The Planning Inspectorate

The Planning Act 2008

# TILLBRIDGE SOLAR PROJECT

Examining Authority's Report

of Findings and Conclusions

and

Recommendation to the Secretary of State for

Energy Security and Net Zero

---


Examining Authority

**Nicholas Ely** BSc (HONS) CEng MIStructE MCIOB, (Lead member of the Panel)

**Luke Simpson** BSc MSc MRTPI


14 July 2025

# OVERVIEW

File reference: EN010142

The application, dated 10 April 2024, was made under section 37 of the Planning Act 2008 (as amended) and was received in full by the Planning Inspectorate on that date.

The applicant is Tillbridge Solar Limited.

The application was accepted for examination on 8 May 2024.

The examination began on 15 October 2024 and was completed on 15 April 2025.

The proposed development comprises the construction, operation (including maintenance), and decommissioning of ground-mounted solar photovoltaic (PV) arrays and associated development to support the solar PV arrays.

**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 at Appendix D.

1. INTRODUCTION ..... 1
1.1. BACKGROUND TO THE EXAMINATION ..... 1
1.2. APPOINTMENT OF THE EXAMINING AUTHORITY ..... 1
1.3. THE APPLICATION ..... 1
1.4. THE EXAMINATION ..... 8
1.5. CHANGES TO THE APPLICATION ..... 10
1.6. OTHER CONSENTS ..... 10
1.7. STRUCTURE OF THIS REPORT ..... 10
2. HOW THE APPLICATION IS DETERMINED ..... 12
2.1. INTRODUCTION ..... 12
2.2. LEGISLATION AND POLICY ..... 12
2.3. NATIONAL POLICY STATEMENTS ..... 12
2.4. OTHER RELEVANT NATIONAL POLICIES ..... 13
2.5. LOCAL IMPACT REPORTS ..... 14
2.6. ENVIRONMENTAL IMPACT ASSESSMENT ..... 14
2.7. HABITATS REGULATIONS ASSESSMENT ..... 15
2.8. TRANSBOUNDARY EFFECTS ..... 15
3. THE PLANNING ISSUES ..... 16
3.1. INTRODUCTION ..... 16
3.2. PRINCIPLE OF DEVELOPMENT AND CLIMATE CHANGE ..... 17
3.3. BIODIVERSITY AND ECOLOGY ..... 28
3.4. CUMULATIVE AND IN-COMBINATION EFFECTS ..... 37
3.5. HISTORIC ENVIRONMENT ..... 41
3.6. HUMAN HEALTH, SAFETY, ACCIDENTS AND MAJOR INCIDENTS ..... 56
3.7. LANDSCAPE AND VISUAL ..... 64
3.8. NOISE AND VIBRATION ..... 85
3.9. SOCIO-ECONOMICS ..... 100
3.10. SOILS AND AGRICULTURE ..... 109
3.11. TRANSPORT AND ACCESS ..... 118
3.12. WATER ENVIRONMENT AND FLOOD RISK ..... 128
3.13. OTHER MATTERS ..... 136
4. FINDINGS AND CONCLUSIONS IN RELATION TO HABITATS REGULATIONS ASSESSMENT ..... 154
4.1. INTRODUCTION ..... 154
4.2. FINDINGS IN RELATION TO LIKELY SIGNIFICANT EFFECTS (LSE) ..... 155
4.3. HRA CONCLUSIONS ..... 159
5. CONCLUSION ON THE CASE FOR DEVELOPMENT CONSENT ..... 160
5.1. INTRODUCTION ..... 160
5.2. SUMMARY OF THE MAIN PLANNING ISSUES ..... 160
5.3. HERITAGE BALANCE ..... 169
5.4. OVERALL PLANNING BALANCE ..... 171
5.5. CONCLUSION ..... 173
6. COMPULSORY ACQUISITION AND RELATED MATTERS ..... 174

6.1. INTRODUCTION ..... 174
6.2. THE REQUEST FOR COMPUSORY ACQUISITION AND TEMPORARY POSSESSION POWERS ..... 174
6.3. THE PURPOSES FOR WHICH LAND IS REQUIRED ..... 175
6.4. THE CA AND TP POWERS SOUGHT ..... 176
6.5. LEGISLATIVE REQUIREMENTS ..... 176
6.6. EXAMINATION OF THE CA AND TP CASE ..... 178
6.7. MATTERS RAISED IN THE EXAMINATION/ OBJECTIONS TO CA AND TP ..... 180
7. DRAFT DEVELOPMENT CONSENT ORDER AND RELATED MATTERS .... 189
7.1. INTRODUCTION ..... 189
7.2. THE STRUCTURE OF THE DRAFT DEVELOPMENT CONSENT ORDER ..... 189
7.3. CHANGES DURING EXAMINATION ..... 191
7.4. DCO PROVISIONS WITH OBJECTIONS OUTSTANDING ..... 192
7.5. CONCLUSIONS ..... 195
8. SUMMARY OF FINDINGS AND CONCLUSIONS ..... 196
8.1. INTRODUCTION ..... 196
8.2. CONSIDERATION OF FINDINGS AND CONCLUSIONS ..... 196
8.3. RECOMMENDATION ..... 198

Appendix A: Key legislation and development plan policies

Appendix B: Abbreviations

Appendix C: Report on implications for European sites

Appendix D: Recommended DCO

**List of Figures**

Figure 1: Location Plan ..... 2
Figure 2: Existing Site Condition ..... 4
Figure 3: Indicative Principal Site Layout Plan ..... 6
Figure 4: Sites statutorily designated for nature conservation ..... 30
Figure 5: Non statutory sites designated for nature conservation ..... 31
Figure 6: Location of mapped extent of Viking winter camp in relation to order limits ..... 50
Figure 7: Local landscape character areas ..... 75
Figure 8: Viewpoint 2b - baseline summer ..... 76
Figure 9: Viewpoint 20 - baseline summer and summer year 15 ..... 77
Figure 10: Viewpoint 4 - baseline summer and summer year 15 ..... 78
Figure 11: Viewpoint 2b - applicant's photomontage year 15 (summer) ..... 80
Figure 12: Flood risk in upper north west corner of Order limits ..... 133

**List of Tables**

Table 1: Agricultural Land Classification for the principal site ..... 112

Table 2: ExA application of weight to issues..... 172

Table 3: Agreements reached with parties ..... 192

# 1. INTRODUCTION

## 1.1. BACKGROUND TO THE EXAMINATION

1.1.1. On 10 April 2024, Tillbridge Solar Limited (the applicant) submitted an application (the application) for the construction, operation (including maintenance), and decommissioning of ground-mounted solar photovoltaic (PV) arrays and associated development to support the solar PV arrays (the proposed development).

1.1.2. The application was submitted to the Planning Inspectorate (the Inspectorate) and is referenced EN010142. The application was made pursuant to section 31 (s31) of the Planning Act 2008 (PA2008). It was accepted for examination under s55 of the same Act on 8 May 2024 [PD-001].

1.1.3. This report sets out the Examining Authority's (ExA) findings, conclusions and recommendations to the Secretary of State for Energy Security and Net Zero (SoS).

1.1.4. The legislative tests to determine whether the proposed development is a Nationally Significant Infrastructure Project (NSIP) were considered by the then Secretary of State for Levelling Up, Housing and Communities in his decision to accept the Application for examination in accordance with s55 of the PA2008 on 8 May 2024 [PD-001].

1.1.5. The proposed development is a generating station which would have a capacity of more than 50 megawatts (MW). The proposed development therefore falls within s14 of the PA2008 and meets the definition of an NSIP set out in s15(2). As such, the proposed development requires development consent in accordance with s31 of the same Act.

1.1.6. The Examination Library (EL) [LINK to NSIP EL] provides a record of all application documents and submissions to the examination, each of which is given a unique reference number, for example '[APP-001]'. The reference numbers are used throughout this report and hyperlinks are included to allow the reader to access documents directly.

1.1.7. This report does not contain extensive summaries of the documents and representations received. Readers are referred to relevant material using linked EL references. We have had full regard to all such material and to all important and relevant matters arising from it. This information has informed our conclusions and recommendations.

## 1.2. APPOINTMENT OF THE EXAMINING AUTHORITY

1.2.1. On 19 June 2024, Nicholas Ely and Luke Simpson were appointed as the ExA for the Application under s61 and s65 of PA2008 [PD-003]. Nicholas Ely was appointed as the lead member and Luke Simpson as a panel member.

## 1.3. THE APPLICATION

### LOCATION OF THE PROPOSED DEVELOPMENT

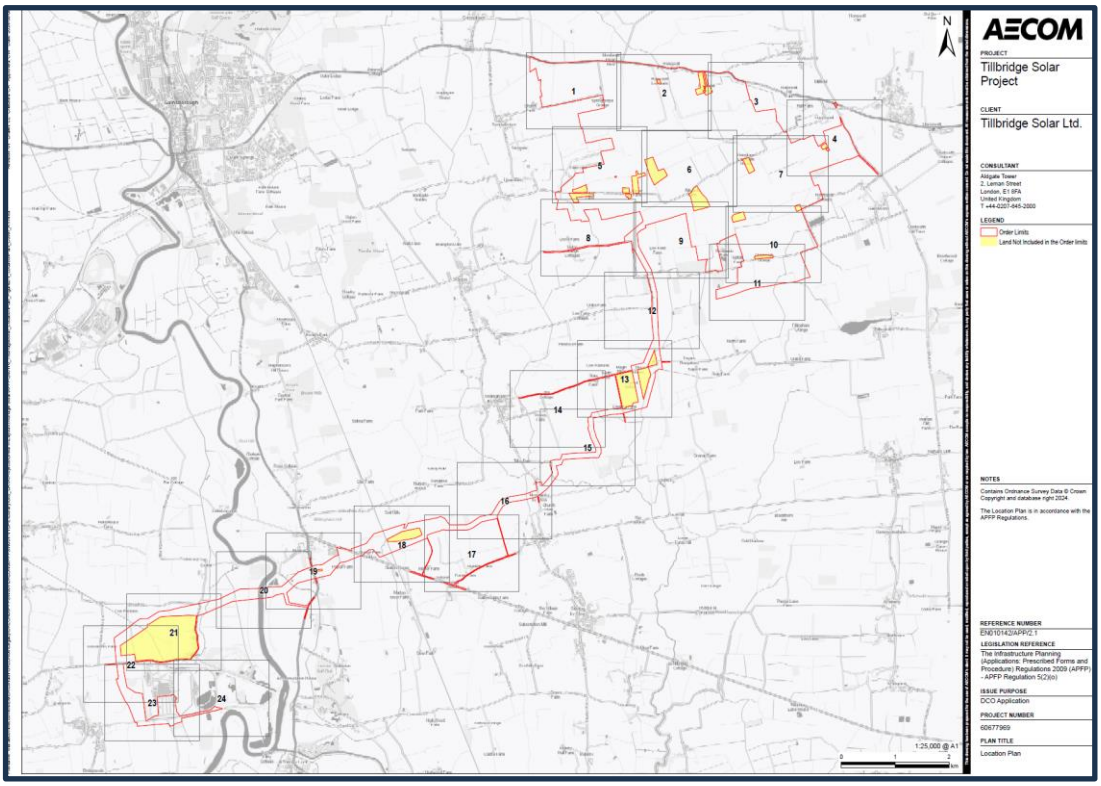
1.3.1. The location of the proposed development is shown in the Location Plan [AS-039] (extract shown in Figure 1 below) and the final versions of the Land and Crown Plans [AS-040]. The site is situated within the Lincolnshire County Council (LCC),

West Lindsey District Council (WLDC), Nottinghamshire County Council (NCC) and Bassetlaw District Council (BDC) administrative areas and is wholly in England.

1.3.2. The site is described in detail in ES chapter 2 [APP-033], which explains that there are two parcels that make up the order limits:

- 'the principal site', which is the location where ground mounted solar photovoltaic (PV) panels, electrical substations, and battery energy storage systems (BESS) would be installed; and
- 'the cable route corridor' (CRC), which would comprise the underground electrical infrastructure required to connect the principal site to National Grid Cottam Substation.

**Figure 1: Location Plan[1]**




1.3.3. The principal site is located approximately 5km to the east of Gainsborough and 13km north of Lincoln. There are also several villages which are located within 3km of the principal site, including (but not limited to) Hemswell, Glentworth, Fillingham, Upton, Heapham, Springthorpe and Corringham. Other settlements located nearby are listed in ES chapter 12 [REP4-013].

1.3.4. The CRC would extend approximately 18.5km from the south-western corner of the principal site to connect with Cottam substation. The route of the corridor is described in detail in ES chapter 2 [APP-033].

[1] Source: Change Request - 2.1 Location Plan - Revision 1 [AS-039]

1.3.5. The total area of land shown within the order limits is approximately 1,670 hectares (ha). This includes all of the land which the applicant considers is necessary for construction and decommissioning of the proposed development.

**Characteristics of the surrounding area**

1.3.6. ES chapter 2 [APP-033] and section 3 of the Planning Statement [REP3-027] provide a description of the surrounding area. In summary, the characteristics of the surrounding area are:

- A landscape characterised by predominantly open fields typically interspersed by small villages.
- There are no sites internationally designated for their biodiversity importance within 10km of the order limits nor any for which bats are a qualifying feature within 30km of the order limits.
- The CRC crosses the River Trent, which is hydrologically connected to the Humber Estuary Special Area of Conservation (SAC) and Ramsar Site.
- Ashton's Meadow Site of Special Scientific Interest (SSSI) and Lea Marsh SSSI are located approximately 1.5km west and 6.5km northwest of the CRC respectively.
- Two locally designated Local Wildlife Sites (LWS) are located immediately adjacent to the CRC.
- There is an Area of Great Landscape Value (AGLV) to the west of the principal site and north of the CRC.
- Lincolnshire Wolds Area of Outstanding Natural Beauty is located approximately 18km to the east of the principal site.
- A registered park and garden (Grade II), associated with Fillingham Castle, is located approximately 2.2km to the east of the principal site.
- There are two Scheduled Monuments located in close proximity to the principal site and four located in close proximity to the CRC.
- There are four Conservation Areas (CoA) within 3km of the principal site.
- There are a total of 163 listed buildings within 3km of the principal site. These listed buildings include 15 Grade I and 11 Grade II*, with the remaining being Grade II.
- There are four Grade II listed buildings located on the edge of the CRC. These are; Stow Park Station and the Signal Box, the Church of Holy Trinity and the Font.
- There is an area of Ancient Woodland (Burton Wood) approximately 1.1km north of the CRC.
- There are a various recreational routes and Public Rights of Way (PRoW) within 500m of the principal site.

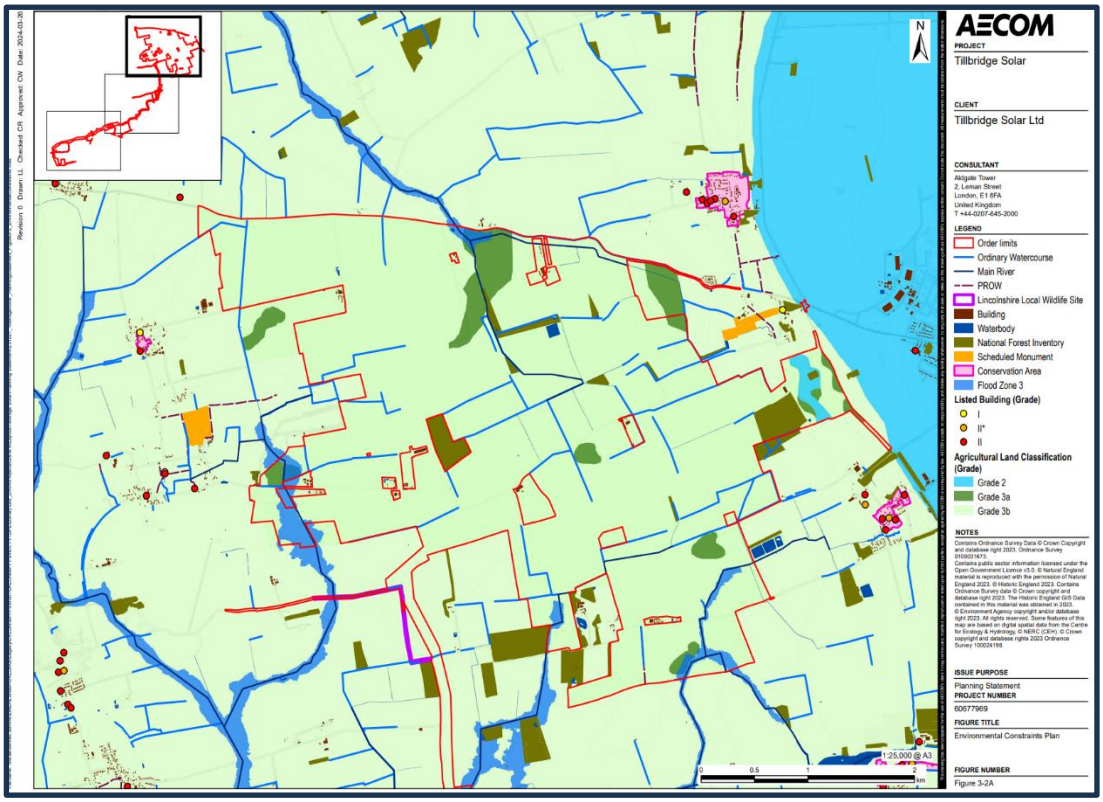
**Characteristics of the land within the order limits**

1.3.7. ES chapter 2 [APP-033] and section 3 of the Planning Statement [REP3-027] provide existing descriptions of the principal and CRC sites. In summary, the characteristics of these two components of the site include:

- The principal site typically comprises parcels of open arable farmland bound by hedgerows and trees at junctures with the highway, with occasional rural dwellings and agricultural buildings present.
- The CRC typically comprises low-lying arable farmland with occasional woodland blocks and scattered farmsteads or isolated properties.
- The CRC includes crossings of several highways, the east midlands railway line and the River Trent.

- There are no international, national or regionally designated nature conservation sites within the order limits.
- There are three LWS within the CRC.
- There are no international, national or regional landscape designations within the order limits.
- The Lincoln Cliff AGLV is located at the eastern end of the principal site.
- The are no designated heritage assets and 79 non-designated heritage assets (NDHA) within the order limits.
- Most of the principal site is located within Flood Zone 1 and is therefore at a low risk of flooding from fluvial sources and surface water. There are, however, various watercourses located within the principal site.
- Parts of the CRC are located within Flood Zone 2 and 3, where the risk of flooding is medium and high respectively.
- The only PRoW within the principal site is a bridleway extending from Kexby Road near Glentworth Grange towards Willingham Road.
- There are several PRoW which cross the CRC.
- Parts of the principal site are located within a limestone minerals safeguarding area (MSA) and an operational oil extraction site.
- A small area of the CRC is located within a sand and gravel MSA.

**Figure 2: Existing Site Condition[2]**




## DESCRIPTION OF THE PROPOSED DEVELOPMENT

1.3.8. The proposed development comprises the construction, operation (including maintenance) and decommissioning of ground-mounted solar PV arrays and

[2] Source: Figure 3-2 Planning Statement [REP3-027]

associated development to support the solar PV arrays. The components of the proposed development are described in detail in ES chapter 3 [REP4-016]. The proposed development works comprise:

- Work No. 1 – a ground mounted solar photovoltaic generating station with a gross electrical output capacity of over 50 megawatts including—
  (a) solar panels fitted to mounting structures; and
  (b) solar stations.
- Work No. 2 – Battery energy storage systems (BESS).
- Work No. 3 – Development of two onsite substations (Work No. 3a and No. 3b).
- Work No. 4 – Works in connection with high voltage electrical cabling including access and construction compounds for the electrical cables (Work No. 4a to 4e).
- Work No. 5 – Works to the National Grid Cottam substation to facilitate connection of the development to the National Grid Cottam substation.
- Work No. 6 –Works including, but not limited to: electrical cables; permissive paths; hardstanding, parking areas; drainage; boundary treatments; security; improvement of private tracks; street and access road repairs; internal access tracks; internal pipes and cables; and other mitigation.
- Work No. 7 – Construction and decommissioning compounds.
- Work No. 8 – Works to develop a solar farm control centre and equipment storage.
- Work No. 9 – Areas of habitat management and protection.
- Work No 10 – Works to facilitate access to Work No. 1 to 9.
- Work No 11 – Sensitive archaeological site protection and management.

1.3.9. Further details of each proposed work numbers can be found in Schedule 1 of the recommended Development Consent Order (rDCO) in Appendix D.

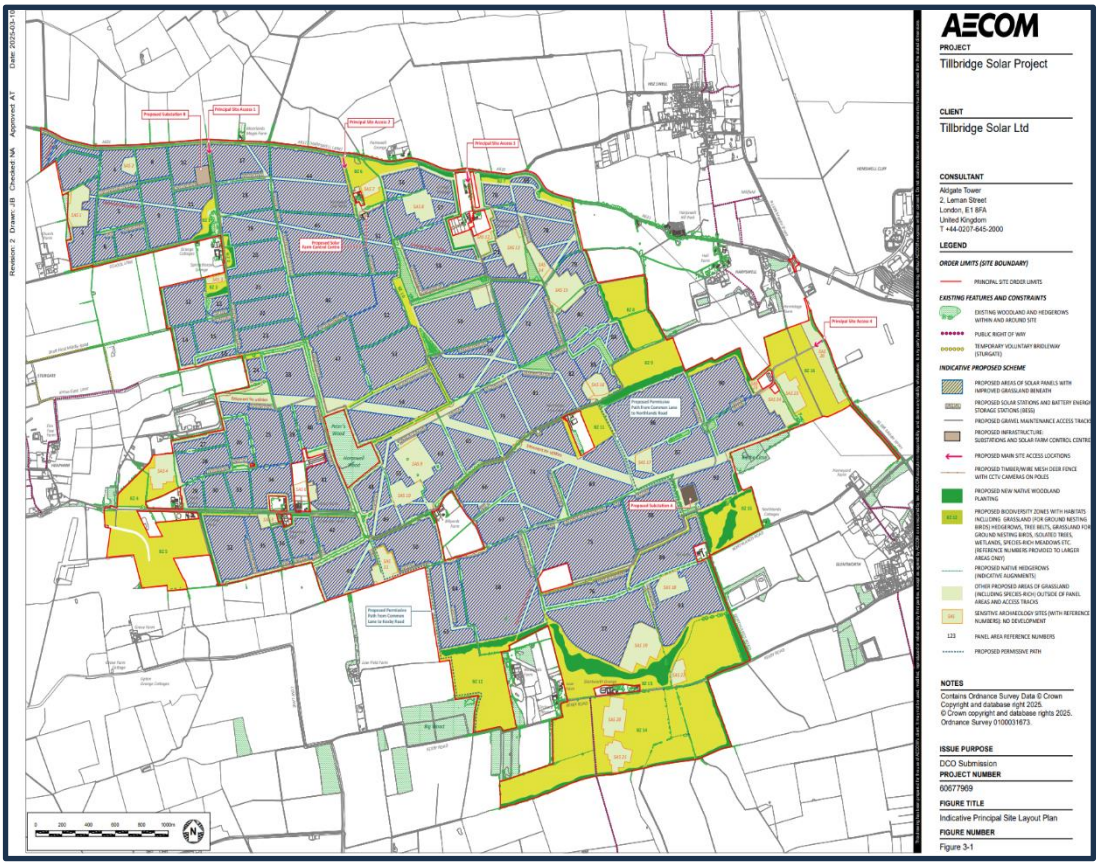
1.3.10. The application comprises Work No. 1 for which development consent is required, as a NSIP, and associated development under Works Nos 2 to 11.

1.3.11. The applicant submitted an Outline Design Principles Statement (ODPS) with the application, which was amended over the course of the examination, with a final version submitted at deadline 4 (D4) [REP4-020]. This document sets out the maximum design parameters for the proposed development. This has enabled the maximum parameters and associated 'worst case scenario' for the proposed development to be assessed within the ES (known as the 'Rochdale Approach').

1.3.12. As such, whilst the requirements in the rDCO would allow for the final design to be approved post-consent, any such approval would be subject to the parameters set out within the ODPS. Notwithstanding this, various indicative plans have been submitted with this application, including an indicative principal site layout plan [REP6-019], as shown in Figure 3.

1.3.13. The applicant's final draft DCO (final dDCO) [REP7-004] requirement 21(1) (R21) states that the date of decommissioning must be no later than 60 years following the date of final commissioning.

**Figure 3: Indicative Principal Site Layout Plan[3]**




## RELEVANT PLANNING HISTORY

1.3.14. The applicant has produced a 'long list' (APP-124) of allocations and other developments within 10km of the order limits (the zone of influence (ZoI)). Developments and allocations identified include:

- DCO applications for NSIPs in England.
- Planning applications for major developments.
- Any major development projects being progressed through other statutory procedures.
- Allocations identified in the adopted and emerging development plans of the local planning authorities.
- Other relevant plans and projects.

1.3.15. The long list includes the following solar generating station developments, all of which would be (subject to completion) located partly within the order limits:

- Cottam Solar Project: This development, proposed by Cottam Solar Project Limited, comprises 4 electricity generating stations, each with anticipated capacity in excess of 50MW. Each consists of ground mounted solar arrays, with associated development including energy storage, grid connection infrastructure and other infrastructure. This project would be partly within the order limits of the

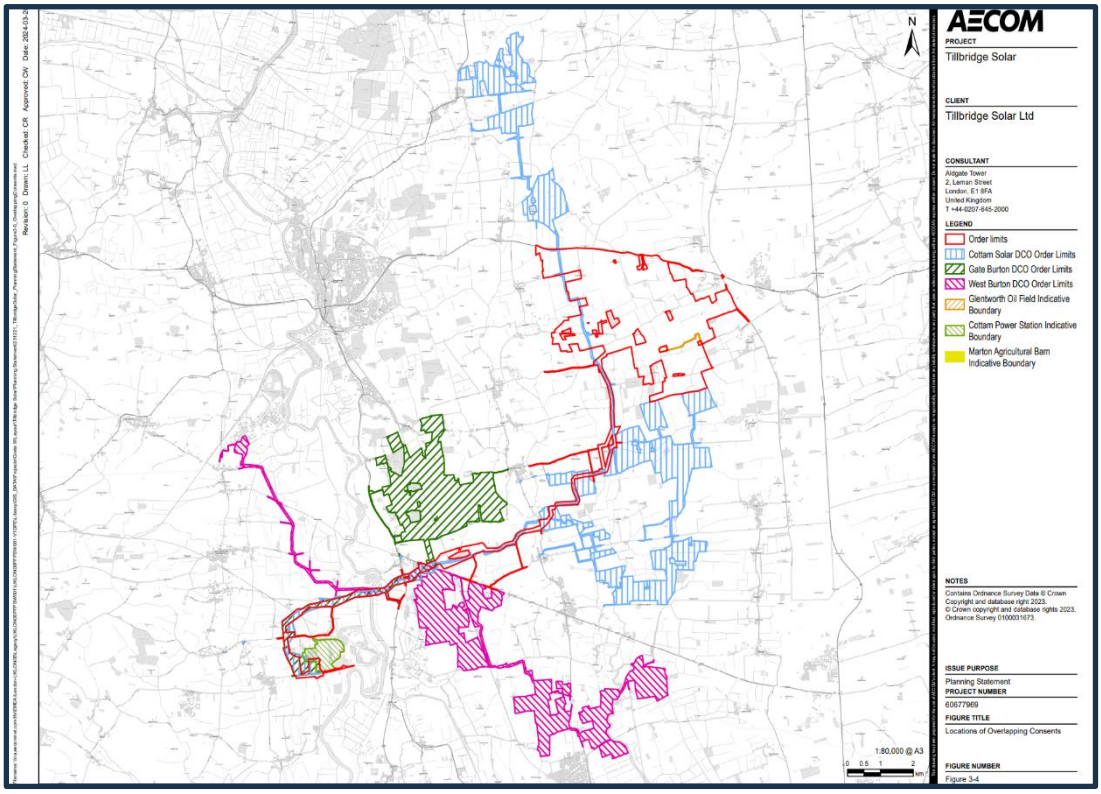
[3] Source: Environmental Statement - Figure 3-1 - Indicative Principal Site Layout - Revision 2 [REP6-019]

proposed development (overlapping CRC). The DCO was made on 5 September 2024 under application reference EN010133.

- Gate Burton Energy Park: This development, proposed by Gate Burton Energy Park Limited, comprises the installation of solar PV generating panels and on-site energy storage facilities and grid connection infrastructure. The development would allow for the generation, storage and export of up to 500MW electrical generation capacity. It would be partially located within the order limits of the proposed development (overlapping CRC). The DCO was made on 12 July 2024 under application reference EN010131.
- West Burton Solar Project: This development, proposed by West Burton Solar Project Limited, comprises three electricity generating stations, each with anticipated capacity in excess of 50MW, comprising of ground mounted solar arrays, with associated development including energy storage, grid connection infrastructure and other infrastructure. It includes associated development which would partially overlap both the principal site and CRC of the proposed development. The DCO was made on 24 January 2025 under application reference EN010132.

1.3.16. There is no substantive evidence before us that construction has commenced on any of these three solar DCO developments.

**Figure 4: Planning History**[4]




1.3.17. Parts of the CRC overlap with those granted consent for Gate Burton and Cottam solar developments. ES paragraph 3.1.4 states in part that the applicant has investigated the potential for a shared CRC with these developments. However, it further states that the ES describes the construction, operation and

[4] Source: Figure 3-4 Planning Statement [REP3-027]

decommissioning of the proposed development, including the CRC, in isolation from the nearby solar DCO projects.

1.3.18. In addition, the following three developments would be located partly within the order limits:

- Cottam power station demolition: Planning permission was granted under BDC planning application reference 21/01661/DEM for demolition and site clearance of the power station.
- Glentworth oil field: Planning permission was granted under LCC reference PL/0135/22 for a new well site and access track, drilling a vertical exploration well drilled to 3,000m, up to seven horizontal wells and a pipeline to the existing Glentworth site.
- Marton agricultural barns: Planning permission was granted under WLDC reference 145882 for two agricultural storage buildings.

1.3.19. The applicant's Planning Statement [REP3-027] sets out further details in relation to the planning history of the site and surrounding area.

## 1.4. THE EXAMINATION

### START OF THE EXAMINATION

1.4.1. The preliminary meeting (PM) took place on 15 October 2024 [EV3-001]. The ExA subsequently issued a Rule 8 Letter [PD-008], which included the final version of the Examination Timetable at annex A.

1.4.2. The examination began after the PM on 15 October 2024 and concluded on 15 April 2025. The principal components of the examination can be seen in the examination timetable [PD-005] and are summarised below.

### PROCEDURAL DECISIONS

1.4.3. Our procedural decisions (PD) are recorded in the EL, referenced [PD-]. They detail our decisions relating to the procedure of the examination. All were discharged as intended and no further reference is made to them in this report.

### STATEMENTS OF COMMON GROUND

1.4.4. By the end of the examination, the following bodies had concluded and signed statements of common ground (SoCG) with the applicant:

- Natural England
- Canal and River Trust
- Environment Agency
- National Highways
- Historic England
- Trent Valley Internal Drainage Board
- Scunthorpe and Gainsborough Water Management Board
- Upper Witham Internal Drainage Board
- Lincolnshire Wildlife Trust
- Network Rail
- Anglian Water
- West Lindsey District Council
- Lincolnshire County Council

- Nottinghamshire County Council
- Bassetlaw District Council
- Other Solar Developers (Cottam, Gate Burton and West Burton)

1.4.5. The SoCGs with the following bodies remained unsigned at the end of the examination:

- 7000 Acres

1.4.6. We have taken these documents into account in all relevant sections of this report.

## WRITTEN QUESTIONS

1.4.7. The ExA published three rounds of written questions:

- First written questions (ExQ1) [PD-009].
- Second written questions (ExQ2) [PD-011].
- Third written questions (ExQ3) [PD-012]

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

- Rule 17 Letter requesting information in relation to affected persons (AP) [PD-007].

## SITE INSPECTIONS

1.4.9. The ExA carried out the following unaccompanied site inspections (USIs):

- 25 September 2024 (USI) [EV2-001].
- 13 January 2025 (USI) [EV2-002].
- 13 January 2025 (USI) [EV2-003].

## HEARINGS

1.4.10. Hearings were held under s91 PA2008 into specific issues (ISHs), under s92 PA2008 into the compulsory acquisition of land and rights (CAHs) and under s93 PA2008 providing for open floor hearings (OFHs).

1.4.11. The following ISHs were held:

- ISH1 regarding the draft DCO and general principles of the proposed development, on 15 October 2025 [PD-005].
- ISH2 regarding environmental matters, including: water environment and flood risk; soils and agriculture; and general and other planning matters, on 14 January 2025 [EV1-004].
- ISH3 regarding environmental matters including: health, safety and wellbeing; landscape and visual impact; noise; biodiversity and ecology; and the DCO, on 15 January 2025 [EV1-005].

1.4.12. The following CAH was held:

- CAH1 on 16 January 2025 [EV1-003].

1.4.13. The following OFHs were held:

- OFH1 on 16 October 2025 [EV1-002].
- OFH2 on 14 January 2025 [EV1-006].

## 1.5. CHANGES TO THE APPLICATION

1.5.1. Changes to the key application documents, including the wording of the dDCO, were submitted and updated during the examination. The changes sought to address points raised by us and interested parties (IP) and update or provide additional information resulting from changes and discussions that had occurred during the examination.

1.5.2. The applicant's changes to the application documents, together with any additional information submitted, are detailed in the guide to the application submitted at D7 [REP7-003]. This provides a guide to all documents submitted as part of the application and was updated at each deadline when new or revised documents were submitted. It provides a full record of all documentation submitted into the examination.

1.5.3. The applicant also submitted a change request (discussed below). We accepted the change request but some of those documents were also subsequently superseded as part of the general changes to application documents highlighted above.

### CHANGE REQUEST

1.5.4. The applicant submitted a formal change request on 27 September 2024 [AS-036]. This change request included reductions to the order limits, removal of highway extents from the order limits, refinement of access arrangements and diversion of construction and decommissioning traffic to a different access.

1.5.5. Full details of the change request and the consultation undertaken by the applicant are provided in the Change Request Report [AS-065] and Consultation Report, respectively [AS-066].

1.5.6. We formally accepted the change request in our Rule 8 Letter (Annex B) [PD-008]. In doing so we concluded that the proposed changes would not constitute a project that would be materially different to that for which development consent was originally sought. Therefore, we considered that the proposed changes were non-material in nature.

## 1.6. OTHER CONSENTS

1.6.1. In addition to the consents required under the PA2008, the applicant would require other consents to construct, operate and maintain the proposed development. These are identified in the Consents and Agreements Position Statement [REP1-011].

## 1.7. STRUCTURE OF THIS REPORT

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

- **Section 2** identifies how the application is to be determined and summarises the key legislation and policy context that applies to the decision.
- **Section 3** sets out the findings and conclusions in relation to the individual planning issues that arose from the application and during the examination.
- **Section 4** considers the implications of the Habitat Regulations.
- **Section 5** sets out the balance of planning considerations arising from sections 2 and 3.
- **Section 6** sets out our examination of land rights and related matters.

- **Section 7** considers the implications of the matters arising from the preceding chapters for the DCO.
- **Section 8** summarises all relevant considerations and sets out our recommendation to the SoS.

1.7.2. This report is supported by the following appendices:

- **Appendix A** – Key legislation and development plan policies.
- **Appendix B** – Abbreviations.
- **Appendix C** – Report on Implications for European Sites.
- **Appendix D** – The Recommended DCO.

# 2. HOW THE APPLICATION IS DETERMINED

## 2.1. INTRODUCTION

2.1.1. This section identifies the key legislation, policy and local impact reports (LIRs) that our recommendation is made against.

## 2.2. LEGISLATION AND POLICY

2.2.1. This section identifies the key legislation and policy that we consider to be important and relevant to our findings and recommendations to the SoS.

### PLANNING ACT 2008

2.2.2. This is an application where more than one National Policy Statement (NPS) is in effect. We have considered the statutory basis for examination, reporting and decision-making and concluded that it must proceed under PA2008 s104 (decisions in cases where NPSs have effect). There are no substantial elements of the proposed development that fall outside the remit of relevant NPS policies and so PA2008 s105 (decisions in cases where no NPSs have effect) is not relevant.

2.2.3. PA2008 s104(2) sets out the matters to which the SoS must have regard when making his decision. These include any relevant NPS, any duly submitted LIR, any matters prescribed in relation to the development, and any other matters the SoS thinks are both important and relevant to the decision.

2.2.4. PA2008 s104(3) requires the SoS to decide the application in accordance with any relevant NPS that has effect in relation to it, subject to the exceptions in s104(4) to (8) as follow:

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

2.2.5. This report sets out our findings, conclusions and recommendations taking these matters into account and applying s104 of the PA2008.

### OTHER LEGISLATION

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

## 2.3. NATIONAL POLICY STATEMENTS

2.3.1. NPSs set out government policy on different types of national infrastructure development. Having regard to the purposes of s104(2)(a) of the PA2008, we consider the following NPSs to be relevant to the application:

- Overarching National Policy Statement for energy (NPS EN-1).
- National Policy Statement for renewable energy infrastructure (NPS EN-3).
- National Policy Statement for electricity networks infrastructure (NPS EN-5).

2.3.2. The NPSs form the primary policy context for this examination. This report sets out our findings, conclusions and recommendations taking these matters into account and applying the approach set out in PA2008 s104. The purpose and broad content of these NPSs is summarised here.

### OVERARCHING NATIONAL POLICY STATEMENT FOR ENERGY (NPS EN-1)

2.3.3. NPS EN-1 (2024) is part of a suite of NPSs issued by the Secretary of State for Energy Security and Net Zero. It sets out the government's policy for delivery of major energy infrastructure. In conjunction with NPS EN-3 and NPS EN-5, it is the primary policy to be applied in the consideration of the proposed development. It sets out general principles and generic impacts to be taken into account in considering applications for energy NSIPs.

2.3.4. Part 3 of NPS EN-1 includes assessments of the need for new major renewable electricity infrastructure. It establishes that the SoS should act on the basis that the need for infrastructure covered by the NPS has been established. Part 4 sets out the general principles that should be applied in the assessment of development consent applications across the full range of technologies covered by the NPS. Part 5 sets out the policy on assessment of impacts which are common across these technologies.

### NATIONAL POLICY STATEMENT FOR RENEWABLE ENERGY INFRASTRUCTURE (NPS EN-3)

2.3.5. Whilst NPS EN-1 sets out general principles for the assessment of the range of energy technologies, NPS EN-3 is concerned with impacts and policy provisions specific to the different types of renewable energy generation, including 'solar photovoltaic' generating stations with a capacity of more than 50MW in England**.**

### NATIONAL POLICY STATEMENT FOR ELECTRICITY NETWORKS (NPS EN-5)

2.3.6. NPS EN-5 paragraph 1.6.1 states in part that infrastructure for electricity networks includes 'associated infrastructure' such as substations. NPS EN-5 paragraph 1.6.4 outlines that this NPS applies to such associated infrastructure where it constitutes associated development for which consent is sought along with an NSIP.

2.3.7. In this case, two new substations and works to another substation are proposed as associated development. As such, NPS EN-3 is relevant within the terms of PA2008 s104(2)(a).

## 2.4. OTHER RELEVANT NATIONAL POLICIES

2.4.1. Other relevant government policy includes the following:

- The National Planning Policy Framework (2024).

- Noise Policy Statement for England (2010).
- Written Ministerial Statement (WMS) 'Solar and protecting our Food Security and Best and Most Versatile (BMV) Land' (May 2024).
- Written Ministerial Statement by the former SoS for Communities and Local Government (March 2015).
- National Planning Practice Guidance.
- A Green Future: Our 25 Year Plan to Improve the Environment (2018).
- Environmental Improvement Plan (2023).
- Energy White Paper: Powering our Net Zero Future (2020).
- National Infrastructure Strategy (2020).
- Net Zero Strategy: Build Back Greener (2021).
- British Energy Security Strategy (2022)
- Industrial Decarbonisation Strategy (HM Government, 2021).
- Powering up Britain (2023)
- Clean Power 2030 Action Plan (DESNZ, 2024)

## 2.5. LOCAL IMPACT REPORTS

2.5.1. LIRs were submitted into the examination at D1A by the following local authorities:

- LLC [REP1A-001]
- NCC [REP1A-002]
- WLDC [REP1A-005]

2.5.2. No LIR was received from BDC.

2.5.3. LIR content has been considered throughout the examination and in this report. It must be considered during the decision by the SoS, pursuant to PA2008 s104(2)(b).

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

2.5.5. LIRs identify local policies (including those from the Development Plan) which are capable of being important and relevant considerations under s104(2)(d) of the PA2008. Appendix A includes a list of development plan policies referred to in the LIRs.

2.5.6. It is our understanding that the Bassetlaw Local Plan (2020-2038) was adopted in May 2024 and replaced the Bassetlaw District Core Strategy (December 2011) and Bassetlaw Local Plan main modifications (2023). However, the applicant's Planning Statement does not refer to the new Local Plan and neither did BDC in its final SoCG [REP3-053] with the applicant. Furthermore, it should be noted that BDC did not submit a LIR. Notwithstanding this, neither BDC nor any other IP raised any concerns with regard to any conflict with the new Local Plan. Furthermore, we note that the NPS are the primary policy documents for the consideration of this application in any case.

## 2.6. ENVIRONMENTAL IMPACT ASSESSMENT

2.6.1. The applicant provided a notification under Regulation 8(1)(b) of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 (EIA Regulations) of its intention to provide an ES. Therefore, in accordance with Regulation 6(2)(a) of the EIA Regulations, the Planning Inspectorate determined that the proposed development was EIA development.

2.6.2. On 30 September 2022, the applicant submitted a Scoping Report to the SoS under Regulation 10 of the EIA Regulations, in order to request an opinion about the scope of the ES to be prepared (a Scoping Opinion) [APP-051].

2.6.3. On 4 November 2022, the Planning Inspectorate provided a Scoping Opinion [APP-052].

2.6.4. Overall, we consider that the ES, as supplemented with additional information during the examination, is sufficient to enable the SoS to make a decision in compliance with the EIA Regulations.

2.6.5. We also consider that the changes to the documentation, comprising the ES during the examination, together with the change request (see section 1.5 of this report) did not individually or cumulatively undermine the scope and assessment of the ES. Section 3 of this report will summarise the environmental effects under each topic section.

## 2.7. HABITATS REGULATIONS ASSESSMENT

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

2.7.2. As is the convention and to inform SoS decisions prepared under the PA2008, a separate record of considerations relevant to HRA has been set out in Appendix C of this report, a summary of which can be found in section 4.

## 2.8. TRANSBOUNDARY EFFECTS

2.8.1. A transboundary screening under Regulation 32 of the EIA Regulations was undertaken on behalf of the SoS on 4 November 2022 following the applicant's request for an EIA Scoping Opinion. No significant effects were identified on the environment in a European Economic Area (EEA) member state.

2.8.2. A second screening was published on 20 June 2024. Again, no EEA states were identified as being likely to have significant effects on their environment in terms of extent, magnitude, probability, duration, frequency or reversibility.

The Regulation 32 duty is an ongoing duty, and on that basis, we have considered whether any facts have emerged to change these screening conclusions, up to the point of closure of the examination. We are satisfied, on the basis of the information provided by the applicant that the correct sites have been considered in the HRA Report [REP3-006] and that the proposed development would not have an LSE on European sites in any EEA States.

# 3. THE PLANNING ISSUES

## 3.1. INTRODUCTION

3.1.1. This section sets out our findings and conclusions on the planning issues. The section is structured firstly to examine matters of principle, including need and is followed by generic topic headings which are arranged in alphabetical order. The order in which these section headings are presented should not be taken to imply any order of merit.

3.1.2. In each section, we identify the policy background, followed by a summary of the application as made. We then report on the main issues considered during the examination for each topic before reaching conclusions. In reaching our conclusions, we assign 'positive' or 'negative' weight using the following terms:

- *'Neutral'*
- *'A little'*
- *'Moderate'*
- *'Great'*
- *'Very great'*

### INITIAL ASSESSMENT OF PRINCIPAL ISSUES (IAPI)

3.1.3. As required by s88 of the PA2008 and Rule 5 of the Infrastructure Planning (Examination Procedure) Rules 2010, we undertook an IAPI in advance of the PM. This was based on the application documents and relevant representations (RR). The list of issues relates to all phases of the proposed development. The IAPI was raised at the PM and no other key topics were identified during the examination. The full IAPI can be found in Annex C of our Rule 6 letter [PD-005]. The principal issues identified in the IAPI were as follow:

- Biodiversity and ecology.
- Climate change.
- Cumulative and in-combination effects.
- General and other planning matters.
- Heritage.
- Human health, safety, accidents and major incidents.
- Landscape and visual impact.
- Noise.
- Socio-economic.
- Soils and agriculture.
- Transport and access.
- Water environment including flood risk.

### THE PLANNING ISSUES IN THIS REPORT

3.1.4. The issues raised by Interested Parties (IP) were broadly in line with the IAPI and were subject to written and oral questioning during the examination. These are the issues used to structure most of the following sections in this report. To facilitate efficient consideration of the relationships between certain issues and to avoid repetition in analysis, there is some variation in the order of the issues considered compared with the IAPI. We have combined the 'principle of development' with 'climate change' as these issues are intrinsically linked.

3.1.5. It should also be noted that the IAPI is a high-level framework. We have had regard to all important relevant matters arising from submissions from IPs and report on these, if required, within each section below.

3.1.6. The planning issues are generally in alphabetical order except for the 'principle of development' and 'other matters' which have been included at the beginning and end of this section in a logical order. The issues are as follow:

- Section 3.2: Principle of development and Climate Change.
- Section 3.3: Biodiversity and ecology.
- Section 3.4: Cumulative and in-combination effects.
- Section 3.5: Historic environment.
- Section 3.6: Human health, safety, accidents and major incidents.
- Section 3.7: Landscape and Visual.
- Section 3.8: Noise and vibration.
- Section 3.9: Socio-economic.
- Section 3.10: Soils and agriculture.
- Section 3.11: Transport and access.
- Section 3.12: Water environment including flood risk.
- Section 3.13: Other matters.

3.1.7. It should be noted that, unless stated otherwise in this report, we agree with the conclusions reached in the applicant's ES on residual environmental effects and the conclusions on development plan policy compliance as detailed in Planning Statement [REP3-027] appendix B.

## 3.2. PRINCIPLE OF DEVELOPMENT AND CLIMATE CHANGE

### INTRODUCTION

3.2.1. This section considers the principle of development and the climate change effects of the proposed development. Issues pertaining to the principle of the Battery Energy Storage System (BESS) units (as associated development) and overplanting are considered at section 3.13 of this report.

### POLICY BACKGROUND

#### Principle of development

3.2.2. NPS EN-1 paragraph 3.2.1 outlines that the government's objectives for the energy system are to ensure the supply of energy always remains secure, reliable, affordable, and consistent with net zero emissions in 2050.

3.2.3. NPS EN-1 paragraphs 3.2.6 to 3.2.8 state in full:

*"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.*

*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.*

*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."*

3.2.4. NPS EN-1 paragraphs 3.2.2 to 3.2.5 emphasise that it is not the role of the planning system to set any limits on the number or type of energy infrastructure projects which come forward.

3.2.5. NPS EN-1 paragraph 3.3.30 states that wind and solar are the lowest cost ways of generating electricity, helping reduce costs and providing a clean and secure source of electricity supply (as they are not reliant on fuel for generation).

3.2.6. NPS EN-1 does not set out any specific policy requirement to consider alternative sites or technologies. Indeed, this would not be consistent with the clear establishment of need at paragraphs 3.2.6 to 3.2.8.

3.2.7. NPS EN-3 re-iterates that need is established in NPS EN-1. However, it also states that, as most renewable energy resources can only be developed where the resource exists and where economically feasible, and because there are no limits on the need established in Part 3 of NPS EN-1, the SoS should not use a consecutive approach in the consideration of renewable energy projects (for example, by giving priority to the re-use of previously developed land for renewable technology developments). However, in relation to BMV land, paragraph 2.10.29 does encourage applicants to, 'where possible', utilise previously developed land, brownfield land, contaminated land and industrial land.

3.2.8. NPPF section 14 addresses the challenge of climate change. It emphasises that the planning system should support the transition to a low carbon future in a changing climate. Proposals for renewable development should not be required to demonstrate the overall need for renewable energy and should be approved if their impacts are, or can be made, acceptable.

3.2.9. Central Lincolnshire Local Plan (2023) (CLLP) Policy S14 supports proposals for renewable technology where the benefits outweigh the harm caused, so long as it can be demonstrated that any harm would be mitigated as far as is reasonably possible. It also includes specific policy requirements in relation to solar development, which amongst other things require compliance with CLLP Policy S67 on the use of BMV land.

**Climate change**

3.2.10. The issue of climate change forms much of the basis for the policies contained in NPS EN-1 and NPS EN-3. NPS EN-1 emphasises that large-scale infrastructure will be required to ensure that the UK can meet its decarbonisation targets (paragraph 2.1.6). These targets include a 2050 net zero greenhouse gas ('GHG') emissions target (paragraph 2.2.1) and a requirement for the UK to reduce GHG emissions by 78 per cent by 2035 compared to 1990 levels (paragraph 2.2.1).

3.2.11. NPS EN-1 explains that infrastructure included within EN-1 is needed in order to reach these objectives (paragraph 3.2.2).

3.2.12. NPS EN-1 requires that all proposals for energy infrastructure projects include a GHG assessment as part of their ES (paragraph 5.3.4). The GHG assessment should be used to drive down GHG emissions at every stage of the proposed development (paragraph 5.3.7). Steps taken to minimise and offset emissions should be set out in a GHG Reduction Strategy, secured under the DCO.

3.2.13. NPS EN-1 outlines that the SoS will need to be satisfied that the applicant has, as far as possible, assessed the GHG emissions of all stages of the development (paragraph 5.3.8). It also states that the SoS should be content that the applicant

has taken all reasonable steps to reduce the GHG emissions of the construction and decommissioning stages of the development (paragraph 5.3.9).

3.2.14. The NPPF outlines that the planning system should take full account of all climate impacts.

3.2.15. The LIRs (REP1A-001 to REP1A-005) set out the relevant development plan policies and they are listed at Appendix A of this report.

## THE APPLICATION

3.2.16. The applicant's case in relation to climate change effects is set out in ES chapter 7 [APP-038] and the assessment of cumulative climate change effects is addressed in ES chapter 18 [REP6-013].

3.2.17. The applicant's climate change assessment includes the following components:

- Lifecycle GHG impact assessment – to consider the impact of GHG emissions arising over the lifetime of the proposed development on the climate.
- Climate change resilience assessment (CCRA) – to consider the resilience of the proposed development to the impacts of future climate change.
- In-combination climate change impact (ICCI) assessment – to identify how the resilience of receptors in the surrounding environment are affected by the combined impact of future climate conditions and the proposed development.

### Baseline

3.2.18. ES chapter 7 outlines that the receptor for the lifecycle GHG impact assessment is the global climate. It states that the baseline and future baseline for GHG emissions is a 'business as usual' scenario where the proposed development does not go ahead. The ES asserts that whilst the current land use within the order limits would have minor levels of associated GHG emissions, it is anticipated that these emissions would not be material in the context of the proposed development. Therefore, for the purposes of the lifecycle GHG impact assessment, the applicant has applied a baseline of zero for GHG emissions.

3.2.19. For the CCR and ICC assessments, the ES explains that the current baseline is the climate in the location of the proposed development for the 30-year period of 1981 to 2010, This is based on historic climate data recorded by the closest Met Office station to the proposed development (Scampton). Future baselines were calculated using the United Kingdom Climate Projections (2018).

### Mitigation

3.2.20. The proposed development includes a range of embedded mitigation measures to mitigate the impacts of the development on climate change and vice versa.

3.2.21. These are contained in the framework construction environmental management plan (FCEMP) [REP5-015] and framework decommissioning environmental management plan (FDEMP) [REP5-017] and include measures aimed at: increasing recyclability; minimising waste creation; maximising use of low carbon materials; reusing infrastructure and resources where possible; reducing the number of construction staff and employee trips; switching vehicles and plant off when not in use; conforming to vehicle emissions standards; and ensuring regular maintenance of plant and machinery to optimise efficiency.

3.2.22. Measures which seek to protect the proposed development from the effects of climate change are discussed in section 3.12 of this report.

**ES conclusions on effects of GHG**

3.2.23. ES paragraph 7.8.1 [APP-038] explains that the effects (both beneficial and adverse) associated with the construction, operation (including maintenance), and decommissioning of the proposed development have been considered. However, ES paragraph 7.8.2 emphasises that whilst it is important to understand the GHG impacts at each individual lifecycle stage, it is also important to understand the net GHG impact of the proposed development.

3.2.24. As such, the overall assessment, which accounts for all GHG emissions over the lifetime of the proposed development, compares its GHG intensity with the GHG intensity of other predicted grid energy generation sources.

*Construction*

3.2.25. ES paragraph 7.8.6 concludes that total GHG emissions from the construction phase of the proposed development are estimated to equate to 910,126tCO2e. This includes embodied carbon associated with the manufacture of battery and solar PV components as well as other development (96% of the total) and emissions associated with transportation of products and materials (3% of the total). ES table 7-16 outlines that the construction phase would account for 26.8% of all GHG emissions.

3.2.26. ES paragraph 7.10.2 outlines that construction phase effects cannot be completely removed through mitigation. The applicant therefore concludes that the residual effect of GHG on the global climate during construction would be 'minor adverse (not significant)'.

*Operation*

3.2.27. ES paragraph 7.8.12 [APP-038] concludes that total operational emissions over the design life of the proposed development are estimated at 2,470,621tCO2e. Over 99% of these emissions would be associated with the materials and transport of the replacement components required throughout operation. Replacement rates are based on similar developments and take into account the design life of components.

3.2.28. The assessment assumes that all of the PV panels will require replacement once during the proposed development's operational life. All BESS cells are assumed to require replacement five times based on a life cycle of 5-15 years (10 years taken as the midpoint). All transformers and cables are assumed to require replacement twice based on a replacement time of 25-30 years. Converters are assumed to be replaced three times based on a life cycle of 10-20 years (15 years taken as the midpoint).

3.2.29. In considering the overall effect of GHG during operation, the ES outlines that the proposed development will achieve substantial emission reductions compared to the without-project baseline. The 'without-project baseline' is a scenario in which the proposed development does not go ahead and the power it generates is provided by a combined cycle gas turbine facility (CCGT). ES paragraph 7.8.23 [APP-038] confirms that the operational carbon intensity of proposed development would be 86% lower than the without-project baseline.

3.2.30. The applicant also asserts that the operation of the BESS would result in further reductions in GHG compared to a 'without-project baseline' but this has not been factored into the overall assessment.

3.2.31. Overall, the ES concludes that there would be a 'beneficial (significant) effect' on the global climate during operation.

*Decommissioning*

3.2.32. ES table 7-16 [APP-038] sets out that carbon emissions during decommissioning would be approximately 11,853tCO2e, which represents 0.3% of overall GHG emissions. A large proportion of these (42%) would arise as a result of transport emissions. ES table 7-21 concludes that this would lead to a 'minor adverse (not significant)' effect on the global climate.

*Overall lifetime assessment*

3.2.33. The ES concludes that GHG emissions savings are expected to be achieved throughout the lifetime of the proposed development compared to other fossil fuel energy generation types. Therefore, the applicant considers that the GHG emissions during construction, operation and decommissioning of the proposed development can be considered to be 'offset' by the net positive impact of the proposed development on GHG emissions and the UK's ability to meet its carbon targets. The applicant concludes that the overall GHG impact of the proposed development is therefore 'beneficial and significant' [APP-038].

**ES conclusions on climate change resilience (CCR)**

3.2.34. ES chapter 7 [APP-038] outlines that future climate change projections were reviewed and the sensitivity of the proposed development's assets to the impacts of a changing climate were examined. This review considered the adequacy of the CCR measures built into the proposed development and whether they would be sufficient. As a result of the proposed mitigation measures, the ES identified no significant climate change risks during the construction, operation, or decommissioning phases.

**ES conclusions on in-combination climate change impact (ICCI)**

3.2.35. Future climate change projections were reviewed, and the sensitivity of identified receptors was examined as part of the ICCI Assessment. ES chapter 7 concludes that there would be no significant effects as a result of the effects of the proposed development combined with the impacts of climate change.

**ES conclusions on the cumulative effects on climate change**

3.2.36. ES chapter 18 [REP6-014] explains that, for climate change impacts, the global climate is the receptor. In addition, it refers to IEMA guidance on assessing GHG emissions, which outlines that effects of GHG emissions from specific cumulative projects should not be individually assessed, as there is no basis for selecting any particular (or more than one) cumulative project that has GHG emissions for assessment over any other. As such, the applicant has not undertaken an assessment of the cumulative effects on climate change.

## ISSUES CONSIDERED DURING THE EXAMINATION

**Principle of Development**

*ExA considerations*

3.2.37. Representations made in relation to the principle of development - including in relation to need, the effectiveness of the technology, roof mounted alternatives and efficiency compared to other technologies – relate to the merits of the policies contained in NPS EN-1 and EN-3. Both clearly establish the need for this type of development and there are no expressed policy requirements to consider alternative sites or technologies, other than in relation to flood risk, BMV land, compulsory acquisition and habitats sites, which are all considered separately in this report where relevant.

3.2.38. PA2008 s87(3)(a) states that the ExA may, in examining the application, disregard representations if it considers that they go to the merits of policy contained in the NPSs. Similarly, s106(b) states that, in deciding an application, the SoS may disregard representations for the same reason. Whilst we appreciate that many interested parties have previously advanced positions in relation to 'need' at the examinations for the other three nearby solar DCOs, solar is now included in NPS EN-1 and EN-3. Given that both NPSs clearly establish the need for this type of development, we disregard these representations and recommend that the SoS does the same.

3.2.39. The applicant provided evidence of a bilateral grid connection agreement with the National Electricity System Operator (NESO), confirming a 500MW agreement (import and export), at Appendix A of its Written Summary of applicant's Oral Submissions at the Issue Specific Hearing 1 (ISH1) [REP1-046]. The applicant asserts that over its 60-year lifetime, the proposed development would have a total energy generation figure of approximately 48.5 terawatt-hours (TWh). The applicant outlines that this is enough electricity to power approximately 299,383 homes per annum.

3.2.40. 7000 Acres' WR [REP2-028] refers to various constraints on energy generation from solar developments. However, these typically apply to all such developments in the UK and the NPSs do not direct that such development should be located in optimum locations for energy production.

3.2.41. In its written summary of oral submissions to ISH1, 7000 Acres asserts that, 'given the low UK solar gain', the proposed development would provide approximately 0.5TWh per year. Even if we were to agree with this lower figure, it still represents a significant amount of reliable and secure energy from a renewable source. As such, even taking this asserted figure into account, the development would derive significant policy support for the principle of development from NPS EN-1 and EN-3.

**Climate Change**

3.2.42. The effect of the proposed development on climate change was considered during the examination.

*3.2.43.* LCCs initial position was set out in its LIR [REP1A-001], which states in part: *"adopting a 'whole life' approach to GHG emissions, there are no negative and neutral impacts and that significant positive impacts would accrue".*

3.2.44. However, LCC updated this position in its written representation at D2 [REP2-012]. Here it questioned the efficacy of large solar farms in managing the impact of climate change, both from the direct usage of renewable energy sources in the UK, and from the carbon footprint produced in the making and transportation of solar

panels. LCC also criticised the applicant's methodology in assessing the cumulative climate change effects, as discussed at paragraphs 3.2.76 to 3.2.79 of this report. LCC retained these objections in its final SoCG [REP6-035].

3.2.45. Paragraph 2.1 of WLDC's LIR [REP1A-005] summarises various criticisms and areas of clarification sought in relation to the applicant's assessment of climate change effects. Notably, WLDCs final SoCG [REP6-034] agrees with the applicant's attribution of substantial positive weight to the climate change effects of the proposed development.

3.2.46. NCC's LIR [REP1A-002] does not refer to climate change.

3.2.47. Various IPs outlined general criticisms of the role of solar in combatting climate change. Others criticised climate change goals and objectives more generally. These RR and WR are summarised and responded to by the applicant in its respective written submissions at D1 [REP1-028] and D3 [REP3-063].

**GHG Assessment**

3.2.48. 7000 Acres questioned the applicant's use of a baseline assumption that in a 'business as usual' scenario, electricity would be generated by CCGT. In ExQ2 [PD-011] we also questioned why - in applying the without-project baseline at ES paragraph 7.3.26 [APP-038] - the applicant has assumed that electricity would be generated from CCGT.

3.2.49. In response [REP5-032] the applicant refers to the IEMA guidance on setting a baseline, which says that emissions can take the form of '*emissions arising from an alternative project design and/or BaU for a project of this type'*. The applicant asserts that CCGT is a representation of 'business as usual'. As such, the applicant emphasises that the baseline does not assume that a new CCGT would be constructed if the proposed development did not go ahead.

3.2.50. WLDC [REP1A-005] outlined that no decarbonisation rate appeared to have been applied for GHG emissions arising as a result of low-carbon electricity from the development replacing electricity generated by natural gas-fuelled CCGT.

3.2.51. The applicant's response [REP3-061] states that the projected decarbonisation of the UK electricity grid has been considered in relation to the power consumption of the proposed development. The applicant asserts that the energy output from the proposed development is expected to directly displace energy from marginal generation sources, which, in the UK, most commonly comprises CCGT. The applicant concludes that its approach is appropriate, as it is unlikely that the carbon intensity of CCGT produced energy will vary over time.

3.2.52. LCCs WR [REP2-012] refers to the judgement in R (Finch) v Surrey County Council [2024] UKSC 20 (the Finch Judgement) and questions the '*efficacy of large scale solar farms in managing the impact of climate change'* with particular regard to the carbon footprint produced in making and transporting solar panels and the '*cost of importing food supplies'* to compensate for the loss of agricultural production. Various IPs also asserted that the proposed development would result in increased food importation, resulting in an increase in carbon emissions.

3.2.53. In a response to LCCs concerns [REP4-048], the applicant outlines that the focus of the Finch Judgement is on 'inevitable' consequences and effects. The applicant does not believe this test applies to lost food production. This is because it is not 'inevitable' that food will have to be imported as a result of the proposed

development, particularly when considering the national policy position on food security.

3.2.54. The applicant asserts that land use change does not feature among the identified risks to UK food security, whereas climate change does. The applicant also contends that the use of BMV agricultural land has been minimised through its site selection process.

3.2.55. 7000 Acres [REP2-033] outlines that '*the assessment takes no account of the lost food production and the consequent environmental impact.*' Elaborating further, it states: '*the applicant takes no account of initiatives such as the Country Stewardship scheme and the Woodland Management Plan that will increase habitat and carbon sequestration in farming land. Neither does the applicant take account of growing biofuels on the site, which reduce GHG emissions*.'

3.2.56. The applicant considers that the current and future baseline conditions should not include consideration of biofuel production or woodland carbon sequestration. This is because the site is not currently utilised in this manner and neither are there any future proposals for such uses [REP5-032].

3.2.57. The applicant highlighted that a baseline reference point should consider either the current GHG emissions within the site, or the emissions resulting from an alternative project design. The applicant did not therefore consider it appropriate to include all potential alternative uses of the principal site within the future baseline scenario.

3.2.58. 7000 Acres disagree with the applicant's assumption that solar panels would only be replaced once during the operational lifetime of the proposed development. In addition, WLDC [REP1A-005] questions the assumed rate of replacement of panels and other infrastructure. Given that the ES table 3-1 [REP4-016] sets out that panel lifespan ranges between 25 to 40 years, we also questioned this in ExQ1 [PD-009] and ExQ2 [PD-011].

3.2.59. In response [REP5-032], the applicant outlined that if the panels were to be replaced more frequently than assumed in the ES, this would result in panels being removed as part of decommissioning when they are only part way through their design life. The applicant asserts that this would not be an efficient use of panel technology and that 'no reasonable undertaker' would install panels with a design life that extends far beyond the operational phase.

3.2.60. Furthermore, the applicant emphasised that it is very likely that solar technology will improve in the future, potentially increasing the lifespan of PV modules. As such, the applicant concludes that it is a 'reasonable worst-case' to assume that panels would be replaced no more than once over the 60-year operational phase of the proposed development.

*3.2.61.* 7000 Acres [REP2-033] also asserts that it is probable that decommissioning, especially recycling all equipment and returning the land to productive farmland, will result in higher GHG emissions than stated by the applicant.

*ExA considerations*

3.2.62. We are satisfied with the applicant's baseline 'business as usual' assumption that electricity would otherwise be generated by CCGT and we also consider that the associated decarbonisation assumptions are appropriate. This is because it is logical to assume that in the absence of this development, or other solar energy

developments, there would be a greater reliance on existing CCGT to meet the UKs energy needs. Furthermore, solar energy generation is an intrinsic element of the UKs strategy to reduce carbon emissions as evidence by its inclusion in NPS EN-3.

3.2.63. We do not consider it reasonable to require the applicant to consider the potential consequences of food imports on GHG. Whilst the majority of the principal site comprises agricultural land in arable rotation, there is no substantive evidence to indicate that the loss of this land would necessitate the import of food from further afield, including abroad. Indeed, ES paragraph 14.6.22 [APP-045] sets out that the amount of land in agricultural use in Lincolnshire alone is 488,915 hectares. The principal site, which comprises 1,212.3ha in agricultural use, represents a small fraction of this. For this reason alone, we do not consider that it is inevitable or even likely that the proposed development would result in an increase in food imports.

3.2.64. In relation to the potential or existing use of the site for bio-fuels, even if that were plausible, ES paragraph 15.6.13 [APP-046] outlines that the land is predominantly in standard arable rotations of cereals and break crops with only some energy crops grown. There is no substantive evidence to indicate that the majority of crops are or would be grown for energy. As such, it is not considered reasonable or proportionate to include this assumption in the assessment. Similarly, whilst there may be general policy initiatives to increase woodland management on agricultural holdings, there is no substantive evidence that the principal site is proposed for use for carbon sequestration.

3.2.65. In terms of concerns raised by 7000 Acres in relation to 'curtailment', ES paragraphs 7.8.27 to 7.8.30 [APP-038] outline the asserted benefits of BESS in relation to climate change. These benefits have not been taken into account in the applicant's overall GHG assessment. However, we consider that the use of BESS and its associated decarbonisation benefits would alleviate any perceived effect of curtailment because it would reduce the amount of energy lost during periods of peak generation.

3.2.66. Whilst the applicant's justification for the assumed rate of panel and infrastructure replacement is relatively high-level, we accept that it would not be economically advantageous for a future operator to replace such components at a more frequent rate than that assumed by the applicant. Furthermore, we note that the assumed rates of replacement are at the lower end of the ranges provided by the applicant in ES table 3-1 [REP4-016]. On this basis, we are satisfied that the assumptions used represent a reasonable worst-case scenario for replacement of infrastructure during the operational period.

3.2.67. We are satisfied that the applicant's assessment of effects during decommissioning is based on reasonable worst-case assumptions and that effects can be effectively mitigated through the implementation of the FDEMP [REP5-017].

3.2.68. The applicant's GHG assessment takes into account embodied carbon in components of the proposed development. Measures to ensure the use of components with lower levels of embodied carbon are included in table 3-2 of the FCEMP [REP5-015]

3.2.69. We accept the conclusions of the applicant's GHG assessment and we consider that the overall GHG impact of the proposed development is beneficial.

**CCR**

3.2.70. WLDC [REP1A-005] made various representations in relation to the applicant's CCR assessment. Matters relating to CCR in respect of flood risk are addressed in section 3.12 of this report where relevant.

3.2.71. WLDC outlines that the decommissioning risk assessment is unsatisfactory. It asserts that the likelihood and consequences of impacts will change with the baseline (for example warmer winters and wetter summers) and that this has not been addressed.

3.2.72. The applicant responded [REP5-032] by asserting that climate change risks associated with decommissioning would remain at the same significance level, despite the projected changes in climate. These risks are still considered to be 'low'. The applicant contends that this is due to the low consequence of impact associated with climate related construction and decommissioning risks.

*ExA considerations*

3.2.73. The applicant has taken into account future baseline projections as is demonstrated at ES paragraphs 7.6.8 to 7.6.11 [APP-038]. ES table 7-19 assumes that decommissioning effects would be the same as construction effects. However, the 'likelihood' of a climate hazard occurring during operation, whilst increasing in certain instances, is never greater than 'low'. We therefore agree that it is reasonable to assume that - at decommissioning stage - the same 'likelihood' of an event occurring would apply.

3.2.74. Overall, we agree with the applicant's conclusion that there would be no significant climate change risks during the construction, operation, or decommissioning phases of the proposed development.

**ICCI**

*ExA considerations*

3.2.75. Whilst WLDC did raise several minor queries with regard to the ICCI, these were all addressed by the applicant in their response [REP3-061]. Overall, we agree with the applicant's conclusion that there would be no additional significant effects on receptors resulting from the proposed development combined with the impacts of climate change.

**Cumulative effects**

3.2.76. LCCs WR [REP2-012] outlines that the climate change effects of panel production (including transportation) and increased food imports should be assessed on a cumulative basis. With reference to the Finch Judgment, LCC asserts that the fact that GHG emissions are a global issue does not mean that they are not capable of assessment in relation to a single project or cluster of projects.

3.2.77. In ExQ1 [REP3-065], we asked LCC to elaborate on this assertion and confirm whether it is alleging any harm in relation to climate change. In its response to Q1.3.11, LCC indicated that the Cottam, West Burton and Gate Burton solar developments should be considered in the cumulative assessment and that only once this information has been provided could it confirm its position on whether harm would arise.

3.2.78. The applicant responded [REP4-048] stating that the Finch Judgement does not consider the need to assess related or geographically proximate projects

cumulatively when undertaking GHG assessments. Furthermore, the applicant asserts that if a cumulative assessment of the solar schemes in Lincolnshire was to be considered, then given that they all play a role in decarbonising the grid in line with the UK's net zero targets, there would be a significant beneficial cumulative impact on GHG emissions compared to the baseline where the projects do not go ahead.

*ExA considerations*

3.2.79. We accept the applicant's rationale for excluding a cumulative assessment of climate change effects. This is partly because the receptor is the global climate and there is no reasonable basis upon which to consider other planned or approved developments. However, even if that were not the case, we have concluded that the proposed development would have a significant beneficial effect on GHG and that there would be no significant ICCI or CCR effects. Therefore, including the proposed development in a cumulative assessment would only have positive net consequences. As such, there would be no significant adverse cumulative climate change effects.

## CONCLUSIONS

3.2.80. We have reached the following conclusions in relation to the principle of development and climate change effects:

- → We agree with the conclusions of the applicant's GHG assessment and consider that the overall GHG impact of the proposed development would be positive.
- → We agree with the conclusions reached in the applicant's CCR that there would not be any significant climate change risks during the construction, operation, or decommissioning phases of the proposed development.
- → We agree with the applicant's conclusion that there would be no additional significant effects on receptors resulting from the proposed development combined with the impacts of climate change.
- → We accept the applicant's rationale for excluding a cumulative assessment of climate change effects and we consider that there would not be any significant adverse cumulative effects on climate change.
- → A range of necessary and effective mitigation measures are included in the FCEMP and FDEMP and these would be secured through R12 and R21 of the rDCO.
- → In relation to climate change and the principle of development, the proposed development would comply with NPS EN-1, NPS EN-3, the NPPF and relevant development plan policies.
- → Overall, we conclude that the proposed development would make a significant contribution to secure and reliable energy provision whilst also resulting in significant climate change benefits. We consider that very great weight should be afforded to these benefits, given that they are fundamental to the objectives of NPS EN-1 and NPS EN-3.

## 3.3. BIODIVERSITY AND ECOLOGY

### INTRODUCTION

3.3.1. This section considers the likely impact and effects of the proposed development on the biodiversity and ecology of the site and adjacent sites of national, local and regional interest.

3.3.2. Matters relating to effects on European sites in the context of the Habitats Regulations are set out separately in section 4 and Appendix C of this Recommendation Report, which relates to potential effects on the Humber Estuary SAC and Ramsar site.

### POLICY BACKGROUND

3.3.3. NPS EN-1 seeks to ensure that the ES clearly "*sets out any effects on internationally, nationally and locally designated sites of ecological or geological conservation importance, on protected species and on habitats and other species identified as being of principal importance for the conservation of biodiversity, including irreplaceable habitats*".

3.3.4. Applicants should show how the project has taken advantage of opportunities to conserve and enhance biodiversity interests and maximise opportunities for building-in beneficial biodiversity features, using requirements or planning obligations where appropriate.

3.3.5. Paragraph 5.3.8 reminds the SoS to ensure that appropriate weight is attached to designated sites of international, national and local importance; protected species; habitats and other species of principal importance for the conservation of biodiversity.

3.3.6. Section 5.4 of NPS EN-1 also highlights the government's 25-year Environment Plan and other policies including the Environmental Improvement Plan 2023, which aim to halt overall biodiversity loss in England by 2030 and then reverse loss by 2042, support healthy well-functioning ecosystems and establish coherent ecological networks. Inclusion of appropriate avoidance, mitigation, compensation and enhancement measures as an integral part of the proposed development is set out in paragraph 5.4.35.

3.3.7. Paragraph 5.4.41 recognises that nationally significant low carbon energy infrastructure may include benefits for biodiversity which may outweigh harm. It advises that the SoS may take account of any such net benefit where it can be demonstrated.

3.3.8. Biodiversity Net Gain (BNG) forms an important consideration as set out in section 4.6 of NPS EN-1. Proposals should seek opportunities to contribute to and enhance the natural environment by providing net gains for biodiversity and the wider environment where possible. Paragraph 4.6.7 encourages use of the latest version of the biodiversity metric to calculate the baseline and present BNG outcomes, with data presented in full as part of the application. Paragraph 4.6.1 advises that the SoS should give appropriate weight to environmental and biodiversity net gain.

3.3.9. The NPPF, at paragraph 186, states that opportunities to improve biodiversity in and around developments should be integrated as part of their design, especially where this can secure measurable net gains for biodiversity or enhance public access to nature where this is appropriate. CLLP policy S60 seeks to protect biodiversity,

whilst policy S61 requires delivery of at least 10% BNG in all qualifying development proposals.

## THE APPLICATION

3.3.10. The applicant submitted the following documents for consideration at application.

3.3.11. ES chapter 9 [APP-040] assesses the impacts of construction, operation and decommissioning and their effects on ecology and the natural environment.

3.3.12. Supporting appendices include:

- Appendix 9-1: Ecology and Nature Conservation Legislation, Policy and Guidance [APP-081].
- Appendix 9-2: Aquatic Ecology Baseline Report [APP-082].
- Appendix 9-3: Baseline Report for Flora (including hedgerows) [APP-083].
- Appendix 9-4: Baseline Report for Terrestrial invertebrates [APP-084].
- Appendix 9-5: Baseline Report for Great Crested Newt [AS-012].
- Appendix 9-6: Baseline Report for Reptiles and amphibians (excluding Great Crested Newt) [APP-086].
- Appendix 9-7: Baseline Report for Breeding Birds Part 1 of 2 [APP-087].
- Appendix 9-7: Baseline Report for Breeding Birds Part 2 of 2 (Confidential) [APP-088].
- Appendix 9-8: Baseline report for non-breeding birds [APP-089].
- Appendix 9-9: Baseline Report for Bats [APP-090].
- Appendix 9-10: Baseline Report for Riparian mammals [APP-091].
- Appendix 9-11: Baseline Report for Badger Part 1 of 2 [APP-092].
- Appendix 9-11: Baseline Report for Badger Part 2 of 2 (Confidential) [APP-093].
- Appendix 9-12: Habitat Regulations Assessment Report [REP3-006].

3.3.13. Framework Plans have been prepared that set out the planned measures to avoid, mitigate and compensate for impacts and effects on biodiversity and ecology from the construction, operation and decommissioning of the proposed development.

3.3.14. These plans are respectively:

- FCEMP [REP5-015]
- Framework Operational Environmental Management Plan (FOEMP) [REP6-027]
- FDEMP [REP5-017]
- Framework Landscape and Ecological Management Plan Parts (FLEMP) [REP6-022]

The development also proposes to deliver a net gain of biodiversity over the life of the development and a BNG Report [APP-226] has been prepared to assess and quantify this proposed gain.

### Baseline

3.3.15. The existing land use within the order limits is predominately flat and used for arable agriculture, with the fields being intersected by a network of drainage ditches. Other land areas within the order limits comprise areas of mature trees and hedges, wooded copses and ponds. There are also individual and clusters of residential properties adjacent to the order limits.

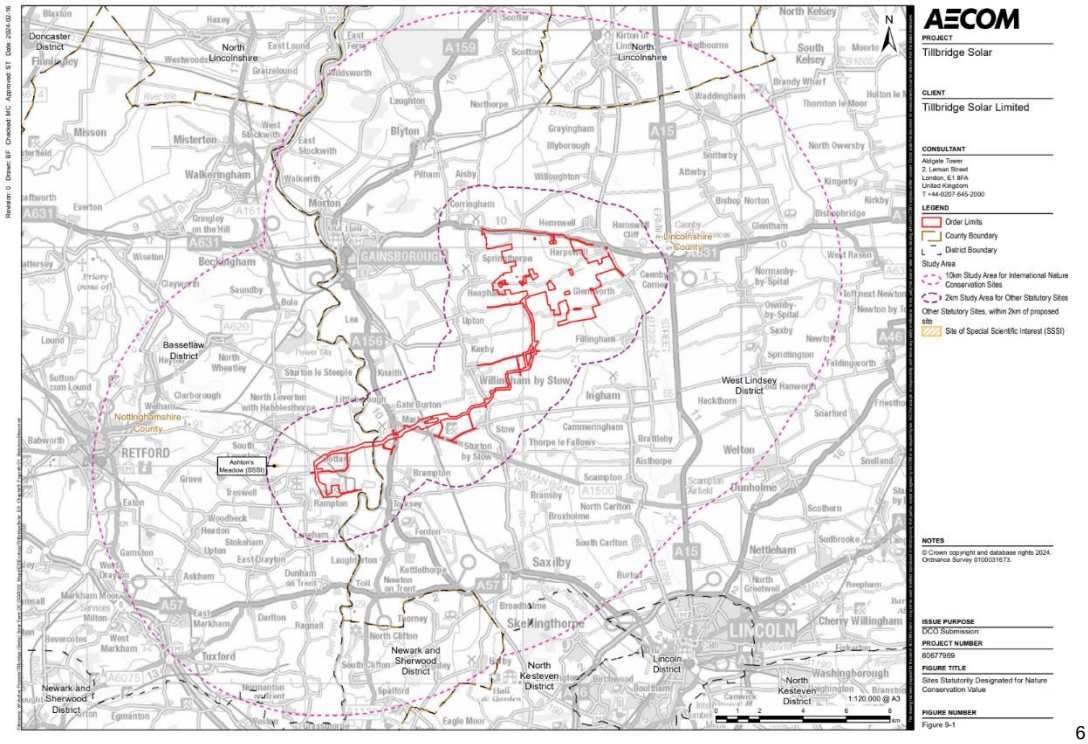
3.3.16. ES Chapter 9 [APP-040] asserts that the land heavily relies on agricultural inputs such as fertiliser and pesticides to increase production yields and that

supplementary abstraction of water from two licensed sites within the order limits is also required for irrigation. The applicant infers that this artificial lowering of water levels and use of additives to the soil by farming may be impacting the local watercourses and habitats.

3.3.17. There are no sites internationally designated for their ecological or biodiversity status within 10km of the order limits. The CRC is proposed to cross the River Trent, which flows into to the Humber Estuary SAC and Ramsar site.

3.3.18. There is one site, the Ashton's Meadow SSSI, statutorily designated for biodiversity importance approximately 1.5km west of the CRC. This site is also designated as a Local Wildlife Site by the Nottinghamshire Wildlife Trust.

**Figure 4: Sites statutorily designated for nature conservation[5]**




6

3.3.19. There are a further 13 non-statutory sites within 2km of the order limits as shown in figure 5.

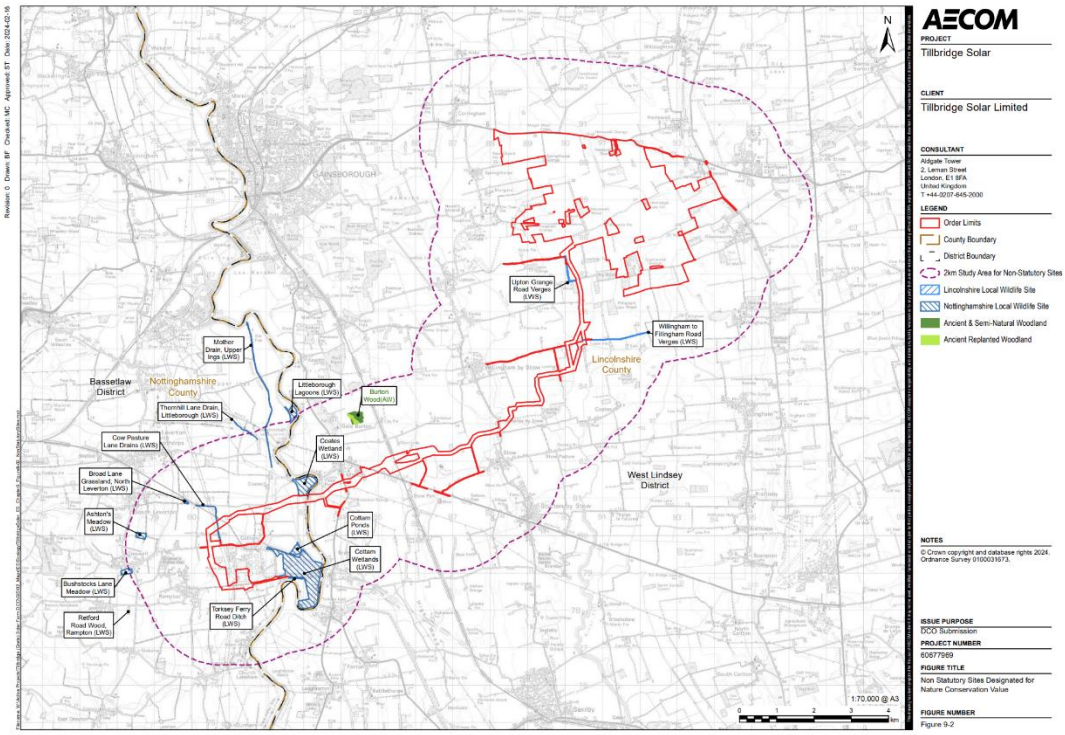
3.3.20. The following legally protected, or notable, species were assumed to be present or recorded within 2km or inside of the order limits:

- Aquatic macrophyte and macroinvertebrates
- Fish, including European eel anguilla anguilla
- Flora/plants
- Hedgerows
- Terrestrial invertebrates

[5] Source: 6.3 Figure 9-1: Sites Statutorily Designated for Nature Conservation Value [APP-164]

- Great crested newt
- Reptiles and amphibians
- Breeding birds
- Non-breeding (wintering and passage) birds
- Bats
- Riparian mammals
- Badger
- Invasive non-native species

**Figure 5: Non statutory sites designated for nature conservation[7]**




### No proposed development

3.3.21. Existing habitats would likely continue to provide support for a number of species as identified to date. In the longer term, the applicant asserts that the continued intensive agricultural use of the principal site will lead to a long-term degradation of the habitat and biodiversity of the site as evidenced by national, regional and local trends in biodiversity monitoring.

### Construction Phase

3.3.22. Temporary works to facilitate the construction of the development such as site clearance, access tracks and temporary buildings are likely to impact directly on the existing biodiversity features of the site.

3.3.23. This could include temporary loss of habitats, fragmentation of populations, disturbance and displacement to species, degradation of habitats, species mortality and introduction of new invasive species.

[7] Source: 6.3 Figure 9-2: Non-Statutory Sites designated For Nature Conservation Value [APP-165]

### Operational phase

3.3.24. Potential adverse impacts identified by the applicant during the operation of the proposed development included:

- Disruption to aquatic invertebrate populations caused by attracting species to the site due to confusing solar panels with bodies of water.
- Disruption of bats and birds using the order limits site due to operational lighting.
- Disturbance of sensitive species during maintenance activities.
- Fragmentation of habitats by fencing.

Potential beneficial impacts identified by the applicant during the operation of the proposed development included:

- Increase in flora diversity and associated invertebrate usage of flora.
- Increase in foraging species due to growth in invertebrate populations.
- Increase in species due to absence of human disturbance from agricultural use.
- Reduction in artificial agricultural inputs to the system resulting in watercourse and habitat improvements.

3.3.25. During the operational phase of the proposed development, activity on the principal site would be minimal with vegetation management and periodic servicing and maintenance of equipment taking place. Solar panels would also be cleaned with clean water once a year.

3.3.26. There would be approximately 10-12 permanent staff and no part of the proposed development would be continuously lit.

### Decommissioning phase

Prior to decommissioning, field surveys are proposed to establish the ecological baseline at the end of the development lifespan. Above ground infrastructure would be removed from site and the land within the order limits would be returned to their original landowners. The condition of the principal site would be restored to that prior to construction of the proposed development, except where this would impact new and established habitats.

## Mitigation

3.3.27. The design of the proposed development has evolved to avoid all sites statutorily designated for their biodiversity importance. Measures have been proposed to avoid or minimise impacts on sites that are non-statutorily designated.

3.3.28. Buffers to the following key habitat features have been proposed and are defined within the proposed FCEMP [REP5-015] secured by R12 in rDCO:

- Woodland – at least 15m
- All trees within hedgerows and individual trees – defined root protection areas
- Watercourses – at least 10m from top of bank
- Standing water – at least 20m
- Hedgerows – at least 5m

3.3.29. Habitat enhancement proposals are also included within the FLEMP, secured by R7 in the rDCO, to provide additional habitat area for species including ground nesting birds.

3.3.30. Vegetation clearance would be undertaken in advance of construction and timed appropriately to avoid disruption to nesting birds and other species assumed to be at the site.

3.3.31. The site security perimeter fencing will include gaps for the passage of mammals to transit the site, and these gaps will be limited in areas of ground nesting birds to avoid predation.

3.3.32. Construction lighting will be used as and when required but designed to minimise spill into habitats.

3.3.33. Principal watercourse and the majority of smaller watercourse crossings will be undertaken using non-intrusive trenchless techniques. These working sites will be situated at least 10m from the water's edge to minimise the risk of pollution into the watercourse. Approximately eighteen minor watercourse crossings will be undertaken using open cut techniques and these sites will be surveyed prior to works to establish a baseline to restore to after the works are completed.

Prior to construction commencing walkover surveys will be undertaken to comply with relevant wildlife legislation and ensure reasonable avoidance measures can be implemented to avoid disturbance to any extant badger or bat species

## ASSESSMENT OF LIKELY IMPACTS AND EFFECTS

3.3.34. The applicant has assessed the potential impacts and effects of the proposed development on the relevant ecological features, habitats and species and considered them in line with the mitigation measures they have proposed in the relevant framework plans.

3.3.35. They have identified that there could be a medium magnitude of impact on hedgerows during construction and a high magnitude of impact on skylark population due to loss of breeding habitat during construction, but that these overall are minor adverse effects in the context of their overall significance.

3.3.36. They have concluded that they consider there is no potential for significant effects on ecology or biodiversity arising from the proposed development.

3.3.37. Nevertheless, the applicant has proposed a series of additional mitigation and enhancement measures to increase biodiversity net gain at the site, including woodland planting, new hedgerows, provision of scrub, species rich grassland under solar panels, pond restoration and planting around ponds, provision of habitat boxes and creation of habitat piles.

## ISSUES CONSIDERED DURING THE EXAMINATION

3.3.38. Prior to the examination opening the following parties made their views known to the us during the relevant representation period.

3.3.39. Natural England (NE) [RR-208] advised that, overall, they were satisfied that the proposed development addressed the majority of the potential impacts identified to the natural environment. They did request that the Examining Authority specifically consider the impact on Internationally Designated Sites.

3.3.40. The Environment Agency (EA) [RR-093] noted initially some slight discrepancies with the calculation of the BNG and asked for these to be addressed. They also raised concerns regarding the EMF generated by the cables and the impact that

these might have on migratory fish within the River Trent. They did consider this would be a low risk, but asked for the applicant to monitor fish migration during the operation of the scheme and help develop research in this area to assess the potential impacts that may have occurred.

3.3.41. The Forestry Commission [RR-097] requested that consideration be given to the danger of fragmentation of woodlands by the proposed development and highlighted that some woodland areas within the order limits that had been established by grant from the Forestry Commission.

3.3.42. LCC [RR-165] acknowledged the surveys the applicant had undertaken and that they had worked collaboratively with developers of other nearby large scale solar developments. They also acknowledged that potential impacts are permanent and temporary, loss and damage to priority habitats, and protected and priority species. LCC highlighted the reliance on a package of mitigation and enhancement works that would be secured within the rDCO by the FCEMP, FOEMP and FDEMP. LCC also acknowledged the applicant's commitment to BNG and the quantities that were proposed.

3.3.43. WLDC [RR-328] asked for biodiversity and ecology to be considered as one of the principal issues throughout the examination.

3.3.44. Springthorpe [RR-284], Glentworth [RR-109] and Stow Parish [RR-292] councils also raised their concerns at relevant representation stage specifically of the potential for impacts on existing habitats and species at the site.

3.3.45. 7000 acres [RR-001] initially challenged the assessment undertaken by the applicant and advised that they considered it was not thorough enough and specifically did not consider disruption during construction or noise during operation impacts on ecology.

3.3.46. In total, 75 RRs received out of a total of 355 were raising concerns with regards to the potential for the development to have an impact and effect on biodiversity and ecology.

3.3.47. LIRs were also received from the Local Authorities at D1A. These generally agreed with the identification of the site designation and location of adjacent designated sites. They also highlighted the respective ecological policy content from their respective local plans. They also identified some areas where further information in respect to specific surveys for species and potential impacts on species were requested.

3.3.48. The issue of biodiversity and ecology was raised at various points during the examination including the holding of an issue specific hearing ISH3 [EV1-005] and raising the issue through the exchange of 3 rounds of written questions [PD-009] [PD-011] [PD-012].

3.3.49. The specific issues where further information was sought related to

- The effect of the proposed development on wildlife at the site throughout the life of the development and beyond.
- The effect of the proposed development on woodland and hedgerows at the site throughout the life of the development and beyond.
- The potential for electromagnetic field effects on migratory aquatic and terrestrial life.

- The measures proposed to deliver and maintain biodiversity net gain throughout the life of the project and after its decommissioning.

3.3.50. During the hearing (ISH3) questions were raised as to the significance of the wildlife species that been recorded at the site, how species populations might change throughout the life of the proposed development; and clarification of specific written questions from IPs relating to extents of surveys for species within the principal site, CRC and adjacent boundary sites.

3.3.51. The applicant addressed these questions in writing [REP4-049] clarifying the extent of species noted at the site and the relevant mitigation measures put in place to address each type.

3.3.52. With regards to the potential for electromagnetic field interference from the buried electrical cable under the River Trent and the potential for disrupting the navigation of migratory fish, the applicant advised on the safe distances for cable proximities adjacent to humans and advised that the proposed distances between the bed of the river and the top of the cables were significantly in excess of this. However, notwithstanding this, the applicant proposed a scheme of monitoring to establish any impacts on fish migration during operation and sought EA and NE's approval for the proposed monitoring arrangements.

3.3.53. WLDC [REP1A-003] did request further information with regards to potential impacts on ground nesting birds and bat populations in the vicinity of the site, but over the course of the examination these issues were resolved to WLDC's satisfaction [REP5-061].

3.3.54. The EA [REP2-009] requested details of any riparian mammal survey undertaken on the cable corridor route and challenged that even with the depth of burial of the electrical cable under the river there was no supporting evidence to establish that there would be no impact on migratory fish. With regards to the potential for electromagnetic field interference from the buried electrical cable under the River Trent and the potential for disrupting the navigation of migratory fish, the applicant advised on the safe distances for cable proximities adjacent to humans and advised that the proposed distances between the bed of the river and the top of the cables were significantly in excess of this. However, notwithstanding this, the applicant proposed a scheme of monitoring in conjunction with a local university to establish any impacts on fish migration during operation and received the EA's [REP6-057] and NE's [REP6-044] approval for the proposed monitoring arrangements.

3.3.55. NE [REP3-071] did not have a specific view with regards to protected and non-protected wildlife species at the site as they were not directly associated with any designated site. However, they did advise that relevant licenses would need to be sought should protected species be encountered and need to be addressed.

3.3.56. 7000 Acres [REP2-023] raised concerns as to the potential for impacts from the development on birds of prey if their food source was impacted by a change in the existing habitat and potential for the risk of impact on bat populations arising from solar developments. In addition, they raised questions as to the potential impact of the proposed development on deer and swan populations which were known to use the existing site. We noted the presence of a lone deer crossing the road and into woodland within the order limits during our first site inspection [EV2-001].

3.3.57. The applicant addressed these concerns at D3 [REP3-063] and advised that ground nesting bird populations are likely to increase due to the absence of cultivation of

the principal site and consequently support bird of prey populations. The applicant also highlighted research on the potential impact of solar developments on bat populations due to the species mistaking panels for bodies of water and shifting their hunting patterns there to search for invertebrate prey. The research highlighted this was a low risk and principally focused on those solar developments adjacent to large bodies of water which this proposed development is not.

### Cumulative effects

3.3.58. WLDC consider that the cumulative impacts of the proposal in conjunction with the other approved solar development NSIPs in the area will potentially have an impact on the biodiversity and ecology of the area. The potential for the construction works to take place concurrently they felt could lead to large areas of existing habitat being displaced prior to its restoration.

3.3.59. We acknowledge this but note that it would not be possible to dictate to other previously authorised developments the timings of their relative construction programmes. However, we requested and received from the applicant a proposed cumulative construction programme, and this proposed a range of concurrent and overlapping construction programme scenarios for the proposed development and the adjacent NSIPs. The applicant assessed the potential cumulative effects for the worst-case scenario of all of the sites undergoing construction concurrently and the potential impacts on biodiversity and ecology. This was considered to be no worse than that previously assessed. We also sought to ensure the Framework plans linked to the planned construction works would require local authority approval via R7, R12 and R13 of the rDCO before commencement to ensure this issue could be foreseen, planned for and avoided.

### CONCLUSIONS

3.3.60. We have reached the following conclusions in relation to biodiversity and ecology:

- → The principal statutory regulators and bodies with responsibilities for enforcement and monitoring of ecological and biodiversity measures are generally satisfied with the approach the applicant has taken
- → There will be buffer strips to existing natural habitats and protection of existing habitats with the exception of those trees and hedgerows affected by access formation. A comprehensive and effective system of mitigation is included in the FCEMP [REP5-015], FOEMP [REP6-027], FDEMP [REP5-017] and FLEMP [REP6-022]. These would be secured through rDCO R12, R13, R21 and R7 respectively.
- → The principal site area is predominately currently used for arable agricultural production with periodic ploughing, cultivation and harvesting. The proposed change to an area predominately covered with solar panels will lead to replacement of this arable land with grassland albeit shaded by the solar panels.
- → The CRC will be restored to its prior condition on completion of the to the works.
- → In addition, a generous biodiversity net gain plan has been proposed to increase biodiversity at the site above the existing measures.
- → The proposed development has the potential to result in significant residual effects on biodiversity and ecology during construction if the transitional

arrangements for wildlife are not established in advance or considered cumulatively with other developments. The risk of this has been minimised and mitigated by the requirements in the rDCO and the overview of the LCC and WLDC who will be able to agree the programme and phasing within the FCTMP to ensure that adjacent projects do not conflict and give rise to cumulative effects.

→ We agree with the applicant that the proposed development would likely have moderate beneficial residual effects on biodiversity and ecology during the operational phase of the proposed development. However, we consider that the BNG provisions and extent of habitat provision mean that this enhancement of the local biodiversity and ecology may be further enhanced.

→ The proposed development therefore complies with the relevant provisions of the NPSs, the NPPF and relevant development plan policies in relation to biodiversity and ecology.

→ Given the above measures secured in the rDCO and the opinions of the statutory nature conservation bodies, we are of the opinion that the development is likely to result in a net improvement in the long-term biodiversity and ecology of the site, and consequently we ascribe moderate positive weight in favour of making the development consent order.

## 3.4. CUMULATIVE AND IN-COMBINATION EFFECTS

### INTRODUCTION

3.4.1. The applicant's assessment of cumulative and in-combination effects is included at ES chapter 18 [REP6-013].

3.4.2. Cumulative effects are considered on a topic-by-topic basis under each of the relevant planning issues. This section therefore focuses on the applicant's methodology and assessment of in-combination effects.

3.4.3. In-combination effects are the impacts that occur when a single receptor is affected by multiple environmental impacts from a project, potentially intensifying the overall impact. For example, where one receptor may experience two environmental effects which aren't 'significant' in isolation but those effects combined would have a 'significant' effect on that receptor. The applicant refers to these effects as 'effect interactions' at ES section 18.5.

### POLICY BACKGROUND

3.4.4. NPS EN-1 states that, in considering any proposed development, the SoS should take into account cumulative adverse impacts (paragraph 4.1.5). Paragraph 4.2.12 states that applicants should consider the cumulative impacts of multiple developments with residual impacts.

3.4.5. NPS EN-3 states that applicants may choose to site development based on nearby available grid export capacity (paragraph 2.10.25). Paragraph 2.10.26 outlines that, where this is the case, applicants should consider the cumulative impacts of situating a solar farm in proximity to other energy generating stations and infrastructure.

3.4.6. NPS EN-3 outlines that the approach to assessing cumulative landscape and visual impact of large-scale solar farms is likely to be the same as assessing other onshore energy infrastructure (paragraph 2.10.94).

3.4.7. The NPPF sets out that cumulative impacts should be considered in relation to various environmental impacts of development.

3.4.8. The LIRs [REP1A-001 to REP1A-005] and Appendix A of this report set out the relevant development plan policies.

## THE APPLICATION

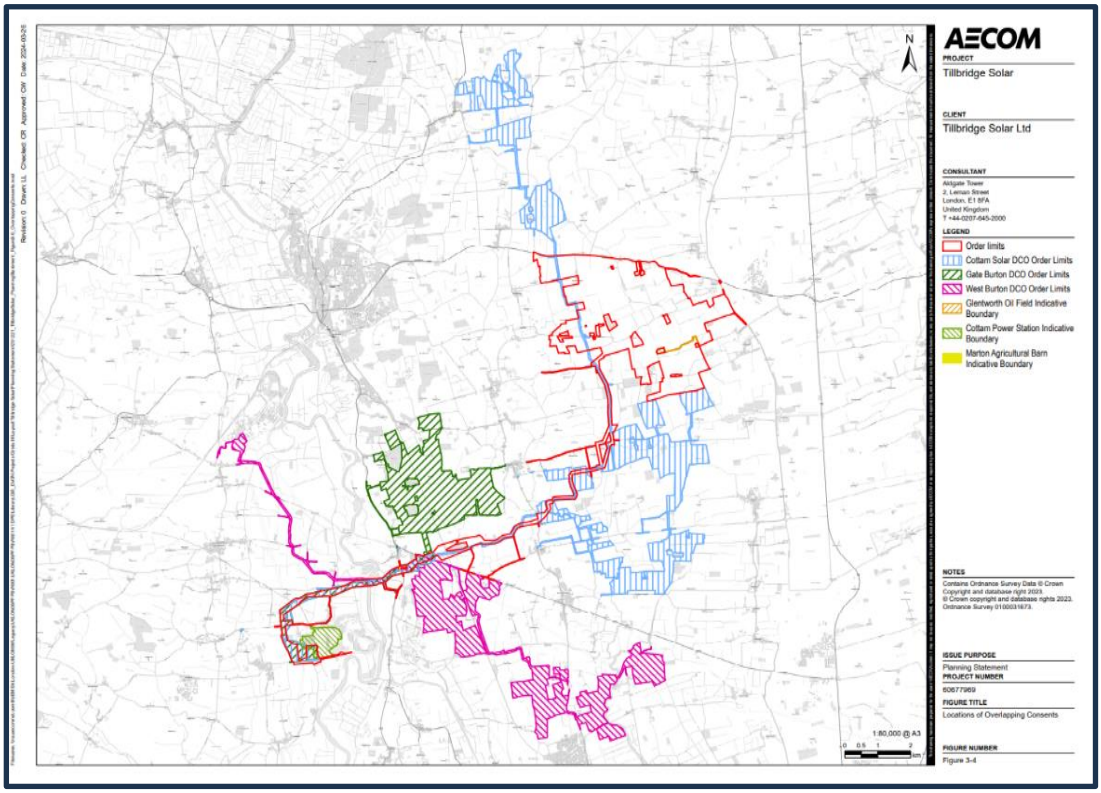
### Methodology for cumulative effects

3.4.9. The applicant identified a shortlist of developments to be considered as part of the assessment of cumulative effects, ES chapter 18.4 sets out the four-stage process adopted by the applicant.ES appendix 18-1 [APP-124] provides a full list of cumulative developments considered in that process.

3.4.10. Each environmental topic has been assigned a different ZOI based on industry guidance. As such, the list of cumulative developments is different for each topic.

3.4.11. Figure 5 below is an extract of ES figure 18-1a [APP-203], which shows other developments and buffer zones to illustrate different ZOIs.

**Figure 5: Cumulative developments[8]**




[8] Source: ES figure 18-1a [APP-203]

3.4.12. Generally, each topic considers the cumulative effect of the proposed development with the other three nearby solar DCO developments (Cottam, West Burton and Gate Burton), with other projects considered depending on the ZOI adopted. In relation to the other three solar DCO developments, ES paragraph 18.4.28 sets out that two scenarios have been assessed for the shared CRC construction. Scenario 1 assumes that the CRC works would be undertaken in 24-36 months, whilst scenario 2 assumes a 5-year construction period.

3.4.13. The applicant's assessment of cumulative effects is included in ES chapters 18.7 to 18.18 and is presented on a topic-by-topic basis.

**In-combination effects**

3.4.14. ES paragraph 18.4.4 [REP6-013] explains that, where residual effects have been identified for a particular EIA topic, these have been considered in the effect interactions, provided the effect is of 'minor significance' or greater.

3.4.15. ES table 18-3 [REP6-013] identifies that there are two types of receptor which have potential to experience effect interactions. These include neighbouring residential properties and non-motorised user routes. ES section 18.5 includes the applicant's assessment of effect interactions on these receptors.

3.4.16. ES table 18-7 sets out potential effect interactions during construction and decommissioning. ES paragraph 18.5.5 summarises that a residual moderate adverse (significant) effect has been identified on 'Hermitage Low Farmhouse, Common Lane (residential receptor)', and on 'non-motorised users of A631 and School Lane'. The former would experience adverse noise, air quality and landscape/ visual effects, which when combined would be 'significant'. The latter would experience adverse noise, landscape/ visual and transport effects, which when combined would be 'significant'.

3.4.17. ES table 18-8 sets out the potential effect interactions during the operational phase of the proposed development. This table identifies 7 residential receptors that would experience moderate adverse (significant) effects. In all cases, these relate to the combination of landscape/ visual and noise effects. In all cases, the landscape and visual effects in isolation would be significant and are added to by noise effects which would otherwise not have been significant if considered in isolation. In all cases, by year 15 - once landscape and planting proposals have matured - the effect interactions would be reduced to either moderate adverse or slight adverse, both of which are 'not significant' effects.

## ISSUES CONSIDERED DURING THE EXAMINATION

3.4.18. Cumulative effects were a significant issue of contention between the applicant, local authorities and interested parties during the examination. Nearly all of the representations made relate to the cumulative effects as opposed to in-combination effects or the methodology adopted. Cumulative effects are addressed in detail under the different planning issues. The methodology and the applicant's assessment of in-combination effects are considered here.

**Methodology**

3.4.19. WLDC's LIR [REP1A-005] refers to a 'decade' long cumulative construction period. During ExQ1 [PD-009] we asked WLDC to explain the basis for this assumption, bearing in mind the applicant's worst-case assumption of a five-year construction period.

3.4.20. In response, WLDC [REP3-067] asserts that a simple 'staggering' of development periods within the 5-year periods for each DCO could lead to construction activity occurring up to 2033. WLDC also states that there is no control over the commencement of construction, aside from that it must occur within 5 years of the Orders coming into force.

3.4.21. In response [REP3-062], the applicant outlines that such a long construction period is unlikely, given that this would mean delaying the start of construction on three of the schemes by years following consent, with the last starting construction 9 years after consent. The applicant also emphasises that much of the CRC would likely be shared with the other solar DCO developments, all of which were assessed on the basis of a maximum five-year worst-case scenario cumulative construction period.

3.4.22. 7000 Acres response to ExQ1[REP3-092]raised concerns in relation to the assumptions applied by the applicant for the cumulative construction period. Its response outlines that based on the 'NESO tec register' the earliest grid connection date is 01 August 2028 with the last project having a connection date of 31 October 2029. 7000 Acres asserts that if the completion dates are aligned with these grid connection dates, there would be an entirely different construction sequence for the projects in comparison to that set out in the applicant's two scenarios.

3.4.23. In response [REP4-048], the applicant asserts that changing the start dates and elongating the construction period would lead to lower cumulative effects, because construction peaks would not overlap.

*3.4.24.* In its RR [RR-001], 7000 Acres outlined that, due to the unprecedented nature of this development and the significant impact on the area and communities, all NSIP solar projects need to be considered together by the Planning Inspectorate and SoS. 7000 Acres asserts that this list should include other schemes in earlier stages of planning in the surrounding area, such as 'One Earth Solar Farm' and 'Steeple Solar'.

*3.4.25.* In response [REP1-0028], the applicant refers to the cumulative assessment at ES chapter 18 and also states that no significant cumulative effects with One Earth Solar Farm have been identified.

*ExA considerations*

3.4.26. We consider that the applicant's methodology is acceptable. In relation to cumulative construction periods, we note that the assumptions applied by the applicant are in line with those applied and assessed for the other three solar DCO developments. We agree with the applicant's assertion that a longer, more staggered, cumulative construction period would likely lead to lower overall effects in any case.

3.4.27. We are also satisfied with the applicant's staged approach to identification of cumulative developments. We note that this included consideration of both One Earth Solar Farm and Steeple Solar Farm (APP-124).

**In-Combination Effects**

*ExA considerations*

3.4.28. There were no substantive representations made in relation to the applicant's assessment of in-combination effects (referred to by the applicant as 'effect

interactions') at ES tables 18-7 to 18-8. In the absence of any evidence to the contrary, we concur with the conclusions reached by the applicant.

### CONCLUSIONS

3.4.29. The applicant's methodology for the assessment of cumulative and in-combination effects is acceptable. Cumulative effects are considered under each respective planning issue in this report. We have reached the following conclusions with regard to in-combination effects:

- → The applicant's cumulative assessment methodology and assessment of in-combination effects both comply with NPS EN-1 and NPS EN-3, the NPPF, the NPPG and relevant development plan policies.
- → We agree with the applicant that there would be moderate adverse (significant) in-combination effects during construction on one residential receptor and one non-motorised user route receptor.
- → We agree with the applicant that there would also be 7 residential receptors that would experience moderate adverse (significant) in-combination effects during the operational phase (up to year 15 of operation).
- → In all cases, these in-combination effects primarily derive from significant landscape effects which are added to by other effects. As such, to avoid double counting adverse effects we consider that 'a little' negative weight can be afforded to these effects over and above that already considered for each respective planning issue in this report. Policy compliance or otherwise is also considered under the respective planning issues of this report.

## 3.5. HISTORIC ENVIRONMENT

### INTRODUCTION

3.5.1. This section considers the effects of the proposed development on the historic environment. The heritage planning balance to be applied in consideration of this application is undertaken at section 5 of this report.

### POLICY BACKGROUND

3.5.2. NPS EN-1 paragraph 5.9.9 outlines that applicants should undertake an assessment of any likely significant heritage impacts on heritage assets and explain how the mitigation hierarchy has been applied. The assessment should include consideration of cumulative effects and the effect on historic landscapes.

3.5.3. NPS EN-1 also emphasises that the assessment should take into account the contribution to the significance of heritage assets made by their settings. The level of detail should be proportionate to the importance of the assets affected. Where there is potential archaeological interest, applicants should include a desk-based assessment and, where appropriate, a field evaluation (paragraphs 5.9.10 and 5.9.11).

3.5.4. In terms of mitigation, EN-1 outlines that the ability to record evidence of the asset should not be a factor in deciding whether such a loss should be permitted, and whether consent should be given (paragraph 5.9.16). However, where the loss of the whole or part of a heritage asset's significance is justified, the SoS will require the applicant to record and advance understanding of the significance of the heritage asset before it is lost (wholly or in part) (paragraph 5.9.17).

3.5.5. NPS EN-1 paragraph 5.9.21 states that where there is a high probability (based on an adequate assessment) that a development site may include, as yet undiscovered heritage assets with archaeological interest, the SoS will consider requirements to ensure appropriate procedures are in place for the identification and treatment of such assets discovered during construction.

3.5.6. NPS EN-1 paragraph 5.9.23 states that the SoS must comply with the requirements set out in the Infrastructure Planning (Decisions) Regulations 2010. Regulation 3 requires the SoS to have regard to desirability of: preserving a listed building or its setting or any features of special architectural or historic interest which it possesses; preserving or enhancing the character or appearance of a conservation area; and preserving an affected scheduled monument or its setting.

3.5.7. NPS EN-3 reflects the policies contained within EN-1. In addition, in relation to ground-mounted solar, paragraph 2.10.109 states that below ground impacts, although generally limited, may include direct impacts on archaeological deposits through ground disturbance associated with trenching, cabling, foundations, fencing and temporary haul routes. However, paragraph 2.10.11 acknowledges that solar PV developments may have a positive effect, for example archaeological assets may be protected by a solar PV development, because the site is removed from regular ploughing.

3.5.8. In relation to mitigation, NPS EN-3 paragraph 2.10.137 outlines that the ability of the applicant to microsite specific elements of the proposed development during the construction phase should be an important consideration for the SoS when assessing the risk of damage to archaeology. Paragraph 2.10.138 outlines that the SoS should consider allowing flexibility in micrositing where unforeseen circumstances may arise, such as the discovery of unknown archaeology.

3.5.9. NPS EN-3 paragraph 2.10.160 states that the SoS should consider the length of time for which consent is sought when considering the impacts of any indirect effect on the historic environment, such as effects on the setting of designated heritage assets.

3.5.10. NPS policies relevant to the heritage balance are included at section 5 of this report.

3.5.11. NPPF paragraphs 215 and 216 broadly reflect the requirements in NPS EN-1 with regard to balancing the effects of a proposal on designated assets and NDHA against its benefits.

3.5.12. The LIRs [REP1A-001 to REP1A-005] and Appendix A of this report set out the relevant development plan policies, which generally accord with the NPS policies outlined above.

**THE APPLICATION**

3.5.13. ES chapter 8 [APP-039] sets out the applicant's assessment of the effect of the proposed development on cultural heritage during construction, operation and decommissioning. In addition, the applicant has undertaken an assessment of the cumulative and in-combination effects at ES chapter 18 [REP6-13].

3.5.14. ES chapter 8 is supported by a large number of technical appendices and figures, as well as information in other ES chapters. These documents are listed at ES paragraphs 8.1.3 to 8.1.5.

3.5.15. In particular, a Cultural Heritage Desk Based Assessment (DBA) is included at ES appendix 8-2 [APP-059].

**Methodology and baseline**

3.5.16. The full methodology for the assessment of cultural heritage effects is set out at ES chapter 8.4 [APP-039]. The assessment has been undertaken adopting the principles of the 'Rochdale Envelope' whereby the maximum (and where relevant, minimum) parameters for the principal site and CRC are applied on a worst-case scenario basis to determine significance of effect. The assessment assumes that construction activities could take place anywhere within the CRC order limits, and - where the Works Plans [REP6-004] allow for - within the principal site.

3.5.17. The Cultural Heritage DBA [APP-059] has been informed by a programme of archaeological field evaluation. This comprised geophysical surveys of the principal site and targeted geophysical surveys within the CRC, followed by trial trench evaluation of the principal site. Only two fields (Fields 16 and 127) could not be trial trenched due to access or crop constraints. During the geophysical survey of the principal site, only five fields (Fields 27, 30, 82, 93 and 120), totalling approximately 23ha were unavailable for survey due to overgrown crops or access constraints. Within the CRC approximately 29.84ha of the 76.24ha of land selected was unable to be surveyed due to access constraints, crops, and water-logged ground conditions.

3.5.18. Planning Statement [REP3-027] appendix c is a 'Heritage Harm Statement'. Table 1 of this statement sets out the level of harm which would arise to heritage assets as a result of the proposed development. The level of harm is expressed within the terms of NPS EN-1 and the NPPF.

3.5.19. In terms of the baseline conditions, there are no World Heritage Sites, Registered Battlefields, or Protected Wrecks within the order limits or within a 5km radius. In addition, there are no designated heritage assets comprising scheduled monuments, listed buildings, and conservation areas within the order limits. Within 3km of the order limits, there are 186 designated heritage assets. These comprise:

- 17 scheduled monuments.
- 4 conservation areas (Glenworth, Hemswell, Springthorpe and Fillingham).
- 163 listed buildings (15 Grade I, 11 Grade II* and the remainder Grade II).
- 2 Grade II Registered Park and Gardens (Fillingham Castle and Norton Place).

3.5.20. The ES [APP-039] outlines that there are a total of 422 NDHA recorded within 1km radius of the order limits (excluding findspots), with 55 located within the principal site and 23 within the CRC. These include but are not limited to, monuments, archaeological sites and buildings. The applicant considers that there is potential for unknown archaeological remains, deposits, scatters and artefacts within and adjacent to the order limits.

3.5.21. The applicant concludes that the historic landscape character within the order limits is predominantly agricultural, with elements of medieval open fields and early enclosure surviving within the later enclosure fields of the 18th and 19th centuries. Within Lincolnshire, the order limits are located within two historic landscape character zones, with the majority located within historic landscape character zone 'NCL3: The Northern Cliff' and the eastern edge located within historic landscape character zone 'TVL:1 The Trent Valley'. Within Nottinghamshire, the CRC passes through five historic landscape character types. In addition, a total of 30 historic

important hedgerows and one potentially important hedgerow are located within the order limits.

**Mitigation**

3.5.22. The proposed development would include embedded mitigation measures to minimise impacts to heritage assets before and during the construction and decommissioning of the proposed development. These are set out within the FCEMP [REP5-015] and FDEMP [REP5-017]. These measures include but are not limited to: siting haulage and access routes away from sensitive receptors; use of low noise generators; careful placement of security and work lights to minimise light spill; and sympathetic screening of works.

3.5.23. Other embedded design measures include:

- Changing the order limits in the north-eastern corner of the principal site, removing two fields completely from the proposed development to avoid impacts upon the scheduled monument Harpswell Hall (National Heritage List for England (NHLE) 101906).
- Removal of solar panels from two fields west of the scheduled monument at Harpswell Hall (NHLE 1019068) to mitigate impacts upon heritage and landscape, in fields 108 and 109.
- Removal of solar infrastructure from field 124 north of Kexby Road and west of Northlands Road to mitigate heritage impacts relating to the setting and views from Glentworth Hall (NHLE 1063348) and the non-designated historic farmstead Glentworth Grange (MLI118040).
- A 20m buffer zone in which no construction activity would take place would be established along the northern side of the Fleet Plantation scheduled monument (NHLE 1008594).
- The use of Horizontal Directional Drilling (HDD) to install the high-voltage (HV) cables rather than open cut trenching for the avoidance/preservation of buried peat deposits (MNT27156) of potential Neolithic date within the floodplain of the River Trent.
- The use of trenchless crossing rather than open cut trenching to avoid impacts to the extensive complex of Iron Age and Romano-British enclosures, field system and trackway (MNT4983; AEC032) east of Cow Pasture Lane, Cottam.

3.5.24. In respect of surface earthworks and buried archaeological remains, embedded mitigation within the principal site would include the establishment of 26 sensitive archaeology sites (see figure 3-1 of this ES [REP6-019]) which have been excluded from areas for the siting of the proposed development to preserve the archaeological remains.

3.5.25. The sensitive archaeology sites would be secured by Work No. 11 at Schedule 1 to the final dDCO [REP7-004]. The selection of each sensitive archaeology site has been guided by the baseline and survey data, with the extent of each site based on the results of the trial trench evaluation.

3.5.26. An Archaeological Mitigation Strategy (AMS) [REP1-025] has also been produced which would be secured through rDCO R11 [REP7-004].

**ES conclusions on construction effects**

3.5.27. Before considering additional mitigation, the applicant concludes that there would be significant effects on six NDHA. They are:

- Undated enclosure (AEC024).
- Cropmark and Earthwork Features (AEC043).
- Winter Camp of the Viking Great Army at Torksey (MLI125067).
- Iron Age or Romano-British Enclosure Complex (AEC031; MNT15983).
- Cropmark Complex (MNT4983; AEC032 and AEC033).
- Romano-British Settlement (AEC035).

3.5.28. In all cases, the effect prior to additional mitigation is assessed as 'moderate adverse (significant)'. However, with the implementation of the programme of additional mitigation the applicant concludes that the residual effects in all cases would be 'minor adverse (not significant)', as set out in ES table 8-12 [APP-039].

**ES conclusions on operational effects**

3.5.29. The applicant concludes that there would be no significant effects arising on heritage assets as a result of security lighting with motion detectors, operational noise, traffic for operational access and glint and glare.

3.5.30. The applicant also outlines that it is not expected that the operation of the proposed development would result in any intrusive ground activities. As such, no further physical impact to the archaeological resource is identified during the operational phase of the proposed development.

**ES conclusions on decommissioning effects**

3.5.31. The applicant has not identified any significant effects during the decommissioning phase of the proposed development [APP-039]. The applicant concludes that there is the potential for temporary setting impacts during the removal of the solar infrastructure. However, the applicant does not anticipate that these effects would be any worse than those assessed for the construction phase.

3.5.32. Furthermore, the applicant asserts that the decommissioning impacts would be temporary and the duration of these impacts would likely be shorter than during construction, with a worst case 24-month decommissioning period assumed. The applicant outlines that, upon completion of decommissioning, the long-term adverse effects from the proposed development will have been reversed and will no longer exist.

**ES conclusions on historic landscape character effects**

3.5.33. ES Appendix 8-2 [APP-039] provides an assessment of the historic landscape character within the order limits, with individual historic landscape character zones and types shown on ES figure 8-5 [APP-161]. ES paragraph 8.9.44 concludes that the construction of the proposed development within the principal site would result in the long-term change of land-use from intensive agriculture to solar renewable energy generation.

3.5.34. Despite this, the ES concludes that the proposed development preserves the pattern, layout, key boundaries and features of the historic landscape, enabling the grain of the two historic landscape character zones (HLCZ NCL3 and HLCZ TVL1) to retain their coherence, time depth and legibility. The applicant concludes that there would be a low magnitude of impact on historic landscape character zones, resulting in a long-term minor adverse effect which is 'not significant'.

3.5.35. In relation to the CRC, ES paragraph 8.9.445 concludes that, due to the limited construction period, elements of the historic landscape character zone and historic

landscape character types within the order limits would experience a very low magnitude of impact. The applicant asserts that this would result in a negligible adverse significance of effect which is 'not significant'.

**ES conclusions on historic important hedgerow effects**

3.5.36. ES paragraph 8.9.54 [APP-039] concludes that, before reinstatement, the temporary removal of hedgerows in the CRC would result in a negligible (not significant) effect. The applicant asserts that hedgerows will be reinstated where they have been removed during construction in the principal site, resulting in a negligible (not significant) effect. In instances where hedgerows are not reinstated, the applicant concludes that effects would be minor adverse (not significant). Hedgerow re-instatement would be secured through the LEMPs controlled through rDCO R7.

**Cumulative effects**

3.5.37. The assessment contained in ES chapter 18 includes a consideration of the cultural heritage effects of the Gate Burton, Cottam and West Burton solar developments as well as the hydrocarbon wellsite development in Glentworth. ES chapter 18 [REP6-013] includes an assessment of cumulative effects on cultural heritage. ES paragraphs 18.9.1 to 18.9.14 conclude that there would be no significant cumulative cultural heritage effects during any phase of the proposed development.

**Less than substantial harm and the heritage balance**

3.5.38. Planning Statement appendix C table 1 [REP3-028] identifies 17 heritage assets which would be subject to 'less than substantial harm' within the terms expressed in NPS EN-1 and the NPPF. These are:

- Harpswell Hall (Scheduled Monument, NHLE 1019068) - Temporary and long-term change of setting and alteration of views.
- Moated Manorial Complex at Elm Tree Farm (Scheduled Monument, NHLE 1016920) - Temporary and long-term change of setting.
- Medieval Bishop's Palace and Deer Park, Stow Park (Scheduled Monument, NHLE 1019229) - Temporary and long-term change of setting.
- Roman fort, south of Littleborough Lane (Scheduled Monument, NHLE 1004935) – Temporary change of setting.
- Segelocum Roman Town, Littleborough (Scheduled Monument, NHLE 1003669) - Temporary change of setting.
- Fleet Plantation Moated Site (Scheduled Monument, NHLE 1008594) - Temporary change of setting.
- Church of St Chad (Grade I listed building, NHLE 1309029) - Temporary and long-term change of setting and alteration of views.
- Glentworth Hall (Grade II* Listed Building, NHLE 1063348) - Temporary and long-term change of setting and alteration of views.
- Corringham Windmill (Grade II listed building, NHLE 1359417) - Temporary and long-term change of setting and alteration of views.
- Church of St Margaret of Antioch, Marton (Grade I Listed Building, NHLE 1359484) Temporary change of setting.
- Group of listed assets (Grade II Listed Buildings) in Marton – Cross (NHLE 1146582) 25 Gainsborough Road (NHLE 1308917) Thornleigh House (NHLE 1359485) Wapping Lane Farmhouse (NHLE 1146611) Berfoston Cottage (NHLE 1064060) Ingelby Arms Public house (NHLE 1064057) – Temporary change of setting.

