, charges and expenses which the drainage authority may reasonably and properly incur—

(a) in the examination or approval of plans under this Part of this Schedule;

(b) in the inspection of the construction of the specified works or any protective works required by the drainage authority under this Part of this Schedule; and

(c) in the carrying out of any surveys or tests by the drainage authority which are reasonably required in connection with the construction of the specified works.

25.—(1) Without limiting the other provisions of this Part of this Schedule, the undertaker must indemnify the drainage authority in respect of all reasonable 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) the construction, operation or maintenance of any specified works or the failure of any such works comprised within them;

(b) any damage to any drainage work so as to impair its efficiency for the purposes of flood defence;

(c) any raising or lowering of the water table in land adjoining the authorised development or any sewers, drains and watercourses; or

(d) any flooding or increased flooding of any such land.

(2) The drainage authority must give to the undertaker reasonable notice of any such claim or demand and must not settle or compromise a claim without the agreement of the undertaker, which agreement must not be unreasonably withheld or delayed.

(3) The drainage authority must at all times take reasonable steps to prevent and mitigate any such claims, demands, proceedings, costs, damages, expenses or loss.

(4) 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 the provisions of this Part of this Schedule.

(5) Nothing in sub-paragraph (1) imposes any liability on the undertaker with respect to—

(a) any loss arising out of or in consequence of any negligent act or default of the drainage authority or its officers, servants, agents or contractors or any person or body for which it is responsible; or

(b) any indirect or consequential loss of the drainage authority or any third party (including but not limited to loss of use, revenue, profit, contract, production, increased cost of working or business interruption).

26. Any dispute arising between the undertaker and the drainage authority under this Part of this Schedule, if the parties agree, is to be determined by arbitration under article 42 (arbitration), but otherwise is to be determined by the Secretary of State for Energy Security and Net Zero on a reference to them by the undertaker or the drainage authority, after notice in writing by one to the other.

PART 4

FOR THE PROTECTION OF THE ENVIRONMENT AGENCY

27.—(1) The following provisions apply for the protection of the Agency unless otherwise agreed in writing between the undertaker and the Agency.

(2) In this part of this Schedule—

"Agency" means the Environment Agency;

"construction" includes execution, placing, altering, replacing, relaying and removal and excavation and "construct" and "constructed" is construed accordingly;

"drainage work" means any main river and includes any land which provides or is expected to provide flood storage capacity for any main river and any bank, wall, embankment or other structure, or any appliance, constructed or used for land drainage, flood defence or tidal monitoring;

"emergency" means an occurrence which presents a risk of—

(a) serious flooding

(b) serious detrimental impact on drainage

(c) serious harm to the environment

"fishery" means any waters containing fish and fish in, or migrating to or from, such waters and the spawn, spawning ground, habitat or food of such fish;

"main river" has the same meaning given in section 113 of the Water Resources Act 1991;

"non-tidal main river" has the meaning given in paragraph 2(1) of Part 1 of Schedule 25 to the Environmental Permitting (England and Wales) Regulations 2016;

"plans" includes plans, sections, elevations, drawings, specifications, programmes, proposals, calculations, method statements and descriptions;

"remote defence" means any berm, wall or embankment that is constructed for the purposes of preventing or alleviating flooding from, or in connection with, any main river;

"sea defence" means any bank, wall, embankment (any berm, counterwall or cross-wall connected to any such bank, wall or embankment), barrier, tidal sluice and other defence, whether natural or artificial, against the inundation of land by sea water or tidal water, including natural or artificial high ground which forms part of or makes a contribution to the efficiency of the defences of the Agency's area against flooding, but excludes any sea defence works which are for the time being maintained by a coast protection authority under the provisions of the Coast Protection Act 1949 or by any local authority or any navigation, harbour or conservancy authority;

"specified work" means so much of any work or operation authorised by this Order as is in, on, under, over or within;

(a) 16 metres of the base of a sea defence which is likely to—

(i) endanger the stability of, cause damage or reduce the effectiveness of that sea defence, or

(ii) interfere with the Agency's access to or along that sea defence or the Agency's ability to undertake works to ensure the efficacy of that sea defence;

(b) 8 metres of the base of a remote defence which is likely to—

(i) endanger the stability of, cause damage or reduce the effectiveness of that remote defence, or

(ii) interfere with the Agency's access to or along that remote defence;

(c) 16 metres of a drainage work involving a tidal main river;

(d) 8 metres of a drainage work involving a non-tidal main river;

(e) any distance of a drainage work and is otherwise likely to—

(i) affect any drainage work or the volumetric rate of flow of water in or flowing to or from any drainage work;

(ii) affect the flow, purity or quality of water in any main river or other surface waters

(iii) cause obstruction to the free passage of fish or damage to any fishery;

(iv) affect the conservation, distribution or use of water resources; or

(v) affect the conservation value of the main river and habitats in its immediate vicinity;

or which involves—

(f) an activity that includes dredging, raising or taking of any sand, silt, ballast, clay, gravel or other materials from or off the bed or banks of a drainage work (or causing such materials to be dredged, raised or taken), including hydrodynamic dredging or desilting; and

(g) any quarrying or excavation within 16 metres of a drainage work which is likely to cause damage to or endanger the stability of the banks or structure of that drainage work;

"tidal main river" has the meaning given in paragraph 2(1) of Part 1 of Schedule 25 to the Environmental Permitting (England and Wales) Regulations 2016.

Submission and approval of plans

28.—(1) Before beginning to construct any specified work, the undertaker must submit to the Agency plans of the specified work and such further particulars available to it as the Agency may within 28 days of the receipt of the plans reasonably request.

(2) Any such specified work must not be constructed except in accordance with such plans as may be approved in writing by the Agency, or determined under paragraph 38.

(3) Any approval of the Agency required under this paragraph—

(a) must not be unreasonably withheld or delayed;

(b) subject to sub-paragraph (5), is deemed to have been refused if it is neither given nor refused within 2 months of the submission of the plans or such later date as is agreed between the Agency and the undertaker and if further particulars have been requested pursuant to sub paragraph (1) the period between the making of this request and the provision of further particulars in response to it shall not be taken into account in the calculation of the 2 months for the purposes of this sub-paragraph ; and

(c) may be given subject to such reasonable requirements as the Agency may have for the protection of any drainage work or the fishery or for the protection of water resources, or for the prevention of flooding or pollution or for nature conservation or the prevention of environmental harm in the discharge of its environmental duties.

(4) The Agency must use its reasonable endeavours to respond to the submission of any plans before the expiration of the period mentioned in sub-paragraph (3)(b)

(5) In the case of a refusal, the Agency must provide reasons for the grounds of that refusal.

Construction of protective works

29.—(1) Without limiting paragraph 28 the requirements which the Agency may have under that paragraph include conditions requiring the undertaker, at its own expense, to construct such protective works, whether temporary or permanent, before or during the construction of the specified works (including the provision of flood banks, walls or embankments or other new works and the strengthening, repair or renewal of existing banks, walls or embankments) as are reasonably necessary—

(a) to safeguard any drainage work against damage; or

(b) to secure that its efficiency for flood defence purposes is not impaired and that the risk of flooding is not otherwise increased,

by reason of any specified work.

Timing of works and service of notices

30.—(1) Subject to sub-paragraph (2), any specified work, and all protective works required by the Agency under paragraph 29, must be constructed—

(a) without unreasonable delay in accordance with the plans approved under this Part of this Schedule; and

(b) to the reasonable satisfaction of the Agency,

and the Agency is entitled by its officer to watch and inspect the construction of such works.

(2) The undertaker must give to the Agency not less than 14 days' notice in writing of its intention to commence construction of any specified work and notice in writing of its completion not later than 7 days after the date on which it is completed.

(3) If the Agency reasonably requires, the undertaker must construct all or part of the protective works so that they are in place prior to the construction of any specified work to which the protective works relate.

Works not in accordance with this Schedule

31.—(1) If there is any failure by the undertaker to obtain consent or comply with conditions imposed by the Agency in accordance with these protective provisions and where the Agency acting reasonably considers it necessary to avoid any of the risks specified in sub-paragraph (2), the Agency may serve written notice requiring the undertaker to cease all or part of the specified works as may be specified within the notice within the period specified in the notice, and the undertaker must cease constructing the specified works or part thereof until such time as it has obtained the consent or complied with the condition specified within the notice served.

(2) The risks specified in sub-paragraph (1) are—

(a) risk of flooding;

(b) risk of harm to the environment;

(c) risk of detrimental impact on drainage

(d) damage to the fishery.

(3) If any part of a specified work or any protective work required by the Agency is constructed otherwise than in accordance with the requirements of this Part of this Schedule, the Agency may by notice in writing require the undertaker at the undertaker's own expense to comply with the requirements of this Part of this Schedule or (if the undertaker so elects and the Agency in writing consents, such consent not to be unreasonably withheld or delayed) to remove, alter or pull down the work and, where removal is required, to restore the site to its former condition to such extent and within such limits as the Agency reasonably requires.

(4) Subject to sub-paragraph (5) if, within a reasonable period, being not less than 28 days beginning with the date when a notice under sub-paragraph (3) is served upon the undertaker, the undertaker has failed to begin taking steps to comply with the requirements of the notice and has not subsequently made reasonably expeditious progress towards their implementation, the Agency may execute the works specified in the notice and any reasonable expenditure incurred by the Agency in so doing is recoverable from the undertaker.

(5) In the event of any dispute as to whether sub-paragraph (3) is properly applicable to any work in respect of which notice has been served under that sub-paragraph, or as to the reasonableness of any requirement of such a notice, the Agency must not, except in the case of an emergency, exercise the powers conferred by sub-paragraph (4) until the dispute has been finally determined in accordance with paragraph 38.

Maintenance of works

32.—(1) Subject to sub-paragraph (5) the undertaker must from the commencement of the construction of the specified works maintain in good repair and condition and free from obstruction any drainage work which is situated within the limits of deviation and on land held by the undertaker for the purposes of or in connection with the specified works, whether or not the drainage work is constructed under the powers conferred by this Order or is already in existence.

