The Planning Inspectorate

The Planning Act 2008

East Yorkshire Solar Farm

Examining Authority Report
of Findings and Conclusions and
Recommendation to the Secretary of State for
Energy Security and Net Zero

Examining Authority

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17 February 2025

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OVERVIEW

The application, dated 21 November 2023, was made under section 37 of the Planning Act 2008 (as amended) and was received in full by the Planning Inspectorate on 21 November 2023.

The Applicant is East Yorkshire Solar Farm Limited.

The application was accepted for Examination on 19 December 2023.

The Examination of the application began on 22 May 2024 and was completed on 21 November 2024.

The Proposed Development would comprise the construction, operation (including maintenance) and decommissioning of ground mounted solar photovoltaic (PV) panel arrays which will generate electrical energy from the sun. The Proposed Development includes underground cabling to connect to the national electricity transmission network at National Grid's Drax Substation; underground cabling between the areas of solar PV panels; areas of landscaping and biodiversity enhancement; and other associated development.

Summary of Recommendation:

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

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The Planning Inspectorate

ERRATA SHEET – East Yorkshire Solar Farm Ref. EN010143

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 09 May 2025

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

Vol	PDF Page No.	Para	Error	Correction
	55	ER 3.5.34	wouldl	Change to would
	56	ER 3.5.35	"s"	Remove the letter "s" as not needed in sentence
	102	ER 3.9.62	BMVLand	A space between "BMVL" & "and"
	122	ER 3.12.28	Industrializatio n	Change to "industrialisation" (British spelling"
	125	ER 3.12.46	NPS EN-1,paragraphs	Insert space after comma before "paragraphs"
	125	ER 3.12.46	4.4.8,	Change comma to full stop
	157	ER 5.2.2	Missing full stop at end of sentence	Insert full stop at end of sentence.

1. INTRODUCTION

1.1. BACKGROUND TO THE EXAMINATION

1.1.1. An application (the Application) for East Yorkshire Solar Farm (the Proposed Development), Planning Inspectorate (the Inspectorate) reference EN010143, was submitted by East Yorkshire Solar Farm Limited (the Applicant) on 21 November 2023 under section 37 of the Planning Act 2008 (PA2008) and accepted for Examination under s55 of the PA2008 on 19 December 2023. 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).

1.1.2. The legislative tests for 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 its decision to accept the Application for Examination in accordance with s55 of the PA2008.

1.1.3. The Proposed Development is a generating station and falls within s14(1) of PA2008 and meets the definition of an NSIP set out in s15(2) of the PA2008. As such, the Proposed Development requires development consent in accordance with s31 of PA2008.

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

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

1.2. APPOINTMENT OF THE EXAMINING AUTHORITY

1.2.1. On 12 January 2024, Simon Warder was appointed as the single member ExA for the Application under ss61 and 79 of PA2008.

1.3. THE APPLICATION

Site Location and Context

1.3.1. The location of the Proposed Development is shown in the Scheme Location Plan [APP-133] (extract shown in Figure 1 below) and the final versions of the Land Plans [AS-004]. The site lies within the administrative areas of East Riding of Yorkshire Council (ERYC) and North Yorkshire Council (NYC) and is wholly in England.

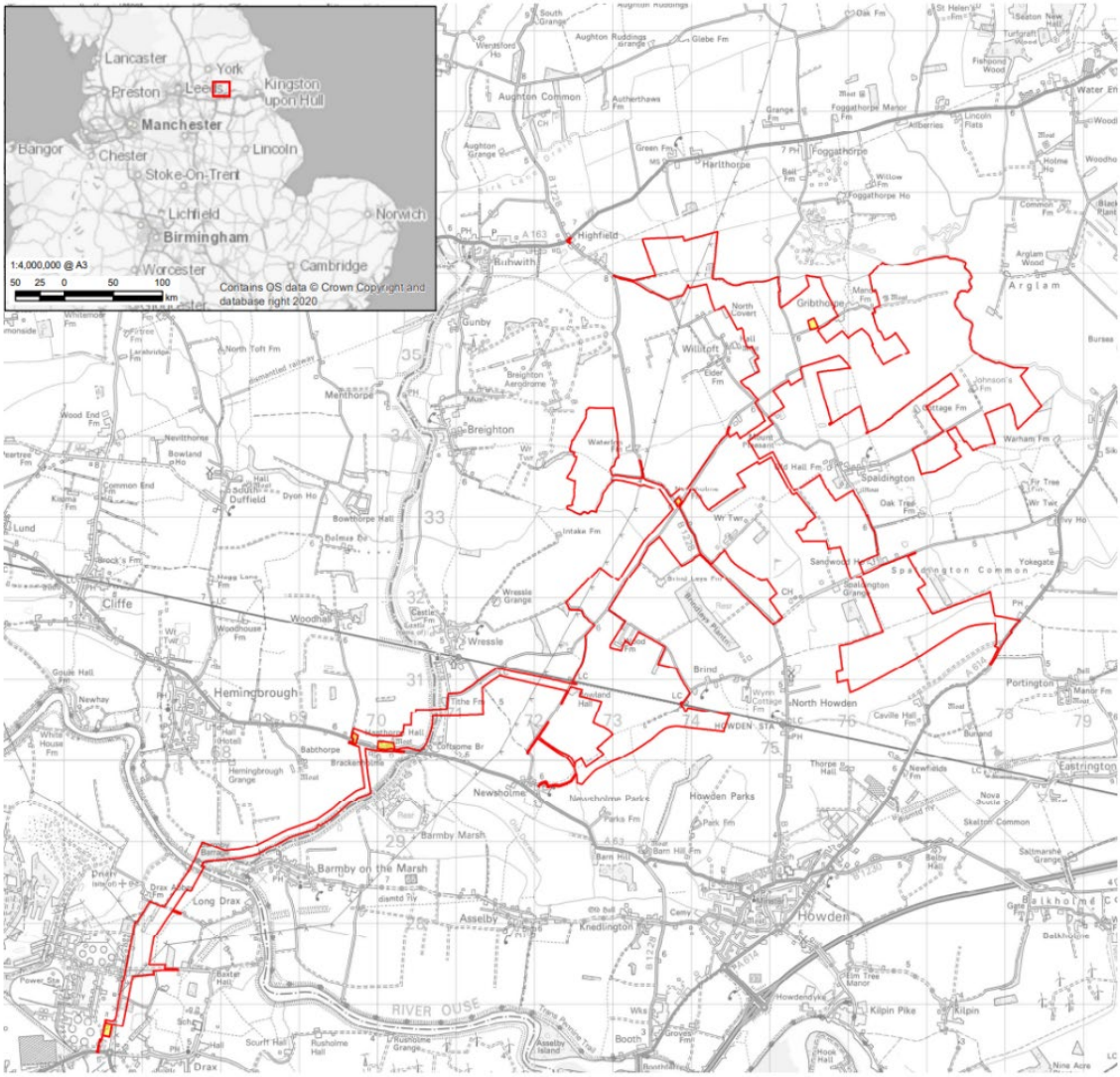

Figure 1 Location Plan (extract from ES Figure 1-1)

1.3.2. Environmental Statement (ES) Chapter 2: The Scheme [APP-054] and the Planning Statement [APP-233] describe the characteristics of the site and the surrounding area which can be summarised as:

- Order Limits extending to approximately 1276 hectares (ha) including 16 solar Photo-voltaic (PV) areas, the Interconnection Cable Corridor (ICC), Grid Connection Corridor (GCC) and Ecology Mitigation Area (EMA). The GCC would be mainly within the NYC area. The remainder of the Proposed Development would be mainly within the ERYC area;
- the topography of the site and surrounding area is generally flat. The solar PV area, EMA and ICC areas are largely agricultural fields under arable production, with some areas of pasture and willow coppice. These fields are separated by individual trees, hedgerows, tree belts, small woodland blocks and farm access tracks. Drainage ditches and small watercourses are prevalent and characteristic of local agricultural and drainage practices. The Rivers Ouse and Derwent cross the GCC and the River Foulness runs to the east of the EMA;

- built development includes the dilapidated Johnson Farm complex on the eastern part of the site, overhead powerlines across two of the western solar PV areas and agricultural access tracks. The area is served by a network of mainly Class B and Class C public highways, although the A63 crosses the GCC and the A614 skirts the south-east of the solar PV site. A network of largely unsurfaced public rights of way (PRoWs) crosses the site and surrounding area. A railway line runs east-west towards the south of the solar PV site and across the GCC;
- there are a number of small settlements in the vicinity of the Order Limits including Gribthorpe, Willitoft, Spaldington, Brind, Wressle and Barmby on the Marsh, as well as individual and small groups of dwellings. The former Spaldington airfield industrial area accommodates a five turbine wind farm and an anaerobic digestion plant. The larger town of Howden lies to the south and the Drax power station complex, including the National Grid sub-station, is to the south-west;
- there are no statutory or non-statutory nature conservation designations within the solar PV area. There are two non-statutory Local Wildlife Sites within the ICC and another within the GCC. The GCC also crosses a number of nationally and internationally designated nature conservation sites. There are no designated heritage assets within the Order Limits.

Planning History

1.3.3. There are no allocations for residential development, employment development or for minerals and waste development within the solar PV site, EMA, ICC or GCC. Nor has evidence been presented of planning consents for other forms of development within the Order Limits which could be relevant to the Examination. There are no large-scale solar developments either consented or built in the vicinity of the Order Limits. The cumulative effect of large-scale solar farms further afield and other larger developments is dealt with in Chapter 3 of this report.

1.3.4. Small scale solar development has been approved at local farms or businesses in Holme on Spalding Moor, Howden, Spaldington and Brind. With the exception of the Spaldington solar farm, nothing arose during the Examination to suggest that the Proposed development would result in significant cumulative effects with these solar farms. The interaction of the Proposed Development with the Spaldington solar farm, and with the nearby anaerobic digestion plant, is considered in Chapter 3 of this report.

Description of the Proposed Development

1.3.5. The Proposed Development is the construction, operation and decommissioning of a solar PV electricity generating facility and export connection to the national grid, at National Grid's Drax Substation. The design life of the Scheme is 40 years, with decommissioning to commence 40 years after final commissioning. The solar PV panels would be mounted as single axis tracker (SAT) units. No battery storage is proposed and the export connection to the national grid is subject to a 400MW peak cap.

1.3.6. The Proposed Development works comprise:

- Work No 1 - a ground mounted solar PV generating station with a gross electrical output capacity of over 50MW;
- Work No 2 - development of on-site substations and associated works;
- Work No 3 - works to lay 132KV electrical cables connecting Work No2 to the Drax sub-station and compounds for the electrical cables;

- Work No 4 - works including electrical cables connecting Work Nos 1, 2 and 3 to one another and interconnecting cables, landscaping and biodiversity mitigation measures, earthworks, temporary footpath diversions, permissive footpaths and associated signage, hardstanding and parking areas, sustainable drainage systems (SUDs), means of enclosure, security equipment including closed circuit television (CCTV), works to existing private tracks, new internal tracks and accesses including watercourse crossings, construction and decommissioning compounds and works to existing overhead electricity lines;
- Work No 5 - construction and decommissioning compounds;
- Work No 6 - works to develop operations and maintenance buildings;
- Work No 7 - works to facilitate access to Work No 1 to 8; and
- Work No 8 – areas of habitat management.

1.3.7. Further details of the proposal for each Work can be found in Schedule 1 of the draft Development Consent Order (dDCO) [REP8-001]. This schedule specifies further associated development in connection with Work Nos 1 to 8. Much of this is of a similar nature to Work No 4, but also includes works to electrical, gas, water, foul water drainage and telecommunications infrastructure, works to non-navigable rivers, streams or watercourses and existing irrigation, surface water drainage works and tunnelling, boring and drilling works.

1.3.8. The illustrative layout is shown below in Figure 2.

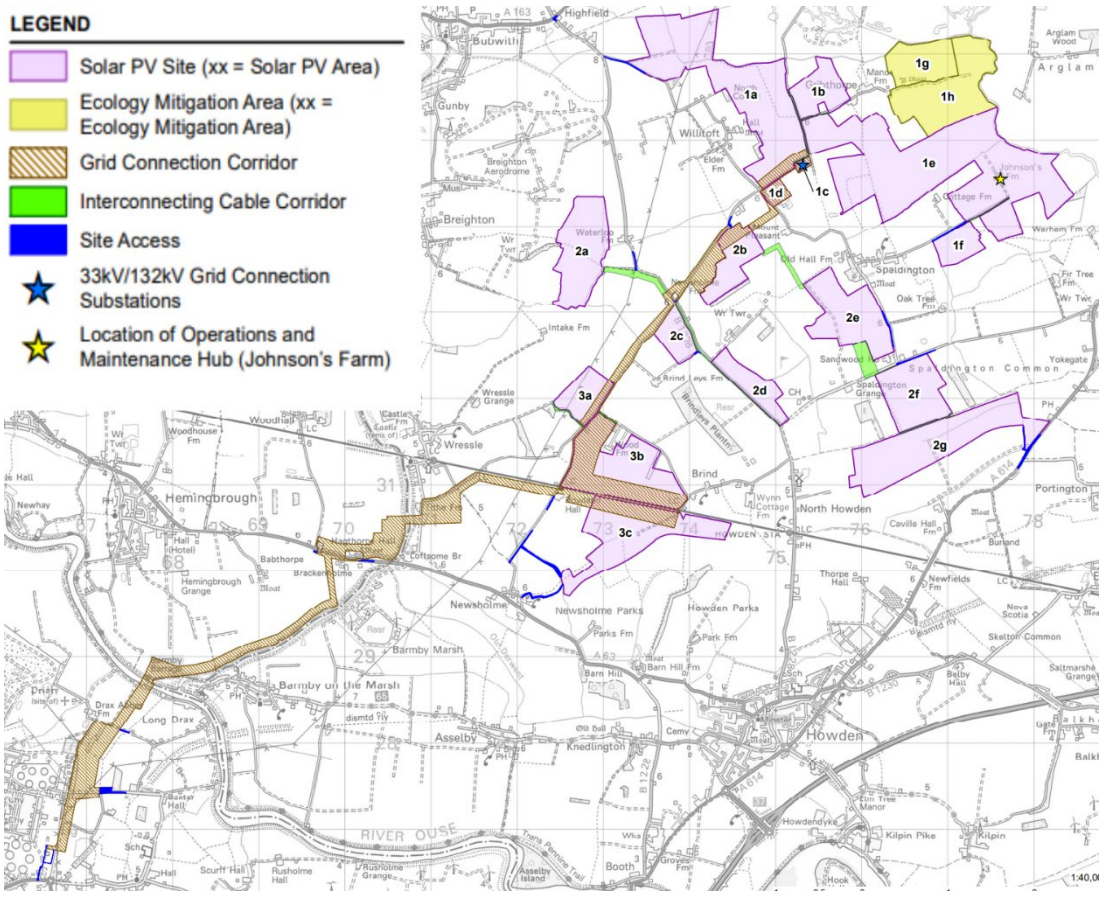

Figure 2 Elements of the scheme (extract from ES Figure 1-3)

1.3.9. Chapter 2 of the ES provides photographs of examples of some of the scheme components. An indicative layout of the Grid Connection compound which includes two substations are shown below.

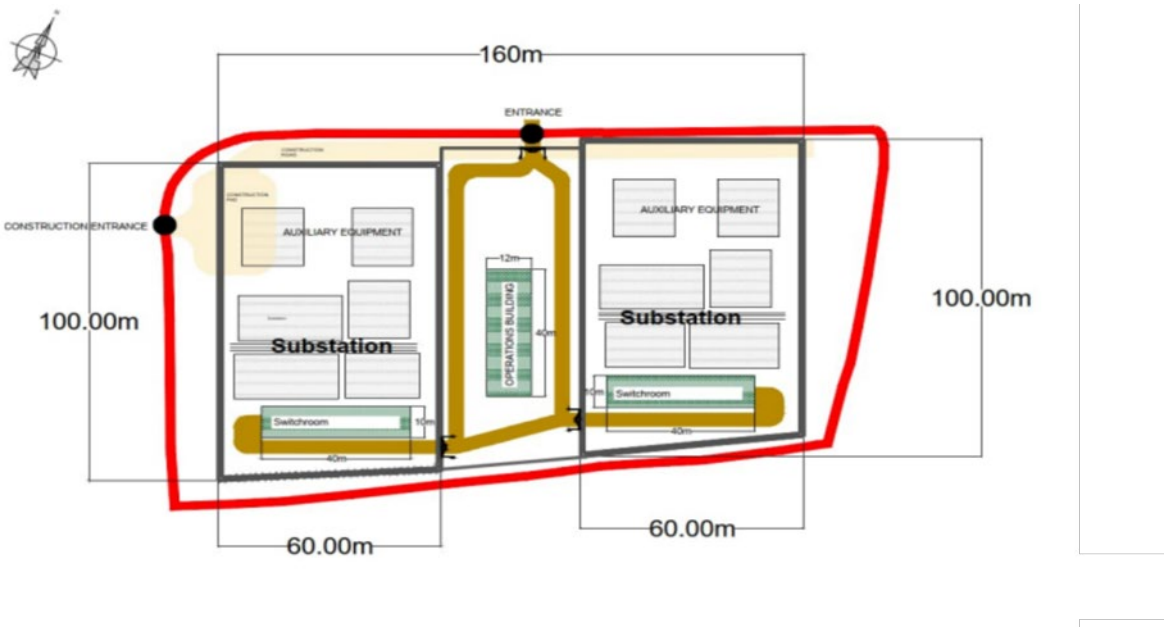

Figure 3 Grid connection substation compound (extract from ES Chapter 2)

1.4. THE EXAMINATION

Local Authorities

1.4.1. The solar PV areas, EMA, ICC and part of the GCC fall within the administrative area of the ERYC. The southern part of the GCC, including the connection to the Drax substation, falls within the NYC area. Both are unitary authorities. NYC was formed on 1 April 2023 by the merger of North Yorkshire County Council and its six constituent District Councils. Prior to that merger the southern part of the GCC fell within the areas of Selby District Council and North Yorkshire County Council.

Relevant Representations

1.4.2. A total of 377 Relevant Representations (RRs) [RR Library] were submitted including statutory consultees, local planning authorities, parish councils, non-statutory organisations and persons with an interest in the land as well as members of the public. The great majority of the RRs of persons with an interest in the land and members of the public oppose the scheme, although 18 do express support. The Applicant's responses, including summaries of the RRs, can be found at [REP1-066]. National Grid Electricity Transmission Plc [REP6-025] and Northern Powergrid (Yorkshire) Plc [REP6-026] withdrew their objections before the close of the Examination.

1.4.3. All RRs have been considered by the ExA. The main issues that they raise are considered in the relevant topic specific sections of this report. However, the following themes attracted a particularly large number of RRs:

- the solar PV panels should be in an alternative brownfield or rooftop location;
- impact on wildlife, with frequent references to deer and ground nesting birds;
- increased flood risk;

- impact on the landscape, the proposal would 'industrialise' the landscape';
- the proposal is too large for its rural location;
- the area already accommodates significant energy-related development;
- visual impact on residential property, the panels would be too close;
- noise impact on residential property;
- impact on farming and food production;
- disruption of, and damage to, local roads; and
- increased risk of crime.

Start of the Examination

1.4.4. The Preliminary Meeting (PM) took place on 21 May 2024. The Rule 6 letter [PD-002] includes the agenda, Procedural Decisions (PD) and introductory information. A recording of the PM is available at [EV1-001] and a note at [EV1-003]. The ExA's further PDs and the Examination Timetable took full account of matters raised at the PM. They were provided in the Rule 8 letter dated 28 May 2024 [PD-003].

1.4.5. The Examination began on 21 May 2024 and concluded on 21 November 2024. The principal components of, and events, in the Examination can be seen in the Examination Timetable annexed to the Rule 8 letter and are summarised below. Tag Energy UK Ltd asked to join the Examination and notification that it became an interested party was given on 23 July 2024 [PD-007].

Procedural Decisions and Notifications

1.4.6. The PDs taken and notifications made by the ExA are recorded in the EL and are referenced [PD-002, PD-003, PD-005, PD-006 and PD-007. They detail my decisions relating to the procedure of the Examination and did not bear on my consideration of the planning merits of the Proposed Development. All were broadly discharged as intended and no further reference is made to them in this report.

Statements of Common Ground

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

- East Riding of Yorkshire Council;
- North Yorkshire Council;
- Environment Agency;
- Forestry Commission;
- Historic England;
- National Highways;
- Natural England;
- Canal and River Trust;
- National Gas Transmission Plc;
- Network Rail Infrastructure Ltd;
- Northern Powergrid (Yorkshire) Plc;
- Ouse & Derwent Internal Drainage Board; and

- UK Health Security Agency/Office for Health Improvement and Disparities.

1.4.8. There were no SoCGs unsigned at the end of the Examination. The signed SoCGs have been fully taken into account by the ExA in all relevant sections of this report.

Written Questions

1.4.9. I asked three rounds of written questions:

- ExQ1 dated 28 May 2024 [PD-004];
- ExQ2 dated 1 August 2024 [PD-008]; and
- ExQ3 dated 15 October 2024 [PD-010].

Site Inspections

1.4.10. I carried out an Unaccompanied Site Inspection (USI) on 29 and 30 April 2024. A note of the USI appears at [EV8-001].

1.4.11. Notice was given to the parties on 18 June 2024 of an Accompanied Site Inspection (ASI) [PD-006] and the itinerary was published on 2 July 2024 [EV3-001]. The ASI took place on 11 July 2024.

Hearings

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

1.4.13. The following ISHs were held:

- ISH1 on the draft Development Consent Order on 21 May 2024. The agenda is at [EV2-005] and a recording is available at [EV2-001 and EV2-003]; and
- ISH2 on environmental matters on 10 July 2024. The agenda is at [PD-005] and a recording is available at [EV7-001, EV7-003 and EV7-005].

1.4.14. A CAH was held on 9 July 2024. The agenda is at [PD-005] and a recording is available at [EV5-001]. An OFH was held on 9 July 2024. The agenda is at [PD-005] and a recording is available at [EV6-001].

1.5. CHANGES TO THE APPLICATION

1.5.1. Changes to the key application documents, including the wording of the dDCO, were submitted and updated during the Examination. The changes sought to address points raised by Interested Parties (IP) and the ExA and to update or provide additional information resulting from changes and discussions that had occurred during the Examination. No formal change requests were made by the Applicant.

1.5.2. The Applicant's changes to the Application documents, together with any additional information submitted, are detailed in the Application Guide submitted at Deadline (D)8 [REP8-003]. 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 by the Applicant.

1.6. UNDERTAKINGS, OBLIGATIONS AND AGREEMENTS

1.6.1. By the end of the Examination, the Applicant had entered into the following agreements and obligations:

- Electricity Generation Licence granted by the Office of Gas and Electricity Markets on 12 September 2022;
- Bilateral Connection Agreement to connect to the National Grid substation at Drax Power Station. The Applicant entered into this agreement jointly with the independent distribution network operator Eclipse Power Networks Ltd in April 2022. The terms of the agreement and the role of Eclipse was explored during the Examination and is considered in Chapter 6 of this report;
- Great Crested Newt District Level Licensing Impact Assessment and Conservation Payment Certificate from Natural England dated 21 November 2023; and
- Option Agreement with Network Rail relating to a grant of an easement to the Applicant was completed on 16 April 2024.

1.6.2. These undertakings, obligations and agreements have been fully taken into account by the ExA in all relevant sections of this report. No agreements under s106 of the Town and Country Planning Act 1990 or other unilateral undertakings were submitted to the Examination.

1.7. OTHER CONSENTS

1.7.1. In addition to the consents required under the PA2008, the Applicant may require other consents to construct, operate and maintain the Proposed Development. These would be obtained after the DCO is made. The Applicant's Consents and Positions Statement [APP-020] refers to:

- a water abstraction or impoundment licence and a water discharge activity environmental permit from the Environment Agency (EA);
- a permit for the transport of abnormal loads from the Department for Transport, National Highways, Local Highway Authority or the police and bridge owners as appropriate;
- a consent for control of noise on construction sites under s61 of the Control of Pollution Act 1974 from the relevant local authority; and
- health and safety related consents from the Health and Safety Executive.

1.7.2. In addition, the Applicant has signalled its willingness [REP3-035] to enter into a s278 agreement with the local highway authority under the Highways Act 1980 to deal with works affecting the public highway. I deal with the issue of Crown consent in Section 7.6 of this report.

1.8. STRUCTURE OF THIS REPORT

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

- **Chapter 2** identifies how the application is to be determined and summarises the key legislation and policy context that applies to the decision;
- **Chapter 3** sets out the findings and conclusions in relation to the individual planning issues that arose from the Application and during the Examination;
- **Chapter 4** is a review of the Habitats Regulations Assessment;

- **Chapter 5** sets out the balance of planning considerations arising from Chapters 2, 3 and 4 in the light of important and relevant factual, legal and policy; considerations.
- **Chapter 6** sets out the ExA's Examination of Compulsory Acquisition and related; matters.
- **Chapter 7** reviews the Applications dDCO and related issues arising during the Examination and
- **Chapter 8** summarises all relevant considerations and sets out the ExA's recommendation to the SoS.
- This report is supported by the following appendices:
- **Appendix A** – Reference Tables;
- **Appendix B** – List of Abbreviations; and
- **Appendix C** – The Recommended DCO.

2. HOW THE APPLICATION WAS DETERMINED

2.1. INTRODUCTION

2.1.1. This chapter identifies the key legislation, policy and Local Impact Reports (LIRs) against which my recommendations are made.

2.2. LEGISLATION AND POLICY

2.2.1. This section identifies the key legislation and policy that I consider to be important and relevant to my findings and recommendations to the SoS. A more detailed review of the policies is provided in Appendix A of this report.

Planning Act 2008

2.2.2. The application is a Nationally Significant Infrastructure Project (NSIP) under the Planning Act 2008 (PA2008) as a consequence of sections 14 and 15. It includes the construction or extension of a generating station in England, not generating electricity from wind and is not an offshore generating station, but has a capacity of more than 50MW.

2.2.3. The PA2008 provides a different basis for decision-making for NSIP applications where a relevant National Policy Statement (NPS) (s104) has effect and that where no NPS has effect (s105).

2.2.4. NPSs for energy infrastructure, including Overarching NPS for Energy EN-1 and NPS for Renewable Energy Infrastructure EN-3, were designated in 2011. While solar farms are not within their scope, they are both important and relevant considerations in the determination of this application. Revised NPSs for energy infrastructure including NPSs EN-1 and EN-3 were designated in January 2024. Although solar farms fall within the scope of the revised NPSs, the SoS has decided that for any application accepted for Examination before the 2024 designations, the 2011 suite of NPSs should have effect in accordance with the terms of those NPSs. Nevertheless, the 2024 designations are important and relevant considerations in the determination of this application.

2.2.5. Where an NSIP is not within the scope of an NPS, as is the case here, s105 of the PA2008 applies. It requires regard to be had to the following matters:

- any duly submitted Local Impact Report;
- any matters prescribed in relation to development of the description to which the application relates; and
- any other matters which the SoS thinks are both important and relevant to the SoS's decision.

2.2.6. This report sets out my findings, conclusions and recommendations taking these matters into account and applying s105 of the PA2008.

Other Legislation

2.2.7. 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 Table A1 of Appendix A of this report. All applicable legislation has been considered by the ExA as required and the

findings and recommendations in this report are framed so as to identify and enable the SoS to discharge all applicable statutory considerations or duties.

2.3. NATIONAL POLICY STATEMENTS

2.3.1. NPSs set out government policy on different types of national infrastructure development. NPS EN-1 (overarching NPS for energy) and NPS EN-3 (renewable energy infrastructure) form the primary policy context for this Examination and are both important and relevant in this case. NPS EN-5 (electricity networks) is also relevant since it applies to underground cables. At the time the Application was made, the 2011 versions of these NSIPs were in force. Revised versions were published in 2024. The parties were given the opportunity to comment on the implications of the revised versions [PD-004, REP1-081, REP1-088, REP2-021]. Notwithstanding that the Application remains to be considered under s105 of PA2008, the 2024 versions of the NPSs provide the most up to date expression of government policy relevant to the determination of the Application. Therefore, unless otherwise stated, references to NPSs EN-1, EN-3 and EN-5 in this report are to the 2024 versions.

2.3.2. The purpose and broad content of these NPSs is summarised here. Specific provisions of the NPSs are considered as they relate to topic areas in Chapter 3 of this report.

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

2.3.3. NPS EN-1 sets out general principles and generic impacts to be taken into account in considering applications for energy NSIPs. All other energy NPSs sit within the policy framework provided by this NPS. It provides the primary basis for determining if development consent should be granted for energy development.

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

2.3.4. The 2024 version of this NPS brought into its scope for the first time solar photovoltaic (PV) schemes with a capacity of more than 50MW. It is concerned with impacts and other matters which are specific to, among other forms of renewable generation, solar PV, including site selection, climate change adaptation and resilience, good design and flexibility in project details.

2.3.5. The NPS also covers situations where the impact or issue is generic and dealt with in NPS EN-1 but there are further specific considerations arising from the technologies covered. Considerations in the case of solar PV include site location factors, site capacity, site layout, design and appearance, project lifetime and decommissioning as well as environmental impacts.

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

2.3.6. NPS EN-5 details the assessment criteria specific to electricity networks development. This includes factors influencing site selection and design, biodiversity and geological conservation, landscape and visual, noise and vibration, Electric and Magnetic Fields and Sulphur Hexafluoride.

2.4. OTHER RELEVANT NATIONAL POLICIES

2.4.1. Other relevant government policy has been taken into account in this report, including the following:

- National Planning Policy Framework (December 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);
- 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); and
- Powering Up Britain (2023).

2.4.2. Table A2 in Appendix A provides further detail on the relevance of each of the above policies to the Proposed Development. These policies are also discussed where relevant in Section 3.2 'The Principle of Development'.

2.5. LOCAL IMPACT REPORTS

2.5.1. LIRs were submitted into the Examination at Deadline 2 by East Riding of Yorkshire Council (ERYC) [REP2-022] and North Yorkshire Council (NYC) [REP2-023]. LIR content has been considered through the Examination and in this report. They must be considered during the decision by the SoS pursuant to PA2008 s105(2)(a).

2.5.2. The issues raised are considered in further detail in relation to relevant planning issues in Chapter 3 of this report. Table A3 in Appendix A sets out a list of the issues raised in each LIR.

2.5.3. Among other matters, LIRs identify local policies (including those from the Development Plan) which are capable of being important and relevant considerations under s105(2)(c) of the PA2008. Table A4 in Appendix A lists the individual local policies that are relevant to the Proposed Development.

2.6. ENVIRONMENTAL IMPACT ASSESSMENT

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

2.6.2. The Applicant submitted a Scoping Report [APP-073] on 9 September 2022 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). The Planning Inspectorate provided a Scoping Opinion on 20 October 2022 [APP-074].

2.6.3. Overall, I 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. Changes to the documentation did not individually or cumulatively undermine the scope and assessment of the ES. Chapter 3 of this report summarises the environmental effects under each topic section.

2.6.4. The ES considers cumulative effects for each topic area and this report follows that approach. The cumulative assessments are based on a list of projects which was updated and agreed with ERYC and NYC during the Examination (ES Appendix 17-1 [REP2-008]).

2.6.5. It is noted that, fairly late in the Examination period, a press release was issued regarding a proposal for a ground mounted solar development called the Mylen Leah scheme. The scheme is understood to constitute a NSIP, although an application had not been submitted to PINS at the close of this Examination and therefore its status as an NSIP has not been confirmed. It would be sited approximately 1.8km north of the Order Limits at its closest point and therefore has the potential to lead to cumulative effects. The Applicant addressed the matter briefly in its closing submissions [REP6-023]. It recognised that limited information on the Mylen Leah scheme was available, but considered that from the information that was available, that there would be 'no potential for likely significant cumulative effects' of the application proposal with the Mylen Leah scheme.

2.6.6. Under the circumstances, I see no reason to take a different view. It would be for the Mylen Leah scheme promoters to consider potential cumulative effects should an application be submitted at a future date. The Mylen Leah scheme is, therefore, not considered further in this report.

2.7. HABITATS REGULATIONS ASSESSMENT

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

2.7.2. The Proposed Development is one that has been identified as giving rise to the potential for likely significant effects (LSE) on European sites and hence is subject to a Habitats Regulations Assessment (HRA). 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 Chapter 4 of this report.

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 20 October 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 undertaken on 15 March 2024. Again, no EEA states were identified as being likely to experience significant effects on their environment in terms of extent, magnitude, probability, duration, frequency or reversibility.

2.8.3. The Regulation 32 duty is an ongoing duty, and on that basis, I have considered whether any facts have emerged to change these screening conclusions, up to the point of closure of the Examination. I am satisfied, on the basis of the information

provided by the Applicant [AS-038], and Natural England [AS-044] that the correct sites have been considered in the HRA and that the Proposed Development would not have an LSE on European sites in any EEA States.

3. THE PLANNING ISSUES

3.1. INTRODUCTION

3.1.1. This chapter sets out my findings and conclusions on the planning issues. The chapter is structured first to review the Initial Assessment of Principal Issues. It then examines matters of principle, including need and alternatives, followed by generic topic headings. The order in which all these section headings are presented should not be taken to imply any order of merit.

3.1.2. In each section, the policy background is identified, followed by a summary of the Application as made and then main issues for each topic are reported. Findings and conclusions are drawn and weight assigned for or against the making of the Development Consent Order (DCO).

Initial Assessment of Principal Issues (IAPI)

3.1.3. As required by section (s) 88 of the Planning Act 2008 (PA2008) and Rule 5 of the Infrastructure Planning (Examination Procedure) Rules 2010, I made an IAPI arising from the Application in advance of the Preliminary Meeting (PM). This formed an initial assessment of the issues based on the Application documents and submitted Relevant Representations (RR). The list of issues relates to all phases of the Proposed Development. The IAPI was raised at the PM and no other key topics were identified during the Examination. The full IAPI can be found in Appendix C of the Rule 6 letter [PD-002]. The principal issues identified in the IAPI were as follows:

- Air quality;
- Biodiversity, ecology and the natural environment;
- Climate change;
- Compulsory acquisition;
- Draft development consent order;
- Environmental Statement general matters;
- Historic environment;
- Landscape and visual effects;
- Land use, agriculture and socio-economics;
- Noise;
- Traffic and transport; and
- Water environment.

The Planning Issues in this Report

3.1.4. I consider that the issues raised by Interested Parties (IP) were broadly in line with the IAPI and were subject to written and oral questioning during the Examination. These are the issues 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. Specifically, air quality was identified as a principal issue, but it is considered in this report under the heading of 'Other matters'. The IAPI refers to the efficiency of the proposal (under 'Climate change') and its generating capacity (under 'Environmental Statement general matters'). These issues

came together during the Examination and are considered in the context of 'need' in the 'Principle of development' section of this report.

3.1.5. It should also be noted that the IAPI is a high-level framework. I 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 considered in this report are listed below. They are generally in alphabetical order except for the principle of development - which sets the scene for the other topic areas and human health where the findings rely in part on the conclusions of preceding topics.

- Section 3.2: Principle of development;
- Section 3.3: Biodiversity;
- Section 3.4: Climate change;
- Section 3.5: Historic environment;
- Section 3.6: Landscape and visual;
- Section 3.7: Land use and socio-economic;
- Section 3.8: Noise and vibration;
- Section 3.9: Soils and agricultural land
- Section 3.10: Transport and traffic;
- Section 3.11: Water environment;
- Section 3.12: Human health; and
- Section 3.13: Other matters.

3.2. THE PRINCIPLE OF DEVELOPMENT

Introduction

3.2.1. This section covers the need for the Proposed Development, having regard to its overall scope, scale and output as well as the approach taken to good design, site selection and alternatives. It also deals with the proposed operational period. Matters relating to the use of agricultural land and soil resources are dealt with in Section 3.9 Soils and agricultural land.

Policy Context

National Policy Statements

Need

3.2.2. Unlike the 2011 versions of NPSs EN-1 and EN3, the 2024 versions specifically include solar PV with a capacity of more than 50MW within their scope. NPS EN-1 paragraphs 3.2.6 to 3.2.8 confirm that the applications should be assessed on the basis that "*the government has demonstrated that there is a need for those types of infrastructure covered"* by the NPS and that *"substantial weight should be given to this need."* Further, there is no requirement *"to consider separately the specific contribution of any individual project to satisfying the need established."*

3.2.3. Paragraph 3.3.14 confirms that value for money assessments are not required on applications for development consent for energy infrastructure projects. The NPS

advises that wind and solar are the lowest cost ways of generating electricity, helping to reduce costs and providing a clean and secure source of electricity supply. A net zero consistent system in 2050 is likely to be composed predominantly of these forms of generation, albeit complemented by other technologies to achieve affordable system reliability (paragraphs 3.3.20 and 3.3.22).

3.2.4. In order to meet the government's commitment to reduce greenhouse gases (GHG) emissions by 78 per cent by 2035, all electricity will need to come from low carbon sources, subject to security of supply. As such, there is an urgent need for new (and particularly low carbon) electricity NSIPs to be brought forward as soon as possible and the government has concluded that there is a critical national priority (CNP) for the provision of nationally significant low carbon infrastructure. Subject to any legal requirements, this CNP, together with the national security, economic, commercial, and net zero benefits, will in general outweigh any other residual impacts not capable of being addressed by the application of the mitigation hierarchy (paragraphs 3.3.57, 3.3.58, 3.3.62 and 3.3.63).

3.2.5. The consideration of need in NPS EN-3 largely reflects NPS EN-1. As well as referring to NPS EN-1, NPS EN-5 advises that new network infrastructure is needed to support the development of other technologies, including those in NPS EN-3 (paragraph 1.1.4).

Scope, scale and output

3.2.6. NPS EN-1 recognises that the case for a new connection is demonstrated if the proposed development represents an efficient and economical means of connecting a new generating station to the network (paragraph 3.3.78).

3.2.7. It also recognises that electricity storage has a key role to play in achieving net zero and providing flexibility in the energy system. It can provide various services, including maximising the usable output from intermittent low carbon generation such as solar. However, the NPS goes on to say that many of the storage facilities currently being deployed provide storage over a period of hours, but cannot cost effectively cover prolonged periods of low output from wind and solar (paragraphs 3.3.25 to 3.3.28).

3.2.8. NPS EN-1 paragraphs 4.3.10 to 4.3.12 require the applicant to provide information proportionate to the scale of the project, sufficient to meet the requirements of the EIA Regulations based on a worst-case assessment of its environmental, social and economic effects.

3.2.9. NPS EN-3 refers to the 'British Energy Strategy' expectation of a five-fold increase in combined ground and rooftop solar deployment by 2035 (up to 70GW) and that the government is supportive of solar that is "*co-located with other functions (for example, agriculture, onshore wind generation, or storage) to maximise the efficiency of land use"* (paragraph 2.10.10).

3.2.10. It goes on to advise that the 'Powering Up Britain: Energy Security Plan' seeks large scale ground-mounted solar deployment across the UK on brownfield, industrial and low and medium grade agricultural land. It recognises that solar and farming can be complementary and encourages solar schemes that deliver environmental benefits, with consideration for ongoing food production or environmental improvement (paragraph 2.10.11).

3.2.11. The NPS outlines the likely components of solar farm proposals, among other things recognising that associated development may include security arrangements such as flood defences, fencing, lighting and surveillance (paragraph 2.10.16). In terms of land take, it advises that, 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, although this will vary significantly depending on the site. While this may change over time as the technology becomes more efficient, the NPS acknowledges that *"this scale of development will inevitably have impacts, particularly if sited in rural areas"* (paragraph 2.10.17).

3.2.12. In terms of installed generating capacity, paragraph 2.10.55 and footnote 92 recognise that overplanting (that is, proposing installed generating capacity which is larger than the generator's grid connection) may be necessary in order to allow for a reduction in the panel array efficiency over time. Reasonable overplanting should be considered acceptable in a planning context so long as it can be justified and the electricity export does not exceed the relevant NSIP installed capacity threshold throughout the operational lifetime of the site. Impacts should be assessed on the basis of the full extent of the proposal including any overplanting.

3.2.13. Applicants should consider the design life of solar panel efficiency over time when determining the period for which consent is required. An upper limit of 40 years is typical. A time limited consent is described as temporary because it exists for a finite period (paragraphs 2.10.65 and 2.10.66). NPS EN-3 also advises that solar panels *"can be decommissioned relatively easily and cheaply",* that the panel arrays and mounting structures will be decommissioned, and underground cabling dug out to ensure that prior use of the site can continue. Applicants should set out what would be decommissioned and removed from the site at the end of the operational life of the scheme (paragraphs 2.10.68 and 2.10.69).

3.2.14. NPS EN-5 paragraph 2.7.2 advises that the government envisages that, wherever reasonably possible, applications for new generating stations and their related infrastructure should be contained in a single application.

Alternatives, site selection and good design

3.2.15. NPS EN-1 does not contain any general requirement to consider alternatives or to establish whether the proposed project represents the best option from a policy perspective. Nevertheless, it does acknowledge that there are specific requirements in relation to compulsory acquisition and habitats sites. The consideration of alternatives should be proportionate and limited to alternatives which meet the objectives of the proposed development, are realistic, and accord with relevant NPS policies (paragraphs 4.3.9 and 4.3.22 to 28).

3.2.16. NPS EN-3 advises that the government does not seek to direct applicants to particular sites (paragraph 2.3.5) and that the SoS should not use a consecutive approach, such as giving priority to the re-use of previously developed land for renewable developments (paragraph 2.3.9). Renewable energy proposals affecting national designations (such as Sites of Special Scientific Interest (SSSIs), National Nature Reserves, Areas of Outstanding Natural Beauty (now National Landscapes), Registered Parks and Gardens, and World Heritage Sites) should meet relevant policy tests and ensure that any significant adverse effects on the designation are clearly outweighed by the urgent need for this type of infrastructure (paragraph 2.3.6).

3.2.17. Locational factors specific to solar PV schemes include irradiance and site topography, network connection, proximity to dwellings, agricultural land classification (ALC) and land type, accessibility, public rights of way and security and lighting. With regard to land type in particular, the NPS states that *"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."* Further that *"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 "Best and Most Versatile" agricultural land where possible."*

3.2.18. The NPS acknowledges that the use of agricultural land for ground mounted solar arrays is likely, but consideration should be given to allowing continuation of the agricultural use or co-location with other functions to maximise the efficiency of land use (NPS EN-3 paragraphs 2.10.18 to 2.10.48).

3.2.19. Paragraph 4.7.2 of NPS EN-1 advises that good design of energy projects should produce sustainable infrastructure which is sensitive to place. It should have regard to impacts on matters such as heritage, efficient use of natural resources, including land-use, and energy use as well as aesthetics. It goes on to acknowledge that the nature of energy infrastructure development will often limit the extent to which it can contribute to the enhancement of the quality of the area. Applicants should demonstrate how good design has been applied to the project from its early stage through to post-consent.

3.2.20. NPS EN-3 adds that renewable energy infrastructure should demonstrate good design in respect of landscape and visual amenity, opportunities for co-existence/co-location with other terrestrial uses, and in the design of the project to mitigate impacts such as noise and effects on ecology and heritage (paragraph 2.5.2).

Written Ministerial Statement May 2024

3.2.21. This WMS is headed *'Solar and protecting our Food Security and Best and Most Versatile (BMV) Land'*. The approach is broadly consistent with that set out in NPS EN-3. However, it does underline the need to consider cumulative effects where there are several proposals in the same locality. It also seeks to address concerns about the accuracy and consistency of soil surveys and ALC reports and highlights government support for rooftop solar.

National Planning Policy Framework

3.2.22. Chapter 14 deals with the challenge of climate change. 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.

3.2.23. The Planning Practice Guidance for renewable and low carbon energy advises that increasing the amount of energy from renewables will help to make sure the UK has a secure energy supply and reduce greenhouse gas emissions to slow climate change. However, that does not mean that the need for renewable energy automatically overrides environmental protections and the planning concerns of local communities. With regard to large scale ground-mounted solar PV farms, it refers to locational considerations consistent with NPS EN-3 as well as the proposal's visual impact, the effect on landscape of glint and glare, on neighbouring uses and aircraft safety and the potential to mitigate landscape and visual impacts using screening.

Development Plan

East Riding Local Plan 2016

3.2.24. Policy S2 seeks to support a reduction in GHG emissions by, among other things, promoting renewable energy generation in appropriate locations. The application site falls within the countryside for the purposes of the Local Plan and Policy S4 supports energy development and associated infrastructure there, provided that it respects the intrinsic character of its surroundings.

3.2.25. Policy EC5 supports solar PV development where any significant adverse impacts are addressed satisfactorily, and the residual harm is outweighed by the wider benefits of the proposal. It requires such development to be acceptable in terms of cumulative impacts, the character and sensitivity of landscapes to accommodate energy development and effects including local amenity, biodiversity, the historic environment, telecommunications, transport, flood risk and land conditions including soil resources. Provision should be made for decommissioning.

3.2.26. The site falls within Local Plan sub areas A4 and A6 where the relevant policies seek to safeguard and enhance designated sites, including the Lower Derwent Valley and the Humberhead Levels Nature Improvement Area.

Selby District Core Strategy Local Plan 2013

3.2.27. Policy SP2 sets out the Plan's spatial strategy. The site is in the countryside where clause 2(c) limits development to certain forms of buildings and that which would contribute towards and improve the local economy and enhance or maintain the vitality of rural communities. Policy SP13 is headed scale and distribution of economic growth and supports sustainable economic growth in rural areas. Neither policy makes express provision for energy related development.

3.2.28. Policy SP17 requires renewable energy development to be designed and located to protect the environment and local amenity or demonstrate that the wider environmental, economic and social benefits outweigh any harm caused to the environment and local amenity. Impacts on local communities should be minimised.

Selby District Local Plan 2005

3.2.29. Policy EMP10 generally supports industrial development related to energy generation at, or close to, the Drax power station, subject to detailed considerations.

APPLICANT'S APPROACH

Need

3.2.30. The Applicant's need case is found primarily in its Statement of Need (SoN) [REP5-015]. Following consideration of the Paris Agreement and the national response through the Climate Change Act 2008 (as amended) and related strategies, it reviews the then current energy NPSs. This review was updated to take into account the publication of the 2024 NPSs in the Applicant's response to ExQ1 [REP1-081]. The update notes the urgent need for low carbon electricity generation and considers that the 2024 changes to NPSs EN-1 and EN-3 further strengthen the need case, which does not need to be considered further in the Examination.

3.2.31. The SoN reviews the national demand for low carbon electricity generation and concludes that, while peak electricity demand is uncertain, it is likely to grow. Significant additional capacity in low-carbon generation will be required to meet peak

demand against a wide range of weather conditions, and the anticipated increase in electricity consumption due to electrification of non-traditional sectors. The scheme would therefore contribute to the UK's decarbonisation and energy security aims.

3.2.32. The SoN reviews the options for meeting the demand for low carbon electricity and finds that proven technologies, such as solar PV, should be brought forward in order to mitigate against the potential non-delivery of less well-developed technologies. Although individual renewable assets are variable generators, aggregated generation output from portfolios which consist of different renewable technologies is more stable. Integration measures are, or will become, available to help balance electricity generation from variable generators over short periods to meet demand. Solar facilities are already among the cheapest form of electricity generation in the UK and government forecasts indicate that costs will continue to reduce in the future.

3.2.33. The Application scheme is considered to be viable, with a strong likelihood of near-term deliverability and would contribute to an adequate and dependable UK energy generation mix.

Scale, output and scope

3.2.34. The SoN refers to the government expectation of a 5-fold increase in the deployment of solar by 2035 leading to 70GW of operational capacity by that date. This requires solar installations to achieve 4GW of capacity every year from 2024, a figure only reached in 2015. It reviews the pipeline capacity of solar projects on the Transmission Entry Capacity Register, Embedded Capacity Registers and the government's Renewable Energy Planning Database. Although it does not reach an overall conclusion on the capacity of these schemes to meet government expectations, it highlights uncertainties with some schemes progressing and grid connection constraints as risks to the ability of the UK to reach its decarbonisation targets.

3.2.35. The SoN does not put a figure on the output of the proposal. However, it does state that *"The Scheme, as a leading large-scale solar scheme in GB, represents c 2% of the additional solar generation capacity required in the FES[1] projections to 2030, for scenarios compatible with net zero."*

3.2.36. ES Chapter 6 Climate Change [APP-058] states that the energy generation for the scheme is estimated to be 433,709 MWh in the first full year. That figure is based on a 480MW oversized AC peak capacity, a typical 922 kilowatt hour per kilowatt-peak per year yield and a 2% reduction in solar PV panel performance during the first year. In response to ExQ1 Q3.0.7 [PD-004] the Applicant advised [REP1-081] that subsequent modelling indicates that the scheme could achieve a higher kilowatt hour per kilowatt-peak per year yield and therefore that the quoted typical yield should be seen as a worst-case scenario. ES Chapter 6 goes on to estimate the total energy generation of the scheme over its 40 year lifespan as 15.9 terrawatt hours. This figure allows for a 0.45% degradation in panel performance after the first year.

3.2.37. In terms of technical considerations for the location of solar PV, the SoN refers to the availability of sufficient land, a point of connection to the electricity system and sufficient solar irradiation levels. It finds that large-scale schemes which connect to the National Electricity Transmission System (NETS) allow for a "more efficient bulk transfer of power to consumers" than smaller schemes. It reviews the characteristics of Single Axis Tracker (SAT) and Fixed South Facing (FSF) mounted panels and finds that SAT requires more land per MW(p)(peak) but has the potential to generate more

[1] National Grid ESO's Future Energy Scenarios

MWh(hours)/MW(p) than FSF. SAT is the preferred system. Overplanting[2] is reviewed and found to be important to ensuring that the installation maximises the use of its grid connection capacity and accounts for degradation in the efficiency of the panels over time. However, beyond a ratio of 1.5 the benefits reduce; the optimum ratio is therefore likely to be in the range 1.3 to 1.5.

3.2.38. With regard to co-location with electricity storage, the SoN concludes that solar schemes with no grid import connection availability (such as the application proposal) are more likely to be developed as stand-alone facilities but would still deliver critical decarbonisation and energy security benefits to the UK.

Alternatives, site selection and good design

3.2.39. The SoN finds that the higher per unit cost of connecting many small-scale (including rooftop) systems, together with ownership and technical issues associated with their installation, means that they are unlikely to meet the scale of demand and urgent need for solar generation.

3.2.40. In terms of site locational considerations, the SoN finds that the proposed connection point at the Drax Power Station substation is suitable and no adverse operability effects are anticipated as a result of the connection. The scheme holds an agreement to connect and if DCO consent is not granted a critical opportunity will be missed to deliver a significant capacity of low-carbon solar generation capacity onto the NETS in the important 2020s. The proposed location is highly suitable for large-scale solar because of the attractive combination of the grid connection, solar irradiation and the suitability of the land.

3.2.41. Alternatives, site selection and good design are considered further in ES Chapter 3 Alternatives and Design Evolution [APP-055]. It describes a three stage selection process for the solar PV site, commencing with a 15km radius area of search around the Drax substation, being the maximum economically viable distance to the grid connection point.

3.2.42. Stage 2 refined that area, based on internationally and nationally designated biodiversity sites, national landscape designations, green belt, designated heritage assets, proximity to urban areas/dwellings, forest/woodland, flood risk, areas of BMVL and accessibility. That exercise narrowed the search area to land to the north-east of the substation. The third stage refined the area based on topography, field pattern and arrangement, land use conflict and land availability.

3.2.43. Responding to the preference in the then draft NPS EN-3 for using brownfield land and non-agricultural land, the local authority brownfield register and local knowledge were used to establish that no suitable areas of brownfield or non-agricultural land able to form part of the solar PV site could be identified.

3.2.44. Additional land was offered to the Applicant and what is now solar PV area 3c was included. Areas 1g and 1h were reassigned as ecological mitigation. Some parts of the refined search area are in Flood Zones 2 and 3. Alternative locations were considered in accordance with the Sequential Test for flood risk but no low risk areas were found to be reasonably suitable and available for solar PV infrastructure.

[2] Defined in NPS EN-3 footnote 92 as *"the situation in which the installed generating capacity or nameplate capacity of the facility is larger than the generator's grid connection."*

3.2.45. Land for the ecological mitigation area (EMA) was selected as it is adjacent to the solar PV site and is considered suitable to mitigate the loss of land (through the construction of the solar PV site) which is currently functionally linked to the international designated sites of the Lower Derwent Valley SPA/Ramsar and Humber Estuary SPA/Ramsar.

3.2.46. The selection of the interconnection cable corridors {ICC) had regard to the technical requirement for the cabling to be directly routed between the solar PV areas and the Grid Connection Substations to avoid losses in transmission as well as avoiding environmental designations and other land use conflicts. The selected corridors include land in Flood Zones 2 and 3, but no more suitable routes were found to be available.

3.2.47. The route of the grid connection corridor (GCC) was selected having regard to operational and engineering requirements, planning and environmental constraints, other land use and land ownership constraints. Although most of the GCC would be within Flood Zones 2 or 3, that is the case for the majority of the land around the Drax substation. As such, the Applicant considers that it was not possible to avoid this constraint. The GCC crosses and lies adjacent to, and partly runs through the northern part of the River Derwent Special Area of Conservation (SAC)/SSSI. Within the GCC, three options for cable routeing are identified and the ES finds that none would result in permanent loss of qualifying habitat or special interest features within the SAC/SSSI boundary and there would be no impact on habitat for which the River Derwent SAC/SSSI is designated for or is functionally dependent upon.

3.2.48. The ES describes the evolution of the Order Limits and the alternative layouts from EIA scoping, through statutory consultation to the application proposal. This resulted in a series of refinements to the layout. As well as the alterations outlined above, a notable change was the omission of battery storage from the scheme in response to feedback at the statutory consultation stage.

3.2.49. Alternative solar design technologies in the form of FSF, SAT and east-west fixed panels were considered. East-west fixed solar panels were discounted as they would have lower biodiversity net gain compared to other options because there would be less space between the arrays and therefore less light reaching the ground under the panels. They would also require a greater amount of construction traffic due to the larger volume of panels required. SAT was chosen over FSF because, among other things, they have a lower panel height during most of the day and at night, therefore potentially reducing visual and landscape impact.

3.2.50. The proposal retains three options for the configuration of the field stations. Option 1 would enclose the transformer, inverter and switchgear in a single containerised 'Field Station Unit'. In option 2 the transformer and switchgear would be housed together in a single containerised 'Field Substation', with the inverter provided separately as string type, mounted parallel to the array, or more likely at the end of each solar PV frame. In option 3 the transformer and switchgear would be housed in separate containerised units with inverters provided as either string type (as per option 2) or centralised within protective housing or containerised units.

3.2.51. Good design is considered in the Design and Access Statement (DAS) [APP-234]. Among other things, the DAS describes the process of developing the design, its different stages of evolution, including iterations of the site layout and how the outline design would be secured. Nine design objectives are identified and the design response details how they would be met and how design commitments would be secured. Mainly, this involves setting out the maximum extents and parameters for

components of the scheme in the Outline Design Principles Statement [REP1-051]. Finally, the DAS presents the Scheme Design Masterplan.

ISSUES CONSIDERED DURING THE EXAMINATION

The principle of solar energy generation

3.2.52. The Local Impact Reports (LIRs) of both East Riding of Yorkshire Council (ERYC) [REP2-022] and North Yorkshire Council (NYC) [REP2-023] do not question the need for the proposal and find that it is supported in principle by their respective development plan policies. A relatively small number of RRs also support solar energy development in principle.

3.2.53. Although a few RRs and subsequent submissions [REP1-100] [REP1-103] [REP1-125] [REP1-150] consider that solar PV is not a 'green' form of energy generation and that the UK should not pursue renewable energy before other countries, they were not supported by substantive evidence. In any event, NPS EN-1 is clear that the need for solar energy generation has been demonstrated.

Scale, output and scope

3.2.54. There was more concerted opposition to the scale and efficiency of the proposal. I deal with the scale of the proposal in terms of its landscape and visual effects, as well as the effects on the character of the area and the living conditions of local residents in subsequent sections of this report. I asked questions about the efficiency of the proposal at ExQ1 [PD-004], ExQ2 [PD-008] ExQ3 [PD-010] and raised the matter at ISH2 [EV7-003]. The Applicant's responses are at [REP1-081, REP3-035, REP4-030 and [REP3-038] which is a 'Note on Scheme Efficiency' (the Efficiency Note).

3.2.55. Mr Field raised a series of concerns regarding the technical information submitted by the Applicant [REP1-111, REP1-112, REP2-026, REP3-069, REP4-036, REP5-025, REP6-028 REP8-015] and contributed to ISH2 [EV7-003]. Mr Field, The Right Honourable Sir David Davis KCB MP (Sir David) [AS-025] and others [REP1-153] [REP3-055], [REP3-65] and [REP3-074] suggested that the ExA should be supported by an electrical engineer to assess the Applicant's submissions. It was also contended that the DCO should include a provision to ensure that the scheme achieves a minimum output.

Solar PV panel configuration

3.2.56. Among Mr Field's concerns were the relative efficiency of SAT and FSF configurations, with SAT being less suited to higher latitudes such as East Yorkshire where the sun would hit the horizontal panels at a shallower angle than the tilted FSF panels and would be more susceptible to shading, as well as to the energy losses and additional mechanical complications of the SAT tracking system. He also questioned the basis for the Applicant's use of a relatively low overplanting ratio of 1.2 including the data used in Figure 6-6 of the SoN [REP5-015] which supports that ratio; its calculations for the installed capacity and overall output of the scheme, including not adequately accounting for transmission losses; the inputs into the PVsyst software model used by the Applicant and its definition of AC peak power.

3.2.57. The Applicant responded [REP2-020, REP3-033, REP3-035, REP3-038, REP4-029, REP5-021, REP6-023] to Mr Field's concerns, as well as others concerned that the SAT is untested. It maintained that the use of SAT is now more financially viable in the UK as installation costs have reduced and is proposed in at least eight NSIP solar farm proposals; SAT has been used extensively in other countries, including by the

Applicant. It has used PVsyst modelling to account for site specific geometrical and meteorological data (including 16 years of solar irradiation data) and the effects of shading and electrical losses on the calculated output of the scheme. SAT was found to be the best option for the Application site, but that may not be the case at other locations.

3.2.58. The difference in approach to the choice of panel mounts between the application proposal and the Applicant's scheme for the Fenwick Solar Farm was questioned [REP7-010]. The ES for the Fenwick scheme ([APP-055] ES Table 3-2) advises that fixed south facing panels were considered to be more space efficient at that site.

3.2.59. Nevertheless, the available evidence indicates that the choice of SAT panels, while they are relatively new to the UK, is reasonable. As discussed below, they would yield a worthwhile increase in annual energy generation compared to FSF panels. Although the SAT panels would be mechanically more complicated than FSF panels, the proposal provides for three people to be employed to maintain the facility during its operational phase and there is nothing to suggest that they would not be able to keep the panels in working order over the lifetime of the project.

Overplanting

3.2.60. Mr Field considered that the proposed overplanting ratio of 1.2 would be ineffective. Losses due to the output characteristics of SAT solar PV panels and the degradation of output over time would exceed the installed over-capacity (most clearly expressed in [REP8-015]). The Applicant did not have an opportunity to respond to the D8 submission. Nevertheless, its earlier responses and the Efficiency Note advised that SoN Figures 6.5 and 6.6 are derived from irradiation data made available through the PV-GIS system which uses an analytical excel-based model and industry-standard assumptions on internal losses and degradation.

3.2.61. The Efficiency Note provides further information on the peak output and degradation of the panels, the considerations used to determine the level of overplanting proposed, the assumptions used in the PVsyst modelling and the illustrative panel layout. It also compares the peak and annual energy outputs of SAT and FSF panels and the implications for the panel layouts. It concludes that SAT maximises the grid connection agreement by delivering more renewable energy over the scheme lifetime. Specifically, the proposed SAT scheme would produce 12.3% more renewable energy than FSF for the agreed 400MW export cap.

3.2.62. The Applicant used similar arguments in response to suggestions [REP1-103] [REP1-119] [REP1-120] that the chosen panels should be trialled before use.

3.2.63. The SoN finds that the optimum overplanting ratio is likely to be in the range 1.3 to 1.5. The Application scheme is based on a lower ratio of 1.2. While recognising that the choice of ratio is affected by a range of factors including capital outlay and land take, I queried the matter in ExQ3 Q1.0.1 [PD-010]. The Applicant acknowledged that it could have reasonably selected a larger overplanting ratio, but this would have led to a greater project footprint than it has secured agreement to be a part of the scheme. The final overplanting ratio would be determined at the detailed design stage, having regard to the final panel selection and further environmental surveys [REP7-005].

3.2.64. Mr Field has sought to interrogate the electrical aspects of the Applicant's submissions and, together with my questions and the hearing discussions, has brought out useful information that was not fully explained in the original submissions. Although the Applicant's position relies to a significant extent on the outputs from the PVsyst

modelling software, there is no substantive evidence to show that the software itself or inputs used were flawed. Nor that the Applicant has misinterpreted or mispresented its outputs. While some of the phraseology and figures used by the Applicant could be considered to lack a degree of rigour, my view is that that was largely borne out of an attempt to make the information accessible to a wide readership, rather than a lack of understanding on the part of the authors.

3.2.65. I consider that nothing emerged during the Examination to indicate that the Applicant's assessment of the electrical aspects of the proposal, including the panel configuration and output estimates, are materially unsound. I return to the overplanting issue below.

Land use efficiency

3.2.66. The land use efficiency of the proposal was covered extensively in the Examination including ExQ1 (Q1.5.1) [PD-004], ExQ2 (Q1.0.3) [PD-008], ExQ3 (Q1.0.2) [PD-010] and discussion at ISH2 [EV7-003]). Specifically, the proposed land take (some 966ha (2387 acres) for the solar PV area) appears to be high compared with the installed capacity (capped at 400MWp by the grid connection agreement). This view has regard to paragraph 2.10.7 of NPS EN-3, which advises that a solar farm requires between 2 to 4 acres for each MW of output, as well as comparisons with other NSIP solar schemes. In ExQ2 (Q1.0.3) I referred to the review at Appendix A of [REP7-035] of the Mallard Pass Examination EN010127). The matter was also raised by Sir David [AS-025], Foggathorpe and Howden Parish Councils [REP3-050] [REP3-051] and others including [REP1-115] [REP3-063] [REP3-074] [REP4-036].

3.2.67. The Applicant's key responses can be found at [REP1-081, REP3-033, REP3-035, REP3-038, REP4-029, REP4-030, REP5-021 REP7-005]. In essence, it argues that the figures used in NPS EN-3 are advisory and are not supported by a clear methodology. Further, that the calculation of the ratio of land take to capacity depends on what allowance is made for features such as buffer zones, fencing, PRoWs, access, overhead lines and landscape and ecological mitigation areas.

3.2.68. Mr Field [REP4-036] pointed to the discrepancies between the areas used in the Efficiency Note and those in the SoN (and ES Chapter 2 which describes the scheme). This was also the subject of my ExQ3 Q1.0.2. The Applicant's response advised that the larger area used in the SoN and ES Chapter 2 refers to the solar PV area as a whole, whereas the area used in the Efficiency Note refers to the area of Work No 1 as defined on the Works Plan [APP-008]. The DCO would require the solar panels to be contained within the Work No 1 area and the remainder of the solar PV area would be used for the on-site substations and areas of habitat creation and enhancement.

3.2.69. The Efficiency Note sets out an adjusted figure for the land take allocated to these features and finds that, using the approach adopted in the Mallard Pass Recommendation Report, the current application proposal has a ratio of 3.85 or 3.94 acres/MW depending on whether or not areas for substations, operations building and access provision are included in the land take. Both ratios lie within the range advised in NPS EN-3.

3.2.70. Nevertheless, even the higher of these figures allows for a limited area of 'associated infrastructure' as set out in NPS EN-3. The Mallard Pass Recommendation Report recognises that the extent of mitigation and enhancement area to be included could reasonably vary from case to case (paragraph 3.2.102). Bearing in mind that the Order Limit in this case includes other areas of ecological mitigation and the GCC, the on-site substations and areas of habitat creation and enhancement which comprise

the difference between the area of Work No 1 and the solar PV area as a whole, could be regarded as 'associated infrastructure'.

3.2.71. On this basis, using the solar PV area as a whole (966ha/2387 acres) to calculate the land use efficiency ratio would yield a figure of 4.97 acres/MW. This would fall outside the range advised in NPS EN-3, as well as the ratios of the other NSIP solar farm schemes reviewed at Appendix A of [REP7-035] of the Mallard Pass Examination EN010127).

3.2.72. I recognise that the peak output of the scheme would be limited to the grid connection capacity of 400MW and the final overplanting ratio would be subject to detailed design. Nevertheless, the Applicant's proposed ratio of 1.2 seems unambitious insofar as it would not take full advantage of the export capacity of the grid connection outside of the peak generation hours. Together with the relatively low land use efficiency ratio, this suggests that the proposal would not contribute as much electricity generation to the NETS as its land take would suggest.

Battery Storage

3.2.73. The Applicant's decision to omit a battery energy storage system (BESS) from the submitted scheme was queried by Mr Field, Sir David and others [REP1-111] [AS-025] [REP3-054] [REP3-074]. It was argued that the inclusion of BESS for solar farm development is supported by NPS EN-1 and would make the power output of the scheme more efficient and support its daily and year-round energy supply contribution to the NETS. The Applicant's suggestion that others could add battery storage at a later date would require extra hardware and place an unnecessary additional burden on the NETS.

3.2.74. The Applicant's response acknowledged the advantages of BESS on a national scale. However, BESS does not need to be co-located with energy generation projects where its purpose is to store electricity imported from the NETS. In this case, the agreement to connect to the Drax substation does not allow for the import of electricity. BESS to support the NETS is most efficient when located immediately adjacent to a National Grid substation. Providing BESS on the solar PV site would introduce new effects including visual impacts and the need for fire water tanks at each location. Local resident feedback at statutory consultation sought the removal of BESS. The Applicant considered that, having investigated BESS, the scheme accords with NPS EN1 and does not prevent other developers from providing storage at a later date [REP3-033].