- Winter Camp of the Viking Great Army at Torksey (NDHA, MLI125067) – Permanent physical impact.

## ISSUES CONSIDERED DURING THE EXAMINATION

3.5.39. Historic England's (HE) SoCG [REP1-032] outlines that the applicant and HE have engaged - both prior to and during the examination - to agree all matters and recommendations raised by HE. The SoCG outlines that HE agrees with the applicant's assessment of cumulative effects and agrees with the conclusions reached Planning Statement appendix c [REP3-028]. The SoCG also confirms that HE agrees to the geoarchaeological approach set out in the applicant's AMS [REP1-025].

3.5.40. In its LIR [REP1A-005] WLDC outlines that there would be no significant cultural heritage effects as a consequence of the proposed development with mitigation applied. WLDC's SoCG [REP6-034] outlines that adverse weight should be afforded to the cultural heritage effects of the proposed development, which (within the range of terms it uses to apply weight) is broadly consistent with the applicant's equivalent assertion that moderate negative weight should be afforded to the cultural heritage effects. WLDC defers to LCC in respect of matters pertaining to archaeology. Cultural heritage is not referred to in WLDC's closing statement [REP7-024].

3.5.41. NCC's LIR [REP1A-002] sets out that the potential impact of the proposed development on the archaeological resource would be significant and adverse, resulting in total or partial loss when archaeological remains are encountered. However, NCC also states that the level of archaeological evaluation and assessment work undertaken to date is sufficient to inform an appropriate AMS. NCC's LIR noted that - at that stage - only a draft version of the AMS had been submitted. However, NCC's SoCG [REP5-031] concludes that subject to the requirements of the DCO, the effect on cultural heritage would be 'neutral'.

3.5.42. During the examination [REP3-065] LCC raised concerns in relation to the effect of the proposed development on Corringham Windmill (a grade II listed building). In relation to other designated heritage assets it deferred to the conclusions of HE [REP1A-001]. In relation to NDHA, LCC objected to the proposed development on the grounds of its effect on various historic farmsteads and their immediate settings [REP1A-001 and REP6-036]. It also raised concerns with the regard to the effect of the proposed development on Winter Camp of the Viking Great Army at Torksey (the Viking winter camp) [REP5-062].

3.5.43. Other IPs raised similar concerns in RR and WR. The applicant summarised and responded to these RR and WR at D1 [REP1-028] and D3 [REP3-063], respectively.

### Designated Heritage Assets

*Corringham Windmill*

3.5.44. Corringham Windmill is a grade II listed building (NHLE 1359417) which is located approximately 200m to the north-west of the principal site, standing in a field visible to the north of the A631. ES paragraph 8.9.87 notes that solar panels are proposed in close proximity (field 1). ES paragraph 8.9.89 concludes that the effect on Corringham Windmill [NHLE 1359417] would be negligible (not significant).

3.5.45. LCC considers that the proposed development would harm the setting of Corringham windmill by altering its southeastern views, transitioning them from a

rural landscape to a semi-industrial character [REP3-065]. The Council recommends that the applicant consider further setbacks to the solar array to reduce the potential harm to this heritage asset.

3.5.46. The applicant's response [REP4-044], states that few of the original features of the windmill remain and asserts that its immediate setting has been diminished due to the demolition of associated mill buildings.

3.5.47. In ExQ1 [PD-009] we asked the applicant to expand on its reasoning for concluding that the windmill's setting is confined to '*the field in which it is located alongside the road and relationship to Corringham*' (ES paragraph 8.9.85).

3.5.48. The applicant's response [REP3-062] outlines that the setting of the structure relates to the field in which it is located, along with its relationship and proximity to Corringham as a wayfinder. The applicant asserts that the windmill's wider agricultural setting, as noted in ES paragraph 8.9.88, has been taken into account in in the assessment.

*Other designated heritage assets*

3.5.49. We raised no substantive questions in relation to other designated heritage assets and this reflects the general consensus in the LIRs that the applicant's assessment of effects on designated heritage assets is accurate.

*ExA considerations*

3.5.50. We accept the applicant's rationale for considering the setting and significance of the grade II listed Corringham Windmill. Whilst we consider that it's setting includes the wider agricultural landscape, including Field 1 within the order limits, we agree that the asset's significance has been diminished through the loss or associated buildings. Nonetheless, we agree with the applicant's conclusion that there would be some harm to the significance of the heritage asset, which would be 'less than substantial' within the terms of NPS EN-1.

3.5.51. We also agree with the applicant's conclusions on the significance of designated heritage assets as set out in the ES and DBA [APP-059]. We note that HE does not raise any objection in this regard. We consider that there would not be any significant effects on designated heritage assets (within EIA terms) as a result of the proposed development.

3.5.52. We concur with the applicant's conclusions in relation to the level of harm which the proposed development would cause to designated heritage assets. In particular we agree with the applicant's conclusions (at Planning Statement appendix C [REP3-027]) that there would be less than substantial harm to the following designated heritage assets by reason of a harmful temporary and/ or long-term change to their settings:

- Harpswell Hall (Scheduled Monument, NHLE 1019068) - Temporary and long-term change of setting and alteration of views.
- Moated Manorial Complex at Elm Tree Farm (Scheduled Monument, NHLE 1016920) - Temporary and long-term change of setting.
- Medieval Bishop's Palace and Deer Park, Stow Park (Scheduled Monument, NHLE 1019229) - Temporary and long-term change of setting.
- Roman fort, south of Littleborough Lane (Scheduled Monument, NHLE 1004935) – Temporary change of setting.

- Segelocum Roman Town, Littleborough (Scheduled Monument, NHLE 1003669) - Temporary change of setting.
- Fleet Plantation Moated Site (Scheduled Monument, NHLE 1008594) - Temporary change of setting.
- Church of St Chad (Grade I listed building, NHLE 1309029) - Temporary and long-term change of setting and alteration of views.
- Glentworth Hall (Grade II* Listed Building, NHLE 1063348) - Temporary and long-term change of setting and alteration of views.
- Corringham Windmill (Grade II listed building, NHLE 1359417) - Temporary and long-term change of setting and alteration of views.
- Church of St Margaret of Antioch, Marton (Grade I Listed Building, NHLE 1359484) Temporary change of setting.
- Group of listed assets (Grade II Listed Buildings) in Marton – Cross (NHLE 1146582) 25 Gainsborough Road (NHLE 1308917) Thornleigh House (NHLE 1359485) Wapping Lane Farmhouse (NHLE 1146611) Berfoston Cottage (NHLE 1064060) Ingelby Arms Public house (NHLE 1064057) – Temporary change of setting.

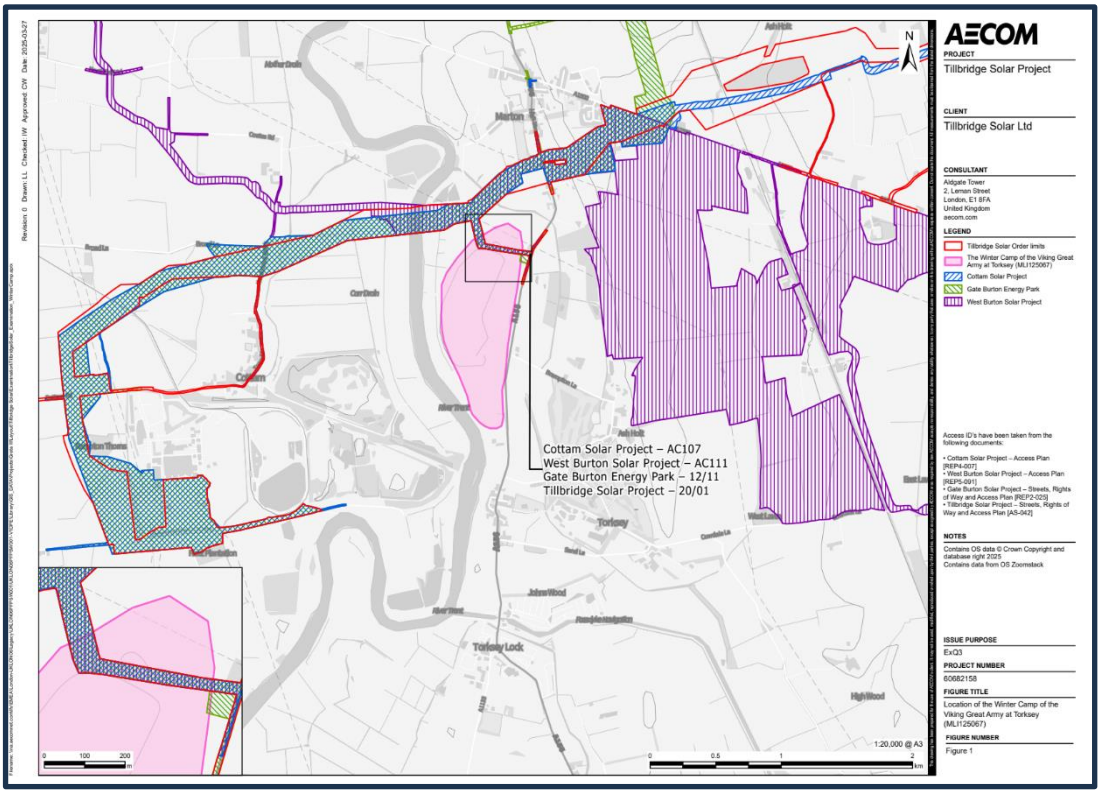
3.5.53. The heritage balancing exercise is undertaken at section 5 of this report.

**Non-designated heritage assets `**

*Winter Camp of the Viking Great Army at Torksey*

The Viking winter camp is a recorded non-designated heritage asset [MLI125067] on the Lincolnshire Historic Environment Record. It is located to the south-west of the village of Marton, on a bluff overlooking the east bank of the River Trent. Figure 6 below shows the location of this heritage asset as recorded in relation to the order limits of the proposed development and other solar developments. However, the applicant has outlined that it is possible that the Viking winter camp covered a larger extent of up to 55ha, as suggested by a multi-year archaeological research project, the Torksey Viking Project [REP5-032].

**Figure 6: Location of mapped extent of Viking winter camp in relation to order limits [9]**




The CRC is located approximately 120m to the north of the mapped extent of the asset but CRC access 6 would cross it. During the examination, the applicant asserted [REP5-032] that access options in this location are heavily constrained. The applicant also emphasised that this access route has already been approved by the SoS in respect of the other three solar DCO projects.

3.5.54. ES paragraph 8.9.415 [APP-039] outlines that the extensive archaeological remains and artefactual evidence associated with the Viking winter camp, although not protected through designation as a scheduled monument, have considerable archaeological and historic interest. It outlines that this asset forms one of a small number of historically documented sites able to provide evidence for how the Viking army functioned and moved through the landscape. The applicant concludes that the value of the asset is derived from its considerable archaeological and historic interest, which have the potential to be of national importance, it is therefore considered to be of high value.

3.5.55. NPS EN-1 paragraph 5.9.6 states that NDHA of archaeological interest, which are demonstrably of equivalent significance to scheduled monuments, should be considered subject to the policies for designated heritage assets. The applicant considers that the Viking winter camp falls into this category and it is therefore of national importance. This means that it is regarded, for the purposes of assessment,

[9] Source: Appendix A of applicant's Response to Examining Authority's Third Written Questions [REP6-054]

as equivalent in heritage value to a designated scheduled monument. Paragraph 5.14 of Appendix C to the Planning Statement [REP3-027] states in full:

*"The construction of the proposed development has the potential to result in the disturbance or loss of a small section of surviving archaeological remains, if they survive within the order limits. This will cause harm to the significance of the asset, but, given the location of the impact towards the periphery of the winter camp and not within the core of settlement activity, as it is currently understood, that harm will be less than substantial with the asset's heritage significance not being significantly lost or altered."*

3.5.56. In ExQ1 [PD-009], we asked LCC whether it agreed with this conclusion. In its response [REP3-065] it stated:

*"LCC is not satisfied that this will cause less than substantial harm. There is no evidence put forward to support such a statement. Torksey Viking Winter Camp is a unique and incredibly important historic and archaeological site and any damage whatsoever to it is substantial harm. The nature of the site is such that there is potential for archaeology of national and even international importance [to] be found and impacted anywhere across the site."*

3.5.57. This conclusion was not presented in LCCs LIR [REP1A-001]. As a result, we asked the applicant and LCC a series of questions in ExQ2 (Q2.7.6 a to e). The applicant's responses were provided in appendix E of its response to second written questions [REP5-032]. In summary the applicant confirmed:

- CRC Access 6 does not require flexibility. As such, there would not be any likely difference in the location of this route when compared to that already consented under the other solar DCOs.
- The issue of less than substantial harm to the Viking winter camp was not considered by the SoS in previous decisions (Gate Burton, West Burton, Cottam) given that in those cases the respective applicants did not identify the NDHA as an asset of national importance.
- Geophysical and non-intrusive surveys did not reveal any conclusive evidence of the Viking winter camp extending into the location of CRC access 6, other than evidence of a north-south aligned medieval or post-medieval ridge and furrow cultivation extending into the order limits. The applicant asserts that this supports its position that the focus of the settlement activity and associated cemetery lie to the southwest of the order limits towards the highest point of the bluff.
- Whilst the proposed development has the potential to disturb or remove possible surviving archaeological remains within the Viking winter camp, the proposed temporary access road would impact a relatively small section of the overall archaeological site.
- The heritage asset is estimated to cover an area of between approximately 26ha and 55ha. Even though the works would cause harm, the harm would not be 'substantial', having regard to the scale of the harm or loss compared to the extent of the asset which would remain preserved and intact.

3.5.58. LCCs responses to ExQ2 Q2.7.6 [REP5-062] are summarised as follow:

- LCCs concern is that harm 'could' be substantial not that it 'would' be. This is because LCC cannot know the full extent and significance of a site until the area is opened up for ground investigation.

- LCC highlights that: "*fortunately in terms of dealing with developmental impacts this is balanced by the nature of archaeological mitigation: LCC are aware of the presence of this very important archaeological site and have agreed that groundworks which may impact the site will be mitigated effectively to allow the archaeology to be investigated and recorded in a manner proportionate to its importance and for the development to move forward."*
- With the information currently provided by the applicant, it is not possible for the SoS to know the degree of harm which would be caused. Until it can be demonstrated that the harm is not 'exceptional' it should be considered on a precautionary basis and should at this stage be treated in the planning balance as 'exceptional'.

3.5.59. The final SoCG between the applicant and LCC [REP6-036] confirms that LCC maintains its position that there is potential for significant archaeology to be found but confirms that it is content that the measures in place would appropriately mitigate the potential impact of the proposed development. The referenced mitigation encompasses the strategy set out in the AMS. In relation to CRC access 6, the AMS (page 171) outlines that mitigation includes stripping, mapping and recording within areas of construction impact. It also sets out various specific research objectives. The 'strip, map and record' mitigation measures are described in detail in AMS table 1 [REP1-025].

*ExA considerations*

3.5.60. As a starting point, it is common ground between LCC and the applicant that the Viking winter camp is a NDHA of at least national importance. NPS EN-1 and the NPPF outline that such assets should be subject to policies for designated heritage assets. In this case, that includes policies relating to scheduled monuments. We agree with this position.

3.5.61. We agree with the applicant's assessment of the significance of the Viking winter camp and the contribution of its setting to that significance, as set out at Planning Statement appendix c [REP3-027]. Evidence suggests that the land was occupied by the Viking Great Army, which likely overwintered there between AD872 and 873. The camp likely consisted of substantial areas of temporary settlement and there is some evidence of metal processing activities occurring on the site. Evidence of a small cemetery overlooking the River Trent has also been identified through previous survey work. The asset is therefore of considerable archaeological and historic interest, particularly given that it is likely that several thousand people temporarily resided there.

3.5.62. The site is positioned on a naturally defensible and prominent landscape feature on the borders of the River Trent, this position and the geography associated with it therefore further contributes to its significance.

3.5.63. In terms of the harm which may arise, a very small section of the mapped heritage asset would be crossed by CRC access road 6. Construction work in this area would include topsoil stripping for the creation of a temporary access road and associated drainage corridor. We find that the proposed construction work in this area would be of a limited intrusive nature and would comprise only a small proportion of the asset, on its periphery. Whilst it may be possible that archaeological remains extend further north into the CRC, there is limited evidence of this. The applicant's DBA [APP-059] - which refers to previous geophysical surveys - indicates that areas further north are peripheral to the core of the temporary settlement.

3.5.64. We note that LCC is content with the additional mitigation measures proposed in the form of the AMS, which would be controlled and implemented through final dDCO R11 [REP7-004]. We agree with the applicant's conclusion that this would reduce the potential moderate adverse effect (significant) to a residual minor adverse effect (not significant) in EIA terms. However, additional mitigation cannot be considered prior to concluding whether less than substantial or substantial harm would be caused in the terms of NPS EN-1 and the NPPF. Nonetheless, we disagree with LCCs conclusion that substantial harm could arise for the reasons outlined in paragraph 3.5.64 above. There would be less than substantial harm to this NDHA and this is weighed in the planning balance at section 5 of this report.

*Historic Farmsteads*

3.5.65. The applicant provided a detailed written response [REP1-028] to LCCs concerns [RR-165] in relation to the effect of the proposed development on specific historic farmsteads.

3.5.66. In summary, it asserts that historic farmsteads that are not of demonstrable national or regional significance to be granted listed status are recorded on the LCC Historic Environment Record as NDHA, reflecting their local importance.

3.5.67. The applicant explains that the 2015 publication, 'Building the Evidence Base for Historic Farmsteads in Greater Lincolnshire' provided a county wide study of historic farmsteads categorised according to their level of survival. This was considered when assigning 'low' or 'very low' value to these NDHA.

3.5.68. The applicant contends that, in order to trigger a significant effect on assets of low value, a high magnitude of impact would be required, such that the value of the heritage asset is totally altered or destroyed through physical impact or comprehensive alteration to its setting, affecting its value and seriously impeding the ability to understand and appreciate the asset.

3.5.69. The applicant referred to ES paragraph 8.8.6 [APP-039], which outlines that the development design has applied buffers around historic farmsteads. The applicant therefore contends that the change experienced by the setting of the historic farms is low or very low. The applicant outlines that this is set against an overall context where the value of the historic farmsteads has already been eroded due to the loss of their historic fabric and/or the presence of modern sheds. The applicant concludes that the inclusion of buffers and exclusion of these assets from the order limits would ensure negligible adverse effects that are 'not significant'.

*Archaeology*

3.5.70. In ExQ1 [PD-009] we asked the applicant to provide its latest position on the extent of the archaeological survey work undertaken. In doing so we highlighted LCCs RR [RR-165] which noted that the applicant had identified that certain areas of the CRC had not been surveyed due to access constraints.

3.5.71. In response [REP3-062], the applicant outlined that geophysical surveys could not be undertaken on 27.5ha spread across 14 land parcels. The applicant highlighted that, for these land parcels, the results of the DBA [APP-059], aerial photography and LiDAR assessment [APP-064] were used instead. Consequently, the applicant found that three of the un-surveyed land parcels either contained previously unknown archaeological features or required further archaeological evaluation. All

would be subject to trial trenching controlled through the implementation of the AMS.

*ExA considerations*

3.5.72. We accept the applicant's rationale [REP1-028] for assigning 'low' or 'very low' value to non-designated historic farmsteads. We note the various embedded mitigation measures, including buffers and landscaping proposals which would ensure that there would not be a 'high' magnitude of impact on non-designated historic farmsteads.

3.5.73. The embedded mitigation measures would be secured through rDCO R11, the works plans [REP6-004] and the FLEMP [REP6-022]. With these measures implemented, we conclude that there would be no significant effects on historic farmsteads and that any effects that would occur would be reversed after the decommissioning.

3.5.74. In relation to other NDHA, we are satisfied that the applicant has undertaken sufficient survey work to establish the likely presence of buried archaeological remains. Where geophysical surveys have not been undertaken due to access constraints, LIDAR and desk-based surveys have been relied upon. These have clearly been effective as evidenced by the identification of potential archaeological remains in three cases. We also note that LCC and HE are satisfied with the broad content of the AMS, which would be subject to approval under rDCO R11.

3.5.75. We agree with the applicant's conclusion that there would be 6 NDHA which would be adversely affected by the proposed development prior to mitigation. However, following implementation of mitigation measures, which would in part allow a greater understanding of the significance of these assets through investigation and subsequent recording (See table 1 AMS [REP1-025]), we agree that the effect would reduce to 'minor adverse not significant'. These assets include the following:

- Undated enclosure (AEC024).
- Cropmark and Earthwork Features (AEC043).
- Winter Camp of the Viking Great Army at Torksey (MLI125067).
- Iron Age or Romano-British Enclosure Complex (AEC031; MNT15983).
- Cropmark Complex (MNT4983; AEC032 and AEC033).
- Romano-British Settlement (AEC035).

**Historic Landscape Character**

3.5.76. In ExQ1 (Q1.7.5) [PD-009] and ExQ2 (Q2.7.2) [PD-011] we asked the applicant to expand on its conclusions in relation to the effect of the development on historic landscape character and to explain the effect of planting proposals on historic landscape character. The applicant provided responses at D3 [REP3-062] and D5 [REP5-032].

*ExA considerations*

3.5.77. We accept the explanations provided by the applicant and we agree that the proposed development, whilst altering the landscape, will largely retain the key historic components, which primarily relate to the agricultural use of much of the land.

3.5.78. For these reasons, in contrast to our conclusions with regard to landscape character in section 3.7 of this report, we do not consider that the foreshortening of open

views would have any significant effect on the historic landscape. The effects in this regard are further reduced when taking into account the temporary duration of the proposed development within the context of the long-term historic value of the landscape.

3.5.79. We also agree with the applicant's conclusion that there would be no significant effect on historic important hedgerows, taking into account provision for hedgerow re-instatement set out in the FLEMP [REP6-022] and the construction management measures contained in the FCEMP [REP5-015].

**Cumulative effects**

3.5.80. In ExQ2 (Q2.7.3) [PD-011] we queried the apparent absence of an assessment of the cumulative effect of the proposed development and other developments on historic landscape character.

3.5.81. The applicant [REP5-032] outlined that this information is included at ES paragraphs 8.9.434 to paragraph 8.9.445 [APP-039]. The conclusion of this assessment is, following mitigation, that there would be a long-term minor adverse (not significant) effect.

3.5.82. The applicant also referred to the methodology set out in ES chapter 18 [REP6-013] which states that '*significant effects result where the cumulative change results in an erosion to, or total loss of, the ability to understand and appreciate the heritage value of an asset as a result of multiple impacts'*.

3.5.83. The applicant referred to the conclusions reached in the assessments of Cottam, Gate Burton and West Burton solar projects. Here the assessments concluded 'slight adverse effect', 'negligible adverse effect' and 'slight adverse effect' respectively. All assessments concluded that the cumulative effects would be 'not significant'.

3.5.84. Furthermore, the applicant identifies that the worst-case scenarios have been assessed for each of these projects and the pattern and layout of the historic landscape will be retained in each case. As such the applicant concludes that there would be no significant cumulative effects to assess or report on with regards to historic landscape character.

*ExA considerations*

3.5.85. We accept the rationale provided by the applicant with regard to the consideration of historic landscape character. The ES [APP-039] fully considers the effect of the proposed development on historic landscape character in isolation. Furthermore, the applicant has provided adequate rationale with regard to the assessments undertaken for the other solar projects. As such, we consider that there would not be any significant cumulative effects on historic landscape character. Furthermore, there is no substantive evidence to indicate that any other development would give rise to significant adverse effects on historic landscape character.

## CONCLUSIONS

3.5.86. We have reached the following conclusions in relation to the historic environment effects of the proposed development:

→ We agree with the applicant's assessment of the significance of designated and NDHA and their settings. We also agree that there would not be any

significant residual cultural heritage effects (in EIA terms) during any phase of the development, including when considered cumulatively with other developments.

→ Whilst there would be no 'significant effects' there would be less than substantial harm to various designated and non-designated heritage assets as set out at paragraphs 3.5.52 and 3.5.65 of this report, respectively.

→ Avoidance measures have been embedded within the proposed design and we are satisfied that the mitigation measures set out in the FCEMP [REP5-015], FDEMP [REP5-017], FLEMP [REP6-022] and AMS [REP1-025], would be effectively implemented through rDCO R12, R21, R7 and R11 respectively.

→ The proposed development would accord with NPS EN-1, NPS EN-3, the NPPF, the NPPG and the relevant development plans in relation to cultural heritage effects.

→ Given the requirement to undertake a separate balancing exercise for heritage harm, our consideration of the weight to be attached to the cultural heritage effects of the proposed development is deferred to section 5 of this report.

## 3.6. HUMAN HEALTH, SAFETY, ACCIDENTS AND MAJOR INCIDENTS

### INTRODUCTION

3.6.1. This section considers the likely impact and effects of the proposed development on human health and safety and the risks that may lead to accidents or major incidents.

3.6.2. Many of the themes that could have a detrimental effect on human health are considered separately in sections, such as landscape and visual, noise and vibration, socioeconomics, transport and access, and other matters.

3.6.3. This section principally considers the risks that may arise during the operational period of the proposed development in particular those that may arise from incidents relating to the battery energy storage systems.

3.6.4. This section also considers the wider and cumulative impacts that arise from the other themed sections mentioned above and there potential to have a compounding effect upon human health.

### POLICY BACKGROUND

3.6.5. NPS EN-1 paragraph 4.4.1 states that energy infrastructure has the potential to impact on the health and well-being ('health') of the population. Access to energy is clearly beneficial to society and to our health as a whole. However, the construction of energy infrastructure and the production, distribution and use of energy may have negative impacts on some people's health.

3.6.6. NPS EN-1 paragraph 4.4.2 outlines that direct impacts on health may include:

- increased traffic;
- air or water pollution;
- dust, odour;
- hazardous waste and substances;

- noise
- exposure to radiation; and
- increases in pests.

3.6.7. Where relevant, these effects are considered in the respective planning issues sections of this report.

3.6.8. NPS EN-1 paragraph 4.4.5 explains that the impacts of more than one development may affect people simultaneously. In such instances, it states that the applicant should consider the cumulative impact on health in the ES where appropriate.

3.6.9. NPS EN-1 paragraph 4.4.7 outlines that, generally, those aspects of energy infrastructure which are most likely to have a significantly detrimental impact on health are subject to separate regulation (for example for air pollution) which will constitute effective mitigation of them, so that it is unlikely that health concerns will constitute a reason to refuse consent or require specific mitigation under the PA2008,

3.6.10. Notwithstanding this, NPS EN-1 paragraph 4.4.8 states that not all potential sources of health impacts will be mitigated in this way and the SoS may want to take account of health concerns when setting requirements relating to a range of impacts such as noise.

3.6.11. Section 4.11 of NPS EN-1 relates to health and safety legislation and the Control of Major Accident Hazards Regulations 1999 and includes reference to potential generic mitigation measures for environmental impacts for aspects which must be addressed by the ES.

3.6.12. No specific risks or impacts to consider are highlighted within NPS EN-3 nor NPS EN-5 and the proposed development itself is not subject to the Control of Major Accident Hazards (COMAH) Regulations 2015. As such, it would not be subject to controls put in place by the Health and Safety Executive.

3.6.13. The National Fire Chiefs Council have produced guidance on Grid Scale Battery Energy Storage System planning and Guidance for Fire and Rescue Services.

3.6.14. LCC's Joint Health and Wellbeing Strategy focusses on promoting physical activity and reducing obesity of its residents.

## THE APPLICATION

3.6.15. ES chapter 11 Human Health [APP-042] and chapter 17 Other Environmental Topics [APP-048] include an assessment of the effect of proposed development on the human health, safety, accidents and major incidents.

3.6.16. Supporting appendices to these two chapters are:

- Appendix 11-1: Human Health Legislation, Policy and Guidance [APP-100]
- Appendix 17-5: Unplanned Atmospheric Emissions from Battery Energy Storage Systems [APP-123]

3.6.17. A Framework Battery Safety Management Plan (FBSMP) [REP4-026] has been prepared which sets out the planned measures to avoid, mitigate and compensate for impacts and effects arising from the battery energy storage systems proposed at the site.

## Baseline

*Hazards*

3.6.18. Hazards and accidents are a risk of major infrastructure projects. Proper risk assessment, planning and mitigation can reduce the risk to reasonable levels.

3.6.19. For the Tillbridge Solar project the proposed development involves working in close proximity to a Major Accident Hazard Pipeline (MAHP) and COMAH site at Cottam power station.

3.6.20. In addition, adjacent to the site is the Glentworth K petrochemical extraction site.

*Health*

3.6.21. The data from 2021 census shows the total population of the study area is 15,145. The study areas extending outside of the order limits as defined in the development consent order to consider widespread impacts on communities that potentially could be affected by the development.

3.6.22. The census also indicated that 5.2% of residents considered their existing health to "bad" or "very bad".

3.6.23. The UK Government Office for Health Improvement and Disparities records that the prevalence of mental health disorders within the West Lindsey and Bassetlaw local authorities is 15.3% and 17.7% respectively against a national average for England of 16.9%.

## Future baseline scenarios

*Hazards*

3.6.24. The proposed development has the potential to present a risk and hazard to the surrounding community if inspection and monitoring safety regimes are not maintained.

3.6.25. There is an extant planning permission for expansion of the Glentworth K petrochemical site adjacent to the Order limits.

*Health*

3.6.26. Trends from the socio-economic studies undertaken indicate that that the population for the relevant study area and at a national level is trending towards a growing elderly population (65+) and a smaller working aged population, with ages 16-64 and the 0-15 age group shrinking as a proportion of the population.

## Construction and decommissioning phases

*Health*

3.6.27. ES table 11-12 [APP-042] sets out the applicant's assessment of residual health effects during construction and decommissioning. The applicant concludes that there would be 5 residual minor adverse (not significant) effects as a result of the impacts associated with: transport and access; noise and vibration; climate change and landscape/ visual amenity. It also concludes that there would be 2 residual negligible (not significant) effects as a result of impacts associated with air quality and transport. The applicant also considers that there would be a minor beneficial

(not significant) effect arising as a result of the socio-economic impact of the proposed development.

*Major Accidents and Disasters*

ES paragraphs 17.6.14 to 17.6.16 conclude that there would be no significant residual effects resulting from fire or rail accidents during construction or decommissioning.

*Electric and Electro-Magnetic Fields*

3.6.28. ES chapter 17.9 does not identify any significant residual health effects arising from electric or electro-magnetic fields.

### Operational phase

*Health*

3.6.29. ES table 11-13 [APP-042] sets out the applicant's assessment of residual health effects during the operational phase of the proposed development. The applicant concludes that there would be 2 residual minor adverse (not significant) effects on health arising from landscape/ visual amenity and noise impacts. The applicant also concludes that there would be 4 residual negligible (not significant) effects on health arising from transport/ access and air quality during operation. The ES outlines that there would be 2 residual minor beneficial (not significant) effects on health, arising from transport/ access and climate change impacts.

*Major Accidents and Disasters*

3.6.30. ES paragraph 17.6.29 states that, with embedded mitigation taken into account, significant effects on the risk of fire would be 'unlikely'.

3.6.31. ES paragraph 17.6.30 concludes that significant effects on rail accidents 'are not anticipated'.

*Electric and Electro-Magnetic Fields*

3.6.32. ES chapter 17.9 does not identify any significant residual health effects arising from electric or electro-magnetic fields during operation.

### 3.6.33. Cumulative effects

3.6.34. ES chapter 18 [REP6-013] paragraph 18.12.1 states in full:

*"The cumulative effects associated with human health are covered in the air quality; climate change; noise and vibration; socio-economics and land use; and transport and access sections of this chapter and not duplicated here."*

3.6.35. ES paragraph 18.18.6 states that cumulative effect with regards to major accidents and disasters would be 'not significant'. Similarly, paragraph 18.18.18 concludes that there would be no significant cumulative electric or electro-magnetic field effects.

## ISSUES CONSIDERED DURING THE EXAMINATION

3.6.36. Of the 355 RRs received prior to the commencement of the examination, 11 expressed concerns with regards to human health, safety, accidents and major

incidents. From these and along with the review of the application documents we identified 3 key issues relating to this topic to examine in more detail. These were:

- the risk and consequence of BESS fires;
- the potential for the proposed development to have a harmful impact on the physical and mental health of the local residents, and;
- the risk and consequence of major accident hazards occurring where the proposed development is adjacent to existing and proposed petrochemical installations, crosses major pipelines and connect to the existing Cottam sub-station.

3.6.37. The issue of the human health, safety, accidents and major incidents was raised at various points during the examination including the holding of an issue specific hearing ISH3 [EV1-005] and raising of the issue through the exchange of 3 rounds of written questions [PD-009] [PD-011] [PD-012].

### BESS fires

3.6.38. Fire safety - the probability of a fire incident occurring at the proposed development, the incident response and safety of the local communities - was a key focus of the examination.

3.6.39. LCC [REP1A-001] recognised the emerging technology of BESS and the challenges this poses to fire and rescue services. It highlighted the letter to all Chief Fire Officers dated 22 August 2023 from the National Fire Chiefs Council (NFFC) and the guidance and recommendations within. LCC in its capacity as Lincolnshire Fire and Rescue Service (LFRS) has developed standing advice regarding BESS based on this guidance. LCC advised us that the applicant's FBSMP meets the standards contained in this guidance.

3.6.40. LFRS also sought requirements within the DCO, including annually indexed financial provisions to ensure that it had sufficient resources in place to familiarise itself with the proposed development prior to its operation and to undertake annual exercises as required to maintain preparedness to attend and deal with a fire related incident.

3.6.41. 7000 Acres raised concerns as to the potential for hazardous emissions arising from any fire incidents from the BESS and the challenge of fighting fires [REP2-026].

3.6.42. The applicant's team concurred that whilst the probability of a fire occurring over the lifetime of the development was low, the likelihood could not be ruled out [REP5-032]. Continuous development and improvements in the field of BESS meant that there had been a steady reduction in incidents historically and this trend was likely to continue with further research and development.

3.6.43. When questioned during ISH3, LFRS acknowledged it had never had to fight a large-scale BESS fire but believed that - with Part 8 PPs and R6 within the dDCO, and their ongoing exercising and training gained by working with the developers and guidance from the NFFC - it would be in a good position to respond to, and deal with, such an incident.

3.6.44. Amendments were made throughout the examination to the FBSMP and site layout to ensure there would be adequate firefighting water resources available on site, even in the summer months with future climate change scenarios, and that evacuation, access and rendezvous centres within the site would be accessible for a range of likely fire locations, and wind and smoke plume directions.

3.6.45. With regards to the safety of the local community and residents, the applicant did acknowledge that there was the potential for toxic emissions from a fire within a BESS. It was noted that there where these had occurred around the world the spacing of the units had resulted in the fire not spreading to adjacent battery units and that typically the units suffering from thermal runaway were designed to be sacrificial and vent upwards and disperse into the environment in a very localised fashion, with the fire permitted to burn out and the loss the whole unit.

3.6.46. At OFH2 surrounding landowners questioned the risk of fire spreading into surrounding crop land from the principal site. The applicant advised the battery storage site spacing, perimeter buffer zone and active grassland management within the principal site should ensure this risk is minimised, and vice versa should a fire originate in an adjacent field of crops, such as during harvesting it should be unlikely to progress into the principal site.

3.6.47. We also asked the applicant how the risk of fire spread from, or to, the adjacent operating and planned petrochemical sites was considered. This resulted in the safe buffer zone to these sites being increased accordingly.

3.6.48. At ISH2 discussion was also had around how the local community might be warned of an incident occurring at the site. The applicant considered that in the event of an incident, the Local Resilience Forum would be stood up and warnings issued to professional partners and the local community as for any other major incident.

3.6.49. However, LCC advises that to date the Local Resilience Forum had never, to their knowledge, been activated for a large fire in Lincolnshire. The applicant was asked to consider other methods of warning the public such as via the community liaison group and other local champions of the community and agreed to prepare an emergency response plan in conjunction with the community liaison group.

3.6.50. The applicant has drafted a FBSMP in direct consultation with LFRS, who acknowledged they were fully satisfied with its content and provisions.

### Human health

3.6.51. The cumulative nature of the issues and themes associated with the proposed development means that even less than significant or subtle effects, such as changes in landscape views, local transport disruption, noise or socio-economics can accumulate and have the potential to impact an individual’s mental health and well-being.

3.6.52. 7000 Acres identified that the proposed development has the potential to have a detrimental impact on the general health and wellbeing of the local residents, in particular their mental health, by impacting the visual amenities of the area and reducing agricultural jobs.

3.6.53. The LIRs received from LCC and WLDC also drew attention to the risk of mental health and EMF impacts on the local community.

3.6.54. At OFH1 and OFH2, local residents powerfully and emotionally expressed their views on the proposed development and the impacts that the shadow of the application, the examination process and their consideration of the future had had on their lives to date. People speaking on behalf of their communities, such as parish council leaders, gave strong and moving testimony to how they felt their local

communities and place would change as a result of the proposed development and highlighted that this would be a multi-generational change.

3.6.55. In addressing the mental health impacts the applicant cited the comprehensive Environmental Impact Assessment that they had undertaken which had considered a full range of impacts and effects that may have a consequential direct or indirect knock-on impact on the mental health of local residents. The applicant considers that the issues of air quality; climate change; noise and vibration; visual amenity; socio-economics and land use; and transport and access have the potential to effect mental health.

3.6.56. An issue specific hearing ISH3 [EV1-005] was held on this topic and 7000 acres did present a mental health expert who expressed his concern as to the wellbeing of the local residents given the local impact of the development and cumulative nature of solar developments across wider Lincolnshire.

3.6.57. The applicant addressed the concerns in writing [REP4-049] and highlights the steps taken during the Environmental Impact Assessment to identify possible harm arising from impacts.

3.6.58. Notwithstanding this, 7000 acres maintain that a separate Health Impact Assessment over and above the Environmental Impact Assessment should have been undertaken.

3.6.59. We were interested to understand the potential for any localised climate change, or creation of a heat island, for the local community arising from the change in albedo and surface reflectance of the natural landscape from one of greenfield and arable crops to that of a significant area of solar arrays. This potentially leading to a localised rise in temperature on hot sunny days and potentially discomfort for local residents.

3.6.60. The applicant advised that there is currently no consensus amongst the scientific literature regarding the effect of solar panels on the localised climate. Some research [REP4-049] has suggested that on a hot day the centre of a large solar farm could be as much as 4 degrees Celsius higher than the ambient surrounding conditions, but they did suggest this effect was very localised and reduced to 0.5 degrees Celsius at 300m horizontal distance from the site. They also alluded to the use of renewable energy technology in an effort to reduce carbon dioxide emissions and subsequently the risks of global warming.

3.6.61. The proposal to bundle power cables from several of the solar development sites in the area along a shared CRC did move us to ask of the applicant the potential risk from the combined electromagnetic fields to any residents in close proximity to the CRC. An assessment of the risk was undertaken [APP-048] suggesting the nearest cabling would be a minimum of 10m from any property and as such this was deemed a safe distance by International Commission on Non-Ionizing Radiation Protection guidance.

### Major accident hazard sites

3.6.62. The principal site adjoins the petrochemical extractions sites at Glentworth K oil site and the CRC crosses over the MAHP (Health and Safety Executive (HSE) reference 11166, Uniper and E.ON UK, Blyborough to Cottam power station pipeline) and enters into the COMAH site at Cottam power station (HSE reference 4154 EDF Energy Ltd).

3.6.63. The risks of fire spread to, or from, the Glentworth K oil site and the extant permissions for expansion were mitigated as described above by increase of the buffer zone to the site.

3.6.64. The risk of causing major accident hazards whilst working in the proximity of Cottam power station and the gas pipeline that supplies it will be controlled by the legislative working practices associated with working in and around those controlled sites and locations.

3.6.65. The applicant has advised that it will prepare risk assessments and method statements for the works it proposes in those areas and will seek approval and authorisation from the site and pipelines controllers. These protected provisions and requirements would be secured within the rDCO. In addition, the Construction (Design and Management) Regulations 2015 will apply and require appropriate risk assessment and mitigation to ensure the potential risks are reduced to as low as reasonably practicable.

### Cumulative effects

3.6.66. With regards to the cumulative effects on Human Health as they are linked to the range of separate themes listed in the paragraph above it is considered appropriate to consider the relevant sections of this report where the cumulative effect of each theme (air quality; climate change; noise and vibration; visual amenity; socio-economics and land use; and transport and access) is considered in detail.

3.6.67. Considering the cumulative effects on Safety, Accidents and Major Incidents the applicant has concluded that the other developments in the area can lead to new sources of hazard and also act as potential receptors from any hazards originating at the proposed development site. We consider that, subject to the requirements in the rDCO, the cumulative risk with regards to Safety, the cumulative risk with regards to Safety, Accidents and Major Incidents will not be significant.

### CONCLUSIONS

3.6.68. We have reached the following conclusions in relation to Human Health, Safety, Accidents and Major Incidents:

- → The probability of a fire occurring in the BESS is low but the consequence of such a fire is not insignificant. LFRS has had input to the preparation of the FBSMP [REP4-026] and is content with its provisions and that it meets the guidance of the NFFC. We consider that that dDCO R6 and the PP would ensure that LFRS are sufficiently resourced to deal with the risk that the BESS may pose.
- → The effects and impacts of a range of issues arising from the proposed development including changes to landscape, noise, socio-economics, and transport has the potential to impact on local residents' health and wellbeing. We are conscious of not double counting these effects along with the effects weighted elsewhere in the specific sections of this report that follow.
- → We agree with the applicant that there would be adverse effects on health as set out in ES tables 11-12 and 11-13 [APP-042]. These effects would be associated with the landscape and visual, transport, climate change, noise and air quality impacts of the proposed development. We agree with the applicant that some of these effects would include adverse effects on mental health and wellbeing. Notwithstanding this, these effects would not be

significant and there is no substantive evidence to persuade us otherwise. Furthermore, whilst we disagree with the applicant's assessment in relation to some of the other planning issues, we do not consider that this would result in an increase in health effects above those set out in ES tables 11-12 and 11-13.

→ The proposed development will require working in and around major accidents hazards sites. The site is also adjacent to petrochemical installations and other NSIP developments. We consider the applicant has assessed these risks adequately and prepared adequate mitigation measures within the FCEMP and dDCO to ensure the likelihood of these risks is reduced to as low as reasonably practicable.

→ The residual risk presented by the BESS and the potential for the proposed development to have an impact on the mental health and wellbeing of local residents means we disagree with the applicant's assessment of the likely effects on human health, safety, accidents and major incidents.

→ We ascribe a little negative weighting with regards to the consideration of making the development consent order.

## 3.7. LANDSCAPE AND VISUAL

### INTRODUCTION

3.7.1. This section considers the landscape and visual effects of the proposed development and in particular:

- The assessment methodology.
- Landscape effects.
- Visual effects.
- Cumulative effects.
- Mitigation measures.
- Glint and glare.
- Good design.

### POLICY BACKGROUND

3.7.2. NPS EN-1 outlines that projects need to be designed carefully, taking account of the potential impact on the landscape (5.10.6). However, it also acknowledges that virtually all nationally significant energy infrastructure will have adverse effects on the landscape (5.10.5).

3.7.3. Outside of nationally designated areas, there are local landscapes that may be highly valued locally. NPS EN-1 states that where a local development document has policies based on landscape character assessment, these should be paid particular attention. However, it also clarifies that locally valued landscapes should not be used in themselves to refuse consent, as this may unduly restrict acceptable development (5.10.12).

3.7.4. NPS EN-1 requires that applicants conduct a landscape and visual impact assessment (LVIA), which should address the effects on landscape components and character during construction and operation (5.10.20). The assessment should also address the visibility and conspicuousness of the project during construction and of the presence and operation of the project and potential impacts on views and visual amenity (5.10.21).

3.7.5. In terms of decision-making, NPS EN-1 states that the SoS should be satisfied that local authorities will have sufficient design content secured to ensure future consenting will meet landscape, visual and good design objectives (5.10.30).

3.7.6. NPS EN-1 also sets out that the scale of energy projects means that they will often be visible across a very wide area. The SoS should judge whether any adverse impact on the landscape would be so damaging that it is not offset by the benefits (including need) of the project. In having regard to the adverse effects, the SoS should take account of whether those effects are temporary or reversible (5.10.35-36).

3.7.7. NPS EN-3 outlines more specific policies for solar photovoltaic generation projects. It indicates that the approach to assessing cumulative effects of such projects is likely to be the same as for assessing other onshore energy infrastructure. It also acknowledges that solar farms may have wider zones of visual influence than other infrastructure but outlines that this influence could be appropriately minimised through effective screening, as well as through the use of land topography and existing landscape features (2.10.94).

3.7.8. In terms of glint and glare effects, NPS EN-3 states that, unless a significant impairment can be demonstrated, the SoS is unlikely to give any more than limited weight to claims of aviation interference because of glint and glare from solar farms (2.10.159).

3.7.9. NPS EN-5 outlines that new substations and other above-ground installations that serve as connection, switching, and voltage transformation points on the electricity network may also give rise to adverse landscape and visual impacts (2.9.9).

3.7.10. NPPF paragraph 187 outlines that planning decisions should protect valued landscapes in a manner consistent with their statutory status or identified quality in the development plan.

3.7.11. The LIR's submitted by LCC [REP1A-001], WLDC [REP1A-005], and NCC [REP1A-002] refer to various development plan policies. Local development plan policies relevant to the proposed development are set out at Appendix A.

3.7.12. There is a locally designated AGLV at the eastern end of the principal site. This is known as the Lincoln Cliff. As such, CLLP (2023) Policy S62 is particularly relevant. It contains specific criteria for considering proposals within, or within the setting of, AGLV. It also outlines that where a proposal may result in adverse impacts, it may exceptionally be supported if the overriding benefits of the development demonstrably outweigh the harm.

## THE APPLICATION

3.7.13. ES chapter 12 [REP4-013] sets out the applicant's assessment of the effect of the proposed development on landscape and visual amenity during construction, operation and decommissioning. In addition, the applicant has undertaken an assessment of the cumulative and in-combination effects at ES chapter 18 [REP6-013].

3.7.14. ES chapter 12 is supported by a large number of technical appendices and figures which are summarised at ES paragraphs 12.1.8 to 12.1.9.

### Methodology

3.7.15. ES appendix 12-2 [APP-102] sets out the full EIA methodology adopted by the applicant for the assessment of landscape and visual effects. This document states that the methodology follows the Landscape Institute and IEMA Guidelines for Landscape and Visual Impact Assessment, 3rd Edition 2013.

3.7.16. In common with other EIA disciplines, the LVIA has been undertaken on the basis of the Rochdale Envelope approach. ES chapter 12 confirms that the maximum (and, where relevant, minimum) parameters for the design elements of the proposed development have been assessed, providing for a reasonable worst-case scenario.

3.7.17. The study area and extent of ZTV visibility extends 5km from the outer boundary of the principal site and 1km from the boundaries of the CRC. This is illustrated in ES Figure 12-3 [APP-174].

3.7.18. ES Section 18.4 [REP6-013] includes the methodology for the assessment of cumulative effects. The applicant has applied a 10km ZoI, to the principal site and a 2km ZoI to the CRC. Within these ZoIs the applicant has identified other planned or consented developments. ES Tables 18-10 to 18-11 outline whether any such identified projects have been discounted from the assessment, with reasons given.

3.7.19. In addition, the applicant submitted cumulative ZTVs at ES Figures 18-2 to 18-4 [APP-204 to APP-206]. These show other developments included in the cumulative assessment. Other developments considered in relation to landscape and visual effects include:

- *Gate Burton Energy Park*
- *Cottam Solar Park*
- *West Burton Solar Park*
- *Hydrocarbon wellsite at Glentworth Oil site – Permitted under LCC planning application reference 146100/PL/0135/22.*

3.7.20. ES paragraph 18.13.3 provides a brief explanation of what 'sequential impacts' encompass. The applicant has included such an assessment in ES Tables 18-16 to 18-18 [REP6-013].

**Baseline conditions**

3.7.21. ES chapter 12 includes an assessment of the baseline landscape character within 2km of the principal site and 1km of the CRC. The applicant has defined Local Landscape Character Areas (LLCA) and assigned them an 'overall landscape value' ranging from 'very low' to 'high'. The applicant's full description of the key characteristics of the LLCAs is included at ES table 12-4. 'LCAA 2a Lincoln Cliff – Harpswell' and 'LCAA 2e Lincoln Cliff Fillingham' have both been assigned 'high' value by the applicant.

3.7.22. To establish the visual amenity baseline conditions, the applicant identified representative viewpoints in respect of the principal site and the CRC. ES table 12-5 [REP4-013] presents the 29 viewpoints identified as being representative of visual effects from development proposed on the principal site. ES table 12-6 presents 9 viewpoints identified as being representative of visual effects arising from the CRC.

3.7.23. The applicant has not undertaken a Residential Visual Amenity Assessment (RVAA).

**Mitigation**

3.7.24. ES section 12.7 [REP4-013] summarises the mitigation embedded in the design of the proposed development. Many of these embedded mitigation measures would be controlled by the parameters set out in the ODPS [REP4-020]. They would also be controlled and implemented by the rDCO, through the implementation of the FCEMP [REP5-015], FDEMP [REP5-017], FOEMP [REP6-026], and FLEMP [REP6-022]. The FLEMP includes an indicative landscape masterplan.

3.7.25. In summary, embedded measures include (but are not limited to):

- Provision of buffers around residential properties, with woodland mitigation and areas of open grassland where appropriate.
- Creation of an undeveloped gap between the principal site and the Cottam solar development.
- Reinstatement and/or improvement of field boundaries.
- Use of existing farm tracks and field openings as the preferred routes for construction access.
- Siting substations and the operational Solar Farm Control Centre in locations with existing landscape screening.

3.7.26. Pages 33 to 37 of the Environmental Mitigation and Commitments Register [REP3-020] provide more detail on the mechanisms which would secure the implementation of the mitigation measures.

3.7.27. ES section 12.9 outlines that the applicant does not propose any additional mitigation measures beyond those which are embedded in the design of the proposed development.

**ES conclusions on landscape effects**

3.7.28. The applicant's assessment of landscape effects is included at ES appendix 12-5 [APP-105] and summarised in ES section 12.8. The significant effects are also detailed in ES table 12-7, with a summary of the residual effects after mitigation.

3.7.29. The assessment considers the landscape effects arising from the principal site and CRC during the construction, operation (year 1 in winter and year 15 in summer) and decommissioning phases of the development.

3.7.30. The applicant concludes that there would be significant residual landscape effects during the construction of the proposed development. These effects would arise on the following LLCAs:

- 2B Lincoln Cliff – Harpswell (moderate adverse).
- 2C Lincoln Cliff – Open Farmland (moderate adverse).
- 3A Till Vale – Open Farmland (moderate adverse).

3.7.31. These effects would be primarily caused by the widespread perception of the works or the extensive change in the landscape.

3.7.32. Furthermore, during the first year of operation the ES concludes that there would be significant residual landscape effects on the following LLCAs:

- 2B Lincoln Cliff – Harpswell (moderate adverse).
- 3A Till Vale – Open Farmland (moderate adverse).

3.7.33. The ES outlines that these effects would arise from the perceptual influence of the proposed development in views. However, the ES concludes that due to planting

and ecological mitigation measures, by year 15 of operation, there would only be significant landscape effects on LLCA 3A Till Vale – Open Farmland (moderate adverse residual effect).

3.7.34. In relation to the decommissioning phase of the proposed development, the applicant concludes that no significant landscape effects are expected. This is because the applicant asserts that the perception of change will be further reduced due to the increased maturity of planting.

3.7.35. The assessment concludes that no significant landscape effects would arise during the construction, operation or decommissioning of the CRC. This is primarily because the landscape effects for the CRC relate to the construction and decommissioning activity which is limited in scale and duration.

**ES conclusions on visual effects**

3.7.36. The applicant's assessment of visual effects is included at ES appendix 12-6 [REP3-008] and summarised in ES section 12.8. The significant effects are also detailed in ES table 12-7, with a summary of the residual effects after mitigation.

3.7.37. The assessment considers the visual effects arising from the principal site and CRC during construction, operation (year 1 in winter and year 15 in summer) and decommissioning phases of the development.

3.7.38. ES Table 12-7 [REP4-013] summarises that during construction, it is anticipated that 13 representative viewpoints would experience significant residual visual effects. 11 of these are associated with the principal site and 2 are associated with the CRC. The relevant viewpoints are as follow:

- VP1 A631, Hemswell Road junction Low (moderate adverse).
- VP2a Common Lane, east of Hermitage Low Farm (looking east) (moderate adverse).
- VP2b Common Lane, east of Hermitage Low Farm (looking west) (major adverse).
- VP4 B1398 Middle Street, above Harpswell (moderate adverse).
- VP7 B1398 Middle Street, Glentworth Cliff (moderate adverse).
- VP9 Kexby Road, west of Glentworth Grange: junction with bridleway Gltw/85/1 (major adverse).
- VP13 Public footpath (Hems/787/82), Millfield, Hemswell (major adverse).
- VP19 Grange Cottages, School Lane, Springthorpe (moderate adverse).
- VP20 A631 east of Corringham windmill (moderate adverse).
- VP28 Yawthorpe (moderate adverse).
- VP29 Common Lane west of Billyards Farm (moderate adverse).
- VP CRC6 Footpath (Bram66/1/) south of Trent Port, Marton (moderate adverse).
- VP CRC7 Trent Valley Way, Cottam (moderate adverse).

3.7.39. The ES explains that the effects for the principal site are predicted to be experienced at receptors in close proximity and would arise as a result of short-range views with limited or no screening. Other effects would arise for receptors with open, elevated views from the Cliff. The applicant also outlines that the effects for the CRC are associated with the proximity of PRoW to construction activity.

3.7.40. The ES also states that there would be significant residual visual effects for 11 representative viewpoints during year 1 of operation, with significant visual effects

for 3 viewpoints after year 15, once mitigation planting has matured. These can be summarised as follow:

- VP1 A631, Hemswell Road junction Low (moderate adverse year 1).
- VP2a Common Lane, east of Hermitage Low Farm (looking east) (moderate adverse year 1).
- VP2b Common Lane, east of Hermitage Low Farm (looking west) (major adverse year 1).
- VP4 B1398 Middle Street, above Harpswell (moderate adverse year 1).
- VP7 B1398 Middle Street, Glentworth Cliff (moderate adverse year 1 and moderate adverse year 15).
- VP9 Kexby Road, west of Glentworth Grange: junction with bridleway Gltw/85/1 (major adverse year 1 and moderate adverse year 15).
- VP13 Public footpath (Hems/787/82), Millfield, Hemswell (major adverse year 1 and major adverse year 15).
- VP19 Grange Cottages, School Lane, Springthorpe (major adverse year 1).
- VP20 A631 east of Corringham windmill (moderate adverse year 1).
- VP28 Yawthorpe (moderate adverse year 1).
- VP29 Common Lane west of Billyards Farm (moderate adverse year 1).

3.7.41. The assessment concludes that there would be no significant visual effects arising from the CRC during the operational phase of the proposed development.

3.7.42. ES paragraph 12.8.39 explains that no significant visual effects are expected to arise during the decommissioning phase due to the increased maturity of vegetation and resultant screening.

**ES conclusions on cumulative effects**

3.7.43. ES chapter 18 [REP6-013] includes the applicant's assessment of cumulative landscape and visual effects.

3.7.44. ES tables 18-12 to 18-18 [REP6-013] provide an assessment of cumulative landscape and visual effects during the construction, operation and decommissioning phases of the proposed development. These tables include the residual effect for the proposed development in isolation as well as the overall effect when taking into account cumulative developments.

3.7.45. ES paragraph 18.13.21 explains that landscape and visual cumulative effects will predominantly arise from the following developments:

- Landscape and visual effects of the Cottam Solar Project during construction, operation and decommissioning of the proposed development.
- Visual effects of Glentworth oil well during construction and operation of the proposed development.
- Visual effects of Gate Burton and West Burton Solar Projects during construction.

*Cumulative landscape effects*

3.7.46. ES tables 18-12 to 18-15 set out the cumulative landscape effects during construction, operation and decommissioning. Generally, the applicant acknowledges that other projects would give rise to cumulative effects on landscape character. However, the applicant only identifies a small number of instances where

the overall residual effect would increase beyond that identified for the proposed development in isolation. These include:

- LLCA 3a Till Vale Open Farm Land - increasing from a residual effect of 'moderate adverse significant' to 'large adverse significant' - during construction, year 1 and year 15.
- LLCA 5a Trent Valley Meadowlands – increasing from a residual effect of 'minor adverse not significant' to 'moderate adverse significant' during construction.

3.7.47. The ES outlines that the increased effect on LLCA 3a would arise from construction of the other three solar developments in areas both north and south of the order limits. The ES indicates that this would extend the influence of solar infrastructure along an overall north-south corridor of up to approximately 20km within the LLCA and areas of corresponding character.

3.7.48. With regard to LLCA 5a the ES states that direct cumulative effects would arise from construction of the CRC within the area of the underground crossing of the River Trent, alongside indirect (perceptual) impacts from influence of construction and associated access or compounds within the LLCA along the river.

*Cumulative Visual Effects*

3.7.49. ES tables 18-16 to 18-18 set out the cumulative visual effects during construction, operation and decommissioning.

3.7.50. The applicant accepts that there will be significant cumulative effects but there are only two instances identified in the ES where the significance of the cumulative effects for viewpoints would be greater than the values assigned to the proposed development in isolation. They are viewpoints CRC3: Flat Tops, Normandy by Stow and CRC5: Marton – Poplar Farm (Footpath Mton/68/1).

3.7.51. For the proposed development in isolation, the residual visual effects identified during construction for these two viewpoints were 'minor adverse (not significant)' [REP4-013].

3.7.52. In both instances, applying a worst case five-year cumulative construction period for Gate Burton, West Burton and Cottam, the effects on these two viewpoints would increase from 'minor adverse (not significant)' to 'moderate adverse (significant)'.

3.7.53. ES paragraphs 18.13.24 to 18.13.29 summarise the applicant's assessment of cumulative sequential visual effects. The applicant concludes that sequential views would not result in any additional significant visual cumulative effects beyond those identified for the representative viewpoints described in ES tables 18-16 to 18-18.

**Applicant's assessment of glint and glare**

3.7.54. ES appendix 17-2 contains the applicant's Glint and Glare Assessment [APP-120]. This assessment analysed the effect of glint and glare from the proposed development on 85 individual residential receptors, 161 road receptors, three PRoW receptors, eight runway approach paths and two are traffic control towers.

3.7.55. The assessment concludes that there would be no overall impacts on these receptors with the exception of a low (not significant) impact on runway 27 at Sturgate Airfield. Overall impacts were considered to be 'negligible' with no mitigation required.

### Applicant's conclusions on good design

3.7.56. ES chapter 4 [APP-035] sets out the design evolution of the proposed development. The applicant also submitted a Design and Access Statement [AS-031] and commented on the design process in the submitted Panning Statement [REP3-028].

3.7.57. The applicant [REP3-062] asserts that these documents demonstrate how the scheme accords with the designated energy NPS and other policies and guidance in relation to good design.

## ISSUES CONSIDERED DURING THE EXAMINATION

3.7.58. LCC [REP1A-001] and WLDC [REP1A-005] raised significant concerns in relation to the landscape and visual impact of the proposed development, both in isolation and when considered cumulatively with other development. Landscape and visual impact was a significant area of discussion during the examination and we asked a series of questions at ExQ1, ExQ2 and ExQ3. We also held ISH3, which included examination of landscape and visual effects. During this hearing we asked WLDC, LCC and 7000 Acres to summarise their positions in relation to landscape and visual effects.

3.7.59. LCC confirmed that its main criticism of the applicant's assessment of visual effects related to the ES conclusions reached for three viewpoints.

3.7.60. During ISH3, LCC, WLDC and 7000 Acres all confirmed that they agreed with the applicant's conclusion that significant adverse landscape effects would arise.

3.7.61. In addition, there were objections from other interested parties on landscape and visual grounds in RR and WR. The applicant summarised and responded to these RR and WR at D1 [REP1-028] and D3 [REP3-063], respectively.

### The assessment methodology

*RVAA*

3.7.62. During ISH3 [EV8-004] we asked the applicant to explain the absence of a RVAA. In doing so, we highlighted the guidance contained within Technical Guidance Note (TGN) 2/19: 'Residential Visual Amenity Assessment' (TGN 2/19) and the emphasis on the need to consider residential properties in close proximity to a proposed development (between 50 and 250 metres). The applicant was asked to expand on the justification provided within ES chapter 12, given the absence of a focus on properties located closer to the order limits.

3.7.63. In response, the applicant updated ES chapter 12 [REP4-013] to provide a justification for the absence of a RVAA, taking into account the effect on properties in close proximity to the order limits. The revised ES confirms the applicant's position that – due to embedded mitigation measures, existing planting and the proposed siting of more expansive infrastructure in locations away from these receptors – the threshold for a RVAA is not reached.

*ZTVs*

3.7.64. During ISH3 and through ExQ1 [PD-009] and ExQ2 [PD-011], we asked the applicant to confirm the accuracy of the ZTVs. This was because paragraph 12.4.13 of the original ES [APP-043] stated:

"*Due to computer processing capabilities, reference points were taken from the outer boundaries of the panel areas. As such, some areas of panels, particularly along slightly higher topography such as the north-south ridge between the A631 and Harpswell Wood, may increase theoretical visibility beyond that shown"*

3.7.65. In response, the applicant updated ES paragraph 12.4.13 to confirm that the ZTVs were accurate and reflective of the worst-case visibility from elevated locations.

3.7.66. However, at ISH3 we again questioned the accuracy of this conclusion given that updated Figure 12-5 [REP3-022] appeared to show a higher level of topography in the centre of the site than at the southern, northern and western site boundaries.

3.7.67. When asked to explain the importance of the ZTVs during ISH3, the applicant outlined that they are just one tool to be used in undertaking the assessment of landscape and visual effects [EV8-004 and EV8-005]. The applicant asserted that '*site observations including of the wider area were of far greater value and that while ZTVs provided some use this diminished rapidly as the viewer moves further away from the site'* [REP4-049].

*Reasonable worst-case scenario*

3.7.68. ES paragraph 12.3.1 outlines that the LVIA is based on the Indicative Site Layout Plan [REP6-019] as well as the worst-case parameters in ES chapter 3 [REP4-016] and the ODPS [REP4-020].

3.7.69. During ISH3, we questioned whether the LVIA contained within the ES was based on a reasonable worst-case scenario. This is because we noted that - on the basis of the wording contained in the dDCO and the ODPS - all of the BESS units could theoretically be located in one location, as opposed to the separate locations shown on the indicative layout plan.

3.7.70. In response [REP4-049], the applicant updated the parameters in the ODPM to ensure that the BESS units could not be located in one location and that they would be dispersed throughout the site in a manner indicated on the indicative layout plan and assessed in the ES.

*ExA considerations*

3.7.71. We accept the applicant's revised justification for the absence of an RVAA. This is because the revised justification provided in ES chapter 12 takes into account the effect on properties in close proximity to the order limits. This approach is consistent with the guidance contained in TGN 2/19.

3.7.72. We are also satisfied with the methodology adopted by the applicant in formulating the ZTVs, which we consider are broadly accurate, with only minor discrepancies. This is because whilst ZTVs are helpful in identifying theoretical visibility and informing assessment parameters, they do not take into account all existing trees and vegetation [REP4-049]. On this basis, we agree with the applicant that professional judgement serves as a far more effective tool in the assessment of landscape and visual effects.

3.7.73. We have considered the revisions to the ODPS [REP4-021] and the explanation of how a reasonable worst-case scenario has been applied to landscape and visual assessment. The revisions ensure that the BESS units could not be located in one single location and that they would be spread throughout the site in line with the indicative layout plan.

3.7.74. Furthermore, we consider that rDCO R5 ensures that there is control over the final siting of the BESS units in any case. These two factors ensure that the assessment of landscape and visual effects has been undertaken on a reasonable worst-case scenario basis, in accordance with NPS EN-1 paragraph 4.3.12.

**Landscape effects**

3.7.75. During the examination LCC agreed with the applicant that the proposed development would result in significant residual effects on landscape character in line with the conclusions reached in the applicant's ES [REP4-051].

3.7.76. LCC's position on the landscape effects of the proposed development is summarised in paragraph 8.9 of its LIR [REP1A-001], which states in full:

*"By reason of its mass and scale, the proposed development would lead to significant adverse effects upon landscape character and visual amenity. The development has the potential to transform the local landscape by altering the character on a large scale. This landscape change also has potential to affect wider landscape character, at a regional or county scale, by replacing large areas of agricultural or rural land with solar development, affecting the current openness, tranquillity and agricultural character, that are identified as defining characteristics of the area. The Council are particularly concerned about the landscape character effects through changes to the land use over a large area. Significant landscape effects are subsequently identified within the LVIA chapter 'due to the change in land use and the massing of the panels and associated structures'*

3.7.77. Appendix A of LCC's LIR also included a 'Landscape and Visual Review'. Paragraph 4.15 asserted that 'highways elements' had not been fully considered as part of the applicant's LVIA. LCC outlined its concern that the highway works could result in potential vegetation loss, urbanisation and reduced visual amenity. In turn, LCC indicated that the landscape effects during construction may be underestimated within the LVIA.

3.7.78. In response to ExQ1 [REP3-062], the applicant asserted that the likely vegetation loss on the highway network largely relates to the provision of construction accesses and vehicle passing places on construction access routes to the CRC. It also outlined that - through implementation of the FLEMP [REP6-022] - any habitat removed on the CRC would be reinstated following completion of construction.

3.7.79. The applicant also stated that this would have no bearing on the assessment outcome. It clarified that the overall significant residual effects on landscape character (including LLCA3a Till Value Open Farmland) encompass the collective changes in vegetation.

3.7.80. During ISH3, WLDC agreed with the applicant that the proposed development would result in significant residual landscape effects [EV8-004]. It also confirmed that it disagreed with the applicant on the weight to be afforded to the landscape harm identified in the applicant's ES.

3.7.81. Of particular concern to WLDC is the effect of the proposed development on the Cliff AGLV and its associated landscape character areas [REP4-053]. WLDC asserts that there are three distinct local landscape character areas associated with the Cliff (Lower Till Vale, The Cliff and Limestone Dip Slope).

3.7.82. WLDC contends that the transitional zones of all 3 occur at the top of the Cliff. WLDC asserts that the Cliff is not only an LCA protected by policy as an AGLV in its

own right, but that it also has a clear influence on the character of the adjacent 'Till Vale' LLCA, within which the majority of the principal site is located [REP4-053].

3.7.83. WLDC's ISH3 post-hearing submissions [REP4-052] state in part:

*"The Tillbridge Solar Project extends up to, into and encroaches upwards into The Cliff LCA/AGLV. The impact of the project directly upon The Cliff and the area that bridges that LCA with the Till Vale. This impact which raises the harm to landscape character considerably and is considered unacceptable.*

*3.7.84.* In response to these concerns [REP5-032], the applicant asserted that the effects of the proposed development on the LLCA associated with the Cliff would not be significant at the operational 15 year stage. As such, the applicant considers that revisions to the design - beyond the proposed buffers of biodiversity enhancement and sensitive archaeological sites - would be 'disproportionate and unnecessary'.

3.7.85. 7000 Acres WR on landscape character [REP2-018] refers heavily to the LCC LIR and associated landscape and visual review [REP1A-001]. Notwithstanding this, it also emphasised its objection to the proposed development on the grounds that landscape character will be *'largely lost' and 'mitigation will not be effective'*.

3.7.86. Other IPs outlined concerns with regard to the effect of the proposed development on landscape character. Many alleged that the proposed development would harm the landscape character in areas covering the settlements of Harpswell, Harpswell Grange, Hemswell, Corringham, Springthorpe, Heapham and Glentworth.

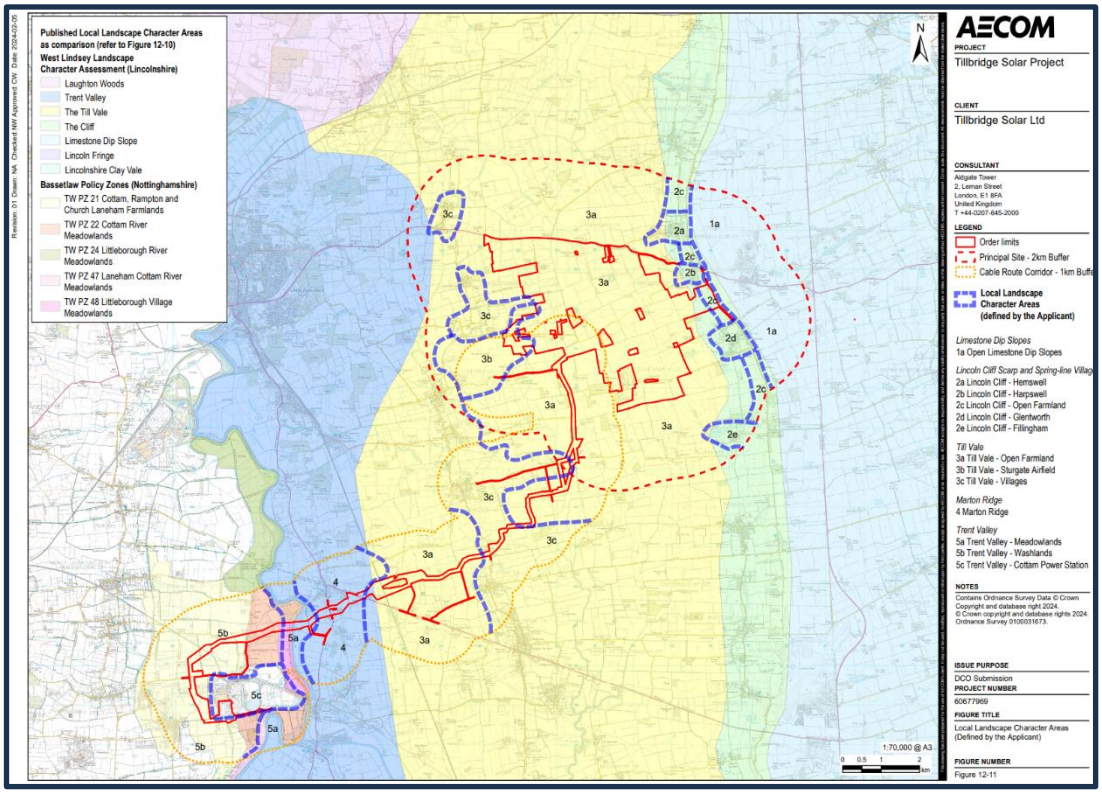
3.7.87. The applicant responded to these WR [REP3-063] by stating that no significant residual effects are expected at year 15 for the LLCA associated with these settlements. The applicant further explained that it has sought to limit views from these locations through the provision of buffers to the settlements, focused mitigation and through the removal of solar infrastructure from certain fields from the order limits, west of Harpswell and Glentworth.

*ExA considerations*

3.7.88. We agree with the applicant's assessment of effects on landscape character as set out in the ES. In particular, the proposed development would result in significant adverse effects on landscape character during construction and operation. Effects associated with the CRC would not be significant.

3.7.89. In particular, the applicant's defined LLCAs associated with the Cliff AGLV - comprising 2B Lincoln Cliff, 2C Lincoln Cliff and 3a Till Vale - would be subject to significant adverse effects during both construction and operation.

**Figure 7: Local landscape character areas**[10]




3.7.90. Even though the majority of the Till Vale (3A) LLCA is located outside of the AGLV it is closely related to the AGLV. This is because the defining feature of the AGLV is the landform rising above the relatively flat and open landscape to the west. As such, the juxtaposition between the Cliff and the Till Vale (3A) makes a major contribution to the value of the AGLV. Whilst we accept that the majority of the proposed development – comprising panels – would be of minimal height, its sheer scale would transform the character of the Till Vale (3A) LLCA. This would lead to a harmful effect on this LLCA and the AGLV.

3.7.91. This harm would be further exacerbated by the proposed substations and BESS units. Even with careful siting, these would be more prominent features of the proposed development. Whilst we accept that the applicant is proposing buffer zones adjacent to the AGLV, we do not consider that these would completely eliminate the harm to the landscape and in particular the AGLV.

3.7.92. We note the concerns raised by LCC in relation to vegetation loss associated with highway works, however we consider that the effects of this could be mitigated through implementation of the FLEMP [REP6-022].

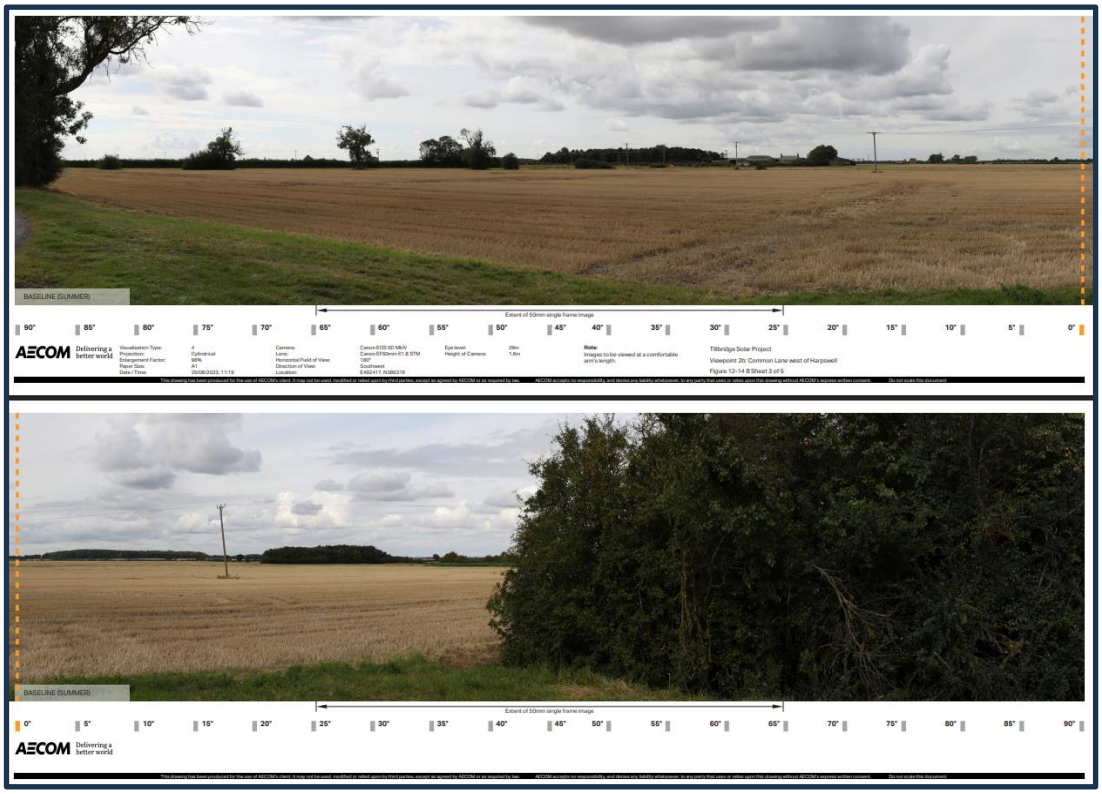
3.7.93. We agree with the applicant that the harm to Lincoln Cliff LLCAs would be reduced by year 15. We also agree with the applicant that there would remain a moderate adverse residual effect after year 15 on the Till Vale 3A LLCA.

**Visual effects**

[10] Source: ES figure 12-11 [AS-013]

3.7.94. LCCs LIR [REP1A-001] outlines that the scale and extent of the proposed development would lead to significant adverse visual effects. It emphasises that the views from receptors, would change from views within an agricultural or rural landscape to a landscape containing a large solar development. LCC asserts that the applicant has 'underplayed' the magnitude of visual effect and the significance of effect for three representative viewpoints.

**Figure 8: Viewpoint 2b - baseline summer**[11]



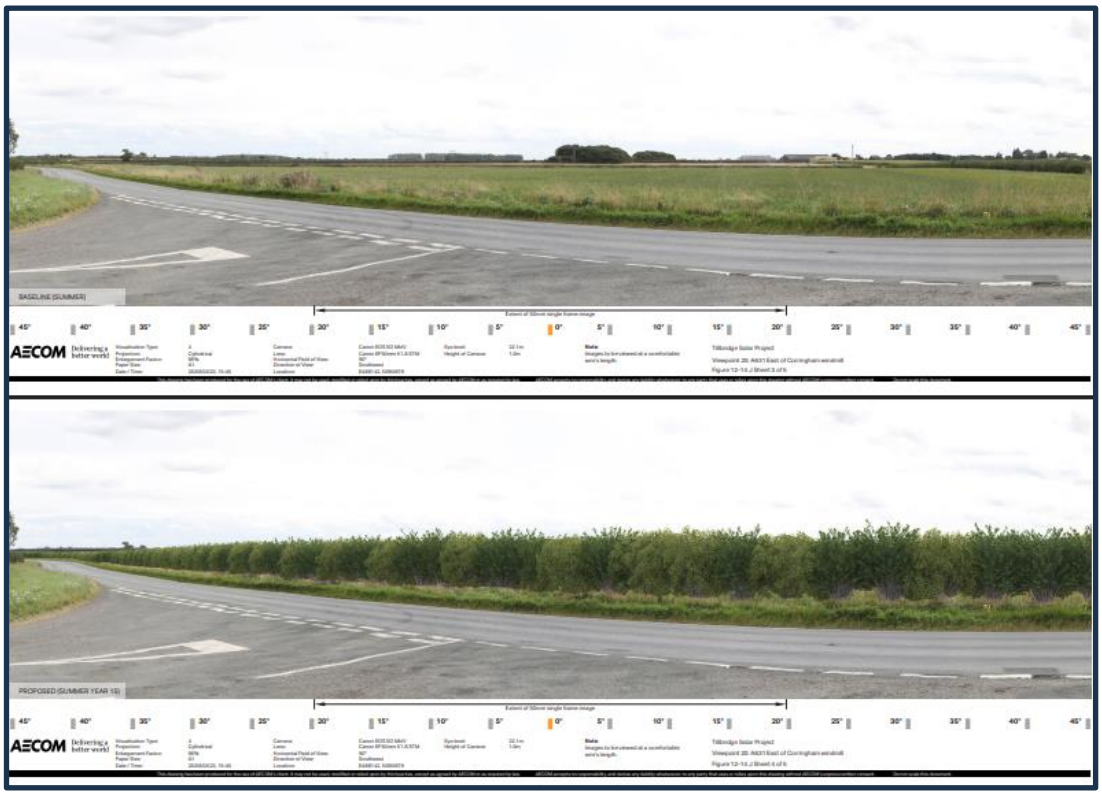

3.7.95. LCC considers viewpoints 2b and 20 [APP-184] to currently comprise open views across fields. Whilst LCC agrees that the visual effects on these views during construction and operation would be 'high' it disagrees that this would reduce to 'low' at year 15. This is because it considers that the proposed planting would foreshorten existing open views, resulting in a 'medium' magnitude of visual effect for these viewpoints. LCC considers that there would be a 'residual significant effect' for viewpoint 2b and a 'residual not significant effect' for viewpoint 20.

3.7.96. During ISH3 [EV8-004] the applicant responded by acknowledging that viewpoints 2b and 20 (figures 9 and 10 of this report) would be foreshortened by proposed mitigation planting. However, the applicant contends that the presence of hedgerows is in keeping with the character of the area when travelling west along Common Lane. The applicant also outlines that the loss of the view is not a significant effect when accounting for the sensitivity and susceptibility of receptors on that route [REP4-049].

[11] Source: ES figure 12-14A-J [APP-187]

3.7.97. The applicant's LVIA [REP3-008] concludes that the magnitude of visual effect on viewpoint 4 is 'medium' during construction and year 1 of operation, reducing to low during year 15 of operation. During ISH3 the applicant outlined there would be a loss of an expansive view, but that this would be mitigated by extensive sections of planting, in keeping with the hedgerow planting already in place. Furthermore, the applicant asserts that there is no footway in this location. The applicant therefore suggests that the loss of this view would not be significant [REP4-049].

**Figure 9: Viewpoint 20 - baseline summer and summer year 15**[12]




3.7.98. LCC disagrees with the applicant's assessment [REP1A-001]. It considers this viewpoint to comprise an open panoramic view across an agricultural landscape with a magnitude of visual effect which is 'medium' during year 15. LCC considers that the development would be conspicuous in an extensive part of the view. It also finds that these effects would be experienced along several sections of the B1398. As such, in contrast to the applicant, it concludes that there would be residual significant effects at year 15 of operation [REP6-036].

[12] Source: ES figure 12-14A-J [APP-187]

**Figure 10: Viewpoint 4 - baseline summer and summer year 15[13]**



3.7.99. During ISH3 [EV8-004], WLDC confirmed that it does not dispute the assessment of the visual effects of the proposed development as contained within the applicant's ES. However, it disagrees with the applicant on the weight to be afforded to the harm identified by the applicant. Indeed, in its WR [REP2-016] WLDC raises significant objections based on the visual impact of the proposed development.

3.7.100. One matter of specific concern to WLDC is the potential siting of BESS infrastructure, solar stations and substations in areas of the site which are more visual sensitive. It contends that such infrastructure should be located away from sensitive locations, including the Cliff [REP6-034].

3.7.101. In response, the applicant contends that no such infrastructure would be located close to the 'Lincoln Edge', with the eastern extent of the principal site proposed for landscape and ecological enhancement areas and sensitive archaeological sites [REP6-034]. The applicant asserts that these areas would provide a buffer of approximately 600m from Middle Street to the closest land parcels comprising PV panels and associated infrastructure.

3.7.102. Many interested parties, including 7000 Acres objected to the proposed development on the grounds of its visual impact. 7000 Acres WR [REP2-018] outlines that it agrees with the applicant's assessment of the visual effects of the proposed development in isolation during construction and operation. However, it questioned the findings in relation to decommissioning, stating that:

[13] Source: ES figure 12-14A-J [APP-187]

*"The act of carrying out this decommissioning process, along with any resultant damage to the land and landscape across this vast proposed development will in our opinion have a significant effect on views."*

3.7.103. ES chapter 12 [REP4-013] sets out the applicant's position. It outlines that the proposed planting measures will have matured after 60 years to a degree where there would be no significant visual effects during decommissioning.

3.7.104. IPs also raised specific concerns in relation to the effect of the proposed development on the following views: to and from Lincoln Cliff; from Middle Street (B1398) from Common Lane; from St Chad's Church; from Harpswell Hall; across the Till Vale; and within and around Springthorpe. WLDC [REP2-016] also raised specific concerns in relation to views identified as important in the Glentworth Neighbourhood Plan.

3.7.105. The applicant provided a response to these written representation at D3 [REP3-063]. In summary, the applicant acknowledged that there would be some significant residual effects, including after 15 years of operation. Notwithstanding this, the applicant cites the limited sensitivity of many of the receptors highlighted by the IPs, primarily due to the absence of footways, footpaths or recreational routes.

3.7.106. In relation to embedded mitigation, LCC [REP1A-001] outlines that any made DCO should include an appropriate period of landscape maintenance, that ties into the FLEMP. LCC emphasised that it considered an initial 15-year maintenance period to be necessary, as this would align with the period assessed for residual effects. LCCs LIR also suggests that the management plan should be updated every 5 years thereafter.

3.7.107. In response the applicant referred to Article 31 (11) of the dDCO, which it asserts confirms that the maintenance period in relation to landscape will be the time period set out in the FLEMP, to be approved in accordance with final dDCO R7 [REP7-004].

*ExA considerations*

3.7.108. During our first unaccompanied site inspection [EV2-001] we noted that the area proposed for the siting of solar panels is clearly visible from areas adjacent to the order limits. In particular, the proposed development would be prominent in views along Common Lane, Middle Street and the A631.

3.7.109. We also noted that the site would be visible in panoramic views from the A16 as well as from residential properties on the Cliff and those surrounded by the order limits. The CRC is also located close to sensitive receptors in some locations (including VP CRC6). However, the visual effects of the CRC would primarily relate to the construction period, limiting the visual harm which would arise.

3.7.110. Many of the views of the principal site are currently open and extend across the relatively flat agricultural landscape, with very few hedgerows located along field boundaries. Where views are attainable from the elevated land along the Cliff, they are expansive and relatively long range.

3.7.111. The visual impact of the proposed development would be particularly harmful when taking into account the shorter-range views identified in the applicant's ES. Despite the limited height of the panels, the sheer scale and ground coverage of the

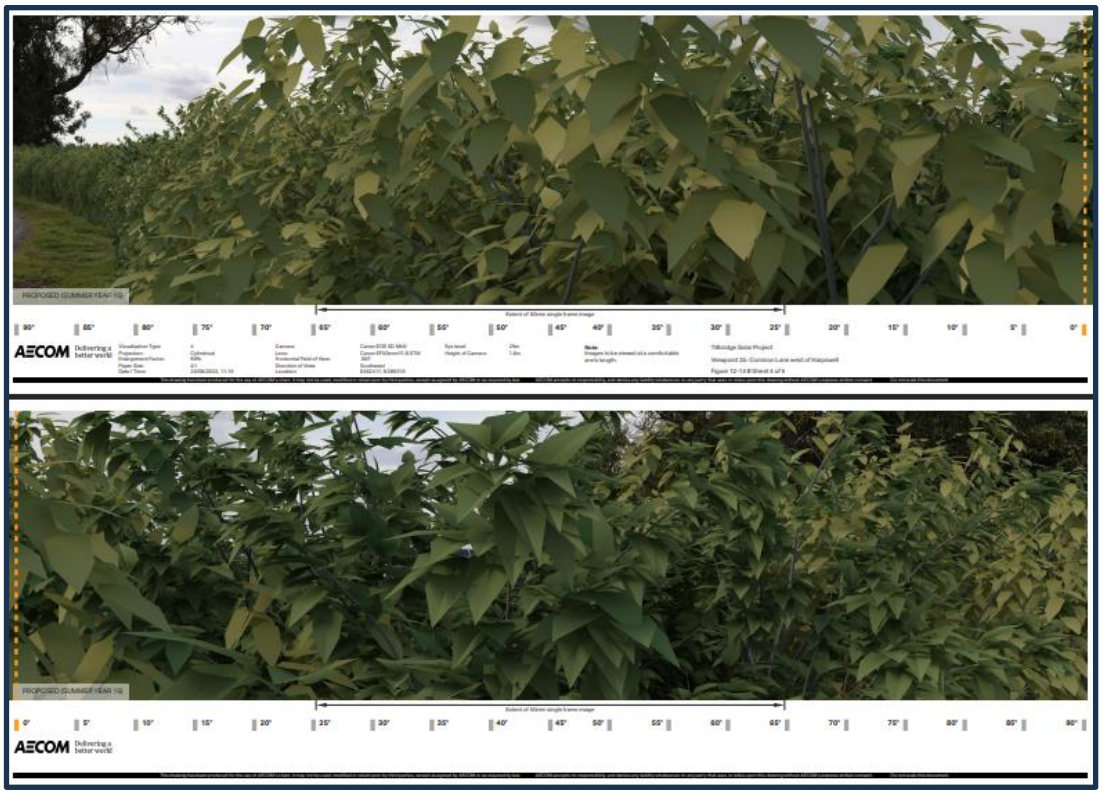
proposed development would have a harmful visual impact, which would endure for a significant proportion of the development's lifetime.

3.7.112. There are very few instances where more sensitive receptors (pedestrians) would experience the more expansive views from the Cliff. However, there are various residential properties located on the Cliff where expansive views of the agricultural landscape would be transformed to that of a more industrialised character. This would result in additional visual harm.

3.7.113. We accept that the indicative layout of the proposed development has been designed to avoid and mitigate the visual effects on the most sensitive receptors, with buffer zones separating residential properties from the proposed development. The proposed planting measures, whilst indicative, demonstrate that some, but not all, of the visual effects could be mitigated.

3.7.114. We note WLDCs concerns in relation to the indicative locations of BESS, solar station and substation infrastructure. However, it is clear that these have been carefully sited to avoid the most sensitive views. Proposed buffer zones provide further mitigation to limit the visual effect of these elements of the proposed development.

**Figure 11: Viewpoint 2b - applicant's photomontage year 15 (summer)**[14]



3.7.115. For these reasons we agree with most of the applicant's conclusions with regard to the visual effects during the construction and operation of the proposal, as set out in

[14] Source: ES figure 12-14A-J [APP-187]

ES chapter 12. However, we disagree with the conclusions reached in relation to the visual effects on viewpoints 2b, 20 and 4.

3.7.116. We consider that, whilst the proposed planting measures could screen the proposed development from view, they would need to be relatively substantial in order to achieve this. These viewpoints all represent existing expansive and open views, which would be foreshortened by the proposed planting. As such, the planting proposals themselves would result in adverse visual effects on these viewpoints. In particular, we agree with LCCs conclusion that there would be significant residual visual effects for viewpoints 2b (shown in figure 11 of this report) and 4, even after year 15 of operation.

3.7.117. We concur with the applicant's conclusion that there would be no significant visual effects during decommissioning. This is because, whilst decommissioning activities may be similar to those undertaken during construction, the site would benefit from substantial additional screening as a result of proposed planting measures, which would have matured over several decades.

3.7.118. In summary, we largely concur with the applicant's assessment of visual effects, with the exception of three viewpoints, two of which (VPs 2b and 4) would be subject to significant adverse visual effects after year 15 of operation.

**Cumulative effects**

3.7.119. Cumulative landscape and visual effects remain an area of disagreement between the applicant and both WLDC [REP6-034] and LCC [REP6-036].

3.7.120. WLDC [REP6-034 considers that, when the effect of the proposed development is combined with the West Burton, Gate Burton and Cottam solar projects, the magnitude of change in landscape character would be *'unacceptable and contrary to national and local planning policies.*'

3.7.121. LCCs position on cumulative landscape and visual effects is summarised at section 14.2 of the SoCG [REP6-036], which states:

*"The cumulative landscape and visual effects of the proposed development will bring about significant cumulative landscape and visual effects, particularly when assessed alongside the consented Cottam, West Burton and Gate Burton schemes. The mass and scale of these projects combined would lead to adverse effects on landscape character and visual amenity over an extensive area. The landscape character of the local, and potentially regional area, may be completely altered over the operational period, particularly when experienced sequentially for visual receptors travelling through the landscape and experiencing these schemes across potentially several kilometres."*

3.7.122. The applicant [REP6-036] does not dispute that significant adverse landscape and visual cumulative effects would arise. It states that these cumulative effects will arise with the Cottam Solar Project, predominantly from the presence of solar infrastructure to areas both north and south of the proposed development, and in elevated representative viewpoints along Middle Street. However, the applicant considers that these effects should be considered in relation to the 'long-term green infrastructure benefits' of the proposed development. The applicant also acknowledges that significant adverse cumulative effects will arise at the representative viewpoint on Kexby Road, due to combined views with Glentworth oil well.

3.7.123. In addition, the applicant's assessment concludes that there would be adverse cumulative effects during construction. However, the applicant notes that these effects would be temporary [REP6-036].

3.7.124. Cumulative landscape and visual effects are also a significant issue of concern for many IPs. Objections were expressed in both RR and WR and are reflected in 7000 Acres WR [REP2-018]. 7000 Acres outline that the landscape would drastically change from a rural, agricultural landscape to a solar landscape [REP5-034]. It also considers that the combined effect of four large solar farms in one area of Lincolnshire would be an 'overwhelming', 'devastating' and 'dominating feature' of the landscape.

3.7.125. In response [REP5-034], the applicant acknowledges that significant operational (Year 15) cumulative landscape effects will arise for LLCA 3A Till Vale and a small number of representative viewpoints. However, the applicant emphasises that the design has sought to limit significant visual effects through 'undeveloped set-backs' and woodland/hedge planting. Although significant landscape effects remain, the applicant concludes that these should be considered against the inclusion of extensive areas for biodiversity enhancement through the Principal Site.

3.7.126. Paragraph 6.33.4 of LCCs LIR [REP1A-001] states that the cumulative landscape effects from the construction of the four solar developments (Gate Burton, Cottam, West Burton and Tillbridge) would last up to a decade.

3.7.127. In response [REP5-032], the applicant states that the assessment of cumulative effects [REP6-013] focused on two construction scenarios. In Scenario 1, the peak of construction activity overlaps across all of the cumulative schemes. In Scenario 2, the construction of the cumulative schemes is completed sequentially. The latter would result in a 5-year construction period.

*Sequential cumulative effects*

3.7.128. Sequential effects are experienced as one travels through the landscape, as opposed to experiencing views from one particular viewpoint. This remains an area of disagreement between the applicant and 7000 Acres with the latter stating [REP6-036]:

*"The applicant does not take a true account of the cumulative impact. Their assessment only takes account of the Cottam scheme as they state the other schemes cannot be seen from the Tillbridge scheme"*

3.7.129. Furthermore, LCC [REP6-036] maintain that visual receptors travelling through the landscape along roads and PRoW would experience frequent sequential views of solar development.

3.7.130. During ISH3 [EV8-004] we questioned whether the applicant had sufficiently assessed the sequential cumulative visual effects and asked the applicant to update its ES to address the sequential effects of the proposed development.

*3.7.131.* In response [REP4-049], the applicant updated the ES to include an assessment of sequential cumulative visual effects at tables 18-16 to 18-18 [REP6-013]. Nonetheless, no additional significant effects were identified.

*ExA considerations*

3.7.132. We agree with the applicant that there would be significant landscape and visual cumulative effects. However, we consider that these effects have been underestimated in the applicant's assessment. In particular, we disagree that there would only be two instances where the cumulative landscape and visual effects would be greater than those for the proposed development in isolation.

3.7.133. In particular, during construction and up to the complete maturation of planting (15 years) we consider that there would be a significant change from a rural open landscape to a more industrialised landscape, dominated by solar panels and associated infrastructure. We consider that the applicant's focus on specific viewpoints neglects the sequential cumulative effects experienced when receptors move through the landscape.

3.7.134. Whilst we agree that receptors travelling between local villages (or along the A361 and A15) are more likely to do so by motor vehicle, the evidence [EV8-004] indicates that many local people travel by foot on the quite rural lanes, despite the absence of footways. In either case, many receptors would experience a dramatically altered landscape. This landscape and visual impact would be particularly harmful during the cumulative construction period up to the maturation of planting at 15 years. Notwithstanding this, we accept that this would be a temporary period and that after planting proposals have matured, there would be very little cumulative landscape and visual harm.

**Glint and glare**

3.7.135. In its WR [REP2-030] 7000 Acres criticises the applicant's assessment of glint and glare [APP-120]. In particular, it outlines that the applicant has only considered receptors within 1km of the proposed development, despite receptors beyond this range having an elevated view of it.

3.7.136. In addition, 7000 Acres criticises the assessment for not taking into consideration: actual observer heights on the upper floors of buildings; cumulative effects; those with eyesight conditions; and the implications for livestock and equestrian activities. 7000 Acres also states that the applicant has misapplied the US Federal Aviation Authority's methodology [REP6-050]. LCC [REP1A-001] also queries the absence of an assessment from the upper stories of nearby properties.

3.7.137. In response [REP3-063] the applicant outlines that there is no legislation and limited guidance or policy available in the UK at present in relation to the assessment of glint and glare from developments. The applicant states that the assessment has been undertaken in accordance with guidance available in other policy documents, such as NPS EN-3.

3.7.138. In relation to the study area, the applicant states that a 1km Study Area around the principal site is considered adequate for the assessment of ground based (residential, road, rail and PRoW) receptors, whilst a 30km study area was chosen for aviation receptors as a worst-case scenario to encompass the most representative receptors surrounding the proposed development. Given that the assessment concluded that there would be no glint and glare impacts within the 1km study area, the applicant considers that a wider study area would not identify further impacts.

3.7.139. The applicant similarly counters that a cumulative assessment is not necessary given that in isolation the assessment concluded that there would be no significant effects.

3.7.140. With regard to observation heights, the applicant outlines that consideration of potential impacts upon residential receptors at 2m height is appropriate, given that this encapsulates the lower floors, which are typically the main living space during the day. As such, the applicant concludes that any potential impacts would have a greater significance with respect to residential amenity at this observation height.

*ExA considerations*

3.7.141. We agree with the applicant's conclusions that the proposed development would not lead to any significant adverse effects in relation to glint and glare. We are also satisfied with the methodology adopted and we note that there is no detailed guidance on the correct methodology to adopt in this regard. Nonetheless, it is clear that the applicant has undertaken a comprehensive and detailed assessment.

3.7.142. Whilst there would be a low impact on runway 27 at Sturgate Airfield. The applicant concludes that this would be negligible, with no mitigation required. There is no substantive evidence to the contrary of this finding. We also acknowledge NPS EN-3 paragraph 2.10.159 which states that the SoS is unlikely to give any more than limited weight to claims of aviation interference because of glint and glare from solar farms.

**Good design**

*ExA considerations*

3.7.143. We asked the applicant a series of questions in relation to good design during ExQ1 [PD-009] and ExQ2 [PD-011]. We are satisfied that the principles of good design have been embedded in the proposed development from a very early stage (pre-application). ES chapter 4 [APP-035] sets out the design evolution of the proposed development. The applicant also submitted a Design and Access Statement [AS-031] and commented on the design process in the submitted Panning Statement [REP3-028].

3.7.144. These documents demonstrate that the applicant has sought to use good design to reduce the effects of the proposed development in accordance with NPS EN-1 paragraph 4.7.3.

## CONCLUSIONS

3.7.145. We have reached the following conclusions in relation to the landscape and visual effects of the proposed development:

- → We agree with the applicant's conclusion that the proposed development would lead to significant residual adverse landscape and visual effects during the construction and operational phases of the development both in isolation and when considered cumulatively with other development.
- → In terms of landscape effects, much of the harm would be reduced after 15 years of operation. However, this still represents a significant proportion of the proposed development's estimated lifetime. The importance of the AGLV and the associated LLCAs increases the effect of this harm.
- → We consider that the applicant has underestimated the visual impact of the proposed development. NPS EN-3 paragraph 2.10.95 outlines that whilst solar developments may cover a significant surface area, effective screening and appropriate land topography can limit the zone of visual influence.

However, in this instance, the wide and open characteristics of large parts of the principal site, combined with the elevated views possible from the Cliff, significantly limit the effect of mitigation planting, even beyond 15 years of operation in some instances.

→ We consider that the applicant has underestimated the cumulative landscape and visual effects of the proposed development. This is primarily because we consider that the cumulative landscape and visual harm experienced on a sequential basis would be significant up to year 15 of operation.

→ Despite the landscape and visual harm which would arise, it is clear that the applicant has adopted good design principles from an early stage, mitigating the landscape and visual effect of the development as far as possible, through an iterative and considered design processes.

→ There would not be any significant harm arising from glint and glare.

→ We acknowledge that embedded mitigation measures would be secured through the FLEMP and other management plans. We also note the temporary lifetime of the proposed development.

→ Despite the harm which would be caused, there would not be a conflict with NPS EN-1 and EN3. This is because NPS EN-1 recognises that virtually all nationally significant energy infrastructure will have adverse effects on the landscape (5.10.5). In addition, despite the harm which would be caused to a locally valued landscape, NPS EN-1 paragraph 5.10.12 states that locally valued landscapes should not be used in themselves to refuse consent, as this may unduly restrict acceptable development.

→ The proposed development would conflict with the NPPF and relevant development plan policies insofar as they seek to ensure that new development is in keeping with local character.

→ However, there would not be a conflict with CLLP (2023) Policy S62 because the benefits of the proposed development would demonstrably outweigh the harm to the AGLV for reasons outlined in section 5 of this report.

→ Overall, we attribute great negative weight to the landscape and visual harm, which would be caused by the proposed development in isolation and when considered cumulatively with other development.

## 3.8. NOISE AND VIBRATION

### INTRODUCTION

3.8.1. This section considers the noise and vibration effects of the proposed development.

### POLICY BACKGROUND

3.8.2. NPS EN-1 paragraph 4.4.2 states that direct impacts on health can include noise impacts. Paragraph 4.4.8 outlines that the SoS may want to take account of health concerns when setting requirements relating to a range of impacts such as noise.

3.8.3. NPS EN-1 paragraph 4.7.3 sets out that good design, in terms of siting and use of appropriate technologies, can help mitigate adverse impacts such as noise.

3.8.4. NPS EN-1 paragraph 4.12.1 outlines that issues relating to discharges or emissions from a proposed project, which include noise and vibration may be subject to separate regulation under the pollution control framework or other consenting and licensing regimes. Paragraph 4.12.10 states that the SoS 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. It also states that the SoS should act to complement but not seek to duplicate these regimes.

3.8.5. NPS EN-1 paragraph 5.12.1 states that excessive noise can have wide-ranging impacts on the quality of human life and health such as annoyance, sleep disturbance, cardiovascular disease and mental ill-health. It can also have an impact on the environment and the use and enjoyment of areas of value such as quiet places and areas with high landscape quality. Paragraph 5.12.2 outlines that the government's policy on noise is set out in the 'Noise Policy Statement for England' (NPSE), which promotes good health and good quality of life through effective noise management.

3.8.6. NPS EN-1 paragraphs 5.12.6 to 5.12.12 set out how applicants should assess noise impacts within a noise assessment. Paragraphs 5.12.13 to 5.12.16 set out possible mitigation measures that the SoS may require in order to control operational and construction noise.

3.8.7. NPS EN-1 paragraph 5.12.17 states in full:

*"The Secretary of State should not grant development consent unless they are satisfied that the proposals will meet the following aims, through the effective management and control of noise:*

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

3.8.8. NPS EN-1 paragraph 5.12.18 outlines that, when preparing the Development Consent Order, the SoS should consider including measurable requirements or specifying the mitigation measures to be put in place to ensure that noise levels do not exceed any limits specified in the development consent. These requirements or mitigation measures may apply to the construction, operation, and decommissioning of the energy infrastructure development.

3.8.9. NPS EN-3 paragraph 2.10.141 outlines that where cumulative effects on residential amenity are predicted from multiple solar farm developments, it may be appropriate for applicants for various projects to work together to ensure that the number of abnormal loads and deliveries during construction are minimised, and the timings of deliveries are managed and coordinated to ensure that disruption to residents is minimised.

3.8.10. NPS EN-3 paragraph 2.10.162 states that the SoS is unlikely to give any more than limited weight to traffic and transport noise and vibration impacts from the operational phase of a project.

3.8.11. NPS EN-5 paragraph 2.9.37 outlines that audible noise effects can also arise from substation equipment such as transformers, quadrature boosters and mechanically switched capacitors. Paragraph 2.9.38 states that transformers at substations

generate a low frequency hum. Whether the noise can be heard outside a substation depends on a number of factors, including transformer type and the level of noise attenuation present.

3.8.12. NPS EN-5 paragraph 2.9.39 states that for the assessment of noise from substations, standard methods of assessment and interpretation using the principles of the relevant British Standards are satisfactory.

3.8.13. NPPF paragraph 187 outlines that the natural and local environment should be enhanced by preventing new development from contributing to, or being adversely affected by, unacceptable levels of noise pollution. Planning decisions should mitigate and minimise potential adverse noise impacts and avoid significant adverse impacts on health and the quality of life and tranquil areas should be protected from noise (NPPF paragraph 198).

3.8.14. The LIR's submitted by LCC [REP1A-001], WLDC [REP1A-005], and NCC [REP1A-002] refer to various development plan policies. Local development plan policies relevant to the proposed development are set out at appendix A of this report.

## THE APPLICATION

3.8.15. ES chapter 13 [AS-006] sets out the applicant's assessment of the noise and vibration effects of the proposed development.

3.8.16. ES chapter 13 is supported by the following documents:

- Appendix 13-1: Legislation and Planning Policy [APP-110]
- Appendix 13-2: Acoustics Terminology [APP-111].
- Appendix 13-3: Baseline Noise Survey [APP-112].
- Appendix 13-4: Noise Modelling [AS-008].
- Figure 13-1: Noise Sensitive Receptors and Noise Monitoring Locations [APP-188]
- Figure 13-2: Operational Noise Contours [AS-017]

3.8.17. Also of relevance are the following management plans and documents, which contain various mitigation measures pertaining to noise effects:

- FCEMP [REP5-015]
- FDEMP [REP5-017]
- FOEMP[REP6-026]
- FCTMP [REP5-020]
- ODPS [REP4-020]

3.8.18. An assessment of cumulative and in-combination noise and vibration effects is included at ES chapter 18 [REP6-013].

### Methodology and baseline

*Methodology*

3.8.19. The full methodology is set out at ES section 13.4 [AS-006] and the full EIA methodology is detailed in ES chapter 5 [APP-036].

3.8.20. The ES assesses the noise and vibration effects of the proposed development during the construction, operational and decommissioning phases. ES paragraph 13.4.20 states in full:

*"For the purposes of assessing noise and vibration, the construction programme has been summarised into four scenarios that represent high Noise Generating Activities (NGA). These activities are most likely to generate likely significant effects and are as follows:*

*a. NGA1 – Construction of substations.*

*b. NGA2 – Installation of BESS, inverters, and transformers.*

*c. NGA3 – Construction of ground-mounted solar PV panels.*

*d. NGA4 – Cable installation (general works).*

*e. NGA5 – Trenchless cable installation at Cottam Power Station railway line, the River Trent and the East Midlands Railway (assumed as trenchless methods, which is worst-case for noise)."*

3.8.21. ES paragraph 13.4.21 outlines that the earliest construction could start is late 2025 and construction will require an estimated 24 months, which represents a construction period where all works are undertaken concurrently. The applicant asserts that this provides a worst-case scenario for noise and vibration assessment.

3.8.22. ES table 13-4 sets out the core working hours for construction. These are between 07:00 and 19:00 between Monday and Friday inclusive and between 07:00 and 13:00 on Saturday. ES paragraph 13.4.22 states that some construction activities may need to occur outside of these hours / times due to activities needing to be undertaken continuously (such as trenchless methods – part of NGA5) if it is not safe or practical to end at 19:00 on a particular day. Where work outside of standard construction times is necessary, prior notification would be provided to the Local Planning Authority under s61 of the Control of Pollution Act 1974 (as amended) (CoPA).

3.8.23. Sensitive receptors have been separated into residential and non-residential categories and are listed in ES table 13-2 [AS-006].

3.8.24. ES paragraph 13.4.11 states that, given the linear nature of PRoWs, the range of noise impacts along them forming the ambient noise environment, and the transient usage of a PRoW, a material change in the experience of using the PRoW as a whole as a result of noise emissions from the proposed development is not anticipated. Consequently, no significant adverse effects on PRoW users have been identified as arising from the proposed development. On this basis the applicant scoped a detailed assessment of noise and vibration effects on PRoW users out of the EIA.

3.8.25. ES paragraph 13.4.13 outlines that, in accordance with the NPSE, all reasonable steps to minimise the effects of noise on PRoW users would be taken during the construction, operational and decommissioning phases of the proposed development. These measures are set out in the FCEMP, FOEMP and FDEMP.

*Baseline*

3.8.26. A baseline noise monitoring survey was completed in July 2022 [APP-112]. The applicant's monitoring indicated that road traffic noise was the dominant noise source at most locations. Where monitoring locations were not located close to

roads, the dominant noise source was wind, bird song, farming activity or aircraft using Sturgate Airfield.

*Cumulative methodology*

3.8.27. In addition to the Gate Burton, Cottam and West Burton solar developments, ES table 18-9 [REP6-013] sets out other developments scoped into the assessment. These include:

- Application Reference: 19/00167/SCR and 21/01661/DEM. Demolition of Cottam Power Station
- Application Reference: PL/0100/22. To construct a 6MW anaerobic digestion plant with associated infrastructure

3.8.28. In relation to cumulative construction noise and vibration effects, the applicant has applied a worst-case scenario, whereby construction of the CRC would be undertaken at the closest boundary to residential receptors. The applicant considers that decommissioning effects would be similar to those occurring during construction.

**Mitigation**

3.8.29. ES section 13.7 [AS-006] sets out the embedded design mitigation measures for the proposed development.

3.8.30. During construction and decommissioning these include:

- Best practice management measures secured through the FCEMP [REP5-015] and FDEMP [REP5-017] for construction and decommissioning works as detailed at ES paragraph 13.7.3.
- Core construction hours as specified in ES table 13-4.
- Construction and decommissioning noise monitoring schemes, controlled and implemented through the FCEMP and FDEMP, respectively.
- A communication strategy and noise complaint system, secured through the final dDCO [REP7-004] as part of the FCEMP and FDEMP.
- A hierarchy of mitigation measures for trenchless activities, contained in the FCEMP.
- Traffic routing, timing and access points to the proposed development are designed to minimise noise impacts at existing receptors with management of construction traffic secured through the FCTMP [REP5-019].

3.8.31. The implementation of the FOEMP [REP6-026] would secure the following embedded mitigation measures during the operational phase of the development:

- Plant selection (noise emissions will be one of the criteria evaluated when procuring equipment for use on the site).
- Locating BESS stations and inverters at least 250m from residential receptors.
- Potential enclosure of transformers.

3.8.32. The applicant also commits that noise at sensitive receptors will be no higher than the levels presented in ES section 13.8. This commitment would be secured through final dDCO R18 [REP7-004].

3.8.33. ES paragraphs 13.9.1 and 13.9.4 highlight that - beyond the embedded measures - there are no additional noise and vibration mitigation measures proposed for any phase of the proposed development.

3.8.34. Pages 36 to 38 of the Environmental Mitigation and Commitments Register [REP3-020] provide more detail on the mechanisms which would secure the implementation of the mitigation measures.

**ES conclusions on construction and decommissioning effects**

3.8.35. ES paragraph 13.8.5 [AS-006] concludes that all predicted noise effects during the daytime construction scenarios would be below the Significant Observed Adverse Effect Level (SOAEL). The NPSE (2010) explains that this is the level above which significant adverse effects on health and quality of life occur. As such, the applicant concludes that all daytime construction scenario effects would be 'not significant'.

3.8.36. However, ES paragraph 13.8.5 concludes that there would be several noise sensitive receptors which would experience effects above the Lowest Observed Adverse Effect Level (LOAEL). The NPSE outlines that this is the level above which adverse effects on health and quality of life can be detected. The ES concludes that noise effects above the LOAEL would occur during NGA3 (*Construction of ground-mounted solar PV panels*) at R2, R8, R9, R10, R23 and R2; and during NGA4 at R23 and R24. The receptor locations are shown on ES figure 13-1 [APP-188].

3.8.37. ES paragraph 13.8.6 asserts that mitigation measures and noise management plans will be put into place to ensure that construction noise is minimised at all times throughout the construction programme. The applicant outlines that best practice construction measures would be secured through the FCEMP and FDEMP.

3.8.38. The ES has also identified the effects which would occur during NGA5 (Trenchless cable installation at Cottam Power Station railway line, the River Trent and the East Midlands Railway). ES paragraph 13.8.10 outlines that during NGA5 the SOAEL would be exceeded at receptors R29 and R30.

3.8.39. However, ES paragraph 13.8.10 outlines that this identification of a likely significant effect is precautionary as it is expected that trenchless activities outside of the daytime period would only be required if there is a clear and obvious benefit, such as for safety reasons or to avoid daytime disruption to many people or, in the case of the East Midlands Railway, if required by the asset owner.

3.8.40. ES paragraph 13.8.11 notes that a hierarchy of mitigation measures for trenchless methods would be secured through the CEMP. The applicant asserts that this would reduce the effects on R29 and R30 to 'not significant', even if night-time construction activities are required. ES paragraph 13.10.5 reaffirms that residual effects during NGA5 would be 'not significant'.

3.8.41. ES paragraph 13.8.24 concludes that vibration effects during construction and decommissioning would be 'not significant'. ES paragraph 13.8.9 notes that trenchless methods would not be required during the decommissioning phase of the proposed development.

3.8.42. ES paragraphs 13.8.25 to 13.8.31 consider the construction traffic noise effects of the proposed development. These paragraphs outline that all such effects would be 'not significant' with two exceptions. The first would be, receptors along the B1241, North of Fleets Road and Cottam Road, East of Westbrecks Lane, which are predicted to experience 'temporary moderate adverse effects' for a duration of approximately two months, which would be 'significant'. The second, relates to low flow roads where construction traffic on Fillingham Lane and Headstead Bank would

result in a temporary ‘moderate adverse’ effect for a duration of approximately two months, which would be ‘significant’.

3.8.43. However, ES paragraph 13.10.5 outlines that measures secured in the FCEMP to ensure no overlap of team construction traffic would ensure that the construction traffic noise effects would be reduced such that they would be ‘not significant’.

**ES conclusions on operational effects**

3.8.44. Operational effects have been assessed based on the worst-case assumption that operational noise would be constant during night-time. ES paragraph 13.8.6 [AS-006] states in part:

*“At receptors R1, R4, R5, R6, R14, R26, R39, NR1, NR2 and NR3, operational noise is below the LOAEL, indicating no adverse impact. At all other receptors, the LOAEL is exceeded, however, the SOAEL is not exceeded at any location, indicating non-significant adverse impacts. No significant impacts are predicted*.”

**ES conclusions on cumulative effects**

3.8.45. ES chapter 18 [REP6-014] sets out a cumulative assessment of noise and vibration effects.

*Cumulative effects during construction*

3.8.46. In relation to noise effect resulting from the cumulative CRC of all four solar developments, ES paragraph 18.14.5 explains that even if other solar DCOs construct their CRC at the same time as the proposed development, it is unlikely that the worst-case scenario would be exceeded. However, the duration of these works is likely to be extended and, hence, the duration that receptors may be exposed to noisy works out of core hours would be increased. The ES explains that this extended exposure may affect the level of mitigation required for out-of-hours trenchless crossing work activities in which case the Section 61 process will be followed.

3.8.47. This means that a Section 61 application would be made to the Local Authority for their consideration containing details of the works to be completed, the method by which the works will be completed, and the proposed process to minimise noise resulting from the works. Therefore, the applicant concludes that by following the proposed method and noise reducing interventions set out in the Section 61 application, the cumulative effects of construction noise and vibration along the CRC would be neutral (not significant).

3.8.48. For other construction activities, ES paragraph 18.14.6 outlines that the applicant notes that the other solar developments are subject to their own CEMPs and would be required to follow best practice measures during construction. As such, the applicant concludes that the cumulative effects of construction noise and vibration would be neutral and therefore ‘not significant’.

3.8.49. ES paragraph 18.14.8 states that temporary changes in noise due to cumulative construction traffic at the majority of roads are identified as ranging from negligible to minor adverse. At these roads, cumulative traffic noise effects are unchanged from residual effects and would therefore be neutral (not significant). The exception to this is at receptors along Stow Park Road and Cottam Road, which are predicted to experience temporary moderate adverse and major adverse effects, which would be ‘significant’.

3.8.50. However, the applicant asserts that the sequencing and physical separation of the CRC construction phase traffic, as secured through the Framework CEMP, would prevent all the construction traffic from being on the same road at the same time and therefore such significant effects are not anticipated in practice. With this mitigation in place, the residual effect is considered to be neutral (not significant) on the three identified roads

3.8.51. For the same reasons, whilst ES paragraph 18.14.11 identifies a significant cumulative construction traffic noise effect on the low flow road receptors of Fillingham Road and Headstead Bank, it concludes that the residual cumulative effect would be neutral and 'not significant'. The applicant concludes that all other cumulative effects on low flow roads are neutral and 'not significant'.

*Cumulative effects during operation*

3.8.52. ES paragraph 18.14.4 concludes that although noise levels at receptors R14 (cumulative effects with Cottam solar development) and NR2 (cumulative effects with 6MW anaerobic digestion plant) may increase as a result of cumulative noise, the increase would be less than 3 dB and not perceptible to the average person. Consequently, the applicant concludes that cumulative operational noise would remain unchanged from the residual effects and would therefore be neutral and 'not significant'.

*Cumulative effects during decommissioning*

3.8.53. The applicant considers that the effects of decommissioning will be similar to or less than those which would occur during the construction phase. ES paragraph 18.14.16 outlines that measures to managed noise and vibration during decommissioning are contained within the FDEMP and it is assumed that operators of other solar developments in the area would have similar management plans in place. As such, the applicant concludes that the cumulative noise and vibration effects during decommissioning would be neutral and 'not significant'.

## ISSUES CONSIDERED DURING THE EXAMINATION

3.8.54. LCC's LIR [REP1A-001] doesn't specifically address the noise and vibration effects of the proposed development and neither does its subsequent written representation [REP2-012].

3.8.55. Noise was discussed during ISH3 [EV1-005]. In its post-hearing representations [REP4-051], LCC questioned the absence of a set noise limit within the DCO and referred to various other DCOs which include such limits.

3.8.56. Nonetheless, subsequent to discussions and amendments to the FOEMP [REP6-026] in relation to noise monitoring, LCC has confirmed that it is satisfied with the applicant's approach to noise monitoring during the operational phase of the proposed development [REP6-036]. This is discussed further in this report in relation to 'operational noise effects'. Noise and vibration effects are not referred to in LCCs closing statement [REP7-022].

3.8.57. WLDC's LIR [REP1A-005] summarises the following key points in relation to noise and vibration effects:

- *"[NV1] Cumulative noise impacts during construction require a firm and enforceable commitment to joint working between developers to minimise impacts.*
- *[NV2] WLDC consider that, although effect on users of PROW have been scoped out of EIA, the commitment in the CEMP to minimise the impact on such users is welcome and must be implemented.*
- *[NV3] Clarification on the conditions that triggered the removal of noise data is required.*
- *[NV4] It appears that no production of construction vibration impacts are presented. Clarification of the reason why is required (e.g. distances from receptors are sufficient)."*

3.8.58. WLDC's post hearing representations [REP4-053] outline that its principal concern in relation to noise relates to the control of the development through the DCO requirements and the practical implication of resolving noise issues on a cumulative basis. Specifically, concerns are raised that dDCO R17 (now rDCO R18) is not effective.

3.8.59. Unlike LCC, WLDC retained these concerns in their final SoCG [REP6-034]. WLDC also objects to the application due to the combined cumulative impact associated with the construction and decommissioning of the four solar developments on noise and vibration [REP6-034]. These concerns are also reflected in its closing statement [REP7-024].

3.8.60. 7000 Acres made written representations [REP2-032] objecting to the proposed development partly on the grounds of noise effects. Primary concerns relate to the effect on groups and individuals who are more sensitive to noise effects and the associated effect on mental health. Concerns are also raised in relation the cumulative noise effects of the proposed development and other developments.

3.8.61. Various IPs have objected to the proposed development on the basis of the perceived adverse effects of noise and vibration during construction, operation and decommissioning. These representations are summarised in the applicant's response to RR [REP1-028], the applicant's response to WR [REP4-044] and Appendix C of the applicant's response to ExQ1 [REP3-062].

3.8.62. The Canal and river trust initially raised concerns in relation to noise effects in its WR [REP1-028]. However, it's signed SoCG confirms that it no longer retains these concerns.

**Effects during construction and decommissioning**

3.8.63. The ES (including paragraph 13.4.22) [AS-006], makes several references to instances during construction and decommissioning where the applicant may notify the local authority of an intention to work outside of core construction hours. Specific reference is made to such a requirement being possible during the trenchless cable crossings during construction. The applicant outlines that such notification would be made on a voluntary basis under s61 of the CoPA.

3.8.64. During ExQ1 [PD-009] we asked the applicant to explain how this process would work in practice and whether there were any provisions within the dDCO which controlled this process.

3.8.65. In response [REP3-062], the applicant outlined that the s61 process is a risk management tool which is aimed at guarding against the issue of a s60 notice to stop works in the event of a noise complaint. Paragraph 13.32 of WLDC's LIR

[REP1A-005] outlines that the approach to obtaining s61 consents should be fully agreed with the local planning authority. The applicant's response [REP3-061] outlines that there is provision to agree such an approach within the FCEMP and FDEMP.

3.8.66. We also asked the applicant [PD-009] whether the noise modelling was based on all works being undertaken during core construction hours (during the daytime). In response [REP3-062] the applicant confirmed that all construction activities have been modelled to occur during daytime hours with the exception of HDD activities, which have been assumed to take place overnight.

3.8.67. WLDC's LIR states that it appears that no construction vibration impacts are presented in the applicant's assessment. WLDC sought clarification on this matter. In response, the applicant outlines that vibration effects are considered in the ES (page 39 [AS-006]) and that the distance of works to sensitive receptors is discussed, with prior warning mechanisms committed to in the FCEMP.

3.8.68. In its WR [REP2-032] 7000 Acres queried how noise would impact users of PRoW. In response [REP6-063] the applicant outlines that noise is not expected to significantly impact users of PRoW as set out at ES paragraph 13.4.11 [AS-006].

3.8.69. The applicant asserts that the impact on users of PRoW would be managed through implementation of the FCEMP [REP5-015] and the FPMP [REP3-041]. These are set out in detail at paragraph 3.1.13 of the FPMP and include measures to mitigate the impact of construction traffic on PRoW users and divert PRoW during construction. Paragraph 3.3.1 outlines that similar measures would be adopted during decommissioning.

*ExA considerations*

3.8.70. We are satisfied that the applicant's assessment of construction noise and vibration is based on a worst-case scenario assessment. In particular we note that the applicant has assumed that all HDD activities would occur overnight, when they are likely to have greater noise and vibration effects.

3.8.71. We acknowledge that the ES does identify significant effects prior to mitigation in relation to construction traffic noise and trenchless crossing methods. However, these would be temporary effects. Furthermore, we agree with the applicant's assessment that the embedded mitigation measures included in the FCEMP and FPMP are sufficient and would ensure that, for the proposed development in isolation, there would not be any significant residual effects during construction.