(2) If any such drainage work which the undertaker is liable to maintain is not maintained to the reasonable satisfaction of the Agency, the Agency may by notice in writing require the undertaker to repair and restore the work, or any part of such work, or (if the undertaker so elects and the Agency in writing consents, such consent not to be unreasonably withheld or delayed), to remove the work and restore the site to its former condition, to such extent and within such limits as the Agency reasonably requires.

(3) Subject to sub-paragraph (4) if, within a reasonable period, being not less than 28 days beginning with the date on which a notice in respect of any drainage work is served under sub-paragraph (2) on the undertaker, the undertaker has failed to begin taking steps to comply with the requirements of the notice and has not subsequently made reasonably expeditious progress towards their implementation, the Agency may do what is necessary for such compliance and any reasonable expenditure incurred by the Agency in so doing is recoverable from the undertaker.

(4) In the event of any dispute as to the reasonableness of any requirement of a notice served under sub-paragraph (2), the Agency must not, except in the case of an emergency, exercise the

powers conferred by sub-paragraph (3) until the dispute has been finally determined in accordance with paragraph 38.

(5) This paragraph does not apply to—

(a) drainage works which are vested in the Agency, or which the Agency or another person is liable to maintain and is not proscribed by the powers of the Order from doing so; and

(b) any obstruction of a drainage work expressly authorised in the approval of specified works plans and carried out in accordance with the provisions of this Part provided that any obstruction is removed as soon as reasonably practicable.

Remediating impaired drainage work

33. If by reason of the construction of any specified work or of the failure of any such work, the efficiency of any drainage work for flood defence purposes is impaired, or that drainage work is otherwise damaged, such impairment or damage must be made good by the undertaker to the reasonable satisfaction of the Agency and if the undertaker fails to do so, the Agency may make good the impairment or damage and recover any expenditure incurred by the Agency in so doing from the undertaker.

Agency access

34. If by reason of the construction of any specified work or the failure of any such work, the Agency's access to flood defences or equipment maintained for flood defence purposes is materially obstructed, the undertaker must notify the Agency immediately and provide suitable alternative means of access that will allow the Agency to maintain the flood defence or use the equipment no less effectively than was possible before the obstruction occurred and such alternative access must be made available as soon as reasonably practicable after the undertaker becomes aware of such obstruction, except in the case of an emergency in which case the undertaker must provide such alternative means of access on demand.

Free passage of fish

35.—(1) The undertaker must take all such measures as may be reasonably practicable to prevent any interruption of the free passage of fish in the fishery during the construction of any specified work.

(2) If by reason of—

(a) the construction of any specified work; or

(b) the failure of any such work,

damage to the fishery is caused, or the Agency has reason to expect that such damage may be caused, the Agency may serve notice on the undertaker requiring it to take such steps as may be reasonably practicable to make good the damage, or, as the case may be, to protect the fishery against such damage within the period specified in the notice.

(3) If, the undertaker fails to take such steps as are described in the notice served under sub-paragraph (2), the Agency may take those steps and any expenditure incurred by the Agency in so doing is recoverable from the undertaker.

(4) In any case where immediate action by the Agency is reasonably required in order to secure that the risk of damage to the fishery is avoided or reduced, the Agency may take such steps as are reasonable for the purpose, and may recover from the undertaker any expenditure incurred in so doing provided that notice specifying those steps is served on the undertaker as soon as reasonably practicable after the Agency has taken, or commenced to take, the steps specified in the notice.

Indemnity

36.—(1) The undertaker indemnifies the Agency in respect of all costs, charges and expenses which the Agency may incur—

(a) in the examination or approval of plans under this Part of this Schedule;

(b) in the inspection of the construction of the specified works or any protective works required by the Agency under this Part of this Schedule; and

(c) in the carrying out of any surveys or tests by the Agency which are reasonably required in connection with the construction of the specified works.

37.—(1) The undertaker is responsible for and indemnifies the Agency against all costs and losses, liabilities, claims and demands not otherwise provided for in this Schedule which may be reasonably incurred or suffered by the Agency by reason of, or arising out of—

(a) the construction, operation or maintenance of any specified works comprised within the authorised development or the failure of any such works comprised within them; or

(b) any act or omission of the undertaker, its employees, contractors or agents or others whilst engaged upon the construction, operation or maintenance of the authorised development or dealing with any failure of the authorised development.

(2) For the avoidance of doubt, in sub-paragraph (2)—

"costs" includes—

(a) expenses and charges;

(b) staff costs and overheads;

(c) legal costs;

"losses" includes physical damage.

"claims" and "demands" include as applicable—

(a) costs (within the meaning of sub-paragraph (2(i)) incurred in connection with any claim or demand;

(b) any interest element of sums claimed or demanded;

"liabilities" includes—

(a) contractual liabilities;

(b) tortious liabilities (including liabilities for negligence or nuisance);

(c) liabilities to pay statutory compensation or for breach of statutory duty;

(d) liabilities to pay statutory penalties imposed on the basis of strict liability (but does not include liabilities to pay other statutory penalties).

(3) The Agency must give to the undertaker reasonable notice of any such claim or demand and must not settle or compromise a claim without the agreement of the undertaker and that agreement must not be unreasonably withheld or delayed.

(4) The Agency must, at all times take reasonable steps to prevent and mitigate any such claims, demands, proceedings, costs, damages, expenses or loss.

(5) The fact that any work or thing has been executed or done by the undertaker in accordance with a plan approved by the Agency, or to its satisfaction, or in accordance with any directions or award of an arbitrator, must not relieve the undertaker from any liability under the provisions of this Part of this Schedule.

(6) Nothing in this paragraph imposes any liability on the undertaker with respect to any costs, charges, expenses, damages, claims, demands or losses to the extent that they are attributable to the neglect or default of the Agency, its officers, servants, contractors or agents.

Disputes

38. Any dispute arising between the undertaker and the Agency under this Part of this Schedule must, if the parties agree, be determined by arbitration under article 42(arbitration), but failing agreement be determined by the Secretary of State for Environment, Food and Rural Affairs or its successor and the Secretary of State for Energy Security and Net Zero or its successor acting

jointly on a reference to them by the undertaker or the Agency, after notice in writing by one to the other.

PART 5

FOR THE PROTECTION OF NATIONAL GAS TRANSMISSION PLC AS GAS UNDERTAKER

Application

39.—(1) For the protection of NGT as referred to in this Part of this Schedule the following provisions have effect, unless otherwise agreed in writing between the undertaker and NGT.

(2) Subject to sub-paragraph (3) or to the extent otherwise agreed in writhing between the undertaker and NGT, where the benefit of this Order is transferred or granted to another person under article 6 (Benefit of the Order)—

(a) any agreement of the type mentioned in subparagraph (1) has effect as if it had been made between NGT and the transferee or grantee (as the case may be); and

(b) written notice of the transfer or grant must be given to NGT 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 NGT (but without prejudice to 49(3)b).

Interpretation

40. 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):

(c) a waiver of subrogation and an indemnity to principal clause in favour of NGT;

(d) 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—

(a) a parent company guarantee from a parent company in favour of NGT to cover the undertaker's liability to NGT to a total liability cap of £50,000,000.00 (fifty million pounds) (in a form reasonably satisfactory to NGT and where required by NGT, accompanied with a legal opinion confirming the due capacity and authorisation of the parent company to enter into and be bound by the terms of such guarantee); or

(b) a bank bond or letter of credit from an acceptable credit provider in favour of NGT to cover the undertaker's liability to NGT 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 NGT);

"alternative apparatus" means appropriate alternative apparatus to the satisfaction of NGT to enable NGT 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 NGT 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 NGT 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 (Interpretation) 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 NGT (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 NGT's approval a ground mitigation scheme;

"ground subsidence event" means any ground subsidence identified by the monitoring activities set out in the ground monitoring scheme that has exceeded the level described in the ground monitoring scheme as requiring a ground mitigation scheme;

"in" in a context referring to apparatus or alternative apparatus in land includes a reference to apparatus or alternative apparatus under, over, across, along or upon such land;

"maintain" and "maintenance" shall include the ability and right to do any of the following in relation to any apparatus or alternative apparatus of NGT: construct, use, repair, alter, inspect, renew or remove the apparatus;

"NGT" 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 NGT 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 NGT's Gas Transporters Licence, as both documents are amended from time to time;

"Network Code Claims" means any claim made against NGT by any person or loss suffered by NGT under the Network Code arising out of or in connection with any failure by NGT 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 NGT 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 NGT acting reasonably;

"specified works" means any of the authorised works or activities undertaken in association with the authorised works which—

(a) will or may be situated over, or within 15 metres measured in any direction of any apparatus the removal of which has not been required by the undertaker under paragraph 45(2) or otherwise; and/or

(b) may in any way adversely affect any apparatus the removal of which has not been required by the undertaker under paragraph 45(2) or otherwise; and/or

(c) includes any of the activities that are referred to in paragraph 8 of T/SP/SSW/22 (NGT's policies for safe working in proximity to gas apparatus). Specification for safe working in the vicinity of NGT, High pressure Gas pipelines and associated installation requirements for third parties T/SP/SSW/22.

"undertaker" means the undertaker as defined in article 2 (Interpretation) of this Order.

On Street Apparatus

41. Except for paragraphs 42 (apparatus of NGT in stopped up streets), 47 (retained apparatus: protection), 48 (expenses) and 49 (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 NGT, the other provisions of this Schedule do not apply to apparatus in respect of which the relations between the undertaker and NGT are regulated by the provisions of Part 3 of the 1991 Act.

Apparatus of NGT in stopped up streets

42.—(1) Where any street is stopped up under article 14 (Temporary stopping up of and permitting vehicular use on public rights of way) permanent stopping up, restriction of use and construction of streets, public rights of way and private means of access), if NGT has any apparatus in the street or accessed via that street NGT has the same rights in respect of that apparatus as it enjoyed immediately before the stopping up and the undertaker must grant to NGT, or procure the granting to NGT of, legal easements reasonably satisfactory to NGT 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 NGT to require the removal of that apparatus under paragraph 45 or the power of the undertaker, subject to compliance with this sub-paragraph, to carry out works under paragraph 47.