3.2.75. Although the inclusion of BESS would likely have enhanced the useable output of the scheme and is encouraged by NPS EN-1, the co-location of BESS and solar farms is not a requirement of either NPS EN-1 or EN-3. In this case, the inclusion of BESS would also heighten concerns expressed at the statutory consultation stage and during the Examination regarding visual impact and safety (which I deal with later in this report). The potential flexibility of any BESS would be limited in this case because the Applicant does not hold an import connection agreement. Others could bring forward a BESS scheme subsequently, although that would be more complicated than providing it alongside the solar PV farm. As such, I consider that the absence of BESS detracts somewhat from the Applicant's need case.

Independent Assessment and Minimum Output

3.2.76. With regard to the calls for an independent assessment of the electrical aspects of the scheme, the Applicant considered that the scheme presents no materially new or different engineering considerations from any of the other (then) five solar schemes

granted a DCO or others which have completed their Examination. It is in the Applicant's commercial interest to maximise the output of the scheme and, again, no other solar scheme DCOs include a minimum output control [REP3-033]. More generally, the Applicant argues that, unlike other forms of energy generation, the environmental and social impacts of solar farms are not dictated by power output, but by their physical parameters. Those matters are controlled through the DCO.

3.2.77. There is no dispute that the capacity of the proposal would exceed the 50MW required for it to qualify as an NSIP. As the Applicant contends, it is in its commercial interest to maximise the lifetime output of the proposal, and I note that the SoS has not imposed a minimum output requirement on other solar farm DCO consents. I see no reason for a different approach in this case. I am also satisfied that I was able to examine the scheme in sufficient depth to reach valid conclusions on the electrical aspects of the proposal without the assistance of an independent assessor.

Alternatives, site selection, good design and timing

3.2.78. A significant number of RRs and Examination submissions considered that the solar panels should be installed on rooftops or brownfield sites. Others considered that they should be at locations such as alongside motorways or wind farms or in the south of the country closer to the main areas of demand. Some submissions point to government policy on the preference for rooftop/brownfield locations and argue that the roofs of large industrial units would be suitable. However, with the exception of an undefined location at Thorne Moors [RR-376], none proposed specific alternative sites.

3.2.79. It was also suggested that the site was defined by the availability of land put forward by certain local farmers rather than a proper selection process and that, as a result, the site is unduly disjointed and dispersed [REP1-135] [REP1-141] [REP3-052] [REP3-054] [REP3-059] [REP3-073]. I queried this matter in ExQ1 Q1.5.2 particularly in relation to impacts on the landscape and residential properties.

3.2.80. My ExQ1 also sought clarification of the Applicant's approach to site selection following the May 2024 WMS (Q1.0.2), its site selection process (Q1.5.3) and the choice of EMA location (Q1.5.4) [PD-004].

3.2.81. The Applicant's response to the use of brownfield/rooftop locations [REP1-066] [REP1-081] referred to its three-stage sequential approach to site selection in ES Chapter 3 [APP-055] based on connection to the Drax substation. It did not identify suitable brownfield land or lower grade agricultural land. The local planning authority brownfield register was reviewed and local knowledge consulted. Those processes did not identify any brownfield sites which were of a suitable size and location for the scheme. The process sought to avoid environmental and land use constraints including designated landscapes and green belt land, biodiversity sites, protected species and habitats, heritage assets, flood risk and water quality. It also took into consideration criteria such as topography, field pattern and arrangement, land use conflict and land availability.

3.2.82. The Applicant also referred to the current and expected contribution of rooftop solar to the government's overall solar capacity target of 70GW. While acknowledging the role of rooftop locations, and that such locations are prioritized in the WMS, the Applicant considered that they are limited by size and the need for co-ordination and agreement with building owners. As such, they are not likely to deliver sufficient capacity at the required pace and cost. Ground mounted solar farms are less costly and more efficient by comparison and are necessary alongside rooftop deployment.

3.2.83. With regard to the proposed layout of the solar PV areas, the Applicant [REP1-081, REP4-029] referred to the land availability criteria used in the site selection process, including identifying willing landholders, minimising the number of affected landowners and avoiding uncertainty arising from the use of unregistered land. Notwithstanding the availability of compulsory acquisition (CA) powers, acquisition by agreement reduces impacts on development delivery in terms of programme and cost. This resulted in the Applicant identifying some contiguous and some discrete solar PV areas. They provide appropriate off-setting from residential properties with further controls on the approval of the detailed design in the Construction Environmental Management Plan (CEMP) and dDCO Requirement (R)5. While the assessment of landscape effects in ES Chapter 10 Landscape and Visual Amenity [REP1-014] finds some significant adverse effects, the Applicant considered that the effect would be the same if the solar PV areas had a more concentrated pattern.

3.2.84. In terms of the EMA, the Applicant cites the criteria in the Habitats Regulations Assessment [AS-038] for the selection of appropriate and effective mitigation land for the loss of functionally linked habitat for birds using the SPA/Ramsar sites. These include sufficient size, openness and avoiding sources of disturbance. The Applicant's ornithologist reviewed the land in close proximity to the solar PV areas against these criteria and the proposed EMA performed well. The availability of land was a secondary consideration but nevertheless an important and relevant factor in accordance with good site selection practice.

3.2.85. Overall, the Applicant considered that the site selection process was robust and accords with NPS EN-1 paragraphs 5.11.2 and 5.11.3 and NPS EN-3 paragraph 2.10.29. I deal with the use of agricultural land in section 3.9 of this report.

3.2.86. The aim of achieving good design is implicit in the discussion above regarding, for example, the choice of SAT or FSF panels. It also underlies subsequent discussion in this chapter, such as effects on residential properties. However, it did not feature as a discrete area of concern during the Examination.

3.2.87. Sir David [AS-025] and others raised concern that the Applicant's proposal is to complete the scheme by 2027 whereas the grid connection will not be available until 2029. I also sought clarification of this point (ExQ1 Q1.3.5) The Applicant responded that the provision of a construction timetable is standard practice, but that a five-year implementation period in the DCO is sought. This would allow the flexibility to synchronise the construction timetable and the connection date. While the Applicant cannot unilaterally bring forward the connection date, it has expressed an interest to National Grid to do so, if the DCO is granted.

3.2.88. There is nothing to suggest that the proposed five-year implementation period would be inappropriate in this case. It would allow the Applicant to co-ordinate the construction period to match the grid connection date, whether that is 2029 or sooner. Given the capital expenditure and associated borrowing costs required to construct the scheme, there is no reason to expect the Applicant would complete the scheme and leave it idle in advance of the grid connection date.

3.2.89. There was concern that the proposed 40-year operational life of the proposal was not 'temporary' and that the local community would be living with the effects of the Proposed Development for an extended period (for example [REP1-131], [REP1-135], [REP1-137], [REP1-147], [REP1-154]).

3.2.90. NPS EN-3 advises that 'temporary' in this context refers to the grant of consent for a finite period. Although the performance of the solar PV panels would degrade over

time, there is no substantive evidence to suggest they would require wholesale replacement during the lifetime of the scheme. Indeed, in response to ExQ1 Q14.4.4 the Applicant, expressly stated that that is not its intention [REP1-081]. The ES is based on a 40-year operational life and the impacts are assessed accordingly. Therefore, I consider that it is appropriate to consider the application on the basis of a 40-year temporary consent.

CONCLUSIONS

3.2.91. The electrical aspects of the scheme, including its output, panel configuration and its land use efficiency took up a considerable proportion of the Examination and the discussions brought out useful clarifications of the Applicant's initial submissions. I am content that the process provided sufficient information to reach sound conclusions on these matters.

3.2.92. I am also satisfied that the Applicant's assessments of these matters are soundly based. I consider that the choices in terms of the use of SAT panels, the omission of battery storage and the timing and operational life of the Proposed Development case are reasonable. As such the proposal accords with NPS EN-1 paragraphs 4.3.10 to 4.3.12.

3.2.93. Further, that adequate consideration has been given to the use of rooftop and brownfield locations. While the layout of the solar PV areas is somewhat dispersed, I find that the Applicant's justification of the site selection process was robust and had proper regard to the grid connection location at the Drax substation, environmental and land ownership considerations in accordance with NPS EN-3 paragraphs 2.10.18-48. The Applicant has also given adequate consideration to good design in the formulation of the proposal as required by paragraph 4.7.2 of NPS EN-1.

3.2.94. That said, I consider that the land use efficiency of the proposal in terms of the site area taken to achieve the predicted energy generation is low relative to NPS EN-3 advice and comparable schemes. Overall, however, I find that the principle of the Proposed Development accords with the relevant provisions of NPS EN-1, NPS EN-3, the May 2024 WMS, the NPPF and the development plan.

3.2.95. While there is some scope for the scheme efficiency to improve if a higher overplanting ratio is achieved at the detailed design stage, I consider that this matter, and the absence of battery storage, detracts from the Applicant's need case and that no more than moderate positive weight can be put on the need for the proposal.

3.3. BIODIVERSITY

INTRODUCTION

3.3.1. This section considers the ecology and biodiversity effects of the Proposed Development. These include biodiversity net gain and effects on habitats, species and on designated sites. Matters relating specifically to the Habitats Regulations are considered separately in Chapter 4.

POLICY BACKGROUND

National Policy Statements

3.3.2. NPS EN-1 paragraph 5.4.17 requires the applicant to ensure that the ES clearly sets out any effects on internationally, nationally, and locally designated sites of ecological conservation importance, on protected species and habitats and other species

identified as being of principal importance for the conservation of biodiversity. It should be shown how the project has taken advantage of opportunities to conserve and enhance biodiversity, including using the design process to embed nature inclusive design and enhancements beyond Biodiversity Net Gain (BNG). Proposals also need to consider the movement of mobile/migratory species such as birds, fish and marine and terrestrial mammals and their potential to interact with infrastructure (paragraphs 5.4.18 to 5.4.22).

3.3.3. Direct and indirect effects on ancient woodland, ancient and veteran trees or other irreplaceable habitats during both construction and operational phases should be mitigated and reasonable opportunities considered to maximise the restoration, creation, and enhancement of wider biodiversity, and the protection and restoration of the ability of habitats to store or sequester carbon (paragraphs 5.4.32 and 5.4.33).

3.3.4. Appropriate avoidance, mitigation, compensation and enhancement measures should be an integral part of the proposed development. This applies in particular to construction activities by ensuring that the area of such activity is minimised, is planned to avoid or limit disturbance and that best practice is followed to ensure that risk of disturbance or damage to species or habitats is minimised. Where practicable, habitats should be restored after construction and opportunities taken to enhance existing habitats rather than replace them. Where habitat creation is required, it should be focused on areas where the most ecological and ecosystem benefits can be realised. The applicant should produce and implement a Biodiversity Management Strategy as part of its proposal (paragraphs 5.4.35 and 5.4.36).

3.3.5. Development should, in line with the mitigation hierarchy, aim to avoid significant harm to biodiversity interests, including the consideration of reasonable alternatives. Where significant harm cannot be avoided, impacts should be mitigated and as a last resort, appropriate compensation measures should be sought (paragraph 5.4.42).

3.3.6. NPS EN-3 supplements NPS EN-1 by, among other things, identifying issues that need assessment such as habitats, ground nesting birds, wintering and migratory birds, bats, dormice, reptiles, great crested newts, water voles and badgers (paragraph 2.10.77). It also advises that the construction and design of any fencing should enable mammal, reptile and other fauna access into the site if required to do so in the ecological report (paragraph 2.10.83).

National Planning Policy Framework

3.3.7. The biodiversity objectives of the NPPF are broadly consistent with those of the NPSs. It advocates a commitment to improving biodiversity, minimising impacts and encourages the incorporation of biodiversity improvements in and around developments.

Development Plan

East Riding Local Plan 2016

3.3.8. Policy ENV4 seeks to conserve and enhance biodiversity by ensuring that appropriate consideration is given to the effect of proposals on International Sites, National Sites, Local Sites, or habitats or species supported by Local Sites and the application of the mitigation hierarchy. Policy ENV5 seeks to strengthen green infrastructure by incorporating it into the design of proposals. These provisions are reinforced in the Local Plan Update 2023.

Selby District Core Strategy Local Plan 2013

3.3.9. Policy SP18 aims to safeguard international, national and locally protected sites for nature conservation from inappropriate development and ensure that developments protect and enhance features of biological interest, apply the mitigation hierarchy and produce a net gain in biodiversity by designing-in wildlife. It also applies a strategic approach to increasing connectivity with green infrastructure. These aims are supported for specific interests by Selby District Local Plan 2005 saved policies ENV9 (Sites of importance for nature conservation), ENV11 (Ancient Woodland) and ENV12 (River and stream corridors).

APPLICANT'S APPROACH

3.3.10. The Applicant's position on ecology and biodiversity is set out primarily in ES Chapter 8 Ecology [APP-060]. This is supplemented by Appendix 8-1 on legislation, policy and guidance [APP-126], and eight further appendices comprising reports on specific species and habitats [APP-083 to APP-093] (some of these EL references are to redacted versions) and a Great Crested Newt District Level Licensing Impact Assessment and Conservation Payment Certificate [REP1-019] (redacted). The Applicant's submissions also include:

- Figure 8-1: International Sites Designated for Nature Conservation within 10km and other Statutory Designated Sites within 5km [APP-149];
- Figure 8-2: Non Statutory Sites Designated for Nature Conservation within 2km [APP-150];
- Biodiversity Net Gain Report [REP1-061] and Appendix {REP1-060]; and
- Framework Landscape and Ecological Management Plan [AS-040].

Methodology

3.3.11. ES Section 8.4 sets out the assumptions, limitations and uncertainties in the assessment. In accordance with the Scoping Report [APP-073] matters scoped out include air quality effects on ecology from construction, operation and decommissioning phase HGV movements (as the number of movements falls below Institute of Air Quality Management (IAQM) guidelines); statutory designated sites (without mobile qualifying criteria) more than 2km from the Order Limits (as they would not be directly impacted by habitat loss or disturbance and would be too distant for there to be a pathway for noise, lighting or visual impacts); and impacts on common and widespread habitats of low sensitivity and/or conservation interest (in order to focus the assessment of relevant ecological features in accordance with Chartered Institute of Ecology and Environmental Management (CIEEM) guidance).

3.3.12. Dust from construction activity is considered separately (see Section 3.13 of this report). The assessment allows for flexibility in the routeing of cables within the ICC and GCC and provides for further hedgerow surveys if necessary. The study for ecology is defined as the site and by distance from the Order Limit according to the nature conservation value of the receptor.

3.3.13. Information was gathered from published sources and databases together with the following field surveys:

- Extended Phase 1 habitat survey and habitat condition assessment to inform BNG assessment;
- targeted grassland survey;
- hedgerows;
- aquatic scoping survey;

- aquatic macrophyte and macroinvertebrate surveys, including the presence of any invasive non-native species (INNS);
- breeding birds;
- non-breeding (wintering and passage) birds;
- bats – preliminary bat roost appraisal and roost, foraging and commuting surveys;
- badgers;
- otter and water vole; and
- INNS.

3.3.14. The impact assessment was said to be undertaken in accordance with CIEEM guidelines, and definitions were provided for impact characteristics and the determination for the significance of effects. Reference is made to the BNG Assessment Report and the prescriptions for the establishment, long term management and monitoring of habitat creation measures in the Framework Landscape and Environmental Management Plan (LEMP).

Baseline

3.3.15. The baseline is described in section 8.5 of the ES. International statutory sites for nature conservation within the relevant 10km study area comprise (in order of distance from the site) River Derwent Special Area of Conservation (SAC) (crossed by the GCC), Lower Derwent Valley SAC Ramsar and SPA, Humber Estuary SAC, Ramsar and Special Protection Area (SPA), Skipwith Common SAC, Thorne and Hatfield Moors SPA and Thorne Moor SAC. No SACs designated for bats were identified within 30km of the site and no proposed Ramsar sites, possible SACs, or potential SPAs are present within the 10km study area.

3.3.16. Other statutory designated sites for nature conservation comprise (in order of distance from the site) River Derwent Site of Special Scientific Interest (SSSI) (crossed by the GCC), Barn Hill Meadows SSSI, Eastrington Ponds Local Nature Reserve (LNR), Howden Marsh LNR, Breighton Meadows SSSI, Lower Derwent Valley National Nature Reserve, Derwent Ings SSSI, Eskamhorn Meadows SSSI, Humber Estuary SSSI and Barlow Common LNR. There are also 13 non-statutory sites designated for nature conservation identified within the study area including Wressle Verge Local Wildlife Site (LWS) and Tottering Lane, Gribthorpe LWS which fall within the Order Limits.

3.3.17. While there are no areas of ancient woodland within the 2km study area, a walkover survey identified veteran or ancient trees within the site. The greatest part of the site is given over to arable fields (some 1,100 ha out of a total of 1,276 ha). Other habitat includes improved grassland (some 48ha), mature trees and hedges (some 74km), small areas of woodland (some 26ha) and ponds (mostly dry or holding shallow water). The surrounding habitat is mainly arable with boundary hedgerows and watercourses/ditches, together with woodland and water bodies.

3.3.18. Notable species are identified. Those of more than local importance include tansy beetle (national), bullhead, brown trout, eel, sea lamprey, river lamprey, Atlantic salmon, allis shad and grayling fish, curlew, non-breeding bird assemblages, bats, otter (all county), skylark, water vole and polecat (if present) (all district).

Embedded Mitigation

3.3.19. The biodiversity mitigation embedded in the scheme is set out in section 8.6 of the ES and measures are detailed by biodiversity features in Table 8-11. At the construction and decommissioning phases key measures include avoiding statutorily designated sites where practicable and the use of horizontal directional drilling with specified set back distances from, and depths below, high value watercourses. In other cases, auger drilling would be implemented under sites which cannot be avoided, together with the use of buffer zones and protective fencing elsewhere. Specific measures for the Wressle Verge LWS and Tottering Lane, Gribthorpe LWS are also described and were the subject of discussion during the Examination (see below).

3.3.20. An area of habitat enhancement adjacent to the River Foulness would provide permanent wet grassland habitat for non-breeding birds and further land within the solar PV area would be managed for ground-nesting birds. Watercourse and ditch crossings would be appropriately designed and temporarily lost habits reinstated.

3.3.21. The Framework CEMP [REP4-010] and Decommissioning Environmental Management Plan (DEMP) [REP3-014] detail the measures required to mitigate any construction related effects on biodiversity, including those associated with dust deposition, air pollution, pollution incidents, water quality, light, noise and vibration. Vegetation clearance and building clearance would be timed and managed to avoid the nesting bird period and the incidental injuring or killing of reptiles and amphibians. The Framework Soil Management Plan (SMP) [REP1-058] sets out measures for the sustainable management of soil resources and the Framework Surface Water Drainage Strategy (SWDS) [REP1-021] deals with surface water runoff, pollution and flood risk. Pre-construction surveys would be undertaken in accordance with relevant wildlife legislation.

3.3.22. During the operational phase embedded mitigation would include avoidance of external artificial lighting apart from task specific lighting for cleaning and emergency repairs. Such lighting would conform to best practice guidelines to minimise light spill. The SWDS deals with surface water runoff, pollution and flood risk during operation. Security fencing would be sited and designed to allow connectivity for small mammals. The creation and subsequent management of habitats would seek to maximise floristic diversity.

Likely Impacts and Effects

3.3.23. Section 8.7 of the ES sets out the assessment of likely impacts and effects including a review by biodiversity feature in ES Table 8-12. Table 1 below summarises significant effects (defined as moderate or major adverse) during the construction phase. Decommissioning phase effects are considered to be similar to the construction phase. No significant adverse effects are identified during the operational phase. No significant beneficial effects are identified during any phase.

Table 1 Summary of construction phase significant biodiversity effects

Biodiversity Feature	Impact and Duration	Significance
River Derwent SAC and River Derwent SSSI	Disturbance to associated species through noise disturbance. Temporary (short term).	Moderate adverse (noise disturbance)

Biodiversity Feature	Impact and Duration	Significance
Lower Derwent Valley SPA/ Ramsar	Impacts on qualifying bird species of the SPA/Ramsar through the potential loss of functionally linked land (elements of the site would be considered as such if qualifying migratory species from the SPA were found using them (that is, evidence of birds going between parts of the site and SPA)). Long-term (for the duration of the scheme), reversible.	Major adverse
Lower Derwent Valley SAC	Impacts on otter that are associated with the Lower Derwent Valley SAC (linked to the River Derwent, which is crossed by the scheme) through disturbance due to increased noise, disturbance. Temporary (short-term).	Moderate adverse (noise)
Humber Estuary SAC/SPA/ Ramsar/ SSSI	Impacts on qualifying bird species of the SPA/Ramsar through the potential loss of functionally linked land. Long-term (for the duration of the scheme), reversible.	Major adverse

Additional Mitigation and Enhancement

3.3.24. In order to address these effects additional mitigation is proposed comprising:

- Ecology Mitigation Areas (EMAs) (site areas 1g and 1h) in the form of maintained agricultural land and the creation of permanent wet/damp grassland to the west of the River Foulness. These areas are intended to provide golden plover with damp/wet permanent grassland to support high densities of invertebrates. For pink-footed geese they would offer sensitively managed arable farmland. The effectiveness and size of these areas was considered during the Examination (see below and Chapter 4 on HRA matters); and
- portable noise fencing to minimise any potential for noise disturbance to otter using the River Derwent, River Ouse and Watercourse DE53 at three horizontal directional drilling (HDD) entry points.

3.3.25. Enhancement is proposed in the form of:

- habitat boxes installed on suitable features to provide additional nesting and roosting opportunities for bats and a range of bird species;
- reptile and amphibian hibernacula/refugia within 200m of retained ponds across the site; and
- works to targeted watercourses including protective fencing of the riparian zone, removal of bank face reinforcement to allow natural bank habitats to establish and removal of shading vegetation, filamentous algae and/or duckweed.

3.3.26. The Applicant's Biodiversity Net Gain (BNG) Report [REP1-061] uses Biodiversity Metric 4.0 to compare the results of pre- and post-development habitat distinctiveness on the site. The Report was updated during the Examination and the scheme was revisited to achieve a minimum 10% net gain for hedgerows. In total, 223.31 ha of

area-based habitats, 74.07 km of hedgerow habitats and 4.45 km of watercourse habitats would be retained. The Report states that 4.03 km of hedgerow and 1.72 km of watercourse habitats would be enhanced, and 986.17 ha of area-based habitats, 16.48 km of hedgerow habitats, and 0.07 km of watercourse habitats would be created. This is assessed to achieve net gains of 80.42% for area-based habitat units, 10.30% for hedgerow units, and 10.84% for watercourse units.

3.3.27. While the trading rules for hedgerows and watercourses would be met, for area-based habitats, the trading rules would be not satisfied for 'High' and 'Medium' distinctiveness habitats under the current proposals. The Applicant advises that the trading down of habitats would be reduced at the detailed design stage and by reducing construction impacts with the aim of meeting the trading rules in the final scheme.

3.3.28. Monitoring would be undertaken during the pre-construction, construction and operational phases and secured through the Framework LEMP [AS-040]. Habitats monitored during the operational phase are intended to ensure that the target conditions set out in the BNG Assessment Report would be achieved.

Applicant's Conclusions and Cumulative Effects

3.3.29. The Applicant finds that the additional mitigation measures would result in no residual significant adverse effects during construction, operational or decommissioning phases. Minor adverse effects would remain for receptors including the River Derwent SAC/SSSI, Lower Derwent Valley SPA/SAC/ Ramsar/SSSI and Humber Estuary SPA/Ramsar/SAC, two LWSs, rivers, and species including birds (overwintering, curlew, skylark, special protected bird species), otter and fish. The majority of these effects would be temporary, with permanent/long-term effects being reversible.

3.3.30. Overall, the Applicant considers that the scheme would offer a substantial beneficial effect for biodiversity in the medium- to long-term as a result of the area-based, hedgerow and watercourse net gains set out in the BNG Report.

3.3.31. As set out in section 8.10 and Table 8-15 of the ES, the Applicant's finding of no likely significant residual effects is not altered when interactions with cumulative schemes are taken into account and, therefore, no likely significant cumulative effects are predicted.

ISSUES CONSIDERED DURING THE EXAMINATION

Statutory Consultees

3.3.32. The LIR from ERYC [REP2-022] found that the Applicant's HRA Report [AS-038] and Ecology Surveys provide an accurate assessment of the biodiversity impacts of the development and rule out any likely significant affects, subject to the mitigation. The LIR makes requests for further information, in particular in relation to HRA matters which were addressed during the Examination [REP3-032]. Similarly concerns about the effects of the proposal on the Tottering Lane LWS and Wressle Verge LWS were dealt with in revised proposals for passing places in Annex B of the Framework Construction Traffic Management Plan (CTMP) [REP5-022]. The Statement of Common Ground (SoCG) with ERYC [REP6-011] confirms that all biodiversity and ecology matters were agreed.

3.3.33. The LIR from NYC [REP2-023] did not make substantive comment on biodiversity and ecology matters and its SoCG [REP6-013] confirms that all such matters were agreed. The EA [RR-107, REP1-092] sought further information on proposals for vegetation

clearance, the eradication of mink and invasive plant species, barn owl nest boxes and the protection of eels at larger watercourse crossings. These matters were addressed largely in a revised Framework CEMP [REP4-010]. The SoCG with the EA confirms that all ecology matters were agreed.

3.3.34. Natural England (NE) raised a series of concerns regarding HRA matters in its RRs and subsequent submissions and they were also the subject of ExQ1 Q2.1.1 to Q2.1.18 [PD-004]. These concerns were addressed through the submission of a revised HRA Report [AS-038] and Technical Notes [REP4-037, AS-045] and are considered in more detail in Chapter 4 of this report. It is noted here that all matters materially affecting the assessment were agreed by the end of the Examination as set out in the NE additional submission [AS-044] and the SoCG [REP6-017]. Concerns about effects on the Humber Estuary SSSI and River Derwent SSSI designated features mirror those expressed regarding the parallel HRA sites and were dealt with in the same way.

3.3.35. Other construction/decommissioning stage concerns from NE regarding otters and requests for further information on River Derwent SSSI dragonfly, bird and fish assemblages [RR-266] were addressed during the Examination [REP1-066] and the SoCG confirms that agreement on these matters was reached [REP6-017]. The SoCG also confirms that NE was satisfied with the Applicant's BNG assessment and proposals.

Other IPs

3.3.36. Yorkshire Wildlife Trust (YWT) [RR-377, REP1-097], UK Solar Alliance [RR-370] together with RRs from a considerable number of local residents objected to the scheme on a range of biodiversity grounds. Some of these objections were sustained in WRs and subsequent submissions. I consider them under the following broad headings.

Adequacy of the survey effort

3.3.37. The request by NE for further bird surveys to support the HRA, and a similar concern expressed in [RR-140], is dealt with in Chapter 4 of this report. In response to ExQ1 Q2.0.6 [PD-004] on the Applicant's approach to scoping out impacts on common and widespread habitats of low sensitivity and/or conservation interest, NE advised that, provided the correct methodology is used, the Applicant's approach would be reasonable [REP1-094]. There is nothing to suggest that the Applicant's methodology in that respect was flawed.

3.3.38. In response to suggestions by IPs other than NE that there was inadequate survey effort for birds and mammals (for example [REP1-103, REP1-118]) the Applicant referred to the methodology in ES Chapter 8 Ecology and the supporting surveys. The Applicant also confirmed in response to ExQ1 Q2.0.11 that the presence across the site of species including hedgehog, brown hare, harvest mouse, reptiles and common amphibians and polecat (although the latter was unlikely) was assumed and mitigation proposed accordingly. Further, that the habitats recorded within the site are common in a local and national context and therefore unusual or rare assemblages of terrestrial invertebrates are not expected to be present [REP2-019, REP2-020].

General concern about the impact on local wildlife

3.3.39. This concern was raised by a large number of IPs at the RR and WR stages. Although limited detailed evidence was provided, there was anecdotal evidence of the presence of:

- mammal species including deer, hare, fox (in particular the restriction of movement of these species), hedgehog, badger and otter;
- bird species including curlew, lapwing, skylark, pink footed goose, barn owl, tawny owl, little owl, bat, buzzard, red kite, kingfisher, tree and house sparrow, yellow hammer, cuckoo, lesser and greater spotted woodpecker, hobby, pheasant, partridge and heron; and
- other species including newts and pollinating insects.

3.3.40. These concerns were also raised at OFH1 [EV6-002] and were the subject of discussion at ISH2 [EV7-006]. ExQ1 [PD-004] Q2.0.11 sought further information on deer movement and Q2.0.14 on effects on bird species such as curlew and skylark.

3.3.41. The Applicant's responses [REP1-066, REP2-019, REP2-020, REP3-035, REP3-036], as well as referring to the level of survey effort, advised that the scheme would provide large areas of habitats so that it would not constrain connectivity and would have wildlife corridors along the field margins and gaps in the fencing to allow access for smaller mammals. Small deer would be able to get through the gaps but the large deer would not. However, the space between the fence and the field edges would allow deer to move within and around the edges of the site, outside of the solar PV areas. As such, their ability to move through the landscape would not be affected by the proposal and there is other suitable habitat in the local area.

3.3.42. With regard to bird species, existing field margins, boundaries and hedgerows would be maintained throughout the scheme. Embedded mitigation would improve the quality of these habitats, such as grassland planting to increase the number of invertebrates, which would be important for both ground nesting birds and other species that would be associated with hedgerows and other boundary features. These enhancements would provide increased nesting opportunities for species such as buzzard and increase small mammal populations so there would be increased food availability.

3.3.43. For species that need open space, there would be spaces which would remain open with better quality, permanent grassland and would not be subject to farming practices such as harvesting. The scheme would result in around 163 hectares of better condition grassland than is currently present. The Applicant has obtained a Great Crested Newt District Level Licensing Impact Assessment and Conservation Payment Certificate [REP1-019] to deal with that species.

Tottering Lane LWS and Wressle Verge LWS

3.3.44. These LWSs comprise narrow grass verges and, in some places, adjoining hedgerows. In addition to the response to the ERYC LIR reported above, the Applicant advised that the auger proposed to be used for cable installation is not long enough to pass under both the hedgerow and the verge. The Applicant considers it preferable to protect the hedgerow and temporarily affect the verge itself for a minimal width of 5m. The works would take two days and the disturbed turf would be stored and replaced. The process would be controlled in the Framework LEMP [AS-040], which would also secure the creation of large areas of grassland as mitigation [REP1-066, REP2-019, REP3-035].

Concern regarding effect on hedgerows

3.3.45. The Applicant advised that existing hedgerows would be retained wherever practicable. Minimum offsets of 10m from hedgerows or 15m where there are hedgerow trees are proposed. Buffers of grassland, native scrub, woodland and

traditional orchard would be created around the edge of the solar PV areas and other larger areas of grassland would be created, which will offer habitat for wildlife. The BNG Report [REP1-061] finds a minimum 10% gain in hedgerow units [REP1-066, REP2-019].

Effect on vegetation under the solar panels

3.3.46. YWT [REP1-097] and others were concerned that the shading created by the solar PV panels could lead to a reduction in sward height, increased amounts of bare ground and increased leaf litter. At ISH2 [REP3-035] the Applicant advised that it is committed to periodic monitoring visits to ensure that the target conditions detailed in the BNG Report are met. Remedies could include the use of shade tolerant grass species and overseeding and dynamic change to the management regime as set out in the Framework LEMP [AS-040].

Management of the Ecology Mitigation Area.

3.3.47. The concerns in this regard were essentially that the proposed mitigation amounts to no more than good farming practice (for example [RR-034] [REP1-103] [REP1-104]) and that the mitigation area should be managed for its biodiversity value in perpetuity rather than just for the lifetime of the scheme [REP1-097]. These matters were discussed at ISH2 [EV7-006]. In response to the nature of mitigation proposed, the Applicant commented that the creation of wetland areas and provision of over-winter stubbles had been carefully devised to meet the needs of the species and populations for which mitigation is necessary. This would include adjustments to farming practice to enhance the habitat for use by over wintering birds [REP2-019].

3.3.48. The Applicant further advised that managing the mitigation areas in perpetuity would be disproportionate and would serve no useful planning purpose, as there would be nothing left to mitigate against once the scheme is decommissioned. As such, it would be a disproportionate burden on the Applicant and the landowners affected as they would be unable to deal with their land freely including the potential resumption of agricultural use [REP2-019].

CONCLUSIONS

3.3.49. At the close of the Examination all of the substantive concerns of statutory consultees regarding HRA and biodiversity matters had been resolved. While YWT did not withdraw its objections or indicate that it was satisfied with the Applicant's responses to its concerns, I note that it did not participate in the Examination after submitting its D1 WR's in order to dispute those responses. Although the management of the EMAs for their ecological value in perpetuity would represent a long-term benefit of the scheme, I consider that the proposal to confine that management to the lifetime of the scheme would be an acceptable level of mitigation for the effects of the scheme on designated sites.

3.3.50. I appreciate that other IPs remained concerned regarding the effect of the proposal on a range of local mammal and bird species and habitats. However, having taken all relevant matters into consideration, I am satisfied that the Applicant's survey effort was sufficient to identify those species and habitats or, alternatively, it was reasonable to assume their presence in making the assessment.

3.3.51. Mitigation and enhancement measures have been secured in DCO R5 (Detailed Design Approval), R6 (LEMP), R7 (BNG), R11 (CEMP), R13 (CTMP) and R18 (Decommissioning and restoration). Taken together, these measures accord with the aims of NPS EN-1 paragraphs 5.4.35 and 5.4.36.

3.3.52. With these measures in place, I consider that there would not be significant adverse effects on designated sites or protected species. I agree with the Applicant's findings of minor adverse effects on receptors including the River Derwent SAC/SSSI, Lower Derwent Valley SPA/SAC/Ramsar/SSSI and Humber Estuary SPA/Ramsar/SAC, the two LWSs and species including birds, otter and fish, albeit that the majority of effects would be temporary.

3.3.53. On the other hand, there would be beneficial effects on receptors including broad-leaved plantation woodland, watercourses (affected by accesses), neutral grassland habitats, terrestrial invertebrates, reptiles and foraging bats and common amphibians. The Applicant also considers that there would be beneficial effects for other mammals. While that may be so in terms of habitat creation and enhancement, I consider that the constraining effect of the fencing around the solar PV areas would be negative, especially for larger mammals, resulting in a neutral effect overall.

3.3.54. Nevertheless, I accept that the proposal would achieve biodiversity net gains of 80.42% for area-based habitat units, 10.30% for hedgerow units, and 10.84% for watercourse units. This represents a benefit which weighs positively in favour of the proposal. As such, it complies with NPS EN-1 paragraph 5.4.42.

3.3.55. Consequently, I consider that the ecology and biodiversity considerations have been adequately assessed in the ES and that the proposal would accord with the ecology and biodiversity requirements of NPSs EN-1 and EN-3, the NPPF and relevant development plan policies. As such, the beneficial effects for certain habitats and species, together with the BNG identified, should be afforded moderate positive weight in the planning balance.

3.4. CLIMATE CHANGE

INTRODUCTION

3.4.1. This section considers the climate change effects of the Proposed Development. It therefore reviews the carbon savings associated with the proposal, the carbon emissions resulting from its construction, operation and decommissioning, its resilience to the effects of climate change and potential in-combination climate change impacts (ICCI).

POLICY BACKGROUND

3.4.2. The need to reduce carbon emissions and the role to be played by renewable energy development is covered in the policy background in Section 3.2 The Principle of Development of this report. Therefore, it is not repeated here.

National Policy Statements

3.4.3. NPS EN-1 paragraphs 4.10.8 to 4.10.10 require applicants to consider the direct and indirect impacts of climate change in the location, design, build, operation and decommissioning of new energy infrastructure. Impacts on, and from, the proposed development should be assessed across a range of climate change scenarios. A high level of climate resilience should be built-in from the outset and adaption over the life of the scheme should be demonstrated. NPS EN-3 paragraph 2.4.11 advises that particular consideration should be given to the effects of flooding and higher temperatures.

3.4.4. Paragraph 5.3.4 of NPS EN-1 requires the ES to provide a whole life GHG assessment showing construction, operational and decommissioning GHG impacts,

including impacts from change of land use and measures taken to drive down the climate change impacts at each of those stages. It should show how operational emissions have been reduced as much as possible through the application of best available techniques. Opportunities should be sought to embed nature-based or technological solutions to mitigate or offset the emissions of construction and decommissioning (paragraph 5.3.6).

National Planning Policy Framework

3.4.5. The NPPF broadly echoes NPS EN-1 with regard to climate change resilience and the support for reducing carbon emissions.

Development Plan

East Riding Local Plan adopted 2016

3.4.6. Policy S2 supports a reduction in GHG emissions and adaptation to the expected impacts of climate change. Policy EC5 supports the development of the energy sector, provided that any significant adverse impacts are addressed satisfactorily, and the residual harm is outweighed by the wider benefits of the proposal.

Selby District Core Strategy Local Plan 2013

3.4.7. Policy SP17 provides for new sources of renewable energy and low-carbon energy generation and supporting infrastructure, subject to detailed criteria.

APPLICANT'S APPROACH

3.4.8. The Applicant's climate change assessment appears in ES Chapter 6 [APP-058], together with Appendix 6-1: Legislation, Policy and Guidance (Climate Change) [APP-077], Appendix 6-2: Climate Change Risk Assessment (CCRA) [APP-78] and Appendix 6-3: ICCI Environmental Technical Disciplinary Risk Assessment [APP-072].

Methodology and Baseline

3.4.9. The methodology is set out in ES Section 6.4 and the baseline at Section 6.5. The methodology uses the Institute for Environmental Management and Assessment (IEMA) 'Environmental Impact Assessment Guide to: Assessing Greenhouse Gas Emissions and Evaluating their Significance'. It includes direct emissions at each phase of the scheme and indirect emissions embedded in the construction products and material production as well as transportation of these products and materials, waste and construction workers. As GHG emissions is a national and global issue, the assessment compares the estimated GHG emissions from the scheme against the reduction targets defined in the Climate Change Act 2008 (2050 Target Amendment) Order 2019 and associated five-year carbon budgets. It is assumed that the scheme would be constructed in the 4th carbon budget and would be operational in the 4th, 5th and 6th budgets.

3.4.10. The CCRA includes all of the scheme's infrastructure and assets and covers resilience against gradual climate change and the risks associated with an increased frequency of extreme weather events as set out in the UK Climate Projections 2018. The ICCI assessment considers how projected climate change would influence the significance of the impact of the scheme on receptors in the surrounding environment based on its location and assessment timeframe.

Embedded Mitigation

3.4.11. As reported in ES Section 6.6, construction and decommissioning phase embedded mitigation measures, secured through the CEMP CTMP and DEMP, include good practice construction, encouraging low carbon travel modes and preparing a Decommissioning Resource Management Plan to control waste generated on-site. Operational phase embedded mitigation measures in the OEMP would include using motion detection security lighting to avoid permanent lighting and minimising the creation of waste and maximising the use of alternative materials with lower embodied carbon.

Likely Effects and Impacts

GHG emissions

3.4.12. Section 6.7 of the ES finds that the largest GHG impacts would occur during the construction phase through the manufacture of the materials and components required. The manufacture of the solar PV panels is estimated to account for 83,568 tonnes carbon dioxide (CO2) equivalent (tCO2e). This figure is based on the use of the Environmental Product Declaration for the Jolywood JW-D144N-166 solar PV panels. Other materials and components, transport, waste, fuel and water use would take the construction phase total to167,877 tCO2e. On an annualised basis, this would represent 0.022% of the 4th UK carbon budget.

3.4.13. Operational phase carbon emissions would arise from replacement materials, transport, grid electricity and water use and amount to 65,337 tCO2e. Annualised, this would equate to 0.0005% of the 5^{th,} and 0.0008% of the 6^{th,} UK carbon budgets.

3.4.14. Acknowledging a degree of uncertainty due to limited confidence in conditions prevailing in 40-years time, the decommissioning phase assessment indicates total emissions of 6,978 tCO2e from sources including transport, waste recycling and disposal and fuel and water use. Lifetime emissions would therefore total 240,191 tCO2e.

3.4.15. Renewable energy generation during the first full year of operation is estimated to be 433,709 MWh based on a 480MW capacity of the scheme, a typical 922 kWh/kWp/yr (kilowatt hour per kilowatt-peak per year) yield. A 2% reduction in solar PV panel performance during the first year, followed by a 0.45% degradation factor for each subsequent year, would yield a total energy generation figure of approximately 15.9 terawatt hours over the 40-year lifetime of the scheme. Dividing this figure by the lifetime emissions total gives a total carbon intensity value of 15.1 grams of carbon dioxide equivalent per kilowatt hour (gCO2e/kWh). The carbon intensity of the operational phase alone would be 4.1 gCO2e/kWh.

3.4.16. In comparison, the carbon intensity for the operation only (the assessment advises that figures are not available for the lifetime carbon intensity of existing fossil fuel generating stations) of a gas fired combined cycle gas turbine (CCGT) facility, considered to be the most carbon-efficient fossil-fuelled technology currently in use, is given as 354gCO2e/kWh. Therefore, the operational phase carbon intensity of the proposal would be 98.8% lower than the counterfactual CCGT. The assessment goes on to find an overall lifetime carbon reduction of over 5.5 million tCO2e compared to the counterfactual CCGT.

3.4.17. The assessment advises that the published carbon intensities of other low-carbon technologies covers a broad range of figures which makes it challenging to make direct comparisons with the proposed scheme.

3.4.18. The GHG impact from the construction phase of the scheme is assessed to be minor adverse and not significant and the point is made that the National Grid will not be able to decarbonise without investment in low carbon electricity generation projects.

3.4.19. The GHG impact of the operational phase is considered to be beneficial and significant when compared to the future baseline 'business-as-usual' scenario as required by the IEMA guidelines. GHG emissions from the decommissioning phase are considered to have a minor adverse effect on climate change which is not significant. Again, it is noted that the scheme would contribute to the UK meeting its GHG reduction targets.

Climate Change Resilience

3.4.20. At the construction stage, climate change risks would be mainly due to workforce exposure to dangerous working conditions and damage to physical structures/assets, damage largely due to increased temperatures, flooding, and storms.

3.4.21. At the operational phase risks would be predominantly asset damage from extreme weather conditions and changes in annual precipitation and temperatures, as well as workforce exposure to dangerous working conditions. At the decommissioning phase the risks would be mainly to the workforce due to increased temperatures, rainfall, and extreme weather events. The risks are assessed to be negligible to low and not significant at each phase.

ICCI Assessment

3.4.22. The assessment details the likelihood, consequence, and significance of potential ICCIs and the sensitivity of receptors to both climate change and the scheme. With embedded mitigation and good practice measures in place, it finds that ICCIs during the construction, operational and decommissioning phases would be not significant.

Additional Mitigation and Monitoring

3.4.23. As no significant adverse effects are identified, the assessment at ES Section 6.8 concludes that no additional mitigation or monitoring would be necessary.

ISSUES CONSIDERED DURING THE EXAMINATION

3.4.24. The LIRs by ERYC [REP-022] and NYC [REP2-023] do not comment on the Applicant's climate change assessment. The SoCG with ERYC [REP6-011] confirms that it was content with the Applicant's findings on this topic. The SoCGs with NYC [REP6-013], the EA [REP5-018] and NE [REP6-017] are silent on this matter.

3.4.25. I asked a series of questions on climate change [PD-004] (ExQ1 Q3.0.1 to Q3.0.9). The Applicant's key responses [REP1-081] were that:

- land use change was excluded from the GHG assessment since it would have a beneficial impact due to measures secured through the Soil Management Plan [REP1-058] and would largely be reversed during decommissioning leaving a net neutral impact;
- although there would likely be sulphur hexafluoride (SF6) within the switchgear located at the field stations, these would be 'sealed for life' solutions with extremely low anticipated leakage rates. End of life disposal would adhere to strict waste management protocols and all components containing SF6 would be disposed of appropriately without releases to the atmosphere, as secured in the Site Waste Management Plan [APP-124];

- published figures for the lifetime carbon intensity of other solar and low carbon technologies range from 9 to 280 gCO2e per kWh for solar photovoltaic systems, 10 to 345gCO2e/kWh for solar thermal power plants, 8 to 30 gCO2e/kWh for onshore wind and 9 to 19 gCO2e/kWh for off-shore turbines. Stated lifetime figures for five other NSIP schemes then under consideration range from 7.72 to 70 gCO2e/kWh. All had BESS which may increase carbon intensity. At 15.1 gCO2e/kWh, the application proposal would sit towards the lower end of these ranges;
- as a large majority of the embodied carbon from materials in the scheme would come from the PV panels (approximately 58%), opportunities to reduce embodied carbon emissions are limited by what PV panels are available on the market, although the trend is towards lower carbon intensity products. The CEMP [REP4-010] commits the Applicant to maximising the use of alternative materials with lower embodied carbon such as locally sourced products and materials with a higher recycled content; and
- although the requirement in NPS EN-1 paragraph 5.3.7 to seek the submission of a Greenhouse Gas Reduction Strategy was published after the application was submitted, collectively the application documents provide comparable information. Relevant mitigation and enhancement is provided in the CEMP, OEMP and DEMP which are secured under DCO Requirements.

3.4.26. It was suggested that solar farms of the size proposed are untested and may become a hot spot for thermal activity [REP1-136]. In response, the Applicant referred to a number of studies which suggest that solar farms may have a cooling effect and one that indicates they could lead to warmer temperatures [REP2-019]. However, the latter study was undertaken in Arizona and is therefore not likely to be representative of the East Yorkshire climate.

CONCLUSIONS

3.4.27. Mitigation relevant to this topic is secured by DCO R11 (CEMP), R12 (OEMP), R13 (CTMP) and R18 (DEMP).

3.4.28. There was limited challenge to the Applicant's climate change case from IPs. The Applicant provided satisfactory responses to my questions. Although the submission does not include a Greenhouse Gas Reduction Strategy as such, I consider that it provides sufficient information to enable the climate change effects of the proposal to be properly examined. GHG effects are assessed over the construction, operational and decommissioning phases of the scheme and impacts from land use are considered, albeit briefly. Reasonable measures to reduce climate change impacts at each stage are secured in the DCO.

3.4.29. Comparisons with other low carbon technologies and the counterfactual of the current CCGT generating facilities have been provided. The scheme would perform fairly well against other low carbon technologies and result in a very considerable reduction in carbon emissions compared with CCGT.

3.4.30. Direct and indirect impacts of climate change on the scheme itself have been reviewed and it has been shown to be resilient against a range of climate change scenarios. I am satisfied that the ICCIs during the construction, operational and decommissioning phases would be not significant. Nor do I consider that the available evidence indicates that the proposal would have a harmful effect on the local temperature.

3.4.31. As such, I find that the proposal would comply with the climate change requirements of NPSs EN-1 and EN-3, the NPPF and relevant development plan policies. In view of the very considerable carbon emission reduction achievable compared with the continued use of CCGT for electricity generation, I conclude that the climate change impact of the proposal should be given great positive weight in the planning balance.

3.5. HISTORIC ENVIRONMENT

INTRODUCTION

3.5.1. The effects of the Proposed Development on the historic environment are considered in this section. There are no designated heritage assets within the Order Limits. This section therefore reviews effects on non-designated heritage assets (NDAs), the settings of designated assets and NDAs and archaeology.

POLICY BACKGROUND

3.5.2. Regulation 3 of the Infrastructure Planning (Decisions) Regulations 2010 requires the SoS to have regard to the desirability of preserving a listed building or its setting or any features of special architectural or historic interest which it possesses, the desirability of preserving or enhancing the character or appearance of a conservation area and the desirability of preserving an affected scheduled monument or its setting.

National Policy Statements

3.5.3. NPS EN-1 paragraph 5.9.9 requires applicants to assess and describe any likely significant heritage impacts as well as how the mitigation hierarchy has been applied. This should include consideration of above and below ground heritage assets and possible impacts, including cumulative, on the wider historic environment.

3.5.4. 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, consult relevant published sources and, where there is potential archaeological interest, include a desk-based assessment and, where appropriate, a field evaluation. Applicants are encouraged, where opportunities exist, to prepare proposals which can make a positive contribution to the historic environment (paragraphs 5.9.10, 5.9.11 and 5.9.13).

3.5.5. Where the loss of the whole or part of a heritage asset's significance is justified, the applicant will be required to record and advance understanding of the significance of the heritage asset before it is lost. This may be achieved by imposing a requirement in the DCO. Where necessary, requirements may also be used to ensure appropriate procedures are in place to identify and treat assets discovered during construction (paragraphs 5.9.17 to 5.9.21).

3.5.6. Paragraphs 5.9.22 to 5.9.36 deal with "decision making". This requires consideration of the impact of a proposed development on any heritage assets having regard to the particular nature of the significance of the heritage assets and the value that they hold for this and future generations. This understanding should be used to avoid or minimise conflict between their conservation and any aspect of the proposal as well as the desirability of sustaining and, where appropriate, enhancing the significance of heritage assets.

3.5.7. Great weight should be given to the asset's conservation and the more important the asset, the greater the weight should be. In weighing applications that directly or indirectly affect non-designated heritage assets, a balanced judgement will be

required having regard to the scale of any harm or loss and the significance of the heritage asset. Where development affects the setting of a designated heritage asset, appropriate weight should be given to the desirability of preserving the setting of the asset. Applications that preserve elements of the setting or make a positive contribution to it should be treated favourably.

3.5.8. NPS EN-3 generally re-affirms the provisions of NPS EN-1. It adds at paragraph 2.10.137 that the ability of applicants to microsite specific elements of the proposed development during the construction phase should be an important consideration when assessing the risk of damage to archaeology. At paragraph 2.10.160 it advises that consideration should be given to 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 settings of designated heritage assets.

National Planning Policy Framework

3.5.9. Paragraph 212 confirms that when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation (and the more important the asset, the greater the weight should be). This is irrespective of whether any potential harm amounts to substantial harm, total loss or less than substantial harm to its significance. 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 NDA against its benefits.

Development Plan

East Riding Local Plan adopted 2016

3.5.10. Policy ENV3 provides protection for designated and non-designated assets and their settings generally consistent with the NPPF, as well as conserving any key features that contribute to the district's distinctive historic character. Where development affecting archaeological sites is acceptable in principle, mitigation of damage through preservation of the remains in situ is the preferred solution. When in situ preservation is not justified, adequate provision for excavation and recording before or during development will be required.

Selby District Core Strategy Local Plan 2013

3.5.11. Policy SP18 seeks to safeguard and, where possible, enhance the historic environment, and conserve those assets which contribute most to the distinct character of the district.

Selby District Local Plan 2005

3.5.12. Policies ENV22, ENV25 and ENV27 provide protection for listed buildings and scheduled monuments and their settings and conservation areas generally consistent with the NPPF.

APPLICANT'S APPROACH

3.5.13. Chapter 7 of the ES [REP2-006] deals with Cultural Heritage. It is supported by:

- Appendix 7-1 Legislation, Policy and Guidance for Cultural Heritage [APP-079];
- Appendix 7-2 Cultural Heritage Desk-based Assessment [APP-080];
- Appendix 7-3 Geophysical Survey Report [APP-081];
- Appendix 7-4 Archaeological Trial Trenching Evaluation Report [REP1-018];

- Figure 7-1 Location of Designated Heritage Assets [APP-145];
- Figure 7-2 Location of Non-Designated Heritage Assets [APP-146];
- Figure 7-3 Location of Archaeological Events [APP-147]; and
- Figure 7-4 Historic Landscape Characterisation [APP-148].

Methodology/Baseline

3.5.14. ES Section 7.4 and Appendix 7-2 Cultural Heritage Desk-based Assessment (DBA) set out the assessment methodology. The study area extends 3km from the solar PV areas and 1km from the GCC and ICC for designated heritage assets and 1km from the Order Limit for NDAs. As well as a geophysical survey and site walkover, trial trenching was carried out within the solar PV areas, although areas deemed to have low archaeological potential were deferred for further evaluation. As set out in ES paragraph 7.4.15, a range of published data sources were consulted.

3.5.15. The DBA describes the baseline conditions, heritage assets and the contribution of their settings and provides a thematic landscape assessment. It also assesses the archaeological potential of the site and identifies key heritage considerations. ES Tables 7-4, 7-5 and 7-6 set out the criteria for determining the value, magnitude of impact and significance of effect for heritage assets.

3.5.16. The ES considers that there is no direct correlation between the classification of effect as reported in the ES and the level of harm caused to heritage value. However, it states that a major (significant) effect would likely mean that the level of harm to the value of the asset would be substantial. A moderate (significant) effect is likely to equate to a less than substantial level of harm to the value of the asset.

3.5.17. ES Section 7.5 finds that there are no World Heritage Sites, Registered Battlefields, Registered Parks and Gardens, or Protected Wrecks within the site or the study areas. Nor are there scheduled monuments, listed buildings (LBs) or conservation areas within the site. However, there are 52 entries on the Historic Environment Record (HER).

3.5.18. Within the 3km study area there are 126 assets comprising seven scheduled monuments, 118 LBs (including five Grade I and six Grade II*) and the Howden conservation area. There are further high value assets within 5km of the solar PV areas comprising four scheduled monuments, two Grade I LBs, and two Grade II* LBs. Within the 1km study area from the GCC (and outside the 3km study area from the solar PV site), there is one scheduled monument, one Grade I LB and eleven Grade II LBs.

Embedded Mitigation

3.5.19. As set out in ES Section 7.6, at the construction stage, the scheme design seeks to avoid physical impacts to known heritage assets within the Order Limits, where practicable. Construction and decommissioning traffic routes and modes of transport have been planned to reduce impacts on heritage assets. Three of the five temporary construction compounds are sited within the solar PV site, to avoid wider physical impacts than those required for the construction of the solar PV site, where possible. The definition of the Order Limits seeks to avoid or minimise potential changes to the settings of designated heritage assets, including LBs.

3.5.20. At the operational stage, the limited maintenance requirements of the scheme, lack of additional excavation or infrastructure works needed, and the limited traffic

requirements were assessed to be unlikely to result in significant effects. As such no further mitigation would be necessary.

Likely Impacts and Effects

3.5.21. ES Section 7.7 identifies likely impacts and effects. The construction phase assessment finds significant effects on the Iron Age and Romano-British settlement archaeology in solar PV areas 1a, 1e (two locations), 2b, 2e and 2g. In all cases:

- the sensitivity of the asset is medium;
- there would be physical impact resulting in permanent loss of archaeological interest and heritage value;
- the magnitude of the impact would be medium; and
- the effect category would be moderate adverse.

3.5.22. It also finds significant effects on:

- Johnson's Farm. This low sensitivity NDA would experience a permanent impact from a total loss of significance through demolition of the surviving historic fabric resulting in a high magnitude impact and a moderate adverse effect; and
- Hagthorpe moated site. This medium/high sensitivity asset would experience a potential permanent impact due to a partial loss of archaeological interest through open cut trenching for the GCC, resulting in a low impact and a moderate adverse effect.

3.5.23. The assessment finds no significant effects during the operational or decommissioning phases. Minor adverse, and therefore not significant, residual construction phase effects are predicted for the designated Drax Augustinian priory scheduled monument, Wressle Castle and the site of the Howden rail accident. Minor adverse effects would occur at the designated Drax Augustinian priory scheduled monument and the non-designated site of the Howden rail accident at the operational phase and at Wressle Castle, and the site of the Howden rail accident at the decommissioning phase.

Additional Mitigation and Monitoring

3.5.24. The proposed additional mitigation at ES Section 7.8 seeks to address the significant effects identified above. It would therefore comprise an Overarching Written Scheme of Investigation (OWSI) and site-specific Written Schemes of Investigation. These would provide for preservation in situ, archaeological investigation and recording, and a protocol for dealing with unexpected archaeological discoveries during construction. This would be focussed primarily on the areas of Iron Age and Romano-British settlement archaeology in the solar PV areas set out above, together with the Hagthorpe moated site. The mitigation would also provide for detailed historic building recording at the two non-designated farm buildings at Johnson's Farm.

3.5.25. The OWSI [REP3-030] has been agreed by ERYC and NYC. The site-specific Written Schemes of Investigation would be secured by DCO R10.

3.5.26. Since the archaeological mitigation works would be carried out in advance of construction activities no construction, operational or decommissioning phase monitoring is proposed.

Residual and Cumulative Effects

3.5.27. The assessment at ES Section 7.9 recognises that archaeological excavation and recording would not minimise the physical impact on the archaeological assets identified above. However, the proposed additional mitigation would compensate for their loss by preserving them by record, thereby allowing their continued study and achieving greater understanding and appreciation of their heritage value. As a result, there would be a residual minor adverse effect on individual assets, which would not be significant. The historic building recording works at the traditional farm buildings at Johnson's Farm would lead to a similar reduction in effect. As such, no residual significant effects are predicted at the construction, operational or decommissioning phases. The minor adverse effects identified above would remain.

3.5.28. Potential cumulative effects arising from the cumulative projects identified in ES Appendix 17-1 [REP2-008] that overlap, or share a boundary, with the scheme during the construction phase were reviewed. Four such projects were considered in greater detail, but the Applicant found that the significance of the effects of the proposal would not change at any receptors when their effects were added.

ISSUES CONSIDERED DURING THE EXAMINATION

3.5.29. The LIRs of ERYC [REP2-022] and NYC [REP2-023] do not question the findings of the Applicant's historic environment assessment or proposed mitigation. The RR from Historic England (HE) [RR-146] sought further detail on the archaeological potential of the site, more developed suggested archaeological research themes, to give appropriate weight to how a place is experienced when considering the contribution of its setting and to provide an assessment of cumulative impacts. These matters were the subject of discussion during the Examination and revised versions of ES Chapter 7 [REP2-006] and the OWSI [REP3-030] were submitted. The SoCG [REP4-020] with HE confirms that all matters were agreed by the close of the Examination.

3.5.30. Concerns were expressed regarding the effect of the proposal on the setting of Wressle Castle [RR-064] [RR-201], the historic landscape and the Iron Age Hasholme Boat found near the River Foulness [RR-038][3] to which the Applicant responded [REP1-066] with reference to relevant paragraphs of ES Chapter 7 and the DBA. The effect on Wressle Castle is assessed as minor adverse at the construction and decommissioning phases, the effect of the historic landscape would be negligible during the operational phase and the assessment does not make direct reference to the Iron Age boat.

3.5.31. It was suggested [RR-134] and [REP1-103] that there had been inadequate archaeological survey effort. The Applicant [REP2-019] considered that its investigations were robust and referred to the Geophysical Survey Report [APP-081], the Archaeological Trial Trench Evaluation [APP-082] and the OWSI.

3.5.32. There was also concern [REP1-119] that there had been inadequate assessment of NDAs not on the HER and their settings contrary to advice in the NPPF and Planning Practice Guidance. The walkover survey was confined to the site and insufficient use had been made of published information. Examples cited of direct effects on NDAs not properly considered included Spaldington Grange, Sandwood House and Chapel Farm and the settings of Willitoft Hall and the moated sites in Spaldington. The

[3] The Applicant's responses to the RRs incorrectly refers to [RR-034] and [RR-037] on this matter.

assessment also failed to properly consider the effect of the proposal on the setting of the Grade II listed Rowland Hall.

3.5.33. In response [REP2-019 REP3-037] the Applicant considered that the assessment is proportionate to the level of impact and accords with the methodology agreed during ES scoping. The walkover extended beyond the site to the study area and relevant consultees, data sources and historic mapping were consulted. The Applicant also reviewed its consideration of the examples of possible NDAs cited in [REP1-119] and found that, in the case of Sandwood House and Chapel Farm, they do not meet the criteria to be considered an NDA. In the other cases, the proposal would result in no change to their settings. The Applicant confirmed its assessment that the effect of the proposal on Rowland Hall would be very low to negligible and cites the agreement to this finding by the ERYC conservation officer in the LIR [REP2-022].

3.5.34. I asked a series of questions at ExQ1 Q7.0.1 to 7.0.13 [PD-004] and sought one point of clarification at ExQ2 [PD-008]. The Applicant's responses [REP1-081 REP4-030] on substantive matters were:

- with regard to the temporary impact on Wressle Castle, the extent to which such an impact may or may not influence the significance of effect depends on the level of change to the heritage value of an asset, including components of its setting that contribute to its value. In the case of Wressle Castle, the temporary duration of change to the setting is taken into account with the significance of the effect articulated through the descriptive narrative;
- the assessment assumes that construction of all of the scheme components. Including within the solar PV areas, could result in either physical disturbance or removal of buried archaeological assets. Physical disturbance would include impacts arising from compaction. The OWSI provides for agreed mitigation measures;
- the assessment was updated to include three of the five construction compounds not included in the original assessment. They fall within the GCC and the impact would be the same as the assessment of laying of cables within the GCC and would likely result in a moderate adverse or major adverse effect, which is significant. The GCC has not been subject to trial trench evaluation, but, if needed, a programme of archaeological excavation and recording would be carried out. The mitigation in the agreed OWSI would result in a residual effect that is not significant;
- the re-use of the modern agricultural barns, a single storey brick barn and the derelict dwelling (farmhouse) at Johnson's Farm for an operations and maintenance hub would avoid requiring new-build structures and reuses previously developed land and existing utility services. Although the modern barns could be used for storage, the farmhouse and single storey brick barn were not considered to be in a suitable condition and would need to be demolished. The heritage value of the buildings to be demolished is assessed as low and, with the mitigation in the OWSI, the residual effect would be minor adverse;
- the spatial extent of remains associated with a potential non-designated moated site at Hagthorpe would be confirmed by a programme of trial trench evaluation. Once the presence, spatial extent and heritage significance of the asset is confirmed, avoidance by design measures, such as the use of trenchless technologies, would be considered. If avoidance measures are not feasible, then a programme of mitigation comprising detailed archaeological excavation wouldl be carried out in line with the agreed OWSI; and

- the route of The Outgang drove road was walked as part of the site survey and is appreciable as a historic route for approximately 2.1 km. The maximum width of the ICC trench which would be cut across The Outgang would be 2.0m which represents an impact of less than 0.1% of the asset.

CONCLUSIONS

3.5.35. Having regard to the Applicant's clarification of its investigation of NDAs beyond the site boundary, I am satisfied that it has properly considered all relevant heritage assets in the assessment. There is nothing to suggest that the assessment methodology was deficient, and I note the agreement of HE and the local planning authorities s to its findings. As such, I consider that the assessment of the historic environment is satisfactory and accords with NPS EN1-1 paragraphs 5.9.22 to 5.9.36.

3.5.36. For the purposes of the ES, and with agreed mitigation in place, there would be no significant effects on designated heritage assets or their settings at any phase of the scheme.

3.5.37. There would be a minor adverse effect on the setting of one designated asset (Drax Augustinian priory scheduled monument) at the construction and operational phases. While this is not significant for ES purposes, NPS EN-1 and the NPPF require considerable importance and weight to be given to the desirability of preserving all heritage assets. Any harm or loss of significance of a designated heritage asset or its setting requires clear and convincing justification. The harm to the significance of the asset would be less than substantial and, in accordance with EN1-1 paragraph 5.9.32, I weigh this against the public benefits of the proposal in Chapter 5 of this report.

3.5.38. The assessment also finds minor adverse effects on the settings of a limited number of NDAs at the construction, operational and decommissioning phases. As required by NPS EN-1 paragraph 5.9.33, given the scale of this harm and the significance of the heritage assets, I judge these minor effects, balanced against the broader benefits of the proposal, in Chapter 5 of this report.

3.5.39. Overall therefore, and subject to the weighing exercises in Chapter 5, I consider that the effects of the proposal on the historic environment generally accord with the requirements of NPSs EN-1 and EN-3, the NPPF and relevant development plan policies. In view of the outstanding balancing exercises, my consideration of the weight to be attached to the effects of the proposal on the historic environment in the planning balance is deferred to Chapter 5.

3.6. LANDSCAPE AND VISUAL

INTRODUCTION

3.6.1. This section considers the landscape and visual effects of the proposal. It takes also into account the effects of the Proposed Development on the outlook from residential properties in the vicinity of the application site and on users of affected public rights of way (PRoWs) and the road network. It also covers glint and glare.

3.6.2. The Order Limits do not include any land designated nationally or locally for its landscape value. However, the locally designated Lower Derwent Valley and Pocklington Canal Important Landscape Area (ILA) and the Derwent Valley Candidate Locally Important Landscape Area are located to the west of the Applicant's Landscape and Visual Impact Assessment (LVIA) study area. The Yorkshire Wolds ILA is located some 10 km to the east and is being considered as a National Landscape.

POLICY BACKGROUND

National Policy Statements

3.6.3. NPS EN-1 paragraph 5.10.5 advises that *"virtually all nationally significant energy infrastructure projects will have adverse effects on the landscape, but there may also be beneficial landscape character impacts arising from mitigation."* Paragraph 5.10.6 goes on to say that projects need to be designed carefully, having regard to landscape impact as well as siting, operational and other constraints. They should aim to minimise harm and provide reasonable mitigation.

3.6.4. Landscapes may be highly valued locally and particular attention should be paid to local development plan landscape policies. However, locally valued landscapes should not be used, in themselves, to refuse consent, as this may unduly restrict acceptable development. Furthermore, energy infrastructure is likely to have visual effects for many receptors. It will be necessary to judge whether the visual effects on sensitive receptors, including local residents, outweigh the benefits of the project. (paragraphs 5.10.12 to 5.10.14).

3.6.5. The applicant's ES should include a landscape and visual impact assessment (LVIA) and guides are available including the Landscape Institute and IEEMA: Guidelines for Landscape and Visual Impact Assessment (3rd edition) (GLVIA3). The LVIA should refer to any landscape character assessment and associated studies. Landscape and visual matters should be considered in the early stages of siting and design and the minimisation of negative effects and opportunities for enhancement should be demonstrated (paragraph 5.10.16, 5.10.17 and 5.10.19).

3.6.6. The visibility and conspicuousness of the project during the construction and operational phases should be assessed, along with potential impacts on views and visual amenity. This should include light pollution effects, including on dark skies, local amenity, and nature conservation. The landscape and visual effects of noise and light pollution on residential amenity and sensitive locations should be assessed as well as how they would be minimised (paragraphs 5.10.21 and 5.10.22).

3.6.7. Adverse landscape and visual effects may be minimised through appropriate siting within the site and wider setting. Careful consideration should be given to the design of the project as well as to sympathetic landscaping and management of its immediate surroundings (paragraph 5.10.27 and 5.10.28).