3.8.72. Concerns in relation to operation of final dDCO [REP7-004] R18 and cumulative effects are considered later in this report.

**Effects during operation**

3.8.73. During ISH3 we noted that the applicant's noise modelling [AS-008] was based on AC-coupled BESS units. However, the proposed development would be DC-coupled. We therefore asked the applicant to explain whether this discrepancy would have any bearing on the noise modelling results.

3.8.74. The applicant outlined [REP4-049] that the primary difference between the two systems is that DC-coupled systems remove the need for an additional inverter between the solar station and the BESS. The applicant highlighted that inverters are typically the loudest component of the solar station layout, and that the DC-coupled

design would reduce the overall numbers of inverters. As such, the applicant concludes that the noise levels presented in the modelling are conservative and likely represent an overestimate of noise levels.

3.8.75. We asked the applicant, in ExQ1 [PD-009] and ExQ2 [PD-011], to provide information to support the identified sound power levels which formed the basis for the noise modelling. We suggested that the applicant should provide specification sheets in this regard.

3.8.76. In response [REP5-032] the applicant provided some high-level specification sheets but these contained limited information on noise levels. The applicant highlighted that data on sound power levels is typically confidential as it belongs to those who commission the collection of the data. Furthermore, the applicant outlined that dDCO R17 (now rDCO R18) would ensure that noise levels generated are no greater than those assessed in the ES.

3.8.77. During ExQ1 [PD-009] we asked the applicant whether it had undertaken an assessment of noise resulting from activities associated with the replacement of panels, batteries and other development during the operational phase of the development.

3.8.78. In response [REP3-062], the applicant stated that the noise resulting from the replacement of panels, batteries and other development would not exceed the levels generated during construction, as reported in the ES [AS-006]. The applicant therefore concludes that replacement development would not give rise to any significant effects.

3.8.79. In its WR [REP2-032], 7000 Acres requested that the applicant obtain the advice of an independent health expert to establish whether noise would have an adverse effect on the health of nearby residents.

3.8.80. In response [REP3-063], the applicant outlines that ES chapter 13 [AS-006] provides an assessment of the impacts of noise and vibration, and how it would affect human health and quality of life.

*ExA considerations*

3.8.81. We agree with the applicant's assessment that there would be some adverse noise effects during operation but that these would all fall below the SOAEL and would not therefore be significant. Whilst noise may be audible at some residential and non-residential receptors during a worst-case scenario of operation, the mitigation measures, including buffer distances set out in the ODPS [REP4-020], would ensure that these effects are not significant. For this reason, we also consider that there would be no associated significant effects on public health and wellbeing.

3.8.82. It is also relevant to note that this assessment is predicated on a worst-case scenario whereby the noise emitted from the proposed development would be constant during night-time. However, in practice, whilst possible, taking into account grid-balancing functions, it is unlikely that all components of the development would be operational during night-time.

3.8.83. We accept that final dDCO [REP7-004] R18 and R13 in combination with the FOEMP would be sufficient to control the operational noise effects of the proposed development. As such, even in the absence of detailed specifications of plant and machinery we are satisfied that the operational noise and vibration levels would not

be greater than those detailed in the ES. This is discussed further in relation to final dDCO [REP7-004] R18 later in this report.

**Cumulative effects**

3.8.84. WLDC's LIR [REP1A-005] outlines that cumulative noise impacts during construction require a firm and enforceable commitment to joint working between developers to minimise noise impacts. In its closing statement [REP7-024], WLDC re-iterated its concern that the cumulative impact of the construction of four NSIP solar projects within the same area would give rise to significant impacts on the environment and communities over a long period of time.

3.8.85. In particular, WLDC outlines that these cumulative impacts would occur through developments being constructed concurrently or in sequence. WLDC asserts that no binding or enforceable commitment to collaboration has been made by the respective applicants/ developers.

3.8.86. WLDC highlight that the applicant's '*Joint Report on Interrelationships between NSIP projects'* [REP6-024] is neither included as a 'Certified Document' nor is it proposed to be enforced through any DCO requirement. WLDC therefore considers that this document cannot be relied upon to minimise cumulative construction impacts.

3.8.87. In response [REP6-034] the applicant refers to the conclusions reached in ES chapter 18. Specifically, the applicant outlines that during construction, operation and decommissioning, the proposed development is assessed to have no significant effects in terms of noise and vibration. The applicant agrees that cumulative noise impacts during construction require a firm and enforceable commitment to joint working between developers to minimise impacts. However, it asserts that this is committed to in the FCEMP [REP5-015] on pages 54 to 55.

3.8.88. In relation to cumulative operational noise effects, the applicant [REP6-055] considers that the controls within the FOEMP [REP6-026] are sufficiently robust to control the very low levels of cumulative noise identified for the proposed development.

*ExA considerations*

3.8.89. In terms of joint working with developers of other nearby solar DC developments, the applicant referred specifically to the measures set out on pages 54 and 55. However, we note that the only reference to any form of joint working is a sentence which states in full:

*"Regular liaison meetings will be held with other high-risk construction sites within 500m of the proposed development (or greater, if applicable), to ensure plans are co-ordinated and noise and vibration is minimised. It is important to understand the interactions of the off-site transport / deliveries which might be using the same routes."*

3.8.90. FCEMP paragraph 2.7.4 also states that '*in the event that the construction schedules associated with this proposed development and other schemes in the area overlap (i.e. with the Cottam Solar Project, West Burton Solar Project and the Gate Burton Energy Park), a joint Construction Traffic Management Plan (Joint CTMP) could be produced*'.

3.8.91. FCTMP [REP5-019] paragraph 8.5.3 also outlines that '*a firm commitment cannot be made to prepare or agree a Joint CTMP'*.

3.8.92. We acknowledge that these commitments do indicate an intention to pursue joint working. However, there is no firm or enforceable requirement or legally binding mechanism which requires other developers to co-ordinate with the applicant during construction and decommissioning. We acknowledge that the other solar project developers will be subject to their own CEMPs but no evidence has been advanced to indicate any legally binding commitment to joint working or programming of construction traffic on their parts either.

3.8.93. Nonetheless, the only significant cumulative effects identified in ES chapter 18 relate to the effects on receptors on two roads (Cottam Road and Stow Park Road) resulting from cumulative construction traffic associated with construction of the CRC. ES paragraph 18.14.8 explains that, when taking into account sequencing and physical separation of the CRC construction phase traffic, as secured through the FCEMP [REP5-015], the residual effects would be reduced to 'not significant'. As such, there is no reliance placed on joint working as a means to mitigate these particular effects.

3.8.94. We therefore agree with the applicant's conclusion that there would be no significant residual cumulative effects.

**Effects on specific groups and those with protected characteristics**

3.8.95. 7000 Acres' WR [REP2-032] states in part:

*"In the overall context, this application should demonstrate that they have taken into consideration the impact it would have on the vulnerable and elderly, and how the noise might affect physical and mental health conditions in the general population. This area has a higher proportion of elderly, some of these are more vulnerable than others (e. g. those living in nursing, residential homes or have care at home, as well as those who are already vulnerable because of loneliness and isolation). In the study area, there are potential people with learning disabilities. We note a reference to one case and without the applicant understanding and resolving this, it will lead to a significant health inequality for this person."*

3.8.96. The applicant [REP1-028] acknowledges the specific sensitivity of certain groups and individuals and the concern that low frequency noise from the substations may be perceptible.

3.8.97. The applicant has submitted an Equality Impact Assessment (EqIA) [APP-227]. The EqIA assesses the potential direct and indirect impacts of the proposed development on groups with protected characteristics as defined in the Equality Act 2010. The applicant accepts that, during construction, increased traffic movements have the potential to disproportionality affect some protected characteristic groups, including older and disabled people. The applicant acknowledges that, during operation, potential impacts include negative effects of increased noise on protected characteristic groups such as disabled people.

3.8.98. However, the applicant refers to ES paragraph 13.7.17, which states that the issue of low frequency noise will be considered throughout the detailed design for the on-site substations and eliminated through design, or appropriately mitigated (isolation and attenuation measures) where appropriate. The applicant asserts that this commitment is secured in the FOEMP [REP6-027]. Furthermore, the applicant

refers to the commitment in the ODPS [REP4-020] not to locate solar stations and BESS within 250 metres of residential properties.

3.8.99. In relation to specific concerns raised by an interested party [RR-014] in relation to autism spectrum disorder, the applicant provided various additional reports and assessments (appendix C and D of [REP1-028]). We posed specific questions on this matter during ExQ1 (Q1.10.8 [PD-009]).

3.8.100. In response [appendix C of REP3-062] the applicant emphasised that there is some evidence to suggest that hyperacusis (defined as an unusual tolerance to ordinary environmental sounds) is more prevalent in those with autism. The applicant asserts that studies have consistently reported a higher level of discomfort for speech intensity between 60 and 90 dB. However, such levels are well above the 27 dB likely to be experienced at the interested party's property in this case.

3.8.101. Nonetheless, the applicant has also made various amendments to the indicative layout of the proposed development to remove infrastructure from locations in proximity to this residential property. This has included, amending the works plans [REP6-004] to exclude Solar Stations and BESS on Field 92. This means that the substation as well as all BESS and Solar Stations would be at least 500 m from this property.

*ExA considerations*

3.8.102. We are satisfied that the applicant has properly and thoroughly considered the noise effects of the proposed development on groups and individuals with protected characteristics as defined in the Equality Act 2010.

3.8.103. We acknowledge that noise effects are likely to be more perceptible by some groups, for example the elderly and disabled. However, the embedded mitigation measures, some of which have been specifically adjusted to mitigate effects on those with the aforementioned protected characteristics, are sufficient to ensure that there would be no significant long-term effect on these groups as a result of the proposed development. Despite concerns raised, no substantive evidence of sufficient weight has been provided to persuade us otherwise.

**Requirement 18**

3.8.104. Draft DCO R17 [REP3-005] (now rDCO R18), on operational noise, was discussed during ISH3. At that time, it stated as follows:

*"17.—(1) No part of Work No. 1, Work No. 2 or Work No. 3 may commence until an operational noise assessment containing details of how the design of the authorised development has incorporated mitigation to ensure the operational noise rating levels as set out in the environmental statement are to be complied with for that part has been submitted to and approved by the relevant planning authority for that part.*

*(2) The mitigation measures described in the operational noise assessment for each part of the authorised development must be implemented as approved and maintained throughout the operation of the relevant parts of the authorised development to which the plan relates"*

3.8.105. During ISH3 we asked the applicant to more precisely define the term 'operational noise rating levels', as referred to in the draft requirement. The applicant outlined [REP4-049] that this is a reference to the figures set out in ES Table 13-17 [AS-

006]. At our request the applicant has updated the requirement [REP7-004] (now R18) to refer directly to this data.

3.8.106. In ISH3 we outlined that, as worded, we considered dDCO R17 only required that an operational noise assessment was undertaken and that the proposed mitigation measures within it would be implemented. We noted that in an instance of a noise complaint, the requirement would not lead to any action being taken, given its limited scope. LCC and WLDC also noted that dDCO R17, as drafted at that time, was not sufficiently detailed or wide-ranging, with no requirement for noise monitoring included.

3.8.107. We further queried the absence of any mechanism to monitor operational noise in ExQ2 [PD-011]. In response [REP5-032] the applicant asserted that R17 (now R18) was not the appropriate mechanism for securing monitoring, given its role as a pre-commencement requirement. The applicant explained that the requirement for controlling noise monitoring at source is embedded within Table 3-8 of the FOEMP [REP6-0026], which is secured through R13 of the final dDCO [REP7-004]. This includes the requirement that results of the sound monitoring of plant during the operational lifetime of the proposed development, carried out during regular maintenance checks, would be submitted to the relevant planning authority for review and further action taken, where required.

3.8.108. LCCs SoCG [REP6-036] confirms that it is satisfied with this approach. WLDCs Closing Statement [REP7-024] also confirms that it agrees with this approach. However, WLDC still maintain that there is no mechanism to distinguish and enforce against adverse noise effects arising from more than one solar project.

*ExA considerations*

3.8.109. We are satisfied that noise and vibration monitoring can be controlled and enforced through rDCO R18 and R13 (with the associated OEMP). We note that part 3 of R13 states that the OEMP [REP6-026] must be implemented as approved and maintained throughout the operation of the relevant parts of the authorised development to which it relates. This part provides an enforceable mechanism for R13 and would control the content of the final OEMP.

3.8.110. We note that the FOEMP indicates the applicant's willingness for a future operator to adopt regular noise monitoring (at least annually) as part of an annual maintenance regime. The final wording of the OEMP would be subject to approval by the relevant planning authority. Overall, the wording contained within the FOMEP is sufficient to satisfy us that there is a mechanism to effectively monitor operational noise and vibration.

3.8.111. In terms of distinguishing between effects emanating from the proposed development and those arising from other developments, we consider that it is not uncommon for acoustic experts to need to distinguish between similar sources of noise. In that respect, such a scenario is not an unusual circumstance. Furthermore, the applicant's ES demonstrates that during operation there would be no likely significant effects, even taking a worst-case scenario approach.

## CONCLUSIONS

3.8.112. We conclude as follows:

→ We agree with the applicant's assessment of noise and vibration effects for the development, both cumulatively and isolation. There would be some adverse noise effects but none of the residual effects would be significant and none would lead to any significant adverse impact on health and wellbeing, including when considering those with protected characteristics.

→ Avoidance measures have been embedded within the proposed design and we are satisfied that embedded mitigation measures set out in the FCEMP [REP5-015], FDEMP [REP5-017], FCTMP [REP5-019], FOEMP [REP6-026] and ODPS [REP4-020] would be effectively implemented through rDCO R12, R21, R15, R13 and R5 respectively.

→ The proposed development would comply with NPS EN-1, EN-3 and EN-5 as well as the NPPF and relevant development plan policies insofar as they relate to noise and vibration effects.

→ We attribute 'a little' negative weight to the adverse noise effects of the proposed development, given that they would fall below the SOAEL.

## 3.9. SOCIO-ECONOMICS

### INTRODUCTION

3.9.1. This section considers the socio-economic effects of the proposed development. Effects on human health and soils and agriculture are considered in sections 3.6 and 3.10 of this report, respectively.

### POLICY BACKGROUND

3.9.2. NPS EN-1 paragraph 5.13.4 outlines that the applicant's assessment should consider all relevant social-economic effects, including:

- The creation of jobs and training opportunities.
- The provision of additional local services and improvements to local infrastructure.
- Any indirect beneficial impacts for the region.
- Effects on tourism.
- The impact of a changing influx of workers during the different construction, operation and decommissioning phases of the energy infrastructure.
- Cumulative effects, for example a potential shortage of construction workers to meet the needs of other industries and major projects within the region.

3.9.3. NPS EN-1 states that the SoS should have regard to effects that it considers are important and relevant to its decision and it may afford limited weight where assertions are not supported by evidence (5.13.9 to 5.13.10). In addition, the SoS should consider any positive provisions that the applicant proposes to mitigate effects (5.13.11). A requirement for an employment and skills plan may be one means of securing such mitigation (5.13.12).

3.9.4. In relation to decommissioning, NPS EN-3 paragraph 2.10.69 states that applicants should set out what would be decommissioned and removed from the site at the end of the operational life of the generating station. It also outlines that applicants should consider whether there may be socio-economic benefits in retaining site infrastructure after the operational life, such as retaining pathways through the site or a site substation.

3.9.5. The NPPF outlines that significant weight should be placed on the need to support economic growth and productivity. Support is also given to the sustainable growth of all types of business in rural areas and to the development and diversification of agricultural and other land-based rural businesses (paragraphs 85, 87 and 88). Paragraph 105 advises that planning decisions should protect and enhance public rights of way and access, including taking opportunities to provide better facilities for users.

3.9.6. The LIR's submitted by LCC [REP1A-001], WLDC [REP1A-005], and NCC [REP1A-002] refer to various development plan policies. Local development plan policies relevant to the proposed development are also set out at appendix A of this report.

## THE APPLICATION

3.9.7. The applicant's case in relation to socio-economic effects is set out in ES chapter 14 [APP-045] and the assessment of cumulative socio-economic effects is included in ES chapter 18 [REP6-014]. In addition, the applicant submitted the following documents:

- FLEMP [REP6-022], which includes details of permissive paths.
- FCEMP [REP5-015], CTMP [REP5-019], FOEMP [REP6-026] and FDEMP [REP5-017], which set out measures to reduce amenity impacts on sensitive receptors during construction, operation and decommissioning respectively.
- Framework PRoW Management Plan (FPMP) [REP3-041].
- Framework Skills, Supply Chain and Employment Plan (FSSCEP) [APP-232].
- Tourism Assessment (appendix D of [REP3-061]).

### Baseline and methodology

3.9.8. The socio-economic methodology is set out at ES section 14.4 and the full EIA methodology is detailed in ES chapter 5 [APP-036].

*Study areas*

3.9.9. Impacts on the economy and employment have been considered within a 60-minute travel area. The same impacts have been considered within the local authorities of West Lindsey District and Bassetlaw District and the wider East Midlands region.

3.9.10. ES chapter 14 outlines that due to the scale of the proposed development relative to the national economy, it is unlikely that there would be any considerable national impacts. Therefore, the economic impacts have only been considered relative to the local and regional area.

3.9.11. The study area for local communities that could be affected by community severance has considered communities that may potentially be directly and indirectly affected by the proposed development, within 1km of the order limits. The study area for impacts on recreational routes focuses on PRoW within 500m of the order limits.

3.9.12. Impacts on agricultural production have been considered within Nottinghamshire and Lincolnshire counties, the wider East Midlands region and England.

3.9.13. The study area for land use and amenity impacts on residential properties, local businesses, open space, community facilities, visitor attractions and development land, considers receptors that could be directly or indirectly affected by the proposed development, within 500m of the order limits.

*Baseline conditions*

3.9.14. The baseline conditions set out in ES chapter 14 can be summarised as follow:

- 2021 census data shows that populations in West Lindsey and Bassetlaw have increased by 6.6% and 4.4% respectively since 2011 and the ES predicts that they will increase further by 2043 (by 7.7% and 12.1% respectively).
- In 2023, the unemployment rate for working-age residents was 1.3% in West Lindsey and 3.8% in Bassetlaw, compared to the average rates across the East Midlands (2.9%) and England (3.7%).
- Gross Value Added (GVA) per head data indicates a lower value in Lincolnshire (£18,959) and North Nottinghamshire (£18,816) compared to the averages across the East Midlands (£21,845) and England (£27,949).
- In 2023 there were approximately 12,399 rooms in local hotel, bed and breakfast and inns accommodation within a 60-minute drive of the order limits.
- There are various local communities within close proximity to the order limits and several residential properties are surrounded by the order limits.
- There are several PRoW, bridleways and claimed PRoW within the order limits, the majority of which are located within the CRC.
- 1,212ha of the principal site is currently in agricultural use, with the remainder (138ha) being categorised as non-agricultural land.

**Mitigation**

3.9.15. Mitigation measures identified in ES chapter 14 can be summarised as follow:

- The FCEMP, FOEMP, FDEMP and CTMP, set out measures to reduce amenity impacts on sensitive receptors during construction, operation and decommissioning respectively.
- The FPMP provides details of temporary PRoW diversions and closures during construction and also includes details of monitoring and reinstatement.
- The FSSCEP sets out details of opportunities for apprenticeships, training, education, local employment and local procurement.

3.9.16. Page 39 of the Environmental Mitigation and Commitments Register [REP3-020] provide more detail on the mechanisms which would secure the implementation of the mitigation measures.

**ES conclusions on socio-economic effects**

*Construction*

3.9.17. ES chapter 14 concludes that the proposed development would ‘support’, on average, 914 net additional jobs during the construction period. Of these, it predicts that 138 jobs per annum would be expected to be taken-up by residents within the 60-minute drive time study area. The applicant concludes that this would lead to a beneficial effect at a regional scale albeit not a significant beneficial effect.

3.9.18. The applicant applied a worst-case scenario whereby all 690 construction workers require accommodation at once. Its assessment concludes that, at peak occupancy (during August, September and October) there would be a minimum surplus of 2,689 rooms available within the study area. As such, the ES concludes that there would be no significant effect on accommodation availability.

3.9.19. The applicant concludes that there would be a temporary beneficial (not significant) effect on the local and regional economy during construction. This is on the basis of

direct Gross Value Added (GVA) during the construction phase. ES paragraph 14.8.23 concludes that approximately £52.3 million would be generated from the proposed development per year during construction, of which approximately £7.9 million would be within West Lindsey and Bassetlaw districts, and £44.4 million within the East Midlands as a whole.

3.9.20. The ES [APP-045] concludes that - taking into account the results of the noise, traffic, visual and air quality assessments - there would be no residents, businesses or community facilities that would likely experience a significant effect during construction in relation to more than one of these topics. It therefore concludes that there would be 'no effect' on amenity arising from the proposed development during construction.

3.9.21. Given the absence of permanent closures to PRoW and measures to manage and divert PRoW during construction, the ES concludes that the residual effect on PRoW and local community severance would be 'minor adverse (not significant)'. This would result from the temporary severance of access to the River Trent for fishers.

3.9.22. In relation to agricultural production the applicant concludes that there would be a 'minor adverse' residual effect. This would arise as the result of disruption of agricultural production land during construction activity on the principal site. Nonetheless, the ES concludes that these effects would be 'not significant'

*Operation*

3.9.23. ES paragraphs 14.8.49 to 14.8.51 [APP-045] explain that approximately 10 existing jobs - supported by agricultural activities on the principal site - would be lost during the operational phase of the proposed development. However, there would be a gross number of 10 jobs generated by the proposed development during the same phase. The ES assumes a leakage of 85% outside the 60-minute drive time study area, displacement of 25% and a 1.5 multiplier. With these assumptions taken into account the total net employment of the proposed development would be zero.

3.9.24. All PRoW would be re-opened during operation, with two new permissive paths proposed. This includes two new permissive pathways proposed along Common Lane to the west of Glentworth [REP6-022].

3.9.25. Referring to the findings of other ES topics, ES paragraph 6.10.32 concludes that there would no significant effects on community or private assets. Overall, the applicant concludes that there would no significant socio-economic effects during the operational phase of the proposed development.

*Decommissioning*

3.9.26. The applicant contends that the decommissioning effects would likely be similar to those for the construction phase of the proposed development. As such, the applicant concludes that there would be no significant socio-economic effects in this phase.

**ES conclusions on cumulative socio-economic effects**

3.9.27. The assessment of cumulative socio-economic effects includes consideration of Gate Burton, Cottam and West Burton solar developments along with other developments. ES table 18-22 outlines the other 'cumulative socio-economic and

land use developments' considered in the assessment of cumulative socio-economic effects.

3.9.28. The applicant concludes that the temporary socio-economic benefits associated with construction would increase from 'minor beneficial (not significant)' to 'moderate beneficial (significant)' if all developments were constructed. The applicant considers that all other effects during construction, operation and decommissioning would be 'not significant'. The full rationale for these conclusions is set out in ES chapter 18 [REP6-013].

## ISSUES CONSIDERED DURING THE EXAMINATION

3.9.29. Socio-economic effects of the proposal were considered during the examination, including the following issues:

- Methodology.
- Employment and supply chain.
- Tourism, accommodation and recreation.
- Cumulative effects.

3.9.30. LCC [REP1A-001], WLDC [REP1A-005] and a significant number of IPs raised concerns in relation to the loss of agricultural land and the associated socio-economic effects. These issues are primarily considered in section 3.10 of this report. However, the extent to which the proposed development would affect agricultural jobs in the supply chain is considered in this section.

### Methodology

3.9.31. 7000 Acres WR [REP2-021] outlines that it is concerned that the study area used by the applicant to reference baseline conditions has been very widely drawn. As such, it suggests that the applicant has not sufficiently considered the specific socio-economic difficulties of Gainsborough, the nearest town.

3.9.32. In addition, 7000 Acres [REP2-021] criticises the applicant's use of available Census data. It asserts that this has led to the failure of the assessment to consider the effect of the proposed development on Gainsborough, which it suggests is significantly deprived in terms of income, employment, and education.

3.9.33. During ExQ2 [PD-011] we asked 7000 Acres to explain how it considers that a focus on the more deprived area of Gainsborough would have affected the applicant's assessment of socio-economic effects. Particularly given that the applicant's assessment concludes that there would be socio-economic benefits accrued through employment during construction.

3.9.34. In response [REP5-039], 7000 Acres outlined that whilst considering Gainsborough in more detail may or may not have influenced the outcome of the assessment, the approach is '*representative of the applicant's treatment of this and other* subjects'. It also suggested that the proposed development *'exacerbates an already socially challenging situation – and omits to be transparent about this owing to the gross averaging of impacts arising from having chosen such a broad study area*'.

*ExA considerations*

3.9.35. Even if we accepted 7000 Acre's position - that there should have been a greater focus on deprivation in the nearest town of Gainsborough - this would have only increased the benefits associated with employment generation during construction.

This is because the value of socio-economic benefits to deprived areas is greater than it might be for a less deprived area. In addition, the ES does not identify any adverse effects which could conceivably be heighted through a greater focus on deprivation in Gainsborough. As such, we conclude that the applicant's methodology is acceptable in this regard.

**Employment and supply chain**

3.9.36. Both WLDC [REP1A-005] and 7000 Acres [REP5-034] consider that the applicant has not fully considered the employment effects of the proposed development when taking into account supply chain jobs in the agricultural industry.

3.9.37. Given these concerns, in ExQ1 [PD-009] we asked the applicant to direct us to any assessment of the effect of the socio-economic impact of the proposed development on the wider rural economy.

3.9.38. In response [REP3-062], the applicant outlined that a multiplier effect has been applied to estimate direct and indirect employment effects, with job numbers presented in ES Table 14-20 [APP-045]. The table shows that whilst there would be a loss of 4 indirect jobs as a result of the proposed development, this would be balanced by the creation of 4 new indirect jobs. Overall, the applicant concludes that there would be no effect on total and indirect employment.

3.9.39. Furthermore, in response to WLDCs LIR [REP3-061] the applicant emphasises that the proposed development would contribute towards the local economy and supply chain, in part through the implementation of the FSSCEP [APP-232]. The applicant asserts that, once implemented, this would help maximise opportunities for investing in skills locally.

3.9.40. ES paragraph 14.8.4 [APP-045] states in part: "*The applicant estimates that the proposed development will require a peak of 1,395 full-time equivalent (FTE) jobs, and an average of 812 gross direct FTE jobs on-site over the 24-month construction period*."

3.9.41. During ExQ1 [PD-009] we asked the applicant to explain the number of employees estimated for each type of employment specified in Table 2.4 of the FSSCEP.

3.9.42. In response [REP3-062], the applicant updated table 2.4 of the FSSCEP to show the proportions of the total estimated jobs assigned to each specific job role. The updated table indicates that there would be a wide range of jobs created, requiring different skills and expertise in construction.

*ExA's considerations*

3.9.43. We agree with the applicant's assessment that there would be economic benefits associated with the jobs created during the construction period. Indeed, the evidence indicates that approximately £52.3m would be generated from the proposed development per year during construction. This would contribute positively to the local and regional (East Midlands) economies.

3.9.44. Many of the jobs supported and created, would require specific skills. The implementation of the FSSCEP would facilitate training opportunities for employees residing in the local area. That said, the need for specialist skills is likely to necessitate a significant degree of employment from outside of the study area.

3.9.45. We acknowledge the concerns raised by IPs and local authorities with regard to the effect of the proposal on indirect jobs, particularly within the agricultural sector. However, the applicant has directed us to evidence to indicate that whilst 4 indirect jobs would be lost, 4 others would be gained during the operation of the proposed development. Even if the net effect were not zero, the loss of 4 indirect jobs is not considered to be significant.

3.9.46. Furthermore, ES paragraph 14.8.1 explains that the effect of the multiplier depends on the size of the geographical area that is being considered, the local supply linkages and income leakage from the area. The HCA Additionality Guide provides 'ready reckoner' composite multipliers (the combined effect of indirect and induced multipliers) to account for this. The applicant outlines that this is a best practice approach. In the absence of any objective evidence to the contrary, we consider this approach to be acceptable.

3.9.47. We therefore consider that during operation there would be a neutral impact on employment.

**Tourism, accommodation and recreation**

3.9.48. WLDC [REP1A-005] considers that there would be a long-term impact on tourism during the construction phase of the proposed development. This is because it considers that there is a potential for the development to reduce the desirability of the local area for tourism. In addition, 7000 Acres, in its WR [REP2-021], outlined that the ES provides an '*extremely limited treatment of any impacts on tourism'*.

3.9.49. In response to these concerns, the applicant submitted a Tourism Assessment [REP3-061]. This assessment considered the effects on visitor expenditure, visitor attractions, recreation facilities and 'other tourism receptors' during construction and operation. The assessment notes that effects during decommissioning are likely to be similar to those during construction.

3.9.50. In relation to the displacement of visitor accommodation during construction, the assessment refers to the conclusions in ES chapter 14. It found that there would be sufficient capacity within a 60-minute drive time of the order limits during construction.

3.9.51. The assessment identifies that there is a large area of 'access land' south of Hall Farm, within 300m of the order limits. This area includes small businesses associated with Harpswell Hall Farm, including the Open Garden. The applicant concludes that, due to existing levels of screening and intervening distance, visibility of the construction activities would likely be very limited at most. Similarly, the assessment concludes that during operation, planting measures will ensure that only glimpsed views from this attraction will be possible in year 1, with no change in visual amenity by year 15.

3.9.52. In terms of recreation facilities, the assessment acknowledges that there would be a moderate effect on users of the River Trent, most of whom would be recreational users. Nonetheless, the assessment concludes that these effects are unlikely to deter visitors. This is because only a small section of the River Trent would be affected over the temporary construction period. During operation, the assessment concludes that the proposed development would not inhibit PRoW in the local area from being used recreationally

3.9.53. The assessment concludes that there would be a maximum minor adverse (not significant) effect on the local tourism industry and that any potential secondary impacts on local business would be no worse than this.

3.9.54. Several IPs, including Glentworth Parish Council [REP2-051 and REP-052] outlined concerns in relation to the future reinstatement of the Glentworth to Harpswell PROW which was removed from the definitive map. In response, the applicant emphasised that no panels are proposed in the area of this claimed bridleway.

*ExA considerations*

3.9.55. We consider that there would be a minor adverse effect on tourism and recreation during construction. Whilst we note the concerns raised by WLDC and IPs, the applicant has supplied additional evidence to demonstrate that the temporary harm which may arise in terms of tourism and recreation would not be significant. We agree with this assessment and there is no substantive evidence to the contrary.

3.9.56. Similarly, the applicant has provided evidence to demonstrate that the construction of the proposed development would not lead to a reduction in visitor accommodation which could be offset by existing capacity within 60 minutes of the order limits. The demand for construction staff accommodation would benefit local accommodation providers and there is no substantive evidence to indicate that tourists would be displaced. Furthermore, the applicant's assessment has also be undertaken on a worst-case scenario basis, whereby all construction staff require accommodation at once.

3.9.57. Whilst we acknowledge concerns in relation to the claimed bridleway between Glentworth and Harpswell, the proposed development would not impinge upon this route.

**Cumulative effects**

3.9.58. WLDC [REP1A-005] questioned whether there would be sufficient ability to identify the required construction workforce for the development when considering the potential overlap with the construction periods for the three other solar developments (Gate Burton, West Burton and Cottam).

3.9.59. In response [REP3-061] the applicant asserts that only 15% of the required workforce are likely to come from the local area. This is primarily due to the specialist skills required for construction workers. Furthermore, the applicant indicates that construction periods of the four solar schemes would likely be staggered, with construction of the proposed development extending approximately 12 months beyond the completion of the West Burton and Cottam solar developments. These factors combined are such that the applicant considers that there would not be a negative effect on the availability of local labour during construction.

3.9.60. WLDC [REP1A-005] also identified a concern that there is potential for adverse cumulative socio-economic and land use effects during decommissioning of other solar DCOs. These effects would relate community severance, effects on PRoW users and land use/amenity.

3.9.61. In response [REP3-061] the applicant outlines that ES paragraph 18.15.23 [REP6-013] assesses the potential cumulative socio-economic and land use effects during decommissioning of other solar DCOs and the proposed development, in particular on community severance, PRoW users, land use and amenity. The assessment

concluded that effects would be unlikely to exceed those assessed for the construction phase and are likely to be neutral (not significant).

3.9.62. WLDC [REP1A-005] also set out concerns that the duration of the construction periods of all cumulative projects would put significant strain on the capacity of the area to accommodate workers. WLDC considers that this will have a consequential impact upon the tourist industry.

3.9.63. In response, the applicant submitted an assessment of cumulative accommodation requirements [Appendix C of REP3-061]. This includes an analysis of potential local accommodation availability for the cumulative workforce. The specific developments considered are referred at paragraph 2.1.1 and include Gate Burton, Cottam and West Burton. The assessment concludes that the remaining accommodation capacity during the construction period (27-month assessment period) would not fall below 7% in any month and only falls below 10% in four months of the assessment period.

*ExA considerations*

3.9.64. We are satisfied that the proposed development, when considered cumulatively with other developments, would not significantly displace construction workers from the local economy. This is because the applicant estimates that only a small percentage (15%) would be sourced locally. Whilst we acknowledge concerns that there may be an excessive demand for skilled workers from further afield, we consider that the likely staggering of construction periods would ensure that the effect of this would not be significant.

3.9.65. We also accept the applicant's assertion that there would not be an undue burden on local accommodation. We note that there is significant capacity and that this would remain at a minimum level of 7%. We further note that this is a worst-case scenario and that during off-season periods there would likely be a beneficial effect on local accommodation providers.

3.9.66. We consider that the cumulative employment benefits during construction of the proposed development and other developments would be greater than for the proposed development in isolation. That said, there is no substantive explanation in ES chapter 18 [REP6-014] for the applicant's case that such effects would be increased to 'moderate beneficial (significant). Indeed, ES paragraph 18.15.4 states that the scale of the construction employment generated cannot be readily quantified as for some developments this information is commercially sensitive and not publicly available.

3.9.67. For this reason and taking into account that cumulative work on the CRC would potentially be shared with other developers, we consider that the applicant has over-estimated the cumulative socio-economic benefits. Notwithstanding this, there would still be some cumulative benefits.

**CONCLUSIONS**

3.9.68. We conclude as follows:

→ We consider that the applicant has used an appropriate methodology in considering socio-economic effects, including the approach taken to selecting a study area.

→ We agree that there would be local and regional economic benefits associated with the jobs supported during the construction period. Furthermore, the implementation of the FSSCEP [APP-232] (secured by rDCO R20) would facilitate training opportunities for employees residing in the local area.

→ There would be a neutral effect on direct and indirect jobs during operation of the proposed development.

→ Whilst there may be a reduction in visitor accommodation during construction, there would be sufficient capacity to ensure that there would not be any significant effect on tourism or the local economy. There would be a minor adverse residual effect (not significant) on tourism and recreation during construction.

→ The proposed development - when considered cumulatively with other developments - would not significantly displace construction workers from the local economy. We consider that the cumulative social-economic effects would be beneficial.

→ Whilst there would be some adverse effects, these would not be significant. Overall, the proposed development would lead to socio-economic benefits, most of which would be realised during the temporary construction period. It logically follows that the same benefits would be likely during the temporary decommissioning period.

→ The proposed development complies with the policies and guidance on socio-economic effects contained within NPS EN-1, EN-3 and EN-5 as well as the NPPF and relevant development plan policies.

→ Given the limited duration of the socio-economic benefits we consider that they should only be afforded a little positive weight.

## 3.10. SOILS AND AGRICULTURE

### INTRODUCTION

3.10.1. This section considers the likely impact and effects of the proposed development on land use and soils, specifically considering the BMV agricultural land and future condition of the soils at the site.

### POLICY BACKGROUND

3.10.2. NPS EN-1 paragraph 5.11.2 states that applicants should seek to minimise impacts on the BMV agricultural land (defined as land in grades 1, 2 and 3a of the Agricultural Land Classification (ALC)) and preferably use land in areas of poorer quality (grades 3b, 4 and 5). Paragraph 5.11.2 states that applicants should also identify any effects and seek to minimise impacts on soil health and protect and improve soil quality taking into account any mitigation measures proposed.

3.10.3. Paragraph 5.11.34 states that the SoS should ensure that applicants do not site their scheme on the BMV agricultural land without justification. Where schemes are to be sited on BMV agricultural land the SoS should take into account the economic and other benefits of that land. Where development of agricultural land is demonstrated to be necessary, areas of poorer quality land should be preferred to those of a higher quality.

3.10.4. NPS EN-3 paragraph 2.10.11 cites The Powering Up Britain: Energy Security Plan and highlights that government seeks large scale ground-mount solar deployment across the UK, looking for development mainly on brownfield, industrial and low and medium grade agricultural land. It explains how solar PV development and farming can be complementary, supporting each other financially, environmentally and through shared use of land. It also encourages deployment of solar technology that delivers environmental benefits, with consideration for ongoing food production or environmental enhancements.

3.10.5. Paragraph 2.10.29 says 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. Where the proposed use of any agricultural land has been shown to be necessary, poorer quality land should be preferred to higher quality land avoiding the use of BMV agricultural land where possible. BMV agricultural land is defined as land in grades 1, 2 and 3a of the ALC.

3.10.6. Paragraph 2.10.30 states that whilst the development of ground mounted solar arrays is not prohibited on BMV agricultural land, or sites designated for their natural beauty, or recognised for ecological or archaeological importance, the impacts of such are expected to be considered.

3.10.7. In paragraph 2.10.31 it is recognised that at this scale, it is likely that applicants' developments will use some agricultural land. Applicants should explain their choice of site, noting the preference for development to be on suitable brownfield, industrial and low and medium grade agricultural land.

3.10.8. Paragraph 2.10.32 says that where sited on agricultural land, consideration may be given as to whether the proposal allows for continued agricultural use and/or can be co-located with other functions (for example, onshore wind generation, storage, hydrogen electrolysers) to maximise the efficiency of land use.

3.10.9. Paragraph 2.10.33 highlights that the ALC is the only approved system for grading agricultural quality in England and Wales and, if necessary, field surveys should be used to establish the ALC grades in accordance with the current, or any successor to it, grading criteria and identify the soil types to inform soil management at the construction, operation, and decommissioning phases in line with the Defra construction code.

3.10.10. Paragraph 2.10.145 advises the SoS should take into account the economic and other benefits of the BMV agricultural land. The SoS should ensure that the applicant has put forward appropriate mitigation measures to minimise impacts on soils or soil resources.

3.10.11. NPS EN-5 says the SoS should only grant development consent for underground power cables when the applicant has made a commitment, as set out in their Environment Statement, to mitigate the potential detrimental effects of undergrounding works on any relevant agricultural land and soils (including peat soils), particularly regarding BMV land, including development and implementation of a Framework Soil Management Plan (FSMP).

3.10.12. In paragraph 2.9.58 it says there is little evidence that exposure of crops, farm animals or natural ecosystems to transmission line electro-magnetic fields (EMF) has any agriculturally significant consequences.

3.10.13. The Central Lincolnshire Local Plan (April 2023) Policy S67: Best and Most Versatile Agricultural Land states that proposals should protect the BMV agricultural land so as to protect opportunities for food. Policy S14 specifically in relation to solar energy proposals, includes a presumption in favour of commercial large-scale ground-based photovoltaics and associated infrastructure unless (amongst other matters) the proposal following a site-specific soil assessment does not meet the requirements of policy S67.

3.10.14. It emphasises the need for production and the continuance of the agricultural economy. Significant development resulting in the loss of the BMV agricultural land will only be supported if:

- The need for the proposed development has been clearly established and there is insufficient lower grade land available at that settlement (unless development of such lower grade land would be inconsistent with other sustainability considerations).
- The benefits and/or sustainability considerations outweigh the need to protect such land, when taking into account the economic and other benefits of the BMV agricultural land.
- The impacts of the proposal upon ongoing agricultural operations have been minimised through the use of appropriate design solutions; and where feasible, once any development which is supported has ceased its useful life the land will be restored to its former use (this condition will be secured by planning condition where appropriate).

3.10.15. Where proposals are for sites of 1 hectare or larger, which would result in the loss of BMV agricultural land, an ALC report should be submitted, setting out the justification for such a loss and how the criterion has been met.

3.10.16. BMV agricultural land is a national resource and national and local planning policies advocate against the unnecessary loss of such land to non-agricultural development. Land in ALC Grades 1, 2 and 3a is considered to constitute BMV land. The applicant also notes that policy also says that land type alone should not be the defining factor in determining site location.

3.10.17. On 15 May 2024, a WMS was published on solar infrastructure and protecting food security and BMV land. This sought to reinforce the protection of BMV land for food production, the consideration of the cumulative of such solar development schemes and their impact on the land and set out an improvement in the soil surveying standards for agricultural land classification.

## THE APPLICATION

3.10.18. The applicant submitted the following documents for consideration at application.

3.10.19. ES Volume 6 chapter 15 Soils and Agriculture [APP-046] assesses the impacts of construction, operation and decommissioning and their effects on the soils and agriculture at the proposed site.

3.10.20. Supporting appendices include:

- Appendix 15-1: Soils and Agriculture Legislation, Policy and Guidance
- Appendix 15-2: Agricultural Land Classification Baseline Report

### Baseline

3.10.21. The applicant has assessed the impact and effects of the proposed development, but only for the area within the principal site, against three criteria:

- ALC
- Soil Resource
- Farming Circumstances

3.10.22. A soil survey for the principal solar array site was undertaken by Soil Environment Services between September 2022 and September 2023 [APP-116].

3.10.23. The ALC, conditions of the soil and a survey of the CRC were not ascertained in advance of the application owing to the uncertainty of the route of the cable.

**Agricultural Land Classification (ALC)**

3.10.24. The following are the results of the ALC survey undertaken at the principal site:

**Table 1: Agricultural Land Classification for the principal site[15]**

| ALC Grade | Area (Hectares) | Area % of total site |
|---|---|---|
| **Grade 1 (Excellent)** | **0** | **0** |
| **Grade 2 (Very Good)** | **8** | **0.6** |
| **Subgrade 3a (Good)** | **103** | **7.7** |
| **Subgrade 3b (Moderate)** | **1218** | **91.6** |
| **Grade 4 (Poor)** | **1** | **0.1** |
| **Grade 5 (Very Poor)** | **0** | **0** |
| **Non-agricultural / other** | **0** | **0** |
| **Total** | **1330** | **100** |

3.10.25. The largest proportion of land, over 91%, within the proposed development is of grade 3b ALC and is a heavy textured topsoil. When wet this material is highly vulnerable to prolonged structural degradation (smearing, poaching and rutting) from mechanical disturbance such as cultivator blades, tractor wheels and livestock hooves. The combination of restricted drainage, climate and topsoil clay content

[15] Source: reproduced from Table 2 of the 6.2 Appendix 15-2: ALC Baseline Report

limits opportunities for cultivation and carrying livestock, with this restriction being sufficient to limit the land to ALC Grade 3b on soil wetness and workability.

3.10.26. Some areas of the principal site have soil with a similarly impeded drainage but a topsoil that has a lower clay content and/or a significant presence of naturally occurring calcium carbonate (chalk and limestone). This topsoil is more resilient to structural degradation and as a result the soil wetness and workability limitation is to Grade 3a.

3.10.27. The section of land with Grade 2 ALC is located to the west of Cliff Road running from Hermitage Farm to Homeyard Farm.

**Soil resource**

3.10.28. Most of the land within the principal site is under conventional arable management with ploughing each year for crop residue incorporation, weed control and preparation of a seed bed. The loosening and inversion of soil aerates it, speeding the metabolisation of organic matter sufficiently that the topsoil organic matter will continue to decline to a low equilibrium irrespective of the quantity of additional organic matter that can be practically applied to the land.

**Farming circumstances**

3.10.29. Five farm businesses out of the twelve operating within the principal site were interviewed by the applicant with the remainder either being non-commercial small holdings of 5 and 15 hectares, or reluctant to provide information.

3.10.30. Farming is predominately arable within the site, and the applicant assumes that the farms that were not interviewed typically utilise contractors to manage their land.

3.10.31. Land is predominantly in standard arable rotations of cereals and break crops, with some energy crops grown for anaerobic digester substrate and bio-ethanol production.

**Baseline**

**ALC**

3.10.32. ALC grading is insensitive to land management and should only change if there is a major intervention outside the scope of normal agricultural practice, for instance significant contamination of the soil with a persistent toxin. The future baseline of agricultural land quality is therefore effectively fixed.

**Soil resource**

3.10.33. Soil health under standard arable rotations, as found within the principal site, has become depleted, with soil organic matter falling towards a low equilibrium. For the future baseline, soil organic matter for arable land will continue to approach this low equilibrium.

**Farming circumstances**

3.10.34. Agricultural land use is sensitive to market prices, input costs and government agri-environmental subsidies. Current trends of a gradual decline in agricultural employment and increasing use of contractor management of arable land, are likely to continue.

**Construction phase**

3.10.35. Agricultural production will cease to take place during the construction of the project.

3.10.36. Temporary access tracks would be constructed which would involve topsoil stripping and storage on site, and compacted stone laid on top of geotextile membrane.

3.10.37. Permanent infrastructure would be constructed across the principal site including driving steel piles into the ground and fixing of solar panels to the frames above.

3.10.38. Cabling will be laid in trenches around the site and the associated buildings, inverter bases and sub-stations would also be constructed.

3.10.39. Trafficking assumed from construction operations is considered to be comparable to the size and weight of plant that would be operated to plough, cultivate, seed and harvest the fields of the comparable area.

**Operational phase**

3.10.40. There is not anticipated to be any change in the ALC during the operational life of the proposed development.

3.10.41. Soil resource will be protected with no ploughing or disturbance. The applicant envisages that the topsoil will recover over the life of the proposed development resulting in improvements to organic matter, drainage conditions and nutrients levels.

3.10.42. Farming circumstances will change due to lack of agricultural production, but landowners will receive an income from the leasing of the land to the developer. There may also be an opportunity to graze the grassland beneath the solar panels.

3.10.43. **Decommissioning period**

3.10.44. At decommissioning the sub-stations and woodland additions will remain but all other associated infrastructure, including the solar panels, pilings and access tracks would be removed, and the original topsoil restored from the storage areas on site to cover the access track works. Decommissioning works will also be conducted in a manner similar to construction works to avoid damage to the soil resource.

3.10.45. It is proposed that the site could be returned to its former agricultural use at this time.

**Mitigation**

3.10.46. Prior to application the order limits were adjusted to remove some areas of BMV land from the application and meet the test of the NPS. Also, as the examination progressed the order limits were further refined to remove land from the application.

3.10.47. A FSMP [APP-224] has been prepared that sets out the planned measures to avoid, mitigate and compensate for impacts and effects to the soil at the site from the construction, operation and decommissioning of the proposed development.

3.10.48. The grade 2 BMV land is reserved for use principally as a biodiversity zone and a small proportion as an access track so would have minimal disruption.

3.10.49. The design has evolved to lead to the majority of the principal site being classified as grade 3b ALC.

## ISSUES CONSIDERED DURING THE EXAMINATION

3.10.50. A significant number of the RRs received prior to the examination commencing, 250 of the 355 in total received, expressed concerns with regards to food security and the loss of agricultural land and jobs.

3.10.51. From a review of the applicant's application and RRs there were a number of key issues that stood out for further examination. These were:

- The loss of BMV and the impact on UK food security.
- The ALC of the land along the CRC and the proposed measures to protect the soil resource.
- The impact on farming circumstances and jobs for the agricultural sector.

### BMV and food security

3.10.52. NE [RR-208] challenged the extent of permanent loss of agricultural land to the infrastructure, principally the area of sub-stations which would remain after decommissioning. They did welcome the inclusion of the FSMP.

3.10.53. LCC's LIR [REP1A-001] was generally in agreement with the assessment of the ALC for the site, and the potential impacts over the life of the development. They also highlighted some requirements to ensure the existing soils were retained and adequately managed on site. In LCC's representation [RR-165] they pointed out the significance of Lincolnshire in the context of total English agricultural production and specifically vegetable production. They reinforced the importance of food security and the current degree of UK self-sufficiency in the growing internationally unstable geopolitical climate and also the risks presented by climate change. They did concur that overall impact on BMV land would be reasonably small.

3.10.54. WLDC's representation [RR-328] requested that the issue of loss of agricultural land be specifically considered during the examination.

3.10.55. At both OFH1 [EV1-002] and OFH2 [EV1-006] a common theme of many of the speakers was that there would be a risk to UK food security in the loss of the productive agricultural land and that the government should focus its policy on installing solar panels on existing and new buildings.

3.10.56. 7000 Acres expressed their lack of confidence in the ALC assessment that had been undertaken [AS-035].

3.10.57. It was frequently highlighted to the audience at the OFHs that the second issue raised of challenging the merits of the NPS would not be considered during the examination by virtue of s94 paragraph 8(b) of PA2008.

3.10.58. The applicant's expert at ISH2 explained their opinion of the likely condition of the soil prior to any development and at the end of development at decommissioning. They advised that the intensive agricultural working of the soils currently with pesticide and fertiliser was considered to be having a negative impact on soil condition. They argued that the laying fallow of the site for 60 years would lead to a restoration of the overall soil condition over its entire depth and that the seeding with grassland would also promote this and restore the natural humus and organic matter in the soil and give time for the artificially added products to disperse. It was

also pointed out that ALC would not change over the lifetime of the development due to topographic conditions not varying. This was reinforced by NE's reply to ExQ1 [REP3-071] where they reaffirmed the temporary and reversible nature of the development, and that the overall ALC would likely remain unaffected.

3.10.59. The applicant was asked to consider the proposal in light of the then recent WMS on "Solar and protecting our Food Security and BMV Land" made on 15 May 2024. We asked them to consider the requests and additional considerations to be undertaken referenced within. The applicant reaffirmed that the statement did not substantiate any concerns that solar development proposals present a risk to UK food security. They also considered they had met the requirements of the WMS by undertaking the ALC assessment in line with the recommendations of the statement and had minimised impacts by the siting and iterative design of their proposals to reduce any effects on the BMV land within the development. NE advised they remained content with their ALC assessment methodology and results for the proposed development and the approach the applicant had taken.

3.10.60. The applicant said in answer to the overall impact of the development and its cumulative effect on UK food security, that the Defra UK Food Security Report 2021 notes that "*In terms of medium and long term risk to UK domestic food production, the biggest risks include climate change and soil degradation*". Land use and land use change are not listed as risks to UK domestic food production.

### Soils of the CRC

3.10.61. NE [RR-208] expressed concern that the cable corridor route had not had a full ALC undertaken as per the principal site.

3.10.62. The site survey and assessment of ALC of the soils along the line of the CRC had not been undertaken during the application or examination. The applicant made the point that this was due to the exact location of the CRC not yet having been established. This was due to the consideration of a shared CRC with other solar developments in the area in line with the recommendations of NPS EN-5. The applicant made a commitment to seek to minimise disruption by use of a shared corridor as much as possible in line with recommendations in NPS EN-5 and to undertake all such surveys and assessments as required once the route had been confirmed. It was also reiterated that the cable trenching works would have no impact on the ALC along the route of the cable corridor. These commitments are secured within the rDCO by R19.

### Farming circumstances

3.10.63. At OFH1 [EV1-002] representations were also received from tenant farmers who expressed concerns as to their ability to continue to operate and disruption to their business. Some farmers leased land within the principal site and the loss of the use of this land could compromise their ability to operate sustainably, or in one case at all. Farmers had bought equipment and stock to use on the land and did not have alternative locations in the area to relocate to.

3.10.64. 7000 acres representation [RR-001] highlighted their concerns as to impacts on jobs in the agricultural sector and the loss of agricultural produce to the UK as a whole. They also pointed out that some of the existing agricultural land was already meeting the challenge of net zero by being used to plant and harvest biofuels.

3.10.65. The applicant highlighted the potential for grazing of the operational site by sheep as a cost-effective means of vegetation management and also food production and

cited other operational solar farms that were undertaking this. They advised that farmers could undertake this and they would be willing to enter into negotiations with this taking place within the site but that it would not be an activity they would directly engage in as it did not align with their business operations.

3.10.66. The applicants also assessed that there would be little implication in the number of jobs employed on the land before and after the proposed development.

3.10.67. The FLEMP details how the development could provide areas suitable for grazing and how this could be achieved during the operational phase of the development.

### Cumulative effects

3.10.68. Whilst the area of the development is significant and the cumulative area taken along with other solar developments in the Lincolnshire area is also significant, in the context of the overall area of Lincolnshire the developments are not. The applicant noted the potential for existing agricultural businesses with interests and operations across the cumulative sites could be detrimentally impacted. However, overall, the cumulative impact on soils and agriculture is considered to be negligible in the local and national context.

## CONCLUSIONS

3.10.69. We have reached the following conclusions in relation to Soils and Agriculture:

- → We recognise the significant concerns from the many representations that were received with regards to the loss of arable production and the food security of the country. Indeed, we appreciate that food security is a crucial reason why BMV agricultural land is afforded a protected status in the NPS. Furthermore, we are mindful of the cumulative impact that the loss of BMV agricultural land can have on local communities, especially in cases where there is a large amount of geographical clustering of solar developments in rural areas, such as here in Lincolnshire. However, while we note that around 111 hectares of BMV agricultural land would be lost, the majority of the effects would be temporary, albeit long term. Furthermore, we note that even when taken with the loss of other areas of BMV which have been permitted as part of the other nearby NSIPs, the impact in a regional and national context would not be significant.

- → Generally, the evidence provided by the applicant and supported by the statutory authorities concluded that the ALC of the site was likely to be unaffected over the life of the development and likely to result in an improvement in the soil condition by its removal from intensive agricultural practices. Iterative optimisation of the location and design of the site and its proposals has to a greater degree minimised impacts on the BMV land.

- → The historic farming of the land and its potential loss from UK farming production was not evidenced or proven to be significant in the UK national food security context as raised by many representations received throughout the examination. However, it is noted that presently the UK imports a high proportion of its food from overseas and that this situation can change with geopolitical changes and climate change. The reversibility of this development and the temporary, all be it long term, nature of the development does mean the existing situation could be restored should it be needed in the future. This was also reaffirmed by the relevant statutory bodies and local authorities. There also remains the potential to continue the

sites contribution to agricultural production through grazing of the site during its operation.

→ Overall, we consider there is no robust evidence that the temporary loss of around 111 ha of BMV land and 1218 ha of grade 3b agricultural land would have any material impact on the UKs food security.

→ The ALC of the CRC has yet to be established. The works proposed in the CRC will not materially affect the ALC as the upper soils will be carefully, removed and replaced on completion of the works. Therefore, whilst we note that once the chosen route is settled upon, appropriate surveys and testing will still be required to establish its condition prior to the works, the proposed development will not lead to a loss of BMV land or deterioration of the soil resource.

→ The farming circumstances of the existing landowners, tenant farmers and contractors who support them are likely to change due to the proposed development. The net change in employment is not likely to be significant, owing to the increase in roles to support the proposed development, but will result in the loss of agricultural activity within the principal site.

→ In summary, it is likely that the majority of the principal site will be taken out of agricultural production for the lifetime of the development, but that over this time the level of artificial pollutants in the soils will reduce and soil will restore to a more favourable condition.

→ Consequently, we are satisfied that the applicant has mitigated the impact of the proposed development on BMV land and taken into consideration the WMS in their assessment.

→ Given the above are of the opinion that over the life of the proposed development there is likely to be a moderate beneficial effect on the soil resource at the site but a slight loss of use of BMV land. Therefore, we ascribe a neutral weight with regards to the consideration of making the development consent order.

## 3.11. TRANSPORT AND ACCESS

### INTRODUCTION

3.11.1. This section considers the transport and access effects of the proposed development.

### POLICY BACKGROUND

3.11.2. NPS EN-1 outlines that consideration and mitigation of transport impacts is an essential part of the government's wider policy objectives for sustainable development. Paragraph 5.14.3 states that disturbance caused by traffic and abnormal loads during the construction phase will depend on the scale and type of the proposal.

3.11.3. NPS EN-1 outlines that if a project is likely to have significant transport implications, the applicant's ES should include a transport appraisal and that the applicant should prepare a travel plan to mitigate transport impacts (paragraph 5.14.5).

3.11.4. Paragraph 5.14.21 of NPS EN-1 states that the SoS should only consider refusing development on highways grounds if there would be an unacceptable impact on highway safety, residual cumulative impacts on the road network would be severe, or where it has not been demonstrated that consideration has been given to the provision of adequate active public or shared transport access and provision.

3.11.5. NPS EN-3 (paragraphs 2.10.35 and 2.10.41) notes that access and public rights of way are two considerations which should inform site selection, with the latter kept open where possible during the construction phase of a development.

3.11.6. In relation to construction, NPS EN-3 states that applicants should assess the various potential routes to the site for delivery of materials and components, where the source of the materials is known at the time of the application and select the route that is the most appropriate. (paragraph 2.10.123).

3.11.7. NPS EN-3 paragraph 2.10.124 notes that, where the exact location of the source of construction materials is not known at the time of the application, applicants should assess the worst-case impact of additional vehicles on the likely potential routes.

3.11.8. NPS EN-3 also emphasises that applicants should ensure all sections of roads and bridges on the proposed delivery route can accommodate the weight and volume of the loads and width of vehicles (paragraph 2.10.125).

3.11.9. Where a cumulative impact is likely because multiple energy infrastructure developments are proposing to use a common access route and pass through the same towns and villages, NPS EN-3 states that applicants should include a cumulative transport assessment as part of the ES (paragraph 2.10.126). In terms of mitigating such impacts, paragraph 2.10.141 states that it may be appropriate for applicants for various projects to work together to ensure that the number of abnormal loads and deliveries are minimised, and the timings of deliveries are managed and coordinated to ensure that disruption to residents and other highway users is reasonably minimised.

3.11.10. NPS EN-3 paragraph 2.10.161 states that once solar farms are in operation, traffic movements to and from the site are generally very light. Should there be a need to replace components, this may generate heavier commercial vehicle movements, but these are likely to be infrequent.

3.11.11. NPPF paragraph 115 requires proposals to ensure that sustainable transport modes are prioritised, that safe and suitable access can be achieved and that significant impacts can be adequately mitigated. Paragraph 116 states that development should only be refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network, following mitigation, would be severe.

3.11.12. The LIR's submitted by LCC [REP1A-001], WLDC [REP1A-005], and NCC [REP1A-002] refer to various development plan policies. Local development plan policies relevant to the proposed development are set out at Appendix A.

## THE APPLICATION

3.11.13. The applicant's case in relation to transport and access effects is set out in ES chapter 16 [APP-047] and the assessment of cumulative transport and access effects is included in ES chapter 18 [REP6-013]. These chapters are supported by various associated documents listed at ES paragraphs 16.1.1 to 16.1.5.

3.11.14. ES Appendix 16-1 [APP-117] includes the Transport Assessment (TA). The proposed and existing accesses which would be utilised during construction, operation and decommissioning are shown on the Works Plans [REP6-004] and the Streets, Rights of Way and Access Plans [AS-042]. Proposed HGV routes are shown in ES Figure 16-3 [AS-018] and ES Figure 18-5 [REP5-014] shows the proposed cumulative construction traffic routes,

3.11.15. In addition, the applicant submitted the following documents:

- FLEMP [REP6-022], which includes details of permissive paths.
- FCEMP [REP5-018].
- FOEMP [REP6-026].
- FDEMP [REP5-017].
- CTMP [REP5-019].
- FPMP [REP3-041].
- Traffic Regulation Measure Plans [APP-009]

**Methodology**

3.11.16. The full transport and access methodology is set out at ES section 16.4 [APP-047] and the full EIA methodology is detailed in ES chapter 5 [APP-036].

3.11.17. Due to the low level of trips likely to be generated within the network peak hours, an assessment of the operational phase was excluded from the ES.

3.11.18. ES chapter 16 [APP-047] explains that professional judgement and experience of other solar DCO submissions was used to identify the study area. The study area includes the extents of the highway network shown in ES Figure 16-4: Local Highway Network [AS-019] and the PRoW networks shown in ES Figure 16-5: Local PRoW Network [APP-197]. The applicant considers that these areas are potentially at risk from possible direct and indirect impacts arising from the proposed development.

3.11.19. The assessment methodology is based on the assumption that the principal site is expected to have four points of access, three located along the A631 Harpswell Lane and one located on the B1398 Middle Street as shown in ES Figure 16-2 [APP-194]. In addition, there would be internal accesses and emergency accesses within the principal site. The CRC would have approximately 24 additional site accesses along its route.

3.11.20. The ES methodology also assumes that there would be no likely significant effects on the Strategic Road Network or on ports.

3.11.21. ES paragraph 16.4.12 outlines the various sources of information upon which the assessment was based. This includes traffic survey data. This survey data was obtained using Automatic Traffic Counts (ATCs) and Manual Classified Counts (MCCs) between 10 – 19 July 2022. Full details of ATC and MCC locations are outlined at ES paragraph 16.4.13 [APP-047].

3.11.22. In addition, the assessment is based partly on Personal Injury Collision (PIC) data, with the PIC study area including the main vehicle routes that are expected to be utilised.

3.11.23. All four principal site accesses used during construction would remain open during the operational phase of the proposed development.

3.11.24. The assessment has been based on the shortest expected construction programme of 24-months, which provides a worst-case scenario in terms of monthly (and therefore daily) construction vehicle trips relating to construction staff, LGVs and HGVs. The decommissioning period is also assumed to be similar.

3.11.25. ES paragraph 16.4.56 explains that the following criteria were considered in the assessment:

- Severance of communities.
- Road vehicle driver and passenger delay.
- Non-motorised user delay.
- Non-motorised user amenity.
- Fear and intimidation on and by road users.
- Road user and pedestrian safety.
- Hazardous/large loads.

**Baseline conditions**

3.11.26. The baseline conditions set out in ES chapter 16 [APP-047] can be summarised as follow:

- ES paragraphs 16.6.3 to 16.6.25 identify various roads comprising the highway network within and surrounding the order limits.
- Baseline traffic flows have been identified in ES tables 16-8 and 16-9 and are based on construction working hours of between 07:00 and 19:00.
- ES paragraph 16.6.30 outlines that a total of 127 collisions (87 slight, 34 serious and 6 fatal) have occurred within the study area, for a five-year period between 2017 and 2022, with a summary provided at table 16-10.
- ES paragraph 16.6.32 outlines that one collision cluster was identified at the A1500/ B1241 Sturton by Stow junction, where five collisions occurred over the five-year study period, equating to one collision per year. This junction has therefore been assigned a 'medium' level of sensitivity in terms of road safety.
- There is one PRoW and one claimed PRoW located within the principal site (Claimed Glentworth and Harpswell Public Bridleway 1209 and PRoW Gltw/85/).
- There are 15 PRoW within the CRC and these are listed at ES paragraph 16.6.38.
- All other PRoW within the vicinity of the order limits are identified in ES Figure 16-5 [APP-197].
- ES paragraphs 16.6.41 to 16.6.56 set out baseline details for cycling, equestrian, public transport and rail facilities.

**Mitigation**

3.11.27. ES paragraph 16.7.2 outlines the embedded mitigation measures. Some of these measures relate to separate documents submitted as part of the application. These measures include:

- Implementation of the FCTMP, FCEMP, FOEMP and FDEMP, to mitigate effects during construction, operation and decommissioning, respectively. These would be secured through the rDCO at R15, R12, R13 and R21 respectively.
- Restricting HGV, and LGV movements and abnormal loads to certain routes, as outlined in ES Figures 16-3 [APP-195] and 16-10 [APP-202].
- Temporary traffic management measures as set out in the FCTMP [REP5-019] and Traffic Regulation Measures Plan [APP-009].

- Implementing local off-site highway improvements to accommodate abnormal indivisible loads during construction in accordance with details set out at Appendix C of the FCTMP.

3.11.28. Pages 42 to 45 of the Environmental Mitigation and Commitments Register [REP3-020] provide more detail on the mechanisms which would secure the implementation of the mitigation measures.

**ES conclusions on transport and access effects**

*Construction*

3.11.29. ES chapter 16 concludes that, following the implementation of embedded mitigation, a significant residual effect would arise on severance/ pedestrian delay/ non-motorised user amenity on the B1241. However, the applicant concludes that this effect would only occur for a short period during construction if works are carried out at multiple CRC sites accessed via the B1241.

3.11.30. The applicant considers that all other highway links assessed would not have any significant residual effects in terms of non-motorised user amenity, severance, driver and passenger delay, accidents and safety and fear and intimidation.

3.11.31. ES chapter 16 outlines that, as both the partial and full temporary road closures will be for very short periods within the construction phase and in all circumstances alternative routes will be provided, the residual effects on driver and passenger delay and severance would be 'not significant'.

3.11.32. The applicant concludes that there would be 'no significant effects' on all PRoW, when taking into account the management measures set out within the FPMP [REP3-041].

*Operation*

3.11.33. ES NTS paragraph 6.12.18 [AS-024] explains that the operational effects were scoped out of the ES assessment given that they would only relate only to 'routine activity on-site' which would be 'minimal' and 'restricted principally to vegetation management, equipment maintenance and servicing, replacement of any components that fail, and monitoring to ensure the continued effective operation of the proposed development'.

*Decommissioning*

3.11.34. ES chapter 16 concludes that decommissioning effects would be equal to and no greater than the construction effects.

*Cumulative effects*

3.11.35. ES chapter 18 sets out the applicant's assessment of the cumulative transport and access effects of the proposed development and other developments. ES paragraphs 18.7.4 to 18.75 [REP6-013] outline that various other developments have been scoped out of the assessment, whilst the following have been included:

- Gate Burton solar development.
- West Burton solar development.
- Cottam solar development.
- Glentworth oil extraction site development.

3.11.36. As a worst-case scenario the cumulative assessment is based on 'scenario 1' whereby the ducts and cables for all four solar developments are installed within a 24-month period. This scenario also incorporates peak construction traffic from all four developments but assumes no consolidation of trips, as a result of coordinating the construction of these developments.

3.11.37. The ES concludes that there would be no significant cumulative effects during construction, operation or decommissioning. ES paragraph 18.17.74 notes that the cumulative increase in traffic flows on School Lane, Cow Lane, Fillingham Lane, the B1241, Headstead Bank and Cottam Road would be greater than 30% and 'noteworthy'. However, the applicant concludes that the effects would be temporary in nature and would occur on receptors with a low or very low sensitivity. The significance category is therefore Slight Adverse (not significant).

3.11.38. Despite the worst-case scenario assumption that there would be no consolidation of trips as a result of coordinating the construction of these developments, ES paragraph 18.17.78 states that it is 'the developers intention' to develop a Joint CTMP.

3.11.39. Further information on joint construction management measures is provided within the Joint Report on the Interrelationship with other National Infrastructure projects [REP6-024].

## ISSUES CONSIDERED DURING THE EXAMINATION

3.11.40. LCC does not raise any substantive objections in relation to transport and access in its LIR [REP1A-001], SoCG [REP6-036] and closing statement [REP7-022].

3.11.41. WLDC's LIR [REP1A-005] paragraph 9.1 summarises various queries in relation to transport and access. The applicant provided a response to these queries [REP3-061]. However, WLDC maintains an objection in relation to the combined cumulative impact of traffic and transport associated with the construction, operation and decommissioning of Tillbridge, Gate Burton, West Burton and Cottam [REP6-034].

3.11.42. NCC's LIR outlines various recommendations at paragraph 5.41 [REP1A-002]. However, these queries were resolved during the examination and NCC do not object on the grounds of transport and access [REP5-031].

3.11.43. A significant number of objections were raised by IPs in relation to the transport effects of the proposed development in isolation and cumulatively. These are summarised in Table 2-17 of the applicant's responses to RR [REP1-028] and referred to on pages 65-66 of the applicant's response to written representations [REP6-063].

### Effects on road vehicle delay and non-motorised user delay

3.11.44. WLDC's LIR [REP1A-005] states that no data has been provided regarding potentially sensitive receptors in the study area. WLDC also questioned whether existing driver delay had been reflected in baseline data.

3.11.45. The applicant responded [REP3-061], stating that the assessment of driver delay is discussed in ES sections 16.8.12 and 16.8.13 [APP-047]. The applicant also emphasises that, through discussions with LCC and NCC, it was agreed that driver delay was not likely to be significant and that junction modelling was not necessary.

3.11.46. LCC's LIR [REP1A-001] asserts that the applicant's assessment is predicated on specific shift patterns for construction workers. It therefore outlined that it is essential that this is secured through an appropriately worded requirement and monitored through the FCTMP.

3.11.47. The applicant responded [REP3-061] by stating that the FCEMP and FCTMP establish the principle of shift patterns and construction vehicle movements, reflecting the number of trips to be generated during the construction phase of the proposed development. The applicant asserts that the CEMP and CTMP will need to be substantially in accordance with the framework plans and the proposed development will need to be implemented in accordance with them. The applicant outlines that these management plans would be controlled through R12 and R15 respectively.

3.11.48. 7000 Acres has reviewed [REP6-050] the HGV movement data provided by the applicant and queries the validity of the daily movement calculations for the CRC when compared to the principal site. In response [REP6-050], the applicant outlines that the numbers used are conservative and represent a worst-case assessment.

3.11.49. In response to the concerns raised by IPs in relation to driver and pedestrian delay [REP1-028] the applicant refers to the conclusions of the ES, which includes an assessment the effects on the highway network.

*ExA considerations*

3.11.50. The applicant's assessment of construction effects has been based on the shortest expected construction programme of 24-months, which provides a worst-case scenario in terms of monthly (and therefore daily) construction vehicle trips relating to construction staff, LGVs and HGVs. Even when taking this worst-case approach, we consider that the applicant has sufficiently demonstrated that the proposed development would not lead to any significant effects on vehicle or driver delay.

3.11.51. Any construction, operational or decommissioning effects on vehicle and NMU delay would be temporary and would be sufficiently mitigated through the measures contained within the FCTMP, FDMP, FCEMP and FOMP.

**Effects on road user and pedestrian safety**

3.11.52. Stow Parish Council [RR-292] is concerned that the proposed routing of construction traffic along the B1241 would have an adverse impact on public safety. However, the applicant responded [REP1-028] by outlining that there are no significant effects identified in relation to road user and pedestrian safety. Furthermore, the applicant highlights that the use of the B1241 for construction traffic associated with the Cottam solar development has already been considered acceptable by the SoS, with the DCO made on 05 September 2024.

3.11.53. ES paragraph 16.8.29 [APP-047] refers to a cluster of collisions in the vicinity of the A1500/ B1241 Sturton by Stow junction, over a five-year period. The applicant assigned this junction a 'medium' level of sensitivity.

3.11.54. During ExQ1 [PD-009] we asked the applicant to explain why a 'medium' level of sensitivity had been assigned. In response [REP3-062] the applicant confirmed that; although identified collisions occurred in close proximity, the types of collisions and causalities are all different and do not involve vulnerable road users. Furthermore,

the applicant highlighted that, whilst five accidents in five years suggests a cluster, it is not such a high rate as to suggest a major safety concern.

*ExA considerations*

3.11.55. We agree with the conclusions of the ES in relation to road user and pedestrian safety. Whilst we note the concerns of IPs, there is no substantive evidence to indicate that the temporary construction and decommissioning periods would result in a significant adverse impact on highway safety. The applicant has also updated the FCTMP to address concerns in relation to Stow Primary School as discussed further below.

3.11.56. Overall, we consider that there would be no adverse effect on highway safety during any phase of the proposed development.

**Effects on local community severance, pedestrian delay (including PRoW) and non-motorised user amenity**

3.11.57. ES chapter 16 identifies a 'moderate adverse (significant)' effect for local community severance, pedestrian delay and non-motorised user amenity at ATC 23 [APP-198] during the AM development peak hour of 06:00 to 07:00. Given the close proximity of Sturton by Stow primary school to ATC 23, WLDC [REP1A-005] sought further mitigation in this location. LCC also requested further mitigation in its LIR [REP1A-001] and Stow Parish Council [RR-292] queried whether safety and access concerns had been taken into account, given the proximity of the route to the primary school.

3.11.58. In ExQ2 [PD-011] we asked the applicant why it had not identified any specific and targeted measures within the FCTMP for ATC23, given the significant effects identified and the close proximity of a primary school.

3.11.59. The applicant responded [REP5-032] and updated the FCTMP [REP5-019] to incorporate additional targeted measures, including:

- A reduction in the number of CRC sites accessed via the B1241 at any given time (reduced from four to two), thereby reducing the magnitude of traffic impact to a 'minor adverse (not significant)'.
- Amendment of HGV delivery restrictions where they apply to the B1241, to avoid school pick up and drop off times.
- Increased community liaison to ensure that the community is aware of the timing and duration of construction activities.

3.11.60. In response to ExQ3, LCC [REP6-058] and WLDC [REP6-059] both confirmed that the applicant's changes to the CTMP were acceptable.

*ExA considerations*

3.11.61. Whilst we acknowledge the applicant's conclusion [REP5-032] that the revisions to the CTMP would reduce the effects on ATC23 from 'significant' to 'not significant', we note that the applicant has not updated the corresponding assessment in the ES [APP-047]. Nonetheless, we agree that the revisions made to the FCTMP would reduce the residual effects on ATC23, such that they would not be significant.

3.11.62. We are also satisfied with the applicant's methodology in establishing the sensitivity of non-motorised receptors. In relation to PRoW, we consider that there would be no significant effects caused as a result of community severance or pedestrian delay.

This is because where effects are identified they are temporary. In addition, two new permissive paths are incorporated as part of the proposed development.

3.11.63. Overall, we conclude that there would not be any significant effects on local community severance, pedestrian delay (including PRoW) and non-motorised user amenity during any phase of the proposed development.

**Scheduled Ancient Monument**

3.11.64. Stow Parish Council [RR-292] raised concerns that abnormal loads during construction could cause structural damage to the Site of a college and Benedictine Abbey, St Mary's Church, which is a SAM. In response, the applicant updated the FCTMP [REP5-019] to confirm that abnormal load manoeuvres adjacent to buildings and existing structures would be monitored by a suitably qualified banksman to ensure potential adverse impacts are avoided.

*ExA considerations*

3.11.65. We are satisfied that the FCTMP has been sufficiently amended to accommodate measures which would avoid damage to the structure or foundations of the SAM. Details of the effect of the proposed development on heritage assets are included in section 3.5 of this report.

**Operational effects**

3.11.66. ES paragraph 16.4.50 [APP-047] outlines that if full panel and BESS replacement is required at some point during the operational lifetime of the development, then this activity would be considerably less intensive, with just 10% of the daily HGV, LGV and car movements expected compared to the construction period. During ExQ1 we asked the applicant to expand on the rationale for this conclusion.

3.11.67. In response [REP3-062], the applicant stated that the figures referred to in the ES have been derived from experience of working on other solar projects and are based on a calculation which assumes one HGV arrival every fifteen minutes over a ten-hour day. The applicant asserts that four HGVs per hour is a reasonable rate of delivery for the replacement of panels in one field at a time. The applicant also notes that, to avoid loss of energy generating revenue, an operator would not decommission the panels at a faster rate than the panels could be replaced.

*ExA considerations*

3.11.68. We accept that it is reasonable to assume that solar panels would only be replaced once during the operational lifetime of the proposed development for reasons already given in section 3 of this report.

3.11.69. We consider that the wholesale replacement of panels is unlikely to occur all at once but even if that were the case, there would not be any significant effects given that this would still only account for a small proportion of the HGV traffic generated during the construction phase.

3.11.70. Even noting the likely requirement to replace other associated infrastructure over the operational lifetime, for the reasons outlined above we agree with the applicant's decision to scope the operational effects out of the EIA assessment. We conclude that there would be no significant effects on transport and access during the operational phase of the development.

**Cumulative effects**

3.11.71. WLDC [REP3-066] objects to the application due to the combined cumulative impact of traffic and transport associated with the construction, operation and decommissioning of Gate Burton, Cottam, West Burton and Tillbridge solar developments. In particular, WLDC [REP7-024] is concerned that the lack of co-ordination (either voluntary or enforced through the DCOs) will result in a piecemeal, project-by-project approach to managing cumulative construction. WLDC suggests that the FCTMP should include measures to be adopted in the event of two or more projects being constructed simultaneously [REP1A-005].

3.11.72. Similarly, 7000 Acres [REP6-050] and other IPs are concerned that the applicant has not adequately considered the cumulative impact of traffic on rural routes and villages.

3.11.73. In response to these concerns [REP3-061] the applicant asserts that the cumulative assessment is based on the peak construction period for all four solar projects occurring at the same time. Even taking this precautionary approach, the ES concludes that there would be no significant cumulative effects. The applicant therefore considers that additional measures to control cumulative impacts are unnecessary.

3.11.74. Notwithstanding this, the applicant outlines that it has worked collaboratively with the operators of the other solar developments, during design development and environmental assessments, including identification of a shared CRC and shared mitigation measures.

3.11.75. In addition, the applicant notes that there are requirements within the Framework CTMP to liaise with the LHAs with regard to the timing of any works to be undertaken on the public highway.

3.11.76. The Report on the Interrelationships with Other NSIPs [REP6-024] outlines that no commitment is made to produce a joint CTMP as a result of the lack of certainty that the other projects will be consented. However, during ExQ1 we asked the applicant to update this position, given that all three solar developments are now subject to made DCOs.

3.11.77. The applicant responded [REP3-062] stating that uncertainty regarding the grant of consent is also only one of the reasons why a firm commitment cannot be made to prepare and agree a Joint CTMP at this stage. The applicant highlights that the four developments may be subject to different requirements on construction traffic or timescales, which may make production of one document across all projects challenging. The applicant also outlines that no single party has authority over another and each DCO only controls the activities for that project.

3.11.78. Despite these assertions, section 8.5 of the FCTMP does outline the approach to collaboration during the construction period, including the stated ‘intention’ to produce a joint CTMP once further details of project timescales are understood.

*ExA considerations*

3.11.79. We agree with IPs that the applicant’s stated intention to pursue joint construction traffic measures carries no substantive weight. However, the cumulative transport and access assessment at ES chapter 18 [REP6-013] is based on the worst-case scenario assumption that there would be ‘no consolidation of trips as a result of coordinating the construction’ with the other three solar developments. Given that

the assessment concludes that there would be no significant cumulative effects, it is neither necessary, nor reasonable to require the applicant to adopt joint construction or decommissioning measures.

3.11.80. Overall, we agree with the conclusions reached by the applicant in its worst-case assessment of the cumulative transport and access effects of the proposed development. It is evident that the applicant has liaised with the representatives of the other solar developments over the course of and prior to the examination [REP6-024]. The most significant component of this joint working is the proposal for a joint CRC in certain locations, which would help to minimise the temporary construction traffic impacts. These factors reduce the likelihood of the worst-case construction scenario coming to fruition.

3.11.81. Overall, we are satisfied that the proposed development would not lead to any significant cumulative transport and access effects during any phase of the proposed development.

### CONCLUSIONS

3.11.82. We have reached the following conclusions in relation to the transport and access effects of the proposed development:

- → The proposed development would not lead to any significant residual effects on vehicle delay or driver delay during any phase of the proposed development.
- → There would be no residual adverse effects on highway safety during any phase of the proposed development.
- → There would not be any significant residual effects, during any phase of the proposed development, on local community severance, pedestrian delay (including PRoW) and non-motorised user amenity. Revisions to the FCTMP [REP5-019] during the examination mean that there would be no significant residual effect at location ATC23.
- → The proposed development would not lead to any significant residual cumulative transport and access effects during any phase of the proposed development.
- → Overall, there would not be an unacceptable impact on highway safety and residual cumulative impacts on the road network would be not be severe. The proposed development therefore complies with the policies and guidance contained within NPS EN-1, EN-3 and EN-5 as well as the NPPF and relevant development plan policies.
- → There would be some ‘minor adverse’ and ‘negligible’ residual transport and access effects, as identified in the ES. We agree with the applicant’s conclusions in this regard. However, we note that these are not ‘significant effects’ and all relate to the temporary construction and decommissioning periods and are predicated on a worst-case scenario. We assign a little negative weight to these effects.

## 3.12. WATER ENVIRONMENT AND FLOOD RISK

### INTRODUCTION

3.12.1. This section considers the likely impact and effects of the proposed development on the water environment including flood risk, surface water drainage and water quality.

## POLICY BACKGROUND

3.12.2. NPSEN-1 section 5.8 sets out the approach to consider flood risk and the steps to take to assess the risk at the site of the proposed development, with paragraph 5.8.36 setting out the checks and tests to be met for the SoS to be satisfied.

3.12.3. It emphasises the need to undertake the sequential test to establish the optimum location for the development and the steps to take if development cannot be undertaken outside of a flood risk zones 2 or 3 and an exception test is required to be undertaken.

3.12.4. Paragraph 5.8.12 advises that proposed development should be designed to ensure there is no increase in flood risk elsewhere, accounting for the predicted impacts of climate change throughout the lifetime of the development.

3.12.5. In addition, paragraph 5.11.16 states that the proposed development should, wherever possible, help to improve local environmental conditions such as air and water quality, taking into account relevant information such as river basin management plans.

3.12.6. NPS EN-3 paragraph 2.4.11 advises that solar PV sites may also be proposed in low lying exposed sites. For these proposals, applicants should consider, in particular, how plant will be resilient to increased risk of flooding.

3.12.7. NPS EN-5 reiterates that the resilience of the projects to the effects of climate change including future increased flood risk should be considered.

3.12.8. The watercourses within the development site also fall within the water framework directive and as such need the proposed development will need to consider the impacts of the proposed activities on the water environment and water quality.

## THE APPLICATION

3.12.9. The applicant submitted the following documents for consideration at application.

3.12.10. ES volume 6 chapter 10 Water Environment [REP3-012] assesses the impacts of construction, operation and decommissioning and their effects on the water environment at the proposed site.

3.12.11. Supporting appendices include:

- 6.2 Appendix 10-1 Water Environment Legislation, Policy and Guidance [APP-095]
- 6.2 Appendix 10-2: Water Framework Directive Extended Screening and Scoping Assessment [APP-096]
- 6.2 Appendix 10-3: Flood Risk Assessment [APP-097]
- 6.2 Appendix 10-4: Outline Drainage Strategy [APP-098]
- 6.2 Appendix 10-5: Water Environment Stakeholder Correspondence [APP-099]

**Baseline**

3.12.12. The applicant prepared a water framework directive scoping and screening assessment [APP-096] and a site specific flood risk assessment [APP-097] to consider the current and future flood risk of the site.

3.12.13. The proposed development site covers eight water framework directive surface water body catchments and seven of these are screened into the assessment and considered. The EA assess that all of these water bodies are failing their chemical status generally due to a range of pollutants and consider it is not feasible to rectify this. Therefore chemical classification of the water bodies does not require assessment as this situation cannot be improved. Overall the majority of the water bodies are in moderate ecological status with just the tributary of the Till water body in poor condition. It is intended to improve the general status of these waterbodies to good by 2027.

3.12.14. These assessments have been verified by ecological and hydromorphological surveys and review of past physical and chemical water sampling.

3.12.15. Most of the principal site lies within flood zone (FZ) 1 with a low probability of flooding. There is a section of the site at higher risk of flooding, FZ 2 and 3, where solar panels are proposed to be installed and this is referred to as the interaction zone. A section of security fencing will also cross a watercourse in field 56.

3.12.16. The watercourses, FZs and boundaries of the IDBs are available to view in the 6.3 Figure 10-5: Watercourses, Flood Zones and Internal Drainage Boards [REP1-049].

3.12.17. The CRC will also encroach onto areas of medium to high probability of flooding FZ 2 and 3 from pluvial, fluvial and tidal action and will cross under main rivers and functional floodplain. No permanent above ground infrastructure is proposed within the CRC.

3.12.18. The proposed development is classified as essential infrastructure and for any development in FZ 3a would require an exception test to be undertaken.

3.12.19. For the exception test to be passed, it should be demonstrated that:

a. The development would provide wider sustainability benefits to the community that outweigh the flood risk; and
b. The development will be safe for its lifetime taking account of the vulnerability of its users, without increasing flood risk elsewhere, and, where possible, will reduce flood risk overall.

3.12.20. Both elements of the exception test should be satisfied for development to be allocated or permitted.

3.12.21. The iterations of the sequential test are outlined by the site selection process requiring the proximity to the grid connection, the balancing with other environmental constraints and finally by mitigation within the site envelope to ensure vulnerable infrastructure is located in the zones of lowest flood risk.

3.12.22. The applicant advises that no alternative route for the CRC could avoid the FZs 2 or 3 completely as the CRC will have to cross the River Trent at some point to link the principal site with Cottam sub-station.

3.12.23. During the course of the examination new data from the EA was provided which detailed the FZs to a higher resolution and accuracy than had previously been available. We asked the applicant to assess whether this new data had any

implications for the proposed development and similarly the EA was asked to comment on the potential flood risk as a result of this improved resolution data. Generally it was agreed that the new data did not indicate that the proposed development site was at a significantly greater risk of flooding than prior to its release.

3.12.24. The EA, the organisation with the strategic overview of flood risk for the area, was content with the flood risk assessment and noted that the principal site was predominately located within an area of FZ 1. However, it also highlighted the fact that two of the temporary construction compounds for the CRC were located within FZ 3 and requested that the developer consider this and have a plan in the event of flooding of the working area occurring.

3.12.25. LIRs were also received from the Local Authorities at D1A. The reports reiterated the requirements of the national and local planning policies and identified that the proposals by the applicant to deal with the surface water flood risk arising from the site was satisfactory given that it would limit run off from the site to existing green field rates and be designed to attenuate a 1 in 100 year flood event including a 40% uplift for the impact of climate change. They also requested the requirements within the dDCO for this to approved by the relevant local authority prior to development.

3.12.26. Trent Valley internal drainage board (TVIDB) are the flood risk management authority with responsibility for managing numerous water courses within the order limits, specifically around Cottam power station. The board reiterated their bylaws but did not highlight any specific concerns with regard to the proposals from the applicant. Upper Witham internal drainage board did not express any concerns as to the proposals.

3.12.27. Similarly, the Canal & River Trust highlighted their roles and responsibilities with regards to the River Trent and requested further details regarding the proposed crossing under the river and the temporary works required.

3.12.28. Anglian Water services advised that they were content with the proposals from the applicant and in particular the collection of foul water and surface water at the site. They were also content with their ability to provide potable drinking water to the site as required.

3.12.29. LCC are the lead local flood authority for the area and also take the lead for managing surface water and drainage flood risks. Prior to the examination commencing they did not raise any specific concerns with regards to flood risks.

**No proposed development**

3.12.30. With no development of the site it is likely the flood risk in the short term would remain as is, with the potential for a steady increase in the extents of the higher flood risk zones due to the effects of climate change on rainfall, river flows and sea level rise.

**Construction phase**

3.12.31. The construction activity has the potential to lead to pollution of surface water, temporary changes to the watercourses by crossing them with plant and services, potential changes to groundwater tables by pumping and dewatering activity and temporary changes to flood risk by changes in surface water flow routing.

3.12.32. These effects are proposed to be mitigated by a series of measures listed in the FCEMP [REP5-015]. It is also proposed to produce a water management plan if the proposal is approved to provide increased detail into the planned measures to mitigate and protect the water environment.

3.12.33. During construction a dedicated flood warden will be established to monitor the risk of flooding, receive flood warnings from the EA flood warning service and coordinate evacuation of the construction site in accordance with the emergency plan.

3.12.34. The five proposed temporary construction compounds (TCC) within the principal site and located within FZ 1 [REP4-018]. One of the TCCs is located adjacent to a watercourse but modelling suggests this location is above the estimated flood levels. All five temporary construction compounds within the principal site are at low flood risk.

3.12.35. There will be six TCCs along the route of the CRC and these could potentially be in use for up to 3 years. Four of these TCCs are in FZ 1 and consequently have a low risk of flooding, although one TCC is near to FZ 2 and 3 and so has been assessed and sited appropriately to ensure it does not sit within FZ2 or 3. Materials and equipment would not be stored or stockpiled in the flood plain at these sites.

3.12.36. The two TCCs located in high flood risk areas FZ3 are situated slightly north and south of Cottam power station . These areas are protected by raised flood defences along the River Trent, but in the event that these defences are breached or overwhelmed the operational buildings, site welfare facilities will be raised above the 1 in 100 year flood levels to provide a safe refuge in case egress away from the site is impeded . Any stockpiling of materials or equipment in the floodplain will require EA permitting and if a flood warning is received would be moved out of the floodplain to avoid causing obstruction or debris in the flood water.

3.12.37. Works in and around watercourses will be planned to avoid times of high flood risk and flow and will cease if conditions change. Trenchless crossing techniques are planned on main rivers and larger watercourses to avoid obstruction to the flows and cause a risk of flooding. During periods of closedown and holidays, plant and equipment will be moved and stored out of the floodplain.

**Operational phase**

3.12.38. During operation of the development, there could be impacts on groundwater and surface water from pollution due to any accidental spillages on site, any use of water to fight fires that arise on site, potential permanent changes to water courses, changes in local water supplies and changes in flood risk due to surface water run-off from the site.

3.12.39. The risks of these effects are proposed to be mitigated by the measures set out in the FOEMP [REP6-026] and include prior risk assessment of activities during operation, monitoring of conditions and corrective actions should risks manifest.

3.12.40. The sequential test and subsequent design iterations has resulted in all the proposed buildings, compound areas and the majority of the solar PV panels and mounting structures being located outside of areas of high and medium flood risk an in areas of low flood risk FZ 1.

3.12.41. A small section of field 56 will be in FZ 2 and 3 where the north west corner of the field meets the floodplain of the Yewthorpe Beck surface water ditch. This area is called the “interaction zone” and the applicant commissioned detailed flood

modelling to understand the risk and likelihood of this FZ occurring. As a result of this assessment the solar panels in this area will mounted at a higher height above ground level than is typical of the rest of the principal site (220mm higher) to ensure that the underside of the panels are 300mm above the extreme flood scenario including allowances for climate change. This has negligible effect on flood plain storage and no other infrastructure will be installed in this area. Scunthorpe and Gainsborough Water Management Board manage this water course in this area and were content with the proposals and that that a small section of the watercourse would be fenced across and not present a risk to blockage in flood flow conditions.

**Figure 12: Flood risk in upper north west corner of Order limits**




3.12.42. Fluvial risk for the remainder of the site will remain unchanged as surface water run-off from the site is proposed to be limited to existing greenfield run off rates so not contributing to any increase in flow to rivers or streams.

3.12.43. Surface water flood risk is proposed to be managed by allowing the run-off from solar panels to go into the ground as original conditions. Run-off from buildings and associated infrastructure such as sub-stations and compounds will discharged to a sustainable drainage system to temporarily attenuate the flows before discharging to the surrounding watercourses at restricted rates to mimic the greenfield run-off rates of pre-development. This is also not envisaged to change groundwater flood risk. There is not perceived to be a flood risk from any known sewers within the site or artificially raised reservoirs.

3.12.44. The applicant is assuming that the impermeable areas as a result of the solar PV panels will be no different to that before the proposed development and that surface water will fall of the lower edge of the panels and discharge into the ground.

3.12.45. No permanent above ground infrastructure will be left on the route of the CRC. Therefore the flood risk will return to the status it was before the works were undertaken.

**Decommissioning period**

3.12.46. The impacts and effects arising from decommissioning are likely to be similar to those occurring during construction. To minimise the risk of disturbance buried infrastructure such as cabling is likely to be left in situ, with above ground infrastructure likely to be removed. Mitigation measures are listed in the FDEMP [REP5-017].

3.12.47. Decommissioning is not proposed to result in any change to flood risk as operational conditions are proposed to be no worse than preceding conditions. So restoration to the original status would not result in any perceived change in flood risk including allowing for the effects of climate change.

## ISSUES CONSIDERED DURING THE EXAMINATION

3.12.48. The key issues with regards to the water environment and flood risk that arose and required further examination were:

- the management of surface water run off including any contaminants at the proposed development, and;
- the risk arising from the existing reservoirs at or adjacent to the site.

### Surface water

3.12.49. Given the significant area of solar panels being proposed, we wanted to investigate whether rain falling onto the solar PV panels and then dripping off the lower edge into the fields would behave in the same way as rain falling directly on to the fields as alluded to by the applicant.

3.12.50. Of the RRs received prior to the commencement of the examination, 11 out of a total of 255 expressed concern with regards to flood risk and water resources.

3.12.51. Whilst the stipulation that the extent of run-off surface water from the development site would be no greater than that which would run off an existing greenfield site, we were keen to understand how the applicant proposed to manage this, capture and attenuate flows.

3.12.52. 7000 acres [REP2-018] did raise concerns regarding the surface run-off and potential for soil erosion from the site. They also highlighted the potential for cumulative effects resulting from flood risk of the other adjacent solar developments.

3.12.53. The applicant provided details of the quantities envisaged and how a series of swales and attenuation ponds could be used to intercept and slow down these flows even accounting for increases in rainfall from climate change projections accounting for the buildings, sub-stations and BESS which would cover the site. With regards to the rainfall run-off from the solar panels themselves, the applicant did agree that a degree of erosion may occur below the leading edge of the panels but that the water would flow over the ground surface and under the adjacent rows of panels permeating into the ground similarly to the pre-development behaviour. They also directed us to evidence of the monitoring of rainfall at existing solar developments which tended to support this [REP4-045].

3.12.54. It was also argued that as all the other developments in the area were intending to limit run off from the site to these greenfield run-off rates also, the cumulative impacts of all the developments together would be no worse than existing.

3.12.55. The ExA remained concerned as to how the collection of 740 hectares of rainfall falling onto the impervious solar panels could be engineered to perform in the same manner as that rainfall falling directly onto grassland but overall was satisfied that the development consent order R10 contained measures to limit run off from the site, and should the proposals, which are yet to be approved by the lead local flood authority, fail to accommodate the rainfall the only party to suffer from any unforeseen flood risk would be the development site itself.

3.12.56. The applicant has proposed to periodically wash the solar panels to maintain their cleanliness and efficiency. We wanted to understand where this cleaning water would be sourced and what possible contaminants it might introduce to the ground under panels.

3.12.57. The applicant advised that for the intermittent cleaning of solar panels potable water would be brought to site by tanker, used to clean the panels and allowed to discharge the ground as per the rainfall. No chemicals would added to the cleaning water. The risk of contamination from this was considered low due to the likelihood that any detritus and debris forming on the panels would be of natural origin and no different to what would normally fall on to the greenfield site.

3.12.58. Discussion also led on to how any water used to fight fires arising at BESSs might run-off of burning infrastructure and into the groundwater table and surrounding water courses. Lincolnshire Fire and Rescue services (LFRS) confirmed that the requirements for minimum firefighting water provisions had been met and were content with the adequacy of supply and arrangement of emergency water storage systems for fighting fires. The applicant advised that fire water runoff from infrastructure would be collected in impermeable bunded attenuation ponds and swales and contained for treatment and disposal and not enter the environment. They also addressed the EA's concern of the potential to deal with multiple fires simultaneously and containment of fire water across the site. These issues were addressed in the FBSMP [REP4-026].

### Reservoir risk

3.12.59. On review of the application documents we noted the presence of reservoir marked on the plans which was not discussed further in the flood risk assessment. We asked to the applicant to describe this asset and quantify any flood risk arising from its presence.

3.12.60. A small reservoir was shown indicatively within the order limits of the proposed development. We sought to understand the purpose, risk and consequence of any breach of this reservoir and whether it had been considered more fully in the flood risk assessment. The EA mapping of reservoir flood risk did not indicate any risk arising from this installation as its volume is below the threshold to be considered within the EA's national reservoir breach mapping project and an investigation by the applicant determined the reservoir was deemed to be an existing digestate storage reservoir used for agricultural purposes and of low flood risk. It was also advised that the safety, control and monitoring of this reservoir were controlled by other appropriate permitting legislation in place.

### Cumulative effects

3.12.61. It is assumed that all other developments within the immediate area of the proposed development will have an appropriate drainage strategy to accommodate surface water run-off in accordance with either NPS or NPPF. This limitation should ensure that all surface water risk is managed at each respective site and should make flood

risk no worse for any adjacent development. Similarly, the developments will have to ensure that nothing that occurs on their sites has a downstream risk for others so fluvial flood risk will not be exacerbated by the cumulative nature of the developments.

3.12.62. Use of water resources for the proposed development is modest and managed on site and will not impact on other developments or existing communities adjacent to the site.

**CONCLUSIONS**

3.12.63. We have reached the following conclusions in relation to the water environment and flood risk theme for the proposed development:

- → With regards to flood risk, it is not envisaged that the principal site is at significant flood risk for the life of its development. There is a small area of site called the interaction zone where risk is elevated but will be managed by ensuring the infrastructure in that location is not vulnerable and located above the anticipated flood levels even accounting for climate change.
- → The proposal seeks to ensure it will not exacerbate flood risk for any sites outside of the development by limiting run off rates from the site to greenfield rates. R10 of the rDCO, requires that the surface water drainage scheme is subject to approval by the LLFA. The ExA is content that the R10 of the rDCO will ensure that this risk is managed.
- → We are content that the applicant has satisfied the sequential and exception tests within the NPS EN-1. It would also accord with policies pertaining to water environment and flood risk contained in NPS EN-1, EN-3, the NPPF and the relevant development plan documents.
- → LFRS are content with the provisions for firefighting water and how they would use and manage this water during any ongoing incident to reduce the risk of pollution. The risk of contamination from any firefighting water run off or from the cleaning of the panels is managed and will be low.
- → Given the above measures we consider that the development is likely to result in a neutral position with regards to the water environment and flood risk impacts at the site. Therefore, we ascribe a neutral weight with regards to the consideration of making the development consent order.

## 3.13. OTHER MATTERS

### INTRODUCTION

3.13.1. This section considers other planning matters which we did not include as separate topics in our initial assessment of principle issues. Nonetheless, we consider that they are relevant to the consideration of this application.

### AIR QUALITY

#### Policy background

3.13.2. NPS EN-1 recognises that energy infrastructure development can have adverse effects on air quality which could impact on health and biodiversity. Reference is made to legal limits for pollutants in the Air Quality Standards Regulations 2010 and

national objectives set out in the Air Quality (England) Regulations 2000 (paragraphs 5.2.1 and 5.2.2).

3.13.3. Paragraph 5.2.9 sets out the requirements for the ES, including descriptions of the existing air quality concentrations, significant air quality effects and predicted absolute emissions. Air quality considerations should be given substantial weight where a project would lead to a deterioration in air quality or where the project is near a sensitive receptor site (paragraphs 5.2.16 and 5.2.17). In terms of solar photovoltaic generation, NPS EN-3 does not add to the advice in NPS EN-1.

3.13.4. NPPF paragraph 199 advises that decisions should sustain and contribute towards compliance with relevant limit values or national objectives for pollutants, taking into account Air Quality Management Areas (AQMA), Clean Air Zones and cumulative impacts. Opportunities to improve air quality or mitigate impacts should be identified.

3.13.5. The LIR's submitted by LCC [REP1A-001], WLDC [REP1A-005], and NCC [REP1A-002] refer to various development plan policies. Local development plan policies relevant to the proposed development are set out at appendix A of this report.

**The application**

3.13.6. The applicant's assessment of the effects of the proposed development on air quality is included at ES chapter 6 [APP-037]. This assessment is supported by the following ES appendices and figures:

- Appendix 6-1: Air Quality Legislation, Policy and Guidance [APP-054].
- Appendix 6-2: Dust Risk Assessment [APP-055].
- Appendix 6-3: Air Quality Modelling [APP-056].
- Figure 6-1: Air Quality Baseline Monitoring Locations and Receptors [APP-155].
- Figure 6-2: Dust Risk Assessment Zones [APP-156].

3.13.7. The applicant's assessment of the cumulative effects on air quality is included at ES chapter 18 [REP6-013].

*Methodology and Baseline*

3.13.8. Air quality effects from operational road traffic were considered in accordance with: Institute of Air Quality Management (IAQM) guidance on the assessment of dust from demolition and construction (2024); guidance on land-use planning and development control (2017); and the Department for Environment, Food and Rural Affairs' (DEFRA) local air quality management technical guidance (2022).

3.13.9. Air quality effects from operational road traffic were considered against the IAQM screening criteria and identified as not requiring detailed assessment due to their very low levels. In addition, the applicant asserts that there would be no emission sources from the proposed development during its operation and as such, the operational phase assessment was scoped out.

3.13.10. There are no AQMA declared in the WLDC or BDC administrative areas. As no monitoring data was available within the vicinity of the order limits, a three-month air quality monitoring survey was undertaken at nine roadside sites in the vicinity of the order limits in 2022.

3.13.11. This monitoring identified that existing air quality within and surrounding the order limits is generally good and complies with the national air quality objectives set for

the protection of human health. DEFRA's projections for future air quality predict that local air quality within the vicinity of the order limits will improve slightly by the time that the construction of the proposed development is likely to occur.

3.13.12. The ES asserts that a background level of dust exists in all urban and rural locations in the UK. Dust can be generated on a local scale from vehicle movements and from the action of wind on exposed soils and surfaces. The applicant has considered existing local sources, including from: wind-blown dust; exhaust emissions; energy plant; road vehicles; and the long-range transport of material.

*Mitigation and monitoring*

3.13.13. The ES outlines that standard good practice measures to manage the impacts from dust generation are included in the FCEMP [REP5-015] and the FDEMP [REP5-017]. These include measures such as avoiding stockpiling soil and materials near to the boundaries of the order limits, using water to damp down soil if earthworks are undertaken in dry weather, and covering any dusty materials being transported.

*ES conclusions on construction and decommissioning phase effects*

3.13.14. ES table 6-20 [APP-037] concludes that with the implementation of embedded mitigation measures, the effects of dust on health and amenity would be negligible to minor adverse which is 'not significant'. It also concludes that effects of emissions from construction and decommissioning traffic on human health would be negligible and 'not significant'.

*Cumulative Effects*

3.13.15. The applicant's assessment of cumulative air quality effects is included at ES chapter 18 [REP6-013]. The ZoI for the dust risk assessment is 250m from the order limits and is presented in ES figure 18-1. This ZoI is in place to cover the cumulative effects of dust generated during the construction and decommissioning phases. In addition to the solar DCOs, the other developments within the ZoI which the applicant considers have the potential to generate cumulative effects with regards to dust are:

- NCC planning application Reference: 19/00167/SCR and 21/01661/DEM. Demolition of Cottam Power Station; and
- LCC planning application Reference: 146100/ PL/0135/22. To construct a hydrocarbon wellsite at Glentworth Oil site, with the drilling of one vertical appraisal well and up to seven horizontal development wells and ancillary development.

3.13.16. The ZoI for the construction and decommissioning traffic is within 200m of the modelled road links. The impacts on air quality as a result of the cumulative traffic flows were assessed by the applicant.

3.13.17. The applicant concludes that, following implementation of dust control measures included in the FCEMP and FDEMP, the cumulative effects from dust generation during construction and decommissioning would be neutral (not significant).

3.13.18. ES paragraph 18.7.6 outlines that if other developments, particularly the solar DCOs, are being constructed at the same time as the proposed development, there is the potential for the total number of HGVs on the road network to cause a cumulative impact on air quality.

3.13.19. However, the results of the applicant's Air Quality Monitoring [APP-056] show that all predicted annual mean concentrations of NO2, PM10 and PM2.5 are below their respective UK Air Quality Strategy objectives. The applicant concludes that cumulative traffic will have no effect on air quality within the ZoI of the proposed development during construction or decommissioning phases.

3.13.20. ES paragraph 18.7.9 outlines that the applicant concludes that there would be no potential for significant cumulative effects during operation. This is primarily due to the low levels of operational traffic and the absence of emissions from the development itself.

3.13.21. The applicant also outlines that, if full solar PV panel and BESS replacement is required at some point during the lifetime of the proposed development, the activity on the road network would be considerably less intensive than during construction. The applicant asserts that this activity would generate approximately 10% of the daily HGV/ coach and car/ LGV movements expected during peak construction.

**Issues considered during the examination**

3.13.22. LCC, NCC and WLDC's LIRs do not raise any substantive issues in relation to air quality.

3.13.23. WLDC's LIR [REP1A-001] does however outline that the main risk to air quality will arise during construction of the proposed development in isolation, with the effect multiplied on a cumulative level. WLDC's SoCG [REP6-034] states that it considers that the proposed development will not give rise to a risk of air quality degradation during the construction phase in solus. However, WLDC's closing statement [REP7-024] outlines that it considers that there would be significant adverse cumulative effects on air quality during construction.

3.13.24. IPs raised concerns regarding air pollution caused by the construction and operation of the proposed development and the potential for BESS fires to have an adverse effect on air quality. The applicant's response summarises these representations [REP1-028] and refers to the findings of the ES and the FBSMP [REP4-026].

3.13.25. The applicant asserts that the implementation of the FBSMP would ensure that the resultant hydrogen fluoride concentration (associated with any fires) at the closest receptors from any emissions of such a fire, would be below the level that Public Health England has identified as resulting in notable discomfort to members of the general population.

3.13.26. We asked a series of questions on air quality during ExQ1 [PD-009] and ExQ2 [PD-011]. These sought general points of clarification. The applicant provided responses at D3 [REP3-062] and D5 [REP5-032].

**ExA conclusions**

3.13.27. We note the concerns raised by IPs and alluded to in WLDCs Closing Statement with regard to the effects on air quality. However, we find that there is no substantive evidence that the proposed development would lead to any adverse effect on air quality during any phase of the development.

3.13.28. During construction and decommissioning, we agree that embedded measures included in the FDEMP and FCEMP, secured through rDCO R21 and R12, would sufficiently avoid adverse effects on air quality. We also note the results of the

applicant's cumulative assessment, which shows that there would be no significant effects.

3.13.29. WLDC has outlined concerns in relation to cumulative construction effects on air quality, but no substantive evidence has been advanced to support this assertion. In contrast, the applicant has accepted that there could be an impact, but its air quality modelling results suggest that, given the baseline conditions, this effect would not be significant.

3.13.30. Given that operational activities would be very limited we concur with the applicant's conclusion that there would be no significant effects during the operational phase of development. We also accept the applicant's assertion that any replacement of infrastructure during the operational life of the development would not give rise to greater air quality effects than those identified for the construction phase. The same is true of the decommissioning phase, with the future baseline likely to have improved given the national policy emphasis on decarbonisation.

3.13.31. We have reached the following conclusions with regard to the effect of the proposed development on air quality:

- → We agree with the applicant that the proposed development would not result in any significant residual effects on air quality during construction, operation or decommissioning either in isolation or when considered cumulatively with other developments.
- → The proposed development complies with the relevant provisions of the NPSs, the Framework and relevant development plan policies in relation to air quality effects.
- → Overall, air quality effects would be neutral.

## GROUND CONDITIONS

### Policy background

3.13.32. NPS EN-1 paragraph 5.1.17 advises that applicants should ensure that the site is suitable for the proposed use, taking account of ground conditions and any risks arising from land instability and contamination.

3.13.33. In relation to mineral safeguarding, the proposed development would be partly located within a Sand and Gravel MSA, a Limestone MSA, one Site Specific MSA (Glentworth K) and a Petroleum Exploration and Development Licence block falling within Lincolnshire. The extents of these areas are set out in the Lincolnshire Minerals and Waste Local Plan Core Strategy and Development Management Policies (2016) and the Nottinghamshire Minerals Local Plan (2021). The locations of the MSAs in relation to the proposed development are shown in Planning Statement appendix E [REP3-027].

3.13.34. Paragraph 5.11.19 of NPS EN-1 states that applicants 'should safeguard any mineral resources on the proposed site as far as possible, taking into account the long-term potential of the land use after any future decommissioning has taken place'. NPS EN-1 paragraph 5.11.28 outlines that the SoS should ensure that "appropriate mitigation measures have been put in place to safeguard mineral resources", should a development have an impact on an MSA.

3.13.35. The LIR's submitted by LCC [REP1A-001], WLDC [REP1A-005], and NCC [REP1A-002] refer to various development plan policies. Local development plan policies relevant to the proposed development are set out at appendix A of this report.

**The application**

3.13.36. The applicant's assessment of the effect of the proposed development on ground conditions is included in section 17.5 at ES chapter 17 [APP-048]. This is supplemented by preliminary risk assessments undertaken for the principle site [APP-121] and CRC [APP-122].

3.13.37. Intrusive site investigation is proposed by the applicant at the post-consent stage to verify the conceptual site model and to inform whether further mitigation and verification is required prior to the commencement of the authorised development.

3.13.38. The FCEMP [REP5-015] includes management measures relating to ground conditions which will secure the completion of intrusive site investigations prior to the commencement of development. The applicant concludes that the final CEMP will need to be substantially in accordance with the FCEMP and the proposed development implemented in accordance with the approved CEMP, thereby ensuring that any risks associated with ground conditions are mitigated as appropriate.

3.13.39. The ground conditions assessment within ES chapter 17 concludes that the proposed development will not pose an unacceptable risk to human health or the environment during construction, operation or decommissioning, with no significant residual adverse effects arising.

3.13.40. ES paragraph 18.18.2 concludes that provided that the requirements of relevant policies and legislation relating to land contamination and remediation are integrated within the design and appropriate mitigation measures are applied during the construction, operation and decommissioning phases of every cumulative development, the cumulative effect on ground conditions would be 'not significant'.

3.13.41. The applicant's Planning Statement [REP3-027] includes consideration of the effect of the application on mineral resources at section 6.14. Paragraph 6.14.13 states that it was agreed between the applicant, LCC and NCC that a full minerals assessment was not required with respect to MSAs falling within the order limits.

3.13.42. Planning statement paragraph 6.15.14 concludes that the proposed development would accord with all of the relevant development plan policy requirements because the mineral deposits protected by MSA would not be permanently sterilised and the operation of existing mineral sites would be safeguarded.

**Issues considered during the examination**

3.13.43. WLDCs LIR [REP1A-005] outlines the following concerns in relation to ground conditions:

- The assessment methodology in the ES chapter requires clarification. It does not appear to refer to government or Design Manual for Roads and Bridges (DMRB) guidelines or assessment methodologies.
- The ES chapter considers only potential impacts from land contamination and does not describe the methodology for assessment and how it is appropriate for the proposed development.

- Potential effects on mineral resources or geologically sensitive receptors, such as SSSIs, do not seem to have been explained or considered.
- The two study areas (principal site and CRC) have not been defined in the ES chapter.
- For the majority of assessment topics, there are very limited references to the sources provided. Further information from the applicant would be welcomed.

3.13.44. The applicant responded directly to these points as follows [REP3-061]:

- A full ground conditions assessment was scoped out of the EIA on the basis of the PRA which was appended to the Scoping Report [APP-051].
- Potential for impacts on mining and mineral sites through loss of mineral resource was considered as set out within ES paragraph 17.5.19 [APP-048]. No impact was identified. There are no geological designated sites within the study area.
- The study areas are defined in ES paragraph 17.5.5 [APP-048].
- Sources of information used to inform the ground conditions assessment are set out within ES Appendices 17-3 [APP-121] and 17-4 [APP-122].

3.13.45. Neither WLDC's SoCG [REP6-034] nor its closing statement [REP6-055] include any outstanding issues in relation to ground conditions or mineral safeguarding.

3.13.46. LCC [REP1A-001] and NCCs [REP1A-002] LIRs do not raise any substantive concerns in relation to the effect of the proposed development on ground conditions.

3.13.47. In relation to mineral safeguarding, LCC's LIR outlines that its Planning and Regulation Committee resolved to grant planning permission for a further oil site to the west of Glentworth K. It further states that, whilst this permission has not yet been implemented, appropriate safeguards need to be put into place as is the case for the existing oil production site. Subject to this being achieved LCC concludes that the impacts on minerals would be neutral.

3.13.48. NCCs LIR notes that parts of the proposed CRC and access routes are located in a mineral safeguarding and consultation area for sand and gravel. However, it concludes that '*given the relatively small land take for the cabling route, the County Council does not forsee any problems and therefore raises no mineral safeguarding issues.'*

3.13.49. During ExQ1 we sought further clarification from the applicant on the limitations of the PRA [APP-121 to APP-122] due to access constraints. The applicant's response [REP3-062] highlights that the PRA recommended further ground investigation survey work in any case. Such work would be secured through the FCEMP.

**ExA conclusions**

3.13.50. We are satisfied that the applicant has carried out a PRA which includes a full ground conditions assessment including consideration of impacts on mining and mineral sites. We consider that the PRA and assessment of effects on ground conditions [APP-048] are based on a sound methodology.

3.13.51. The temporary lifetime of the proposed development would mean that there would not be any likely permanent sterilisation of mineral resources. Neither LCC nor NCC have raised any substantive objection pertaining to sterilisation of mineral resources over the operational life of the development. We also note that the cable route is predominantly shared with the three other solar DCOs and this reduces land take, further reducing any likely adverse impact.

3.13.52. We note LCCs comments in relation to the protection of Igas functions and infrastructure. Final dDCO schedule 15 [REP7-004] includes protective provisions to safeguard the functions and apparatus of utility undertakers. These are discussed further in section 7 of this report. However, we are satisfied that they are sufficient to address the comments raised by LCC in relation to Igas.

3.13.53. We are satisfied that the FCEMP includes management measures relating to ground conditions which will secure the completion of intrusive site investigations prior to the commencement of development. This would be controlled and implemented through the operation of rDCO R12.

3.13.54. In summary, we conclude as follows:

→ We agree with the applicant that, in relation to ground conditions, the proposed development would not pose an unacceptable risk to human health or the environment during construction, operation or decommissioning, with no significant residual adverse effects arising in isolation or when considered cumulatively with other developments.

→ The proposed development complies with the relevant provisions of the NPSs, the Framework and relevant development plan policies in relation to ground conditions and mineral safeguarding.

→ Overall, ground condition effects would be neutral.

## MATERIALS AND WASTE

### Policy background

3.13.55. NPS EN-1 refers to the use of the Waste Hierarchy when managing waste (paragraph 5.15.2). Applicants should report on how waste and the use of resources would be sustainably managed (paragraphs 5.15.8 and 5.15.9). Construction best practices should be used to ensure reuse or recycling on-site where possible and for the storage of waste (paragraphs 5.15.12 and 5.15.13).

3.13.56. The LIR's submitted by LCC [REP1A-001], WLDC [REP1A-005], and NCC [REP1A-002] refer to various development plan policies. Local development plan policies relevant to the proposed development are set out at Appendix A.

### The application

3.13.57. The applicant's assessment of the effects of the proposed development on materials and waste is included at section 17.8 of ES chapter 17 [APP-048]. This is supported by appendix 17-1 [APP-119]. In addition, at D1 the applicant submitted a report entitled 'Waste Quantitative Cumulative Assessment' [REP1-028] to supplement the cumulative assessment at ES chapter 18 [REP6-013].

*Methodology and Baseline*

3.13.58. The applicant outlined two Study Areas for materials and waste in line with those defined in IEMA Guidance. They include:

- A 'proposed development Study Area' – for construction, operational and decommissioning waste generation, use of construction, operational and decommissioning materials and consideration of impacts on allocated and/ or safeguarded waste sites. The Study Area is deemed to include the footprint of

the proposed works, together with any temporary land requirements during the construction.

- An 'expansive Study Area' – within which waste is managed and materials are sourced:
  i. Non-hazardous and inert waste management – East Midlands and Yorkshire and the Humber.
  ii. Hazardous waste management – England.
  iii. Availability of key construction materials, crushed rock, sand and gravel, ready-mixed concrete and asphalt – East Midlands and Yorkshire and the Humber.
  iv. Availability of key construction materials, steel – UK.

3.13.59. ES paragraph 17.8.15 outlines national and regional material availability and waste capacity. ES table 17-14 sets out recovery rates for construction materials and waste.

3.13.60. Section 4.3 of the applicant's report entitled 'Waste Quantitative Cumulative Assessment' outlines that two assessments were carried out as follow:

- A "realistic worst case" of a 70% recovery rate, based on current and likely future recovery rates. Recovery is defined as reuse, recycling and recovery (energy from waste).
- An "absolute worst case" based on the assumption that all construction and demolition (C and D) waste goes to landfill.

3.13.61. The applicant has applied the 'realistic worst case' scenario on the basis that the absolute worst-case scenario is extremely unlikely to occur when taking into account current local and national policies on waste and recycling and the trend towards greater levels of recycling.

*Mitigation*

3.13.62. The applicant asserts that all management of waste, during construction, operation and decommissioning, would be in accordance with the relevant regulations. Waste would be transported by licensed waste carriers to waste management sites which hold the necessary regulatory authorisation and/ or permits for those wastes consigned to them. These measures are set out in the FCEMP [REP5-015], FOEMP [REP6-026] and FDEMP [REP5-017], which would be implemented and controlled through rDCO R12, R13, and R21 respectively.

*ES conclusions on construction, operational and decommissioning phase effects*

3.13.63. The ES concludes that construction materials required to construct the proposed development are unlikely to be required in large quantities, representing less than 1% of regional or national construction material availability. Therefore, no significant effects are anticipated.

3.13.64. With the embedded mitigation measures in place, the applicant anticipates that the overall quantities of construction waste would be a very small percentage of non-hazardous and hazardous landfill capacity, comprising less than 1% of overall capacity. The applicant outlines that, at this stage, the potential for generation of some surplus excavated material cannot be ruled out. However, the applicant concludes that the quantities involved would not be significant in the context of regional landfill capacity and would only be disposed of to landfill as a last resort. For these reasons the applicant has concluded that no significant effects are expected during construction.

3.13.65. The ES outlines that materials required to operate the proposed development are unlikely to be required in large quantities and no significant effects are anticipated. In addition, the applicant outlines that during operation, including maintenance activities, waste generation is expected to be negligible.

3.13.66. However, the ES does conclude that it is expected that there would be a requirement for periodic replacement of some of the solar farm elements. Waste generated by maintenance activities such as component replacement during the operational life of the proposed development would be managed in the same way as waste from the final decommissioning of the proposed development. The applicant outlines that recycling of PV panels will be prioritised as set out within the FOEMP. For these reasons, the applicant concludes that there would be no significant effects during operation.

3.13.67. The ES states that, at the end of the proposed developments operational life, it would be decommissioned, with recycling prioritised as set out within the FDEMP. The applicant concludes that recycling routes are generally available for decommissioning materials at present, and that it is likely that there will be even greater opportunities for recycling in the future, with market expansion anticipated as solar PV installations increase. The applicant concludes that no significant effects are expected during the decommissioning phase. The overall quantities of decommissioning waste are anticipated to be a very small percentage of non-hazardous and hazardous landfill capacity, comprising less than 1%.

*Cumulative Effects*

3.13.68. The applicant's assessment of the cumulative effects of waste take into consideration the effects of 24 solar projects listed in table 4-2 of the 'Waste Quantitative Cumulative Assessment' [REP1-028].

3.13.69. The applicant outlines that waste estimates are not available for all of these projects. Therefore, estimates have been generated specifically for this cumulative assessment by:

- Estimating PV module waste based on a nominal module capacity of 0.65 kW and weight of 35 kg; and
- assuming that the ratio of other waste to PV module waste for schemes is the average of four developments for which decommissioning waste estimates are available (Tillbridge Solar Project, Gate Burton Energy Park, Longfield Solar Farm and East Yorkshire Solar Farm).

3.13.70. The cumulative assessment focuses on decommissioning waste for the following reasons:

- The peak of waste generation would be during decommissioning and this is therefore the worst case in terms of waste generation.
- Operational waste generation is not expected to be concurrent for all projects, given that their PV modules and other components would have different operating periods and it is very unlikely that all facilities would replace their equipment at the same time.

3.13.71. For the purposes of the cumulative assessment, the applicant has assumed that all developments are decommissioned over a single five-year period and that all waste is non-hazardous.

3.13.72. The assessment concludes that under the absolute worst-case assessment (assuming zero recycling and recovery), cumulative impacts would be significant. Under the realistic worst case (70% recovery), cumulative impacts would be 'not significant'.

3.13.73. Assuming decommissioning of all of the identified cumulative developments occurs over a single five-year period, waste from the cumulative developments would equate to approximately 4.5% of construction and demolition (C and D) waste arisings in the East Midlands, and 11.2% of C and D waste arisings in Lincolnshire and Nottinghamshire. 4

3.13.74. The applicant highlights that the threshold of significance for an effect on hazardous landfill capacity is 0.1% of national capacity, equivalent to 9,912 m3. The applicant concludes that, if it is assumed that the hazardous fraction of waste solar panels is sent to hazardous waste landfill, then a significant effect would occur if this hazardous fraction represents more than 3.75% of the mass of solar panels. However, the applicant asserts that the majority of solar panel components would not be considered to be hazardous waste.

3.13.75. Whilst significant effects are identified in the absolute worst-case scenario, ES paragraph 18.18.17 [REP6-013] concludes that since waste solar panels are unlikely to be disposed of to landfill, the effects are anticipated to be 'not significant'. Therefore, no significant cumulative materials and waste effects have been identified. In reaching this conclusion the applicant highlights evidence of existing and likely expansion of specialist recycling facilities in the UK prior to decommissioning (ES paragraphs 18.18.11 to 18.18.16) and the commitments to maximise recycling included in the FOEMP and FDEMP.