(2) Notwithstanding the temporary stopping up or diversion of any highway under the powers of article 14 (Temporary stopping up of and permitting vehicular use on public rights of way), NGT 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 work 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 without the written consent of NGT.

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 NGT 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 NGT 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 NGT or affect the provisions of any enactment or agreement regulating the relations between NGT and the undertaker in respect of any apparatus laid or erected in land belonging to or secured by the undertaker, the undertaker must as NGT reasonably requires enter into such deeds of consent upon such terms and conditions as may be agreed between NGT and the undertaker acting reasonably and which must be no less favourable on the whole to NGT unless otherwise agreed by NGT, and it will be the responsibility of the undertaker to procure and/or secure the consent and entering into of such deeds and variations by all other third parties with an interest in the land at that time who are affected by such authorised works.

(3) The undertaker and NGT 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 NGT and/or other enactments relied upon by NGT 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 NGT under paragraph 47 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 NGT 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 NGT 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 NGT 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 NGT 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 NGT to its satisfaction (taking into account paragraph 46(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, NGT must, on receipt of a written notice to that effect from the undertaker, take such steps as are reasonable in the circumstances in an endeavour to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed save that this obligation shall not extend to the requirement for NGT 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 NGT and the undertaker.

(5) NGT 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 NGT 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 NGT 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 NGT and must be no less favourable on the whole to NGT than the facilities and rights enjoyed by it in respect of the apparatus to be removed unless otherwise agreed by NGT.

(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 NGT 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 15 (Arbitration) of this Part of this Schedule and the arbitrator must make such provision for the payment of compensation by the undertaker to NGT as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

Retained apparatus: protection

47.—(1) Not less than 56 days before the commencement of any specified works the undertaker must submit to NGT a plan and, if reasonably required by NGT, a ground monitoring scheme in respect of those works.

(2) In relation to works which will or may be situated on, over, under or within (i) 15 metres measured in any direction of any apparatus, or (ii) involve embankment works within 15 metres of any apparatus, the plan to be submitted to NGT 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 NGT has given written approval of the plan so submitted.

(4) Any approval of NGT required under sub-paragraph (3)—

(a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraphs (4) or (6); and,

(b) must not be unreasonably withheld.

(5) In relation to any work to which sub-paragraphs (1) and/or (2) apply, NGT 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 NGT and in accordance with such reasonable requirements as may be made in accordance with sub-paragraphs (5) or (7) by NGT for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and NGT will be entitled to watch and inspect the execution of those works.

(7) Where NGT 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 NGTs' satisfaction prior to the commencement of any specified works for which protective works are required and NGT 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 NGT 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 39 to 41 and 44 to 46 apply as if the removal of the apparatus had been required by the undertaker under paragraph 45(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 NGT notice as soon as is reasonably practicable and a plan of those works and must comply with sub-paragraphs (6), (7) and (8) insofar as is reasonably practicable in the circumstances and comply with sub paragraph (11) at all times.

(11) At all times when carrying out any works authorised under the Order NGT must comply with NGT's policies for safe working in proximity to gas apparatus "Specification for safe working in the vicinity of NGT, 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 NGT 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 48.

Expenses

48.—(1) Save where otherwise agreed in writing between NGT and the undertaker and subject to the following provisions of this paragraph, the undertaker must pay to NGT within 30 days of receipt of an itemised invoice or claim from NGT all charges, costs and expenses reasonably anticipated within the following three months or reasonably and properly incurred by NGT 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 NGT in connection with the acquisition of rights or the exercise of statutory powers for such apparatus including without limitation all costs incurred by NGT as a consequence of NGT;

(b) using its own compulsory purchase powers to acquire any necessary rights under paragraph 45(3); or

(c) exercising any compulsory purchase powers in the Order transferred to or benefitting NGT;

(d) in connection with the cost of the carrying out of any diversion work or the provision of any alternative apparatus, where no written diversion agreement is otherwise in place;

(e) the cutting off of any apparatus from any other apparatus or the making safe of redundant apparatus;

(f) the approval of plans;

(g) the carrying out of protective works, plus a capitalised sum to cover the cost of maintaining and renewing permanent protective works;

(h) the survey of any land, apparatus or works, the inspection and monitoring of works or the installation or removal of any temporary works reasonably necessary in consequence of the execution of any such works referred to in this Part of this Schedule.

(2) There will be deducted from any sum payable under sub-paragraph (1) the value of any apparatus removed under the provisions of this Part of this Schedule and which is not re-used as part of the alternative apparatus, that value being calculated after removal.

(3) If in accordance with the provisions of this Part of this Schedule—

(a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions; or

(b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was situated,

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or, in default of agreement, is not determined by arbitration in accordance with paragraph 53 (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 NGT 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 NGT 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 NGT 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 NGT, or there is any interruption in any service provided, or in the supply of any goods or energy, by NGT, or NGT 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 NGT the cost reasonably and properly incurred by NGT in making good such damage or restoring the supply; and

(b) indemnify NGT for any other expenses, loss, demands, proceedings, damages, claims, penalty or costs incurred by or recovered from NGT, by reason or in consequence of any such damage or interruption or NGT becoming liable to any third party and including Network Code Claims other than arising from any default of NGT.

(2) The fact that any act or thing may have been done by NGT on behalf of the undertaker or in accordance with a plan approved by NGT or in accordance with any requirement of NGT 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 NGT 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 NGT, 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 NGT 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 (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 49; 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) NGT 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) NGT 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) NGT 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 NGT'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 NGT's control and if reasonably requested to do so by the undertaker NGT must provide an explanation of how the claim has been minimised, where relevant.

(7) Not to commence construction (and not to permit the commencement of such construction) of the authorised works on any land owned by NGT or in respect of which NGT has an easement or wayleave for its apparatus or any other interest or to carry out any works within 15 metres of NGT's apparatus until the following conditions are satisfied—

(a) unless and until NGT 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 NGT has confirmed the same to the undertaker in writing; and

(b) unless and until NGT is satisfied acting reasonably (but subject to all necessary regulatory constraints) that the undertaker has procured acceptable insurance (and provided evidence to NGT 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 NGT has confirmed the same in writing to the undertaker.

(8) In the event that the undertaker fails to comply with 49(7) of this Part of this Schedule, nothing in this Part of this Schedule shall prevent NGT 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 NGT 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 NGT 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 NGT requires the removal of apparatus under paragraph 45(2) or NGT makes requirements for the protection or alteration of apparatus under paragraph 47, 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 NGT's undertaking and NGT shall use its best endeavours to co-operate with the undertaker for that purpose.

(2) For the avoidance of doubt whenever NGT'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 paragraph 44(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 NGT to maintain or use the apparatus no less effectively than was possible before such obstruction.

Arbitration

53. Save for differences or disputes arising under paragraph 45(2), 45(4) 46(1) and 47 any difference or dispute arising between the undertaker and NGT under this Part of this Schedule must, unless otherwise agreed in writing between the undertaker and NGT, be determined by arbitration in accordance with article 42 (Arbitration).

Notices

54. Notwithstanding article 39 (Service of notices), any plans submitted to NGT by the undertaker pursuant to paragraph 47 must be submitted to https://lsbud.co.uk/ or such other address as NGT may from time to time appoint instead for that purpose and notify to the undertaker in writing.

PART 6

FOR THE PROTECTION OF NATIONAL GRID ELECRICITY TRANSMISSION PLC AS ELECTRICITY UNDERTAKER

Application

55.—(1) For the protection of NGET as referred to in this Part of this Schedule the following provisions have effect, unless otherwise agreed in writing between the undertaker and NGET.

(2) Subject to sub-paragraph (3) or to the extent otherwise agreed in writing between the undertaker and NGET, where the benefit of this Order is transferred or granted to another person under article 6 (Benefit of the Order)—

(a) any agreement of the type mentioned in subparagraph (1) has effect as if it had been made between NGET and the transferee or grantee (as the case may be); and

(b) written notice of the transfer or grant must be given to NGET on or before the date of that transfer or grant.

(3) Sub-paragraph (2) does not apply where the benefit of the Order is transferred or granted to NGET (but without prejudice to 65(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 NGET;

(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—

(a) a parent company guarantee from a parent company in favour of NGET to cover the undertaker's liability to NGET to a total liability cap of £50,000,000.00 (fifty million pounds) (in a form reasonably satisfactory to NGET and where required by NGET, accompanied with a legal opinion confirming the due capacity and authorisation of the parent company to enter into and be bound by the terms of such guarantee); or

(b) a bank bond or letter of credit from an acceptable credit provider in favour of NGET to cover the undertaker's liability to NGET 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 NGET);

"alternative apparatus" means appropriate alternative apparatus to the satisfaction of NGET to enable NGET to fulfil its statutory functions in a manner no less efficient than previously;

"apparatus" means any electric lines or electrical plant as defined in the Electricity Act 1989, belonging to or maintained by NGET together with any replacement apparatus and such other apparatus constructed pursuant to the Order that becomes operational apparatus of NGET for the purposes of transmission, distribution and/or supply and includes any structure in which apparatus is or will be lodged or which gives or will give access to apparatus;

"authorised works" has the same meaning as is given to the term "authorised development" in article 2(1) of this Order and includes any associated development authorised by the Order and for the purposes of this Part of this Schedule includes the use and maintenance of the authorised works and construction of any works authorised by this Schedule;

"commence" and "commencement" in this Part of this Schedule shall include any below ground surveys, monitoring, ground work operations or the receipt and erection of construction plant and equipment;

"deed of consent" means a deed of consent, crossing agreement, deed of variation or new deed of grant agreed between the parties acting reasonably in order to vary or replace existing easements, agreements, enactments and other such interests so as to secure land rights and interests as are necessary to carry out, maintain, operate and use the apparatus in a manner consistent with the terms of this Part of this Schedule;

"functions" includes powers and duties;

"ground mitigation scheme" means a scheme approved by NGET (such approval not to be unreasonably withheld or delayed) setting out the necessary measures (if any) for a ground subsidence event;