3.6.8. The SoS should take into consideration the level of detailed design provided and secured in the DCO, the extent to which design details are subject to future approvals, and should be satisfied that sufficient design content is secured to ensure future consenting will meet landscape, visual and good design objectives (paragraphs 5.10.29 and 5.10.30).

3.6.9. NPS EN-3 recognises that solar farms are likely to be in low lying areas of good exposure and, as such, may have a wider zone of visual influence than other types of onshore energy infrastructure. Nevertheless, the zone of visual influence of ground-mounted solar panels could be appropriately minimised with effective screening and appropriate land topography. Applicants should follow the criteria for good design set out in Section 4.7 of NPS EN-1 and should direct considerable effort towards minimising the landscape and visual impacts of the proposal, including any security measures and fencing (paragraphs 2.10.94 to 2.10.99)

3.6.10. The growth of vegetation should be considered in the design, layout, construction and maintenance of the proposal. The impact on established trees and hedges should be

informed by a tree survey and arboricultural/hedge assessment as appropriate (paragraphs 2.10.100 and 2.10.101).

3.6.11. NPS EN-3 also recognises that solar panels may reflect the sun's rays at certain angles, causing glint and glare. Applicants should map receptors qualitatively to identify potential glint and glare issues. When a quantitative glint and glare assessment is necessary, it should consider the geometric possibility of glint and glare affecting nearby receptors and provide an assessment of potential impact and impairment. It should take account of the use of tracking panels where relevant, as well as mounts and frames (paragraphs 2.10.102 to 2.10.106).

3.6.12. To the extent that NPS EN-5 provides additional guidance, it reinforces the aims of NPS EN-1 regarding careful consideration of siting design and the mitigation of landscape and visual effects (paragraphs 2.9.7 to 2.9.15).

National Planning Policy Framework

3.6.13. The NPPF seeks to protect valued landscapes and recognises the intrinsic character and beauty of the countryside including trees and woodland (paragraph 187).

Development Plan

East Riding Local Plan adopted 2016

3.6.14. Policy ENV2 requires development to be sensitively integrated into the landscape, and seeks to make the most of the opportunities to protect and enhance landscape characteristics and features. Important hedgerows and trees should be retained unless their removal can be justified in the wider public interest in which case replacements will usually be required. Woodland should be maintained or enhanced. Existing landscape character should be maintained, particularly within the Yorkshire Wolds and Lower Derwent Valley ILAs.

Selby District Core Strategy 2013

3.6.15. Policy SP12 encourages opportunities to protect, enhance and better join up existing Green Infrastructure as well as creating new Green Infrastructure. Policy SP18 seeks to safeguard and, where possible, enhance landscape character.

Selby District Local Plan 2005

3.6.16. Policy ENV11 presumes against development likely to cause loss of, or damage to, an ancient woodland, unless the reasons for the development outweigh the nature conservation value of the woodland. Policy ENV12 presumes against development likely to harm the natural features of, or access to, river, stream and canal corridors unless the importance of the development outweighs these interests, and adequate compensatory measures are provided.

APPLICANT'S APPROACH

3.6.17. The Applicant's landscape and visual assessment is found primarily in ES Chapter10 Landscape and Visual Amenity [REP1-014]. It is supplemented by the following appendices:

- 10-1 Legislation, Policy and Guidance [APP-128];
- 10-2 Landscape and Visual Impact Assessment Methodology [APP-099];
- 10-3 Landscape Character [APP-100];

- 10-4 Potential Representative Viewpoints [APP-101]; and
- 10-5 Arboricultural Impact Assessment and Tree Protection Report [APP-102] including Annex D: Tree Constraints Plan [APP-103] and Annex E: Tree Protection Plan [APP-104].

3.6.18. The assessment is also supported by these figures:

- 10-1 Study Area [APP-156];
- 10-2 National and Regional Landscape Character Areas [APP-157];
- 10-3 Local Landscape Character Types [APP-158];
- 10-4 Zone of Theoretical Visibility Bare Earth – All Features [APP-159];
- 10-5 Zone of Theoretical Visibility (With Surface Features) – Solar PV Panels [APP-160];
- 10-6 Zone of Theoretical Visibility (With Surface Features) – Grid Connection Substations [APP-161];
- 10-7 Potential Viewpoint Locations [APP-162];
- 10-8 Representative Viewpoint Locations Plan [REP1-029];
- 10-9 to 10-38 Viewpoint Photography [APP-164 to APP-193][4]; and
- 10-39 to 10-55 Photomontages [APP-194 to APP-210][5].

Landscape and Visual Assessment

Methodology

3.6.19. The methodology at ES Section 10.4 is based on a realistic worst-case scenario using the Rochdale Envelope approach. Construction phase assumptions used therefore include peak construction activity during the winter when trees are not in leaf, early implementation of the perimeter fencing, temporary two-storey accommodation at the Johnson's Farm operations hub and a 30m wide working corridor for cable installation in the ICC and GCC. The operational phase assessment is based on year 1 and year 15 winter-time scenarios. The decommissioning phase assessment again assumes winter-time activity and the removal of the GCC cables and retention of the Grid substations.

3.6.20. The LVIA study area is based on a combination of Zones of Theoretical Visibility (ZTV) analysis and professional judgement. The study area extends up to 2.6km from the solar PV areas, although, to the north it extends only some 1.0km. The study area for the GCC varies due to intervening vegetation and structures.

3.6.21. The assessment has regard to GLVIA3 and Landscape Institute technical guidance notes as referenced at ES Section 10-11 [REP1-014]. ES Tables 10-3 to 10-7 define the sensitivity criteria used. Moderate and major impacts are deemed 'significant' for the purposes of the ES.

[4] In response to a number of questions in ExQ1, 14 viewpoint photographs were revised at Deadline 1 with updated EL reference numbers. See discussion of the issues in the Examination below for details.
[5] In response to my ExQ1, five photomontages were revised at Deadline 1 with updated EL reference numbers. See discussion of the issues in the Examination below for details.

3.6.22. As well as identified representative viewpoints, the assessment takes into account visual effects on private views from residential properties. It has regard to the Landscape Institute's Technical Guidance Note 2/19: 'Residential Visual Amenity Assessment. The assessment considers that significant adverse effects on the views and visual amenity of residential receptors do not normally cause planning concern. Although there may be situations where the effect is so significant that it would not be in the public interest to permit them, the assessment finds no significant visual effects on residential receptors at Year 15.

Baseline

3.6.23. The baseline is described in ES Section 10.5. Data was obtained from published sources as well as site visits. The landscape baseline is characterised by reference to published National Character Areas and County and Local Level Landscape Character Assessments together with descriptive characterisations and landscape designations.

Landscape

3.6.24. In essence, the solar PV areas and ICC are located on low lying land within a relatively flat landscape. The land use is predominantly agricultural with medium to large scale arable fields, pasture and some willow coppice. Field boundaries are predominantly hedgerows of varying quality and height. In places tree lines mark where hedgerows have been lost and fields amalgamated.

3.6.25. The River Foulness defines the eastern boundary of the solar PV area and some land within the Order Limits acts as floodplain. Long views are available where there is limited intervening hedgerows and vegetation, and some long distance views are available from the eastern extent of the study area towards the Wolds. The assessment identifies detracting features including Spaldington Wind Farm and pylons, communications masts in the western part of the study area and intensive arable agriculture. Small settlements, isolated dwellings and farmsteads are located between the solar PV areas and the ICC.

3.6.26. The landscape condition and structure is said to be declining due to boundary loss and fragmentation of features through the intensification of agricultural processes. Nevertheless, the landscape offers recreational opportunities through the PRoW network. Levels of tranquillity vary.

3.6.27. The EMAs would be located to the north-east of the solar PV areas. The GCC is predominantly agricultural and comprises medium to large scale arable fields, The landscape is said to be commonplace with repetitive elements and overriding detracting features such as the Drax Power Station, pylons and overhead lines. The river corridors are inconspicuous within the landscape due to limited vegetation and engineered banks. The landscape is considered ordinary with few features of value.

Visual

3.6.28. The ZTVs were used to locate representative viewpoints. The baseline also takes into account transient views from the PRoWs, the Hull to Selby railway line, the road network and flights from Breighton airfield. A total of 29 representative viewpoints, chosen to illustrate the typical range of views from within the study area as experienced from settlements, publicly accessible roads and PRoWs, are described for summer and winter.

3.6.29. Viewpoints 21 and 29 (both Barmby on the Marsh PRoW, 22 (Trans-pennine Trail PRoW), 26 (All Saints Church, Holme on Spalding Moor PRoW) and 28 (Willitoft Road (south)) are categorised as having a medium value of view. All others are given a low or very low value of view.

Embedded Mitigation

3.6.30. The LVIA is said to have informed an iterative design process**.** The design principles include:

- locating solar PV areas where large scale amalgamated fields can accommodate the infrastructure. Solar PV panels have been removed and/or set back where they were considered to have a stronger influence on key landscape and visual receptors;
- adjusting offsets from properties and local roads to respond to the character of views, or where views and open character contribute to the setting of villages;
- creating offsets to existing vegetation and water bodies. Using existing access points where possible to avoid loss of hedgerows;
- creating offsets to PRoWs to reflect the existing character of the route. Where solar infrastructure lies on one side of the PRoW, the offset would be 15m from the centre line of the PRoW to the line of the perimeter fence. Where the PRoW has solar infrastructure on both sides, offsets would be 20m each side of the centre line of the PRoW. Solar PV panels would be located 5m from the perimeter fence;
- introducing two new permissive paths to link existing PRoWs and create circular routes within the site;
- moving the grid sub-stations to solar PV area 1c where vegetation would provide visual containment;
- placing the GCC and ICC cables underground to avoid the introduction of new tall linear features into the landscape and routeing them to minimise disturbance of existing vegetation; and
- using the existing footprint of the derelict buildings at Johnson's Farm to locate the proposed permanent office, welfare and storage facilities.

3.6.31. The scheme includes the provision of semi-improved grassland within the fence line of the solar PV areas and species-rich grassland within the wider solar PV site, increased woodland cover and connectivity and hedgerow reinforcement. A damp grassland habitat adjacent to the River Foulness in the EMA would extend south to join a similar area of habitat in the east of solar PV area 1e.

3.6.32. The maximum height of the solar PV panels was reduced following the scoping exercise. The perimeter fence will be a 'stock and deer proof fence' or other mesh-type security fencing with wooden posts, up to 2.2 m in height, with galvanised palisade security fencing up to 2.4m high, and likely green in colour, around the grid sub-stations. The following example photographs are taken from ES Chapter 2 [APP-054].

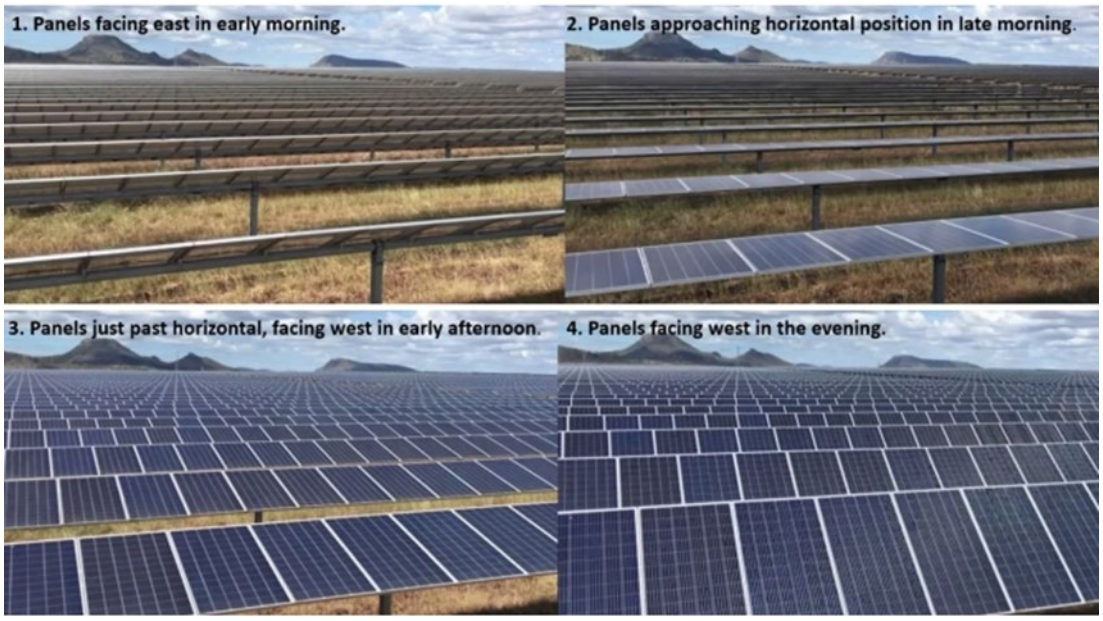

Figure 4 Example of single axis tracker solar PV panels at different times of the day

Figure 5 Example of field station unit

3.6.33. Non-visible infrared lighting would be used for the CCTV/security system to provide night vision functionality for CCTV. Elsewhere limited lighting would be required during the operational phase and would be designed to minimise light spillage and brightness, and would be motion controlled.

Figure 6 Example of perimeter fencing

Likely Impacts and Effects

3.6.34. The assessment of likely impacts and effects appears at ES Section 10.7. It is based on the Indicative Site Layout at ES Figure 2-3 [REP1-028]. Although a 24-month construction period is assumed, the assessment considers that the results would not change if the period were to be extended.

3.6.35. Landscape effects are described for the construction, operational year 1, operational year 15 and decommissioning phases. They are defined by national, regional and local character areas and set out in ES Tables 10-9, 10-10 and 10-11 respectively. Most effects are assessed as no change, minor or negligible adverse and therefore not significant. No significant effects are predicted at the national (Natural England National Character Areas) or regional (North Yorkshire and York Landscape Character Assessment Local Character Type) levels. At the local (East Riding of Yorkshire Landscape Character Assessment Local Character Area (LCA) level, moderate adverse, and therefore significant, landscape effects are identified as summarised in the following table.

Table 2 Likely significant landscape effects (all local level)

Character Area	Impact
Howden to Bubwith Farmland (LCA 5A)	*Operational Year 1*. The introduction of new infrastructure would represent a comprehensive local change to the overall perceptual character of the LCA, with extensive massing of incongruous features and a loss of the varied patterns of winter arable farming. Perceptual influence may extend outside the solar PV areas, although this influence is likely to be limited by the low-lying topography and hedgerows or woodland blocks. High magnitude impact, over a large geographical extent, long-term, and reversible.
	Operational Year 15. Effects broadly in line with operational year 1. Replacement and mitigation planting would have established and provide a more robust landscape structure and additional containment to the infrastructure.

Character Area	Impact
	High magnitude impact, over a large geographical extent, long-term, and reversible.
West of Holme on Spalding Moor Farmland (LCA 5B)	*Operational Year 1*. The introduction of new infrastructure would represent a noticeable local change to the overall perceptual character of the LCA, with extensive massing of incongruous features and a loss of the varied patterns of winter arable farming. Perceptual influence may extend outside the solar PV areas, although this influence is likely to be limited by the low-lying topography and hedgerows or woodland blocks. New planting and ecological mitigation would be in place but not yet established. High magnitude impact, over a medium geographical extent, long-term, and reversible,

3.6.36. Visual effects are assessed by reference to the identified representative viewpoints and include receptors experiencing transient views. Winter-time effects for the construction, operational year 1, operational year 15 and decommissioning phases are set out in ES Table 10-12. Most effects are assessed as no change, minor or negligible adverse and therefore not significant. Moderate adverse and therefore significant effects are predicted as set out in the following table.

Table 3 Likely significant visual effects

Viewpoint	Phase	Receptor
1. Rowland Hall Lane, PRoW (WRESF07)	Construction	Residents
	Decommissioning	Residents
3. Brind Lane	Construction	Residents
	Operational Year 1	Residents
4. Featherbed Lane PRoW, (EASTB17)' Howden 20	Construction	PRoW users
	Operational Year 1	PRoW users
5, Sandwood House, Spaldington Road	Construction Phase	Residents
	Operational Year 1	Residents
6. Willitoft Road, Spaldington	Construction	Residents
	Operational Year 1	Residents
7. Crossroads Cottages, Willitoft Road	Construction	Residents
	Operational Year 1	Residents
10a. Tottering Lane junction, Gribthorpe (FOGGF13), Howden 20 (east)	Construction	PRoW/road users
	Operational Year 1	PRoW/road users
10b. Tottering Lane junction, Gribthorpe (FOGGF13), Howden 20 (west)	Construction	PRoW users
	Operational Year 1	PRoW users
	Decommissioning	PRoW users
	Construction	Residents/ PRoW users

Viewpoint	Phase	Receptor
11. PRoW (SPALF14 and SPALF01), Howden 20, Spaldington	Operational Year 1	Residents/ PRoW users
14. A614, PRoW (EASTF15 and EASTF13), Burland	Construction	Residents
	Operational Year 1	Residents
19. Wrestle Grange PRoW (WRESF02)	Construction	Residents
	Operational Year 1	Residents
21. Barmby on the Marsh PRoW (BOTMF06) (west)	Construction	Residents/ PRoW users
	Decommissioning	Residents/ PRoW users
22. Trans Pennine Trail PRoW	Construction	PRoW users
	Decommissioning	PRoW users
29. Barmby on the Marsh PRoW (BOTMF06) (south-west)	Construction	Recreational users
	Decommissioning	Recreational users
Users of the long-distance Howden 20 walking route	Operational Year 1	PRoW users
	Decommissioning	Recreational users

Additional Mitigation and Residual Effects

3.6.37. ES Section 10-8 describes the additional mitigation proposed at viewpoints 5 and 7 which are considered key locations. The mitigation would take the form of specimen tree, shrub or 'ready hedge' planting in sensitive locations to reduce the time until the effectiveness of the screening reaches an 'operation year 15' level. Details of the planting are set out in the LEMP [AS-040].

3.6.38. Nevertheless, the summary of residual landscape and visual effects at ES Section 10-9 and Tables 10-17 to 10-20 identify the same effects as the pre-additional mitigation assessment. As such, the residual effects would not change from those set out in Tables 2 and 3 above.

Cumulative Effects

3.6.39. Cumulative landscape and visual effects are considered at ES Section 10-10. This is based on an agreed list of cumulative schemes as set out at ES Appendix 17-1 [REP2-008]. A worst-case scenario whereby all the identified developments are being constructed and therefore present in the landscape simultaneously has been assumed.

3.6.40. ES Table 10-21 sets out the landscape, and ES Table 10-22 the visual, cumulative effects. In both cases it is found that there would be no additional significant cumulative effects.

Glint and Glare

3.6.41. The Applicant's glint and glare assessment is contained in ES Section 16.3 [AS-016] supported by a technical study at ES Appendix 16-2 [APP-122]. The assessment methodology is summarised at ES paragraph 16.3.12 and involves using geometric calculations to determine the extent of solar reflections from the panels towards identified receptors. These comprise residential, road, rail and PRoW receptors within 1km of the solar PV site together with Breighton Airfield and Leeds East Airport.

Consideration was also given to effects on the River Derwent and the River Ouse even though they are located more than 1km from the solar PV site.

3.6.42. The modelling is said to be based on worst-case principles in that it does not consider man-made or natural obstacles between the receptors and the solar installation that may obstruct observed glare and assumes clear skies at all times. Embedded mitigation considered in the assessment comprises the careful siting of the scheme in the landscape with offsets from existing residential areas, vegetation patterns and PRoW and road networks.

3.6.43. No solar effects were found on any of the receptors assessed within the study area. Since no effects were found on receptors within the study area, it was inferred that there would be no effects on the more distant River Derwent and River Ouse.

3.6.44. In terms of aviation receptors, only 'Green Glare' impacts (low potential for an 'after image') were predicted for Runway 28 at Breighton Airfield, which is an acceptable impact on runways according to the US Federal Aviation Authority guidance used in the assessment. Overall aviation impacts were therefore assessed as low and not significant.

3.6.45. No additional mitigation was considered necessary, although it is noted that the LEMP planning proposals would provide additional screening. Residual effects were assessed as negligible and no or negligible cumulative effects were found.

ISSUES CONSIDERED DURING THE EXAMINATION

Statutory Consultees

3.6.46. The LIR from ERYC [REP2-022] was generally supportive of the Applicant's assessment, but was concerned regarding the lack of viewpoints at solar PV area 2a and considered that views in the Willitoft and Gribthorpe areas should be given medium rather than low value. The LIR also requested consideration of further mitigation and enhancement measures for the protection and retention of existing trees, improved fencing and CCTV design and the creation of green and river corridors and more grassland.

3.6.47. The Applicant's response is at [REP3-032]. These matters were also discussed at ISH2 [EV7-002] [REP3-035] and at a subsequent meeting between ERYC and the Applicant. The SoCG with ERYC [REP6-011] confirms that, by the close of the Examination, the Council was content that landscape and visual matters had been properly assessed and that appropriate mitigation and enhancement measures could be secured through DCO Requirements 5 (detailed design approval) and 6 (detailed LEMP).

3.6.48. The RR [RR-282] and LIR from NYC [REP2-023] expressed concerns including that there was no specific requirements in the CEMP or DCO requirements for the Applicant to protect and retain existing vegetation in the GCC or to contribute to green infrastructure. Existing and proposed planting was not clearly shown in the application submissions, including the LEMP landscape Masterplan. Further, that the final cable routeing in the GCC was not shown and that it was not clear how the LVIA takes into account the worst-case position.

3.6.49. The Applicant's responses are at [REP1-066, REP3-032]. These matters were also discussed at ISH2 [EV7-002] [REP3-035] and in a subsequent meeting between NYC and the Applicant. The Framework LEMP was updated at Deadline 3 to respond to NYC's concerns and the final version is at [AS-040]. The SoCG with NYC [REP8-006]

confirms that, by the close of the Examination, the Council was content that landscape and visual matters had been properly assessed using the worst-case scenario. Moreover, detailed design of the protection and reinstatement of existing vegetation would be secured through DCO Requirements 6 (detailed LEMP) and 11 (detailed CEMP). The Framework CEMP is at [REP4-010].

3.6.50. The RR from the Forestry Commission [RR-118] sets out its advice and makes suggestions to improve access to woodland within and adjoining the site, to take opportunities to link and buffer existing woodland and for the design and management of newly created woodland. It also considered that the proposed 15m buffer to existing woodland may not adequately mitigate the ongoing shading impact of woodland and trees on solar panels, leading to potential future conflict. Cabling should be routed to avoid tree root protection areas.

3.6.51. The Applicant's response [REP1-066] referred to updating the LEMP [AS-040] to explain the management of existing planting, the commitment to enabling access to woodland and to adhering to the UK Forestry Standard for new planting. It also referred to the connectivity benefits which would be provided by the new woodland planting as well as to the measures to be approved in the detailed LEMP and secured by DCO requirement 6. The Applicant considered that the Arboricultural Impact Assessment [APP-102] provides justification for the proposed buffers to existing woodland. The Applicant was in further contact with the Forestry Commission during the Examination and, by the close, all matters were agreed as set out in the SoCG [REP6-015].

Other IPs and ExQs

3.6.52. Landscape and visual matters drew widely held and sustained concerns, including from Foggathorpe [RR-117] and Spaldington [RR-341] Parish Councils. A detailed landscape and visual representation was submitted on behalf of Mr and Mrs Taylor [REP1-144] in addition to Mr Taylor's own submission [REP1-145].

3.6.53. Submissions on these matters were made in RRs and at Deadlines 1, 3 and 8. The topic was also discussed at ISH2 [EV7-002] and I asked related questions at ExQ1 [PD-004] and ExQ2 [PD-008]. My ExQ1 included a number of queries regarding the clarity and consistency of the Applicant's viewpoint photographs and photomontages. In response the Applicant submitted revised versions as set out in the table below.

Table 4 Revised viewpoint and photomontage submissions

EL reference	Viewpoint (VP)
REP1-029	Representative Viewpoint Locations Plan
REP1-030	Viewpoint Photography VP02
REP1-031	Viewpoint Photography VP03
REP1-032	Viewpoint Photography VP04
REP1-033	Viewpoint Photography VP06
REP1-034	Viewpoint Photography VP07
REP1-035	Viewpoint Photography VP012a
REP1-036	Viewpoint Photography VP16
REP1-037	Viewpoint Photography VP18

EL reference	Viewpoint (VP)
REP1-038	Viewpoint Photography VP22
REP1-039	Viewpoint Photography VP25
REP1-040	Viewpoint Photography VP26
REP1-041	Viewpoint Photography VP27
REP1-042	Viewpoint Photography VP08
REP1-043	Photomontage VP05
REP1-044	Photomontage VP09
REP1-045	Photomontage VP010a
REP1-046	Photomontage VP19
REP1-047	Photomontage VP25
REP3-039	Photomontage and Wireline for Y15 winter at VP3
REP3-040	Photomontage and Wireline for Y15 winter at VP4
REP3-041	Photomontage and Wireline for Y15 winter at VP5
REP3-042	Photomontage and Wireline for Y15 winter at VP6
REP3-043	Photomontage and Wireline for Y15 winter at VP7
REP3-044	Photomontage and Wireline for Y15 winter at VP10a
REP3-045	Photomontage and Wireline for Y15 winter at VP10b

3.6.54. I consider that, with this revised photography and photomontages, the Applicant's submissions provide a clear visual representation of the existing context and of the proposal. I deal with the other matters raised under the following headings.

Scale of the proposal, landscape character and long views

3.6.55. IPs considered the proposal would be too large, would 'industrialise' the local landscape, engulf adjoining villages and that residents would be deprived of views of a valued countryside, including from PRoWs. It was also considered that the solar PV panels would be too big and high. ExQ1 Q9.0.19 and ExQ2 Q7.0.5 sought further information on the cumulative foreshortening / enclosing effect of the proposed planting and fencing on extensive views.

3.6.56. In response the Applicant [REP1-066, REP1-081, REP2-019, REP3-035, REP4-029, REP4-030] referred to the ES landscape and visual assessment and the careful design of the scheme which seeks to minimise harm to the landscape and reduce adverse visual effects. The Applicant acknowledged that the proposal would introduce incongruous, industrial features that would change the overall landscape character and that the land use would change from agricultural fields to areas of solar PV panels.

3.6.57. The Applicant also recognised that there would be some enclosing of views, including along PRoWs, in direct proximity to the solar PV areas. However, the LEMP provides for intermittent woodland edge planting to break up views while allowing some wider views. The proposal includes the reinstatement of hedgerows which would reinforce the existing landscape character. Buffer zones are proposed adjacent to the PRoWs,

as previously described, and would create a zone up to 50m wide overall. Sections C and D of LEMP Appendix A illustrate the arrangements [AS-040].

3.6.58. While recognising that the assessment does not cover every residential property individually, the Applicant advised that hedgerow, woodland and orchard planting and grass buffers are proposed to mitigate effects on views from residential properties and would be effective by operational year 15. The LEMP allows for the early provision of mature planting to be explored with landowners in targeted locations to mitigate the effects on the most sensitive receptors.

3.6.59. Key landscape characteristics including hedgerows, hedgerow trees and longer distance views would be retained, where possible. The Applicant considered that there would be limited and localised adverse landscape and visual effects. They would reduce over the operational life of the scheme and would be reversible.

3.6.60. Related to these concerns, I queried the Applicant's use of national and local landscape character areas as the basis of its assessment (ISH2 [EV2-002] and ExQ1 Q9.0.13 [PD-004]) given that GLVIA3 advice (paragraph 5.50) refers to a range of scales including the site level and the immediate setting. Potentially therefore, the effects of the proposal, when experienced at a smaller scale, could be more concentrated.

3.6.61. The Applicant [REP1-081, REP3-035] considered that it had followed the GLVIA3 advice. The impacts of the scheme would be experienced across a larger area than the site and its immediate setting and therefore it was appropriate to use the local and national character area levels in the assessment. In terms of the immediate setting of the solar PV areas, the perceptual influence of the panels on landscape character would extend beyond the individual solar PV area boundary, although it would be limited by the low-lying topography, existing hedgerows and existing woodland blocks. This would limit the indirect impacts of the proposal on landscape character.

3.6.62. The assessment has been undertaken on a local level using subdivisions of the LCAs. The Applicant contended that, if they were further subdivided, which would be needed to assess the scheme at a smaller scale, the direct impacts on landscape character and indirect impacts on its perceptual qualities would not change from those originally assessed due to the limiting effects of the landform and vegetation.

3.6.63. The Applicant also clarified its findings on particular local character areas in response to ExQ1 Q9.0.11 and Q9.0.12.

3.6.64. The representation on behalf of Mr and Mrs Taylor [REP1-144] was particularly concerned about the effects of the solar PV areas 2e and 2f in the vicinity of Sandwood House, Spaldington Road. It contended that the Applicant's landscape and visual assessment is deficient in that:

- the baseline does not consider the immediate setting of each solar PV area, in particular where this concerns local settlement and there is an apparent underassessment of landscape sensitivity;
- the assessment does not assess change against landscape receptors at an immediate setting scale, contrary to GLVIA3;
- the visual assessment does not identify all visual receptors relevant to solar PV areas 2e and 2f and underestimates magnitude, contrary to the ES LVIA methodology, resulting in an underassessment of the number and magnitude of likely significant visual effects relevant to areas 2e and 2f; and

- the approach to landscape and visual mitigation is inconsistent and over reliant on 'cosmetic' screen planting, particularly in the case of areas 2e and 2f and is discordant with the objectives of relevant national and local character area assessments.

3.6.65. The Applicant's response [REP2-019] referred to its LVIA, which it considers robust, and finds a number of significant adverse effects. Specifically, LCA 5A Howden to Bubwith Farmland is considered to be representative of the landscape character around Spaldington, including Sandwood House. The landscape value is considered to be low as a result of the presence of existing development and detracting features (overhead cables and industrial structures), with no notable elements that are rare or of cultural heritage or historical association.

3.6.66. The Applicant considered that it would not be proportionate to make the assessment at a finer grain. However, VP5 is representative of the views from Sandwood House. There would be a moderate adverse (significant) effect as a result of the visibility of the scheme in views from gaps in the boundary hedgerow at the construction phase and operational year 1. This would reduce to a minor adverse effect that is not significant in year 15. The potential for views from upper storey windows was acknowledged although the majority of these properties, including Sandwood House, have mature garden vegetation to the south which provides some intermittent filtering of views.

3.6.67. In addition, the provisions of the LEMP and Design and Access Statement [APP-234] include location specific buffers, such as native woodland planting some 10m wide along the northern boundary of area 2f and hedgerow enhancement along Spaldington Road. Sandwood Business Park and the equestrian paddock to the south of area 2e was considered to have a lesser appreciation of the landscape and was assessed to be of low sensitivity. No visible lighting from CCTV or artificial lighting for security purposes is proposed.

Existing vegetation and new planting

3.6.68. There was concern that existing vegetation would be lost and that new planting would be ineffective, inappropriately sited and not properly maintained.

3.6.69. The Applicant's response [REP1-066] stated that the scheme has been designed to minimise the loss of, and avoid significant impacts on, existing landscape features. This includes maintaining minimum offsets to woodland, hedgerows and individual trees which are secured in the CEMP [REP4-010]. Offsets from properties and local roads would respond to the existing character of views or contribute to the setting of local villages. Where longer views from sensitive receptors are available, wider offsets have been provided.

3.6.70. Details of the proposed planting are set out in the Framework Landscape Masterplan at Appendix A of the LEMP [AS-040] and include buffers of grassland, native scrub, woodland and traditional orchard around the edges of the solar PV areas. Areas of proposed tree planting would be set back from the boundaries of residential properties and potential impacts, including overshadowing, arising as the planting matures have been taken into consideration in the siting of this planting. A more detailed review would be undertaken when the detailed landscape planting scheme is developed, and specific species are identified.

3.6.71. The LEMP also provides for the future management of the proposed landscape works. It sets out the short and long-term measures and practices that would be implemented

by the Applicant to establish, monitor and manage landscape and ecology mitigation and enhancement proposals.

Tranquillity and light pollution

3.6.72. Concern was expressed regarding loss of tranquillity, light pollution and loss of dark skies. In response [REP1-066] the Applicant advised that construction vehicle movements and plant would result in a small-scale reduction in the sense of tranquillity but that this would reduce as construction progresses. Measures to control lighting at all stages of the scheme are set out in the CEMP [REP4-010], OEMP [REP6-007] and DEMP [REP3-014] as secured by DCO Requirements 11, 12 and 18 respectively.

3.6.73. ExQ1 Q9.0.2 [PD-004] sought the views of ERYC and NYC on the Applicant's approach to the assessment of tranquillity. Both initially expressed reservations [REP2-021] [REP1-088]. The Applicant responded [REP2-020] that the Councils' response to the ES Scoping Report agreed that tranquillity would be formally assessed only if significant noise effects were found. Since such effects were not found, tranquillity was not formally assessed. I note that there was no disagreement on this matter in the SoCGs of ERYC [REP6-011] or NYC [REP8-006].

Residential amenity

3.6.74. Loss of visual amenity was also raised by many residents, particularly that the solar PV panels, fencing and the like would be too close to residential properties. There was also concern that the proposal would lead to a loss of privacy.

3.6.75. As well as the offset principles mentioned above, the Applicant's reply [REP1-066] referred to the scheme objective of ensuring a sensitive response to residential properties. There would be no visible lighting from CCTV or artificial lighting for security purposes during operation. The CCTV cameras would have fixed, inward-facing viewsheds and be aligned to capture only the perimeter fence and the area inside the fence and so would not capture publicly accessible areas or residential curtilages. These matters are secured in the Outline Design Principles Statement [REP1-051] and DCO Requirement 5.

3.6.76. ExQ1 Q9.0.5 and ExQ2 Q7.0.4 sought further information on the methodology used to assess views from residential locations and how the concerns of neighbouring occupiers were taken into account. The Applicant [REP1-081 REP4-030] advised that, in accordance with GLVIA3, an assessment of views from individual residential locations has not been undertaken. Groups of residential properties were assessed using representative viewpoints. The Applicant worked collaboratively to provide an integrated and responsive design that balances the need to maximise renewable energy generation with minimising potential adverse impacts including creating offsets from residential properties.

3.6.77. Additional consideration was given to solar PV Area 1b, where a wide grassland margin would provide visual separation from the solar PV area and would retain a long view on the approach to Gribthorpe. A wide margin would be provided within solar PV area 2f, where a small number of properties currently have open views across the field. Appendix B of the Applicant's response to ExQ2 [REP4-030] sets out offset distances for the properties visited on the Accompanied Site Visit.

3.6.78. ExQ1 Q9.0.7 asked the Applicant to expand on how the advice in the Landscape Institute's Technical Guidance Note 2/19: 'Residential Visual Amenity Assessment' (RVAA) had been applied in its assessment. The Applicant replied that the guidance

was reviewed for long term impacts on visual amenity receptors taking into consideration the effects of mitigation. Identified significant effects during the construction phase and operational year 1 were not considered to trigger the need for a RVAA due to the temporary and short-term nature of the effects. It was also noted that ERYC did not request a RVAA.

Glint and Glare

3.6.79. At the RR stage, concerns were expressed regarding glare, particularly to vehicles and homes and it was contended that the effect of glint and glare cannot be properly assessed. Reference was made to the local flying club at Breighton Airfield in the RRs and [REP1-100]. The Applicant's response [REP1-066] refers to the findings of its glint and glare assessment [AS-016] and supporting study [APP-122].

CONCLUSIONS

3.6.80. I find that the Applicant's methodology and baseline characterisation for the landscape and visual assessment is generally sound. That said, I consider that it somewhat underplays the effect of the proposal when experienced at a local level. While GLVIA3 supports the use of published landscape character areas, it also recognises that effects can be experienced at a range of geographical levels, including the site level and immediate setting.

3.6.81. In this case, the size and dispersed layout of the proposal means that its impacts in terms of change to landscape character and the curtailment of some longer views would be experienced recurrently while travelling through the affected area. I accept that the landform and existing vegetation would limit the extent of the impact. Nevertheless, the size of the proposal and repetition of the impact due to its dispersed layout, would create a significant effect at the level of its immediate setting. This would be felt particularly by local residents travelling regularly through the area. Consequently, I find that the effect of the proposal on landscape character has been underestimated in the Applicant's assessment.

3.6.82. Nevertheless, the proposal provides generally well-considered offsets from key landscape features and from settlements, groups of residential properties and individual dwellings. I consider that the proposed planting, when mature, would provide effective screening. The CEMP and LEMP include provisions to enhance mitigation planting, if necessary, at the detailed design stage. As noted already, the flat landform and presence of existing vegetation would limit medium and long range impacts.

3.6.83. Therefore, I find that the proposal would not 'engulf' or overwhelm existing settlements, groups, or individual residential properties. Moreover, as the plan at Appendix B of [REP4-030] shows, the solar PV areas would be reasonably well set back from nearby residential properties. Therefore, while some residents would experience a diminution of certain longer views, the effect on their immediate outlook would not be overbearing or oppressive.

3.6.84. I am satisfied that the proposals for lighting during the operational phase would not result in light spillage into residential properties and that the CCTV arrangements would not lead to loss of privacy. Consequently, I conclude that the proposal would not have an unacceptable effect on the living conditions of nearby residents.

3.6.85. The proposal would result in some narrowing of views along affected PRoWs, notwithstanding that buffer areas would be provided between the PRoWs and the solar PV area perimeter fencing. However, the LEMP proposes lower-level and

intermittent planting which would help to reduce what might otherwise have been unduly enclosing effects. Therefore, I consider that the Applicant's findings on the visual effects for PRoW users are reasonable.

3.6.86. I have carefully considered the concerns expressed on behalf of Mr and Mrs Taylor in relation to the effect of solar PV areas 2e and 2f on Sandwood House and its environs. However, my findings on the assessment methodology, and the reasoning set out above in terms of effects on the landscape and residential properties generally, also applies to this case. That includes the potential to provide enhanced mitigation planting, if necessary, at the detailed design stage. As such, I consider that the proposal would not have undue landscape or visual impacts on Sandwood House and its environs. Consequently, the proposal would broadly conform with NPS EN-1 paragraphs 5.10.6 and 5.10.12 to 5.10.14.

3.6.87. The form of lighting proposed and the controls on it in the CEMP and OEMP would ensure that the proposal would not lead to light pollution in the surrounding countryside. I deal with noise in Section 3.8 below. However, there is no firm evidence to show that the proposal would lead to a loss of tranquillity as a result of increased activity or noise in the operational phase. Some loss of tranquillity could be expected for a temporary period during the construction phase, although this would have no more than a minor adverse effect.

3.6.88. I am content that the proposal would minimise the loss of existing vegetation and that the LEMP would make provision for appropriate offsets to safeguard retained vegetation. The proposal would also reinforce characteristic landscape features including hedgerows and woodland planting. The DCO requirements, including the approval of a detailed LEMP, offer the opportunity to enhance the planting proposals. I note that, by the close of the Examination, statutory consultees were content with the arrangements for the retention and protection of existing vegetation and the proposals for new planting. I agree and therefore consider that the proposal would accord with NPS EN-1 paragraphs 5.10.29 and 5.10.30 and NPS EN-3 paragraphs 2.10.94 to 2.10.99.

3.6.89. I am satisfied that the Applicant has undertaken a proper assessment of glint and glare effects. There is no substantive evidence to show that its findings of no or negligible effects are unsound.

3.6.90. In summary, I find that the effects of the proposal on the landscape would be somewhat greater than assessed by the Applicant. I broadly agree with the Applicant's findings regarding visual effects, effects on residential amenity and on glint and glare. I also find that the proposals for existing and proposal planting are acceptable.

3.6.91. Overall therefore, I conclude that the proposal broadly accords with the aims of NPSs EN1, EN3 and EN-5, the NPPF and the development plan with regard to landscape and visual amenity matters. Nevertheless, the effects of the proposal on landscape and visual matters should carry moderate negative weight in the planning balance.

3.7. LAND USE AND SOCIO-ECONOMICS

INTRODUCTION

3.7.1. This section deals with the land use and socio-economic effects of the proposal. It therefore takes in existing land uses, recreational facilities, including PRoWs, and businesses within and around the Order Limits, together with the socio-economic

effects of the proposal during the construction, operational and decommissioning phases.

3.7.2. The Order Limits are not within a green belt designation and do not include National Trust land or land forming part of a common, open space or fuel or field garden allotment. Although small areas within the Order Limits fall within Mineral Safeguarding Areas as defined in the ERYC Local Plan, minerals was scoped out of the ES with the agreement of ERYC and NYC on the basis that deposits would not be permanently sterilised and could be extracted after decommissioning if required. Soils and agricultural land are covered in section 3.9 below.

POLICY BACKGROUND

National Policy Statements

3.7.3. NPS EN-1 advises that, notwithstanding the preference for the re-use of previously developed land, its use may not be possible for many forms of energy infrastructure (paragraph 5.11.3). The environmental, social, health and economic benefits that green and blue infrastructure can enable are recognised (paragraph 5.11.7).

3.7.4. The applicant's ES should identify existing and proposed land uses near the project, as well as any effects from replacing an existing development or use, or preventing development or use of, a neighbouring site from continuing (paragraph 5.11.8).

3.7.5. Proposals should prevent new and existing developments from contributing to, or being adversely affected by, local environmental conditions. The site should be suitable for the proposed use, having regard to ground conditions and risks from land instability and contamination (paragraphs 5.11.15 to 5.11.17).

3.7.6. The functionality and connectivity of green infrastructure network should be maintained and any adverse impacts mitigated (paragraph 5.11.24). Applicants are expected to use appropriate mitigation measures to address adverse effects on PRoWs and to consider opportunities to improve or create new access. Any revisions to an existing right of way should consider its use, character, attractiveness, and convenience (paragraph 5.11.30).

3.7.7. NPS EN-3 advises that solar is a highly flexible technology and can be deployed on a wide variety of land types. It recognises that PRoWs may need to be temporarily closed or diverted to enable construction. However, applicants should endeavour to keep all public rights of way safe and open during construction and protect users where a PRoW borders or crosses the site. Site layout and appearance should ensure continued recreational use of PRoWs where possible during construction, and in particular during operation of the site and facilitate enhancements where possible (paragraphs 2.10.41 to 2.10.44).

National Planning Policy Framework

3.7.8. Significant weight should be placed on the need to support economic growth and productivity, taking into account both local business needs and wider opportunities for development and the locational requirements of different sectors. 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).

3.7.9. 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.

Development Plan

East Riding Local Plan adopted 2016

3.7.10. Policy EC1 supports development, including renewable energy, where its scale is suitable for its location and respects the character of the surrounding landscape.

Selby District Core Strategy 2013

3.7.11. Policy SP12 strongly encourages opportunities to protect, enhance and better join up existing, and the creation of new, green infrastructure as well as measures to mitigate or minimise the consequences of development. Policy SP13 supports the retention of local services and supporting development in rural areas.

Selby District Local Plan 2005

3.7.12. Policy ENV6 supports renewable energy development, subject to criteria including locating it near to the electricity grid.

APPLICANT'S APPROACH

3.7.13. The Applicant's assessment of land use and socio-economic matters is at ES Chapter 12 [APP-064]. This is supplemented by:

- Appendix 12-1 Legislation, Policy and Guidance (Socio-Economics and Land Use) [APP-130];
- Appendix12-2 Communications with Minerals Planning Authorities [APP-108];
- Figure 12-1 Study Area and Socio-economic Receptor Map [APP-213];
- Figure 12-2 60-minute Drive Time from the Order Limits [APP-214];
- Figure 12-3 30-minute Drive Time from the Order Limits [APP-215];
- Framework Public Rights of Way Management Plan [APP-245];
- Framework Skills, Supply Chain and Employment Plan [APP-247]; and
- Equality Impact Assessment [APP-248].

Methodology/Baseline

3.7.14. The assessment methodology is at ES Section 12.4. It states that there is no statutory guidance on land use and socio-economic assessments and therefore it uses professional judgement and best practice. It also acknowledges limitations in the availability and currency of baseline data. Matters scoped into the assessment comprise employment generation, impacts on local services and facilities, gross value added (GVA), PRoWs and other private and community assets (including residential properties, business premises, community facilities, visitor attractions and development land). Differing geographical areas of impact and significance criteria are defined for each matter.

3.7.15. ES Section 12.5 describes baseline conditions in terms of land use, population and deprivation, the local economy and labour market, PRoWs, residential properties and business premises, education and community facilities, visitor attractions and development land. Where relevant, the study area data is compared with that for the

unitary authority or former district council area, the Yorkshire and Humber region and England. In general, the demographic and economic indicators for the study area do not differ markedly from the larger comparative geographical areas. The 2019 local authority level Indices of Multiple Deprivation show East Riding of Yorkshire as the 217th, and Selby as the 252nd, most deprived local authorities of 317 districts in England (where 1 is the most deprived).

Embedded Mitigation

3.7.16. The description of embedded mitigation in ES Section 12.6 refers to measures to reduce construction and operational effects in other chapters of the ES. No PRoWs would be closed at any phase of the project although routes crossing the ICC may need to be temporarily diverted during construction. Fencing and user management measures would be secured in the PRoW Management Plan (PROWMP) [APP-245]. During the operational phase, controls, including gates, would be used where an internal maintenance route crosses an existing PRoW. Buffer areas would be maintained where a PRoW is within or adjoins a solar PV area and two new permissive footpaths are proposed which would enhance access to the PROW network.

Likely Impacts and Effects

3.7.17. ES Section 12.7 sets out the likely land use and socio-economic impacts and effects.

Construction Phase

3.7.18. The construction phase is expected to last 24 months for the solar PV site and 12 months (running concurrently) for the GCC. The Applicant estimates that the scheme would generate some direct 356 on-site full-time equivalent jobs per annum. If the construction period were extended, the peak number of jobs would fall, but the amount of construction activity and spending would remain unchanged and so, therefore, would the overall employment benefits. Leakage, displacement and multiplier effects have been applied to the total job creation figure using guidance in the Homes and Communities Agency (now Homes England) Additionality Guide. The results are shown in the table below.

Table 5 Net additional construction employment per annum

	Study area	Outside study area	Total
Gross direct employment	160	196	356
Displacement	-40	-49	-89
Net direct employment	120	147	267
Indirect and Induced Employment	61	73	134
Total net employment	181	220	401

3.7.19. A Framework Skills, Supply Chain and Employment Plan [APP-247] has been prepared with the aim of maximising and proactively expanding the economic benefits of the scheme for the local community. DCO Requirement 16 would secure a fully developed Skills, Supply Chain and Employment Plan. As the employment generation would be relatively small compared to the labour pool of construction workers in the area, construction employment generation in the employment study area is considered to have a short-term temporary minor beneficial effect.

3.7.20. The implications of accommodating this workforce in local accommodation facilities has been assessed and is said to demonstrate that, at peak workforce employment and typical seasonal occupancy levels, all of the scheme's construction workers could be accommodated within both a 30 and 60-minute drive time of the site.

3.7.21. The average gross direct value added per construction worker in Yorkshire and the Humber has been applied to the total number of construction workers to give the total GVA generated during the construction period. This works out to a total of £22.5m within and beyond the study area. The GVA generation is assessed to have a minor beneficial effect when considered at both the study area and national levels.

3.7.22. The 'Howden 20' recreational route PRoW passes through the solar PV site at various locations, but there are no national trails or national cycle routes within the solar PV site. National Cycle Route 65 runs through the GCC. The assessment considers that, since the PRoWs do not connect rural areas to more urban areas or business parks, they are unlikely to be used for commuting. Given also that no PRoWs would be closed, and only a limited number temporarily diverted during construction, the effect on the network is considered to be negligible.

3.7.23. With regard to residential properties, business premises, community facilities and development land, no significant amenity effects are predicted based on assessments in other parts of the ES. The only direct land take required would result in a potential temporary impact on two businesses and one residential premises within the Order Limits. The residential properties, business premises, community facilities and development land, would experience some connectivity impacts, and there would be limited potential for interference with overlapping developments in the GCC. Overall, the effect is found to be minor adverse.

Operational Phase

3.7.24. The Applicant estimates that the site currently accommodates three agriculture-related jobs and that three permanent roles would be required to operate and manage the project during operation. Even taking into account leakage, displacement and multiplier factors, the net effect would be no change in employment generation in the operational phase.

3.7.25. Since there are expected to be no PRoW closures or diversions during the operational phase, and that new permissive paths would be available, a minor beneficial effect on PRoW users is predicted.

3.7.26. In terms of residential properties, business premises, community facilities and development land, the assessments elsewhere in the ES find no amenity impacts. Predicted traffic levels during the operational phase are so low that they were scoped out of the assessment. As such, no impact on community connectivity during the operational phase is predicted. Overall, the assessment finds no effect on private and community assets in the operational phase of the scheme.

Decommissioning Phase

3.7.27. The duration and employment generation potential of decommissioning activities are considered to be the same as the construction phase and, again, a minor beneficial effect is predicted. Following decommissioning, the operational phase jobs would be lost, but the agricultural employment could be re-instated, resulting in no net effect.

3.7.28. Impacts on PRoWs during decommissioning are considered to be limited in a similar manner to the construction phase. A negligible effect is, therefore, predicted.

However, it cannot be guaranteed that the landowners would retain the permissive paths in which case their negligible beneficial effect would be lost.

3.7.29. The considerations relating to residential properties, business premises, community facilities and development land during decommissioning are expected to be similar to those during construction. Therefore, a minor adverse effect is again predicted.

Additional Mitigation/Residual Effects

3.7.30. As no significant adverse effects associated with land use and socio-economic matters have been identified, no additional mitigation measures would be required. Accordingly, the residual effects would not change from those set out above.

Cumulative Effects

3.7.31. Six of the short-list cumulative schemes identified in ES Appendix 17-1 [REP2-008] are considered to potentially coincide with the Order Limits. However, three had yet to be determined and, therefore, it was not possible to fully quantify their impact due to lack of readily available information.

3.7.32. Potential cumulative effects on employment, the PROW network, residential properties, business premises or community facilities were considered for the construction operational and decommissioning phases. No material changes to the effects of the scheme in isolation were found.

ISSUES CONSIDERED DURING THE EXAMINATION

Statutory consultees

3.7.33. In its LIR [REP2-022] ERYC expressed concern that the Applicant's proposals for PRoWs were too broad and undefined to consider the differing characteristics of each route. It also questioned the purpose and extent of the proposed permissive routes. It sought further information before making a full assessment. The Council also referred to applications to upgrade three PRoWs affected by the proposal and commented on the process for making alterations to PRoWs.

3.7.34. The Applicant's response [REP3-032] referred to the submitted Framework PRoWMP [APP-245] being a working document with a detailed PRoWMP to be submitted and approved by ERYC under DCO Requirement 17. Further, that DCO Article 11(4) requires the Undertaker to consult the street authority prior to making any changes to a PRoW. The permissive routes were the subject of earlier discussion with the Council's rights of way team and changes to the Order Limits following discussions with National Grid's Eastern Green Link 2 project team precluded the creation of a mooted additional route. The potentially upgraded routes are included in its Framework PRoWMP.

3.7.35. These matters were the subject of subsequent discussion between ERYC and the Applicant and the SoCG [REP6-011] between the parties indicates that all matters were agreed by the close of the Examination.

3.7.36. The LIR [REP2-023] from NYC referred to the process for amending PRoWs and sought clarification of the effects of the proposal on a number of footpaths and minor roads. It also drew the Applicant's attention to a claimed PRoW.

3.7.37. The Applicant's response [REP3-032] referred to the powers to stop up and divert PRoWs under the PA2008 and DCO Article 11, including the requirement for consultation under Article 11(4). Reference was also made to the Framework and

detailed PRoWMPs which describe how PRoWs would be managed. The Applicant was also aware of the claimed PRoW. The SoCG with NYC [REP8-006] indicates that all matters related to PRoWs were agreed at the close of the Examination.

3.7.38. The LIR from NYC expressed concern regarding health care provision. This matter is dealt with in Section 3.12 (Human Health) of this report. Neither LIR commented directly on the employment or economic effects of the proposal or its relationship to other community or private facilities or development land.

Other IPs and ExQs

Socio-economic effects

3.7.39. The RRs of some IPs contended that the proposal would lead to the loss of farming jobs. The Applicant referred to ES Chapter 12 which finds that there would be no net change in employment at the site in the operational phase.

3.7.40. Other than that, the Applicant's assessments of the employment and GVA effects of the proposal were not challenged by IPs. I queried some of the assumptions used in the methodology (ExQ1 Q11.0.1 to Q11.0.5 [PD-004] and received satisfactory responses [REP1-081].

3.7.41. Concern was expressed that the size and appearance of the proposal would reduce the attractiveness of local tourism and visitor accommodation (for example [REP1-132]). The Applicant's responses [REP1-081, REP2-019] referred to ES Chapter 12 Socio-Economics and Land Use [APP-064]. It assesses impacts on private and community assets including visitor attractions, businesses (including holiday lets and restaurants). It finds that there would be no significant effects on any of these receptors associated with direct land take, amenity effects or severance during the construction, operational, or decommissioning phases.

3.7.42. The socio-economic assessment also identifies beneficial effects as a result of employment generation during the construction and decommissioning periods, assisted by the provisions of the Framework Skills, Supply Chain and Employment Plan [APP-247].

3.7.43. A number of IPs contended in RRs and WRs that the proposal would be of no benefit to the local community and considered that they should receive a discount on their electricity bills and / or that the Applicant should contribute to a community fund.

3.7.44. In response, the Applicant [REP1-066] advised that it is exploring the use of a community benefit fund in connection with the scheme and aims to work with local organisations that will best spend the money to support the community. However, the community fund is not part of the DCO application and is given no weight in this report.

3.7.45. It was contended locally that the anaerobic digestor plant at Spaldington Airfield relies on fields within the site for the disposal of its waste, indeed that it was the subject of a condition on the planning consent for the plant. The Applicant [REP2-019] reported that it had reviewed the consent for the plant (application reference DC/17/03450) and that there was no requirement for its waste to be spread on the site.

Scale of the land-use change

3.7.46. A considerable number of RRs and WRs were concerned that the proposal would be too large and intensive to absorb into the rural community, that adjoining villages

would be surrounded and that the proposal would lead to local population decline and would damage the quality of life of nearby residents.

3.7.47. It was also contended that the area already accommodates a number of energy generation developments such as the Drax Power Station and a wind farm and anaerobic digestor plant at Spaldington Airfield. The community should not be required to accept another large energy development. It was suggested that Government guidelines state that in any one area only 3% of the land should be given over for solar, and that in this area the figure would be 6%,

3.7.48. Some of these matters were also raised in OFH1 [EV6-002]. I asked about the scale of change to the land use character of the area in ExQ1 Q8.0.16 [PD-004] and in ISH2 [EV7-002].

3.7.49. These matters involve a degree of overlap with other ES topics. I deal with matters related to landscape impact and the visual amenity of residential occupiers in Section 3.6 above, the loss of agricultural land in Section 3.9 below and matters related to human health in Section 3.12 below.

3.7.50. The Applicant's responses are at [REP1-066, REP1-081, REP2-019 and REP3-035]. It cites the urgent need for large scale low carbon energy generation in NPSs EN1 and EN3 and the contribution which the proposal would make to meeting that need. It goes on to refer to an iterative and collaborative approach to the design of the proposal which responds to the local context and minimises adverse impacts, including on residential amenity. It also refers to the buffers to residential properties, the retention of existing planting and proposed planting. The Applicant aspires to retain some of the agriculture use of the site by making provision for sheep grazing.

3.7.51. The effects of the proposal on matters including landscape, noise, transport, agricultural land and socio-economics have been assessed in the ES. The ES also considers cumulative effects with other existing and proposed developments. Mitigation measures are set out in relevant management plans secured through DCO requirements. The Applicant was unable to find the policy source of the claimed 3% limit on solar farms in any one area. It accepted that there would be a change in the land use character of the site, although it would be reversible following decommissioning.

Public rights of way

3.7.52. There was concern from IPs in RRs and WRs, including Spaldington Parish Council [RR-341], that the proposal would compromise the use of PRoWs for pedestrians, horse riders and cyclists. The Ramblers Association (East Yorkshire and Derwent Branch) [RR-310] expressed concern that the size and industrialised appearance of the proposal would affect its countryside walks. The Howden 20 route was mentioned specifically.

3.7.53. The East Riding of Yorkshire and Kingston upon Hull Joint Local Access Forum (JLAF) [RR-088, REP1-098] sought clarification on temporary diversions and closures, including their timing, details of resurfacing, mitigation and enhancement. It also drew attention to the Secretary of State for the Environment's 2031 deadline for submission of claims for historic rights of way.

3.7.54. Potential changes to the definitive map and the characterisation and assessment of routes were discussed in ISH2 [EV7-006]. ExQ1 included questions on PRoWs [PD-004].

3.7.55. The Applicant's responses [REP1-066, REP2-019, REP3-035], among other things, confirmed that there would be no PRoW closures during any phase of the proposal and only minor temporary diversions during the construction and decommissioning phases. These are shown in the Streets, Rights of Way and Access Plans [AS-027, AS-028]. Horizontal Directional Drilling would be used to avoid affecting PRoWs in the GCC. Reference was also made to the management of PRoWs in the PRoWMP, CEMP [REP4-010], OEMP [REP6-007] and DEMP [REP3-014] and to soil restoration proposals in the Soils Management Plan [REP1-058]. Detailed proposals for each route would need to be approved in the detailed PRoWMP to be secured under DCO Requirement 17.

3.7.56. The Applicant considered that the linear nature of PRoWs, and their transient usage, means that noise impacts along them would form the ambient noise environment. As such, there would not be a material change in the experience of users (including horses and riders) of the PRoW as a whole, or significant adverse effects on their health or quality of life. The proposed permissive paths would be open to horse riders.

3.7.57. The Applicant described the buffer areas adjoining the solar PV areas and the provision of permissive footpaths. It also referred to the assessments of landscape and visual, transport, socio-economics and human health effects in the ES, none of which find significant long term effects on pedestrians, cyclists or equestrians.

3.7.58. Regarding claims for new PRoWs, the Applicant is in dialogue with ERYC and NYC. DCO Article 11(9) would permit the undertaker to stop up, prohibit the use of, alter or divert any PRoW within the Order Limits if required for the purposes of carrying out the authorised development, for which there is an urgent need.

3.7.59. In response to ExQ1 Q11.0.1, the Applicant [REP1-081] advised that the PRoWMP includes a communications strategy which would provide regular information on diversion and management proposals and meaningful two-way dialogue with affected groups.

3.7.60. It also stated that the reinstatement of the surfacing of PRoWs, and adjoining vegetation associated with works for PRoW diversions, would be included in the highway condition surveys. This is a commitment in the CTMP [REP5-13]. This matter was pursued in ExQ2 Q9.0.1 [PD-008] and ExQ3 Q4.0.1 [PD-010]. The Applicant responded [REP4-030, REP7-004] by updating the CTMP to include PRoWs in the conditions surveys and advised that the Framework PRoWMP commits to reinstating the PRoWs following construction. Further, that the maintenance of the PRoWs during the operation of the proposal would be the responsibility of the local authority, although vegetation adjoining the PRoWs would be maintained by the undertaker in accordance with the LEMP [AS-040].

CONCLUSIONS

3.7.61. As the Applicant acknowledges, the guidance for the assessment of socio-economic and land use matters is perhaps less well developed than for other ES topics. Nevertheless, I am satisfied that the baseline position has been adequately characterised and that the appropriate methodologies have been properly applied. Both host local authorities were content with the Applicant's approach to these matters at the close of the Examination.

3.7.62. I agree that the proposal would have minor beneficial effects on local employment and GVA during the construction and decommissioning phases.

3.7.63. I appreciate the concerns raised about adverse effects on local tourism and visitor accommodation and have found in Section 3.6 above that the effect of the proposal on landscape character would be somewhat greater than the Applicant's assessment. However, the area is not subject to any statutory designations for its landscape quality and there is no substantive evidence to show that its landscape quality is a particular draw for visitors.

3.7.64. As such, I consider that the effect of the proposal on local tourist and visitor accommodation would not be significant. There is no firm evidence to question the Applicant's finding that the proposal would not have adverse effects on other private and community assets or development land. Nor that it would contribute to, or be adversely affected by environmental conditions, contamination or land instability. As such, the proposal would meet the aims of NPS EN-1 paragraphs 5.11.8, 5.11.15 and 5.11.17.

3.7.65. That said, there was more widespread concern about the effect of the scale of land use change on the local community. My finding on landscape character is relevant here too, although I have also found that the proposal would not engulf adjoining settlements. While the rural character of the area would undoubtedly be diluted, the layout of the proposal is such that each settlement would retain a physical and visual connection to the wider agricultural landscape. Moreover, in socio-economic terms, as the Applicant's employment assessment shows, the number of people directly employed in agriculture at the site is very low. Therefore, the proposal would comply with NPS EN-3 paragraphs 2.10.28 and 2.10.29 to the extent that it would be suitably located in land use terms.

3.7.66. I have also found already that there is strong policy support in NPSs EN1 and EN3 for low carbon energy generation and that the proposal is appropriately sited. I recognise that the area already accommodates a number of other energy-related developments. However, there is nothing substantive to show that implementation of the proposal would lead to unacceptable cumulative effects. Consequently, I conclude that the scale of land use change would have only a limited adverse effect on the local community.

3.7.67. The JLAF and Ramblers Association initially raised concerns regarding impacts on the PRoW network. However, I note that following the Applicant's responses to their Deadline 1 submissions, neither body pursued their concerns further. Notwithstanding my earlier finding that the proposal would lead to some narrowing of views from certain PRoWs, there would be relatively limited disruption to the routeing and convenience of use of the network, even during construction and decommissioning. Collectively, the PRoWMP, CEMP, OEMP, DEMP and CTMP provide adequate safeguards for the treatment and management of the network during all phases of the proposal. The proposed permissive footpaths would offer a minor enhancement to the network. Therefore, I consider that the net effect of the proposal on the use of PRoWs would be negligible and accord with NPS EN-3 paragraphs 2.10.41 to 2.10.44.

3.7.68. I am satisfied with the Applicant's assessment of the cumulative effects of the proposal with other identified development schemes and agree that no significant effects are likely to arise. Taking into account all matters raised, I find that the minor beneficial effects on employment and GVA, the limited adverse effects on visitor accommodation and land use, and the negligible effects on other matters considered in this section, combine such that land use and socio-economic considerations weigh neutrally in the planning balance. The proposal would, therefore, comply with the relevant provisions of NPSs EN-1 and EN-3, the NPPF and the development plan.

3.8. NOISE AND VIBRATION

INTRODUCTION

3.8.1. This section deals with the noise and vibration effects of the proposal on local residents and their properties. In common with the Applicant's assessment, it draws on information taken from the consideration of transport and traffic matters (Section 3.10 of this report and Chapter 13 of the Applicant's ES [APP-065]) with regard to construction traffic.

POLICY BACKGROUND

National Policy Statements

3.8.2. NPS EN-1 recognises that excessive noise can have an impact on the quality of human life and health as well as the environment, including quiet places, wildlife and biodiversity (paragraphs 5.12.1 and 5.12.4). The NPS references to noise apply equally to vibration and this summary adopts the same approach.

3.8.3. The Applicant should undertake a proportionate assessment of noise which takes into account a description of the aspects of the proposal leading to noise impacts, the identification of sensitive receptors and areas, the existing noise environment, a prediction of how the noise environment would change with the proposed development, an assessment of the effects of such change and reasonable measures to minimise and mitigate effects. The effects of ancillary activities including road movements should be considered (paragraphs 5.12.6 to 5.12.8).

3.8.4. Noise should be assessed in accordance with relevant British Standards (BS) and reference is made to guidance in NPS EN-3 for renewable energy schemes. The EA and relevant statutory nature conservation body (in this case NE) should be consulted. Any mitigation measures which need to be imposed should take account of the NPPF, the Planning Practice Guidance on Noise (PPGN) and the Noise Policy Statement for England (NPSE). Mitigation may include engineering, layout or administrative measures (paragraphs 5.12.9 to 5.12.16).

3.8.5. Consent should not be granted unless the proposal avoids significant adverse impacts on health and the quality of life from noise, mitigates and minimises other adverse impacts and, where possible, contributes to improvements to health and quality of life through the effective management and control of noise. The DCO may include measurable requirements or specify mitigation measures to ensure that noise does not exceed specified levels (paragraphs 5.12.17 and 5.12.18).

3.8.6. NPS EN-3 advises that good design should be used to mitigate noise impacts (paragraph 2.5.2). It links the perception of noise and vibration effects with construction activity, including traffic and transport. It recognises that solar farms may be sited in areas served by a minor road network and that the public perception of the construction phase will derive mainly from the effects of traffic movements. This may involve relatively small vehicles, but a high number of movements. Consideration should be given to potential cumulative effects (paragraph 2.10.121 and 2.10.126).

3.8.7. It may be necessary to control the number of vehicle movements during the construction phase and the routeing of movements, particularly by heavy vehicles (paragraph 2.10.139). Due to the low volume of movements, the traffic and transport noise and vibration impacts from the operational phase are unlikely to be given any more than limited weight (paragraph 2.10.162).

National Planning Policy Framework

3.8.8. 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 (paragraph 187(e)). Planning decisions should mitigate and minimise potential adverse noise impacts and avoid significant adverse impacts on health and the quality of life. Tranquil areas should be protected from noise (paragraph 198).

Other National Guidance

3.8.9. The NPSE aims to avoid significant adverse impacts on health and quality of life from noise, mitigate and minimise adverse impacts and, where possible, contribute to the improvement of health and quality of life through the effective management and control of noise. The PPGN provides more detailed advice for dealing with the noise effects of development. Among other things, it refers to the noise hierarchy and defines categories of Observed Adverse Effect Levels introduced in the NPSE.

Development Plan

East Riding Local Plan adopted 2016

3.8.10. Policy EC5 requires energy developments to be acceptable in terms of effects on local amenity including noise.

Selby District Core Strategy 2013

3.8.11. Policy SP19 seeks to prevent development from contributing to unacceptable levels of noise.

Selby District Local Plan 2005

3.8.12. Policy ENV2 presumes against development which would give rise to noise unless satisfactory remedial or preventative measures are incorporated into the scheme. Policy ENV6 requires renewable energy development to avoid giving rise to nuisance by virtue of noise.