**Issues considered during the examination**

3.13.76. LCCs LIR [REP1A-001] and D2 representation [REP2-012] outlined various concerns in relation to materials and waste. The applicant sought to address these concerns during the examination including through submission of the Quantitative Cumulative Assessment Topic Paper, which formed Appendix A to the applicant's Relevant Representation Report [REP1-028]. The applicant also amended the FOEMP to include recommendations made by LCC. As such, the position set out in LCCs LIR has moved on and it best reflected by section 13.2 of its SoCG with the applicant. In summary, this document outlines the following:

- Following concerns (still retained by LCC) that there was an over reliance in the applicant's assessment on future waste recycling facilities coming forwards, the applicant committed to periodic reviews of the FOEMP. LCC welcomed this commitment.
- The revised FOEMP commits to the Operational Waste Management Plan (OWMP) containing the details of waste quantities, type and fate at each stage of the project. LCC considers that it will be necessary to check this when the OWMP is produced. However, LCC outlines that concerns regarding recycling availability still apply during the operational phase, particularly cumulatively with other projects.
- LCC welcomes the applicant's clarification that PV panels are included in its anticipated rate of 70% diversion from landfill. However, LCC would prefer that the applicant specifically commits to a "good practice landfill diversion rate of 90%" as per ES paragraph 17.8.12b.
- LCC welcomes the applicant's clarification that a DEMP will be produced but requires clarification as to what is meant by "before decommissioning

commences". LCC considers that it is crucial that this is prepared with sufficient lead-in time to allow LCC to review and comment.

3.13.77. Materials and waste are not referred to as outstanding matters in LCC's Closing Statement [REP7-022].

3.13.78. Paragraph 5.10 of NCC's LIR [REP1A-002] states that, subject to the requirements of the DCO, it is of the view that the impacts of the proposed development in Nottinghamshire would be neutral. However, paragraph 5.4 does note that currently suitable recycling facilities are limited and that the applicant is reliant on further facilities being made available over the lifetime of the proposed development.

3.13.79. WLDC's LIR [REP1A-004] outlines that WLDC has concerns regarding the method for recycling materials as a consequence of maintenance (replacement) and decommissioning of the proposed development. WLDC considers that there is insufficient capacity within the district, the region and the UK as a whole, to deal with the waste.

3.13.80. WLDC's LIR also states that it '*notes concerns over the proposed development complying with Policy S10: Supporting a Circular Economy of the Central Lincolnshire Local Plan, due to the replacement and disposal of solar panels and other associated infrastructure that will be required during the proposed development's operation'.*

3.13.81. Despite this, materials and waste are not included as an area of disagreement in WLDC's final SoCG [REP6-034]. WLDC's closing statement [REP7-024] does state that it considers that the applicant remains unable to provide any clarity on the management of waste from 'maintenance' activities. Maintenance activities include replacement panels and infrastructure over the operational phase of the proposed development.

3.13.82. The SoCG between the applicant and the EA [REP6-042] outlines that all matters relating to materials and waste raised by the EA were resolved by D6.

3.13.83. 7000 Acres WR [REP2-033] sets out concerns that the definition of maintenance in the dDCO allows for more than the modelled single replacement of panels and infrastructure over the lifetime of the development. 7000 Acres suggests that this renders the applicant's waste management conclusions 'void'. It also notes that *'the applicant claims that 70% of waste will be recycled, despite there being no facilities in the UK that can recycle the large volume of solar panels used by the scheme'*.

3.13.84. Other IPs raised concerns, in RR, regarding the likely level of recycling at decommissioning. These representations are addressed by the applicant on page 37 of the applicant's response to RR [REP1-028].

3.13.85. We asked a series of questions in relation to materials and waste in ExQ1 [PD-009] and ExQ2 [PD-011]. These were generally seeking minor points of clarification from the applicant, LCC and WLDC. The responses did not substantively alter the positions summarised above in the LIRs and SOCGs.

**ExA conclusions**

3.13.86. We are satisfied that the FOEMP [REP6-027] and the FDEMP [REP5-017] both include sufficient commitments to ensure that there would be a target 70% recovery and recycling rate during both operational and decommissioning phases of the proposed development. The FOEMP and FDEMP require that an OWMP and a

Decommissioning Resource Management Plan are produced for the respective phases of the development. The detail of these management plans is outlined in the FOEMP and FDEMP respectively. Furthermore, rDCO R13 and R21 ensure that the specific details of the respective management plans are subject to approval by the relevant planning authorities.

3.13.87. For these reasons we consider that on a realistic worst-case scenario basis, 70% of waste materials would be recycled. We note concerns in relation to existing capacity, however we accept the applicant's rationale that such facilities are highly likely to be developed as the market for such recycling increases over the operational lifetime of the proposed development. Taking these considerations into account we consider that the applicant's assumed 70% recovery rate is acceptable.

3.13.88. In terms of maintenance activities, we agree that there is scope within the final dDCO [REP7-004] definition of maintenance for more than one replacement of panels over the operational phase of the development. However, for reasons already given in section 3.2 of this report, we agree with the applicant's assumption that there would likely be one round of panel replacement over the project lifetime. On that basis, given that materials and waste effects of this would logically be less than the wholesale replacement of the development in one go, we are satisfied that the conclusions of the Waste Quantitative Cumulative Assessment can be equally applied to the operational phase of the proposed development.

3.13.89. For these reasons we have reached the following conclusions:

- → We agree with the applicant that the proposed development would not result in any significant residual materials and waste effects during construction, operation or decommissioning, in isolation or when considered cumulatively with other developments.
- → The proposed development therefore complies with the relevant provisions of the NPSs, the Framework and relevant development plan policies in relation to materials and waste.
- → Overall materials and waste effects would be neutral.

## TELECOMMUNICATIONS, TELEVISION RECEPTION AND UTILITIES

### Policy background

3.13.90. There are no directly relevant policies in the relevant NPSs or the NPPF.

3.13.91. The LIR's submitted by LCC [REP1A-001], WLDC [REP1A-005], and NCC [REP1A-002] refer to various development plan policies. Local development plan policies relevant to the proposed development are set out at Appendix A.

### The application

3.13.92. The applicant's assessment of the effect of the proposed development on telecommunications, television reception and utilities is included at ES section 17.7 [APP-048] with cumulative effects considered in ES chapter 18 [REP6-013].

3.13.93. The applicant concludes that the proposed development would be unlikely to interfere with telecommunications and television transmission infrastructure, as typically structures need to be more than 5 m in height to interfere with these signals. Given that the vast majority of the proposed development would not exceed this height.

3.13.94. The applicant concludes that the potential exists for utilities to be affected during the construction and decommissioning of the proposed development through inadvertent damage caused as a result of excavation and engineering operations. Without any precautionary measures to avoid damage to utilities, this could lead to short-term adverse effects. However, the following embedded mitigation measures are proposed:

- Locating infrastructure outside of utilities protected zones.
- The use of ground penetrating radar before excavation to identify any unknown utilities.
- Consultation and agreement with relevant utility operators regarding construction and demobilisation methods prior to works commencing.

3.13.95. These mitigation measures are included in the FCEMP and FDEMP.

3.13.96. Overall, the applicant concludes that there would be no significant residual effects (including cumulative effects) on telecommunications, television reception and utilities.

**Issues considered during the examination**

3.13.97. None of the LIRs raise any substantive concerns in relation to the effect of the proposed development on telecommunications, tv reception or utilities.

3.13.98. Anglian Water Services Limited (AWS) SoCG [REP6-040] state that all matters of discussion with the applicant have been resolved. AWS's final representation [REP7-021] also confirms that Protective Provisions for the benefit of AWS are included in the dDCO and that there are no outstanding matters of areas of disagreement. Similarly, Cadent Gas Limited's final representation [REP4-054] confirms that it has no outstanding objections subject to the Protective Provisions set out in the dDCO.

3.13.99. There were no substantive issues raised by any other IPs during the examination in relation to the same matters.

**ExA conclusions**

3.13.100. We conclude as follows:

→ We agree with the applicant that, in relation to telecommunications, television reception and utilities, the proposed development would not result in any significant residual effects, either in isolation or cumulatively, during any development phase.

→ The proposed development would not conflict with any policy - pertaining to telecommunications, television reception and utilities – contained within the NPSs, the Framework or the relevant development plans.

→ Overall, telecommunications, television reception and utilities effects would be neutral.

## ASSOCIATED DEVELOPMENT

**Introduction**

3.13.101. During the examination we asked various questions in relation to whether the BESS units comprised associated development. This section addresses those questions and the responses received.

### Policy background

3.13.102. NPS EN-1 paragraph 3.3.24 to 3.2.27 set out that energy storage has a key role to play in achieving net zero. These paragraphs emphasise that storage plays various roles including maximising the usable output from intermittent low carbon generation, reducing the total amount of generation capacity needed on the system and providing a range of balancing services to the NETSO and Distribution Network Operators (DNOs).

3.13.103. NPS EN-3 paragraph 2.10.6 outlines that, for solar development, 'associated infrastructure may also be proposed and may be treated, on a case-by-case basis, as associated development, such as energy storage'

3.13.104. NPS EN-1 paragraph 1.3.11 refers to separate government guidance, which the SoS must have regard to in considering whether development is associated development. This guidance is entitled 'Planning Act 2008: Guidance on associated development applications for major infrastructure projects (April 2013)' (AD Guidance).

3.13.105. Paragraph 5 of the AD Guidance set out four core principles to be taken into account in considering associated development. These can be summarised as follow:

- There must be a direct relationship between the associated development and principal development.
- Associated development should be subordinate to the principal development.
- Development which is only necessary as a source of additional revenue is not associated development.
- Associated development must be proportionate to the nature and scale of the principal development.

3.13.106. Paragraph 6 of the AD Guidance also emphasises that, in most cases, associated development will be typical of development brought forward alongside the type of principal development proposed.

### The application

3.13.107. ES paragraph 4.4.16 [REP4-016] explains that '*the BESS is associated development to ensure that energy can be stored when it is generated and not demanded*'. Paragraph 3.4.17 outlines that the proposed development would be DC-coupled, which means electricity would flow from solar panels directly into the BESS, with no inversion of electricity from DC to AC and back to DC before storage in the batteries.

3.13.108. In addition to solely supporting the principal development, the BESS would serve other functions. Table 5-1 of the applicant's statement of need [APP-210] sets out these functions, which include grid-balancing and reserve operation services.

### Issues considered during the examination

3.13.109. During ISH1 [EV4-002] and through ExQ1 [PD-009] and ExQ2 [PD-011] we asked the applicant a series of questions to seek to establish whether the BESS units comprised associated development. These questions were predicated on the fact that the applicant's statement of need [APP-210] outlines that BESS would potentially fulfil various functions other than solely supporting the principal development.

3.13.110. The applicant provided detailed responses during ISH1 which were ultimately supplemented through the submission of a 'note on generating capacity and associated development' at Appendix B of the applicant's summary of oral submissions at ISH1 [REP1-046]. The substantive conclusions can be summarised as follow:

- The direct relationship between the BESS and the principal development is emphasised by the DC coupling approach, which requires the BESS to be distributed across the principal site and co-located with the solar PV arrays and solar stations.
- The BESS is subordinate as evidenced by its dispersion throughout the indicative principal site on the indicative layout plan, in comparison to other developments where BESS is typically in a single location.
- Inclusion of BESS alongside solar generating stations is well-established and there are many examples of DCO developments where the SoS has granted consent for such.
- The storage capacity of the BESS—designed for four hours of storage with a total energy capacity of 2,310 MWh—ensures that it is suitably sized to handle the energy output of the solar PV array in times of curtailment. The strategic co-location of the BESS across the principal site also minimises electrical losses, making it a proportionate and necessary component of the development.
- While the BESS may have the potential to import electricity from the grid and store it (with the 500 MW import capacity), this is not its primary purpose. The BESS would be constructed as part of the overall development to enhance the efficiency and reliability of the solar PV operation.

3.13.111. The applicant's response also highlighted that it is estimated that the BESS will be charged by the solar PV array on approximately 30% of the days in a year. As such, in ExQ1 [PD-009] we asked the applicant what function the BESS would fulfil during the other 70% of days in a year.

3.13.112. The applicant responded [REP3-062] stating that outside of the 30%, the BESS can either remain dormant or provide other services, as previously outlined. However, the applicant contends that these potential activities and the proportion of time that the BESS is engaged in them, do not influence whether the BESS is associated development, given that the BESS is necessary to help maximise the delivery of energy generated by the solar PV to the grid and this is the key and primary reason it is included as part of the proposed development. The applicant also asserts that there is no requirement to establish the proportion of time each function of the associated development would be utilised for.

**ExA conclusions**

3.13.113. Whilst the proposed BESS units would provide various functions which we do not consider to be primarily related to the principal development, the primary purpose of the units is to support the associated development and improve efficiency. We therefore consider that the BESS units would be directly related and subordinate to the principal development. Whilst it is possible that additional revenue would be generated, it is clear that the BESS units are not 'only' required as an additional source of revenue. The scale of the BESS units is proportionate to the proposed development and in particular to the 500MW import and export capacity of the grid connection.

3.13.114. For these reasons we are satisfied that the BESS units would meet the tests set out at paragraph 4 of the AD guidance and are therefore 'associated development'. The

proposed development therefore complies with the NPSs insofar as they relate to the consideration of associated development.

## OVERPLANTING

### Introduction

3.13.115. The issue of overplanting was raised by 7000 Acres during the examination [REP2-033], and we asked various questions on this subject. This section addresses those questions and the applicant's responses.

### Policy background

3.13.116. NPS EN-3 paragraph 2.10.55 outlines that the installed generating capacity of a solar farm will decline over time in correlation with the reduction in panel array efficiency. It further states that applicants may account for this by overplanting solar panel arrays. Footnote 92 clarifies that such reasonable overplanting should be considered acceptable in a planning context so long as it can be justified and its impacts are assessed.

3.13.117. In relation to the typical scale of solar developments, NPS EN-3 (paragraph 2.10.17) states that, along with associated infrastructure, a solar farm requires between 2 to 4 acres for each MW of output. A typical 50MW solar farm will consist of around 100,000 to 150,000 panels and cover between 125 to 200 acres. However, NPS EN-3 also clarifies that this will vary significantly and is expected to change over time as the technology continues to become more efficient.

### Application

3.13.118. The applicant's Planning Statement [REP3-027] (page 23) states that *'the indicative design for the proposed development includes an element of overplanting to have regard to the degradation of panels*.' The applicant's statement of need [APP-210] includes a section setting out the benefits of overplanting.

### Issues considered during the examination

3.13.119. 7000 Acres WR [REP2-033] state that '*the overplanting is excessive and increases the major significant harm caused by the development, especially when considered alongside the cumulative harm caused by the other three solar NSIPs located nearby*'.

3.13.120. Through ExQ1 [PD-009] and ExQ2 [PD-011] we asked the applicant a series of questions requiring further justification for the planned 157% ratio of overplanting. In addition, we asked for comparative figures for similar DCO developments. The main points raised in the applicant's substantive responses ([REP3-062], [REP5-032] and [REP1-046]) can be summarised as follow:

- The ratio of 1.57 (157%) compares with Mallard Pass Solar Farm, which is between 1.3 and 1.5.
- The justification for the overplanting for the proposed development is based on a number of factors, all of which are aimed at enabling the grid connection to be maximised across its lifetime.
- The benefit of the overplanting (in particular when the solar PV is co-located with BESS) is that it would enables the proposed development to export electricity in accordance with its grid connection for longer on a daily and annual basis.

- The proposed level of overplanting will support the delivery of an efficient development from a technical perspective having regard to panel degradation as well as ensuring an efficient use of land.

**ExA conclusions**

*3.13.121.* We accept that the level of overplanting proposed is relatively comparable to other solar DCO developments and that where it exceeds other examples, those developments typically lack BESS provision. The primary benefit of overplanting when coupled with BESS provision is that it ensures that the grid connection is maximised by reducing the amount of energy which would otherwise be lost during times of peak generation.

*3.13.122.* For these reasons we consider that the applicant has justified the level of overplanting proposed and that the proposed development accords with NPS EN-3 paragraph 2.10.55 in that regard. In any case, the overplanting is an intrinsic component of the proposed development which has been fully assessed in the applicant's EIA.

# 4. FINDINGS AND CONCLUSIONS IN RELATION TO HABITATS REGULATIONS ASSESSMENT

## 4.1. INTRODUCTION

4.1.1. This section sets out our analysis and conclusions relevant to the Habitats Regulations Assessment (HRA). This will assist the SoS, as the competent authority, in performing his duties under The Conservation of Habitats and Species Regulations 2017 ('The Habitats Regulations').

4.1.2. This section is structured as follows:

- Section 4.2: Findings in relation to Likely Significant Effects (LSE)
- Section 4.3: HRA conclusions

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 where 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. We have been mindful throughout the examination of the need to ensure that the SoS has such information as may reasonably be required to carry out their duties as the competent authority. We have sought evidence from the applicant and the relevant Interested Parties (IPs), including Natural England (NE) as the Appropriate Nature Conservation Body (ANCB), through written questions and ISHs.

### RIES AND CONSULTATION

4.1.6. We produced a Report on the Implications for European Sites (RIES) [PD-014], included at appendix c, which compiled, documented, and signposted HRA-relevant information provided in the DCO application and examination representations up to D5 (25 February 2025). The RIES was issued to set out our understanding on HRA-relevant information and the position of the IPs in relation to the effects of the proposed development on European sites at that point in time. Consultation on the RIES took place between 11 March 2025 and 1 April 2025.

4.1.7. Our recommendation is that the RIES, and consultation on it, may be relied upon as an appropriate body of information to enable the SoS to fulfil his duties of consultation under regulation 63(3) of The Habitats Regulations, should the SoS wish to do so.

### PROPOSED DEVELOPMENT DESCRIPTION AND HRA IMPLICATIONS

4.1.8. The proposed development is described in section 1 of this report.

4.1.9. The applicant's assessment of effects is presented in ES appendix 9-12: Habitat Regulations Assessment Report [APP-094] [REP1-058A] [REP3-006].

4.1.10. The spatial relationship between the order limits of the proposed development and European sites is shown in figure 1 of the HRA report [REP3-006].

4.1.11. The proposed development is not directly connected with, or necessary to, the management of a European site. Therefore, the SoS must make an 'appropriate assessment' of the implications of the proposed development on potentially affected European sites, taking into account their conservation objectives.

4.1.12. During the pre-examination stage, the applicant submitted a change request [AS-036 to AS-066] as described in section 1 of this report. These changes were accepted by the ExA. No HRA-relevant matters arose from this change request.

### SUMMARY OF HRA MATTERS CONSIDERED DURING THE EXAMINATION

4.1.13. The main HRA matters which we, NE and the EA discussed during the examination include:

- the impact-pathways with potential for likely significant effects (LSE); and
- LSE on qualifying features of the Humber Estuary Special Area of Conservation (SAC) and Humber Estuary Ramsar site.

4.1.14. These matters are discussed in the RIES [PD-014] and in the sections below.

## 4.2. FINDINGS IN RELATION TO LIKELY 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' (AA) and the activities, sites or plans and projects to be included for further consideration in the AA.

4.2.2. The European sites and qualifying features that were considered in the applicant's assessment of LSE are presented in table 5 of the HRA report [APP-094]. The applicant's HRA report sets out the methodology applied in determining what would constitute a 'significant effect' within its HRA report [APP-094].

4.2.3. The applicant originally used a 10km radius for European sites. However, during pre-application, comments were received from the EA in relation to the potential for electro-magnetic fields (EMF) to affect migratory fish. The applicant subsequently agreed during the pre-application phase that a wider search area would therefore be undertaken beyond the original 10km identified. This was necessary in order to determine whether the proposed development could be connected to any European sites designated for migratory fish.

4.2.4. The applicant's HRA report therefore included consideration of a wider search area within its screening methodology.

4.2.5. We asked NE to comment on the distances used to screen sites into the assessment in ExQ1 [PD-009]. NE confirmed [REP3-071] that it was satisfied that the distances used were appropriate to identify all relevant European sites and/ or European site qualifying features that could be affected by the proposed development and any functional usage outside of designated sites.

4.2.6. No further matters have been raised in the examination in relation to the applicant's approach to identification of European sites.

4.2.7. The HRA Report therefore identified two European Sites within the UK National Site Network for inclusion within the assessment:

- Humber Estuary SAC.
- Humber Estuary Ramsar site.

4.2.8. The applicant did not identify any LSE on non-UK European sites in European Economic Area States in its HRA Report [APP-094] and there were no potential LSE identified by any IP during the examination. As such, only UK European sites are addressed in this report.

## LSE FROM THE PROPOSED DEVELOPMENT ALONE

4.2.9. The applicant identified potential impacts of the proposed development considered to have the potential to result in LSE alone in HRA Report section 4 [APP-094].

4.2.10. The impacts considered by the applicant to have the potential to result in LSE are:

- noise and visual disturbance to river lamprey and sea lamprey during construction and decommissioning; and
- barriers (including EMF) and/ or displacement effects to river lamprey and sea lamprey during operation.

4.2.11. In its relevant representation, NE [RR-208] identified the following additional impact-pathways it considered should be assessed:

- impacts to functionally linked land for passage and wintering golden plover (*Pluvialis apricaria*) of the Humber Estuary Ramsar site; and
- impacts to sea lamprey and river lamprey qualifying features of the Humber Estuary SAC and Humber Estuary Ramsar site from construction pollutants (silt and bentonite).

4.2.12. The EA [RR-093] also identified the potential for EMF effects on both qualifying features. It requested that the applicant secure a program of monitoring, similar to the approach taken on other consented solar developments (Cottam and West Burton).

## FUNCTIONALLY LINKED LAND FOR GOLDEN PLOVER

4.2.13. In its response to [RR-208], the applicant stated [REP1-028] that its updated HRA report [REP1-058] provided further reasoning to support its decision to exclude impacts to the passage and wintering of golden plover from screening for LSE. The applicant stated that the closest section of the proposed development to the Humber Estuary Ramsar Site is 20.2km and lacked the primary habitat that the feature requires.

4.2.14. The applicant concluded that functional habitat for golden plover was well beyond the area where there could be a potential functional link with the Humber Estuary Ramsar Site. It therefore concluded that the proposed development was unlikely to be located on an area providing foraging habitat for this qualifying feature. As such, it was ruled out prior to the screening for the LSE stage of the HRA.

4.2.15. In ExQ1 [PD-009] we asked NE to confirm whether it had further representations on this matter. NE responded [REP3-071] that it was satisfied - based on the reasoning above – that this qualifying feature could be screened out of further consideration.

### IMPACTS FROM CONSTRUCTION POLLUTANTS

4.2.16. Further to the representations received from NE on water quality matters [RR-208], the applicant's updated HRA report [REP1-058] included consideration of an additional impact-pathway from construction and decommissioning pollutants (silt and bentonite) to the sea and river lamprey qualifying features of the Humber Estuary SAC and Humber Estuary Ramsar site.

4.2.17. The applicant concludes [REP1-058A] that there would be no LSE on the Humber Estuary SAC and Humber Estuary Ramsar site from this impact-pathway. The applicant's response points to the legal obligations through the Environmental Damage (England) Regulations 2015 and the Environmental Permitting (England and Wales) Regulations 2016 defining the need to protect the health of watercourses from risk of pollution. The applicant considers that these measures would be in place irrespective of the presence of European sites.

4.2.18. NE did not raise any objection to the applicant's conclusion of no LSE [REP6-044].

### EMF

4.2.19. In ExQ1 [PD-009], we queried the applicant's approach of assessing the burial depth of the cable below the river in the lower water column in the bottom of the river. We asked the applicant, the EA and NE whether, given that migratory species can use the full depth of the water column, they would sense this risk and adjust accordingly.

4.2.20. NE [REP3-071] responded that it was satisfied with the approach to cable burial and considered that any increase in EMF activity in the lower water column would be unlikely to cause a significant effect upon lamprey populations. However, NE acknowledged evidence gaps in this area and stated that a commitment to monitor effects to migratory fish (including lamprey) in the River Trent would be necessary and any identified impacts should be acted upon.

4.2.21. The EA's [REP3-068] response to ExQ1 [PD-009] noted that it is possible that some fish will detect an EMF in the water which may create an invisible barrier and therefore the EA cannot currently advise that impacts would be avoided.

4.2.22. The final SoCG with the EA [REP6-044] includes agreement from the applicant to contribute to a program of EMF monitoring within the River Trent, secured through the FOEMP [REP6-026]. The applicant's approach was also explained further in [REP3-063]. This states that, subject to agreement on the details with NE and the EA and any necessary consents from landowners such as the Canal and River Trust, monitoring would continue for at least 3 years following commissioning of the first cable crossing. The FOEMP [REP6-026] also states that this contribution may be financial and is subject to agreement on the extent of the monitoring with the EA.

4.2.23. The EA confirmed at D6 [REP6-057] that it is satisfied that the wording in the FOEMP [REP4-022] is sufficient to secure the EMF monitoring required.

4.2.24. In ExQ3 [PD-012] we asked the EA to comment on the potential ways in which the risk could be mitigated in the event that EMF monitoring establishes an impact is taking place. The EA responded [REP6-057] that their latest position is that they are

not insisting on mitigation measures in connection with the proposed development, nor others nearby, if adverse effects on fish are found.

4.2.25. We also identified [PD-009] the explanation provided in ES chapter 17 [APP-048] from National Grid guidance on detectability of EMF, querying whether this evidence had relevance to the conclusions of potential LSE on migratory fish.

4.2.26. The applicant [REP3-062] did not respond directly to this point but stated that the burial depth was a design parameter that arose from previous solar projects. In its updated HRA Report at D4 [REP3-006] the applicant maintained that there would be no LSE from this impact-pathway either alone or in-combination with other plans or projects.

4.2.27. NE [RR-208] and the Canal and River Trust (CRT) [RR-036] both requested clarity on the rationale behind the use of a 5m burial depth for the River Trent cable crossing.

4.2.28. In its response to RR [REP1-028], the applicant stated that the reasons for the depths of the crossings were as set out in the ODPS [REP4-020]. This states that trenchless crossings would be installed at 3m depth: *"…with the exception of the River Till and the River Trent where cables will be installed at a minimum of 5m below the lowest surveyed point of the riverbed to prevent disturbance to fish species"*.

4.2.29. In ExQ1 [PD-009] we asked the applicant to further confirm whether the proposed 5m depth was applied as mitigation. In doing so, we referred to the judgment in People over Wind and Sweetman v Coillte Teoranta [2018].

4.2.30. The applicant stated [REP3-062] that the wording in the updated ODPS [REP4-020] had been amended to clarify that the primary reason for a burial depth of a minimum of 5m below the River Till and River Trent is to avoid the mobilisation of silt from the riverbed and the risk of scour exposing the cable, with a benefit of this depth being that it also effectively negates the potential for any impacts from EMF to fish species.

4.2.31. At D3 NE [REP3-071] confirmed that it was satisfied with the explanation and consider the 5m depth to be suitably precautionary. LCC [REP3-065] noted it had no reason to disagree with the applicant's conclusion of no LSE and was happy that the cable burial approach was consistent with other local proposals.

### LSE FROM THE PROPOSED DEVELOPMENT IN COMBINATION

4.2.32. The applicant addressed potential in-combination effects arising from the proposed development within section 5.4 of the HRA report [APP-094] which sets out the methodology applied. The other plans and projects included in the in-combination assessment are set out in table 8 of the HRA report.

4.2.33. Additional projects were identified by NE [RR-208] that should be considered in the applicant's in-combination assessment for all identified impact-pathways. These were:

- Great North Road Solar
- One Earth Solar Farm

4.2.34. The applicant's HRA Report [REP1-058A] included an updated assessment of in-combination effects that included these projects. The applicant's conclusions of no

LSE in-combination with other plans and projects remained unchanged with the addition of these projects.

At D3, NE [REP3-071] confirmed that it was satisfied with the applicant's updated conclusions. This was also confirmed as a matter agreed in the final SoCG between the applicant and NE [REP6-044].

## 4.3. HRA CONCLUSIONS

4.3.1. The applicant concluded in section 6 of the HRA Report [REP3-006] that the proposed development would not be likely to give rise to significant effects, either alone or in combination with other projects or plans, on the sea and river lamprey qualifying features of the following European sites:

- Humber Estuary SAC.
- Humber Estuary Ramsar site.

4.3.2. No LSE were identified for the European sites included in the applicant's assessment, both from the proposed development alone and in-combination with other projects or plans.

4.3.3. We are satisfied that the correct European sites and qualifying features have been identified for the purposes of assessment, and that all potential impacts which could give rise to significant effects have been identified.

4.3.4. We are also satisfied that no LSE exist either alone or in-combination with other plans and projects.

4.3.5. We therefore consider that there is sufficient information before the SoS to enable him to undertake an appropriate assessment in order to fulfil his duty under the requirements of the Habitats Regulations.

# 5. CONCLUSION ON THE CASE FOR DEVELOPMENT CONSENT

## 5.1. INTRODUCTION

5.1.1. NPS EN-1 states that the Government has concluded that there is a critical national priority (CNP) for the provision of nationally significant low carbon infrastructure. The proposed development is CNP infrastructure as defined in NPS EN-1.

5.1.2. Within this context, this section considers the overall case for development consent, taking into consideration the conclusions reached in relation to the main planning issues.

## 5.2. SUMMARY OF THE MAIN PLANNING ISSUES

5.2.1. This sub-section summarises our conclusions on the main planning issues.

### THE PRINCIPLE OF DEVELOPMENT AND CLIMATE CHANGE

5.2.2. We reached the following conclusions in relation to the principle of development and climate change:

- → We agree with the conclusions of the applicant's GHG assessment and consider that the overall GHG impact of the proposed development would be positive.
- → We agree with the conclusions reached in the applicant's CCR that there would not be any significant climate change risks during the construction, operation, or decommissioning phases of the proposed development.
- → We agree with the applicant's conclusion that there would be no additional significant effects on receptors resulting from the proposed development combined with the impacts of climate change.
- → We accept the applicant's rationale for excluding a cumulative assessment of climate change effects and we consider that there would not be any significant adverse cumulative effects on climate change.
- → A range of necessary and effective mitigation measures are included in the FCEMP and FDEMP and these would be secured through R12 and R21 of the rDCO.
- → In relation to climate change and the principle of development, the proposed development would comply with NPS EN-1, NPS EN-3, the NPPF and relevant development plan policies.
- → Overall, we conclude that the proposed development would make a significant contribution to secure and reliable energy provision whilst also resulting in significant climate change benefits. We consider that very great weight should be afforded to these benefits, given that they are fundamental to the objectives of NPS EN-1 and NPS EN-3.

### BIODIVERSITY AND ECOLOGY

5.2.3. We reached the following conclusions in relation to the principle of development and biodiversity and ecology:

→ The principal statutory regulators and bodies with responsibilities for enforcement and monitoring of ecological and biodiversity measures are generally satisfied with the approach the applicant has taken

→ There will be buffer strips to existing natural habitats and protection of existing habitats with the exception of those trees and hedgerows affected by access formation. A comprehensive and effective system of mitigation is included in the FCEMP [REP5-015], FOEMP [REP6-027], FDEMP [REP5-017] and FLEMP [REP6-022]. These would be secured through rDCO R12, R13, R21 and R7 respectively.

→ The principal site area is predominately currently used for arable agricultural production with periodic ploughing, cultivation and harvesting. The proposed change to an area predominately covered with solar panels will lead to replacement of this arable land with grassland albeit shaded by the solar panels.

→ The CRC will be restored to its prior condition on completion of the to the works.

→ In addition, a generous biodiversity net gain plan has been proposed to increase biodiversity at the site above the existing measures.

→ The proposed development has the potential to result in significant residual effects on biodiversity and ecology during construction if the transitional arrangements for wildlife are not established in advance or considered cumulatively with other developments. The risk of this has been minimised and mitigated by the requirements in the rDCO and the overview of the LCC and WLDC who will be able to agree the programme and phasing within the FCTMP to ensure that adjacent projects do not conflict and give rise to cumulative effects.

→ We agree with the applicant that the proposed development would likely have moderate beneficial residual effects on biodiversity and ecology during the operational phase of the proposed development. However, we consider that the BNG provisions and extent of habitat provision mean that this enhancement of the local biodiversity and ecology may be further enhanced.

→ The proposed development therefore complies with the relevant provisions of the NPSs, the NPPF and relevant development plan policies in relation to biodiversity and ecology.

→ Given the above measures secured in the rDCO and the opinions of the statutory nature conservation bodies, we are of the opinion that the development is likely to result in a net improvement in the long-term biodiversity and ecology of the site, and consequently we ascribe moderate positive weight in favour of making the development consent order.

## CUMULATIVE AND IN-COMBINATION EFFECTS

5.2.4. Cumulative effects were considered under each respective planning issue. However, we reached the following conclusions in relation to the in-combination effects of the proposed development:

→ The applicant's cumulative assessment methodology and assessment of in-combination effects both comply with NPS EN-1 and NPS EN-3, the NPPF, the NPPG and relevant development plan policies.

→ We agree with the applicant that there would be moderate adverse (significant) in-combination effects during construction on one residential receptor and one non-motorised user route receptor.

→ We agree with the applicant that there would also be 7 residential receptors that would experience moderate adverse (significant) in-combination effects during the operational phase (up to year 15 of operation).

→ In all cases, these in-combination effects primarily derive from significant landscape effects which are added to by other effects. As such, to avoid double counting adverse effects we consider that 'a little' negative weight can be afforded to these effects over and above that already considered for each respective planning issue in this report. Policy compliance or otherwise is also considered under the respective planning issues of this report.

**HISTORIC ENVIRONMENT**

5.2.5. The heritage balance is undertaken at section 4.3. We reached the following conclusions on the historic environment effects of the proposed development:

→ We agree with the applicant's assessment of the significance of designated and NDHA and their settings. We also agree that there would not be any significant residual cultural heritage effects (in EIA terms) during any phase of the development, including when considered cumulatively with other developments.

→ Whilst there would be no 'significant effects' there would be less than substantial harm to various designated and non-designated heritage assets as set out at paragraphs 3.5.52 and 3.5.65 of this report, respectively.

→ Avoidance measures have been embedded within the proposed design and we are satisfied that the mitigation measures set out in the FCEMP [REP5-015], FDEMP [REP5-017], FLEMP [REP6-022] and AMS [REP1-025], would be effectively implemented through rDCO R12, R21, R7 and R11 respectively.

→ The proposed development would accord with NPS EN-1, NPS EN-3, the NPPF, the NPPG and the relevant development plans in relation to cultural heritage effects.

→ Given the requirement to undertake a separate balancing exercise for heritage harm, our consideration of the weight to be attached to the cultural heritage effects of the proposed development is deferred to section 5 of this report.

**HUMAN HEALTH, SAFETY, ACCIDENTS AND MAJOR INCIDENTS**

5.2.6. We reached the following conclusions in relation to human health, safety, accidents and major incidents:

→ The probability of a fire occurring in the BESS is low but the consequence of such a fire is not insignificant. LFRS has had input to the preparation of the FBSMP [REP4-026] and is content with its provisions and that it meets the guidance of the NFFC. We consider that that dDCO R6 and the PP would ensure that LFRS are sufficiently resourced to deal with the risk that the BESS may pose.

→ The effects and impacts of a range of issues arising from the proposed development including changes to landscape, noise, socio-economics, and transport has the potential to impact on local residents' health and wellbeing. We are conscious of not double counting these effects along with the effects weighted elsewhere in the specific sections of this report that follow.

→ We agree with the applicant that there would be adverse effects on health as set out in ES tables 11-12 and 11-13 [APP-042]. These effects would be associated with the landscape and visual, transport, climate change, noise and air quality impacts of the proposed development. We agree with the applicant that some of these effects would include adverse effects on mental health and wellbeing. Notwithstanding this, these effects would not be significant and there is no substantive evidence to persuade us otherwise. Furthermore, whilst we disagree with the applicant's assessment in relation to some of the other planning issues, we do not consider that this would result in an increase in health effects above those set out in ES tables 11-12 and 11-13.

→ The proposed development will require working in and around major accidents hazards sites. The site is also adjacent to petrochemical installations and other NSIP developments. We consider the applicant has assessed these risks adequately and prepared adequate mitigation measures within the FCEMP and dDCO to ensure the likelihood of these risks is reduced to as low as reasonably practicable.

→ The residual risk presented by the BESS and the potential for the proposed development to have an impact on the mental health and wellbeing of local residents means we disagree with the applicant's assessment of the likely effects on human health, safety, accidents and major incidents.

→ We ascribe a little negative weighting with regards to the consideration of making the development consent order.

## LANDSCAPE AND VISUAL

5.2.7. We reached the following conclusions in relation to the landscape and visual effects of the proposed development:

→ We agree with the applicant's conclusion that the proposed development would lead to significant residual adverse landscape and visual effects during the construction and operational phases of the development both in isolation and when considered cumulatively with other development.

→ In terms of landscape effects, much of the harm would be reduced after 15 years of operation. However, this still represents a significant proportion of the proposed development's estimated lifetime. The importance of the AGLV and the associated LLCAs increases the effect of this harm.

→ We consider that the applicant has underestimated the visual impact of the proposed development. NPS EN-3 paragraph 2.10.95 outlines that whilst solar developments may cover a significant surface area, effective screening and appropriate land topography can limit the zone of visual influence. However, in this instance, the wide and open characteristics of large parts of the principal site, combined with the elevated views possible from the Cliff, significantly limit the effect of mitigation planting, even beyond 15 years of operation in some instances.

→ We consider that the applicant has underestimated the cumulative landscape and visual effects of the proposed development. This is primarily because we consider that the cumulative landscape and visual harm experienced on a sequential basis would be significant up to year 15 of operation.

→ Despite the landscape and visual harm which would arise, it is clear that the applicant has adopted good design principles from an early stage, mitigating the landscape and visual effect of the development as far as possible, through an iterative and considered design processes.

→ There would not be any significant harm arising from glint and glare.

→ We acknowledge that embedded mitigation measures would be secured through the FLEMP and other management plans. We also note the temporary lifetime of the proposed development.

→ Despite the harm which would be caused, there would not be a conflict with NPS EN-1 and EN3. This is because NPS EN-1 recognises that virtually all nationally significant energy infrastructure will have adverse effects on the landscape (5.10.5). In addition, despite the harm which would be caused to a locally valued landscape, NPS EN-1 paragraph 5.10.12 states that locally valued landscapes should not be used in themselves to refuse consent, as this may unduly restrict acceptable development.

→ The proposed development would conflict with the NPPF and relevant development plan policies insofar as they seek to ensure that new development is in keeping with local character.

→ However, there would not be a conflict with CLLP (2023) Policy S62 because the benefits of the proposed development would demonstrably outweigh the harm to the AGLV for reasons outlined in section 5 of this report.

→ Overall, we attribute great negative weight to the landscape and visual harm, which would be caused by the proposed development in isolation and when considered cumulatively with other development.

**NOISE AND VIBRATION**

5.2.8. We reached the following conclusions in relation to the noise and vibration effects of the proposed development:

→ We agree with the applicant's assessment of noise and vibration effects for the development, both cumulatively and isolation. There would be some adverse noise effects but none of the residual effects would be significant and none would lead to any significant adverse impact on health and wellbeing, including when considering those with protected characteristics.

→ Avoidance measures have been embedded within the proposed design and we are satisfied that embedded mitigation measures set out in the FCEMP [REP5-015], FDEMP [REP5-017], FCTMP [REP5-019], FOEMP [REP6-026] and ODPS [REP4-020] would be effectively implemented through rDCO R12, R21, R15, R13 and R5 respectively.

→ The proposed development would comply with NPS EN-1, EN-3 and EN-5 as well as the NPPF and relevant development plan policies insofar as they relate to noise and vibration effects.

→ We attribute ‘a little’ negative weight to the adverse noise effects of the proposed development, given that they would fall below the SOAEL.

**SOCIO-ECONOMIC**

5.2.9. We reached the following conclusions on the socio-economic effects of the proposed development:

→ We consider that the applicant has used an appropriate methodology in considering socio-economic effects, including the approach taken to selecting a study area.

→ We agree that there would be local and regional economic benefits associated with the jobs supported during the construction period. Furthermore, the implementation of the FSSCEP [APP-232] (secured by rDCO R20) would facilitate training opportunities for employees residing in the local area.

→ There would be a neutral effect on direct and indirect jobs during operation of the proposed development.

→ Whilst there may be a reduction in visitor accommodation during construction, there would be sufficient capacity to ensure that there would not be any significant effect on tourism or the local economy. There would be a minor adverse residual effect (not significant) on tourism and recreation during construction.

→ The proposed development - when considered cumulatively with other developments - would not significantly displace construction workers from the local economy. We consider that the cumulative social-economic effects would be beneficial.

→ Whilst there would be some adverse effects, these would not be significant. Overall, the proposed development would lead to socio-economic benefits, most of which would be realised during the temporary construction period. It logically follows that the same benefits would be likely during the temporary decommissioning period.

→ The proposed development complies with the policies and guidance on socio-economic effects contained within NPS EN-1, EN-3 and EN-5 as well as the NPPF and relevant development plan policies.

→ Given the limited duration of the socio-economic benefits we consider that they should only be afforded a little positive weight.

**SOILS AND AGRICULTURE**

5.2.10. We reached the following conclusions on the soils and agriculture effects of the proposed development:

→ We recognise the significant concerns from the many representations that were received with regards to the loss of arable production and the food security of the country. Indeed, we appreciate that food security is a crucial reason why BMV agricultural land is afforded a protected status in the NPS. Furthermore, we are mindful of the cumulative impact that the loss of BMV agricultural land can have on local communities, especially in cases where there is a large amount of geographical clustering of solar developments in rural areas, such as here in Lincolnshire. However, while we note that

around 111 hectares of BMV agricultural land would be lost, the majority of the effects would be temporary, albeit long term, with only around 1 ha of BMV agricultural land being lost permanently. Furthermore, we note that even when taken with the loss of other areas of BMV which have been permitted as part of the other nearby NSIPs, the impact in a regional and national context would not be significant.

→ Generally, the evidence provided by the applicant and supported by the statutory authorities concluded that the ALC of the site was likely to be unaffected over the life of the development and likely to result in an improvement in the soil condition by its removal from intensive agricultural practices. Iterative optimisation of the location and design of the site and its proposals has to a greater degree minimised impacts on the BMV land.

→ The historic farming of the land and its potential loss from UK farming production was not evidenced or proven to be significant in the UK national food security context as raised by many representations received throughout the examination. However, it is noted that presently the UK imports a high proportion of its food from overseas and that this situation can change with geopolitical changes and climate change. The reversibility of this development and the temporary, all be it long term, nature of the development does mean the existing situation could be restored should it be needed in the future. This was also reaffirmed by the relevant statutory bodies and local authorities. There also remains the potential to continue the sites contribution to agricultural production through grazing of the site during its operation.

→ Overall, we consider there is no robust evidence that the temporary loss of around 60 ha of BMV land or 1218 ha of grade 3 agricultural land would have any material impact on the UKs food security. Indeed, we note that even in the most ambitious scenarios, the total area of agricultural land used for solar would occupy less than 1% if the UKs agricultural land.

→ The ALC of the CRC has yet to be established. The works proposed in the CRC will not materially affect the ALC as the upper soils will be carefully, removed and replaced on completion of the works. Therefore, whilst we note that once the chosen route is settled upon, appropriate surveys and testing will still be required to establish its condition prior to the works, the proposed development will not lead to a loss of BMV land or deterioration of the soil resource.

→ The farming circumstances of the existing landowners, tenant farmers and contractors who support them are likely to change due to the proposed development. The net change in employment is not likely to be significant, owing to the increase in roles to support the proposed development, but will result in the loss of agricultural activity within the principal site.

→ In summary, it is likely that the majority of the principal site will be taken out of agricultural production for the lifetime of the development, but that over this time the level of artificial pollutants in the soils will reduce and soil will restore to a more favourable condition.

→ Consequently, we are satisfied that the applicant has mitigated the impact of the proposed development on BMV land and taken into consideration the WMS in their assessment.

→ Given the above are of the opinion that over the life of the proposed development there is likely to be a moderate beneficial effect on the soil resource at the site but a slight loss of use of BMV land. Therefore, we ascribe a neutral weight with regards to the consideration of making the development consent order.

### TRANSPORT AND ACCESS

5.2.11. We reached the following conclusions on the transport and access effects of the proposed development:

→ The proposed development would not lead to any significant residual effects on vehicle delay or driver delay during any phase of the proposed development.

→ There would be no residual adverse effects on highway safety during any phase of the proposed development.

→ There would not be any significant residual effects, during any phase of the proposed development, on local community severance, pedestrian delay (including PRoW) and non-motorised user amenity. Revisions to the FCTMP [REP5-019] during the examination mean that there would be no significant residual effect at location ATC23.

→ The proposed development would not lead to any significant residual cumulative transport and access effects during any phase of the proposed development.

→ Overall, there would not be an unacceptable impact on highway safety and residual cumulative impacts on the road network would not be severe. The proposed development therefore complies with the policies and guidance contained within NPS EN-1, EN-3 and EN-5 as well as the NPPF and relevant development plan policies.

→ There would be some ‘minor adverse’ and ‘negligible’ residual transport and access effects, as identified in the ES. We agree with the applicant’s conclusions in this regard. However, we note that these are not ‘significant effects’ and all relate to the temporary construction and decommissioning periods and are predicated on a worst-case scenario. We assign a little negative weight to these effects.

### WATER ENVIRONMENT INCLUDING FLOOD RISK

5.2.12. We reached the following conclusions on potential effects of the proposed development on the water environment including flood risk:

→ With regards to flood risk, it is not envisaged that the principal site is at significant flood risk for the life of its development. There is a small area of site called the interaction zone where risk is elevated but will be managed by ensuring the infrastructure in that location is not vulnerable and located above the anticipated flood levels even accounting for climate change.

→ The proposal seeks to ensure it will not exacerbate flood risk for any sites outside of the development by limiting run off rates from the site to greenfield rates. R10 of the rDCO, requires that the surface water drainage scheme is subject to approval by the LLFA. The ExA is content that the R10 of the rDCO will ensure that this risk is managed.

→ We are content that the applicant has satisfied the sequential and exception tests within the NPS EN-1. It would also accord with policies pertaining to water environment and flood risk contained in NPS EN-1, EN-3, the NPPF and the relevant development plan documents.

→ LFRS are content with the provisions for firefighting water and how they would use and manage this water during any ongoing incident to reduce the risk of pollution. The risk of contamination from any firefighting water run off or from the cleaning of the panels is managed and will be low.

→ Given the above measures we consider that the development is likely to result in a neutral position with regards to the water environment and flood risk impacts at the site. Therefore, we ascribe a neutral weight with regards to the consideration of making the development consent order.

## OTHER MATTERS

### Air quality

5.2.13. We reached the following conclusions on air quality effects:

→ We agree with the applicant that the proposed development would not result in any significant residual effects on air quality during construction, operation or decommissioning either in isolation or when considered cumulatively with other developments.

→ The proposed development complies with the relevant provisions of the NPSs, the Framework and relevant development plan policies in relation to air quality effects.

5.2.14. Overall, air quality effects would be neutral.

### Materials and waste

5.2.15. We reached the following conclusions on materials and waste effects:

→ We agree with the applicant that the proposed development would not result in any significant residual materials and waste effects during construction, operation or decommissioning, in isolation or when considered cumulatively with other developments.

→ The proposed development therefore complies with the relevant provisions of the NPSs, the Framework and relevant development plan policies in relation to materials and waste.

→ Overall materials and waste effects would be neutral.

### Ground conditions

5.2.16. We reached the following conclusions on ground condition effects:

→ We agree with the applicant that, in relation to ground conditions, the proposed development would not pose an unacceptable risk to human health or the environment during construction, operation or decommissioning, with no significant residual adverse effects arising in isolation or when considered cumulatively with other developments.

→ The proposed development complies with the relevant provisions of the NPSs, the Framework and relevant development plan policies in relation to ground conditions and mineral safeguarding.

→ Overall, ground condition effects would be neutral.

**Telecommunications, television reception and utilities**

5.2.17. We reached the following conclusions on this matter:

→ We agree with the applicant that, in relation to telecommunications, television reception and utilities, the proposed development would not result in any significant residual effects, either in isolation or cumulatively, during any development phase.

→ The proposed development would not conflict with any policy - pertaining to telecommunications, television reception and utilities – contained within the NPSs, the Framework or the relevant development plans.

→ Overall, telecommunications, television reception and utilities effects would be neutral.

**Associated Development and Overplanting**

5.2.18. We concluded that the proposed BESS units do constitute 'associated development' and that the applicant has justified the level of overplanting proposed. These matters do not alter the planning balance to be applied in considering this application.

### THE ENVIRONMENTAL STATEMENT

5.2.19. We are satisfied that the applicant has provided sufficient information to enable the SoS to understand the environmental effects of the proposed development.

5.2.20. Changes to the documentation during the examination did not individually or cumulatively undermine the scope of, and assessments contained in, the ES. Consideration has been given to the adequacy of the ES generally and to matters arising from it. Section 3 of this report summarises the environmental effects, including the measures proposed to mitigate the likely significant effects identified by the applicant.

5.2.21. Overall, we consider that the ES, as supplemented with additional information submitted during the examination, is sufficient to enable the SoS to take a decision in compliance with the EIA Regulations.

### HRA CONSIDERATIONS

5.2.22. We are 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. We have concluded that no LSE exist, either alone or in-combination with other plans and projects.

5.2.23. We consider that there is sufficient information before the SoS to enable them to undertake an appropriate assessment in order to fulfil their duty under the requirements of the Habitats Regulations.

## 5.3. HERITAGE BALANCE

## POLICY AND LEGISLATIVE BACKGROUND

5.3.1. NPS EN-1 paragraph 5.9.23 states that the SoS must comply with the requirements set out in the Infrastructure Planning (Decisions) Regulations 2010. Regulation 3 requires the SoS to have regard to desirability of: preserving a listed building or its setting or any features of special architectural or historic interest which it possesses; preserving or enhancing the character or appearance of a conservation area; and preserving an affected scheduled monument or its setting.

5.3.2. When considering the impact of a proposed development on the significance of a designated heritage asset, the SoS should give great weight to the asset's conservation. The more important the asset, the greater the weight should be. This is irrespective of whether any potential harm amounts to substantial harm, total loss, or less than substantial harm to its significance (paragraph 5.9.27). The SoS should give considerable importance and weight to the desirability of preserving all heritage assets, with any harm or loss requiring clear and convincing justification (paragraph 5.9.28).

5.3.3. NPS EN-1 paragraph 5.9.6 outlines that non-designated heritage assets (NDHA) of archaeological interest, that are demonstrably of equivalent significance to Scheduled Monuments, should be considered subject to the policies for designated heritage assets.

5.3.4. NPS EN-1 paragraph 5.9.32 states that where the proposed development 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 a proposal, including, where appropriate securing its optimum viable use.

5.3.5. NPS EN-1 paragraph 5.9.36 states that, when considering applications for development affecting the setting of a designated heritage asset, the SoS should give appropriate weight to the desirability of preserving the setting of such assets and treat favourably applications that preserve those elements of the setting that make a positive contribution to, or better reveal the significance of, the asset. When considering applications that do not do this, the SoS should give great weight to any negative effects, when weighing them against the wider benefits of the application. The greater the negative impact on the significance of the designated heritage asset, the greater the benefits that will be needed to justify approval.

5.3.6. NPS EN-3, the NPPF and the relevant development plan policies generally reflect the requirements in NPS EN-1 with regard to designated and NDHA.

## LESS THAN SUBSTANTIAL HARM

5.3.7. In section 3.4 we confirmed that we agree with the applicant's assessment that there would be 'less than substantial harm to the following designated heritage assets':

- Harpswell Hall (Scheduled Monument, NHLE 1019068).
- Moated Manorial Complex at Elm Tree Farm (Scheduled Monument, NHLE 1016920).
- Medieval Bishop's Palace and Deer Park, Stow Park (Scheduled Monument, NHLE 1019229).
- Roman fort, south of Littleborough Lane (Scheduled Monument, NHLE 1004935).

- Segelocum Roman Town, Littleborough (Scheduled Monument, NHLE 1003669).
- Fleet Plantation Moated Site (Scheduled Monument, NHLE 1008594).
- Church of St Chad (Grade I listed building, NHLE 1309029).
- Glentworth Hall (Grade II* Listed Building, NHLE 1063348).
- Corringham Windmill (Grade II listed building, NHLE 1359417).
- Church of St Margaret of Antioch, Marton (Grade I Listed Building, NHLE 1359484).
- Group of listed assets (Grade II Listed Buildings) in Marton – Cross (NHLE 1146582) 25 Gainsborough Road (NHLE 1308917) Thornleigh House (NHLE 1359485) Wapping Lane Farmhouse (NHLE 1146611) Berfoston Cottage (NHLE 1064060) Ingelby Arms Public house (NHLE 1064057) – Temporary change of setting.

5.3.8. There would also be 'less than substantial harm' to the Winter Camp of the Viking Great Army at Torksey [NDHA, MLI125067]. We agree with the applicant's conclusion this is a NDHA of national importance. NPS EN-1 and the NPPF outline that such assets should be subject to policies for designated heritage assets.

**BALANCE**

5.3.9. The proposed development would cause less than substantial harm to the designated and NDHA identified above. We afford great weight to each asset's conservation, in accordance with NPS EN-1. NPS EN-1 explains that this harm should be weighed against the public benefits of the proposal, including, where appropriate securing its optimum viable use.

5.3.10. The proposed development would make a significant contribution to secure and reliable energy provision, whilst also resulting in significant climate change benefits. We afford very great weight to these benefits. There would be other more minor benefits, including socio-economic benefits associated with the temporary construction and decommissioning periods. These are all public, as opposed to private, benefits.

5.3.11. Given the significance and importance of the public benefits, as emphasised in NPS EN-1, we consider that they would clearly outweigh the less than substantial harm which would arise. We also note that the harm would be temporary.

5.3.12. We therefore conclude that the proposed development would accord with NPS EN-1, NPS EN-3, the NPPF and the relevant development plan policies in relation to historic environment effects. As such, whilst we attribute 'great weight' to the conservation of the identified heritage assets, having applied the heritage balance we conclude that 'moderate' negative weight should be afforded to the harm which would be caused.

## 5.4. OVERALL PLANNING BALANCE

5.4.1. In accordance with NPS EN-1 paragraph 4.1.5 we have considered the benefits and adverse effects of the proposed development. In doing so we have taken into account the mitigation hierarchy (see appendix B of [REP5-032]). We have also established the weight to be afforded to the effects which would arise, as set out in Table 2.

**Table 2: ExA application of weight to issues**

| Issue | Finding | Weighting | Section of this report |
|---|---|---|---|
| The principle of development and climate change | Positive | Very great | 3.2 |
| Biodiversity and ecology | Positive | Moderate | 3.3 |
| Socio-economic | Positive | A little | 3.9 |
| Landscape and Visual | Negative | Great | 3.7 |
| Historic Environment | Negative | Moderate | 3.5 |
| Human health, safety, accidents and major incidents | Negative | A little | 3.6 |
| In-combination effects | Negative | A little | 3.4 |
| Noise and vibration | Negative | A little | 3.8 |
| Transport and Access | Negative | A little | 3.11 |
| Soils and agriculture | Neutral | - | 3.10 |
| Water environment including flood risk | Neutral | - | 3.12 |
| Air quality | Neutral | - | 3.13 |
| Materials and Waste | Neutral | - | 3.13 |
| Ground conditions | Neutral | - | 3.13 |
| Telecommunications, television reception and utilities | Neutral | - | 3.13 |

5.4.2. In circumstances where we have identified negative weight, it is because there are residual adverse effects after the application of the mitigation hierarchy. In such,

instances, NPS paragraph 4.1.7 explains that the SoS should weigh these effects against the benefits of the proposed development.

5.4.3. NPS EN-1 paragraph 4.1.7 further states that, for CNP Infrastructure it is likely that the need case will outweigh the residual effects in all but the most exceptional cases, but that this presumption does not apply to residual impacts which present an unacceptable risk to, or interference with, human health and public safety, defence, irreplaceable habitats, or unacceptable risk to the achievement of net zero.

5.4.4. Whilst we have attributed a 'little negative weight' to the adverse health effects of the proposed development, given the short-term nature of these effects and their limited extent, we do not consider that they would amount to an 'unacceptable' impact within the terms expressed in NPS EN-1 paragraph 4.1.7.

5.4.5. Overall, there would be substantial benefits accrued as a result of the proposed development. These would result from a significant contribution to climate change objectives and the provision of secure and reliable electricity. We assign very great weight to these benefits. NPS EN-1 paragraph 3.2.7 outlines that 'substantial weight' should be given to 'need'. For the purposes of the terminology use in our conclusions this is equivalent to 'very great weight'.

5.4.6. There would also be socio-economic and biodiversity benefits. These can be afforded a little positive weight and moderate positive weight, respectively.

5.4.7. The main harm would result from the adverse landscape and visual effects of the proposed development, both when considered in isolation and cumulatively with other developments. This harm would last a significant proportion of the development's overall lifetime and would adversely affect the currently very open views and landscape character of the principal site. This harm is more pronounced given the presence of an AGLV and the close relationship between the site and the Cliff. We therefore attribute great weight to it.

5.4.8. To add to that, there would be some residual harm arising from the in-combination, transport and access, health safety and major accidents, and noise effects of the proposed development. These effects should each attract a little negative weight.

5.4.9. For the reasons given in section 5.3 of this report we also assign moderate negative weight to the adverse effects on the historic environment.

5.4.10. Whilst the overall collective harm would be wide ranging and would encompass several different effects, it would not be sufficient to outweigh the benefits of the proposed development.

5.4.11. The cumulative effects of the proposed development and other projects have been fully assessed and are taken into account in our conclusions above. As such, whilst we note that there would be three other solar DCO developments near the order limits, we do not consider that this constitutes an 'exceptional' situation within the terms of NPS EN-1 paragraph 4.1.7.

## 5.5. CONCLUSION

5.5.1. Taking the above factors into account and having had regard to all important and relevant matters, we conclude that there are no adverse impacts of sufficient weight, either on their own or collectively, that would mean that the DCO should not be made.

# 6. COMPULSORY ACQUISITION AND RELATED MATTERS

## 6.1. INTRODUCTION

6.1.1. The application included proposals for the compulsory acquisition (CA) and temporary possession (TP) of land and rights over land. This section records the key information on those proposals and related issues and our conclusions and recommendations.

## 6.2. THE REQUEST FOR COMPUSORY ACQUISITION AND TEMPORARY POSSESSION POWERS

6.2.1. The application dDCO (version 1.0) [APP-014] and all subsequent versions include provision for the compulsory acquisition (CA) of freehold interests and private rights, the extinguishment of existing rights and the creation of new rights over land. They also contain provisions for the temporary possession (TP) of land to facilitate the works.

6.2.2. The order limits of the dDCO establish the extent of the land that would be affected by the CA and TP powers sought.

6.2.3. The land proposed for compulsory acquisition or temporary possession included in the CA request does not include any National Trust land, open space or common land. The dDCO does request access and rights over Crown Land. The application was accompanied by:

- a Statement of Reasons (SoR) [APP-017];
- a Funding Statement [APP-018];
- a Book of Reference (BoR) [APP-019]; and
- Land and Crown Land Plans [APP-006].

6.2.4. These documents set out the land and rights sought by the applicant at the time of submission together with the reasons for its requirement and the basis under which compensation would be funded.

6.2.5. During the course of the examination the applicant submitted a change request and proposed alterations to the initial proposals as a result of feedback received from all parties. Documents and plans were amended and updated as a result accordingly.

6.2.6. At the close of the examination the most up to date versions of these documents were as follows:

- Statement of Reasons (SoR) [REP1-014].
- Funding Statement [APP-018].
- Book of Reference (BoR) [REP7-008].
- Land and Crown Land Plans [AS-040].

6.2.7. We were kept updated by the applicant throughout the examination on the progress of negotiations with affected persons (AP) by means of a Schedule of Negotiations and Powers Sought [REP7-010].

6.2.8. These documents form the basis for the analysis for this section. Reference to the documents and plans in this section from this point should be read as reference to the latest versions above.

## 6.3. THE PURPOSES FOR WHICH LAND IS REQUIRED

6.3.1. The application is for development consent for the construction, operation, and maintenance of a ground mounted solar farm with a capacity of over 50MW together with BESS and other associated works to construct and operate the development. The purposes for which the CA and TP powers are required are set out in the final submitted BoR [REP7-008] and SoR [REP1-014].

6.3.2. The Order land extends to approximately 1,660 ha in area. The principal site which contains the solar PV panels covers an area of approximately 1,350ha, comprising largely agricultural land. It is located to the south of Harpswell Lane (A631), to the west of Middle Street (B1398), to the north of Kexby Road and to the east of Springthorpe.

6.3.3. The cable route is located within the area referred to as the CRC, which connects the principal site and the National Grid Cottam substation. This route is approximately 18.5km in length, covering approximately 315 ha, and crosses agricultural land, various roads, footpaths and watercourses.

6.3.4. There is also land included within the order limits for the purposes of facilitating access to the proposed development from existing streets.

6.3.5. The electricity generated by the proposed development would be transformed at the onsite substations and carried via 400kV to the National Grid Cottam Substation.

6.3.6. In their SoR [REP1-014] the applicant states that it requires powers of CA to ensure that the proposed development can be built, maintained and operated, and so that government policy in relation to the timely provision of new generating capacity is met within a reasonable timescale. It goes on to say that in the absence of these powers, the Order land may not be assembled, uncertainty would continue to prevail, and its objectives and government policy objectives would not be achieved.

6.3.7. The applicant has attempted to enter into voluntary agreements with landowners which cover the majority of the land required and has been seeking to acquire the new rights and temporary use of land by private agreement. However, at the close of examination these agreements were not in place with all affected persons (AP).

6.3.8. The applicant also requires certain rights to be suspended, overridden or extinguished within the Order land to ensure that there are no impediments for the construction, operation and maintenance of the proposed development.

6.3.9. The applicant's principal justification for the use of powers of CA arises from the fact that the proposed development:

- would help meet the urgent need for new, low carbon energy infrastructure and provide enhanced energy security;
- would help support government priorities in relation to economic development and security of supply;

- minimises or mitigates adverse impacts to an acceptable degree and is compliant with NPS EN-1, NPS EN-3 and NPS EN-5. All of which it considers are both important and relevant to the SoS's decision.

## 6.4. THE CA AND TP POWERS SOUGHT

6.4.1. The powers sought are for the acquisition of:

- all interests in land, including freehold (Article 21 in the dDCO) - shown edged red and shaded pink on the Land and Crown Land Plan;
- all interests in land, including freehold in respect of subsoil only (Article 26 in the DCO);
- permanent acquisition of new rights (Article 23 in the dDCO) - shown edged red and shaded blue on the Land and Crown Land Plan;
- temporary use of land to permit construction or maintenance where the applicant has not yet exercised powers of CA (Articles 30 and 31 in the dDCO) - shown edged red and shaded green on the Land and Crown Land Plan; and
- extinguishment and/ or suspension of rights (Articles 23 and 24 in the dDCO) and overriding of easements and other rights (Article 27 in the dDCO).

## 6.5. LEGISLATIVE REQUIREMENTS

6.5.1. Section 122(2) of the PA2008 provides that a DCO may include provision authorising CA only if the SoS is satisfied that certain conditions are met. These include that the land subject to CA is required for the development to which the development consent relates or is required to facilitate or is incidental to it.

6.5.2. 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, DCLG's guidance on CA ("the CA Guidance") indicates the SoS will need to be persuaded that there is compelling evidence that the public benefits that would be derived from the CA will outweigh the private loss that would be suffered by those whose land is to be acquired.

6.5.3. Section 123 requires the SoS to be satisfied that one of the three procedural conditions set out in subsections (2) to (4) are met, namely:

- *that the application for the order included a request for CA of the land to be authorised - s123(2);*
- *or that all persons with an interest in the land consent to the inclusion of the provision – s123(3); and*
- *or that the prescribed procedure has been followed in relation to the land - s123(4).*

6.5.4. The application included a request for CA of the land to be authorised. As such, we are satisfied that the condition set out in s123(2) of the PA2008 has been met.

6.5.5. Section 127 of the PA2008 applies to SU land. S127(2) and (3) state that an order granting development consent may include provisions authorising the CA of SU land only to the extent that the SoS is satisfied that it can be purchased and not replaced without serious detriment to the carrying on of the undertaking or if purchased it can be replaced by other land belonging to, or available for acquisition by, the undertakers without serious detriment to the undertaking. Similarly, s127(5) and (6) of the PA2008 provide that an order granting development consent may only include provision authorising the CA of rights belonging to SUs to the extent that the SoS is satisfied that the right can be taken without serious detriment to the carrying out of

the undertaking, or that any detriment can be made good. A number of SUs have land interests within the order limits. These are set out in the BoR [REP7-018].

6.5.6. Section 138 of the PA2008 relates to the extinguishment of rights on SU land. It states that an order may include a provision for the extinguishment of the relevant rights, or the removal of the relevant apparatus only if the SoS is satisfied that the extinguishment or removal is necessary for the purposes of carrying out the development to which it relates. For the proposed development, this section of the PA2008 is relevant to SUs with land and equipment interests within the order limits.

6.5.7. Section 135 of the PA2008 provides that an order granting development consent may include provision authorising the CA of an interest in Crown land only if it is an interest which is for the time being held otherwise than by or on behalf of the Crown, and the appropriate Crown authority consents to the acquisition. Furthermore, it makes clear that an order granting development consent may include any other provision applying in relation to Crown land, or rights benefiting the Crown, only if the appropriate Crown authority consents to the inclusion of the provision.

6.5.8. Crown Land has been identified within the order limits as shown by Plot 20-11 on the Land and Crown Land Plan [AS-040]. This land relates to the land required as part of the proposed CRC where it crosses beneath the River Trent. However, as noted above, this land is excluded from the scope of CA powers by virtue of Article 49 of the dDCO.

6.5.9. 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: only capable of proceeding if the primary development is justified.

6.5.10. The Neighbourhood Planning Act 2017 includes a number of provisions related to the TP of land including notice requirements, the service of counter notices and compensation. These provisions have not been brought into force and are described as technical changes in the explanatory notes that accompany the Act. Article 6 of the rDCO disapplies the provisions of the Act insofar as they relate to TP of land under Articles 29 (Temporary use of land for constructing the authorised development) and 30 (Temporary use of land for maintaining the authorised development).

6.5.11. In addition to the legislative requirements set out above, the CA Guidance sets out a number of general considerations which also need 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; and*
- *the SoS is satisfied that the purposes stated for the CA and TP are legitimate and sufficiently justify the inevitable interference with the human rights of those affected.*

6.5.12. We have taken all relevant legislation and guidance into account in our reasoning below and relevant conclusions are drawn at the end of this section.

## 6.6. EXAMINATION OF THE CA AND TP CASE

### THE EXAMINATION PROCESS

6.6.1. In examining the application, we considered all written material in respect of CA and TP and asked written questions of the applicant in ExQ1 [PD-009], ExQ2 [PD-011], ExQ3 [PD-012] and our Rule 17 letter dated 23 September 2024 [PD-007].

6.6.2. APs were notified that the ExA was holding a Compulsory Acquisition Hearing (CAH1) [EV1-003] to hear their views and any issues they wished to raise. As required by Regulation 15(2) of the CA Regulations as a result of the applicant's change requests, we notified all APs and IPs and advised them that we would be holding a Compulsory Acquisition Hearing for their attendance. No further oral representations in relation to CA were made by APs.

### THE APPLICANT'S CASE

6.6.3. The applicant's general case for CA and TP is set out in sections 5 to 10 of the SoR [REP1-014].

6.6.4. The applicant considers that it is necessary, proportionate and justifiable to seek powers to acquire land compulsorily, create and compulsorily acquire new rights over land and impose restrictions, and extinguish or override existing rights over land, as well as powers to take TP of land to construct and maintain the proposed development.

6.6.5. The applicant considers that it will require powers of CA to ensure that the proposed development can be built, maintained and operated, and so that the government's policies in relation to the timely delivery of new generating capacity and achieving net zero targets are met.

6.6.6. The applicant considers that in the absence of these powers, the Order land may not be assembled, uncertainty will continue to prevail, and its objectives and government policy objectives would not be achieved.

6.6.7. Taken together, the Land and Crown Land Plan [AS-040] and the Works Plan [REP6- 004] indicate that each area of land affected by CA or TP is required for the carrying out of one or more of the works identified in Schedule 1 of the dDCO.

### ALTERNATIVES

6.6.8. The CA Guidance indicates that the applicant should be able to demonstrate to the satisfaction of the SoS that all reasonable alternatives to CA (including modifications to the proposed development) have been explored.

6.6.9. The applicant's initial approach was to negotiate with freehold owners of the principal site to reach agreement on leasing the land for the duration of the development. The boundary of the principal site was informed in part by the willingness of landowners to reach voluntary agreement with the applicant to lease the land for the proposed development amongst other factors, such as environmental considerations. This has ensured that compulsory acquisition of land within the principal site is minimised to as great an extent as practicable. Negotiations for the plots within the principal site has successful and in the majority

of cases lease agreements have been exchanged or heads of terms signed. A few negotiations are ongoing and an option agreement as has been reached for the remaining land plots to the south of the principal site and other matters relate to probate with estate but are progressing amicably and look to being resolved in time.

6.6.10. Acquisition of and creation of rights to secure the land and rights needed to build and operate the development is required along the CRC. Negotiation to acquire these rights by agreement has largely been successful with heads of terms either signed or agreed save for a few remaining landowners. These landowners remain opposed to the proposed development and do not wish to enter into agreement with the applicant. Their respective situations are explained in more detail below.

6.6.11. Alternative locations and arrangements for the proposed development and order limits were considered in chapter 4 Alternatives and Design Evolution [APP-035]. In summary, the order limits were refined, optimised and focused on the land defined in the Land and Crown Land Plans [AS-040] in the application for the following reasons:

a. The land on which the proposed development is located consists of large flat open areas, and has high levels of irradiation, which meets the requirements of the proposed development to efficiently generate significant amounts of electricity.
b. The order limits are within a suitable distance from the identified point of connection at the National Grid Cottam Substation.
c. The order limits are not located within or close to internationally and nationally designated biodiversity sites and is not located within or close to areas of national designated landscape value.
d. The order limits are not located within designated Green Belt.
e. The order limits utilise significant amounts of non BMV agricultural land.
f. The order limits avoid direct physical impact on designated heritage assets.
g. The order limits are predominantly within FZ 1 and at low risk of flooding.
h. The order limits include good transport access for construction being in close proximity to the A631 and B1398.
i. The order limits have limited land use conflicts in terms of displacement of existing non- agricultural businesses.
j. The order limits are available to the applicant during the period of construction and operation of the proposed development.

6.6.12. The location and route of the CRC has been designed to overlap and share the route of the cables from the other solar development NSIP projects in the area (Gate Burton Energy Park, Cottam Solar Project and West Burton Solar Project). This is the recommended approach for co-location and sharing of cable routes in NPS EN-5.

6.6.13. The applicant's approach to the consideration of alternatives in relation to CA is set out in section 5 SoR [REP1-014]. It explains that the applicant has considered all reasonable alternatives to CA including negotiated agreements, alternative sites and modification to the proposed development. It notes that the location and extent of the land required has been carefully considered and designed in order to take the minimum amount while maintaining the benefits; and to co-locate and share a common CRC with the other solar development NSIP projects in the area.

6.6.14. The 'no development' scenario as an alternative to the proposed development has not been considered. This is because 'no development' is not considered to be a reasonable alternative to the proposed development as it would not deliver the

proposed additional electricity generation capacity which is essential to meet the urgent national need for secure and affordable low carbon energy infrastructure.

6.6.15. The applicant has pursued the acquisition of the land and rights needed by voluntary agreement. These negotiations have been ongoing throughout the examination. At the end of the examination the majority of the principal site has been acquired voluntarily.

6.6.16. With regard to the principal site, we consider that the applicant has made reasonable efforts to acquire the land voluntarily by agreement and that the remaining plots of land and reasons why they would require compulsory acquisition has been justified satisfactorily. It is possible that these agreements have been reached since the close of the examination but that the powers sought in the rDCO will ensure that the land can be acquired if this has not happened.

6.6.17. With respects to the CRC, generally the applicant has reached agreements with the majority of landowners along the route, and those SUs and other parties who have rights over the land. A few landowners remain who are not willing to enter into agreement with the applicant and their details are explored below.

6.6.18. The applicant requires the temporary possession and rights to access, install cable and associated infrastructure and reinstate the large proportion of the cable route. It is proposed to share the CRC with the other solar development NSIPs in the area. We consider that the applicant has satisfactorily demonstrated that it has considered all reasonable alternatives and the rights are required to facilitate the works.

### AVAILABILITY AND ADEQUACY OF FUNDS

6.6.19. The applicant's Funding Statement [APP-018] indicates that the applicant, Tillbridge Solar Ltd, has the ability, through its parent companies of Canadian Solar Inc. and Tribus Clean Energy Limited, to procure the financial resources required for the proposed development, including the cost of acquiring any rights and the payment of compensation, as applicable.

6.6.20. The adequacy of funding for CA was not raised by any AP during the course of the examination.

6.6.21. Article 47 of the dDCO states that the developer has to put in place a guarantee or alternative form of security for compensation that may be payable pursuant to the DCO before the provisions for CA can be exercised. This provides a clear mechanism whereby the necessary funding for CA can be guaranteed.

### CONCLUSION ON THE GENERALITY OF THE APPLICANT'S CASE FOR CA AND TP.

6.6.22. We concur with the applicant's conclusions on the generality of the case, and subject to our further consideration of plots affected by outstanding objections and representations below, we consider the tests set out in s122(2) and s122(3) of the PA2008 to be met.

## 6.7. MATTERS RAISED IN THE EXAMINATION/ OBJECTIONS TO CA AND TP

6.7.1. This section specifically considers objections and representations raised in relation to CA and TP which were unresolved at the close of the examination. However, we acknowledge that these represent only some of the plots affected. Even though a specific objection or representation may not have been raised in relation to a particular plot of land, we have nevertheless applied the relevant tests to the whole of the land that would be the subject to the powers of CA or TP in reaching our overall conclusions.

6.7.2. With regards to the principal site, the majority of land leasing agreements have been exchanged or are awaiting commercial terms to be finalised.

6.7.3. Some of the plots are subject to ongoing probate discussions where executors and solicitors are dealing with the handover of the estate. In this situation negotiations have been ongoing with the deceased's probate solicitors and agreements are continuing to be progressed.

6.7.4. The change request also removed some APs land from the originally submitted order limits and changed the extent of the Works proposed.

6.7.5. With respects to the CRC, generally heads of terms have been signed or agreed with the landowners along the route. However, some landowners have refused to enter into negotiation and are not willing to facilitate the temporary powers and permanent access rights sought.

6.7.6. Two SUs, EDF Energy (Thermal Generation) Limited and National Grid Electricity Distribution (East Midlands) plc object to the acquisition of the rights due to concerns over the protection and access to their existing apparatus on the land.

6.7.7. No AP requested a CAH. Notwithstanding this, the ExA took the procedural decision to hold a CAH1 [EV1-003] and notified all APs of the date and venue.

## OBJECTIONS/ REPRESENTATIONS OUTSTANDING

## CRC Negotiations Only

## Mr Nicholas Hill and Mrs Emma Ruth Hill

### Acquisition of Rights of Plot No: 19-09

6.7.8. The applicant has been corresponding with the APs since May 2023. Dialogue has been ongoing with the APs including sharing of Heads of Terms agreed with neighbouring landowners for consideration. The applicant has maintained dialogue with the APs but no progress has been reached on a mutual agreement.

6.7.9. Representations were lodged from the APs [RR-214] and [RR-091] where they objected to the route of the cable corridor as it would be going through their agricultural business and have a direct impact on the viability of the business.

6.7.10. The APs also followed up at D3 [REP3-085] where they highlighted: the combined CRC passing through the farm; their existing development rights; and the subsequent challenges they would face if the cables did pass through the property.

6.7.11. The APs provided a further representation at D4 [REP4-109] explaining the background to their business, their extant planning permissions and permitted development rights; and their preference for the applicant to pursue a wayleave instead of an easement if they continue to seek the route they are proposing.

6.7.12. At D5 the APs provided further information relating to correspondence they had received from Gate Burton Energy Park relating to the CRC and also details of the extant planning permissions on their land, which they felt would be adversely impacted.

6.7.13. The APs stated that they were unable to attend the CAH1 but did request that 7000 Acres act and represent them on their behalf and included an email to advise us of this. At the CAH, 7000 Acres reiterated the APs concerns with regards to the proposed CRC, the impact it would have on their existing agricultural business and their ability to develop the barns they have planning permission for, and also any infringement on their permitted development rights for any future developments.

6.7.14. The applicant explained how the planned CRC did not impinge on the footprint of the planned developments and that the site would be reinstated to the extant condition on completion of the cable installation works.

6.7.15. At the close of the examination agreement had still not been reached between the APs and the applicant.

6.7.16. We saw no supporting evidence to indicate that the APs proposed barns could not be developed either in advance, after or potentially concurrently with the installation of the cabling works and at the CAH the applicant made the case that the extant permissions could be developed and that the works did not infringe upon their permitted development rights.

6.7.17. We acknowledge that there is the potential for disruption arising from the installation of the cable and the ongoing presence of the cabling could give rise to some adverse impacts for these APs and the agricultural operations they carry out at the site for the lifetime of the development. This would be in the manner of inconvenience and inability to use or access the land during the cable installation and restrictions in the future as to what could be developed adjacent to the CRC and agricultural operations above it.

6.7.18. Notwithstanding this we consider that the applicant has demonstrated the need for the powers and rights over this APs land and that there is a compelling case in the public interest for the land to be acquired compulsorily. We are therefore satisfied that it meets the tests in s122(3) the PA2008.

### Mr Melville Roy Wilkinson

**Acquisition of Rights of Plot No: 13-07,13-08,13-09,13-10,13-11b and 14-02**

6.7.19. The applicant has been corresponding with the AP since March 2023. The applicant has repeatedly made efforts to engage with and negotiate with the landowner but to no avail. The landowner has stated repeatedly that they do not wish to engage with the applicant and that they remain opposed to the principle of the development and do not wish to enter into a voluntary agreement

6.7.20. The rights sought relate to use of two of the landowners' plots for an option for the CRC and rights over the highway adjacent to the route.

6.7.21. The rights sought appear reasonable and in line with the agreements reached for the neighbouring landowners.

6.7.22. We have received no representations from this AP, nor did he attend the CAH.

6.7.23. We consider that the applicant has made a number of reasonable efforts to a negotiate with this AP and has demonstrated to us the need for the powers and rights over the land. We conclude there is a compelling case in the public interest for the land to be acquired compulsorily. We are therefore satisfied that it meets the tests in s122(3) the PA2008.

### Mrs Nicola Jane Hulme and Mr Stephen Patrick Harness

#### Acquisition of rights of Plot No: 19-07 and 08

6.7.24. The applicant has been corresponding with the APs since March 2023. The applicant has issued multiple requests for information, which were sent so that the landowner's interests within the land could be confirmed. Detailed heads of terms were issued to the APs on 22 December 2023 to secure the rights to construct and operate the proposed development. Revised heads of terms were issued the week commencing 11 March 2024 following detailed negotiations with other landowners. There has been no further engagement however updated heads of terms are to be issued imminently. A visit undertaken to the landowner's home address has resulted in an opening of constructive dialogue. The landowners have confirmed that they are willing to enter into constructive dialogue but so far, no agreement has been reached.

6.7.25. The APs have not lodged any RRs with us, nor attended the CAH1

6.7.26. In light of the above it is assumed that the applicant will continue to progress negotiations to a satisfactory conclusion with the APs, but in the event they do not, then we believe that the applicant has satisfactorily demonstrated the need for the rights and powers over the APs land to undertake the works.

### HIGHWAYS

### Lincolnshire County Council (Highways Authority)

6.7.27. The applicant is seeking TP with permanent rights over numerous plots of highway land to undertake the proposed works.

6.7.28. LCC advised via the LIR [REP1A-001] that any works proposed on the highway need to follow the Council's PermittingCouncils permitting proposed development procedures as is the case for any SU. These requirements are met by the dDCO including the following Articles:

- Article 9 – the Council need to technically approve the works in Paragraph 1.
- Article 10 - includes provision for highways authority approval.
- Article 11 - Temporary Prohibitions - this needs to follow the Councils permitting scheme approvals.
- Article 16 - TROs - this needs to follow the Councils permitting scheme approvals.

6.7.29. In its capacity as the Highway Authority, LCC acknowledged in the SoCG [REP6-036] that these draft articles are satisfactory to themselves as the relevant highway authority for the plots of land considered.

6.7.30. We see no reason not to permit the proposed temporary possession and permanent rights to work on and under the highway as requested and consider the relevant local highways authority's position and assets have been protected.

### Nottinghamshire County Council (Highways Authority)

6.7.31. The applicant is seeking TP with permanent rights over numerous plots of highway land to undertake the proposed works.

6.7.32. Nottinghamshire County Council (NCC) advised via the LIR [REP1A-002] some amendments to the Framework Construction Traffic Management Plan (FCTMP) that have been accommodated and request for statutory liaison regarding planned street works with themselves as the relevant highway authority for the plots of land considered.

6.7.33. The applicant has included Articles 8 to 16 inclusive within the dDCO to provide the requested specification for streetworks and the management of such works.

6.7.34. At the close of the examination NCC's SoCG [REP5-031] agreed the provisions within the dDCO and that the FCTMP met their requirements, permitting conditions and notice periods which were subtly different to the adjoining highways authority of LCC.

6.7.35. We see no reason not to permit the proposed temporary possession and permanent rights to work on and under the highway as requested. We consider that the relevant local highways authority's position and assets have been protected.

## STATUTORY UNDERTAKERS

6.7.36. The applicant contacted SUs with apparatus or land within the vicinity of the order limits.

6.7.37. Where those SUs engaged, generally bespoke PPs have been agreed with the parties and are included within the dDCO to protect their apparatus and their rights to construct, operate and maintain it.

6.7.38. Some SUs did not reply to the applicant's enquiries. In these instances, general PPs have been included within the dDCO to ensure that the interests of those parties are protected.

### Cadent Gas

6.7.39. Cadent Gas Limited is a licensed gas transporter under the Gas Act 1986, with a statutory responsibility to operate and maintain the gas distribution networks in north London, Central, east Anglia and north-west England.

6.7.40. Cadent Gas initially lodged an objection to the proposed development [RR-035]. This is because it was not satisfied that its apparatus would not be affected. In addition it outlined that the extent of PPs covering its operations were inadequate.

6.7.41. On the 20 December 2024 prior to D4, Cadent Gas withdrew its objection [REP4-054] and confirmed that it had agreed PPs with the applicant.

6.7.42. We see no reason not to permit the proposed permanent and temporary rights sought to work on the numerous plots of land that Cadent Gas has an interest and rights within. We consider that Cadent Gas's position and assets have been protected.

### Canal & River Trust

6.7.43. After an exchange of emails in January 2024, it was confirmed on 16 January 2024 that the Canal & River Trust do not believe that a cable crossing easement beneath the River Trent would require its formal consent. Negotiations have since continued between the freehold owner of the land and the applicant and Heads of Terms are currently being discussed.

6.7.44. The Canal & River Trust did require some PPs to ensure the Works did not affect the River Trent and these were incorporated into the dDCO by the applicant. On 22 January 2024, prior to D4 [REP4-055] the Canal & River Trust wrote to us confirming that it was content that the ODPS and proposed documents as amended by the applicant.

6.7.45. At the close of the examination a SoCG [REP4-042] was signed by both parties and all issues were agreed and resolved.

6.7.46. We see no reason not to permit the proposed TP with permanent rights sought to work on the numerous plots of land that 20-06 and 20-11 that the Canal & River Trust has an interest and rights within. We consider that the Canal & River Trust's position and assets have been protected.

### EDF Energy (Thermal Generation) Limited

6.7.47. The applicant is seeking compulsory acquisition with rights over two plots of land within the order limits of the principal site, Plots 1-02 and 03, and rights over a number of plots of land adjacent to Cottam power station.

6.7.48. EDF Energy initially [RR-080] raised concerns with regard to the potential impacts of the proposed development on its rights and the need to ensure adequate PPs within the dDCO.

6.7.49. Throughout the examination, the applicant has been negotiating heads of terms and PPs with EDF Energy.

6.7.50. EDF Energy updated us on their opinion as to progress towards this negotiated agreement at D2 [REP2-048], D3 [REP3-074] and D5 [REP5-055].

6.7.51. EDF Energy's last correspondence with us [REP5-055] advises that it is still working towards agreeing PPs with the applicant.

6.7.52. EDF Energy continue to negotiate with the applicant. We are content that the land and rights requested can be acquired without serious detriment to the continued function operation of EDF Energy's undertakings in line with s127 of the PA2008. We see no reason not to permit the CA and rights requested over land that EDF Energy has an interest in. We consider that EDF Energy's position and assets have been protected.

### CROWN LAND

### The King's Most Excellent Majesty in Right of his Crown

6.7.53. Crown Estate is the landowner of the riverbed and banks of the River Trent (Plot no 20-11). The applicant has been liaising with Crown Estate for an easement and consent under section 135(1) of the PA2008 to install power cables under the riverbed.

6.7.54. The rDCO includes the standard article providing that the Tillbridge DCO does not prejudicially affect any estate of the Crown, and that the undertaker may not enter on or take any Crown land other than with the consent of the appropriate authority (Article 49). Article 23, which permits powers of compulsory acquisition of rights, specifically provides that it is subject to Article 49.

6.7.55. Heads of terms for the lease of easement have been redrafted in line with the terms requested by Crown Estate and exchanged but the consent remains outstanding. The applicant has been actively pursuing Crown Estate for its consent and was confident that this would be in place by the close of examination, or shortly thereafter.

## HUMAN RIGHTS ACT 1998 CONSIDERATIONS

6.7.56. The Human Rights Act 1998 incorporates the European Convention on Human Rights ("the Convention") into UK law. The Convention includes provisions in the form of Articles, the aim of which is to protect the rights of the individual. Schedule 1 of the Act sets out the Articles.

6.7.57. We consider that the following Articles of the Convention are relevant to the SoS's decision as to whether the Tillbridge DCO should be made to include powers of CA.

### Article 6 (Right to a fair trial)

6.7.58. This entitles those affected by the powers sought in the dDCO to a fair and public hearing of any relevant objections they may have to the granting of those powers. This includes property rights and can include opportunities to be heard in the decision-making process.

6.7.59. In relation to Article 6, we note that appropriate consultation took place before and during the process and that there has been opportunity to make representations during the preparation of the application and owners of land had been consulted. There has also been the opportunity to make representations during the course of the examination. A CAH was held and all APs were invited and offered an opportunity to be heard fully, fairly and in public. We also note that, should an Order be made, there are further opportunities for APs to challenge the Order in the High Court pursuant to Section 118 of the PA2008. We consider this is sufficient to meet the obligations set out in Article 6.

### Article 8 (Right to respect for private and family life)

6.7.60. This protects private and family life, home and correspondence. No public authority can interfere with these rights except in accordance with the law, and so far as is necessary in the interest of national security, public safety or the economic well-being of the country.

6.7.61. The order limits do not include and the proposed development does not require the acquisition of residential dwellings.

6.7.62. Therefore, we are of the opinion that Article 8 of Human Rights Act 1998 is not infringed.

### Article 1 of the First Protocol (Protection of property)

6.7.63. This provides the right of everyone to the peaceful enjoyment of possessions and provides that no one can be deprived of their possessions except in the public interest and subject to the relevant national and international laws and principles.

6.7.64. With regards to Article 1, the applicant acknowledges in the SoR [REP1- 014] that the Order has the potential to infringe the rights of affected parties and acknowledges the need to strike a balance between the rights of the individual and the interests of the public. Furthermore, we note it has sought to minimise the amount of land affected and included suitable provisions for the payment of compensation in the dDCO.

## EQUALITY ACT 2010 CONSIDERATIONS

6.7.65. The EA2010 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. We have had regard to this duty throughout the examination and in our consideration of the issues raised in this Recommendation.

6.7.66. We have found above that there is a compelling case in the public interest for all of the land identified to be acquired compulsorily. Furthermore, we consider that the proposed interference with individuals' rights would be lawful, necessary, proportionate and justified in the public interest. We therefore consider the CA and TP powers sought are compatible with the HRA1998 and the EA2010.

## CONCLUSIONS

6.7.67. We have considered all of the material submitted and presented during the examination relating to compulsory acquisition and temporary possession of land and rights within the order limits. We have reached the following conclusions:

- → The application site has been appropriately selected.
- → All reasonable alternatives to CA have been explored.
- → The applicant would have access to the necessary funds and the rDCO provides a clear mechanism whereby the necessary funding can be guaranteed.
- → There is a clear need for all the land included in the BoR to be subject to CA or TP.
- → There is a need to secure the land and rights required to construct, operate and maintain the proposed development within a reasonable timeframe, and the proposed development represents a significant public benefit to weigh in the balance.
- → 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 PPs in favour of those affected.
- → That in all cases relating to individual objections and issues that CA and TP are justified to enable implementation of the proposed development.
- → The powers sought satisfy the conditions set out in s122 and s123 of the PA2008 as well as the CA Guidance.

→ The powers sought in relation to SUs meet the conditions set out in s127 and s138 of the PA2008 and the CA Guidance.

6.7.68. Considering all of the above, we consider there is a compelling case in the public interest for the compulsory acquisition and temporary powers that are being requested.

# 7. DRAFT DEVELOPMENT CONSENT ORDER AND RELATED MATTERS

## 7.1. INTRODUCTION

7.1.1. The application dDCO [APP-014] and the Explanatory Memorandum (EM) [APP-015] were submitted by the applicant as part of the application for development consent. The dDCO and EM were updated throughout the examination with the final version of the dDCO being [REP7-004] and the EM being [REP7-006]. The EM explains the purpose and effect of each article of, and Schedules to, the Order and why they are required.

7.1.2. A final version of the dDCO which includes all the changes made between the application version and the 8 revisions to the final dDCO [REP7-005] was also submitted at D7.

7.1.3. This section comments on the structure of the final rDCO, and reports on processes used to examine it and its progress through the examination. Matters which were subject to discussion and changes subsequently made are reported on. We have only reported on the main discussion points and contentious matters and have not reported on every change made to each version. Many amendments were made as a result of typographical or referencing errors and minor changes to drafting following discussions at hearings, and as a result of written representations from IPs our written questions.

7.1.4. Finally, we summarise whether any amendments to revision 8 are considered necessary for the rDCO which is presented at Appendix D.

## 7.2. THE STRUCTURE OF THE DRAFT DEVELOPMENT CONSENT ORDER

7.2.1. The application draft was based on the Infrastructure Planning (Model Provisions) (England and Wales) Order 2009 but departs from those clauses to draw upon drafting used in made Orders for similar development under the PA2008. Although there has been a change of approach to the use of Model Provisions since the Localism Act 2011, they remain a starting point for the consideration of the DCO.

7.2.2. Precedent DCO's have also been considered and this draft DCO adopts some of the previously approved approaches in the Cleve Hill Solar Park Order 2020 (SI 2020/547), the Little Crow Solar Park Order 2022 (SI 2022/436), the Longfield Solar Farm Order 2023 (SI 2023/734), the Mallard Pass Solar Farm Order 2024 (SI 2024/796), the Gate Burton Energy Park Order 2024 (SI 2024/807), the Cottam Solar Project Order 2024 (SI 2024/943) and the West Burton Solar Project Order 2025 (SI 2025/116).

7.2.3. The draft DCO is structured as follows. There are six parts containing 49 Articles:

- **Part 1**: Articles 1 and 2 deal with preliminary matters including how the Order may be cited when it comes into force and sets out the meaning of the various defined terms used in the Order.
- **Part 2**: Articles 3 to 7 provide development consent for the Authorised Development, and allow it to be constructed, operated and maintained by the undertaker. Articles 6 and 7 relate to legislative provisions and statutory nuisance.

- **Part 3**: Articles 8 to 17 provide powers in relation to street works.
- **Part 4**: Articles 18 to 20 set out supplementary powers relating to the discharge of water, protective works to buildings, and the authority to survey and investigate land.
- **Part 5**: Articles 21 to 34 provide for the undertaker to be able to compulsorily acquire order land and rights over and within it, including temporary use of land. The provisions provide compensation for APs in respect of these powers (where not secured elsewhere) and powers in relation to apparatus and rights of statutory undertakers.
- **Part 6**: Articles 35 to 49 contain various miscellaneous and other general provisions. These include, amongst others, consent to transfer the benefit of the order, powers in relation to trees and hedges, certification of plans and documents, rules for arbitration, legislation to be disapplied, and protection of Crown rights.

7.2.4. There are 16 Schedules to the Order which are:

- **Schedule 1**: Description of the Authorised Development.
- **Schedule 2**: The Requirements that apply to the Authorised Development.
- **Schedule 3**: Legislation to be disapplied, relating to rivers, watercourses, railways and water supply infrastructure (insofar as any provisions are inconsistent with the powers contained in the Order).
- **Schedules 4 to 8**: Matters relating to street works, accesses and rights of way.
- **Schedule 9**: Details of land in which only new rights may be required.
- **Schedule 10**: Amendments to legislation to ensure appropriate compensation is payable where new rights over land are acquired under the Order.
- **Schedule 11**: Land which may be subject to temporary possession.
- **Schedule 12**: List of hedgerows to be removed.
- **Schedule 13**: A list of documents and plans to be certified.
- **Schedule 14**: Arbitration rules.
- **Schedule 15**: Protective Provisions.
- **Schedule 16**: Procedure for discharge of requirements.

## PARAMETERS OF THE ORDER

7.2.5. The detailed design of the proposed development must be in accordance with the ODPS [REP4-020], as secured in R5 of Schedule 2 of the Order.

7.2.6. In addition to the ODPS, other DCO requirements, certified documents and plans will operate to control and manage the detailed design of the proposed development, as well as its construction, operation (including maintenance) and decommissioning. The way in which those mechanisms work together as an envelope within which the authorised development is to be undertaken, is explained in more detail below.

7.2.7. Article 3 (Development consent etc. granted by this Order) and Schedule 2 (Requirements)] operate to create a "consent envelope" within which the proposed development would be brought forward.

7.2.8. The proposed development is described in Schedule 1 of the Order, where it is referred to as the "authorised development". The authorised development is granted consent pursuant to Article 3(1).

7.2.9. In Schedule 1 the proposed development (the authorised development) is divided into a series of component parts, referred to as "numbered works".

7.2.10. Article 3(2) requires that the numbered works authorised by the Order are situated in the areas and within the limits of deviation shown on the Works Plans.

7.2.11. The design of the proposed development is also controlled via R5 (detailed design approval) of Schedule 2 of the DCO which requires approval of details of the proposed development's design and requires that the details submitted accord with the ODPS. The ODPS set out the basis on which the assessment set out in the ES has been undertaken and secures the key design mitigation measures referenced in the ES. The ODPS capture the important parameters that are necessary to ensure that the proposed development is constructed and operated in such a way that the impacts and effects would not exceed the scenario assessed in the ES.

### THE CONSENT ENVELOPE

7.2.12. A 'consent envelope' approach has been used within the application in assessing the maximum (and the minimum, where relevant) and worst-case parameters of the proposed development. This is a common approach used in energy generation projects where a degree of flexibility is required, and technology regularly progresses to increase efficiency of relevant apparatus.

7.2.13. The applicant has not included a maximum limit on generating capacity in the draft DCO. The total generation capacity is linked to the size of the site, the height and spread and final design selection of solar photovoltaic (PV) panel. The applicant has received and accepted a grid connection offer. To not impose a limit would allow the applicant to take advantage of future technologies to make the proposed development as efficient as possible.

7.2.14. The approach is consistent with NPS EN-3 which at paragraph 2.10.56 states *that "installed export capacity should not be seen as an appropriate tool to constrain the impacts of a solar farm. Applicants should use other measurements, such as panel size, total area and percentage of ground cover to set the maximum extent of development when determining the planning impacts of an application*" and is described in PINS' Advice Note 9: Rochdale Envelope (July 2018).

7.2.15. A similar approach was adopted in the other solar development NSIP's mentioned previously in paragraph 6.2.2.

7.2.16. The parameters within the consent envelope are set out in the ODPS [REP4-020] and these correspond with the areas set out in the Works Plans [REP6-004]. Article 41 and Schedule 13 of the dDCO [REP7-004] secure these within the documents and plans to be certified.

7.2.17. R3 provides the ability to submit approved details and amendments to them to the relevant planning authorities, such that the subject matter of the approval sought is unlikely to give rise to any materially new or materially different environmental effects from those assessed in the environmental statement.

R5 secures detailed design approval of all elements including their layout, scale and external appearance such that Work Nos 1, 2, 3 or 4 may not commence until the details are submitted and approved by the relevant planning authority.

## 7.3. CHANGES DURING EXAMINATION

7.3.1. The dDCO content was raised at various points during the examination including the holding of two issue specific hearings ISH1 [EV1-001] and ISH3 [EV1-005] and

raising specific items for consideration through the exchange of 3 rounds of written questions [PD-009] [PD-011] [PD-012].

7.3.2. Discussions on the provisions contained in the dDCO resulted in a number of changes. These were generally confined to removal of articles deemed unnecessary, resolving inconsistencies, providing clarification and certainty in drafting and updates resulting from agreement reached between the applicant and IPs in ongoing discussions throughout the examination. Details of the changes made between each version can be found in the Schedule of Changes to the draft DCO [REP7-016].

7.3.3. Notable changes to the dDCO throughout the examination are highlighted below:

a. Updating to the dDCO to reference section 104 of the PA2008, to acknowledge the NPS EN-3 2024 was in force.
b. Change to the definition of the “commencement” of the works to that in section 155 of the PA2008, rather than section 56(4) of the TCPA 1990.
c. Updating of references to adjacent solar development NSIP’s as and when their respective orders were made.
d. Removal of closure of roads from the Article 16 to reflect no permanent road closures are planned.
e. Removal of power to “discharge of water” to the public sewer in Article 18 as this is not planned.
f. Removal of “removal of human remains” from Article 18 as no indication of presence of human remains at the site and adequate powers in other legislation to accommodate this if encountered during the Works.
g. Clarification with regards to Article 19 “protective works to buildings”
h. Update to Articles 21 and 22 to align with the Levelling-up and Regeneration Act 2023.
i. Removal of airspace rights from Article 26 as no planned need.
j. Clarification of Articles 39 and 40 with regards to works to trees and trees with preservation orders, to facilitate boundary management and also should a tree preservation order come into effect after the DCO is made.
k. Removal of Article 45 “deemed marine licence” as works under and adjacent to River Trent do not require licence and MMO have agreed an exemption.
l. Schedule 2, clarification of the definition of battery energy storage system.
m. Various amendments to the management plans to include LCC and the EA who had requested to be consultees to those plans.
n. Various amendments to the PPs to accommodate the consultations and requests with SUs.
o. Addition of schedule of fees for Local Authorities to discharge requirements.

7.3.4. The remainder of this section considers those parts of the dDCO where objections remained outstanding at the close of the examination, our recommendations in respect of them and the alterations we consider are necessary to form the rDCO.

## 7.4. DCO PROVISIONS WITH OBJECTIONS OUTSTANDING

7.4.1. At the close of the examination the parties listed in table 3 of this report had either progressed Statements of Common Ground, Protective Provisions, or both. Where blank the party had either not requested a SoCG or PP:

**Table 3: Agreements reached with parties**

| Prescribed Consultees | Statement of Common Ground | Protective Provisions |
|---|---|---|
| Natural England (NE) | Yes, signed | |
| Canal & River Trust (CRT) | Yes, signed | Yes |
| Environment Agency (EA) | Yes, signed | Yes |
| National Highways (NH) | Yes, signed | |
| Trent Valley Internal Drainage Board (TVIDB) | Yes, signed | Yes |
| Historic England (HE) | Yes, signed | |
| Scunthorpe & Gainsborough Water Management Board (SGWMB) | Yes, signed | Yes, drainage authorities |
| Upper Witham Internal Drainage Board (UWIDB) | Yes, signed | Yes, drainage authorities |
| Lincolnshire Wildlife Trust (LWT) | Yes, signed | |
| Network Rail (NR) | Yes, signed | Yes, railway interests |
| **Statutory Undertakers** | **Statement of Common Ground** | **Protective Provisions** |
| Anglian Water (AW) | Yes, signed | Yes |
| Cadent Gas | | Yes |
| Exolum Pipeline System Limited | | Yes |
| National Grid Electricity Transmission Plc | | Yes |
| National Grid Electricity Distribution (East Midlands) Plc (NGED) | | Yes |
| Northern Powergrid (Yorkshire) Plc | | Yes |
| Uniper | | |
| **Local Authorities** | **Statement of Common Ground** | **Protective Provisions** |
| West Lindsey District Council (WLDC) | Yes, signed | |
| Lincolnshire County Council (LCC) | Yes, signed | Yes, LFRS |
| Nottinghamshire County Council (NCC) | Yes, signed | |
| Bassetlaw District Council (BDC) | Yes, signed | |

| Other Interested Parties | Statement of Common Ground | Protective Provisions |
|---|---|---|
| Other Solar Developers (OSD) – Gate Burton Energy Park, Cottam Solar Project and West Burton Solar Project | Yes, signed | Yes |
| 7000 Acres (unsigned) | Yes, unsigned | |

7.4.2. Of the above in table 3, the following parties highlighted disagreements with the wording of the dDCO.

7.4.3. NGED at DL7 requested an amendment to their PP at Part 18 of Schedule 15 of the dDCO. They requested paragraph 247 (3) be amended to their preferred wording and in line with the other agreements in place for SUs in the DCO. The issue relating to the ability of NGED to pursue claims it receives from third parties against the undertaker (the applicant). NGED noting that this identical wording has been accepted by the applicant for the other SUs interested parties. We note that at the close of examination the applicant had not responded to this request but that we consider this amendment reasonable and have amended the rDCO accordingly.

7.4.4. LFRS requested costs in paragraph 94 for their attendance at the site familiarisation exercise facilitated by the undertaker and index linked costs for annual review until decommissioning. The figures agreed and inserted are in line with the agreements reached for the other NSIP developments in the area.

7.4.5. West Lindsey District Council (WLDC) raised concerns as to the coordination of the works with the other consented NSIP developments in the area and the inability to enforce the collaboration of developers to work together to mitigate impacts for the local communities. Due to the number of developments coming forward in the area they also requested under Article 45 a longer period for discharge of requirements to allow them to cope with the consideration the multiple of sites. These changes would be inconsistent with the other made Orders. However, an agreement was reached to extend the Article 45 period from 8 to 10 weeks in recognition of the challenge they face.

7.4.6. Lincolnshire County Council (LCC) under Article 47, Schedule 17, Section 5 requested that the discharge of requirements with respect to archaeology should be situated within the first list of the fee schedule attracting a higher fee rate. This would be inconsistent with the other made Orders in the area within Lincolnshire.

7.4.7. 7000 Acres challenged that some of the benefits put forward, such as employment and development of local skills, and biodiversity net gain are not secured in the draft DCO. The applicant put the case that these are detailed in the FSSCEP and FLEMP and these would be secured by Requirements 20 and 7 of the dDCO respectively.

## 7.5. CONCLUSIONS

7.5.1. We acknowledge the issues raised above by the parties. We have amended the dDCO to the rDCO in Appendix D accordingly. We are content with the remainder of the dDCO in its final revision [REP7-004]. Taking all matters raised in this section and all matters relevant to the DCO raised throughout the examination and in this report, if the SoS is minded to make the Order, we recommend it should be made in the form set out in Appendix D.

# 8. SUMMARY OF FINDINGS AND CONCLUSIONS

## 8.1. INTRODUCTION

8.1.1. This section summarises our conclusions arising from the report and sets out our primary recommendation to the Secretary of State (SoS) for Energy Security and Net Zero.

## 8.2. CONSIDERATION OF FINDINGS AND CONCLUSIONS

8.2.1. We have considered the proposed development against s104 of the PA2008 as it is within the scope of the Overarching National Policy Statement for Energy (NPS EN-1), the National Policy Statement for Renewable Energy Infrastructure (NPS EN-3) and the National Policy Statement for Electricity Networks Infrastructure (NPS EN-5). We find that these are relevant National Policy Statements and have effect. We find no evidence that s104(4) to (8) of the PA2008 apply and as required by s104(3), we conclude that the application must be decided in accordance with the relevant National Policy Statements.

8.2.2. We find that the proposed development is Critical National Priority (CNP) infrastructure in accordance with the relevant National Policy Statements. Our conclusions are the same both with and without CNP infrastructure considerations.

8.2.3. We have had regard to matters arising from the Local Impact Reports (LIR) from Lincolnshire County Council, Nottinghamshire County Council and West Lindsey County Council, and to all matters that we consider to be both important and relevant in reaching our conclusions. We have considered the relevant legislation and guidance.

8.2.4. In relation to s104(2) and s104(3) of the PA2008, we conclude that making the rDCO would be in accordance with the relevant National Policy Statements.

8.2.5. We have regard to the applicant's Habitats Regulations Assessment Screening Report and Natural England' s comments. Whilst the Secretary of State for Energy Security and Net Zero is the Competent Authority under the Conservation of Habitats and Species Regulations 2017 (the Habitat Regulations) and will make the definitive assessment, we conclude that the proposed development would not be likely to give rise to adverse effects on the integrity of European Sites. We find that there is sufficient information for the SoS to enable him to undertake an appropriate assessment and to fulfil his duty under the Habitat Regulations. We see no reason for Habitats Regulations Assessment matters to prevent the making of the DCO.

8.2.6. Regarding the land rights required to implement the proposed development, and subject to the resolution and consent of the Crown. We find that:

- the application site is selected appropriately, all reasonable alternatives are explored, and the applicant has a clear idea of how it intends to use the land;
- the powers sought are for a legitimate purpose, necessary to facilitate the proposed development, and no more than is reasonably required; and
- adequate funding would be likely to be available for the delivery of the proposed development and for the payment of compensation, which is secured appropriately.

8.2.7. We have had regard to the provisions of the Human Rights Act 1998.

8.2.8. For a few individuals, there could be the potential for interference with Article 1 (protection of property) of the First Protocol of the Human Rights Act 1998. In relation to Article 6 (entitlement to a fair and public hearing), the examination has ensured a fair and public hearing. The weight of national policy in favour of the proposed development and the wider public interest qualifies any interference with the human rights affected. We conclude that any interference with human rights arising from implementation of the proposed development would be proportionate and strike a fair balance between the rights of the individual and the public interest. We find that there is a compelling case in the public interest for the powers sought and conclude that the powers should be granted.

8.2.9. We have had regard to the Public Sector Equality Duty. We find no harm to the interests of persons who share a protected characteristic, or any adverse effect on the relationships between such persons and persons who do not share a protected characteristic. We find no breach of the Public Sector Equality Duty.

8.2.10. As required by Regulation 3 of The Infrastructure Planning (Decisions) Regulations 2010, we have had regard to the desirability of preserving listed buildings, their settings 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 and their settings. Given the significance and importance of the public benefits of the proposed development, we consider that they would clearly outweigh the less than substantial harm which would arise to designated and non-designated heritage assets.

8.2.11. As required by Regulation 7 of the Infrastructure Planning (Decisions) Regulations 2010, we have had regard to the United Nations Environmental Programme Convention on Biological Diversity of 1992 and are content that those aims are accorded with.

8.2.12. We have due regard to conserving and enhancing biodiversity and fulfil our biodiversity duty in accordance with the Natural Environment and Rural Communities Act 2006.

8.2.13. Our conclusions are subject to the provisions of the recommended Development Consent Order (rDCO) in Appendix D. We have concluded that there are no adverse impacts of sufficient weight, either on their own or collectively, that would mean that the DCO should not be made.

## 8.3. RECOMMENDATION

8.3.1. Our findings and conclusions are set out in this report, and we consider important and relevant matters and all submissions. We comply with all applicable legal duties and do not take account of any matters that are not relevant to our recommendations. We find no important and relevant matters that would individually or collectively lead to a different recommendation.

8.3.2. We find that the proposed development meets the tests in s104 of the PA2008 and we recommend that the Secretary of State for Energy Security and Net Zero makes the Tillbridge Solar Development Consent Order in the form attached at Appendix D.

# Appendix A:

# Key legislation and development plan policies

Tillbridge Solar Project EN010142

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

| Legislation |
| --- |
| • Acquisition of Land Act 1981 |
| • Air Quality (England) Regulations 2000 |
| • Air Quality Standards Regulations 2010 (as amended) |
| • The Air Quality (Amendment of Domestic Regulations) (EU Exit) Regulations 2019 |
| • Ancient Monuments and Archaeological Areas Act 1979 |
| • Building Act 1984 and the Building Regulations 2010 |
| • Carbon Budget Order 2021 |
| • Climate Change Act 2008 (Credit Limit) Order 2021 |
| • Climate change Act 2008 |
| • Commons Registration Act 1965 |
| • Conservation of Habitats and Species Regulations 2017 (the Habitat Regulations 2017') |
| • Contaminated Land (England) (Amendment) Regulations 2012 ('Contaminated Land |
| Regulations') |
| • Control of Pollution Act 1974 |
| • Compulsory Purchase Act 1965 |
| • Compulsory Purchase (Vesting Declarations) Act 1981 |
| • Countryside and Rights of Way Act 2000 |
| • Equality Act 2010 |
| • Electricity Act 1989 |
| • The Environment Act 1995 |
| • Environment Act 2021 |
| • Environment (Amendment etc.) (EU Exit) Regulations 2019 |
| • Environmental Damage (Prevention and Remediation) (England) Regulations 2015 |
| • Environment (Miscellaneous Amendments) (EU Exit) Regulations 2020 |
| • Environmental Permitting (England and Wales) Regulations 2016 |
| • Environmental Protection Act 1990 |

**• Environmental Noise (England) Regulations 2006 (as amended)**

**• Environmental Permitting (England and Wales) Regulations 2016**

**• Environmental Permitting (England and Wales) (Amendment) (EU Exit) Regulations 2019**

**• European Commission Circular Economy Package Environmental Protection Act 1990**

**• European Landscape Convention (ELC) (Council of Europe, 2016) Hedgerow Regulations**

**1997**

**• Flood Risk Regulations 2009**

**• Flood and Water Management Act 2010**

**• Groundwater (Water Framework Directive) (England) Direction 2016**

**• Hazardous Waste (England and Wales) Regulations 2005**

**• Health and Safety at Work etc. Act 1974**

**• Health and Social Care Act 2012**

**• The Hedgerows Regulations 1997**

**• Highways Act 1980**

**• Human Rights Act 1998**

**• The Infrastructure Planning (Decisions) Regulations 2010**

**• The Infrastructure Planning (Environmental Impact Assessment) Regulations 2017**

**• Land Drainage Act 1991**

**• Levelling Up and Regeneration Act 2023**

**• Localism Act 2011**

**• Marine and Costal Access Act 2009**

**• National Parks and Access to the Countryside Act 1949**

**• National Parks and Access to the Countryside Act 2000**

**• Natural Environment and Rural Communities Act 2006**

**• Neighbourhood Planning Act 2017**

**• Noise Insulation Regulations 1975**

**• The Planning Act 2008**

- **Planning (Hazardous Substances) Act 1990**
- **Planning (Listed Buildings and Conservation Areas) Act 1990**
- **Pollution Prevention and Control Act 1999**
- **Protection of Badgers Act 1992**
- **Town and Country Planning Act 1990**
- **Waste (England and Wales) Regulations 2011**
- **Waste Electrical and Electronic Equipment Regulations 2013**
- **Water Abstraction and Impounding (Exemptions) Regulations 2017**
- **Water Act 2003**
- **Water Act 2014**
- **Water Framework Directive (2000/60/EC)**
- **Water Framework Directive (Standards and Classification) Directions (England and Wales) 2015**
- **Water Environment (Water Framework Directive) (England and Wales) Regulations 2017**
- **Water Industry Act 1991**
- **Water Resources (Abstraction and Impounding) Regulations 2006**
- **Water Resources Act 1991**
- **Water Supply (Water Quality) Regulations 2018**
- **Wild Mammals (Protection) Act 1996**
- **Wildlife and Countryside Act 1981**

**Development Plan Policies referred to by the Applicant or in Local Impact Reports**

| Plan | Policies |
|---|---|
| **Lincolnshire Minerals and Waste Local Plan, Core Strategy and Development Management Policies (adopted June 2016)** | **Policy DM1: Presumption in favour of sustainable development**<br>**Policy DM4: Historic Environment**<br>**Policy DM6: Impact on Landscape and Townscapes**<br>**Policy DM12: Best and Most Versatile Agricultural Land Policy M11: Safeguarding of Mineral Resources**<br>**Policy M12: Safeguarding of Existing Mineral Sites and Associated Minerals Infrastructure**<br>**Policy W1: Future Requirements for New Waste Facilities.** |
| **Central Lincolnshire Local Plan (Adopted April 2023)** | **Policy S1: The Spatial Strategy and Settlement Hierarchy**<br>**Policy S2: Growth Levels and Distribution**<br>**Policy S5: Development in the Countryside**<br>**Policy S10: Supporting the Circular Economy**<br>**Policy S11: Embodied Carbon**<br>**Policy S14: Renewable Energy**<br>**Policy S15: Protecting Renewable Energy Infrastructure**<br>**Policy S16: Wider Energy Infrastructure**<br>**Policy S17: Carbon Sinks**<br>**Policy S20: Resilient and Adaptable Design**<br>**Policy S21: Flood Risk and Water Resources**<br>**Policy S28: Spatial Strategy for Employment**<br>**Policy S29: Strategic Employment Sites**<br>**Policy S31: Important Established Employment Areas**<br>**Policy S43: Sustainable Rural Tourism** |

| | |
|---|---|
| | **Policy S45: Strategic Infrastructure Requirements**<br><br>**Policy S47: Accessibility and Transport**<br><br>**Policy S48: Walking and Cycling Infrastructure**<br><br>**Policy S53: Design and Amenity**<br><br>**Policy S54: Health and Wellbeing**<br><br>**Policy S56: Development on Land Affected by Contamination**<br><br>**Policy S57: The Historic Environment**<br><br>**Policy S58: Protecting Lincoln, Gainsborough and Sleaford's Setting and Character**<br><br>**Policy S59: Green and Blue Infrastructure Network**<br><br>**Policy S60: Protecting Biodiversity and Geodiversity**<br><br>**Policy S61: Biodiversity Opportunity and Delivering Measurable Net Gains**<br><br>**Policy 62: Area of Outstanding Natural Beauty and Areas of Great Landscape Value**<br><br>**Policy S66: Trees, Woodland and Hedgerows**<br><br>**Policy S67: Best and Most Versatile Agricultural Land** |
| **Bassetlaw District Core Strategy Development Management Policies DPD (Adopted December 2011) (Now replaced))** | **Policy CS1: Settlement Hierarchy**<br><br>**Policy CS9: All Other Settlements**<br><br>**Policy DM3: General Development in the Countryside**<br><br>**Policy DM4: Design and Character**<br><br>**Policy DM8: The Historic Environment**<br><br>**Policy DM9: Green Infrastructure; Biodiversity & Geodiversity; Landscape; Open Space and Sports Facilities**<br><br>**Policy DM10: Renewable and Low Carbon Energy** |

| | |
|---|---|
| | **Policy DM12: Flood Risk, Sewerage and Drainage**<br><br>**Policy DM13: Sustainable Transport** |
| **Bassetlaw Local Plan Main Modifications (August 2023) (superseded by adopted Local Plan)** | **Policy ST1: Bassetlaw's Spatial Strategy**<br><br>**Policy ST6: Cottam Priority Regeneration Area**<br><br>**Policy ST35: Design Quality**<br><br>**Policy ST37: Landscape Character**<br><br>**Policy ST39: Green and Blue Infrastructure**<br><br>**Policy ST40: Biodiversity and Geodiversity**<br><br>**Policy ST41: Trees, Woodland and Hedgerows**<br><br>**Policy ST42: The Historic Environment**<br><br>**Policy ST43: Designated and Non-Designated Heritage Assets**<br><br>**Policy ST44: Promoting Healthy, Active Lifestyles**<br><br>**Policy 48: Protecting Amenity**<br><br>**Policy 49: Contaminated and Unstable Land**<br><br>**Policy ST50: Reducing Carbon Emissions, Climate Change Mitigation and Adaptation**<br><br>**Policy ST51: Renewable and Low Carbon Energy Generation**<br><br>**Policy ST52: Flood Risk and Drainage**<br><br>**Policy ST53: Protecting Water Quality and Management** |
| **Nottinghamshire Minerals Local Plan (March 2021)** | **Policy SP7: Minerals Safeguarding, Consultation Areas and Associated Minerals Infrastructure** |
| **Nottinghamshire and Nottingham Replacement Waste Local Plan: Part 1 Waste Core Strategy (Dec 2013)** | **Policy WCS2: Waste awareness and reuse** |
| **Nottinghamshire and Nottingham Pre-** | **SP1 – Waste Prevention and Reuse** |

| | |
|---|---|
| **Submission Draft Waste Local Plan (2023)** | |
| **Corringham Neighbourhood Plan (Adopted January 2022)** | **Policy CNP1: Sustainable Development Principles**<br>**Policy CNP5: Local Character and the Design of New Development**<br>**Policy CNP6: Key Views**<br>**Policy CNP7: Designated Heritage Assets**<br>**Policy CNP8: Protecting and Enhancing Non-designated Heritage Assets**<br>**Policy CNP9: Protecting and Enhancing Archaeological Sites**<br>**Policy CNP12: Development in the Countryside**<br>**Policy CNP13: Nature Conservation and Biodiversity**<br>**Policy CNP16: Transport and Active Travel** |
| **Glentworth Neighbourhood Plan (Adopted Nov 2019)** | **Policy 1: Views**<br>**Policy 3: Design and Character of Development**<br>**Policy 5: Green Infrastructure** |
| **Hemswell and Harpswell Neighbourhood Plan (Adopted March 2023)** | **Policy 5: Protecting the Wider Landscape Character and Setting of the Neighbourhood Plan Area**<br>**Policy 6: Design Principles**<br>**Policy 7: Protecting Non-Designated Heritage Assets**<br>**Policy 8: Designated Local Green Space**<br>**Policy 10: Public Rights of Way and Footpath Network** |
| **Treswell and Cottam Neighbourhood Plan Referendum Version (Adopted Feb 2019)** | **Policy 1: Development in Treswell and Cottam**<br>**Policy 2: Design Principles** |

| | |
|---|---|
| **Treswell and Cottam Neighbourhood Plan Review (Submission Draft February 2024)** | **Policy 6: Design Principles** |
| **Sturton By Stow and Stow Neighbourhood Plan (Adopted July 2022)** | **Policy 1: Sustainable Development**<br>**Policy 3: Area of Separation between Sturton by Stow and Stow**<br>**Policy 5: Delivering Good Design**<br>**Policy 6: Historic Environment**<br>**Policy 9: Protected Views**<br>**Policy 11: Green Infrastructure**<br>**Policy 12: Environmental Protection**<br>**Policy 13: Flood Risk**<br>**Policy 5: Development Principles**<br>**Policy 6: Heritage Assets in Rampton and Woodbeck**<br>**Policy 10: The Protection of the Parish Landscape** |

# Appendix B:

# Abbreviations

Tillbridge Solar Project EN010142

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

| Abbreviation or acronym | Reference |
|---|---|
| AA | Appropriate Assessment |
| AD | Associated Development |
| AGLV | Area of Great Landscape Value |
| ALC | Agricultural Land Classification |
| AMS | Archaeological Mitigation Strategy |
| ANCB | Appropriate Nature Conservation Body |
| AP | Affected Person |
| AQA | Air Quality Assessment |
| AQMA | Air Quality Management Area |
| ATC | Automatic Traffic Counts |
| AWS | Anglian Water Services Limited |
| BDC | Bassetlaw District Council |
| BESS | Battery Energy Storage System |
| BMV | Best and most versatile |
| BNG | Biodiversity Net Gain |
| BoR | Book of Reference |
| CA | Compulsory Acquisition |
| CAH | Compulsory Acquisition Hearing |
| C and D | Construction and Demolition |
| CCR | Climate Change Resilience |
| CCRA | Climate Change Resilience Assessment |
| CCGT | Combined Cycle Gas Turbine |
| CLLP | Central Lincolnshire Local Plan 2023 |
| CNP | Critical National Priority |
| CoA | Conservation Area |
| CoPA | Control of Pollution Act 1974 |
| COMAH | Control of Major Accident Hazard Regulations 2015 |
| CRC | Cable Route Corridor |

| | |
|---|---|
| **CRT** | **Canal & Rivers Trust** |
| **D** | **Deadline** |
| **DAS** | **Design and Access Statement** |
| **DBA** | **Desk-Based Assessment** |
| **DCO** | **Development Consent Order** |
| **dDCO** | **Draft Development Consent Order** |
| **DEFRA** | **Department for Environment, Food and Rural Affairs** |
| **DESNZ** | **Department for Energy Security and Net Zero** |
| **DMRB** | **Design Manual for Roads and Bridges** |
| **DNO** | **Distribution Network Operator** |
| **EA** | **Environment Agency** |
| **ECHR** | **European Convention on Human Rights** |
| **EEA** | **European Economic Area** |
| **EIA** | **Environmental Impact Assessment** |
| **EL** | **Examination Library** |
| **EM** | **Explanatory Memorandum** |
| **EMF** | **Electro-magnetic Field** |
| **EqIA** | **Equality Impact Assessment** |
| **ES** | **Environmental Statement** |
| **ExA** | **Examining Authority** |
| **ExQ1/2/3** | **The ExA's first, second, third etc rounds of written questions** |
| **FBSMP** | **Framework Battery Safety Management Plan** |
| **FCEMP** | **Framework Construction Environmental Management Plan** |
| **FCTMP** | **Framework Construction Traffic Management Plan** |
| **FDEMP** | **Framework Decommissioning Environmental Management Plan** |
| **FLEMP** | **Framework Landscape and Ecological Management Plan** |
| **FOEMP** | **Framework Operational Environmental Management Plan** |
| **FPMP** | **Framework Public Rights of Way Management Plan** |
| **FRA** | **Flood Risk Assessment** |

| | |
|---|---|
| **FSMP** | **Framework Soil Management Plan** |
| **FSSCEP** | **Framework Skills, Supply Chain and Employment Plan** |
| **FTE** | **Full Time Equivalent** |
| **FZ** | **Flood Zone** |
| **GHG** | **Greenhouse Gas** |
| **GVA** | **Gross Value Added** |
| **ha** | **Hectare(s)** |
| **HDD** | **Horizontal Directional Drilling** |
| **HGV** | **Heavy goods vehicle** |
| **HE** | **Historic England** |
| **HLCZ** | **Historic Landscape Character Zone** |
| **HRA** | **Habitats Regulations Assessment** |
| **HSE** | **Health and Safety Executive** |
| **HV** | **High Voltage** |
| **IAPI** | **Initial Assessment of Principal Issues** |
| **IAQM** | **Institute of Air Quality Management** |
| **ICCI** | **In-combination Climate Change Impact** |
| **IP** | **Interested Party** |
| **IP Regs** | **The Infrastructure Planning (Interested Parties and Miscellaneous Prescribed Provisions) Regulations 2015** |
| **ISH** | **Issue Specific Hearing** |
| **LA** | **Local Authority** |
| **LCC** | **Lincolnshire County Council** |
| **LFRS** | **Lincolnshire Fire and Rescue** |
| **LIR** | **Local Impact Report** |
| **LLCA** | **Local Landscape Character Area** |
| **LLFA** | **Lead Local Flood Authority** |
| **LNR** | **Local Nature Reserve** |
| **LOAEL** | **Lowest observed adverse effect level** |
| **LRN** | **Local Road Network** |

| | |
|---|---|
| **LSE** | **Likely Significant Effects** |
| **LVIA** | **Landscape and Visual Impacts Assessment** |
| **LWA** | **Land and Works Agreement** |
| **LWS** | **Local Wildlife Site** |
| **LWT** | **Lincolnshire Wildlife Trust** |
| **MAHP** | **Major Accident Hazard Pipeline** |
| **MCC** | **Manual Classified Counts** |
| **MMO** | **Marine Management Organisation** |
| **MoD** | **Ministry of Defence** |
| **MSA** | **Mineral Safeguarding Area** |
| **MU(s)** | **Motorised User(s)** |
| **MW** | **Megawatts** |
| **NCC** | **Nottinghamshire County Council** |
| **NDHA** | **Non-Designated Heritage Asset** |
| **NE** | **Natural England** |
| **NESO** | **National Electricity System Operator** |
| **NFFC** | **National Fire Chiefs Council** |
| **NGA** | **Noise Generating Activities** |
| **NGED** | **National Grid Electricity Distribution Plc** |
| **NHLE** | **National Heritage List for England** |
| **NMU(s)** | **Non-Motorised User(s)** |
| **NPPF** | **National Planning Policy Framework** |
| **NPS** | **National Policy Statement** |
| **NPSE** | **Noise Policy Statement for England (DEFRA 2010)** |
| **NPS EN-1** | **Overarching National Policy Statement for Energy** |
| **NPS EN-3** | **National Policy Statement for Renewable Energy Infrastructure** |
| **NPS EN-5** | **National Policy Statement for Electricity Networks Infrastructure** |
| **NSIP** | **Nationally Significant Infrastructure Project** |
| **NR** | **National Rail** |

| | |
|---|---|
| **ODPS** | **Outline Design Principles Statement** |
| **OFH** | **Open Floor Hearing** |
| **OSD** | **Other Solar Developers** |
| **OWMP** | **Operational Waste Management Plan** |
| **PA2008** | **Planning Act 2008 (as amended)** |
| **PD** | **Procedural Decision** |
| **PIC** | **Personal Injury Collision** |
| **PINS** | **Planning Inspectorate** |
| **PM** | **Preliminary Meeting** |
| **PP** | **Protective Provision** |
| **PRoW** | **Public Right of Way** |
| **PSED** | **Public Sector Equality Duty** |
| **PV** | **Photovoltaic** |
| **Q** | **Question** |
| **R** | **Requirement** |
| **rDCO** | **The ExA's recommended Development Consent Order** |
| **RIES** | **Report on the Implications for European Sites** |
| **RR** | **Relevant Representations** |
| **RVAA** | **Residential Visual Amenity Assessment** |
| **s** | **Section** |
| **SAC** | **Special Area of Conservation** |
| **SGWMB** | **Scunthorpe & Gainsborough Water Management Board** |
| **SI** | **Statutory Instrument** |
| **SNCB** | **Statutory Nature Conservation Body** |
| **SoCG** | **Statement of Common Ground** |
| **SOAEL** | **Significant observed adverse effect level** |
| **SoR** | **Statement of Reasons** |
| **SoS** | **Secretary of State** |
| **SP** | **Statutory Party** |

| | |
|---|---|
| **SPA** | **Special Protection Area** |
| **SSSI** | **Site of Special Scientific Interest** |
| **SU(s)** | **Statutory Undertakers** |
| **TA** | **Transport Assessment** |
| **TCC** | **Temporary Construction Compound** |
| **TCPA 1990** | **The Town and Country Planning Act 1990 (as amended)** |
| **TGN 2/19** | **Technical Guidance Note (TGN) 2/19: Residential Visual Amenity Assessment** |
| **TP** | **Temporary Possession** |
| **TVIDB** | **Trent Valley Internal Drainage Board** |
| **TWh** | **Terawatt-hours** |
| **USI** | **Unaccompanied Site Inspection** |
| **UWIDB** | **Upper Witham Internal Drainage Board** |
| **VP** | **Viewpoint** |
| **WLDC** | **West Lindsey District Council** |
| **WMS** | **Written Ministerial Statement** |
| **WR** | **Written Representation** |
| **ZoI** | **Zone of Influence** |
| **ZTV** | **Zone of Theoretical Visibility** |

# Appendix C:

# Report on implications for European sites

Tillbridge Solar Project EN010142

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

Planning Inspectorate

# REPORT on the IMPLICATIONS for EUROPEAN SITES

## Proposed Tillbridge Solar Project

An Examining Authority report prepared with the support of the Environmental Services Team

Planning Inspectorate Reference: EN010142

11 March 2025

# TABLE OF CONTENTS

**TABLE OF CONTENTS** ..... I

**1 INTRODUCTION** ..... 2
1.0 BACKGROUND ..... 2
1.1 DOCUMENTS USED TO INFORM THIS RIES ..... 3
1.2 CHANGE REQUESTS ..... 3
1.3 HRA MATTERS CONSIDERED DURING THE EXAMINATION ..... 3

**2 LIKELY SIGNIFICANT EFFECTS** ..... 4
2.0 EUROPEAN SITES CONSIDERED ..... 4
2.1 POTENTIAL IMPACT PATHWAYS ..... 5
2.2 IN-COMBINATION EFFECTS ..... 6
2.3 THE APPLICANT'S ASSESSMENT ..... 7
2.4 EXAMINATION MATTERS ..... 7

**3 CONCLUDING REMARKS** ..... 15

# 1 INTRODUCTION

## 1.0 Background

1.0.1 Tillbridge Solar Limited (the applicant) has applied for a development consent order (DCO) under section 37 of the Planning Act 2008 (PA2008) for the proposed Tillbridge Solar Project ('the proposed development'). On behalf of the Secretary of State for Housing, Communities and Local Government, an Examining Authority (ExA) has been appointed to conduct an examination of the application. The ExA will report its findings and conclusions and make a recommendation to the relevant Secretary of State (SoS) as to the decision to be made on the application.