"ground monitoring scheme" means a scheme for monitoring ground subsidence which sets out the apparatus which is to be subject to such monitoring, the extent of land to be monitored, the manner in which ground levels are to be monitored, the timescales of any monitoring activities and the extent of ground subsidence which, if exceeded, shall require the undertaker to submit for NGET's approval a ground mitigation scheme;

"ground subsidence event" means any ground subsidence identified by the monitoring activities set out in the ground monitoring scheme that has exceeded the level described in the ground monitoring scheme as requiring a ground mitigation scheme;

"in" in a context referring to apparatus or alternative apparatus in land includes a reference to apparatus or alternative apparatus under, over, across, along or upon such land;

"Incentive Deduction" means any incentive deduction NGET receives under its electricity transmission licence which is caused by an event on its transmission system that causes electricity not to be supplied to a demand customer and which arises as a result of the authorised works;

"maintain" and "maintenance" shall include the ability and right to do any of the following in relation to any apparatus or alternative apparatus of NGET: construct, use, repair, alter, inspect, renew or remove the apparatus;

"NGET" means National Grid Electricity Transmission Plc (Company Number 02366977) whose registered office is at 1-3 Strand, London, WC2N 5EH or any successor as a licence holder within the meaning of Part 1 of the Electricity Act 1989;

"NGESO" means as defined in the STC;

"plan" or "plans" include all designs, drawings, specifications, method statements, soil reports, programmes, calculations, risk assessments and other documents that are reasonably necessary properly and sufficiently to describe and assess the works to be executed;

"parent company" means a parent company of the undertaker acceptable to and which shall have been approved by NGET acting reasonably;

"specified works" means any of the authorised works or activities undertaken in association with the authorised works which—

(a) will or may be situated over, or within 15 metres measured in any direction of any apparatus the removal of which has not been required by the undertaker under paragraph 61(2) or otherwise; and/or

(b) may in any way adversely affect any apparatus the removal of which has not been required by the undertaker under paragraph 61(2) or otherwise; and/or

(c) includes any of the activities that are referred to in "Development near overhead lines" EN43-8 and the Health and Safety Executives (HSE) Guidance Note G6 "Avoiding Danger from Overhead Power Lines".

"STC" means the System Operator Transmission Owner Code prepared by the electricity Transmission Owners and NGESO as modified from time to time;

"STC Claims" means any claim made under the STC against NGET arising out of or in connection with the de-energisation (whereby no electricity can flow to or from the relevant system through the generator or interconnector's equipment) of a generator or interconnector party solely as a result of the de-energisation of plant and apparatus forming part of NGET's transmission system which arises as a result of the authorised works;

"Transmission Owner" means as defined in the STC;

"undertaker" means the undertaker as defined in article 2(1) (Interpretation) of this Order.

On Street Apparatus

57. Except for paragraphs 58 (Apparatus of NGET in stopped up streets), 63 (Retained apparatus: protection), 64 (Expenses) and 65 (Indemnity) of this Schedule which will apply in respect of the exercise of all or any powers under the Order affecting the rights and apparatus of NGET, the other provisions of this Schedule do not apply to apparatus in respect of which the relations between the undertaker and NGET are regulated by the provisions of Part 3 of the 1991 Act.

Apparatus of NGET in stopped up streets

58.—(1) Where any street is stopped up under article 10 (Street works), 13 (Construction and maintenance of altered streets) and 14 (Temporary stopping up of and permitting vehicular use on public rights of way), if NGET has any apparatus in the street or accessed via that street NGET has the same rights in respect of that apparatus as it enjoyed immediately before the stopping up and the undertaker must grant to NGET, or procure the granting to NGET of, legal easements reasonably satisfactory to NGET 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 NGET to require the removal of that apparatus under paragraph 61 or the power of the undertaker, subject to compliance with this sub-paragraph, to carry out works under paragraph 63.

(2) Notwithstanding the temporary stopping up or diversion of any highway under the powers of article 14 (Temporary stopping up of and permitting vehicular use on public rights of way), NGET 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 work 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 NGET.

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 must not (a) appropriate or acquire or take temporary possession of any land or apparatus or ((b) appropriate, acquire, extinguish, interfere with or override any easement, other interest or right and/or apparatus of NGET otherwise than by agreement.

(2) As a condition of an agreement between the parties in sub-paragraph (1), prior to the carrying out of any part of the authorised works (or in such other timeframe as may be agreed between NGET and the undertaker) that is subject to the requirements of this Part of this Schedule that will cause any conflict with or breach the terms of any easement or other legal or land interest of NGET or affect the provisions of any enactment or agreement regulating the relations between NGET and the undertaker in respect of any apparatus laid or erected in land belonging to or secured by the undertaker, the undertaker must as NGET reasonably requires enter into such deeds of consent upon such terms and conditions as may be agreed between NGET and the undertaker acting reasonably and which must be no less favourable on the whole to NGET unless otherwise agreed by NGET, and it will be the responsibility of the undertaker to procure and/or secure the consent and entering into of such deeds and variations by all other third parties with an interest in the land at that time who are affected by such authorised works.

(3) Save where otherwise agreed in writing between NGET and the undertaker the undertaker and NGET agree that where there is any inconsistency or duplication between the provisions set out in this Part of this Schedule relating to the relocation and/or removal of apparatus/including but not limited to the payment of costs and expenses relating to such relocation and/or removal of apparatus) and the provisions of any existing easement, rights, agreements and licences granted, used, enjoyed or exercised by NGET and/or other enactments relied upon by NGET as of right or other use in relation to the apparatus, then the provisions in this Schedule shall prevail.

(4) Any agreement or consent granted by NGET under paragraph 63 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 NGET to maintain that apparatus in that land must not be extinguished until alternative apparatus has been constructed, and is in operation to the reasonable satisfaction of NGET in accordance with sub-paragraph (2) to (5).

(2) If, for the purpose of executing any works in, on, under or over any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, it must give to NGET advance written notice of that requirement, together with a plan of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order NGET reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph (3), secure any necessary consents for the alternative apparatus and afford to NGET to its satisfaction (taking into account paragraph 62(1) below) the necessary facilities and rights—

(a) for the construction of alternative apparatus in other land of or land secured by the undertaker; and

(b) subsequently for the maintenance of that apparatus.

(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of or land secured by the undertaker, or the undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraph (2) in the land in which the alternative apparatus or part of such apparatus is to be constructed, NGET 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 NGET to use its compulsory purchase powers to this end unless it elects to so do.

(4) Any alternative apparatus to be constructed in land of or land secured by the undertaker under this Part of this Schedule must be constructed in such manner and in such line or situation as may be agreed between NGET and the undertaker.

(5) NGET must, after the alternative apparatus to be provided or constructed has been agreed, and subject to a written diversion agreement having been entered into between the parties and the grant to NGET of any such facilities and rights as are referred to in sub-paragraph (2) or (3),

proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by the undertaker to be removed under the provisions of this Part of this Schedule.

Facilities and rights for alternative apparatus

62.—(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to or secures for NGET facilities and rights in land for the construction, use, maintenance and protection of alternative apparatus in substitution for apparatus to be removed, those facilities and rights must be granted upon such terms and conditions as may be agreed between the undertaker and National and must be no less favourable on the whole to NGET than the facilities and rights enjoyed by it in respect of the apparatus to be removed unless otherwise agreed by NGET.

(2) If the facilities and rights to be afforded by the undertaker in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are less favourable on the whole to NGET than the facilities and rights enjoyed by it in respect of the apparatus to be removed and the terms and conditions to which those facilities and rights are subject the matter may be referred to arbitration in accordance with paragraph 69 (Arbitration) of this Part of this Schedule and the arbitrator must make such provision for the payment of compensation by the undertaker to NGET as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

Retained apparatus: protection

63.—(1) Not less than 56 days before the commencement of any specified works the undertaker must submit to NGET a plan of the works to be executed and seek from NGET details of the underground extent of their electricity assets.

(2) In relation to specified works the plan to be submitted to NGET under sub-paragraph (1) must include a method statement and describe—

(a) the exact position of the works;

(b) the level at which these are proposed to be constructed or renewed;

(c) (the manner of their construction or renewal including details of excavation, positioning of plant;

(d) the position of all apparatus;

(e) by way of detailed drawings, every alteration proposed to be made to or close to any such apparatus;

(f) any intended maintenance regimes; and

(g) an assessment of risks of rise of earth issues;

(h) a ground monitoring scheme, where required.

(3) In relation to any works which will or may be situated on, over, under or within 10 metres of any part of the foundations of an electricity tower or between any two or more electricity towers, the plan to be submitted under sub-paragraph (1) must, in addition to the matters set out in sub-paragraph (2), include a method statement describing—

(a) details of any cable trench design including route, dimensions, clearance to pylon foundations;

(b) demonstration that pylon foundations will not be affected prior to, during and post construction;

(c) details of load bearing capacities of trenches;

(d) details of any cable installation methodology including access arrangements, jointing bays and backfill methodology;

(e) a written management plan for high voltage hazard during construction and ongoing maintenance of any cable route;

(f) written details of the operations and maintenance regime for any cable, including frequency and method of access;

(g) assessment of earth rise potential if reasonably required by NGET's engineers; and

(h) evidence that trench bearing capacity is to be designed to support overhead line construction traffic of up to and including 26 tonnes in weight.

(4) The undertaker must not commence any works to which sub-paragraphs (2) or (3) apply until NGET has given written approval of the plan so submitted.

(5) Any approval of NGET required under sub-paragraphs (4)—

(a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraphs (6) or (8); and

(b) must not be unreasonably withheld.

(6) In relation to any work to which sub-paragraphs (2) or (3) apply, NGET may require such modifications to be made to the plans as may be reasonably necessary for the purpose of securing its apparatus against interference or risk of damage, for the provision of protective works or for the purpose of providing or securing proper and convenient means of access to any apparatus.