APPLICANT'S APPROACH

3.8.13. The Applicant's noise and vibration assessment is found in ES Chapter 11 [REP1-016]. It is supported by:

- Appendix 11-1 Legislation and Planning Policy [APP-129];
- Appendix 11-2 Acoustic Terminology [APP-105];
- Appendix 11-3 Baseline Noise Surveys [APP-106];
- Appendix 11-4 Construction and Operational Noise Modelling [REP1-023];
- Figure 11-1 Site boundary, receptor locations and noise monitoring positions [REP-048]; and
- Figure 11-2 Noise Contours – Operational Phase [APP-212].

Methodology

3.8.14. The methodology is set out in ES Section 11.4. Measured ambient sound levels were recorded at 16 locations and are considered representative of existing and future baseline conditions. Construction noise predictions are based on computer modelling software and use BS 5228:2014+A1:2019 'Code of practice for noise and vibration

control on construction and open sites'. The use of auger piling for the foundations of field station units is assumed as a worst-case scenario.

3.8.15. Noise effects during decommissioning are considered to be less than those during construction. As a worst-case scenario for operational phase noise, it is assumed that all plant would be in maximum operation at all times of day and that central inverters would be used rather than the option of utility scale string inverters.

3.8.16. Operational phase vibration was scoped out in agreement with PINS because no part of the proposal would generate perceptible levels of vibration. Operational phase road traffic was scoped out based on the low volume of vehicle movements predicted. A study area for construction and operational noise was agreed with ERYC and NYC and extends 500m from the solar PV site, 300m from the ICC and GCC and 50m either side of construction traffic routes.

3.8.17. Noise sensitive receptors are identified and comprise 54 individual or groups of dwellings and one holiday chalet site. The assessment considers that the linear nature of PRoWs, the range of noise impacts forming the ambient noise environment, and the transient usage of a PRoW, means that the health or quality of life of PRoW users would not be materially affected by the proposal. At all stages, reasonable steps to minimise the effects of noise on PRoW users would be taken and are set out in the CEMP [REP4-010], OEMP [REP6-007] and DEMP [REP3-014].

Construction noise and vibration

3.8.18. Core working hours are defined and construction activities are grouped into the following noise generating activities (NGAs):

- NGA1 – Construction of the Grid Connection Substations, field station units and ground mounted solar PV panel arrays;
- NGA2 – Cable installation (general works) at the GCC and ICC; and
- NGA3 – Cable installation (Horizontal Directional Drilling (HDD) activities) at the GCC and ICC.

3.8.19. The assessment methodology for residential receptors is based on the use of Lowest Observed Adverse Effect Level (LOAEL) and Significant Observed Adverse Effect Level (SOAEL) criteria as set out in the NPSE and PPGN and Unacceptable Adverse Effect Level (UAEL) as defined in the Design Manual for Roads and Bridges (DMRB) LA111. Threshold values (measured in LAeqT dB[6]) are set in ES Table 11-6 for day, evening/weekend and night times. Criteria for the perception of construction and decommissioning phase vibration within occupied buildings are set out in ES Table 11-7 and for cosmetic damage in Table 11.8. They are based on BS 5228-2.

3.8.20. The methodology considers that a significant effect from construction and decommissioning activities may be based on exceedances of the defined SOAEL, but goes on to use a qualitative consideration of exceedances of the LOAEL. It also refers to DMRB guidance to consider that receptors experiencing noise levels exceeding the SOAEL are more sensitive to smaller changes in noise than receptors experiencing absolute noise levels below the SOAEL.

[6] Defined in ES Appendix 11-2 as the equivalent continuous A-weighted sound pressure level of the totally encompassing sound in a given situation at a given time that is usually composed of sound from many sources near and far.

3.8.21. Activities generating construction traffic noise are reviewed, and noise levels calculated, based on Department of Transport Calculation of Road Traffic Noise (CRTN) methodology. Assessment criteria are set out in ES Table 11-9.

Operational noise

3.8.22. The methodology uses software modelling to predict operational noise from transformers and inverters/switchgear. Noise from the solar PV panel tracking motors is considered to be too low to be perceptible at sensitive receptors.

3.8.23. Operational noise has been assessed following BS 4142 'Methods for rating and assessing industrial and commercial sound' guidance. As such, the rating level of noise emissions from activities are compared against the background level of the pre-development noise climate. ES paragraphs 11.4.65 to 11.4.72 review the parameters used in the assessment and Table 11-10 sets out the operational noise assessment criteria.

3.8.24. There is only one non-residential noise receptor (holiday chalets) and the methodology adopts the recommendation of BS 8233 that the same design criterion is used for holiday accommodation as for living accommodation.

Baseline

3.8.25. The baseline position is set out in ES Section 11.5. The dominant noise source at most of the monitoring locations was road traffic from the surrounding road network, although train movements made a substantial contribution at two locations. Other local noise sources that influenced noise conditions were road traffic from the M62 to the south, Drax Power Station to the south-west, York Flying School to the west, and local wind farms and agricultural farming activities.

3.8.26. The noise monitoring results (measured in LAeq,1h and LA_{90},1hr[7]) for day, evening and night time periods are summarised in ES Table 11-11. While future baseline noise levels may be higher due to road traffic growth, the current baseline has been used as a worst-case scenario.

Embedded Mitigation

3.8.27. Embedded mitigation is reviewed in ES Section 11.6.

Construction and decommissioning phases

3.8.28. The ES advises that measures to control noise are defined in Annex B of BS 5228-1 and measures to control vibration are defined in Section 8 of BS 5228-2. They represent Best Practicable Means and are secured in the CEMP [REP4-010] and DEMP [REP3-014]. ES paragraph 11.6.3 summarises the measures to be implemented. These include core working hours which differ from those suggested by the (former) Selby District Council. However, the measures also include restrictions on NGAs near residential properties during the first and last hours of the working day.

3.8.29. ES paragraph 11.6.10 sets out a hierarchy of mitigation measures in the CEMP to ensure that significant noise effects do not occur due to potential night-time HDD work. The CEMP and DEMP would also secure monitoring, a communication strategy

[7] Defined in ES Appendix 11-2 as the A-weighted sound pressure level of the residual noise at the assessment position that is exceeded for 90% of a given time interval, T, measured using the fast time weighting, F, and quoted to the nearest whole number

and noise complaint system. TThe management of Heavy Goods Vehicles (HGV) on the highway network would be managed through the CTMP [REP5-013].

Operational Phase

3.8.30. Embedded mitigation during operation would consist of plant selection and the design, location and orientation of field station units / field substations, and the Grid Connection Substations to minimise noise at receptors.

3.8.31. The Applicant advises that the scheme layout has been optimised to locate inverters as far as practicable from sensitive receptors. In general, field stations would be located at least 250m from residential properties. The exception would be a specific exclusion area for a sensitive receptor in Spaldington which is defined in the Outline Design Principles Statement (ODPS) [REP1-051]. Nevertheless, some flexibility in the layout is sought. If a decision is taken to move noise generating infrastructure closer to sensitive receptors than is shown in ES Figure 11-2 Operational Noise Contours [APP-212], the noise at the sensitive receptors would be no higher than the predicted levels. The measures to achieve this would be secured in the OEMP [REP6-007].

Likely Impacts and Effects

Construction and decommissioning activity noise

3.8.32. For activities in NGA1 (see paragraph 3.8.18 above) noise level predictions were made for all noise sensitive receptors. For NGA2 and NGA3, the potential distance from grid connection activities at which LOAEL and SOAEL are calculated to occur was used to screen receptors in the GCC Study Area for adverse levels of noise and likely significant effects.

3.8.33. ES Table 11-12 sets out the predicted noise levels at each noise sensitive receptor for activities in NGA1. It finds that the levels would be below LOAEL at all locations. Table 11-13 sets out the noise effects for NGA2. It finds effect levels between LOAEL and SOAEL for six receptors and above SOAEL for a further three receptors. These three receptors would, therefore, potentially, experience significant effects.

3.8.34. However, NGA2 would take place during the day-time only and the assessment considers that receptor occupiers can be more tolerant of high noise events if they receive regular communication and are kept informed of the timings and duration of such events. It also cites BS 5228-1 to the effect that residents *"might be willing to accept higher levels of noise if they know that such levels will only last for a short time".* Reference is made to the communications strategy to be secured in the CEMP to ensure affected occupiers are kept informed of noise events. Further, that cable laying works within 15m of a sensitive receptor would be avoided. On this basis the assessment considers that NGA2 in the GCC and ICC would not result in significant effects.

3.8.35. NGA3 comprises HDD works which could take place at night. The assessment finds that the calculations in ES Appendix 11-4 Construction and Operational Noise Modelling [REP1-023] indicate that significant effects (an exceedance of SOAEL) may occur at night at sensitive receptors within 200m of such activities. It is predicted that the SOAEL for NGA3 would not be exceeded during the daytime, weekday evenings or weekend at any receptor.

3.8.36. While adverse effects may also occur at greater distances, the assessment considers that the embedded mitigation would satisfy NPSE advice which allows such impacts provided that reasonable steps have been to reduce them. Therefore, the

assessment only considers receptors within 200m of a HDD location and Table 11-15 identifies the four such receptors.

3.8.37. Works undertaken outside of core hours would be the subject of Section 61 (Control of Pollution Act) consent which would contain details of the methodology, mitigation, communication strategy and monitoring. The embedded mitigation includes the use of acoustic fencing which could attenuate noise by 10dB. This would reduce the effect on two of the four identified receptors to below the SOAEL. The remaining two receptors (identified as R44 and R46 in ES Figure 11-1 [REP1-048]) would experience significant noise effects. However, this effect would only occur in the case of night-time HDD working. The assessment advises that night-time working would take place only if there was a clear and obvious benefit.

Construction and decommissioning activity vibration

3.8.38. The assessment acknowledges that, without very detailed information, the prediction of ground-borne vibration is difficult. Therefore, it uses information from published sources to assess vibration effects. On this basis, it finds that vibration from plant typically used in NGA1 activity is well below levels at which cosmetic building damage is predicted to occur, even at distances of 10m. The levels are also below the SOAEL where it is likely that vibration in residential environments would result in complaints but can be tolerated if prior warning and explanation is given to residents.

3.8.39. Data from BS 5228-1 indicates that piling-induced ground-borne vibration is below the LOAEL at the 50m distance between the solar PV array and the closest sensitive receptor. Consequently, the assessment finds that vibration at sensitive receptors from construction of the field station units and ground mounted solar PV panel arrays would not be significant.

3.8.40. For NGA2 activity, the highest vibration level would be the use of vibratory rollers during reinstatement following the cable laying. Vibratory rollers may generate adverse levels of vibration at receptors within 50m and significant levels of vibration at receptors within 25m. There would be eight receptors between 25m and 50m of the GCC or ICC and a further five receptors within 25m. The assessment cites advice in BS 5228-2 to the effect that, even at the level experienced by receptors within 25m, while there would be complaints, it can be tolerated if prior warning and explanation is given. The CEMP makes provision for such warning to be given which, together with the short-term duration of the work, is considered to be sufficient to avoid a significant effect.

3.8.41. Similar levels of vibration could be expected from the NGA3 activity. However, in that case the nearest receptor would be some 45m away. Therefore, although the LOAEL may be exceeded, the SOAEL would not, and the effect would not be significant.

Construction and decommissioning traffic noise effects

3.8.42. ES Table 11-16 sets out the results of the construction traffic noise assessment based on a calculated CTRN Basic Noise Level for the 18-hour Average Annual Weekday Traffic (AAWT) at 10m from the road edge. The eleven selected road links with an AAWT of more than 1000 are assessed and the effect is found to be negligible and not significant in all cases.

3.8.43. The assessment advises that CTRN calculations are unreliable for roads with AAWT flows of less than 1000. Construction traffic would use low flow roads, although it would not exceed three movements per hour. Whilst this level of movement may

cause disturbance, based on advice in PPGN, it is not considered to be of sufficient magnitude to result in a significant effect.

Operational phase noise effects

3.8.44. The assessment considers that plant noise emissions would likely be experienced at receptors as a distinctive continuous and steady hum. Therefore a 3 dB correction has been applied in determining the rating level as advised in BS 4142. As the night-time period constitutes the most onerous assessment scenario, it has been used in ES Table 11-17. This table sets out the operational noise effects for the receptors outside of the GCC and ICC (where the underground cables would not generate noise). Twenty receptors would be below the LOAEL and 21 between the LOAEL and SOAEL. None would be above the SOAEL and therefore, there would be no significant effects. Although adverse levels of noise are identified at some receptors, the provision of embedded mitigation would comply with the NPSE requirement to take reasonable steps to mitigate and minimise adverse effects.

Additional Mitigation/Residual Effects

3.8.45. ES Sections 11.8 and 11.9 cover additional mitigation and residual effects respectively. Section 11.8 reiterates the measures described above to mitigate potentially significant effects on the six properties due to cable laying (NGA2) and the significant effects on the two properties due to the HDD (NGA3). No further mitigation is proposed, and none is considered necessary during the operational phase. Residual effects therefore are unchanged from those described above.

Cumulative Effects

3.8.46. ES Section 11.10 considers cumulative effects. It uses professional judgement to conclude that the interaction of noise emissions from multiple developments would be attenuated such that there would normally be no combined effect at a distance of more than 500m. Table 11-21 identifies the cumulative developments (see ES Appendix 17-1 [REP2-008]) within this distance. The separation distances between the cumulative developments and the sensitive receptors are reviewed. Based on these distances, and the requirement to implement best practice measures, the assessment concludes that any overlapping of construction phases between the proposal and the cumulative developments would not result in significant in-combination cumulative effects at common noise sensitive receptors. The significant effects on the two properties due to NGA3 would not change.

ISSUES CONSIDERED DURING THE EXAMINATION

Statutory Consultees

3.8.47. The LIR from ERYC [REP2-022] recommends that consideration is given to lowering the night-time construction noise criteria from 55 dB LAeq,T to 45 dB LAeq,T in view of the low background noise levels across the site. It also recommends that consideration is given to lowering the SOAEL night-time operational noise assessment criteria to 30 dB and to housing the transformers, switchgear, and inverters within the field station units in view of the low background noise levels across the development site and the proximity of properties in Gribthorpe, Willitoft and Spaldington. These matters were also discussed in ISH2 [EV7-006]

3.8.48. The Applicant's responses are at [REP3-032 REP3-035]. The parties also subsequently discussed the Council's concerns and the SoCG with ERYC [REP6-011] indicates that all matters relating to noise were agreed. With regard to operational noise, the Applicant agreed to commit to designing, constructing, operating and

maintaining fixed plant with the objective of achieving a LAr,Tr rating level at affected residential receptors of not more than 30 dB. Where that is not reasonably practicable it would adopt measures to ensure that noise from all fixed plant is reduced as far as reasonably practicable and would not exceed the predicted levels in ES Table 11-17 [REP1- 016]. This commitment is included in the OEMP [REP6-007].

3.8.49. The LIR from NYC [REP2-023] does not object to the Applicant's noise assessment or, subject to the preparation of a detailed CEMP and the definition of emergency works, its mitigation proposals. Emergency works were defined in the Framework CEMP submitted at D3 and a detailed CEMP would be secured through DCO Requirement 11.

3.8.50. Noise disturbance featured in NE's initial concerns regarding the effect of the proposal on international designated sites [REP1-094]. This matter is considered further in the HRA review at Chapter 4 of this report. The EA did not comment on noise matters.

Other IPs and ExQs

3.8.51. Concerns were expressed in RRs, WRs and submissions at D3 and D8 by a significant number of IPs (including Spaldington Parish Council [RR-341]. The issues raised included:

- prolonged traffic and construction noise and piling vibration impacts during construction;
- noise from the solar PV panels and substations during the operational phase;
- the cumulative impact with nearby wind turbines; and
- noise impacts on animals.

3.8.52. The Applicant's responses are at [REP1-066 REP2-019 REP4-029]. With regard to the construction phase, they refer to the noise and vibration assessments in ES Chapter 11 which find no significant effects, with a possible exception in the event that night-time HDD drilling is required. Reference is also made to:

- the assessment of cumulative effects in ES Chapter 17 Cumulative Effects and Interactions [AS-016] which finds no significant cumulative noise effects;
- mitigation measures in the CEMP;
- the selection of noise monitoring locations in Spaldington which represent the worst-case scenario;
- a highest construction noise level at Spaldington of 60 dB LAeq,T. This would be temporary when construction works take place close to Spaldington and is considered not significant; and
- properties in Spaldington would be sufficiently distant from the solar PV module locations that piling induced vibration would not be perceptible. No construction or operational traffic would be routed through Spaldington.

3.8.53. Responses to operational phase concerns refer to the commitment in the ODPS [REP1-051] to locate field stations and the grid connection substations at least 250m from residential properties. The highest predicted noise level at Spaldington would be comparable to the level that design guidance for new residential properties recommends for good sleeping conditions.

3.8.54. Short, high noise events which may disturb animals would be minimised through measures in the CEMP. During operation, the character of noise emissions would be low and continuous and, as such, unlikely to cause disturbance to animals.

3.8.55. It was suggested that noise surveys were unrepresentative as they were undertaken during a week of RAF training [REP1-137]. In response [REP2-019], the Applicant referred to the use of BS guidance. It requires noise criteria to be defined against a LA90 background noise level, whereby the sound level is exceeded for 90% of the time. In this way, the noise criteria were representative of quiet periods and was not influenced by events such as RAF training,

3.8.56. Mr Taylor [REP1-145 REP3-073] requested the use of screw piling having regard to the lack of adequate foundations at his Georgian era house. He considered that there should be no piling within 2000m of residential properties. The effect of piling on residential properties was also raised in ISH2. The Applicant responded [REP2-019 REP3-035 REP4-029] that best practicable means controls for noise and vibration in relevant British Standards would be followed. Vibration assessment criteria were based on human disturbance and are substantially lower than the level of vibration that may cause cosmetic damage in a building. There are no properties within 50m of the proposed solar PV areas. Based on guidance in BS5228-2, at this distance, there would be no exceedances of the SOAEL for human disturbance and therefore no cosmetic damage to properties using augur or bored piling.

3.8.57. Sir David [REP8-013] and Beckitt and MacMillan [REP8-023] were concerned that the change to the OEMP made following the discussion between the Applicant and ERYC (see paragraph 3.8.48 above) would dilute the effectiveness of the mitigation. In particular, that inclusion of the phase 'as far as reasonably practical' would become 'do nothing' in reality. Since D8 was the last opportunity for submissions to the Examination, the Applicant was not able to respond. However, I deal with these concerns in my conclusions below.

3.8.58. ExQ1 [PD-004] included a series of queries regarding apparent anomalies in the original version of ES Chapter 11 [APP-063]. These concerned the locations of the noise receptors (Q10.0.4, Q10.0.17, Q10.0.20, Q10.0.21) and the lack of reference in Table 11-8 to typical construction types for the kinds of residential buildings which are likely to be most affected by the proposal (Q10.0.8). Further questions sought clarification of details of the methodology and the assessment. My queries were satisfactorily addressed by the Applicant in [REP1-081] and the submission of a revised version of ES Chapter 11 [REP1- 016].

3.8.59. ExQ1 Q10.0.16 and ExQ2 Q8.0.1 [PD-008] sought clarification regarding the assessment's finding that cable laying works in the GCC could take place within 15m of three sensitive receptors and therefore lead to SOAEL. The Applicant [REP4-030] considered it unlikely that cable laying work would be required to take place within 15m of these three receptors. However, the CEMP [REP4-010] includes a commitment to screen sensitive receptors from cable laying activities using acoustic barriers if it is not practicable to maintain a 15m buffer.

3.8.60. I sought the views of the Applicant, ERYC and NYC (ExQ1 Q10.0.19) on whether the proposed use of communication with the five receptors within 25m of the cable laying in the GCC (NGA2) would be sufficient to mitigate the vibration effect on them such that it would be reduced to not significant.

3.8.61. The Applicant's response [REP1-081] referred to the short duration of the works and to guidance in BS 5228-2009+A1:2014 which advises that, while the predicted noise

level may lead to complaints, it can be tolerated if prior warning and explanation is given.

3.8.62. The Councils' responses [REP1-088] [REP2-021], consider that communication with the affected residents would not, of itself, reduce the effect, but would give confidence in the processes being followed and should identify and address issues at an early stage and so avoid escalation. The same submissions responded to ExQ1 Q10.0.22 that, subject to the submission of a detailed CEMP, all reasonable steps have been taken to minimise adverse noise effects.

CONCLUSIONS

3.8.63. I recognise the widely held concerns from local residents regarding noise and vibration impacts on their properties. However, there is little systematic analysis or substantive evidence to show that significant effects would occur. On the other hand, the Applicant has undertaken a thorough assessment of the noise effects of the proposal. Although the assessment of vibration effects relies, to an extent, on published, rather than first-hand information, having regard to the distance of the works from sensitive receptors, including dwellings with deficient foundations, I consider that the Applicant's findings are supported by the available evidence and are reasonable. Taking into account the revisions made to ES Chapter 11 during the Examination therefore, I am satisfied that the Applicant's assessment of the noise and vibration effects of the proposal is adequate and meets the aims of NPS EN-1 paragraphs 5.12.6 to 5.12.8.

3.8.64. I agree with the assessment's finding of significant residual noise effects on two sensitive receptors as a result of evening or night HDD activities in the GCC (NGA3). The effect would be temporary during the construction period.

3.8.65. There was some difference of opinion between the Applicant and the Councils regarding the use of a communications strategy to reduce the vibration effect of cable laying works in the GCC (NGA2) on five sensitive receptors from significant to not significant. I acknowledge that the Applicant relies on relevant BS guidance in support of its position. Nevertheless, even a successful communication exercise would not reduce the actual effect. That said, any such effect would be short-lived and would affect a relatively small number of receptors.

3.8.66. With regard to the effectiveness of the OEMP, I note that the full text of the revised OEMP defines the consideration of what is 'reasonably practical'. It goes on to state that, in such cases, the plant would be designed, constructed and maintained so that, under all reasonably foreseeable circumstances, it would not exceed the noise levels originally predicted in Table 11-17 of the ES. Those levels are below the LOAEL in most cases and below the SOAEL in all cases. I consider that the revised text provides a suitable safeguard that residential properties in the vicinity of the plant would not be subject to significant adverse noise effects. It would be for ERYC, who agreed the revision to the OEMP, to ensure that it is properly implemented.

3.8.67. Overall therefore, I find that all reasonable measures have been taken to reduce the noise and vibration effects of the proposal at the construction, operational and decommissioning phases. The mitigation measures contained in the CEMP, OEMP and DEMP would limit the effects to those identified in the Applicant's assessment. As such, the proposal would accord with NPS EN-1 paragraphs 5.12.17 and 5.12.18.

3.8.68. On this basis, and having regard to all matters raised, I conclude that the proposal accords with the relevant policies of NPSs EN-1 and EN-3, the NPPF, PPGN and

NPSE and the development plan. The noise and vibration effects of the proposal carry a little negative weight in the planning balance.

3.9. SOILS AND AGRICULTURAL LAND

INTRODUCTION

3.9.1. This section considers the effects of the proposal on soils and agricultural land. Therefore, it takes in the extent to which best and most versatile land (BMVL) would be used and the loss of agricultural output while the scheme is in operation. It also considers proposals for the storage and re-use of soils disturbed in the construction of the scheme. Matters such as site selection, socio-economic effects, change in land use character and biodiversity are considered elsewhere in this report.

POLICY BACKGROUND

National Policy Statements

3.9.2. Applicants should seek to minimise impacts on BMVL (defined as land in grades 1, 2 and 3a of the Agricultural Land Classification (ALC)) and preferably use land in areas of poorer quality. Where BMVL is used, the economic and other benefits of that land should be taken into account (paragraphs 5.11.12 and 5.11.34).

3.9.3. NPS EN-1 recognises that energy development direct and indirect effects on soil resources (paragraph 5.11.4). Applicants should identify any effects on soil health and seek to minimise impacts and protect and improve soil quality. A Soil Management Plan could help to minimise potential land contamination, and the sustainable reuse of soils needs to be carefully considered (paragraphs 5.11.13 and 5.11.14).

3.9.4. NPS EN-3 advises that solar energy schemes can be sited on a wide variety of land types. Where the 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 BMVL where possible. It is recognised that, at the scale of solar development expected, some use of agricultural land is likely (paragraphs 2.10.28 to 2.10.31).

3.9.5. Consideration may be given to whether the proposal allows for continued agricultural use and/or can be co-located with other functions to maximise the efficiency of land use (paragraph 2.10.32).

3.9.6. If necessary, field surveys should be used to establish the ALC grades in accordance with the then current grading criteria and identify the soil types to inform soil management at the construction, operation, and decommissioning phases (paragraph 2.10.33).

3.9.7. NPS EN-3 restates NPS EN-1 regarding the development of a Soil Resources and Management Plan and goes on to say that it should accord with the ambition in the government's Environmental Improvement Plan to bring at least 40% of England's agricultural soils into sustainable management by 2028 and increase this up to 60% by 2030 (paragraph 2.10.34). Any soil stripping should be managed to provide optimal conditions for site restoration (paragraph 2.10.81). and paragraph 2.10.127 refers to the Defra Construction code of practice for the sustainable use of soils on construction sites.

Solar and Protecting our Food Security and Best and Most Versatile Land Written Ministerial Statement May 2024 (WMS)

3.9.8. The WMS follows the publication of NPSs EN-1 and EN-3 and seeks to balance the aims of protecting BMVL and developing solar energy projects. It reiterates that applicants should seek to minimise impacts on BMVL and preferably use land in areas of poorer quality. The highest quality agricultural land is least appropriate for solar development and, as the land grade increases, there is a greater onus on developers to show that the use of higher quality land is necessary.

3.9.9. It goes on to state the importance of considering not just the impacts of an individual proposal, but also whether there are cumulative impacts where several proposals come forward in the same locality.

3.9.10. The WMS also advises on measures to be taken to improve the quality and consistency of soil surveys used in the planning process and sets out government support for the deployment of solar on rooftops and brownfield land.

National Planning Policy Framework

3.9.11. Planning decisions should recognise the economic benefits of BMVL (paragraph 187(b). Footnote 65 advises that, where significant development of agricultural land is demonstrated to be necessary, areas of poorer quality land should be preferred to those of a higher quality.

Development Plan

East Riding Local Plan adopted 2016

3.9.12. Policy S4 supports development in the countryside subject to criteria including avoiding a significant loss of BMVL. Policy EC5 requires energy developments to be acceptable in terms of its effect on soil resources among other things.

Selby District Core Strategy 2013

3.9.13. Policy SP18 seeks to steer development to areas of least agricultural quality.

APPLICANT'S APPROACH

3.9.14. The Applicant's assessment of soils and agricultural land is found primarily in ES Chapter 15 [APP-067]. It is supported by:

- Appendix 15-1 Legislation, Policy and Guidance (Soils and Agricultural Land) [APP-132];
- Appendix 15-2 Predictive Agricultural Land Classification (ALC) Map (Cranfield University) [APP-117];
- Appendix 15-3 ALC and Soil Survey Report [APP-118];
- Appendix 15-4 Communications with Natural England [APP-119];
- Appendix 15-5 Soil Health Analysis Data [APP-120];
- Figure 15-1 Provisional and Post 1988 Agricultural Land Classification [APP-221];
- Figure 15-2 Predictive Agricultural Land Classification [APP-222];
- Figure 15-3 Agricultural Land Classification Survey for the Solar PV Site [APP-223]; and

- Figure 15-4 Soil Associations [APP-224].

3.9.15. The Applicant also submitted a Framework SMP [REP1-058].

Methodology

3.9.16. The methodology is contained in ES Section 15.4. The assessment is based on relevant aspects of the IEMA guidance 'A New Perspective on Land and Soil in Environmental Impact Assessment'. It advises that, in common with most solar farms, the frames supporting the solar panels would be driven directly into the ground without the need for the excavation of foundations or disturbance to the surrounding land surface (soils) and would, therefore, not result in (permanent) loss of soil resources or agricultural land. Options for the management of the grassland within the solar PV site and, potentially, in the Golden Plover Mitigation Zone of the EMA include grazing by sheep. This is considered in ES Appendix 2-1 Grazing Feasibility Study [APP-071] which finds that, subject to good husbandry, *"there is no reason why the land under the panels cannot successfully be grazed by sheep, as is common practice on other operational solar farms both within the UK and internationally".*

3.9.17. The assessment assumes that the land within the solar PV site would be removed from agricultural use at the commencement of construction and that the grassland within the solar PV site, Golden Plover EMA, and most hardstandings would be returned to that use following decommissioning.

3.9.18. Land used to create new hedgerows is not considered to represent a loss of agricultural land as it would form field/agricultural boundaries. Land used for tree, shrub and orchard planting is considered to be a loss of agricultural land since it is likely that the planting would be retained. The grid sub-station land is also treated as a permanent loss. To present a worst-case scenario it is assumed that all land within the GCC and ICC is agricultural and would be subject to disturbance.

3.9.19. As agreed with NE, no soil and ALC surveys of the GCC, ICC or site accesses have been undertaken. Rather, the ES assessments are based upon the Predictive ALC data obtained from Cranfield University (ES Appendix 15-2). PINS also agreed that decommissioning effects may be scoped out on the basis that they would be of similar to, or of less magnitude than, construction effects.

Baseline

3.9.20. The baseline position is set out in ES Section 15.5 and uses published data, predictive modelling, and progressive stages of field surveys. It identifies the soil types within the solar PV site, EMA, GCC and ICC and notes that there are small areas where there is no soil cover.

3.9.21. The study area for agricultural land comprises all land within the solar PV site, the EMA GCC and ICC. Agricultural land classification was undertaken using, initially, the government's 1:250,000 scale Provisional ALC mapping and supplemented by Predictive ALC data from Cranfield University. A two-phase soil and ALC survey was undertaken within the solar PV site and EMA by a specialist soil surveying consultancy (Appendix 15-3 Soil and Agricultural Land Classification Survey Report [APP-118]). For the more detailed phase, survey densities were agreed with NE.

3.9.22. The baseline ALC is set out in ES Tables 15-11 Solar PV site, 15-12 EMA, 15-3 GCC and 15-14 ICC. ES Table 15-15 is the ALC for the study area as a whole and is reproduced below.

Table 6 Baseline ALC data for the study area

ALC grade	Area (ha)	% of study area for agricultural land
Grade 1	48.31	3.8
Grade 2	9.76	0.8
Subgrade 3a	91.24	7.2
Subgrade 3b	1096.62	86.7
Grade 4	9.93	0.8
Non-agricultural	9.67	0.8
Total agricultural land	1255.86	99.2
Total BMVL	149.32	11.8
Total non-BMVL	1106.55	87.4
Total land	1265.53	100.0

3.9.23. To provide context, ES Tables 15-16 and 15-17 provide comparative data for the administrative areas of ERYC and the former Selby District Council. The assessment notes that parts of these areas are only covered by the Provisional Mapping which does not distinguish between ALC grades 3a and 3b and therefore a 50:50 split is assumed. In total, 73.4% of the available agricultural land within ERYC, and 71.9% of such land within Selby District, is predicted to be of BMV quality.

3.9.24. The study area agricultural land equates to approximately 0.5% of the available agricultural land within ERYC, 2.1% of the available agricultural land within Selby District, and 0.4% of such land within ERYC and Selby District combined. The BMVL within the study area equates to approximately 0.1% of the available BMVL within ERYC and 0.35% of the available BMVL within Selby District.

3.9.25. The assessment acknowledges the potential for changes to soil conditions and agricultural practice over the lifetime of the proposal, but considers that the baseline data provides a good representation of future land use and agricultural conditions.

Embedded Mitigation

3.9.26. Embedded mitigation measures are described in ES Section 15.6. During construction, the agricultural capability of soils would be protected by the use of best practice in soil stripping, handling and storage of soil materials. ES paragraph 15.6.2 summarises the measures which are secured in the SM) [REP1-058] and DCO Requirement 15, The Framework CEMP [REP4-010] and SMP describe techniques to ensure the sustainable management of soil resources and good practice measures to minimise the risk of damage to soil structure.

3.9.27. During the operational phase, land within the solar PV site and EMA would be managed using environmental good practice measures set out in the OEMP [REP6-007] and LEMP [AS-040]. Most of the EMA (Goose Mitigation Zone) would be subject to arable rotation and the remainder (Golden Plover Mitigation Zone) would be managed as grassland. Should grazing be undertaken (within the solar PV site and/or the Golden Plover Mitigation Zone), it would be managed to avoid potential negative impacts such as over-grazing, or damage to soil structure. These measures are

outline submitted Framework OEMP and would be fleshed out in the detailed OEMP and secured by DCO Requirement 12.

Likely Impacts and Effects

3.9.28. The likely impacts and effects on use of agricultural land and soil function are set out in ES Section 15.7.

Construction and decommissioning phases

Solar PV site

3.9.29. The assessment assumes, as a worst-case scenario, that all agricultural land within the solar PV site would be taken out of agricultural use during the construction phase. ES Table 15-18 sets out the post-construction land uses within the solar PV site, including areas of BMVL and non-BMVL. The key finding is that 4.9% of the solar PV area would be BMVL.

3.9.30. Some shallow excavation and localised redistribution of topsoil to increase flood storage resilience would be undertaken in the grassland areas within solar PV areas 1e and 2a. Nevertheless, the ES considers that all the grassland would be returned to agricultural use with no loss of soil function following decommissioning. Therefore, the effect would be reversible in the long-term and is assessed to be slight adverse for BMVL and neutral for non-BMVL.

3.9.31. The land used for tree, shrub and orchard planting would constitute a permanent loss of agricultural land, albeit with no loss of soil function or volume. The effect is assessed to be slight adverse for the Subgrade 3a land and neutral for the Subgrade 3b land affected.

3.9.32. It is anticipated that, with the exception of the grid connection sub-station compounds, the hardstandings created would be removed following decommissioning. Mitigation measures in the CEMP and SMP would enable these areas to be reinstated with no loss of soil function. As such, the effect would be reversible in the long-term and is assessed to be slight adverse for BMVL and neutral for non-BMVL. The land used for the grid connection sub-station compounds (solar PV area 1c) extends to some 5ha and is non-grade 3b. The permanent sealing of this land is found to result in a slight adverse effect.

Ecological Mitigation Area

3.9.33. The 28.63ha of the Golden Plover Mitigation Zone would be converted to wet species rich grassland. Of the agricultural land, approximately three quarters is Subgrade 3b land, with the remainder Subgrade 3a. The loss of agricultural land would be long-term reversible and is therefore assessed as slight adverse for the BMV Subgrade 3a land and neutral for the non-BMV Subgrade 3b land.

3.9.34. The Goose Mitigation Zone extends to 79ha and predominantly contains Subgrade 3b land, with the remainder Subgrade 3a or non-agricultural. This land would remain in the current arable rotation with amendments to improve habitat quality. These amendments are assessed as part of the construction phase. There would be no loss of agricultural land and the impact is assessed as no change. The effect on soil function for the EMA is assessed as neutral.

Grid Connection Corridor and Interconnecting Cable Corridor

3.9.35. The GCC extends to 167.81ha, of which 65.14ha is BMVL. The ICC extends to 23.47ha of which 4.29 ha is BMVL. The ES assumes, as a worst-case scenario, that all land within the GCC and ICC would be temporarily disturbed during construction. The land would return to agricultural use at the end of the construction period, and with the mitigation measures set out in the SMP, it would be reinstated to its original quality (ALC grading) in the short-term with no discernible loss or reduction of soil functions or volume. The effect on agricultural land is, therefore, considered to be slight adverse for the BMVL and neutral for the non-BMVL. The effect on soils is assessed as neutral.

Operational phase

3.9.36. The impact on agricultural land would occur during the construction phase. Therefore, there would be no further effect during operation, although the ES notes that the solar PV site would be subject to environmental good practice as set out in the OEMP and LEMP. Some additional disturbance of soils may occur due to maintenance or remedial works during the operational phase. However, such activity would be limited in scope and subject to the mitigation in the OEMP and LEMP. Consequently, the effect is assessed as neutral.

3.9.37. Moreover, the change from agricultural use to grassland at the solar PV site is considered to benefit soil structure by protecting it from wind erosion when dry and surface water runoff erosion when wet. Improved soil structure can improve plant growing conditions. Such a long-term reversible improvement over some 900ha is considered to represent a slight benefit.

Additional Mitigation/Residual Effects

3.9.38. Additional mitigation and residual effects are covered in ES Sections 15.8 and 15.9 respectively. Since no significant effects are identified during any phase of the scheme, no additional mitigation or enhancement is proposed, and the residual effects would not change. Those effects are summarised in ES Tables 15-25 and 15-26.

Cumulative Effects

3.9.39. Cumulative effects are considered in ES Section 15.10. They are based on the short-list of cumulative schemes in ES Appendix 17-1 [REP2-008]. Of those schemes, ES Table 15-27 identifies eight with boundaries that overlap the Order Limits and Table 15-28 provides details for three other solar farm schemes which have the potential to lead to significant cumulative effects. Together they would affect some 683ha of BMVL.

3.9.40. The application proposal would bring the total area of BMVL affected to around 789ha. The majority would convert from arable land to grassland which could be grazed by sheep during operation and returned to arable farming following decommissioning. The permanent loss of BMVL due to vegetation planting or infrastructure would be approximately 3% of the total BMVL affected.

3.9.41. The BMVL affected by the cumulative solar developments comprises 0.4% of all BMVL in the administrative areas of ERYC and the former Selby District. The permanent loss would amount to some 0.01% of BMVL in those areas. The ES considers that the cumulative schemes would not change the residual effect of the proposal on agriculture.

3.9.42. Nevertheless, the ES notes that, whereas it found that the improvement in soil function during the operation of the proposal would lead to a slight beneficial effect, the

assessments of other cumulative schemes found significant beneficial effects. Consequently, it considers that the cumulative effect on soil function would be moderate significant beneficial.

ISSUES CONSIDERED DURING THE EXAMINATION

Statutory IPs

3.9.43. The LIR with ERYC [REP2-022] advises that the Council commissioned its own independent consultant to carry out a desk-based assessment and verify the findings of the Applicant's assessment. It confirms that it is content with the Applicant's assessment of soils and agricultural land, although it expects further surveys to be undertaken along the ICC to ensure that soil resources are not damaged and that the siting of permanent structures has regard to the ALC grade. The Applicant has committed to further surveys of the ICC and GCC in the CEMP [REP4-010] which is secured by DCO Requirement 2 and would inform the SMP [REP1-058], secured by DCO Requirement 15. These matters were agreed in the SoCG [REP6-011].

3.9.44. The SoCG with NYC [REP8-006] finds that the Applicant's assessment of agricultural land and soils is acceptable.

3.9.45. The RR from NE [RR-266] makes a series of suggestions about soil handling and refers to the use of the Institute of Quarrying's 'Good Practice Guidance for Handling Soils in Mineral Working'. It also considers that the commitment to restoring the land to its current ALC following decommissioning could be altered to be clear that the site would be restored, at a minimum, to the same ALC grade, and additional measures would be taken to further benefit the land quality/productivity. This commitment would allow the DCO to ensure that the land quality would not be affected. Restoration criteria should be included in the detailed SMP.

3.9.46. The Applicant's response [REP1-066] refers to the provisions of the updated SMP [REP1-058] and the DEMP [REP3-014] and confirms that soil restoration criteria would be included in the detailed SMP. All matters relating to soils and agricultural land were agreed in the SoCG with NE [REP6-017].

Other IPs and ExQs

3.9.47. There was widespread and sustained objection in RRs (including Foggathorpe [RR-117] and Spaldington [RR-341] Parish Councils, WRs at D1, D3, D5 and D8 to the loss of agricultural land and the impact on food production. Many submissions considered the site to be high quality agricultural land. Related concerns included:

- food security is particularly important in view of the growing population and international tensions;
- the loss of local food production would increase food miles and the carbon footprint of production;
- soil conditions are variable and can be improved to optimise yields;
- the Applicant's claim that the site is low quality agricultural land should be validated by an independent soil sampling programme and communicated to residents;
- sheep grazing would not be viable and is not a traditional agricultural activity in the area; and
- it would be difficult to reinstate the land following decommissioning and it is unlikely to be returned to agriculture.

3.9.48. The Applicant's responses [REP1-066, REP2-019, REP4-029, REP1-081] refer to the site selection process (ES Chapter 3 Alternatives and Design Evolution [APP-055]), which, it says, accords with the requirements of NPSs EN-1 and EN-3 and the WMS. Further, ES Chapter 15 finds that the proposal would be mostly on lower quality agricultural land, with almost 93% of the solar PV site on non-BMVL. Moreover, only a very small amount of BMVL (0.41ha) would be permanently taken out of agricultural use for tree planting. Relatively small amounts of non-BMVL would be lost to tree planting and the grid connection substation compounds.

3.9.49. The submitted soil and ALC survey was undertaken by experienced specialist consultants using a recognised methodology and sampling intensity. The methodology was agreed with NE, ERYC and NYC. The general development and adoption of precision farming to optimise yields would not be affected by the proposal.

3.9.50. Reference was made to the Applicant's discussion with farmers of the site who say that the land is difficult to farm, and to the potential to achieve improvements to the soil by the conversion of the land to grassland for a 40-year period.

3.9.51. The Applicant referred to ES Appendix 2-1 Grazing Feasibility Study [APP-071] which finds that sheep grazing in the solar PV area is feasible. As grazing achieves an essential maintenance function at low cost, it is possible for solar farms to use less agriculturally productive breeds and to graze at low densities. While the current farmers may not keep sheep, the necessary skills could be developed, or other shepherds may wish to rent the land. Sheep grazing takes place successfully on solar farms in the UK and has benefits in terms of soil health and biodiversity enhancement.

3.9.52. The metal piling used to support the solar PV panel mounts would be removed at decommissioning. Cables would be laid in trenches and farming activity could continue over the trenches during the operational phase. The DEMP [REP3-014] allows for the cabling to be removed following decommissioning. In response to my ExQ1 Q8.0.15 [PD-004], the Applicant [REP1-081] also confirmed that field station foundations would be removed at decommissioning as set out in the DEMP. The Applicant maintained that the vast majority of the land would be available for agricultural use following decommissioning and that this would be secured under the DCO.

3.9.53. The use of agricultural land was also discussed at ISH2 [EV7-004]. Among other things, the Applicant advised [REP3-035] that the site is currently used for a mix of farming including food production, animal feed and biomass, although it was not able to specify the proportions of each. It was also stated that the site has different soils, including clay and loam, making some areas prone to waterlogging and difficult to farm.

3.9.54. The Applicant provided satisfactory responses to my queries in ExQ1 on factual matters and the methodology used in the soils and ALC assessments. Its key responses [REP1-081] to other questions were:

- pre-construction soil surveys in the ICC and GCC would define the ALC grading in the cable corridor working widths and provide detailed soil information to further inform the detailed SMP (Q8.0.1);
- there would be some loss of agricultural productivity as a result to changes to the management of the Goose Mitigation Zone. The Golden Plover Mitigation Zone would be managed as grassland. However, this land lies within Flood Zone 3 and is farmed at risk due to periodic flooding from the River Foulness. Current arable cropping yields from the land are therefore unpredictable (Q8.0.3); and

- the proposal would contribute to the ambitions of the Environmental Improvement Plan (as required by NPS EN-3 paragraph 2.10.34) in terms of bringing agricultural soils into sustainable management by delivering all three actions of the UK Government's Sustainable Farming Incentive during its operational lifetime. These would be delivered through commitments in the LEMP and OEMP rather than the SMP (Q8.0.14).

CONCLUSIONS

3.9.55. Although there was widespread concern from IPs regarding the effect of the proposal on the claimed loss of agricultural land, there was little substantive challenge to the Applicant's surveys, methodology and assessment. Further, I note that NE, ERYC and NYC were content on these points, and the Applicant gave satisfactory responses to my ExQs. As such, I consider that the Applicant's findings are sound and in line with NPS EN-3 paragraph 2.10.33.

3.9.56. While the application site is currently predominantly agricultural land, I have already found that the site selection process used was acceptable. The Applicant's assessment shows that the proposal would use a relatively small area of BMVL. BMVL makes up less than 5% of the solar PV site and less than 12% of the agricultural land study area. Moreover, the available evidence suggests that agricultural activity on the site does not comprise exclusively food production. Therefore, the proposal accords with the aims of NPS EN-1 paragraphs 5.11.12 and 5.11.34, NPS EN-3 paragraphs 2.10.28 to 2.10.31 and the WMS.

3.9.57. The greatest part of the agricultural land used would be converted to grassland which would have potential benefits for soil health in the long term. The conversion would also be reversible in the long term as secured by DCO Requirement 18 and the DEMP. Although it would be for landowners at the time to decide on the future use of the land, I am content that the provisions of the DEMP would allow the great majority of the land to be returned to ALC grade following decommissioning. Only a small area of agricultural land would be permanently lost to planting and hardstandings as a result of the proposal.

3.9.58. There are other developments in the area which would use agricultural land although, the Applicant's assessment, which was not challenged, was that the cumulative use of BMVL would amount to 0.4% of the total BMVL in the ERYC and former Selby District areas.

3.9.59. The proposal would result in some reduction of agricultural production over an extended period. However, there is no substantive evidence to show that it would be materially harmful in terms of food production or security or the carbon footprint for food production, either in isolation or cumulatively with other schemes in the area. The proposal for sheep grazing, while potentially beneficial, is not secured in the dDCO and, therefore, can be given little weight.

3.9.60. The CEMP, OEMP, DEMP and SMP contain measures to protect soil functionality and volumes and are secured by DCO requirements. I am satisfied that these mitigations would lead to the results predicted in the Applicant's assessment. A degree of improvement in soil health could be achieved in the long term, although this would be reversible depending on the use of the land following decommissioning. The proposal therefore accords with NPS EN-1 paragraphs 5.11.13 and 5.11.14.

3.9.61. Taking all matters into account, I agree with the Applicant's assessment that the proposal would not lead to significant adverse effects on agricultural land or soil

resources. Consequently, I find that the proposal complies with the relevant provisions of NPSs EN1 and EN3, the WMS and NPPF and the development plan.

3.9.62. I consider that the predicted slight adverse effects on BMVLand non-BMVL at the construction phase would narrowly outweigh the slight beneficial effects on the soil resource during the operational phase. As such, the effect of the proposal on agricultural land and soils carries a small degree of negative weight in the planning balance.

3.10. TRAFFIC AND TRANSPORT

INTRODUCTION

3.10.1. This section considers the traffic and transport effects of the proposal. It therefore takes in matters of sustainable travel and highway safety and convenience, as well as the impact of the proposal on the physical condition of the local network. The effect of the proposal on the use of the public rights of way network is considered above in Section 3.7 Land Use and Socio-economics. The local highway authorities in this case are ERYC and NYC.

POLICY BACKGROUND

National Policy Statements

3.10.2. NPS EN-1 recognises that transport impacts and their mitigation can contribute to the government's wider objectives for sustainable development (paragraph 5.14.4). Proposals having significant transport implications should include a transport appraisal in the ES, informed by consultation with National Highways (NH) and the local highway authorities. Applicants should also prepare a travel plan including demand management and monitoring measures to mitigate transport impacts. It may be necessary to control the timing and routeing of HGV movements (paragraphs 5.14.5 to 5.14.7 and 5.14.11 to 5.14.14).

3.10.3. Refusal of consent on highways grounds should only be considered if a proposal would have an unacceptable impact on highway safety, residual cumulative impacts on the road network would be severe, or it does not show consideration for adequate active public or shared transport access provision (paragraph 5.14.21).

3.10.4. NPS EN-3 acknowledges that solar farms may be located in areas served by a minor local road network and that the public perception of the construction phase of solar farms will derive mainly from the effects of traffic movements, which may be voluminous (paragraph 2.10.121).

3.10.5. Applicants should assess potential routes to the site for delivery of materials and components. Where the exact location of the source of construction materials, is not known, the worst-case impact of additional vehicles should be assessed (paragraphs 2.10.123 and 2.10.124). Applicants should ensure all sections of roads and bridges on delivery routes can accommodate the vehicles to be used. Where multiple energy infrastructure developments are likely to lead to cumulative impacts a cumulative transport assessment should be provided (paragraphs 2.10.125 and 2.10.126). In terms of mitigation, NPS EN-3 generally reflects the provisions of NPS EN-1.

3.10.6. With regard to the operational phase, NPS EN-3 advises that traffic movements to and from the site are generally very light. Replacement of components may generate heavier commercial vehicle movements, but these are likely to be infrequent (paragraph 2.10.161).

National Planning Policy Framework

3.10.7. 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. 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 (paragraph 116).

Development Plan

East Riding Local Plan adopted 2016

3.10.8. Policy S8 requires development to ensure that people and places are well connected and seeks to protect the overall role and function of the Strategic Transport Network. Policy EC5 requires energy developments to be acceptable in terms of the effects on transport including the opportunity to use waterways and rail for transportation of materials, and the capacity of the road network to accommodate development.

Selby District Core Strategy 2013

3.10.9. Policy SP15 requires schemes to minimise traffic growth by providing a range of sustainable travel options. Policy SP19 requires development to be accessible to all users and easy to get to and move through.

Selby District Local Plan 2005

3.10.10. Policy ENV1 requires proposals to take account of their relationship to the highway network, the proposed means of access, the need for highway improvements and car parking arrangements. Policy ENV6 requires renewable energy development proposals to avoid nuisance due to vehicular movements.

APPLICANT'S APPROACH

3.10.11. The Applicant's assessment is found in ES Chapter 13 Transport and Access [APP-065]. It is supported by:

- Appendix 13-1 Legislation, Policy and Guidance (Transport and Access) [APP-109};
- Appendix 13-2 Traffic Flow Diagrams [APP-110];
- Appendix 13-3 Communications with Local Highway Authorities [APP-111];
- Appendix 13-4 Transport Assessment (TA) [REP1-025];
- Appendix 13-5 Framework Construction Traffic Management Plan (CTMP) [REP5-013];
- Figure 13-1 Study Area [APP-216];
- Figure 13-2 Traffic Survey Locations [APP-217];
- Figure 13-3 Indicative Heavy Goods Vehicles (HGV) routeing [APP-218]; and
- Figure 13-4 Roads likely to be used to access the site [REP1-049].

Methodology

3.10.12. The methodology for the transport and access assessment is set out at ES Section 13.4. It is considered to present a worst-case scenario, based on the construction period's highest number of hourly two-way road trips, the construction period's highest

daily two-way movements for HGVs, that activity would occur at multiple compounds simultaneously and that any extension to the anticipated 24-month construction period would result in reduced daily flows on the network. Fewer movements are expected during operational and decommissioning phases and therefore the operational phase was assessed qualitatively rather than quantitatively.

3.10.13. Core working hours are defined, which, during the summer months, would mean peak arrivals and departures by construction staff would not coincide with peak flows on the network. While this may not be the case in the winter months, the percentage increase in traffic would likely be lower in this situation due to higher baseline traffic flows on the road network at peak hours.

3.10.14. ES paragraphs 13.4.15 to 13.4.18 describe the transport study area (ES Figure 13-1 [APP-216], which has been agreed with NH, ERYC and NYC. No material changes to the network within the study area are expected.

3.10.15. The assessment methodology for development-generated traffic impacts is based on IEMA Guidelines 'Environmental Assessment of Traffic and Movement' (2023). Environmental effects assessed comprise total traffic increase, HGV increase, severance, non-motorised user amenity, driver delay, fear and intimidation and accidents and safety. Potential impacts scoped out of the assessment are pedestrian delay, due to the low number of pedestrians affected, and hazardous loads, due to the absence of road features which may suggest that the transfer of materials would pose a greater than normal risk to the highway network.

3.10.16. The criteria used to assess receptor sensitivity, the magnitude of impacts and the significance of effects are set out in ES paragraphs 13.4.29 to 13.4.41 and Tables 13-4 to 13-7.

Baseline

3.10.17. Baseline conditions are described in ES Section 13.5. It reviews the data sources used and, in summary, characterises the context for the proposal as follows:

- strategic highway network – comprising the M62 including junction 37, which could potentially be used by vehicles to access the scheme;
- local highway network – comprising the A63 to the south of the solar PV site and would be crossed by the GCC, the A614 to the east of the site, the A163 to the north and the A645 to the south. The B1228 runs generally north to south through the site, which is also crossed by a network of minor, often single track, roads;
- walking and cycling provision – beyond the PRoW network (considered above), footpath and cycle routes are largely limited to paths within settlements, although National Cycle Route 65 crosses the GCC;
- public transport provision – due to the limited service coverage and poor frequency, the site is not considered to be accessible by bus. While there is a rail station at Howden, the ES finds that it would be unlikely to be used by construction staff due to the limited footpath connections; and
- road safety information – Personal Incident Collision data for the most recent five year period does not show incidents occurring frequently at any particular location. There were 14 incidents recorded along the B1228 over that period, although the ES considers that the accident data descriptions do not suggest a pattern of safety issues that could be aggravated by the proposed construction movements.

3.10.18. To establish baseline traffic levels, automated traffic counts (ATC) were undertaken at 19 locations selected in consultation with ERYC and NYC. Data was recorded for 24-hours a day at 15-minute intervals. The surveys were timed to take place outside of school holidays to provide representative traffic levels. ES Table 13-14 presents the counts for summer-time construction peaks (06:00 to 07:00 AM and 19:00 to 20:00 PM), local network peaks (08:00 to 09:00 AM and 17:00 to 18:00 PM) and the 24-hour annual average daily traffic. The latter figure ranges from more than 8000 two-way movements on the A614 north of the B1230 roundabout to counts in the low hundreds on minor roads. National Standard Trip End Model Presentation Program growth factors were used to derive the 2025 future baseline counts in ES Table 13-16.

Embedded Mitigation

3.10.19. Embedded mitigation is covered in ES Section 13.6 and ES paragraph 13.6.2 describes the construction phase measures to be included in the CTMP [REP5-013]. These include:

- the location and design of suitable site access points;
- minimum car parking levels at each construction compound;
- pre- and post-construction surveys;
- swept path analysis for abnormal indivisible loads (AILs) (up to 10 expected), HGVs, and tractor/trailers to ensure appropriate routeing;
- local off-site highway improvements to facilitate HGV movements;
- use of internal routes where possible;
- use of traffic management measures, the provision of visibility splays and signage and giving priority to non-construction traffic;
- restricting HGV routeing to the construction compounds and minimising HGV movements at peak times including implementing a Delivery Management System and monitoring;
- measures to control and minimise the number and routes of movements to the site by construction staff; and
- a communications strategy aimed at mitigating impacts on cyclists and pedestrians.

3.10.20. The Framework DEMP provides for similar measures to be included in the detailed DEMP [REP3-014]. Embedded mitigation during the operational phase would be contained in the CTMP and OEMP [REP6-007] and would include controls on operational staff routes to work, parking and controls over the timing of HGV movements and AIL routes. The CTMP, OEMP and DEMP are secured by requirements in the dDCO.

Likely Impacts and Effects

3.10.21. The likely impacts and effects on transport and access are assessed in ES Section 13-7.

Construction phase

3.10.22. The numbers of vehicles expected to travel to and from the site during this phase were provided by the Applicant. Peak construction traffic generation is anticipated to be during the first 18 months of the 24-month construction period. Up to 178 construction worker vehicles including minibuses and private worker vehicles, 25 HGVs and 50

tractor/trailer movements are anticipated to be travelling to and from the site daily. Traffic would be distributed across the five construction compounds as set out in Tables 18 to 20 of the TA [REP1-025].

3.10.23. ES Table 13-17 sets out the increase in traffic flows during the AM and PM construction peaks and over 24-hours for each of the 19 ATC locations (referred to in the ES as 'links'). One of the IEMA Guideline rules defines the scale and extent of the traffic assessment based on an increase in traffic flows of more than 30% or an increase in the number of heavy goods vehicles of more than 30%. Six of the links would exceed this threshold, although the ES notes that at four of those links the baseline hourly two-way traffic flows would be very low (less than 30 two-way vehicles per hour). As such, the additional construction traffic results in a high percentage increase, even though the actual increase in traffic would be small.

3.10.24. The likely effects on receptors in terms of total construction traffic, severance, pedestrian amenity, driver delay, fear and intimidation, and highway safety are summarised in ES Tables 13-18 (Road Links Magnitude of Impact against Assessment Criteria) and 13-19 (Summary of potential effects). The ES applies professional judgement to amend 'High' magnitudes for road links to 'Medium' where baseline flows are low, and it is considered there is sufficient capacity on the road network to accommodate the additional development-generated trips.

3.10.25. Table 13-19 finds that, for most of the 19 links assessed, the effects would be negligible for each of the factors considered. The exceptions are:

- Link 2 Green Lane north of A63 junction - where all individual effects would be minor, but still resulting in the overall effect being non-significant;
- Link 5 - Street Lane between Wood Lane and Willitoft Lane – where the total traffic increase would be minor and other effects negligible but still resulting in the overall effect being non-significant;
- Link 15 - B1228 between B1230 and Brind Lane junctions – where the total traffic increase would be moderate and the other effects minor, leading to a significant effect overall; and
- Accident and safety effects at links 1, 2, 3, 5, 6,13 and 15 are considered further in ES paragraphs 137.21 to 13.7.24 and Table 13-20.

3.10.26. That further consideration of accident and safety effects refers to the earlier finding that accident data descriptions do not suggest a pattern of safety issues that could be aggravated by the proposed construction traffic movements. ES Table 13-20, therefore, finds the accident and safety criteria magnitude is very low, notwithstanding that there would be a traffic increase of more than 30% on the links considered.

Operational phase

3.10.27. Operational phase traffic generation is expected to be very low comprising one to three on-site staff and a small number of visitor, delivery and panel maintenance trips. There is also the possibility of an AIL trip for delivery and removal of a failed transformer. Operational effects are therefore considered to be negligible for all potential impacts.

Decommissioning phase

3.10.28. Decommissioning effects are anticipated to be comparable to (though likely to be less than) construction phase activity. Therefore, effects are considered to be negligible

for all potential impacts except for link 15, where minor to moderate effects could be expected.

Additional Mitigation/Residual Effects

3.10.29. ES Sections 13.8 (additional mitigation) and 13.9 (residual effects) consider that, as all transport and access mitigation is embedded within the scheme design, no further additional mitigation measures are required. Significant residual effects would, therefore, remain the increase in overall and HGV traffic movements at link 15 during the construction and decommissioning phases.

3.10.30. The ES finds that this significant effect occurs as a result of increased movements at the construction peak hours (06.00-07.00 AM (243 vehicles) and 19.00-20.00 PM (225 vehicles)). However, these flows are still comparable with flows at the network peak hours (08.00-09.00 AM (225 vehicles) and 17.00-18.00 PM (295 vehicles)). In essence therefore, the effect would be to increase the length of the AM and PM peaks from one to two hours.

Cumulative Effects

3.10.31. ES Section 13.10 reviews the interaction of the proposal with the cumulative schemes identified in ES Appendix 17-1 [REP2-008]. ES Table 13-24 identifies the cumulative schemes which require further consideration based on their expected construction period and anticipated interaction with the 19 links assessed for the application proposal. ES paragraph 13.10.7 identifies the links predicted to experience a medium or high magnitude of impact warranting the consideration of cumulative effects. This process results in the following interactions being considered further:

- Cumulative scheme ID 2 (Scotland England Green Link 2 – English Offshore Scheme) in terms of links 5 and 15; and
- Cumulative scheme ID 7 (J.G Hatcliffe Property and Planning and Howdens Joinery Properties Ltd development of mixed-use allocation at 'HOW-G') in terms of link 15.

3.10.32. These schemes are assessed based on 24-hour AADT two-way flows based on the best available information. The ES notes that neither scheme states their peak generated traffic flows to be between the hours of 06:00-07:00 or 19:00-20:00 and considers that cumulative peak hours impact with the application proposal would be negligible. ES Tables 13-25 to 13-28 set out the figures leading to the calculation of the 2025 base + cumulative development + construction traffic two-way daily flows for total traffic and HGVs at links 5 and 15. They show the following increases:

- Link 5 – total traffic 8%, HGVs 5%; and
- Link 15 - total traffic 7%, HGVs 0%.

3.10.33. The ES finds that the impact of the cumulative schemes is minimal in terms of changing the 24-hour flows. Therefore, it considers that the magnitude of impact at road links 5 and 15 would remain unchanged when the cumulative schemes are taken into consideration in a 24-hour profile.

ISSUES CONSIDERED DURING THE EXAMINATION

Statutory IPs

3.10.34. The LIR from ERYC [REP2-022] confirmed that the Council considered that the Applicant provided an accurate assessment of the impact on the local highway

network both during construction and operation. It sought further details of the CTMP, including the siting of passing places along Rowlandhall Lane, and abnormal loads and indicated that an agreement under S278 of the Highway Act would be required. These matters were also discussed at ISH2 [EV7-006] and in a subsequent meeting between the parties. The SoCG with ERYC [REP6-011] confirms that the CTMP [REP5-013] and its Appendix B [REP5-022] were updated to meet ERYC's concerns and that all transport matters were agreed.

3.10.35. The LIR from NYC [REP2-023] considered that, subject to the management of construction traffic, the small increase in traffic on the network would be acceptable. It required further details on the design of access points. The SoCG [REP8-006] with NYC refers to measures in the CTMP and LEMP [AS-040] for the design of access points and confirms that all transport matters were agreed.

3.10.36. The RR by NH [RR-265] did not dispute the Applicant's transport assessment, but referred to further details which should be included in the CTMP and DEMP [REP3-014]. The SoCG with NH [REP1-073] confirms that these concerns were addressed by the Applicant [REP1-066] and that all transport matters were agreed.

Other IPs and ExQs

3.10.37. Transport matters featured in the submissions made by Foggathorpe [RR-117] and Spaldington [RR-341] Parish Councils and a great many local residents in RRs, WRs, subsequent submissions and at the OFH [EV6-002]. The general concerns can be summarised as:

- the network of local roads serving the area is generally single track and not capable of accommodating the high volume of traffic generated by the proposal, especially HGVs during the construction phase. This would lead to inconvenience and disruption. It would also pose a risk to highway safety, particularly given the narrow roads and restricted visibility at bends;
- other developments in the area such as the anaerobic digestor plant, have increased traffic on local roads;
- the road network is currently in a poor condition and this would be made worse by the additional traffic, with particular concern regarding damage to soft highway verges and buried utility services;
- the additional traffic from the proposal has the potential to impede access to the area by emergency services; and
- there should be a plan to control construction traffic.

3.10.38. ExQ1 Q12.0.16 [PD-004] sought clarification of how damage to roads and verges would be addressed.

3.10.39. The Applicant's responses [REP1-066 REP2-019 REP1-081] refer to the findings of the assessment in ES Chapter 13 Transport and Access [APP-065] which consider effects on sensitive receptors. At the peak period of construction, there would be 25 in and 25 out HGV movements and 50 in and 50 out tractor/trailer movements per day. These movements would be spread across the network and result in only one significant adverse effect (on the B1228 between B1230 and Brind Lane junctions) which would be temporary and managed.

3.10.40. There were only two accidents recorded in official Personal Injury Collision data on the minor roads (that is, non Class A or B roads) within the Study Area that involved either a slight, serious or fatal injury during the survey period (2016-2019 and 2021).

3.10.41. Access routes have been tracked using industry standard software to ensure that movements can be made suitably and safely. Where issues have been identified, carriageway widening and/or vegetation removal and associated traffic management to facilitate safe implementation would be introduced. The site accesses have been designed have regard to relevant guidelines and in consultation with the local highway authorities. They seek to ensure the safe access and egress of construction vehicles from the local road network, while minimising the overall environmental impact. Existing access points have been used where possible, or locations where junction visibility would limit hedgerow removal.

3.10.42. The CTMP contains measures to control construction traffic including HGV routeing and temporary traffic signals and the use of a banksperson. Construction traffic would be routed to avoid travelling through Spaldington.

3.10.43. The CTMP also requires the preparation of an Emergency Response Plan in consultation with the relevant local authority emergency planning officer and emergency services including the local fire service. A Construction Site Manager would be responsible for liaising with emergency services to ensure access is not compromised. A detailed CTMP would need to be approved by the local highway authorities as required by DCO Requirement 13.

3.10.44. The Applicant also pointed to DCO provisions for the protection of utility assets. Pre- and post-construction road condition surveys would be undertaken at identified locations in consultation with the local highway authorities. Any damage identified through this process would be repaired and the condition of the highway, including verges, reinstated to their original condition.

3.10.45. More specific concern was raised about the routeing of HGVs through the village of Newsholme. ExQ1 Q12.0.7 [PD-004] also queried whether, rather than routeing traffic through Newsholme, access could be taken directly from the A63. The Applicant responded [REP1-081] that construction vehicles requiring access to Compound B would do so via the B1228 and Wood Lane in order to prevent construction vehicles using Rowlandhall Lane. As such, no construction traffic would travel through Newsholme. The CTMP [REP5-013] was updated to clarify this arrangement.

3.10.46. I sought clarification of a number of matters in the Applicant's transport assessment in ExQ1. Its key responses [REP1-081] were:

- while winter working hours may mean construction staff arriving and departing closer to the network peak hours, a lower number of workers would be expected than during summer periods, due to the nature of construction activity. The absolute levels of traffic would be lower than in summer (Q12.0.3);
- ATC locations were chosen to represent roads most likely to be subject to significant adverse effects as a result of increased traffic. Due consideration was given to ensuring that sensitive receptors such as schools, residential properties, churches, play parks and care homes were represented by a sufficiently close ATC (Q12.0.4);
- although seven of the 14 accidents recorded along the B1228 were close to compound B, they were slight in terms of severity and did not have any common causality that would represent an inherent highway safety issue. In terms of construction traffic, which would be temporary, it is predicted that a total of 185 two-way vehicles trips would use this section of the road network (link 5) per day as a worst-case. Construction traffic would be carefully managed throughout the construction phase (Q12.0.6);

- the predicted number of workers and consequent vehicles required to transport the workers needed for construction has been derived by the Applicant based on knowledge and implementation of previous schemes of a similar size and nature. Realistic assumptions have been made regarding the use of minibuses and car sharing by construction staff. The number of construction delivery movements required has been calculated based on the known amount of materials required by the scheme over the planned 24 month construction period (Q12.0.8);
- it is considered that there is sufficient capacity on the network to accommodate construction traffic on the basis that future predicted 2025 base flows on links 2, 3 and 6 are very low (207, 289 and 148 daily two-way trips respectively). With the total number of daily two-way construction vehicles added to the base flows, (link 2, 207 + 33 = 237, link 3, 289 + 73 = 362 and link 6, 148 + 203 = 351) the total number of vehicles would likely not exceed the carrying capacity of the roads (Q12.0.12); and
- the use of nearby ports (such as Goole) to transfer materials was considered at an early stage of the scheme development. However, the likely origin of the majority of materials would not make use of these port locations feasible logistically. Also, the creation of jetty facilities on the River Ouse would be required to provide waterborne access close to the solar PV site. There would still be a requirement for HGV movements on the local highway network to move materials from the jetty to the solar PV site (Q12.0.18).