1.0.2 For applications submitted under the PA2008 regime, the relevant SoS is the competent authority for the purposes of the Conservation of Habitats and Species Regulations 2017 ('the Habitats Regulations'). The findings and conclusions on nature conservation issues reported by the ExA will assist the Secretary of State in performing their duties under the Habitats Regulations.

1.0.3 This Report on the Implications for European sites (RIES) documents and signposts the information in relation to potential effects on European Sites that was provided within the DCO application and submitted during the examination by the applicant and Interested Parties (IPs), up to Deadline 5 (DL5) of the examination (25 February 2025). It is not a standalone document and should be read in conjunction with the examination documents referred to. Where document references are presented in square brackets [ ] in the text of this report, that reference can be found in the examination library published on the 'Find a National Infrastructure Project' website by following the link below:

https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/EN010142/EN010142-000427-Tillbridge%20Solar%20Examination%20Library.pdf

1.0.4 For the purpose of this RIES, 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. For ease of reading, this RIES also collectively uses the term 'European site' for European sites as defined in the Habitats Regulations 2017, unless otherwise stated. The 'UK National Site Network' refers to SACs and SPAs belonging to the United Kingdom already designated under the Directives and any further sites designated under the Habitats Regulations.

1.0.5 This RIES is issued to ensure that IPs including the Appropriate Nature Conservation Body (ANCB) - Natural England (NE) – is consulted formally on Habitats Regulations matters. This process may be relied on by the Secretary of State for the purposes of Regulation 63(3) of the Habitats Regulations.

1.0.6 It also aims to identify and close any gaps in the ExA's understanding of IPs' positions on Habitats Regulations matters, in relation to all European sites and qualifying features as far as possible, in order to support a robust and thorough recommendation to the Secretary of State.

1.0.7 Following consultation, the responses will be considered by the ExA in making their recommendation to the Secretary of State and made available to the Secretary of State along with this report. The RIES will not be revised following consultation.

1.0.8 Comments on the RIES are timetabled for DL6 (1 April 2025).

## 1.1 Documents used to inform this RIES

1.1.1 The applicant's Habitats Regulations Assessment (HRA) Report (the HRA Report) comprised the following document(s):

- Habitat Regulations Assessment Report [APP-094], provided as Appendix 9-12 of the Environmental Statement (ES) and updated at DL1 [REP1-058A] and DL3 [REP3-006]

1.1.2 In addition to the HRA Report, the RIES refers to representations submitted to the examination by IPs, Issue Specific Hearing (ISH) documents, Statements of Common Ground (SoCG) and other examination documents as relevant. All documents can be found in the examination library.

## 1.2 Change Requests

1.2.1 To date, the applicant has made the following change request:

- change request dated 27 September 2024 [AS-036 to AS-066]. Fifteen changes, including reductions in the order limits and highway access refinements.

1.2.2 This change was accepted by the ExA on 24 October 2024 [PD-008, annex D]. No relevant HRA matters arose from this change request and no further change requests have been received to date during the examination.

## 1.3 HRA Matters Considered During the Examination

1.3.1 The examination to date has focussed on the following matters:

- the impact-pathways with potential for likely significant effects (LSE)
- LSE on qualifying features of the Humber Estuary Special Area of Conservation (SAC) and Humber Estuary Ramsar Site

# 2 LIKELY SIGNIFICANT EFFECTS

## 2.0 European sites considered

**Introduction**

2.0.1 The proposed development is not connected with or necessary to the management for nature conservation of any European site.

2.0.2 The scope of the assessment is described within paragraph 4.2 of the HRA Report [APP-094]. The applicant noted that there is no published guidance on screening distances for solar farms. A combination of professional judgement and published guidance from the Environment Agency (EA) on screening for large power generation projects was therefore used to set a 10km search area for European sites. The applicant noted that while the proposed development is a large power generation project, it would not result in elevated air emissions and so the EA guidance recommendation of a 15km search area radius was not used as it was considered unlikely to reflect the impacts arising from the proposed development. The applicant also noted that there were no further sites identified within a 20km radius of the proposed development designated for birds such as geese or 30km for bats [REP1-058A].

2.0.3 The applicant stated [APP-094, section 3.2] that during pre-application, additional comments were received from the Environment Agency in relation to the potential for electromagnetic fields (EMF) to affect migratory fish. The applicant subsequently agreed with NE during the pre-application phase that a wider search area would therefore be undertaken beyond the original 10km identified by the applicant, in order to determine whether the proposed development could be connected to any European sites designated for migratory fish.

2.0.4 The applicant's HRA Report [APP-094] therefore included consideration of a wider search area within its screening methodology.

2.0.5 The ExA asked NE to comment on the distances used to screen in sites to the assessment in ExQ1 [PD-009, Q1.2.14]. NE confirmed [REP3-071] that it was satisfied that the distances used were appropriate to identify all relevant European sites and/ or European site qualifying features that could be affected by the proposed development and any functional usage outside of designated sites.

2.0.6 No further matters have been raised in the examination to date in relation to the applicant's approach to identification of European sites.

**Sites within the UK National Site Network (NSN)**

2.0.7 The applicant's HRA Report [APP-094 and REP1-058A] identified two European sites within the UK National Site Network for inclusion within the assessment. These are the Humber Estuary SAC and Humber Estuary Ramsar Site (both 20.2km north of the proposed development).

2.0.8 The applicant's submitted HRA Report [APP-094] did not contain a figure to identify the European sites considered in the assessment. At ExQ1, the ExA

requested information to show the proposed development in relation to European sites [PD-009, Q1.2.16] and the locations of these sites relative to the proposed development were subsequently provided by the applicant as Figure 1 of the HRA Report [REP3-006].

2.0.9 The applicant identified [APP-094, paragraph 3.1.5] that the Order Limits do not overlap with any EEA state. Only sites within the UK NSN are addressed in this RIES.

2.0.10 No additional UK European sites have been identified by IPs for inclusion within the assessment in the examination to date.

## 2.1 Potential impact pathways

2.1.1 Section 4 of the HRA Report detailed the potential impacts from the proposed development, along with the potential geographical extent of effects. Table 5 of the HRA Report [APP-094] lists the sites and qualifying features and the impact pathways which could affect them.

***Table 2.1 Pathways for LSE assessed by the applicant [APP-094]***

| **Site / qualifying feature** | **LSE pathway** |
|---|---|
| Humber Estuary SAC | |
| River lamprey *Lampetra fluviatilis* and sea amprey *Petromyzon marinus* | Noise and visual disturbance (construction and decommissioning)<br>Barriers (including EMF) and/ or displacement (operation) |
| Humber Estuary Ramsar Site | |
| River lamprey and sea lamprey (Ramsar Criterion 8) | Noise and visual disturbance (construction and decommissioning)<br>Barriers (including EMF) and/ or displacement (operation) |

2.1.2 The HRA Report assessed potential impacts during the construction, operation and decommissioning phases. The applicant considered potential impacts during the decommissioning phase to be similar to those outlined in the construction phase [APP-094, section 5.2).

2.1.3 In its relevant representation, NE [RR-208, NE1, NE3, NE4] identified the following additional impact-pathways it considered should be assessed:

- impacts to functionally linked land for passage and wintering golden plover *Pluvialis apricaria* of the Humber Estuary Ramsar Site
- impacts to sea lamprey and river lamprey qualifying features of the Humber Estuary SAC and Humber Estuary Ramsar Site from construction pollutants (silt and bentonite)

2.1.4 In its RR [RR-208], NE noted that the applicant's assessment [APP-094] did not include consideration of the effects on the golden plover *Pluvialis apricaria* qualifying feature of the Humber Estuary Ramsar Site. NE noted that golden plover can travel 15 to 20km to use surrounding land for foraging. As the proposed development is within 20km of the Humber Estuary Ramsar Site, NE considered that any land that is frequently used by >1% of the Ramsar Site population of golden plover should be screened into the assessment.

2.1.5 In its response to RR [REP1-028], the applicant stated that its updated HRA Report provided further reasoning to support its decision to exclude impacts to passage and wintering golden plover from screening for LSE. [REP1-058A] considered this qualifying feature. It concluded that the closest section of the proposed development to the Humber Estuary Ramsar Site was 20.2km and lacked the primary habitat (saltmarsh and intertidal mudflats) that the feature requires. The applicant continued that these habitats were related more to the boundary of the Humber Estuary SPA, (identified as 30.1km from the proposed development) and referred to its surveys from 2022 and 2023 [APP-040] which identified only sporadic observations of golden plover flying over the order limits. The applicant concluded that functional habitat for golden plover was therefore well beyond the area where there could be a potential functional link with the Humber Estuary Ramsar Site and therefore the proposed development was unlikely to be providing foraging habitat for this qualifying feature and it was scoped out prior to the screening for LSE stage of the HRA.

2.1.6 In ExQ1 [PD-009, Q1.2.14], the ExA therefore asked NE to confirm whether it had further representations on this matter. NE [REP3-071] responded that it was satisfied that based on the reasoning above, that this qualifying feature could be screened out of further consideration.

2.1.7 This was also stated in the draft SoCG between the applicant and NE at DL3 [REP3-057].

2.1.8 Further to the responses received from NE on water quality matters [RR-208], the applicant's updated HRA report [REP1-058A] included consideration of an additional water quality impact-pathway to the sea and river lamprey qualifying features of the Humber Estuary SAC and Humber Estuary Ramsar Site during construction and decommissioning.

2.1.9 The applicant's responses to NE's further comments in relation to its assessment of LSE are addressed in section 2.5 of this RIES.

## 2.2 In-combination effects

2.2.1 Section 5.4 of the HRA Report [APP-094] detailed the applicant's approach to assessing in-combination effects. The projects included in its in-combination assessment were detailed in table 8 of the HRA Report [APP-094] and their locations depicted on ES Figure 18-1 [APP-203].

2.2.1 Additional projects were identified by NE [RR-208] that should be considered in the applicant's in-combination assessment for all identified impact-pathways. These were:

- Great North Road Solar
- One Earth Solar Farm

2.2.2 The applicant's HRA Report supplied at DL1 [REP1-058A] therefore included an updated assessment of in-combination effects that included these two additional projects. The applicant's conclusions of no LSE in-combination with other plans or projects remained unchanged with the addition of these projects.

2.2.3 At DL3 NE [REP3-071] confirmed that it was satisfied with the applicant's updated conclusions with the inclusion of the One Earth Solar and Great North Road Solar projects. This was also confirmed as a matter agreed in the draft SoCG between the applicant and NE [REP3-057].

2.2.4 No further matters have been raised in relation to the applicant's in-combination assessment of LSE in the course of the examination.

## 2.3 The applicant's assessment

2.3.1 The applicant's conclusions in respect of screening are presented in section 6 of the HRA Report [REP3-006] and in the applicant's screening matrices [REP3-006, appendix A].

**Sites for which the applicant concluded <u>no LSE</u> on all qualifying features**

2.3.2 The applicant concluded [APP-094, section 6] that the proposed development would not be likely to give rise to significant effects, either alone or in combination with other projects or plans, on the sea and river lamprey qualifying features of the following European site(s):

- Humber Estuary SAC
- Humber Estuary Ramsar Site.

2.3.3 The conclusions were not disputed by IPs but matters were raised in relation to the applicant's approach and were questioned by the ExA during the examination.

## 2.4 Examination matters

2.4.1 Matters raised to date in relation to LSEs screened out and/ or not considered by the applicant are summarised in table 2.2 below.

***Table 2.2: Issues raised in the Examination to date by the ExA and IPs in relation to the applicant's screening of LSEs (alone and in-combination)***

| ID | Potential impact pathway | Details of issue | ExA observation/ question |
|---|---|---|---|
| **Humber Estuary SAC and Humber Estuary Ramsar Site** | | | |
| 2.1 | Water quality impacts from construction silt on migratory river and sea lamprey – construction, decommissioning | NE [RR-208, NE3] noted that the applicant's assessment [APP-094] did not include consideration of the effects on migrating river and sea lamprey within the River Trent from construction silt, considering that there was potential for silt to cause a barrier to migration and/ or smothering of breeding habitat for these qualifying features. NE [RR-208] therefore requested the screening of impacts to river and sea lamprey from construction silt within the HRA.<br>NE also noted that a commitment to prepare a silt management plan was proposed within the applicant's framework Construction Environmental Management Plan (CEMP) but requested that where this was used to avoid impacts on lamprey qualifying features, that this should be set out in the applicant's HRA Report.<br>The applicant updated its HRA Report [REP1-058A] at DL1 to include consideration of this impact-pathway during construction and committed to the development of a silt management plan within the detailed CEMP. It stated however that the requirement for a silt management plan was in order to meet wider legislative requirements to avoid water quality impacts irrespective of the presence of a European site and as such, was not applied as mitigation specifically to address potential LSE on the SAC/ Ramsar Site. | **n/a** |

| ID | Potential impact pathway | Details of issue | ExA observation/ question |
|---|---|---|---|
| | | The applicant concluded [REP1-058A] that given the adequate delivery of measures to safeguard the general water environment there would be no LSE on the Humber Estuary SAC and Humber Estuary Ramsar Site from this impact-pathway.<br>The ExA [PD-009, Q1.2.14] asked NE to comment on the applicant's updated HRA report [REP1-058A] and conclusions of no LSE from this impact-pathway.<br>NE confirmed at DL3 [REP3-071] that it was satisfied with the conclusion of no LSE, taking account of the silt management plan avoiding silt pollution within watercourses. This was also confirmed in the draft SoCG between the applicant and NE at DL3 [REP3-057].<br>No further IPs commented on the applicant's conclusions of no LSE is matter during the course of the examination. | |
| 2.2 | Water quality impacts from construction bentonite on migratory river and sea lamprey - construction | NE [RR-208] also noted that the applicant's HRA Report [REP1-058A] did not include consideration of the effects on migrating river and sea lamprey within the River Trent from potential bentonite breakouts from Horizontal Directional Drilling (HDD) during cable laying. NE [RR-208] therefore requested the applicant screen in impacts to river and sea lamprey from bentonite used in HDD within the HRA Report and also requested inclusion of a Bentonite Management Plan within the detailed CEMP.<br>The applicant's updated HRA report [REP1-058A] addressed this request. The measures already provided for bentonite management in the framework CEMP were amended [REP3-033] to include reference to a bentonite management plan. The applicant concluded [REP1-058A] that given the adequate delivery | **n/a** |

| ID | Potential impact pathway | Details of issue | ExA observation/ question |
|---|---|---|---|
| | | of measures to safeguard the general water environment there would be no LSE on the Humber Estuary SAC and Humber Estuary Ramsar Site from this impact-pathway.<br>NE confirmed at DL3 [REP3-071] that it was satisfied that impacts from construction and decommissioning to water quality from bentonite were suitably secured through the dDCO and this matter was marked as agreed in the draft SoCG between the applicant and NE [REP3-057].<br>No further IPs have commented on the conclusions of no LSE arising from this matter during the course of the examination. | |
| 2.3 | EMF barrier impacts to migratory fish – depth of cables - operation | NE, [RR-208, NE6] and the Canal and River Trust (CRT) [RR-036] requested clarity on the rationale behind the use of a 5m burial depth for the River Trent cable crossing.<br>In its response to relevant representations [REP1-028], the applicant stated that the reasons for the depths of the crossings were as set out in [AS-058] (Outline Design Principles Document). This states that trenchless crossings would be installed at 3m depth:<br>"…. with the exception of the River Till and the River Trent where cables will be installed at a minimum of 5m below the lowest surveyed point of the riverbed to prevent disturbance to fish species".<br>In ExQ1 [PD-009, Q1.2.16] the ExA asked the applicant to further confirm whether the proposed 5m depth below the riverbed was applied as mitigation for effects specifically on qualifying features of the Humber Estuary both alone and in-combination with other | **n/a** |

| ID | Potential impact pathway | Details of issue | ExA observation/ question |
|---|---|---|---|
| | | plans and projects and with reference to People over Wind and Sweetman v Coillte Teoranta.<br>The applicant stated [REP3-062] that the wording in the updated Outline Design Principles Statement [REP3-030] had been amended to clarify that the primary reason for the buried depth of a minimum of 5m below the River Till and River Trent is to avoid the mobilisation of silt from the riverbed and the risk of scour exposing the cable, with a benefit of this depth being that it also effectively negates the potential for any impacts from EMF to fish species.<br>At DL3 NE [REP3-071] confirmed that it was satisfied with the explanation and consider the 5m depth to be suitably precautionary. Lincolnshire County Council [REP1A-001] [REP3-065] noted it had no reason to disagree with the applicant's conclusions of no LSE and was happy that the cable burial approach was consistent with other local proposals.<br>The CRT [RR-036] also noted that the applicant intended to use HDD to lay cables beneath the River Trent, requesting that the applicant amend its outline design principles document [APP-213] to state that the cables would be buried a maximum of 25m below the bottom of the riverbed and a minimum of 5m below the lowest surveyed point of the riverbed to prevent the risk of scour exposing the cable. The applicant subsequently amended this document as [AS-058]. The draft SoCG with the CRT [REP3-059] subsequently marked this matter as resolved with the principles for design of the HDD included within the applicant's documents.<br>The applicant concluded that there was no potential for the proposed development to result in LSEs on the Humber Estuary | |

| ID | Potential impact pathway | Details of issue | ExA observation/ question |
|---|---|---|---|
| | | SAC and Humber Estuary Ramsar Site regarding barriers to movement and/or displacement of qualifying features during operation. | |
| 2.4 | EMF impacts to sea lamprey and river lamprey – operation and monitoring | The EA [RR-093] noted the potential for EMF from cables buried beneath the River Trent on fish species in the river, considering it an emerging issue. It considered that there would be a low risk to migratory fish but requested that the applicant secure a programme of monitoring similar to the approach taken on other, consented, solar schemes (West Burton and Cottam). The EA also highlighted that it is in contact with Hull University to gain advice on a suitable monitoring programme.<br>In ExQ1 [PD-009, Q1.2.7], the ExA queried the applicant's approach of assessing the burial depth of the cable below the river in the lower water column near the bottom of the river. The ExA asked the applicant, NE and the EA, whether, given that migratory species can use the full depth of the water column, they would sense this risk and adjust accordingly.<br>NE [REP3-071] responded that it was satisfied with the approach to cable burial and consider that any increase in EMF activity in the lower portion of the water column would be unlikely to cause a significant effect upon lamprey populations. However NE acknowledged evidence gaps in this area and stated that the commitment to monitor effects to migratory fish (including lamprey) on the River Trent would be necessary and any identified impacts acted upon.<br>The EA [REP3-068] response to ExQ1 [PD-009, Q1.2.7] noted that it is possible that some fish will detect an EMF in the water which | **n/a** |

| ID | Potential impact pathway | Details of issue | ExA observation/ question |
|---|---|---|---|
| | | may create an invisible barrier and therefore the EA cannot currently advise that impacts would be avoided.<br>The draft SoCG with the EA [REP3-055] includes agreement from the applicant to contribute to a programme of EMF monitoring within the River Trent, secured through the framework Operational Environmental Management Plan (OEMP) [REP4-022]. The applicant's approach was also explained further in [REP3-063] stating that subject to agreement on the details with NE and the EA and any necessary consents from landowners such as the CRT, monitoring would continue for at least 3 years following commissioning of the first cable crossing.<br>The framework OEMP [REP4-022] also states that this contribution may be financial and is subject to agreement on the extent of the monitoring with the EA.<br>The draft SoCG [REP5-003] between the applicant and the EA notes details of this monitoring are ongoing but agrees that with the commitment within the OEMP for the applicant to take part in the monitoring secured through the DCO, the EA considers the details would be progressed outside the determination period of the DCO .<br>The ExA also identified [PD-009, Q1.2.16] the explanation provided in ES Chapter 17 [APP-048] from National Grid guidance on detectability of EMF, querying whether this evidence had relevance to the conclusions of potential LSE on migratory fish.<br>The applicant [REP3-062] did not respond directly to this point but stated that the burial depth was a design parameter that arose from previous solar projects. In its updated HRA Report at DL4 [REP3-006] the applicant maintained that there would be no LSE from this | |

| ID | Potential impact pathway | Details of issue | ExA observation/ question |
|---|---|---|---|
| | | impact-pathway either alone or in-combination with other plans or projects.<br>Following these clarifications, no further matters have been raised in relation to this matter during the course of the examination. | |

# 3 CONCLUDING REMARKS

3.0.1 The applicant concludes that LSE can be excluded to the Humber Estuary SAC and Humber Estuary Ramsar Site. The ExA's understanding of the applicant's and NE's positions in relation to LSE matters is set out above.

3.0.2 This RIES is based on information submitted throughout the Examination by the Applicants and IPs, up to and including DL5 (25 February 2025) of the examination in relation to potential effects on European sites. It should be read in conjunction with the examination documents referred to throughout.

3.0.3 Comments on the RIES must be submitted for DL6 (1 April 2025).

# Appendix D:

# Recommended DCO

Tillbridge Solar Project EN010142

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

S T A T U T O R Y  I N S T R U M E N T S

# 202* No. ****

# INFRASTRUCTURE PLANNING

## The Tillbridge Solar Order 202*

*Made* - - - - ***

*Coming into force* - - ***

CONTENTS


PART 1
PRELIMINARY

1. Citation and commencement
2. Interpretation

PART 2
PRINCIPAL POWERS

3. Development consent etc. granted by this Order
4. Operation of generating station
5. Power to maintain the authorised development
6. Application and modification of statutory provisions
7. Defence to proceedings in respect of statutory nuisance

PART 3
STREETS

8. Street works
9. Application of the relevant permit scheme
10. Power to alter layout, etc., of streets
11. Construction and maintenance of altered streets
12. Temporary prohibition or restriction of the use of streets and public rights of way
13. Claimed public right of way
14. Use of private roads
15. Access to works
16. Agreements with street authorities
17. Traffic regulation measures

PART 4
SUPPLEMENTAL POWERS

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

PART 5
POWERS OF ACQUISITION

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

PART 6
MISCELLANEOUS AND GENERAL

35. Benefit of the Order
36. Consent to transfer the benefit of the Order
37. Application of landlord and tenant law
38. Operational land for the purposes of the 1990 Act
39. Felling or lopping of trees and removal of hedgerows
40. Trees subject to tree preservation orders
41. Certification of plans and documents, etc.
42. No double recovery
43. Arbitration
44. Protective provisions
45. Service of notices
46. Procedure in relation to certain approvals etc.
47. Guarantees in respect of payment of compensation
48. Compulsory acquisition of land – incorporation of the mineral code
49. Crown rights

---

SCHEDULES

SCHEDULE 1 — AUTHORISED DEVELOPMENT
SCHEDULE 2 — REQUIREMENTS
SCHEDULE 3 — LEGISLATION TO BE DISAPPLIED
SCHEDULE 4 — STREETS SUBJECT TO STREET WORKS

SCHEDULE 5 — ALTERATION OF STREETS
PART 1 — PERMANENT ALTERATION OF LAYOUT
PART 2 — TEMPORARY ALTERATION OF LAYOUT
SCHEDULE 6 — STREETS AND PUBLIC RIGHTS OF WAY
PART 1 — TEMPORARY PROHIBITION OR RESTRICTION OF THE USE OF STREETS
PART 2 — TEMPORARY PROHIBITION OR RESTRICTION OF PUBLIC RIGHTS OF WAY WITH DIVERSION
PART 3 — PERMANENT USE OF MOTOR VEHICLES ON PUBLIC RIGHT OF WAY
PART 4 — TEMPORARY MANAGEMENT OF PUBLIC RIGHTS OF WAY
PART 5 — TEMPORARY USE OF MOTOR VEHICLES ON PUBLIC RIGHTS OF WAY
SCHEDULE 7 — ACCESS TO WORKS
PART 1 — PERMANENT MEANS OF ACCESS TO WORKS
PART 2 — TEMPORARY MEANS OF ACCESS TO WORKS
SCHEDULE 8 — TRAFFIC REGULATION MEASURES
SCHEDULE 9 — LAND IN WHICH ONLY NEW RIGHTS ETC. MAY BE ACQUIRED
SCHEDULE 10 — MODIFICATION OF COMPENSATION AND COMPULSORY PURCHASE ENACTMENTS FOR THE CREATION OF NEW RIGHTS AND IMPOSITION OF NEW RESTRICTIVE COVENANTS
SCHEDULE 11 — LAND OF WHICH TEMPORARY POSSESSION MAY BE TAKEN
SCHEDULE 12 — HEDGEROWS TO BE REMOVED
PART 1 — IMPORTANT HEDGEROWS WHICH REQUIRE REMOVAL
PART 2 — HEDGEROWS WHICH REQUIRE REMOVAL
SCHEDULE 13 — DOCUMENTS AND PLANS TO BE CERTIFIED
SCHEDULE 14 — ARBITRATION RULES
SCHEDULE 15 — PROTECTIVE PROVISIONS
PART 1 — FOR THE PROTECTION OF ELECTRICITY, GAS, WATER AND SEWERAGE UNDERTAKERS
PART 2 — FOR THE PROTECTION OF OPERATORS OF ELECTRONIC COMMUNICATIONS CODE NETWORKS
PART 3 — FOR THE PROTECTION OF DRAINAGE AUTHORITIES
PART 4 — FOR THE PROTECTION OF THE CANAL & RIVER TRUST
PART 5 — FOR THE PROTECTION OF COTTAM SOLAR PROJECT LIMITED
PART 6 — FOR THE PROTECTION OF GATE BURTON ENERGY PARK LIMITED
PART 7 — FOR THE PROTECTION OF WEST BURTON SOLAR PROJECT LIMITED
PART 8 — FOR THE PROTECTION OF LINCOLNSHIRE FIRE AND RESCUE
PART 9 — FOR THE PROTECTION OF CADENT GAS LIMITED
PART 10 — FOR THE PROTECTION OF THE ENVIRONMENT AGENCY
PART 11 — FOR THE PROTECTION OF NORTHERN POWERGRID (YORKSHIRE) PLC
PART 12 — FOR THE PROTECTION OF RAILWAY INTERESTS

PART 13 — FOR THE PROTECTION OF ANGLIAN WATER SERVICES LIMITED
PART 14 — FOR THE PROTECTION OF UNIPER
PART 15 — FOR THE PROTECTION OF EXOLUM PIPELINE SYSTEM LIMITED
PART 16 — FOR THE PROTECTION OF EDF ENERGY
PART 17 — FOR THE PROTECTION OF NATIONAL GRID ELECTRICITY TRANSMISSION PLC AS ELECTRICITY UNDERTAKER
PART 18 — FOR THE PROTECTION OF NATIONAL GRID ELECTRICITY DISTRIBUTION (EAST MIDLANDS) PLC AS ELECTRICITY UNDERTAKER
PART 19 — FOR THE PROTECTION OF TRENT VALLEY INTERNAL DRAINAGE BOARD
SCHEDULE 16 — PROCEDURE FOR DISCHARGE OF REQUIREMENTS

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

The application has been examined by the Examining Authority appointed by the Secretary of State pursuant to chapter 3 of Part 6 of the 2008 Act and carried out in accordance with chapter 4 of Part 6 of the Infrastructure Planning (Examination Procedure) Rules 2010(**c**).

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

The Secretary of State has considered the report and recommendation of the Examining Authority, has taken into account the environmental information in accordance with regulation 4 of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017(**e**) and has had regard to the documents and matters referred to in section 104(2)(c) of the 2008 Act.

The Secretary of State, having decided the application, has determined to make an Order granting development consent for the development described in the application on terms that in the opinion of the Secretary of State are not materially different from those proposed in the application.

The Secretary of State, in exercise of the powers conferred by sections 114(**f**), 115(**g**), 120(**h**), 122(**i**), 123(**j**) and 140 of the 2008 Act, makes the following Order—

---

(**a**) 2008 c. 29. Section 37 was amended by section 137(5) of, and paragraph 5 of Schedule 13 to the Localism Act 2011 (c. 20).
(**b**) S.I. 2009/2264, amended by S.I. 2010/439, S.I. 2010/602, S.I. 2012/635, S.I. 2012/2654, S.I. 2012/2732, S.I. 2013/522, S.I. 2013/755, S.I. 2014/469, S.I. 2014/2381, S.I. 2015/377, S.I. 2015/1682, S.I. 2017/524, 2017/572 and S.I. 2018/378.
(**c**) S.I. 2010/103.
(**d**) As amended by paragraph 29(1) and (3) of Part 1 of Schedule 13 to the Localism Act 2011 (c. 20).
(**e**) S.I. 2017/572.
(**f**) As amended by paragraph 55 of Part 1 of Schedule 13 to the Localism Act 2011.
(**g**) As amended by section 160 of the Housing and Planning Act 2016 (c. 22) and section 43 of the Wales Act 2017 (c. 4).
(**h**) As amended by section 140 and paragraph 60 of Part 1 of Schedule 13 to the Localism Act 2011.
(**i**) As amended by paragraph 62 of Part 1 of Schedule 13 to the Localism Act 2011.
(**j**) Ibid.

# PART 1

## PRELIMINARY

### Citation and commencement

**1.** This Order may be cited as the Tillbridge Solar Order 202[*] and comes into force on [*] 202[*].

### 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 1984 Act" means the Road Traffic Regulation Act 1984(**e**);

"the 1989 Act" means the Electricity Act 1989(**f**);

"the 1990 Act" means the Town and Country Planning Act 1990(**g**);

"the 1991 Act" means the New Roads and Street Works Act 1991(**h**);

"the 2008 Act" means the Planning Act 2008(**i**);

"address" includes any number or address used for the purposes of electronic transmission;

"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;

"archaeological mitigation strategy" means the plans of that name identified in the table at Schedule 13 (documents and plans to be certified), including Part 1 and Part 2, and which are certified by the Secretary of State as the archaeological mitigation strategy for the purposes of this Order;

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

"book of reference" means the document of that name identified in the table at Schedule 13 (documents and plans to be certified) and which is certified by the Secretary of State as the book of reference for the purposes of this Order;

"building" includes any structure or erection or any part of a building, structure or erection;

"carriageway" has the same meaning as in the 1980 Act;

"commence" means beginning to carry out a material operation, as defined in 155 (when development begins) of the 2008 Act, comprised in or carried out or for the purposes of the authorised development other than the permitted preliminary works (except where stated to

---

(**a**) 1961 c. 33.
(**b**) 1965 c. 56.
(**c**) 1980 c. 66.
(**d**) 1981 c. 66.
(**e**) 1984 c. 27.
(**f**) 1989 c. 29.
(**g**) 1990 c. 8.
(**h**) 1991 c. 22. Section 48(3A) was inserted by section 124 of the Local Transport Act 2008 (c. 26). Sections 78(4), 80(4) and 83(4) were amended by section 40 of, and Schedule 1 to, the Traffic Management Act 2004 (c. 18).
(**i**) 2008 c. 29.

the contrary) and the words "commencement", "commenced" and cognate expressions are to be construed accordingly;

"commissioning" means the process of testing all systems and components of numbered work 1 to ensure that they, and the authorised development as a whole, function in accordance with plant design specifications and the undertaker's operational and safety requirements;

"Cottam undertaker" means the undertaker for the purposes of the Cottam Solar Project Order 2024;

"date of final commissioning" means in respect of each part of the authorised development as approved under requirement 2 of Schedule 2 (requirements) the date on which each part of the authorised development commences operation by generating electricity on a commercial basis but excluding the generation of electricity during commissioning and testing;

"date of decommissioning" means in respect of each part of the authorised development, the date that that part of the authorised development has permanently ceased to generate electricity on a commercial basis;

"electrical cables" means—

(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, data cables and optical fibre cables; and

(b) works associated with cable laying including jointing pits, hardstanding adjoining the jointing pits, combiner boxes, fibre bays, cable ducts, cable protection, joint protection, manholes, kiosks, marker posts, underground cable marker, tiles and tape, send and receive pits for horizontal directional drilling, trenching, lighting, and a pit or container to capture fluids associated with drilling;

"electronic transmission" means a communication transmitted—

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

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

"environmental statement" means the document of that name identified in the table at Schedule 13 (documents and plans to be certified) and which is certified by the Secretary of State as the environmental statement for the purposes of this Order;

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

"framework battery safety management plan" means the document of that name identified in the table at Schedule 13 (documents and plans to be certified) and which is certified by the Secretary of State as the framework battery safety management plan for the purposes of this Order;

"framework construction environmental management plan" means the document of that name identified in the table at Schedule 13 (documents and plans to be certified) and which is certified by the Secretary of State as the framework construction environmental management plan for the purposes of this Order;

"framework construction traffic management plan" means the document of that name identified in the table at Schedule 13 (documents and plans to be certified) and which is certified by the Secretary of State as the framework construction traffic management plan for the purposes of this Order;

"framework decommissioning environmental management plan" means the document of that name identified in the table at Schedule 13 (documents and plans to be certified) and which is certified by the Secretary of State as the framework decommissioning environmental management plan for the purposes of this Order;

"framework landscape and ecological management plan" means the document of that name identified in the table at Schedule 13 (documents and plans to be certified) and which is certified by the Secretary of State as the framework landscape and ecological management plan of the purposes of this Order;

"framework operational environmental management plan" means the document of that name identified in the table at Schedule 13 (documents and plans to be certified) and which is certified by the Secretary of State as the framework operational environmental management plan for the purposes of this Order;

"framework public rights of way management plan" means the document of that name identified in the table at Schedule 13 (documents and plans to be certified) and which is certified by the Secretary of State as the framework public rights of way management plan for the purposes of this Order;

"framework skills, supply chain and employment plan" means the plan of that name identified in the table at Schedule 13 (documents and plans to be certified) and which is certified by the Secretary of State as the framework skills, supply chain and employment plan for the purposes of this Order;

"framework soil management plan" means the document of that name identified in the table at Schedule 13 (documents and plans to be certified) and which is certified by the Secretary of State as the framework soil management plan for the purposes of this Order;

"Gate Burton undertaker" means the undertaker for the purposes of the Gate Burton Energy Park Order 2024;

"hedgerow removal plan" means the plans of that name identified in the table at Schedule 13 (documents and plans to be certified) and which are certified by the Secretary of State as the hedgerow removal plan for the purposes of this Order;

"highway" and "highway authority" have the same meaning as in the 1980 Act(**a**);

"land and Crown land plans" means the plans of that name identified in the table at Schedule 13 (documents and plans to be certified) and which are certified by the Secretary of State as the special category land plan for the purposes of this Order;

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

"maintain" includes inspect, repair, adjust, alter, remove, refurbish, reconstruct, replace and improve any part of, but not remove, reconstruct or replace the whole of, the authorised development and "maintenance" and "maintaining" are to be construed accordingly;

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

"Order land" means the land which is required for, or is required to facilitate, or is incidental to, or is affected by the authorised development shown on the land plans and described in the book of reference;

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

"outline design principles statement" means the document identified as the outline design principles statement in the table of Schedule 13 (documents and plans to be certified) and which is certified by the Secretary of State as the outline design principles for the purposes of this Order;

"outline drainage strategy" means the document of that name identified in the table at Schedule 13 (documents and plans to be certified) and which is certified by the Secretary of State as the outline drainage strategy for the purposes of this Order;

"owner", in relation to land, has the same meaning as in section 7 (interpretation) of the Acquisition of Land Act 1981(**b**);

"permitted preliminary works" means all or any of—

(**a**) "highway" is defined in section 328(1). For "highway authority" see section 1.
(**b**) 1981 c. 67.

(a) environmental surveys, geotechnical surveys, intrusive archaeological surveys and other investigations for the purpose of assessing ground conditions;

(b) removal of plant and machinery;

(c) above ground site preparation for temporary facilities for the use of contractors;

(d) remedial work in respect of any contamination or other adverse ground conditions;

(e) diversion and laying of apparatus;

(f) the provision of temporary means of enclosure and site security for construction;

(g) the temporary display of site notices or advertisements;

(h) site clearance (including vegetation removal, demolition of existing buildings and structures); or

(i) advanced planting to allow for an early establishment of protective screening;

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

"relevant permit scheme" means the Lincolnshire Permit Scheme for Road Works and Street Works Order 2016 or the Nottinghamshire County Council Permit Scheme Order 2020 which are made under Part 3 of the Traffic Management Act 2004, as applicable for the location of the relevant street works;

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

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

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

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

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

"streets, access and rights of way plans" means the plans of that name identified in the table at Schedule 13 (documents and plans to be certified) and which are certified by the Secretary of State as the streets, access and rights of way plans for the purposes of this Order;

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

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

"traffic authority" has the same meaning as in section 121A (traffic authorities) of the 1984 Act(**d**);

"traffic regulation measures plan" means the document of that name identified in the table at Schedule 13 (documents and plans to be certified) and which is certified by the Secretary of State as the traffic regulation measures plan for the purposes of this Order;

"undertaker" means Tillbridge Solar Limited (company number 12887594) and any other person who for the time being has the benefit of this Order in accordance with article 35 (benefit of the Order) or article 36 (consent to transfer the benefit of the Order);

"Upper Tribunal" means the Lands Chamber of the Upper Tribunal;

---

(**a**) 2003 c. 21.

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

(**c**) 2006 c. 46.

(**d**) Section 121A was inserted by paragraph 70 of Schedule 8 to the 1991 Act, and subsequently amended by section 271 of the Greater London Authority Act 1999 (c. 29); section 1(6) of, and paragraphs 70 and 95 of Schedule 1 to the Infrastructure Act 2015; and S.I. 1999/1920 and S.I 2001/1400.

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

"West Burton undertaker" means the undertaker for the purposes of the West Burton Solar Project Order 2025;

"working day" means any day apart from Saturday, Sunday or any statutory bank or public holiday; and

"works plans" means the plans of that name identified in the table at Schedule 13 (documents and plans to be certified) and which are certified by the Secretary of State as the works plans for the purposes of this Order.

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

(3) In this Order, references to the purposes of the authorised development includes the construction, maintenance, operation, use and decommissioning of the authorised development.

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

(5) References in this Order to numbered works are references to the works comprising the authorised development as numbered in Schedule 1 (authorised development) and shown on the works plans and a reference in this Order to a work designated by a number, or by a combination of letters and numbers, is a reference to the work so designated in that Schedule and a reference to "Work No. 4" or "numbered work 4" means numbered works 4A and 4B inclusive and the same principle applies to such numbered works that contain letters.

(6) In this Order, the expression "includes" is to be construed without limitation.

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

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

(9) References in this Order to any statute, order, regulation or similar instrument are to be construed as a reference to the statute, order, regulation or instrument as amended by any subsequent statute, order, regulation or instrument or as contained in any subsequent re-enactment.

# PART 2

## PRINCIPAL POWERS

### Development consent etc. granted by this Order

**3.**—(1) Subject to the provisions of this Order and the requirements, the undertaker is granted development consent for the authorised development to be carried out within the Order limits.

(2) Each numbered work must be situated within the corresponding numbered area shown on the works plans and within the limits of deviation.

### Operation of generating station

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

(2) This article does not relieve the undertaker of any requirement to obtain any permit or licence under any other legislation that may be required from time to time to authorise the operation of an electricity generating station.

**Power to maintain the authorised development**

**5.**—(1) The undertaker may at any time maintain the authorised development.

(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 maintenance works which are likely to give rise to any materially new or materially different effects that have not been assessed in the environmental statement.

**Application and modification of statutory provisions**

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

(a) section 23 (prohibition on obstructions, etc. in watercourses) of the Land Drainage Act 1991(**a**);

(b) section 32 (variation of awards)(**b**) of the Land Drainage Act 1991;

(c) the provisions of any byelaws made under section 66 (powers to make byelaws)(**c**) of the Land Drainage Act 1991;

(d) the provisions of any byelaws made under, or having effect as if made under, paragraphs 5, 6 or 6A of Schedule 25 (byelaw making powers of the appropriate agency) to the Water Resources Act 1991(**d**);

(e) regulation 12 (requirement for environmental permit) of the Environmental Permitting (England and Wales) Regulations 2016(**e**) in respect of a flood risk activity only;

(f) the legislation listed in Schedule 3 (legislation to be disapplied) in so far as the provisions still in force are incompatible with the powers contained within this Order and do not impact on the operation or maintenance of the River Trent as a navigable river; and

(g) the provisions of the Neighbourhood Planning Act 2017(**f**) insofar as they relate to the temporary possession of land under articles 30 (temporary use of land for constructing the authorised development) and 31 (temporary use of land for maintaining the authorised development) of this Order.

(2) For the purposes of section 9 (requirement of licence for felling) of the Forestry Act 1967(**g**) any felling comprised in the carrying out of any work or operation required for the purposes of the authorised development, or in connection with, the authorised development is deemed to be immediately required for the purposes of carrying out development authorised by planning permission granted under the 1990 Act.

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

---

(**a**) 1991 c. 59. Section 23 was amended by paragraph 192(2) of Schedule 22 to the Environment Act 1995 (c. 25), paragraphs 25 and 32 of Schedule 2 to the Flood and Water Management Act 2010 (c. 29) and S.I. 2013/755.
(**b**) Section 32 was amended by S.I. 2013/755.
(**c**) Section 66 was amended by paragraphs 25 and 38 of Schedule 2 to the Flood and Water Management Act 2010 and section 86 of the Water Act 2014 (c. 21).
(**d**) Paragraph 5 was amended by section 100 of the Natural Environment and Rural Communities Act 2006 (c. 16) and S.I. 2013/755. Paragraph 6 was amended by section 105 of, and paragraph 26 of Schedule 15 to, the Environment Act 1995, and S.I. 2013/755. Paragraph 6A was inserted by section 103(3) of the Environment Act 1995.
(**e**) S.I. 2016/1154. Regulation 12 was amended by S.I. 2018/110.
(**f**) 2017 c. 20.
(**g**) Section 9 was amended by section 4 of, and paragraph 141 of, Schedule 2 to the Planning (Consequential Provisions) Act 1990 (c. 11) and S.I. 2013/755. There are other amendments to section 9 that are not relevant to this Order.
(**h**) S.I. 1997/1160.

"or

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

(4) Regulation 14 of the Town and Country Planning (Tree Preservation) (England) Regulations 2012(**a**) is modified so as to read for the purposes of this Order only as if there were inserted after paragraph 14(1)(a)(ix) the following—

"or

(x) so far as such work is necessary to implement development which has been authorised by an order granting development consent pursuant to the Planning Act 2008."

(5) Notwithstanding the provisions of section 208 (liability) of the 2008 Act, for the purposes of regulation 6 (meaning of "development") of the Community Infrastructure Levy Regulations 2010(**b**) any building comprised in the authorised development is deemed to be—

(a) a building into which people do not normally go; or

(b) a building into which people go only intermittently for the purpose of inspecting or maintaining fixed plant or machinery.

(6) 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 development for which development consent is required under the 2008 Act or part of such a development; or

(b) required to complete or enable the maintenance, use of operation of any part of the development authorised by this Order;

then the construction, maintenance, use or operation of that development under the terms of the planning permission does not constitute a breach of the terms of this Order.

(7) To the extent that any development carried out or used—

(a) pursuant to a planning permission granted under section 57 (requirement of planning permission) or section 73 (determination of applications to develop land without compliance with conditions previously attached) of the 1990 Act, including if changed by a determination by the local planning authority under section 96A (power to make non-material changes to planning permission or permission in principles) of the 1990 Act, or compliance with any conditions of that permission;

(b) pursuant to any development consent order granted under section 114 (grant or refusal of development consent) of the 2008 Act, including any corrections or amendments to that development consent order made under section 119 (correction of errors in development consent decisions) or section 152 (changes to, and revocation of, orders granted development consent) of the 2008 Act, or compliance with the terms of that development consent order; or

(c) pursuant to a consent granted by the Secretary of Statement pursuant to section 36 (consent required for construction etc of generation stations) of the 1989 Act, including any variation to that consent made under section 36C (variation of consents under section 36) of that Act;

is inconsistent with the exercise of any power, right or obligation under this Order or the authorised development, then that inconsistency is to be disregarded for the purposes of establishing whether any development which is the subject matter of that planning permission or development consent order is capable of physical implementation, and no enforcement action under the 1989 Act, 1990 Act or the 2008 Act may be taken in respect of that inconsistency, whether it relates to land inside or outside the Order limits.

---

(**a**) S.I. 2012/605.
(**b**) S.I. 2010/948, amended by S.I. 2011/987. There are other amending instruments but none are relevant to this Order.

(8) Any development or any part of a development within the Order limits which is constructed or used under the authority of any permission falling under sub-paragraphs (6) or (7) is deemed not to be a breach of, or inconsistent with, this Order and does not prevent the authorised development being carried out or used or any other power or right under this Order being exercised.

(9) In paragraph (7) "enforcement action" means any enforcing action under Part 7 (enforcement) of the 1990 Act or Part 8 of the 2008 Act, as relevant.

**Defence to proceedings in respect of statutory nuisance**

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

(a) relates to premises used by the undertaker for the purposes of the authorised development or in connection with the authorised development and that the nuisance is attributable to the construction, maintenance, operation, use or decommissioning of the authorised development in accordance with a notice served under section 60 (control of noise on construction site) of the Control of Pollution Act 1974(**b**), a consent given under section 61 (prior consent for work on construction site) of that Act, or any document approved under the provisions of Schedule 2 of the Order; or

(b) is a consequence of the construction, maintenance or decommissioning of the authorised development and that it cannot reasonably be avoided; or

(c) is a consequence of the use of the authorised development and that it cannot be reasonably 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 the premises by the undertaker for purposes of the authorised development, or in connection with the authorised development.

# PART 3

## STREETS

**Street works**

**8.**—(1) The undertaker may, for the purposes of the authorised development, enter on so much of any of the streets specified in Schedule 4 (streets subject to street works) 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 and electrical cables under the street;

(d) maintain apparatus and electrical cables under the street, change its position or remove it;

(e) repair, replace or otherwise alter the surface or structure of the street or any culvert under the street; and

(f) execute any works required for or incidental to any works referred to in sub-paragraphs (a) to (e).

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

---

(**a**) 1990 c. 43.
(**b**) 1974 c. 40.

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

**Application of the relevant permit scheme**

**9.**—(1) The relevant permit scheme applies with the modifications set out in this article to street works carried out under the power conferred by article 8 (street works) of this Order.

(2) For the purposes of this Order—

(a) a permit may not be refused or granted subject to conditions which relate to the imposition of a moratoria; and

(b) a permit may not be granted subject to conditions where compliance with those conditions would constitute a breach of this Order or where the undertaker would be unable to comply with those conditions pursuant to the powers conferred by this Order.

(3) References to moratoria in sub-paragraph (2) mean restrictions imposed under section 58 (restrictions on works following substantial road works) or section 58A (restrictions on works following substantial street works) of the 1991 Act.

(4) Without restricting the undertaker's recourse to any alternative appeal mechanism which may be available under the relevant permit scheme or otherwise, the undertaker may appeal any decision to refuse to grant a permit or to grant a permit subject to conditions pursuant to the permit scheme in accordance with the mechanism set out in Schedule 16 (procedure for discharge of requirements) of this Order.

**Power to alter layout, etc., of streets**

**10.**—(1) The undertaker may for the purposes of the authorised development, or in connection with 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 5 (alteration of streets) permanently in the manner specified in relation to that street in column 3; and

(b) in the case of the streets as specified in column 2 of the table in Part 2 (temporary alteration of layout) of Schedule 5 (alteration of streets) temporarily in the manner specified in relation to that street in column 3.

(2) Without prejudice to the specific powers conferred by paragraph (1), but subject to paragraphs (3) and (4), the undertaker may, for the purposes of the authorised development, or in connection with the authorised development, alter the layout of any street including, notwithstanding article 3 (development consent etc. granted by this Order) any street outside of the Order limits and, without limitation on the scope of this paragraph, the undertaker may—

(a) alter the level or increase the width of any kerb, footway, cycle track or verge;

(b) make and maintain passing places; and

(c) alter, remove, replace and relocate any street furniture, including bollards, lighting columns, road signs and chevron signs.

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

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

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

**Construction and maintenance of altered streets**

**11.**—(1) The permanent alterations to each of the streets specified in Part 1 (permanent alteration of layout) of Schedule 5 (alteration of streets) to this Order must be completed to the

reasonable satisfaction of the highway authority or street authority (as relevant) and, unless otherwise agreed by the highway authority or street authority, the alterations must be maintained by and at the expense of the undertaker for a period of 12 months from their completion and from the expiry of that period by and at the expense of the highway authority or street authority (as relevant).

(2) Subject to paragraph (3), the temporary alterations to each of the streets specified in Part 2 (temporary alteration of layout) of Schedule 5 (alteration of streets) must be completed to the reasonable satisfaction of the street authority and the temporary alterations must be maintained by and at the expense of the undertaker.

(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 highway authority or 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 highway authority or street authority.

(4) In any action against the undertaker in respect of loss or damage resulting from any failure by it to maintain alterations to 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 prohibition or restriction of the use of streets and public rights of way**

**12.**—(1) The undertaker may, during and for the purposes of constructing or maintaining the authorised development, temporarily prohibit the use of, restrict the use of, authorise the use of, alter or divert any street or public right of way and may for any reasonable time—

(a) divert the traffic or a class of traffic from the street or public right of way;

(b) 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

(c) subject to paragraph (2), prevent all persons from passing along the street or public right of way.

(2) The undertaker must provide reasonable access for pedestrians going to or from premises abutting a street or public right of way affected by the temporary prohibition, restriction, alteration

or diversion of a street or public right of way under this article if there would otherwise be no such access.

(3) Without prejudice to the generality of paragraph (1), the undertaker may temporarily, prohibit the use of, authorise the use of, restrict the use of, alter or divert—

(a) the streets specified in column 2 of the table in Part 1 (temporary prohibition or restriction of the use of streets) of Schedule 6 (streets and public rights of way) to the extent specified in column 3 of that table;

(b) the public rights of way specified in column 2 of the table in Part 2 (temporary prohibition or restriction of public rights of way with diversion) of Schedule 6 (streets and public rights of way) to the extent specified in column 3 of that table;

(c) the public rights of way specified in column 2 of the table in Part 3 (permanent use of motor vehicles on public rights of way) of Schedule 6 (streets and public rights of way) to the extent specified in column 3 of that table;

(d) the public rights of way specified in column 2 of the table in Part 4 (temporary management of public rights of way) of Schedule 6 (streets and public rights of way) to the extent specified in column 3 of that table; and

(e) the public rights of way specified in column 2 of the table in Part 5 (temporary use of motor vehicles on public rights of way) of Schedule 6 (streets and public rights of way) to the extent specified in column 3 of that table.

(4) The undertaker must not temporarily prohibit the use of, authorise the use of, restrict the use of, alter or divert—

(a) any street or public right of way specified in paragraph (3) without first consulting the street authority; and

(b) any other street or public right of way without the consent of the street authority, and the street authority may attach reasonable conditions to any such consent.

(5) Any person who suffers loss by the suspension of any street or private 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.

(6) Without prejudice to the scope of paragraph (1), the undertaker may use any street or public right of way the use of which has been temporarily prohibited, restricted, altered or diverted under the powers conferred by this article and within the Order limits as a temporary working site.

(7) In this article expressions used in this article and in the 1984 Act have the same meaning.

(8) Nothing in this article prevents the undertaker from temporarily, prohibiting the use of, authorising the use of, restricting the use of, altering or diverting a street or public right of way under this article more than once.

**Claimed public right of way**

**13.**—(1) Subject to the provisions of this article, the undertaker may for the purposes of the authorised development temporarily prohibit the use of, restrict the use of, authorise the use of, alter or divert any claimed public right of way shown using the yellow line on the streets, access, rights of way plans listed in Parts 2, 4 and 5 of Schedule 6 (streets and public rights of way) to an extent that does not exceed the limits of the land shown dashed pink on the streets, access, rights of way plans whether or not that street was in existence or recognised on the definitive map on the date this Order is made.

(2) Where a claimed public right of way is temporarily prohibited for use, restricted for use, authorised for use, altered or diverted under paragraph (1)—

(a) subject to paragraph (3), all public rights of way over or along the claimed public right of way are temporarily prohibited or restricted for use;

(b) subject to paragraph (4), private rights over or along a claimed public right of way are temporarily suspended or cease to have effect; and

(c) the undertaker may appropriate and authorise for use, alter or divert for the purposes of the authorised development so much of the proposed public right of way as is bounded on both sides by land owned by the undertaker.

(3) The prohibition or restriction of use of public rights of way referred to in paragraph (1) will come into effect seven working days after the undertaker serves a notice on the surveying authority giving details of the extent of the prohibition or restriction of use and including a plan showing the extent by which the public right of way has been prohibited or restricted for use.

(4) The power conferred by paragraph (1) must not be exercised by the undertaker earlier than the date on which the undertaker acquired an interest in the land comprised in the extent of the public right of way to be prohibited for use, restricted for use, authorised for use, altered or diverted and the provisions of article 24 (private rights) apply to the extinguishment or cessation of any such private rights.

(5) A notice referred to in paragraph (3) is deemed to be a legal event for the purposes of section 53(3)(a)(i)(1) of the Wildlife and Countryside Act 1981.

(6) This article is subject to article 33 (apparatus and rights of statutory undertaker in stopped up streets).

(7) Any person who suffers loss by the suspension of any private 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.

(8) In this article—

"definitive map" has the meaning given to it by section 53(1) of the Wildlife and Countryside Act 1981; and

"surveying authority" has the same meaning given to it by section 66(1)(2) (interpretation of Part III) of the Wildlife and Countryside Act 1981 and section 159 of the 2008 Act applies to this article.

**Use of private roads**

**14.**—(1) The undertaker may use any private road within the Order limits for the passage of persons or vehicles (with or without materials, plant and machinery) for the purposes of the authorised development, or in connection with the authorised development.

(2) The undertaker must compensate the person liable for the repair of a road to which paragraph (1) applies for any loss or damage which that person may suffer by reason of the exercise of the power conferred by paragraph (1).

(3) Any dispute as to a person's entitlement to compensation under paragraph (2), or as to the amount of such compensation, is to be determined under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

**Access to works**

**15.** 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 7 (access to works);

(b) form and lay out the temporary means of access in the location specified in Part 2 (temporary means of access) of Schedule 7 (access to works); and

(c) with the approval of the relevant planning authority after consultation with the highway authority, form and lay out such other means of access or improve existing means of access, at such locations within the Order limits as the undertaker reasonably requires for the purposes of the authorised development.

**Agreements with street authorities**

**16.**—(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 prohibition, restriction, alteration or diversion of a street authorised by this Order;

(c) the undertaking in the street of any of the works referred to in article 8 (street works) and article 11(1) (construction and maintenance of altered streets) and article 15 (access to 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) If such agreement provides that the street authority must undertake works on behalf of the undertaker the agreement may, without prejudice to the generality of paragraph (1)—

(a) make provision for the street authority to carry out any function under this Order which relates to the street in question;

(b) specify a reasonable time for the completion of the works; and

(c) contain such terms as to payment and otherwise as the parties consider appropriate.

**Traffic regulation measures**

**17.**—(1) Subject to the provisions of this article the undertaker may at any time, in the interests of safety and for the purposes of the authorised development, or in connection with the authorised development, temporarily place traffic signs and signals in the extents of the road specified in column 2 of the table in Schedule 8 (traffic regulation measures) and the placing of those traffic signs and signals is deemed to have been permitted by the traffic authority for the purposes of section 65 of the 1984 Act and the Traffic Signs Regulations and General Directions 2016(**a**).

(2) Subject to the provisions of this article and without limitation to the exercise of the powers conferred by paragraph (1), the undertaker may make temporary provision for the purposes of the 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 order made, or having effect as if made, under the 1984 Act.

(3) No speed limit imposed by or under this Order applies to vehicles falling within regulation 3(4) of the Road Traffic Exemptions (Special Forces) (Variation and Amendment) Regulations 2011(**b**) when in accordance with regulation 3(5) of those regulations.

(4) Before exercising the power conferred by paragraph (2) the undertaker must—

(a) consult with the chief officer of police in whose area the road is situated; and

(b) obtain the written consent of the traffic authority.

(5) The undertaker must not exercise the powers in paragraphs (1) or (2) unless it has—

---

(**a**) S.I. 2016/362.
(**b**) S.I. 2011/935.

(a) given not less than four weeks' notice in writing of its intention so to do to the chief officer of police and to the traffic authority in whose area the road is situated; and

(b) not less than seven days before the provision is to take effect published the undertaker's intention to make the provision in one or more newspapers circulating in the area in which any road to which the provision relates is situated; and

(c) displayed a site notice containing the same information at each end of the length of road affected.

(6) Any provision made under the powers conferred by paragraphs (1) or (2) of this article may be suspended, varied or revoked by the undertaker from time to time by subsequent exercise of the powers conferred by paragraph (1) or (2).

(7) Any provision made by the undertaker under paragraphs (1) or (2)—

(a) must be made by written instrument in such form as the undertaker considers appropriate;

(b) has effect as if duly made by the traffic authority in whose area the road is situated as a traffic regulation order under the 1984 Act and the instrument by which it is effected may specify specific savings and exemptions to which the provision is subject; and

(c) is deemed to be a traffic order for the purposes of Schedule 7 to the Traffic Management Act 2004(**a**) (road traffic contraventions subject to civil enforcement).

(8) In this article—

(a) subject to paragraph (b), expressions used in this article and in the 1984 Act have the same meaning; and

(b) a "road" means a road that is a public highway maintained by and at the expense of the traffic authority.

# PART 4

## SUPPLEMENTAL POWERS

**Discharge of water**

**18.**—(1) Subject to sub-paragraphs (3) and (4) and (7) the undertaker may use any watercourse or any drain for the drainage of water for the purposes of the authorised development or in connection with 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 or drain.

(2) Any dispute arising from the making of connections to or the use of a drain by the undertaker under paragraph (1) is to be determined as if it were a dispute under section 106 (right to communicate with public sewers) of the Water Industry Act 1991(**b**).

(3) The undertaker must not discharge any water into any watercourse or drain except with the consent of the person to whom it belongs whose consent may be given subject to terms and conditions as that person may reasonably impose.

(4) The undertaker must not make any opening into any drain except—

(a) in accordance with plans approved by the person to whom the drain belongs; and

(b) where that person has been given the opportunity to supervise the making of the opening.

(5) Where the undertaker discharges water into, or makes any opening into, a watercourse or drain belonging to or under the control of a drainage authority (as defined in Part 3 of Schedule 15 (protective provisions)), the provisions of Part 3 of Schedule 15 (protective provisions) apply in substitution for the provisions of paragraphs (3) and (4).

---

(**a**) 2004 c. 18.
(**b**) 1991 c. 56.

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

(7) This article does not authorise the entry into controlled waters (within the meaning given by section 104 of the Water Resources Act 1991) of any matter whose entry or discharge into controlled waters requires a licence pursuant to the Environmental Permitting (England and Wales) Regulations 2016(**a**).

(8) In this article—

(a) "drain" means a drain which belongs to Homes England, the Environment Agency, an internal drainage board, a joint planning board, a local authority, a National Park Authority, a sewerage undertaker or an urban development corporation; and

(b) other expressions, excluding watercourse, used both in this article and in the Water Resources Act 1991(**b**) have the same meaning as in that Act.

**Protective works to buildings**

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

(2) Protective works may be carried out—

(a) at any time before or during the construction of any part of the authorised development in the vicinity of the building; or

(b) after the completion of that part of the authorised development in the vicinity of the building at any time up to the end of the period of five years beginning with the date of final commissioning; and

(c) to facilitate or during decommissioning of any part of the authorised development in the vicinity of the building.

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

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

(a) enter the building and any land within its curtilage; and

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

(5) Before exercising—

(a) a right under paragraph (1) to carry out protective works to a building;

(b) a right under paragraph (3) to enter a building and land within its curtilage;

(c) a right under paragraph (4)(a) to enter a building and land within its curtilage; or

(d) a right under paragraph (4)(b) to enter land,

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

(6) Where a notice is served under paragraph (5)(a), (5)(c) or (5)(d), the owner or occupier of the building or land concerned may, by serving a counter-notice within the period of 10 days

(**a**) S.I. 2016/1154.
(**b**) 1991 c. 57.

beginning with the day on which the notice was served, require the question whether it is necessary or expedient to carry out the protective works or to enter the building or land to be referred to arbitration under article 43 (arbitration).

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

(8) Where—

(a) protective works are carried out under this article to a building; and

(b) within the period of five years beginning with the date of final commissioning of the relevant part of the authorised development it appears protective works are inadequate to protect the building against damage caused by the construction or use of that part of the authorised development,

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

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

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

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

(12) In this article "protective works" in relation to a building means—

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

(b) any works the purpose of which is to remedy any damage which has been caused to the building by the construction, maintenance, decommissioning or use of the authorised development.

**Authority to survey and investigate the land**

**20.**—(1) The undertaker may for the purposes of this Order enter on any land shown within the Order limits or enter on any land which may be affected by the authorised development or enter on any land upon which entry is required in order to carry out monitoring or surveys in respect of the authorised development and—

(a) survey or investigate the land;

(b) without prejudice to the generality of sub-paragraph (a), make trial holes or bore holes in such positions on the land as the undertaker thinks fit to investigate the nature of the surface layer and subsoil and groundwater and remove soil and groundwater samples;

(c) without prejudice to the generality of sub-paragraph (a), carry out ecological or archaeological investigations on such land, including the digging of trenches; and

(d) place on, leave on and remove from the land apparatus for use in connection with the survey and investigation of land and making of trial holes, bore holes or trenches.

(2) No land may be entered or equipment placed or left on or removed from the land under paragraph (1) unless at least 14 days' notice has been served on every owner and occupier of the land.

(3) Any person entering land under this article on behalf of the undertaker—

(a) must, if so required before entering the land, produce written evidence of their authority to do so; and

(b) may take with them such vehicles and equipment as are necessary to carry out the survey or investigation or to make the trial holes.

(4) No trial holes are to be made under this article—

(a) in land located within the highway boundary without the consent of the highway authority; or

(b) in a private street without the consent of the street authority.

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

# PART 5

## POWERS OF ACQUISITION

### Compulsory acquisition of land

**21.**—(1) The undertaker may acquire compulsorily so much of the Order land as is required for the authorised development or to facilitate, or as is incidental, to it.

(2) This article is subject to article 22 (time limit for exercise of authority to acquire land compulsorily), article 23 (compulsory acquisition of rights), article 30 (temporary use of land for constructing the authorised development) and article 32 (statutory undertakers) and article 49 (Crown rights).

### Time limit for exercise of authority to acquire land compulsorily

**22.**—(1) The applicable period for the purposes of section 4 of the 1965 Act (time limit for giving notice to treat) and section 5A of the 1981 Act (time limit for general vesting declaration) is five years beginning on the day on which this Order is made.

(2) No notice to treat is to be served under Part 1 (compulsory purchase under Acquisition of Land Act 1981) of the 1965 Act and no declaration is to be executed under section 4 (execution of declaration) of the 1981 Act as applied by article 25 (application of the 1981 Act) after the end of the applicable period, including any extension to the applicable period pursuant to those Acts.

(3) The authority conferred by article 30 (temporary use of land for constructing the authorised development) must not be used after the end of the applicable period referred to in sub-paragraph (1), save that if an application is made under section 118 of the 2008 Act (legal challenges relating to applications for orders granting development consent) the applicable period is to be extended by—

(a) a period equivalent to the period beginning on the day the application is made and ending on the day it is withdrawn or finally determined; or

(b) if shorter, one year.

(4) An application is not finally determined for the purposes of sub-paragraph (3)(a) if an appeal in respect of the application—

(a) could be brought (ignoring any possibility of an appeal out of time with permission); or

(b) has been made and not withdrawn or finally determined.

(5) Nothing in sub-paragraph (3) 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**

**23.**—(1) Subject to paragraph (2) and article 30 (temporary use of land for constructing the authorised development), the undertaker may acquire compulsorily such rights over the Order land or impose such restrictive covenants over the Order land as may be required for any purpose for which that land may be acquired under article 21 (compulsory acquisition of land), by creating them as well as by acquiring rights already in existence.

(2) Subject to the provisions of this paragraph, article 24 (private rights) and article 32 (statutory undertakers), in the case of the Order land specified in column 1 of the table in Schedule 9 (land in which only new rights etc. may be acquired) the undertaker's powers of compulsory acquisition are limited to the acquisition of existing rights and benefit of restrictive covenants over that land and the creation and acquisition of such new rights and the imposition of restrictive covenants for the purpose specified in relation to that land in column 2 of the table in that Schedule.

(3) Subject to section 8 (other provisions as to divided land) and Schedule 2A (counter-notice requiring purchase of land) of the 1965 Act (as substituted by paragraph 5(8) of Schedule 10 (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 10 (modification of compensation and compulsory purchase enactments for the creation of new rights and imposition of new restrictive covenants) has effect for the purpose of modifying the enactments relating to compensation and the provisions of the 1965 Act in their application in relation to the compulsory acquisition under this article of a right over land by the creation of a new right or the imposition of restrictive covenants.

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

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

(7) This article is subject to article 49 (Crown rights).

(8) Subject to the modifications set out in Schedule 10 (modification of compensation and compulsory purchase enactments for the creation of new rights and imposition of restrictive covenants) the enactments for the time being in force with respect to compensation for the compulsory purchase of land are to apply in the case of a compulsory acquisition of this Order in respect of a right by the creation of a new right or imposition of a restrictive covenant as they apply to the compulsory purchase of land and interests in land.

**Private rights**

**24.**—(1) Subject to the provisions of this article, all private rights and restrictive covenants over land subject to compulsory acquisition under this Order are extinguished—

(a) from the date of acquisition of the land, whether compulsorily or by agreement or through the grant of a lease of the land by agreement; or

(b) on the date of entry on the land by the undertaker under section 11(1) (power of entry) of the 1965 Act,

whichever is the earliest.

(2) Subject to the provisions of this article, all private rights or restrictive covenants over land subject to the compulsory acquisition of rights or the imposition of restrictive covenants under article 23 (compulsory acquisition of rights) cease to have effect in so far as their continuance would be inconsistent with the exercise of the right or compliance with the restrictive covenant—

(a) as from the date of the acquisition of the right or imposition of the restrictive covenant by the undertaker (whether the right is acquired compulsorily, by agreement or through the grant of a lease of the land by agreement); or

(b) on the date of entry on the land by the undertaker under section 11(1) (power of entry) of the 1965 Act in pursuance of the right,

whichever is the earliest.

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

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

(5) This article does not apply in relation to any right to which section 138 (extinguishment of rights, and removal of apparatus, of statutory undertakers etc.) of the 2008 Act or article 32 (statutory undertakers) applies.

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

(a) any notice given by the undertaker before—

(i) the completion of the acquisition of the land or the acquisition of rights or the imposition of restrictive covenants over or affecting the land;

(ii) the undertaker's appropriation of the land;

(iii) the undertaker's entry onto the land; or

(iv) the undertaker's taking temporary possession of the land,

stating that any or all of those paragraphs do not apply to any right specified in the notice; or

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

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

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

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

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

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

**Application of the 1981 Act**

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

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

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

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

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

(5) In section 5B(1) (extension of time limit during challenge) for "section 23 of the Acquisition of Land Act 1981 (application to High Court in respect of compulsory purchase order)," substitute "section 118 of the 2008 Act (legal challenges relating to applications for orders granting development consent)".

(6) In section 6 (notices after extension 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".

(7) 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)".

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

> "(2) But see article 26(3) (acquisition of subsoil only) of the Tillbridge Solar Order 202[*], which excludes the acquisition of subsoil only from this Schedule."

(9) References to the 1965 Act in the 1981 Act must be construed as references to the 1965 Act as applied by section 125 (application of compulsory acquisition provisions) of the 2008 Act (and as modified by article 28 (modification of Part 1 of the Compulsory Purchase Act 1965)) to the compulsory acquisition of land under this Order.

**Acquisition of subsoil only**

**26.**—(1) The undertaker may acquire compulsorily so much of, or such rights in, the subsoil of the land referred to in paragraph (1) of article 21 (compulsory acquisition of land) or article 23 (compulsory acquisition of rights) as may be required for any purpose for which that land may be acquired under that provision instead of acquiring the whole of the land.

(2) Where the undertaker acquires any part of, or rights in, the subsoil of the 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 as modified by Schedule 10 (modification of compensation and compulsory purchase enactments for the creation of new rights and imposition of new restrictive covenants);;

(b) Schedule A1 (counter-notice requiring purchase of land not in general vesting declaration) to the 1981 Act; and

(c) section 153(4A) (blighted land: proposed acquisition of part interest; material detriment test) of the 1990 Act.

(4) Paragraphs (2) and (3) are to be disregarded where the undertaker acquires a cellar, vault, arch or other construction forming part of a house, building or manufactory.

**Power to override easements and other rights**

**27.**—(1) Any authorised activity which takes place on land within the Order land (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) activities carried out for the purposes of the authorised development or in connection with the authorised development;

(b) the exercise of any power authorised by the Order; or

(c) the use of any land within the Order land (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 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 or any contractors, servants or agents of 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**

**28.**—(1) Part 1 of the 1965 Act (compulsory acquisition under Acquisition of Land Act 1981), as applied to this Order by section 125 (application of compulsory acquisition provisions) of the 2008 Act, is modified as follows.

(2) In section 4A(1) (extension of time limit during challenge) for "section 23 of the Acquisition of Land Act 1981 (application to the High Court in respect of compulsory purchase order" substitute "section 118 (legal challenges relating to applications for orders granting development consent) of the 2008 Act".

(3) In section 11A (powers of entry: further notice of entry)—

(a) in subsection (1)(a), after "land" insert "under that provision"; and

(b) in subsection (2), after "land" insert "under that provision".

(4) In Schedule 2A (counter-notice requiring purchase of land not in notice to treat)—

(a) for paragraphs 1(2) and 14(2) substitute—

"(2) But see article 26(3) (acquisition of subsoil only) of the Tillbridge Solar 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 19 (protective works to buildings), article 30 (temporary use of land for constructing the authorised development) or article 31 (temporary use of land for maintaining the authorised development) of the Tillbridge Solar Order 202[*]."

**Rights under or over streets**

**29.**—(1) The undertaker may enter on, appropriate and use so much of the subsoil of or airspace over any street within the Order land as may be required for the purposes of the authorised

development and may use the subsoil or airspace for those purposes or any other purpose ancillary to the authorised development.

(2) Subject to paragraph (3), the undertaker may exercise any power conferred by paragraph (1) in relation to a street without being required to acquire any part of the street or any easement or right in the street.

(3) Paragraph (2) does not apply in relation to—

(a) any subway or underground building; or

(b) any cellar, vault, arch or other construction in, on or under a street which forms part of a building fronting onto the street.

(4) Subject to paragraph (5), any person who is an owner or occupier of land appropriated under paragraph (1) without the undertaker acquiring any part of that person's interest in the land, and who suffers loss as a result, is entitled to compensation to be determined, in case of dispute, under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

(5) Compensation is not payable under paragraph (4) to any person who is an undertaker to whom section 85 (sharing cost of necessary measures) of the 1991 Act applies in respect of measures of which the allowable costs are to be borne in accordance with that section.

**Temporary use of land for constructing the authorised development**

**30.**—(1) The undertaker may, in connection with the construction of the authorised development—

(a) enter on and take temporary possession of—

(i) so much of the land specified in column (1) of the table in Schedule 11 (land of which temporary possession may be taken) for the purpose specified in relation to the land in column (2) of that table; and

(ii) any other Order land in respect of which no notice of entry has been served under section 11 of the 1965 Act (powers of entry) and no declaration has been made under section 4 of the 1981 Act (execution of declaration);

(b) remove any buildings, agricultural plant and apparatus, drainage, fences, debris and vegetation from that land;

(c) construct temporary works (including means of access), 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 Schedule 1 (authorised development); and

(f) carry out mitigation works required under the requirements in Schedule 2 (requirements).

(2) Paragraph (1) does not authorise the undertaker to take temporary possession of—

(a) any house or garden belonging to a house; or

(b) any building (other than a house) if it is for the time being occupied.

(3) Not less than 14 days before entering on and taking temporary possession of land under this article the undertaker must serve notice of the intended entry on the owners and occupiers of the land.

(4) The undertaker must not, without the agreement of the owners of the land, remain in possession of any land under this article—

(a) in the case of the land referred to in paragraph (1)(a)(i) after the end of the period of one year beginning with the date of final commissioning of the part of the authorised development for which temporary possession of the land was taken; or

(b) in the case of land referred to in paragraph (1)(a)(ii) after the end of the period of one year beginning with the date of final commissioning of the part of the authorised

development for which temporary possession of the land was taken unless the undertaker has, before the end of that period, served a notice of entry under section 11 of the 1965 Act or made a declaration under section 4 of the 1981 Act in relation to that land.

(5) Unless the undertaker has served notice of entry under section 11 of the 1965 Act or made a declaration under section 4 of the 1981 Act or otherwise acquired the land or rights over land subject to temporary possession, the undertaker must before giving up possession of land of which temporary possession has been taken under this article, remove all works and restore the land to the reasonable satisfaction of the owners of the land; but the undertaker is not required to—

(a) replace any building, structure, debris, drain or electric line removed under this article;

(b) remove any drainage works installed by the undertaker under this article;

(c) remove any new road surface or other improvements carried out under this article to any street specified in Schedule 4 (streets subject to street works), Schedule 5 (alteration of streets) or Schedule 7 (access to works);

(d) remove any fencing or boundary treatments installed by the undertaker under this article to replace or enhance existing fencing or boundary treatments; or

(e) restore the land on which any works have been carried out under paragraph (1)(f) insofar as the works relate to mitigation, compensation or enhancement works identified in the environmental statement or required pursuant to the requirements in Schedule 2 (requirements).

(6) The undertaker must pay compensation to the owners and occupiers of land of which temporary possession is taken under this article for any loss or damage arising from the exercise in relation to the land of the provisions of any power conferred by this article.

(7) Any dispute as to a person's entitlement to compensation under paragraph (6), or as to the amount of compensation, must be determined under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

(8) Nothing in this article affects any liability to pay compensation under section 152 (compensation in case where no right to claim in nuisance) of the 2008 Act or under any other enactment in respect of loss or damage arising from the carrying out of the authorised development, other than loss or damage for which compensation is payable under paragraph (6).

(9) Where the undertaker takes possession of land under this article, the undertaker is not required to acquire the land or any interest in it.

(10) The undertaker must not compulsorily acquire, acquire new rights over or impose restrictive covenants over, the land referred to in paragraph (1)(a)(i) under this Order.

(11) Nothing in this article precludes the undertaker from—

(a) creating and acquiring new rights or imposing restrictions over any part of the Order land identified in Schedule 9 (land in which only new rights etc. may be acquired); or

(b) acquiring any part of the subsoil of (or rights in the subsoil of) that land under article 26 (acquisition of subsoil only) or any part of the subsoil of or airspace over that land under article 29 (rights under or over streets).

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

(13) 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**

**31.**—(1) Subject to paragraph (2), at any time during the maintenance period relating to any part of the authorised development, the undertaker may—

(a) enter on and take temporary possession of any land within the Order land if such possession is reasonably required for the purpose of maintaining the authorised development;

(b) enter on any land within the Order land for the purpose of gaining such access as is reasonably required for the purpose of maintaining the authorised development; and

(c) construct such temporary works (including the provision of means of access) and buildings on the land as may be reasonably necessary for that purpose.

(2) Paragraph (1) does not authorise the undertaker to take temporary possession of—

(a) any house or garden belonging to a house; or

(b) any building (other than a house) if it is for the time being occupied.

(3) Not less than 28 days before entering on and taking temporary possession of land under this article the undertaker must serve notice of the intended entry on the owners and occupiers of the land.

(4) The undertaker may only remain in possession of land under this article for so long as may be reasonably necessary to carry out the maintenance of the part of the authorised development for which possession of the land was taken.

(5) Before giving up possession of land of which temporary possession has been taken under this article, the undertaker must remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land.

(6) The undertaker must pay compensation to the owners and occupiers of land of which temporary possession is taken under this article for any loss or damage arising from the exercise in relation to the land of the provisions of this article.

(7) Any dispute as to a person's entitlement to compensation under paragraph (6), or as to the amount of compensation, must be determined under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

(8) Nothing in this article affects any liability to pay compensation under section 152 (compensation in case where no right to claim in nuisance) of the 2008 Act or under any other enactment in respect of loss or damage arising from the maintenance of the authorised development, other than loss or damage for which compensation is payable under paragraph (6).

(9) Where the undertaker takes possession of land under this article, the undertaker is not required to acquire the land or any interest in it.

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

(11) In this article "the maintenance period" means the period of five years beginning with the date of final commissioning of the part of the authorised development for which temporary possession is required under this article except where maintenance relates to landscaping or ecological works in which case "the maintenance period" means such period as set out in the landscape and ecological management plan which is approved by the relevant planning authority pursuant to requirement 7 beginning with the date on which that part of the landscaping is completed.

**Statutory undertakers**

**32.** Subject to the provisions of Schedule 15 (protective provisions) the undertaker may—

(a) acquire compulsorily, or acquire new rights or impose restrictive covenants over, the land belonging to statutory undertakers shown on the land plans 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 closed streets**

**33.** Where a street, public right of way or claimed public right of way is altered or diverted or its use is temporarily prohibited or restricted under article 8 (street works), article 10 (power to alter layout, etc., of streets), article 11 (construction and maintenance of altered streets), article 12 (temporary prohibition or restriction of the use of streets and public rights of way) or article 13 (claimed public right of way) any statutory undertaker whose apparatus is under, in, on, along or across the street has the same powers and rights in respect of that apparatus, subject to Schedule 15 (protective provisions), as if this Order had not been made.

**Recovery of costs of new connections**

**34.**—(1) Where any apparatus of a public utility undertaker or of a public communications provider is removed under article 32 (statutory undertakers) any person who is the owner or occupier of premises to which a supply was given from that apparatus is entitled to recover from the undertaker compensation in respect of expenditure reasonably incurred by that person, in consequence of the removal, for the purpose of effecting a connection between the premises and any other apparatus from which a supply is given.

(2) Paragraph (1) does not apply in the case of the removal of a public sewer but where such a sewer is removed under article 32 (statutory undertakers), any person who is—

(a) the owner or occupier of premises the drains of which communicated with that sewer; or

(b) the owner of a private sewer which communicated with that sewer,

is entitled to recover from the undertaker compensation in respect of expenditure reasonably incurred by that person, in consequence of the removal, for the purpose of making the drain or sewer belonging to that person communicate with any other public sewer or with a private sewerage disposal plant.

(3) This article does not have effect in relation to apparatus to which Part 3 (street works in England and Wales) of the 1991 Act applies.

(4) In this article—

"public communications provider" has the same meaning as in section 151(1) (interpretation of Chapter 1) of the Communications Act 2003(**a**); and

"public utility undertaker" has the same meaning as in the 1980 Act.

# PART 6

## MISCELLANEOUS AND GENERAL

**Benefit of the Order**

**35.**—(1) Subject to sub-paragraph (2) and article 36 (consent to transfer the benefit of the Order), the provisions of this Order have effect solely for the benefit of the undertaker.

(2) Paragraph (1) does not apply to Work No. 5 in respect of which the provisions of this Order are for the benefit of the undertaker and National Grid.

**Consent to transfer the benefit of the Order**

**36.**—(1) Subject to the powers of this Order, the undertaker may—

(a) transfer to another person ("the transferee") any or all of the benefit of the provisions of this Order and such related statutory rights as may be agreed between the undertaker and the transferee; and

---

(**a**) 2003 c. 21.

(b) grant to another person ("the lessee") for a period agreed between the undertaker and the lessee any or all of the benefit of the provisions of this Order and such related statutory rights as may be so agreed.

(2) Where a transfer or grant has been made references in this Order to the undertaker, except in paragraph (8), are to include references to the transferee or lessee.

(3) The consent of the Secretary of State is required for the exercise of the powers of paragraph (1) except where—

(a) the transferee or lessee is the holder of a licence under section 6 (licences authorising supply etc.) of the 1989 Act;

(b) the transfer or grant relates to Work No. 4C to 4E and the transferee or lessee (as relevant) is the Cottam undertaker; or

(c) the transfer or grant relates to Work No. 4E and the transferee or lessee (as relevant) is the Gate Burton undertaker; or

(d) the transfer or grant relates to Work No. 4D and 4E and the transferee or lessee (as relevant) is West Burton undertaker; or

(e) the time limits for claims for compensation in respect of the acquisition of land or effects upon land under this Order have elapsed and—

(i) no such claims have been made;

(ii) any such claim has been made and has been compromised or withdrawn;

(iii) compensation has been paid in full and final settlement of any such claim;

(iv) payment of compensation into court has taken place in lieu of settlement of any such claim; or

(v) it has been determined by a tribunal or court of competent jurisdiction in respect of any such claim that no compensation is payable.

(4) Where the consent of the Secretary of State is not required, the undertaker must notify the Secretary of State and the relevant planning authorities in writing before transferring or granting a benefit referred to in paragraph (1).

(5) The notification referred to in paragraph (4) must state—

(a) the name and contact details of the person to whom the benefit of the powers will be transferred or granted;

(b) subject to paragraph (6), the date on which the transfer will take effect;

(c) the powers to be transferred or granted;

(d) pursuant to paragraph (8), the restrictions, liabilities and obligations that will apply to the person exercising the powers transferred or granted; and

(e) where relevant, a plan showing the works or areas to which the transfer or grant relates.

(6) The date specified under paragraph (5)(b) must not be earlier than the expiry of ten working days from the date of the receipt of the notification.

(7) The notification given must be signed by the undertaker and the person to whom the benefit of the powers will be transferred or granted as specified in that notification.

(8) Where the undertaker has transferred any benefit, or for the duration of any period during which the undertaker has granted any benefit—

(a) the benefit transferred or granted ("the transferred benefit") must include any rights that are conferred, and any obligations that are imposed, by virtue of the provisions to which the benefit relates;

(b) the transferred benefit will reside exclusively with the transferee or, as the case may be, the lessee and the transferred benefit will not be enforceable against the undertaker; and

(c) the exercise by a person of any benefits or rights conferred in accordance with any transfer or grant is subject to the same restrictions, liabilities and obligations as would apply under this Order if those benefits or rights were exercised by the undertaker.

**Application of landlord and tenant law**

**37.**—(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 purposes of the authorised development, or any part of it,

so far as any such agreement relates to the terms on which any land which is the subject of a lease granted by or under that agreement is to be provided for that person's use.

(2) No enactment or rule of law regulating the rights and obligations of landlords and tenants prejudices the operation of any agreement to which this article applies.

(3) Accordingly, no such enactment or rule of law applies in relation to the rights and obligations of the parties to any lease granted by or under any such agreement, so as to—

(a) exclude or in any respect modify any of the rights and obligations of those parties under the terms of the lease, whether with respect to the termination of the tenancy or any other matter;

(b) confer or impose on any such party any right or obligation arising out of or connected with anything done or omitted on or in relation to land which is the subject of the lease, in addition to any such right or obligation provided for by the terms of the lease; or

(c) restrict the enforcement (whether by action for damages or otherwise) by any party to the lease of any obligation of any other party under the lease.

**Operational land for the purposes of the 1990 Act**

**38.** Development consent granted by this Order is to be treated as specific planning permission for the purposes of section 264(3) (cases in which land is to be treated as operational land) of the 1990 Act.

**Felling or lopping of trees and removal of hedgerows**

**39.**—(1) The undertaker may fell or lop any tree or shrub within or overhanging land within the Order limits or cut back its roots, if it reasonably believes it to be necessary to do so to prevent the tree or shrub from—

(a) obstructing or interfering with the construction, maintenance or operation of the authorised development or any apparatus used in connection with the authorised development;

(b) constituting a danger to persons using the authorised development; or

(c) obstructing or interfering with the passage of vehicles to the extent necessary for the purposes of construction or decommissioning of the authorised development.

(2) In carrying out any activity authorised by paragraph (1) the undertaker must do no unnecessary damage to any tree or shrub and must pay compensation to any person for any loss or damage arising from such activity.

(3) Any dispute as to a person's entitlement to compensation under paragraph (2), or as to the amount of compensation, is to be determined under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

(4) The undertaker may, for the purposes of the authorised development and subject to paragraph (2), remove any hedgerows within the Order limits that may be required for the purposes of constructing the authorised development.

(5) Without prejudice to the generality of paragraph (4), the undertaker may, for the purposes of the authorised development or in connection with the authorised development and subject to paragraph (2), remove part of the hedgerows specified in column 2 of the table in part 1 and column 2 of the table in part 2 of Schedule 12 (hedgerows to be removed) and shown on the hedgerow removal plan.

(6) The undertaker may not pursuant to paragraphs (1), (4) or (5) fell or lop a tree or remove hedgerows within the extent of the publicly maintainable highway without the prior consent of the highway authority.

(7) In this article "hedgerow" has the same meaning as in the Hedgerows Regulations 1997.

**Trees subject to tree preservation orders**

**40.**—(1) Subject to paragraph (2), the undertaker must not under the powers of this article fell, lop, prune, or cut back the roots of any tree which is the subject of a tree preservation order.

(2) The undertaker may fell or lop any tree that is subject to a tree preservation order which was made after 10 April 2024 within or overhanging land within the Order limits or cut back its roots, if it reasonably believes it to be necessary to do so in order to prevent the tree from obstructing or interfering with the construction, maintenance or operation of the authorised development or any apparatus used in connection with the authorised development.

(3) In carrying out any activity authorised by paragraph (1)—

(a) the undertaker must do no unnecessary damage to any tree and must pay compensation to any person for any loss or damage arising from such activity; and

(b) the duty contained in section 206(1) (replacement of trees) of the 1990 Act does not apply.

(4) The authority given by paragraph (1) constitutes a deemed consent under the relevant tree preservation order.

(5) Any dispute as to a person's entitlement to compensation under paragraph (3), or as to the amount of compensation, is to be determined under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

**Certification of plans and documents, etc.**

**41.**—(1) The undertaker must, as soon as practicable after the making of this Order, submit to the Secretary of State copies of all documents and plans listed in the table at Schedule 13 (documents and plans to be certified) for certification that they are true copies of the documents referred to in this Order.

(2) A plan or document so certified is admissible in any proceedings as evidence of the contents of the document of which it is a copy.

**No double recovery**

**42.** Compensation is not payable in respect of the same matter both under this Order and under any enactment, any contract or any rule of law.

**Arbitration**

**43.**—(1) Any difference under any provision of this Order, unless otherwise provided for, is to be referred to and settled in arbitration in accordance with the rules set out in Schedule 14 (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 is not subject to arbitration.

**Protective provisions**

**44.** Schedule 15 (protective provisions) has effect.

**Service of notices**

**45.**—(1) A notice or other document required or authorised to be served for the purposes of this Order may be served—

(a) by post;

(b) by delivering it to the person on whom it is to be served or to whom it is to be given or supplied; or

(c) with the consent of the recipient and subject to paragraphs (6) to (8), by electronic transmission.

(2) Where the person on whom a notice or other document to be served for the purposes of this Order is a body corporate, the notice or document is duly served if it is served on the secretary or clerk of that body.

(3) For the purposes of section 7 (references to service by post) of the Interpretation Act 1978( ) 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 that time of service.

(4) Where for the purpose of this Order a notice or other document is required or authorised to be served on a person as having an interest in, or as the occupier of, land and the name or address of that person cannot be ascertained after reasonable enquiry, the notice may be served by—

(a) addressing it to that person by the description of "owner", or as the case may be "occupier" of the land (describing it); and

(b) either leaving it in the hands of the person who is or appears to be resident or employed on the land or leaving it conspicuously affixed to some building or object on or near the land.

(5) Where a notice or other document required to be served or sent for the purposes of this Order is served or sent by electronic transmission the requirement is to be taken to be fulfilled only where—

(a) the recipient of the notice or other document to be transmitted has given consent to the use of electronic transmission in writing or by electronic transmission;

(b) the notice or document is capable of being accessed by the recipient;

(c) the notice or document is legible in all material respects; and

(d) the notice or document is in a form sufficiently permanent to be used for subsequent reference.

(6) Where the recipient of a notice or other document served or sent by electronic transmission notifies the sender within seven days of receipt that the recipient requires a paper copy of all or any part of that notice or other document the sender must provide such a copy as soon as reasonably practicable.

(7) Any consent to the use of an electronic transmission by a person may be revoked by that person in accordance with paragraph (8).

(8) Where a person is no longer willing to accept the use of electronic transmission for any of the purposes of this Order—

(a) that person must give notice in writing or by electronic transmission revoking any consent given by that person for that purpose; and

(b) such revocation is final and takes effect on a date specified by the person in the notice but that date must not be less than seven days after the date on which the notice is given.

(9) This article does not exclude the employment of any method of service not expressly provided for by it.

**Procedure in relation to certain approvals etc.**

**46.**—(1) Where an application is made to or request is made of, a consenting authority for any consent, agreement or approval required or contemplated by any of the provisions of the Order (not including the requirements), such consent, agreement or approval to be validly given, must 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) Schedule 16 (procedure for discharge of requirements) has effect in relation to all consents, agreements or approvals required, granted, refused or withheld in relation to the requirements.

(4) Save for applications made pursuant to Schedule 16 (procedure for discharge of requirements) and where stated to the contrary if, within eight weeks (or such longer period as may be agreed between the undertaker and the relevant consenting authority in writing) after the application or request has been submitted to a consenting authority it has not notified the undertaker of its disapproval and the grounds of disapproval, it is deemed to have approved the application or request.

(5) Where any application is made as described in paragraph (1), the undertaker must include a statement in such application that refers to the timeframe for consideration of the application and the consequences of failure to meet that timeframe as prescribed by paragraph (4).

(6) Schedule 16 (procedure for discharge of requirements) does not apply in respect of any consents, agreements or approvals contemplated by the provisions of Schedule 15 (protective provisions) or any dispute under article 19(6) (protective works to buildings) to which paragraph (4) applies.

(7) In this article "consenting authority" means the relevant planning authority, highway authority, traffic authority, street authority, the owner of a watercourse, sewer or drain or the beneficiary of any of the protective provisions contained in Schedule 15 (protective provisions).

**Guarantees in respect of payment of compensation**

**47.**—(1) The undertaker must not exercise the powers conferred by the provisions referred to in paragraph (2) in relation to any part of the Order land unless it has first put in place either—

(a) a guarantee, the form and amount of which has been approved by the Secretary of State in respect of the liabilities of the undertaker to pay compensation pursuant to the provisions referred to in paragraph (2) in respect of the relevant provision in relation to that part of the Order land; or

(b) an alternative form of security, the form and amount of which has been approved by the Secretary of State in respect of the liabilities of the undertaker to pay compensation pursuant to the provisions referred to in paragraph (2) in respect of the relevant provision in relation to that part of the Order land.

(2) The provisions are—

(a) article 21 (compulsory acquisition of land);

(b) article 23 (compulsory acquisition of rights);

(c) article 24 (private rights);

(d) article 29 (rights under or over streets);

(e) article 30 (temporary use of land for constructing the authorised development);

(f) article 31 (temporary use of land for maintaining the authorised development); and

(g) article 32 (statutory undertakers).

(3) A guarantee or alternative form of security given in respect of any liability of the undertaker to pay compensation under this Order is to be treated as enforceable against the guarantor or person providing the alternative form of security by any person to whom such compensation is payable and must be in such a form as to be capable of enforcement by such a person.

(4) Nothing in this article requires a guarantee or alternative form of security to be in place for more than 15 years after the date on which the relevant power is exercised.

**Compulsory acquisition of land – incorporation of the mineral code**

**48.** Parts 2 and 3 of Schedule 2 (minerals) to the Acquisition of Land Act 1981(**a**) are incorporated into this Order subject to the 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.

**Crown rights**

**49.**—(1) Nothing in this Order affects prejudicially any estate, right, power, privilege, authority or exemption of the Crown and in particular, nothing in this Order authorises the undertaker or lessee or any licensee to take, use, enter upon or in any manner interfere with any land or rights of any description (including any portion of the shore or bed of the sea or any river, channel, creek, bay or estuary—

(a) belonging to His Majesty in right of the Crown and forming part of The Crown Estate without the consent in writing of the Crown Estate Commissioners;

(b) belonging to His Majesty in right of the Crown and not forming part of The Crown Estate without the consent in writing of the government department having the management of that land; or

(c) belonging to a government department or held in trust for His Majesty for the purposes of a government department without the consent in writing of that government department.

(2) Paragraph (1) does not apply to the exercise of any right under this Order for the compulsory acquisition of an interest in land (as defined in the 2008 Act) which is for the time being held otherwise than by or on behalf of the Crown.

(3) A consent under paragraph (1) may be given unconditionally or subject to terms and conditions and is deemed to have been given in writing where it is sent electronically.

Signed by authority of the Secretary of State for [ ]

*Name*
Address Title
Date Department for [ ]

# SCHEDULES

## SCHEDULE 1 Article 3

## AUTHORISED DEVELOPMENT

**Interpretation**

**1.** In this Schedule—

(**a**) 1981 c. 67.

"auxiliary equipment" means Low Voltage AC distribution board, Low Voltage DC distribution board, Battery and Charger panel, the power panel for security lighting, Protection and Control Panel and Telecom and Metering Panel and lightning protection;

"battery modules" means equipment used for the storage of electrical energy;

"battery energy storage systems" (BESS) means all components within Work No. 2;

"BESS Enclosure" means the components detailed within Work No 2(a) and (b);

"BESS-Solar Station Compound" means all components within Work No 2(a) – (e) and Work No 1(b);

"DC/DC converter" means an electrical device that converts the voltage of the direct current (DC) into another level of voltage;

"electrical cables" means—

(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; and

(b) works associated with cable laying including jointing pits, hardstanding adjoining the jointing pits, link boxes, combiner boxes, fibre bays, cable ducts, cable protection, joint protection, manholes, kiosks, marker posts, underground cable marker, tiles and tape, send and receive pits for horizontal directional drilling, trenching, lighting, and a pit or container to capture fluids associated with drilling;

"equipment storage" means a total area of 1,200m2 for either—

(a) open storage covered by a canopy for weather protection;

(b) the use of storage containers; and/or

(c) the provision of parking areas and associated infrastructure;

"inverter" means electrical equipment required to convert direct current power to alternating current;

"mounting structure" means a rack made with galvanised steel and/or magnelis or other material designed to support the solar panels and mounted on piles driven into the ground, piles rammed into a pre-drilled hole, a pillar attaching to a steel ground screw, or pillars fixed to concrete foundations of concrete ballasts and includes drives and motors;

"National Grid Cottam substation" means the existing 400kV substation at Cottam Power Station owned and operated by National Grid;

"permissive paths" means new access tracks providing restricted public access within the Order limits along the route shown on the access and rights of way plans;

"solar farm control centre" means an operations and maintenance building;

"solar panel" means a solar photovoltaic panel or module designed to convert solar irradiance to electrical energy;

"Solar Station" means a station comprising inverters, transformers and switchgear with each component for each solar station either—

(a) located outside, with a concrete foundation slab for each of the inverters, transformers and switchgear and a levelling layer of this sand within a concrete perimeter pavement; or

(b) housed together within a container sitting on a concrete foundation slab and a levelling layer of thick sand with a concrete perimeter pavement;

"substation" means a compound containing electrical equipment required to switch, transform and convert electricity and provide reactive power compensation;

"switchgear" means a combination of electrical disconnect switches, fuses or circuit breakers used to control, protect and isolate electrical equipment; and

"transformer" means a structure containing an electrical device to transform electricity to a different voltage.

**Authorised Development**

**2.**—(1) In the Districts of West Lindsey and Bassetlaw and in the Counties of Lincolnshire and Nottinghamshire a nationally significant infrastructure project as defined in sections 14 and 15 of the 2008 Act and associated development under section 115(1)(b) of the 2008 Act.

(2) The nationally significant infrastructure project comprises one generating station with a gross electrical output capacity of over 50 megawatts comprising all or any of the work numbers in this Schedule or any part of any work number in this Schedule—

**Work No. 1— a ground mounted solar photovoltaic generating station with a gross electrical output capacity of over 50 megawatts including—**

(a) solar panels fitted to mounting structures; and

(b) solar stations;

and associated development within the meaning of section 115(2) of the 2008 Act including—

**Work No. 2— battery energy storage systems including—**

(a) battery modules;

(b) an enclosure protecting the battery modules comprised in Work No. 2 (a) and ancillary equipment including liquid cooling systems and explosion prevention systems;

(c) heating, ventilation and air conditioning (HVAC) either housed within the enclosures comprised in Work No. 2(b), attached to the side or top of the enclosures, or located separately from but near to the enclosures;

(d) monitoring and control systems housed within the enclosures for Work No. 2(b) or located separately in its own enclosure or control room;

(e) DC/DC converter;

(f) fire safety infrastructure, mitigation and control measures including—

(i) fire service access,

(ii) fire compartmentation measures,

(iii) water storage tanks and hydrants,

(iv) impermeable membrane surrounding Work No 2(b) which directs fire water to a swale for containment and a sump and drain valve to allow the extraction of contaminated fire water,

(v) hard standing to accommodate emergency vehicles,

(vi) parking spaces; and

(g) electrical cables connecting to Work No. 1(b), and Work No. 3.

**Work No. 3— development of onsite substations and associated works including—**

(a) **Works 3A** – Substation A—

(i) substation comprising main components of 400kV Gas Insulated Switchgear, 400kV Cable Sealing End, 400kV Surge Arrester, 400kV Post-Insulator, 2 x 400/33kV, 150/75/75 MVA Transformers, 400kV shunt reactor, 400kV gas insulated bus duct, 33kV Switchgear, 33kV Cabling and auxiliary equipment;

(ii) substation buildings including building to accommodate 400kV switchgear, buildings to accommodate 33kV switchgear and associated control and protection equipment, control room building to accommodate protection and control cabinets and auxiliary boards and panels and a diesel generator;

(iii) hardstanding, internal access road and parking areas; and

(iv) a water storage structure (swales) to collect and treat surface water before discharge.

(b) **Works 3B** – Substation B—

(i) substation, comprising main components of 400kV Gas Insulated Switchgear, 400kV Cable Sealing End, 400kV Surge Arrester, 400kV Post-Insulator, 2 x 400/33kV, 150/75/75MVA Transformers, 400kV gas insulated bus duct, 33kV Switchgear, 33kV Cabling and auxiliary equipment;

(ii) substation buildings including building to accommodate 400kV switchgear, buildings to accommodate 33kV switchgear and associated control and protection equipment, control room building to accommodate Protection and Control cabinets and auxiliary boards and panels and a diesel generator;

(iii) hardstanding, internal access road and parking areas; and

(iv) a water storage structure (swales) to collect and treat surface water before discharge.

**Work No. 4— works in connection with high voltage electrical cabling including—**

(a) **Work No. 4A** – works to lay high voltage electrical cables including—

(i) connecting Work No. 3A to Work No. 3B;

(b) **Work No. 4B** – works to lay high voltage electrical cables, access and construction compounds for the electrical cables including-

(i) works to lay 400kV electrical cables connecting to Work No. 4A;

(ii) works to lay 400kV electrical cables connecting to Work No. 4C;

(iii) laying down of access tracks, ramps, footpaths, roads, including the laying and construction of drainage infrastructure, signage and information boards;

(iv) joint bays, link boxes, cable ducts, cable protection, joint protection, manholes;

(v) marker posts, underground cable marker, tiles and tape, communications chambers, fibre optic cables and lighting and other works associated with cable laying;

(vi) tunnelling, boring and drilling works.

(c) **Work No. 4C** – works to lay high voltage electrical cables, access and construction compounds for the electrical cables including—

(i) works to lay 400kV electrical cables connecting to Work No. 4B;

(ii) works to lay 400kV electrical cables connecting to Work No. 4D;

(iii) laying down of access tracks, ramps, footpaths, roads, including the laying and construction of drainage infrastructure, signage and information boards;

(iv) joint bays, link boxes, cable ducts, cable protection, joint protection, manholes;

(v) marker posts, underground cable marker, tiles and tape, communications chambers, fibre optic cables and lighting and other works associated with cable laying; and

(vi) tunnelling, boring and drilling works.

(d) **Work No. 4D** – works to lay high voltage electrical cables, access and construction compounds for the electrical cables including—

(i) works to lay 400kV electrical cables connecting to Work No. 4C;

(ii) works to lay 400kV electrical cables connecting to Work No. 4E;

(iii) laying down of access tracks, ramps, footpaths, roads, including the laying and construction of drainage infrastructure, signage and information boards;

(iv) joint bays, link boxes, cable ducts, cable protection, joint protection, manholes;

(v) marker posts, underground cable marker, tiles and tape, communications chambers, fibre optic cables and lighting and other works associated with cable laying; and

(vi) tunnelling, boring and drilling works.

(e) **Work No. 4E** – works to lay high voltage electrical cables, access and construction compounds for the electrical cables including—

(i) works to lay 400kV electrical cables connecting to Work No. 4D;

(ii) works to lay 400kV electrical cables connecting to Work No. 5;

(iii) laying down of access tracks, ramps, footpaths, roads, including the laying and construction of drainage infrastructure, signage and information boards;

(iv) joint bays, link boxes, cable ducts, cable protection, joint protection, manholes;

(v) marker posts, underground cable marker, tiles and tape, communications chambers, fibre optic cables and lighting and other works associated with cable laying; and

(vi) tunnelling, boring and drilling works.

**Work No. 5 – works to the National Grid Cottam substation to facilitate connection of the authorised development to the National Grid Cottam substation including—**

(a) busbars and connectors to connect to the existing busbar disconnectors at the National Grid substation;

(b) a 400kV 3phase circuit breaker for control and protection of the outgoing circuit serving the authorised development;

(c) a 3phase set of current transformers for protection of the new outgoing 400kV feeder circuit and the overlap with the National Grid system;

(d) a 3phase high accuracy metering current and voltage transformer assembly for commercial metering of the connection;

(e) a 3phase 400kV line disconnector/earth switch for isolation and earthing of the outgoing 400kV feeder circuit;

(f) a 3phase set of 400kV high voltage cable sealing ends and cables connecting the National Grid substation with Work No. 4; and

(g) protection and control works in the existing relay room or erection of new building to house protection and control works apparatus if required.

**Work No. 6 – works including—**

(a) electrical cables, including but not limited to electrical cables connecting Works No. 1, 2 and 3 to one another, connecting solar panels to one another, connecting the solar panels to the BESS, the solar stations and on-site substations, including tunnelling, boring and drilling works for trenchless crossings; and open trench crossings;

(b) site establishments and preparation works, including site clearance (including vegetation removal, demolition of existing buildings and structures); earthworks (including soil stripping and storage and site levelling) and excavations; the alteration of the position of services and utilities; and works for the protection of buildings and land;

(c) laying down of permissive paths;

(d) hardstanding and parking areas;

(e) sustainable drainage systems including swales, runoff outfalls, general drainage and irrigation infrastructure, systems and improvements or extensions to existing drainage and irrigation systems;

(f) fencing, gates, boundary treatment and other means of enclosure;

(g) works for the provision of security and monitoring measures such as CCTV columns, cameras, lighting columns and lighting, weather stations, perimeter fencing and communication infrastructure;

(h) improvement, maintenance and use of existing private tracks;

(i) works to maintain and repair streets and access roads;

(j) laying down of internal access tracks, ramps, means of access, footpaths, crossing of watercourses and roads, including the laying and construction of drainage infrastructure, signage and information boards;

(k) electricity, water, waste water and telecommunications connections including pressurised water pipes; and

(l) other works to mitigate any adverse effects of the construction, maintenance, operation or decommissioning of the authorised development.

**Work No. 7 – construction and decommissioning compounds including—**

(a) areas of hardstanding; compacted ground or track matting;

(b) parking areas;

(c) site and welfare offices, canteens and workshops;

(d) security infrastructure, including cameras, perimeter fencing and lighting;

(e) areas to store materials, equipment, waste skips and spoil;

(f) site drainage and waste management infrastructure (including sewerage); and

(g) electricity, water, waste water and telecommunications connections.

**Work No. 8 – works to develop a solar farm control centre and equipment storage including—**

(a) erection of a new building to accommodate the solar farm control centre including;

(i) Central Control Room;

(ii) Central CCTV and security control, including access gates to fenced areas;

(iii) welfare facility for staff and subcontractors;

(iv) parking area for staff and visitors;

(v) independent power supply including emergency power supply; and

(vi) equipment storage.

**Work No. 9 – areas of habitat management and protection including—**

(a) measures to enhance the existing woodland and hedgerows;

(b) landscape and biodiversity enhancement measures;

(c) habitat creation and management including earthworks and landscaping;

(d) construction of drainage infrastructure and means of access;

(e) laying down of internal access tracks, means of access and crossing of watercourses; and

(f) fencing gates boundary treatment and other means of enclosure.

**Work No. 10 – works to facilitate access to Work No. 1 to 9 including—**

(a) **Work No. 10A**— works to facilitate permanent access to Work Nos. 1 to 9 including;

(i) alternation and improvement of existing road layout;

(ii) creation of visibility splays; and

(iii) street works to facilitate the construction of proposed accesses.

(b) **Work No. 10B**— works to facilitate temporary construction and decommissioning access to Work Nos. 1 to 9 including—

(i) creation of new access or improvement of existing access from the public highway;

(ii) street works to facilitate the construction of proposed accesses and cable installation works;

(iii) alteration of road layouts, including modifications to road markings and temporary removal of signage to facilitate abnormal load manoeuvres;

(iv) alteration of road layout to facilitate localised carriageway widening for construction vehicles; and

(v) alteration of road layout to facilitate the construction of passing bays.

(c) **Work No. 10C**— works to facilitate permanent emergency access for fire service vehicles associated with Work No. 2 including—

(i) alteration of existing road layout to facilitate the creation of new emergency accesses from the public highway including the creation of visibility splays; and

(ii) street works to facilitate the construction of the proposed accesses.

**Work No. 11 – sensitive archaeological site protection and management including—**

(a) habitat creation and management; and

(b) fencing gates boundary treatment and other means of enclosure.

In connection with and in addition to Work Nos. 1 to 10 further associated development within the Order limits, including—

(a) works for the provision of fencing and security measures such as CCTV, columns, lighting, communication boxes, lightning protection masts and weather stations;

(b) laying down of internal access tracks, ramps and span bridges, means of access, non-motorised links, footpaths and footways, laying and surfacing of permissive paths;

(c) laying down of temporary footpath diversions, permissive paths and construction of drainage infrastructure, signage and information boards;

(d) bunds, embankments, trenching and swales;

(e) boundary treatments, including means of enclosure;

(f) habitat creation and management including earthworks, landscaping, means of enclosure and the laying and construction of drainage infrastructure;

(g) landscaping and other works to mitigate any adverse effects of construction, maintenance or operation of the authorised development;

(h) electrical, gas, water, foul water drainage and telecommunications infrastructure connections, diversions and works to, 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;

(j) works to the existing irrigation system and works to alter the position and extent of such irrigation system;

(k) surface water drainage systems, storm water attenuation systems including storage basins, oil water separators, including channelling and culverting and works to existing drainage systems;

(l) site establishments and preparation works including site clearance (including vegetation removal, demolition of existing buildings and structures); earthworks (including soil stripping and storage and site levelling) and excavations; the alteration of the position of services and utilities; and works for the protection of buildings and land;

(m) works required for the strengthening, improvement, maintenance, or reconstruction of any street;

(n) tunnelling, boring and drilling works;

(o) working sites in connection with the construction and decommissioning of the authorised development and its restoration; and

(p) other works to mitigate any adverse effects of the construction, maintenance, operation or decommissioning of the authorised development;

and further associated development comprising such other works or operations as may be necessary or expedient for the purposes of or in connection with the construction, operation and maintenance or decommissioning of the authorised development but only within the Order limits and insofar as they are unlikely to give rise to any materially new or materially different environmental effects from those assessed in the environmental statement.

# SCHEDULE 2

Article 3

# REQUIREMENTS

**Interpretation**

**1.** In this Schedule—

"relevant planning authority" means—

(a) Lincolnshire County Council and Nottinghamshire County Council in their capacity as the local planning authority for their respective administrative areas for the purposes of—

(i) Requirement 6 (battery safety management);

(ii) Requirement 10 (surface and foul water drainage);

(iii) Requirement 11 (archaeology);

(iv) Requirement 14 (waste management plan);

(v) Requirement 15(construction traffic management plan);

(vi) Requirement 17 (public rights of way);

(vii) Requirement 19 (soils management); and

(b) West Lindsey District Council and Bassetlaw District Council in their capacity as the local planning authority for their respective administrative areas for the purposes of—

(i) Requirement 3 (approved details and amendments to them);

(ii) Requirement 4 (community liaison group);

(iii) Requirement 5 (detailed design approval);

(iv) Requirement 7 (landscape and ecological management plan);

(v) Requirement 8 (biodiversity net gain);

(vi) Requirement 9 (fencing and other means of enclosure);

(vii) Requirement 12 (construction environmental management plan);

(viii) Requirement 13 (operational environmental management plan);

(ix) Requirement 18 (operational noise);

(x) Requirement 20 (skills, supply chain and employment);

(xi) Requirement 21 (decommissioning and restoration);

and "relevant planning authorities" and "relevant planning authority" means Lincolnshire County Council, West Lindsey District Council and Bassetlaw District Council as applicable.

**Commencement of the authorised development**

**2.** The authorised development must not be commenced after the expiration of five years from the date this Order comes into force.

**Approved details and amendments to them**

**3.**—(1) The undertaker may submit any amendments to any Approved Document to the relevant planning authority for approval and, following approval, the relevant Approved Document is to be taken to include the amendments as approved under this paragraph.

(2) Approval under sub-paragraph (1) for the amendments to any Approved Document must not be given except where it has been demonstrated to the satisfaction of the relevant planning authority or, where the part falls within the administrative areas of multiple relevant planning authorities, each of the relevant planning authorities, that the subject matter of the approval sought is unlikely to give rise to any materially new or materially different environmental effects from those assessed in the environmental statement.

(3) In this paragraph, "Approved Document" means any document certified under article 41 (certification of plans and documents, etc) and any plans, details or schemes which have been approved pursuant to any requirement.

**Community liaison group**

**4.**—(1) Prior to the commencement of the authorised development the undertaker must submit to the relevant planning authorities for approval the terms of reference for a community liaison group whose aim is to facilitate liaison between representatives of people living in the vicinity of the Order limits and other relevant organisations in relation to the construction of the authorised development.

(2) The community liaison group must be established prior to commencement of the authorised development and must be administered by the undertaker, and operated, in accordance with the approved terms of reference.

(3) The community liaison group is to continue to meet until the date of final commissioning of the final part of the authorised development unless otherwise agreed with the relevant planning authorities.

**Detailed design approval**

**5.**—(1) No part of Work Nos. 1, 2, 3 or 4 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; and

(g) refuse or other storage units, signs and lighting,

relating to that part have been submitted to and approved in writing by the relevant planning authority for that part or, where the part falls within the administrative areas of multiple relevant planning authorities, each of the relevant planning authorities.

(2) The details submitted must accord with the outline design principles statement and the outline drainage strategy.

(3) The authorised development must be carried out in accordance with the approved details.

**Battery safety management**

**6.**—(1) Work No. 2 must not commence until a battery safety management plan has been submitted to and approved by the relevant planning authority.

(2) The battery safety management plan must prescribe measures to facilitate safety during the construction, operation and decommissioning of Work No. 2 including the transportation of new, used and replacement battery cells both to and from the authorised development.

(3) The battery safety management plan must be substantially in accordance with the framework battery safety management plan.

(4) The relevant planning authority must consult with West Lindsey District Council, Lincolnshire Fire and Rescue, Nottinghamshire Fire and Rescue Service and the Environment Agency before determining an application for approval of the battery safety management plan.

(5) The battery safety management plan must be implemented as approved and maintained throughout the operation of the relevant part of the authorised development to which the plan relates.

**Landscape and ecological management plan**

**7.**—(1) No part of the authorised development may commence until a written landscape and ecological management plan has been submitted to and approved by the relevant planning authority for that part, or where the part falls within the administrative areas of multiple planning authorities, each of the relevant planning authorities, following consultation with the Environment Agency and where the part falls within its administrative area, Lincolnshire County Council.

(2) The landscape and ecological management plan must be substantially in accordance with the framework landscape and ecological management plan.

(3) The landscape and ecological management plan must be implemented as approved and maintained throughout the operation of the relevant part of the authorised development to which the plan relates.

(4) For the purposes of sub-paragraph (1), "commence" includes part (h) site clearance (including vegetation removal, demolition of existing buildings and structures) and part (i) (advanced planting to allow for an early establishment of protective screening) of permitted preliminary works.

**Biodiversity net gain**

**8.**—(1) No part of the authorised development may commence until a biodiversity net gain strategy has been submitted to and approved by the relevant planning authority, in consultation with the Environment Agency, Lincolnshire County Council and any other relevant statutory nature conservation body.

(2) The biodiversity net gain strategy must be substantially in accordance with the outline landscape and ecological management plan, must be implemented as approved and maintained throughout the operation of the relevant part of the authorised development to which the plan relates.

**Fencing and other means of enclosure**

**9.**—(1) No part of the authorised development may commence until written details of all proposed temporary fences, walls or other means of enclosure, including those set out in the construction environmental management plan, for that part have been submitted to and approved by the relevant planning authority or, where the part falls within the administrative areas of multiple relevant planning authorities, each of the relevant planning authorities.

(2) No part of the authorised development may commence until written details of all permanent fences, walls or other means of enclosure for that part have been submitted to and approved by the relevant planning authority or, where the part falls within the administrative areas of multiple relevant planning authorities, each of the relevant planning authorities.

(3) For the purposes of sub-paragraph (1), "commence" includes any permitted preliminary works.

(4) The written details provided under sub-paragraph (2) must be substantially in accordance with the outline design principles statement.

(5) Any construction site must remain securely fenced in accordance with the approved details under sub-paragraph (1) or (2) at all times during construction of the authorised development.

(6) Any temporary fencing must be removed on completion of the part of construction of the authorised development for which it was used.

(7) Any approved permanent fencing for a part of the authorised development must be completed before the date of final commissioning.

**Surface and foul water drainage**

**10.**—(1) No part of the authorised development may commence until written details of the surface water drainage scheme and (if any) foul water drainage system (including means of

pollution control) for that part have been submitted to and approved by the relevant planning authority for that part, or where the part falls within the administrative areas of multiple relevant planning authorities, each of the relevant planning authorities.

(2) The written details under sub-paragraph (1) must be substantially in accordance with the outline drainage strategy.

(3) Any approved scheme pursuant to sub-paragraph (1) must be implemented as approved.

**Archaeology**

**11.**—(1) The authorised development must be implemented in accordance with the archaeological mitigation strategy.

(2) No part of the authorised development may commence until a written scheme of archaeological investigation (which must accord with the archaeological mitigation strategy) for that part has been submitted to and approved by the relevant planning authority.