(7) Works executed under sub-paragraphs (2) or (3) must be executed in accordance with the plan, submitted under sub-paragraph (1) or as relevant sub-paragraph (6), as approved or as amended from time to time by agreement between the undertaker and NGET and in accordance with such reasonable requirements as may be made in accordance with sub-paragraphs (6) or (8) by NGET for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and NGET will be entitled to watch and inspect the execution of those works.

(8) Where NGET requires any protective works to be carried out by itself or by the undertaker (whether of a temporary or permanent nature) such protective works, inclusive of any measures or schemes required and approved as part of the plan approved pursuant to this paragraph, must be carried out to NGET's satisfaction prior to the commencement of any specified works (or any relevant part thereof) for which protective works are required and NGET shall give notice its requirement for such works within 42 days of the date of submission of a plan pursuant to this paragraph (except in an emergency).

(9) If NGET in accordance with sub-paragraphs (6) or (8) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraphs 55 to 57 and 60 to 62 apply as if the removal of the apparatus had been required by the undertaker under paragraph 61(2).

(10) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 56 days before commencing the execution of the specified 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 NGET notice as soon as is reasonably practicable and a plan of those works and must comply with sub-paragraphs (6), (7) and (8) insofar as is reasonably practicable in the circumstances and comply with sub-paragraph (11) at all times.

(12) At all times when carrying out any works authorised under the Order, the undertaker must comply with NGET's policies for development near overhead lines EN43-8 and the Health and Safety Executives (HSE) guidance note 6 "Avoidance of Danger from Overhead Power Lines".

Expenses

64.—(1) Save where otherwise agreed in writing between NGET and the undertaker and subject to the following provisions of this paragraph, the undertaker must pay to NGET within 30 days of receipt of an itemised invoice or claim from NGET all charges, costs and expenses reasonably anticipated within the following three months or reasonably and properly incurred by NGET in, or in connection with, the inspection, removal, relaying or replacing, alteration or protection of any

apparatus or the construction of any new or alternative apparatus which may be required in consequence of the execution of any authorised works including without limitation—

(a) any costs reasonably and properly incurred by or compensation properly paid by NGET in connection with the acquisition of rights or the exercise of statutory powers for such apparatus including without limitation all costs incurred by NGET as a consequence of NGET—

(i) using its own compulsory purchase powers to acquire any necessary rights under paragraph 61(3); or

(ii) exercising any compulsory purchase powers in the Order transferred to or benefitting NGET;

(b) in connection with the cost of the carrying out of any diversion work or the provision of any alternative apparatus, where no written diversion agreement is otherwise in place;

(c) the cutting off of any apparatus from any other apparatus or the making safe of redundant apparatus;

(d) the approval of plans;

(e) the carrying out of protective works, plus a capitalised sum to cover the cost of maintaining and renewing permanent protective works;

(f) the survey of any land, apparatus or works, the inspection and monitoring of works or the installation or removal of any temporary works reasonably necessary in consequence of the execution of any such works referred to in this Part of this Schedule.

(2) There will be deducted from any sum payable under sub-paragraph (1) the value of any apparatus removed under the provisions of this Part of this Schedule and which is not re-used as part of the alternative apparatus, that value being calculated after removal.

(3) If in accordance with the provisions of this Part of this Schedule—

(a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions; or

(b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was situated,

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or, in default of agreement, is not determined by arbitration in accordance with paragraph 69 (arbitration) to be necessary, then, if such placing involves cost in the construction of works under this Part of this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to NGET by virtue of sub-paragraph (1) will be reduced by the amount of that excess save to the extent that it is not possible in the circumstances to obtain the existing type of apparatus at the same capacity and dimensions or place at the existing depth in which case full costs will be borne by the undertaker.

(4) For the purposes of sub-paragraph (3)—

(a) an extension of apparatus to a length greater than the length of existing apparatus will not be treated as a placing of apparatus of greater dimensions than those of the existing apparatus; and

(b) where the provision of a joint in a pipe or cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole will be treated as if it also had been agreed or had been so determined.

(5) Any amount which apart from this sub-paragraph would be payable to NGET in respect of works by virtue of sub-paragraph (1) will, if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on NGET any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, be reduced by the amount which represents that benefit.

Indemnity

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 NGET, or there is any interruption in any service provided, or in the supply of any goods, by NGET, or NGET becomes liable to pay any amount to any third party, the undertaker will—

(a) bear and pay on demand accompanied by an invoice or claim from NGET the cost reasonably and properly incurred by NGET in making good such damage or restoring the supply; and

(b) indemnify NGET for any other expenses, loss, demands, proceedings, damages, claims, penalty or costs incurred by or recovered from NGET, by reason or in consequence of any such damage or interruption or NGET becoming liable to any third party and including STC Claims or an Incentive Deduction other than arising from any default of NGET.

(2) The fact that any act or thing may have been done by NGET on behalf of the undertaker or in accordance with a plan approved by NGET or in accordance with any requirement of NGET or under its supervision will not (unless sub-paragraph (3) applies), excuse the undertaker from liability under the provisions of this sub-paragraph (1) unless NGET fails to carry out and execute the works properly with due care and attention and in a skilful and workman like manner or in a manner that does not accord with the approved plan.

(3) Nothing in sub-paragraph (1) shall impose any liability on the undertaker in respect of—

(a) any damage or interruption to the extent that it is attributable to the neglect or default of NGET, its officers, servants, contractors or agents;

(b) any authorised works and/or any other works authorised by this Part of this Schedule carried out by NGET as an assignee, transferee or lessee of the undertaker with the benefit of the Order pursuant to section 156 of the Planning Act 2008 or article 6 (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 65; and/or

(c) any indirect or consequential loss of any third party (including but not limited to loss of use, revenue, profit, contract, production, increased cost of working or business interruption) arising from any such damage or interruption, which is not reasonably foreseeable.

(4) NGET must give the undertaker reasonable notice of any such third party claim or demand and no settlement, admission of liability or compromise must, unless payment is required in connection with a statutory compensation scheme, be made without first consulting the undertaker and considering their representations.

(5) NGET must, in respect of any matter covered by the indemnity given by the undertaker in this paragraph, at all times act reasonably and in the same manner as it would as if settling third party claims on its own behalf from its own funds.

(6) NGET must use its reasonable endeavours to mitigate and to minimise any costs, expenses, loss, demands, and penalties to which the indemnity under this paragraph applies where it is within NGET's reasonable ability and control to do so and which expressly excludes any obligation to mitigate liability arising from third parties which is outside of NGET's control and if reasonably requested to do so by the undertaker NGET must provide an explanation of how the claim has been minimised, where relevant.

(7) Not to commence construction (and not to permit the commencement of such construction) of the authorised works on any land owned by NGET or in respect of which NGET has an easement or wayleave for its apparatus or any other interest or to carry out any works within 15 metres of NGET's apparatus until the following conditions are satisfied—

(a) unless and until NGET 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 NGET has confirmed the same to the undertaker in writing; and

(b) unless and until NGET is satisfied acting reasonably (but subject to all necessary regulatory constraints) that the undertaker has procured acceptable insurance (and provided evidence to NGET 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 NGET has confirmed the same in writing to the undertaker.

(8) In the event that the undertaker fails to comply with 65(7) of this Part of this Schedule, nothing in this Part of this Schedule shall prevent NGET 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 NGET and the undertaker, nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and NGET in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

Co-operation

67.—(1) Where in consequence of the proposed construction of any part of the authorised works, the undertaker or NGET requires the removal of apparatus under paragraph 61(2) or NGET makes requirements for the protection or alteration of apparatus under paragraph 63, the undertaker shall use its best endeavours to co-ordinate the execution of the works in the interests of safety and the efficient and economic execution of the authorised works and taking into account the need to ensure the safe and efficient operation of NGET's undertaking and NGET shall use its best endeavours to co-operate with the undertaker for that purpose.

(2) For the avoidance of doubt whenever NGET's consent, agreement or approval is required in relation to plans, documents or other information submitted by the undertaker or the taking of action by the undertaker, it must not be unreasonably withheld or delayed.

Access

68. If in consequence of the agreement reached in accordance with paragraph 60(1) or the powers granted under this Order the access to any apparatus is materially obstructed, the undertaker must provide such alternative means of access to such apparatus as will enable NGET to maintain or use the apparatus no less effectively than was possible before such obstruction.

Arbitration

69. Save for differences or disputes arising under paragraph 61(2), 61(4) 62(1) and 63 any difference or dispute arising between the undertaker and NGET under this Part of this Schedule must, unless otherwise agreed in writing between the undertaker and NGET, be determined by arbitration in accordance with article 42 (Arbitration).

Notices

70. Notwithstanding article 39 (Service of notices), any plans submitted to NGET by the undertaker pursuant to paragraph 63 must be submitted using the LSBUD system (https://lsbud.co.uk/) or to such other address as NGET may from time to time appoint instead for that purpose and notify to the undertaker in writing.

PART 7

FOR THE PROTECTION OF NORTHERN POWERGRID

71. For the protection of NPG the following provisions have effect, unless otherwise agreed in writing between the undertaker and NPG.

72. In this Part of this Schedule—

"alternative apparatus" means alternative apparatus adequate to enable NPG 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 NPG 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 NPG'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 NPG's undertaking within the Order Limits; and

"NPG" means Northern Powergrid (Yorkshire) PLC (Company Number 04112320) whose registered address is Lloyds Court, 78 Grey Street, Newcastle upon Tyne, NE1 6AF

73. This Part of this Schedule does not apply to apparatus and / or alternative apparatus in respect of which the relations between the undertaker and NPG are regulated by the provisions of Part 3 (street works in England and Wales) of the 1991 Act.

74. 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 NPG otherwise than by agreement with NPG such agreement not to be unreasonably withheld or delayed.

75. 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 NPG in relation to its apparatus or acquire or interfere with rights or interests supporting the use, maintenance or renewal of such equipment including any easements other than by agreement of NPG (such agreement not to be unreasonably withheld or delayed) and having regard to NPG's existing and known future requirements for such land or interests.