CONCLUSIONS

3.10.47. I am satisfied that the Applicant has undertaken an adequate assessment of transport and traffic matters and note that its findings have not been disputed by the local highway authorities or NH.

3.10.48. There was a considerable volume of local opposition to the proposal, largely based on its construction phase impacts. Although there was limited analytical evidence to support these concerns, I am also aware of the value of local knowledge when dealing with highways matters. I also gained some insight into local road conditions on my unaccompanied and accompanied site visits. Nevertheless, little specific or detailed information was presented to dispute the Applicant's assessment.

3.10.49. Therefore, the weight of evidence supports the Applicant's finding that the only significant adverse effect would be the increase in general and HGV traffic movements at link 15 (B1228 between B1230 and Brind Lane junctions) during the construction and decommissioning phases. That said, I recognise that local residents would experience a degree of disruption during the temporary construction phase. However, I am not persuaded that the emergency access would be unacceptably disrupted by construction traffic.

3.10.50. While the use of river transport to deliver construction materials seems superficially attractive given the proximity of the site to the River Ouse, I accept that, in practice, it would not be viable.

3.10.51. The number of movements during the operational phase would be too low to lead to significant effects. The accident and safety analysis does not indicate a pattern of incidents which could be exacerbated by the additional movements generated by the proposal. Nor does the available evidence indicate that this position would be altered by the effects of the cumulative schemes. As such, I find that the effect of the proposal on the highway network would not meet the threshold for refusal of consent set out in NPS EN-1 paragraph 5.4.21.

3.10.52. The proposal includes satisfactory mitigation measures, largely contained in the CTMP, to ensure that the transport and traffic effects would be as predicted in the Applicant's assessment, that any damage to the highway would be remediated, and that sustainable transport options have been properly considered. The measures would be refined in a detailed CTMP to be approved by the local highway authorities and secured by DCO Requirement 13. This would accord with NPS EN-1 paragraphs 5.14.5 to 5.14.7 and 5.14.11 to 5.14.14 and NPS EN-3 paragraph 2.10.141.

3.10.53. Overall therefore, taking all local concerns into consideration, I find that the proposal would broadly accord with the transport related provisions of NPSs EN-1 and EN-3, the NPPF and the development plan. Consequently, transport and traffic matters carry a little negative weight in the planning balance.

3.11. WATER ENVIRONMENT

INTRODUCTION

3.11.1. This section considers the effects of the proposal on ground water, surface water bodies, surface water drainage and flood risk.

POLICY BACKGROUND

National Policy Statements

3.11.2. Regarding flood risk, planning policy aims to ensure that flood risk from all sources of flooding is taken into account to avoid inappropriate development in areas at risk of flooding, and to steer new development to areas with the lowest risk of flooding (NPS EN-1 paragraph 5.8.6). Reference is made to the application of the Sequential and Exception Tests as set out in the PPG Flood Risk and Coastal Change (paragraphs 5.8.9 to 5.8.11). The sequential approach should be applied to the layout and design of the project (paragraph 5.8.29).

3.11.3. A site-specific flood risk assessment (FRA) should be provided for sites on more than 1ha (paragraph 5.8.13). Paragraph 5.8.15 to 5.8.20 set out the requirements for FRAs. Mitigation should manage surface water and the impact of the natural water cycle on people and property, including the use of sustainable urban drainage systems (SUDS). The DCO will need to make provision for the appropriate operation and maintenance of any SUDS throughout the project's lifetime (paragraphs 5.8.24 to 5.8.26 and 5.8.38).

3.11.4. NPS EN-1 also recognises that infrastructure development can have adverse effects on the water environment and could lead to adverse impacts on health or on protected species and habitats or result in failure to meet environmental objectives under the Water Environment (Water Framework Directive) (England and Wales) Regulations 2017 (WFD) (paragraphs 5.16.1 and 5.16.2).

3.11.5. Applicants should undertake an assessment of the existing status of, and impacts of the proposed project on, water quality, water resources and the physical characteristics of the water environment. The impact of climate change and cumulative effects should be considered.

3.11.6. Surface water should be managed and the risk of pollution to groundwater controlled, during construction, taking account of measures and objectives in River Basin Management Plans and Groundwater Protection Zones (paragraphs 5.16.3 to 5.16,7). Consideration should be given to whether any mitigation measures beyond those

forming part of the application are needed in order to minimise impact on the water environment (paragraphs 5.16.8 to 5.16.10).

3.11.7. More weight must be given to impacts where a project would have an adverse effect on the achievement of WFD environmental objectives. Duties under other legislation, including the Environment Act 2021, in relation to environmental targets must be considered, and regard had to the policies in the Government's Environmental Improvement Plan 2023 (paragraphs 5.16.12 and 5.16.13).

3.11.8. NPS EN-3 advises on the need for a FRA, but that as solar PV panels drain to the existing ground, the impact will generally not be significant (paragraph 2.10.84). Where the site is currently subject to intensive agricultural practice, solar sites can deliver significant ecosystem services value in the form of drainage, flood attenuation, natural wetland habitat, and water quality management (paragraph 2.10.154).

3.11.9. SUDS should be used to control run-off. Given the temporary nature of solar PV farms, sites should be configured to avoid impacts on existing drainage systems and watercourses. Culverting existing watercourses and drainage ditches should also be avoided. Where culverting for access is unavoidable, applicants should demonstrate that no reasonable alternatives exist and, where necessary, will only be in place for the construction period (paragraphs 2.10.85 to 2.10.88).

National Planning Policy Framework

3.11.10. Paragraph 170 advises that development should be directed away from areas at highest flood risk (whether existing or future). Where development is necessary in such areas, it should be made safe for its lifetime without increasing risk elsewhere using the Sequential Test in areas known to be at risk now or in the future (paragraphs 174 and 175).

3.11.11. Paragraph 181 sets out the requirements for development in areas at risk of flooding. These include ensuring that the most vulnerable development is located in areas of lowest flood risk, and the use of flood resistance and resilience measures and safe access routes. Applications which could affect drainage on or around the site should incorporate SUDS proportionate to the nature and scale of the proposal to control flow rates and reduce volumes of runoff (paragraph 182).

Development Plan

East Riding Local Plan adopted 2016

3.11.12. Policy ENV6 seeks to manage environmental hazards, such as flood risk. It goes on to describe the Sequential Test and measures to proactively manage flood risk.

Selby District Core Strategy 2013

3.11.13. Policy SP15 requires schemes to avoid areas of flood risk and sets out requirements similar to those in the NPPF.

Selby District Local Plan 2005

3.11.14. Policy ENV5 requires proposals in areas subject to flood risk to be accompanied by a FRA appropriate to the scale and nature of the proposal.

APPLICANT'S APPROACH

3.11.15. The water environment is assessed in ES Chapter 9 Flood Risk, Drainage and Water Environment [APP-061]. It is supported by:

- Appendix 9-1 Legislation, Policy and Guidance (Flood Risk, Drainage and Water Environment) [APP-127];
- Appendix 9-2 Water Framework Directive Assessment [APP-095];
- Appendix 9-3 Flood Risk Assessment [APP-097] and Annexes [REP5-011];
- Appendix 9-4 Framework Surface Water Drainage Strategy [REP1-021];
- Figure 9-1 Surface Water Features and Their Attributes [APP-151];
- Figure 9-2 Drain Names and Internal Drainage Board areas [APP-152];
- Figure 9-3 Groundwater Features and their attributes [APP-153];
- Figure 9-4 Fluvial Flood Risk [APP-154]; and
- Figure 9-5 Surface Water Flood Risk [APP-155].

Methodology

3.11.16. The assessment methodology is described in ES Section 9.4. Horizontal directional drilling (HDD) would be used under the River Ouse, River Derwent, Featherbed Drain and an unnamed drain adjacent to the River Derwent (named in the ES as DE53). HDD is also an option at the Loftsome Bridge Drain. As a worst-case scenario, the ES assumes that all other watercourse crossings required for cables would be installed using an open cut technique. The ES advises that the number of new watercourse crossings has been reduced as far as practicable and no new culverts are proposed. A worst-case assumption has been applied that the maximum extension of existing culverts would be an additional 2.0m width in each case.

3.11.17. The scheme elements would be set back from all water environment features by at least 10m (except where crossings are required), and 30m in the case of the River Derwent, River Ouse and drainage ditch DE53. There would also be a buffer of 16m from the landward toe of all flood defences.

3.11.18. The risk from surface water runoff to water features has been assessed qualitatively based on the Framework Surface Water Drainage Strategy (SWDS) at ES Appendix 9-4 [REP1-021]. The risk from surface water runoff from new hardstandings to surface or groundwater features has been assessed according to the Simple Index Approach presented in the C753 The SUDS Manual. As the solar PV panels would use a single axis tilting design, they would not focus surface water in specific areas and there would be no single 'drip track' from the panels. It is assumed that the solar PV panels would be cleaned on two-yearly cycles and no cleaning products would be added to the water.

3.11.19. The solar PV panels and field stations would be mainly located outside of EA Flood Zones (FZs) 2 and 3, although there would be panels and field stations within FZ2 (solar PV areas 1f, 2a, 2c, 2d, 3a and 3b) and solar PV panels only in FZ3 (solar PV areas 1e and 2a). These have flood resistance and resilience measures included within the design as advised by the FRA. Associated substations would be located in FZ1.

3.11.20. Potable water supply for the construction and operational phases has been scoped out on the basis that the volumes required would not be expected to have an

appreciable impact on water resource provision in the area. As there would be no discharge of foul water to a watercourse, and no discharge to the public foul sewer is anticipated, the assessment of foul water drainage has been scoped out.

3.11.21. A study area of 1km around the Order Limits has been defined and includes downstream flows to the River Foulness, River Derwent and River Ouse which are considered to be the final receiving waterbodies that could conceivably be affected. Water quality surveying was not undertaken as the water bodies associated with the proposal are considered to be generally minor. Nor was a water quality monitoring programme considered necessary. The water quality of the more significant watercourses adjacent to the Order Limits and beyond was determined using EA data.

3.11.22. A qualitative assessment of the likely significant effects on surface water quality and water resources was undertaken using a source-pathway-receptor approach. Potential hydromorphological impacts were qualitatively appraised and are said to have regard to likely impacts on the WFD objectives for the relevant watercourses.

3.11.23. The submitted FRA [APP-097] is said to be prepared in accordance with the requirements of the then current and draft NPSs EN-1 and EN-3, the NPPF and in consultation with the EA, ERYC and NYC as lead local flood authorities (LLFAs) and inland drainage boards (IDB). It includes a review of the current and future flood risk to the site from all sources to inform the scheme design and sets out proposed mitigation requirements.

3.11.24. The submitted Water Framework Directive Assessment [APP-095] is based on EA guidance notes and comprises Screening and Scoping assessments. ES Tables 9-3 to 9-5 set out the criteria used to determine the significance of effects on the water environment.

Baseline

3.11.25. The baseline position is described in ES Section 9.5 [APP-061]. It covers water resources, hydrogeology and flood risk. The topography, land use and climate of the study area is reviewed and surface water features described. All watercourses in the study area ultimately drain to the River Humber although it is not in the study area. In all there are five surface water WFD reportable waterbodies (as determined by the EA) in the study area. ES Table 9-6 reviews the WFD status of waterbodies in the study area and Table 9-7 describes other named watercourses. The area also contains numerous smaller waterbodies and is served by an extensive network of agricultural ditches.

3.11.26. ES paragraphs 9.5.20 to 9.5.24 review the hydrology of the River Ouse, River Derwent and River Foulness. ES paragraphs 9.5.25 to 9.5.29 and Tables 9-8 and 9-9 review the water quality of the River Ouse, Fleet Dyke, River Derwent and River Foulness. Aquatic ecology is described in ES paragraphs 9.5.30 and 9.5.38 which, among other things, identify the presence of several invasive non-native species (INNS).

3.11.27. Geology, groundwater, soils and water resources, nature conservation designations and flood risk of the solar PV site are reviewed in ES paragraphs 9.5.39 to 9.5.79 and Tables 9-10 to 9-12. ES paragraphs 9.5.80 to 9.5.110 and Tables 9-13 to 9-15 set out comparable information for the GCC area.

3.11.28. The ES considers that the future baseline for surface and ground water would not change from the baseline position. The FRA adopts the ‘Credible Maximum Scenario’

for climate change in accordance with EA advice. An upper end peak river flow of +54% has been used based on the River Derwent being the main source of fluvial flooding.

3.11.29. ES table 9-16 summarises the importance of water environment receptors and paragraphs 9.5.132 to 9.5.137 review floodplain sensitivity for the flood risk assessments at the construction and operational phases of the proposal.

Embedded Mitigation

3.11.30. Embedded mitigation is considered in ES Section 9.6. The construction phase measures are contained primarily in Table 4 of the CEMP [REP4-010]. Operational phase mitigation would be embedded in the scheme design, including off-setting all structures from watercourses and flood storage compensation for the works taking place in FZ3. Further mitigation is contained in Chapter 7 of the FRA [APP-097] and Chapter 3 of the SWDS REP1-021].

3.11.31. The OEMP [REP6-007] sets out measures to control weed management in order to protect ground and surface water and watercourses. Details of water quality monitoring during construction would be set out in a Water Management Plan to be prepared under the terms of the CEMP and DEMP. No monitoring is considered to be necessary during the operational phase. The Consents and Agreements Position Statement [APP-020] identifies other water-related permissions which may be required and are not disapplied through the DCO.

Likely Impacts and Effects

3.11.32. ES Section 9.7 [APP-061] deals with likely impacts and effects during the construction, operational and decommissioning phases. They are summarised in Tables 9-20 (construction and decommissioning phases) and 9-21 (operational phase). The effects assessed comprise:

- water quality and morphology for the reportable water courses and agricultural drains and ditches;
- superficial and bedrock groundwater;
- flood risk from tidal, fluvial, groundwater sources; and
- flood risk from artificial sources and sewers.

3.11.33. For the most part the magnitudes of impact are found to be ‘no change’ or ‘negligible’ and the effects ‘neutral’. Slight adverse effects are found for the following water environment features:

- Construction phase
  - River Ouse;
  - River Derwent;
  - Fleet Dyke;
  - River Foulness;
  - Agricultural drains and ditches;
  - Groundwater (Bedrock) Sherwood Sandstone; and
  - Flood risk (from tidal, fluvial, groundwater sources).
- Operational phase
  - Fleet Dyke;
  - Groundwater (Bedrock) Sherwood Sandstone; and

- Tidal, fluvial and pluvial flood risk.

3.11.34. No significant effects are predicted during any phase of the scheme. The FRA [APP-097] considers that a sequential approach has been used to locate and design the proposal and, therefore, that it meets the Sequential Test as required by NPS EN-1 and the NPPF and PPG. Nevertheless, parts of the proposal fall within FZ3 and the Exceptions Test has been considered. In terms of whether the wider sustainability benefits to the community would outweigh the flood risk, the Applicant points to the need and climate change benefits of the proposal (see Sections 3.2 and 3.4 of this report). With regard to the safety and effect on flood risk, reference is made to the mitigation measures set out in ES Section 9.6. The FRA concludes that the Exception Test has been met.

Additional Mitigation/Residual Effects

3.11.35. Since no significant effects have been identified, no additional mitigation is considered necessary, and the residual effects would remain as set out above (ES Sections 9.8 and 9.9).

Cumulative Effects

3.11.36. ES Section 9.10 identifies those cumulative schemes from the shortlist at ES Appendix 17-1 [REP2-008] which it considers have the potential to lead to cumulative effects on the water environment, or adjacent to water receptors, and which could be impacted by the proposal. ES Tables 9-24 and 9-25 find that, all cases, there would be no change from the residual effects of the application proposal alone at any phase of the proposal.

ISSUES CONSIDERED DURING THE EXAMINATION

Statutory IPs

3.11.37. The SoCGs with ERYC [REP6-011] and NYC [REP8-006] confirmed that both Councils were content with the Applicant's assessment of water environment matters and the mitigation proposed.

3.11.38. The RR from EA [RR-107] confirmed that it was satisfied with the Applicant's assessment with relation to groundwater, land and water, and was generally satisfied with the FRA, subject to updating the model report. The EA did express concerns regarding the proposed trenchless crossings under the River Ouse and River Derwent and effects on flood management assets.

3.11.39. Further discussion between the Applicant and the EA took place. Updated FRA modelling was submitted (ES Appendix 9-3 FRA Annexes [REP5-011]). On the basis of the submitted CEMP REP4-010], the need to prepare a detailed CEMP (secured by DCO Requirement 11), and the terms of the protective provisions for the EA (DCO Schedule 14 Part 5), agreement on the trenchless crossings and other water environment matters was reached. This is confirmed in the SoCG with the EA [REP5-018].

3.11.40. The RR from the Ouse and Derwent Internal Drainage Board [RR-287] sought clarification of the need for the Applicant to obtain its consent for works under the Land Drainage Act 1991 and the description of certain matters in the ES. The Applicant [REP1-066] confirmed that the terms of the DCO would disapply the relevant provisions of the Land Drainage Act and referred to the submitted and detailed CEMPs and the protective provisions in DCO Schedule 14 Part 3 for drainage

authorities. The SoCG with the Drainage Board [REP4-026] confirms that agreement was reached on these matters

3.11.41. The RR from the Canal and River Trust [RR-036] requested that the DCO requires the Applicant to seek its consent for the discharge of water into the River Ouse. This is secured in the protective provisions for the Trust (DCO Schedule 14, Part 4) and the SoCG with the Trust [REP1-074] confirms that agreement was reached on this basis.

Other IPs and ExQs

3.11.42. The RRs and WRs from a considerable number of local residents, as well as Spaldington Parish Council [RR-341], objected to the proposal on the basis that it would exacerbate flooding on and around the site. Many referred to problems with the existing land drainage system, the high water table, the presence of clay soils with a low rate of absorption and areas which currently flood, including the gardens of nearby houses. Flood risk would be heightened by increased rainfall over time.

3.11.43. There was also concern that construction activity would compact the soil and that new hard surfaces would be created, both of which would increase surface water run-off. Further, that the construction works would damage the existing land drainage system.

3.11.44. The Applicant's responses [REP1-066, REP2-019, REP4-029] refer to ES Chapter 9 [APP-061] which assesses flood risk from surface water bodies, as well as hydromorphology and has regard to soils and climate change. The FRA [APP-097] acknowledges that parts of the site fall within FZs 2 and 3. It finds that flood risk to the development would be very low for the majority of the site, but high in localised shallow patches. The proposal would not increase flood risk elsewhere and would remain safe for its lifetime. The submitted SWDS [REP1-021]) would mitigate the flood risk and includes a sustainable drainage system agreed by the relevant IDB.

3.11.45. The potential for physical damage to the existing drainage system from construction activity was pursued in ExQ1 Q13.0.13 [PD-004] and at ISH2 [EV7-006]. The Applicant responded [REP1-081 REP3-035] that the land would be returned to the landowners in its original condition which would include the repair of any existing drains, if required. Prior to that, drains would be repaired for the temporary construction drainage system. The final version of the submitted CEMP [REP4-010] includes a clearer commitment to these measures.

3.11.46. I sought clarification of a number of detailed points in the assessment of the water environment in ExQ1. The Applicant provided satisfactory responses. Its key responses to other queries in ExQ1 can be summarised as:

- water to clean the solar PV panels would come from a licensed water source, which may include the on-site connection to the mains at Johnsons Farm, or purchase from a commercial enterprise (Q13.0.3);
- at site access points, mud deposits would be controlled using wheel washing facilities and/or road sweepers operating during earthworks activities or other times as required. Equipment and plant would be washed in designated areas at the temporary construction compounds or at Johnson's Farm, where runoff would be isolated for treatment before disposal. These measures are set out in the submitted CEMP and greater detail would be provided in the detailed CEMP and Water Management Plan secured under DCO Requirement 11 (Q13.0.6);

- there would be no increase in the impermeable area at the Johnson's Farm maintenance and operational hub and, therefore, no change to the existing drainage regime (Q13.0.12); and
- the Framework SWDS [REP1-021] and the Framework OEMP [REP6-007] were updated to clarify the Applicant would have responsibility for the maintenance of the SUDS. Maintenance would follow best practice approaches and would typically consist of inspection and periodic sediment removal for the attenuation storage ditches (Q13.0.15).

CONCLUSIONS

3.11.47. Given the topography, soil type and extensive drainage system across the site, I recognise the local concerns regarding existing flooding and the potential for the proposal to worsen the position. However, the Applicant has undertaken a thorough assessment of flood risk and other water-related potential impacts of the proposal. There is little substantive evidence to dispute the validity of its findings and I note that they were agreed by the EA and the LLFAs. As such, I consider that the FRA meets the requirements if NPS EN-1 paragraphs 5.8.15 to 5.8.20.

3.11.48. While the site includes areas at higher risk of flooding, they are limited in extent. The scheme has been designed to make it resilient to, and to avoid worsening, flood risk in those areas. Effective mitigation is also contained in the CEMP and SWDS. The assessment in the Applicant's FRA was not disputed by IPs and I have no reason to doubt its findings that the Sequential and Exception Tests required by national policy have been satisfied.

3.11.49. There is nothing to suggest that the proposal would have significant adverse effects on surface or ground water quality or morphology or that it would put at risk WFD targets for water bodies in and around the site. With the mitigation measures in the CEMP in place, I am content that the proposed HDD activity would not have significant adverse effects on the watercourses crossed using that technique. Consequently, the proposal accords with NPS EN-1 paragraphs 5.16.8 to 5.16.10, 5.16.12 and 5.16.13.

3.11.50. Therefore, I am satisfied that the Applicant has adequately assessed the water environment effects of the proposal. The proposed mitigation measures, including the use of SUDS, which are secured through DCO requirements, would ensure that the effects of the proposal would be as set out in the Applicant's assessment. This is in line with the aims of NPS EN-1 paragraphs 5.16.8 to 5.16.10 and NPS EN-3 paragraphs 2.10.85 to 2.10.88.

3.11.51. Overall, I conclude that there would be no significant effects on the water environment and the proposal would accord with the relevant provisions of NPSs EN-1 and EN-3, the NPPF, the PPG Flood Risk and Coastal Change and the development plan. Consequently, I conclude that water environment matters weigh neither for nor against the proposal in the planning balance.

3.12. HUMAN HEALTH

INTRODUCTION

3.12.1. This section considers the effects of the proposal on human health. It deals with physical and mental health and, to the extent that they are related, fire risk, electro-magnetic fields (EMFs), privacy and light disturbance. Crime risk, major accidents and hazards are covered in Section 3.13 of this report. In common with the

Applicant's ES chapter on this topic, this section refers to findings from a number of other environmental topic areas.

POLICY BACKGROUND

National Policy Statements

3.12.2. NPS EN-1 paragraphs 4.4.1 to 4.4.3 recognise that access to energy is beneficial to health as a whole, while the construction of energy infrastructure and the production of energy may have direct and indirect negative health impacts.

3.12.3. Where the proposal has an effect on humans, the ES should assess these effects for each element of the project, identifying any potential adverse health impacts, and measures to avoid, reduce or compensate for these impacts as appropriate. Cumulative impacts should be considered, and opportunities taken to mitigate indirect impacts (paragraphs 4.4.4 to 4.4.6).

3.12.4. NPS EN-1 also advises that the aspects of energy infrastructure which are most likely to have a significantly detrimental impact on health are generally subject to separate regulation (for example, air pollution) which will constitute effective mitigation. As such, it is unlikely that health concerns will constitute a reason to refuse consent or require specific mitigation under the PA2008. Nevertheless, not all health impacts will be mitigated in this way and it may be necessary to take account of health concerns when setting requirements relating to a range of impacts (paragraphs 4.4.7 and 4.4.8).

3.12.5. NPS EN-5 covers EMFs although its focus is on overhead lines. It does advise that, where it is shown that an electricity line will comply with the current public exposure guidelines, no further mitigation should be necessary (paragraph 2.10.12).

National Planning Policy Framework

3.12.6. Planning decisions should aim to achieve healthy, inclusive, safe and accessible places which do not undermine the quality of life, promote good health and prevent ill-health, especially where this would address identified local health and well-being needs and reduce health inequalities (paragraph 96).

Development Plan

East Riding Local Plan adopted 2016

3.12.7. This plan does not have policies directly related to human health, although it does seek to promote healthy lifestyles and communities. Policy C1 supports proposals which are adequately serviced by infrastructure and facilities.

Selby District Core Strategy Local Plan 2013

3.12.8. This plan also promotes a healthy environment and lifestylea and recognises that the issue permeates a number of policy areas. For example, Policy SP19 promotes access to open spaces and green infrastructure which contribute to the health and social well-being of the local community.

APPLICANT'S APPROACH

3.12.9. ES Chapter 14 deals with human health [APP-066]. It is supported by Appendix 14-1 Legislation, Policy and Guidance (Human Health) [APP-131] and Figure 14-1 Health and Wellbeing Study Area Wards [APP-220]. Reference is also made to the ES

chapters on flood risk and drainage, landscape and visual amenity, noise and vibration, socio-economics, transport and other environmental topics.

Methodology/Baseline

3.12.10. Section 14.4 of the ES acknowledges limitations in the baseline condition information and, in particular, that conditions cannot be extrapolated accurately as far as the decommissioning phase. The DEMP therefore commits to undertake a validation exercise, to ensure that the effects after mitigation are no worse than those presented in the ES.

3.12.11. The assessment is based on professional judgement having regard to IEMA guidance 'Determining Significance for Human Health in Environmental Impact Assessment', as well as the NHS Healthy Urban Development Unit's 'Rapid Health Impact Assessment Toolkit 2019'. It considers health and well-being determinants comprising access to healthcare services and other social infrastructure, access to open space and nature, air quality, noise and neighbourhood amenity, accessibility and active travel, access to work and training, social cohesion and neighbourhoods. It also takes into account impacts on the mental health of local residents which may result from changes to neighbourhood amenity.

3.12.12. The potential for effects associated with exposure to Electric and Electro-Magnetic Fields was scoped out of ES Chapter 14 on the basis of an assessment at ES Chapter 16 Other Matters (see Section 3.13 of this report). However, it emerged as a concern during the Examination, and I deal with it in this section to the extent that it affects human health.

3.12.13. The study area is defined by the wards of Howdenshire and Howden in East Riding of Yorkshire and Camblesforth and Carlton, Cliffe and North Duffield (formerly Derwent) in the former Selby District.

3.12.14. The baseline information shows that the study area performs relatively well in terms of claimant count and in the 2019 Indices of Multiple Deprivation, including health deprivation. Overall, the study area residents have better than average health, relative to regional and national comparators, although there are small pockets of deprivation. The assessment does not indicate deficiencies in healthcare or education provision in the study area. The only highly sensitive sub-population identified was the over-65s.

Embedded Mitigation

3.12.15. ES Section 14.6 advises that protective measures would be used to limit impacts on PRoWs in the construction and operational phases as reported earlier in this report. Two new permissive paths would be created, giving access to the EMAs. Reference is also made to embedded mitigation for traffic, noise and air quality impacts set out in other ES chapters.

Likely Impacts and Effects

3.12.16. The assessment at Section 14.7 considers the likely effects of the proposal on the determinants of human health identified in paragraph 3.12.11 above, together with flood risk and landscape and visual amenity at the construction, operational and decommissioning phases. It finds minor adverse effects on the following:

- Construction and decommissioning phases
  - Healthcare services;

- Other social infrastructure;
- Noise and vibration associated amenity and mental health impacts;
- Access to open space and active travel;
- Access to employment and training;
- Social cohesion and neighbourhoods; and
- Landscape and visual amenity.

- Operational phase
  - Other social infrastructure (older population); and
  - Landscape and visual amenity.

3.12.17. The effect on access to open spaces and active travel was found to be minor beneficial due to the creation of new permissive footpaths. The effects on other receptors were considered to be nil or negligible. No significant effects were found.

Additional Mitigation/Residual Effects

3.12.18. Since none of the predicted effects exceed 'minor adverse' in severity, the assessment at ES Section 14.8 finds that there would be no significant effects on human health. As such, it considers that no additional mitigation is necessary. Reference is also made to the provision of a Framework Skills, Supply Chain and Employment Plan [APP-247]. This identifies skills, supply chain and employment activities which the Applicant would take forward in partnership with local stakeholders for the benefit of the local community following consent. The plan would be secured by DCO Requirement 16.

3.12.19. ES Section 14.9 finds that the residual effects would not change from those set out above.

ISSUES CONSIDERED DURING THE EXAMINATION

Statutory IPs

3.12.20. The LIR from ERYC [REP2-022] refers briefly to the health benefits of the PRoW network and to guidance on improving the network to that end. However, the SoCG with ERYC [REP6-011] confirms that it was satisfied on this point by the close of the Examination.

3.12.21. The LIR from NYC [REP2-023] notes that the Applicant's human health assessment does not reference external literature or research and considers that the proposal would be an opportunity to collect new data on the effects of solar farms on the local population. It also considers that in combination effects and vulnerable groups other than the over 65s were not adequately taken into account and that measures should be put in place to mitigate actual impacts, that the worst-case impact on local GP services has not been assessed and that the Council's Director of Public Health should approve the DEMP REP3-014].

3.12.22. The Applicant's responses to these concerns are set out in [REP3-032]. In essence it considers that the data and methodology used in the assessment were robust and that it would not be proportionate to the likely effects of the scheme to collect new data. In combination effects are considered in ES Chapter 17 Cumulative Effects and Interactions and the baseline information does not indicate a need to identify additional vulnerable groups in the local population. While there is potential for increased and multiple impacts, the impacts would be temporary and reversible following completion of construction and decommissioning.

3.12.23. Reference is also made to the mitigation measures in the CEMP REP4-010] and DEMP and to the proposals for a community liaison group which would facilitate feedback from the local community and action on mitigation if required. The proportion of construction workers assessed as accessing GP services was considered to be a worst-case scenario. NYC would need to approve the detailed DEMP and the Director of Public Health could be included in that process.

3.12.24. My ExQ2 Q5.0.1 [PD-008] and discussion at ISH [EV7-003] sought to advance discussion between the Applicant and NYC on these matters. Following further meetings between the parties, agreement on some matters was reached. However, as set out in the SoCG with NYC [REP8-006] other matters could not be agreed. These concern the methodology and data sources used in the assessment, cumulative and in-combination effects, mitigation provisions and the identification of vulnerable groups, in particularly those who consider that they have a long-term health condition or disability.

3.12.25. The UK Health Security Agency was satisfied with the ES methodology for this topic and considered that the proposal should not result in any significant adverse impact on public health [RR-369].

Other IPs and ExQs

3.12.26. I asked questions (ExQ1 Q6.0.3, to Q6.0.5 and Q6.0.7 [PD-004]) about the Applicant's characterisation of the baseline position, to which I received satisfactory responses [REP1-081]. I also asked about local concerns over security lighting and loss of privacy from CCTV (ExQ1 Q6.0.9). The Applicant confirmed that there would be no visible lighting from CCTV or artificial lighting during operation. The CCTV would use thermal imaging and infrared lighting to provide night vision functionality. The CCTV cameras would have fixed, inward-facing viewsheds and so would not capture publicly accessible areas or any residential curtilages, thereby avoiding a loss of privacy [REP1-081].

3.12.27. Local concern was widely expressed regarding the impact of the proposal on the physical and mental health and well-being of the nearby population. This included concerns that the long-term effects of solar farms are not known and that the increased temperature from heat reflected from the panels would be detrimental to health [REP1-120]. Further, that exposure to electromagnetic radiation can affect the health of humans and animals as well as the potential for solar panels to contain harmful elements [RR-140]. It was also contended that the World Health Organisation (WHO) advises that solar farms should not be within 2 miles of residential properties [REP1-130].

3.12.28. The physical and mental health impacts of the proposal were also discussed at ISH2 [EV7-003] where the scale of the proposal and its effects on access to, and enjoyment of, nature, footpaths and the 'industrialization' of the countryside were raised in particular. The latter point was also the subject of ExQ1 Q6.0.1.

3.12.29. The Applicant's responses [REP1-066, REP1-081 REP2-019, REP3-035] recognise that the proposed environmental changes are a source of concern for local residents and refer to the assessments in ES Chapter 14 Human Health [APP-066] and Chapter 12 Socio-economics and Land Use (including PRoWs) [APP-064] which take into account physical and mental health considerations. It contended that it has taken a holistic approach using WHO and IEMA guidelines. A wide range of determinants has been considered including changes in landscape and visual amenity, noise, access to open space and employment as well as physical health associated with air pollution

and access to healthcare. No significant effects were found, although the CEMP includes a commitment to a stakeholder communications plan and liaison group.

3.12.30. With regard to the effect on the landscape in particular, the Applicant advised that this is not identified as a health determinant within relevant NHS and IEMA guidance. Its human health assessment refers to the visual amenity assessment in ES Chapter 10: Landscape and Visual Amenity [REP1-015]. The likely effect during both the construction and the operational phases is assessed to be minor adverse which is not significant.

3.12.31. At ISH2 [EV7-003] I sought more specific information on the effects of the proposal on the local community. In response, the Applicant [REP3-035] referred to its consideration of the determinants of health, such as effects on social infrastructure, including schools and community facilities, noise and vibration, air pollution and dust, access to open space and active travel, access to employment and training, social cohesion and neighbourhoods, flood risk and landscape and visual amenity. The assessment of the effects on other social infrastructure, including GP services, has regard to the sensitivity of the population. The older population has been given high sensitivity and the rest of the population has been given a medium sensitivity.

3.12.32. In response to a question from a local resident regarding effects on individuals, the Applicant referred to its definition of health which is focused on individuals as well as access to employment opportunities and PRoWs and transport, and landscape and visual effects.

3.12.33. At ISH2 I also asked the Applicant to respond to local concerns about safety. The Applicant responded that it has recognised these concerns and designed the scheme to mitigate them. For example, a community liaison group, which would be established prior to construction and endure for the operational lifetime of the scheme and during decommissioning (secured by DCO Requirement 4) would provide a forum to manage such concerns. The ES assesses fire and crime and does not identify particular risks. I noted that the battery storage, a perceived fire safety risk, has been removed from the scheme.

3.12.34. Fire safety concern was also raised later in the Examination [REP3-054] [REP8-023] including reference to a Building Research Establishment study entitled 'Fire and Solar PV Systems – Investigations and Evidence'. I asked the Applicant to comment on the implications of this report for the application scheme (ExQ2 Q10.0.1 [PD-008]).

3.12.35. In essence, the Applicant's response [REP4-030] found that, of the 80 investigations discussed in the study, six were of ground mounted solar PV farms. The study's consideration of the spread of fire only refers to dwellings and roof mounted solar installations. In general, PV fires have caused damage to PV installations themselves and sometimes to the buildings on which they are mounted, which were assumed to be on roof mounted systems. The Applicant considered that the study explains poor installation/materials/components, a lack of professional maintenance, and is focused on roof top solar on buildings in the period 2010 to 2018. As such, it has no relevance for the assessment of the fire risk of the scheme.

3.12.36. The Applicant had no opportunity to respond to [REP8-023] which was submitted on the final Examination deadline. The Applicant was unable to find published studies or communications from the WHO that suggest that it recommends solar farms should be located 2 miles from residential properties.

3.12.37. In terms of EMFs, the Applicant advised that, with the exception of relatively short lengths of distribution cabling connecting the solar panels and the inverters, all cables would be buried underground [REP1-066]. ES Chapter 16 Other Environmental Matters [AS-016] advises that cables would be installed a minimum of 10m from the façade of any dwelling. National Grid guidance indicates that a residential receptor would need to be within 5m of the centreline of a 33 kV ICC or 132 kV GCC cable, and for it to be overlapped by other electricity infrastructure, before the 100 microtesla threshold would be approached and for potentially significant effects to occur.

3.12.38. People using the PRoWs crossing the ICC and GCC would be exposed to electro-magnetic fields from the cables for only very short periods of time. The assessment considers that this level of exposure would be similar to that associated with general household appliances. It goes on to conclude that there would be no significant effects on the migratory fish species using the River Ouse or River Derwent due to the generation of electro-magnetic fields by the GCC cables. As such, no significant effects from EMF are predicted.

CONCLUSIONS

3.12.39. I note that, by the close of the Examination neither the UK Health Security Agency or ERYC had outstanding concerns regarding human health matters. With regard to the outstanding concerns of NYC, while new data collection from the local population may be useful to the Council, there is no compelling evidence to suggest that the baseline data or methodology used by the Applicant is deficient. As such, I consider that it would not be proportionate to seek new data collection through this application, particularly as only the GCC falls within the NYC area.

3.12.40. NYC expressed concern that the only sensitive group identified in the assessment is over 65s and *'that it might be possible to draw alternative conclusions'* which the Applicant has not considered. However, the only other potentially sensitive group identified by NYC is those who consider that they have a long-term condition or disability. The available information shows that this group makes up a smaller proportion of the study area population than the comparator Yorkshire and Humber and England populations. This does not suggest that they should be accorded a higher degree of sensitivity for the purposes of the assessment.

3.12.41. Cumulative and in combination effects on human health are assessed in Chapter 14 of the ES with further commentary in Chapter 17 Cumulative Effects and Interactions [APP-069]. The Applicant provided further an updated information [REP1-081 REP2-019] on these matters in response to my ExQ1 Q15.0.1 and Q15.0.4 [PD-004]. I consider that, taken together, this information provides an adequate assessment of cumulative and in combination effects on human health as advised by NPS EN-1 paragraphs 4.4.7 and 4.4.8.

3.12.42. Inevitably the assessment can only provide predicted effects. However, the CEMP and OEMP REP6-007] provide mechanisms for the monitoring of, and reaction to, actual effects and the DEMP commits to undertake a validation exercise. There is also a requirement to operate a community liaison group for the lifetime of the scheme, all of which is secured in the DCO and subject to NYC approval. Consequently, I find that the DCO provides sufficient safeguards to ensure that any differences between predicted and actual effects are dealt with effectively.

3.12.43. The scheme includes sufficient safeguards, secured in the DCO to avoid loss of privacy or disturbance by artificial lighting for neighbouring residents. Nor does the available evidence show that the proposal would present an elevated risk from EMFs.

I am not persuaded that evidence submitted by IPs relating to fire demonstrates that the solar farm presents an undue risk or that the Applicant should fund specialist training for the local fire service.

3.12.44. I acknowledge that, during the construction phase in particular, there would be a degree of disturbance and inconvenience for local residents. Nevertheless, this would be the case in most large construction projects and there is no substantive evidence to show that it would disrupt access to local health care, social, educational or employment facilities to a degree that would be detrimental to the health of the local population. Similarly, the construction activity would likely curtail enjoyment of the countryside for PRoW users. However, the routes would remain open and the impact would be temporary. As such, I accept the Applicant's finding of a minor adverse effect in this regard.

3.12.45. I recognise the more general, but widely expressed concerns about the scale of the proposal and its potentially 'industrialising' effect on the landscape (I considered this matter in section 3.6 on landscape and visual amenity). Moreover, I agree that access to the countryside is a contributor to good physical and mental health. These concerns, while genuinely held, are difficult to quantify. The Applicant has sought to assess them by reference to the findings of a range of other environment topics, none of which led to significant adverse effects alone or in combination.

3.12.46. The size of the proposal is towards the larger end of the range of NSIP solar farms currently consented or under consideration. Nevertheless, no firm evidence emerged during the Examination to indicate that the application site, the application proposal, or its relationship to the surrounding community, would lead to specific or undue physical or mental health effects. The proposal would undoubtedly lead to changes, and possibly the need for adjustment, for the surrounding community especially during the construction phase. However, I consider that these would not amount to significant adverse effects on human health at the construction, operational or decommissioning phases. As such, the proposal would comply with NPS EN-1,paragraphs 4.4.7 and 4.4.8,

3.12.47. During the construction phase, there would be increased access to employment opportunities, albeit for a relatively short period of time. This would go some way to off-setting the broader effects of the proposal on human health.

3.12.48. Overall therefore, I find that the effects of the proposal on human health would not be significant and that it would broadly comply with the relevant provisions of NPSs EN-1 and EN-5, the NPPF and the development plan. The human health effects of the proposal should be accorded a small negative weight in the planning balance.

3.13. OTHER MATTERS

INTRODUCTION

3.13.1. This section considers matters which did not merit a separate chapter in the Applicant's ES or which have been raised by IPs and do not fall within the scope of the ES. Chapter 16 [AS-016] of the Applicant's ES deals with other environmental topics and includes sections on air quality, glint and glare, ground conditions, major accidents or disasters, telecommunications, television reception and utilities, materials and waste and electric and electro-magnetic fields. It is supported by:

- Appendix 16-1 Legislation, Policy and Guidance (Other Environmental Topics) [APP-121];

- Appendix 16-2 Glint and Glare Assessment [APP-122];
- Appendix 16-3 Phase 1 Preliminary Risk Assessment Report [APP-123];
- Appendix 16-4 Framework Site Waste Management Plan [APP-124];
- Figure 16-1 Dust Risk Assessment Zones [REP1-050]; and
- Figure 16-2 Authorised and Historic Landfills, Permitted Waste Sites and Waste Site Applications [APP-226].

3.13.2. I dealt with glint and glare in Section 3.6 Landscape and Visual Amenity and electric and electro-magnetic fields in Section 3.12 Human Health of this report. The remaining matters are considered below.

Air Quality

Policy Background

3.13.3. 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).

3.13.4. 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 farms, NPS EN-3 does not add to the advice in NPS EN-1.

3.13.5. 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 and Clean Air Zones, and the cumulative impacts. Opportunities to improve air quality or mitigate impacts should be identified.

3.13.6. Policy EC5 of the East Riding Local Plan Core Strategy requires energy sector development to be acceptable in terms of air quality among other things. Policy SP18 of the Selby District Core Strategy seeks to ensure that new development protects air quality.

Applicant's Approach

Scope and methodology

3.13.7. The Applicant's assessment of air quality appears at ES Section 16.2. The ES Scoping Opinion [APP-074] agreed that the impact of traffic movements could be scoped out due to the low number of movements and that emissions from plant during the operational phase could be scoped out as there would be no emissions from the plant. It was also agreed that detailed air quality modelling and assessment of effects from construction including dust, and emissions from construction vehicles and plant was not required on the basis that a qualitative Dust Risk Assessment and CEMP were to be prepared.

3.13.8. Emissions from non-road mobile machinery are not considered in detail because they are considered to be temporary, localised, controlled through good-practice mitigation measures and exhaust emissions are controlled through assimilated European Directives.

3.13.9. The assessment has regard to the Institute of Air Quality Management (IAQM) (2014) Guidance on the assessment of dust from demolition and construction. Sensitive receptors are defined as those where people would be present and designated nature conservation sites up to 350m from the Order Limits, 500m from the site access points and 50m either side of routes used by construction vehicles.

Baseline

3.13.10. The baseline is described in ES paragraphs 16.2.41 to 16.2.53. There are no Air Quality Management Areas (AQMA) within the administrative area of ERYC and air quality is considered by the Council to be good. Although there is one AQMA in the administrative area of the former Selby District Council, it is in Selby town centre and, due to its distance from the Order Limits, is considered not likely to be affected by the scheme.

Embedded mitigation

3.13.11. Embedded good or standard practice mitigation measures are summarised in ES Tabless 16-4 and 16-5 and are based on any mitigation that is 'highly recommended' in the IAQM guidance on dust. The measures would be secured through the CEMP [REP4-010] and DEMP [REP3-014] and include the preparation of a Dust Management Plan, site management, preparation and maintenance and avoiding site run-off and mud deposits.

Likely impacts and effects

3.13.12. The construction phase dusk risk assessment uses the IAQM guidance and is set out in ES Tables 16-6 to 16-10 and paragraphs 16.2.61 to 16.2.69. It finds a high sensitivity for dust soiling effects, a low sensitivity for human health impacts and a high sensitivity for ecological impacts. The IAQM guidance recommends that the significance is assigned after mitigation has been applied. The ES considers that implementation of the embedded mitigation outlined above would prevent the occurrence of significant effects arising from dust generation during the construction phase.

Additional mitigation/residual effects

3.13.13. Since no significant effects are predicted, no additional mitigation is proposed and the residual effects would be unchanged.

Cumulative effects

3.13.14. The list of cumulative schemes identified in ES Appendix 17-1 [REP2-008] were reviewed based on the potential for construction phases to overlap and for haul-routes to be co-located. The ES states that none of the identified developments have undertaken detailed construction air quality modelling. Furthermore, at this time, the timing and routeing of construction traffic for other developments and how they would interact with that of the scheme are not known.

3.13.15. As such, a meaningful assessment of the cumulative construction air quality impacts cannot be undertaken using the information currently available. However, the assessment notes that all schemes have a shared responsibility to reduce traffic and air quality impacts.

3.13.16. No anticipated cumulative operational air quality impacts are predicted as impacts from the scheme are negligible. The ES also finds that it is not possible to identify cumulative decommissioning impacts at this stage as it is unknown what other

schemes could be operating at the same time. However, based on current information, it is not expected that there would be potential for likely significant effects on sensitive receptors.

Issues considered during the Examination

3.13.17. The SoCGs with ERYC [REP6-011] and NYC [REP8-006] confirm that both Councils were content with the Applicant's air quality assessment and mitigation proposals. Although the RR from NH [RR-266] refers to air quality and dust control in relation to European sites, the SoCG with NH confirms that these matters were agreed by the close of the Examination [REP6-017]. More detail is provided in Chapter 4 of this report.

3.13.18. The RRs and WRs from other IPs do not refer directly to air quality or dust related concerns. I deal with concerns about effects on human health in Section 3.12 above. I sought clarification on a small number of air quality matters in ExQ1 [PD-004], to which the Applicant provided satisfactory responses [REP1-081 REP2-020]. In particular, the response to ExQ1 Q14.0.5 supported its conclusion that there would be no significant cumulative air quality effects.

Conclusions

3.13.19. Having regard to the outcome of the EIA scoping process, I am content that the limited scope of the Applicant's air quality assessment is appropriate in this case. Moreover, I have no reason to question its findings. The finding of no significant effects from dust relies on the implementation of embedded mitigation. The measures required would be effectively delivered through the CEMP and DEMP which would be secured through DCO requirements. Therefore, I conclude that the air quality assessment accords with the relevant provisions of NPS EN-1, the NPPF and the development plan. Consequently, air quality matters generally carry a neutral weight in the planning balance. Chapter 4 below gives specific consideration of air quality effect on European Sites.

Ground Conditions

Policy Background

3.13.20. 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. NPPF paragraph 196 and East Riding Local Plan Core Strategy 2016 Policy EC5 reiterate these points. Policy ENV6 seeks to ensure that environmental hazards, including pollution, are properly managed. Selby District Core Strategy 2013 Policy SP15 and Selby District Local Plan 2005 Policy ENV2 also refer to the need to control contamination.

Applicant's Approach

3.13.21. Maintenance and operational activities were scoped out of the assessment with the agreement of PINS on the understanding that an outline OEMP would be submitted. Minerals safeguarding was scoped out of the impact assessment with the agreement of PINS, ERYC and NYC as the proposal would not permanently sterilise the deposits.

3.13.22. A Phase 1 Preliminary Risk Assessment (PRA) [APP-123] was carried out to identify and evaluate potential land quality risks and development constraints associated with the scheme. ES Table 16-17 sets out the sources, pathways and receptors identified in the PRA. The key findings are:

- risks to human health are identified as between very low to moderate/low. The highest risks are in the areas surrounding the former Breighton Airfield, historical landfill sites and the current Drax Power Station;
- risks to controlled waters are identified as up to moderate. The highest risks are in the areas surrounding the former Breighton Airfield, historical landfill sites and the current Drax Power Station; and
- limited intrusive investigation is proposed to confirm the findings of the assessment which may be included as part of a geotechnical scope of works. An intrusive site investigation and Generic Quantitative Risk Assessment is proposed in the areas of potential contamination.

3.13.23. The recommendations of the Generic Quantitative Risk Assessment would be incorporated into the detailed CEMP (secured by DCO Requirement 11) together with other environmental design and management measures. On this basis, the ES considers that the risk to human health and controlled waters during the construction and decommissioning phases would be acceptable. The ES therefore concludes that significant ground conditions effects are not expected.

3.13.24. The ES considers eight cumulative schemes within a 1km buffer of the proposal which have the potential to result in cumulative ground contamination effects. It finds that, provided that relevant policy and legislation on land contamination and remediation is applied for each development, impacts on ground conditions would be controlled and any cumulative effects would not be significant.

Issues considered during the Examination

3.13.25. The SoCGs with the EA [REP5-018], ERYC [REP6-011] and NYC [REP8-006] confirm that these authorities were content with the Applicant's assessment and proposed mitigation for ground conditions matters.

3.13.26. Although a few RRs (see example [RR-037] [RR-196] [RR-202]) from local residents mentioned pollution associated with the construction of the scheme, none raised specific concerns about contamination or land stability. The Applicant's response [REP1-066] refers to the assessment at ES Section 16.4 and the provisions of the CEMP [REP4-010].

Conclusions

3.13.27. There is nothing in the Applicant's assessment or the information considered during the Examination to indicate that ground conditions at the site would make it unsuitable for the proposed use. I am content that the Applicant's mitigation measures would provide effective controls and that the proposal would not pose an unacceptable risk to human health or the environment by reason of its effects on ground conditions. Therefore, it would accord with the relevant requirements of NPSs EN-1 and EN-3, the NPPF and the development plan. Ground conditions matters weigh neutrally in the planning balance.

Major Accidents or Disasters

Policy Background

3.13.28. NPS EN-1 refers to the role of the Health and Safety Executive (HSE) as an independent regulator for workplace health and safety. A safety assessment should be prepared where required, and it should be ensured that the competent authority has raised no safety objections (paragraphs 4.13.5 to 4.13.7).

3.13.29. NPPF paragraph 96 seeks safe and accessible places where crime and disorder, and the fear of crime, do not undermine the quality of life or community cohesion. Paragraph 102 requires planning decisions to promote public safety, taking into account wider security requirements, by anticipating and addressing possible malicious threats and other hazards, whether natural or man-made.

Applicant's Approach

3.13.30. The proposal itself would not be subject to the Control of Major Accident Hazards Regulations (2015). However, it does fall within the consultation zones for the Spaldington Airfield and Drax Power Limited Major Accident Hazard (MAH) sites and the National Grid Transmission PLC (NGT) pipeline '7 Feeder Cawood/ Eastoft pipeline' and the Northern Gas Networks (NGN) 'Asselby to Harswell pipeline' MAH pipelines.

3.13.31. The ES scoping exercise required consideration to be given to events that could occur, and to which the scheme is particularly vulnerable, or which the scheme has a particular capacity to exacerbate. ES Table 16-20 sets out the events shortlisted for further consideration. The table below summarises the Applicant's position for events not covered in other parts of the ES.

Table 7 Summary of shortlisted major accident or disaster events

Major accident or disaster	Assessment
Construction and decommissioning phases	
Fire	Health and safety on site would be managed during construction and decommissioning to mitigate the risk of fire in line with legislative safety requirements. The CEMP and DEMP include measures to reduce the risk of fire. The scheme is not expected to have an effect on the environment due to the risk of a major accident occurring as a result of fire.
Utilities failure	Existing infrastructure constraints would be identified through consultation and a desk-based study prior to construction so that appropriate mitigation such as buffers and easements can be incorporated into the detailed design. Protective provisions in the DCO contain measures to ensure the safety and security of assets during construction, operation and decommissioning.
Accidental fire or explosion at an onshore major hazard site	The scheme would temporarily introduce construction workers into the consultation zones of the MAH sites/pipelines listed above. Employees are considered to be 'normal working population' who are fit and healthy and could be easily organised for emergency action. No staff would sleep on site overnight. As such, the scheme represents the lowest level of sensitivity and consequently the risk to the workforce due to the proximity of these sites is considered to be not significant. No members of the public would be present within the working areas.
Criminal damage	The site would be managed by the contractor during construction and decommissioning to mitigate the risk of criminal activity. The design would include safety measures to

Major accident or disaster	Assessment
	protect the site including fencing, CCTV cameras and an out-of-hours security detail.
HDD failure	Pre-construction geotechnical site investigations would be carried out to design a methodology for the HDD, including determining the suitable depth for installation of the cable. The pressure within the drilling hole would be monitored during HDD operations and the use of bentonite would reduce the risk of the bore hole collapsing as the drill is removed. The measures are secured in the CEMP.
Operational phase	
Criminal damage	The operational solar farm would be managed by the Applicant to mitigate the risk of criminal activity. The design includes safety measures to protect the site from criminal damage, including fencing, CCTV cameras and lighting.
Accidental fire or explosion at an onshore major hazard site	There would be three full time staff during the operational phase. Their primary base at Johnson's Farm is not within the consultation zone of any MAH site or pipeline. Other workers would be present on site on an 'as and when required' basis. The HSE confirmed that, due to the low number of site staff and visitors at the operational phase, it 'would not advise against' the development of the scheme.'

3.13.32. The ES considers that none of the shortlisted events would represent a significant major accident or disaster risk. The necessary mitigation measures would be contained in the CEMP [REP4-010], DEMP [REP3-014] and OEMP REP6-007], each of which is secured by a DCO requirement.

3.13.33. The ES, therefore, concludes that there would be no significant risks to people or the environment. Nor is it expected that any cumulative schemes identified in ES Appendix 17-1 [REP2-008] would increase the risk or severity of the residual effects associated with major accidents and disasters affecting the scheme.

Issues considered during the Examination

3.13.34. The SoCGs with ERYC [REP6-011] and NYC [REP8-006] confirm that both Councils were content with the Applicant's assessment of major accident or disaster risks and the associated mitigation. The SoCG with the EA [REP5-018] confirms that it was content in relation to flood risk and effects on flood defences. The consultation responses from the HSE (see ES Table 16-19) provide advice, but do not indicate that it had concerns about the Applicant's approach to major accident or disasters.

3.13.35. The RR from NGN [AS-020] refers to the company's requirement for the protection of its Asselby to Harswell high pressure gas pipeline. The Applicant's response [REP1-066] refers to the measures for the protection of utilities infrastructure in the CEMP and to the protective provisions for utilities undertakers in Schedule 14, Part 1 of the dDCO. NGN did not take the opportunity to reply to the Applicant's response and I note that the Applicant and NGN intend to enter into bespoke protections in an Asset Protection Agreement (Applicant's response to ExQ1 Q14.3.2 [REP1-081]. Therefore, I have no reason to consider that NGN was not content with the Applicant's position.

3.13.36. The SoCG with NGT [REP4-022] and subsequent correspondence [REP7-007] and Applicant's response to ExQ3 Q3.1.1 [REP7-004] confirm that the only outstanding issues between the parties relate to the wording of the protective provisions for NGT in Schedule 14, Part 9 of the dDCO. I deal with this matter in Chapter 7 below. However, there is nothing to suggest that the NGT maintained concern regarding the Applicant's assessment of major accidents or disasters.

3.13.37. Local residents expressed concern in RRs, WRs, subsequent submissions and at the ISH2 that the proposal would attract criminal activity, including organised crime, to a rural area where police numbers are low. ExQ1 Q14.3.3 [PD-004] sought further information on the vulnerability of the scheme to criminal activity.

3.13.38. The Applicant's responses [REP1-066 REP1-081 REP4-029 REP3-035] refer to the proposed fencing and internal facing CCTV systems which use infra-red technology. This would be installed around the perimeter of the operational areas of the solar PV site and would mitigate against the risk of criminal activity. Security arrangements could be increased through the use of additional security staff if recommended by the Site Manager. A security appraisal would be carried out by the Site Manager ahead of site preparation works and construction, and again prior to operation. The Applicant considered that criminal activity on solar farms is not a common occurrence in the UK. At ISH2, the Applicant also pointed to the community liaison group which would be used to manage local concerns including crime risk.

3.13.39. The Applicant's responses to other ExQs on major accidents and disasters were satisfactory [REP1-081].

Conclusions

3.13.40. Statutory IPs and the undertakers responsible for the two MAH pipelines crossing the site were content with the Applicant's assessment finding of no significant effects relating to major accidents or disasters. There is no substantive evidence to lead me to disagree with that position or with its assessment of the other identified hazards. While the fear of criminal activity was widely expressed there was little firm evidence that the proposal would be unduly vulnerable, notwithstanding its rural location.

3.13.41. The mitigation necessary to secure the predicted outcomes would be contained in the CEMP, OEMP and DEMP and secured by requirements in the DCO. Nor is there anything to indicate that the cumulative schemes considered would lead to significant effects.

3.13.42. Therefore, I find that the proposal would accord with the relevant provisions of NPS EN-1 and the NPPF and that the consideration of major accidents and disasters weighs neutrally in the planning balance.

Telecommunications, Television Reception, and Utilities

3.13.43. Section 16.6 of the ES deals with the effects of the proposal on telecommunications, television reception and utilities. There are no provisions relating directly to these matters in the relevant NPSs, the NPPF or the development plan.

3.13.44. The ES finds that the proposal would be unlikely at any phase to interfere with telecommunications infrastructure or television reception due to the relatively low height of the panels and infrastructure. With embedded mitigation in place, there would be no significant effects during the construction, operational or decommissioning phases. It assumes that any cumulative schemes would also be the subject of comparable mitigation and, therefore, there would be no cumulative effects.

3.13.45. I deal with local concerns regarding the potential for damage to utility services buried in roadside verges in Section 3.10 on traffic and transport. Nothing else emerged during the Examination to challenge the Applicant's assessment of telecommunications, television reception, and utilities effects or the efficacy of the proposed mitigation. I am satisfied that the effect of the proposal on these matters would not be significant and consider that they weigh neither for nor against the proposal in the planning balance.

Materials and Waste

3.13.46. Section 16.7 of the ES covers the treatment of materials and waste streams in the proposal. As previously reported, minerals safeguarding was scoped out of the assessment with the agreement of PINS and ERYC and NYC as the local mineral planning authorities.

3.13.47. 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).

3.13.48. Concern was expressed locally in RRs and at D8 that the solar PV panels would be difficult and costly to recycle, that their transport from China would result in a high carbon footprint as well as doubts over the ethics of their manufacture. There was also concern regarding the amount of concrete used during construction.

3.13.49. The Applicant's assessment adequately demonstrates that the proposal would not consume undue quantities of materials or, for the most part, generate large amounts of waste at any phase. Satisfactory measures would be in contained in the CEMP and Waste Management Plan as secured in the DCO, to ensure that waste would be managed and disposed of according to the principles of the Waste Hierarchy and would not prejudice the capacity of national or regional waste disposal facilities.

3.13.50. While the capacity of facilities to deal with the decommissioned solar PV panels is still evolving, I see no reason to disagree with the Applicant's view that the system will respond to demand over time. There is nothing to suggest that the type or number of panels involved in the application scheme would lead to particular difficulties in this regard. I deal with the carbon footprint of the proposal in Section 3.4 of this report. The ethics of the supply of the solar panels is not a planning matter.

3.13.51. Overall, therefore I find that the materials and waste matters comply with the relevant requirements of NPS EN-1, the NPPF, the National Policy for Waste and the development plan. As such, these matters weigh neutrally in the planning balance.

Other Matters

3.13.52. A lack of consultation and the poor response of the Applicant to queries during pre-application consultation and the Examination was a persistent concern of IPs in RRs, D1, D3 and D8 submissions. Local residents considered that representatives of the Applicant lacked knowledge of the area and the scheme. Also, that answers to queries were vague, sometimes dismissive and that the process sought to minimise objections to the proposal. It was also contended that some of the consultation material was inaccurate or out of date.

3.13.53. The Applicant's responses [REP1-066 REP2-019 REP4-029] reviewed the consultation process including the events, materials and the range of means of

communication used. Reference was made to the Consultation Report [APP-025] which describes the process and results. The Applicant maintained that it encouraged contact with the project team and that changes were made to the scheme as a result of feedback. As many questions as possible were answered by a dedicated project team. Plans were based on Ordnance Survey mapping, although it was acknowledged that some of the mapping used did not show individual residential properties due to their scale. Other information and assessments came from up-to-date information sourced from official organisations, as well as a range of specialist field surveys.

3.13.54. The Applicant also pointed to Requirement 4 of the dDCO which secures the establishment of a community liaison group which would be maintained throughout the lifetime of the project.

3.13.55. I am not in a position to comment on the responses made by the Applicant's representatives at pre-application events. However, I note that the Consultation Report documents the process of engagement, feedback received and the Applicant's responses, including changes made to the scheme. There is no firm evidence to indicate that the statutory requirements for consultation in the PA2008 were not followed.

3.13.56. The Consultation Report indicates that a reasonable range of representative bodies were consulted and means of communication used. Appendix K of the Report [APP-036] shows that the plans used for consultation used Ordnance Survey bases and the Report confirms that the relevant statutory bodies were consulted in the preparation of the pre-application assessments used in public consultation. Both ERYC [AoC-002] and NYC [AoC-007] as host local authorities considered that the statutory requirements for consultation had been followed.

3.13.57. As set out in Section 1.4 of this report, the Examination offered further opportunities for community engagement at events and in writing. The Applicant participated fully in the process. Overall therefore, I consider that the process provide adequate opportunities for public engagement. That said some of the Applicant's responses to IPs' concerns at events and in writing lacked depth and were somewhat generic in content. Nevertheless, in each of the preceding sections of this report, I have found that the information supplied by the Applicant has been adequate to properly assess the environmental effects of the scheme. As such, while I recognise the concerns of local residents, any shortcomings in the Applicant's responses to IPs do not affect my ability to reach sound conclusions on the effects of the proposal.

4. FINDINGS AND CONCLUSIONS IN RELATION TO HABITATS REGULATIONS ASSESSMENT

4.1. INTRODUCTION

4.1.1. This chapter sets out the Examining Authority's (ExA's) analysis and conclusions relevant to the Habitats Regulations Assessment (HRA). This will assist the Secretary of State for Energy Security and Net Zero (SoS), as the competent authority, in performing their duties under the Conservation of Habitats and Species Regulations 2017 (the Habitats Regulations).

4.1.2. This chapter is structured as follows:

- Section 4.2 Findings in relation to Likely Significant Effects on the UK National Site Network and other European sites;
- Section 4.3 Conservation Objectives for sites and features;
- Section 4.4 Findings in relation to Adverse Effects on Integrity; and
- Section 4.4 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 no reasonable scientific doubt remains[8].

4.1.4. The term "European sites" includes Special Areas of Conservation (SACs), proposed SACs, Special Protection Areas (SPAs), potential SPAs, Ramsar sites, proposed Ramsar sites and sites identified or required as compensatory measures for adverse effects on any of these sites. The 'UK National Site Network' (NSN) refers to the network of European sites within the UK.

4.1.5. Policy considerations and the legal obligations under the Habitats Regulations are described in Chapter 2 and Appendix A of this report. The Applicant's assessment of effects is presented in East Yorkshire Solar Farm Habitats Regulations Assessment (Rev 02) (HRAR) [AS-038].

4.1.6. The Applicant submitted a version of the HRAR with the DCO application [APP-244]. This was updated at D2 (Rev 01) (D2 HRAR) [REP2-012] in response to The Examining Authority' written questions (ExQs) and matters raised by Natural England (NE). It included the results of additional non-breeding bird surveys that were undertaken between September 2023 and March 2024 (contained in HRAR Table 12 and Appendix D). A final version (Rev 02) [AS-038] was provided and incorporated updated and additional information that had been submitted to the Examination. All references in this report to the HRAR are to this version unless stated otherwise.

4.1.7. The Applicant submitted a Technical Note (TN) , dated 15 August 2024 [REP4-037], that set out calculations of land required for mitigation of effects on bird species, based on the results of the additional surveys undertaken in 2023/24. It submitted another TN, dated 8 July 2024 [AS-045], that responded to a number of comments

[8] Case Law CJEU Case C-127/02 Waddenzee 7 September 2004, Reference for a preliminary ruling from the Raad van State (Netherlands) in the proceedings: Landelijke Vereniging tot Behoud van de Waddenzee and Nederlandse Vereniging tot Bescherming van Vogels v Staatssecretaris van Landbouw, Natuurbeheer en Visserij.

previously made by NE, particularly in relation to pink-footed goose (PFG), golden plover and lapwing.

4.1.8. I 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. I have sought evidence from the Applicant and the relevant Interested Parties (IPs), including NE as the Appropriate Nature Conservation Body, through written questions and Issue Specific Hearing 2 (ISH2).

RIES and Consultation

4.1.9. The ExA produced a Report on the Implications for European Sites (RIES) [PD-011] which compiled, documented, and signposted HRA-relevant information provided in the DCO application and Examination representations up to Deadline 6 (D6). The RIES was issued to set out my understanding of HRA-relevant information and the position of the IPs in relation to the effects of the Proposed Development on European sites at that point in time. Consultation on the RIES took place between 15 October 2024 and 5 November 2024 and comments were received from NE [REP7-008]. These comments have been taken into account in the drafting of this chapter.

4.1.10. My 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 their duties of consultation under Regulation 63(3) of the Habitats Regulations, should the SoS wish to do so.

Proposed Development Description and HRA Implications

4.1.11. The Proposed Development is described in Chapter 1 of this report. It is not directly connected with or necessary to the management of any European site. Therefore, for any European site for which a likely significant effect (LSE) is identified the SoS must make an 'appropriate assessment' (AA) of the implications of the Proposed Development on potentially affected European sites in light of their conservation objectives.

4.1.12. The Applicant identified European sites within 20km of the application site boundary. It confirmed in the HRAR [AS-038] (paragraph 3.1.4) that there are no European sites designated for bats within 30km of the boundary.

4.1.13. The Applicant did not identify any LSEs on non-UK European sites in European Economic Area States in its HRAR or within its ES. No such impacts were raised for discussion by any IPs during the Examination. Only UK European sites are addressed in this report.