(3) For the purposes of sub-paragraph (1), "commence" includes any permitted preliminary works, excluding part (i) (advanced planting to allow for an early establishment of protective screening).

(4) Any archaeological works or archaeological monitoring and recording must be carried out in accordance with the approved scheme

**Construction environmental management plan**

**12.**—(1) No part of the authorised development may commence until a construction environmental management plan for that part has been submitted to and approved by the relevant planning authority or, where the part falls within the administrative area of multiple relevant planning authorities, each of the relevant planning authorities, in consultation with the relevant highway authority, the Environment Agency and where the part falls within its administrative area, Lincolnshire County Council.

(2) The construction environmental management plan must be substantially in accordance with the framework construction environmental management plan.

(3) All construction works associated with the authorised development must be carried out in accordance with the approved construction environmental management plan.

**Operational environmental management plan**

**13.**—(1) Prior to the date of final commissioning for any part of the authorised development, an operational environmental management plan for that part must be submitted to and approved by the relevant planning authority or, where the part falls within the administrative area of multiple relevant planning authorities, each of the relevant planning authorities, in consultation with the relevant highway authority, the relevant waste authority, the Environment Agency and where the part falls within its administrative area, Lincolnshire County Council.

(2) The operational environmental management plan must be substantially in accordance with the framework operational environmental management plan.

(3) The operational environmental management plan must be implemented as approved and maintained throughout the operation of the relevant parts of the authorised development to which the plan relates.

**Waste management plan**

**14.**—(1) No part of the authorised development may commence until an Operational Waste Management Plan has been submitted to and approved by the relevant planning authority.

(2) The Operational Waste Management Plan must be substantially in accordance with the relevant parts of the framework operational environmental management plan, must be

implemented as approved and maintained throughout the operation of the relevant part of the authorised development to which the plan relates.

**Construction traffic management plan**

**15.**—(1) No part of the authorised development may commence until a construction traffic management plan for that part has been submitted to and approved by the relevant planning authority, or where the part falls within the administrative areas of multiple relevant planning authorities, each of the relevant planning authorities.

(2) The construction traffic management plan must be substantially in accordance with the framework construction traffic management plan.

(3) Before approving the construction traffic management plan the relevant planning authority must consult with the relevant highway authority.

(4) All construction works associated with the authorised development must be carried out in accordance with the approved construction traffic management plan.

**Permissive path**

**16.**—(1) Work No. 6(c) must be provided and open to the public prior to the date of final commissioning of Work No. 1.

(2) The permissive path must be maintained and access by the public permitted for 364 days a year except where closure is required for maintenance or in an emergency until the date of decommissioning.

**Public rights of way**

**17.**—(1) No part of the authorised development may commence until a public rights of way management plan for any sections of public rights of way shown to be temporarily closed on the public rights of way plan for that part has been submitted to and approved by the relevant planning authority, or, where the part falls within the administrative areas of multiple relevant planning authorities, each of the relevant planning authorities.

(2) The public rights of way management plan must be substantially in accordance with the framework public rights of way management plan.

(3) Before approving the public rights of way management plan the relevant planning authority must consult with the relevant highway authority.

(4) The public rights of way management plan must be implemented as approved and maintained throughout the operation of the relevant parts of the authorised development to which the plan relates.

**Operational noise**

**18.**—(1) No part of Work No. 1, Work No. 2 or Work No. 3 may commence until an operational noise assessment containing details of how the design of the authorised development has incorporated mitigation to ensure the operational noise rating levels as set out within Table 13-17 in Chapter 13 of the environmental statement are to be complied with for that part has been submitted to and approved by the relevant planning authority for that part.

(2) The mitigation measures described in the operational noise assessment for each part of the authorised development must be implemented as approved and maintained throughout the operation of the relevant parts of the authorised development to which the plan relates.

**Soils management**

**19.**—(1) No part of the authorised development may commence until a soil management plan for that part has been submitted to and approved by the relevant planning authority or, where the

part falls within the administrative areas of multiple planning authorities, each of the relevant planning authorities.

(2) The soil management plan must be substantially in accordance with the framework soil management plan.

(3) The soil management plan must be implemented as approved and maintained throughout the operation of the relevant parts of the authorised development to which the plan relates.

**Skills, supply chain and employment**

**20.**—(1) No part of the authorised development may commence until a skills, supply chain and employment plan in relation to that part has been submitted to and approved by the relevant planning authority for that part or, where the part falls within the administrative areas of multiple planning authorities, each of the relevant planning authorities, in consultation with Lincolnshire County Council.

(2) The skills, supply chain and employment plan must be substantially in accordance with the framework skills, supply chain and employment plan.

(3) Any plan under this paragraph must identify opportunities for individuals and businesses to access employment, skills and supply chain opportunities associated with that part of the authorised development and the means for publicising such opportunities.

(4) The skills, supply chain and employment plan must be implemented as approved and maintained throughout the operation of the relevant parts of the authorised development to which the plan relates.

**Decommissioning and restoration**

**21.**—(1) The date of decommissioning must be no later than 60 years following the date of final commissioning.

(2) Unless otherwise agreed with the relevant planning authority, no later than 12 months prior to the date the undertaker intends to decommission any part of the authorised development, the undertaker must notify the relevant planning authority of the intended date of decommissioning for that part of the authorised development.

(3) Unless otherwise agreed with the relevant planning authority, no later than eight weeks prior to the intended date of decommissioning of any part of the authorised development notified pursuant to sub-paragraph (2), the undertaker must submit to the relevant planning authority for that part a decommissioning environmental management plan for approval.

(4) Where the undertaker decides to decommission a part of the authorised development that falls within the administrative areas of multiple planning authorities, the decommissioning environmental management plan must be submitted to each relevant planning authority, following consultation with the Environment Agency, and the approval of all relevant planning authorities is required for the purposes of this paragraph.

(5) The decommissioning environmental management plan must be substantially in accordance with the framework decommissioning environmental management plan and must include a timetable for its implementation.

(6) No decommissioning works must be carried out until the relevant planning authority has approved the decommissioning environmental management plan submitted in relation to those works.

(7) The decommissioning environmental management plan must be implemented as approved.

(8) This requirement is without prejudice to any other consents or permissions that may be required to decommission any part of the authorised development.

# SCHEDULE 3

Article 6

## LEGISLATION TO BE DISAPPLIED

**1.** The following provisions do not apply in so far as they relate to the construction of any numbered work or the carrying out of any operation required for the purpose of, or in connection with, the construction, operation, maintenance or decommissioning of the authorised development—

(a) Stowe, Sturton and Bransby Inclosures Act 1803(**a**)

(b) Great Grimsby and Sheffield Junction Railway Act 1845(**b**)

(c) Great Northern Railway Act 1846(**c**)

(d) Sheffield and Lincolnshire Junction Railway Act 1846(**d**)

(e) Manchester, Sheffield, and Lincolnshire Railways, and Manchester and Lincolnshire Union Railway and Chesterfield and Gainsborough Canal Amalgamation Act 1847(**e**)

(f) Gainsborough Waterworks Act 1865(**f**)

(g) West Riding and Grimsby Railway (Extension) Act 1865(**g**)

(h) Trent and Lincolnshire Water Act 1971(**h**)

(i) Trent (Burton on Trent and Humber) Navigation Act 1887(**i**)

(j) Trent Navigation Act 1906(**j**)

(k) Great Central Railway Act 1907(**k**)

(l) Lincolnshire Rivers Fisheries Provisional Order Confirmation Act 1928(**l**)

(m) Anglian Water Authority Act 1977(**m**)

# SCHEDULE 4

Article 8

## STREETS SUBJECT TO STREET WORKS

| *(1)*<br>*Area* | *(2)*<br>*Street* | *(3)*<br>*Description of the street works* |
|---|---|---|
| Lincolnshire County Council | School Lane | Street works to facilitate cable installation works for the length shown in green patterned hatching on Sheet 1 of the streets, rights of way and access plans. |
| Lincolnshire County Council | Common Lane | Street works to facilitate cable installation works for the lengths shown in green patterned hatching on Sheets 3, 5, 6 and 7 of the streets, |

(**a**) 1803 c. xlii.
(**b**) 1845 c. 1.
(**c**) 1846 c. lxxi.
(**d**) 1846 c. ccciv.
(**e**) 1847 c. cxc.
(**f**) 1865 c. cx.
(**g**) 1865 c. cccxxi.
(**h**) 1971 c. xiii.
(**i**) 1887 c. cxv.
(**j**) 1906 c. 1906 c. lvii.
(**k**) 1907 c. lxxviii.
(**l**) 1928 c. lxvii.
(**m**) 1977 c. i.

| | | |
|---|---|---|
| | | rights of way and access plans. |
| Lincolnshire County Council | Kexby Lane | Street works to facilitate cable installation works for the length shown in green patterned hatching on Sheet 9 of the streets, rights of way and access plans. |
| Lincolnshire County Council | Willingham Road | Street works to facilitate cable installation works for the length shown in green patterned hatching on Sheet 13 of the streets, rights of way and access plans. |
| Lincolnshire County Council | Fillingham Lane | Street works to facilitate cable installation works for the length shown in green patterned hatching on Sheet 13 of the streets, rights of way and access plans. |
| Lincolnshire County Council | South Lane | Street works to facilitate cable installation works for the length shown in green patterned hatching on Sheet 13 of the streets, rights of way and access plans. |
| Lincolnshire County Council | Normanby Road | Street works to facilitate cable installation works for the length shown in green patterned hatching on Sheet 16 of the streets, rights of way and access plans. |
| Lincolnshire County Council | Wooden Lane | Street works to facilitate cable installation works for the length shown in green patterned hatching on Sheet 16 of the streets, rights of way and access plans. |
| Lincolnshire County Council | A1500 Stow Park Road | Street works to facilitate cable installation works for the length shown in green patterned hatching on Sheets 18 and 19 of the streets, rights of way and access plans. |
| Lincolnshire County Council | A156 High Street | Street works to facilitate cable installation works for the length shown in green patterned hatching on Sheet 19 of the streets, rights of way and access plans. |
| Nottinghamshire County Council | Headstead Bank up until the junction of Headstead Bank and Broad Lane | Street works to facilitate cable installation works for the length shown in green patterned hatching on Sheet 21 of the streets, rights of way and access plans. |
| Nottinghamshire County | Cow Pasture Lane | Street works to facilitate cable |

| | | |
|---|---|---|
| Council | | installation works for the length shown in green patterned hatching on Sheet 21 of the streets, rights of way and access plans. |
| Nottinghamshire County Council | Cottam Road | Street works to facilitate cable installation works for the length shown in green patterned hatching on Sheet 22 of the streets, rights of way and access plans. |
| Nottinghamshire County Council | Torksey Ferry Road | Street works to facilitate cable installation works for the length shown in green patterned hatching on Sheet 23 of the streets, rights of way and access plans. |

# SCHEDULE 5

Articles 9 and 10

## ALTERATION OF STREETS

## PART 1

### PERMANENT ALTERATION OF LAYOUT

| *(1)*<br>*Area* | *(2)*<br>*Street* | *(3)*<br>*Description of the alteration* |
|---|---|---|
| Lincolnshire County Council | A631 Harpswell Lane Carriageway and Field Access | Alteration of layout including modifications to road markings on the carriageway of A631 Harpswell Lane in the area depicted in solid green hatching at the point marked 1/01 as shown on Sheet 1 of the streets, rights of way and access plans. |
| Lincolnshire County Council | A631 Harpswell Lane Carriageway and Field Access | Alteration of layout including modifications to road markings on the carriageway of A631 Harpswell Lane in the area depicted in solid green hatching at the point marked 1/02 as shown on Sheet 1 of the streets, rights of way and access plans. |
| Lincolnshire County Council | A631 Harpswell Lane Carriageway and Field Access | Alteration of layout including modifications to road markings on the carriageway of A631 Harpswell Lane in the area depicted in solid green hatching at the point marked 1/05 as shown on Sheet 1 of the streets, rights of way and |

| | | |
|---|---|---|
| | | access plans. |
| Lincolnshire County Council | A631 Harpswell Lane Carriageway and Field Access | Alteration of layout including modifications to road markings on the carriageway of A631 Harpswell Lane in the area depicted in solid green hatching at the point marked 1/07 as shown on Sheet 1 of the streets, rights of way and access plans. |
| Lincolnshire County Council | Existing Junction of A631 Harpswell Lane with School Lane | Existing junction off A631 Harpswell Lane to School Lane in the area depicted in solid green hatching at the point marked 1/13 as shown on Sheet 1 of the streets, rights of way and access plans to be retained and improved with alteration of layout to A631 Harpswell Lane and School Lane. |
| Lincolnshire County Council | School Lane | Alteration of layout to facilitate the construction of passing bays in the area depicted in green solid hatching as shown on Sheet 1 of the streets, rights of way and access plans. |
| Lincolnshire County Council | Existing Field Access off School Lane Northbound | Alteration of layout to School Lane to occur in the area depicted in solid green hatching at the point marked 1/14 as shown on Sheet 1 of the streets, rights of way and access plans subsequent to improvements to adjoining field access. |
| Lincolnshire County Council | Existing Field Access off School Lane Southbound | Alteration of layout to School Lane to occur in the area depicted in solid green hatching at the point marked 1/15 as shown on Sheet 1 of the streets, rights of way and access plans subsequent to improvements to adjoining field access. |
| Lincolnshire County Council | Private Means of Access off A631 Harpswell Lane | Alteration of layout of A631 Harpswell Lane in the area depicted in solid green hatching at the point marked 2/03 as shown on Sheet 2 of the streets, rights of way and access plans subsequent to improvements to adjoining private access. |
| Lincolnshire County Council | Private Means of Access off A631 Harpswell Lane | Alteration of layout of A631 Harpswell Lane in the area |

| | | |
|---|---|---|
| | | depicted in solid green hatching at the point marked 2/09 as shown on Sheets 2 and 3 of the streets, rights of way and access plans subsequent to improvements to adjoining private access. |
| Lincolnshire County Council | Private Means of Access off B1398 Middle Street | Alteration of layout of B1398 Middle Street in the area depicted in solid green hatching at the point marked 4/01 as shown on Sheet 4 of the streets, rights of way and access plans subsequent to improvements to adjoining private access. |
| Lincolnshire County Council | Field Access off Common Lane Westbound | Alteration of layout of Common Lane in the area depicted in solid green hatching at the point marked 5/23 as shown on Sheets 5 and 6 of the streets, rights of way and access plans subsequent to improvements to adjoining field access. |
| Lincolnshire County Council | Field Access off Common Lane Eastbound | Alteration of layout of Common Lane in the area depicted in solid green hatching at the point marked 6/01 as shown on Sheets 5 and 6 of the streets, rights of way and access plans subsequent to improvements to adjoining field access. |
| Lincolnshire County Council | Proposed New Access off Common Lane Eastbound | Alteration of layout of Common Lane in the area depicted in solid green hatching at the point marked 6/04 as shown on Sheets 5 and 6 of the streets, rights of way and access plans subsequent to construction of adjoining new access. |
| Lincolnshire County Council | Proposed New Access off Common Lane Westbound | Alteration of layout of Common Lane in the area depicted in solid green hatching at the point marked 6/15 as shown on Sheet 6 of the streets, rights of way and access plans subsequent to construction of adjoining new access. |
| Nottinghamshire County Council | Torksey Ferry Road | Alteration of layout to facilitate the repair of the existing carriageway and construction of passing bays in the area marked west of 23/01 |

| | | |
|---|---|---|
| | | to the area marked east of 24/05 depicted in solid green hatching as shown on Sheets 23 and 24 of the streets, rights of way and access plans. |
| Nottinghamshire County Council | Junction of Torksey Ferry Road and Shortleys Road | Alteration of layout to Torksey Ferry Road and Shortleys Road to facilitate the retention and improvement of the existing junction of Torksey Ferry Road and Shortleys Road in the area depicted in solid green hatching at the point marked 23/07 as shown on Sheet 23 of the streets, rights of way and access plans. |

# PART 2

## TEMPORARY ALTERATION OF LAYOUT

| *(1)*<br>*Area* | *(2)*<br>*Street* | *(3)*<br>*Description of alteration* |
|---|---|---|
| Lincolnshire County Council | Junction of A631 and B1398 Middle Street (roundabout) | Alteration of layout to include the temporary removal of signage to facilitate abnormal load manoeuvres in the area depicted in solid green hatching adjacent to the point marked 4/04 as shown on Sheet 4 of the streets, rights of way and access plans. |
| Lincolnshire County Council | Cow Lane | Alteration of layout to facilitate the construction of a passing bay in the area depicted in green solid hatching to the west of the point marked 8/01 as shown on Sheet 8 of the streets, rights of way and access plans. |
| Lincolnshire County Council | Cow Lane | Alteration of layout to facilitate the construction of a passing bay in the area depicted in green solid hatching to the west of the point marked 8/03 as shown on Sheet 8 of the streets, rights of way and access plans. |
| Lincolnshire County Council | Cow Lane | Alteration of layout to facilitate the construction of a passing bay in the area depicted in green solid hatching to the west of the point marked 8/08 as shown on Sheet 8 of the streets, rights of way and access plans. |

| | | |
|---|---|---|
| Lincolnshire County Council | Cow Lane | Alteration of layout to facilitate the construction of a passing bay in the area depicted in green solid hatching to the east of the point marked 8/10 as shown on Sheet 8 of the streets, rights of way and access plans. |
| Lincolnshire County Council | Field Access off Cow Lane Eastbound | Alteration of layout of Cow Lane in the area depicted in solid green hatching at the point marked 8/13 as shown on Sheet 8 of the streets, rights of way and access plans subsequent to improvements to adjoining field access. |
| Lincolnshire County Council | Proposed New Access off Willingham Road Eastbound | Alteration of Willingham Road in the area depicted in solid green hatching at the point marked 13/28 as shown on Sheet 13 of the streets, rights of way and access plans subsequent to the construction of adjoining new access. |
| Lincolnshire County Council | Fillingham Lane | Alteration of layout to facilitate the construction of a passing bay in the area depicted in solid green hatching adjacent to the point marked 13/03 as shown on Sheet 13 of the streets, rights of way and access plans. |
| Lincolnshire County Council | Fillingham Lane | Alteration of layout to facilitate the construction of passing bays in the area depicted in solid green hatching between the points marked 13/07 and 13/15 as shown on Sheet 13 of the streets, rights of way and access plans. |
| Lincolnshire County Council | Fillingham Lane | Alteration of layout to facilitate the construction of a passing bay in the area depicted in solid green hatching adjacent to the point marked 13/21 as shown on Sheet 13 of the streets, rights of way and access plans. |
| Lincolnshire County Council | Fillingham Lane | Alteration of layout to facilitate the construction of a passing bay in the area depicted in solid green hatching adjacent to the point marked 13/24 as shown on Sheet 13 of the streets, rights of way and access plans. |

| | | |
|---|---|---|
| Lincolnshire County Council | Fillingham Lane | Alteration of layout to facilitate localised carriageway widening for construction vehicles in the area depicted in solid green hatching adjacent to the point marked 13/26 as shown on Sheet 13 of the streets, rights of way and access plans. |
| Lincolnshire County Council | Field Access off Fillingham Lane Southbound and Westbound | Alteration of layout to Fillingham Lane in the area depicted in solid green hatching adjacent to the point marked 13/26 as shown on Sheet 13 of the streets, rights of way and access plans subsequent to improvements to adjoining field access. |
| Lincolnshire County Council | Field Access off South Lane Southbound | Alteration of layout to South Lane in the area depicted in solid green hatching adjacent to the point marked 13/31 as shown on Sheets 13 and 15 of the streets, rights of way and access plans subsequent to improvements to adjoining field access. |
| Lincolnshire County Council | Field Access off South Lane Northbound | Alteration of layout to South Lane in the area depicted in solid green hatching adjacent to the point marked 13/32 as shown on Sheets 13 and 15 of the streets, rights of way and access plans subsequent to improvements to adjoining field access. |
| Lincolnshire County Council | South Lane | Alteration of layout to facilitate localised widening and the construction of passing bays in the area depicted in solid green hatching between the points marked 13/14 and 13/32 as shown on Sheet 13 of the streets, rights of way and access plans. |
| Lincolnshire County Council | Fillingham Lane | Alteration of layout to facilitate the construction of passing bays in the area depicted in solid green hatching adjacent to the point marked 14/03 as shown on Sheet 14 of the streets, rights of way and access plans. |
| Lincolnshire County Council | Fillingham Lane | Alteration of layout to facilitate the construction of passing bays in the area depicted in solid green |

| | | |
|---|---|---|
| | | hatching adjacent to the point marked 14/09 as shown on Sheet 14 of the streets, rights of way and access plans. |
| Lincolnshire County Council | Fillingham Lane | Alteration of layout to facilitate the construction of passing bays in the area depicted in solid green hatching adjacent to the point marked 14/19 as shown on Sheet 14 of the streets, rights of way and access plans. |
| Lincolnshire County Council | Proposed New Access off Normanby Road Northbound | Alteration of layout of Normanby Road in the area depicted in solid green hatching adjacent to the point marked 16/06 as shown on Sheet 16 of the streets, rights of way and access plans subsequent to construction of adjoining new access. |
| Lincolnshire County Council | Proposed New Access off Normanby Road Southbound | Alteration of layout of Normanby Road in the area depicted in solid green hatching adjacent to the point marked 16/07 as shown on Sheet 16 of the streets, rights of way and access plans subsequent to construction of adjoining new access. |
| Lincolnshire County Council | Proposed New Access off Wooden Lane Northbound | Alteration of layout of Normanby Road in the area depicted in solid green hatching adjacent to the point marked 16/08 as shown on Sheet 16 of the streets, rights of way and access plans subsequent to construction of adjoining new access. |
| Lincolnshire County Council | Proposed New Access off Wooden Lane Southbound | Alteration of layout of Normanby Road in the area depicted in solid green hatching adjacent to the point marked 16/09 as shown on Sheet 16 of the streets, rights of way and access plans subsequent to construction of adjoining new access. |
| Lincolnshire County Council | Wooden Lane | Alteration of layout to facilitate localised widening and construction of passing bays in the area depicted in solid green hatching between the points marked 16/08 and 17/25 as shown on Sheets 16 and 17 of the streets, rights of way and access plans. |

| | | |
|---|---|---|
| Lincolnshire County Council | Junction of A1500 Tillbridge Lane with Stow Park Road | Alteration of layout to A1500 Tillbridge Lane and Stow Park Road, subsequent to improvements to existing junction off A1500 Tillbridge Lane to Stow Park Road in the area depicted in solid green hatching adjacent to the point marked 17/04 as shown on Sheet 17 of the streets, rights of way and access plans. |
| Lincolnshire County Council | Junction of Stow Park Road with Wooden Lane | Alteration of layout to Stow Park Road and Wooden Lane subsequent to improvements to existing junction of Stow Park Road and Wooden Lane in the area depicted in solid green hatching adjacent to the point marked 17/25 as shown on Sheet 17 of the streets, rights of way and access plans. |
| Lincolnshire County Council | Stow Park Road | Alteration of layout to facilitate the construction of a passing bay in the area depicted in solid green hatching to the west of the point marked 17/08 as shown on Sheet 17 of the streets, rights of way and access plans. |
| Lincolnshire County Council | Stow Park Road | Alteration of layout to facilitate the construction of a passing bay in the area depicted in solid green hatching to the east of the point marked 17/10 as shown on Sheet 17 of the streets, rights of way and access plans. |
| Lincolnshire County Council | Stow Park Road | Alteration of layout to facilitate the construction of a passing bay in the area depicted in solid green hatching adjacent to the point marked 17/17 as shown on Sheet 17 of the streets, rights of way and access plans. |
| Lincolnshire County Council | Stow Park Road | Alteration of layout to facilitate the construction of a passing bay in the area depicted in solid green hatching adjacent to the point marked 17/21 as shown on Sheet 17 of the streets, rights of way and access plans. |
| Lincolnshire County Council | Private Means of Access off A1500 Tillbridge Lane | Alteration of layout of A1500 Tillbridge Lane in the area depicted in solid green hatching adjacent to the point |

| | | |
|---|---|---|
| | | marked 18/01 and depicted in green solid hatching as shown on Sheets 17 and 18 of the streets, rights of way and access plans subsequent to improvements to adjoining private access. |
| Lincolnshire County Council | Proposed New Access off A1500 Stow Park Road Eastbound | Alteration of layout of A1500 Stow Park Road in the area depicted in solid green hatching adjacent to the point marked 19/03 as shown on Sheets 18 and 19 of the streets, rights of way and access plans subsequent to construction of adjoining new access. |
| Lincolnshire County Council | Proposed New Access off A1500 Stow Park Road Westbound | Alteration of layout of A1500 Stow Park Road in the area depicted in solid green hatching adjacent to the point marked 19/04 as shown on Sheets 18 and 19 of the streets, rights of way and access plans subsequent to construction of adjoining new access. |
| Lincolnshire County Council | Field Access off A156 High Street Southbound | Alteration of layout of A156 High Street in the area depicted in solid green hatching adjacent to the point marked 19/12 as shown on Sheet 19 of the streets, rights of way and access plans to be retained and improved subsequent to improvements to adjoining field access. |
| Lincolnshire County Council | Proposed New Access off A156 High Street Northbound | Alteration of layout of A156 High Street in the area depicted in solid green hatching adjacent to the point marked 19/15 as shown on Sheet 19 of the streets, rights of way and access plans subsequent to construction of adjoining new access. |
| Lincolnshire County Council | Field Access off A156 High Street Northbound | Alteration of layout of A156 High Street in the area depicted in solid green hatching adjacent to the point marked 20/01 as shown on Sheets 19 and 20 of the streets, rights of way and access plans subsequent to improvements to adjoining field access. |
| Nottinghamshire County Council | Field Access off Headstead Bank Southbound | Alteration of layout of Headstead Bank in the area depicted in solid green hatching adjacent to the point |

| | | |
|---|---|---|
| | | marked 21/62 as shown on Sheet 21 of the streets, rights of way and access plans subsequent to improvements to adjoining field access. |
| Nottinghamshire County Council | Field Access off Headstead Bank Southbound | Alteration of layout of Headstead Bank in the area depicted in solid green hatching adjacent to the point marked 21/63 as shown on Sheet 21 of the streets, rights of way and access plans subsequent to improvements to adjoining field access. |
| Nottinghamshire County Council | Proposed New Access off Headstead Bank Northbound | Alteration of layout of Headstead Bank in the area depicted in solid green hatching adjacent to the point marked 21/64 as shown on Sheet 21 of the streets, rights of way and access plans subsequent to construction of adjoining new access. |
| Nottinghamshire County Council | Town Street | Alteration of layout to facilitate the construction of a passing bay in the area depicted in solid green hatching adjacent to the point marked 21/36 as shown on Sheet 21 of the streets, rights of way and access plans. |
| Nottinghamshire County Council | Town Street | Alteration of layout to facilitate the construction of a passing bay in the area depicted in solid green hatching adjacent to the point marked 21/44 as shown on Sheet 21 of the streets, rights of way and access plans. |
| Nottinghamshire County Council | Town Street | Alteration of layout to facilitate the construction of a passing bay in the area depicted in solid green hatching adjacent to the point marked 21/55 as shown on Sheet 21 of the streets, rights of way and access plans. |
| Nottinghamshire County Council | Headstead Bank | Alteration of layout to facilitate the construction of a passing bay in the area depicted in solid green hatching adjacent to the point marked 21/60 as shown on Sheet 21 of the streets, rights of way and access plans. |
| Nottinghamshire County Council | Cow Pasture Lane | Alteration of layout to facilitate construction access |

| | | |
|---|---|---|
| | | in the area depicted in solid green hatching adjacent to the point marked 21/01 as shown on Sheet 21 of the streets, rights of way and access plans. |
| Nottinghamshire County Council | Field Access off Cottam Road Westbound | Alteration of layout of Cottam Road in the area depicted in solid green hatching adjacent to the point marked 22/01 as shown on Sheets 21 and 22 of the streets, rights of way and access plans subsequent to improvements to adjoining field access. |
| Nottinghamshire County Council | Proposed New Access off Cottam Road Eastbound | Alteration of layout of Cottam Road in the area depicted in solid green hatching adjacent to the point marked 22/02 as shown on Sheets 21 and 22 of the streets, rights of way and access plans subsequent to construction of adjoining new access. |
| Nottinghamshire County Council | Field Access off Torksey Ferry Road Eastbound | Alteration of layout of Torksey Ferry Road at the point marked 23/03 and depicted in solid green hatching as shown on Sheet 23 of the streets, rights of way and access plans to be retained and improved, including alteration of layout to Torksey Ferry Road. |
| Nottinghamshire County Council | Nightleys Road | Alteration of layout to facilitate construction access in the area depicted in solid green hatching as shown on Sheet 23 of the streets, rights of way and access plans. |
| Nottinghamshire County Council | Field Access off Shortleys Road Northbound | Alteration of layout of Shortleys Road the area depicted in solid green hatching adjacent to the point marked 23/08 as shown on Sheet 23 of the streets, rights of way and access plans subsequent to improvements to adjoining field access. |
| Nottinghamshire County Council | Proposed New Access off Shortleys Road Southbound | Alteration of layout of Shortleys Road the area depicted in solid green hatching adjacent to the point marked 23/09 as shown on Sheet 23 of the streets, rights of way and access plans subsequent to construction of adjoining new access. |
| Nottinghamshire County | Private Means of Access of | Alteration of layout of Torksey |

| | | |
|---|---|---|
| Council | Torksey Ferry Road Eastbound | Ferry Road in the area depicted in solid green hatching at the point marked 24/03 as shown on Sheet 24 of the streets, rights of way and access plans subsequent to improvements to adjoining private access. |

# SCHEDULE 6

Article 12

## STREETS AND PUBLIC RIGHTS OF WAY

## PART 1

### TEMPORARY PROHIBITION OR RESTRICTION OF THE USE OF STREETS

| *(1)*<br>*Area* | *(2)*<br>*Street* | *(3)*<br>*Measure* |
|---|---|---|
| Lincolnshire County Council | A631 Harpswell Lane | Temporarily single or full closure to all traffic save for traffic under the direction of the undertaker for the width of the street to facilitate the alteration of layout for the lengths shown in green solid hatching on Sheets 1, 2 and 3 of the streets, rights of way and access plans. |
| Lincolnshire County Council | School Lane | Temporarily single or full closure to all traffic save for traffic under the direction of the undertaker for the width of the street to facilitate the alteration of layout and street works for the lengths shown in green solid and patterned hatching on Sheet 1 of the streets, rights of way and access plans. |
| Lincolnshire County Council | Common Lane | Temporarily single or full closure to all traffic save for traffic under the direction of the undertaker for the width of the street to facilitate the alteration of layout and street works for the lengths shown in green solid and patterned hatching on Sheets 3, 5, 6 and 7 of the streets, rights of way and access plans. |
| Lincolnshire County Council | Junction of A631 and B1398 Middle Street (roundabout) | Temporarily single or full closure to all traffic save for traffic under the direction of |

| | | |
|---|---|---|
| | | the undertaker for the width of the street to facilitate the alteration of layout for the length shown in green solid hatching on Sheet 4 of the streets, rights of way and access plans. |
| Lincolnshire County Council | B1398 Middle Street | Temporarily single or full closure to all traffic save for traffic under the direction of the undertaker for the width of the street to facilitate the alteration of layout for the length shown in green solid hatching on Sheet 4 of the streets, rights of way and access plans. |
| Lincolnshire County Council | Cow Lane | Temporarily single or full closure to all traffic save for traffic under the direction of the undertaker for the width of the street to facilitate the alteration of layout for the lengths shown in green solid hatching on Sheet 8 of the streets, rights of way and access plans. |
| Lincolnshire County Council | Kexby Lane | Temporarily single or full closure to all traffic save for traffic under the direction of the undertaker for the width of the street to facilitate the street works for the length shown in green patterned hatching on Sheet 9 of the streets, rights of way and access plans. |
| Lincolnshire County Council | Fillingham Lane | Temporarily single or full lane closure to all traffic save for traffic under the direction of the undertaker for the width of the street to facilitate the alteration of layout and street works for the lengths shown in green solid and patterned hatching on Sheets 13 and 14 of the streets, rights of way and access plans. |
| Lincolnshire County Council | Willingham Road | Temporarily single or full closure to all traffic save for traffic under the direction of the undertaker for the width of the street to facilitate the alteration of layout and street works for the lengths shown in green solid and patterned hatching on Sheet 13 of the streets, rights of way and |

| | | |
|---|---|---|
| | | access plans. |
| Lincolnshire County Council | South Lane | Temporarily single or full closure to all traffic save for traffic under the direction of the undertaker for the width of the street to facilitate the alteration of layout and street works for the lengths shown in green solid and patterned hatching on Sheets 13 and 15 of the streets, rights of way and access plans. |
| Lincolnshire County Council | Normanby Road | Temporarily single or full closure to all traffic save for traffic under the direction of the undertaker for the width of the street to facilitate the alteration of layout and street works for the lengths shown in green solid and patterned hatching on Sheet 16 of the streets, rights of way and access plans. |
| Lincolnshire County Council | Wooden Lane | Temporarily single or full closure to all traffic save for traffic under the direction of the undertaker for the width of the street to facilitate the alteration of layout and street works for the lengths shown in green solid and patterned hatching on Sheets 16 and 17 of the streets, rights of way and access plans. |
| Lincolnshire County Council | Stow Park Road | Temporarily single or full closure to all traffic save for traffic under the direction of the undertaker for the width of the street to facilitate the alteration of layout for the lengths shown in green solid hatching on Sheet 17 of the streets, rights of way and access plans. |
| Lincolnshire County Council | A1500 Tillbridge Lane | Temporarily single or full closure to all traffic save for traffic under the direction of the undertaker for the width of the street to facilitate the alteration of layout for the lengths shown in green solid hatching on Sheets 17 and 18 of the streets, rights of way and access plans. |
| Lincolnshire County Council | A1500 Stow Park Road | Temporarily single or full closure to all traffic save for traffic under the direction of |

| | | |
|---|---|---|
| | | the undertaker for the width of the street to facilitate the alteration of layout and street works for the lengths shown in green solid and patterned hatching on Sheets 18 and 19 of the streets, rights of way and access plans. |
| Lincolnshire County Council | A156 High street | Temporarily single or full closure to all traffic save for traffic under the direction of the undertaker for the width of the street to facilitate the alteration of layout and street works for the lengths shown in green solid and patterned hatching on Sheets 19 and 20 of the streets, rights of way and access plans. |
| Nottinghamshire County Council | Headstead Bank up until the junction of Headstead Bank and Broad Lane | Temporarily single or full closure to all traffic save for traffic under the direction of the undertaker for the width of the street to facilitate the alteration of layout and street works for the lengths shown in green solid and patterned hatching on Sheet 21 of the streets, rights of way and access plans. |
| Nottinghamshire County Council | Town Street | Temporarily single or full closure to all traffic save for traffic under the direction of the undertaker for the width of the street to facilitate the alteration of layout for the lengths shown in green solid hatching on Sheet 21 of the streets, rights of way and access plans. |
| Nottinghamshire County Council | Cow Pasture Lane | Temporarily single or full closure to all traffic save for traffic under the direction of the undertaker for the width of the street to facilitate the alteration of layout and street works for the lengths shown in green solid and patterned hatching on Sheet 21 of the streets, rights of way and access plans. |
| Nottinghamshire County Council | Cottom Road | Temporarily single or full closure to all traffic save for traffic under the direction of the undertaker for the width of the street to facilitate the alteration of layout and street |

| | | |
|---|---|---|
| | | works for the lengths shown in green solid and patterned hatching on Sheets 21 and 22 of the streets, rights of way and access plans. |
| Nottinghamshire County Council | Torksey Ferry Road | Temporarily single or full closure to all traffic save for traffic under the direction of the undertaker for the width of the street to facilitate the alteration of layout and street works for the lengths shown in green solid and patterned hatching on Sheets 23 and 24 of the streets, rights of way and access plans. |
| Nottinghamshire County Council | Shortleys Road | Temporarily single or full closure to all traffic save for traffic under the direction of the undertaker for the width of the street to facilitate the alteration of layout for the length shown in green solid hatching on Sheet 23 of the streets, rights of way and access plans. |
| Nottinghamshire County Council | Nightleys Road | Temporarily single or full closure to all traffic save for traffic under the direction of the undertaker for the width of the street to facilitate the alteration of layout for the length shown in green solid hatching on Sheet 23 of the streets, rights of way and access plans. |

# PART 2

## TEMPORARY PROHIBITION OR RESTRICTION OF PUBLIC RIGHTS OF WAY WITH DIVERSION

| *(1)*<br>*Area* | *(2)*<br>*Public right of way* | *(3)*<br>*Measure* |
|---|---|---|
| Lincolnshire County Council | Claimed PRoW Kexby and Willingham DMMO 680 between PRoW 12/01 and PRoW 13/01 | Claimed Public Right of Way to be temporarily stopped up and diverted between PRoW 12/02 and PRoW 13/02 as shown on Sheets 12 and 13 of the streets, access and rights of way plans, to facilitate the construction of the authorised development. |
| Lincolnshire County Council | Claimed PRoW DMMO 591 between PRoW 16/01 and | Claimed Public Right of Way to be temporarily stopped up |

| | | |
|---|---|---|
| | PRoW 17/01 | and diverted between PRoW 16/01 and PRoW 16/04 as shown on Sheet 16 of the streets, access and rights of way plans, to facilitate the construction of the authorised development. |
| Lincolnshire County Council | Claimed PRoW DMMO 591 between PRoW 16/02 and PRoW 16/04 | Claimed Public Right of Way to be temporarily stopped up and diverted between PRoW 16/02 and PRoW 16/04 as shown on Sheet 16 of the streets, access and rights of way plans, to facilitate the construction of the authorised development. |
| Lincolnshire County Council | LL\|Bram\|66/1 | Public Right of Way to be temporarily stopped up and diverted between PRoW 20/03 and PRoW 20/04 as shown on Sheets 19 and 20 of the streets, access and rights of way plans, to facilitate the construction of the authorised development. |
| Nottinghamshire County Council | NT\|South Leverton\|BOAT 16 | Public Right of Way to be temporarily stopped up and diverted between PRoW 21/01 and PRoW 21/02 as shown on Sheet 21 of the streets, access and rights of way plans, to facilitate the construction of the authorised development. |
| Nottinghamshire County Council | NT\|Cottam\|RB4 | Public Right of Way to be temporarily stopped up and diverted between PRoW 21/03 and PRoW 21/04 as shown on Sheet 21 of the streets, access and rights of way plans, to facilitate the construction of the authorised development. |
| Nottinghamshire County Council | NT\|Cottam\|FP3 | Public Right of Way to be temporarily stopped up and diverted between PRoW 21/05 and PRoW 21/06 as shown on Sheet 21 of the streets, access and rights of way plans, to facilitate the construction of the authorised development. |
| Nottinghamshire County Council | NT\|Rampton\|FP5 | Public Right of Way to be temporarily stopped up and diverted between PRoW 23/01 and PRoW 23/02 as shown on Sheet 23 of the streets, access and rights of way plans, to facilitate the construction of the authorised development. |
| Nottinghamshire County | NT\|Rampton\|FP6 | Public Right of Way to be |

| | | |
|---|---|---|
| Council | | temporarily stopped up and diverted between PRoW 23/04 and PRoW 23/05 as shown on Sheet 23 of the streets, access and rights of way plans, to facilitate the construction of the authorised development. |
| Nottinghamshire County Council | NT\|Rampton\|BOAT13 | Public Right of Way to be temporarily stopped up and diverted between PRoW 23/03 and PRoW 24/01 as shown on Sheets 23 and 24 of the streets, access and rights of way plans, to facilitate the construction of the authorised development. |
| Nottinghamshire County Council | NT\|Rampton\|FP20 | Public Right of Way to be temporarily stopped up and diverted between PRoW 23/06 and PRoW 23/07 as shown on Sheet 23 of the streets, access and rights of way plans, to facilitate the construction of the authorised development. |
| Nottinghamshire County Council | NT\|Rampton\|BOAT12 | Public Right of Way to be temporarily stopped up and diverted between PRoW 23/08 and PRoW 23/09 as shown on Sheet 23 of the streets, access and rights of way plans, to facilitate the construction of the authorised development. |

# PART 3

## PERMANENT USE OF MOTOR VEHICLES ON PUBLIC RIGHT OF WAY

| *(1)*<br>*Area* | *(2)*<br>*Public right of way* | *(3)*<br>*Measure* |
|---|---|---|
| Nottinghamshire County Council | NT\|Rampton\|BOAT13 | Permanent use of motor vehicles under the direction of the undertaker at location PRoW 23/03 and PRoW 24/01 as shown on Sheets 23 and 24 of the streets, access and rights of way plans, to facilitate the construction and operation of the Scheme. |

# PART 4

## TEMPORARY MANAGEMENT OF PUBLIC RIGHTS OF WAY

| *(1)*<br>*Area* | *(2)*<br>*Public right of way* | *(3)*<br>*Measure* |
|---|---|---|

| | | |
|---|---|---|
| Lincolnshire County Council | Claimed Glentworth and Harpswell Public Bridleway 1209 between PRoW 4/01 and PRoW 4/02 | Claimed Public Right of Way between PRoW 4/01 and PRoW 4/02 as shown on Sheet 4 of the streets, access and rights of way plans to be managed during construction of the authorised development. |
| Lincolnshire County Council | Gltw 85/1 | Public Right of Way between points PRoW 10/01 and PRoW 11/01 as shown on Sheets 10 and 11 of the streets, access and rights of way plans to be managed during construction of the authorised development. |
| Lincolnshire County Council | Claimed PRoW Kexby and Willingham DMMO 680 between PRoW 12/01 and PRoW 13/01 | Claimed Public Right of Way between PRoW 12/01 and PRoW 12/02 as shown on Sheet 12 of the streets, access and rights of way plans to be managed during construction of the authorised development. |
| Lincolnshire County Council | Claimed PRoW Kexby and Willingham DMMO 680 between PRoW 12/01 and PRoW 13/01 | Claimed Public Right of Way between PRoW 13/01 and PRoW 13/02 as shown on Sheet 13 of the streets, access and rights of way plans to be managed during construction of the authorised development. |
| Lincolnshire County Council | Claimed PRoW DMMO 591 between PRoW 16/01 and PRoW 17/01 | Claimed Public Right of Way between PRoW 16/04 and PRoW 17/01 as shown on Sheets 16 and 17 of the streets, access and rights of way plans to be managed during construction of the authorised development. |
| Lincolnshire County Council | Claimed PRoW DMMO 591 between PRoW 16/03 and PRoW 16/04 | Claimed Public Right of Way between PRoW 16/03 and PRoW 16/04 as shown on Sheet 16 of the streets, access and rights of way plans to be managed during construction of the authorised development. |
| Lincolnshire County Council | Claimed PRoW DMMO 591 between PRoW 17/02 and PRoW 17/03 | Claimed Public Right of Way between PRoW 17/02 and PRoW 17/03 as shown on Sheet 17 of the streets, access and rights of way plans to be managed during construction of the authorised development. |
| Lincolnshire County Council | Mton 68/1 | Public Right of Way between points PRoW 19/01 and PRoW 19/02 as shown on Sheet 19 of the streets, access and rights of way plans to be managed during construction of the authorised development. |

| | | |
|---|---|---|
| Nottinghamshire County Council | NT\|Cottam\|FP1 | Public Right of Way between points PRoW 20/01 and PRoW 20/02 as shown on Sheet 20 of the streets, access and rights of way plans to be managed during construction of the authorised development. |
| Nottinghamshire County Council | NT\|Rampton\|BOAT13 | Public Right of Way between points PRoW 23/03 and PRoW 24/01 as shown on Sheets 23 and 24 of the streets, access and rights of way plans to be managed during construction of the authorised development. |
| Nottinghamshire County Council | NT\|Rampton\|FP20 | Public Right of Way between points PRoW 23/06 and PRoW 23/07 as shown on Sheet 23 of the streets, access and rights of way plans to be managed during construction of the authorised development. |
| Nottinghamshire County Council | NT\|Rampton\|BOAT12 | Public Right of Way between points PRoW 23/08 and PRoW 23/09 as shown on Sheet 23 of the streets, access and rights of way plans to be managed during construction of the authorised development. |

# PART 5

## TEMPORARY USE OF MOTOR VEHICLES ON PUBLIC RIGHTS OF WAY

| *(1)*<br>*Area* | *(2)*<br>*Public right of way* | *(3)*<br>*Measure* |
|---|---|---|
| Lincolnshire County Council | Claimed PRoW Kexby and Willingham DMMO 680 between 12/01 and 13/01 | Temporary use of motor vehicles under the direction of the undertaker at location PRoW 12/02 and PRoW 13/02 as shown on Sheets 12 and 13 of the streets, access and rights of way plans to facilitate the construction of the Scheme. |
| Lincolnshire County Council | Claimed PRoW DMMO 591 between 16/02 and 16/04 | Temporary use of motor vehicles under the direction of the undertaker at location PRoW 16/02 and PRoW 16/04 as shown on Sheet 16 of the streets, access and rights of way plans to facilitate the construction of the Scheme. |
| Lincolnshire County Council | LL\|Bram\|66/1 | Temporary use of motor vehicles under the direction of the undertaker at location PRoW 20/03 and PRoW 20/04 as shown on Sheet 20 of the |

| | | |
|---|---|---|
| | | streets, access and rights of way plans to facilitate the construction of the Scheme. |
| Nottinghamshire County Council | NT\|South Leverton\|BOAT 16 | Temporary use of motor vehicles under the direction of the undertaker at location PRoW 21/01 and PRoW 21/02 as shown on Sheet 21 of the streets, access and rights of way plans, to facilitate the construction of the Scheme. |
| Nottinghamshire County Council | NT\|Cottam\|RB4 | Temporary use of motor vehicles under the direction of the undertaker at location PRoW 21/03 and PRoW 21/04 as shown on Sheet 21 of the streets, access and rights of way plans, to facilitate the construction of the Scheme. |
| Nottinghamshire County Council | NT\|Cottam\|FP3 | Temporary use of motor vehicles under the direction of the undertaker at location PRoW 21/05 and PRoW 21/06 as shown on Sheet 21 of the streets, access and rights of way plans, to facilitate the construction of the Scheme. |
| Nottinghamshire County Council | NT\|Rampton\|FP5 | Temporary use of motor vehicles under the direction of the undertaker at location PRoW 23/01 and PRoW 23/02 as shown on Sheet 23 of the streets, access and rights of way plans, to facilitate the construction of the Scheme. |
| Nottinghamshire County Council | NT\|Rampton\|FP20 | Temporary use of motor vehicles under the direction of the undertaker at location PRoW 23/06 and PRoW 23/07 as shown on Sheet 23 of the streets, access and rights of way plans, to facilitate the construction of the Scheme. |
| Nottinghamshire County Council | NT\|Rampton\|BOAT12 | Temporary use of motor vehicles under the direction of the undertaker at location PRoW 23/08 and PRoW 23/09 as shown on Sheet 23 of the streets, access and rights of way plans, to facilitate the construction of the Scheme. |

# SCHEDULE 7

Article 15

## ACCESS TO WORKS

## PART 1

### PERMANENT MEANS OF ACCESS TO WORKS

| *(1)*<br>*Area* | *(2)*<br>*Location* | *(3)*<br>*Description of means of access* |
|---|---|---|
| Lincolnshire County Council | Existing Access off A631 Harpswell Lane to School Lane | Existing access to be improved at the point marked 1/13 on Sheet 1 of the streets, rights of way and access plans. |
| Lincolnshire County Council | Proposed New Access off School Lane Northbound | Proposed new access to be constructed at the point marked 1/14 on Sheet 1 of the streets, rights of way and access plans. |
| Lincolnshire County Council | Existing Field Access off School Lane Southbound | Existing field access to be improved at the point marked 1/15 on Sheet 1 of the streets, rights of way and access plans. |
| Lincolnshire County Council | Proposed New Access off School Lane Northbound | Proposed new access to be constructed at the point marked 1/34 on Sheet 1 of the streets, rights of wat and access plans. |
| Lincolnshire County Council | Existing Private Means of Access off A631 Harpswell Lane | Existing private means of access to be improved at the point marked 2/03 on Sheet 2 of the streets, rights of way and access plans. |
| Lincolnshire County Council | Existing Private Means of Access off A631 Harpswell Lane | Existing private means of access to be improved at the point marked 2/09 on Sheet 2 of the streets, rights of way and access plans. |
| Lincolnshire County Council | Existing Private Means of Access off B1398 Middle Street Northbound | Existing private means of access to be improved at the point marked 4/01 on Sheet 4 of the streets, rights of way and access plans. |
| Lincolnshire County Council | Existing Field Access off Common Lane Westbound | Existing field access to be improved at the point marked 5/23 on Sheet 5 of the streets, rights of way and access plans. |
| Lincolnshire County Council | Existing Field Access off Common Lane Eastbound and Southbound | Existing field access to be improved at the point marked 6/01 on Sheet 6 of the streets, rights of way and access plans. |
| Lincolnshire County Council | Proposed New Access off Common Lane Eastbound | Proposed new access to be constructed at the point marked 6/04 on Sheet 6 of the |

| | | |
|---|---|---|
| | | streets, rights of way and access plans. |
| Lincolnshire County Council | Proposed New Access off Common Lane Westbound | Proposed new access to be constructed at the point marked 6/15 on Sheet 6 of the streets, rights of way and access plans. |
| Nottinghamshire County Council | Existing Access off Torksey Ferry Road to Shortleys Road | Existing access to be improved at the point marked 23/07 on Sheet 23 of the streets, rights of way and access plans. |

# PART 2

## TEMPORARY MEANS OF ACCESS TO WORKS

| *(1)*<br>*Area* | *(2)*<br>*Location* | *(3)*<br>*Description of means of access* |
|---|---|---|
| Lincolnshire County Council | Proposed New Access off School Lane Northbound | Proposed new access to be constructed at the point marked 1/35 on Sheet 1 of the streets, rights of way and access plans. |
| Lincolnshire County Council | Existing Field Access off Cow Lane Eastbound and Southbound | Existing field access to be improved at the point marked 8/13 on Sheet 8 of the streets, rights of way and access plans. |
| Lincolnshire County Council | Existing Field Access off Fillingham Lane Southbound and Westbound | Existing field access to be improved at the point marked 13/26 on Sheet 13 of the streets, rights of way and access plans. |
| Lincolnshire County Council | Proposed New Access off Willingham Road Eastbound | Proposed new access to be constructed at the point marked 13/28 on Sheet 13 of the streets, rights of way and access plans. |
| Lincolnshire County Council | Existing Field Access off South Lane Southbound | Existing field access to be improved at the point marked 13/31 on Sheet 13 of the streets, rights of way and access plans. |
| Lincolnshire County Council | Existing Field Access off South Lane Northbound | Existing field access to be improved at the point marked 13/32 on Sheet 13 of the streets, rights of way and access plans. |
| Lincolnshire County Council | Proposed New Access off Normanby Road Northbound | Proposed new access to be constructed at the point marked 16/06 on Sheet 16 of the streets, rights of way and access plans. |
| Lincolnshire County Council | Proposed New Access off Normanby Road Southbound | Proposed new access to be constructed at the point marked 16/07 on Sheet 16 of |

| | | |
|---|---|---|
| | | the streets, rights of way and access plans. |
| Lincolnshire County Council | Proposed New Access off Wooden Lane Northbound | Proposed new access to be constructed at the point marked 16/08 on Sheet 16 of the streets, rights of way and access plans. |
| Lincolnshire County Council | Proposed New Access off Wooden Lane Southbound | Proposed new access to be constructed at the point marked 16/09 on Sheet 16 of the streets, rights of way and access plans. |
| Lincolnshire County Council | Existing Access off A1500 Tillbridge Lane to Stow Park Road | Existing access to be improved at the point marked 17/04 on Sheet 17 of the streets, rights of way and access plans. |
| Lincolnshire County Council | Existing Access off Stow Park Road to Wooden Lane | Existing access to be improved at the point marked 17/25 on Sheet 17 of the streets, rights of way and access plans. |
| Lincolnshire County Council | Existing Private Means of Access off A1500 Tillbridge Lane | Existing private means of access to be improved at the point marked 18/01 on Sheet 18 of the streets, rights of way and access plans. |
| Lincolnshire County Council | Proposed New Access off A1500 Stow Park Road Eastbound | Proposed new access to be constructed at the point marked 19/03 on Sheet 19 of the streets, rights of way and access plans. |
| Lincolnshire County Council | Proposed New Access off A1500 Stow Park Road Westbound | Proposed new access to be constructed at the point marked 19/04 on Sheet 19 of the streets, rights of way and access plans. |
| Lincolnshire County Council | Existing Field Access off A156 High Street Southbound | Existing field access to be improved at the point marked 19/12 on Sheet 19 of the streets, rights of way and access plans. |
| Lincolnshire County Council | Proposed New Access off A156 High Street Northbound | Proposed new access to be constructed at the point marked 19/15 on Sheet 19 of the streets, rights of way and access plans. |
| Lincolnshire County Council | Existing Field Access off A156 High Street Northbound | Existing field access to be improved at the point marked 20/01 on Sheet 20 of the streets, rights of way and access plans. |
| Nottinghamshire County Council | Existing Field Access off Headstead Bank Southbound | Existing field access to be improved at the point marked 21/62 on Sheet 21 of the streets, rights of way and access plans. |
| Nottinghamshire County | Existing Field Access off | Existing field access to be |

| | | |
|---|---|---|
| Council | Headstead Bank Southbound | improved at the point marked 21/63 on Sheet 21 of the streets, rights of way and access plans. |
| Nottinghamshire County Council | Proposed New Access off Headstead Bank Northbound | Proposed new access to be constructed at the point marked 21/64 on Sheet 21 of the streets, rights of way and access plans. |
| Nottinghamshire County Council | Existing Field Access off Cottam Road Westbound | Existing field access to be improved at the point marked 22/01 on Sheet 22 of the streets, rights of way and access plans. |
| Nottinghamshire County Council | Proposed New Access off Cottam Road Eastbound | Proposed new access to be constructed at the point marked 22/02 on Sheet 22 of the streets, rights of way and access plans. |
| Nottinghamshire County Council | Existing Field Access off Torksey Ferry Road Eastbound | Existing field access to be improved at the point marked 23/03 on Sheet 23 of the streets, rights of way and access plans. |
| Nottinghamshire County Council | Existing Field Access off Shortleys Road Northbound | Existing field access to be improved at the point marked 23/08 on Sheet 23 of the streets, rights of way and access plans. |
| Nottinghamshire County Council | Proposed New Access off Shortleys Road Southbound | Proposed new access to be constructed at the point marked 23/09 on Sheet 23 of the streets, rights of way and access plans. |
| Nottinghamshire County Council | Existing Private Means of Access off Torksey Ferry Road Eastbound | Existing private means of access to be improved at the point marked 24/03 on Sheet 24 of the streets, rights of way and access plans. |

# SCHEDULE 8

Article 17

## TRAFFIC REGULATION MEASURES

| *(1)*<br>*Area* | *(2)*<br>*Extent of temporary traffic signal and banksman control area or change to traffic regulation* |
|---|---|
| A631 Harpswell Lane Eastbound and Westbound Carriageway to facilitate the construction of the authorised development. | Extents of traffic signals and banksman control presented on Sheets 1, 2 and 3 of the traffic regulation measures plans. |
| School Lane Northbound, Southbound, Eastbound and Westbound Carriageways to | Extents of traffic signals and banksman control presented on Sheet 1 of the traffic regulation |

| | |
|---|---|
| facilitate the construction of the authorised development. | measures plans. |
| Common Lane Eastbound, Westbound, Northbound and Southbound Carriageways to facilitate the construction of the authorised development. | Extents of traffic signals and banksman control presented on Sheets 3, 5, 6 and 7 of the traffic regulation measures plans. |
| Junction of A631 Harpswell Lane and B1398 Middle Street (roundabout) | Extents of traffic signals and banksman control presented on Sheet 4 of the traffic regulation measures plans. |
| B1398 Middle Street Northbound and Southbound Carriageway to facilitate the construction of the authorised development. | Extents of traffic signals and banksman control presented on Sheet 4 of the traffic regulation measures plans. |
| Cow Lane Eastbound, Westbound, Northbound and Southbound Carriageways to facilitate the construction of the authorised development. | Extents of traffic signals and banksman control presented on Sheet 8 of the traffic regulation measures plans. |
| Kexby Lane Eastbound and Westbound Carriageways to facilitate the construction of the authorised development. | Extents of traffic signals and banksman control presented on Sheet 9 of the traffic regulation measures plans. |
| Willingham Road Eastbound and Westbound Carriageway to facilitate the construction of the authorised development. | Extents of traffic signals and banksman control presented on Sheet 13 of the traffic regulation measures plans. |
| Fillingham Lane Eastbound and Westbound Carriageway to facilitate the construction of the authorised development. | Extents of traffic signals and banksman control presented on Sheets 13 and 14 of the traffic regulation measures plans. |
| South Lane Northbound and Southbound Carriageway to facilitate the construction of the authorised development. | Extents of traffic signals and banksman control presented on Sheets 13 and 15 of the traffic regulation measures plans. |
| Normanby Road Northbound and Southbound Carriageway to facilitate the construction of the authorised development. | Extents of traffic signals and banksman control presented on Sheet 16 of the traffic regulation measures plans. |
| Wooden Lane Northbound and Southbound Carriageway to facilitate the construction of the authorised development. | Extents of traffic signals and banksman control presented on Sheets 16 and 17 of the traffic regulation measures plans. |
| Stow Park Road Eastbound and Westbound Carriageway to facilitate the construction of the authorised development. | Extents of traffic signals and banksman control presented on Sheet 17 of the traffic regulation measures plans. |
| A1500 Tillbridge Lane Eastbound and Westbound Carriageway to facilitate the construction of the authorised development. | Extents of traffic signals and banksman control presented on Sheets 17 and 18 of the traffic regulation measures plans. |
| A1500 Stow Park Road Eastbound and Westbound Carriageway to facilitate the construction of the authorised development. | Extents of traffic signals and banksman control presented on Sheets 18 and 19 of the traffic regulation measures plans. |
| A156 High Street Northbound and Southbound Carriageway to facilitate the construction of the authorised development. | Extents of traffic signals and banksman control presented on Sheets 19 and 20 of the traffic regulation measures plans. |
| Headstead Bank Northbound and Southbound Carriageway commencing to the South of the Junction with Broad Lane to facilitate the construction of the authorised development. | Extents of traffic signals and banksman control presented on Sheet 21 of the traffic regulation measures plans. |
| Town Street Northbound and Southbound Carriageway commencing to the South of the Junction with Broad Lane to facilitate the construction of the authorised development. | Extents of traffic signals and banksman control presented on Sheet 21 of the traffic regulation measures plans. |
| Cow Pasture Lane Northbound and Southbound Carriageway to facilitate the construction of the | Extents of traffic signals and banksman control presented on Sheet 21 of the traffic regulation |

| | |
|---|---|
| authorised development. | measures plans. |
| 18 Ton Weight Restriction in place on Cottam Road leading to Town Street and Headstead Bank. | Existing 18 Ton Weight Restriction as shown on Sheet 21 of the traffic regulation measures plans to be temporarily suspended in both directions to facilitate the access of construction vehicles to and from the Grid Connection Corridor to the north of the village of Cottam. |
| Cottam Road Eastbound and Westbound Carriageway to facilitate the construction of the authorised development. | Extents of traffic signals and banksman control presented on Sheets 21 and 22 of the traffic regulation measures plans. |
| Torksey Ferry Road Eastbound and Westbound Carriageway to facilitate the construction of the authorised development. | Extents of traffic signals and banksman control presented on Sheets 23 and 24 of the traffic regulation measures plans. |
| Nightleys Road Northbound and Southbound Carriageway to facilitate the construction of the authorised development. | Extents of traffic signals and banksman control presented on Sheet 23 of the traffic regulation measures plans. |
| Shortleys Road Northbound and Southbound Carriageway to facilitate the construction of the authorised development. | Extents of traffic signals and banksman control presented on Sheet 23 of the traffic regulation measures plans. |

# SCHEDULE 9

Article 23

# LAND IN WHICH ONLY NEW RIGHTS ETC. MAY BE ACQUIRED

**Interpretation**

**1.** In this Schedule—

"access rights" means rights over land to—

(a) alter, improve, form, maintain, retain, use (with or without vehicles, plant and machinery), remove, reinstate means of access to the authorised development including visibility splays, bridges and road widening and to remove impediments (including vegetation) to such access;

(b) form, remove, reinstate passing places in the highway and means of access to the authorised development including visibility splays and to remove impediments to such access;

(c) remain, pass and repass on foot, with or without vehicles, plant and machinery (including rights to lay and use any temporary surface) for all purposes in connection with the authorised development;

(d) install, use, support, protect, inspect, alter, remove, replace, refurbish, reconstruct, retain, renew, improve and maintain security fencing, gates, boundary treatment, public rights of way and any other ancillary apparatus and any other works as necessary;

(e) install, execute, implement, retain, repair, improve, renew, remove, relocate and plant trees, woodlands, shrubs, hedgerows, seeding, landscaping and other ecological measures together with the right to maintain, inspect and replant such trees, shrubs, hedgerows, landscaping and other ecological measures the right to pass and repass on foot, with or without vehicles, plant and machinery for all purposes in connection with the implementation and maintenance of landscaping and ecological mitigation or enhancement works; and

(f) 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;

"cable rights" means rights over land to—

(a) install, use, support, protect, inspect, alter, remove, replace, refurbish, reconstruct, retain, renew, improve and maintain electrical underground cables, earthing cables, optical fibre cables, data cables, telecommunications cables and other services, works associated with such cables including bays, ducts, protection and safety measures and equipment, and other ancillary apparatus and structures (including but not limited to access chambers, manholes and marker posts) and any other works necessary together with the right to fell, trim or lop trees and bushes which may obstruct or interfere with the said cables, telecommunications and other ancillary apparatus;

(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;

(c) continuous vertical and lateral support for the authorised development;

(d) install, use, support, protect, inspect, alter, remove, replace, refurbish, reconstruct, retain, renew, improve and maintain sewers, drains, pipes, ducts, mains, conduits, services, flues and to drain into and manage waterflows in any drains, watercourses and culverts;

(e) install, execute, implement, retain, repair, improve, renew, remove, relocate and plant trees, woodlands, shrubs, hedgerows, seeding, landscaping and other ecological measures together with the right to maintain, inspect and replant such trees, shrubs, hedgerows, landscaping and other ecological measures the right to pass and repass on foot, with or without vehicles, plant and machinery for all purposes in connection with the implementation and maintenance of landscaping and ecological mitigation or enhancement works;

(f) install, use, support, protect, inspect, alter, remove, replace, refurbish, reconstruct, retain, renew, improve and maintain security fencing, gates, boundary treatment, public rights of way and any other ancillary apparatus and any other works as necessary; and

(g) restrict and remove the erection of buildings or structures, restrict the altering of ground levels, restrict and remove vegetation and restrict the planting of trees or carrying out operations or actions (including but not limited to blasting and piling) which may obstruct, interrupt or interfere with the exercise of the rights or damage the authorised development; and

"substation connection rights" means rights over land to, for the purposes of the authorised development and in connection with the authorised development—

(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 National Grid Cottam substation;

(b) install, use, support, protect, inspect, alter, remove, replace, refurbish, reconstruct, retain, renew, improve and maintain sewers, drains, pipes, ducts, mains, conduits, services, flues and to drain into and manage waterflows in any drain, watercourses and culverts;

(c) 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 Work No. 4E and 5;

(d) restrict and remove the erection of buildings or structures, restrict the altering of ground levels, restrict and remove the planting of trees or carrying out operations or actions (including but not limited to blasting and piling) which may obstruct, interrupt or interfere with the exercise of the rights or damage the authorised development; and

(e) install, use, support, protect, inspect, alter, remove, replace, retain, renew, improve and maintain soft landscaping and biodiversity measures;

"AIL rights" means rights over land to pass and repass on foot, with or without vehicles, plant and machinery (including rights to lay and use any temporary surface) and to temporarily

remove impediments to such passage for all purposes in connection with the authorised development.

| *(1)*<br>*Plot reference number shown on the Land Plans* | *(2)*<br>*Purposes for which rights over land may be required and restrictive covenants imposed* |
|---|---|
| 1-07 | Access rights |
| 1-08 | Access rights |
| 2-04a | Access rights |
| 2-04b | Access rights |
| 2-08 | Access rights |
| 3-01 | Access rights |
| 3-03 | Access rights |
| 3-20 | Cable rights and access rights |
| 4-02 | AIL rights |
| 4-03 | AIL rights |
| 4-04 | AIL rights |
| 4-05 | AIL rights |
| 4-11 | Access rights |
| 5-12a | Cable rights and access rights |
| 5-12b | Cable rights and access rights |
| 6-11 | Cable rights and access rights |
| 6-12 | Cable rights and access rights |
| 6-13 | Cable rights and access rights |
| 6-16 | Cable rights and access rights |
| 7-04 | Cable rights and access rights |
| 7-04a | Cable rights and access rights |
| 7-05 | Cable rights and access rights |
| 8-09a | Access rights |
| 8-09b | Access rights |
| 8-09c | Access rights |
| 8-09d | Access rights |
| 8-09e | Access rights |
| 8-11 | Cable rights |
| 9-06 | Cable rights |
| 9-07 | Cable rights |
| 9-08 | Cable rights |
| 9-09 | Cable rights |
| 9-10 | Cable rights |
| 9-11 | Cable rights |
| 9-12 | Cable rights |
| 12-01 | Cable rights |
| 12-02 | Cable rights |
| 12-03 | Cable rights |
| 12-04 | Cable rights |
| 12-05 | Cable rights |
| 13-01 | Cable rights |
| 13-02 | Cable rights |
| 13-03 | Cable rights |
| 13-04 | Cable rights |
| 13-05 | Cable rights |

| | |
|---|---|
| 13-06 | Cable rights |
| 13-07 | Cable rights and access rights |
| 13-08 | Cable rights |
| 13-09 | Cable rights |
| 13-10 | Cable rights and access rights |
| 13-11a | Access rights |
| 13-11b | Access rights |
| 13-12 | Cable rights |
| 13-13 | Cable rights |
| 13-14 | Cable rights |
| 13-15 | Cable rights |
| 13-16 | Cable rights |
| 13-17 | Cable rights |
| 13-18 | Cable rights and access rights |
| 13-19 | Cable rights and access rights |
| 13-20 | Cable rights |
| 14-01a | Access rights |
| 14-01b | Access rights |
| 14-01c | Access rights |
| 14-02 | Access rights |
| 15-01 | Cable rights and access rights |
| 15-02 | Cable rights |
| 15-03 | Cable rights |
| 15-04 | Cable rights |
| 15-05 | Cable rights |
| 15-06 | Cable rights |
| 15-07 | Cable rights |
| 15-08 | Cable rights |
| 16-01 | Cable rights |
| 16-03 | Cable rights and access rights |
| 16-04 | Cable rights |
| 16-05 | Cable rights |
| 16-06 | Cable rights |
| 16-07 | Cable rights |
| 16-08 | Cable rights and access rights |
| 16-09 | Access rights |
| 16-10 | Cable rights |
| 17-01 | Cable rights |
| 17-02 | Cable rights |
| 17-03 | Cable rights |
| 17-05 | Access rights |
| 17-06a | Access rights |
| 17-06b | Access rights |
| 17-06c | Access rights |
| 17-06d | Access rights |
| 17-06e | Access rights |
| 18-01 | Cable rights |
| 18-02 | Cable rights |
| 18-03 | Cable rights |
| 18-04 | Cable rights |
| 18-05 | Cable rights |

| | |
|---|---|
| 18-06 | Cable rights |
| 18-07 | Access rights |
| 18-08 | Access rights |
| 18-09 | Cable rights |
| 18-10 | Cable rights |
| 18-11 | Cable rights |
| 18-12 | Cable rights |
| 18-13 | Cable rights |
| 18-14 | Cable rights |
| 18-15 | Cable rights |
| 18-16 | Cable rights |
| 18-17 | Cable rights |
| 18-18 | Cable rights |
| 18-19 | Cable rights |
| 18-20 | Cable rights |
| 18-21 | Cable rights |
| 18-22 | Cable rights and access rights |
| 18-23 | Cable rights |
| 19-01 | Cable rights |
| 19-02 | Cable rights and access rights |
| 19-03 | Cable rights |
| 19-04 | Cable rights |
| 19-05 | Cable rights |
| 19-06 | Cable rights |
| 19-07 | Cable rights and access rights |
| 19-08 | Cable rights |
| 19-09 | Cable rights |
| 19-10 | Cable rights |
| 19-11 | Access rights |
| 19-12 | Access rights |
| 19-13 | Access rights |
| 20-01 | Access rights |
| 20-02 | Cable rights |
| 20-03 | Cable rights |
| 20-04 | Cable rights |
| 20-05 | Access rights |
| 20-06 | Cable rights and access rights |
| 20-08 | Cable rights |
| 20-09 | Cable rights |
| 20-10 | Cable rights |
| 20-11 | Cable rights |
| 20-13 | Cable rights |
| 20-14 | Cable rights |
| 20-15 | Cable rights |
| 21-01 | Cable rights |
| 21-02 | Cable rights |
| 21-03 | Cable rights |
| 21-04 | Cable rights |
| 21-05 | Cable rights |
| 21-06 | Cable rights |
| 21-07 | Cable rights |

| | |
|---|---|
| 21-08 | Cable rights and access rights |
| 21-08a | Access rights |
| 21-08b | Access rights |
| 21-08c | Access rights |
| 21-08d | Access rights |
| 21-09 | Cable rights |
| 21-10 | Cable rights |
| 21-11 | Cable rights |
| 21-12 | Cable rights |
| 21-13 | Cable rights |
| 21-14 | Cable rights |
| 21-15 | Cable rights |
| 21-16 | Cable rights |
| 21-17 | Cable rights |
| 21-17a | Cable rights |
| 21-18 | Cable rights |
| 21-19 | Cable rights |
| 21-20 | Cable rights |
| 21-23 | Cable rights and access rights |
| 21-24 | Cable rights and access rights |
| 21-26 | Cable rights and access rights |
| 22-01 | Cable rights |
| 22-03 | Cable rights and access rights |
| 22-04 | Cable rights |
| 22-05 | Cable rights |
| 22-06 | Cable rights |
| 23-01 | Cable rights |
| 23-02 | Cable rights |
| 23-03 | Access rights |
| 23-04 | Access rights |
| 23-05 | Substation connection rights and access rights |
| 23-06 | Substation connection rights and access rights |
| 23-07 | Substation connection rights and access rights |
| 23-08 | Cable rights |
| 23-09 | Cable rights |
| 23-10 | Cable rights |
| 23-11 | Cable rights |
| 23-12 | Cable rights |
| 23-13 | Cable rights |
| 24-01 | Access rights |
| 24-02 | Access rights |

# SCHEDULE 10

Article 23

# MODIFICATION OF COMPENSATION AND COMPULSORY PURCHASE ENACTMENTS FOR THE CREATION OF NEW RIGHTS AND IMPOSITION OF NEW RESTRICTIVE COVENANTS

**Compensation enactments**

**1.** The enactments for the time being in force with respect to compensation for the compulsory purchase of land are to apply, with the necessary modifications as respects compensation, in the case of a compulsory acquisition under this Order of a right by the creation of a new right or the imposition of a restrictive covenant as they apply as respects compensation on the compulsory purchase of land and interests in land.

**2.**—(1) Without limitation on the scope of paragraph 1, the Land Compensation Act 1973(**a**) has effect subject to the modifications set out in sub-paragraph (2).

(2) In section 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" substitute "a right or restrictive covenant over land is purchased from or imposed on"; and

(b) for the words "acquired or taken from him" substitute "over which the right is exercisable or the restrictive covenant enforceable".

**3.**—(1) Without limitation on the scope of paragraph 1, the 1961 Act has effect subject to the modifications set out in sub-paragraph (2).

(2) In section 5A(5A) (relevant valuation date), omit the words after "if—" and substitute—

"(a) the acquiring authority enters on land for the purpose of exercising a right in pursuant of a notice of entry under section 11(1) of the 1965 Act (as modified by paragraph 5(5) of Schedule 10 (modification of compensation and compulsory purchase enactments for the creation of new rights and imposition of new restrictive covenants) to the Tillbridge Solar Order 202[*];

(b) the acquiring authority is subsequently required by a determination under paragraph 12 of Schedule 2A to the 1965 Act (as substituted by paragraph 5(7) of Schedule 10 to the Tillbridge Solar Order 202[*]) to acquire an interest in the land; and

(c) the acquiring authority enters on and takes possession of that land the authority is deemed for the purposes of subsection (3)(a) to have entered on that land where it entered on that land for the purpose of exercising that right."

**Application of Part 1 of the 1965 Act**

**4.** Part 1 (compulsory purchase under Acquisition of Land Act 1981) of the 1965 Act, as applied by section 125 (application of compulsory acquisition provisions) of the 2008 Act to the acquisition of land under article 21 (compulsory acquisition of land) and as modified by article 28 (modification of Part 1 of the Compulsory Purchase Act 1965), applies to the compulsory acquisition of a right by the creation of a new right under article 23 (compulsory acquisition of rights)—

(a) with the modifications specified in paragraph 5; and

(b) with such other modifications as may be necessary.

---

(**a**) 1973 c. 26.

**5.**—(1) The modifications referred to in paragraph 4(a) are as follows—

(2) References in the 1965 Act to land are, in the appropriate contexts, to be read (according to the requirements of the particular context) as referring to, or as including references to—

(a) the right acquired or to be acquired, or the restriction imposed or to be imposed; or

(b) the land over which the right is or is to be exercisable, or the restriction is to be enforceable.

(3) For section 7 of the 1965 Act (measure of compensation in case of severance) substitute—

"**7.** In assessing the compensation to be paid by the acquiring authority under this Act, regard must be had not only to the extent (if any) to which the value of the land over which the right is to be acquired or the restrictive covenant is to be imposed is depreciated by the acquisition of the right or the imposition of the covenant but also to the damage (if any) to be sustained by the owner of the land by reason of its severance from other land of the owner, or injuriously affecting that other land by the exercise of the powers conferred by this or the special Act."

(4) The following provisions of the 1965 Act (which state the effect of a deed poll executed in various circumstances where there is no conveyance by persons with interests in the land), that is to say—

(a) section 9(4) (failure by owners to convey);

(b) paragraph 10(3) of Schedule 1 (owners under incapacity);

(c) paragraph 2(3) of Schedule 2 (absent and untraced owners); and

(d) paragraphs 2(3) and 7(2) of Schedule 4 (common land),

are modified to secure that, as against persons with interests in the land which are expressed to be overridden by the deed, the right which is to be compulsorily acquired or the restrictive covenant which is to be imposed is vested absolutely in the acquiring authority.

(5) Section 11 (powers of entry)(**a**) of the 1965 Act is modified to secure that, as from the date on which the acquiring authority has served notice to treat in respect of any right or restrictive covenant, as well as the notice of entry required by subsection (1) of that section (as it applies to compulsory acquisition under article 21 (compulsory acquisition of land)), it has power, exercisable in equivalent circumstances and subject to equivalent conditions, to enter for the purpose of exercising that right or enforcing that restrictive covenant (which is deemed for this purpose to have been created on the date of service of the notice); and sections 11A (powers of entry: further notices of entry)(**b**), 11B (counter-notice requiring possession to be taken on specified date)(**c**), 12 (unauthorised entry)(**d**) and 13 (refusal to give possession to acquiring authority)(**e**) of the 1965 Act are modified correspondingly.

(6) Section 20 (**f**) (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 enforcement of the restrictive covenant in question.

---

(**a**) Section 11 was amended by section 34(1) of, and Schedule 4 to, the Acquisition of Land Act 1981 (c. 67), section 3 of, and Part 1 of Schedule 1 to, the Housing (Consequential Provisions) Act 1985 (c. 71), section 14 of, and paragraph 12(1) of Schedule 5 to, the Church of England (Miscellaneous Provisions) Measure 2006 (No. 1), sections 186(2), 187(2) and 188 of, and paragraph 6 of Schedule 14 and paragraph 3 of Schedule 16 to, the Housing and Planning Act 2016 (c. 22) and S.I. 2009/1307.

(**b**) Section 11A was inserted by section 186(3) of the Housing and Planning Act 2016.

(**c**) Section 11B was inserted by section 187(3) of the Housing and Planning Act 2016.

(**d**) Section 12 was amended by section 56(2) of, and Part 1 of Schedule 9 to, the Court Act 1971 (c. 23) and paragraphs (2) and (4) of Schedule 16 to the Housing and Planning Act 2016.

(**e**) Section 13 was amended by sections 62(3), 139(4) to (9) and 146 of, and paragraphs 27 and 28 of Schedule 13 and Part 3 of Schedule 23 to the Tribunals, Courts and Enforcement Act 2007 (c. 15).

(**f**) Section 20 was amended by paragraph 4 of Schedule 15 to the Planning and Compensation Act 1991 (c. 34) and S.I. 2009/1307.

(7) Section 22 (interests omitted from purchase) of the 1965 Act as modified by article 28 (modification of Part 1 of the Compulsory Purchase Act 1965) is so modified as to enable the acquiring authority, in circumstances corresponding to those referred to in that section, to continue to be entitled to exercise the right acquired or restrictive covenant imposed, subject to compliance with that section as respects compensation.

(8) For Schedule 2A to the 1965 Act (counter notice requiring purchase of land not in notice to treat) substitute—

# "SCHEDULE 2A

# COUNTER-NOTICE REQUIRING PURCHASE OF LAND

**1.**—(1) This Schedule applies where an acquiring authority serves 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 25 (application of the 1981 Act) of the Tillbridge Solar Order 202[*] in respect of the land to which the notice to treat relates.

(2) But see article 26(3) (acquisition of subsoil only) of the Tillbridge Solar Order 202[*] which excludes the acquisition of subsoil only from this Schedule.

**2.** In this Schedule, "house" includes any park or garden belonging to a house.

**Counter-notice requiring purchase of land**

**3.** A person who is able to sell the house, building or factory ("the owner") may serve a counter-notice requiring the authority to purchase the owner's interest in the house, building or factory.

**4.** A counter-notice under paragraph 3 must be served within the period of 28 days beginning with the day on which the notice to treat was served.

**Response to counter-notice**

**5.** On receiving a counter-notice, the acquiring authority must decide whether to—

(a) withdraw the notice to treat,

(b) accept the counter notice, or

(c) refer the counter notice to the Upper Tribunal.

**6.** The authority must serve notice of their decision on the owner within the period of three months beginning with the day on which the counter-notice is served ("the decision period").

**7.** If the authority decides to refer the counter-notice to the Upper Tribunal they must do so within the decision period.

**8.** If the authority does not serve notice of a decision within the decision period they are to be treated as if they had served notice of a decision to withdraw the notice to treat at the end of that period.

**9.** If the authority serves notice of a decision to accept the counter-notice, the compulsory purchase order and the notice to treat are to have effect as if they included the owner's interest in the house, building or factory.

**Determination by the Upper Tribunal**

**10.** On a referral under paragraph 7, the Upper Tribunal must determine whether the acquisition of the right or the imposition of the restrictive covenant would—

(a) in the case of a house, building or factory; cause material detriment to the house, building or factory, or

(b) in the case of a park or garden, seriously affect the amenity or convenience of the house to which the park or garden belongs.

**11.** In making its determination, the Upper Tribunal must take into account—

(a) the effect of the acquisition of the right or the imposition of the covenant,

(b) the use to be made of the right or covenant proposed to be acquired or imposed, and

(c) if the right or covenant is proposed to be acquired or imposed for works or other purposes extending to other land, the effect of the whole of the works and the use of the other land.

**12.** If the Upper Tribunal determines that the acquisition of the right or the imposition of the covenant would have either of the consequences described in paragraph 10, it must determine how much of the house, building or factory the authority ought to be required to take.

**13.** If the Upper Tribunal determines that the authority ought to be required to take some or all of the house, building or factory, the compulsory purchase order and the notice to treat are to have effect as if they included the owner's interest in that land.

**14.**—(1) If the Upper Tribunal determines that the authority ought to be required to take some or all of the house, building or factory, the authority may at any time within the period of six weeks beginning with the day on which the Upper Tribunal makes its determination withdraw the notice to treat in relation to that land.

(2) If the acquiring authority withdraws the notice to treat under this paragraph they must pay the person on whom the notice was served compensation for any loss or expense cause by the giving and withdrawal of the notice.

(3) Any dispute as to the compensation is to be determined by the Upper Tribunal."

# SCHEDULE 11

Article 30

## LAND OF WHICH TEMPORARY POSSESSION MAY BE TAKEN

| *(1)*<br>*Plot reference number shown on the Land Plans* | *(2)*<br>*Purpose for which temporary possession may be taken* |
|---|---|
| 8-10 | Construction of temporary compounds |
| 16-01a | Construction of temporary compounds |
| 19-03a | Construction of temporary compounds |
| 21-25 | Construction of temporary compounds |
| 22-02 | Construction of temporary compounds |

# SCHEDULE 12

Article 39

## HEDGEROWS TO BE REMOVED

## PART 1

### IMPORTANT HEDGEROWS WHICH REQUIRE REMOVAL

| *(1)*<br>*Area* | *(2)*<br>*Number of hedgerow and extent of removal* | *(3)*<br>*Purpose of removal* |
|---|---|---|
| West Lindsey District Council | Removal of up to 8m of the hedgerow H089c within the Order limits as shown approximately within the Hedgerow Removal Plan Sheet 2 of 24 | To facilitate construction of the authorised development |
| West Lindsey District Council | Removal of up to 16m of the hedgerow H155 within the Order limits as shown approximately within the Hedgerow Removal Plan Sheet 5 of 24 | To facilitate construction of the authorised development |
| West Lindsey District Council | Removal of up to 89m of the hedgerow H118 within the Order limits as shown approximately within the Hedgerow Removal Plan Sheet 7 of 24 | To facilitate construction of the authorised development |
| West Lindsey District Council | Removal of up to 220m of the hedgerow H181 within the Order limits as shown approximately within the Hedgerow Removal Plan Sheet 8 of 24 | To facilitate construction of the authorised development |
| West Lindsey District Council | Removal of up to 3m of the hedgerow LoT3 within the Order limits as shown approximately within the Hedgerow Removal Plan Sheet 9 of 24 | To facilitate construction of the authorised development |
| West Lindsey District Council | Removal of up to 46m of the hedgerow H182 within the Order limits as shown approximately within the Hedgerow Removal Plan Sheets 9 and 12 of 24 | To facilitate construction of the authorised development |
| West Lindsey District Council | Removal of up to 45m of the hedgerow H256 within the Order limits as shown approximately within the Hedgerow Removal Plan Sheets 9 and 12 of 24 | To facilitate construction of the authorised development |
| West Lindsey District Council | Removal of up to 83m of the hedgerow H184 within the | To facilitate construction of the authorised development |

| | | |
|---|---|---|
| | Order limits as shown approximately within the Hedgerow Removal Plan Sheets 12 and 13 of 24 | |
| West Lindsey District Council | Removal of up to 28m of the hedgerow H259b within the Order limits as shown approximately within the Hedgerow Removal Plan Sheet 13 of 24 | To facilitate construction of the authorised development |
| West Lindsey District Council | Removal of up to 46m of the hedgerow H196 within the Order limits as shown approximately within the Hedgerow Removal Plan Sheet 13 of 24 | To facilitate construction of the authorised development |
| West Lindsey District Council | Removal of up to 49m of the hedgerow H197 within the Order limits as shown approximately within the Hedgerow Removal Plan Sheet 14 of 24 | To facilitate construction of the authorised development |
| West Lindsey District Council | Removal of up to 48m of the hedgerow H199 within the Order limits as shown approximately within the Hedgerow Removal Plan Sheet 14 of 24 | To facilitate construction of the authorised development |
| West Lindsey District Council | Removal of up to 53m of the hedgerow H201 within the Order limits as shown approximately within the Hedgerow Removal Plan Sheet 14 of 24 | To facilitate construction of the authorised development |
| West Lindsey District Council | Removal of up to 51m of the hedgerow H204 within the Order limits as shown approximately within the Hedgerow Removal Plan Sheet 14 of 24 | To facilitate construction of the authorised development |
| West Lindsey District Council | Removal of up to 46m of the hedgerow H210 within the Order limits as shown approximately within the Hedgerow Removal Plan Sheet 16 of 24 | To facilitate construction of the authorised development |
| West Lindsey District Council | Removal of up to 45m of the hedgerow H212 within the Order limits as shown approximately within the Hedgerow Removal Plan Sheet 16 of 24 | To facilitate construction of the authorised development |
| West Lindsey District Council | Removal of up to 52m of the hedgerow H284 within the Order limits as shown approximately within the | To facilitate construction of the authorised development |

| | | |
|---|---|---|
| | Hedgerow Removal Plan Sheet 16 of 24 | |
| West Lindsey District Council | Removal of up to 38m of the hedgerow H286 within the Order limits as shown approximately within the Hedgerow Removal Plan Sheet 16 of 24 | To facilitate construction of the authorised development |
| West Lindsey District Council | Removal of up to 52m of the hedgerow H227 within the Order limits as shown approximately within the Hedgerow Removal Plan Sheet 17 of 24 | To facilitate construction of the authorised development |
| West Lindsey District Council | Removal of up to 53m of the hedgerow H233 within the Order limits as shown approximately within the Hedgerow Removal Plan Sheet 17 of 24 | To facilitate construction of the authorised development |
| West Lindsey District Council | Removal of up to 18m of the hedgerow H241 within the Order limits as shown approximately within the Hedgerow Removal Plan Sheet 18 of 24 | To facilitate construction of the authorised development |
| West Lindsey District Council | Removal of up to 44m of the hedgerow H319 within the Order limits as shown approximately within the Hedgerow Removal Plan Sheet 19 and 20 of 24 | To facilitate construction of the authorised development |
| West Lindsey District Council | Removal of up to 51m or up to 41m of the hedgerow H316 within the Order limits as shown approximately within the Hedgerow Removal Plan Sheets 19 and 20 of 24 | To facilitate construction of the authorised development |
| West Lindsey District Council | Removal of up to 7m of the hedgerow H328 within the Order limits as shown approximately within the Hedgerow Removal Plan Sheets 19 and 20 of 24 | To facilitate construction of the authorised development |
| West Lindsey District Council | Removal of up to 14m of the hedgerow H337 within the Order limits as shown approximately within the Hedgerow Removal Plan Sheets 19 and 20 of 24 | To facilitate construction of the authorised development |
| Bassetlaw District Council | Removal of up to 46m of the hedgerow H330 within the Order limits as shown approximately within the Hedgerow Removal Plan Sheet 21 of 24 | To facilitate construction of the authorised development |

| | | |
|---|---|---|
| Bassetlaw District Council | Removal of up to 53m, 45m and 29m of the hedgerow H348 within the Order limits as shown approximately within the Hedgerow Removal Plan Sheet 22 of 24 | To facilitate construction of the authorised development |
| Bassetlaw District Council | Removal of up to 48m of the hedgerow H366 within the Order limits as shown approximately within the Hedgerow Removal Plan Sheet 23 of 24 | To facilitate construction of the authorised development |

# PART 2

## HEDGEROWS WHICH REQUIRE REMOVAL

| *(1)*<br>*Area* | *(2)*<br>*Number of hedgerow and extent of removal* | *(3)*<br>*Purpose of removal* |
|---|---|---|
| West Lindsey District Council | Removal of up to 11m and 10m of the hedgerow H156 within the Order limits as shown approximately within the Hedgerow Removal Plan Sheet 1 of 24 | To facilitate construction of the authorised development |
| West Lindsey District Council | Removal of up to 20m of the hedgerow H037 within the Order limits as shown approximately within the Hedgerow Removal Plan Sheet 1 of 24 | To facilitate construction of the authorised development |
| West Lindsey District Council | Removal of up to 7m of the hedgerow H034 within the Order limits as shown approximately within the Hedgerow Removal Plan Sheet 1 of 24 | To facilitate construction of the authorised development |
| West Lindsey District Council | Removal of up to 4m of the hedgerow H112 within the Order limits as shown approximately within the Hedgerow Removal Plan Sheet 1 of 24 | To facilitate construction of the authorised development |
| West Lindsey District Council | Removal of up to 7m of the hedgerow H111 within the Order limits as shown approximately within the Hedgerow Removal Plan Sheet 1 of 24 | To facilitate construction of the authorised development |
| West Lindsey District Council | Removal of up to 40m of the hedgerow H110 within the Order limits as shown approximately within the | To facilitate construction of the authorised development |

| | | |
|---|---|---|
| | Hedgerow Removal Plan Sheet 1 of 24 | |
| West Lindsey District Council | Removal of up to 7m of the hedgerow H033 within the Order limits as shown approximately within the Hedgerow Removal Plan Sheet 1 of 24 | To facilitate construction of the authorised development |
| West Lindsey District Council | Removal of up to 30m of the hedgerow H029 within the Order limits as shown approximately within the Hedgerow Removal Plan Sheet 1 of 24 | To facilitate construction of the authorised development |
| West Lindsey District Council | Removal of up to 2m of the hedgerow H149 within the Order limits as shown approximately within the Hedgerow Removal Plan Sheet 1 of 24 | To facilitate construction of the authorised development |
| West Lindsey District Council | Removal of up to 30m and 47m of the hedgerow H030 within the Order limits as shown approximately within the Hedgerow Removal Plan Sheet 1 of 24 | To facilitate construction of the authorised development |
| West Lindsey District Council | Removal of up to 282m of the hedgerow H150 within the Order limits as shown approximately within the Hedgerow Removal Plan Sheet 1 of 24 | To facilitate construction of the authorised development |
| West Lindsey District Council | Removal of up to 6m of the hedgerow H151 within the Order limits as shown approximately within the Hedgerow Removal Plan Sheet 1 of 24 | To facilitate construction of the authorised development |
| West Lindsey District Council | Removal of up to 6m of the hedgerow H152 within the Order limits as shown approximately within the Hedgerow Removal Plan Sheet 1 of 24 | To facilitate construction of the authorised development |
| West Lindsey District Council | Removal of up to 10m of the hedgerow H153 within the Order limits as shown approximately within the Hedgerow Removal Plan Sheet 1 of 24 | To facilitate construction of the authorised development |
| West Lindsey District Council | Removal of up to 9m and 5m of the hedgerow H099b within the Order limits as shown approximately within the Hedgerow Removal Plan Sheet 1 of 24 | To facilitate construction of the authorised development |

| | | |
|---|---|---|
| West Lindsey District Council | Removal of up to 6m of the hedgerow H091 within the Order limits as shown approximately within the Hedgerow Removal Plan Sheet 2 of 24 | To facilitate construction of the authorised development |
| West Lindsey District Council | Removal of up to 41m of the hedgerow H089b within the Order limits as shown approximately within the Hedgerow Removal Plan Sheet 2 of 24 | To facilitate construction of the authorised development |
| West Lindsey District Council | Removal of up to 18m and 36m of the hedgerow H093 within the Order limits as shown approximately within the Hedgerow Removal Plan Sheet 2 of 24 | To facilitate construction of the authorised development |
| West Lindsey District Council | Removal of up to 26m of the hedgerow H077 within the Order limits as shown approximately within the Hedgerow Removal Plan Sheet 2 of 24 | To facilitate construction of the authorised development |
| West Lindsey District Council | Removal of up to 10m of the hedgerow H095 within the Order limits as shown approximately within the Hedgerow Removal Plan Sheet 2 of 24 | To facilitate construction of the authorised development |
| West Lindsey District Council | Removal of up to 10m of the hedgerow H096 within the Order limits as shown approximately within the Hedgerow Removal Plan Sheet 2 of 24 | To facilitate construction of the authorised development |
| West Lindsey District Council | Removal of up to 2m of the hedgerow H079a within the Order limits as shown approximately within the Hedgerow Removal Plan Sheet 2 of 24 | To facilitate construction of the authorised development |
| West Lindsey District Council | Removal of up to 60m of the hedgerow H073 within the Order limits as shown approximately within the Hedgerow Removal Plan Sheet 3 of 24 | To facilitate construction of the authorised development |
| West Lindsey District Council | Removal of up to 26m of the hedgerow H063 within the Order limits as shown approximately within the Hedgerow Removal Plan Sheet 3 of 24 | To facilitate construction of the authorised development |
| West Lindsey District Council | Removal of up to 23m of the hedgerow H064 within the | To facilitate construction of the authorised development |

| | | |
|---|---|---|
| | Order limits as shown approximately within the Hedgerow Removal Plan Sheet 3 of 24 | |
| West Lindsey District Council | Removal of up to 10m and 67m of the hedgerow H122 within the Order limits as shown approximately within the Hedgerow Removal Plan Sheets 3 and 7 of 24 | To facilitate construction of the authorised development |
| West Lindsey District Council | Removal of up to 14m of the hedgerow H072a within the Order limits as shown approximately within the Hedgerow Removal Plan Sheets 3 and 7 of 24 | To facilitate construction of the authorised development |
| West Lindsey District Council | Removal of up to 5m of the hedgerow H154 within the Order limits as shown approximately within the Hedgerow Removal Plan Sheet 5 of 24 | To facilitate construction of the authorised development |
| West Lindsey District Council | Removal of up to 6m of the hedgerow H089a within the Order limits as shown approximately within the Hedgerow Removal Plan Sheet 5 of 24 | To facilitate construction of the authorised development |
| West Lindsey District Council | Removal of up to 8m of the hedgerow H088 within the Order limits as shown approximately within the Hedgerow Removal Plan Sheet 5 of 24 | To facilitate construction of the authorised development |
| West Lindsey District Council | Removal of up to 9m of the hedgerow H136 within the Order limits as shown approximately within the Hedgerow Removal Plan Sheet 5 of 24 | To facilitate construction of the authorised development |
| West Lindsey District Council | Removal of up to 4m of the hedgerow H137 within the Order limits as shown approximately within the Hedgerow Removal Plan Sheet 5 of 24 | To facilitate construction of the authorised development |
| West Lindsey District Council | Removal of up to 16m of the hedgerow H143 within the Order limits as shown approximately within the Hedgerow Removal Plan Sheet 5 of 24 | To facilitate construction of the authorised development |
| West Lindsey District Council | Removal of up to 47m of the hedgerow H084 within the Order limits as shown approximately within the | To facilitate construction of the authorised development |

| | | |
|---|---|---|
| | Hedgerow Removal Plan Sheet 6 of 24 | |
| West Lindsey District Council | Removal of up to 39m of the hedgerow H073 within the Order limits as shown approximately within the Hedgerow Removal Plan Sheet 6 of 24 | To facilitate construction of the authorised development |
| West Lindsey District Council | Removal of up to 7m of the hedgerow H025 within the Order limits as shown approximately within the Hedgerow Removal Plan Sheet 6 of 24 | To facilitate construction of the authorised development |
| West Lindsey District Council | Removal of up to 9m and 40m of the hedgerow H121 within the Order limits as shown approximately within the Hedgerow Removal Plan Sheet 6 of 24 | To facilitate construction of the authorised development |
| West Lindsey District Council | Removal of up to 69m of the hedgerow H119 within the Order limits as shown approximately within the Hedgerow Removal Plan Sheet 7 of 24 | To facilitate construction of the authorised development |
| West Lindsey District Council | Removal of up to 39m of the hedgerow In T1 within the Order limits as shown approximately within the Hedgerow Removal Plan Sheet 7 of 24 | To facilitate construction of the authorised development |
| West Lindsey District Council | Removal of up to 8m of the hedgerow H162b within the Order limits as shown approximately within the Hedgerow Removal Plan Sheet 8 of 24 | To facilitate construction of the authorised development |
| West Lindsey District Council | Removal of up to 14m of the hedgerow H250a within the Order limits as shown approximately within the Hedgerow Removal Plan Sheet 8 of 24 | To facilitate construction of the authorised development |
| West Lindsey District Council | Removal of up to 54m of the hedgerow H171 within the Order limits as shown approximately within the Hedgerow Removal Plan Sheet 8 of 24 | To facilitate construction of the authorised development |
| West Lindsey District Council | Removal of up to 52m of the hedgerow H173 within the Order limits as shown approximately within the Hedgerow Removal Plan Sheet 8 of 24 | To facilitate construction of the authorised development |

| | | |
|---|---|---|
| West Lindsey District Council | Removal of up to 50m of the hedgerow H175 within the Order limits as shown approximately within the Hedgerow Removal Plan Sheet 8 of 24 | To facilitate construction of the authorised development |
| West Lindsey District Council | Removal of up to 50m of the hedgerow H177 within the Order limits as shown approximately within the Hedgerow Removal Plan Sheet 8 of 24 | To facilitate construction of the authorised development |
| West Lindsey District Council | Removal of up to 29m of the hedgerow H179 within the Order limits as shown approximately within the Hedgerow Removal Plan Sheet 8 of 24 | To facilitate construction of the authorised development |
| West Lindsey District Council | Removal of up to 7m and 40m of the hedgerow H129 within the Order limits as shown approximately within the Hedgerow Removal Plan Sheet 9 of 24 | To facilitate construction of the authorised development |
| West Lindsey District Council | Removal of up to 8m of the hedgerow H131 within the Order limits as shown approximately within the Hedgerow Removal Plan Sheet 9 of 24 | To facilitate construction of the authorised development |
| West Lindsey District Council | Removal of up to 43m of the hedgerow H125 within the Order limits as shown approximately within the Hedgerow Removal Plan Sheet 9 of 24 | To facilitate construction of the authorised development |
| West Lindsey District Council | Removal of up to 117m of the hedgerow H180 within the Order limits as shown approximately within the Hedgerow Removal Plan Sheet 9 of 24 | To facilitate construction of the authorised development |
| West Lindsey District Council | Removal of up to 30m of the hedgerow H045 within the Order limits as shown approximately within the Hedgerow Removal Plan Sheet 9 of 24 | To facilitate construction of the authorised development |
| West Lindsey District Council | Removal of up to 9m of the hedgerow H040 within the Order limits as shown approximately within the Hedgerow Removal Plan Sheet 10 of 24 | To facilitate construction of the authorised development |
| West Lindsey District Council | Removal of up to 1m of the hedgerow LoT2a within the | To facilitate construction of the authorised development |

| | | |
|---|---|---|
| | Order limits as shown approximately within the Hedgerow Removal Plan Sheet 10 of 24 | |
| West Lindsey District Council | Removal of up to 46m of the hedgerow H185 within the Order limits as shown approximately within the Hedgerow Removal Plan Sheet 13 of 24 | To facilitate construction of the authorised development |
| West Lindsey District Council | Removal of up to 34m of the hedgerow H370 within the Order limits as shown approximately within the Hedgerow Removal Plan Sheet 13 of 24 | To facilitate construction of the authorised development |
| West Lindsey District Council | Removal of up to 34m of the hedgerow H371 within the Order limits as shown approximately within the Hedgerow Removal Plan Sheet 13 of 24 | To facilitate construction of the authorised development |
| West Lindsey District Council | Removal of up to 31m and 54m of the hedgerow H372 within the Order limits as shown approximately within the Hedgerow Removal Plan Sheet 13 of 24 | To facilitate construction of the authorised development |
| West Lindsey District Council | Removal of up to 43m of the hedgerow H373 within the Order limits as shown approximately within the Hedgerow Removal Plan Sheet 13 of 24 | To facilitate construction of the authorised development |
| West Lindsey District Council | Removal of up to 53m of the hedgerow H187 within the Order limits as shown approximately within the Hedgerow Removal Plan Sheet 13 of 24 | To facilitate construction of the authorised development |
| West Lindsey District Council | Removal of up to 40m of the hedgerow H188 within the Order limits as shown approximately within the Hedgerow Removal Plan Sheet 13 of 24 | To facilitate construction of the authorised development |
| West Lindsey District Council | Removal of up to 40m of the hedgerow H189 within the Order limits as shown approximately within the Hedgerow Removal Plan Sheet 13 of 24 | To facilitate construction of the authorised development |
| West Lindsey District Council | Removal of up to 51m and 26m of the hedgerow H192 within the Order limits as shown approximately within | To facilitate construction of the authorised development |

| | | |
|---|---|---|
| | the Hedgerow Removal Plan Sheet 13 of 24 | |
| West Lindsey District Council | Removal of up to 13m of the hedgerow H193 within the Order limits as shown approximately within the Hedgerow Removal Plan Sheet 13 of 24 | To facilitate construction of the authorised development |
| West Lindsey District Council | Removal of up to 52m of the hedgerow H194 within the Order limits as shown approximately within the Hedgerow Removal Plan Sheets 13 and 14 of 24 | To facilitate construction of the authorised development |
| West Lindsey District Council | Removal of up to 51m of the hedgerow H195 within the Order limits as shown approximately within the Hedgerow Removal Plan Sheets 13 and 14 of 24 | To facilitate construction of the authorised development |
| West Lindsey District Council | Removal of up to 27m of the hedgerow H382 within the Order limits as shown approximately within the Hedgerow Removal Plan Sheets 13 and 15 of 24 | To facilitate construction of the authorised development |
| West Lindsey District Council | Removal of up to 30m of the hedgerow H263 within the Order limits as shown approximately within the Hedgerow Removal Plan Sheets 13 and 15 of 24 | To facilitate construction of the authorised development |
| West Lindsey District Council | Removal of up to 55m of the hedgerow LoT06 within the Order limits as shown approximately within the Hedgerow Removal Plan Sheet 14 of 24 | To facilitate construction of the authorised development |
| West Lindsey District Council | Removal of up to 50m of the hedgerow H200 within the Order limits as shown approximately within the Hedgerow Removal Plan Sheet 14 of 24 | To facilitate construction of the authorised development |
| West Lindsey District Council | Removal of up to 47m of the hedgerow H202 within the Order limits as shown approximately within the Hedgerow Removal Plan Sheet 14 of 24 | To facilitate construction of the authorised development |
| West Lindsey District Council | Removal of up to 15m of the hedgerow H269 within the Order limits as shown approximately within the Hedgerow Removal Plan Sheets 14 and 15 of 24 | To facilitate construction of the authorised development |

| | | |
|---|---|---|
| West Lindsey District Council | Removal of up to 23m of the hedgerow H273 within the Order limits as shown approximately within the Hedgerow Removal Plan Sheets 14 and 15 of 24 | To facilitate construction of the authorised development |
| West Lindsey District Council | Removal of up to 17m of the hedgerow H276 within the Order limits as shown approximately within the Hedgerow Removal Plan Sheet 15 of 24 | To facilitate construction of the authorised development |
| West Lindsey District Council | Removal of up to 38m of the hedgerow H376 within the Order limits as shown approximately within the Hedgerow Removal Plan Sheet 16 of 24 | To facilitate construction of the authorised development |
| West Lindsey District Council | Removal of up to 45m of the hedgerow H377 within the Order limits as shown approximately within the Hedgerow Removal Plan Sheet 16 of 24 | To facilitate construction of the authorised development |
| West Lindsey District Council | Removal of up to 32m of the hedgerow H378 within the Order limits as shown approximately within the Hedgerow Removal Plan Sheet 16 of 24 | To facilitate construction of the authorised development |
| West Lindsey District Council | Removal of up to 28m of the hedgerow H219 within the Order limits as shown approximately within the Hedgerow Removal Plan Sheet 16 of 24 | To facilitate construction of the authorised development |
| West Lindsey District Council | Removal of up to 172m of the hedgerow H220 within the Order limits as shown approximately within the Hedgerow Removal Plan Sheets 16 and 17 of 24 | To facilitate construction of the authorised development |
| West Lindsey District Council | Removal of up to 45m of the hedgerow H221 within the Order limits as shown approximately within the Hedgerow Removal Plan Sheets 16 and 17 of 24 | To facilitate construction of the authorised development |
| West Lindsey District Council | Removal of up to 51m of the hedgerow H225 within the Order limits as shown approximately within the Hedgerow Removal Plan Sheet 17 of 24 | To facilitate construction of the authorised development |
| West Lindsey District Council | Removal of up to 3m of the hedgerow H229 within the | To facilitate construction of the authorised development |

| | | |
|---|---|---|
| | Order limits as shown approximately within the Hedgerow Removal Plan Sheet 17 of 24 | |
| West Lindsey District Council | Removal of up to 5m and 54m of the hedgerow H230 within the Order limits as shown approximately within the Hedgerow Removal Plan Sheet 17 of 24 | To facilitate construction of the authorised development |
| West Lindsey District Council | Removal of up to 51m of the hedgerow H231 within the Order limits as shown approximately within the Hedgerow Removal Plan Sheet 17 of 24 | To facilitate construction of the authorised development |
| West Lindsey District Council | Removal of up to 52m of the hedgerow H236 within the Order limits as shown approximately within the Hedgerow Removal Plan Sheets 17 and 18 of 24 | To facilitate construction of the authorised development |
| West Lindsey District Council | Removal of up to 12m of the hedgerow H237 within the Order limits as shown approximately within the Hedgerow Removal Plan Sheets 17 and 18 of 24 | To facilitate construction of the authorised development |
| West Lindsey District Council | Removal of up to 30m of the hedgerow H238 within the Order limits as shown approximately within the Hedgerow Removal Plan Sheets 17 and 18 of 24 | To facilitate construction of the authorised development |
| West Lindsey District Council | Removal of up to 55m of the hedgerow H238 within the Order limits as shown approximately within the Hedgerow Removal Plan Sheet 18 of 24 | To facilitate construction of the authorised development |
| West Lindsey District Council | Removal of up to 91m of the hedgerow H239 within the Order limits as shown approximately within the Hedgerow Removal Plan Sheet 18 of 24 | To facilitate construction of the authorised development |
| West Lindsey District Council | Removal of up to 11m of the hedgerow H381 within the Order limits as shown approximately within the Hedgerow Removal Plan Sheet 18 of 24 | To facilitate construction of the authorised development |
| West Lindsey District Council | Removal of up to 304m of the hedgerow H384 within the Order limits as shown approximately within the | To facilitate construction of the authorised development |

| | | |
|---|---|---|
| | Hedgerow Removal Plan Sheet 18 of 24 | |
| West Lindsey District Council | Removal of up to 53m and 7m of the hedgerow H386 within the Order limits as shown approximately within the Hedgerow Removal Plan Sheet 18 of 24 | To facilitate construction of the authorised development |
| West Lindsey District Council | Removal of up to 8m of the hedgerow H387 within the Order limits as shown approximately within the Hedgerow Removal Plan Sheet 18 of 24 | To facilitate construction of the authorised development |
| West Lindsey District Council | Removal of up to 49m of the hedgerow H300 within the Order limits as shown approximately within the Hedgerow Removal Plan Sheet 19 of 24 | To facilitate construction of the authorised development |
| West Lindsey District Council | Removal of up to 47m of the hedgerow H301 within the Order limits as shown approximately within the Hedgerow Removal Plan Sheet 19 of 24 | To facilitate construction of the authorised development |
| West Lindsey District Council | Removal of up to 29m of the hedgerow H302 within the Order limits as shown approximately within the Hedgerow Removal Plan Sheet 19 of 24 | To facilitate construction of the authorised development |
| West Lindsey District Council | Removal of up to 49m of the hedgerow H302 within the Order limits as shown approximately within the Hedgerow Removal Plan Sheet 19 of 24 | To facilitate construction of the authorised development |
| West Lindsey District Council | Removal of up to 56m of the hedgerow H311 within the Order limits as shown approximately within the Hedgerow Removal Plan Sheet 19 of 24 | To facilitate construction of the authorised development |
| West Lindsey District Council | Removal of up to 33m of the hedgerow H313 within the Order limits as shown approximately within the Hedgerow Removal Plan Sheet 19 of 24 | To facilitate construction of the authorised development |
| West Lindsey District Council | Removal of up to 65m of the hedgerow H308 within the Order limits as shown approximately within the Hedgerow Removal Plan Sheet 19 of 24 | To facilitate construction of the authorised development |

| | | |
|---|---|---|
| West Lindsey District Council | Removal of up to 100m of the hedgerow H312 within the Order limits as shown approximately within the Hedgerow Removal Plan Sheet 19 of 24 | To facilitate construction of the authorised development |
| West Lindsey District Council | Removal of up to 38m of the hedgerow H319 within the Order limits as shown approximately within the Hedgerow Removal Plan Sheet 19 of 24 | To facilitate construction of the authorised development |
| West Lindsey District Council | Removal of up to 44m of the hedgerow H319 within the Order limits as shown approximately within the Hedgerow Removal Plan Sheets 19 and 20 of 24 | To facilitate construction of the authorised development |
| West Lindsey District Council | Removal of up to 48m of the hedgerow H318 within the Order limits as shown approximately within the Hedgerow Removal Plan Sheet 19 of 24 | To facilitate construction of the authorised development |
| West Lindsey District Council | Removal of up to 48m of the hedgerow H321 within the Order limits as shown approximately within the Hedgerow Removal Plan Sheet 19 of 24 | To facilitate construction of the authorised development |
| Bassetlaw District Council | Removal of up to 93m of the hedgerow H329 within the Order limits as shown approximately within the Hedgerow Removal Plan Sheet 21 of 24 | To facilitate construction of the authorised development |
| Bassetlaw District Council | Removal of up to 95m of the hedgerow H331 within the Order limits as shown approximately within the Hedgerow Removal Plan Sheet 21 of 24 | To facilitate construction of the authorised development |
| Bassetlaw District Council | Removal of up to 33m of the hedgerow H334 within the Order limits as shown approximately within the Hedgerow Removal Plan Sheet 21 of 24 | To facilitate construction of the authorised development |
| Bassetlaw District Council | Removal of up to 7m of the hedgerow H334a within the Order limits as shown approximately within the Hedgerow Removal Plan Sheet 21 of 24 | To facilitate construction of the authorised development |
| Bassetlaw District Council | Removal of up to 25m of the hedgerow H334c within the | To facilitate construction of the authorised development |

| | | |
|---|---|---|
| | Order limits as shown approximately within the Hedgerow Removal Plan Sheet 21 of 24 | |
| Bassetlaw District Council | Removal of up to 41m of the hedgerow H336 within the Order limits as shown approximately within the Hedgerow Removal Plan Sheet 21 of 24 | To facilitate construction of the authorised development |
| Bassetlaw District Council | Removal of up to 190m and 130m of the hedgerow H343 within the Order limits as shown approximately within the Hedgerow Removal Plan Sheets 21 and 22 of 24 | To facilitate construction of the authorised development |
| Bassetlaw District Council | Removal of up to 64m of the hedgerow H347 within the Order limits as shown approximately within the Hedgerow Removal Plan Sheets 22 and 23 of 24 | To facilitate construction of the authorised development |
| Bassetlaw District Council | Removal of up to 52m of the hedgerow H358 within the Order limits as shown approximately within the Hedgerow Removal Plan Sheets 23 and 24 of 24 | To facilitate construction of the authorised development |
| Bassetlaw District Council | Removal of up to 54m of the hedgerow H359 within the Order limits as shown approximately within the Hedgerow Removal Plan Sheets 23 and 24 of 24 | To facilitate construction of the authorised development |
| Bassetlaw District Council | Removal of up to 8m of the hedgerow H360 within the Order limits as shown approximately within the Hedgerow Removal Plan Sheet 23 of 24 | To facilitate construction of the authorised development |
| Bassetlaw District Council | Removal of up to 50m, 46m, 52m and 51m of the hedgerow H361 within the Order limits as shown approximately within the Hedgerow Removal Plan Sheet 23 of 24 | To facilitate construction of the authorised development |
| Bassetlaw District Council | Removal of up to 10m of the hedgerow H362 within the Order limits as shown approximately within the Hedgerow Removal Plan Sheet 23 of 24 | To facilitate construction of the authorised development |
| Bassetlaw District Council | Removal of up to 49m of the hedgerow H363 within the Order limits as shown approximately within the | To facilitate construction of the authorised development |

| | | |
|---|---|---|
| | Hedgerow Removal Plan Sheet 23 of 24 | |
| Bassetlaw District Council | Removal of up to 51m of the hedgerow H365 within the Order limits as shown approximately within the Hedgerow Removal Plan Sheet 23 of 24 | To facilitate construction of the authorised development |
| Bassetlaw District Council | Removal of up to 47m of the hedgerow H367 within the Order limits as shown approximately within the Hedgerow Removal Plan Sheet 23 of 24 | To facilitate construction of the authorised development |
| Bassetlaw District Council | Removal of up to 29m of the hedgerow H369 within the Order limits as shown approximately within the Hedgerow Removal Plan Sheet 23 of 24 | To facilitate construction of the authorised development |
| Bassetlaw District Council | Removal of up to 7m of the hedgerow H383 within the Order limits as shown approximately within the Hedgerow Removal Plan Sheet 24 of 24 | To facilitate construction of the authorised development |
| Bassetlaw District Council | Removal of up to 3m of the hedgerow H358 within the Order limits as shown approximately within the Hedgerow Removal Plan Sheet 24 of 24 | To facilitate construction of the authorised development |
| West Lindsey District Council | Removal of up to 25m and 28m and 42m of the hedgerow H029 within the Order limits as shown approximately within the Hedgerow Removal Plan Sheet 1 of 24 | To facilitate construction of the authorised development |
| West Lindsey District Council | Removal of up to 11m and 7m of the hedgerow H030 within the Order limits as shown approximately within the Hedgerow Removal Plan Sheet 1 of 24 | To facilitate construction of the authorised development |

# SCHEDULE 13

Article 41

## DOCUMENTS AND PLANS TO BE CERTIFIED

| *(1)*<br>*Document name* | *(2)*<br>*Document reference* | *(3)*<br>*Revision number* | *(4)*<br>*Date* |
|---|---|---|---|
| Land and Crown Land Plans | EN010142/APP/2.2 | 1 | September 2024 |

| | | | |
|---|---|---|---|
| Works Plans | EN010142/APP/2.3 | 4 | April 2025 |
| Streets, Rights of Way and Access Plan | EN010142/APP/2.4 | 3 | October 2024 |
| Traffic Regulation Measures Plan | EN010142/APP/2.5 | 3 | October 2024 |
| Hedgerow Removal Plan | EN010142/APP/2.9 | 1 | September 2024 |
| Book of Reference | EN010142/APP/4.3 | 5 | April 2025 |
| Environmental Statement (other than those listed individually below) | EN010142/APP/6.1 | 0 | April 2024 |
| Environmental Statement Chapter 3: Scheme Description of the ES | EN010142/APP/6.1 | 3 | January 2025 |
| Environmental Statement Chapter 10: Water Environment | EN010142/APP/6.1 | 1 | December 2024 |
| Environmental Statement Chapter 12: Landscape and Visual Assessment | EN010142/APP/6.1 | 2 | January 2025 |
| Environmental Statement Chapter 13: Noise and Vibration | EN010142/APP/6.1 | 1 | June 2024 |
| Environmental Statement Chapter 18: Cumulative Effects and Interactions | EN010142/APP/6.1 | 4 | April 2025 |
| Environmental Statement Chapter 19: Summary of Significant Environmental Effects | EN010142/APP/6.1 | 1 | December 2024 |
| Technical Appendices (other than those listed individually below) | EN010142/APP/6.2 | 0 | April 2024 |
| Appendix 8-5-1: Principal Site Geophysical Report (Part 1) | EN010142/APP/6.2 | 1 | June 2024 |
| Appendix 8-5-2: Cable Route Corridor Geophysical Survey Report | EN010142/APP/6.2 | 1 | June 2024 |
| Appendix 9-5: Baseline Report for Great Crested Newts | EN010142/APP/6.2 | 1 | June 2024 |
| Appendix 9-12: Habitat Regulations Assessment Report | EN010142/APP/6.2 | 2 | December 2024 |
| Appendix 10-3: Flood Risk Assessment | EN010142/APP/6.2 | 2 | January 2025 |

| | | | |
|---|---|---|---|
| Appendix 12-6: LVIA Assessment of Visual Effects | EN010142/APP/6.2 | 1 | December 2024 |
| Appendix 12-7: Arboricultural Impact Assessment Part 1, 2 and 3 | EN010142/APP/6.2 | 1 | April 2025 |
| Appendix 13-4: Noise Modelling | EN010142/APP/6.2 | 1 | June 2024 |
| Figures (other than those listed individually below) | EN010142/APP/6.3 | 0 | April 2024 |
| Figure 2-2: Environmental Constraints Plan | EN010142/APP/6.3 | 1 | June 2024 |
| Figure 3-1: Indicative Principal Site Layout Plan | EN010142/APP/6.3 | 2 | April 2025 |
| Figure 3-7: Access Locations | EN010142/APP/6.3 | 1 | September 2024 |
| Figure 3-12: Trenchless Crossing Cross Sections | EN010142/APP/6.3 | 1 | October 2024 |
| Figure 4-2: Outcome of Planning and Environmental Constraints Mapping | EN010142/APP/6.3 | 1 | June 2024 |
| Figure 4-3: Zones Suitable for Solar Development | EN010142/APP/6.3 | 1 | June 2024 |
| Figure 10-5: Watercourses, Flood Zones and Internal Drainage Boards | EN010142/APP/6.3 | 1 | October 2024 |
| Figure 12-4: A-H Zones of Theoretical Visibility | EN010142/APP/6.3 | 1 | June 2024 |
| Figure 12-5: Topography and Watercourses | EN010142/APP/6.3 | 1 | December 2024 |
| Figure 12-7: Public Rights of Way | EN010142/APP/6.3 | 1 | December 2024 |
| Figure 12-11: Local Landscape Character Areas (Defined by the Applicant) | EN010142/APP/6.3 | 1 | June 2024 |
| Figure 12-13: Q-V Reference Viewpoint Photography | EN010142/APP/6.3 | 0 | June 2024 |
| Figure 12-13: W-CC Reference Viewpoint Photography | EN010142/APP/6.3 | 0 | June 2024 |
| Figure 13-2: Operational Noise Contours | EN010142/APP/6.3 | 1 | June 2024 |

| | | | |
|---|---|---|---|
| Figure 16-3: Proposed HGV Routes – Principal Site and Cable Route Corridor | EN010142/APP/6.3 | 1 | June 2024 |
| Figure 16-4: Local Highway Network | EN010142/APP/6.3 | 1 | June 2024 |
| Figure 16-8: Selected Bus Stops and Routes Closet to the Scheme | EN010142/APP/6.3 | 1 | June 2024 |
| Figure 18-5: Transport Cumulative Traffic Routes | EN010142/APP/6.3 | 2 | February 2025 |
| Outline Design Principles Statement | EN010142/APP/7.4 | 3 | January 2025 |
| Framework Construction Environmental Management Plan | EN010142/APP/7.8 | 3 | February 2025 |
| Framework Operational Environmental Management Plan | EN010142/APP/7.9 | 4 | April 2025 |
| Framework Decommissioning Environmental Management Plan | EN010142/APP/7.10 | 3 | February 2025 |
| Framework Construction Traffic Management Plan | EN010142/APP/7.11 | 5 | February 2025 |
| Framework Soil Management Plan | EN010142/APP/7.12 | 2 | April 2025 |
| Framework Battery Safety Management Plan | EN010142/APP/7.13 | 1 | January 2025 |
| Framework Public Rights of Way Management Plan | EN010142/APP/7.16 | 1 | December 2024 |
| Framework Landscape and Ecological Management Plan | EN010142/APP/7.17 | 6 | April 2025 |
| Framework Skills, Supply Chain and Employment Plan | EN010142/APP/7.18 | 0 | April 2024 |
| Archaeological Mitigation Strategy | EN010142/APP/7.18 | 0 | October 2024 |

# SCHEDULE 14

Article 43

## ARBITRATION RULES

**Commencing an arbitration**

**1.** The arbitration is deemed to have commenced when a party ("the claimant") serves a written notice of arbitration on the other party ("the respondent").

**Time periods**

**2.**—(1) All time periods in these arbitration rules are measured in days and include weekends, but not bank or public holidays.

(2) Time periods are calculated from the day after the arbitrator is appointed which is either—

(a) the date the arbitrator notifies the parties in writing of his/her acceptance of an appointment by agreement of the parties; or

(b) the date the arbitrator is appointed by the Secretary of State.

**Timetable**

**3.**—(1) The timetable for the arbitration is that which is set out in sub-paragraphs (2) to (4) below unless amended in accordance with paragraph 5(3).

(2) Within 14 days of the arbitrator being appointed, the claimant must provide both the respondent and the arbitrator with—

(a) a written statement of claim which describes the nature of the difference between the parties, the legal and factual issues, the claimant's contentions as to those issues, the amount of its claim or the remedy it is seeking;

(b) all statements of evidence and copies of all documents on which it relies, including contractual documentation, correspondence (including electronic documents), legal precedents and expert witness reports.

(3) Within 14 days of receipt of the claimant's statements under sub-paragraph (2) by the arbitrator and respondent, the respondent must provide the claimant and the arbitrator with—

(a) a written statement of defence consisting of a response to the claimant's statement of claim, its statement in respect of the nature of the difference, the legal and factual issues in the claimant's claim, its acceptance of any elements of the claimant's claim and its contentions as to those elements of the claimant's claim it does not accept;

(b) all statements of evidence and copies of all documents on which it relies, including contractual documentation, correspondence (including electronic documents), legal precedents and expert witness reports;

(c) any objection it wishes to make to the claimant's statements, comments on the claimant's expert reports (if submitted by the claimant) and explanations of the objections.

(4) Within seven days of the respondent serving its statements under sub-paragraph (3), the claimant may make a statement of reply by providing both the respondent and the arbitrator with—

(a) a written statement responding to the respondent's submissions, including its reply in respect of the nature of the difference, the issues (both factual and legal) and its contentions in relation to the issues;

(b) all statements of evidence and copies of documents in response to the respondent's submissions;

(c) any expert report in response to the respondent's submissions;

(d) any objections to the statements of evidence, expert reports or other documents submitted by the respondent; and

(e) its written submissions in response to the legal and factual issues involved.