76.—(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 in or over which access to any apparatus is enjoyed or requires that NPG's apparatus is relocated or diverted, that apparatus must not be removed under this Part of this Schedule, and any right of NPG 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 alterative apparatus, all to the reasonable satisfaction of NPG 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 NPG 42 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 NPG reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph (3), afford to NPG 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—

(a) the undertaker must in the first instance use reasonable endeavours to acquire all necessary land interests or rights as NPG 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 NPG's apparatus and alternative apparatus thereafter the terms of such access and maintenance to be agreed by NPG (acting reasonably); and

(b) In the event that the undertaker is not able to procure the necessary land interest or rights referred to in the sub-paragraph (3) (a) NPG 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 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 NPG to use its compulsory purchase powers to this end.

(c) In the event that neither the undertaker nor NPG can acquire all necessary land interest or rights which NPG may reasonably require for the relocation and construction of alternative apparatus pursuant to paragraph 76 (3) (a) and /or (b), the undertaker shall seek to amend the Order to include the relevant land and /or rights in the Order Land so that it can use its powers of compulsory purchase powers under the Order (where available) for the acquisition of any such land or land rights unless otherwise agreed by arbitration under article 42.

(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 NPG and the undertaker or in default of agreement settled by arbitration in accordance with article 42.

(5) NPG must, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with article 42, and after the grant to NPG 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.

77.—(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to NPG 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 NPG or in default of agreement settled by arbitration in accordance with article 42 (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 NPG 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 NPG as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

78.—(1) Not less than 28 days before starting the execution of any authorised works in, on or under any land purchased, held, appropriated or used under this Order that are near to or will or may affect, any apparatus the removal of which has not been required by the undertaker under paragraph 76(2), the undertaker must submit to NPG a plan, section and description of the works to be executed and any such information as NPG reasonably requires relating to those works.

(2) Those authorised 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 NPG for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and NPG is entitled to watch and inspect the execution of those works.

(3) Any requirements made by NPG 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 NPG in accordance with sub-paragraph (2) and in consequence of the authorised works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraphs 71 to 75 apply as if the removal of the apparatus had been required by the undertaker under paragraph (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 authorised 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 NPG notice as soon as is reasonably practicable and a plan, section and description of those authorised works as soon as reasonably practicable subsequently and must comply with sub-paragraph (2) in so far as is reasonably practicable in the circumstances.

79.—(1) Subject to the following provisions of this paragraph, the undertaker must repay to NPG within fifty one (51) days of receipt of an itemised invoice or claim all reasonable and proper expenses incurred by NPG—

(a) 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 79(2); and 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 NPG acquires any necessary land and / or rights for alternative apparatus by voluntary negotiation or elects to use its compulsory purchase powers to acquire any necessary rights under paragraph 75(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 including alternative 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 NPG may abandon apparatus that the undertaker does not seek to remove in accordance with paragraph 76(1) having first decommissioned such apparatus.

(2) There is to be deducted from any sum payable under sub-paragraph (1) the value of any apparatus removed under the provisions of this Part of this Schedule, that value being calculated after removal 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)

(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 placed,

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 42 (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 would be payable to NPG 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.

(4) For the purposes of sub-paragraph (3)—

(a) an extension of apparatus to a length greater than the length of existing apparatus is not to be treated as a placing of apparatus of greater dimensions than those of the existing apparatus where such extension is required in consequence of the execution of any such works as are referred to in paragraph 76(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.

80.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction use maintenance or failure of any of the authorised works referred to in in paragraph 76(2), 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 authorised works, including without limitation authorised 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 NPG, or there is any interruption in any service provided by NPG, or NPG 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, and provided that at all times NPG will be under an obligation to take reasonable steps to mitigate its loss, the undertaker must—

(a) bear and pay within 90 days of receipt of a demand accompanied by an appropriately detailed invoice or claim from NPG the cost reasonably incurred by NPG in making good such damage or restoring the supply; and

(b) indemnify NPG for any other expenses, loss, damages, penalty, proceedings, claims or costs incurred by or recovered from NPG by reason or in consequence of any such damage or interruption or NPG becoming liable to any third party.

(2) Nothing in sub-paragraph (1) imposes any liability on the undertaker with respect to—

(a) any damage or interruption to the extent that it is attributable to the act, default, neglect or negligence of NPG, its officers, employees, servants, contractors or agents; and/or

(b) any authorised development and/or other works authorised by this Part of this Schedule carried out by NPG.

(3) NPG 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) NPG 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 10 applies. If requested to do so by the undertaker, NPG 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 10 for claims reasonably incurred by NPG.

(5) NPG 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) Subject to sub-paragraphs (3) and (4), the fact that any act or thing may have been done by NPG on behalf of the undertaker or in accordance with a plan approved by NPG or in accordance with any requirement of NPG 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 skillful 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 NPG.

81. Nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and NPG in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

82. Any difference or dispute arising between the undertaker and NPG under the provisions of this Part of the Schedule must, unless otherwise agreed in writing between the undertaker and NPG, be referred to and settled by arbitration in accordance with Article 42 (arbitration).

83. Where in consequence of the proposed construction of any of the authorised works, the undertaker or NPG requires the removal of apparatus under paragraph 6 or otherwise or NPG makes requirements for the protection or alteration of apparatus under paragraph 8, 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 NPG's apparatus taking into account the undertaker's desire for the efficient and economic execution of the authorised development and the undertaker and NPG shall use reasonable endeavours to co-operate with each other for those purposes.

84. For the avoidance of doubt whenever NPG'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 and any action, decision, cost and/or expense which may be claimed under this Part of this Schedule shall at all times be subject to NPG acting reasonably.

85. If in consequence of an agreement reached in accordance with paragraph 4 or the powers granted under this Order the access to any apparatus or alternative apparatus is materially obstructed, the undertaker shall provide such alternative means of access to such apparatus or

alternative apparatus as will enable NPG to maintain or use the said apparatus no less effectively than was possible before such obstruction.

86. The plans submitted to NPG by the undertaker pursuant to this Part of the Schedule must be sent to NPG at property@northernpowergrid.com or such other address as NPG 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 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 NPG 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 authorised works are—

(a) within 15m of any above ground apparatus and / or

(b) within 15m of any apparatus and are to a depth of between 0 – 4m below ground level under any apparatus.

PART 8

FOR THE PROTECTION OF RAILWAY INTERESTS

89. The provisions of this Part of this Schedule have effect, unless otherwise agreed in writing between the undertaker and Network Rail and, in the case of paragraph 103 of this Part of this Schedule any other person on whom rights or obligations are conferred by that paragraph.

90. In this Part of this Schedule—

"asset protection agreement" means an agreement to regulate the construction and maintenance of the specified work in a form prescribed from time to time by Network Rail;

"construction" includes execution, placing, alteration and reconstruction and "construct" and "constructed" have corresponding meanings;

"the engineer" means an engineer appointed by Network Rail for the purposes of this Order;

"network licence" means the network licence, as the same is amended from time to time, granted to Network Rail Infrastructure Limited by the Secretary of State in exercise of their powers under section 8 (licences) of the Railways Act 1993(**a**);

"Network Rail" means Network Rail Infrastructure Limited (company number 02904587, whose registered office is at Waterloo General Office, London SE1 8SW) and any associated company of Network Rail Infrastructure Limited which holds property for railway purposes, and for the purpose of this definition "associated company" means any company which is (within the meaning of section 1159 of the Companies Act 2006(**b**) the holding company of Network Rail Infrastructure Limited, a subsidiary of Network Rail Infrastructure Limited or another subsidiary of the holding company of Network Rail Infrastructure Limited and any successor to Network Rail Infrastructure Limited's railway undertaking;

"plans" includes sections, designs, design data, software, drawings, specifications, soil reports, calculations, descriptions (including descriptions of methods of construction), staging proposals, programmes and details of the extent, timing and duration of any proposed occupation of arti;

"railway operational procedures" means procedures specified under any access agreement (as defined in the Railways Act 1993) or station lease;

(**a**) 1993 c. 43.
(**b**) 2006 c. 46.

"railway property" means any railway belonging to Network Rail and—

(a) any station, land, works, apparatus and equipment belonging to Network Rail or connected with any such railway;

"regulatory consents" means any consent or approval required under—

(a) the Railways Act 1993;

(b) the network licence; and/or

(c) any other relevant statutory or regulatory provisions,

by either the Office of Rail and Road or the Secretary of State for Transport or any other competent body including change procedures and any other consents, approvals of any access or beneficiary that may be required in relation to the authorised development;

"specified work" means so much of any of the authorised development as is situated upon, across, under, over or within 15 metres of, or may in any way adversely affect, railway property and, for the avoidance of doubt, includes the maintenance of such works under the powers conferred by article 4 (maintenance of authorised development) in respect of such works.

91.—(1) Where under this Part of this Schedule Network Rail is required to give its consent or approval in respect of any matter, that consent or approval is subject to the condition that Network Rail complies with any relevant railway operational procedures and any obligations under its network licence or under statute.

(2) In so far as any specified work or the acquisition or use of railway property is or may be subject to railway operational procedures, Network Rail must—

(a) co-operate with the undertaker with a view to avoiding undue delay and securing conformity as between any plans approved by the engineer and requirements emanating from those procedures; and

(b) use their reasonable endeavours to avoid any conflict arising between the application of those procedures and the proper implementation of the authorised development pursuant to this Order.

92.—(1) The undertaker must not exercise the powers conferred by—

(a) article 3 (development consent etc. granted by the Order);

(b) article 4 (maintenance of authorised development);

(c) article 18 (discharge of water);

(d) article 20 (authority to survey and investigate land);

(e) article 21 (compulsory acquisition of land);

(f) article 23 (compulsory acquisition of rights);

(g) article 26 (acquisition of subsoil only);

(h) article 27 (power to override easements and other rights);

(i) article 30 (temporary use of land for carrying out the authorised development);

(j) article 31 (temporary use of land for maintaining the authorised development);

(k) article 32 (statutory undertakers);

(l) article 24 (private rights);

(m) article 40 (felling or lopping of trees or removal of hedgerows);

(n) article 41 (trees subject to tree preservation orders);

(o) the powers conferred by section 11(3) (powers of entry) of the Compulsory Purchase Act 1965;

(p) the powers conferred by section 203 (power to override easements and other rights) of the Housing and Planning Act 2016;

(q) the powers conferred by section 172 (right to enter and survey land) of the Housing and Planning Act 2016;

(r) any powers under in respect of the temporary possession of land under the Neighbourhood Planning Act 2017;

in respect of any railway property unless the exercise of such powers is with the consent of Network Rail.