4.1.14. The HRAR identified 10 European sites within the NSN for inclusion within the assessment:

- River Derwent SAC;
- Lower Derwent Valley SPA;
- Lower Derwent Valley Ramsar site;
- Lower Derwent Valley SAC;
- Humber Estuary SPA;
- Humber Estuary Ramsar site;
- Humber Estuary SAC;

- Skipwith Common SAC;
- Thorne and Hatfield Moors SPA; and
- Thorne Moor SAC.

4.1.15. These are listed, together with their qualifying features, in Table 4 of Section 4 of the HRAR. The spatial relationship between the Order Limits of the Proposed Development and the European sites is shown in Figure 5 of Appendix A of the HRAR [AS-038]. No additional UK European sites were identified by IPs during the Examination for inclusion within the assessment.

4.1.16. Section 1 of the HRAR explains that the scope and extent of the HRA was determined by ongoing engagement with NE, among other factors. It is stated that NE was consulted on the draft HRAR on 28 September 2023 and a Discretionary Advice Service response was received on 20 October 2023.

Summary of HRA Matters Considered During the Examination

4.1.17. The main HRA matters raised by the ExA, NE and other IPs and discussed during the Examination include:

- the adequacy of the Applicant's modelling in relation to disturbance distances for bird species;
- the Applicant's conclusions on LSE and omission of an additional qualifying feature which could also be subject to LSE: the bullhead feature of the River Derwent SAC;
- the Applicant's approach to assessing in-combination effects due to insufficient information being provided initially;
- the adequacy of the proposed mitigation in relation to the potential loss of functionally linked land (FLL) for qualifying bird features of the Humber Estuary SPA and Ramsar site and Lower Derwent Valley SPA and Ramsar site; and
- the Applicant's conclusions in relation to adverse effects on integrity (AEoI) on the Humber Estuary SPA and Ramsar site and Lower Derwent Valley SPA and Ramsar site in relation to potential effects on otter from temporary loss of, or damage to, the River Derwent SAC habitat during construction; and construction noise disturbance to FLL used by qualifying bird features.

4.1.18. These matters are discussed within the RIES [PD-011] and within the sections below..

4.2. FINDINGS IN RELATION TO LIKELY SIGNIFICANT EFFECTS

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 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 4 of Section 4.2 of the HRAR [AS-038]. Section 3 of the HRAR sets out the methodology applied to determine what would constitute a 'significant effect' within its HRAR.

4.2.3. The ExA and NE noted that disturbance impact to the bullhead feature of the River Derwent SAC had not been assessed in the HRA, and considered that insufficient

information had been submitted to rule out LSE on this feature and also on the river lamprey and sea lamprey features of this SAC and the Humber Estuary SAC during construction. Further discussion of these matters is contained in the LSE Assessment Outcomes section of this report below.

4.2.4. NE confirmed in [REP1-094] that other than the sites and features for which it had raised a specific concern (discussed below) it agreed with the LSE conclusions in the application HRAR [APP-244]. This is reflected in the D1 SoCG between the Applicant and NE [REP1-075].

LSE from the Proposed Development Alone

4.2.5. The Applicant identified impacts of the Proposed Development considered to have the potential to result in LSE alone in Section 6 of the HRAR. The impact pathways relevant to each of the European sites' features are reflected in the screening matrices contained in HRAR Appendix B.

4.2.6. The impacts considered by the Applicant to have the potential to result in LSE are:

- noise and visual disturbance during construction and decommissioning;
- temporary loss of/damage to qualifying habitat during construction and decommissioning;
- atmospheric pollution (and dust deposition) during construction and decommissioning;
- water quality during construction, operation and decommissioning; and
- permanent loss of functionally linked habitat during operation.

4.2.7. These are set out in Table 8 below. The Applicant's HRAR concluded no LSE from the Proposed Development alone (or in combination) on any of the qualifying features of:

- Skipwith Common SAC;
- Thorne and Hatfield Moors SPA; and
- Thorne Moor SAC.

4.2.8. These sites were scoped out from further assessment and not taken forward to the screening stage on the basis of their distance from the application site and the absence of potential impact pathways and suitable habitat for their qualifying species. NE confirmed in its RR [RR-266] that it agreed with the Applicant's conclusion of no LSEs in respect of the three sites listed immediately above. As such, there was no discussion of these sites during the Examination.

LSE from the Proposed Development in Combination

4.2.9. The Applicant addressed potential in-combination effects arising from the Proposed Development in Section 7 of the HRAR, which sets out the methodology applied. The other plans and projects included in the in-combination assessment are set out in Table 10 of Section 7 of the HRAR.

4.2.10. ExQ1 Q2.1.4 [PD-004] noted that, where it was determined in the in-combination effects screening assessment (Section 7 Table 10 of the application HRAR) that in-combination effects may occur, it generally did not identify which European sites and qualifying features may be affected, or the phases of the Proposed Development in which the effects could occur. In addition, not all of the AEoI assessments contained

in HRAR Section 8, which identified the potential for in-combination effects, specified the European sites and features that may be affected.

4.2.11. The Applicant [REP1-081] responded that Table 10 in the HRAR, submitted at D2, had been updated to identify the phases in which relevant impacts would arise and the European sites potentially impacted. The in-combination AEoI assessments had also been updated to clearly identify the European sites/qualifying features potentially impacted. Table 10 was further updated in the final HRAR to identify the relevant qualifying features. NE confirmed in its RR [RR-266] that it considered the list of developments in Table 10 to be comprehensive.

4.2.12. No additional plans or projects were highlighted by IPs during the Examination. Section 2.6 of this report refers to a potential solar farm development at Mylen Leah. NE concluded that an in-combination assessment with Mylen Leah would not be possible at this stage due to a lack of information [REP7-008].

4.2.13. In-combination LSE have been identified for qualifying features of all of the European sites considered in the HRA screening. These are identified in Table 8 below.

LSE Assessment Outcomes

4.2.14. The sites for which the Applicant concluded LSE would occur from either the project alone or in combination with other projects and plans are presented in Section 2.4 of the RIES [PD-011], Sections 4 and 7 of the HRAR and in Table 8 below.

4.2.15. A number of matters were raised in the Examination and where I sought clarity in relation to LSEs screened out or not considered by the Applicant. These are reported in Table 2.2 of the RIES and summarised below.

4.2.16. ExQ1 [PD-004] contained a number of questions relating to HRA. These included points in relation to the need for additional information and apparent errors and inconsistences within the HRAR. NE raised issues in its RR [RR-266], relating to particular sites and features which were reiterated in its WR [REP1-094]. The Applicant responded [REP1-081] to ExQ1 and NE's submissions and addressed them in the updated HRAR provided at D2. NE provided a response to ExQ1 at D1 [REP1-094].

4.2.17. ExQ2 Q2.0.2 [PD-008] requested an update from the Applicant on HRA matters. The Applicant stated in response [REP4-030] that it was in ongoing dialogue with NE to resolve the outstanding matters and would update the HRA, ES Ecology Chapter and the Framework Landscape and Ecological Management Plan (Framework LEMP), if required, once this had been concluded. The final versions of these documents submitted to the Examination are [AS-038] (Rev 02), [APP-126] (Rev 00) and [AS-040] (Rev 03), respectively.

4.2.18. ExQ1, 2.1.6 noted that while the bullhead feature, in addition to the river and sea lamprey features of the River Derwent SAC, was mentioned in Section 6.2 of the application HRAR, disturbance LSE were discussed only in relation to lamprey. The Applicant was asked to provide an LSE assessment in respect of disturbance to bullhead. NE [RR-266] (Ref NE6) and [REP1-094] made similar comments regarding the bullhead and noted potential impacts on it would not necessarily be the same as for lamprey.

4.2.19. The Applicant responded [REP1-081] to ExQ1 2.1.6 that additional text had been added to the HRAR to be submitted at D2 which included specific discussion of bullhead. It considered that the existing assessment of the low acoustical energies

associated with horizontal directional drilling (HDD) remained valid as a basis for concluding no LSE in relation to noise disturbance on qualifying fish, including bullhead, which are considered to have similar levels of sensitivity to lamprey.

4.2.20. The Applicant provided additional information on the sensitivity of bullhead in its D1 and D2 responses and within Section 6.2 of the D2 updated HRAR [REP1-066, REP2-019 and REP2-012, respectively]. It explained that bullhead are most at risk of impacts during their spawning periods (February to June) and as they lack swim bladders, both bullhead and lamprey have low sensitivity to vibration impacts other than those arising within the water column. It noted that bullhead are sedentary and remain in their freshwater habitats throughout the year, indicating that their sensitivity to noise/vibration disturbance shows no temporal variation.

4.2.21. The Applicant concluded that there would be no construction and decommissioning LSE on the river lamprey or sea lamprey features of the Humber Estuary SAC or the river lamprey, sea lamprey or bullhead features of the River Derwent SAC.

4.2.22. ExQ1 Q2.1.7 sought details of the timings and duration of any potentially disturbing works in the River Derwent SAC, potential disturbance impacts on river and sea lamprey, and to relate those to the core migratory periods for those species.

4.2.23. NE considered [RR-266] (Ref NE6) and [REP1-094] that there was insufficient information to rule out LSE. It noted that paragraph 6.2.6 of the HRAR stated that there would not be any works within the river because trenchless HDD, would be used for crossing the River Derwent and River Ouse. The cables would be 5m below the bed of both rivers, with the send and receive pits a minimum of 30m from the edge of the watercourse. NE considered that further justification was required of whether these distances would allow noise/vibration from HDD to attenuate to acceptable levels for the relevant fish species.

4.2.24. NE noted that, although HRAR paragraph 6.2.5 provided detail on the migration timings for the lamprey species, no comparison was made with migration periods and the timings of any potentially disturbing works, and no detail provided on how long any of the most disturbing works were anticipated to last.

4.2.25. The Applicant advised that Table 8–12 (page 183) of ES Chapter 8 Ecology [APP-060] identified that use of HDD would be avoided in the core fish migration season of September to February and May beneath the River Ouse and River Derwent, unless the depth of the HDD was confirmed to be a minimum of approximately 10m below the riverbed, to avoid noise and vibration effects. However, this information was not included in the HRAR in relation to the River Derwent SAC. NE considered that further justification of whether these measures were sufficient should be provided, including consideration of whether these are mitigation measures (and therefore should be included at the AA stage).

4.2.26. In relation to buffer distances, the Applicant explained in paragraph 6.2.7 of the D2 HRAR that a literature review of the vibration disturbance risks associated with HDD was undertaken. It found some evidence for behavioural impacts and physical injury from underwater noise generated by construction activities (typically from pile driving, dredging and seismic surveying) but little to no evidence of harm from substrate vibration. The likely acoustical energies associated with the Proposed Development were considered highly unlikely to result in any material substrate vibration or associated noise in the water column that would result in behavioural or physical impacts to bullhead and lamprey. As the HDD would be 30m back from the banks and a minimum of 5m below the riverbeds there would be a large volume (approximately

1500m^3) of substrate and rock between the HDD and the river laterally, and approximately 1000m^3 above the drill. In addition, the drilling would be of short duration, lasting several days only.

4.2.27. In respect of the timings and duration of any potentially disturbing works and the core migratory periods for river and sea lamprey, the Applicant [REP1-081] responded to ExQ1 Q2.1.7 that details on the duration of disturbing works would be provided in the D2 HRAR. The exact timings of HDD works were not yet known but the HRAR had been updated to specify that HDD operations beneath the River Ouse and River Derwent would avoid the core fish migration season of September to February and May where practicable. This seasonal restriction had been included in the updated CEMP [REP1-053] submitted at D1. The updated HRAR included reference to the seasonal restrictions set out in the ES Ecology chapter [APP-060]] and the CEMP, which the Applicant considered reinforced a conclusion of no AEoI.

4.2.28. NE [AS-024 REP3-048] noted that the D2 HRAR clarified that the HDD process would take place over a short period of time, as stated in the CEMP, and that further justification had been provided. It concluded that sufficient detail had been provided to rule out impacts on lamprey and bullhead associated with the River Derwent SAC and/or Humber Estuary SAC.

4.2.29. The Applicant confirmed in [REP4-029] that the HDD buffers had been added to Table 3 of the updated CEMP submitted at D1 [REP1-053].

4.2.30. NE reiterated [AS-044] that measures intended to avoid impacts on European site features, that is, avoidance of the core migration seasons for the designated fish features, should be considered as mitigation. However, it considered that this would not materially impact the conclusions of the AEoI assessment.

4.2.31. Section 5 of the Applicant's TN dated 8 July 2024 [AS-045] explained that the avoidance of the core fish migration season was not a key reason for the conclusion of no LSE but was added to reinforce it. It stated that the conclusion of no LSE was based on a combination of the large volume of intervening rock and soil between the HDD launch pit and the HDD drill itself and the very short duration of HDD. Given this, there was very low risk that lamprey or bullhead movements would be disrupted. The Applicant had reordered D2 HRAR Section 6.2 to clarify the position.

4.2.32. The sites and features identified in Table 8 below were assessed by the Applicant to determine whether they could be subject to adverse effects on integrity, as a result of the Proposed Development alone or in combination with other plans and projects, in view of their conservation objectives.

4.2.33. I am satisfied, on the basis of the information provided, that the correct impact pathways for each site have been assessed and am satisfied with the approach to the assessment of alone and in-combination LSE.

4.2.34. Taking into account the reasoning set out above, I consider that the Proposed Development is likely to have a significant effect from the impacts identified above, and in Table 8, on the qualifying features of the identified European sites when considered alone, or in combination with other plans or projects. This was not disputed by IPs/NE during the Examination.

Table 8 European sites and feature for which LSE could not be excluded/were identified by the Applicant

European site(s)	Qualifying Feature(s)	LSE Alone from:	LSE in-combination from:
River Derwent SAC	Otter	Noise and visual disturbance (construction and decommissioning)	Noise and visual disturbance (construction and decommissioning)
	Watercourse of plain to montane levels with the Ranunculion fluitantis and Callitricho-Batrachion vegetation River lamprey Sea lamprey Bullhead Otter	Water quality (construction, operation and decommissioning) Atmospheric pollution, including dust deposition (construction and decommissioning)	Water quality (construction, operation and decommissioning) Atmospheric pollution, including dust deposition (construction and decommissioning)
	Watercourses of plain to montane levels with the Ranunculion fluitantis and Callitricho-Batrachion vegetation Otter	Temporary loss of/damage to qualifying habitat (construction and decommissioning)	Temporary loss of/damage to qualifying habitat (construction and decommissioning)
Lower Derwent Valley SAC	Lowland hay meadows Alluvial forests	Water quality (construction, operation and decommissioning)	Water quality (construction, operation and decommissioning)
	Otter	Noise and visual disturbance (construction and decommissioning)	Noise and visual disturbance (construction and decommissioning)
Lower Derwent Valley SPA	Waterbird assemblage Bewick's swan Golden plover Ruff Shoveler Teal Wigeon Pochard Whimbrel	Loss of functionally linked habitat (operation) Noise and visual disturbance (construction and decommissioning) Water quality (construction, operation and decommissioning)	Noise and visual disturbance (construction and decommissioning) Water quality (construction, operation and decommissioning) Loss of functionally linked habitat (operation)
Lower Derwent Valley	Wintering waterfowl assemblage	Loss of functionally linked habitat (operation)	Loss of functionally linked habitat (operation)

European site(s)	Qualifying Feature(s)	LSE Alone from:	LSE in-combination from:
Ramsar site	Species/populations occurring at levels of international importance		
	Passage birds Wintering waterfowl assemblage Species/populations occurring at levels of international importance	Noise and visual disturbance (construction and decommissioning	Noise and visual disturbance (construction and decommissioning)
	Species-rich alluvial flood meadow habitat Assemblage of wetland invertebrates Passage birds Wintering waterfowl assemblage Species/populations occurring at levels of international importance	Water quality (construction, operation and decommissioning)	Water quality (construction, operation and decommissioning)
Humber Estuary SPA	Avocet Bittern Hen harrier Golden plover Bar-tailed godwit Ruff Little tern Shelduck Knot Dunlin Black-tailed godwit Redshank Waterbird assemblage	Loss of functionally linked habitat (operation) Noise and visual disturbance (construction and decommissioning) Water quality (construction, operation and decommissioning)	Loss of functionally linked habitat (operation) Noise and visual disturbance (construction and decommissioning) Water quality (construction, operation and decommissioning)
Humber Estuary Ramsar site	Criterion 5: wintering waterfowl assemblage Criterion 6: species/populations occurring at levels of international importance	Loss of functionally linked habitat (operation) Noise and visual disturbance (construction and decommissioning)	Loss of functionally linked habitat (operation) Noise and visual disturbance (construction and decommissioning)
	Criterion 1: A near-natural estuary with component habitats Criterion 3: grey seal	Water quality (construction, operation and decommissioning)	Water quality (construction, operation and decommissioning)

European site(s)	Qualifying Feature(s)	LSE Alone from:	LSE in-combination from:
	Criterion 5: wintering waterfowl assemblage Criterion 6: species/populations occurring at levels of international importance Criterion 8: river lamprey and sea lamprey		
Humber Estuary SAC	Estuaries Mudflats and sandflats not covered by seawater at low tide Sandbanks which are slightly covered by sea water all the time Coastal lagoons Salicornia and other annuals colonising mud and sand Atlantic salt meadows Embryonic shifting dunes Shifting dunes along the shoreline with Ammophila arenaria Fixed coastal dunes with herbaceous vegetation Dunes with Hippopha rhamnoides Sea lamprey River lamprey Grey seal	Water quality (construction, operation and decommissioning)	Water quality (construction, operation and decommissioning)

4.3. CONSERVATION OBJECTIVES

4.3.1. The conservation objectives for the sites and features identified above are set out in Section 4 of the Applicant's HRAR. Information on the condition of the Sites of Special Scientific Interest (SSSIs) that underpin the European sites is provided in Section 4.2 Table 5 of the HRAR.

4.3.2. NE noted in its RR [RR-266] (Ref NE7) that the application HRAR (paragraph 8.5.2) stated that the verge habitat within the River Derwent SAC, that would be temporarily removed for a construction access track, was considered part of the SAC's wider site fabric (which is not essential for the SAC to achieve its conservation objectives) and therefore concluded that there would be no AEoI on the SAC habitat. NE noted that the Applicant found that there was no evidence of otter using Ditch DE21. Therefore,

it agreed with the conclusion of no AEoI on otter from temporary habitat loss. However, NE welcomed the restoration plan provided in the Applicant's LEMP.

4.4. FINDINGS IN RELATION TO ADVERSE EFFECTS ON INTEGRITY

4.4.1. The European sites and qualifying features identified in Section 4.2 and Table 8 above were further assessed by the Applicant to determine if they could be subject to AEoI from the Proposed Development, either alone or in combination. The assessment of AEoI was made in light of the conservation objectives for the European sites.

4.4.2. ExQ1 Q2.1.9 [PD-004] noted that operational water quality LSE (from surface runoff resulting in water pollution) was identified in the screening assessment (application HRAR Section 6.3) for all the European sites except the Lower Derwent Valley SAC (although the SAC is included in the AEoI assessment for this impact pathway in Section 8.2). Although a reference was made to the need for surface runoff to be managed in the operational phase, no assessment or description of proposed operational mitigation was provided and the conclusion therein (paragraph 8.2.13) referred only to construction and decommissioning. The conclusion in HRAR paragraph 9.3.2 also omitted reference to this pathway for the Humber Estuary SAC.

4.4.3. The Applicant updated the HRAR to include a more detailed discussion of operational water quality impacts for the Lower Derwent Valley SAC and Humber Estuary SAC including information about the proposed Surface Water Drainage Strategy (SWDS) [REP1-021]. This is discussed in more detail in Table 2.2 of the RIES [PD-011].

4.4.4. I am satisfied, based on the information provided, that the correct impacts have been assessed. The Applicant's approach to the in-combination assessment is set out in Section 7 of the HRAR. Based on the findings of the Examination, I am content that an assessment of AEoI from the Proposed Development in combination with other plans or projects can be based on this information and that no other plans or projects should be taken into account. The remainder of this section discusses the conclusions with respect to AEoI for each site.

Sites for which the Applicant concluded AEoI can be excluded

4.4.5. The Applicant's HRAR concluded that the Proposed Development would not result in AEoI of the European sites listed in Table 8 above. A number of the Applicant's conclusions of no AEoI in relation to these European sites and their qualifying features were questioned by NE, and in ExQs, and were discussed throughout the Examination. They are reviewed below.

4.4.6. A description of the European sites and their qualifying features, and the potential effects resulting from the Proposed Development, is provided in Sections 4 and 6 of the HRAR. Section 8 provides an assessment which addressed the potential for AEoI resulting from the impact pathways identified in Table 8 above.

Lower Derwent Valley SPA

Noise and visual disturbance effects on otter - AEoI from Proposed Development alone

4.4.7. Paragraphs 8.1.22 to 8.1.38 of the HRAR contain an assessment of noise and disturbance effects on otter during construction and decommissioning from the Proposed Development alone. The Applicant's initial assessment [APP-244]

determined that, on the basis that noise fencing and a 30m standoff distance surrounding the HDD entry points would be put in place, there would be no AEoI.

4.4.8. ExQ1 Q2.1.5 [PD-004] and NE RR [RR-266] requested more detail on nocturnal works and justification as to why HDD is not proposed where habitat may be suitable for otter, specifically at watercourse references DE03, DE52, OU13, OU20, and OU24, in order to minimise potential disturbance impacts on otter. NE considered that night-time use of HDD should be minimised and only occur in instances when 24-hour working was unavoidable.

4.4.9. The Applicant updated its HRAR at D2 to include further information on nocturnal works and confirming that HDD would be temporary with drilling operations typically requiring several days per crossing. These measures would be secured through section 2.3 of the CEMP [REP4-010] which also defines the core working hours during the day and that nocturnal works would only be required in the case of an emergency or where the activity needed to be completed as soon as practicable to limit services disruption.

4.4.10. On the basis that the above measures are appropriately secured and implemented, NE considered that these issues were resolved [AS-024].

Noise and visual disturbance effects on otter - AEoI from Proposed Development in combination

4.4.11. Paragraphs 8.1.39 to 8.1.47 of the HRAR contain an in-combination assessment of noise and disturbance effects on otter at the European site during construction and decommissioning of the Proposed Development.

4.4.12. The Applicant concluded that, with adequate noise fencing around the HDD entry points and a 30m stand-off distance being maintained, and taking into account the short-term temporary nature of HDD which is unlikely to overlap with any other proposed HDD as part of other plans or projects, AEoI could be excluded.

4.4.13. NE [RR-266] (Ref N9) considered that insufficient information had been provided for the in-combination assessment from noise disturbance in terms of impacts and potential mitigation measures.

4.4.14. The Applicant updated its HRAR at D2 to include further information on nocturnal works including that HDD would be temporary with drilling operations typically requiring several days per crossing. These measures would be secured through section 2.3 of the CEMP [REP4-010] which also defines the core working hours during the day and that nocturnal works would only be required in the case of an emergency or where the activity needed to be completed as soon as practicable to limit services disruption.

4.4.15. NE considered that further assessment should be made of any potential overlap with other plans/projects that may undertake concurrent noise-producing works, which may disturb otter. However, based on the new information provided in paragraph 8.1.34 of the HRAR, NE went on to find impacts in-combination unlikely, particularly due to the short duration of the works. Therefore, NE [REP7-008] confirmed that the mitigation proposed is appropriate to rule out an in-combination AEoI.

Noise and visual disturbance effects on FLL used by qualifying bird species - AEoI from Proposed Development alone

4.4.16. Paragraphs 8.1.1 to 8.1.21 of the HRAR contain an assessment of noise and disturbance effects on the waterbird assemblage and individual qualifying bird features of the European site arising from noise and visual disturbance to FLL during construction and decommissioning from the Proposed Development alone. The Applicant concluded that there would be no AEoI on the European site.

4.4.17. The Applicant considered that the fields in which cable installation or adjacent to which PV construction would occur would be subject to comparable disturbance through usual farming operations on adjacent land, and that only a very small proportion of the overall arable foraging resources in the FLL would be affected by elevated noise levels at any one time. Only a small fraction of the overall construction and decommissioning works would be undertaken close to the edges of the Order Limits. Any works carried out towards the centre of the area would have little potential for disturbance of FLL outside of the Order Limits.

4.4.18. All noise-generating activities would be temporary, with works in a given area typically completed in a matter of weeks. In addition, mitigation habitat for the loss of FLL used by golden plover and PFG would be in place prior to the start of construction works, as set out in the LEMP [AS-040], secured by dDCO Requirement 6.

4.4.19. NE [RR-266] (Ref NE2) disagreed with the conclusion of no AEoI on the SPA from noise disturbance. It considered that it was not possible to ascertain that the proposal would not result in AEoI because the assessment contained insufficient information and/or certainty to justify the conclusion and that further consideration of mitigation options was required. This matter was discussed during the Examination. NE's submissions are at [REP3-048 AS-024 AS-044 REP7-008]. The Applicant responded at [REP1-066, REP2-019 REP4-029], including an updated version of the HRAR (Rev 01) [REP2-012]. These are reported in Table 3.1 of the RIES [PD-011].

4.4.20. Following the Applicant's update to the HRAR submitted at D2, NE agreed that potential noise disturbance effects on FLL could be ruled out subject to the appropriate mitigation/compensation being secured. This mitigation/compensation is set out in paragraph 8.4.18 of the HRAR. The habitat in EMAs 1g and 1h would be established prior to the commencement of construction works. Any construction works in the closest parts of the application site to the EMA would be undertaken first to minimise any potential for noise disturbance. These measures can be found at paragraph 6.1.78 of the LEMP submitted at D1 [REP1-063].

4.4.21. NE commented [AS-044] that although aspects of the noise assessment had not been undertaken in line with its recommendations, and the evidence base could be strengthened, it was of the view that such additional evidence would not have a material impact on the outcome of the assessment.

Noise and visual disturbance effects on FLL used by qualifying bird species - AEoI from Proposed Development in combination

4.4.22. Paragraphs 8.1.39 to 8.1.47 of the HRAR contain an in-combination assessment of noise and disturbance effects on the waterbird assemblage and individual qualifying bird features of the European site during construction and decommissioning of the Proposed Development. The Applicant concluded that there would be no AEoI.

4.4.23. Paragraph 8.1.40 identifies other plans and projects together with which the Proposed Development could give rise to in-combination effects, based on a geographic and

temporal overlap. It is explained that the construction works in the GCC and the overlapping projects, particularly the Helios Renewable Energy Project, would primarily relate to the temporary burial of cables and/or pipelines. The burial activities would be limited to relatively narrow bands of land, undertaken for relatively short stretches of cable/pipe at any given time and temporary in nature, that is, individual sections would be likely to be completed in a matter of weeks. The Preliminary Environmental Information Report submitted for the Helios Project concluded that arable fields adjoining the site boundary were not regularly used by significant aggregations of SPA (or Lower Derwent Valley Ramsar site) birds.

4.4.24. The HRAR highlights that surveys undertaken for the Proposed Development have confirmed the opportunistic nature of bird use of the fields in the area. The Applicant considered that this indicated that the birds were not wedded to specific fields but used fields throughout the large FLL around the SPA as and when they were available and suitable. The fields in which cable installation or adjacent to which PV construction would occur would be subject to comparable disturbance through normal farming operations in adjacent land or temporarily pass out of suitability as part of routine farming use of the land.

4.4.25. The Applicant concluded that, considering the sequential nature of cable installation works, large tracts of arable land being available, natural inter-annual variation in suitability, comparable disturbance from the cable installation activities to conventional farming activities and the highly mobile nature of dependent bird species, the potential for in-combination effects between the Proposed Development and other projects was inherently limited. Therefore, no residual significant disturbance effect was expected to arise and the Applicant concluded that there would be no in-combination AEoI.

Loss of FLL effects on waterbird assemblage and qualifying bird species - AEoI from Proposed Development alone

4.4.26. Paragraphs 8.4.1 to 8.4.40 of the HRAR contain an assessment of effects on the waterbird assemblage and qualifying individual bird species of the European site arising from the loss of FLL during operation from the Proposed Development alone. The Applicant concluded that there would be no AEoI on the European site.

4.4.27. The Applicant identified that only some features would be impacted by the potential loss of FLL due to the variation in distances travelled by bird species from designated sites based on maximum foraging distances by qualifying species. The results of surveys carried out in 2022 to 2024 indicated that parts of the Proposed Development site provided FLL to features of the SPA and therefore mitigation is required to offset the loss of this land. In defining an adequate area for mitigation, the sizes of plots where peak counts of golden plover, PFG and lapwing were recorded were used. In paragraph 8.4.16 of the initial HRAR [APP-244] this includes provision of 15ha of wet grassland for Golden Plover in area 1h and 15ha of arable habitat in areas 1g and 1h.

4.4.28. NE [RR-266] (Ref NE1) agreed that proposed mitigation was required to conclude no AEoI. It requested [REP3-048] further evidence that the proposed quantum of mitigation land for PFG, golden plover and lapwing would be sufficient to accommodate the number of birds likely to be permanently displaced by the Proposed Development. It noted that the Applicant had used a ‘minimum field size’, rather than a peak population count or ’bird-days’ approach, to determine the required mitigation land requirements. Given the increase in bird numbers found in the 2023/2024 surveys, NE advised that the Applicant should reconsider the appropriateness of that approach. NE also requested that mitigation should be specifically secured in the

DCO and for at least the lifetime of the Proposed Development and that a 150m buffer should be secured around the mitigation areas.

4.4.29. These matters were discussed during the Examination with the Applicant [REP1-075 REP3-024 REP4-037 REP6-017 REP2-012 (the updated version of the HRAR)] and NE [REP1-094 REP3-048] making submissions which are reported in Table 3.1 of the RIES [PD-011]. The updated HRAR altered the mitigation area from 15ha to 28.75ha of wet grassland in area 1h to provide enhanced foraging opportunities following the use of a 'bird-days' approach. The establishment and long-term management of the EMAs 1g and 1h are defined within the LEMP [AS-040], secured by dDCO Requirement 6. This provision would be established prior to the commencement of construction works of the closest parts of the Proposed Development.

4.4.30. As a result of the Applicant's updated HRAR, NE agreed that habitat loss effects on FLL could be ruled out subject to the appropriate mitigation/compensation being appropriately secured. The Applicant responded [REP4-029] that the above mechanisms were already committed to and included in the LEMP.

4.4.31. NE [AS-044] considered that sufficient additional assessment had been provided to rule out AEoI. Although it disagreed with the approach of using sugar beet in the calculation of 'bird-days' for PFG, it considered the proposed mitigation measures would be sufficient based on the evidence available. NE advised, that to enable a conclusion of no AEoI, the proposed mitigation should be secured through the DCO for the lifetime of the Proposed Development and that the LEMP should be updated to incorporate all relevant additional information received since the beginning of the Examination. The updated LEMP includes mitigation monitoring of PFG and golden plover for the Proposed Development's lifetime.

Loss of FLL effects on qualifying bird species - AEoI from Proposed Development in combination

4.4.32. Paragraphs 8.4.41 to 8.4.43 of the HRAR contain an in-combination assessment of effects on the waterbird assemblage and qualifying individual bird species of the European site arising from the loss of FLL during operation from the Proposed Development. The Applicant concluded that there would be no AEoI of the European site.

4.4.33. Table 10 of the HRAR identifies other plans and projects together with which the Proposed Development could give rise to in-combination effects, based on a geographic and temporal overlap. The Applicant considers that as the effects from the project alone has been fully mitigated in relation to habitat loss of functionally linked land, this also mitigates potential for AEoI in-combination with other projects. Please see the discussion above about this pathway from the project alone for further detail.

4.4.34. NE [AS-044] (Ref N9) agreed with this position on the basis that the proposed mitigation is appropriately secured and concluded no AEoI from in-combination effects.

Water quality effects on qualifying bird species - AEoI from Proposed Development alone

4.4.35. Paragraphs 8.2.1 to 8.2.15 of the HRAR contain an assessment of effects on the qualifying bird features of the European site arising from water quality during construction, operation and decommissioning from the Proposed Development alone. The Applicant concluded that there would be no AEoI of the European site.

4.4.36. EXQ1 [PD-004] Q2.1.9 and Q2.1.10 identified that operational impacts and mitigation had been omitted from the description and assessment of AEoI. The Applicant updated the HRAR at D2 [REP2-012] to correct these discrepancies and provide a detailed discussion and description of relevant mitigation measures including the proposed SWDS [REP1-021]. This adequately explained how AEoI would be mitigated through vegetation attenuation storage areas where the water quality treatment index of this type of vegetation exceeds the pollution hazard index associated with the impermeable surfaces as the source of impact. This matter was not further disputed.

Water quality effects on qualifying bird species - AEoI from Proposed Development in combination

4.4.37. Paragraphs 8.2.16 to 8.2.18 of the HRAR contain an in-combination assessment of effects on the qualifying bird features of the European site arising from water quality during construction, operation and decommissioning from the Proposed Development. The Applicant concluded that there would be no AEoI of the European site. Please see the above discussion on this impact pathway from the project alone for discussions during the Examination.

4.4.38. Following the updated HRAR the Applicant concluded that, on the basis that there would be no effects from the project alone, there would be no AEoI in-combination with other plans and projects either.

4.4.39. NE [REP6-017] noted that, although impacts of a development may be fully avoided through mitigation, potential residual impacts that could act in combination should still be assessed, that is, where small discharges are still present from multiple projects, after mitigation has been applied. However, NE agreed that, with the described mitigation measures secured, there would be no AEoI in this case.

4.4.40. The Applicant confirmed that the necessary mitigation measures are secured through Table 4 of the CEMP [REP-010]. This includes requirements for site specific groundwater risk assessment prior to commencing work, application of suitable buffers around watercourses and flood defences, and in respect of the HDD, the need for Hydraulic Fracture (frac-out) Risk Assessment that would include contingency measures in event of frac-out, monitoring of the drilling path, and use of water-based drilling fluids.

4.4.41. Having regard to the above information, and that reported in the RIES, I am satisfied that these LSE pathways would not result in AEoI to the Lower Derwent Valley SPA from the Proposed Development alone or in combination with other plans and projects.

Lower Derwent Valley Ramsar site

Noise and visual disturbance effects on qualifying bird species - AEoI from Proposed Development alone and in combination

4.4.42. Paragraphs 8.1.1 to 8.1.21 of the HRAR contain an assessment of noise and disturbance effects on the wintering waterfowl assemblage and the individual qualifying bird features of the European site arising from noise and visual disturbance to FLL during construction and decommissioning from the Proposed Development alone. Paragraphs 8.1.39 to 8.1.47 contain an in-combination assessment of these effects. The Applicant concluded that there would be no AEoI of the European site.

4.4.43. The discussion above about this pathway in relation to the Lower Derwent Valley SPA equally applies to the Lower Derwent Valley Ramsar site and is not repeated here.

Loss of FLL effects on wintering waterfowl assemblage and qualifying bird species - AEoI from Proposed Development alone and in combination

4.4.44. Paragraphs 8.4.1 to 8.4.40 of the HRAR contain an assessment of effects on the wintering waterfowl assemblage and qualifying individual bird species of the European site arising from the loss of FLL during operation from the Proposed Development alone. Paragraphs 8.4.41 to 8.4.43 contain an in-combination assessment of these effects, The Applicant concluded that there would be no AEoI of the European site.

4.4.45. The discussion above about this pathway in relation to the Lower Derwent Valley SPA equally applies to the Lower Derwent Valley Ramsar site and is not repeated here.

Water quality effects on qualifying habitat, wetland invertebrates and bird species - AEoI from Proposed Development alone and in combination

4.4.46. Paragraphs 8.2.1 to 8.2.15 of the HRAR contain an assessment of effects on species-rich alluvial flood meadow habitat, wetland invertebrates and qualifying bird species of the European site arising from water quality during construction, operation and decommissioning from the Proposed Development alone. Paragraphs 8.2.16 to 8.2.18 contain an in-combination assessment of these effects. The Applicant concluded that there would be no AEoI of the European site.

4.4.47. The discussion above about this pathway in relation to the Lower Derwent Valley SPA equally applies to the Lower Derwent Valley Ramsar site and is not repeated here.

4.4.48. Having regard to the above information, and that reported in the RIES, I am satisfied that these LSE pathways would not result in AEoI to the Lower Derwent Valley Ramsar site from the Proposed Development alone or in combination with other plans or projects.

Humber Estuary SPA

Noise and visual disturbance effects on the waterbird assemblage and qualifying bird species - AEoI from Proposed Development alone and in combination

4.4.49. Paragraphs 8.1.1 to 8.1.21 of the HRAR contain an assessment of noise and disturbance effects on the waterbird assemblage and individual qualifying bird features of the European site arising from noise and visual disturbance to FLL during construction and decommissioning from the Proposed Development alone. Paragraphs 8.1.39 to 8.1.47 contain an in-combination assessment of these effects. The Applicant concluded that there would be no AEoI of the European site.

4.4.50. The discussion above about this pathway in relation to the Lower Derwent Valley SPA equally applies to the Humber Estuary SPA and is not repeated here.

Loss of FLL effects waterbird assemblage and qualifying bird species - AEoI from Proposed Development alone and in combination

4.4.51. Paragraphs 8.4.1 to 8.4.40 of the HRAR contain an assessment of effects on the waterbird assemblage and qualifying individual bird species of the European site arising from the loss of FLL during operation from the Proposed Development alone. Paragraphs 8.4.41 to 8.4.43 contain an in-combination assessment of these effects. The Applicant concluded that there would be no AEoI of the European site.

4.4.52. The discussion above about this pathway in relation to the Lower Derwent Valley SPA equally applies to the Humber Estuary SPA and is not repeated here.

Water quality effects on the waterbird assemblage and qualifying bird species - AEoI from Proposed Development alone and in combination

4.4.53. Paragraphs 8.2.1 to 8.1.15 of the HRAR contain an assessment of effects on the waterbird assemblage and qualifying bird species of the European site arising from water quality during construction, operation and decommissioning from the Proposed Development alone. Paragraphs 8.2.16 to 8.2.18 contain an in-combination assessment of these effects The Applicant concluded that there would be no AEoI of the European site.

4.4.54. The discussion above about this pathway in relation to the Lower Derwent Valley SPA equally applies to the Humber Estuary SPA and is not repeated here.

4.4.55. Having regard to the above information, and that reported in the RIES, I am satisfied that these LSE pathways would not result in AEoI to the Humber Estuary SPA from the Proposed Development alone or in combination with other plans or projects.

Humber Estuary Ramsar site

Noise and visual disturbance effects on qualifying bird species - AEoI from Proposed Development alone and in combination

4.4.56. Paragraphs 8.1.1 to 8.1.21 of the HRAR contain an assessment of noise and disturbance effects on the wintering waterfowl assemblage and the individual qualifying bird features the European site arising from noise and visual disturbance to FLL during construction and decommissioning from the Proposed Development alone. Paragraphs 8.1.39 to 8.1.47 contain an in-combination assessment these effects The Applicant concluded that there would be no AEoI of the European site.

4.4.57. The discussion above about this pathway in relation to the Lower Derwent Valley SPA equally applies to the Humber Estuary Ramsar site and is not repeated here.

Loss of FLL effects on wintering waterfowl assemblage and qualifying bird species - AEoI from Proposed Development alone and in combination

4.4.58. Paragraphs 8.4.1 to 8.4.40 of the HRAR contain an assessment of effects on the wintering waterfowl assemblage and qualifying individual bird species of the European site arising from the loss of FLL during operation from the Proposed Development alone. Paragraphs 8.4.41 to 8.4.43 contain an in-combination assessment of these effects. The Applicant concluded that there would be no AEoI of the European site.

4.4.59. The discussion above about this pathway in relation to the Lower Derwent Valley SPA equally applies to the Humber Estuary Ramsar site and is not repeated here.

Water quality effects on qualifying habitat, grey seal, bird species, river lamprey and sea lamprey - AEoI from Proposed Development alone and in combination

4.4.60. Paragraphs 8.2.1 to 8.2.15 of the HRAR contain an assessment of effects on the near-natural estuary with component habitats, grey seal, wintering waterfowl assemblage, individual bird species, river lamprey and sea lamprey qualifying features of the European site arising from water quality during construction, operation and decommissioning from the Proposed Development alone. Paragraphs 8.2.16 to 8.2.18 contain an in-combination assessment of these effects. The Applicant concluded that there would be no AEoI of the European site.

4.4.61. The discussion above about this pathway in relation to the Lower Derwent Valley SPA equally applies to the Humber Estuary Ramsar site and is not repeated here.

4.4.62. Having regard to the above information, and that reported in the RIES, I am satisfied that these LSE pathways would not result in AEoI to the Humber Estuary Ramsar site from the Proposed Development alone or in combination with other plans or projects.

Humber Estuary SAC

Water quality effects on qualifying habitats, sea lamprey, river lamprey and grey seal - AEoI from Proposed Development alone and in combination

4.4.63. Paragraphs 8.2.1 to 8.2.15 of the HRAR contain an assessment of effects on the qualifying habitats, sea lamprey, river lamprey and grey seal features of the European site arising from water quality during construction, operation and decommissioning from the Proposed Development alone. Paragraphs 8.2.6 to 8.2.18 contain an in-combination assessment of these effects The Applicant concluded that there would be no AEoI of the European site.

4.4.64. The discussion above about this pathway in relation to the Lower Derwent Valley SPA equally applies to the Humber Estuary SAC and is not repeated here.

4.4.65. Having regard to the above information, and that reported in the RIES, I am satisfied that these LSE pathways would not result in AEoI to the Humber Estuary SAC from the Proposed Development alone or in combination with other plans or projects.

River Derwent SAC

Noise and visual disturbance effects on otter - AEoI from Proposed Development alone and in combination

4.4.66. Paragraphs 8.1.22 to 8.1.38 of the HRAR contain an assessment of noise and disturbance effects on otter during construction and decommissioning from the Proposed Development alone. Paragraphs 8.1.39 to 8.1.47 contain an in-combination assessment of these effects. The Applicant concluded that there would be no AEoI of the European site.

4.4.67. The discussion above about this pathway in relation to the Lower Derwent Valley SPA equally applies to the Humber Estuary SAC and is not repeated here.

Atmospheric pollution (dust deposition) effects on qualifying watercourses, river lamprey, sea lamprey, bullhead and otter - AEoI from the Proposed Development alone

4.4.68. Paragraphs 8.3.1 to 8.3.4 of the HRAR contain an assessment of effects arising from atmospheric pollution on qualifying watercourses, river lamprey, sea lamprey, bullhead and otter during construction and decommissioning from the Proposed Development alone. The Applicant concluded that there would be no AEoI of the European site.

4.4.69. The HRAR explains that mitigation measures secured through the CEMP [REP4-010] would minimise effects from dust. This includes undertaking earthworks in the drier months where practicable (to reduce runoff-associated contamination), and dampening earthworks and temporary storage sites for excavated materials to minimise dust release in dry weather. Any topsoil/subsoil requiring temporary storage would be stored at least 20m from watercourses (including the River Derwent) and covered with geotextile mats or seeded to promote vegetation growth. The adequate covering of stockpiles or encouraging soils to be bound within root systems of

vegetation would considerably reduce the potential for dust release. The regular washdown of equipment and plant in designated areas, where runoff is isolated for treatment prior to discharge, would further reduce the likelihood of dust release in dry weather. These measures are set out in Table 4 of the CEMP, which is secured through Requirement 11 of the dDCO

4.4.70. This approach was not disputed by IPs during the Examination for impacts from the Proposed Development alone.

Atmospheric pollution effects on qualifying watercourses, river lamprey, sea lamprey, bullhead and otter - AEoI from Proposed Development in combination

4.4.71. Paragraphs 8.3.5 to 8.3.6 of the HRAR contain an in-combination assessment of effects arising from atmospheric pollution on the qualifying watercourses, river lamprey, sea lamprey, bullhead and otter features during construction and decommissioning from the Proposed Development. The Applicant concluded that there would be no AEoI of the European site.

4.4.72. The HRAR explains that buffer distances for dust impacts are relatively small and therefore in-combination effects are unlikely having regard to the mitigation measures discussed above in the section on impacts from atmospheric pollution from the Proposed Development alone,

4.4.73. NE [RR-266] (Ref N9) considered that insufficient information had been provided for the in-combination assessment of atmospheric pollution in terms of impacts and potential mitigation measures.

4.4.74. Section 8.3 of the updated HRAR [REP2-012] includes further justification of why the proposed mitigation measures would ensure no AEoI. It considers that, even though there is spatial overlap with other developments, this occurs outside of the 200m impact zone for dust and that other plans and projects should also be employing best practice measures to control dust. Best practice measures for the Proposed Development are secured through Table 12 of the CEMP [REP4-010]. Based on the provision of this information, NE [REP3-024 and AS-044] agreed with the conclusion of no AEoI.

Temporary loss of/damage to qualifying habitat effects on habitat and otter - AEoI from the Proposed Development alone and in combination

4.4.75. Paragraphs 8.5.1 to 8.5.5 of the HRAR contain an assessment of the effects on the qualifying watercourses and otter features arising from the temporary loss of/damage to qualifying habitat during construction and decommissioning from the Proposed Development alone. Paragraph 8.5.6 of the HRAR contains an assessment of these effects. The Applicant concluded that there would be no AEoI of the European site.

4.4.76. NE [RR-266] noted that the verge habitat within the SAC that would be temporarily removed for a construction access track and that the banks are supporting habitat for otter as a feature of the SAC. As such, there was potential for AEoI if the verge was not restored. It requested the HRAR includes a restoration plan.

4.4.77. The Applicant clarified [REP1-066, REP2-019] that the surveys do not record evidence of otter along Ditch DE21 and it updated the LEMP [REP1-063] to include details of restoration works to full ecological functionality. The Applicant also updated its HRAR at [REP2- 012 paragraph 8.5.4 to reflect this position.

4.4.78. On the basis of this further evidence, NE agreed [AS-024 REP7-008] with the conclusion of no AEoI. While NE did not consider that restoration was required to conclude no AEoI due to the lack of otter presence, the restoration mitigation was welcomed.

Water quality effects on qualifying watercourses, river lamprey, sea lamprey, bullhead and otter - AEoI from the Proposed Development alone and in combination

4.4.79. Paragraphs 8.2.1 to 8.1.15 of the HRAR contain an assessment of effects on the qualifying watercourses, river lamprey, sea lamprey, bullhead and otter features of the European site arising from water quality during construction, operation and decommissioning from the Proposed Development alone. Paragraphs 8.2.16 to 8.1.18 of the HRAR contain an in-combination assessment of these effects. The Applicant concluded that there would be no AEoI of the European site.

4.4.80. The discussion above about this pathway in relation to the Lower Derwent Valley SPA equally applies to the River Derwent SAC and is not repeated here.

4.4.81. Having regard to the above information, and that reported in the RIES, I am satisfied that these LSE pathways would not result in AEoI to the River Derwent SAC from the Proposed Development alone or in combination with other plans or projects.

Lower Derwent Valley SAC

Noise and visual disturbance effects on otter - AEoI from Proposed Development alone and in combination

4.4.82. Paragraphs 8.1.22 to 8.1.38 of the HRAR contain an assessment of noise and disturbance effects on otter arising from noise and visual disturbance to FLL during construction and decommissioning from the Proposed Development alone. Paragraphs 8.1.39 to 8.1.47 contain an in-combination assessment of noise and disturbance these effects. The Applicant concluded that there would be no AEoI of the European site.

4.4.83. The discussion above about this pathway in relation to the Lower Derwent Valley SPA equally applies to the Lower Derwent Valley SAC and is not repeated here.

Water quality effects on lowland hay meadows and alluvial forests - AEoI from the Proposed Development alone and in combination

4.4.84. Paragraphs 8.2.1 to 8.1.15 of the HRAR contain an assessment of effects on the lowland hay meadows and alluvial forests features of the European site arising from water quality during construction, operation and decommissioning from the Proposed Development alone. Paragraphs 8.2.6 to 8.1.18 contain an in-combination assessment of these effects. The Applicant concluded that there would be no AEoI of the European site.

4.4.85. The discussion above about this pathway in relation to the Lower Derwent Valley SPA equally applies to the Lower Derwent Valley SAC and is not repeated here.

4.4.86. Having regard to the above information, and that reported in the RIES, I am satisfied that these LSE pathways would not result in AEoI to the Lower Derwent Valley SAC from the Proposed Development alone or in combination with other plans or projects.

AEoI Assessment Outcomes - Summary

Proposed Development alone and in combination

4.4.87. The Applicant's HRAR concluded that AEoI can be excluded for the European sites listed in Table 8 from the Proposed Development alone and in combination with other plans and projects. Some of the conclusions in the Applicant's HRAR were subject to examination through ExQs, submissions from NE and discussion at ISH2.

4.4.88. The Applicant's conclusions were agreed by NE at the end of the Examination [AS-044 and REP6-017]. Based on the findings of the Examination, I am satisfied that AEoI on all of the qualifying features of the European sites can be excluded from the Proposed Development alone and in combination with other plans and projects.

4.5. HRA CONCLUSIONS

4.5.1. The Proposed Development is not directly connected with, or necessary to, the management of a European site, and therefore the implications of the project with respect to adverse effects on potentially affected sites must be assessed by the SoS.

4.5.2. Seven European sites and their qualifying features were considered in the Applicant's assessment of LSE:

- Lower Derwent Valley SPA;
- Lower Derwent Valley Ramsar site;
- Humber Estuary SPA;
- Humber Estuary Ramsar site;
- Humber Estuary SAC;
- River Derwent SAC; and
- Lower Derwent Valley SAC.

4.5.3. LSE were identified for a number of these sites, set out in Table 8 above, both from the Proposed Development alone and in combination with other plans or projects.

4.5.4. The methodology and outcomes of the Applicant's screening for LSE on European sites was subject to some discussion and scrutiny, however, the sites and features for which LSE were identified were not disputed by any IP. I am satisfied that the correct European sites and qualifying features have been identified for the purposes of assessment, and that all potential impacts which could give rise to significant effects have been identified.

4.5.5. My findings are that, subject to the mitigation measures to be secured in the dDCO, AEoIs on the European sites listed above from the Proposed Development when considered alone or in combination with other plans or projects can be excluded from the impact pathways assessed.

4.5.6. I consider that there is sufficient information before the SoS to enable them to undertake an AA in order to fulfil their duty under the requirements of the Habitats Regulations.

5. CONCLUSION ON THE CASE FOR DEVELOPMENT CONSENT

5.1. INTRODUCTION

5.1.1. This section evaluates the planning merits of the proposal in the light of the legal and policy context set out in Chapter 2 and the topic-based legal and policy requirements identified in Chapters 3 and 4 of this report.

5.1.2. I have taken into account the Local Impact Reports (LIRs) from East Riding of Yorkshire Council (EYRC) and North Yorkshire Council (NYC), all Relevant Representations (RRs), Written Representations (WRs) and responses to my questions, as well as matters discussed at the hearings and all other representations made during the course of the Examination.

5.2. SUMMARY OF THE MAIN PLANNING ISSUES

THE PRINCIPLE OF DEVELOPMENT

5.2.1. I am content that the Examination process provided sufficient information to reach sound conclusions on the electrical aspects of the scheme, including its output and panel configuration. Further, that the Applicant's assessments of these matters were soundly based and that its choices were reasonable.

5.2.2. The Applicant has also given proper attention to good design in the formulation of the Proposed Development and has adequately considered alternatives, including the use of rooftop and brownfield locations. While the layout of the solar photo voltaic areas is somewhat dispersed, I find that the Applicant's justification of the site selection process was robust and had appropriate regard to the grid connection location at the Drax substation, environmental and land ownership considerations

5.2.3. The Proposed Development would contribute towards meeting the urgent need for renewable energy generation and would help in the transition to a low carbon system. However, I have found that the land use efficiency of the proposal in terms of the site area taken to achieve the predicted energy generation is low relative to National Policy Statement for Renewable Energy Infrastructure (NPS EN-3) advice and comparable schemes. While there is some scope for that to improve if a higher overplanting ratio is achieved at the detailed design stage, I consider that this matter, and the absence of battery storage, detracts from the Applicant's need case and that no more than moderate positive weight can be put on the need for the proposal.

5.2.4. Nevertheless, I have found that the principle of the Proposed Development accords with the relevant provisions of Overarching National Policy Statement for Energy (NPS EN-1), NPS EN-3, the May 2024 Written Ministerial Statement (WMS), the National Planning Policy Framework (NPPF) and the development plan.

THE ENVIRONMENTAL STATEMENT

5.2.5. I am satisfied that the Applicant has provided sufficient information to enable the Secretary of State for Energy Security and Net Zero (SoS) to understand the environmental effects of the Proposed Development over its construction, operational and decommissioning phases.

5.2.6. Changes to the documentation during the Examination did not individually or cumulatively undermine the scope of, and assessments in, the Environmental

Statement (ES). Consideration has been given to the adequacy of the ES generally and to matters arising from it. Chapter 3 of this report summarises the environmental effects under each topic section, including the measures proposed to mitigate the likely significant effects identified by the Applicant.

5.2.7. Overall, I 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 Environmental Impact Assessment (EIA) Regulations.

HABITATS REGULATIONS ASSESSMENT (HRA) CONSIDERATIONS

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

5.2.9. I have found that, subject to the mitigation measures to be secured in the draft Development Consent Order (dDCO), adverse effects on integrity from the Proposed Development on the identified European sites, when considered alone or in combination with other plans or projects, can be excluded from the impact pathways assessed.

5.2.10. I 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.

OTHER MATTERS

Biodiversity

5.2.11. At the close of the Examination all of the substantive concerns of statutory consultees regarding HRA and biodiversity matters had been resolved. While Yorkshire Wildlife Trust did not withdraw its objections, I consider that the proposal to confine the management of mitigation measures to the lifetime of the scheme would be an acceptable level of mitigation for the effects of the proposal on designated sites.

5.2.12. Other Interested Parties (IPs) remained concerned regarding the effects of the proposal on a range of local mammal and bird species and habitats. However, I am satisfied that the Applicant's assessments were robust.

5.2.13. With the mitigation and enhancement measures secured in the dDCO requirements and the Landscape and Ecological Management Plan (LEMP), Construction Environmental Management Plan (CEMP), Construction Traffic Management Plan (CTMP) and Decommissioning Environmental Management Plan (DEMP) in place, I consider that there would not be significant adverse effects on designated sites or protected species.

5.2.14. There would be minor beneficial effects on some receptors and the proposal would achieve biodiversity net gains (BNG) of 80.42% for area-based habitat units, 10.30% for hedgerow units, and 10.84% for watercourse units. This represents a benefit which weighs positively in favour of the proposal.

5.2.15. Overall, I have found that the ecology and biodiversity considerations have been adequately assessed in the ES and that the proposal would accord with the ecology and biodiversity requirements of NPSs EN-1 and EN-3, the NPPF and relevant development plan policies. As such, the beneficial effects for certain habitats and

species, together with the BNG identified, should be afforded moderate positive weight in the planning balance.

Climate Change

5.2.16. Although the Applicant's submission does not include a Greenhouse Gas Reduction Strategy as such, I consider that it provides sufficient information to enable the climate change effects of the proposal to be properly examined. Reasonable measures to reduce climate change impacts at each stage are secured in the dDCO.

5.2.17. Comparisons with other low carbon technologies and the alternative scenario of continuing to operate the current combined cycle gas turbine (CCGT) generating facilities have been provided. The scheme would perform fairly well against other low carbon technologies and result in a very considerable reduction in carbon emissions compared with CCGT, even having regard to the carbon emissions generated by its construction, operation and decommissioning.

5.2.18. Direct and indirect impacts of climate change on the scheme itself have been reviewed and it has been shown to be resilient against a range of climate change scenarios. I am satisfied that the in-combination climate change impacts would be not significant.

5.2.19. As such, I find that the proposal would comply with the climate change requirements of NPSs EN-1 and EN-3, the NPPF and relevant development plan policies. In view of the very considerable carbon emissions reduction achievable compared with the continued use of CCGT for electricity generation, I conclude that the climate change impact of the proposal should be given great positive weight in the planning balance.

Historic Environment

5.2.20. I am satisfied that the Applicant has properly considered all relevant heritage assets in the assessment, and note the agreement of Historic England and the host local planning authorities to its findings. For the purposes of the ES, there would be no significant effects on designated heritage assets or their settings at any phase of the scheme.

5.2.21. There would be a minor adverse effect on the setting of one designated asset (Drax Augustinian priory scheduled monument). The effect would be reversible following decommissioning. While this is not significant for ES purposes, NPS EN-1 and the NPPF require considerable importance and weight to be given to the desirability of preserving all heritage assets. I have also had regard to the desirability of preserving the setting of the scheduled monument as required by Regulation 3 of the Infrastructure Planning (Decisions) Regulations 2010. The harm to the significance of the asset would be less than substantial and, in accordance with NPS EN-1 paragraph 5.9.32, I weigh this against the public benefits of the proposal in Section 5.3 below.

5.2.22. The assessment also finds minor adverse effects on the settings of a limited number of non-designated assets. As required by NPS EN-1 paragraph 5.9.33, I judge these effects against the broader benefits of the proposal in Section 5.3 below.

5.2.23. Overall therefore, and subject to the weighing exercises below, I consider that the effects of the proposal on the historic environment generally accord with the requirements of NPSs EN-1 and EN-3, the NPPF and relevant development plan policies. Consideration of the weight to be attached to the effects of the proposal on the historic environment in the planning balance is deferred to Section 5.3.

Landscape and Visual Amenity

5.2.24. While the Applicant's characterisation of landscape and visual matters is generally sound, having regard to GLVIA3[9], I consider that it somewhat underplays the effect of the proposal when experienced at a local level. The size and dispersed layout of the proposal means that its impacts in terms of change to landscape character and the curtailment of some longer views would be experienced recurrently while travelling through the affected area. Although the landform and existing vegetation would limit the extent of the impact, I have found that the size of the proposal and the repetition of the impact would create a significant effect at the level of its immediate setting. This would be felt particularly by local residents travelling regularly through the area. Consequently, I find that the effect of the proposal on landscape character has been underestimated in the Applicant's assessment.

5.2.25. Nevertheless, the proposal provides generally well-considered offsets from key landscape features and from settlements, groups of residential properties and individual dwellings. I consider that the proposed planting, when mature, would provide effective screening. The CEMP and LEMP include provisions to enhance mitigation planting, if necessary, at the detailed design stage.

5.2.26. Therefore, I find that the proposal would not 'engulf' or overwhelm existing settlements, groups, or individual residential properties. Moreover, the solar PV areas would be reasonably well set back from nearby residential properties such that the effect on the immediate outlook of occupiers would not be overbearing or oppressive. This, together with acceptable lighting and CCTV proposals, leads me to conclude that the proposal would not have an unacceptable effect on the living conditions of nearby residents in terms of visual amenity.

5.2.27. In terms of the concerns expressed regarding impacts on Sandwood House specifically, the reasoning set out above also applies in that case. As such, I consider that the proposal would not have undue landscape or visual impacts on Sandwood House and its environs.

5.2.28. Notwithstanding the creation of buffer areas, the proposal would result in some narrowing of views along affected Public Rights of Way (PRoWs). However, planting proposals would help to reduce what might otherwise have been unduly enclosing effects. Therefore, I consider that the Applicant's finding of significant visual effects for a limited number of viewpoints, including PRoWs, is reasonable. I have found that the proposal would not lead to a loss of tranquillity as a result of increased activity or noise in the operational phase. Some loss of tranquillity could be expected for a temporary period during the construction phase, although this would have no more than a minor adverse effect.

5.2.29. I am content that the proposal would minimise the loss of existing vegetation and that the LEMP would make provision for appropriate offsets to safeguard retained vegetation. The proposal would also reinforce characteristic landscape features including hedgerows and woodland planting. The draft Development Consent Order (dDCO) requirements, including the approval of a detailed LEMP, offer the opportunity to enhance the planting proposals.

[9] Landscape Institute and Institute of Environmental Management and Assessment: Guidelines for Landscape and Visual Impact Assessment (3rd edition)

5.2.30. I am satisfied that the Applicant has undertaken a proper assessment of glint and glare effects. There is no substantive evidence to show that its findings of no or negligible effects are unsound.

5.2.31. Notwithstanding my finding that the Applicant has somewhat underplayed the effect of the proposal on the immediate landscape character, overall, I have found that the proposal broadly accords with the aims of NPSs EN1, EN3 and EN-5, the NPPF and the development plan with regard to landscape and visual amenity matters. The effects of the proposal on landscape and visual matters should carry moderate negative weight in the planning balance.

Land Use and Socio-economics

5.2.32. I am satisfied that the baseline position has been adequately characterised and that the appropriate methodologies have been properly applied, notwithstanding the limitations acknowledged by the Applicant.

5.2.33. I agree that the proposal would have minor beneficial effects on local employment and gross value added during the construction and decommissioning phases.

5.2.34. Having had due regard to local concerns over the impact of the proposal on local tourist and visitor accommodation, I have found that the effects would not be significant. Nor is there firm evidence that the proposal would have adverse effects on other private and community assets or development land, contribute to, or be adversely affected by environmental conditions, contamination or land instability.

5.2.35. I have carefully considered the widespread concern about the effect of the scale of land use change on the local community, particularly in light of my conclusion on the effect of the proposal on local landscape character. While the rural character of the area would undoubtedly be diluted, the layout of the proposal is such that each settlement would retain a physical and visual connection to the wider agricultural landscape. Moreover, in socio-economic terms, the number of people directly employed in agriculture at the site is very low. Consequently, I have found that the proposal would be suitably located in land use terms.

5.2.36. There is nothing substantive to show that implementation of the proposal would lead to unacceptable cumulative effects with existing energy generating developments in the area. Therefore, I conclude that the scale of land use change would have only a limited adverse effect on the local community.

5.2.37. Notwithstanding my earlier finding that the proposal would lead to some narrowing of views from certain PRoWs, there would be relatively limited disruption to the routeing and convenience of use of the network, even during construction and decommissioning. Adequate safeguards for the treatment and management of the network during all phases of the proposal would be provided in the dDCO and the LEMP and PRoW Management Plan. The proposed permissive footpaths would offer a minor enhancement to the network.

5.2.38. Overall therefore, the minor beneficial effects on employment and gross value added, the limited adverse effects on visitor accommodation and land use, and the negligible effects on other matters considered under this heading, combine to the effect that land use and socio-economic considerations weigh neutrally in the planning balance. The proposal would, therefore, comply with the relevant provisions of NPSs EN-1 and EN-3, the NPPF and the development plan.

Noise and Vibration

5.2.39. I have considered the concerns from local residents regarding noise and vibration impacts on their properties against the more weighty assessment of noise and vibration undertaken by the Applicant and I am satisfied that the Applicant's assessment of the effects of the proposal is adequate.

5.2.40. I agree with the Applicant's finding of significant residual noise effects on two sensitive residential receptors (identified as R44 and R46 in ES Figure 11-1 [REP-048]) as a result of evening or night-time horizontal directional drilling (HDD) activities in the grid connection corridor (GCC). The effect would be temporary during the construction period.

5.2.41. There was some difference of opinion between the Applicant and the Councils regarding the use of a communications strategy to reduce the vibration effect of cable laying works in the GCC on five sensitive receptors from significant to not significant. I acknowledge that the Applicant relies on relevant British Standard guidance in support of its position. Nevertheless, even a successful communication exercise would not reduce the actual effect. That said, any such effect would be short-lived and would affect a relatively small number of receptors, and I have therefore found in favour of the Applicant in this regard.

5.2.42. With regard to local concerns over the effectiveness of the Operational Environmental Management Plan (OEMP), I have found that the revised text provides suitable safeguards and that residential properties in the vicinity of the operational plant would not be subject to significant adverse noise effects. It would be for ERYC, which agreed the revision to the OEMP, to ensure that it is properly implemented.

5.2.43. Overall therefore, I find that all reasonable measures have been taken to reduce the noise and vibration effects of the proposal at the construction, operational and decommissioning phases. The mitigation measures contained in the CEMP, OEMP and DEMP would limit the effects to those identified in the Applicant's assessment.

5.2.44. On this basis, I conclude that the proposal accords with the relevant policies of NPSs EN-1 and EN-3, the NPPF, Planning Practice Guidance for Noise and Noise Policy Statement for England and the development plan. The noise and vibration effects of the proposal carry a little negative weight in the planning balance.

Soils and Agricultural Land

5.2.45. Although there was widespread concern from IPs regarding the effect of the proposal on the claimed loss of agricultural land, there was little substantive challenge to the Applicant's surveys, methodology and assessment. Further, I note that Natural England and the host local planning authorities were content on these points. As such, I consider that the Applicant's findings are sound.

5.2.46. The Applicant's assessment shows that the proposal would use a relatively small area of best and most versatile land (BMVL) - less than 5% of the solar photo voltaic site and less than 12% of the agricultural land study area. Moreover, the available evidence suggests that agricultural activity on the site does not comprise exclusively food production. There are other developments in the area which would also use agricultural land although the cumulative use of BMVL would amount to 0.4% of the total BMVL in the ERYC and former Selby District areas.

5.2.47. The greatest part of the agricultural land used would be converted to grassland which would have potential benefits for soil health in the long term. Moreover, I am content

that the provisions of the DEMP would allow the great majority of the land to be returned to its original Agricultural Land Classification grade following decommissioning. Only a small area of agricultural land would be permanently lost to planting and hardstandings as a result of the proposal. I have found that there is no substantive evidence to show that the proposal would be materially harmful in terms of food production or security or the carbon footprint for food production, either in isolation or cumulatively with other schemes in the area.

5.2.48. The CEMP, OEMP, DEMP and Soil Management Plan contain measures to protect soil functionality and volumes. I am satisfied that these mitigations would lead to the results predicted in the Applicant's assessment. A degree of improvement in soil health could be achieved in the long term, although this would be reversible depending on the use of the land following decommissioning.

5.2.49. I have found that the proposal would not lead to significant adverse effects on agricultural land or soils. Consequently, I find that the proposal complies with the relevant provisions of NPSs EN-1 and EN-3, the Written Ministerial Statement 2024 (WMS) and NPPF and the development plan. I consider that the predicted slight adverse effects on BMVL and non-BMVL at the construction phase would narrowly outweigh the slight beneficial effects on the soil resource during the operational phase. As such, the effect of the proposal on agricultural land and soils carries a little negative weight in the planning balance.

Traffic and Transport

5.2.50. Although there was a considerable volume of local opposition to the proposal, based largely on its traffic impacts in the construction phase, little specific or detailed information was presented to dispute the Applicant's assessment. I had the opportunity to see local road conditions on my site visits.