**Procedure**

**4.**—(1) The parties' pleadings, witness statements and expert reports (if any) must be concise. A single pleading must not exceed 30 single-sided A4 pages using 10pt Arial font.

(2) The arbitrator will make an award on the substantive differences based solely on the written material submitted by the parties unless the arbitrator decides that a hearing is necessary to explain or resolve any matters.

(3) Either party may, within two days of delivery of the last submission, request a hearing giving specific reasons why it considers a hearing is required.

(4) Within seven days of receiving the last submission, the arbitrator must notify the parties whether a hearing is to be held and the length of that hearing.

(5) Within ten days of the arbitrator advising the parties that a hearing is to be held, the date and venue for the hearing are to be fixed by agreement with the parties, save that if there is no agreement the arbitrator must direct a date and venue which the arbitrator considers is fair and reasonable in all the circumstances. The date for the hearing must not be less than 35 days from the date of the arbitrator's direction confirming the date and venue of the hearing.

(6) A decision must be made by the arbitrator on whether there is any need for expert evidence to be submitted orally at the hearing. If oral expert evidence is required by the arbitrator, then any experts attending the hearing may be asked questions by the arbitrator.

(7) There is to be no examination or cross-examination of experts, but the arbitrator must invite the parties to ask questions of the experts by way of clarification of any answers given by the experts in response to the arbitrator's questions. Prior to the hearing in relation to the experts—

(a) at least 28 days before a hearing, the arbitrator must provide a list of issues to be addressed by the experts;

(b) if more than one expert is called, they will jointly confer and produce a joint report or reports within 14 days of the issues being provided; and

(c) the form and content of a joint report must be as directed by the arbitrator and must be provided at least seven days before the hearing.

(8) Within 14 days of a hearing or a decision by the arbitrator that no hearing is to be held the parties may by way of exchange provide the arbitrator with a final submission in connection with the matters in dispute and any submissions on costs. The arbitrator must take these submissions into account in the award.

(9) The arbitrator may make other directions or rulings as considered appropriate in order to ensure that the parties comply with the timetable and procedures to achieve an award on the substantive difference within four months of the date on which the arbitrator is appointed, unless both parties otherwise agree to an extension to the date for the award.

(10) If a party fails to comply with the timetable, procedure or any other direction then the arbitrator may continue in the absence of a party or submission or document, and may make a decision on the information before the arbitrator attaching the appropriate weight to any evidence submitted beyond any timetable or in breach of any procedure or direction.

(11) The arbitrator's award must include reasons. The parties must accept that the extent to which reasons are given must be proportionate to the issues in dispute and the time available to the arbitrator to deliver the award.

**Arbitrator's powers**

**5.**—(1) The arbitrator has all the powers of the Arbitration Act 1996, save where modified in this Schedule.

(2) There must be no discovery or disclosure, except that the arbitrator is to have the power to order the parties to produce such documents as are reasonably requested by another party no later than the statement of reply, or by the arbitrator, where the documents are manifestly relevant,

specifically identified and the burden of production is not excessive. Any application and orders should be made by way of a Redfern Schedule without any hearing.

(3) Any time limits fixed in accordance with this procedure or by the arbitrator may be varied by agreement between the parties, subject to any such variation being acceptable to and approved by the arbitrator. In the absence of agreement, the arbitrator may vary the timescales or procedure—

(a) if the arbitrator is satisfied that a variation of any fixed time limit is reasonably necessary to avoid a breach of the rules of natural justice and then;

(b) only for such a period that is necessary to achieve fairness between the parties.

(4) On the date the award is made, the arbitrator will notify the parties that the award is completed, signed and dated, and that it will be issued to the parties on receipt of cleared funds for the arbitrator's fees and expenses.

**Costs**

**6.**—(1) The costs of the arbitration must include the fees and expenses of the arbitrator, the reasonable fees and expenses of any experts and the reasonable legal and other costs incurred by the parties for the arbitration.

(2) Where the difference involves connected or interrelated issues, the arbitrator must consider the relevant costs collectively.

(3) The final award must fix the costs of the arbitration and decide which of the parties are to bear them or in what proportion they are to be borne by the parties.

(4) The arbitrator must award recoverable costs on the general principle that each party should bear its own costs, having regard to all material circumstances, including such matters as exaggerated claims or defences, the degree of success for different elements of the claims, claims that have incurred substantial costs, the conduct of the parties and the degree of success of a party.

**Confidentiality**

**7.**—(1) Hearings in this arbitration are to take place in private.

(2) Materials, documents, awards, expert reports and any matters relating to the arbitration are confidential and must not be disclosed to any third party without prior written consent of the other party, save for any application to the courts or where disclosure is required under any legislative or regulatory requirement.

# SCHEDULE 15

Article 44

# 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, (save for any utility undertakers which are specifically protected by any other Part of this Schedule, which will take precedence) the following provisions have effect, unless otherwise agreed in writing between the undertaker and the utility undertakers concerned.

**2.** In this Part of this Schedule—

"alternative apparatus" means apparatus adequate to enable the utility undertaker in question to fulfil its statutory functions in a manner not less efficient than previously;

"apparatus" means—

(a) in the case of an electricity undertaker, electric lines or electrical plant (as defined in the Electricity Act 1989(**a**)), belonging to or maintained by that utility undertaker;

(b) in the case of a gas undertaker, any mains, pipes or other apparatus belonging to or maintained by a gas transporter for the purposes of gas supply;

(c) in the case of a water undertaker—

(i) mains, pipes or other apparatus belonging to or maintained by that utility undertaker for the purposes of water supply; and

(ii) any water mains or service pipes (or part of a water main or service pipe) that is the subject of an agreement to adopt made under section 51A of the Water Industry Act 1991;

(d) in the case of a sewerage undertaker—

(i) any drain or works vested in the utility undertaker under the Water Industry Act 1991(**b**); and

(ii) any sewer which is so vested or is the subject of a notice of intention to adopt given under section 102(4) of that Act or an agreement to adopt made under section 104 of that Act,

and includes a sludge main, disposal main (within the meaning of section 219 of that Act) or sewer outfall and any manholes, ventilating shafts, pumps or other accessories forming part of any such sewer, drain or works, and includes any structure in which apparatus is or is to be lodged or which gives or will give access to apparatus; and

(e) any other mains, pipelines or cables that are not the subject of the protective provisions in Parts 2 to 19 of this Schedule;

"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 Electricity Act 1989;

(b) a gas transporter within the meaning of Part 1 of the Gas Act 1986;

(c) water undertaker within the meaning of the Water Industry Act 1991;

(d) a sewerage undertaker within the meaning of Part 1 of the Water Industry Act 1991; and

(e) an owner or operator of apparatus within paragraph (e) of the definition of that term,

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.

**3.** This Part of this Schedule does not apply to apparatus in respect of which the relations between the undertaker and the utility undertaker are regulated by the provisions of Part 3 of the 1991 Act.

**4.** Regardless of the temporary prohibition or restriction of use of streets under the powers conferred by article 12 (temporary prohibition or restriction of the use of streets and public rights of way), a utility undertaker is at liberty at all times to take all necessary access across any such street and to execute and do all such works and things in, upon or under any such street as may be reasonably necessary or desirable to enable it to maintain any apparatus which at the time of the prohibition or restriction was in that street.

**5.** Regardless of any provision in this Order or anything shown on the land plans, the undertaker must not acquire any apparatus otherwise than by agreement.

---

(**a**) 1989 c. 29.
(**b**) 1991 c. 56.

**6.**—(1) If, in the exercise of the powers conferred by this Order, the undertaker acquires any interest in any land in which any apparatus is placed or over which access to any apparatus is enjoyed or requires that the utility undertaker's apparatus is relocated or diverted, that apparatus must not be removed under this Part of this Schedule, and any right of a utility undertaker to maintain that apparatus in that land and to gain access to it must not be extinguished, until alternative apparatus has been constructed and is in operation, and access to it has been provided, to the reasonable satisfaction of the utility undertaker in question in accordance with sub-paragraphs (2) to (7).

(2) If, for the purpose of executing any works in, on or under any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, the undertaker must give to the utility undertaker in question written notice of that requirement, together with a plan and section of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order a utility undertaker reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph (3), afford to the utility undertaker the necessary facilities and rights for the construction of alternative apparatus in other land of the undertaker and subsequently for the maintenance of that apparatus.

(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of the undertaker, or the undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraph (2), in the land in which the alternative apparatus or part of such apparatus is to be constructed, the utility undertaker in question must, on receipt of a written notice to that effect from the undertaker, as soon as reasonably possible use reasonable endeavours to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed.

(4) Any alternative apparatus to be constructed in land of the undertaker under this Part of this Schedule must be constructed in such manner and in such line or situation as may be agreed between the utility undertaker in question and the undertaker or in default of agreement settled by arbitration in accordance with article 43 (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 43, 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.

**7.**—(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to a utility undertaker facilities and rights for the construction and maintenance in land of the undertaker of alternative apparatus in substitution for apparatus to be removed, those facilities and rights must be granted upon such terms and conditions as may be agreed between the undertaker and the utility undertaker in question or in default of agreement settled by arbitration in accordance with article 43 (arbitration).

(2) If the facilities and rights to be afforded by the undertaker in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are in the opinion of the arbitrator less favourable on the whole to the utility undertaker in question than the facilities and rights enjoyed by it in respect of the apparatus to be removed and

the terms and conditions to which those facilities and rights are subject, the arbitrator must make such provision for the payment of compensation by the undertaker to that utility undertaker as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

**8.**—(1) Not less than 28 days before starting the execution of any works in, on or under any land purchased, held, appropriated or used under this Order that are near to, or will or may affect, any apparatus the removal of which has not been required by the undertaker under paragraph 6(2), the undertaker must submit to the utility undertaker in question a plan, section and description of the works to be executed.

(2) Those works must be executed only in accordance with the plan, section and description submitted under sub-paragraph (1) and in accordance with such reasonable requirements as may be made in accordance with sub-paragraph (3) by the utility undertaker for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and the utility undertaker is entitled to watch and inspect the execution of those works.

(3) Any requirements made by a utility undertaker under sub-paragraph (2) must be made within a period of 21 days beginning with the date on which a plan, section and description under sub-paragraph (1) are submitted to it.

(4) If a utility undertaker in accordance with sub-paragraph (3) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraphs 1 to 7 apply as if the removal of the apparatus had been required by the undertaker under paragraph 6(2).

(5) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 28 days before commencing the execution of any works, a new plan, section and description instead of the plan, section and description previously submitted, and having done so the provisions of this paragraph apply to and in respect of the new plan, section and description.

(6) The undertaker is not required to comply with sub-paragraph (1) in a case of emergency but in that case it must give to the utility undertaker in question notice as soon as is reasonably practicable and a plan, section and description of those works as soon as reasonably practicable subsequently and must comply with sub-paragraph (2) in so far as is reasonably practicable in the circumstances.

**9.**—(1) Subject to the following provisions of this paragraph, the undertaker must repay to a utility undertaker the reasonable expenses incurred by that utility undertaker in, or in connection with, the inspection, removal, alteration or protection of any apparatus or the construction of any new apparatus which may be required in consequence of the execution of any such works as are referred to in paragraph 6(2).

(2) There is to be deducted from any sum payable under sub-paragraph (1) the value of any apparatus removed under the provisions of this Part of this Schedule, that value being calculated after removal.

(3) If in accordance with the provisions of this Part of this Schedule—

(a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions; or

(b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was,

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or, in default of agreement, is not determined by arbitration in accordance with article 43 (arbitration) to be necessary, then, if such placing involves cost in the construction of works under this Part of this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to the utility undertaker in question by virtue of sub-paragraph (1) is to be reduced by the amount of that excess.

(4) For the purposes of sub-paragraph (3)—

(a) an extension of apparatus to a length greater than the length of existing apparatus is not to be treated as a placing of apparatus of greater dimensions than those of the existing apparatus where such extension is required in consequence of the execution of any such works as are referred to in paragraph 6(2); and

(b) where the provision of a joint in a cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole is to be treated as if it also had been agreed or had been so determined.

(5) An amount which apart from this sub-paragraph would be payable to a utility undertaker in respect of works by virtue of sub-paragraph (1), if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on the utility undertaker any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, is to be reduced by the amount which represents that benefit.

**10.**—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any of the works referred to in paragraph 6(2), any damage is caused to any apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works) or property of a utility undertaker, or there is any interruption in any service provided, or in the supply of any goods, by any utility undertaker, the undertaker must—

(a) bear and pay the cost reasonably incurred by that utility undertaker in making good such damage or restoring the supply; and

(b) make reasonable compensation to that utility undertaker for any other expenses, loss, damages, penalty or costs incurred by the utility undertaker,

by reason or in consequence of any such damage or interruption.

(2) Nothing in sub-paragraph (1) imposes any liability on the undertaker with respect to any damage or interruption to the extent that it is attributable to the act, neglect or default of a utility undertaker, its officers, servants, contractors or agents.

(3) A utility undertaker must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise is to be made without the consent of the undertaker which, if it withholds such consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

**11.** Nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and a utility undertaking in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

# PART 2

## FOR THE PROTECTION OF OPERATORS OF ELECTRONIC COMMUNICATIONS CODE NETWORKS

**12.** For the protection of any operator, the following provisions have effect, unless otherwise agreed in writing between the undertaker and the operator.

**13.** 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;

---

(**a**) 2003 c. 21.

"the electronic communications code" has the same meaning as in section 106 (application of the electronic communications code) of the 2003 Act;

"electronic communications code network" means—

(a) so much of an electronic communications network or conduit system provided by an electronic communications code operator as is not excluded from the application of the electronic communications code by a direction under section 106 of the 2003 Act; and

(b) an electronic communications network which the Secretary of State is providing or proposing to provide;

"electronic communications code operator" means a person in whose case the electronic communications code is applied by a direction under section 106 of the 2003 Act; and

"operator" means the operator of an electronic communications code network.

**14.** 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.

**15.**—(1) Subject to sub-paragraphs (2) to (4), if as the result of the authorised development or its construction, or of any subsidence resulting from any of those works—

(a) any damage is caused to any electronic communications apparatus belonging to an operator (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works), or other property of an operator; or

(b) there is any interruption in the supply of the service provided by an operator,

the undertaker must bear and pay the cost reasonably incurred by the operator in making good such damage or restoring the supply and make reasonable compensation to that operator for any other expenses, loss, damages, penalty or costs incurred by it, by reason, or in consequence of, any such damage or interruption.

(2) Nothing in sub-paragraph (1) imposes any liability on the undertaker with respect to any damage or interruption to the extent that it is attributable to the act, neglect or default of an operator, its officers, servants, contractors or agents.

(3) The operator must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise of the claim or demand is to be made without the consent of the undertaker which, if it withholds such consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

(4) Any difference arising between the undertaker and the operator under this Part of this Schedule must be referred to and settled by arbitration under article 43 (arbitration).

**16.** This Part of this Schedule does not apply to—

(a) any apparatus in respect of which the relations between the undertaker and an operator are regulated by the provisions of Part 3 (street works in England and Wales) of the 1991 Act; or

(b) any damage, or any interruption, caused by electro-magnetic interference arising from the construction or use of the authorised development.

**17.** Nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and an operator in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

# PART 3

## FOR THE PROTECTION OF DRAINAGE AUTHORITIES

**18.** The provisions of this Part of this Schedule have effect for the protection of the drainage authority unless otherwise agreed in writing between the undertaker and the drainage authority.

**19.** In this Part of this Schedule—

"authorised development" has the same meaning as in article 2 (interpretation) of this Order and (unless otherwise specified) for the purposes of this Part of this Schedule includes the operation and maintenance of the authorised development and the construction of any works authorised by this Part of this Schedule;

"construction" includes execution, placing, altering, replacing, relaying and removal, and "construct" and "constructed" must be construed accordingly;

"drainage authority" means in relation to an ordinary watercourse—

(a) the drainage board concerned within the meaning of section 23 (prohibition on obstructions etc. in watercourses) of the Land Drainage Act 1991; or

(b) in the case of any area for which there is no such drainage board, the lead local flood authority within the meaning of section 6 (other definitions) of the Flood and Water Management Act 2010;

"drainage work" means any ordinary watercourse and includes any bank, wall, embankment or other structure, or any appliance constructed for land drainage or flood defence which is the responsibility of the drainage authority;

"ordinary watercourse" has the meaning given by section 72 (interpretation) of the Land Drainage Act 1991;

"plans" includes sections, drawings, specifications and method statements;

"specified work" means so much of the authorised development as is in, on, under, over or within 8 metres of a drainage work or is otherwise likely to affect the flow of water in any watercourse.

**20.**—(1) Before commencing construction of a specified work, the undertaker must submit to the drainage authority plans of the specified work and such further particulars available to it as the drainage authority may reasonably require within 14 days of the submission of the plans.

(2) A specified work must not be constructed except in accordance with such plans as may be approved in writing by the drainage authority or determined under paragraph 26.

(3) Any approval of the drainage authority required under this paragraph—

(a) must not be unreasonably withheld or delayed;

(b) is deemed to have been given if it is neither given nor refused within 28 days of the submission of the plans for approval, or submission of further particulars (where required by the drainage authority under sub-paragraph (1)) whichever is the later; and

(c) may be given subject to such reasonable requirements as the drainage authority may make for the protection of any drainage work taking into account the terms of this Order.

(4) Any refusal under this paragraph must be accompanied by a statement of the reasons for refusal.

**21.** Without limiting the scope of paragraph 20, the requirements which the drainage authority may make under that paragraph include conditions requiring the undertaker at its own expense to construct such protective works, whether temporary or permanent, during the construction of the specified work (including the provision of flood banks, walls or embankments or other new works and the strengthening, repair or renewal of existing banks, walls or embankments) as are reasonably necessary taking account of the terms of this Order—

(a) to safeguard any drainage work against damage by reason of any specified work; or

(b) to secure that the efficiency of any drainage work for flood defence and land drainage purposes is not impaired, and that the risk of flooding is not otherwise increased beyond the level of flood risk that was assessed in the environmental statement, by reason of any specified work.

**22.**—(1) Subject to sub-paragraph (2), any specified work, and all protective works required by the drainage authority under paragraph 21, 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 seven days after the date on which it is brought into use.

**23.** If by reason of the construction of a specified work or of the failure of any of a specified work the efficiency of any drainage work for flood defence purposes or land drainage is impaired, or that drainage work is otherwise damaged, the impairment or damage must be made good by the undertaker as soon as reasonably practicable to the reasonable satisfaction of the drainage authority and, if the undertaker fails to do so, the drainage authority may make good the impairment or damage and recover from the undertaker the expense reasonably incurred by it in doing so.

**24.** The undertaker must make reasonable compensation for costs, charges and expenses which the drainage authority may reasonably incur—

(a) in the examination or approval of plans under this Part of this Schedule;

(b) in inspecting the construction of the specified work or any protective works required by the drainage authority under this Part of this Schedule; and

(c) in carrying out any surveys or tests by the drainage authority which are reasonably required in connection with the construction of the specified work.

**25.**—(1) The undertaker must make reasonable compensation for liabilities, costs and losses which may be reasonably incurred or suffered by reason of—

(a) the construction of any specified works comprised within the authorised development; or

(b) any act or omission of the undertaker, its employees, contractors or agents or others while engaged upon the construction of the authorised development.

(2) The drainage authority must give to the undertaker reasonable notice of any such claim or demand.

(3) The undertaker may at its own expense conduct all negotiations for the settlement of the same and any litigation that may arise therefrom.

(4) The drainage authority must not compromise or settle any such claim or make any admission which might be prejudicial to the claim without the agreement of the undertaker which agreement must not be unreasonably withheld or delayed.

(5) The drainage authority will, having regard to its statutory functions, at all times take reasonable steps to prevent and mitigate any such claims, demands, proceedings, costs, damages, expenses or loss.

(6) The drainage authority will, at the request of the undertaker and having regard to its statutory functions, afford all reasonable assistance for the purpose of contesting any such claim or action, and is entitled to be repaid its reasonable expenses reasonably incurred in so doing.

(7) The fact that any work or thing has been executed or done by the undertaker in accordance with a plan approved or deemed to be approved by the drainage authority, or to its satisfaction, or in accordance with any directions or award of an arbitrator, does not relieve the undertaker from any liability under this Part of this Schedule.

(8) Nothing in sub-paragraph (1) imposes any liability on the undertaker with respect to any damage to the extent that it is attributable to the act, neglect or default of the drainage authority or the breach of a statutory duty of the drainage authority, its officers, servants, contractors or agents.

**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 43 (arbitration).

# PART 4

## FOR THE PROTECTION OF THE CANAL & RIVER TRUST

**Interpretation**

**27.**—(1) For the protection of the Canal & River Trust the following provisions of this Part of this Schedule have effect, unless otherwise agreed in writing between the undertaker and the Canal & River Trust.

(2) In this Part of this Schedule—

"Code of Practice" means the Code of Practice for Works Affecting the Canal & River Trust (April 2023) or any updates or amendments thereto;

"construction", in relation to any specified work or protective work, includes—

(a) the execution and placing of that work; and

(b) any relaying, renewal, or maintenance of that work ; and "construct" and "constructed" have corresponding meanings;

"Canal & River Trust's network" means the Canal & River Trust's network of waterways;

"detriment" means any damage to the waterway or any other property of the Canal & River Trust caused by the presence of the authorised development and, without prejudice to the generality of that meaning, includes—

(a) any obstruction of, or interference with, or hindrance or danger to, navigation or to any use of the waterway (including towing paths);

(b) the erosion of the bed or banks of the waterway, or the impairment of the stability of any works, lands or premises forming part of the waterway;

(c) the deposit of materials or the siltation of the waterway so as to damage the waterway;

(d) the pollution of the waterway;

(e) any significant alteration in the water level of the waterway, or significant interference with the supply of water thereto, or drainage of water therefrom;

(f) any harm to the ecology of the waterway; and

(g) any interference with the exercise by any person of any lawful rights over Canal & River Trust's network;

"the engineer" means an engineer appointed by the Canal & River Trust for the purpose in question;

"plans" includes navigational risk assessments, sections, designs, drawings, specifications, soil reports, calculations, descriptions (including descriptions of methods of construction) and programmes;

"practical completion" means practical completion of all of the specified work notwithstanding that items which would ordinarily be considered snagging items remain outstanding, and the expression "practically complete" and "practically completed" is to be construed accordingly;

"protective work" means a work constructed under paragraph 31 below, (Approval of plans, protective works etc.), sub-paragraph 31(4)(a);

"specified work" means so much of the authorised development as is, may be, or takes place in, on, under or over the surface of land below the water level forming part of the waterway; or may affect the waterway or any function of the Trust, including any projection over the waterway by any authorised work or any plant or machinery; and

"the waterway" means each and every part of the River Trent within the order limits and includes any works, lands or premises belonging to the Canal & River Trust, or under its management or control, and held or used by the Canal & River Trust in connection with its statutory functions.

(3) Where the Code of Practice applies to any works or matter that are part of the authorised development or that form part of the protective works and there is an inconsistency between these protective provisions and the Code of Practice, the part of the Code of Practice that is inconsistent with these protective provisions will not apply and these protective provisions will apply. The undertaker will identify and agree with the Canal & River Trust those parts of the Code of Practice which are not applicable to the construction of the specified works and for the avoidance of doubt the undertaker will not be required to comply with those agreed parts of the Code of Practice.

**Powers requiring the Canal & River Trust's consent**

**28.**—(1) The undertaker must not in the exercise of the powers conferred by this Order obstruct or interfere with pedestrian or vehicular access to the waterway unless such obstruction or interference with such access is with the consent of the Canal & River Trust.

(2) The undertaker must not exercise any power conferred by this Order to discharge water into the waterway under article 18 (discharge of water) or in any way interfere with the supply of water to or the drainage of water from the waterway unless such exercise is with the consent of the Canal & River Trust, save as to surface water discharge which will not require the consent of the Canal & River Trust.

(3) The undertaker must not exercise the powers conferred by article 20 (authority to survey and investigate the land) or section 11(3) of the 1965 Act, in relation to the waterway unless such exercise is with the consent of the Canal & River Trust.

(4) The undertaker must not exercise any power conferred by article 30 (temporary use of land for constructing the authorised development) or article 31 (temporary use of land for maintaining the authorised development) in respect of the waterway unless such exercise is with the consent of the Canal & River Trust.

(5) The undertaker must not exercise any power conferred by article 21 (compulsory acquisition of land), article 23 (compulsory acquisition of rights), article 26 (acquisition of subsoil only) or article 32 (statutory undertakers) in respect of the Canal & River Trust's interests in the waterway unless such exercise is with the consent of the Canal & River Trust.

(6) The consent of the Canal & River Trust pursuant to sub-paragraphs (1) to (5) must not be unreasonably withheld or delayed but may be given subject to reasonable terms and conditions provided that it will not be reasonable for the Canal & River Trust to withhold or delay consent or impose terms and conditions that would prevent the undertaker from complying with the protective provisions in this Part of this Schedule or any condition contained in Schedule 2 (requirements) to this Order.

**Fencing**

**29.** Where so required by the engineer acting reasonably the undertaker must, to the reasonable satisfaction of the engineer, fence off a specified work or a protective work or take such other steps as the engineer may require to be taken for the purpose of separating a specified work or a protective work from the waterway, whether on a temporary or permanent basis or both.

**Survey of waterway**

**30.**—(1) Before the commencement of the initial construction of any part of the specified works and again following practical completion of the specified works the undertaker must bear the reasonable and proper cost of the carrying out by a qualified engineer (the "surveyor"), to be approved by the Canal & River Trust and the undertaker, of a survey to measure the navigational depth of the waterway and profile of the riverbed ("the survey") of so much of the waterway and

of any land which may provide support for the waterway as will or may be affected by the specified works.

(2) The design of, and methods proposed to be used for, the survey, to be approved by the Canal & River Trust and the undertaker.

(3) For the purposes of the survey the undertaker must—

(a) on being given reasonable notice (save in case of emergency, when immediate access must be afforded) afford reasonable facilities to the surveyor for access to the site of the specified works and to any land of the undertaker which may provide support for the waterway as will or may be affected by the specified works; and

(b) supply the surveyor as soon as reasonably practicable with all such information as they may reasonably require and which the undertaker holds with regard to the specified works or the method of their construction.

(4) Copies of the survey results must be provided to both the Canal & River Trust and the undertaker at no cost to the Canal & River Trust.

**Approval of plans, protective works etc.**

**31.**—(1) The undertaker must before commencing construction of any specified work including any temporary works supply to the Canal & River Trust proper and sufficient plans of that work, on the Canal & River Trust forms, having regard to the Canal & River Trust's Code of Practice and such further particulars available to it as the Canal & River Trust may within 14 working days of the submission of the plans reasonably require for the approval of the engineer and must not commence such construction of a specified work until plans of that work have been approved in writing by the engineer or settled by arbitration.

(2) The approval of the engineer under sub-paragraph (1) must not be unreasonably withheld or delayed, and if within 25 working days after such plans (including any other particulars reasonably required under sub-paragraph (1)) have been received by the Canal & River Trust the engineer has not intimated his disapproval of those plans and the grounds of his disapproval he is deemed to have approved the plans as submitted.

(3) An approval of the engineer under this paragraph 31 is not deemed to have been unreasonably withheld if approval within the time limited by sub-paragraph (2) has not been given pending the outcome of any consultation on the approval in question that the Canal & River Trust is obliged to carry out in the proper exercise of its functions, provided prior written notice of such consultation has been provided by the Canal & River Trust to the undertaker.

(4) When signifying approval of the plans the engineer may specify on land held or controlled by the Canal & River Trust or the undertaker and subject to such works being authorised by this Order or being development permitted by an Act of Parliament or general development order made under the 1990 Act—

(a) any protective work (whether temporary or permanent) which in the reasonable opinion of the engineer should be carried out before the commencement of a specified work to prevent detriment; and

(b) such other requirements as may be reasonably necessary to prevent detriment,

and such protective works must be constructed by the undertaker or by the Canal & River Trust at the undertaker's request with all reasonable dispatch and the undertaker must not commence the construction of a specified work until the engineer has notified the undertaker that the protective works have been completed to the engineer's reasonable satisfaction such consent not to be unreasonably withheld or delayed.

(5) The withholding of an approval of the engineer under this paragraph 31 will be deemed to be unreasonable if it would prevent the undertaker from complying with any condition contained in Schedule 2 (requirements) to this Order.

(6) The undertaker must pay to the Canal & River Trust a capitalised sum representing any reasonably increased and additional cost of maintaining and, when necessary, renewing any works, including any permanent protective works provided under sub-paragraph (4) above, and of

carrying out any additional dredging of the waterway reasonably necessitated by the exercise of any of the powers under this Order but if the cost of maintaining the waterway, or of works of renewal of the waterway, is reduced in consequence of any such works, a capitalised sum representing such reasonable saving is to be set off against any sum payable by the undertaker to the Canal & River Trust under this paragraph.

(7) In the event that the undertaker fails to complete the construction of, or part of, the specified works the Canal & River Trust may, if it is reasonably required in order to avoid detriment, serve on the undertaker a notice in writing requesting that construction be completed. Any notice served under this sub-paragraph must state the works that are to be completed by the undertaker and lay out a reasonable timetable for the works' completion. If the undertaker fails to comply with this notice within 35 working days, the Canal & River Trust may construct any of the specified works, or part of such works, (together with any adjoining works) in order to complete the construction of, or part of, the specified works or make such works and the undertaker must reimburse the Canal & River Trust all costs, fees, charges and expenses it has reasonably incurred in carrying out such works.

**Design of works**

**32.** Without prejudice to its obligations under the foregoing provisions of this Part of this Schedule the undertaker must consult, collaborate and respond constructively to any reasonable approach, suggestion, proposal or initiative made by the Canal & River Trust on—

(a) the design of the specified works;

(b) the environmental effects of those works; and must have regard to such views as may be expressed by the Canal & River Trust in response to such consultation pursuant in particular to the requirements imposed on the Canal & River Trust by section 22 (general environmental and recreational duties) of the British Waterways Act 1995(**a**) and to the interest of the Canal & River Trust in preserving and enhancing the environment of its waterways; and

(c) amendments or alterations to the construction environmental management plan, landscape and ecological management plan, operational environmental management plan, decommissioning environmental management plan (as may be approved pursuant to Schedule 2 (requirements)) in respect of a specified work or a protective work or otherwise in connection with the waterway.

**Notice of works**

**33.** The undertaker must give to the engineer 30 days' notice of its intention to commence the construction of any of the specified works or protective works, or, in the case of repair carried out in an emergency, such notice as may be reasonably practicable so that, in particular, the Canal & River Trust may where appropriate arrange for the publication of notices bringing those works to the attention of users of the Canal & River Trust's network.

**Construction of specified works**

**34.**—(1) Any specified works or protective works must, when commenced, be constructed—

(a) with all reasonable dispatch in accordance with the plans approved or deemed to have been approved or settled as aforesaid and with any specifications made under paragraph 31 (approval of plans, protective works etc.) and paragraph 32 (design of works) of this Part;

(b) under the supervision (if given) and to the reasonable satisfaction of the engineer;

(c) in such manner as to cause as little detriment to the waterway as is reasonably practicable;

---

(**a**) 1995 c. i.

(d) in such manner as to cause as little inconvenience as is reasonably practicable to the Canal & River Trust, its officers and agents and all other persons lawfully using the waterways, except to the extent that temporary obstruction has otherwise been agreed by the Canal & River Trust;

(e) in such a manner as to ensure that no materials are discharged or deposited into the waterway otherwise than in accordance with article 18 (discharge of water); and

(f) in compliance with the Code of Practice (where appropriate and where consistent with the exercise of powers pursuant to this Order and for the timely, safe, economic and efficient delivery of the authorised works);

(2) Nothing in this Order authorises the undertaker to make or maintain any permanent works in or over the waterway so as to impede or prevent (whether by reducing the width of the waterway or otherwise) the passage of any vessel which is of a kind (as to its dimensions) for which the Canal & River Trust is required by section 105(1)(b) and (2) of the Transport Act 1968(**a**) to maintain the waterway.

(3) Following the completion of the construction of the specified works the undertaker must restore the waterway to a condition no less satisfactory than its condition immediately prior to the commencement of those works unless otherwise agreed between the undertaker and the Canal & River Trust and save to the extent that any deterioration to the condition of the waterway is not caused by the construction of the specified works.

(4) In assessing whether the condition of the waterway is no less satisfactory than immediately prior to the works pursuant to sub-paragraph (3), the Canal & River Trust and the undertaker must take account of any survey issued pursuant to paragraph 30 (survey of waterway) and any other information agreed between them pursuant to this Part.

**Prevention of pollution**

**35.** The undertaker must not in the course of constructing a specified work or a protective work or otherwise in connection therewith do or permit anything which may result in the pollution of the waterway or the deposit of materials therein (unless otherwise permitted by the Order or the protective provisions in this Part of this Schedule) and must take such steps as the engineer may reasonably require to avoid or make good any breach of its obligations under this paragraph.

**Access to work – provision of information**

**36.**—(1) The undertaker on being given reasonable notice must—

(a) at all reasonable times allow reasonable facilities to the engineer for access to a specified work during its construction; and

(b) supply the engineer with all such information as the engineer may reasonably require with regard to a specified work or the method of constructing it.

(2) The Canal & River Trust on being given reasonable notice must—

(a) at all reasonable times afford reasonable facilities to the undertaker and its agents for access to any works carried out by the Canal & River Trust under this Part during their construction; and

(b) supply the undertaker with such information as it may reasonably require with regard to such works or the method of constructing them and the undertaker must reimburse the Canal & River Trust's reasonable costs in relation to the supply of such information.

**Alterations to the waterway**

**37.**—(1) If during the construction of a specified work or a protective work or during a period of twenty four (24) months after the completion of those works any alterations or additions, either

(**a**) 1968 c. 73.

permanent or temporary, to the waterway are reasonably necessary in consequence of the construction of the specified work or the protective work in order to avoid detriment, and the Canal & River Trust gives to the undertaker reasonable notice of its intention to carry out such alterations or additions (which must be specified in the notice), the undertaker must pay to the Canal & River Trust the reasonable costs of those alterations or additions including, in respect of any such alterations or additions as are to be permanent, a capitalised sum representing the increase of the costs which may be expected to be reasonably incurred by the Canal & River Trust in maintaining, working and, when necessary, renewing any such alterations or additions.

(2) If the cost of maintaining, working or renewing the waterway is reduced in consequence of any such alterations or additions a capitalised sum representing such saving is to be set off against any sum payable by the undertaker to the Canal & River Trust under this paragraph.

**Repayment of the Canal & River Trust's fees, etc.**

**38.**—(1) The undertaker must repay to the Canal & River Trust in accordance with the Code of Practice all fees, costs, charges and expenses reasonably incurred by the Canal & River Trust—

(a) in constructing any protective works under the provisions of paragraph 31 (approval of plans, protective works etc.) sub-paragraph 31(4)(a);

(b) in respect of the approval by the engineer of plans submitted by the undertaker and the supervision by the engineer of the construction or repair of a specified work and any protective works;

(c) in respect of the employment during the construction of the specified works or any protective works of any inspectors, watchmen and other persons whom it is reasonably necessary to appoint for inspecting, watching and lighting any waterway and for preventing, so far as may be reasonably practicable, interference, obstruction, danger or accident arising from the construction or failure of the specified works or any protective works;

(d) in bringing the specified works or any protective works to the notice of users of the Canal & River Trust's network; and

(e) in constructing and/or carrying out any measures related to any specified works or protective works which are reasonably required by the Canal & River Trust to ensure the safe navigation of the waterway save that nothing is to require the Canal & River Trust to construct and/or carry out any measures.

(2) If the Canal & River Trust considers that a fee, charge, cost or expense will be payable by the undertaker pursuant to sub-paragraph (1), the Canal & River Trust will first provide an estimate of that fee, charge, cost or expense and supporting information in relation to the estimate to the undertaker along with a proposed timescale for payment for consideration and the undertaker may, within a period of 14 working days—

(a) provide confirmation to the Canal & River Trust that the estimate is agreed and pay to the Canal & River Trust, by the date stipulated, that fee, charge, cost or expense; or

(b) provide confirmation to the Canal & River Trust that the estimate is not accepted along with a revised estimate and a proposal as to how or why the undertaker considers that the estimate can be reduced and or paid at a later date.

(3) The Canal & River Trust must take in to account any representations made by the undertaker in accordance with this paragraph 38 and must, within 15 working days of receipt of the information pursuant to sub-paragraph (1), confirm the amount of the fee, charge, cost or expense to be paid by the undertaker (if any) and the date by which this is to be paid.

(4) The Canal & River Trust must, when estimating and incurring any charge, cost or expense pursuant this paragraph 38, do so with a view to being reasonably economic and acting as if the Canal & River Trust were itself to fund the relevant fee, charge, cost or expense.

**Making good of detriment; compensation and indemnity, etc.**

**39.**—(1) If any detriment is caused by the construction or failure of the specified works or the protective works if carried out by the undertaker, the undertaker (if so required by the Canal & River Trust) must make good such detriment and must pay to the Canal & River Trust all reasonable expenses incurred by the Canal & River Trust, and compensation for any loss sustained by the Canal & River Trust in making good or otherwise by reason of the detriment.

(2) The undertaker must be responsible for and make good to the Canal & River Trust all costs, charges, damages, expenses and losses not otherwise provided for in this Part which may be occasioned to and reasonably incurred by the Canal & River Trust—

(a) by reason of the construction of a specified work or a protective work or the failure of such a work; 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 the construction of a specified work or protective work, and subject to sub-paragraph (4), the undertaker must effectively indemnify and hold harmless the Canal & River Trust from and against all claims and demands arising out of or in connection with any of the matters referred to in sub-paragraphs (a) and (b) (provided that the Canal & River Trust is not entitled to recover from the undertaker any consequential losses which are not reasonably foreseeable).

(3) The fact that any act or thing may have been done by the Canal & River Trust 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 or in accordance with any directions or awards of an arbitrator is not to (if it was done without negligence on the part of the Canal & River Trust or of any person in its employ or of its contractors or agents) excuse the undertaker from any liability under the provisions of this paragraph.

(4) Nothing in sub-paragraph (2) imposes any liability on the undertaker with respect to any detriment, loss or interruption to the extent that it is attributable to the act, neglect or default of the Canal & River Trust, its officers, servants, contractors or agents.

(5) The Canal & River Trust must give the undertaker reasonable notice of any such claim or demand as aforesaid and no settlement or compromise of such a claim or demand is to be made without the prior consent of the undertaker.

(6) The Canal & River Trust 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 39 applies. If requested to do so by the undertaker, the Canal & River Trust must provide an explanation of how the claim has been minimised.

**Arbitration**

**40.** Any difference arising between the undertaker and the Canal & River Trust under this Part (other than a difference as to the meaning or construction of this Part) must be referred to and settled by arbitration in accordance with article 43 (arbitration) of this Order.

**Capitalised sums**

**41.**—(1) Any capitalised sum which is required to be paid under this Part must be calculated by multiplying the cost of the maintenance or renewal works to the waterway necessitated as a result of the operation of the authorised development by the number of times that the maintenance or renewal works will be required during the operation of the authorised development.

(2) The aggregate cap of the undertaker's gross liability to pay capitalised sums and any other payments or liabilities under the terms of this Part of this Schedule shall be limited to £5,000,000 (five million pounds) for any one occurrence or all occurrences of a series arising out of the one original cause.

**As built drawings**

**42.** As soon as reasonably practicable following the completion of the construction of the authorised development, the undertaker must provide to the Canal & River Trust as built drawings of any specified works in a form and scale to be agreed between the undertaker and the Canal & River Trust to show the position of those works in relation to the waterway.

**Decommissioning**

**43.** Where the decommissioning environmental management plan identifies activities which may impact the waterway, the protective provisions in this Part 4 of Schedule 15 will, so far as appropriate, apply to those activities as if they were a specified work.

# PART 5

## FOR THE PROTECTION OF COTTAM SOLAR PROJECT LIMITED

**44.** The provisions of this Part apply for the protection of Cottam unless otherwise agreed in writing between the undertaker and Cottam.

**45.** In this Part—

"apparatus" means the cables, structures or other infrastructure owned, occupied or maintained by Cottam or its successor in title within the Cottam Work Area;

"construction" includes execution, placing, altering, replacing, reconstruction, relaying, maintenance, extensions, enlargement and removal; and "construct" and "constructed" must be construed accordingly;

"Cottam" means an undertaker with the benefit of all or part of the Cottam Solar Project Order for the time being;

"Cottam Solar Project Order" means the Cottam Solar Project Order as granted by the Secretary of State following the examination of the project known as Cottam Solar Project and given reference number EN010133 by the Planning Inspectorate;

"Cottam Work Area" means the area for Work Nos. 1A, 2(h), 3, 4A, 5, 6A, 6B, 7A, 8A, 9A, 9B, 10 authorised in the Cottam Solar Project Order;

"plans" includes sections, drawings, specifications, designs, design data, software, 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 the Cottam Work Area;

"specified works" means so much of any works or operations authorised by this Order (or authorised by any planning permission intended to operate in conjunction with this Order) as is—

(a) within Cottam Work Area;

(b) in, on, under, over or within 25 metres of the Cottam Work Area or any apparatus; or

(c) may in any way adversely affect any apparatus.

**46.** The consent of Cottam under this Part is not required where the Cottam Solar Project Order has expired without the authorised development having been commenced pursuant to the Cottam Solar Project Order.

**47.** Where conditions are included in any consent granted by Cottam pursuant to this Part, the undertaker must comply with the conditions if it chooses to implement or rely on the consent, unless the conditions are waived or varied in writing by Cottam.

**48.** The undertaker must not under the powers of this Order acquire, extinguish, suspend, override or interfere with any rights that Cottam has in respect of any apparatus or has in respect

of the Cottam Work Area without the consent of Cottam, which must not be unreasonably withheld or delayed but which may be made subject to reasonable conditions.

**49.**—(1) The undertaker must not under the powers of this Order carry out any specified works without the consent of Cottam, which must not be unreasonably withheld or delayed but which may be made subject to reasonable conditions and if Cottam does not respond within 28 days of the undertaker's request for consent, then consent is deemed to be given.

(2) Subject to obtaining consent pursuant to sub-paragraph (1) and before beginning to construct any specified works, the undertaker must submit plans of the specified works to Cottam and must submit any such further particulars available to it that Cottam may reasonably require.

(3) Any specified works must be constructed without unreasonable delay in accordance with the plans approved in writing by Cottam.

(4) Any approval of Cottam required under this paragraph may be subject to such reasonable conditions as may be required for the protection or alteration of any apparatus (including proposed apparatus) in the Cottam Work Area or within 25m of the Cottam Work Area or for securing access to such apparatus or the Cottam Work Area;

(5) Where Cottam requires any protective works to be carried out either by themselves or by the undertaker (whether of a temporary or permanent nature) such protective works must be carried out to Cottam's reasonable satisfaction.

(6) 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 specified works, new plans instead of the plans previously submitted, and the provisions of this paragraph apply to and in respect of the new plans.

**50.**—(1) The undertaker must give to Cottam not less than 28 days' written notice of its intention to commence the construction of the specified works and, not more than 14 days after completion of the construction, must give to Cottam written notice of the completion.

(2) The undertaker is not required to comply with paragraph 49 or sub-paragraph (1) in a case of emergency, but in that case it must give to Cottam 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 paragraph 49 in so far as is reasonably practicable in the circumstances.

**51.** The undertaker must at all reasonable times during construction of the specified works allow Cottam and its servants and agents access to the specified works and all reasonable facilities for inspection of the specified works.

**52.**—(1) After the purpose of any temporary works has been accomplished, the undertaker must with all reasonable dispatch, or after a reasonable period of notice in writing from Cottam requiring the undertaker to do so, remove the temporary works in, on, under, over, or within the Cottam Work Area.

(2) If the undertaker fails to remove the temporary works within a reasonable period of receipt of a notice pursuant to sub-paragraph (1), Cottam may remove the temporary works and may recover the reasonable costs of doing so from the undertaker.

**53.** If in consequence of the exercise of the powers conferred by this Order the access to any apparatus is materially obstructed, the undertaker must provide such alternative means of access to such apparatus as will enable Cottam to maintain or use the apparatus no less effectively than was possible before the obstruction.

**54.** The undertaker must not exercise the powers conferred by this Order to prevent or interfere with the access by Cottam to the Cottam Work Area or within 25m of the Cottam Work Area.

**55.** To ensure its compliance with this Part, the undertaker must before carrying out any works or operations pursuant to this Order within Cottam Work Area or within 25m of the Cottam Work Area request up-to-date written confirmation from Cottam of the location of any apparatus or proposed apparatus.

**56.** The undertaker and Cottam must each act in good faith and use reasonable endeavours to co-operate with, and provide assistance to, each other as may be required to give effect to the provisions of this Part.

**57.** The undertaker must pay to Cottam the reasonable expenses incurred by Cottam in connection with the approval of plans, inspection of any specified works or the alteration or protection of any apparatus or the Cottam Work Area or within 25m of the Cottam Work Area.

**58.**—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any specified works, any damage is caused to any apparatus or there is any interruption in any service provided, or in the supply of any goods, by Cottam, or Cottam becomes liable to pay any amount to any third party, the undertaker must—

(a) bear and pay the cost reasonably incurred by Cottam in making good such damage or restoring the service or supply; and

(b) compensate Cottam for any other expenses, loss, demands, proceedings, damages, claims, penalty, or costs incurred by or recovered from Cottam, by reason or in consequence of any such damage or interruption or Cottam becoming liable to any third party as aforesaid.

(2) Nothing in sub-paragraph (1) imposes any liability on the undertaker with respect to any damage or interruption to the extent that it is attributable to the act, neglect or default of Cottam, its officers, servants, contractors or agents.

(3) Cottam must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise shall be made, unless payment is required in connection with a statutory compensation scheme without first consulting the undertaker and considering its representations.

(4) Cottam 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 58 applies. If requested to do so by the undertaker, Cottam shall provide an explanation of how the claim has been minimised. The undertaker shall only be liable under this paragraph 58 for claims reasonably incurred by Cottam.

(5) The fact that any work or thing has been executed or done with the consent of Cottam and in accordance with any conditions or restrictions prescribed by Cottam or in accordance with any plans approved by Cottam or to its satisfaction or in accordance with any directions or award of any arbitrator does not relieve the undertaker from any liability under this Part.

**59.** Any dispute arising between the undertaker and Cottam under this Part must be determined by arbitration under article 43 (arbitration).

# PART 6

## FOR THE PROTECTION OF GATE BURTON ENERGY PARK LIMITED

**60.** The provisions of this Part apply for the protection of Gate Burton unless otherwise agreed in writing between the undertaker and Gate Burton.

**61.** In this Part—

"apparatus" means the cables, structures or other infrastructure owned, occupied or maintained by Gate Burton or its successor in title within the Gate Burton Work No. 4B Area;

"construction" includes execution, placing, altering, replacing, reconstruction, relaying, maintenance, extensions, enlargement and removal; and "construct" and "constructed" must be construed accordingly;

"plans" includes sections, drawings, specifications, designs, design data, software, 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 the Gate Burton Work No. 4B Area;

"specified works" means so much of any works or operations authorised by this Order (or authorised by any planning permission intended to operate in conjunction with this Order) as is—

(a) within the Gate Burton Work No. 4B Area;

(b) in, on, under, over or within 25 metres of the Gate Burton Work No. 4B Area or any apparatus; or

(c) may in any way adversely affect any apparatus.

"Gate Burton" means an undertaker with the benefit of all or part of the Gate Burton Energy Park Order for the time being;

"Gate Burton Energy Park Order" means the Gate Burton Energy Park Order as granted by the Secretary of State following the examination of the project known as Gate Burton Energy Park and given reference number EN010142 by the Planning Inspectorate;

"Gate Burton Work No. 4B Area" means the area for Work No. 4B authorised in the Gate Burton Energy Park Order.

**62.** The consent of Gate Burton under this Part is not required where the Gate Burton Energy Park Order has expired without the authorised development having been commenced pursuant to the Gate Burton Energy Park Order.

**63.** Where conditions are included in any consent granted by Gate Burton pursuant to this Part, the undertaker must comply with the conditions if it chooses to implement or rely on the consent, unless the conditions are waived or varied in writing by Gate Burton.

**64.** The undertaker must not under the powers of this Order acquire, extinguish, suspend, override or interfere with any rights that Gate Burton has in respect of any apparatus or has in respect of the Gate Burton Work No. 4B Area without the consent of Gate Burton, which must not be unreasonably withheld or delayed but which may be made subject to reasonable conditions.

**65.**—(1) The undertaker must not under the powers of this Order carry out any specified works without the consent of Gate Burton, which must not be unreasonably withheld or delayed but which may be made subject to reasonable conditions and if Gate Burton does not respond within 28 days of the undertaker's request for consent, then consent is deemed to be given.

(2) Subject to obtaining consent pursuant to sub-paragraph (1) and before beginning to construct any specified works, the undertaker must submit plans of the specified works to Gate Burton and must submit any such further particulars available to it that Gate Burton may reasonably require.

(3) Any specified works must be constructed without unreasonable delay in accordance with the plans approved in writing by Gate Burton.

(4) Any approval of Gate Burton required under this paragraph may be made subject to such reasonable conditions as may be required for the protection or alteration of any apparatus (including proposed apparatus) in the Gate Burton Work No. 4B Area or for securing access to such apparatus or the Gate Burton Work No. 4B Area;

(5) Where Gate Burton requires any protective works to be carried out either by themselves or by the undertaker (whether of a temporary or permanent nature) such protective works must be carried out to Gate Burton's reasonable satisfaction.

(6) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 28 days before commencing the execution of any specified works, new plans instead of the plans previously submitted, and the provisions of this paragraph shall apply to and in respect of the new plans.

**66.**—(1) The undertaker must give to Gate Burton not less than 28 days' written notice of its intention to commence the construction of the specified works and, not more than 14 days after completion of their construction, must give Gate Burton written notice of the completion.

(2) The undertaker is not required to comply with paragraph 65 or sub-paragraph (1) in a case of emergency, but in that case it must give to Gate Burton 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 paragraph 65 in so far as is reasonably practicable in the circumstances.

**67.** The undertaker must at all reasonable times during construction of the specified works allow Gate Burton and its servants and agents access to the specified works and all reasonable facilities for inspection of the specified works.

**68.**—(1) After the purpose of any temporary works has been accomplished, the undertaker must with all reasonable dispatch, or after a reasonable period of notice in writing from Gate Burton requiring the undertaker to do so, remove the temporary works in, on, under, over, or within the Gate Burton Work No. 4B Area.

(2) If the undertaker fails to remove the temporary works within a reasonable period of receipt of a notice pursuant to sub-paragraph (1), Gate Burton may remove the temporary works and may recover the reasonable costs of doing so from the undertaker.

**69.** If in consequence of the exercise of the powers conferred by this Order the access to any apparatus is materially obstructed, the undertaker must provide such alternative means of access to such apparatus as will enable Gate Burton to maintain or use the apparatus no less effectively than was possible before the obstruction.

**70.** The undertaker must not exercise the powers conferred by this Order to prevent or interfere with the access by Gate Burton to the Gate Burton Work No. 4B Area.

**71.** To ensure its compliance with this Part, the undertaker must before carrying out any works or operations pursuant to this Order within Gate Burton Work No. 4B Area request up-to-date written confirmation from Gate Burton of the location of any apparatus or proposed apparatus.

**72.** The undertaker and Gate Burton must each act in good faith and use reasonable endeavours to co-operate with, and provide assistance to, each other as may be required to give effect to the provisions of this Part.

**73.** The undertaker must pay to Gate Burton the reasonable expenses incurred by Gate Burton in connection with the approval of plans, inspection of any specified works or the alteration or protection of any apparatus or the Gate Burton Work No. 4B Area.

**74.**—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any specified works, any damage is caused to any apparatus or there is any interruption in any service provided, or in the supply of any goods, by Gate Burton, or Gate Burton becomes liable to pay any amount to any third party, the undertaker must—

(a) bear and pay the cost reasonably incurred by Gate Burton in making good such damage or restoring the service or supply; and

(b) compensate Gate Burton for any other expenses, loss, demands, proceedings, damages, claims, penalty, or costs incurred by or recovered from Gate Burton, by reason or in consequence of any such damage or interruption or Gate Burton becoming liable to any third party as aforesaid.

(2) Nothing in sub-paragraph (1) imposes any liability on the undertaker with respect to any damage or interruption to the extent that it is attributable to the act, neglect or default of Gate Burton, its officers, servants, contractors or agents.

(3) Gate Burton must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise shall be made, unless payment is required in connection with a statutory compensation scheme without first consulting the undertaker and considering its representations.

(4) Gate Burton 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 74 applies. If requested to do so by the undertaker, Gate Burton shall provide an explanation of how the claim has been minimised. The undertaker shall only be liable under this paragraph 74 for claims reasonably incurred by Gate Burton.

(5) The fact that any work or thing has been executed or done with the consent of Gate Burton and in accordance with any conditions or restrictions prescribed by Gate Burton or in accordance

with any plans approved by Gate Burton or to its satisfaction or in accordance with any directions or award of any arbitrator does not relieve the undertaker from any liability under this Part.

**75.** Any dispute arising between the undertaker and Gate Burton under this Part must be determined by arbitration under article 43 (arbitration).

# PART 7

## FOR THE PROTECTION OF WEST BURTON SOLAR PROJECT LIMITED

**76.** The provisions of this Part apply for the protection of West Burton unless otherwise agreed in writing between the undertaker and West Burton.

**77.** In this Part—

"apparatus" means the cables, structures or other infrastructure owned, occupied or maintained by West Burton or its successor in title within the West Burton Work No. 5B Area;

"construction" includes execution, placing, altering, replacing, reconstruction, relaying, maintenance, extensions, enlargement and removal; and "construct" and "constructed" must be construed accordingly;

"West Burton" means an undertaker with the benefit of all or part of the West Burton Solar Project Order for the time being;

"West Burton Solar Project Order" means the West Burton Solar Project Order as granted by the Secretary of State following the examination of the project known as West Burton Solar Project and given reference number EN010132 by the Planning Inspectorate;

"West Burton Work No. 5B Area" means the area for Work No. 5B authorised in the West Burton Solar Project Order;

"plans" includes sections, drawings, specifications, designs, design data, software, 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 the West Burton Work No. 5B Area;

"specified works" means so much of any works or operations authorised by this Order (or authorised by any planning permission intended to operate in conjunction with this Order) as is—

(a) within the West Burton Work No. 5B Area;

(b) in, on, under, over or within 25 metres of the West Burton Work No. 5B Area or any apparatus; or

(c) may in any way adversely affect any apparatus.

**78.** The consent of West Burton under this Part is not required where the West Burton Solar Project Order has expired without the authorised development having been commenced pursuant to the West Burton Solar Project Order.

**79.** Where conditions are included in any consent granted by West Burton pursuant to this Part, the undertaker must comply with the conditions if it chooses to implement or rely on the consent, unless the conditions are waived or varied in writing by West Burton.

**80.** The undertaker must not under the powers of this Order acquire, extinguish, suspend, override or interfere with any rights that West Burton has in respect of any apparatus or has in respect of the West Burton Work No. 5B Area without the consent of West Burton, which must not be unreasonably withheld or delayed but which may be made subject to reasonable conditions.

**81.**—(1) The undertaker must not under the powers of this Order carry out any specified works without the consent of West Burton, which must not be unreasonably withheld or delayed but which may be made subject to reasonable conditions and if West Burton does not respond within 28 days of the undertaker's request for consent, then consent is deemed to be given.

(2) Subject to obtaining consent pursuant to sub-paragraph (1) and before beginning to construct any specified works, the undertaker must submit plans of the specified works to West Burton and must submit any such further particulars available to it that West Burton may reasonably require.

(3) Any specified works must be constructed without unreasonable delay in accordance with the plans approved in writing by West Burton.

(4) Any approval of West Burton required under this paragraph may be made subject to such reasonable conditions as may be required for the protection or alteration of any apparatus (including proposed apparatus) in the West Burton Work No. 5B Area or for securing access to such apparatus or the West Burton Work No. 5B Area;

(5) Where West Burton requires any protective works to be carried out either by themselves or by the undertaker (whether of a temporary or permanent nature) such protective works must be carried out to West Burton's reasonable satisfaction.

(6) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 28 days before commencing the execution of any specified works, new plans instead of the plans previously submitted, and the provisions of this paragraph shall apply to and in respect of the new plans.

**82.**—(1) The undertaker must give to West Burton not less than 28 days' written notice of its intention to commence the construction of the specified works and, not more than 14 days after completion of the construction, must give West Burton written notice of the completion.

(2) The undertaker is not required to comply with paragraph 81 or sub-paragraph (1) in a case of emergency, but in that case it must give to West Burton 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 paragraph 81 in so far as is reasonably practicable in the circumstances.

**83.** The undertaker must at all reasonable times during construction of the specified works allow West Burton and its servants and agents access to the specified works and all reasonable facilities for inspection of the specified works.

**84.**—(1) After the purpose of any temporary works has been accomplished, the undertaker must with all reasonable dispatch, or after a reasonable period of notice in writing from West Burton requiring the undertaker to do so, remove the temporary works in, on, under, over, or within the West Burton Work No. 5B Area.

(2) If the undertaker fails to remove the temporary works within a reasonable period of receipt of a notice pursuant to sub-paragraph (1), West Burton may remove the temporary works and may recover the reasonable costs of doing so from the undertaker.

**85.** If in consequence of the exercise of the powers conferred by this Order the access to any apparatus is materially obstructed, the undertaker must provide such alternative means of access to such apparatus as will enable West Burton to maintain or use the apparatus no less effectively than was possible before the obstruction.

**86.** The undertaker must not exercise the powers conferred by this Order to prevent or interfere with the access by West Burton to the West Burton Work No. 5B Area.

**87.** To ensure its compliance with this Part, the undertaker must before carrying out any works or operations pursuant to this Order within West Burton Work No. 5B Area request up-to-date written confirmation from West Burton of the location of any apparatus or proposed apparatus.

**88.** The undertaker and West Burton must each act in good faith and use reasonable endeavours to co-operate with, and provide assistance to, each other as may be required to give effect to the provisions of this Part.

**89.** The undertaker must pay to West Burton the reasonable expenses incurred by West Burton in connection with the approval of plans, inspection of any specified works or the alteration or protection of any apparatus or the West Burton Work No. 5B Area.

**90.**—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any specified works, any damage is caused to any apparatus or there is any interruption in any service provided, or in the supply of any goods, by West Burton, or West Burton becomes liable to pay any amount to any third party, the undertaker must—

(a) bear and pay the cost reasonably incurred by West Burton in making good such damage or restoring the service or supply; and

(b) compensate West Burton for any other expenses, loss, demands, proceedings, damages, claims, penalty, or costs incurred by or recovered from West Burton, by reason or in consequence of any such damage or interruption or West Burton becoming liable to any third party as aforesaid.

(2) Nothing in sub-paragraph (1) imposes any liability on the undertaker with respect to any damage or interruption to the extent that it is attributable to the act, neglect or default of West Burton, its officers, servants, contractors or agents.

(3) West Burton must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise shall be made, unless payment is required in connection with a statutory compensation scheme without first consulting the undertaker and considering its representations.

(4) West Burton 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 90 applies. If requested to do so by the undertaker, West Burton shall provide an explanation of how the claim has been minimised. The undertaker shall only be liable under this paragraph 90 for claims reasonably incurred by West Burton.

(5) The fact that any work or thing has been executed or done with the consent of West Burton and in accordance with any conditions or restrictions prescribed by West Burton or in accordance with any plans approved by West Burton or to its satisfaction or in accordance with any directions or award of any arbitrator does not relieve the undertaker from any liability under this Part.

**91.** Any dispute arising between the undertaker and West Burton under this Part must be determined by arbitration under article 43 (arbitration).

# PART 8

## FOR THE PROTECTION OF LINCOLNSHIRE FIRE AND RESCUE

**Interpretation**

**92.**—(1) For the protection of Lincolnshire Fire and Rescue as referred to in this Part of this Schedule the following provisions have effect, unless otherwise agreed in writing between the undertaker and Lincolnshire Fire and Rescue.

(2) In this Part of this Schedule—

"Index Linked" means an increase in the sums payable on an annual basis or pro rata per diem in accordance with the most recent published figure for the Consumer Price Index, or during any period when no such index exists the index which replaces it or is the nearest equivalent to it; and

"Lincolnshire Fire and Rescue" means Lincolnshire County Council in its capacity as a fire and rescue authority pursuant to section 1(2)(a) of the Fire and Rescue Services Act 2004.

**93.**—(1) The undertaker must, prior to the date of final commissioning of Work No. 2, use reasonable endeavours to facilitate a site familiarisation exercise in connection with Work No. 2 of the authorised development for Lincolnshire Fire and Rescue for the purposes of providing the necessary assurance to Lincolnshire Fire and Rescue that all the required systems and measures are in place in accordance with the battery safety management plan.

(2) Following the first anniversary of the date of final commissioning of Work No. 2 of the authorised development, the undertaker must use reasonable endeavours to facilitate an annual review of Work No. 2 by Lincolnshire Fire and Rescue at the reasonable request of Lincolnshire

Fire and Rescue, up until the year in which the undertaker commences decommissioning of Work No. 2. 143.

**Costs**

**94.**—(1) Pursuant to the provisions set out at paragraph 93, the undertaker must pay to Lincolnshire Fire and Rescue—

(a) £ 16,665 in the first year of operation of the authorised development for, or in connection with Lincolnshire Fire and Rescue's attendance at the site familiarisation exercise facilitated by the undertaker pursuant to paragraph 93(1), such sum to be paid within 30 days following the date of the site familiarisation exercise; and

(b) £ 1,530 in each subsequent year of operation of the authorised development until the date of decommissioning of Work No. 2, such sums to be paid within 30 days of the date of the annual review for that year, if in that year an annual review has taken place pursuant to paragraph 93(2).

(2) The costs payable under sub-paragraph (1)(a) are to be Index Linked.

# PART 9

## FOR THE PROTECTION OF CADENT GAS LIMITED

**Application**

**95.** For the protection of Cadent the following provisions will, unless otherwise agreed in writing between the undertaker and Cadent, have effect.

**Interpretation**

**96.** In this Part of this Schedule—

"alternative apparatus" means appropriate alternative apparatus to the reasonable satisfaction of Cadent to enable Cadent to fulfil its statutory functions in a manner no less efficient than previously;

"apparatus" means any gas mains, pipelines, pipes, pressure governors, ventilators, cathodic protection (including transformed rectifiers and any associated groundbeds or cables), cables, marker posts, block valves, hydrogen above ground installations or other apparatus belonging to or maintained by Cadent for the purposes of Cadent's undertaking together with any replacement apparatus and such other apparatus constructed pursuant to this Order that becomes operational apparatus of Cadent for the purposes of Cadent's undertaking and includes any structure in which apparatus is or will be lodged or which gives or will give access to apparatus;

"authorised development" has the same meaning as in article 2 (interpretation) of the 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 development;

"Cadent" means Cadent Gas Limited and includes its successors in title or any successor as a gas transporter within the meaning of Part 1 of the Gas Act 1986(**a**);

"Cadent's undertaking" means the rights, duties and obligations of Cadent Gas Limited as a public gas transporter within the meaning of Section 7 of the Gas Act 1986 (as amended by the Gas Act 1995(**b**);

"commence" and "commencement" has the same meaning as in article 2 (interpretation) and for the purpose of this Part of this Schedule only includes any below ground surveys,

(**a**) 1989 c. 29.
(**b**) 1995 c. 45.

monitoring, work operations, remedial work in respect of any contamination or other adverse ground condition, the receipt and erection of construction plant and equipment, and non-intrusive investigations for the purpose of assessing ground conditions;

"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;

"facilities and rights" for construction and for maintenance include any appropriate working areas required to reasonably and safely undertake that construction or maintenance, and any necessary rights of access;

"functions" includes powers and duties;

"ground mitigation scheme" means a scheme approved by Cadent (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, requires the undertaker to submit for Cadent'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" will include the ability and right to do any of the following in relation to any apparatus or alternative apparatus of Cadent including retain, lay, construct, inspect, maintain, protect, use, access, enlarge, replace, renew, remove, decommission or render unusable or remove the apparatus;

"plan" or "plans" include all designs, drawings, specifications, method statements, soil reports, programmes, calculations, risk assessments and other documents that are reasonably necessary properly and sufficiently to describe and assess the works to be executed;

"rights" includes rights and restrictive covenants and, in relation to decommissioned apparatus, the surrender of rights, release of liabilities and transfer of decommissioned apparatus; and

"specified works" means any part of the authorised development or activities (including maintenance) undertaken in association with the authorised development 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 sub-paragraph 101(2) or otherwise; or

(b) may in any way adversely affect any apparatus the removal of which has not been required by the undertaker under sub-paragraph 101(2) or otherwise.

**On street apparatus**

**97.**—(1) This Part of this Schedule does not apply to apparatus in respect of which the relations between the undertaker and Cadent are regulated by the provisions of Part 3 of the 1991 Act, except for —

(a) paragraphs 98, 103, 104 and 105; and

(b) where sub-paragraph (2) applies, paragraphs 100 and 101.

(2) This sub-paragraph applies where any apparatus is diverted from an alignment within the existing adopted public highway but not wholly replaced within the existing public highway,

notwithstanding that any diversion may be carried out under the provisions of Part 3 of the 1991 Act.

(3) The protective provisions in this Part of this Schedule apply and take precedence over article 33 (apparatus and rights of statutory undertakers in closed streets) of the Order which does not apply to Cadent.

**Apparatus of Cadent in stopped up streets**

**98.**—(1) Where any street or public right of way is subject to temporary prohibition or restriction of use under article 12 (temporary prohibition or restriction of use of streets and public rights of way), if Cadent has any apparatus in the street or accessed via that street Cadent is entitled to the same rights in respect of such apparatus as it enjoyed immediately before the prohibition or restriction of use and the undertaker must grant to Cadent, or procure the granting to Cadent of, legal easements reasonably satisfactory to Cadent in respect of such apparatus and access to it prior to the prohibition or restriction of use of any such street or highway, but nothing in this paragraph affects any right of the undertaker or of Cadent to require the removal of that apparatus under paragraph 100.

(2) Notwithstanding the temporary alteration, diversion or restriction of use of any street under the powers of article 12 (temporary prohibition or restriction of use of streets and public rights of way), Cadent will be at liberty at all times to take all necessary access across any such street and to execute and do all such works and things in, upon or under any such street as it would have been entitled to do immediately before such temporary alteration, diversion or restriction in respect of any apparatus which at the time of the prohibition or restriction of use or diversion was in that street.

**Protective works to buildings**

**99.** The undertaker must exercise the powers conferred by article 19 (protective works to buildings) so as not to obstruct or render less convenient the access to any apparatus without the written consent of Cadent (such consent not to be unreasonably withheld or delayed).

**Acquisition of land**

**100.**—(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 appropriate or acquire any interest in land or appropriate, acquire, extinguish, interfere with or override any easement or other interest in land of Cadent otherwise than by agreement.

(2) As a condition of agreement between the parties in sub-paragraph (1), prior to the construction or maintenance of any part of the authorised development (or in such other timeframe as may be agreed between Cadent 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 Cadent or affect the provisions of any enactment or agreement regulating the relations between Cadent and the undertaker in respect of any apparatus laid or erected in land belonging to or secured by the undertaker, the undertaker must as Cadent reasonably requires enter into such deeds of consent upon such terms and conditions as may be agreed between Cadent and the undertaker acting reasonably and which must be no less favourable on the whole to Cadent unless otherwise agreed by Cadent, and the undertaker must use reasonable endeavours to procure and/or secure the consent to 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 Cadent agree that where there is any inconsistency or duplication between the provisions set out in this Part of this Schedule relating to the relocation or removal of apparatus, including but not limited to the payment of costs and expenses relating to such relocation or removal of apparatus and the provisions of any existing easement, rights, agreements and licences granted, used, enjoyed or exercised by Cadent and other enactments relied upon by Cadent as of right or other use in relation to the apparatus, then the provisions in this Schedule prevail.

(4) Any agreement or consent granted by Cadent under paragraph 102 or any other paragraph of this Part of this Schedule, is not to be taken to constitute agreement under sub-paragraph (1).

(5) As a condition of an agreement under sub-paragraph (1) that involves de-commissioned apparatus being left in situ on land owned by the undertaker, the undertaker must accept a surrender of any existing easement and/or other interest of Cadent in such decommissioned apparatus and consequently acquire title to such decommissioned apparatus and release Cadent from all liabilities in respect of such de-commissioned apparatus from the date of such surrender.

(6) Where an undertaker acquires the freehold of any land which is subject to any Cadent right or interest (including, without limitation, easements and agreements relating to rights or other interests) and the provisions of paragraph 100 do not apply, the undertaker must—

(a) retain any notice of Cadent's easement, right or other interest on the title to the relevant land when registering the undertaker's title to such acquired land; and

(b) (where no such notice of Cadent's easement, right or other interest exists in relation to such acquired land or any such notice is registered only on the Land Charges Register) include (with its application to register title to the undertaker's interest in such acquired land at the Land Registry) a notice of Cadent's easement, right or other interest in relation to such acquired land.

**Removal of apparatus**

**101.**—(1) If, in the exercise of powers conferred by this Order, including pursuant to any agreement reached in accordance with paragraph 100, the undertaker acquires any interest in any land in which any apparatus is placed, that apparatus must not be decommissioned or removed and any right of Cadent to maintain that apparatus in that land must not be extinguished or interfered with until alternative apparatus has been constructed, is in operation, and the facilities and rights referred to in sub-paragraph (2) have been provided, to the reasonable satisfaction of Cadent and in accordance with sub-paragraphs (2) to (5) inclusive.

(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 Cadent 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 Cadent reasonably needs to move or remove any of its apparatus) the undertaker must afford to Cadent to its satisfaction (taking into account paragraph 102(1)) the necessary facilities and rights—

(a) for the construction of alternative apparatus (including appropriate working areas required to reasonably and safely undertake necessary works by Cadent in respect of the apparatus);

(b) subsequently for the maintenance of that apparatus (including appropriate working areas required to reasonably and safely undertake necessary works by Cadent in respect of the apparatus); and

(c) to allow access to that apparatus (including appropriate working areas required to reasonably and safely undertake necessary works by Cadent in respect of the apparatus).

(3) If 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, Cadent may, 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 assist the undertaker in obtaining the necessary facilities and rights in the land in which the alternative apparatus is to be constructed save that this obligation does not extend to the requirement for Cadent to use its compulsory purchase powers to this end unless it (in its absolute discretion) 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 Cadent and the undertaker.

(5) Cadent must, after the alternative apparatus to be provided or constructed has been agreed, and subject to the prior grant to Cadent of such facilities and rights as are referred to in sub-paragraph (2) or (3), have been afforded to Cadent to its satisfaction, then proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to decommission or remove any apparatus required by the undertaker to be decommissioned or removed under the provisions of this Part of this Schedule.

**Facilities and rights for alternative apparatus**

**102.**—(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to or secures for Cadent facilities and rights in land for the access to, construction and maintenance of alternative apparatus in substitution for apparatus to be decommissioned or removed, those facilities and rights must be granted upon such terms and conditions as may be agreed between the undertaker and Cadent and must be no less favourable on the whole to Cadent than the facilities and rights enjoyed by it in respect of the apparatus to be decommissioned or removed unless otherwise agreed by Cadent.

(2) If the facilities and rights to be afforded by the undertaker and agreed with Cadent under sub-paragraph (1) 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 Cadent (in Cadent's opinion, acting reasonably) than the facilities and rights enjoyed by it in respect of the apparatus to be decommissioned or removed, then the terms and conditions to which those facilities and rights are subject may be referred to arbitration in accordance with paragraph 109 of this Part of this Schedule and the arbitrator must make such provision for the payment of compensation by the undertaker to Cadent as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

**Retained apparatus: protection of Cadent**

**103.**—(1) Not less than 56 days (or such time period as may be agreed in writing between Cadent and the undertaker) before the commencement of any specified works the undertaker must submit to Cadent a plan and, if reasonably required by Cadent, a ground monitoring scheme in respect of those works.

(2) The plan submitted to Cadent under sub-paragraph (1) must include a method statement which describes—

(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 specified works until Cadent has given written approval of the plan so submitted (and the ground monitoring scheme if required).

(4) Any approval of Cadent given under sub-paragraph (3)—

(a) may be given subject to reasonably conditions for any purpose mentioned in sub-paragraph (5); and

(b) must not be unreasonably withheld or delayed; and

(c) Cadent must meaningfully engage with the undertaker within 28 days of the date of submission of the plan under sub-paragraph (1).

(5) For the purposes of sub-paragraph (4)(b) it will be deemed to be reasonable for any approval to be refused if Cadent considers that the specified works would

(a) cause interference with or risk of damage to its apparatus; or

(b) prevent access to its apparatus at any time.

(6) In relation to any specified works to which sub-paragraph (1) applies, Cadent may require such modifications to be made to the plan as may be reasonably necessary for the purpose of securing its apparatus against interference or risk of damage or for the purpose of providing or securing proper and convenient means of access to any apparatus.

(7) Specified works must only be executed in accordance with—

(a) the plan submitted under sub-paragraph (1) (and ground monitoring scheme if required), as approved or as amended from time to time by agreement between the undertaker and Cadent; and

(b) all conditions imposed under sub-paragraph (4)(a), and Cadent is entitled to watch and inspect the execution of those works.

(8) Where Cadent 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 Cadent's satisfaction prior to the commencement of any specified works (or any relevant part thereof) for which protective works are required.

(9) If Cadent, in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraphs (1) to (3) and (7) to (9) apply as if the removal of the apparatus has been required by the undertaker under paragraph 101(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 (unless otherwise agreed in writing by Cadent and the undertaker) 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.

(11) As soon as reasonably practicable after any ground subsidence event attributable to the authorised development (including such an event attributable to its maintenance)—

(a) the undertaker must implement an appropriate ground mitigation scheme; and

(b) Cadent 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 104.

(12) The undertaker is not required to comply with sub-paragraph (1) where it needs to carry out emergency works but in that case it must give to Cadent notice as soon as is reasonably practicable and a plan of those works and must comply with the conditions imposed under sub-paragraph (4)(a) insofar as is reasonably practicable in the circumstances.

(13) In this paragraph, "emergency works" means works whose execution at the time when they are executed is required in order to put an end to, or to prevent the occurrence of, circumstances then existing or imminent (or which the person responsible for the works believes on reasonable grounds to be existing or imminent) which are likely to cause danger to persons or property.

**Expenses**

**104.**—(1) Subject to the following provisions of this paragraph, the undertaker must pay to Cadent on demand, all charges, costs and expenses reasonably anticipated or incurred by Cadent 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 development including without limitation—

(a) any costs reasonably incurred by or compensation properly paid by Cadent in connection with the acquisition of rights or the exercise of statutory powers for such apparatus including without limitation all costs (including professional fees) incurred by Cadent as a consequence of Cadent—

(i) using its own compulsory purchase powers to acquire any necessary rights under paragraph 100(3) if it elects to do so; or

(ii) exercising any compulsory purchase powers under this Order transferred to or benefitting Cadent;

(b) in connection with the cost of the carrying out of any diversion work or the provision of any alternative apparatus;

(c) the cutting off of any apparatus from any other apparatus or the making safe of redundant apparatus;

(d) the approval of plans;

(e) the carrying out of protective works (including any protective works pursuant to article 19 (protective works to buildings), plus a capitalised sum to cover the cost of maintaining and renewing permanent protective works if required;

(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; and

(g) any watching brief pursuant to sub-paragraph 103(6).

(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,

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 108 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 Cadent by virtue of sub-paragraph (1) is to be reduced by the amount of that excess.

(4) For the purposes of sub-paragraph (3)—

(a) an extension of apparatus to a length greater than the length of existing apparatus is not to be treated as a placing of apparatus of greater dimensions than those of the existing apparatus; and

(b) where the provision of a joint in a cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole is to be treated as if it also had been agreed or had been so determined.

(5) An amount which apart from this sub-paragraph would be payable to Cadent 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 Cadent 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.

(6) Where anticipated charges, costs or expenses have been paid by the undertaker pursuant to sub-paragraph (1), if the actual charges, costs or expenses incurred by Cadent are less than the amount already paid by the undertaker, Cadent will repay the difference to the undertaker as soon as reasonable practicable

**Indemnity**

**105.**—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any such works authorised by this Part of this Schedule (including without limitation relocation, diversion, decommissioning, construction and maintenance of apparatus or alternative apparatus) or in consequence of the construction, use, maintenance or failure of any of the authorised development (including works carried out under article 19 (protective works to buildings)) 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 the undertaker) 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 development) or property of Cadent, or there is any interruption in any service provided, or in the supply of any goods, by Cadent, or Cadent 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 Cadent, the cost reasonably incurred by Cadent in making good such damage or restoring the supply; and

(b) indemnify Cadent for any other expenses, loss, demands, proceedings, damages, claims, penalty, compensation or costs properly incurred by, paid by or recovered from Cadent, by reason or in consequence of any such damage or interruption or Cadent becoming liable to any third party as aforesaid other than arising from any negligence, omission or default of Cadent.

(2) The fact that any act or thing may have been done by Cadent on behalf of the undertaker or in accordance with a plan approved by Cadent or in accordance with any requirement of Cadent or under its supervision including under any watching brief will not (unless sub-paragraph (3) applies) excuse the undertaker from liability under the provisions of this sub-paragraph (1) unless Cadent 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 or as otherwise agreed between the undertaker and Cadent.

(3) Nothing in sub-paragraph (1) imposes any liability on the undertaker in respect of—

(a) any damage or interruption to the extent that it is attributable to the neglect, omission or default of Cadent, its officers, servants, contractors or agents; and

(b) any part of the authorised development carried out by Cadent as an assignee, transferee or lessee of the undertaker with the benefit of the Order pursuant to section 156 (benefit of order granting development consent) of the 2008 Act or article 36 (consent to transfer the benefit of the Order) subject to the proviso that once such works become apparatus, any specified works yet to be executed and not falling within this paragraph are subject to the full terms of this Part of this Schedule, including this paragraph in respect of new apparatus.

(4) Cadent must give the undertaker reasonable notice of any such third party claim or demand and no settlement, admission of liability or compromise must, unless payment is required in connection with a statutory compensation scheme, be made without first consulting the undertaker and considering its representations.

(5) Cadent must use its reasonable endeavours to mitigate in whole or in part and to minimise any costs, expenses, loss, demands, and penalties to which the indemnity under this paragraph applies. If requested to do so by the undertaker, Cadent must provide an explanation of how the claim has been minimised. The undertaker is only liable under this paragraph for claims reasonably incurred by Cadent.

**Enactment and agreements**

**106.** Except where this Part of this Schedule provides otherwise, or by agreement in writing between Cadent 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 Cadent 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**

**107.**—(1) Where in consequence of the proposed construction of any part of the authorised development, the undertaker or Cadent requires the removal of apparatus under paragraph 100(2) or Cadent makes requirements for the protection or alteration of apparatus under paragraph 102, the undertaker must use its best endeavours to co-ordinate the execution of the works in the interests of safety and the efficient and economic execution of the authorised development and taking into account the need to ensure the safe and efficient operation of Cadent's undertaking and Cadent must use its best endeavours to co-operate with the undertaker for that purpose.

(2) For the avoidance of doubt whenever Cadent'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 Cadent, it must not be unreasonably withheld or delayed.

**Access**

**108.** If in consequence of any agreement reached in accordance with paragraph 99 or the powers granted under this Order the access to any apparatus is materially obstructed, the undertaker must provide such alternative rights and means of access to such apparatus as will enable Cadent to maintain or use the apparatus no less effectively than was possible before such obstruction.

**Arbitration**

**109.** Any difference or dispute arising between the undertaker and Cadent under this Part of this Schedule must, unless otherwise agreed in writing between the undertaker and Cadent, be determined by arbitration in accordance with article 43 (arbitration).

**Notices**

**110.** Notwithstanding article 45 (service of notices) any plans submitted to Cadent by the undertaker pursuant to sub-paragraph 102(1) must be sent via email to Cadent Gas Limited Plant Protection at plantprotection@cadentgas.com copied by email to toby.feirn@cadentgas.com and sent to the General Counsel Department at Cadent's registered office or such other address as Cadent may from time to time appoint instead for that purpose and notify the undertaker in writing.

# PART 10

## FOR THE PROTECTION OF THE ENVIRONMENT AGENCY

**111.**—(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 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; or

(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;

"specified work" means so much of any work or operation authorised by this Order as is in, on, under, over or within—

(a) 8 metres of the base of a remote defence which is likely to—

(i) endanger the stability of, cause damage or reduce the effectiveness of that remote defence, or

(ii) interfere with the Agency's access to or along that remote defence;

(b) 16 metres of a drainage work involving a tidal main river;

(c) 8 metres of a drainage work involving a non-tidal main river;

(d) 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—

(e) 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

(f) 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**

**112.**—(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 122.

(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**

**113.** Without limiting paragraph 112 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**

**114.**—(1) Subject to sub-paragraph (2), any specified work, and all protective works required by the Agency under paragraph (3), 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**

**115.**—(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 122.

**Maintenance of works**

**116.**—(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 Order limits 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 122.

(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 of this Schedule provided that any obstruction is removed as soon as reasonably practicable.

**Remediating impaired drainage work**

**117.** 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**

**118.** 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**

**119.**—(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**

**120.** The undertaker indemnifies the Agency in respect of all costs, charges and expenses which the Agency may reasonably incur—

(a) in the examination or approval of plans under this Part of this Schedule;

(b) in the inspection of the construction of the specified works or any protective works required by the Agency under this Part of this Schedule; and

(c) in the carrying out of any surveys or tests by the Agency which are reasonably required in connection with the construction of the specified works.

**121.**—(1) The undertaker 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 (1)—

(a) "costs" includes—

(i) expenses and charges;

(ii) staff costs and overheads;

(aa) legal costs;

(b) "losses" includes physical damage.

(c) "claims" and "demands" include as applicable—

(i) costs (within the meaning of sub-paragraph (2)(i) incurred in connection with any claim or demand;

(ii) any interest element of sums claimed or demanded;

(d) "liabilities" includes—

(i) contractual liabilities;

(ii) tortious liabilities (including liabilities for negligence or nuisance);

(iii) liabilities to pay statutory compensation or for breach of statutory duty;

(iv) liabilities to pay statutory penalties imposed on the basis of strict liability (but does not include liabilities to pay other statutory penalties).

(3) The Agency must give to the undertaker reasonable notice of any such claim or demand and must not settle or compromise a claim without the agreement of the undertaker and that agreement must not be unreasonably withheld or delayed.

(4) The Agency must, at all times, take reasonable steps to prevent and mitigate any such claims, demands, proceedings, costs, damages, expenses or loss.

(5) The fact that any work or thing has been executed or done by the undertaker in accordance with a plan approved by the Agency or to its satisfaction, or in accordance with any directions or award of an arbitrator, must not relieve the undertaker from any liability under the provisions of this Part of this Schedule.

(6) Nothing in this paragraph imposes any liability on the undertaker with respect to any costs, charges, expenses, damages, claims, demands or losses to the extent that they are attributable to the neglect or default of the Agency, its officers, servants, contractors or agents.

**Disputes**

**122.** 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 43 (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 the 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 11

## FOR THE PROTECTION OF NORTHERN POWERGRID (YORKSHIRE) PLC

**123.** For the protection of Northern Powergrid (Yorkshire) Plc the following provisions have effect, unless otherwise agreed in writing between the undertaker and Northern Powergrid.

**124.** In this Part of this Schedule—

"alternative apparatus" means alternative apparatus adequate to enable Northern Powergrid to fulfil its statutory functions in a manner not less efficient than previously;

"apparatus" means apparatus (as defined in article 2 (interpretation) of the Order), belonging to or maintained by Northern Powergrid and includes any structure in which apparatus is or is to be lodged or which gives or will give access to Northern Powergrid to such apparatus;

"functions" includes powers and duties;

"in", in a context referring to apparatus or alternative apparatus in land, includes a reference to apparatus or alternative apparatus under, over or upon land;

"plan" includes all designs, drawings, 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 must include any 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 the apparatus or Northern Powergrid's undertaking within the Order Limits; and

"Northern Powergrid" means Northern Powergrid (Yorkshire) Plc (Company number 04112320) whose registered office is at Lloyds Court, 78 Grey Street, Newcastle Upon Tyne, NE1 6AF.

**125.** This Part of this Schedule does not apply to apparatus in respect of which the relations between the undertaker and Northern Powergrid are regulated by the provisions of Part 3 (street works in England and Wales) of the 1991 Act.

**126.** Regardless of the temporary prohibition or restriction of use of streets under the powers conferred by article 12 (temporary prohibition or restriction of the use of streets and public rights of way), the undertaker must not prevent Northern Powergrid from taking all necessary access across any such street and to execute and do all such works and things in, upon or under any such street as may be reasonably necessary or desirable to enable it to maintain any apparatus which at the time of the prohibition or restriction was in that street.

**127.** Regardless of any provision in the Order or anything shown on the land plans or contained in the book of reference, the undertaker must not acquire any apparatus or any other interest of Northern Powergrid, override any easement or other interest of Northern Powergrid, or create any new rights over that apparatus otherwise than by agreement (such agreement not to be unreasonably withheld or delayed, having regard to Northern Powergrid's existing and known future requirements for such land or interests).

**128.** Regardless of any provision in the Order or anything shown on the land plans or contained in the book of reference, the undertaker must not interfere with any communications cables or equipment used by Northern Powergrid in relation to its apparatus or acquire or interfere with rights or interest supporting the use, maintenance or renewal of such equipment other than by agreement of Northern Powergrid (such agreement not to be unreasonably withheld or delayed).

**129.**—(1) If, in the exercise of the powers conferred by this Order, the undertaker acquires any interest in any land in which any apparatus is placed or over which access to any apparatus is enjoyed or requires that Northern Powergrid's apparatus is relocated or diverted, that apparatus must not be removed under this Part of this Schedule, and any right of Northern Powergrid to maintain that apparatus in that land and to gain access to it must not be extinguished, until alternative apparatus has been constructed and is in operation, and access to it has been provided pursuant to a completed easement to retain and subsequently maintain the apparatus being relocated or diverted and any access rights to it for the lifetime of that alternative apparatus, all to the reasonable satisfaction of Northern Powergrid in accordance with sub-paragraphs (2) to (5).

(2) If, for the purpose of executing any works in, on or under any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, the undertaker must give to Northern Powergrid 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 the Order Northern Powergrid reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph (3), afford to Northern Powergrid the necessary facilities and rights for the construction of alternative apparatus in other land of the undertaker and subsequently for the maintenance of that apparatus.

(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of the undertaker, or the undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraph (2), in the land in which the alternative apparatus or part of such apparatus is to be constructed—

(a) the undertaker must in the first instance use reasonable endeavours to acquire through voluntary negotiations all necessary land interests or rights as Northern Powergrid may reasonably require for the relocation and construction of alternative apparatus and must use reasonable endeavours to procure through voluntary negotiations all necessary rights to access and maintain Northern Powergrid's apparatus and alternative apparatus thereafter the terms of such access and maintenance to be agreed by Northern Powergrid (acting reasonably); and

(b) in the event that the undertaker is not able to procure the necessary land interest or rights referred to in the sub-paragraph (i) Northern Powergrid must on receipt of a written notice to that effect from the undertaker and subject to paragraph 132, as soon as reasonably practicable 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 Northern Powergrid to use its compulsory purchase powers to this end;

(c) in the event that neither the undertaker nor Northern Powergrid can acquire all necessary land interest or rights which Northern Powergrid may reasonably require for the relocation and construction of alternative apparatus pursuant to paragraph 129(3)(i) and / or (ii), 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 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 43 (arbitration).

(4) Any alternative apparatus to be constructed in land of the undertaker under this Part of this Schedule must be constructed in such manner and in such line or situation as may be agreed between Northern Powergrid and the undertaker or in default of agreement settled by arbitration in accordance with article 43 of the Order.

(5) Northern Powergrid must, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with article 43, and after the grant to Northern Powergrid of any such facilities and rights as are referred to in sub-paragraph (2) or (3), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by the undertaker to be removed under the provisions of this Part of this Schedule.

**130.**—(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to Northern Powergrid facilities and rights for the construction and maintenance in land of the undertaker of alternative apparatus in substitution for apparatus to be removed, those facilities and rights must be granted upon such terms and conditions as may be agreed between the undertaker and Northern Powergrid or in default of agreement settled by arbitration in accordance with article 43 (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 the facilities and rights are to be granted, are in the opinion of the arbitrator less favourable on the whole to Northern Powergrid than those facilities and rights enjoyed by it in respect of the apparatus to be removed and the terms and conditions to which those facilities and rights are subject, the arbitrator must make such provision for the payment of compensation by the undertaker to Northern Powergrid as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

**131.**—(1) Not less than forty-eight days before starting the execution of any works in, on or under any land purchased, held, appropriated or used under the 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 129(2), the undertaker must submit to Northern Powergrid a plan, section and description of the works to be executed and any such information as Northern Powergrid reasonably requires relating to those works.

(2) Those works must be executed only in accordance with the plan, section and description submitted under sub-paragraph (1) and in accordance with such reasonable requirements as may be made in accordance with sub-paragraph (3) by Northern Powergrid for the alteration or

otherwise for the protection of the apparatus, or for securing access to it, and Northern Powergrid is entitled to watch and inspect the execution of those works.

(3) Any requirements made by Northern Powergrid under sub-paragraph (2) must be made within a period of thirty-five days beginning with the date on which a plan, section and description under sub-paragraph (1) are submitted to it.

(4) If Northern Powergrid in accordance with sub-paragraph (2) 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 123 to 131 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 fourteen working days before commencing the execution of any works, a new plan, section and description instead of the plan, section and description previously submitted, and having done so the provisions of this paragraph apply to and in respect of the new plan, section and description.

(6) The undertaker is not required to comply with sub-paragraph (1) in a case of emergency but in that case it must give to Northern Powergrid notice as soon as is reasonably practicable and a plan, section and description of those works as soon as reasonably practicable subsequently and must comply with sub-paragraph (2) in so far as is reasonably practicable in the circumstances.

**132.**—(1) Subject to the following provisions of this paragraph, the undertaker must repay to Northern Powergrid within fifty days of receipt of an itemised invoice or claim the reasonable expenses incurred by Northern Powergrid – 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 129(2) and 129(3) including within limitation—

(a) in connection with the cost of the carrying out of any diversion work or the provision of any alternative apparatus;

(b) the cutting off of any apparatus from any other apparatus or the making safe of redundant apparatus;

(c) the approval of any plans which must include the review of any such plans and

assessing and preparing a design for apparatus to address and accommodate the proposals of the undertaker where necessary pursuant to paragraph 131(1).

(d) the carrying out of protective works, plus a capitalised sum to cover the reasonable cost of adequately maintaining permanent protective works;

(e) 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) Where any payment falls due pursuant to sub-paragraph (1), Northern Powergrid must—

(a) provide an itemised invoice or reasonable expenses claim to the undertaker;

(b) provide “reminder letters” to the undertaker for payment to be made within the 50 days on the following days after the invoice or reasonable expenses claim to the undertaker—

(i) 15 days (‘reminder letter 1’)

(ii) 29 days (‘reminder letter 2’)

(iii) 43 days (‘reminder letter 3’)

(c) be entitled to commence debt proceedings to recover any unpaid itemised invoice or reasonable expenses claim after fifty one days from receipt of the same where payment has not been made.

(3) If in accordance with the provisions of this Part of this Schedule—

(a) apparatus of a 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 43 (arbitration) of this Order 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 Northern Powergrid by virtue of sub-paragraph (1) is to be reduced by the amount of that excess save where it is not possible on account of reasonable project time limits communicated in a reasonable timeframe to the undertaker or supply issues to obtain the existing type of operations, capacity, dimensions or place at the existing depth.

(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 129(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.

**133.**—(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 works referred to in paragraph 129(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 works, including without limitation works carried out by the undertaker under this Schedule or any subsidence resulting from any of these works, any damage is caused to any apparatus or alternative apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works) or property of Northern Powergrid or there is any interruption in any service provided by Northern Powergrid, or Northern Powergrid becomes liable to pay any amount to a third party the undertaker must—

(a) bear and pay the cost reasonably incurred by Northern Powergrid in making good such damage or restoring the supply; and

(b) indemnify Northern Powergrid for other reasonable expenses, loss, demands, proceedings, damages, claims, penalty or costs incurred by or recovered from Northern Powergrid, 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) any damage or interruption to the extent that it is attributable to the act, neglect or default of Northern Powergrid, its officers, employees, servants, contractors or agents; or

(b) any authorised development and/or other works authorised by this Part of this Schedule carried out by Northern Powergrid 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 36 (consent to transfer the benefit of the Order) subject to the proviso that once such works become apparatus ("new apparatus") any works yet to be executed by the undertaker and not falling within this paragraph will be subject to the full terms of this Part of this Schedule including this paragraph in respect of such new apparatus.

(3) Northern Powergrid must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise is to be made without the consent of the undertaker which, if it withholds such consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

(4) Northern Powergrid must use its reasonable endeavours to mitigate in whole or in part and to minimise any costs, expenses, loss, demands, and penalties to which the indemnity under this paragraph 133 applies. If requested to do so by the undertaker, Northern Powergrid must provide

an explanation of how the claim has been minimised or details to substantiate any cost or compensation claimed pursuant to sub-paragraph (1). The undertaker shall only be liable under this paragraph 133 for claims reasonably incurred by Northern Powergrid.

(5) Subject to sub-paragraph (3) and (4), the fact that any act or thing may have been done by Northern Powergrid on behalf of the undertaker or in accordance with a plan approved by Northern Powergrid or in accordance with any requirement of Northern Powergrid as a consequence of the authorised development or under its supervision will not (unless sub-paragraph (2) applies), excuse the undertaker from liability under the provisions of this sub-paragraph (5) where the undertaker fails to carry out and execute the works properly with due care and attention and in a 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 Northern Powergrid.

**134.** Nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and Northern Powergrid in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which the Order is made.

**135.** Any difference under the provisions of this Part of this Schedule, unless otherwise agreed, is to be referred to and settled by arbitration in accordance with article 43 (arbitration).

**136.** Where in consequence of the proposed construction of any of the authorised development, the undertaker or Northern Powergrid requires the removal of apparatus under paragraph 129 or otherwise or Northern Powergrid makes requirements for the protection or alteration of apparatus under paragraph 131, the undertaker shall use its best endeavours to co-ordinate the execution of the works in the interests of safety and the need to ensure the safe and efficient operation of Northern Powergrid's apparatus taking into account the undertaker's desire for the efficient and economic execution of the authorised development and the undertaker and Northern Powergrid shall use reasonable endeavours to cooperate with each other for these purposes.

**137.** The plans submitted to Northern Powergrid by the undertaker pursuant to this Part of this Schedule must be sent to Northern Powergrid at property@nothernpowergrid.com or such other address as Northern Powergrid may from time to time appoint instead for that purpose and notify the undertaker in writing.

**138.** Prior to carrying out any works within the Order limits, Northern Powergrid 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.

**139.** Where practicable the undertaker and Northern Powergrid will make reasonable efforts to liaise and co-operate in respect of information that is relevant to the safe and efficient construction operation and maintenance of the authorised development. Such liaison shall be carried out where any works are—

(a) within 15m of any above ground apparatus; or

(b) within 15m of any apparatus and are to a depth of between 0 to 4m below ground level.

# PART 12

## FOR THE PROTECTION OF RAILWAY INTERESTS

**140.** 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 154 of this Part of this Schedule any other person on whom rights or obligations are conferred by that paragraph.

**141.** In this Part of this Schedule—

"asset protection agreement" means an agreement to regulate the construction and maintenance of the specified work in a form prescribed from time to time by Network Rail;

"construction" includes execution, placing, alteration and reconstruction and "construct" and "constructed" have corresponding meanings;

"the engineer" means an engineer appointed by Network Rail for the purposes of this Order;

"network licence" means the network licence, as the same is amended from time to time, granted to Network Rail Infrastructure Limited by the Secretary of State in exercise of their powers under section 8 (licences) of the Railways Act 1993;

"Network Rail" means Network Rail Infrastructure Limited (company number 02904587, whose registered office is at Waterloo General Office, London SE1 8SW) and any associated company of Network Rail Infrastructure Limited which holds property for railway purposes, and for the purpose of this definition "associated company" means any company which is (within the meaning of section 1159 of the Companies Act 2006) the holding company of Network Rail Infrastructure Limited, a subsidiary of Network Rail Infrastructure Limited or another subsidiary of the holding company of Network Rail Infrastructure Limited and any successor to Network Rail Infrastructure Limited's railway undertaking;

"plans" includes sections, designs, design data, software, drawings, specifications, soil reports, calculations, descriptions (including descriptions of methods of construction), staging proposals, programmes and details of the extent, timing and duration of any proposed occupation of railway property;

"railway operational procedures" means procedures specified under any access agreement (as defined in the Railways Act 1993) or station lease;

"railway property" means any railway belonging to Network Rail and—

(a) any station, land, works, apparatus and equipment belonging to Network Rail or connected with any such railway; and

(b) any easement or other property interest held or used by Network Rail or a tenant or licensee of Network Rail for the purposes of such railway or works, apparatus or equipment;

"regulatory consents" means any consent or approval required under—

(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 5 (power to maintain the authorised development) in respect of such works. 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.

**142.**—(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.

**143.** The undertaker must not exercise the powers conferred by—

(a) article 3 (development consent etc. granted by this Order);

(b) article 5 (power to maintain the authorised development);

(c) article 18 (discharge of water);

(d) article 20 (authority to survey and investigate the 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 constructing 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 39 (felling or lopping of trees and removal of hedgerows);

(n) article 40 (trees subject to tree preservation orders);

(o) the powers conferred by section 11(3) (power of entry) of the Compulsory Purchase Act 1965;

(p) the powers conferred by section 203 (power to override easements and 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.

**144.**—(1) The undertaker must before commencing construction of any specified work supply to Network Rail proper and sufficient plans of that work for the reasonable approval of the engineer and the specified work must not be commenced except in accordance with such plans as have been approved in writing by the engineer or settled by arbitration.

(2) The approval of the engineer under sub-paragraph (1) must not be unreasonably withheld, and if by the end of the period of 28 days beginning with the date on which such plans have been supplied to Network Rail the engineer has not intimated their disapproval of those plans and the grounds of such disapproval the undertaker may serve upon the engineer written notice requiring the engineer to intimate approval or disapproval within a further period of 28 days beginning with the date upon which the engineer receives written notice from the undertaker. If by the expiry of the further 28 days the engineer has not intimated approval or disapproval, the engineer shall be deemed to have approved the plans as submitted.

(3) If by the end of the period of 28 days beginning with the date on which written notice was served upon the engineer under sub-paragraph (2), Network Rail gives notice to the undertaker that Network Rail desires itself to construct any part of a specified work which in the opinion of the engineer will or may affect the stability of railway property or the safe operation of traffic on the railways of Network Rail then, if the undertaker desires such part of the specified work to be constructed, Network Rail must construct it without unnecessary delay on behalf of and to the reasonable satisfaction of the undertaker in accordance with the plans approved or deemed to be approved or settled under this paragraph, and under the supervision (where appropriate and if given) of the undertaker.

(4) When signifying their approval of the plans the engineer may specify any protective works (whether temporary or permanent) which in the engineer's opinion should be carried out before the commencement of the construction of a specified work to ensure the safety or stability of railway property or the continuation of safe and efficient operation of the railways of Network Rail or the services of operators using the same (including any relocation de-commissioning and removal of works, apparatus and equipment necessitated by a specified work and the comfort and safety of passengers who may be affected by the specified works), and such protective works as may be reasonably necessary for those purposes must be constructed by Network Rail or by the undertaker, if Network Rail so desires, and such protective works must be carried out at the expense of the undertaker in either case without unnecessary delay and the undertaker must not commence the construction of the specified works until the engineer has notified the undertaker that the protective works have been completed to their reasonable satisfaction.

**145.**—(1) Any specified work and any protective works to be constructed by virtue of paragraph 144(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 144;

(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.

**146.** 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.

**147.** 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.

**148.**—(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 144(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 149(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.

**149.** 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 144(3) or in constructing any protective works under the provisions of paragraph 144(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.

**150.**—(1) In this paragraph—

"EMI" means, subject to sub-paragraph (2), electromagnetic interference with Network Rail apparatus generated by the operation of the authorised development where such interference is of a level which adversely affects the safe operation of Network Rail's apparatus; and

"Network Rail's apparatus" means any lines, circuits, wires, apparatus or equipment (whether or not modified or installed as part of the authorised development) which are owned or used by Network Rail for the purpose of transmitting or receiving electrical energy or of radio, telegraphic, telephonic, electric, electronic or other like means of signalling or other communications.

(2) This paragraph applies to EMI only to the extent that such EMI is not attributable to any change to Network Rail's apparatus carried out after approval of plans under paragraph 144(1) for the relevant part of the authorised development giving rise to EMI (unless the undertaker has been given notice in writing before the approval of those plans of the intention to make such change).

(3) Subject to sub-paragraph (5), the undertaker must in the design and construction of the authorised development take all measures necessary to prevent EMI and must establish with Network Rail (both parties acting reasonably) appropriate arrangements to verify their effectiveness.

(4) In order to facilitate the undertaker's compliance with sub-paragraph (3)—

(a) the undertaker must consult with Network Rail as early as reasonably practicable to identify all Network Rail's apparatus which may be at risk of EMI, and thereafter must continue to consult with Network Rail (both before and after formal submission of plans under paragraph 144(1) in order to identify all potential causes of EMI and the measures required to eliminate them;

(b) Network Rail must make available to the undertaker all information in the possession of Network Rail reasonably requested by the undertaker in respect of Network Rail's apparatus identified pursuant to sub-paragraph (a); and

(c) Network Rail must allow the undertaker reasonable facilities for the inspection of Network Rail's apparatus identified pursuant to sub-paragraph (a).

(5) In any case where it is established that EMI can only reasonably be prevented by modifications to Network Rail's apparatus, Network Rail must not withhold its consent unreasonably to modifications of Network Rail's apparatus, but the means of prevention and the method of their execution must be selected in the reasonable discretion of Network Rail, and in relation to such modifications paragraph 144(1) has effect subject to the sub-paragraph.

(6) Prior to the commencement of operation of the authorised development the undertaker shall test the use of the authorised development in a manner that shall first have been agreed with Network Rail and if, notwithstanding any measures adopted pursuant to sub-paragraph (3), the testing of the authorised development causes EMI then the undertaker must immediately upon receipt of notification by Network Rail of such EMI either in writing or communicated orally (such oral communication to be confirmed in writing as soon as reasonably practicable after it has been issued) forthwith cease to use (or procure the cessation of use of) the undertaker's apparatus causing such EMI until all measures necessary have been taken to remedy such EMI by way of modification to the source of such EMI or (in the circumstances, and subject to the consent, specified in sub-paragraph (5)) to Network Rail's apparatus.

(7) In the event of EMI having occurred—

(a) the undertaker must afford reasonable facilities to Network Rail for access to the undertaker's apparatus in the investigation of such EMI;

(b) Network Rail must afford reasonable facilities to the undertaker for access to Network Rail's apparatus in the investigation of such EMI;

(c) Network Rail must make available to the undertaker any additional material information in its possession reasonably requested by the undertaker in respect of Network Rail's apparatus or such EMI; and

(d) the undertaker shall not allow the use or operation of the authorised development in a manner that has caused or will cause EMI until measures have been taken in accordance with this paragraph to prevent EMI occurring.

(8) Where Network Rail approves modifications to Network Rail's apparatus pursuant to sub-paragraphs (5) or (6)—

(a) Network Rail must allow the undertaker reasonable facilities for the inspection of the relevant part of Network Rail's apparatus;

(b) any modifications to Network Rail's apparatus approved pursuant to those sub-paragraphs must be carried out and completed by the undertaker in accordance with paragraph 145.

(9) To the extent that it would not otherwise do so, the indemnity in paragraph 154(1) applies to the costs and expenses reasonably incurred or losses suffered by Network Rail through the implementation of the provisions of this paragraph (including costs incurred in connection with the consideration of proposals, approval of plans, supervision and inspection of works and facilitating access to Network Rail's apparatus) or in consequence of any EMI to which sub-paragraph (6) applies.

(10) For the purpose of paragraph 149(a) any modifications to Network Rail's apparatus under this paragraph shall be deemed to be protective works referred to in that paragraph.

(11) In relation to any dispute arising under this paragraph the reference in article 43 (Arbitration) to the Institution of Civil Engineers shall be read as a reference to the Institution of Engineering and Technology.

**151.** 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.

**152.** 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.

**153.** 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.

**154.**—(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 (subject to article 42 (no double recovery)) which may be occasioned to or reasonably incurred by Network Rail—

(a) by reason of the construction, maintenance or operation of a specified work or the failure thereof;

(b) by reason of any act or omission of the undertaker or of any person in its employ or of its contractors or others whilst engaged upon a specified work;

(c) by reason of any act or omission of the undertaker or any person in its employ or of its contractors or others whilst accessing to or egressing from the authorised development;

(d) in respect of any damage caused to or additional maintenance required to, railway property or any such interference or obstruction or delay to the operation of the railway as a result of access to or egress from the authorised development by the undertaker or any person in its employ or of its contractors or others;

(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.

**155.** 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 154) 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).

**156.** 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.

**157.** 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.

**158.** Nothing in this Order, or in any enactment incorporated with or applied by this Order, prejudices or affects the operation of Part I of the Railways Act 1993.

**159.** The undertaker must give written notice to Network Rail if any application is proposed to be made by the undertaker for the Secretary of State's consent, under article 36 (consent to transfer the benefit of the Order) of this Order and any such notice must be given no later than 28 days before any such application is made and must describe or give (as appropriate)—

(a) the nature of the application to be made;

(b) the extent of the geographical area to which the application relates; and

(c) the name and address of the person acting for the Secretary of State to whom the application is to be made.

**160.** 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 41 (certification of plans and documents etc.), provide a set of those plans to Network Rail in a format specified by Network Rail.

**161.** Any dispute arising under this Part of this Schedule (except for those disputes referred to in paragraph 150) the provisions of article 43 (arbitration) shall not apply and any such dispute, unless otherwise provided for, must be referred to and settled by a single arbitrator to be agreed between the parties or, failing agreement, to be appointed on the application of either party (after giving notice in writing to the other) to the President of the Institution of Civil Engineers.

# PART 13

## FOR THE PROTECTION OF ANGLIAN WATER SERVICES LIMITED

### Application

**162.** For the protection of Anglian Water the following provisions have effect, unless otherwise agreed in writing between the undertaker and Anglian Water.

### Interpretation

**163.** In this Part of this Schedule—

"1991 Act" means the New Roads and Street Works Act 1991;

"alternative apparatus" means alternative apparatus adequate to enable Anglian Water to fulfil its statutory functions in a manner no less efficient than previously;

"Anglian Water" means Anglian Water Services Limited;

"apparatus" means—

(a) works, mains, pipes or other apparatus belonging to or maintained by Anglian Water for the purposes of water supply and sewerage;

(b) any drain or works vested in Anglian Water under the Water Industry Act 1991;

(c) any sewer which is so vested or is the subject of a notice of intention to adopt given under section 102(4) of that Act or an agreement to adopt made under section 104 of that Act;

(d) any drainage system constructed for the purpose of reducing the volume of surface water entering any public sewer belonging to Anglian Water; and

(e) includes a sludge main, disposal main or sewer outfall and any manholes, ventilating shafts, pumps or other accessories forming part of any such sewer, drain or works, and includes any structure in which apparatus is or is to be lodged or which gives or will give access to apparatus;

and for the purpose of this definition, where words are defined by section 219 of that Act, they shall be taken to have the same meaning,

"functions" includes powers and duties;

"in", in a context referring to apparatus or alternative apparatus in land, includes a reference to apparatus or alternative apparatus under, over or upon land;

"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;

**On street apparatus**

**164.** This Part of this Schedule does not apply to apparatus in respect of which the relations between the undertaker and Anglian Water are regulated by the provisions of Part 3 of the 1991 Act.

**Apparatus in streets subject to temporary prohibitions or restrictions**

**165.** Regardless of the temporary diversion or restriction on any highway under the powers conferred by article 12 (temporary prohibition or restriction of the use of streets and public rights of way), Anglian Water is at liberty at all times to take all necessary access across any such diverted or restricted highway and to execute and do all such works and things in, upon or under any such highway as may be reasonably necessary to enable it to maintain any apparatus which at the time of the diversion or restriction was in that highway.

**Protective works to buildings**

**166.** The undertaker, in the case of the powers conferred by article 19 (protective works to buildings), must exercise those powers so as not to obstruct or render less convenient the access to any apparatus.

**Acquisition of apparatus**

**167.** Regardless of any provision in this Order or anything shown on the land plans, the undertaker must not acquire any apparatus otherwise than by agreement.

**Removal of apparatus**

**168.**—(1) If, in the exercise of the powers conferred by this Order, the undertaker acquires any interest in any land in which any apparatus is placed or requires that Anglian Water's apparatus is relocated or diverted, that apparatus must not be removed under this Part of this Schedule, and any right of Anglian Water to maintain that apparatus in that land must not be extinguished, until

(a) alternative apparatus has been constructed and is in operation to the reasonable satisfaction of Anglian Water in accordance with sub-paragraphs (2) to (8); and

(b) facilities and rights have been secured for that alternative apparatus in accordance with paragraph 169.

(2) If, for the purpose of executing any works in, on or under any land purchased held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, the undertaker must give to Anglian Water 28 days' written notice of that requirement, together with a plan of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order an undertaker reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph (3), afford to Anglian Water the necessary facilities and rights for the construction of alternative apparatus in other land of the undertaker and subsequently for the maintenance of that apparatus.

(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of the undertaker, or the undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraph (2) in the land in which the alternative apparatus or part of such apparatus is to be constructed Anglian Water must, on receipt of a written notice to that effect from the undertaker, as soon as reasonably possible use its best endeavours to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed.

(4) Any alternative apparatus to be constructed in land of the undertaker under this Part of this Schedule must be constructed in such manner and in such line or situation as may be agreed between Anglian Water and the undertaker or in default of agreement settled by arbitration in accordance with article 43 (arbitration).

(5) Anglian Water must, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with article 43, and after the grant to Anglian Water of any such facilities and rights as are referred to in sub-paragraphs (2) or (3), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by the undertaker to be removed under the provisions of this Part of this Schedule.

(6) Regardless of anything in sub-paragraph (5), if Anglian Water gives notice in writing to the undertaker that it desires the undertaker to execute any work, or part of any work in connection with the construction or removal of apparatus in any land of the undertaker or to the extent that Anglian Water fails to proceed with that work in accordance with sub-paragraph (5) or the undertaker and Anglian Water otherwise agree, that work, instead of being executed by Anglian Water, must be executed by the undertaker without unnecessary delay under the superintendence, if given, and to the reasonable satisfaction of Anglian Water.

(7) If Anglian Water fails either reasonably to approve, or to provide reasons for its failure to approve along with an indication of what would be required to make acceptable, any proposed details relating to required removal works under sub-paragraph (2) within 28 days of receiving a notice of the required works from the undertaker, then such details are deemed to have been approved. For the avoidance of doubt, any such "deemed consent" does not extend to the actual undertaking of the removal works, which shall remain the sole responsibility of Anglian Water or its contractors unless these works are to be carried out by the undertaker in accordance with sub-paragraph (6).

(8) Whenever alternative apparatus is to be or is being substituted for existing apparatus, the undertaker shall, before taking or requiring any further step in such substitution works, use reasonable endeavours to comply with Anglian Water's reasonable requests for a reasonable period of time to enable Anglian Water to—

(a) make network contingency arrangements; or

(b) bring such matters as it may consider reasonably necessary to the attention of end users of the utility in question.

**Facilities and rights for alternative apparatus**

**169.**—(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to a utility undertaker facilities and rights for the construction and maintenance in land of the undertaker of alternative apparatus in substitution for apparatus to be removed, those facilities and rights are to be granted upon such terms and conditions as may be agreed between the

undertaker and Anglian Water or in default of agreement settled by arbitration in accordance with article 43 (arbitration).

(2) If the facilities and rights to be afforded by the undertaker in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are in the opinion of the arbitrator less favourable on the whole to Anglian Water than the facilities and rights enjoyed by it in respect of the apparatus to be removed and the terms and conditions to which those facilities and rights are subject, the arbitrator must make such provision for the payment of compensation by the undertaker to Anglian Water as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

(3) Such facilities and rights as are set out in this paragraph are deemed to include any statutory permits granted to the undertaker in respect of the apparatus in question, whether under the Environmental Permitting Regulations 2010 or other legislation.

**Retained apparatus**

**170.**—(1) Not less than 28 days before starting the execution of any works in, on or under any land purchased, held, appropriated or used under this Order that are near to, or will or may affect, any apparatus (or any means of access to it) the removal of which has not been required by the undertaker under paragraph 168(2), the undertaker must submit to Anglian Water a plan of the works to be executed.

(2) Those works must be executed only in accordance with the plan submitted under sub-paragraph (1) and in accordance with such reasonable requirements as may be made in accordance with sub-paragraph (3) by Anglian Water for the alteration or otherwise for the protection of the apparatus or for securing access to it, and Anglian Water is entitled to watch and inspect the execution of those works.

(3) Any requirements made by Anglian Water under sub-paragraph (2) must be made within a period of 21 days beginning with the date on which a plan under sub-paragraph (1) is submitted to it.

(4) If Anglian Water in accordance with sub-paragraph (3) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraphs (1) to (3) and (6) to (7) apply as if the removal of the apparatus had been required by the undertaker under paragraph 168(2).

(5) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 28 days before commencing the execution of any works, a new plan instead of the plan previously submitted, and having done so the provisions of this paragraph apply to and in respect of the new plan.

(6) The undertaker is not required to comply with sub-paragraph (1) in a case of emergency but in that case must give to Anglian Water notice as soon as is reasonably practicable and a plan of those works as soon as reasonably practicable subsequently and must comply with sub-paragraph (3) in so far as is reasonably practicable in the circumstances, using best endeavours to keep the impact of those emergency works on Anglian Water's apparatus, on the operation of its water and sewerage network and on end-users of the services Anglian Water provides to a minimum.

(7) For the purposes of sub-paragraph (1) and without prejudice to the generality of the principles set out in that sub-paragraph, works are deemed to be in land near Anglian Water's apparatus (where it is a pipe) if those works fall within the following distances measured from the medial line of such apparatus—

(a) 4 metres where the diameter of the pipe is less than 250 millimetres;

(b) 5 metres where the diameter of the pipe is between 250 and 400 millimetres, and

(c) 7 metres where the diameter of the pipe is 400mm or greater.

**Expenses and costs**

**171.**—(1) Subject to the following provisions of this paragraph, the undertaker must repay to Anglian Water all expenses reasonably incurred by Anglian Water in, or in connection with, the

inspection, removal, alteration or protection of any apparatus or the construction of any new apparatus which may be required in consequence of the execution of any such works as are referred to in this Part of this Schedule.

(2) There must be deducted from any sum payable under sub-paragraph (1) the value of any apparatus removed under the provisions of this Part of this Schedule that value being calculated after removal.

(3) If in accordance with the provisions of this Part of this Schedule—

(a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions; or

(b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was situated, and the place of apparatus of that type or capacity or of those dimensions or the place 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 43 (arbitration) to be necessary, then, if such placing involves cost in the construction of works under this Part of this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to Anglian Water by virtue of sub-paragraph (1) must be reduced by the amount of that excess.

(4) For the purposes of sub-paragraph (3)—

(a) an extension of apparatus to a length greater than the length of existing apparatus is not to be treated as placing of apparatus of greater dimensions than those of the existing apparatus; and

(b) where the provision of a joint in a pipe or cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole is to be treated as if it also had been agreed or had been so determined.

**172.**—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any such works referred to in paragraphs 166 or 168(2), or by reason of any subsidence resulting from such development or works, any damage is caused to any apparatus or alternative apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works) or property of Anglian Water, or there is any interruption in any service provided, or in the supply of any goods, by Anglian Water, the undertaker must—

(a) bear and pay the cost reasonably incurred by Anglian Water, accompanied by an invoice or claim from Anglian Water, in making good such damage or restoring the supply; and

(b) make reasonable compensation to Anglian Water for any other expenses, loss, damages, penalty or costs incurred by the undertaker,

by reason or in consequence of any such damage or interruption.

(2) The fact that any act or thing may have been done by Anglian Water on behalf of the undertaker or in accordance with a plan approved by Anglian Water or in accordance with any requirement of Anglian Water or under its supervision does not, subject to sub-paragraph (3), excuse the undertaker from liability under the provisions of sub-paragraph (1)(3) unless Anglian Water fails to carry out and execute the works properly with due care and attention and in a skilful and professional like manner or in a manner that does not accord with the approved plan.

(3) Nothing in sub-paragraph (1) imposes any liability on the undertaker with respect to any damage or interruption to the extent that it is attributable to the unlawful or unreasonable act, neglect or default of Anglian Water, its officers, servants, contractors or agents.

(4) Anglian Water must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise is to be made, without the consent of the undertaker (such consent not to be unreasonably withheld or delayed) who, if withholding such consent, has the sole

conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

**Cooperation**

**173.** Where in consequence of the proposed construction of any of the authorised development, the undertaker or Anglian Water requires the removal of apparatus under paragraph 168(2) or Anglian Water makes requirements for the protection or alteration of apparatus under paragraph 170, the undertaker must use all reasonable endeavours to co-ordinate the execution of the works in the interests of safety and the efficient and economic execution of the authorised development and taking into account the need to ensure the safe and efficient operation of Anglian Water's undertaking, using existing processes where requested by Anglian Water, provided it is appropriate to do so, and Anglian Water must use all reasonable endeavours to co-operate with the undertaker for that purpose.

**174.** Where the undertaker identifies any apparatus which may belong to or be maintainable by Anglian Water but which does not appear on any statutory map kept for the purpose by Anglian Water, it shall inform Anglian Water of the existence and location of the apparatus as soon as reasonably practicable.

**175.** Nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and Anglian Water in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

**176.** The undertaker and Anglian Water may by written agreement substitute any period of time for those periods set out in this Part of this Schedule.

# PART 14

## FOR THE PROTECTION OF UNIPER

**177.** For the protection of Uniper as referred to in this Part of this Schedule, the following provisions will, unless otherwise agreed in writing between the undertaker and Uniper, have effect.