(2) The undertaker must not in the exercise of the powers conferred by this Order prevent pedestrian or vehicular access to any railway property, unless preventing such access is with the consent of Network Rail.

(3) The undertaker must not exercise the powers conferred by sections 271 or 272 of the 1990 Act, article 32 (statutory undertakers), article 27 (power to override easements and other rights) or article 24 (private rights), in relation to any right of access of Network Rail to railway property, but such right of access may be diverted with the consent of Network Rail.

(4) The undertaker must not under the powers of this Order acquire or use or acquire new rights over, or seek to impose any restrictive covenants over, any railway property, or extinguish any existing rights of Network Rail in respect of any third party property, except with the consent of Network Rail.

(5) The undertaker must not under the powers of this Order do anything which would result in railway property being incapable of being used or maintained or which would affect the safe running of trains on the railway.

(6) Where Network Rail is asked to give its consent pursuant to this paragraph, such consent must not be unreasonably withheld but may be given subject to reasonable conditions but it shall never be unreasonable to withhold consent for reasons of operational or railway safety (such matters to be in Network Rail's absolute discretion).

(7) The undertaker must enter into an asset protection agreement prior to the carrying out of any specified work.

93.—(1) The undertaker must before commencing construction of any specified work supply to Network Rail proper and sufficient plans of that work for the reasonable approval of the engineer and the specified work must not be commenced except in accordance with such plans as have been approved in writing by the engineer or settled by arbitration.

(2) The approval of the engineer under sub-paragraph 93(1) must not be unreasonably withheld, and if by the end of the period of 28 days beginning with the date on which such plans have been supplied to Network Rail the engineer has not intimated their disapproval of those plans and the grounds of such disapproval the undertaker may serve upon the engineer written notice requiring the engineer to intimate approval or disapproval within a further period of 28 days beginning with the date upon which the engineer receives written notice from the undertaker. If by the expiry of the further 28 days the engineer has not intimated approval or disapproval, the engineer shall be deemed to have approved the plans as submitted.

(3) If by the end of the period of 28 days beginning with the date on which written notice was served upon the engineer under sub-paragraph (2), Network Rail gives notice to the undertaker that Network Rail desires itself to construct any part of a specified work which in the opinion of the engineer will or may affect the stability of railway property or the safe operation of traffic on the railways of Network Rail then, if the undertaker desires such part of the specified work to be constructed, Network Rail must construct it without unnecessary delay on behalf of and to the reasonable satisfaction of the undertaker in accordance with the plans approved or deemed to be approved or settled under this paragraph, and under the supervision (where appropriate and if given) of the undertaker.

(4) When signifying their approval of the plans the engineer may specify any protective works (whether temporary or permanent) which in the engineer's opinion should be carried out before the commencement of the construction of a specified work to ensure the safety or stability of railway property or the continuation of safe and efficient operation of the railways of Network Rail or the services of operators using the same (including any relocation de-commissioning and removal of works, apparatus and equipment necessitated by a specified work and the comfort and

safety of passengers who may be affected by the specified works), and such protective works as may be reasonably necessary for those purposes must be constructed by Network Rail or by the undertaker, if Network Rail so desires, and such protective works must be carried out at the expense of the undertaker in either case without unnecessary delay and the undertaker must not commence the construction of the specified works until the engineer has notified the undertaker that the protective works have been completed to their reasonable satisfaction.

94.—(1) Any specified work and any protective works to be constructed by virtue of paragraph 93(4) must, when commenced, be constructed—

(a) without unnecessary delay in accordance with the plans approved or deemed to have been approved or settled under paragraph 93;

(b) under the supervision (where appropriate and if given) and to the reasonable satisfaction of the engineer;

(c) in such manner as to cause as little damage as is possible to railway property; and

(d) so far as is reasonably practicable, so as not to interfere with or obstruct the free, uninterrupted and safe use of any railway of Network Rail or the traffic thereon and the use by passengers of railway property.

(2) If any damage to railway property or any such interference or obstruction shall be caused by the carrying out of, or in consequence of the construction of a specified work, the undertaker must, notwithstanding any such approval, make good such damage and must pay to Network Rail all reasonable expenses to which Network Rail may be put and compensation for any loss which it may sustain by reason of any such damage, interference or obstruction.

(3) Nothing in this Part of this Schedule imposes any liability on the undertaker with respect to any damage, costs, expenses or loss attributable to the negligence of Network Rail or its servants, contractors or agents or any liability on Network Rail with respect of any damage, costs, expenses or loss attributable to the negligence of the undertaker or its servants, contractors or agents.

95. The undertaker must—

(a) at all times afford reasonable facilities to the engineer for access to a specified work during its construction; and

(b) supply the engineer with all such information as they may reasonably require with regard to a specified work or the method of constructing it.

96. Network Rail must at all times afford reasonable facilities to the undertaker and its agents for access to any works carried out by Network Rail under this Part of this Schedule during their construction and must supply the undertaker with such information as it may reasonably require with regard to such works or the method of constructing them.

97.—(1) If any permanent or temporary alterations or additions to railway property are reasonably necessary in consequence of the construction or completion of a specified work in order to ensure the safety of railway property or the continued safe operation of the railway of Network Rail, such alterations and additions may be carried out by Network Rail and if Network Rail gives to the undertaker 56 days' notice (or in the event of an emergency or safety critical issue such notice as is reasonable in the circumstances) of its intention to carry out such alterations or additions (which must be specified in the notice), the undertaker must pay to Network Rail the reasonable cost of those alterations or additions including, in respect of any such alterations and additions as are to be permanent, a capitalised sum representing the increase of the costs which may be expected to be reasonably incurred by Network Rail in maintaining, working and, when necessary, renewing any such alterations or additions.

(2) If during the construction of a specified work by the undertaker, Network Rail gives notice to the undertaker that Network Rail desires itself to construct that part of the specified work which in the opinion of the engineer is endangering the stability of railway property or the safe operation of traffic on the railways of Network Rail then, if the undertaker decides that part of the specified work is to be constructed, Network Rail must assume construction of that part of the specified work and the undertaker must, notwithstanding any such approval of a specified work under paragraph 93(3), pay to Network Rail all reasonable expenses to which Network Rail may be put

and compensation for any loss which it may suffer by reason of the execution by Network Rail of that specified work.

(3) The engineer must, in respect of the capitalised sums referred to in this paragraph and paragraph 98(a) provide such details of the formula by which those sums have been calculated as the undertaker may reasonably require.

(4) If the cost of maintaining, working or renewing railway property is reduced in consequence of any such alterations or additions a capitalised sum representing such saving must be set off against any sum payable by the undertaker to Network Rail under this paragraph.

98. The undertaker must repay to Network Rail all reasonable fees, costs, charges and expenses reasonably incurred by Network Rail—

(a) in constructing any part of a specified work on behalf of the undertaker as provided by paragraph 93(3) or in constructing any protective works under the provisions of paragraph 93(4) including, in respect of any permanent protective works, a capitalised sum representing the cost of maintaining and renewing those works;

(b) in respect of the approval by the engineer of plans submitted by the undertaker and the supervision by the engineer of the construction of a specified work;

(c) in respect of the employment or procurement of the services of any inspectors, signallers, watch-persons and other persons whom it shall be reasonably necessary to appoint for inspecting, signalling, watching and lighting railway property and for preventing, so far as may be reasonably practicable, interference, obstruction, danger or accident arising from the construction or failure of a specified work;

(d) in respect of any special traffic working resulting from any speed restrictions which may in the opinion of the engineer, require to be imposed by reason or in consequence of the construction or failure of a specified work or from the substitution or diversion of services which may be reasonably necessary for the same reason; and

(e) in respect of any additional temporary lighting of railway property in the vicinity of the specified works, being lighting made reasonably necessary by reason or in consequence of the construction or failure of a specified work.

99.—(1) In this paragraph—

"EMI" means, subject to sub-paragraph 99(2), electromagnetic interference with Network Rail apparatus generated by the operation of the authorised development where such interference is of a level which adversely affects the safe operation of Network Rail's apparatus; and

"Network Rail's apparatus" means any lines, circuits, wires, apparatus or equipment (whether or not modified or installed as part of the authorised development) which are owned or used by Network Rail for the purpose of transmitting or receiving electrical energy or of radio, telegraphic, telephonic, electric, electronic or other like means of signalling or other communications.

(2) This paragraph applies to EMI only to the extent that such EMI is not attributable to any change to Network Rail's apparatus carried out after approval of plans under paragraph 93(1) for the relevant part of the authorised development giving rise to EMI (unless the undertaker has been given notice in writing before the approval of those plans of the intention to make such change).

(3) Subject to sub-paragraph 99(5), the undertaker must in the design and construction of the authorised development take all measures necessary to prevent EMI and must establish with Network Rail (both parties acting reasonably) appropriate arrangements to verify their effectiveness.

(4) In order to facilitate the undertaker's compliance with sub-paragraph (3)—

(a) the undertaker must consult with Network Rail as early as reasonably practicable to identify all Network Rail's apparatus which may be at risk of EMI, and thereafter must continue to consult with Network Rail (both before and after formal submission of plans under paragraph 60(1)) in order to identify all potential causes of EMI and the measures required to eliminate them;

(b) Network Rail must make available to the undertaker all information in the possession of Network Rail reasonably requested by the undertaker in respect of Network Rail's apparatus identified pursuant to sub-paragraph 99(4)(a); and

(c) Network Rail must allow the undertaker reasonable facilities for the inspection of Network Rail's apparatus identified pursuant to sub-paragraph 99(4)(a).