5.2.51. The weight of evidence supports the Applicant's finding that the only significant adverse effect would be the increase in general and HGV traffic movements at link 15 (B1228 between B1230 and Brind Lane junctions) during the construction and operational phases. That said, I recognise that local residents would experience a degree of disruption during the temporary construction phase. However, I am not persuaded that emergency access would be unacceptably disrupted by construction traffic.

5.2.52. The number of vehicle movements during the operational phase would be too low to lead to significant effects. The accident and safety analysis does not indicate a pattern of incidents which could exacerbate safety risks by the additional movements generated by the proposal. Nor does the available evidence indicate that this position would be altered by the cumulative effects of the other schemes in the area.

5.2.53. The proposal includes satisfactory mitigation measures, largely contained in the CTMP, to ensure that the transport and traffic effects would be as predicted in the Applicant's assessment, that any damage to the highway would be remediated, and that sustainable transport options have been properly considered. The measures would be refined in a detailed CTMP secured through a DCO requirement.

5.2.54. Overall, I found that the proposal would broadly accord with the transport related provisions of NPSs EN-1 and EN-3, the NPPF and the development plan. Consequently, transport and traffic matters carry a little negative weight in the planning balance.

Water Environment

5.2.55. I recognise the local concerns regarding existing flooding and the potential for the proposal to worsen the position. However, the Applicant has undertaken a thorough assessment of flood risk and other water-related potential impacts of the proposal. There is little substantive evidence to dispute the validity of its findings, and I note that they were agreed by the Environment Agency and the lead local flood authorities.

5.2.56. While the site includes areas at higher risk of flooding, they are limited in extent. The scheme has been designed to make it resilient to, and to avoid worsening, flood risk in those areas. Effective mitigation is also contained in the CEMP and Surface Water Drainage Strategy. I am content with the finding in the Applicant's Flood Risk Assessment that the Sequential and Exception Tests required by national policy have been satisfied.

5.2.57. There is nothing to suggest that the proposal would have significant adverse effects on surface or ground water quality or morphology or that it would put at risk Water Framework Directive targets for water bodies in and around the site. With the mitigation measures in the CEMP in place, I am content that the proposed HDD activity would not have significant adverse effects on the watercourses crossed using that technique. The proposed mitigation measures, including the use of sustainable drainage systems, which are secured through DCO requirements, would ensure that the effects of the proposal would be as set out in the Applicant's assessment.

5.2.58. Overall, I found that there would be no significant effects on the water environment and the proposal would accord with the relevant provisions of NPSs EN-1 and EN-3, the NPPF and the development plan. Consequently, I conclude that water environment matters weigh neither for nor against the proposal in the planning balance.

Human Health

5.2.59. Notwithstanding NYCs concerns, I consider that the data used in the Applicant's assessment would be proportionate, and that its identification of the over 65s as the only sensitive group in the population requiring particular consideration, is reasonable. I have found that the Applicant's submissions provide an adequate assessment of cumulative and in combination effects on human health. Moreover, the DCO provides sufficient safeguards to ensure that any differences between predicted and actual effects would be dealt with effectively.

5.2.60. The scheme includes adequate safeguards, secured in the DCO, to avoid loss of privacy or disturbance by artificial lighting for neighbouring residents. Nor does the available evidence show that the proposal would present an elevated risk of exposure to electric and magnetic fields. I am not persuaded that evidence submitted by IPs relating to fire risk demonstrates that the solar farm presents an undue risk or that the Applicant should fund specialist training for the local fire service.

5.2.61. During the construction phase there would be a degree of disturbance and inconvenience for local residents. Nevertheless, this would be the case in most large construction projects and there is no substantive evidence to show that it would disrupt access to local services or facilities to a degree that would be detrimental to the health of the local population. Similarly, the construction activity would likely curtail enjoyment of the countryside for PRoW users. However, the routes would remain open and the impact would be temporary. As such, I accept the Applicant's finding of a minor adverse effect in this regard.

5.2.62. There were more general, but widely expressed concerns about the scale of the proposal and its potentially 'industrialising' effect on the landscape and its impact on access to the countryside. These concerns, while genuinely held, are difficult to quantify. The Applicant has sought to assess them by reference to the findings of a range of other environmental topics, none of which led to significant adverse effects alone or in combination.

5.2.63. The size of the proposal is towards the larger end of the range of Nationally Significant Infrastructure Project solar farms currently consented or under consideration. Nevertheless, there was no firm evidence to indicate that the application site, the application proposal, or its relationship to the surrounding community, would lead to specific or undue physical or mental health effects.

5.2.64. During the construction phase, there would be increased access to employment opportunities, albeit for a relatively short period of time. This would go some way to off-setting the broader effects of the proposal on human health.

5.2.65. Overall therefore, I have found that the effects of the proposal on human health would not be significant and that it would broadly comply with the relevant provisions of NPSs EN-1 and EN-5, the NPPF and the development plan. The human health effects of the proposal should be accorded a little negative weight in the planning balance.

Other Considerations

5.2.66. I have considered the effects of the proposal on air quality, ground conditions, major accidents or disasters, telecommunications, television reception and utilities and materials and waste. I am content that the limited scope of the Applicant's assessments of these matters is appropriate in this case. To the extent that these topics are covered by relevant provisions of NPS EN-1, the NPPF and the development plan, I have found that the proposals are compliant. Each of these matters therefore weighs neutrally in the planning balance.

Cumulative and Combined Effects

5.2.67. I am satisfied that the Applicant has adequately assessed the likely significant effects of the Proposed Development cumulatively with other planned developments and that the ES includes sufficient information on how the effects of the proposal would combine and interact with the effects of other development during construction, operation and decommissioning.

5.2.68. Accordingly, I am content that the requirements of the EIA Regulations and NPS EN-1 are met and that the ES contains sufficient information to enable the SoS to understand these effects collectively and to consider them as part of the planning balance.

5.3. THE HERITAGE BALANCE

5.3.1. As related in Section 3.5 of this report and summarised above, I have not identified any substantial harm to, or loss of, any designated heritage assets. However, I found that the Proposed Development would result in less than substantial harm to the setting of the Drax Augustinian priory scheduled monument as well as minor adverse effects on the settings of a limited number of non-designated heritage assets.

5.3.2. NPS EN-1 paragraph 5.9.32 requires any harmful impact on the significance of a designated heritage asset or its setting to be weighed against the public benefit of the

development, recognising that the greater the harm to the significance of the heritage asset, the greater the justification that will be needed for any loss. Paragraph 5.9.33 requires a balanced judgement to be made of indirect effects on non-designated assets having regard to the scale of any harm or loss and the significance of the asset.

5.3.3. I have considered the significant public benefits of the Proposed Development, including its contribution to meeting the urgent need for low carbon generating infrastructure and its beneficial greenhouse gas emission (GHG) impacts as outlined in Sections 3.2, 3.4 and 5.2 of this report as well as the relatively minor scale of harms in respect of other matters identified in Chapter 3. While affording great weight to the desirability of preserving the assets, I am satisfied that there is a clear and convincing justification for the harm to both the designated and non-designated heritage assets, considered individually and collectively.

5.3.4. I have had regard to the duty under Regulation 3 of the Infrastructure Planning (Decisions) Regulations 2010 in coming to this view. I find that the effect of the proposal on the historic environment should be given a little negative weight in the overall planning balance.

5.4. OVERALL PLANNING BALANCE

5.4.1. The Proposed Development would make a significant contribution to the urgent need for low carbon electricity generation established in NPS EN-1 and which is reinforced by the legally binding target of Net Zero by 2050. Over the lifetime of the project, the Proposed Development would result in negative GHG emissions contributing to meeting the UK's carbon commitment. My concerns regarding the relatively low land use efficiency of the proposal have led me to moderate the weight given to the need for the scheme, However, taken together, I find that the need and climate change benefits of the proposal are significant and I afford them very great weight.

5.4.2. In addition, although I have found that the proposal would result in adverse effects on some species, overall, it would create some enhancements to ecology and achieve biodiversity net gains of 80.42% for area-based habitat units, 10.30% for hedgerow units, and 10.84% for watercourse units which would be managed and secured over the long term. I consider that the biodiversity effects of the proposal should attract moderate positive weight.

5.4.3. Conversely, I have identified negative effects from the Proposed Development. The proposal would lead to less than substantial harm to one designated, and a number of non-designated, heritage assets. While I afford great weight to the desirability of preserving these assets, the effects are minor and, in the case of the designated asset, would be reversible, albeit in the long term. As such, I consider that this matter should be afforded a little negative weight in the overall planning balance.

5.4.4. I have found that the Proposed Development would result in a number of significant adverse landscape character effects, particularly early in the operational phase, although the effect on the immediate landscape setting would be more enduring for the local community. There would also be significant adverse visual effects at all stages. Nevertheless, the landscape is not subject to statutory protection, measures have been taken to minimise the effects, and they would be temporary and reversible on decommissioning. Overall, I have found that, while the level of harm identified weighs against the proposal, it should be afforded only moderate negative weight in the overall planning balance.

5.4.5. The proposal would result in significant residual noise effects on two sensitive receptors, although over a short period. Moreover, I have found that all reasonable measures have been taken to reduce the noise and vibration effects at all phases of the proposal. Therefore, noise and vibration effects should carry a little negative weight in the planning balance.

5.4.6. I have found that the predicted slight adverse effects on BMVL and non-BMVL at the construction phase would narrowly outweigh the slight beneficial effects on the soil resource during the operational phase. As such, the effect of the proposal on agricultural land and soils should carry a little negative weight in the planning balance.

5.4.7. In terms of transport and traffic, the proposal would result in a significant adverse effect during the construction phase due to the increase in general and HGV traffic movements at one location. Sustainable travel options have been properly considered and measures are secured to ensure that any damage to the highway network is remediated. Consequently, I have found that transport and traffic matters should carry a little negative weight in the planning balance.

5.4.8. I have found that the proposal would lead to minor adverse effects on human health due to the degree of change experienced by the local community. During the construction phase, there would be a short-term increased access to employment opportunities which would go some way to off-setting the broader effects of the proposal on human health. Overall therefore, I have found that the human health effects of the proposal should be accorded a little negative weight in the planning balance.

5.4.9. Taking the above factors into account, and having had regard to all important and relevant matters, I find 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. I conclude that the harms identified with regard to designated and non-designated heritage assets, landscape and visual amenity, noise and vibration, agricultural land and soils, transport and traffic and human health are clearly outweighed by the very great public benefit that would arise from the provision of low carbon energy to meet the need identified in NPS EN-1 and the legally binding target of Net Zero by 2050.

5.5. CONCLUSION

5.5.1. On the basis of all of the above considerations, I conclude that there is a convincing case for development consent to be granted. Compulsory acquisition and related matters are considered in Chapter 6 of this report and matters relating to the drafting of the Development Consent Order in Chapter 7.

6. COMPULSORY ACQUISITION AND RELATED MATTERS

6.1. INTRODUCTION

6.1.1. The application includes proposals for the Compulsory Acquisition (CA) and Temporary Possession (TP) of land and rights over land. This section sets out the key information on those proposals and related issues.

6.2. THE REQUEST FOR CA AND TP POWERS

6.2.1. The application draft Development Consent Order (dDCO) [APP-018] and all subsequent versions include provision for CA of freehold interests and private rights, the acquisition of subsoil only, powers over easements and other rights and the creation of new rights over land. They also contain provisions for the TP of land in order to construct and maintain the authorised development.

6.2.2. The Order Limits and areas proposed for CA and TP are shown on the Land Plan [AS-004] and establish the extent of the land that would be affected by the CA and TP powers sought.

6.2.3. None of the land included in the CA and TP request is National Trust Land, Open Space or common land. A small section has been identified as Crown Land. This is shown on the Crown Land Plan [AS-007], but is intended to be excluded from the scope of CA powers by virtue of Article 49 of the dDCO. I return to this matter in Section 7.6 of the report.

6.2.4. As well as the Land Plan and Crown Land Plan, the Applicant's case for CA and TP powers is contained in the following documents (all Examination Library references are to final versions):

- Statement of Reasons (SoR) [APP-021];
- Funding Statement (FS) [APP-022]; and
- Book of Reference (BoR) [REP4-004].

6.2.5. The powers sought are for the acquisition of:

- all interests in land, including freehold (Article 20 in the dDCO) - shown edged red and shaded pink on the Land Plan;
- permanent acquisition of new rights (Article 22) - shown edged red and shaded blue on the Land Plan;
- extinguishment of private rights (Article 23) and overriding of easements and other rights (Article 26);
- subsoil only rights over land included in Articles 20 and 22 (Article 25);
- temporary use of land to permit construction or maintenance (Articles 29 and 30) - shown edged red and shaded green on the Land Plan; and
- new rights and the imposition of restrictive covenants over Statutory Undertakers' (SU) land and extinguishment of the rights to remove, relocate the rights of, or reposition the apparatus belonging to, SUs within the Order land (Article 31).

6.2.6. During the Examination, I was kept informed of the progress of negotiations with Affected Persons (AP) through the issue of updates to the Schedule of Negotiations and Powers Sought (SNPS) [REP6-005] and a Schedule of Changes to the Book of Reference [REP4-028]. The Applicant also issued an Objections to Compulsory Acquisition Schedule [REP6-020] and summarised its position with regard to SUs in its Closing Submission [REP6-023]. Together, these documents provide the basis for the analysis in this chapter.

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 a Grid Connection Corridor (GCC), Interconnecting Cable Corridor (ICC), Ecology Mitigation Area (EMA) and associated development.

6.3.2. The purposes for which the CA and TP powers are required are set out in the SoR [APP-021] and the BoR [REP4-004]. In essence, the Applicant justifies the need for the powers in order that the proposal can make a meaningful and timely contribution to the decarbonisation and security of supply of low carbon electricity, while helping to lower bills for consumers. Without the scheme, a significant opportunity would be lost, materially increasing the risk that the Government's carbon budgets and Net Zero 2050 target would not be achieved. The Applicant contends that, without the CA and TP powers, it may not be possible to assemble all of the land within the Order Limits (excluding Crown land), uncertainty would prevail, and its objectives and those of Government policy would not be achieved.

6.3.3. The SoR highlights that the scheme would:

- help meet the urgent need for new energy infrastructure, providing enhanced energy security and supporting Government priorities on economic development and the security of energy supply;
- deliver additional renewable energy capacity, supporting the achievement of the Government's climate change commitments and carbon budgets;
- minimise or mitigate adverse impacts to an acceptable degree; and
- comply with (then published) Overarching National Policy Statement for Energy (NPS EN-1), National Policy Statement for Renewable Energy Infrastructure (NPS EN-3) and National Policy Statement for Electricity Networks Infrastructure (NPS EN-5) and Draft NPSs EN-1, EN-3 and EN-5 which are important and relevant factors under section 105 of the Planning Act A2008 (PA2008).

6.3.4. The Applicant has signed Options to Lease with landowners which cover the majority of the land required. In other cases, heads of terms have been signed or negotiations progressed. The Applicant considers that, notwithstanding the voluntary agreements, it has demonstrated that the land and rights being sought are required for the scheme and that there is a compelling case in the public interest for the grant of CA and TP powers.

6.4. LEGISLATIVE REQUIREMENTS

Planning Act 2008

6.4.1. Section 122(1) of the PA2008 states that a DCO may include provision authorising CA only if certain conditions are met. These include that the land subject to CA is

required for the development to which the development consent relates or is required to facilitate or is incidental to it.

6.4.2. Section 122(3) requires there to be a compelling case in the public interest for the land to be acquired compulsorily. For this to be met, the Department for Communities and Local Government's (DCLG) Guidance related to procedures for the compulsory acquisition of land 2103 ("the CA Guidance") indicates that the Secretary of State for Energy Security and Net Zero (SoS) would need to be persuaded that there is compelling evidence that the public benefits derived from the CA would outweigh the private loss that would be suffered by those whose land is to be acquired.

6.4.3. 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)); or
- that the prescribed procedure has been followed in relation to the land (s123(4)).

6.4.4. In this case, the application included a request for CA of the land to be authorised. Consequently, the condition set out in s123(2) has been met.

6.4.5. Section 127 of the PA2008 applies to SU land. Subsections 127(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.

6.4.6. Subsections 127(5) and (6) 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 as detailed in the BoR [REP4-004].

6.4.7. Section 138 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. This provision is relevant to SUs with land and equipment interests within the Order Limits.

6.4.8. Section 135 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. Moreover, an order granting development consent may include any other provision applying to Crown land, or rights benefiting the Crown, only if the appropriate Crown authority consents to the inclusion of the provision.

6.4.9. Crown land is included within the Order Limits as set out in the BoR and on the Crown Land Plan [AS-007]. This is to allow the GCC to cross the River Derwent (Plot 18/109) and River Ouse (Plot 21/141). Permanent acquisition of rights is sought in the interests in the land held otherwise than by or on behalf of the Crown. Interests owned by or on behalf of the Crown are excluded from CA by wording in the BoR.

6.4.10. TP powers are also capable of being within the scope of a DCO by virtue of s120(3), s120(4) or s120(5)(c) of the PA2008. This allows for, among other things, the inclusion of any provision that appears to be necessary or expedient for giving full effect to any other provision of the order. 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 on the application proposal as a whole.

Neighbourhood Planning Act 2017

6.4.11. The Neighbourhood Planning Act 2017 includes a number of provisions relating 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(h) of the dDCO 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).

CA Guidance

6.4.12. As well as the legislative requirements set out above, the DCLG's CA Guidance sets out general considerations which 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 exercise of CA and TP powers are legitimate and sufficiently justify the inevitable interference with the human rights of those affected.

6.4.13. I have taken all relevant legislation and guidance into account in my reasoning below and in the conclusions at the end of this chapter.

6.5. EXAMINATION OF THE CA AND TP CASE

6.5.1. The Examination considered all written material in respect of CA and TP and I asked written questions of the Applicant in my written questions ExQ1 [PD-004], ExQ2 [PD-008] and ExQ3 [PD-010] The issues were also discussed at Compulsory Acquisition Hearing (CAH1) [EV5-002].

The Applicant's Need Case

6.5.2. The Applicant's case for seeking CA and TP powers is set out in sections 5 to 7 of its SoR [APP-021]. It also put its case at CAH1 [REP3-034]. The Applicant considers that the CA and TP powers sought are required to facilitate, or are incidental to, the Proposed Development and are proportionate and no more than is reasonably necessary. It refers to the need case set out in the Statement of Need (SoN) [REP5-015]. This highlights the urgent need to decarbonise, the role of solar power in meeting legally binding targets for decarbonisation and the significant generation capacity contribution which the scheme would make. The Applicant also points to the biodiversity net gain and direct and indirect employment benefits of the scheme.

6.5.3. Regarding the scope of powers sought, the Applicant points to Article 20 of the dDCO which limits the power to compulsorily acquire the freehold interest in land to situations where other powers (such as to acquire new rights or take temporary possession) would not be sufficient or appropriate to enable the construction, operation or maintenance of the scheme. In addition to seeking TP over the land shown edged red and shaded green on the Land Plans, the Applicant is seeking TP powers over all other Order land to allow it to enter on to land for particular purposes in advance of any vesting of the relevant land/rights. The Applicant considers that this would enable it to CA only the minimum amount of land and rights over land.

6.5.4. Reference is made to Appendix 1 of the SNPS [REP6-005] which shows each plot over which freehold acquisition is required, and the works for which each plot of land is required. The Applicant advises that steps have been taken to ensure that the interference with the rights of those with an interest in the affected land is no more than is necessary to deliver the benefits associated with the scheme.

6.5.5. The Applicant considers that there is a compelling case in the public interest for the power to CA land and rights over land to be included in the Order. The extent of the Order Limits is no more than is reasonably necessary and therefore any interference with private rights is proportionate and necessary. Compensation would be payable to all affected landowners and occupiers.

Alternatives to CA

6.5.6. The Applicant advises that it has considered all reasonable alternatives to CA. The 'no development' scenario and a smaller scheme were not considered to be reasonable alternatives as they would not deliver the urgently needed additional generation capacity. Support for this approach is provided by Overarching National Policy Statement for Energy (NPS EN-1) paragraph 4.3.23 which advises that consideration should be given to whether there is a realistic prospect of an alternative scheme delivering the infrastructure capacity on the same scale as the proposed development. Further details of the alternatives considered are set out in ES Chapter 3 Alternatives and Design Evolution [APP-055] and were reviewed at Section 3.2 of this report.

6.5.7. The Applicant has agreed terms to acquire a large proportion of the land required for the scheme (see SNPS [REP6-005]). Notwithstanding this, the Applicant considers that CA powers are required in the event that contracts are not adhered to or are otherwise set aside. It would be in the public interest for the scheme to proceed in these circumstances and the interests in question would be, in effect, converted into a claim for compensation. The Applicant states that it also needs powers to extinguish and/or suspend rights and override easements and other rights in the Order land to the extent that they would conflict with the scheme.

Availability and Adequacy of Funds

6.5.8. The FS [APP-022] sets out the ownership structure of the Applicant company and advises that it is funded by Pelion New Energy GmbH (PNE), a company registered in Germany. The total cost of the scheme is estimated to be some £345m, of which £35m would cover compensation payable for the exercise of CA powers. A letter at Appendix 1 of the FS is said to confirm that PNE can fund the total of the construction and CA costs for the scheme. The FS also advises that, while a final decision has not yet been taken on the type of finance that would be used, this approach is tried and tested in the market and PNE is confident that it would be able to obtain finance for the scheme if required.

6.5.9. Article 47 of the dDCO [REP8-001] prevents the exercise of the compulsory acquisition powers until the SoS has approved a form of security from the Applicant.

Outstanding Objections

6.5.10. There was an opportunity to discuss individual objections relating to CA matters at CAH1 [EV5-002]. While, in some cases, voluntary agreements had not been reached at that time, there were no in principle objections to CA or TP of specific plots. As reported in the final version of the SNPS [REP6-005], options or at least heads of terms had been reached with the majority of affected landowners by the close of the Examination.

6.5.11. The Applicant's Objections to Compulsory Acquisition Schedule [REP6-020] contains only one such objection (Robert George Axup & Matthew Richard Axup Plot (14/72) [RR-229]). However, the substance of the objection concerns the way in which the affected party was treated by the Applicant, rather than an objection to the CA of its land per se. I pursued this matter at CAH1. The Applicant's response [REP3-034] acknowledged an administrative error with regard to surveyors who entered the land without permission. However, the SNPS advises that heads of terms are agreed and are awaiting signature.

6.5.12. Connection to the Drax grid sub-station would require CA over land owned by Drax Power Limited. The company did not participate in the Examination and the SNPS [REP6-020] confirms that negotiations were ongoing. A preferred route for the cable in the land owned by Drax has been agreed and commercial terms were under discussion. Access over Drax land to reach other parcels of land is agreed and would be incorporated within the option to lease once all commercial terms are agreed.

6.5.13. At CAH1, an Interested Party (IP), Mrs Beckitt, asked why the Applicant was seeking CA of highway verges, hedges and trees, rather than seeking permission from the local authority to gain permission to lay cables in highway verges. The Applicant responded [REP3-034] that many of these sections of land are unregistered public highway. As such, the local authority does not own the land, but manages the highway at the surface level. Therefore, neighbouring properties, as assumed owners of the subsoil, were included in the CA request. The Applicant considered that this is appropriate in the context of a DCO, which is intended to be a 'one-stop' process for all necessary consents.

6.5.14. On this basis, I consider that there were no outstanding objections to the CA or TP of specific plots within the Order land.

6.5.15. Sir David Davis KCB MP [AS-025] and Mr Field [REP3-069] queried the Applicant's CA funding arrangements, specifically that the letter at Appendix 1 of the FS [APP-022] states that "*This letter of support does not require us (PNE) to fund the Project, nor does it represent or create any legal obligations and none shall be implied.*" The role of Eclipse in the project was also queried. I sought clarification of these matters at ExQ2 Q3.0.3 [PD-008].

6.5.16. The Applicant responded in [REP3-033 REP4-029 REP4-030]. Regarding funding, the Applicant advised that its shareholders are committed to the project and have spent some £6.5 million on land acquisition costs and costs associated with preparing the application. It maintained that the FS provides the details of how the project would be funded and refers to the support of its professional advisors.

6.5.17. The sentence quoted from Appendix 1 of the FS is intended to convey that there is no absolute requirement on PNE to fund the scheme. This is because a final investment decision has not yet been taken by the Applicant. It is standard practice for this decision to be taken after consent is received. The Applicant also pointed to similar wording in the FSs for the Cleve Hill, Longfield, Sunnica and Gate Burton solar farm, and the Hornsea Four Offshore Wind Farm, NSIPs.

6.5.18. In response to ExQ Q3.0.3 [PD-008] the Applicant advised that Eclipse is an Independent Distribution Network Operator which would adopt the grid connection once installed. The Applicant would control the design and the timing of the grid connection in liaison and agreement with Eclipse. The Applicant would also be responsible for the implementation of the construction and testing of the asset. The Applicant holds the Bilateral Embedded Generation Agreement and Eclipse holds the Bilateral Connections Agreement. The two documents go hand in hand and form 'The Connection Agreement' as a whole.

6.5.19. Mr Field [REP3-069] queried the Applicant's cost estimate on the basis that the figure is considerably less than that quoted for the smaller Cleve Hill solar farm NSIP. The Applicant responded [REP4-029] that its cost estimate covers all elements of the scheme and includes a contingency. A breakdown of the costs is unnecessary and there is no precedent in the Little Crow, Cleve Hill, Longfield, Gate Burton, Mallard Pass or Sunnica solar farm DCOs for providing a breakdown.

6.5.20. A considerable number of people objected in RRs and in D1 and D3 submissions that the proposal would devalue their properties. The Applicant's substantive response [REP1-066] was that the impact on house prices is not a material consideration in the NSIP planning process, that its experience is that solar farms do not devalue nearby houses, and that it would abide by the compensation code including any injurious affectation or depreciation of land value.

6.6. CONCLUSIONS

Need, Alternatives, Funding, Crown Land and Outstanding Objections

6.6.1. Notwithstanding my concern regarding the land use efficiency of the proposal (see conclusions at Section 3.2 of this report), I am satisfied that, taken together, the Land Plan [AS-004], the Works Plan [APP-008], the SoR [APP-021]; and the SNPS [REP6-005] indicate that each area of land affected by CA or TP is required to carry out one or more of the works identified in Schedule 1 of the dDCO. Further, that the Applicant has a clear idea of how the land subject to CA would be used. I am also content that all reasonable alternatives to CA have been explored.

6.6.2. While the letter at Appendix 1 of the FS could be interpreted as raising a doubt over PNE's commitment to fund the scheme, I accept the Applicant's explanation of the wording and recognise that similar wording appears in other solar farm NSIP applications. I also see no need for a breakdown of the cost of the scheme. The Applicant has been professionally advised and there is no firm evidence to show that the scheme would not be viable.

6.6.3. Moreover, Article 47 of the dDCO requires a guarantee or alternative form of security for compensation that may be payable before the CA powers can be exercised. This provides a clear mechanism whereby the necessary funding for CA can be guaranteed.

6.6.4. The Applicant has adequately explained the role of Eclipse in the project and there is nothing to suggest that its involvement would impede delivery of the scheme. The SNPS and the SoCGs confirm that there were no outstanding CA or TP objections from relevant SUs at the close of the Examination.

6.6.5. Concerns regarding the effect of the proposal on local house prices are understandable. However, this is not a planning matter and separate provisions are available to deal with any compensation payable under the compensation code.

6.6.6. Overall therefore, I am satisfied that the CA and TP powers sought over all of the land identified in the Land Plan and BoR are required for the Proposed Development, to facilitate it or are incidental to it and that the powers sought meet the condition set out in s122(2) of the PA2008.

6.6.7. While the CA and TP powers sought might result in some adverse impacts to the private interests of the owners of the land affected, in view of the established need for energy generation and the need to provide certainty in terms of project delivery, I consider there is a compelling case in the public interest for the land to be acquired compulsorily. Consequently, I am satisfied that the test in s122(3) of the PA2008 is met.

6.6.8. Having considered the SNPS, relevant Statements of Common Ground and the content of the protective provisions proposed by the Applicant, I find they are sufficient to ensure that there would be no serious detriment to the SUs affected. Moreover, the extinguishment or removal of apparatus belonging to SUs is necessary for the purpose of carrying out the Proposed Development. Accordingly, I consider that the powers sought meet the requirements of s122, s127 and s138 of the PA2008.

6.6.9. I am also content that the dDCO meets the requirements of s120(5)(a) insofar as it seeks to apply, modify or exclude a statutory provision and s126 with regard to compensation for CA.

6.6.10. I return to the question of CA of Crown land in Section 7.6 of this report.

Human Rights Act 1998 and Equalities Act 2010 Considerations

6.6.11. The Human Rights Act 1998 incorporates the European Convention on Human Rights into UK law. Schedule 1 of the Act sets out the Articles. The proposal would not require the acquisition of residential properties and, as such, I have no reason to believe that Article 8 would be engaged. Article 6 (right to a fair trial) and Article 1 of the First Protocol (protection of property) are engaged.

6.6.12. Regarding Article 6, consultation took place during the pre-application process and Affected Persons (APs) had opportunities to make representations. There were also opportunities to make representations during the course of the Examination. At the CAH, all APs who wished to be heard had an opportunity to be heard fully, fairly and in public. I also note that, should an Order be made, there are further opportunities for APs to challenge the Order in the High Court.

6.6.13. A number of APs and IPs considered that the Applicant's responses to queries before and during the Examination were inadequate or vague. I deal with this matter in Section 3.13 of this report (under the sub-heading of Other Matters). While some of the Applicant's consultation responses were vague, overall, I consider that the consultation undertaken was sufficient to meet the obligations set out in Article 6.

6.6.14. In terms of Article 1, the Applicant acknowledges in the SoR [APP-021] that the Order has the potential to infringe the rights of APs and acknowledges the need to strike a balance between the rights of the individual and the interests of the public. I note that the Applicant has sought to minimise the amount of land affected and has included in the dDCO suitable provisions for the payment of compensation.

6.6.15. Section 149 of the Equalities Act 2010 establishes a duty to have regard to the need to eliminate discrimination, advance equality of opportunity and foster good relations between persons who share a protected characteristic and persons who do not (the Public Sector Equality Duty (PSED)). I have had regard to this duty throughout the Examination and in my consideration of the issues raised in this report.

6.6.16. I have found above that there is a compelling case in the public interest for all of the land identified to be acquired compulsorily. Moreover, I consider that the proposed interference with individuals' rights would be lawful, necessary, proportionate and justified in the public interest. As such, I conclude that the CA and TP powers sought are compatible with the Human Rights Act 1998.

7. DRAFT DEVELOPMENT CONSENT ORDER AND RELATED MATTERS

7.1. INTRODUCTION

7.1.1. The application for development consent was accompanied by a draft Development Consent Order (dDCO) [APP-018] and an Explanatory Memorandum (EM) [APP-019] Both documents were updated during the Examination. The Applicant's final version of the dDCO is at [REP8-001] and the EM at [REP3-006]. For the avoidance of doubt, the D8 version of the dDCO is the same as that submitted at D6 [REP6-003]. Each version of the dDCO is in the form of a statutory instrument as required by s117(4) of the PA2008. A validation report was submitted at [REP8-040].

7.1.2. The EM explains the purpose and effect of each article and Schedule in the dDCO and why they are required. It also identifies and explains departures from the (now withdrawn) Infrastructure Planning (Model Provisions) (England and Wales) Order 2009 including precedent from other made Orders.

7.1.3. This section of the report reviews the dDCO as submitted by the Applicant, the changes made to it during the Examination, issues raised by the ExA and interested parties and my conclusions on the matters outstanding at the close of the Examination. Finally, it sets out my recommended changes to the Applicant's final dDCO. My recommended DCO (rDCO) can be found at Appendix C.

7.2. THE ORDER AS APPLIED FOR

7.2.1. The dDCO includes the provisions to enable the construction, operation, maintenance and decommissioning of the Proposed Development. Its general structure is set out below:

Articles

- Part 1 Preliminary
- Part 2 Principal Powers
- Part 3 Streets
- Part 4 Supplemental Powers
- Part 5 Powers of Acquisition
- Part 6 Miscellaneous and General

Schedules

- Schedule 1 Authorised Development
- Schedule 2 Requirements
- Schedule 3 Legislation to be Disapplied
- Schedule 4 Streets Subject to Street Works
- Schedule 5 Alteration Of Streets
- Schedule 6 Streets and Public Rights of Way Closed and Diverted
- Schedule 7 Permanent 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 Documents and Plans to be Certified
- Schedule 13 Arbitration Rules
- Schedule 14 Protective Provisions
- Schedule 15 Not Used
- Schedule 16 Procedure for Discharge of Requirements

7.3. CHANGES DURING EXAMINATION

7.3.1. Changes made to the dDCO during the Examination are listed in the Schedule of Changes to the dDCO at [REP6-019]. For the most part the broad structure of the dDCO did not change. However, Article 17 (Removal of Human Remains) was omitted and Schedule 15, Article 44 (Deemed Consent Licence) and cross-references to the Deemed Marine Licence in other Articles were omitted.

7.3.2. Other substantive changes made to the application dDCO [[APP-018] are set out in the table below. They are reflected in the Applicant's final dDCO [REP8-001]. Generally the changes were in response to submissions from Interested Parties (IPs), Examining Authority's Written Questions (ExQs) and discussions at the DCO Issue Specific Hearing (ISH1) [EV2-002 EV4-004]. Minor changes such as typographical or grammatical errors and consequential amendments to the text as a result of the substantive changes are not reported.

Table 9 Main changes to the dDCO during the Examination

Provision	Change	Reason for change
Art 2	Definition of "date of final commissioning" amended to exclude the words *"each part of"* the authorised development.	In response to ExQ1 Q5.0.2
Art 2	Definition of *"overarching written scheme of investigation"* added.	To ensure appropriate certification of documents.
Art 6(1)(g)	The words *"and do not impact on the operation or maintenance of the River Ouse as a navigable river"* added to qualify the legislation to be disapplied under Schedule 3.	In response to discussions with the Canal and River Trust.
Art 11	The words *"(9) The undertaker, during and for the purposes of carrying out the authorised development, may stop up, prohibit the use of, restrict the use of, alter or divert any public right of way within the Order Limits which is added to the definitive map and statement (within the meaning of the Wildlife and*	To ensure that the Applicant can deal with any new public right of way added to the definitive map after the date of the application

Provision	Change	Reason for change
	Countryside Act 1981) on or after 21 November 2023." added.	for development consent.
Art 17	Article on removal of human remains omitted.	For consistency with the Gate Burton Energy Park Order 2024, Mallard Pass Solar Farm Order 2024 and Sunnica Energy Farm Order 2024, as there are no known burial grounds within the Order Limits.
Art 23(1)(a)	The words *"or of the right, or of the benefit of the restrictive covenant"* omitted.	Following discussion at ISH1.
Art 25(3)(a)	The words *"as modified by Schedule 10 (modification of compensation and compulsory purchase enactments for the creation of new rights and imposition of new restrictive covenants)"* added to describe Schedule 2A of the Compulsory Purchase Act 1965.	For clarity.
Art 35(3)(b)	Removal of clause granting another person ("the lessee") any or all of the benefit of the provisions of the Order	For consistency with the Gate Burton Energy Park Order 2024 and Mallard Pass Solar Farm Order 2024.
Article 38(1)	The words "*near any part of*" replaced by *"within or overhanging"* in relation to the undertaker's power to lop or fell trees subject to a tree preservation order.	In response to ExQ1 Q5.0.11 and following discussion at ISH1
Art 39(1)	Changes to the wording of the clause to limit the undertaker's power to fell or lop any tree the subject of a tree preservation order unless that order was made after 21 November 2023.	Following discussion at ISH1.
Sch 2 R3	The words *"(3) Where under any of the requirements the approval, agreement or confirmation of the relevant planning authority or both relevant planning authorities is required, that approval, agreement or confirmation must be provided in writing. (4) Within 14 days of the date of final commissioning the undertaker must serve written notice of the date of final commissioning on the relevant planning authority."* added	Following discussion with North Yorkshire Council (NYC).

Provision	Change	Reason for change
Sch 2 R6(3)	The words *"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."* added.	In response to ExQ1 Q5.0.1 and following discussion at ISH1.
Sch 2 R10(2)	The words *"The written scheme of investigation must be substantially in accordance with the overarching written scheme of investigation and must be implemented as approved."* added.	To secure the Overarching Written Scheme of Investigation submitted at D1.
Sch 14 Part 3 para 19	The words *"(or 9 metres in the case of any drainage work under the control of the Ouse and Derwent Internal Drainage Board)"* added to the definition of specified work.	Following discussion with the Ouse and Derwent Inland Drainage Board.
Sch 14 Part 4	Various amendments to the Canal and River Trust protective provisions.	Following discussion with the Canal and River Trust.
Sch 14 Part 5	Updates to the protective provisions for the benefit of the Environment Agency (EA).	To reflect the Applicant's final position on these provisions.
Sch 14 Part 6	Various amendments to the protective provisions for the protection of railway interests.	Following discussion with Network Rail.
Sch 14 Part 7	Updates to the protective provisions for the benefit of National Grid Electricity Transmission Plc.	Following agreement with National Grid.
Sch 14 Part 8	Insertion of protective provisions for the protection of Northern Powergrid (Yorkshire) Plc.	Following agreement with Northern Powergrid
Sch 14 Part 9	Insertion of protective provisions for the protection of National Gas Transmission Plc.	To reflect the Applicant's final position on these provisions.
Sch 15	Removal of the deemed marine licence.	The Applicant is exempt from the requirement to include a deemed marine licence in the DCO. A similar approach has been taken on the Gate

Provision	Change	Reason for change
		3 Burton Energy Park Order 2024.
Sch 16 para 2(3)	Omission of this paragraph	Following discussion with NYC at ISH1 to avoid duplication.

7.3.3. I am content that these changes are justified by the evidence presented and can be recommended for inclusion in the DCO if the SoS concludes that development consent should be granted. I consider that the structure of the Applicant's final draft DCO [REP8-001 is fit for purpose.

7.3.4. I asked a series of questions in ExQ1 [PD-004] with some follow up discussion at ISH1 [EV2-002 EV2-004] and questions in ExQ2 [PD-008] and ExQ3 [PD-010]. My concerns largely sought clarification of, or further justification for, the powers sought in the dDCO. With the exception of the matters discussed in Section 7.4 below, I am content with the responses provided by the Applicant [REP1-081 REP3-034 REP4-030 REP7-004].

7.3.5. I also note that, with the exception of certain matters relating to the protective provisions for National Gas Transmission plc (NGT) and the protective provisions and Article 6 in relation to the Ouse and Humber Drainage Board, there were no outstanding concerns from statutory parties regarding the content of the DCO by the close of the Examination. I deal with those outstanding matters in Section 7.4 below.

7.3.6. For information, the agreement of the EA to the disapplication of Regulation 12 of the Environmental Permitting Regulations 2016 (dDCO Art 6) and the protective provisions in dDCO Schedule14 Part 5 is contained in its response to ExQ3 3.0.1 [REP7-005]. That submission post-dates the final Statement of Common Ground (SoCG) with the EA [REP5-018] and the Applicant's closing submissions [REP6-023].

7.4. CONSIDERATION OF OUTSTANDING DCO MATTERS

7.4.1. This section addresses matters that had not been agreed between IPs and the Applicant by the end of the Examination and other matters of concern for the ExA. As such, they did not result in changes to the Applicant's final dDCO [REP8-001.

Article 6 Application and modification of statutory provisions

Schedule 14 Protective Provisions Part 3 Drainage Authorities

7.4.2. The Applicant's closing submissions REP6-023] and response to ExQ3 Q3.0.1(b) and Q3.1.2 [REP7-004] indicate that the Ouse and Humber Drainage Board (OHDB) had provided an in-principle agreement to Article 6 (disapplication of Sections 23 and 32 of the Land Drainage Act 1991 and Byelaws made under Section 66 of the Land Drainage Act 1991) and the protective provisions in Part 3. However, it was finalising its position at the close of the Examination.

7.4.3. The OHDB's RR [RR-287] sought a change to the definition of "specified work" in the protective provisions so that it includes work within 9m, rather than 8m, of a drainage work, together with the addition of a paragraph on access to a watercourse, similar to a provision given to the EA. The dDCO was subsequently amended to amend the definition of "specified work" as requested. As indicated in the SoCG with OHDB

[REP4-026], the Applicant considered that the access point was resolved to the satisfaction of the OHDB by reference to the requirement for it to approve access plans under paragraph 20(1) of Part 3.

7.4.4. There are no subsequent submissions from the OHDB to dispute that position. Therefore, subject to any post-Examination submissions, I consider that there is no need to alter the Applicant's final dDCO with regard to OHDB's final position.

Schedule 14 Protective Provisions Part 9 National Gas Transmission

7.4.5. NGT had two outstanding substantive concerns [REP7-006 REP7-007]:

- the inclusion of the term "intrusive" in the definition of "commence" in paragraph 118. NGT considers that this term is not well defined and that any activity near its assets, whether deemed "intrusive" or otherwise, should fall within the definition of "commence" to ensure consistent protection for its infrastructure and the safety of those carrying out development projects. The protective provisions should be triggered prior to any monitoring near to its assets; and
- the timing and scope of the insurance and security provisions. NGT objects to the inclusion of the words "referred to in sub-paragraph (7)" in paragraph 127(7)(a) and (b). It considers that this wording would restrict the insurance and security requirements to only those "authorised works" which take place within 15 metres of NGT's apparatus, land owned by NGT, or land over which NGT has an easement or wayleave. A project such as a solar farm would be concentrated in a defined area and the Applicant has not provided sufficient reassurance or explanation to allay NGT's concerns. The insurance and security provisions should, therefore, apply to all authorised works.

7.4.6. The Applicant's position is set out in its closing submission [REP6-023] and response to ExQ3 Q3.1.1 [REP7-004], both of which pre-date the NGT submission. On the first point, the Applicant considered that the word "intrusive" is necessary to ensure that the protective provisions are triggered by monitoring which is intrusive and, therefore, may affect NGT assets, otherwise there would be no interaction between the projects. On the second point, the Applicant considered that the cross reference to sub-paragraph 7 is necessary to ensure that the provision of insurance and security is linked to the intention of the clause, that is, works in the vicinity of NGT assets. The Applicant also considered that the wording is substantially the same as that agreed by National Grid Electricity Transmission in Schedule 14, Part 7 of the dDCO.

7.4.7. Both parties imply that discussions were on-going at the close of the Examination and it may be that agreement is reached before the SoS makes its decision. My view is that:

- on the first point, the inclusion of the word 'intrusive" in paragraph 118 without definition (and neither party has offered a definition) is ambiguous and could lead to uncertainty and delay. On the other hand, the Applicant has not clearly explained why the triggering of the protective provisions by potentially non-intrusive works would be detrimental to its interests. Therefore, I consider that the word "intrusive" should be omitted from paragraph 118; and
- on the second point, the inclusion of the words "referred to in sub-paragraph (7)" provides a clear spatially defined trigger for the insurance and security provisions. While NGT contended that the authorised works would be concentrated in a defined area, it has not provided evidence that the 15m distance established in the Applicant's preferred wording would be inappropriate or would put its assets at

unacceptable risk. Therefore, I consider that the words "referred to in sub-paragraph (7)" should be retained in paragraph 127(7)(a) and (b).

7.4.8. NGT also suggested amendments on two factual points [REP7-007]. Paragraph 125(11) should refer to "the undertaker" rather than "National Gas". This point appears to be non-controversial and the DCO should be amended accordingly. NGT also referred to an incorrect title for a policy document cited in the same paragraph. However, the Applicant's final version of the dDCO already refers to what NGT considers to be the correct title. Therefore, no further change is necessary.

Schedule 2 Requirement 18 Decommissioning and restoration

7.4.9. Sir David Davis KCB MP [AS-025], Mr Field [REP1-111] and others were concerned about the effectiveness of Requirement (R)18 to ensure that the scheme would be decommissioned, and the land restored, at the end of the project's life. They questioned whether the Applicant would be viable and able to fund the works in 40 years time. They considered that a fund should be put in place by the Applicant to finance those works. ExQ1 Q5.1.4 [PD-004] and EQ2 Q4.1.2 [PD-008] sought further assurances from the Applicant on decommissioning and the matter was discussed at ISH1 [EV2-002].

7.4.10. The Applicant's responses [REP1-065 REP1-081 REP2-019 REP2-020] contend that it is not standard practice for DCOs to include a decommissioning fund. The proposed decommissioning DCO provisions are widely accepted by the SoS in made DCOs for solar farms. R18 provides a clear mechanism for ensuring decommissioning takes place and the enforcement mechanisms in the PA2008 are rigorous, where criminal liability is a possible consequence for a breach of a requirement. In addition, the Proceeds of Crime Act 2002 allows local authorities to seek to recover the profits accruing to businesses and individuals who breach planning control.

7.4.11. The Applicant also advised that it has entered into Option for Lease agreements for the entire solar photo-voltaic site which include terms covering the decommissioning works and bond provisions. The bond would be based on a 'Reinstatement Estimate' prepared by a chartered surveyor on or before the 10th anniversary of the lease and updated periodically. The bond would be used by the tenant or, in default the landlord, to fund the decommissioning works.

7.4.12. I note that neither East Riding of Yorkshire Council (ERYC) nor NYC expressed concern regarding the efficacy of the DCO decommissioning provisions. The provisions are broadly comparable to those of other recently made solar farm DCOs. There is no firm evidence that the circumstances of this proposal indicate a particular risk that the decommissioning work would not be implemented as envisaged. As such, I consider that there is no need for a decommissioning fund and no need to alter the terms of dDCO R18 in response to these concerns.

IPs General concerns

7.4.13. Mr Rylance [REP8-033] made a number of points regarding the drafting of the Applicant's final dDCO [REP8-001]. While no doubt reasonable in the context of standard prose English, some of the comments relate to conventions used in the wording of NSIP DCOs written as statutory instruments. Others relate to matters which are a legacy of the changes made to the dDCO during the Examination (such as the continued reference to Article 44 and Schedule 15). Although anomalous, I accept that the re-numbering that would flow from the removal of all references to these provisions has the potential to create cross-referencing errors. Other changes

suggested by Mr Rylance would make the dDCO clearer and easier to read. In these cases, the changes to Schedules 1 and 2 are included in Table 10 below.

7.4.14. Other IPs considered that the dDCO would put too much power in the hands of the developer, particularly in terms of Compulsory Acquisition (CA) (see, for example [REP1-104] and [REP1-138]). It was also suggested that further alterations to the scheme could be made after consent is granted. Others questioned how matters such as landscape buffers, noise and traffic would be controlled.

7.4.15. Although the Applicant did not respond directly to these concerns, there is no substantive evidence to suggest that the project does not require consent under the PA2008 and, in Section 3.2, I found that need has been demonstrated. One of the main purposes of the PA2008 is to allow the grant of a single consent encompassing the main approvals required for an NSIP including CA. In Chapter 6 above, I consider the case for CA in respect of the project.

7.4.16. There is no firm evidence to suggest that the dDCO would not adequately control the implementation of the scheme. Controls over specific matters are set out in, among other things, the Construction Environmental Management Plan, Operational Environmental Management Plan, Decommissioning Environmental Management Plan and Landscape and Ecological Management Plan and the Requirements in Schedule 2 of the DCO.

7.4.17. I found in Sections 3.3 to 3.13 of this report that these documents would provide adequate controls to ensure that the proposal accords with the ES assessments. It would be for ERYC and NYC to ensure that the proposal is implemented in accordance with the controls in the dDCO and authorised documents. Any subsequent alterations to the scheme would be the subject of procedures set out in the PA2008. Consequently, I find that there is no need to amend the dDCO in response to these concerns.

7.5. ExA's PROPOSED CHANGES

7.5.1. Having regard to my conclusions above, I consider that the changes set out in Table 10 below should be made to the Applicant's final dDCO [REP8-001]. These changes are incorporated into the rDCO at Appendix C.

Table 10 ExA's Recommended Changes to the DCO

Provision	Recommendation	ExA Reasoning
Sch 1 Paragraph 2	Omit the words "up to" in the first line of the second clause.	To avoid ambiguity.
Sch 2 Requirement 18	Replace the words "Within 12 months of the date that the undertaker decides" with "No later than 12 months prior to the date that the undertaker intends".	For clarity.
Sch 14 Part 9 Paragraph 118	Omit the word "intrusive" from the definition of "commence" and "commencement".	To avoid uncertainty and delay.

Provision	Recommendation	ExA Reasoning
Sch 14 Part 9 Paragraph 125(11)	In the first line replace the words “National Gas” with “the undertaker”.	To correct a drafting error.

7.6. OTHER CONSIDERATIONS

Article 7 Defence to proceedings in respect of statutory nuisance

7.6.1. The application is accompanied by a Statutory Nuisance Statement (SNS) [APP-237] as required by Regulation 5(2)(f) of the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009. The SNS sets out mitigation measures to ensure the scheme would have no significant effects that would give rise to a statutory nuisance.

7.6.2. On review of the SNS, I am satisfied that the Applicant has appropriately identified the scope of potential nuisance sources from the construction and operation of the proposal and agree with its conclusion that no statutory nuisance effects are likely to occur.

7.6.3. Article 7 of the dDCO contains a defence to proceedings in respect of statutory nuisance. Articles of this type are commonly included in DCOs and its drafting is based on other made DCOs. I am content that the necessary steps to reduce the risk of nuisance events have been taken and that Article 7 is an appropriate provision against circumstances where unforeseen but unavoidable nuisance occurs. As such, I consider that the SNS accords with the requirements of Overarching National Policy Statement for Energy paragraphs 4.15.5 to 4.15.7.

Article 49 Crown Rights

7.6.4. Section 135(1) of the PA 2008 enables a DCO to include provisions authorising the CA of an interest in Crown land only if it is held otherwise than by or on behalf of the Crown and with the consent of the appropriate Crown authority.

7.6.5. Article 49 states that nothing in the Order affects prejudicially any estate, right, power, privilege, authority or exemption of the Crown. Crown Land has been identified within the Order Limits at Plots 18/109 and 21/141 as shown in the Book of Reference (BoR) [REP4-004] and on the Crown Land Plan [APP-007]. This land comprises parts of the banks and beds of the River Derwent and River Ouse and is required to allow the Grid Connection Corridor to cross the river. In response to ExQ2 3.0.1, the Applicant amended the BoR to include the words “excluding all interests owned by or on behalf of the Crown” in each entry for Crown Land.

7.6.6. In response to ExQ3 Q3.0.3 the Applicant [REP7-004] advised that it was continuing to engage with solicitors acting for the Crown Estate and that it understood that the necessary documents were with the Crown Estate for final sign-off. Although the final signed documents were not submitted by the close of the Examination, the Applicant advised that they would be submitted directly to the SoS. The Applicant considered that there was no reason why Crown consent should not be forthcoming.

7.6.7. Nevertheless, the DCO cannot be granted in its current form, that is, with CA being authorised over Plots 18/109 and 21/141, without s135 Crown consent in place. The

Proposed Development could not proceed if Plots 18/109 and 21/141 were excluded. However, the available evidence indicates that such consent will be obtained. Consequently, I have assumed that consent will be in place before the SoS makes a decision on the Application. The SoS may also wish to be satisfied that an appropriate agreement between the Applicant and the Crown for the crossing of Plot 21/141 is in place outside of the DCO process.

7.7. CONCLUSIONS ON THE DRAFT DCO

7.7.1. I have considered all the iterations of the dDCO submitted by the Applicant and the representations of all parties during the Examination. I have noted the changes made during the Examination and agree with those changes, subject to the matters set out in Table 10 above.

7.7.2. I consider that the Requirements provide mitigation for potential adverse effects identified in the ES and sufficiently address the issues raised during the course of the Examination. They are also necessary, reasonable, enforceable and sufficiently precise as well as being relevant to planning and the Proposed Development.

7.7.3. Taking all matters in this Chapter into account, and having regard to all matters relevant to the DCO raised in the remainder of this report, if the SoS is minded to make the DCO, I recommend that it is made in the form set out in Appendix C.

8. SUMMARY OF FINDINGS AND CONCLUSIONS

8.1. INTRODUCTION

8.1.1. This section summarises my conclusions and sets out my recommendation to the Secretary of State for Energy Security and Net Zero (SoS).

8.2. CONSIDERATION OF FINDINGS AND CONCLUSIONS

8.2.1. In reaching my conclusions, I have had regard to the Local Impact Reports produced by East Riding of Yorkshire Council (ERYC) and North Yorkshire Council (NYC). As noted in Chapter 5 above, the urgent need for energy generation of all types is established through Overarching National Policy Statement for Energy (NPS EN-1) and the Net Zero by 2050 target. I consider that the Proposed Development would make a meaningful contribution to meeting this need, would help in the transition to a low carbon system and would generally be in accordance with the relevant National Policy Statements.

8.2.2. As such, in relation to s105 of the Planning Act A2008 (PA2008), I conclude:

- that making the recommended Development Consent Order (rDCO) would be in accordance with NPS EN-1, National Policy Statement for Renewable Energy Infrastructure EN-3 and National Policy Statement for Electricity Networks Infrastructure EN-5. Moreover, it would be generally in accordance with the NPPF and the local development plans as a whole and with other relevant policies, all of which have been considered in this report;
- the Proposed Development would have no significant adverse effects that would outweigh its benefits and there is nothing to indicate that the application should be decided other than in accordance with the relevant policies I have identified in this report; and
- in terms of other matters and representations received, I have found no relevant matters that would, individually or collectively, lead to a different recommendation from that below.

8.2.3. Furthermore, I am satisfied that there would be no likely significant effects on protected sites and that there is sufficient information before the SoS to enable them to conclude that an Appropriate Assessment is not required.

8.2.4. In relation to the application for Compulsory Acquisition (CA) and Temporary Possession (TP) powers, I conclude that:

- the application site has been appropriately selected and all reasonable alternatives to CA have been explored;
- the Applicant would have access to the necessary funds and 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 Book of Reference to be subject to CA or TP;
- there is a need to secure the land and rights required to construct, operate and maintain the Proposed Development within a reasonable timeframe, and the Proposed Development represents a significant public benefit;
- the private loss to those affected has been mitigated through the selection of the land, the minimisation of the extent of the rights and interests proposed to be

acquired and the inclusion, where relevant, of protective provisions in favour of those affected;

- in all cases relating to individual objections and issues, that CA and TP is justified to enable implementation of the Proposed Development;
- the powers sought satisfy the conditions set out in s122 and s123 of the PA2008 as well as the CA Guidance;
- the powers sought in relation to SUs meet the conditions set out in s127 and s138 of the PA2008 and the Department for Communities and Local Government CA Guidance;
- there is a compelling case in the public interest for the CA and TP powers sought;
- with regard to Crown Land, while Crown consent has yet to be obtained, it is reasonable to assume that consent would be forthcoming and would not impede the progress of the scheme; and
- that the case for CA and TP powers has been made out and that the proposed interference with the human rights of individuals would be for legitimate purposes that would justify such interference in the public interest and to a proportionate degree.

8.2.5. I have had regard to the Public Sector Equality Duty (PSED) throughout the Examination, including the method by which hearings and site inspections were undertaken, and in producing this report. The Proposed Development does not harm the interests of persons who share a protected characteristic or have any adverse effect on the relationships between such persons and persons who do not share a protected characteristic. On that basis, I consider there is no breach of the PSED.

8.2.6. In reaching my conclusions, I have considered the cumulative effects of the Proposed Development with other committed and planned developments, including the other proposed solar Nationally Significant Infrastructure Projects identified during the Examination.

8.2.7. I am satisfied that the mitigation hierarchy has been fully explored and the mitigation proposed has been secured by the requirements and other controls included in the rDCO. However, as my recommendation is already in favour of the Proposed Development, it is not necessary to apply the further tests set out in NPS EN-1 in relation to Critical National Priority.

8.3. RECOMMENDATION

8.3.1. For all of the above reasons, and having had regard to the Local Impact Reports produced by ERYC and NYC, as well as my findings and conclusions on important and relevant matters set out in this report, I conclude that the case for the development has been made and that, subject to the necessary Crown consent being obtained, development consent should be granted through a Development Consent Order in the form recommended in Annex C.

APPENDIX A: REFERENCE TABLES

Appendix A: Relevant Legislation and Policies

Table A1 – Summary of relevant legislation

Legislation
• **Air Quality (England) Regulations (2010)** The Air Quality Standards Regulations 2010 give statutory effect to the Air Quality Directive (AQD) and transposes it into UK law. It requires the SoS, as the competent authority, to assess ambient air quality. It sets limit values (LVs) for compliance and establishes control actions where the LVs are exceeded. • **Climate Change Act 2008 (as amended)** The Climate Change Act 2008 as amended by the Climate Change Act 2008 (2050 Target Amendment) Order 2019 establishes the legally binding framework to tackle climate change. It sets statutory climate change projections and carbon budgets. A key provision is the setting of legally binding targets greenhouse gas emission reductions in the UK of at least 100% by 2050. • **Conservation of Habitats and Species Regulations 2017 as amended by the Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019** The Habitats Regulations give effect to the Habitats Directive (92/43/EEC) and Wild Birds Directive (2009/147/EC). Following the UKs departure from the EU, these were amended by the Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019 in order to ensure they continue to operate effectively. • **Control of Pollution Act 1974** Section 60 and s61 of the Control of Pollution Act 1974 (CoPA) provide the main legislation regarding demolition and construction site noise and vibration. • **Countryside and Rights of Way Act 2000** The Act (as amended) includes provisions regarding PRoW and access to land. • **Environment Act 2021** The Environment Act 2021 provides targets, plans and policies for improving the natural environment. Schedule 15 makes provision for Biodiversity Net Gain in NSIPs. Whilst not yet in force, it contains a future target for 10% net gain. • **Environmental Protection Act 1990** Environmental Protection Act 1990 identifies a number of matters which are considered to be statutory nuisance. • **Equality Act 2010** The Equality Act 2010 establishes a duty (the Public Sector Equality Duty) to eliminate discrimination, advance equality of opportunity and foster good relations between persons who share a protected characteristic and persons who do not. • **Human Rights Act 1998** The Human Rights Act 1988 places the European Convention on Human Rights (ECHR) into UK statute. The Compulsory Acquisition of land can engage various relevant articles under the Human Rights Act 1998.

Legislation

- **Infrastructure Planning (Environmental Impact Assessment) Regulations 2017**

  The Proposed Development falls within Schedule 2 Part 3 (a) of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 (the EIA Regulations) as an industrial installation for the production of electricity.

- **Natural Environment and Rural Communities Act 2006**

  The Natural Environment and Rural Communities Act 2006 makes provisions for bodies concerned with the natural environment and rural communities. It includes a duty that public bodies must have regard to the conservation of biodiversity in exercising functions insofar as is consistent with the proper exercising of those functions.

- **Water Environment (Water Framework Directive) (England and Wales) Regulations 2017**

  The WFD Regulations give effect to the Water Framework Directive which establishes a framework for water policy and water quality. The WFD Regulations seek to prevent the deterioration of surface water bodies, groundwater bodies and their ecosystems.

- **Wildlife and Countryside Act 1981 (as amended)**

  The Wildlife and Countryside Act 1981 (as amended) is the primary legislation that protects animals, plants and certain habitats. It provides for the notification and confirmation of SSSIs. The Act provides for and protects wildlife; nature conservation, countryside protection and National Parks; and PRoW. If a species protected under the Act is likely to be affected by development, a protected species licence will be required from Natural England.

Other relevant legislation

- Acquisition of Land Act 1981
- Aire and Calder Navigation Act 1914
- Aire and Calder Navigation Act 1924
- Ancient Monuments and Archaeological Areas Act 1979
- Arbitration Act 1996 Burial Act 1857
- Boothferry Bridge Act 1925
- Carbon Budgets Order 2009 to 2021 (2021)
- Communications Act 2003
- Community Infrastructure Levy Regulations 2010
- Compulsory Purchase (Vesting Declarations) Act 1981
- Compulsory Purchase Act 1965
- Control of Major Accidents Hazard (COMAH) Regulations 2015
- East Riding Drainage Act 1798
- Electricity Act 1989
- Environment Act 1995
- Environmental Permitting (England and Wales) Regulations 2016
- Environmental Permitting Regulations 2010
- European Union (Withdrawal Agreement) Act 2020

Legislation
• Forestry Act 1967 • Groundwater (Water Framework Directive) (England) Direction 2016 • Hazardous Waste Regulations (England and Wales) 2005 (as amended) • Hedgerows Regulations 1997 • Highways Act 1980 • Infrastructure Planning (Decisions) Regulations 2010 • Keyingham (and others) Drainage [Yorkshire] Act 1845 • Land Compensation Act 1961 • Land Drainage Act 1991 • Levelling Up and Regeneration Act 2023 • Modern Slavery Act 2015 • Neighbourhood Planning Act 2017 • New Roads and Street Works Act 1991 • Ouse (Lower) Improvement Act 1884 • Planning (Listed Buildings and Conservation Areas) Act 1990 • Protection of Badgers Act 1992 • Railways Act 1993 • Road Traffic Regulation Act 1984 • Seaton Ross Inclosure Act 1811 • The Air Quality Standards (Amendment) Regulations (2016) • The Paris Agreement • The Selby Area Internal Drainage District Order 2017 • Town and Country Planning (Tree Preservation) (England) Regulations 2012 • Town and Country Planning Act 1990 • Traffic Signs Regulations and General Directions 2016 • Wapentake of Ouse and Derwent Drainage Act 1854 • Waste from Electrical and Electronic Equipment (WEEE) Regulations 2013 • Water Industry Act 1991 • Water Resources Act 1991 • Wild Mammals (Protection) Act 1996 (as amended) • York and North Midland Railway (East Riding Branches) [No.1] Act 1846 • Yorkshire Water Authority (Alteration of Boundaries of the Lower Ouse Internal Drainage District) Order 1989

Table A2 – Summary of other relevant national policies

Other relevant national policies
National Planning Policy Framework (NPPF) The NPPF sets the Government's planning policies for England in relation to decision making and plan making. The application was prepared and submitted in the context of the version of the NPPF published in September 2023. Revised versions of the NPPF were published in December 2023 and December 2024. The latter version was published following the close of the Examination. However, I am content that its changes do not materially affect the consideration of this application. This report uses the paragraph references in the December 2024 version. In each version of the NPPF, paragraph 5 makes it clear that the document does not contain specific policies for NSIPs. However, the NPPF might be relevant to the consideration of NSIP applications. The NPPF is supported by the Planning Practice Guidance.
Noise Policy Statement for England (2010) The Noise Policy Statement for England identifies underlying principles and aims in existing policy documents, legislation and guidance that relate to noise. The statement sets the Government's long-tern vision for noise policy which is to *"promote good health and a good quality of life through the effective management of noise within the context of Government policy on sustainable development"*
Written Ministerial Statement (WMS) 'Solar and protecting our Food Security and Best and Most Versatile (BMV) Land' by the SoSESNZ (May 2024) This WMS was published after the Application was submitted. The parties were given the opportunity to comment on its implications. The WMS states that the highest quality agricultural land is least appropriate for solar development and that *"as the land grade increases, there is a greater onus on developers to show that the use of higher quality land is necessary. Applicants for NSIPs should avoid the use of BMV land where possible."* The WMS aims to support the introduction of independent certification of Agricultural Land Classification Soil Surveys to ensure that they are of a high standard and requires surveyors to meet agreed minimum requirements. It requires consideration to be given to whether there are cumulative impacts where several proposals come forward in the same locality. It also advises that increasing the deployment of rooftop solar remains a priority for Government and outlines relevant benefits, measures and initiatives.
Written Ministerial Statement by the former SoS for Communities and Local Government (March 2015) This WMS included a statement on consideration for solar energy to protect the local and global environment. It identifies the Government's ambitions for solar to play an important

Other relevant national policies
part of the UK's energy mix. It also seeks to ensure that solar farms are developed in the right locations to avoid the unnecessary use of high quality agricultural land.
A Green Future: Our 25 Year Plan to Improve the Environment (2018) This plan sets out plans to improve the environment within generation. The plan's 10 goals are: 1. Clean air. 2. Clean and plentiful water. 3. Thriving plants and wildlife. 4. A reduced risk of harm from environmental hazards such as flooding and drought. 5. Using resources from nature more sustainably and efficiently. 6. Enhanced beauty, heritage and engagement with the natural environment. 7. Mitigating and adapting to climate change. 8. Minimising waste. 9. Managing exposure to chemicals. 10.Enhancing biosecurity.
Environmental Improvement Plan (2023) The Environmental Improvement Plan is the first revision of the Government's 25 Year Environment Plan. It continues to use the 10 goals from the 25 Year Environment Plan as the basis for the document with an "apex goal" of thriving plants and wildlife.
Energy White Paper: Powering our Net Zero Future (2020) This White Paper builds on the Ten Point Plan and sets out the Government's policies and commitments which seek to achieve Net Zero and tackle climate change. It states that *"A low-cost, net zero consistent system is likely to be composed predominantly of wind and solar. But ensuring the system is also reliable means intermittent renewables need to be complemented by technologies which provide power, or reduce demand, when the wind is not blowing, or the sun does not shine."*
National Infrastructure Strategy (2020) This strategy sets out plans for UK infrastructure. One of its aims is to help the UK meet its net zero emissions targets by 2050. It states that, to deliver net zero, the share of generation from renewables needs to dramatically increase with greater capacity from solar and other sources.
Net Zero Strategy: Build Back Greener (2021) This Strategy builds on commitments in the Energy White Paper (2020). Amongst its key policies is a commitment to achieve 40GW of offshore wind by 2030, with more onshore, solar, and other renewables. The Net Zero Strategy was found to be unlawful by the High Court in its judgement on the case of case of R. (on the application of Friends of the Earth Ltd) v Secretary of State for Business, Energy and Industrial Strategy [2022] EWHC 1841 (Admin). Whilst the Net Zero Strategy was not quashed, a report that addresses the

Other relevant national policies
concerns identified within the strategy was required to be prepared and submitted, with compliance required by 31 March 2023 (refer to Powering up Britain (2023) below).
British Energy Security Strategy (2022) This policy paper sets out how the UK Government is *"going to bring clean, affordable, secure power to the people for generations to come"* and *"build a British energy system that is much more self-sufficient."* In relation to solar, it states that the Government will continue to support the effective use of land by encouraging large scale projects to locate on previously developed, or lower value land, where possible, and ensure projects are designed to avoid, mitigate and, where necessary, compensate for the impacts of using greenfield sites. It also supports solar that is co-located with other functions (for example, agriculture, onshore wind generation, or storage) to maximise the efficiency of land use.
Powering Up Britain (2023) This plan sets out the Government's plans to enhance energy security, seize the economic opportunities of the energy transition, and deliver on the Government's Net Zero commitments. In relation to solar, it states: *"Solar has huge potential to help us decarbonise the power sector. We have ambitions for a fivefold increase in solar by 2035, up to 70GW, enough to power around 20 million homes. We need to maximise deployment of both ground and rooftop solar to achieve our overall target. Ground-mount solar is one of the cheapest forms of electricity generation and is readily deployable at scale. Government seeks large scale solar deployment across the UK, looking for development mainly on brownfield, industrial and low/medium grade agricultural land. The Government will therefore not be making changes to categories of agricultural land in ways that might constrain solar deployment. Government is seeking widespread deployment of rooftop solar in commercial, industrial and domestic properties across the UK. To support our solar ambitions, we are accepting the recommendation from the Independent Review of Net Zero to set up a taskforce to deliver on this ambition"*

Table A3 – Issues raised in the Local Impact Reports

East Riding of Yorkshire Council [REP2-022]
Key Issues identified • Flexibility • Principle of Development/Policy Background • Impact on Best and Most Versatile Land • Design, Landscape and Visual Impact • Highways and Transportation • PROW and Countryside Access • Flood Risk and Drainage • Living Conditions • Trees and Landscaping • Heritage Assets • Minerals Safeguarding **Conclusions** • Development plan policies support energy development in the countryside subject to site specific impacts outlined in ERLP Policy EC5. This is consistent with national polices in NPSs EN1 and EN3 and the NPPF and PPG; • The Application is supported by evidence to demonstrate compliance with national and local policy and the WMS May 2024 on the use of agricultural land. The development would not result in a significant loss of BMV. The loss that would occur would have a negative impact in terms of food security, but this would not be significant; • Subject to recommendations regarding additional LVIA information, mitigation measures and LEMP, the development could be capable of having a neutral local impact in terms of landscape and visual amenity. However further information is required and should be explored in the examination; • Subject to identified mitigation measures, the impact on local highway network would be neutral; • The HRA and ecology surveys are considered to provide an accurate assessment of the biodiversity and ecology impacts of the development and rule out any likely significant affects. Further consideration of the mitigation measures is required; • Further information is required for the Council to be able to form a view on the impact of the proposal on the PRoW network; • The sequential test and exception tests for flood risk have been passed and the scheme would have a neutral impact in terms of flood risk and drainage; • Subject to further recommendations on noise, the proposal is capable of having a neutral effect on living conditions; • Subject to mitigation measures and an assessment of the detailed design, the development could be capable of having a neutral impact on trees and landscaping; and • The level of harm to heritage assets would be less than substantial in all cases, and it would have a very negligible to low impact on their significance. This harm would need to be weighed in the wider planning balance. Subject to the agreement of the updated version of the WSI, the proposal would have a neutral impact on archaeology.