**178.** In this part of this Schedule—

"acceptable credit provider" means a bank or financial institution with a credit rating that is not lower than: (i) "A-" if the rating is assigned by Standard & Poor's Ratings Group or Fitch Ratings; and (ii) "A3" if the rating is assigned by Moody's Investors Services Inc.;

"acceptable insurance" means a third party liability insurance effected and maintained by the undertaker or its contractor with a limit of indemnity of not less than £50,000,000 (fifty million pounds) per occurrence or series of occurrences arising out of one event or such lower amount as approved by Uniper, whether arising pursuant to the undertaker or any person on its behalf. Such insurance must be maintained for the construction and operational period of the authorised development which constitute specified works and arranged with an internationally recognised insurer of repute operating in the London and worldwide insurance market underwriters whose security/credit rating meets the same requirements as an "acceptable credit provider" (including any replacement insurance pursuant to subparagraph 186(6)), such policy must include (but without limitation)—

(a) a waiver of subrogation and an indemnity to principal clause in favour of Uniper; and

(b) contractors' pollution liability for third party property damage and third party bodily damage arising from pollution, contamination or environmental harm with cover of £10,000,000 (ten million pounds) per event or £20,000,000 (twenty million pounds) in aggregate;

"acceptable security" means either—

(a) a parent company guarantee from a parent company in favour of Uniper to cover the undertaker's liability to Uniper to a cap of not less than £10,000,000 (ten million pounds) per asset per event up to a total liability cap of £25,000,000 (twenty five million pounds) (in a form reasonably satisfactory to Uniper and where required by Uniper, 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) including any replacement parent company pursuant to subparagraph 186(6)); or

(b) a bank bond or letter of credit from an acceptable credit provider in favour of Uniper to cover the undertaker's liability to Uniper for an amount of not less than £10,000,000 (ten million pounds) per asset per event up to a total liability cap of £25,000,000 (twenty-five million pounds) (in a form reasonably satisfactory to Uniper) which includes any replacement bank bond or letter of credit pursuant to subparagraph 186(6));

"alternative apparatus" means alternative apparatus to the satisfaction of Uniper to enable Uniper to fulfil its functions in a manner no less efficient than previously;

"apparatus" means—

(a) any fixed and moveable items, which forms, or may form, part of Uniper's system, including cavities, chambers, pipelines, valves, ventilators, pumps, compressors, pumping or compression systems, control systems and any associated cables (including high voltage, low voltage and datacoms) and any equipment in which electrical conductors are used, supported, or otherwise form, or may form, part of the system, cathodic protection systems, roads, compounds and equipment owned by Uniper; or

(b) any other equipment or apparatus belonging to or maintained by Uniper or apparatus and such other equipment or apparatus constructed that becomes operational for the purposes of Uniper's functions including any structure in which equipment or apparatus is, or will be, lodged or which gives, or will give, access to apparatus; or

(c) any replacement equipment or apparatus as required or determined by Uniper;

"as-built" records" means each as-built record or document prepared by the undertaker or delivered to the undertaker by its subcontractors or any other person carrying out the specified works;

"authorised development" has the same meaning as in article 2(1) of this Order and includes any associated development authorised by the Order and for the purposes of this Part of this Schedule includes the use and maintenance of the authorised works and construction of any works authorised by this Part of this Schedule;

"commence" has the same meaning as in article 2(1) of this Order and commencement will be construed to have the same meaning save that for the purposes of this Part of the Schedule the terms commence and commencement include operations consisting of ecological or archaeological investigations, investigations for the purpose of assessing and monitoring ground conditions and levels (including drilling and making trial or bore holes), remedial work in respect of any pollution, contamination or other adverse ground conditions, erection of any temporary means of enclosure, receipt and erection of construction plant and equipment;, diversion and laying of underground apparatus (including cables) and site clearance (including removal of vegetation) or any other activities being undertaken under, over, across, along or upon the apparatus or alternative apparatus in land;

"confidential information" means information exchanged during the negotiation or performance of this Part of this Schedule, which is identified in writing by the furnishing party as being confidential at the time of disclosure to the other party;

"deed of consent" means a deed of consent, crossing or proximity agreement, deed of easement, deed of variation or new deed of grant agreed between the parties;

"emergency works" has the meaning given to it in section 52 of the 1991 Act;

"good industry practice" means exercising the degree of skill, diligence, prudence, foresight and care reasonably expected of a skilled and experienced solar developer, which includes obtaining all necessary permits and compliance with any safety rules;

"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, across, along or upon such land;

"including" or "include" are to be construed without limitation, and such general words are not be given a restrictive meaning by reason of the fact that they are followed by particular examples intended to be embraced by the general words and references to "such as" or "for example" must be construed accordingly;

"insolvency related event" means, in respect of any person, any step, process, application, filing in court, order, proceeding, notice or appointment is taken or made by or in respect of such person in relation to the Banking Act 2009 special resolution regime or for a moratorium, composition, compromise or arrangement with creditors, administration, liquidation (other than for the purposes of amalgamation or reconstruction), dissolution, receivership (administrative or otherwise), distress (or the taking control of goods procedure set out in the Tribunals, Courts and Enforcement Act 2007) or execution in any jurisdiction or such person becomes insolvent or is unable or is deemed unable to pay its debts, suspends making payments on its debts, as they fall due in accordance with the law of any application jurisdiction;

"maintain" and "maintenance" includes the ability and right to do any of the following in relation to any apparatus or alternative apparatus of Uniper including retain, lay, construct, use, maintain, repair, protect, access, alter, inspect, renew, replace, enlarge, decommission or remove the apparatus or alternative apparatus;

"Order" means the Tillbridge Solar Order 202[*];

"parent company" means—

(a) a parent company of the undertaker acceptable to and which must have been approved by Uniper acting reasonably; or

(b) where a parent company is subject to an insolvency related event, a replacement parent company approved by Uniper acting reasonably;

"plan" or "plans" include all designs, drawings, specifications, method statements, soil reports, programmes, calculations, risk assessments and mitigation measures (including but not limited to integrity reports), earthing philosophies, proposed land and road crossings and other documents that are reasonably necessary properly and sufficiently to describe and assess the works to be executed;

"representative" means Uniper's directors, officers, employees, agents, consultants and advisers;

"specified works" means any of the authorised development or activities undertaken in association with the authorised development which—

(a) will or may be situated over, under, across, along, upon or within 15 metres measured in any direction of any apparatus, excluding any high pressure pipelines to which paragraph b) below shall apply;

(b) will or may be situated over, under, across, along, upon or within 50 metres measured in any direction of any high pressure pipeline; or

(c) may in any way adversely affect any apparatus the removal of which has not been required by the undertaker under paragraph 184 or otherwise.

"undertaker" has the same meaning as in article 2(1) of the Order; and

"Uniper" means Uniper UK Limited incorporated in England with company number 2796628 and whose registered office is at Compton House 2300 The Crescent, Birmingham Business Park, Birmingham, England, B37 7YE.

**179.** Except for paragraphs 180 (apparatus of Uniper in streets and public rights of way), 183 (retained apparatus), 184 (removal or replacement of apparatus), 185 (expenses) and 186 (indemnity) of this Part of this Schedule which will apply in respect of the exercise of all or any powers under the Order affecting the rights and apparatus of Uniper, the other provisions of this Part of this Schedule do not apply to apparatus in respect of which the relations between the undertaker and Uniper are regulated by the provisions of Part 3 of the 1991 Act.

**Apparatus of Uniper in streets and public rights of way**

**180.** Regardless of the temporary alteration, diversion or restriction of use of any highway under the powers of article 12 (temporary prohibition or restriction of the use of streets and public rights of way), Uniper will be at liberty at all times to take all necessary access across any such highway and to execute and do all such works and things in, upon or under any such highway as it would have been entitled to do immediately before such temporary alteration, diversion or restriction of use in respect of any apparatus which at the time of the alteration, diversion or restriction of use was in that highway.

**Protective works to buildings**

**181.** The undertaker, in the case of the powers conferred by article 19 (protective works to buildings), must exercise those powers in accordance with paragraph 183 of this Part of this Schedule, so as not to obstruct or render less convenient the access to any apparatus or alternative apparatus.

**Acquisition of land**

**182.** Regardless of any provision in this Order or anything shown on the land plans, the undertaker must not acquire any apparatus otherwise than by agreement.

**Retained apparatus**

**183.**—(1) Not less than 56 days before the commencement of any specified works the undertaker must submit to Uniper at the address stated in paragraph 191, a plan in respect of those works.

(2) The plan to be submitted to Uniper under sub-paragraph (1) must include all comprehensive risk assessments (including any quantitative risk assessments) and any method statement describing—

(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;

(f) any changes to the land drainage systems, temporary crossing designs, traffic management plans, health and safety management plans, emergency response plans, planned changes or rerouting of any assets and their corresponding design codes, earth schedules and earthing risk assessments;

(g) any recommendations or mitigation measures to avoid interference with, or loss or damage to the apparatus (including damage caused by passing over the apparatus by heavy construction machinery) and related remedies should such mitigation measures fail;

(h) any intended maintenance regimes; and

(i) a programme of the works, including any proposed start dates and the anticipated duration of the works.

(3) The undertaker must not commence any works to which sub-paragraphs (1) and (2) apply until Uniper has given written approval of the plan so submitted and the undertaker and Uniper have used reasonable endeavours to carry out a joint site walk in the period 4 weeks before commencement of the works. 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 Uniper, or to its

satisfaction, or in accordance with any directions or award of an arbitrator, does not relieve the undertaker from any liability under this Part of this Schedule.

(4) Any approval of Uniper required under sub-paragraph (3)—

(a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraphs (5) or (8); and

(b) must not be unreasonably withheld or delayed.

(5) In relation to any work to which sub-paragraphs (1) or (2) apply, the undertaker will provide any additional information or documentation as reasonably requested by Uniper and Uniper may require modifications to be made to the plans as may be reasonably necessary for the purpose of securing its apparatus against interference or risk of damage or for the purpose of providing or securing proper and convenient means of access to any apparatus.

(6) Works to which this paragraph applies must only be executed in accordance with the plan, submitted under sub-paragraph (1) and (2) or as relevant sub-paragraph (4) and (5), as approved or as amended from time to time by agreement between the undertaker and Uniper and in accordance with all conditions imposed under sub-paragraph (4)(a) by Uniper for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and Uniper (or its representative) will be entitled to attend any meetings related to the specified works and watch, monitor and inspect the execution of those works.

(7) If, during the carrying out of the authorised development, any aspect of the works pose a risk of interference with or loss or damage to the apparatus, the undertaker will immediately notify Uniper, in writing and submit a revised plan in respect of the affected works to Uniper for approval, and the provisions of this paragraph 183 (retained apparatus) will apply to, and in respect of, the revised plan. If Uniper (or its representative) identifies a potential risk of interference with or loss or damage to the apparatus while watching, monitoring or inspecting the specified works, then Uniper (or its representative) may request suspension of such works. The undertaker will then submit a revised plan in respect of the affected works to Uniper for approval, and the provisions of this paragraph 183 will apply to, and in respect of, the revised plan. Uniper's (or its representative's) failure or delay in exercising this right, or the undertaker's failure to suspend the specified works upon request by Uniper (or its representative), will not relieve the undertaker of its responsibility for any interference with, loss of, or damage to the apparatus.

(8) Where Uniper 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 Uniper's satisfaction (acting reasonably) prior to the commencement.

(9) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 56 days before commencing the execution of the authorised development, a new plan, instead of the plan previously submitted, and having done so the provisions of this paragraph 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, provided that—

(a) in respect of danger to persons it must give to Uniper notice as soon as is reasonably practicable by calling Uniper's emergency telephone line on 0800 389 4795 or such other telephone number notified by Uniper to the undertaker in writing; and

(b) in respect of danger to property it shall notify Uniper in accordance with subparagraph (10)(a) above, before any emergency works are commenced by or on behalf of the undertaker, and, in each case, as soon as is reasonably practicable give to Uniper a plan of those works and must—

(i) comply with sub-paragraphs (5), (6), (7) and (8) insofar as is reasonably practicable in the circumstances; and

(ii) comply with sub-paragraph (11) at all times.

(11) At all times when carrying out any works authorised under the Order the undertaker must comply with, and use reasonable endeavours to procure compliance by any party acting on its behalf with, all applicable law and good industry practice. The undertaker must procure that any

party carrying out any works on the land on its behalf has knowledge of the apparatus, its location (including as illustrated by a site map) and procure that the obligations contained in this Part of this Schedule are adhered to by such parties working on the land on its behalf.

(12) The undertaker must prepare, and keep up-to-date, a complete set of red-lined "as-built" records of the execution of the specified works, showing the exact as-built locations, sizes and details of such works as executed. The undertaker must submit to Uniper, no later than twenty (20) business days after the completion of the specified works, all "as-built" records. Uniper may specify the number of copies of any "as built" records acting reasonably.

**Removal or replacement of apparatus**

**184.**—(1) The undertaker is not permitted to remove, move or replace any apparatus in land without the prior written consent of Uniper (such consent not to be unreasonably withheld or delayed).

(2) If, in the exercise of the powers conferred by the Order, the undertaker has exercised its compulsory purchase powers to acquire any interest in or possesses temporarily any Order land in which any apparatus is placed and has the power to move, replace or remove that apparatus, it must not do so under this Part of this Schedule and any right of Uniper 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 Uniper in accordance with sub-paragraphs (3) to (6) inclusive.

(3) If, for the purpose of executing any specified works in, on, under or over any land held, appropriated or used under this Order pursuant to exercising its compulsory purchase powers the undertaker requires the replacement or removal of any apparatus placed in that land it must give to Uniper no less than 56 days advance written notice of that requirement, together with a plan of the work proposed, and where applicable, the proposed replacement apparatus or the position of any alternative apparatus to be provided or constructed and in that case provided that where—

(a) the undertaker requires the replacement of any apparatus placed in that land, it must be replaced with identical apparatus, provided that if identical apparatus is not available, it must be either—

(i) replaced with apparatus on a similar or equivalent basis (i.e. like-for-like basis); or

(ii) where it cannot be replaced on a similar or equivalent basis, then it must be replaced with enhanced apparatus. For the avoidance of doubt, no apparatus will be replaced with anything less advanced than the apparatus being replaced.

(b) the undertaker requires the removal of any apparatus placed in that land (or if in consequence of the exercise of any of the powers conferred by this Order Uniper reasonably needs to remove any of its apparatus) Uniper must, subject to sub-paragraph (4), secure any necessary consents for the alternative apparatus and afford to Uniper to its satisfaction the necessary facilities and rights for the construction of alternative apparatus in other land of or land secured by Uniper and subsequently for the maintenance of that apparatus, and prior to any removal or any replacement of the apparatus pursuant to this paragraph 8, the parties must agree the value attributable to such apparatus or alternative apparatus, prior to any replacement or removal. If such value cannot be agreed between the parties, such value will be determined in accordance with paragraph 190 (arbitration).

(4) 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 (3), in the land in which the alternative apparatus or part of such apparatus is to be constructed, the undertaker must take all steps required in the circumstances to assist Uniper to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed.

(5) 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 the undertaker and Uniper.

(6) Uniper must, after the alternative apparatus to be provided or constructed has been agreed, and subject to a written agreement having been entered into between the parties and the grant to Uniper of any such facilities and rights as are referred to in sub-paragraph (3) or (4), 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.

**Expenses**

**185.**—(1) Subject to the following provisions of this paragraph, the undertaker must pay to Uniper within 30 days of receipt of an invoice, all charges, costs and expenses reasonably anticipated or incurred by Uniper in, or in connection with, the inspection, removal, relaying or replacing, alteration, repair, remediation or restoration of or protection of any apparatus or alternative apparatus or the construction of any new or alternative apparatus which may be required in consequence of the execution of any powers conferred on the undertaker, pursuant to the Order (including in the execution of any authorised development as is referred to in this Part of this Schedule) including without limitation—

(a) in connection with the cost of the carrying out of any assessment of Uniper's apparatus under Pipelines Safety Regulations 1996 and Gas Safety (Management) Regulations 1996 reasonably necessary as a consequence of the authorised development;

(b) implementing any mitigation measures required as a result of any assessment referred to in sub-paragraph (a) reasonably necessary as a consequence of the authorised development;

(c) the approval of plans;

(d) the carrying out of protective works, plus a capitalised sum to cover the cost of maintaining and renewing permanent protective works; and

(e) 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) For the purposes of calculating the sums payable pursuant to sub-paragraph (1) above, in the case of the replacement or removal of apparatus, the following applies—

(a) where apparatus is removed under the provisions of this Part of this Schedule and which will not re-used as part of the apparatus or alternative apparatus, there will be excluded from any sum payable under sub-paragraph (1) the value of the apparatus being removed; and

(b) subject to sub-paragraph 184(3)(a), when replacing existing apparatus, there will be deducted from any sum payable under sub-paragraph (1) the value of that apparatus being removed under the provisions of this Part of this Schedule and which is not re-used as part of the apparatus or alternative apparatus, except that the value of any apparatus or alternative apparatus used to replace the apparatus being removed will be included in the sum payable under sub-paragraph (1), such value being agreed between the parties (or as determined in accordance with paragraph 190 (arbitration) prior to any removal or replacement of the apparatus, provided that, in each case, all charges, costs and expenses reasonably incurred, or reasonably anticipated to be incurred, by Uniper in, or in connection with the works required for the removal or replacement of such apparatus will be included in the sum payable under sub-paragraph (1).

(3) If, in accordance with sub-paragraph (2) of this Part of this Schedule, any existing apparatus is replaced with enhanced apparatus where the undertaker's consent has not been obtained by Uniper (or where disputed in accordance with paragraph 190 (arbitration), decided not to be necessary), then, if the construction expenses for this replacement surpass the construction expenses that would have been paid for similar or equivalent apparatus then any excess costs will be borne by Uniper, except that where it is not possible in the circumstances to obtain similar or equivalent apparatus, full costs will be payable by the undertaker.

(4) Any amount which apart from this sub-paragraph would be payable to Uniper 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 Uniper 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**

**186.**—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any of the authorised development or in consequence of the use, maintenance or failure of any of the authorised development 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 them) 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 loss or damage is caused to any apparatus, alternative apparatus or property of Uniper, or there is any interruption in any services provided, or in the supply of any goods, or in the use of the apparatus or alternative apparatus (as applicable) by Uniper, the undertaker must—

(a) bear and pay the costs reasonably and properly incurred by Uniper in making good such loss or damage or in restoring the supply or its use;

(b) make compensation to Uniper for any other expenses, loss, damages, penalty or costs incurred by Uniper, by reason or in consequence of any such loss, damage or interruption; and

(c) indemnify Uniper for any other expenses, loss, demands, proceedings, damages, claims, penalty or costs incurred by or recovered from Uniper, by reason or in consequence of any such damage or interruption or Uniper becoming liable to any third party (an "Indemnity Claim").

(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 Uniper or its representatives; or

(b) any indirect or consequential loss of any third party (including but not limited to loss of use, revenue, profit, contract, production, increased cost of working or business interruption) arising from any such damage or interruption which is not reasonably foreseeable.

(3) Uniper must give the undertaker reasonable notice of an Indemnity Claim and no settlement or compromise is to be made that is prejudicial to the undertaker without the consent of the undertaker (not to be unreasonably withheld) which, if it withholds such consent, it will assume the sole conduct of the Indemnity Claim, provided that if the undertaker does not assume the sole conduct of the Indemnity Claim within 30 days of the Indemnity Claim being notified to it, Uniper, or a person designated by Uniper, may conduct the Indemnity Claim in such manner as it may deem appropriate and the undertaker will indemnify Uniper for any costs and expenses incurred in connection with defending any such Indemnity Claim.

(4) The undertaker will give assistance to Uniper, as requested, in connection with an Indemnity Claim (including circumstances where Uniper reasonably believes may give rise to an action, claim or demand by a third party).

(5) The undertaker undertakes not to commence construction (and not to permit the commencement of such construction) of the authorised development on any land owned by Uniper or in respect of which Uniper has an easement, wayleave or lease for its apparatus or any other interest or to carry out any works within 15 metres of Uniper's apparatus (except in respect of any high pressure pipelines) or within 50 metres of Uniper's high pressure pipelines until the following conditions are satisfied—

(a) unless and until Uniper 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 will maintain such acceptable security for the construction period of the authorised development from the proposed date of commencement of

construction the authorised development) and Uniper has confirmed the same to the undertaker in writing; and

(b) unless and until Uniper is satisfied acting reasonably (but subject to all necessary regulatory constraints) that the undertaker has procured acceptable insurance (and provided evidence to Uniper that it will maintain such acceptable insurance for the construction period of the authorised development from the proposed date of commencement of construction of the authorised development) and Uniper has confirmed the same in writing to the undertaker.

(6) The undertaker agrees that if, at any time, the acceptable security or acceptable insurance expires or terminates, ceases to fulfil the criteria of acceptable security or acceptable insurance, ceases to be in full force and effect or becomes invalid or unenforceable for the purpose of this Part of this Schedule or an insolvency-related event occurs in respect of the undertaker, then the relevant security or insurance will no longer constitute acceptable security or acceptable insurance and will promptly be replaced by the undertaker with alternative acceptable security or acceptable insurance as approved by the undertaker, to the extent any acceptable insurance and acceptable security is still required under this Part of this Schedule.

(7) In the event that the undertaker fails to comply with sub-paragraph (4) nothing in this Part of this Schedule will prevent Uniper from seeking injunctive relief (or any other equitable remedy) in any court of competent jurisdiction.

(8) Uniper 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 Uniper'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 Uniper's control and if reasonably requested to do so by the undertaker Uniper must provide an explanation of how the claim has been minimised, where relevant.

**Co-operation**

**187.**—(1) Where in consequence of the proposed construction of any of the authorised development, Uniper makes requirements for the protection or alteration of apparatus under paragraphs 183(5) or 183(7), the undertaker must use its best endeavours to co-ordinate the execution of the works in the interests of safety and the efficient and economic execution of the authorised development and taking into account the need to ensure the safe, efficient and economic operation of Uniper's apparatus and Uniper must use its best endeavours to co¬operate with the undertaker for that purpose.

(2) For the avoidance of doubt whenever Uniper's consent, agreement or approval to is required in relation to plans, documents or other information submitted by Uniper or the taking of action by Uniper, it must not be unreasonably withheld or delayed.

**Access**

**188.** If in consequence of the agreement reached in accordance with paragraph 180 of this Part or otherwise as granted by this Order the access to any apparatus (including appropriate working areas required to reasonably and safely undertake necessary works by Uniper (or representative) in respect of the apparatus) is materially obstructed, the undertaker must provide such alternative rights and means of access to such apparatus as will enable Uniper (or its representative) to maintain or use the apparatus no less effectively than was possible before such obstruction. For the avoidance of doubt, Uniper (or its representative) will be entitled to access its apparatus in the land at all times.

**Confidentiality**

**189.**—(1) Each party must treat any confidential information as private and confidential. The party in receipt of any confidential information from the other party may not use it for a purpose other than for the performance of its obligations under this Part of this Schedule and must not disclose confidential information received from the other party to any person, provided that a party

may disclose confidential information to any of its directors, other officers, employees, contractors, customers, affiliates, insurers, funders, advisers or consultants to the extent that disclosure is reasonably necessary for the purposes of this Part of this Schedule.

(2) Sub-paragraph (1) does not apply to Confidential Information—

(a) which is at the date of commencement, or at any time after that date becomes, publicly known other than by breach of sub-paragraph (1);

(b) which was known by the receiving party before disclosure by the other party to the receiving party, provided that such confidential information was lawfully obtained; or

(c) to the extent disclosure of the confidential information is required by laws, the instructions of a competent governmental authority or such competent authority acting on behalf of such governmental authority, or the rules of a relevant and recognised stock exchange.

**Arbitration**

**190.** Any difference or dispute arising between the undertaker and Uniper under this Part of this Schedule must be determined by arbitration in accordance with article 43 (arbitration) unless otherwise agreed between the Parties acting reasonably.

**Notices**

**191.** Any notice, statement, request, plan or any other written communication (including the plan to be provided at paragraph 183(1) to be given or made in respect of this Part of this Schedule by the undertaker must be given or made in writing to the address stated below or such other address as Uniper may have notified to the undertaker from time to time—

Name – Uniper Pipelines Team

Address – Pipelines Office, Uniper Killingholme Power Station, Chase Hill Road, Killingholme, North Lincolnshire, DN40 3LU

Contact – Lead Pipeline Engineer

# PART 15

## FOR THE PROTECTION OF EXOLUM PIPELINE SYSTEM LIMITED

**Application**

**192.** For the protection of Exolum the following provisions, unless otherwise agreed in writing at any time between the undertaker and Exolum, have effect.

**Interpretation**

**193.** In this Part of this Schedule, the following terms shall have the following meanings—

"Additional Rights" means rights for the construction and for access to and for the use, protection, inspection, maintenance, repair and renewal of retained Apparatus including any restrictions on the landowner and occupiers for the protection of the retained Apparatus and to allow Exolum to perform its functions.

"Alternative Apparatus" means alternative apparatus adequate to enable Exolum to fulfil its functions as a pipeline operator in a manner not less efficient than previously.

"Alternative Rights" means rights for the construction and for access to and for the use, protection, inspection, maintenance, repair and renewal of Alternative Apparatus including any restrictions on the landowner and occupiers for the protection of the Alternative Apparatus and to allow Exolum to perform its functions.

"Apparatus" means the pipeline and storage system and any ancillary apparatus owned and/or operated by Exolum and includes—

(a) any structure in which apparatus is or is to be lodged or which gives or will give access to apparatus;

(b) any ancillary works, all protective wrappings, valves, sleeves and slabs, cathodic protection units, together with ancillary cables and markers;

(c) such legal interest, and benefit of property rights and covenants as are vested in respect of these items;

and, where the context requires, includes Alternative Apparatus.

"Exolum" means Exolum Pipeline System Ltd (company registration number 09497223 whose registered office is 1st Floor 55 King William Street, London, England, EC4R 9AD) and for the purpose of enforcing the benefit of any provisions in this Schedule, any group company of Exolum Pipeline System Ltd and in all cases any successor in title.

"functions" includes powers, duties and commercial undertaking.

"in" in a context referring to Apparatus in land includes a reference to Apparatus under, over or upon land.

"Order" means the order granting development consent, made by the Secretary of State and brought into force following the Application and the Planning Act 2008.

"Parties" means the undertaker and Exolum and "Party" shall be construed accordingly.

"Plan" includes all designs, drawings, sections, specifications, method statements, soil reports, programmes, calculations, risk assessments and other documents that are reasonably necessary to allow Exolum to assess the Restricted Works to be executed properly and sufficiently and in particular must describe—

(a) the position of the works as proposed to be constructed or renewed;

(b) the level at which the works are proposed to be constructed or renewed;

(c) the manner of the works' construction or renewal including details of excavation, positioning of plant etc.;

(d) the position of the affected Apparatus and/or Premises and any other apparatus belonging to another undertaker that may also be affected by the Restrictive Works;

(e) by way of detailed drawings, every alteration proposed to be made to or close to any such Apparatus;

(f) any intended maintenance regime;

(g) details of the proposed method of working and timing of execution of works; and

(h) details of vehicle access routes for construction and operational traffic.

"Premises" means land that Exolum owns, occupies or otherwise has rights to use including but not limited to storage facilities, administrative buildings and jetties.

"Protective Works" means works for the inspection and protection of Apparatus.

"Restricted Works" means any works that will or may affect any Apparatus or Premises including—

(a) all works within 15 metres measured in any direction of any Apparatus including embankment works and those that involve a physical connection or attachment to any Apparatus,

(b) the crossing of Apparatus by other utilities,

(c) the use of explosives within 400 metres of any Apparatus or Premises,

(d) piling, undertaking of a 3D seismic survey or the sinking boreholes within 30 metres of any Apparatus or Premises,

(e) all works that impose a load directly upon the Apparatus, wherever situated.

whether carried out by the undertaker or any third party in connection with the Authorised Development.

"Working Day" means any day other than a Saturday, Sunday or English bank or public holiday.

**Acquisition of Apparatus**

**194.** Regardless of any other provision in the Order or anything shown on the land plans—

(a) the undertaker must not, otherwise than by agreement with Exolum, acquire any Apparatus, Exolum's rights in respect of Apparatus or any of Exolum's interests in the Order land;

(b) where the undertaker acquires the freehold of any land in which Exolum holds an interest, the undertaker must afford to or secure for Exolum such rights in land in substitution for any right which would be extinguished by that acquisition (the replacement rights). These replacement rights must be no less favourable than the rights to be extinguished and must be granted upon substantially the same terms and conditions as the rights to be extinguished, unless otherwise agreed between the undertaker and Exolum, and must be granted or put in place contemporaneously with the extinguishment of the right which they replace;

(c) the undertaker must not, otherwise than in accordance with this Part of this Schedule—

(i) obstruct or render less convenient the access to any Apparatus;

(ii) interfere with or affect Exolum's ability to carry out its functions as an oil pipeline operator;

(iii) require that Apparatus is relocated or diverted; or

(iv) remove or required to be removed any Apparatus;

(d) any right of Exolum to maintain, repair, renew, adjust, alter or inspect Apparatus shall not be extinguished under this Order until any necessary Alternative Apparatus has been constructed, it is in operation and the Alternative Rights have been granted, all to the reasonable satisfaction of Exolum; and

(e) any right of Exolum to access the Exolum operations must not be extinguished until necessary alternative access has been provided to Exolum's reasonable satisfaction.

**195.** Prior to the carrying out of any Restricted Works or any works authorised by this Order that will affect the Apparatus, and if required by Exolum, the Parties must use their reasonable endeavours to negotiate and enter into such deeds of consent (crossing consent) and (if considered necessary) variations to the existing rights upon such terms and conditions as may be agreed between Exolum and the undertaker acting reasonably and which must be no less favourable on the whole to Exolum than this Part of this Schedule, to the undertaker will use all reasonable endeavours to procure and 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 works.

**196.** Where the undertaker acquires land which is subject to any existing rights and the provisions of paragraph 198 do not apply, the undertaker must—

(a) retain any notice of the existing rights on the title to the relevant land when registering the undertaker's title to such acquired land; and

(b) (where no such notice of the existing rights or other interest exists in relation to such acquired land or any such notice is registered only on the Land Charges Register) include (with its application to register title to the undertaker's interest in such acquired land at the Land Registry) a notice of the existing rights or other interest in relation to such acquired land; and

(c) provide up to date official entry copies to Exolum within 20 working days of receipt of such up to date official entry copies.

**197.** Where the undertaker takes temporary possession of any land or carries out survey works on land in respect of which Exolum has Apparatus or Premises—

(a) where reasonably necessary, Exolum may exercise its rights to access such land—

(i) in an emergency, without notice; and

(ii) in non-emergency circumstances, having first given not less than 14 days' written notice to the undertaker in order to allow the Parties to agree the timing of their respective works during the period of temporary possession; and;

the undertaker must not remove or in any way alter Exolum's rights in such land, unless in accordance with the provisions of this Order.

**Removal of Apparatus and Rights for Alternative Apparatus**

**198.** If, having used all reasonable endeavours to implement the Authorised Development without the removal of any Apparatus—

(a) the undertaker reasonably requires the removal of any Apparatus; or

(b) Exolum reasonably requires the removal of any Apparatus;

then the relevant Party must give written notice of that requirement to the other.

**199.** The Parties must use their reasonable endeavours to produce a plan of the work proposed and a plan of the proposed position of the Alternative Apparatus to be provided or constructed.

**200.** The undertaker must afford to Exolum the necessary facilities and rights for the construction of Alternative Apparatus and subsequently the grant of Alternative Rights in accordance with paragraphs 206 to 210.

**201.** Any Alternative Apparatus is to be constructed in land owned by the undertaker or in land in respect of which Alternative Rights have been or are guaranteed to be granted to Exolum. The Alternative Apparatus must be constructed in such manner and in such line or situation as may be agreed between Exolum and the undertaker or in default of agreement settled by arbitration in accordance with article 43 (arbitration).

**202.** After the details for the works for Alternative Apparatus to be provided or constructed have been agreed or settled in accordance with article 43 (arbitration), and after the grant to Exolum of any such facilities and rights as are referred to in paragraph 200, Exolum must proceed as soon as reasonably practicable using reasonable endeavours to construct and bring into operation the Alternative Apparatus and subsequently to remove (or if agreed between the Parties to allow the undertaker to remove) any redundant Apparatus required by the undertaker to be removed under the provisions of this Part of this Schedule.

**203.** The following paragraphs 204 and 205 shall only apply if—

(a) Exolum fails to comply with its obligations under paragraph 202 to remove any redundant Apparatus; and

(b) the undertaker has served notice on Exolum specifying the default; and

(c) Exolum has failed to remedy the default within 28 days.

**204.** In the circumstances set out in paragraph 203, if the undertaker then gives notice in writing to Exolum that it desires itself to remove the redundant Apparatus, that work, instead of being executed by Exolum, must be executed by the undertaker without unnecessary delay under the superintendence, if given, and to the reasonable satisfaction of Exolum.

**205.** Nothing in paragraph 204 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 3000 millimetres of the Apparatus unless that Apparatus is redundant and disconnected from Exolum's remaining system.

**Facilities and Rights for Alternative Apparatus**

**206.** Where, in accordance with the provisions of this Schedule, the undertaker affords to Exolum facilities and rights for the construction of Alternative Apparatus and the grant of Alternative Rights, 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 Exolum, and must be materially no less favourable on the whole to Exolum than the facilities and rights enjoyed by it in respect of the apparatus to be removed unless otherwise agreed by Exolum, in accordance with this Part of this Schedule or in default of agreement settled by arbitration in accordance with article 43 (arbitration).

**207.** Alternative Rights must be granted before any Alternative Apparatus is brought into use.

**208.** The Parties agree that the undertaker must use reasonable endeavours to procure the grant of the Alternative Rights by way of a 999 year sub-soil lease, substantially in the form of Exolum's precedent from time to time as amended by written agreement between the Parties acting reasonable, or such other form of agreement as the Parties otherwise agree acting reasonably.

**209.** Nothing in this Part of this Schedule or contained in the Alternative Rights requires Exolum to divert or remove any Alternative Apparatus.

**210.** If the facilities and rights to be afforded by the Applicant 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 Exolum less favourable on the whole to Exolum 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, Exolum may refer the matter to arbitration in accordance with article 43 (arbitration).

**Retained Apparatus and Alternative Apparatus: protection**

**211.** Before commencing the execution of any Restricted Works, the undertaker must submit to Exolum a Plan of the works to be executed and any other information that Exolum may reasonably require to allow Exolum to assess the works.

**212.** No Restricted Works are to be commenced until the Plan to be submitted to Exolum under paragraph 211 has been approved by Exolum (acting reasonably) in writing and are to be carried out only in accordance with the details submitted under paragraph 211 and in accordance with such reasonable requirements as may be notified to the undertaker in writing in accordance with paragraph 213 by Exolum.

**213.** Any approval of Exolum in respect of Restricted Works may be given subject to such reasonable requirements as Exolum may require to be made for—

(a) the continuing safety and operational viability of any Apparatus and/or Premises;

(b) the requirement for Exolum to have reasonable access with or without vehicles to inspect, repair, replace, maintain and ensure the continuing safety and operation or viability of any Apparatus; and

(c) the requirement for Exolum to be entitled to watch and inspect the execution of Restricted Works to ensure the continuing safety and operational viability of any Apparatus and ensure compliance with the agreed Plan,

providing such reasonable requirements will be notified to the undertaker in writing.

**214.** Where reasonably required by either Party, in view of the complexity of any proposed works, timescales, phasing or costs, the Parties must with due diligence and good faith negotiate a works agreement for the carrying out of Protective Works or the installation of Alternative Apparatus.

**215.** If in consequence of the works notified to Exolum by the undertaker under paragraph 211, the circumstances in paragraph 198 apply, then the Parties must follow the procedure in paragraph 198 onwards.

**216.** Nothing in paragraphs 211 to 216 precludes the undertaker from submitting prior to the commencement of works to protect retained Apparatus or to construct Alternative Apparatus (unless otherwise agreed in writing between the undertaker and Exolum) a new Plan, instead of the Plan previously submitted, in which case the Parties must re-run the procedure from paragraph 211 onwards.

**217.** Where Exolum reasonably requires Protective Works, the Parties must use their reasonable endeavours to produce a plan of the work proposed and a plan of the proposed position of any physical features to be provided or constructed.

**218.** The undertaker must afford to Exolum the necessary facilities and rights for the construction of Protective Works and subsequently the grant of Additional Rights in accordance with paragraphs 206 to 210.

**219.** Any Protective Works are to be constructed in land owned by the undertaker or in land in respect of which Additional Rights have been or are guaranteed to be granted to Exolum. The Protective Works shall be constructed in such manner and in such line or situation as may be agreed between Exolum and the undertaker or in default of agreement settled by in accordance with article 43 (arbitration).

**220.** After the details for the Protective Works to be provided or constructed have been agreed or settled in accordance with article 43 (arbitration), and after the grant to Exolum of any such facilities and rights as are referred to in paragraph 200, Exolum must proceed as soon as reasonably practicable using reasonable endeavours to construct and bring into operation the Protective Works.

**Cathodic protection testing**

**221.** Where in the reasonable opinion of Exolum or the undertaker—

(a) the Authorised Development might interfere with the cathodic protection forming part of Apparatus; or

(b) any Apparatus might interfere with the proposed or existing cathodic protection forming part of the Authorised Development;

Exolum and the undertaker must co-operate in undertaking the tests which they consider reasonably necessary for ascertaining the nature and extent of such interference and measures for providing or preserving cathodic protection.

**222.** The Parties must carry out the works and enter into such agreements as are necessary to implement the measures for providing or preserving cathodic protection.

**Expenses**

**223.** Subject to the following provisions of these paragraphs 223 to 225, the Applicant must pay to Exolum the reasonable and properly incurred costs and expenses (including reasonable staffing costs if work is carried out in-house) incurred by Exolum in, or in connection with—

(a) undertaking its obligations under this Schedule including—

(i) the installation, inspection, removal, alteration, testing or protection of any Apparatus, Alternative Apparatus and Protective Works;

(ii) the execution of any other works under this Schedule; and

(iii) the review and assessment of Plans;

(b) the watching of and inspecting the execution of the Authorised Development, any Restricted Works and any works undertaken by third parties as a result of Authorised Development (including the assessment of Plans); and

(c) imposing reasonable requirements for the protection or alteration of Apparatus affected by the Authorised Development or works as a consequence of the Authorised Development in accordance with paragraph 213;

together with any administrative costs properly and reasonably incurred by Exolum.

**224.** There will be no deduction from any sum payable under paragraph 223 as a result of—

(a) the placing of apparatus of a better type, greater capacity or of greater dimensions, or at a greater depth than the existing Apparatus, to the extent Exolum has acted reasonably in procuring such apparatus;

(b) the placing of apparatus in substitution of the existing Apparatus that may defer the time for renewal of the existing Apparatus in the ordinary course; or

(c) the scrap value (if any) of any Apparatus removed.

**225.** Upon the submission of proper and reasonable estimates of costs and expenses to be incurred by Exolum, the undertaker shall pay Exolum sufficiently in advance to enable Exolum to undertake its obligations under this Schedule in a manner that is neutral to its cash flow provided that in the event that the costs incurred by Exolum are less than the amount paid by the undertaker pursuant to this paragraph 225 then Exolum shall, within 35 days of payment being made by Exolum for the costs anticipated in the costs and expenses estimates, repay any overpayment to the undertaker.

**Damage to property and other losses**

**226.** Subject to paragraphs 227 to 232, the undertaker shall—

(a) indemnify Exolum for all reasonably incurred loss, damage, liability, costs and expenses suffered or reasonably incurred by Exolum arising out of—

(i) the carrying out of works under this Schedule;

(ii) the carrying out of the Authorised Development;

(iii) the use or occupation of land over or in the vicinity of any Apparatus or in the vicinity of any Premises in connection with the carrying out of the Authorised Development;

(iv) any injury or damage whatsoever to any property, real or personal, including the property of Exolum; and

(v) any matters arising out of or in connection with this Order;

(b) indemnify Exolum against any claim made against, or loss suffered by, Exolum as a result of any act or omission committed by the undertaker's officers, employees, contractors or agents whilst on or in the vicinity of any Apparatus or Premises for the purposes of carrying out any activity authorised by this Order;

(c) pay to Exolum, in accordance with the provisions of this Part of this Schedule, the cost reasonably incurred by Exolum in making good any damage to the Apparatus (other than Apparatus the repair of which is not reasonably necessary in view of its intended removal or abandonment) arising out of the carrying out of works under this Schedule and arising out of the carrying out of the Authorised Development; and

(d) pay to Exolum the cost reasonably incurred by Exolum in stopping, suspending and restoring the supply though its Apparatus in consequence of the carrying out of works under this Schedule or the carrying out of the Authorised Development;

and make reasonable compensation to Exolum for any other expenses, losses, damages, penalty or costs incurred by Exolum by reason or in consequence of any such damage or interruption including all claims by third parties.

**227.** Nothing in paragraph 226 imposes any liability on the undertaker with respect to 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.

**228.** The fact that any act or thing may have been done by Exolum on behalf of the undertaker or in accordance with a Plan approved by Exolum or in accordance with any requirement of Exolum or under its supervision shall not, subject to paragraph 229, excuse the undertaker from liability under the provisions of paragraph 226.

**229.** Nothing in paragraph 226 imposes any liability on the undertaker with respect to any damage or interruption to the extent that it is attributable to the negligent act, neglect or default of Exolum, its officers, servants, contractors or agents.

**230.** The undertaker and Exolum shall at all times take reasonable steps to prevent and mitigate any loss, damage, liability, claim, cost or expense (whether indemnified or not) which either suffers in connection with this Schedule.

**231.** The undertaker warrants that it will use reasonable endeavours to ensure—

(a) the information it or any of its employees, agents or contractors provide to Exolum about the Plans or the Authorised Development and on which Exolum relies in the design of and carrying out of any works is accurate; and

(b) the undertaker or any of its employees, agents or contractors have exercised all the reasonable skill, care and diligence to be expected of a qualified and experienced member of their respective profession.

**232.** Exolum must give to the undertaker reasonable notice of any such claim or demand to which paragraph 226 applies.

**Insurance**

**233.** The undertaker must not carry out any Restricted Works unless and until Exolum has confirmed to the undertaker in writing that it is satisfied acting reasonably (but subject to all necessary regulatory constraints) that the undertaker (or its contractor) has procured acceptable professional indemnity insurance and public liability insurance with minimum cover of £25 million per event, with respect to the carrying out of the works.

**234.** The undertaker shall maintain such insurance for the construction period of the Authorised Development from the proposed date of Commencement of the Authorised Development.

**Co-operation and reasonableness**

**235.** Where Apparatus is required to be protected, altered, diverted or removed under this Schedule, the undertaker must use all reasonable endeavours to co-ordinate the execution of any works under this Part of this Schedule—

(a) in the interests of safety;

(b) in the interest of the efficient and economic execution of both Exolum's works and the Authorised Development; and

(c) taking into account the need to ensure the safe and efficient operation of Apparatus and carrying out of Exolum's functions.

**236.** Exolum must use its reasonable endeavours to co-operate with the undertaker for the purposes outlined in paragraph 235.

**237.** The undertaker and Exolum will act reasonably in respect of any given term of this Part of this Schedule and, in particular, (without prejudice to generality) where any approval, consent or expression of satisfaction is required by this Part of this Schedule it shall not be unreasonably withheld or delayed.

**Emergency circumstances**

**238.** The undertaker acknowledges that Exolum provides services to His Majesty's Government, using the Apparatus, which may affect any works to be carried under this Part of this Schedule and the Authorised Development.

**239.** In the following circumstances, Exolum may on written notice to the undertaker immediately suspend all works that necessitate the stopping or suspending of the supply of product through any Apparatus under this Schedule and Exolum shall not be in breach of its obligations under this Schedule—

(a) circumstances in which, in the determination of the Government, there subsists a material threat to national security, or a threat or state of hostility or war or other crisis or national emergency (whether or not involving hostility or war); or

(b) circumstances in which a request has been received, and a decision to act upon such request has been taken, by the Government for assistance in relation to the occurrence or anticipated occurrence of a major accident, crisis or natural disaster; or

(c) circumstances in which a request has been received from or on behalf of NATO, the EU, the UN, the International Energy Agency (or any successor agency thereof) or the government of any other state for support or assistance pursuant to the United Kingdom's international obligations and a decision to act upon such request has been taken by the Government; or

(d) any circumstances identified as such by the COBRA committee of the Government (or any successor committee thereof); or

(e) any situation in connection with which the Government requires fuel capacity, including where the United Kingdom is engaged in any planned or unplanned military operations within the United Kingdom or overseas.

**240.** The Parties agree to act in good faith and in all reasonableness to agree any revisions to any schedule, programme or costs estimate (which shall include costs of demobilising and remobilising any workforce, and any costs to protect the Apparatus "mid-works") to account for the suspension.

**241.** Exolum shall not be liable for any costs, expenses, losses or liabilities the undertaker incurs as a result of the suspension of any activities under paragraphs 238 to 240 or delays caused by it.

**Dispute resolution**

**242.** The undertaker and Exolum must use their reasonable endeavours to secure the amicable resolution of any dispute or difference arising between them out of or in connection with this Part of this Schedule in accordance with the following provisions.

**243.** The undertaker and Exolum must each nominate a representative who shall meet to try to resolve the matter. If the matter is not resolved at that level within ten working days of either the undertaker or Exolum requesting such a meeting (or such longer period as may be agreed between the undertaker and Exolum) the matter may at the request of either the undertaker or Exolum be referred for discussion at a meeting to be attended by a senior executive from each Party.

**244.** If the meeting between senior executives fails to result in a settlement within 20 working days of the date of the request for such a meeting (or if it is not possible to convene a meeting within this period) then, unless otherwise agreed in writing between the undertaker and Exolum, the dispute or difference will be determined by arbitration in accordance with article 43 (arbitration).

**Miscellaneous**

**245.** No failure or delay by a Party to exercise any right or remedy provided under this Part of this Schedule or by law will constitute a waiver of that or any other right or remedy, nor will it prevent or restrict the further exercise of that or any other right or remedy. No single or partial

exercise of such right or remedy will prevent or restrict the further exercise of that or any other right or remedy.

# PART 16

## FOR THE PROTECTION OF EDF ENERGY

### Application

**246.**—(1) For the protection of EDF as referred to in this Part of this Schedule the following provisions have effect, unless otherwise agreed in writing between the undertaker and EDF.

(2) Subject to sub-paragraph (3) or to the extent otherwise agreed in writing between the undertaker and EDF, where the benefit of this Order is transferred or granted to another person under article 36 (consent to transfer the benefit of the Order)—

(a) any agreement of the type mentioned in subparagraph (1) has effect as if it had been made between EDF and the transferee or grantee (as the case may be); and

(b) written notice of the transfer or grant must be given to EDF 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 EDF (but without prejudice to paragraph 256(3)(b).

### Interpretation

**247.** In this Part of this Schedule—

"acceptable credit provider" means a bank or financial institution with a credit rating that is not lower than: (i) "A-" if the rating is assigned by Standard & Poor's Ratings Group or Fitch Ratings; and "A3" if the rating is assigned by Moody's Investors Services Inc.;

"acceptable insurance" means general third party liability insurance effected and maintained by the undertaker or its contractor 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 or such lower amount as approved by EDF. Such insurance shall be maintained—

(a) during the construction period of that part of the authorised development which constitutes specified works; and

(b) after the construction period of the authorised development in respect of any use and maintenance of the authorised development by or on behalf of the undertaker which constitute specified works and arranged with an insurer whose security/credit rating meets the same requirements as an "acceptable credit provider", such insurance shall include (without limitation)—

(i) a waiver of subrogation and an indemnity to principal clause in favour of EDF; and

(ii) pollution liability for third party property damage and third party bodily damage arising from any pollution/contamination event with a (sub)limit of indemnity of not less than £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 EDF to cover the undertaker's liability to EDF to a total liability cap of £50,000,000.00 (fifty million pounds) or such lower amount as approved by EDF (granted by an entity and in a form reasonably satisfactory to EDF and where required by EDF, 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 EDF to cover the undertaker's liability to EDF 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) or such lower amount as approved by EDF (in a form reasonably satisfactory to EDF);

"alternative apparatus" means appropriate alternative apparatus to the satisfaction of EDF to enable EDF 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, or other apparatus as defined in article 2(1) of this Order, belonging to or maintained by EDF together with any replacement apparatus and such other apparatus constructed pursuant to the Order that becomes operational apparatus of EDF and includes any structure in which apparatus is or will be lodged or which gives or will give access to apparatus;

"authorised development" has the same meaning 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, maintenance and decommissioning of the authorised development and construction of any works authorised by this Schedule;

"commence" and "commencement" has the same meaning as in article 2(1) of this Order, except in this Part of this Schedule it includes any below ground surveys, monitoring, ground work operations or the receipt and erection of construction plant and equipment;

"deed of consent" means a deed of consent, crossing agreement, deed of variation or new deed of grant agreed between the parties acting reasonably in order to vary or replace existing easements, agreements, enactments and other such interests so as to secure land rights and interests as are necessary to carry out, maintain, operate and use the apparatus in a manner consistent with the terms of this Part of this Schedule;

"EDF" means EDF Energy (Thermal Generation) Limited (Company Number 04267569) whose registered office is at 90 Whitfield Street, London, England, W1T 4EZ or any successor as a licence holder within the meaning of Part 1 of the Electricity Act 1989;

"functions" includes powers and duties;

"ground mitigation scheme" means a scheme approved by EDF (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, is to require the undertaker to submit for EDF'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" include the ability and right to do any of the following in relation to any apparatus or alternative apparatus of EDF: construct, use, repair, alter, inspect, renew or remove (including decommission) the apparatus;

"plan" or "plans" include all designs, drawings, specifications, method statements, soil reports, programmes, calculations, risk assessments and other documents that are reasonably necessary properly and sufficiently to describe and assess the works to be executed;

"parent company" means a parent company of the undertaker acceptable to and which shall have been approved by EDF acting reasonably;

"specified works" means any of the authorised development or activities undertaken in association with the authorised development which—

(a) will or may be situated over, or within 20 metres measured in any direction of any apparatus the removal of which has not been required by the undertaker under paragraph 252(2) or otherwise; or

(b) may in any way adversely affect any apparatus the removal of which has not been required by the undertaker under paragraph 252(2) or otherwise;

"undertaker" means the undertaker as defined in article 2(1) of this Order.

**On Street Apparatus**

**248.** Except for paragraphs 249, 254, 255 and 256 of this Part of this Schedule which will apply in respect of the exercise of all or any powers under the Order affecting the rights and apparatus of EDF, the other provisions of this Schedule do not apply to apparatus in respect of which the relations between the undertaker and EDF are regulated by the provisions of Part 3 of the 1991 Act.

**Apparatus of EDF in streets and public rights of way**

**249.**—(1) Where any street or public right of way is subject to temporary prohibition or restriction of use under the Order, if EDF has any apparatus in the street or public right of way or accessed via that street or public right of way EDF has the same rights in respect of that apparatus as it enjoyed immediately before the prohibition or restriction of use and the undertaker must grant to EDF, or procure the granting to EDF of, legal easements reasonably satisfactory to EDF in respect of such apparatus and access to it prior to the temporary prohibition or restriction of use of any such street or public right of way but nothing in this paragraph affects any right of the undertaker or EDF to require the removal of that apparatus under paragraph 252 or the power of the undertaker, subject to compliance with this sub-paragraph, to carry out works under paragraph 254.

(2) Notwithstanding the temporary diversion of, or restriction on, any street or public right of way under the powers of article 12 (temporary prohibition or restriction of the use of streets and public rights of way), EDF is at liberty at all times to take all necessary access across any such street or public right of way and to execute and do all such works and things in, upon or under any such street or public right of way as may be reasonably necessary or desirable to enable it to maintain any apparatus which at the time of the diversion or restriction was in that street or public right of way.

**Protective works to buildings**

**250.** 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 EDF.

**Acquisition of land**

**251.**—(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 or entry to any land or apparatus or (b) appropriate, acquire, extinguish, interfere with or override any easement, other interest or right or apparatus of EDF otherwise than by agreement, such agreement may not be unreasonably withheld.

(2) As a condition of an agreement between the parties in sub-paragraph (1), prior to the carrying out of any part of the authorised development (or in such other timeframe as may be agreed between EDF 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 EDF or affect the provisions of any enactment or agreement regulating the relations between EDF and the undertaker in respect of any apparatus laid or erected in land belonging to or secured by the undertaker, the undertaker must as EDF reasonably requires enter into such deeds of consent upon such terms and conditions as may be agreed between EDF and the

undertaker acting reasonably and which must be no less favourable on the whole to EDF unless otherwise agreed by EDF, and the undertaker will use reasonable endeavours to procure or secure (or both) the consent and entering into of such deeds and variations by all other third parties with an interest in the land at that time who are affected by such authorised development.

(3) Save where otherwise agreed in writing between EDF and the undertaker, the undertaker and EDF agree that where there is any inconsistency or duplication between the provisions set out in this Part of this Schedule relating to the relocation or removal of apparatus (including but not limited to the payment of costs and expenses relating to such relocation and/or removal of apparatus) and the provisions of any existing easement, rights, agreements and licences granted, used, enjoyed or exercised by EDF or other enactments relied upon by EDF as of right or other use in relation to the apparatus, then the provisions in this Schedule will prevail.

(4) As a condition of an agreement between the parties in sub-paragraph (1) which relates to taking temporary access rights during construction over EDF's land, EDF may ensure that it retains flexibility to alter any construction routes (within the Order limits) or to limit access for certain time periods, and may require the undertaker to pay any security and maintenance costs involved in the grant of any such rights. Any such alterations or limitations under this sub-paragraph will be notified to the undertaker within 36 working days as part of any agreement or consent granted by EDF under paragraph 252 or 254 below.

(5) Any agreement or consent granted by EDF under paragraph 254 or any other paragraph of this Part of this Schedule, are not be taken to constitute agreement under sub-paragraph (1).

**Removal of apparatus**

**252.**—(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 EDF 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 EDF in accordance with sub-paragraphs (2) to (5) inclusive.

(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 EDF 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 EDF 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 EDF to its satisfaction (taking into account paragraph 253(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, operation and decommissioning 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, EDF 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 does not extend to the requirement for EDF 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 EDF and the undertaker.

(5) EDF 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 EDF 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**

**253.**—(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to or secures for EDF 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 EDF and must be no less favourable on the whole to EDF than the facilities and rights enjoyed by it in respect of the apparatus to be removed unless otherwise agreed by EDF.

(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 EDF 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 260 of this Part of this Schedule and the arbitrator must make such provision for the payment of compensation by the undertaker to EDF as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

**Retained apparatus: protection**

**254.**—(1) Not less than 56 days before the commencement of any specified works the undertaker must submit to EDF a plan of the works to be executed and request from EDF details of the underground extent of their assets, which EDF must provide to the undertaker as soon as reasonably practicable and within 36 days of the submission of such a request.

(2) In relation to specified works the plan to be submitted to EDF 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) a ground monitoring scheme, where required.

(3) The undertaker must not commence any works to which sub-paragraph (2) applies until EDF has given written approval of the plan so submitted.

(4) Any approval of EDF required under sub-paragraph (3)—

(a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraphs (5) or (7); and,

(b) must not be unreasonably withheld.

(5) In relation to any work to which sub-paragraph (2) applies, EDF may require such modifications to be made to the plans as may be reasonably necessary for the purpose of securing its apparatus against interference or risk of damage, for the provision of protective works or for the purpose of providing or securing proper and convenient means of access to any apparatus.

(6) Works executed under sub-paragraph (2) must be executed in accordance with the plan, submitted under sub-paragraph (1) or as relevant sub-paragraph (5), as approved or as amended from time to time by agreement between the undertaker and EDF and in accordance with such

reasonable requirements as may be made in accordance with sub-paragraphs (5) or (7) by EDF for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and EDF will be entitled to watch and inspect the execution of those works.

(7) Where EDF 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 EDF's satisfaction prior to the commencement of any specified works for which protective works are required and EDF 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 EDF 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 246 to 248 and 251 to 253 apply as if the removal of the apparatus had been required by the undertaker under paragraph 252(2).

(9) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 56 days before commencing the execution of the authorised development, a new plan, instead of the plan previously submitted, and having done so the provisions of this paragraph shall apply to and in respect of the new plan.

(10) The undertaker will not be required to comply with sub-paragraph (1) where it needs to carry out emergency works as defined in the 1991 Act but in that case it must give to EDF notice as soon as is reasonably practicable and a plan of those works and must comply with sub-paragraphs (5), (6) and (7) insofar as is reasonably practicable in the circumstances and comply with sub-paragraph (11) at all times.

(11) At all times when carrying out any specified works authorised under the Order, the undertaker must comply with EDF's HSEQ Requirement for Contractors (document reference DD_STND_HAS_001) and any document that replaces or supersedes it.

**Expenses**

**255.**—(1) Save where otherwise agreed in writing between EDF and the undertaker and subject to the following provisions of this paragraph, the undertaker must pay to EDF within 30 days of receipt of an itemised invoice or claim from EDF all charges, costs and expenses reasonably anticipated within the following three months or reasonably and properly incurred by EDF 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 development including without limitation—

(a) any costs reasonably incurred by or compensation properly paid by EDF in connection with the acquisition of rights or the exercise of statutory powers for such apparatus including without limitation all costs incurred by EDF as a consequence of EDF;

(i) using its own compulsory purchase powers to acquire any necessary rights under paragraph 252(3); or

(ii) exercising any compulsory purchase powers in the Order transferred to or benefitting EDF;

(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 260 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 EDF 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 EDF 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 EDF 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.

(6) Any sums paid by the undertaker to EDF under sub-paragraph (1) relating to anticipated costs and expenses will be returned on demand (in whole or in part as applicable) by EDF to the undertaker if not incurred.

**Indemnity**

**256.**—(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 development 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 development) or property of EDF, or there is any interruption in any service provided, or in the supply of any goods, by EDF, or EDF 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 EDF the cost reasonably and properly incurred by EDF in making good such damage or restoring the supply; and

(b) indemnify EDF for any other expenses, loss, demands, proceedings, damages, claims, penalty or costs incurred by or recovered from EDF, by reason or in consequence of any

such damage or interruption or EDF becoming liable to any third party other than arising from any default of EDF.

(2) The fact that any act or thing may have been done by EDF on behalf of the undertaker or in accordance with a plan approved by EDF or in accordance with any requirement of EDF or under its supervision will not (unless sub-paragraph (3) applies), excuse the undertaker from liability under the provisions of sub-paragraph (1) unless EDF 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) is to 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 EDF, its officers, servants, contractors or agents; or

(b) any authorised development or any other works authorised by this Part of this Schedule carried out by EDF 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 36 (consent to transfer benefit of Order) subject to the proviso that once such works become apparatus ("new apparatus"), any authorised development yet to be executed and not falling within this sub-section (b) will be subject to the full terms of this Part of this Schedule including this paragraph 256; or

(c) any 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) EDF 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) EDF 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) EDF 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 EDF'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 EDF's control and if reasonably requested to do so by the undertaker EDF 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 that part of the authorised development which constitutes specified works on any land owned by EDF or in respect of which EDF has an easement or wayleave for its apparatus or any other interest or to carry out any works within 20 metres of EDF's apparatus until the following conditions are satisfied—

(a) unless and until EDF 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 that part of the authorised development which constitutes specified works from the proposed date of commencement of construction of that part of the authorised development which constitutes specified works) and EDF has confirmed the same to the undertaker in writing; and

(b) unless and until EDF is satisfied acting reasonably (but subject to all necessary regulatory constraints) that the undertaker has procured acceptable insurance (and provided evidence to EDF that it shall maintain such acceptable insurance for the construction period of that part of the authorised development which constitutes specified works from the proposed date of commencement of construction of that part of the authorised development which constitutes specified works) and EDF has confirmed the same in writing to the undertaker.

(8) In the event that the undertaker fails to comply with sub-paragraph (7), nothing in this Part of this Schedule shall prevent EDF from seeking injunctive relief (or any other equitable remedy) in any court of competent jurisdiction.

**Enactments and agreements**

**257.** Save to the extent provided for to the contrary elsewhere in this Part of this Schedule or by agreement in writing between EDF 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 EDF 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**

**258.**—(1) Where in consequence of the proposed construction of any part of the authorised development, the undertaker or EDF requires the removal of apparatus under paragraph 252(2) or EDF makes requirements for the protection or alteration of apparatus under paragraph 254, 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 development and taking into account the need to ensure the safe and efficient operation of EDF's undertaking and EDF shall use its best endeavours to co-operate with the undertaker for that purpose.

(2) For the avoidance of doubt whenever EDF'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**

**259.** If in consequence of the agreement reached in accordance with paragraph 251(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 EDF to maintain or use the apparatus no less effectively than was possible before such obstruction.

**Arbitration**

**260.** Save for differences or disputes arising under paragraphs 252(2), 252(4), 253(1) and 254 any difference or dispute arising between the undertaker and EDF under this Part of this Schedule must, unless otherwise agreed in writing between the undertaker and EDF, be determined by arbitration in accordance with article 43 (arbitration).

**Notices**

**261.** Notwithstanding article 45 (service of notices), any plans submitted to EDF by the undertaker pursuant to paragraph 254 must be submitted to EDF addressed to the company secretary and copied to the land and estates team and sent to 90 Whitfield Street, London, England, W1T 4EZ or to such other address as EDF may from time to time appoint instead for that purpose and notify to the undertaker in writing.

# PART 17

## FOR THE PROTECTION OF NATIONAL GRID ELECTRICITY TRANSMISSION PLC AS ELECTRICITY UNDERTAKER

### Application

**262.**—(1) For the protection of National Grid Electricity Transmission Plc as referred to in this Part of this Schedule the following provisions have effect, unless otherwise agreed in writing, between the undertaker and National Grid Electricity Transmission Plc.

(2) Subject to sub-paragraph (3) or to the extent otherwise agreed in writing between the undertaker and National Grid Electricity Transmission Plc, where the benefit of this Order is transferred or granted to another person under article 36 (consent to transfer the benefit of the Order)—

(a) any agreement of the type mentioned in sub-paragraph (1) has effect as if it had been made between National Grid Electricity Transmission Plc and the transferee or grantee (as the case may be); and

(b) written notice of the transfer or grant must be given to National Grid Electricity Transmission Plc on or before the date of that transfer or grant.

(3) Sub-paragraph (2) does not apply where the benefit of the Order is transferred or granted to National Grid Electricity Transmission Plc (but without prejudice to paragraph 272(3)(b)).

### Interpretation

**263.** 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 that part of the authorised works which constitutes specified works; and (b) after the construction period of the authorised works in respect of any use and maintenance of the authorised development by or on behalf of the undertaker which constitute specified works and arranged with an insurer whose security/credit rating meets the same requirements as an "acceptable credit provider", such insurance shall include (without limitation)—

(a) a waiver of subrogation and an indemnity to principal clause in favour of National Grid Electricity Transmission Plc;

(b) pollution liability for third party property damage and third party bodily damage arising from any pollution/contamination event with a (sub)limit of indemnity of not less than £10,000,000.00 (ten million pounds) per occurrence or series of occurrences arising out of one event or £20,000,000.00 (twenty million pounds) in aggregate;

"acceptable security" means either—

(a) a parent company guarantee from a parent company in favour of National Grid Electricity Transmission Plc to cover the undertaker's liability to National Grid Electricity Transmission Plc to a total liability cap of £50,000,000.00 (fifty million pounds) (in a form reasonably satisfactory to National Grid Electricity Transmission Plc and where required by National Grid Electricity Transmission Plc, accompanied with a legal opinion confirming the due capacity and authorisation of the parent company to enter into and be bound by the terms of such guarantee); or

(b) a bank bond or letter of credit from an acceptable credit provider in favour of National Grid Electricity Transmission Plc to cover the undertaker's liability to National Grid Electricity Transmission Plc for an amount of not less than £10,000,000.00 (ten million pounds) per asset per event up to a total liability cap of £50,000,000.00 (fifty million pounds) (in a form reasonably satisfactory to National Grid Electricity Transmission Plc);

"alternative apparatus" means appropriate alternative apparatus to the satisfaction of National Grid Electricity Transmission Plc to enable National Grid Electricity Transmission Plc to fulfil its statutory functions in a manner no less efficient than previously;

"apparatus" means any electric lines or electrical plant as defined in the 1989 Act, belonging to or maintained by National Grid Electricity Transmission Plc together with any replacement apparatus and such other apparatus constructed pursuant to the Order that becomes operational apparatus of National Grid Electricity Transmission Plc for the purposes of transmission, distribution or supply and includes any structure in which apparatus is or will be lodged or which gives or will give access to apparatus;

"authorised works" has the same meaning as given to the term "authorised development" in article 2(1) of this Order and for the purposes of this Part of this Schedule includes the use and maintenance of the authorised works and construction of any works authorised by this Part of this Schedule;

"commence" and "commencement" in this Part of this Schedule will include any below ground surveys, monitoring, ground work operations or the receipt and erection of construction plant and equipment;

"deed of consent" means a deed of consent, crossing agreement, deed of variation or new deed of grant agreed between the parties acting reasonably in order to vary or replace existing easements, agreements, enactments and other such interests so as to secure land rights and interests as are necessary to carry out, maintain, operate and use the apparatus in a manner consistent with the terms of this Part of this Schedule;

"functions" includes powers and duties;

"ground mitigation scheme" means a scheme approved by National Grid Electricity Transmission Plc (such approval not to be unreasonably withheld or delayed) setting out the necessary measures (if any) for a ground subsidence event;

"ground monitoring scheme" means a scheme for monitoring ground subsidence which sets out the apparatus which is to be subject to such monitoring, the extent of land to be monitored, the manner in which ground levels are to be monitored, the timescales of any monitoring activities and the extent of ground subsidence which, if exceeded, must require the undertaker to submit for National Grid Electricity Transmission Plc approval a ground mitigation scheme;

"ground subsidence event" means any ground subsidence identified by the monitoring activities set out in the ground monitoring scheme that has exceeded the level described in the ground monitoring scheme as requiring a ground mitigation scheme;

"in" in a context referring to apparatus or alternative apparatus in land includes a reference to apparatus or alternative apparatus under, over, across, along or upon such land;

"incentive deduction" means any incentive deduction National Grid Electricity Transmission Plc 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;

"insured works" means authorised works on any land owned by National Grid Electricity Transmission Plc or in respect of which National Grid Electricity Transmission Plc has an easement or wayleave for its apparatus or any other interest or to carry out any works within 15 metres of National Grid Electricity Transmission Plc's apparatus;

"maintain" and "maintenance" will include the ability and right to do any of the following in relation to any apparatus or alternative apparatus of National Grid Electricity Transmission Plc: construct, use, repair, alter, inspect, renew or remove the apparatus;

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

"NGESO" is as defined in the STC;

"parent company" means a parent company of the undertaker acceptable to and which shall have been approved by National Grid Electricity Transmission Plc acting reasonably;

"plan" or "plans" include all designs, drawings, specifications, method statements, soil reports, programmes, calculations, risk assessments and other documents that are reasonably necessary to properly and sufficiently describe and assess the works to be executed;

"specified works" means any of the authorised works or activities undertaken in association with the authorised development 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 268(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 268(2) or otherwise; and/or

(c) includes any of the activities that are referred to in development near overhead lines EN43-8 and HSE's guidance note 6 "Avoidance of Danger from Overhead Lines";

"STC" means the System Operator Transmission Owner Code prepared by the electricity transmission owners and NGESO as modified from time to time;

"STC claims" means any claim made under the STC against National Grid Electricity Transmission Plc arising out of or in connection with the de-energisation (whereby no electricity can flow to or from the relevant system through the generator or interconnector's equipment) of a generator or interconnector party solely as a result of the de-energisation of plant and apparatus forming part of National Grid Electricity Transmission Plc's transmission system which arises as a result of the authorised works;

"transmission owner" is as defined in the STC; and

"undertaker" means the undertaker as defined in article 2(1) of this Order.

**On Street Apparatus**

**264.** Except for paragraphs 265, 270, 271, and 272 of this Schedule which will apply in respect of the exercise of all or any powers under the Order affecting the rights and apparatus of National Grid Electricity Transmission Plc, the provisions of this Part of this Schedule do not apply to apparatus in respect of which the relations between the undertaker and National Grid Electricity Transmission Plc are regulated by the provisions of Part 3 of the 1991 Act.

**Apparatus of National Grid Electricity Transmission Plc in streets subject to temporary prohibition or restriction of use and public rights of way**

**265.**—(1) Where any street or public right of way is temporarily prohibited or restricted under article 12 (temporary prohibition or restriction of the use of streets and public rights of way), if National Grid Electricity Transmission Plc has any apparatus in the street or public right of way or accessed via that street or public right of way National Grid Electricity Transmission Plc has the same rights in respect of that apparatus as it enjoyed immediately before the temporary prohibition or restriction and the undertaker must grant to National Grid Electricity Transmission Plc, or procure the granting to National Grid Electricity Transmission Plc of, legal easements reasonably satisfactory to National Grid Electricity Transmission Plc in respect of such apparatus and access to it prior to the temporary prohibition or restriction of any such street or public right of way but nothing in this paragraph affects any right of the undertaker or National Grid Electricity Transmission Plc to require the removal of that apparatus under paragraph 268 or the power of the undertaker, subject to compliance with this sub-paragraph, to carry out works under paragraph 270.

(2) Notwithstanding the temporary prohibition or restriction of use or diversion of a street or public right of way under the powers of article 12, National Grid Electricity Transmission Plc is at liberty at all times to take all necessary access across any such street or public right of way and to execute and do all such works and things in, upon or under any such street or public right of way as may be reasonably necessary or desirable to enable it to maintain any apparatus which at the time of the prohibition or restriction of use or diversion was in that street or public right of way.

**Protective works to buildings**

**266.** The undertaker, in the case of the powers conferred by article 19 (protective work to buildings), must exercise those powers so as not to obstruct or render less convenient the access to any apparatus without the written consent of National Grid Electricity Transmission Plc.

**Acquisition of land**

**267.**—(1) Regardless of any provision in this Order or anything shown on the land plans or contained in the book of reference to the Order, the undertaker may not (a) appropriate or acquire or take temporary possession of any land or apparatus or (b) appropriate, acquire, extinguish, interfere with or override any easement, other interest or right and/or apparatus of National Grid Electricity Transmission Plc otherwise than by agreement, such agreement may not be unreasonably withheld.

(2) As a condition of an agreement between the parties in sub-paragraph (1), prior to the carrying out of any part of the authorised works (or in such other timeframe as may be agreed between National Grid Electricity Transmission Plc and the undertaker) that is subject to the requirements of this Part of this Schedule that will cause any conflict with or breach the terms of any easement or other legal or land interest of National Grid Electricity Transmission Plc or affect the provisions of any enactment or agreement regulating the relations between National Grid Electricity Transmission Plc and the undertaker in respect of any apparatus laid or erected in land belonging to or secured by the undertaker, the undertaker must as National Grid Electricity Transmission Plc reasonably requires enter into such deeds of consent upon such terms and conditions as may be agreed between National Grid Electricity Transmission Plc and the undertaker acting reasonably and which must be no less favourable on the whole to National Grid Electricity Transmission Plc unless otherwise agreed by National Grid Electricity Transmission Plc, and the undertaker will use reasonable endeavours to procure and/or secure the consent and entering into of such deeds and variations by all other third parties with an interest in the land at that time who are affected by such authorised works.

(3) Save where otherwise agreed in writing between National Grid Electricity Transmission Plc and the undertaker, the undertaker and National Grid Electricity Transmission Plc agree that where there is any inconsistency or duplication between the provisions set out in this Part of this Schedule relating to the relocation and/or removal of apparatus (including but not limited to the payment of costs and expenses relating to such relocation and/or removal of apparatus) and the provisions of any existing easement, rights, agreements and licences granted, used, enjoyed or exercised by National Grid Electricity Transmission Plc and/or other enactments relied upon by National Grid Electricity Transmission Plc as of right or other use in relation to the apparatus, then the provisions in this Part of this Schedule shall prevail.

(4) Any agreement or consent granted by National Grid Electricity Transmission Plc under paragraph 270 or any other paragraph of this Part of this Schedule, shall not be taken to constitute agreement under sub-paragraph (1).

**Removal of apparatus**

**268.**—(1) If, in the exercise of the powers conferred by this Order, the undertaker acquires any interest in or possesses temporarily any land in which any apparatus is placed, that apparatus must not be removed under this Part of this Schedule and any right of National Grid Electricity Transmission Plc to maintain that apparatus in that land must not be extinguished until alternative

apparatus has been constructed, and is in operation to the reasonable satisfaction of National Grid Electricity Transmission Plc in accordance with sub-paragraphs (2) to (5).

(2) If, for the purpose of executing any works in, on, under or over any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, it must give to National Grid Electricity Transmission Plc advance written notice of that requirement, together with a plan of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order National Grid Electricity Transmission Plc reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph (3), secure any necessary consents for the alternative apparatus and afford to National Grid Electricity Transmission Plc to its satisfaction (taking into account paragraph 269(1) below) the necessary facilities and rights—

(a) for the construction of alternative apparatus in other land of or land secured by the undertaker; and

(b) subsequently for the maintenance of that apparatus.

(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of or land secured by the undertaker, or the undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraph (2), in the land in which the alternative apparatus or part of such apparatus is to be constructed, National Grid Electricity Transmission Plc may in its sole discretion, on receipt of a written notice to that effect from the undertaker, take such steps as are reasonable in the circumstances to assist the undertaker to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed save that this obligation shall not extend to the requirement for National Grid Electricity Transmission Plc to use its compulsory purchase powers to this end unless it elects to do so.

(4) Any alternative apparatus to be constructed in land of or land secured by the undertaker under this Part of this Schedule must be constructed in such manner and in such line or situation as may be agreed between National Grid Electricity Transmission Plc and the undertaker.

(5) National Grid Electricity Transmission Plc must, after the alternative apparatus to be provided or constructed has been agreed, and subject to a written diversion agreement having been entered into between the parties and the grant to National Grid Electricity Transmission Plc of any such facilities and rights as are referred to in sub-paragraphs (2) or (3), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by the undertaker to be removed under the provisions of this Part of this Schedule.

**Facilities and rights for alternative apparatus**

**269.**—(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to or secures for National Grid Electricity Transmission Plc facilities and rights in land for the construction, use, maintenance and protection of alternative apparatus in substitution for apparatus to be removed, those facilities and rights must be granted upon such terms and conditions as may be agreed between the undertaker and National Grid Electricity Transmission Plc and must be no less favourable on the whole to National Grid Electricity Transmission Plc than the facilities and rights enjoyed by it in respect of the apparatus to be removed unless otherwise agreed by National Grid Electricity Transmission Plc.

(2) If the facilities and rights to be afforded by the undertaker in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are less favourable on the whole to National Grid Electricity Transmission Plc than the facilities and rights enjoyed by it in respect of the apparatus to be removed, the terms and conditions to which those facilities and rights are subject may be referred to arbitration in accordance with paragraph 276 of this Part of this Schedule and the arbitrator must make such provision for the payment of compensation by the undertaker to National Grid Electricity Transmission Plc as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

**Retained apparatus: protection of National Grid Electricity Transmission Plc as electricity undertaker**

**270.**—(1) Not less than 56 days before the commencement of any specified works, the undertaker must submit to National Grid Electricity Transmission Plc a plan of the works to be executed and seek from National Grid Electricity Transmission Plc details of the underground extent of their electricity assets.

(2) In relation to specified works the plan to be submitted to National Grid Electricity Transmission Plc under sub-paragraph (1) must include a method statement and describe—

(a) the exact position of the works;

(b) the level at which these are proposed to be constructed or renewed;

(c) the manner of their construction or renewal including details of excavation, positioning of plant;

(d) the position of all apparatus;

(e) by way of detailed drawings, every alteration proposed to be made to or close to any such apparatus;

(f) any intended maintenance regimes;

(g) an assessment of risks of rise of earth issues; and

(h) a ground monitoring scheme, where required.

(3) In relation to any works which will or may be situated on, over, under or within 10 metres of any part of the foundations of an electricity tower or between any two or more electricity towers, the plan to be submitted under sub-paragraph (1) must, in addition to the matters set out in sub-paragraph (2), include a method statement describing—

(a) details of any cable trench design including route, dimensions, clearance to pylon foundations;

(b) demonstration that pylon foundations will not be affected prior to, during and post construction;

(c) details of load bearing capacities of trenches;

(d) details of any cable installation methodology including access arrangements, jointing bays and backfill methodology;

(e) a written management plan for high voltage hazard during construction and ongoing maintenance of any cable route;

(f) written details of the operations and maintenance regime for any cable, including frequency and method of access;

(g) assessment of earth rise potential if reasonably required by National Grid Electricity Transmission Plc's engineers; and

(h) evidence that trench bearing capacity is to be designed to support overhead line construction traffic of up to and including 26 tonnes in weight.

(4) The undertaker must not commence any works to which sub-paragraphs (2) or (3) apply until National Grid Electricity Transmission Plc has given written approval of the plan so submitted.

(5) Any approval of National Grid Electricity Transmission Plc required under sub-paragraph (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, National Grid Electricity Transmission Plc may require such modifications to be made to the plans as may be reasonably necessary for the purpose of securing its apparatus against interference or risk of damage or for the provision of protective works or for the purpose of providing or securing proper and convenient means of access to any apparatus.

(7) Works executed under sub-paragraphs (2) or (3) must be executed in accordance with the plan, submitted under sub-paragraph (1) or, as relevant, sub-paragraph (6) as approved or as amended from time to time by agreement between the undertaker and National Grid Electricity Transmission Plc and in accordance with such reasonable requirements as may be made in accordance with sub-paragraphs (6) or (8) by National Grid Electricity Transmission Plc for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and National Grid Electricity Transmission Plc will be entitled to watch and inspect the execution of those works.

(8) Where National Grid Electricity Transmission Plc requires any protective works to be carried out by itself or by the undertaker (whether of a temporary or permanent nature) such protective works, inclusive of any measures or schemes required and approved as part of the plan approved pursuant to this paragraph, must be carried out to National Grid Electricity Transmission Plc's satisfaction prior to the commencement of any authorised development (or any relevant part thereof) for which protective works are required and National Grid Electricity Transmission Plc 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).

(9) If National Grid Electricity Transmission Plc in accordance with sub-paragraphs (6) or (8) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, sub-paragraphs (1) to (3) and (6) to (8) apply as if the removal of the apparatus had been required by the undertaker under paragraph 268(2).

(10) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 56 days before commencing the execution of the authorised development, a new plan, instead of the plan previously submitted, and having done so the provisions of this paragraph shall apply to and in respect of the new plan.

(11) The undertaker will not be required to comply with sub-paragraph (1) where it needs to carry out emergency works as defined in the 1991 Act but in that case it must give to National Grid Electricity Transmission Plc notice as soon as is reasonably practicable and a plan of those works and must comply with—

(a) sub-paragraphs (6), (7) and (8) insofar as is reasonably practicable in the circumstances; and

(b) sub-paragraph (12) at all times.

(12) At all times when carrying out any works authorised under this Order, the undertaker must comply with National Grid Electricity Transmission Plc's policies for development near overhead lines EN43-8 and the Health and Safety Executive's guidance note 6 "Avoidance of Danger from Overhead Lines".

**Expenses**

**271.**—(1) Save where otherwise agreed in writing between National Grid Electricity Transmission Plc and the undertaker and subject to the following provisions of this paragraph, the undertaker must pay to National Grid Electricity Transmission Plc within 30 days of receipt of an itemised invoice or claim from National Grid Electricity Transmission Plc all charges, costs and expenses reasonably anticipated within the following three months or reasonably and properly incurred by National Grid Electricity Transmission Plc in, or in connection with, the inspection, removal, relaying or replacing, alteration or protection of any apparatus or the construction of any new or alternative apparatus which may be required in consequence of the execution of any authorised works as are referred to in this Part of this Schedule including without limitation—

(a) any costs reasonably incurred by or compensation properly paid by National Grid Electricity Transmission Plc in connection with the acquisition of rights or the exercise of statutory powers for such apparatus including without limitation all costs incurred by National Grid Electricity Transmission Plc as a consequence of National Grid Electricity Transmission Plc—

(i) using its own compulsory purchase powers to acquire any necessary rights under paragraph 268(3); or

(ii) exercising any compulsory purchase powers in the Order transferred to or benefitting National Grid Electricity Transmission Plc;

(b) in connection with the cost of the carrying out of any diversion work or the provision of any alternative apparatus, where no written diversion agreement is otherwise in place;

(c) the cutting off of any apparatus from any other apparatus or the making safe of redundant apparatus;

(d) the approval of plans;

(e) the carrying out of protective works, plus a capitalised sum to cover the cost of maintaining and renewing permanent protective works; and

(f) the survey of any land, apparatus or works, the inspection and monitoring of works or the installation or removal of any temporary works reasonably necessary in consequence of the execution of any such works referred to in this Part of this Schedule.

(2) There will be deducted from any sum payable under sub-paragraph (1) the value of any apparatus removed under the provisions of this Part of this Schedule and which is not re-used as part of the alternative apparatus, that value being calculated after removal.

(3) If in accordance with the provisions of this Part of this Schedule—

(a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions; or

(b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was situated,

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or, in default of agreement, is not determined by arbitration in accordance with paragraph 276 to be necessary, then, if such placing involves cost in the construction of works under this Part of this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to National Grid Electricity Transmission Plc by virtue of sub-paragraph (1) will be reduced by the amount of that excess save to the extent that it is not possible in the circumstances to obtain the existing type of apparatus at the same capacity and dimensions or place at the existing depth in which case full costs will be borne by the undertaker.

(4) For the purposes of sub-paragraph (3)—

(a) an extension of apparatus to a length greater than the length of existing apparatus will not be treated as a placing of apparatus of greater dimensions than those of the existing apparatus; and

(b) where the provision of a joint in a pipe or cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole will be treated as if it also had been agreed or had been so determined.

(5) Any amount which apart from this sub-paragraph would be payable to National Grid Electricity Transmission Plc in respect of works by virtue of sub-paragraph (1) will, if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on National Grid Electricity Transmission Plc any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, be reduced by the amount which represents that benefit.

**Indemnity**

**272.**—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any works authorised by this Part of this Schedule or in consequence of the

construction, use, maintenance or failure of any of the authorised works by or on behalf of the undertaker or in consequence of any act or default of the undertaker (or any person employed or authorised by it) in the course of carrying out such works, including without limitation works carried out by the undertaker under this Part of this Schedule or any subsidence resulting from any of these works, any damage is caused to any apparatus or alternative apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of the authorised works) or property of National Grid Electricity Transmission Plc, or there is any interruption in any service provided, or in the supply of any goods, by National Grid Electricity Transmission Plc, or National Grid Electricity Transmission Plc becomes liable to pay any amount to any third party, the undertaker will—

(a) bear and pay on demand accompanied by an invoice or claim from National Grid Electricity Transmission Plc the cost reasonably and properly incurred by National Grid Electricity Transmission Plc in making good such damage or restoring the supply; and

(b) indemnify National Grid Electricity Transmission Plc for any other expenses, loss, demands, proceedings, damages, claims, penalty or costs incurred by or recovered from National Grid Electricity Transmission Plc, by reason or in consequence of any such damage or interruption or National Grid Electricity Transmission Plc becoming liable to any third party and including STC claims or an incentive deduction other than arising from any negligence or default of National Grid Electricity Transmission Plc.

(2) The fact that any act or thing may have been done by National Grid Electricity Transmission Plc on behalf of the undertaker or in accordance with a plan approved by National Grid Electricity Transmission Plc or in accordance with any requirement of National Grid Electricity Transmission Plc or under its supervision will not (unless sub-paragraph (3) applies), excuse the undertaker from liability under the provisions of sub-paragraph (1) unless National Grid Electricity Transmission Plc fails to carry out and execute the works properly with due care and attention and in a skilful and workman like manner or in a manner that does not accord with the approved plan or as otherwise agreed in writing between the undertaker and National Grid Electricity Transmission Plc.

(3) Nothing in sub-paragraph (1) will impose any liability on the undertaker in respect of—

(a) any damage or interruption to the extent that it is attributable to the neglect or default of National Grid Electricity Transmission Plc, its officers, servants, contractors or agents;

(b) any authorised works and/or any other works authorised by this Part of this Schedule carried out by National Grid Electricity Transmission Plc as an assignee, transferee or lessee of the undertaker with the benefit of the Order pursuant to section 156 of the 2008 Act or article 36 (consent to transfer the benefit of the Order) subject to the proviso that once such works become apparatus ("new apparatus"), any authorised works yet to be executed and not falling within this sub-paragraph 272(3)(b) will be subject to the full terms of this Part of this Schedule including this paragraph 272; and/or

(c) any indirect or consequential loss of any third party (including but not limited to loss of use, revenue, profit, contract, production, increased cost of working or business interruption) arising from any such damage or interruption, which is not reasonably foreseeable.

(4) National Grid Electricity Transmission Plc must give the undertaker reasonable notice of any such third party claim or demand and no settlement, admission of liability or compromise must, unless payment is required in connection with a statutory compensation scheme, be made without first consulting the undertaker and considering its representations (such representations to be made promptly).

(5) National Grid Electricity Transmission Plc must, in respect of any matter covered by the indemnity given by the undertaker in this paragraph, at all times act reasonably and in the same manner as it would as if settling third party claims on its own behalf from its own funds.

(6) National Grid Electricity Transmission Plc must use its reasonable endeavours to mitigate and to minimise any costs, expenses, loss, demands, and penalties to which the indemnity under this paragraph applies where it is within National Grid Electricity Transmission Plc's reasonable ability and control to do so and which expressly excludes any obligation to mitigate liability

arising from third parties which is outside of National Grid Electricity Transmission Plc's control and if reasonably requested to do so by the undertaker National Grid Electricity Transmission Plc must provide an explanation of how the claim has been minimised, where relevant.

(7) Not to commence construction (and not to permit the commencement of such construction) of the authorised development on any land owned by National Grid Electricity Transmission Plc or in respect of which National Grid Electricity Transmission Plc has an easement or wayleave for its apparatus or any other interest or to carry out any works within 15 metres of National Grid Electricity Transmission Plc's apparatus until the following conditions are satisfied—

(a) unless and until National Grid Electricity Transmission Plc is satisfied acting reasonably (but subject to all necessary regulatory constraints) that the undertaker has first provided the acceptable security (and unless otherwise agreed with National Grid Electricity Transmission Plc (acting reasonably) provided evidence that it shall maintain such acceptable security for the construction period of the authorised works from the proposed date of commencement of construction of the authorised works) and National Grid Electricity Transmission Plc has confirmed the same to the undertaker in writing; and

(b) unless and until National Grid Electricity Transmission Plc is satisfied acting reasonably (but subject to all necessary regulatory constraints) that the undertaker has procured acceptable insurance (and unless otherwise agreed with National Grid Electricity Transmission Plc (acting reasonably) provided evidence to National Grid Electricity Transmission Plc that it shall maintain such acceptable insurance for the construction period of the authorised works from the proposed date of commencement of construction of the authorised works) and National Grid Electricity Transmission Plc has confirmed the same in writing to the undertaker.

(8) In the event that the undertaker fails to comply with sub-paragraph (8), nothing in this Part of this Schedule shall prevent National Grid Electricity Transmission Plc from seeking injunctive relief (or any other equitable remedy) in any court of competent jurisdiction.

**Enactments and agreements**

**273.** Save to the extent provided for to the contrary elsewhere in this Part of this Schedule or by agreement in writing between National Grid Electricity Transmission Plc and the undertaker, nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and National Grid Electricity Transmission Plc in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

**Co-operation**

**274.**—(1) Where in consequence of the proposed construction of any part of the authorised works, the undertaker or National Grid Electricity Transmission Plc requires the removal of apparatus under paragraph 268(2) or National Grid Electricity Transmission Plc makes requirements for the protection or alteration of apparatus under paragraph 270, the undertaker will use its best endeavours to co-ordinate the execution of the works in the interests of safety and the efficient and economic execution of the authorised works and taking into account the need to ensure the safe and efficient operation of National Grid Electricity Transmission Plc's undertaking and National Grid Electricity Transmission Plc will use its best endeavours to co-operate with the undertaker for that purpose.

(2) For the avoidance of doubt whenever National Grid Electricity Transmission Plc's consent, agreement or approval is required in relation to plans, documents or other information submitted by the undertaker or the taking of action by the undertaker, it must not be unreasonably withheld or delayed.

**Access**

**275.** If in consequence of the agreement reached in accordance with paragraph 267 or the powers granted under this Order the access to any apparatus is materially obstructed, the

undertaker must provide such alternative means of access to such apparatus as will enable National Grid Electricity Transmission Plc to maintain or use the apparatus no less effectively than was possible before such obstruction.

**Arbitration**

**276.** Save for differences or disputes arising under paragraphs 268(2), 268(4), 269(1), and 270, any difference or dispute arising between the undertaker and National Grid Electricity Transmission Plc under this Part of this Schedule must, unless otherwise agreed in writing between the undertaker and National Grid Electricity Transmission Plc, be determined by arbitration in accordance with article 43 (arbitration).

**Notices**

**277.** Notwithstanding article 45 (service of notices), any plans submitted to National Grid Electricity Transmission Plc by the undertaker pursuant to paragraph 270 must be submitted using the LSBUD system (https://lsbud.co.uk) or to such other address as National Grid Electricity Transmission Plc may from time to time appoint instead for that purpose and notify to the undertaker in writing.

# PART 18

## FOR THE PROTECTION OF NATIONAL GRID ELECTRICITY DISTRIBUTION (EAST MIDLANDS) PLC AS ELECTRICITY UNDERTAKER

**Application**

**278.** For the protection of National Grid Electricity Distribution (East Midlands) plc the following provisions, unless otherwise agreed in writing between the undertaker and National Grid Electricity Distribution (East Midlands) plc, have effect.

**Interpretation**

**279.** In this Part of this Schedule—

"alternative apparatus" means alternative apparatus adequate to enable NGED to fulfil its statutory functions in a manner not less efficient than previously and where the context requires includes any part of such alternative apparatus;

"alternative rights" means all and any necessary legal easements, leases, consents, or permissions required by NGED in order to permit or authorise a diversion and to permit or authorise NGED to lay, keep, operate, maintain, adjust, repair, alter, relay, renew, supplement, inspect, examine, test and remove the alternative apparatus;

"apparatus" means electric lines or electrical plant as defined in the 1989 Act(**a**), belonging to or maintained by NGED;

"diversion" means an alteration to the NGED Network in order to enable or facilitate the authorised development;

"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;

"NGED" means National Grid Electricity Distribution (East Midlands) plc (company number 02366923) whose registered office is at Avonbank, Feeder Road, Bristol, BS2 0TB;

---

(**a**) 1989 c. 29. The definition of "electrical plant" (in section 64) was amended by paragraphs 24 and 38(1) and (3) of Schedule 6 to the Utilities Act 2000 (c.27).

"NGED Network" means NGED's distribution network operated pursuant to its distribution licence issued pursuant to section 6 of the 1989 Act;

"plan" or "plans" includes all designs, drawings, specifications, method statements, programmes, calculations, risk assessments and other documents that are reasonably necessary to properly and sufficiently describe and assess the works to be executed; and

"specified work" means so much of any of the authorised development that is carried out within 6 metres of any apparatus.

**Precedence of 1991 Act in respect of apparatus in streets**

**280.** This Part of this Schedule does not apply to apparatus in respect of which the relations between the undertaker and NGED are regulated by the provisions of Part 3 (street works in England and Wales) of the 1991 Act. No acquisition except by agreement.

**281.** Regardless of any provision in this Order or anything shown on the land and crown land plans, the undertaker must not acquire any apparatus otherwise than by agreement.

**Removal of apparatus**

**282.**—(1) If, in the exercise of the powers conferred by this Order, the undertaker acquires any interest in any land in which any apparatus is placed or requires that apparatus is relocated or diverted, that apparatus must not be removed under this Part of this Schedule and any right of NGED to maintain that apparatus in that land must not be extinguished until alternative apparatus has been constructed, alternative rights acquired or granted for the alternative apparatus and the alternative apparatus is in operation and access to it has been provided if necessary to the reasonable satisfaction of NGED in accordance with sub-paragraphs (2) to (10) or with such alternative or supplementary provisions as the undertaker and NGED may agree between them.

(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 NGED 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.

(3) If as a consequence of the exercise of any of the powers conferred by this Order NGED reasonably needs to remove or divert any of its apparatus and the removal of that apparatus has not been required by the undertaker under sub-paragraph (2) then NGED must give to the undertaker 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 this Part has effect as if the removal or diversion of such apparatus had been required by the undertaker under sub-paragraph (2).

(4) If as a consequence of the removal or diversion of apparatus under sub-paragraph (2) or (3) alternative apparatus is to be constructed in land owned or controlled by the undertaker then the undertaker must afford to NGED the necessary facilities, alternative rights and any necessary third party consent or approvals for the construction of alternative apparatus in the other land owned or controlled by the undertaker as reasonably required by NGED.

(5) If the undertaker or NGED requires to remove or divert any apparatus placed within the Order land and alternative apparatus is to be constructed in land not owned or controlled by the undertaker as a consequence of the removal or diversion of apparatus then NGED shall use its reasonable endeavours to obtain alternative rights in the land in which the alternative apparatus is to be constructed.

(6) If alternative apparatus is to be constructed in land not owned or controlled by the undertaker and NGED is unable to obtain such alternative rights as are mentioned in sub-paragraph (5), the undertaker and NGED shall consider whether there is an alternative engineering solution that can achieve the diversion without the need for the use of compulsory powers. Should such an alternative engineering solution not be practicable and deliverable in a reasonable timescale and at a reasonable cost (which shall be determined by the undertaker acting reasonably), NGED may but

shall not be compelled to use the powers of compulsory acquisition set out in this Order or the 1989 Act to obtain the necessary facilities and rights in the land outside the Order limits in which the alternative apparatus is to be constructed in accordance with a timetable agreed between NGED and the undertaker.

(7) Any alternative apparatus required pursuant to sub-paragraphs (2) or (3) must be constructed in such manner and in such line or situation as may be agreed between NGED and the undertaker or in default of agreement settled in accordance with paragraph 287.

(8) NGED must, after the alternative apparatus to be provided or constructed has been agreed or settled in accordance with paragraph 287(2) and, after the acquisition by or grant to NGED of any such facilities and alternative rights as are referred to in sub-paragraphs (2) to (6), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required to be removed by the undertaker under the provisions of this Part of this Schedule.

(9) Regardless of anything in sub-paragraph (8), if the undertaker gives notice in writing to NGED 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 NGED, must be executed by the undertaker—

(a) in accordance with plans and specifications and in such line or situation agreed between the undertaker and NGED, or, in default of agreement, determined in accordance with paragraph 287(2); and

(b) without unnecessary delay under the superintendence, if given, and to the reasonable satisfaction of NGED.

(10) Nothing in sub-paragraph (9) authorises the undertaker to execute the placing, installation, bedding, packing, removal, connection or disconnection of any apparatus or alternative apparatus, or execute any filling around the apparatus or alternative apparatus (where the apparatus or alternative apparatus is laid in a trench) within 600 millimetres of the point of connection or disconnection.

**Facilities and rights for alternative apparatus**

**283.**—(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to NGED facilities and alternative rights for the construction and maintenance in land of the undertaker of alternative apparatus in substitution for apparatus to be removed, those facilities and alternative rights must be granted upon such terms and conditions as may be agreed between the undertaker and NGED or in default of agreement settled in accordance with paragraph 287(2).

(2) In settling those terms and conditions in respect of alternative apparatus to be constructed in the land of the undertaker, the expert must—

(a) give effect to all reasonable requirements of the undertaker for ensuring the safety and efficient operation of the authorised development and for securing any subsequent alterations or adaptations of the alternative apparatus which may be required to prevent interference with any proposed works of the undertaker;

(b) have regard to the terms and conditions, if any, applicable to the apparatus for which the alternative apparatus is to be substituted;

(c) have regard to NGED's ability to fulfil its service obligations and comply with its licence conditions; and

(d) have regard to the standard form rights NGED ordinarily secures for the type of alternative apparatus to be constructed in the circumstances similar to the authorised development.

(3) If the facilities and alternative rights to be afforded by the undertaker in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and alternative rights are to be granted, are in the opinion of the expert less favourable on the whole to NGED 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 expert must make such

provision for the payment of compensation by the undertaker to NGED as appears to the expert to be reasonable having regard to all the circumstances of the particular case.

**Retained apparatus**

**284.**—(1) Not less than 60 days before the undertaker intends to start the execution of any specified work where the removal of the apparatus in question has not been required under paragraph 282, the undertaker shall submit to NGED a plan of the works to be executed. Any submission must note the time limits imposed on NGED under sub-paragraph (3).

(2) Subject to sub-paragraph (3) below the undertaker shall not commence any works to which sub-paragraph (1) applies until NGED has identified any reasonable requirements it has for the alteration or protection of the apparatus, or for securing access to it.

(3) If by the expiry of 60 days beginning with the date on which a plan under sub-paragraph (1) is submitted NGED has not advised the undertaker in writing of any reasonable requirements for the alteration or protection of the apparatus, or for securing access to it, it shall be deemed not to have any such requirements and the undertaker shall be at liberty to proceed with the works.

(4) The works referred to in sub-paragraph (1) must be executed only in accordance with the plan submitted under sub-paragraph (1) and in accordance with any reasonable requirements as may be notified in accordance with sub-paragraph (2) by NGED and NGED shall be entitled to watch and inspect the execution of those works.

(5) At all times when carrying out the authorised development the undertaker must comply with NGED's Avoidance of Danger from Electricity Overhead Lines and Underground Cables (2014), the Energy Network Association's A Guide to the Safe Use of Mechanical Plant in the Vicinity of Electricity Overhead Lines (undated), the Health and Safety Executive's GS6 Avoiding Danger from Overhead Power Lines, and the Health and Safety Executive's HSG47 Avoiding Danger from Underground Services (Third Edition) (2014) as the same may be replaced from time to time.

(6) If NGED, in accordance with sub-paragraph (2) and in consequence of the works proposed by the undertaker, reasonably requires the removal or diversion of any apparatus and gives written notice to the undertaker of that requirement, this Part of this Schedule applies as if the removal or diversion of the apparatus had been required by the undertaker under paragraph 282(3).

(7) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 60 days before commencing the execution of any works, a new plan instead of the plan previously submitted, and having done so the provisions of this paragraph apply to and in respect of the new plan.

(8) The undertaker is not required to comply with sub-paragraph (1) in a case of emergency but in that case it must give to NGED notice as soon as is reasonably practicable and a plan of those works as soon as reasonably practicable subsequently and must comply with any reasonable requirements stipulated by NGED under sub-paragraph (2) and with sub-paragraphs (4) and (5) in so far as is reasonably practicable in the circumstances. Nothing in this sub-paragraph prevents NGED from exercising its rights under sub-paragraph (6).

**Expenses and costs**

**285.**—(1) Subject to the following provisions of this paragraph, the undertaker must pay to NGED the proper and reasonable expenses incurred by NGED in, or in connection with, the inspection, removal, diversion, alteration or protection of any apparatus, the construction of any alternative apparatus and the acquisition or grant of alternative rights for the alternative apparatus, arising as a result of the powers conferred upon the undertaker pursuant to this Order.

(2) The value of any apparatus removed under the provisions of this Part of this Schedule must be deducted from any sum payable under sub-paragraph (1), that value being calculated after removal.

(3) If in accordance with the provisions of this Part of this Schedule NGED requires that alternative apparatus of better type, of greater capacity, of greater dimensions or at a greater depth

is necessary in substitution for existing apparatus which for NGED's network requirements is over and above what is necessary as a consequence of and for the purpose of the authorised development, NGED shall reduce the cost of such additional requirements from the amount payable by the undertaker pursuant to sub-paragraph (1).

(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 authorised development; and

(b) where the provision of a joint in a cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole is to be treated as if it also had been agreed or had been so determined.

(5) An amount which apart from this sub-paragraph would be payable to a utility undertaker in respect of works by virtue of sub-paragraph (1), if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on the utility undertaker any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, is to be reduced by the amount which represents that benefit.

**286.**—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any specified work or any subsidence resulting from any of those works any damage is caused to any apparatus or alternative apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works) or property of NGED the undertaker is to—

(a) bear and pay the cost reasonably incurred by NGED in making good such damage or restoring the supply; and

(b) reimburse NGED for any other expenses, loss, damages, penalty or costs reasonably and properly incurred by NGED, by reason or in consequence of any such damage or interruption.

(2) Nothing in sub-paragraph (1) imposes any liability on the undertaker with respect to any damage or interruption to the extent that it is attributable to the act, neglect or default of NGED, its officers, servants, contractors or agents.

(3) NGED must give the undertaker reasonable notice of any 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.

(4) NGED must act reasonably in relation to any claim or demand served under sub-paragraph (1) and use its reasonable endeavours to mitigate and to minimise any costs, expenses, loss, claims, demands, proceedings and penalties to which a claim or demand under sub-paragraph (1) applies.

(5) NGED's liability to the undertaker for negligence or breach of contract in respect of each diversion shall be limited to the value of that diversion and NGED shall not otherwise be liable to the undertaker for any losses or costs incurred by the undertaker resulting from delays to the authorised development as a result of its failure to undertake works to deliver any alternative apparatus.

**Expert determination**

**287.**—(1) Article 43 (arbitration) shall apply to any difference as to the legal interpretation of this Part of this Schedule and as provided for in sub-paragraph (7).

(2) Save as provided for in sub-paragraph (1) or sub-paragraph (7) any difference under this Part of this Schedule must be referred to and settled by a single independent and suitable person who holds appropriate professional qualifications and is a member of a professional body relevant to the matter in dispute acting as an expert, such person to be agreed by the differing parties or, in the absence of agreement, identified by the President of the Institution of Civil Engineers or the

President of the Institution of RICS or the President of the Institution of Engineering and Technology (as relevant and agreed between NGED and the undertaker, both acting reasonably and without delay).

(3) All parties involved in settling any difference must use best endeavours to do so within 14 days from the date of a dispute first being notified in writing by one party to the other and in the absence of the difference being settled within that period the expert must be appointed within 21 days of the notification of the dispute.

(4) The costs and fees of the expert and the costs of NGED and the undertaker are payable by the parties in such proportions as the expert may determine. In the absence of such determination the costs and fees of the expert are payable equally by the parties who shall each bear their own costs.

(5) The expert must—

(a) invite the parties to make submissions to the expert in writing and copied to the other party to be received by the expert within 14 days of the expert's appointment;

(b) permit a party to comment on the submissions made by the other party within 7 days of receipt of the submission;

(c) issue a decision within 14 days of receipt of the submissions under paragraph (b); and

(d) give reasons for the decision.

(6) The expert must consider where relevant—

(a) the development outcome sought by the undertaker;

(b) the ability of the undertaker to achieve its outcome in a timely and cost-effective manner;

(c) the nature of the power sought to be exercised by the undertaker;

(d) the effectiveness, cost and reasonableness of proposals for mitigation arising from any party;

(e) NGED's service obligations and licence conditions; and

(f) any other important and relevant consideration.

(7) Any determination by the expert is final and binding, except in the case of manifest error in which case the difference that has been subject to expert determination may be referred to and settled by arbitration under article 43.

# PART 19

## FOR THE PROTECTION OF TRENT VALLEY INTERNAL DRAINAGE BOARD

**288.** The provisions of this Part of this Schedule have effect for the protection of Trent Valley Internal Drainage Board unless otherwise agreed in writing between the undertaker and Trent Valley Internal Drainage Board.

**289.** In this Part of this Schedule—

"authorised development" has the same meaning as in article 2(1) (interpretation) of this Order and (unless otherwise specified) for the purposes of this Part of this Schedule includes the operation and maintenance of the authorised development and the construction of any works authorised by this Part of this Schedule;

"construction" includes execution, placing, altering, replacing, relaying and removal, and "construct" and "constructed" is construed accordingly;

"drainage work" means any ordinary watercourse and any bank, wall, embankment or other structure, or any appliance constructed or used for land drainage or flood defence which are within the geographical drainage district of Trent Valley Internal Drainage Board and subject to their general supervision;

"ordinary watercourse" has the meaning given by section 72 (interpretation) of the Land Drainage Act 1991;

"plans" includes plans, sections, elevations, drawings, specifications and method statements;

"specified work" means so much of the authorised development as is in, on, under, over or within 9 metres of a drainage work or is otherwise likely to—

(a) affect any drainage work or the total volume or volumetric rate of flow of water in or flowing to or from any drainage work;

(b) affect the flow of water in any ordinary watercourse or other surface waters;

(c) restrict access to ordinary watercourses;

(d) restrict the ability of Trent Valley Internal Drainage Board to spread spoils arising from ordinary watercourses within 9 metres of the landward toe of either side of the banks of the watercourse;

(e) affect the conservation, distribution or use of water resources.

**290.**—(1) Before commencing construction of a specified work, the undertaker must submit to Trent Valley Internal Drainage Board for approval plans of the specified work and such further particulars available to it as the Trent Valley Internal Drainage Board may reasonably require within 28 days of the submission of the plans.

(2) A specified work must not be constructed except in accordance with such plans as may be approved in writing by Trent Valley Internal Drainage Board or determined under paragraph 296.

(3) Any approval of Trent Valley Internal Drainage Board 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 42 days of the submission of the plans for approval, or submission of further particulars (where required by Trent Valley Internal Drainage Board under sub-paragraph (1)) whichever is the later; and

(c) may be given subject to such reasonable requirements as Trent Valley Internal Drainage Board may make for the protection of any drainage work or for the prevention of flooding or pollution or discharge of its environmental functions.

(4) Any refusal under this paragraph must be accompanied by a statement of the reasons for refusal.

**291.** Without limiting the scope of paragraph 290, the requirements which Trent Valley Internal Drainage Board may make 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 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 beyond the level of flood risk that was assessed in the environmental statement, by reason of any specified work.

**292.**—(1) Subject to sub-paragraph (2), any specified work, and all protective works required by Trent Valley Internal Drainage Board under paragraph 291, 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;

(b) to the reasonable satisfaction of Trent Valley Internal Drainage Board; and

(c) an officer of Trent Valley Internal Drainage Board is entitled to watch and inspect the construction of such works.

(2) The undertaker must give to Trent Valley Internal Drainage Board—

(a) not less than 14 days' notice in writing of its intention to commence construction of any specified work and any protective work; and

(b) notice in writing of its completion not later than seven days after the date on which it is brought into use.

(3) If Trent Valley Internal Drainage Board reasonably requires, the undertaker must construct all or part of the protective works so that they are in place prior to the construction of the specified work to which the protective works relate.

(4) If any part of a specified work or any protective work required by Trent Valley Internal Drainage Board is constructed other than in accordance with the requirements of this Part of this Schedule, Trent Valley Internal Drainage Board 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 Trent Valley Internal Drainage Board 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 the reasonable satisfaction of Trent Valley Internal Drainage Board.

(5) Subject to sub-paragraph (6) and paragraph 296 if, within a reasonable period, being not less than 56 days beginning with the date when a notice under sub-paragraph (4) is served on the undertaker, the undertaker has failed to begin taking steps to comply with the requirements of the notice and has not subsequently made reasonably expeditious progress towards their implementation, Trent Valley Internal Drainage Board may execute the works specified in the notice and any expenditure reasonably incurred by Trent Valley Internal Drainage Board 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, Trent Valley Internal Drainage Board must not except in the case of an emergency exercise the powers conferred by sub-paragraph (5) until the dispute has been finally determined in accordance with paragraph 297.

**293.** If by reason of the construction of a specified work and any protective work or of the failure of any of a specified 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 Trent Valley Internal Drainage Board and, if the undertaker fails to do so, Trent Valley Internal Drainage Board may make good the impairment or damage and recover from the undertaker the expense reasonably incurred by it in doing so.

**294.** If by reason of construction of the specified work Trent Valley Internal Drainage Board's access to land drainage infrastructure, flood defences or equipment maintained for flood defence purposes is materially obstructed, the undertaker must provide such alternative means of access that will allow Trent Valley Internal Drainage Board to maintain the land drainage infrastructure, flood defence or use the equipment no less effectively than was possible before the obstruction within 24 hours of or as soon as reasonably practicable after the undertaker becoming aware of such obstruction.

**295.** The undertaker must indemnify Trent Valley Internal Drainage Board in respect of reasonable costs, charges and expenses which the relevant drainage authority may reasonably incur by reason of—

(a) the review, examination or approval of plans under this Part of this Schedule;

(b) the inspection of the proposed location of the specified work or any protective works and the construction of the specified work or any protective works required by Trent Valley Internal Drainage Board under this Part of this Schedule; and

(c) the carrying out of any surveys or tests by Trent Valley Internal Drainage Board which are reasonably required in connection with the construction of the specified works and any protective work.

**296.**—(1) Without limiting the other provisions of this Part of this Schedule, the undertaker must indemnify Trent Valley Internal Drainage Board in respect of all costs and losses, liabilities, proceedings, damages, expenses, claims and demands not otherwise provided for in this Schedule

which may be made or taken against, recovered from or incurred by Trent Valley Internal Drainage Board by reason of, or arising out of—

(a) any damage to any drainage work so as to impair its efficiency for the purposes of flood defence;

(b) any raising or lowering of the water table in land adjoining the authorised development or any sewers, drains and watercourse; or

(c) any flooding or increased flooding of any such land

that is caused by the construction, operation or maintenance of any specified works, the protective work or the failure of any such works comprised within them or by any act or omission of the undertaker, its employees, contractors or agents or others whilst engaged upon the construction, operation or maintenance of the specified works and protective works or dealing with any failure of the specified works and protective work.

(2) Trent Valley Internal Drainage Board must give to the undertaker reasonable notice of any such claim or demand.

(3) The undertaker may at its own expense conduct all negotiations for the settlement of the same and any litigation that may arise therefrom.

(4) Trent Valley Internal Drainage Board must not compromise or settle any such claim or make any admission which might be prejudicial to the claim without the agreement of the undertaker which agreement must not be unreasonably withheld or delayed.

(5) Trent Valley Internal Drainage Board will, having regard to its statutory functions, at all times take reasonable steps to prevent and mitigate any such claims, demands, proceedings, costs, damages, expenses or loss to which the indemnity under sub-paragraph (1) applies.

(6) Trent Valley Internal Drainage Board will, at the request of the undertaker and having regard to its statutory functions, afford all reasonable assistance for the purpose of contesting any such claim or action, and is to be repaid its reasonable costs and expenses incurred in so doing.

(7) The fact that any work or thing has been executed or done by the undertaker in accordance with a plan approved or deemed to be approved by Trent Valley Internal Drainage Board, or to its satisfaction, or in accordance with any directions or award of an arbitrator, does not relieve the undertaker from any liability under this Part of this Schedule.

(8) Nothing in sub-paragraph (1) imposes any liability on the undertaker with respect to any damage to the extent that it is attributable to the act, neglect or default of Trent Valley Internal Drainage Board or the breach of a statutory duty of Trent Valley Internal Drainage Board, its officers, servants, contractors or agents.

**297.** Any dispute arising between the undertaker and Trent Valley Internal Drainage Board under this Part of this Schedule, if the parties agree, is to be determined by arbitration under article 43 (arbitration).

# SCHEDULE 16

Article 46

# PROCEDURE FOR DISCHARGE OF REQUIREMENTS

**Interpretation**

**1.** In this Schedule—

"requirement consultee" means any body or authority named in a requirement as a body to be consulted by the relevant planning authority in discharging that requirement; and

"start date" means the date of the notification given by the Secretary of State under paragraph 4(2)(c).

**Applications made under requirement**

**2.**—(1) Where an application has been made to the relevant planning authority for any consent, agreement or approval required by a requirement, the undertaker must also submit a copy of that application to any requirement consultee.

(2) Where an application has been made to the relevant planning authority for any consent agreement or approval required by a requirement the relevant planning authority must give notice to the undertaker of its decision on the application within a period of ten weeks beginning with the later of—

(a) the day immediately following that on which the application is received by the authority;

(b) the day immediately following that on which further information has been supplied by the undertaker under paragraph 3; or

(c) such longer period that is agreed in writing by the undertaker and the relevant planning authority.

(3) Subject to paragraph 4, in the event that the relevant planning authority does not determine an application within the period set out in sub-paragraph (2), the relevant planning authority is to be taken to have granted all parts of the application (without any condition or qualification) at the end of that period.

(4) Any application made to the relevant planning authority pursuant to sub-paragraph (2) 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 relevant planning authority for any consent, agreement or approval required by a requirement included in this Order and the relevant planning authority does not determine the application within the period set out in sub-paragraph (2) and is accompanied by a report pursuant to sub-paragraph (4) 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.

**Further information and consultation**

**3.**—(1) In relation to any application to which this Schedule applies, the relevant planning authority may request such reasonable further information from the undertaker as is necessary to enable it to consider the application.

(2) In the event that the relevant planning authority considers such further information to be necessary and the provision governing or requiring the application does not specify that consultation with a requirement consultee is required, the relevant planning authority must, within 10 working days of receipt of the application, notify the undertaker in writing specifying the further information required.

(3) If the provision governing or requiring the application specifies that consultation with a requirement consultee is required, the relevant planning authority must issue the consultation to the requirement consultee within five working days of receipt of the application, and must notify the undertaker in writing specifying any further information the relevant planning authority considers necessary or that is requested by the requirement consultee within five working days of receipt of such a request and in any event within 15 working days of receipt of the application (or such other period as is agreed in writing between the undertaker and the relevant planning authority).

(4) In the event that the relevant planning authority does not give notification as specified in sub-paragraph (2) or (3) it is deemed to have sufficient information to consider the application and is not thereafter entitled to request further information without the prior agreement of the undertaker.

(5) Where further information is requested under this paragraph in relation to part only of an application, that part is to be treated as separate from the remainder of the application for the purposes of calculating time periods in paragraph 2 and paragraph 3.

**Appeals**

**4.**—(1) The undertaker may appeal in the event that—

(a) the relevant planning authority refuses an application for any consent, agreement or approval required by a requirement included in this Order or grants it subject to conditions;

(b) the relevant planning authority is deemed to have refused an application pursuant to paragraph 2(5);

(c) on receipt of a request for further information pursuant to paragraph 3 the undertaker considers that either the whole or part of the specified information requested by the relevant planning authority is not necessary for consideration of the application; or

(d) on receipt of any further information requested, the relevant planning authority notifies the undertaker that the information provided is inadequate and requests additional information which the undertaker considers is not necessary for consideration of the application.

(2) The steps to be followed in the appeal process are as follows—

(a) any appeal by the undertaker must be made within 42 days of the date of the notice of the decision or determination, or (where no determination has been made) the expiry of the time period set out in paragraph 2(2), giving rise to the appeal referred to in sub-paragraph (1);

(b) the undertaker must submit the appeal documentation to the Secretary of State and must on the same day provide copies of the appeal documentation to the relevant planning authority and any requirement consultee;

(c) the Secretary of State must appoint a person to determine the appeal as soon as reasonably practicable and must forthwith notify the appeal parties of the identity of the appointed person and the address to which all correspondence for the appointed person's attention should be sent;

(d) the relevant planning authority and any requirement consultee must submit written representations to the appointed person in respect of the appeal within 10 working days of the start date and must ensure that copies of their written representations are sent to each other and to the undertaker on the day on which they are submitted to the appointed person;

(e) the undertaker may make any counter-submissions to the appointed person within 10 working days of receipt of written representations pursuant to sub-paragraph (d);

(f) the appointed person must make their decision and notify it to the appeal parties, with reasons, as soon as reasonably practicable and in any event within 30 working days of the deadline for the receipt of counter-submissions pursuant to sub-paragraph (e); and

(g) the appointment of the person pursuant to sub-paragraph (c) may be undertaken by a person appointed by the Secretary of State for this purpose instead of by the Secretary of State.

(3) In the event that the appointed person considers that further information is necessary to enable the appointed person to consider the appeal they must, within five working days of the appointed person's appointment, notify the appeal parties in writing specifying the further information required.

(4) Any further information required pursuant to sub-paragraph (3) must be provided by the relevant party to the appointed person and the other appeal parties on the date specified by the appointed person (the "specified date"), and the appointed person must notify the appeal parties of the revised timetable for the appeal on or before that day. The revised timetable for the appeal must require submission of written representations to the appointed person within 10 working days

of the specified date, but otherwise the process and time limits set out in sub-paragraphs (d) to (f) of sub-paragraph (2) apply.

(5) The appointed person may—

(a) allow or dismiss the appeal; or

(b) reverse or vary any part of the decision of the relevant planning authority (whether the appeal relates to that part of it or not),

and may deal with the application as if it had been made to them in the first instance.

(6) The appointed person may proceed to a decision on an appeal taking into account only such written representations as have been sent within the relevant time limits and in the sole discretion of the appointed person such written representations as have been sent outside of the relevant time limits.

(7) The appointed person may proceed to a decision even though no written representations have been made within the relevant time limits, if it appears to them that there is sufficient material to enable a decision to be made on the merits of the case.

(8) The decision of the appointed person on an appeal is to be final and binding on the parties, unless proceedings are brought by a claim for judicial review.

(9) If an approval is given by the appointed person pursuant to this Schedule, it is to be deemed to be an approval for the purpose of Schedule 2 (requirements) as if it had been given by the relevant planning authority. The relevant planning authority may confirm any determination given by the appointed person in identical form in writing but a failure to give such confirmation (or a failure to give it in identical form) is not to be taken to affect or invalidate the effect of the appointed person's determination.

(10) Save where a direction is given pursuant to sub-paragraph (11) requiring the costs of the appointed person to be paid by the relevant planning authority, the reasonable costs of the appointed person must be met by the undertaker.

(11) On application by the relevant planning authority or the undertaker, the appointed person may give directions as to the costs of the appeal parties and as to the parties by whom the costs of the appeal are to be paid. In considering whether to make any such direction and the terms on which it is to be made, the appointed person must have regard to advice on planning appeals and award costs published in Planning Practice Guidance: Appeals (March 2014) or any circular or guidance which may from time to time replace it.

**Fees**

**5.**—(1) Where an application is made to the relevant planning authority for a discharge, a fee is to apply and must be paid to the relevant planning authority for each application as follows—

| *Application* | *Fee payable* |
|---|---|
| First application for the discharge of each of the requirements 5 *(Detailed design approval)*, 6 (*Battery safety management)*, 7 (*Landscape and ecological management plan)*, 8 (*Biodiversity net gain)*, 10 *(Surface and foul water drainage)*, 12 (*Construction environmental management plan*), 13 *(Operational environmental management plan)*, 14 *(Waste management plan)* 15 *(Construction traffic management plan*), 17 (*Public rights of way*), 19 *(Soils management)*, and 21 (*Decommissioning and restoration)*. | £2,535 |
| Each subsequent application for the discharge of each of the requirements listed in Row 1. | £578 |
| Any application under requirement 5 *(Detailed design approval)* in respect of the requirements | £578 |

| | |
|---|---|
| listed in Row 1. | |
| Any application for the discharge of any other requirements not listed in Row 1. | £145 |
| Any application under requirement 3 *(Approved details and amendments to them)* in respect of requirements not listed in not listed in Row 1. | £145 |
| Any approval required by a document referred to by any requirement or a document approved pursuant to any requirement. | £145 |

(2) Where an application under sub-paragraph (1) is made and a fee payable on or after 1 April 2025, then section 18A of the Town and Country Planning (Fees for Applications, Deemed Applications, Requests and Site Visits) (England) Regulations 2012 (as amended by the Town and Country Planning (Fees for Applications, Deemed Applications, Requests and Site Visits (England) Amendment Regulations 2023) will apply as modified by this Order, so that "the relevant amount" means the fee payable under this sub paragraph (2)(a), 2(b) or 2(c) above.

(3) Any fee paid under this Schedule must be refunded to the undertaker within four weeks of—

(a) the application being rejected as invalidly made; or

(b) the relevant planning authority failing to determine the application within the relevant period in paragraph 2(2) unless—

(i) within that period the undertaker agrees, in writing, that the fee is to be retained by the relevant planning authority and credited in respect of a future application; or

(ii) a longer period of time for determining the application has been agreed pursuant to paragraph 2(2) of this Schedule, as applicable.

## EXPLANATORY NOTE

*(This note is not part of the Order)*

This Order authorises Tillbridge Solar Limited (referred to in this Order as the undertaker) to construct, operate, maintain and decommission a ground mounted solar photovoltaic generating station with a gross electrical output capacity over 50 megawatts and associated development. The Order would permit the undertaker to acquire, compulsorily or by agreement, land and rights in land and to use land for this purpose.

A copy of the Order plans and the book of reference mentioned in the Order and certified in accordance with article 41 (certification of plans and documents, etc) of this Order may be inspected free of charge during working hours at [x].

The Planning Inspectorate **ERRATA SHEET – Tillbridge Solar Project Ref. EN010142**

**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 14 July 2025.**

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

| PDF Page No. | Para | Error | Correction |
|---|---|---|---|
| 9 | 1.4.13 | The following OFHs were held:<br>•<br>OFH1 on 16 October 2025 [EV1-002]. | Should say '16 October 2024' |
| 28 | 3.3.8 | Paragraph 4.6.1 advises that the SoS should give appropriate weight to environmental and biodiversity net gain. | Incorrect reference to NPS EN-1. The correct reference is paragraph 4.6.3 with the "Secretary of State decision making" section. |
| 33 | 3.3.33 | Prior to construction commencing walkover surveys will be undertaken to comply with relevant wildlife legislation and ensure reasonable avoidance measures can be implemented to avoid disturbance to any extant badger or bat species. | Missing paragraph number. |
| 53 | 3.5.64 | Nonetheless, we disagree with LCCs conclusion that substantial harm could arise for the reasons outlined in paragraph 3.5.64 above. | Nonetheless, we disagree with LCC's conclusion that substantial harm could arise for the reasons outlined in paragraph 3.5.64 above. |

| | | | |
|---|---|---|---|
| 53 | 3.5.64 | Nonetheless, we disagree with LCCs conclusion that substantial harm could arise for the reasons outlined in paragraph 3.5.64 above. | Incorrect reference to paragraph. This should refer to paragraph 3.5.58. |
| 109 | 3.10.2 | Paragraph 5.11.2 states that applicants should also identify any effects and seek to minimise impacts on soil health and protect and improve soil quality taking into account any mitigation measures proposed. | Incorrect reference to NPS EN-1. The correct reference is 5.11.12. |
| 117 | 3.10.69 | The reversibility of this development and the temporary, all be it long term, nature of the development does mean the existing situation could be restored should it be needed in the future. | The reversibility of this development and the temporary, albeit long term, nature of the development does mean the existing situation could be restored should it be needed in the future. |
| 118 | 3.10.69 | Overall, we consider there is no robust evidence that the temporary loss of around 111 ha of BMV land and 1218 ha of grade 3b agricultural land would have any material impact on the UKs food security. | Overall, we consider there is no robust evidence that the temporary loss of around 111 ha of BMV land and 1218 ha of grade 3b agricultural land would have any material impact on the UK's food security. |
| 118 | 3.10.69 | The ALC of the CRC has yet to be established. The works proposed in the CRC will not materially affect the ALC as the upper soils will be carefully, removed and replaced on completion of the works. | The comma included is not required. |
| 146 | 3.13.73 | Assuming decommissioning of all of the identified cumulative developments occurs over | The number '4' at end of the sentence is not required. |

| | | | |
|---|---|---|---|
| | | a single five-year period, waste from the cumulative developments would equate to approximately 4.5% of construction and demolition (C and D) waste arisings in the East Midlands, and 11.2% of C and D waste arisings in Lincolnshire and Nottinghamshire. 4 | |
| 183 | 6.7.28 | LCC advised via the LIR [REP1A-001] that any works proposed on the highway need to follow the Council's PermittingCouncils permitting proposed development procedures as is the case for any SU. | LCC advised via the LIR [REP1A-001] that any works proposed on the highway need to follow the Council's ~~PermittingCouncils permitting proposed development~~ procedures as is the case for any SU. |
| 185 | 6.7.46 | We see no reason not to permit the proposed TP with permanent rights sought to work on the numerous plots of land that 20-06 and 20-11 that the Canal & River Trust has an interest and rights within. | We see no reason not to permit the proposed TP with permanent rights sought to work on the numerous plots of land that ~~20-06 and 20-11 that~~ the Canal & River Trust has an interest and rights within. |
| 191 | 7.2.17 | R5 secures detailed design approval of all elements including their layout, scale and external appearance such that Work Nos 1, 2, 3 or 4 may not commence until the details are submitted and approved by the relevant planning authority. | The paragraph has no number. |
| 196 | 8.2.6 | Regarding the land rights required to implement the proposed development, and subject to the | Regarding the land rights required to implement the proposed development, and subject to the resolution and |

| | | | |
|---|---|---|---|
| | | resolution and consent of the Crown. We find that: | consent of the Crown, we find that: |