(5) In any case where it is established that EMI can only reasonably be prevented by modifications to Network Rail's apparatus, Network Rail must not withhold its consent unreasonably to modifications of Network Rail's apparatus, but the means of prevention and the method of their execution must be selected in the reasonable discretion of Network Rail, and in relation to such modifications paragraph 93(1) has effect subject to the sub-paragraph.

(6) Prior to the commencement of operation of the authorised development the undertaker shall test the use of the authorised development in a manner that shall first have been agreed with Network Rail and if, notwithstanding any measures adopted pursuant to sub-paragraph (3), the testing of the authorised development causes EMI then the undertaker must immediately upon receipt of notification by Network Rail of such EMI either in writing or communicated orally (such oral communication to be confirmed in writing as soon as reasonably practicable after it has been issued) forthwith cease to use (or procure the cessation of use of) the undertaker's apparatus causing such EMI until all measures necessary have been taken to remedy such EMI by way of modification to the source of such EMI or (in the circumstances, and subject to the consent, specified in sub-paragraph (5)) to Network Rail's apparatus.

(7) In the event of EMI having occurred—

(a) the undertaker must afford reasonable facilities to Network Rail for access to the undertaker's apparatus in the investigation of such EMI;

(b) Network Rail must afford reasonable facilities to the undertaker for access to Network Rail's apparatus in the investigation of such EMI;

(c) Network Rail must make available to the undertaker any additional material information in its possession reasonably requested by the undertaker in respect of Network Rail's apparatus or such EMI; and

(d) the undertaker shall not allow the use or operation of the authorised development in a manner that has caused or will cause EMI until measures have been taken in accordance with this paragraph to prevent EMI occurring.

(8) Where Network Rail approves modifications to Network Rail's apparatus pursuant to sub-paragraphs 99(5) or (6)—

(a) Network Rail must allow the undertaker reasonable facilities for the inspection of the relevant part of Network Rail's apparatus;

(b) any modifications to Network Rail's apparatus approved pursuant to those sub-paragraphs must be carried out and completed by the undertaker in accordance with paragraph 94.

(9) To the extent that it would not otherwise do so, the indemnity in paragraph 103(1) applies to the costs and expenses reasonably incurred or losses suffered by Network Rail through the implementation of the provisions of this paragraph (including costs incurred in connection with the consideration of proposals, approval of plans, supervision and inspection of works and facilitating access to Network Rail's apparatus) or in consequence of any EMI to which sub-paragraph 94 applies.

(10) For the purpose of paragraph 98(a) any modifications to Network Rail's apparatus under this paragraph shall be deemed to be protective works referred to in that paragraph.

100. If at any time after the completion of a specified work, not being a work vested in Network Rail, Network Rail gives notice to the undertaker informing it that the state of maintenance of any part of the specified work appears to be such as adversely affects the operation of railway property, the undertaker must, on receipt of such notice, take such steps as may be reasonably necessary to put that specified work in such state of maintenance as not adversely to affect railway property.

101. The undertaker must not provide any illumination or illuminated sign or signal on or in connection with a specified work in the vicinity of any railway belonging to Network Rail unless it has first consulted Network Rail and it must comply with Network Rail's reasonable requirements for preventing confusion between such illumination or illuminated sign or signal and any railway signal or other light used for controlling, directing or securing the safety of traffic on the railway.

102. Any additional expenses which Network Rail may reasonably incur in altering, reconstructing or maintaining railway property under any powers existing at the making of this Order by reason of the existence of a specified work must, provided that 56 days' previous notice of the commencement of such alteration, reconstruction or maintenance has been given to the undertaker, be repaid by the undertaker to Network Rail.

103.—(1) The undertaker must pay to Network Rail all reasonable costs, charges, damages and expenses not otherwise provided for in this Part of this Schedule which may be occasioned to or reasonably incurred by Network Rail—

(a) by reason of the construction, maintenance or operation of a specified work or the failure thereof; or

(b) by reason of any act or omission of the undertaker or of any person in its employ or of its contractors or others whilst engaged upon a specified work;

(c) by reason of any act or omission of the undertaker or any person in its employ or of its contractors or others whilst accessing to or egressing from the authorised development;

(d) in respect of any damage caused to or additional maintenance required to, railway property or any such interference or obstruction or delay to the operation of the railway as a result of access to or egress from the authorised development by the undertaker or any person in its employ or of its contractors or others;

(e) in respect of costs incurred by Network Rail in complying with any railway operational procedures or obtaining any regulatory consents which procedures are required to be followed or consents obtained to facilitate the carrying out or operation of the authorised development;

and the undertaker must indemnify and keep indemnified Network Rail from and against all claims and demands arising out of or in connection with a specified work or any such failure, act or omission: and the fact that any act or thing may have been done by Network Rail on behalf of the undertaker or in accordance with plans approved by the engineer or in accordance with any requirement of the engineer or under the engineer's supervision shall not (if it was done without negligence on the part of Network Rail or of any person in its employ or of its contractors or agents) excuse the undertaker from any liability under the provisions of this sub-paragraph.

(2) Network Rail must—

(a) give the undertaker reasonable written notice of any such claims or demands;

(b) not make any settlement or compromise of such a claim or demand without the prior consent of the undertaker; and

(c) take such steps as are within its control and are reasonable in the circumstances to mitigate any liabilities relating to such claims or demands.

(3) The sums payable by the undertaker under sub-paragraph (1) shall if relevant include a sum equivalent to the relevant costs.

(4) Subject to the terms of any agreement between Network Rail and a train operator regarding the timing or method of payment of the relevant costs in respect of that train operator, Network Rail must promptly pay to each train operator the amount of any sums which Network Rail receives under sub-paragraph (3) which relates to the relevant costs of that train operator.

(5) The obligation under sub-paragraph (3) to pay Network Rail the relevant costs shall, in the event of default, be enforceable directly by any train operator concerned to the extent that such sums would be payable to that operator pursuant to sub paragraph (4).

(6) In this paragraph—

"the relevant costs" means the costs, losses and expenses (including loss of revenue) reasonably incurred by each train operator as a consequence of any specified work including but not limited to any restriction of the use of Network Rail's railway network as a result of the construction, maintenance or failure of a specified work or any such act or omission as mentioned in sub-paragraph (1); and

"train operator" means any person who is authorised to act as the operator of a train by a licence under section 8 of the Railways Act 1993.

104. Network Rail must, on receipt of a request from the undertaker, from time to time provide the undertaker free of charge with written estimates of the costs, charges, expenses and other liabilities for which the undertaker is or will become liable under this Part of this Schedule (including the amount of the relevant costs mentioned in paragraph 103) and with such information as may reasonably enable the undertaker to assess the reasonableness of any such estimate or claim made or to be made pursuant to this Part of this Schedule (including any claim relating to those relevant costs).

105. In the assessment of any sums payable to Network Rail under this Part of this Schedule there must not be taken into account any increase in the sums claimed that is attributable to any action taken by or any agreement entered into by Network Rail if that action or agreement was not reasonably necessary and was taken or entered into with a view to obtaining the payment of those sums by the undertaker under this Part of this Schedule or increasing the sums so payable.

106. The undertaker and Network Rail may, subject in the case of Network Rail to compliance with the terms of its network licence, enter into, and carry into effect, agreements for the transfer to the undertaker of—

(a) any railway property shown on the works and land plans and described in the book of reference;

(b) any lands, works or other property held in connection with any such railway property; and

(c) any rights and obligations (whether or not statutory) of Network Rail relating to any railway property or any lands, works or other property referred to in this paragraph.

107. The undertaker must no later than 28 days from the date that the plans submitted to and certified by the Secretary of State in accordance with article 38 (certification of plans, etc.) are certified by the Secretary of State, provide a set of those plans to Network Rail in a format specified by Network Rail.

108. Any dispute arising under this Part of this Schedule, unless otherwise provided for, must be referred to and settled by arbitration in accordance with article 42 (arbitration) and the Rules at Schedule 10 (arbitration Rules).

SCHEDULE 10

Article 40

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 42 (arbitration) 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.

(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.

(**a**) 1996 c.23.

SCHEDULE 11

Article 36

DOCUMENTS TO BE CERTIFIED

(1) Document	*(2) Application Document Reference*	*(3) Revision*	*(4) Date*
Access and rights of way plan	2.4	4	June 2024
Book of reference	4.1	B	May 2025
Environmental statement	Environmental Statement 6.1 (excluding Chapter 4)	0	June 2024
	Environmental Statement 6.1 Chapter 4	1	June 2024
	Environmental Statement 6.2 (excluding Figures 7.1-7.12)	0	June 2024
	Environmental Statement 6.2 Figures 7.1-7.12	1	June 2024
	Environmental Statement 6.3 (excluding Appendices 2.5, 3.1, 5.1, 5.2, 5.3, 5.4, 7.9, 8.8, 8.9, and 14.3)	0	June 2024
	Environmental Statement 6.3 Appendix 2.5	8	February 2025
	Environmental Statement 6.3 Appendix 8.8	A	January 2025
	Environmental Statement 6.3 Appendix 8.9	5	April 2025
	Environmental Statement 6.3 Appendix 14.3	1	January 2025
	Environmental Statement 6.4	1	June 2024
Flood risk assessment	7.5	3.1	April 2025
Land and crown plans	2.2	5	February 2025
Location and order limits plan	2.1	0	June 2024
Outline archaeological mitigation strategy	6.3.6.2	4	June 2024
Outline battery safety management plan	6.3.3.1	5	February 2025
Outline CEMP	6.3.5.1	4	May 2025
Outline CTMP	6.3.5.2	A	February 2025
Outline design principles document	9.15	0	April 2025

Outline DEMP	6.3.5.3	2	April 2025
Outline LEMP	6.3.7.9	4	May 2025
Outline OEMP	6.3.5.4	2	April 2025
Outline soil resource management plan	6.3.14.3	1	January 2025
Outline supply chain, employment and skills plan	9.16	0	April 2025
Works plans	2.3	6	June 2024

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 acquisition of 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 36 (certification of plans and documents, etc.) may be inspected free of charge during working hours at the undertaker's registered office at 17th Floor Hylo 103-105 Bunhill Row, London, United Kingdom, EC1Y 8LZ as may be updated from time to time.