North Yorkshire Council [REP2-023]

Key Issues identified

- Principle of Development
- Noise and Vibration
- Landscape
- Ecology and Biodiversity
- Heritage
- Highways and Transportation
- Public Rights of Way
- Hydrology and Flood Risk
- Public Health
- Air Quality
- Minerals and Waste Planning
- Ground Conditions
- Adequacy of the DCO

Conclusions

- The principle of the proposed development is supported by the relevant local planning policies within the Development Plan;
- The proposal is acceptable with regard to construction and operational phase noise and vibration;
- Landscape and visual concerns include lack of clarity regarding tree and vegetation protection, mitigation and compensation, no commitment to proactively develop the detailed design within the GCC to protect and retain existing vegetation or contribute to Green Infrastructure. It is not clear that the LVIA assesses a worst-case scenario, including cumulative effects. Non-significant effects should be considered and reduced through good design. An arboriculturist should be appointed. The CEMP and LEMP should provide further detail on proposals in the GCC and clarify proposed stand-off distances. Requirements in the dDCO should be amended to provide better protection for existing trees and vegetation;
- The proposed controls and mitigation measures are sufficient in relation to habitat and species protection and biodiversity net gain for the aspects of work that fall within North Yorkshire;
- In terms of heritage effects, while trial trenching within the North Yorkshire part of the site would have been desirable, the available evidence indicates that the proposal would not lead to significant effects on heritage assets. Agreement of an archaeological written scheme of investigation should provide an appropriate level of mitigation;
- Construction phase highways impact would be low, subject to correct traffic management. Subject to appropriate controls, no concerns are raised regarding the proposed access points;
- Legal orders would be required for any temporary division or closure of PRoWs. As well as three PRoWs within the GCC, there is a claimed PRoW which should be treated in the same way as a PRoW on the Definitive Map. Assurance are sought regarding the maintenance of public access to intersecting PRoWs within the GCC and the depiction of C roads on the ES PRoW plan;

- No concerns are raised regarding hydrology and flood risk, air quality or ground conditions;
- The human health assessment does not reference external literature or research and should be used as an opportunity to collect local data. Cumulative and in combinations effects on sensitive populations have not been adequately considered and population groups other than the over 65s may consider themselves to be 'vulnerable'. There should be measures to rectify/mitigate an any impacts not predicted in the assessment. A validation report should be submitted for approval before decommissioning commences. With regard to impacts on health care facilities, the assessment should assume that all construction workers would register with local GPs; and
- The dDCO procedure for discharging requirements is acceptable. Requests for alterations to the dDCO made be made during the examination.

Table A4 – List of development plan policies

Plan	Relevant policies
East Riding Local Plan (adopted April 2016) with Update 2020-2039	• S2 Addressing climate change • S3 Focusing development • S4 Supporting development in villages and the countryside • S8 Connecting people and places • S9 Strengthening blue/green infrastructure • EC1 Supporting the growth and diversification of the East Riding economy • EC4 Enhancing sustainable transport • EC5 Supporting the renewable and low carbon energy sector • EC6 Protecting mineral resources • ENV1 Integrating high quality design • ENV2 Promoting a high quality landscape • ENV3 Valuing our heritage • ENV4 International, National and Local Sites of Importance for Biodiversity • ENV5 Enhancing biodiversity and geodiversity • ENV6 Managing environmental hazards
East Riding and Hull Joint Minerals Plan (Adopted November 2019)	• EC6 Protecting mineral resources

Plan	Relevant policies
Selby District Core Strategy Local Plan (Adopted October 2013)	• SP2 Spatial development strategy • SP13 Scale and distribution of economic growth • SP15 Sustainable development and climate change • SP17 Low carbon and renewable energy • SP18 Protecting and enhancing the environment • SP19 Design quality
Selby District Local Plan (Adopted February 2005) – saved policies	• ENV1 Control of development • ENV2 Environmental pollution and contaminated land • ENV3 Light pollution • ENV9 Sites of importance for nature conservation • ENV11 Ancient Woodland • ENV12 River and stream corridors • ENV15 Conservation and enhancement of locally important landscape areas • ENV 27 Scheduled Monuments and important archaeological sites • ENV28 Other archaeological remains • EMP10 Additional industrial development at Drax and Eggborough Power Stations • T1 Development in relation to the highway network • T2 Access to roads • T8 Public rights of way
City of York Council, North York Moors National Park Authority and North Yorkshire County Council Minerals and Waste Local Plan (Adopted April 2022)	• S01 Safeguarded surface mineral resources • S02 Developments proposed within safeguarded surface mineral resource areas • W01 Moving waste up the waste hierarchy

APPENDIX B: LIST OF ABBREVIATIONS

Appendix B: List of Abbreviations

Abbreviation or acronym	Reference
AA	Appropriate Assessment
AADT	Average annual daily traffic flow
AAWT	Average annual weekday traffic
AEoI	Adverse Effects on Integrity
AIL	abnormal indivisible load
ALC	Agricultural Land Classification
AoCR	Adequacy of Consultation Representation
AP	Affected Person
AQMA	Air Quality Management Area
Art	Article
ASI	Accompanied Site Inspection
ATC	automated traffic counts
BESS	Battery energy storage system
BMVL	Best and most versatile (agricultural) land
BNG	Biodiversity Net Gain
BoR	Book of Reference
BS	British Standard
CA	Compulsory Acquisition
CAH	Compulsory Acquisition Hearing
CCGT	combined cycle gas turbine
CCRA	Climate Change Risk Assessment
CCTV	Closed Circuit Television
CEMP	Construction Environmental Management Plan
CIEEM	Chartered Institute of Ecology and Environmental Management
COMAH	Control of Major Accident Hazard Regulations 2015
CO2	Carbon dioxide
CRTN	Calculation of Road Traffic Noise
CTMP	Construction Traffic Management Plan
DAS	Design and Access Statement
DBA	Desk-Based Assessment (cultural heritage)
DCLG	Department for Communities and Local Government
DCO	Development Consent Order
dDCO	draft Development Consent Order
DEFRA	Department for Environment, Food and Rural Affairs
DEMP	Decommissioning Environmental Management Plan
DESNZ	Department for Energy Security and Net Zero
DLUHC	Department for Levelling Up, Housing and Communities
DML	Deemed Marine Licence
DMRB	Design Manual for Roads and Bridges
EA	Environment Agency
EIA	Environmental Impact Assessment
EIA Regs	Infrastructure Planning (Environmental Impact Assessment) Regulations 2009 (as amended)
EL	Examination Library
EM	Explanatory Memorandum

EMA	Ecology mitigation area
EMF	Electric and magnetic fields
EPR	Infrastructure Planning (Examination Procedure) Rules 2010 (as amended)
ERYC	East Riding of Yorkshire Council
ES	Environmental Statement
ExA	Examining Authority
ExQ1/2/3	ExA's first/second/third rounds of written questions
FLL	functionally linked land
FRA	Flood Risk Assessment
FS	Funding Statement
FZ	Flood Zone
GCC	Grid Connection Corridor
gCO2e/kWh	grams of carbon dioxide equivalent per kilowatt hour
GHG	Greenhouse gas
GLVIA3	Guidelines for Landscape and Visual Impact Assessment (3rd edition)
GVA	Gross added value
ha	Hectare(s)
HDD	Horizontal Directional Drilling
HE	Historic England
HER	Historic Environment Record
HGV	Heavy goods vehicle
HRA	Habitats Regulations Assessment
HRAR	Habitat Regulations Assessment Report
HSE	Health and Safety Executive
IAPI	Initial Assessment of Principal Issues
IAQM	Institute of Air Quality Management
ICC	Interconnecting Cable Corridor
ICCI	In-combination climate change impacts
IDB	Inland drainage board
IEMA	Institute for Environmental Management and Assessment
ILA	Important Landscape Area
INNS	Invasive non-native species
IP	Interested Party
ISH	Issue Specific Hearing
JLAF	(East Riding of Yorkshire and Kingston upon Hull) Joint Local Access Forum
kWh/kWp/yr	kilowatt hour per kilowatt-peak per year
LB	Listed building
LCA	Local Character Area
LEMP	Landscape and Ecological Management Plan
LIR	Local Impact Report
LLFA	Lead local flood authority
LNR	Local Nature Reserve
LOAEL	Lowest observed adverse effect level
LSE	Likely Significant Effect
LVIA	Landscape and Visual Impact Assessment
LWS	Local Wildlife Site
MAH	Major Accident Hazard

MW	Megawatt
NDA	Non-designated heritage asset
NE	Natural England
NETS	National Electricity Transmission System
NGA	Noise generating activity
NGN	Northern Gas Networks
NGT	National Grid Transmission Plc
NH	National Highways
NPPF	National Planning Policy Framework
NPS	National Policy Statement
NPS EN-1	Overarching National Policy Statement for Energy (2024)
NPS EN-3	National Policy Statement for Renewable Energy Infrastructure (2024)
NPS EN-5	National Policy Statement for Electricity Networks Infrastructure (2024)
NPSE	Noise Policy Statement for England (DEFRA 2010)
NSIP	Nationally Significant Infrastructure Project
NSN	(UK) National Site Network
NYC	North Yorkshire Council
ODPS	Outline Design Principles Statement
OEMP	Operational Environmental Management Plan
OFH	Open Floor Hearing
OHDB	Ouse and Humber Drainage Board
OWSI	Overarching Written Scheme of Investigation
PA2008	Planning Act 2008 (as amended)
PFG	pink-footed goose
PM	Preliminary Meeting
PNE	Pelion New Energy GmbH
PP	Protective Provision
PPGN	Planning Practice Guidance for Noise
PRA	Preliminary Risk Assessment (ground conditions)
PRoW	Public Right of Way
PRoWMP	Public Rights of Way Management Plan
PSED	Public Sector Equality Duty
PV	Photo-voltaic
R	Requirement
rDCO	ExA's recommended Development Consent Order
RIES	Report on the Implications for European Sites
RR	Relevant Representations
RVAA	Residential Visual Amenity Assessment
s106	Section 106 agreement under the Town and Country Planning Act 1990 (as amended)
SAC	Special Area of Conservation
SMP	Soil Management Plan
SNPS	Schedule of Negotiations and Powers Sought
SNS	Statutory Nuisance Statement
SOAEL	Significant observed adverse effect level
SoCC	Statement of Community Consultation
SoCG	Statement of Common Ground
SoN	Statement of Need
SoR	Statement of Reasons

SoS	Secretary of State for Energy Security and Net Zero
SPA	Special Protection Area
SSSI	Site of Special Scientific Interest
SU	Statutory Undertaker
SUDS	Sustainable Drainage System
SF6	Sulphur hexafluoride
SWDS	Surface Water Drainage Strategy
TA	Transport Assessment
tCO2e	tonnes CO2 equivalent
TCPA 1990	Town and Country Planning Act 1990 (as amended)
TN	Technical Note
TP	Temporary Possession
TPO	Tree Preservation Order
UAEL	Unacceptable adverse effect level
USI	Unaccompanied Site Inspection
VP	Viewpoint
WFD	Water Framework Directive
WHO	World Health Organisation
WMS	Written Ministerial Statement
WR	Written Representation
YWT	Yorkshire Wildlife Trust
ZTV	Zone of Theoretical Visibility

APPENDIX C: THE RECOMMENDED DCO

STATUTORY INSTRUMENTS

202* No. ****

INFRASTRUCTURE PLANNING

The East Yorkshire Solar Farm Order 202[*]

Made - - - - ***

Coming into force - - ***

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

The application has been examined by the Examining Authority appointed by the Secretary of State pursuant to chapter 3 of Part 6 of the 2008 Act and carried out in accordance with 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 105(2)(**f**) of the 2008 Act.

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

The Secretary of State, in exercise of the powers conferred by sections 114(**g**), 115(**h**), 120(**i**), 122(**j**) 123(**k**) and 140 of the 2008 Act, makes the following Order—

PART 1

PRELIMINARY

Citation and commencement

1. This Order may be cited as the East Yorkshire Solar Farm Order and comes into force on [*] 202[*].

Interpretation

2.—(1) In this Order—

"the 1961 Act" means the Land Compensation Act 1961(**l**);

"the 1965 Act" means the Compulsory Purchase Act 1965(**m**);

"the 1980 Act" means the Highways Act 1980(**n**);

"the 1981 Act" means the Compulsory Purchase (Vesting Declarations) Act 1981(**a**);

(**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.
(**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**) Section 105(2) was amended by paragraph 50 of Schedule 13 to the Localism Act 2011 (c. 20).
(**g**) As amended by paragraph 55 of Part 1 of Schedule 13 to the Localism Act 2011 (c. 20).
(**h**) As amended by section 160 of the Housing and Planning Act 2016 (c. 22) and section 43 of the Wales Act 2017 (c. 4).
(**i**) As amended by section 140 and paragraph 60 of Part 1 of Schedule 13 to the Localism Act 2011 (c. 20).
(**j**) As amended by paragraph 62 of Part 1 of Schedule 13 to the Localism Act 2011 (c. 20).
(**k**) Ibid.
(**l**) 1961 c. 33.
(**m**) 1965 c. 56.
(**n**) 1980 c. 66.

"the 1984 Act" means the Road Traffic Regulation Act 1984(**b**);

"the 1989 Act" means the Electricity Act 1989(**c**);

"the 1990 Act" means the Town and Country Planning Act 1990(**d**);

"the 1991 Act" means the New Roads and Street Works Act 1991(**e**);

"the 2008 Act" means the Planning Act 2008(**f**);

"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;

"authorised development" means the development described in Schedule 1 (authorised development) and any other 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 12 (documents and plans to be certified) and which is certified by the Secretary of State as the book of reference for the purposes of this Order;

"building" includes any structure or erection or any part of a building, structure or erection;

"carriageway" has the same meaning as in the 1980 Act;

"commence" means beginning to carry out a material operation, as defined in section 56(4) of the 1990 Act(**g**) (which explains when development begins), comprised in or carried out or for the purposes of the authorised development other than the permitted preliminary works (except where stated to the contrary) and "commencement", "commenced" and cognate expressions are to be construed accordingly;

"Crown land plans" means the plans of that name identified in the table at Schedule 12 and which are certified by the Secretary of State as the special category land plan for the purposes of this Order;

"date of final commissioning" means the date on which the authorised development commences operation by generating electricity on a commercial basis but excluding the generation of electricity during commissioning and testing;

"electronic transmission" means a communication transmitted—

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

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

"Eclipse" means Eclipse Power Networks Limited (company number 09633506) whose registered office is at 25 Osier Way, Olney, England, MK46 5FP;

"environmental statement" means the document of that name identified in the table at Schedule 12 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 construction environmental management plan" means the document of that name identified in the table at Schedule 12 and which is certified by the Secretary of State as the framework construction environmental management plan for the purposes of this Order;

(**a**) 1981 c. 66.
(**b**) 1984 c. 27.
(**c**) 1989 c. 29.
(**d**) 1990 c. 8.
(**e**) 1991 c. 22.
(**f**) 2008 c. 29.
(**g**) As amended by paragraph 10(2) of Schedule 7 to the Planning and Compensation Act 1991 (c. 34).

"framework construction traffic management plan" means the document of that name identified in the table at Schedule 12 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 12 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 12 and which is certified by the Secretary of State as the framework landscape and ecological management plan for the purposes of this Order;

"framework operational environmental management plan" means the document of that name identified in the table at Schedule 12 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 12 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 12 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 12 and which is certified by the Secretary of State as the framework soil management plan for the purposes of this Order;

"framework surface water drainage strategy" means the document of that name identified in the table at Schedule 12 and which is certified by the Secretary of State as the framework surface water drainage strategy for the purposes of this Order;

"highway" and "highway authority" have the same meaning as in the 1980 Act(**a**);

"holding company" has the same meaning as in section 1159 of the Companies Act 2006(**b**);

"land plans" means the plans of that name identified in the table at Schedule 12 and which are certified by the Secretary of State as the land plans for the purposes of this Order;

"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 of that name identified in the table of Schedule 12 and which is certified by the Secretary of State as the outline design principles for the purposes of this Order;

"overarching written scheme of investigation" means the document of that name identified in the table at Schedule 12 and which is certified by the Secretary of State as the overarching written scheme of investigation for the purposes of this Order;

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

(**a**) "highway" is defined in section 328(1). For "highway authority" see section 1.
(**b**) 2006 c. 46.

"permitted preliminary works" means all or any of—

(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 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 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(**b**);

"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(**c**);

"streets, access and rights of way plans" means the plans of that name identified in the table at Schedule 12 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(**d**);

"traffic authority" has the same meaning as in section 121A (traffic authorities) of the 1984 Act(**e**);

"traffic regulation measures plan" means the document of that name identified in the table at Schedule 12 and which is certified by the Secretary of State as the traffic regulation measures plan for the purposes of this Order;

"undertaker" means East Yorkshire Solar Farm Limited (company number 14103404) and any other person who for the time being has the benefit of this Order in accordance with article 34 (benefit of the Order) or article 35 (consent to transfer the benefit of the Order);

"Upper Tribunal" means the Lands Chamber of the Upper Tribunal;

(**a**) 1981 c. 67.
(**b**) 2003 c. 21.
(**c**) "street authority" is defined in section 49 which was amended by paragraph 117 of Schedule 1 to the Infrastructure Act 2015 (c. 7).
(**d**) 2006 c. 46.
(**e**) 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;

"working day" means any day apart from Saturday, Sunday or any statutory bank or public holiday;

"works plans" means the plans of that name identified in the table at Schedule 12 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) 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 and streets, access and rights of way plans are to be taken to be measured along that work.

(4) References in this Order to numbered works are references to the works comprising the authorised development as numbered in Schedule 1 (authorised development) and shown on the works plans 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. [X]" or "numbered work [X]" means numbered works [X]A and [X]B inclusive and the same principle applies to such numbered works that contain letters.

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

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

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

PART 2

PRINCIPAL POWERS

Development consent etc. granted by this Order

3.—(1) Subject to the provisions of this Order and the requirements in Schedule 2 (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.

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 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 construction of any work or the carrying out of any operation required for the purposes of, or in connection with, the construction, operation or maintenance of any part of the authorised development—

(a) section 23 (prohibition 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) section 118 (consent request for discharge of trade effluent into public sewer) of the Water Industry Act 1991(**e**);

(f) regulation 12 (requirement for environmental permit) of the Environmental Permitting (England and Wales) Regulations 2016(**f**) in respect of a flood risk activity only;

(g) 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 Ouse as a navigable river; and

(h) the provisions of the Neighbourhood Planning Act 2017(**g**) insofar as they relate to the temporary possession 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) of this Order.

(2) For the purposes of section 9 (requirement of licence for felling) of the Forestry Act 1967(**h**) any felling comprised in the carrying out of any work or operation required for the purposes of, or in connection with, the construction of the authorised development is deemed to be immediately required for the purpose of carrying out development authorised by planning permission granted under the 1990 Act.

(3) 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(**i**) any building comprised in the authorised development is deemed to be—

(a) a building into which people do not normally go; or

(**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), section 84 of, and paragraph 3 of Schedule 11 to the Marine and Coastal Access Act 2009 (c. 23) and S.I. 2013/755. Paragraph 6 was amended by section 105 of, and paragraph 26 of Schedule 15 to, the Environment Act 1995, sections 224, 233 and 321 of and paragraphs 20 and 24 of Schedule 16 and Part 5(B) of Schedule 22 to the Marine and Coastal Access Act 2009 (c. 23) and S.I. 2013/755. Paragraph 6A was inserted by section 103(3) of the Environment Act 1995.

(**e**) 1991 c. 56. Section 118 was amended by sections 2(2)(b) and 5(5)(f) of the Environment Act 1995 (c. 25) and sections 66(2)(a) and (b) of the Environment (Wales) Act 2016 (anaw 3).

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

(**g**) 2017 c. 20.

(**h**) 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.

(**i**) S.I. 2010/948, amended by S.I. 2011/987. There are other amending instruments but none are relevant to this Order.

(b) a building into which people go only intermittently for the purpose of inspecting or maintaining fixed plant or machinery.

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 paragraph (g) of section 79(1) (noise emitted from premises so as to be prejudicial to health or a nuisance) of that Act no order may be made, and no fine may be imposed, under section 82(2) of that Act if—

(a) the defendant shows that the nuisance—

(i) relates to premises used by the undertaker for the purposes of or in connection with the construction, maintenance or decommissioning of the authorised development and that the nuisance is attributable to the construction, maintenance or decommissioning of the authorised development in accordance with a notice served under section 60 (control of noise on construction sites) of the Control of Pollution Act 1974(**b**), or a consent given under section 61 (prior consent for work on construction site) of that Act; or

(ii) is a consequence of the construction or maintenance of the authorised development and that it cannot reasonably be avoided; or

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

(2) Section 61(9) (consent for work on construction site to include statement that it does not of itself constitute a defence to proceedings under section 82 of the Environmental Protection Act 1990) of the Control of Pollution Act 1974, does not apply where the consent relates to the use of the premises by the undertaker for the purposes of, or in connection with, the construction or maintenance of the authorised development.

PART 3

STREETS

Street works

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

(d) maintain apparatus in the street, change its position or remove it;

(e) repair, replace or otherwise alter the surface or structure of the street or any culvert under the street; and

(f) execute any works required for or incidental to any works referred to in sub-paragraphs (a) to (e).

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

(**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).

Power to alter layout, etc., of streets

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

(a) in the case of the streets specified in 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 temporarily in the manner specified in relation to that street in column 3.

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

(a) alter the level or increase the width of any kerb, footway, cycle track or verge;

(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.

(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

10.—(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 or street authority (as relevant) and, unless otherwise agreed by the highway 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 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 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 9(3) (power to alter layout, etc., of streets) must be completed to the reasonable satisfaction of the street authority and must be maintained by the undertaker for a period of 12 months from their completion and from the expiry of that period by and at the expense of the street authority.

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

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

(a) the character of the street including the traffic which was reasonably to be expected to use it;

(b) the standard of maintenance appropriate for a street of that character and used by such traffic;

(c) the state of repair in which a reasonable person would have expected to find the street;

(d) whether the undertaker knew, or could reasonably have been expected to know, that the condition of the part of the street to which the action relates was likely to cause danger to users of the street; and

(e) where the undertaker could not reasonably have been expected to repair that part of the street before the cause of action arose, what warning notices of its condition had been displayed,

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

(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 closure of streets and public rights of way

11.—(1) The undertaker, during and for the purposes of constructing or maintaining the authorised development, may temporarily close, 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 closure, 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 close, 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 (streets to be temporarily closed) 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 (public rights of way to be temporarily closed and diverted) of Schedule 6 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 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 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 to the extent specified in column 3 of that table.

(4) The undertaker must not temporarily close, 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 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 which has been temporarily closed 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 closing, prohibiting the use of, authoring the use of, restricting the use of, altering or diverting a street or public right of way under this article more than once.

(9) The undertaker, during and for the purposes of carrying out the authorised development, may stop up, prohibit the use of, restrict the use of, alter or divert any public right of way within the Order limits which is added to the definitive map and statement (within the meaning of the Wildlife and Countryside Act 1981) on or after 21 November 2023.

Use of private roads

12.—(1) The undertaker may use any private road within the Order limits for the passage of persons or vehicles (with or without materials, plant and machinery) for the purposes of, or in connection with, the construction or maintenance of the authorised development.

(2) The undertaker must compensate the person liable for the repair of a road to which paragraph (1) applies for any loss or damage which that person may suffer by reason of the exercise of the power conferred by paragraph (1).

(3) Any dispute as to a person's entitlement to compensation under paragraph (2), or as to the amount of such compensation, is to be determined under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

Access to works

13. The undertaker may, for the purposes of the authorised development—

(a) form and lay out the permanent means of access, or improve existing means of access, in the locations specified in Schedule 7 (permanent means of access to works); and

(b) 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

14.—(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 closure, 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 10(1) (construction and maintenance of altered streets); or

(d) the adoption by a street authority which is the highway authority of works—

(i) undertaken on a street which is existing public maintainable highway; or

(ii) which the undertaker and highway authority agree to be adopted as public maintainable highway.

(2) If such 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

15.—(1) Subject to the provisions of this article the undertaker may at any time, in the interests of safety and for the purposes of, or in connection with, the construction of 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 construction 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) given not less than 4 weeks' notice in writing of its intention so to do to the chief officer of police and to the traffic authority in whose area the road is situated; and

(b) not less than 7 days before the provision is to take effect published the undertaker's intention to make the provision in one or more newspaper circulating in the area in which any road to which the provision relates is situated.

(6) Any provision made under the powers conferred by paragraphs (1) or (2) of this article may be suspended, varied or revoked by the undertaker from time to time by subsequent exercise of the powers conferred by paragraph (1) or (2).

(7) Any provision made by the undertaker under paragraphs (1) or (2)—

(a) must be made by written instrument in such form as the undertaker considers appropriate;

(**a**) S.I. 2016/362.
(**b**) S.I. 2011/935.

(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).

PART 4

SUPPLEMENTAL POWERS

Discharge of water

16.—(1) Subject to paragraphs (3), (4) and (8) the undertaker may use any watercourse or any public sewer or drain for the drainage of water in connection with the construction or maintenance of the authorised development and for that purpose may lay down, take up and alter pipes and may, on any land within the Order limits, make openings into, and connections with, the watercourse, public sewer or drain.

(2) Any dispute arising from the making of connections to or the use of a public sewer or drain by the undertaker under paragraph (1) is to be determined as if it were a dispute under section 106 (right to communicate with public sewers) of the Water Industry Act 1991(**b**).

(3) The undertaker must not discharge any water into any watercourse, public sewer or drain except with the consent of the person to whom it belongs 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 public sewer or drain except—

(a) in accordance with plans approved by the person to whom the sewer or 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, public sewer or drain belonging to or under the control of a drainage authority (as defined in Part 3 of Schedule 14 (protective provisions)), the provisions of Part 3 of Schedule 14 apply in substitution for the provisions of paragraphs (3) and (4).

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

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

(8) In this article—

(a) "public sewer or drain" means a sewer or drain which belongs to 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(**d**) have the same meaning as in that Act.

Not used

17. Not used.

(**a**) 2004 c. 18.
(**b**) 1991 c. 56.
(**c**) S.I. 2016/1154.
(**d**) 1991 c. 57.

Protective works to buildings

18.—(1) Subject to the following provisions of this article, the undertaker may at its own expense carry out such protective works to any building 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.

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

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

(a) enter the building and any land within its curtilage; and

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

(5) Before exercising—

(a) a right under paragraph (1) to carry out protective works to a building;

(b) a right under paragraph (3) to enter a building and land within its curtilage;

(c) a right under paragraph (4)(a) to enter a building and land within its curtilage; or

(d) a right under paragraph (4)(b) to enter land,

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

(6) Where a notice is served under paragraph (5)(a), (5)(c) or (5)(d), the owner or occupier of the building or land concerned may, by serving a counter-notice within the period of 10 days beginning with the day on which the notice was served, require the question whether it is necessary or expedient to carry out the protective works or to enter the building or land to be referred to arbitration under article 42 (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 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 or use of the authorised development; and

(b) any works the purpose of which is to remedy any damage which has been caused to the building by the construction, maintenance or use of the authorised development.

Authority to survey and investigate the land

19.—(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

20.—(1) The undertaker may—

(a) acquire compulsorily so much of the Order land as is required for the authorised development or to facilitate, or as is incidental, to it; and

(b) use any land so acquired for the purpose authorised by this Order or for any other purposes in connection with or ancillary to the undertaking.

(2) This article is subject to article 22(2) (compulsory acquisition of rights) and article 29 (temporary use of land for constructing the authorised development).

Time limit for exercise of authority to acquire land compulsorily

21.—(1) After the end of the period of five years beginning on the day on which this Order is made—

(a) no notice to treat is to be served under Part 1 (compulsory purchase under Acquisition of Land Act 1946) of the 1965 Act; and

(b) no declaration is to be executed under section 4 (execution of declaration) of the 1981 Act as applied by article 24 (application of the 1981 Act).

(2) The authority conferred by article 29 (temporary use of land for constructing the authorised development) ceases at the end of the period referred to in paragraph (1), except that nothing in this paragraph prevents the undertaker remaining in possession of land after the end of that period, if the land was entered and possession was taken before the end of that period.

Compulsory acquisition of rights

22.—(1) Subject to paragraph (2) and article 29 (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 20 (compulsory acquisition of land), by creating them as well as by acquiring rights already in existence.

(2) Subject to the provisions of this paragraph, article 23 (private rights) and article 31 (statutory undertakers), in the case of the Order land specified in column 1 of Schedule 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 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 a restriction under paragraph (1) or (2) is required for the purpose of diverting, replacing or protecting apparatus of a statutory undertaker, the undertaker may, with the consent of the Secretary of State, transfer the power to acquire such rights to the statutory undertaker in question.

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

(7) This article is subject to article 49 (Crown rights).

Private rights

23.—(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 by the undertaker, whether compulsorily or by agreement; or

(b) on the date of entry on the land by the undertaker under section 11(1) (power of entry) of the 1965 Act,

whichever is the earliest.

(2) Subject to the provisions of this article, all private rights or restrictive covenants over land subject to the compulsory acquisition of rights or the imposition of restrictive covenants under article 22 (compulsory acquisition of rights) cease to have effect in so far as their continuance would be inconsistent with the exercise of the right or compliance with the restrictive covenant—

(a) as from the date of the acquisition of the right or 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 31 (statutory undertakers) applies.

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

(a) any notice given by the undertaker before—

(i) the completion of the acquisition of the land or the acquisition of rights or the imposition of restrictive covenants over or affecting the land;

(ii) the undertaker's appropriation of the land;

(iii) the undertaker's entry onto the land; or

(iv) the undertaker's taking temporary possession of the land,

that any or all of those paragraphs do not apply to any right specified in the notice; or

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

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

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

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

the agreement is effective in respect of the persons so deriving title, whether 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

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

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

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

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

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

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

(6) In section 5B(1) (extension of time limit during challenge) for "section 23 of the Acquisition of Land Act 1981 (application to High Court in respect of compulsory purchase order), the three year period mentioned in 5A" substitute "section 118 (legal challenges relating to applications for orders granting development consent) of the 2008 Act, the five year period mentioned in article 21 (time limit for exercise of authority to acquire land compulsorily) of the East Yorkshire Solar Farm Order 202[*].".

(7) 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".

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

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

> "(2) But see article 25(3) (acquisition of subsoil only) of the East Yorkshire Solar Farm Order 202[*], which excludes the acquisition of subsoil only from this Schedule.".

(10) References to the 1965 Act in the 1981 Act must be construed as references to the 1965 Act as applied by section 125 (application of compulsory acquisition provisions) of the 2008 Act (and as modified by article 27 (modification of Part 1 of the Compulsory Purchase Act 1965)) to the compulsory acquisition of land under this Order.

Acquisition of subsoil only

25.—(1) The undertaker may acquire compulsorily so much of, or such rights in, the subsoil of the land referred to in paragraph (1) of article 20 (compulsory acquisition of land) or article 22 (compulsory acquisition of rights) as may be required for any purpose for which that land may be acquired under that provision instead of acquiring the whole of the land.

(2) Where the undertaker acquires any part of, or rights in, the subsoil of land, 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

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(**a**) Section 5A to the 1981 Act was inserted by section 182(2) of the Housing and Planning Act 2016 (c. 22). The existing section 5A was renumbered as section 5A(1), words are substituted and section 5A(2) inserted by section 185(3)(a) of the Levelling-up and Regeneration Act 2023 (c.55).

(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

26.—(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) the erection, construction or maintenance of any part of the authorised development;

(b) the exercise of any power authorised by the Order; or

(c) the use of any land within the Order 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 by whom the land in question was acquired—

(a) is liable to pay compensation by virtue of paragraph (4); and

(b) fails to discharge that liability,

the liability is enforceable against the undertaker.

(6) Nothing in this article is to be construed as authorising any act or omission on the part of any person which is actionable at the suit of any person on any grounds other than such an interference or breach as is mentioned in paragraph (1).

Modification of Part 1 of the Compulsory Purchase Act 1965

27.—(1) Part 1 of the 1965 Act (compulsory acquisition under Acquisition of Land Act 1946), as applied to this Order by section 125 (application of compulsory acquisition provisions) of the 2008 Act, is modified as follows.

(2) In section 4A(1) (extension of time limit during challenge) for "section 23 of the Acquisition of Land Act 1981 (application to the High Court in respect of compulsory purchase order), the three year period mentioned in section 4" substitute "section 118 (legal challenges relating to applications for orders granting development consent) of the 2008 Act, the five year period mentioned in article 21 (time limit for exercise of authority to acquire land compulsorily) of the East Yorkshire Solar Farm Order 202[*]".

(3) In section 11A (powers of entry: further notice of entry)—

(a) in subsection (1)(a), after "land" insert "under that provision"; and

(b) in subsection (2), after "land" insert "under that provision".

(4) In section 22(2) (expiry of time limit for exercise of compulsory purchase power not to affect acquisition of interests omitted from purchase), for "section 4 of this Act" substitute "article 21 (time limit for exercise of authority to acquire land compulsorily) of the East Yorkshire Solar Farm Order 202[*]".

(5) In Schedule 2A (counter-notice requiring purchase of land not in notice to treat)—

(a) for paragraphs 1(2) and 14(2) substitute—

"(2) But see article 25(3) (acquisition of subsoil only) of the East Yorkshire Solar Farm Order 202[*], which excludes the acquisition of subsoil only from this Schedule"; and

(b) after paragraph 29 insert—

"PART 4

INTERPRETATION

30. In this Schedule, references to entering on and taking possession of land do not include doing so under article 18 (protective works to buildings), article 29 (temporary use of land for constructing the authorised development) or article 30 (temporary use of land for maintaining the authorised development) of the East Yorkshire Solar Farm Order 202[*].".

Rights under or over streets

28.—(1) The undertaker may enter on, appropriate and use so much of the subsoil of or airspace over any street within the Order limits as may be required for the purposes of the authorised development and may use the subsoil or airspace for those purposes or any other purpose ancillary to the authorised development.

(2) Subject to paragraph (3), the undertaker may exercise any power conferred by paragraph (1) in relation to a street without being required to acquire any part of the street or any easement or right in the street.

(3) Paragraph (2) does not apply in relation to—

(a) any subway or underground building; or

(b) any cellar, vault, arch or other construction in, on or under a street which forms part of a building fronting onto the street.

(4) Subject to paragraph (5), any person who is an owner or occupier of land appropriated under paragraph (1) without the undertaker acquiring any part of that person's interest in the land, and who suffers loss as a result, is entitled to compensation to be determined, in case of dispute, under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

(5) Compensation is not payable under paragraph (4) to any person who is an undertaker to whom section 85 (sharing cost of necessary measures) of the 1991 Act applies in respect of measures of which the allowable costs are to be borne in accordance with that section.

Temporary use of land for constructing the authorised development

29.—(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 (powers of entry) of the 1965 Act and no declaration has been made under section 4 (execution of declaration) of the 1981 Act;

(b) remove any buildings, agricultural plant and apparatus, drainage, fences, debris and vegetation from that land;

(c) construct temporary works (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 (permanent means of 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 works identified in the environmental statement or required pursuant to the requirements in Schedule 2.

(6) The undertaker must pay compensation to the owners and occupiers of land 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 25 (acquisition of subsoil only) or any part of the subsoil of or airspace over that land under article 28 (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

30.—(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 in relation to landscaping where "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 6 beginning with the date on which that part of the landscaping is completed.

Statutory undertakers

31. Subject to the provisions of Schedule 14 (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

32. Where a street is altered or diverted or its use is temporarily prohibited or restricted under article 8 (street works), article 9 (power to alter layout, etc., of streets), article 10 (construction and maintenance of altered streets) or article 11 (temporary closure of streets and public rights of way) any statutory undertaker whose apparatus is under, in, on, along or across the street has the same powers and rights in respect of that apparatus, subject to Schedule 14 (protective provisions), as if this Order had not been made.

Recovery of costs of new connections

33.—(1) Where any apparatus of a public utility undertaker or of a public communications provider is removed under article 31 (statutory undertakers) any person who is the owner or occupier of premises to which a supply was given from that apparatus is entitled to recover from the undertaker compensation in respect of expenditure reasonably incurred by that person, in consequence of the removal, for the purpose of effecting a connection between the premises and any other apparatus from which a supply is given.

(2) Paragraph (1) does not apply in the case of the removal of a public sewer but where such a sewer is removed under article 31, 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

(**a**) 2003 c. 21.

"public utility undertaker" has the same meaning as in the 1980 Act.

PART 6

MISCELLANEOUS AND GENERAL

Benefit of the Order

34.—(1) Subject to article 35 (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. 3(b) in respect of which the provisions of this Order are for the benefit of the undertaker and National Grid.

(3) Paragraph (1) does not apply to Work Nos. 2 and 3 in respect of which the provisions of this Order are for the benefit of the undertaker and Eclipse.

Consent to transfer the benefit of the Order

35.—(1) Subject to paragraph (3), the undertaker may—

(a) transfer to another person ("the transferee") any or all of the benefit of the provisions of this Order and such related statutory rights as may be agreed between the undertaker and the transferee; and

(b) grant to another person ("the lessee") for a period agreed between the undertaker and the lessee any or all of the benefit of the provisions of this Order and such related statutory rights as may be so agreed.

(2) Where a transfer or grant has been made references in this Order to the undertaker, except in paragraph (4), 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; or

(b) 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 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

36.—(1) This article applies to—

(a) any agreement for leasing to any person the whole or any part of the authorised development or the right to operate the same; and

(b) any agreement entered into by the undertaker with any person for the construction, maintenance, use or operation of the authorised development, or any part of it,

so far as any such agreement relates to the terms on which any land which is the subject of a lease granted by or under that agreement is to be provided for that person's use.

(2) No enactment or rule of law regulating the rights and obligations of landlords and tenants prejudices the operation of any agreement to which this article applies.

(3) Accordingly, no such enactment or rule of law applies in relation to the rights and obligations of the parties to any lease granted by or under any such agreement, so as to—

(a) exclude or in any respect modify any of the rights and obligations of those parties under the terms of the lease, whether with respect to the termination of the tenancy or any other matter;

(b) confer or impose on any such party any right or obligation arising out of or connected with anything done or omitted on or in relation to land which is the subject of the lease, in addition to any such right or obligation provided for by the terms of the lease; or

(c) restrict the enforcement (whether by action for damages or otherwise) by any party to the lease of any obligation of any other party under the lease.

Operational land for the purposes of the 1990 Act

37. 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

38.—(1) Subject to paragraph (2) and article 39 (trees subject to tree preservation orders) the undertaker may fell or lop any tree or shrub within or overhanging the authorised development or cut back its roots, if it reasonably believes it to be necessary to do so to prevent the tree or shrub from—

(a) obstructing or interfering with the construction, maintenance or operation of the authorised development or any apparatus used in connection with the authorised development;

(b) constituting a danger to persons using the authorised development; or

(c) obstructing or interfering with the passage of construction vehicles to the extent necessary for the purposes of construction of the authorised development.

(2) In carrying out any activity authorised by paragraph (1) the undertaker must do no unnecessary damage to any tree or shrub and must pay compensation to any person for any loss or damage arising from such activity.

(3) Any dispute as to a person's entitlement to compensation under paragraph (2), or as to the amount of compensation, is to be determined under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

(4) The undertaker may, for the purposes of the authorised development, or in connection with the authorised development, subject to paragraph (2), undertake works to or remove any hedgerows within the Order limits that may be required.

(5) The undertaker may not pursuant to paragraphs (1) and (4) fell or lop a tree or remove hedgerows within the extent of the publicly maintainable highway without the prior consent of the highway authority.

(6) In this article "hedgerow" has the same meaning as in the Hedgerows Regulations 1997(**a**).

Trees subject to tree preservation orders

39.—(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 which is within or overhanging land Order limits that is subject to a tree preservation order which was made after 21 November 2023, 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 (2)—

(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 (2) 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, must be determined under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

Certification of plans and documents, etc.

40.—(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 12 (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

41. 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

42.—(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 13 (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

43. Schedule 14 (protective provisions) has effect.

(**a**) S.I. 1997/1160.

Not used

44. Not used.

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(**a**) as it applies for the purposes of this article, the proper address of any person in relation to the service on that person of a notice or document under paragraph (1) is, if that person has given an address for service, that address and otherwise—

(a) in the case of the secretary or clerk of a body corporate, the registered or principal office of that body; and

(b) in any other case, the last known address of that person at 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**) 1978 c. 30.

(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 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 does not apply in respect of any consents, agreements or approvals contemplated by the provisions of Schedule 14 (protective provisions) or any dispute under article 18(6) (protective work 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 14.

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 exercise 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 exercise of the relevant provision in relation to that part of the Order land.

(2) The provisions are—

(a) article 20 (compulsory acquisition of land);

(b) article 22 (compulsory acquisition of rights);

(c) article 23 (private rights);

(d) article 28 (rights under or over streets);

(e) article 29 (temporary use of land for constructing the authorised development);

(f) article 30 (temporary use of land for maintaining the authorised development); and

(g) article 31 (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 any licensee to take, use, enter upon or in any manner interfere with any land or rights of any description—

(a) belonging to His Majesty in right of the Crown and forming part of The Crown Estate without the consent in writing of the Crown Estate Commissioners;

(b) belonging to His Majesty in right of the Crown and not forming part of The Crown Estate without the consent in writing of the government department having the management of that land; or

(c) belonging to a government department or held in trust for His Majesty for the purposes of a government department without the consent in writing of that government department.

(2) Paragraph (1) does not apply to the exercise of any right under this Order for the compulsory acquisition of an interest in 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 Energy Security and Net Zero

Signature

Address

Title

Date

Department for Energy Security and Net Zero

(**a**) 1981 c. 67.

SCHEDULES

SCHEDULE 1

Article 3

AUTHORISED DEVELOPMENT

Interpretation

1. In this Schedule—

"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 bays, 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;

"field stations" means inverters, transformers and switchgear comprising either—

(a) a "Field Station Unit" where transformers, inverters and switchgear will be housed in a single container located on a concrete beam or block foundation; or screw piles, rammed piles or compacted hardcore foundation. There will be a perimeter of stone or gravel around the container; or

(b) a "Field Substation" where transformers and switchgear will be housed in a single container and inverters provided in either a separate single container or inverters provided separately and mounted on a ground mounted frame which is parallel to the mounting structure. Each container will be located on a concrete beam or block foundation; or screw piles, rammed piles or compacted hardcore foundation. There will be a perimeter of stone or gravel around each container; or

(c) an "Inverter Arrangement" where transformers, switchgear and inverters will be provided separately, which may be in one or more containers. Inverters may also be provided separately and mounted on a ground mounted frame which is parallel to the mounting structure. Any container will be located on a concrete beam or block foundation; or screw piles, rammed piles or compacted hardcore foundation. There will be a perimeter of stone or gravel around any container; and inverters provided separately and mounted on a ground mounted frame which is parallel to the mounting structure;

"inverter" means electrical equipment required to convert direct current to alternating current;

"mounting structure" means a frame or rack made of galvanised steel or other material designed to support the solar panels and mounted on piles driven into the ground, piles rammed into bare ground, a pillar attaching to a steel ground screw, pillars fixed to a concrete foundation, or pillars set in concrete in a pre-made hole in the ground;

"National Grid Drax Substation" means the existing 400kV substation at Drax 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 framework landscape and ecological management plan;

"solar panel" means a solar photovoltaic panel or module designed to convert solar irradiance to electrical energy;

"substation" means a compound containing electrical equipment required to switch, transform, convert electricity;

"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.

2. In the Unitary authority areas of East Riding of Yorkshire and North Yorkshire a nationally significant infrastructure project as defined in sections 14 and 15 of the 2008 Act and associated development under section 115(1)(b) of the 2008 Act.

The nationally significant infrastructure project comprises one generating station with a gross electrical output capacity of over 50 megawatts comprising all or any of the work numbers in this Schedule or any part of any work number in this Schedule—

Work No. 1— 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) field stations;

and associated development within the meaning of section 115(2) of the 2008 Act including—

Work No. 2— development of onsite substations and associated works including—

(a) substations, switch room buildings and ancillary equipment including reactive power units and harmonic filters; and

(b) monitoring and control systems housed within a control building or located separately in their own containers or control rooms, with welfare facilities.

Work No. 3— works to lay electrical cables and compounds for the electrical cables including—

(a) works to lay 132kV electrical cables connecting Work No. 2 to the National Grid Drax Substation, including link boxes and tunnelling, boring and drilling works for trenchless crossings;

(b) electrical engineering works within or around the National Grid Drax Substation including the laying and terminating of the electrical cables and ancillary equipment; and

(c) construction and decommissioning compounds, including site and welfare offices and areas to store materials and equipment.

Work No. 4— works including—

(a) electrical cables, including but not limited to electrical cables connecting Works No. 1, 2 and 3 to one another and connecting solar panels to one another and the field stations including tunnelling, boring and drilling works for trenchless crossings;

(b) landscaping and biodiversity mitigation and enhancement measures including planting;

(c) earthworks;

(d) laying down of temporary footpath diversions, permissive paths, signage and information boards;

(e) hardstanding and parking areas;

(f) sustainable drainage systems including ponds, runoff outfalls, general drainage and irrigation infrastructure, systems and improvements or extensions to existing drainage and irrigation systems;

(g) fencing, gates, boundary treatment and other means of enclosure;

(h) 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;

(i) improvement, maintenance and use of existing private tracks;

(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) construction and decommissioning compounds, including site and welfare offices and areas to store materials and equipment; and

(l) works to divert and underground existing electrical overhead lines.

Work No. 5— construction and decommissioning compounds including—

(a) areas of hardstanding;

(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 and equipment and waste skips;

(f) site drainage and waste management infrastructure (including sewerage); and

(g) electricity, water, waste water and telecommunications connections.

Work No. 6— works to develop operations and maintenance buildings including—

(a) demolition and alteration of existing structures;

(b) offices, security and welfare facilities;

(c) storage facilities; and

(d) parking areas.

Work No. 7— works to facilitate access to Work Nos. 1 to 8 including—

(a) creation of accesses from the public highway;

(b) creation of visibility splays;

(c) works to widen and surface the public highway and private means of access; and

(d) works adjacent to highways and accesses including those to structures, boundary features, drainage features on private land required for the facilitation of movement of abnormal indivisible loads associated with the authorised development.

Work No. 8— areas of habitat management including—

(a) landscape and biodiversity enhancement measures;

(b) habitat creation and management including earthworks and landscaping, signage and information boards;

(c) construction of drainage infrastructure and means of access;

(d) laying down of internal access tracks, means of access and crossing of watercourses, permissive paths; and

(e) fencing gates boundary treatment and other means of enclosure.

In connection with and in addition to Work Nos. 1 to 8 further associated development within the Order limits, including—

(a) works for the provision of fencing and security measures such as CCTV, columns, lighting and communication boxes;

(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) tunnelling, boring and drilling works;

(n) working sites in connection with the construction and decommissioning of the authorised development and its restoration; and

(o) 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 2

REQUIREMENTS

Interpretation

1. In this Schedule—

"both relevant planning authorities" means East Riding of Yorkshire Council and North Yorkshire Council each being the relevant planning authority for part of the authorised development.

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) With respect to the documents certified under article 40 (certification of plans and documents, etc.) and any plans, details or schemes which have been approved pursuant to any requirement (together the "Approved Documents, Plans, Details or Schemes"), the undertaker may submit to the relevant planning authority or both relevant planning authorities (as applicable) for approval of any amendments to any of the Approved Documents, Plans, Details or Schemes and,

following approval by the relevant planning authority or both relevant planning authorities (as applicable), the relevant Approved Documents, Plans, Details or Schemes is to be taken to include the amendments as so approved pursuant to this paragraph.

(2) Approval under sub-paragraph (1) for the amendments to any of the Approved Documents, Plans, Details or Schemes must not be given except where it has been demonstrated to the satisfaction of the relevant planning authority or both relevant planning authorities (as applicable) that the subject matter of the approval sought is unlikely to give rise to any materially new or materially different environmental effects from those assessed in the environmental statement.

(3) Where under any of the requirements the approval, agreement or confirmation of the relevant planning authority or both relevant planning authorities is required, that approval, agreement or confirmation must be provided in writing.

(4) Within 14 days of the date of final commissioning the undertaker must serve written notice of the date of final commissioning on the relevant planning authority.

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 the authorised development may commence until details of—

(a) 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 and approved in writing by the relevant planning authority for that part or, where the part falls within the administrative areas of both East Riding of Yorkshire Council and North Yorkshire Council, both relevant planning authorities.

(2) The details submitted must accord with the outline design principles statement.

(3) The authorised development must be carried out in accordance with the approved details.

Landscape and Ecological management plan

6.—(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 both East Riding of Yorkshire Council and North Yorkshire Council, both relevant planning authorities.

(2) The landscape and ecological management plan must be substantially in accordance with the framework landscape and ecological management plan and must be implemented as approved.

(3) 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

7.—(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 for that part, in consultation with the relevant statutory nature conservation body.

(2) The biodiversity net gain strategy must be substantially in accordance with the framework landscape and ecological management plan and must be implemented as approved.

(3) The biodiversity net gain strategy must be maintained throughout the operation of the relevant part of the authorised development to which the plan relates.

Fencing and other means of enclosure

8.—(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 East Riding of Yorkshire Council and North Yorkshire Council, both 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 East Riding of Yorkshire Council and North Yorkshire Council, both relevant planning authorities.

(3) For the purposes of requirement 8(1), "commence" includes any permitted preliminary works.

(4) Any construction site must remain securely fenced in accordance with the approved details under requirement 11(1) at all times during construction of the authorised development.

(5) Any temporary fencing must be removed on completion of the part of construction of the authorised development for which it was used.

Surface and foul water drainage

9.—(1) No part of the authorised development may commence until details of the surface water drainage strategy and (if any) foul water drainage system (including means of pollution control) for that part have been submitted to and approved by the relevant planning authority or, where the part falls within the administrative areas of both East Riding of Yorkshire Council and North Yorkshire Council.

(2) The drainage strategy must be substantially in accordance with the framework surface water drainage strategy.

(3) Any strategy approved pursuant to sub-paragraph (1) must be implemented as approved and maintained throughout the construction and operation of the authorised development.

Archaeology

10.—(1) No part of the authorised development may commence, and no part of the permitted preliminary works for that part comprising the intrusive archaeological surveys may start, until a written scheme of investigation for that part has 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 East Riding of Yorkshire Council and North Yorkshire Council, both relevant planning authorities.

(2) The written scheme of investigation must be substantially in accordance with the overarching written scheme of investigation and must be implemented as approved.

Construction environmental management plan

11.—(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 for that part or, where the part falls within the administrative areas of both East Riding of Yorkshire Council and North Yorkshire Council, both relevant planning authorities. Such approval to be in consultation with Natural England.

(2) The construction environmental management plan must be substantially in accordance with the framework construction environmental management plan and must be implemented as approved.

(3) The plan submitted and approved pursuant to sub-paragraph (1) must include a site waste management plan that must be substantially in accordance with the framework site waste management plan and must be implemented as approved.

Operational environmental management plan

12.—(1) Prior to the date of final commissioning for any part, an operational environmental management plan for that part must be submitted to and approved by the relevant planning authority for that part or, where the part falls within the administrative areas of both East Riding of Yorkshire Council and North Yorkshire Council, both relevant planning authorities.

(2) The operational environmental management plan must be substantially in accordance with the framework operational environmental management plan and must be implemented as approved.

Construction traffic management plan

13.—(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 authority for that part or, where the part falls within the administrative areas of both East Riding of Yorkshire Council and North Yorkshire Council, both relevant authorities. Such approval to be in consultation with Network Rail Infrastructure Limited, the relevant highway authority and National Highways Limited.

(2) The construction traffic management plan must be substantially in accordance with the framework construction traffic management plan and must be implemented as approved.

Operational noise

14.—(1) No part of Work No. 1 or Work No. 2 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.

Soil management plan

15.—(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 for that part or, where the part falls within the administrative areas of both East Riding of Yorkshire Council and North Yorkshire Council, both relevant planning authorities

(2) The soils management plan must be substantially in accordance with the framework soil management plan and must be implemented as approved.

Skills, supply chain and employment

16.—(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 both East Riding of Yorkshire Council and North Yorkshire Council, both relevant planning authorities.

(2) The skills, supply chain and employment plan must by substantially in accordance with the framework skills, supply chain and employment plan and must be implemented as approved.

(3) The skills, supply chain and employment plan 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.

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 streets, access and rights of way plans for 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 East Riding of Yorkshire Council and North Yorkshire Council, both relevant planning authorities. Such approval to be in consultation with the relevant highway authority.

(2) The public rights of way management plan must be substantially in accordance with the framework public rights of way management plan and must be implemented as approved.

(3) The public rights of way management plan must be implemented as approved unless otherwise agreed with the relevant planning authority in consultation with the relevant highway authority.

Decommissioning and restoration

18.—(1) No later than 12 months prior to the date that the undertaker intends to decommission any part of the authorised development, the undertaker must submit to the relevant planning authority for that part (or both relevant planning authorities where that part falls within the administrative areas of both East Riding of Yorkshire Council and North Yorkshire Council) for approval a decommissioning environmental management plan for that part.

(2) Decommissioning must commence no later than 40 years following the date of final commissioning.

(3) The plan submitted and approved pursuant to sub-paragraph (1) must be substantially in accordance with the framework decommissioning environmental management plan and must be implemented as approved.

(4) The plan submitted and approved pursuant to sub-paragraph (1) must include a resource management plan that includes details of proposals to minimise the use of natural resources and unnecessary materials.

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) East Riding Drainage Act 1798(**a**);

(b) Seaton Ross Inclosure Act 1811(**b**);

(c) Keyingham (and others) Drainage [Yorkshire] Act 1845(**c**);

(d) York and North Midland Railway (East Riding Branches) [No.1] Act 1846(**d**);

(e) Wapentake of Ouse and Derwent Drainage Act 1854(**e**);

(f) Ouse (Lower) Improvement Act 1884(**f**);

(g) Aire and Calder Navigation Act 1914(**g**);

(h) Aire and Calder Navigation Act 1924(**h**);

(i) Boothferry Bridge Act 1925(**i**);

(j) Yorkshire Water Authority (Alteration of Boundaries of the Lower Ouse Internal Drainage District) Order 1989(**j**);

(k) The Selby Area Internal Drainage District Order 2017(**k**).

(**a**) 1798 c. lxiii
(**b**) 1811 c. cxv
(**c**) 1845 c. cxlix
(**d**) 1846 c. lxv
(**e**) 1854 c. clxxviii
(**f**) 1884 c. clxi
(**g**) 1914 c. xxxiii
(**h**) 1924 c. xlv
(**i**) 1925 c. cxi
(**j**) SI 1998/1866
(**k**) SI 2017/356

SCHEDULE 4

Article 8

STREETS SUBJECT TO STREET WORKS

Interpretation

1. In this Schedule—

"cable works" means works to place, retain and maintain underground electrical and communications apparatus.

(1) *Area*	*(2)* *Street*	*(3)* *Description of the street works*
East Riding of Yorkshire	Junction of the A163 Highfield Road and B1228 Street Lane	Street works to facilitate any removal, repair and reinstatement of street furniture associated with the abnormal load manoeuvre for the length shown in green on Sheet 1 of the streets, rights of way and access plans.
East Riding of Yorkshire	Willitoft Road	Street works to facilitate the construction of the proposed access and passing place for the length shown in green on Sheet 2 of the streets, rights of way and access plans.
East Riding of Yorkshire	Tottering Lane	Street works to facilitate the construction of the proposed access and cable works beneath the width of the highway for the lengths shown in green on Sheets 3 and 4 of the streets, rights of way and access plans.
East Riding of Yorkshire	Willitoft Road south of junction of Tottering Lane with Willitoft Road	Street works to facilitate the cable works within the carriageway for the length shown in green on Sheet 4 of the streets, rights of way and access plans.
East Riding of Yorkshire	Ings Lane	Street works to facilitate the construction of the proposed access, passing place and cable works beneath the width of the highway for the lengths shown in green on Sheets 6 and 7 of the streets, rights of way and access plans.
East Riding of Yorkshire	Ings Lane	Street works to facilitate the construction of the proposed access and cable works beneath the width of the highway for the length shown in green on Sheet 7 of the

		streets, rights of way and access plans.
East Riding of Yorkshire	B1228 Street Lane	Street works to facilitate the construction of the proposed access for the length shown in green on Sheet 8 of the streets, rights of way and access plans.
East Riding of Yorkshire	B1228 Street Lane North of the Junction of Wood Lane and B1228 Street Lane	Street works to facilitate the cable works within the carriageway for the length shown in green on Sheet 9 of the streets, rights of way and access plans.
East Riding of Yorkshire	Wood Lane to South West of Junction with B1228 Street Lane	Street works to facilitate the construction of the proposed access and cable works beneath the width of the highway for the length shown in green on Sheets 9 and 14 of the streets, rights of way and access plans.
East Riding of Yorkshire	Wood Lane to North East of Junction with B1228 Street Lane	Street works to facilitate the construction of the proposed access, passing places and cable works beneath the width of the highway for the lengths shown in green on Sheet 9 of the streets, rights of way and access plans.
East Riding of Yorkshire	Willitoft Road between Spaldington and Spaldington Common	Street works to facilitate the construction of the proposed access for the length shown in green on Sheet 10 of the streets, rights of way and access plans.
East Riding of Yorkshire	Spaldington Road adjacent to Spaldington Common	Street works to facilitate the construction of the proposed access for the length shown in green on Sheet 10 of the streets, rights of way and access plans.
East Riding of Yorkshire	Spaldington Road to West of Spaldington Common	Street works to facilitate the cable works within the carriageway for the length shown in green on Sheet 10 of the streets, rights of way and access plans.
East Riding of Yorkshire	A614	Street works to facilitate the construction of the proposed access for the length shown in green on Sheet 12 of the streets, rights of way and access plans.
East Riding of Yorkshire	B1228 Street Lane	Street works to facilitate the construction of the proposed access and cable works

		beneath the width of the highway for the lengths shown in green on Sheet 13 of the streets, rights of way and access plans.
East Riding of Yorkshire	Wood Lane adjacent to junction with Brind Lane	Street works to facilitate the construction of the proposed access for the length shown in green on Sheet 14 of the streets, rights of way and access plans.
East Riding of Yorkshire	Wood Lane North of junction of Wood Lane with Brind Lane	Street works to facilitate the construction of the proposed passing places for the lengths shown in green on Sheet 14 of the streets, rights of way and access plans.
East Riding of Yorkshire	Wood Lane	Street works to facilitate the construction of the proposed access and cable works within the carriageway for the length shown in green on Sheet 14 and the lengths shown in green on Sheets 14 and 15 of the streets, rights of way and access plans.
East Riding of Yorkshire	Rowlandhall Lane North of Level Crossing to junction with Wood Lane	Street works to facilitate the construction of the proposed passing places for the lengths shown in green on Sheet 15 of the streets, rights of way and access plans.
East Riding of Yorkshire	Rowlandhall Lane South of Level Crossing	Street works to facilitate the cable works within the carriageway for the length shown in green on Sheet 15 of the streets, rights of way and access plans.
East Riding of Yorkshire	Rowlandhall Lane	Street works to facilitate the construction of the proposed access for the length shown in green on Sheet 16 of the streets, rights of way and access plans.
East Riding of Yorkshire	Wood Lane South West of Level Crossing	Street works to facilitate the construction of the proposed access and passing places for the lengths shown in green on Sheet 18 of the streets, rights of way and access plans.
East Riding of Yorkshire	Station Road	Street works to facilitate the cable works within the carriageway for the length shown in green on Sheet 18 of the streets, rights of way and access plans.

North Yorkshire Council	A63 Hull Road	Street works to facilitate the construction of the proposed access for the length shown in green on Sheet 19 of the streets, rights of way and access plans.
North Yorkshire Council	Unnamed Access	Access works to facilitate the construction of the proposed access for the length shown in green on Sheet 19 of the streets, rights of way and access plans.
North Yorkshire Council	Pear Tree Avenue	Street works to facilitate the construction of the proposed access and cable works within the carriageway for the length shown in green on Sheet 21 of the streets, rights of way and access plans.
North Yorkshire Council	New Road	Street works to facilitate the construction of the proposed access and cable works within the carriageway for the length shown in green on Sheet 22 of the streets, rights of way and access plans.
North Yorkshire Council	Carr Lane	Street works to facilitate the construction of the proposed access for the length shown in green on Sheet 22 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) *Area*	*(2)* *Street*	*(3)* *Description of the Alteration*
East Riding of Yorkshire	Field Access off Willitoft Road	Existing field access at the point marked 2/01 on Sheet 2 of the streets, rights of way and access plans to be stopped up.
East Riding of Yorkshire	Proposed Access off Willitoft Road	Proposed access to be constructed at the point marked 2/03 on Sheet 2 of the streets, rights of way and access plans.
East Riding of Yorkshire	Proposed Passing Place off Willitoft Road	Proposed passing place to be constructed to the west of the point marked 2/05 on Sheet 2 of the streets, rights of way and access plans.
East Riding of Yorkshire	Field Access off Willitoft Road	Existing field access at the point marked 2/04 on Sheet 2 of the streets, rights of way and access plans to be stopped up.
East Riding of Yorkshire	Field Access off Tottering Lane	Existing field access at the point marked 3/01 on Sheet 3 of the streets, rights of way and access plans to be stopped up.
East Riding of Yorkshire	Field Access off Unnamed Road	Existing field access at the point marked 3/03 on Sheet 3 of the streets, rights of way and access plans to be stopped up.
East Riding of Yorkshire	Field Access off Unnamed Road	Existing field access at the point marked 3/04 on Sheet 3 of the streets, rights of way and access plans to be stopped up.
East Riding of Yorkshire	Proposed Access off Tottering Lane	Proposed access to be constructed at the point marked 3/05 on Sheet 3 of the streets, rights of way and access plans.
East Riding of Yorkshire	Field Access off Tottering Lane	Existing field access at the point marked 4/04 on Sheet 4 of the streets, rights of way

		and access plans to be stopped up.
East Riding of Yorkshire	Field Access off Tottering Lane	Existing field access at the point marked 4/05 on Sheet 4 of the streets, rights of way and access plans to be stopped up.
East Riding of Yorkshire	Field Access off Tottering Lane	Existing field access at the point marked 4/06 on Sheet 4 of the streets, rights of way and access plans to be retained and improved.
East Riding of Yorkshire	Field Access off Tottering Lane	Existing field access at the point marked 4/07 on Sheet 4 of the streets, rights of way and access plans to be stopped up.
East Riding of Yorkshire	Field Access off Tottering Lane	Existing field access at the point marked 4/09 on Sheet 4 of the streets, rights of way and access plans to be retained and improved.
East Riding of Yorkshire	Field Access off Tottering Lane	Existing field access at the point marked 4/10 on Sheet 4 of the streets, rights of way and access plans to be stopped up.
East Riding of Yorkshire	Proposed Access off Tottering Lane	Proposed access to be constructed at the point marked 4/11 on Sheet 4 of the streets, rights of way and access plans.
East Riding of Yorkshire	Field Access off Tottering Lane	Existing field access at the point marked 4/12 on Sheet 4 of the streets, rights of way and access plans to be stopped up.
East Riding of Yorkshire	Field Access off Tottering Lane	Existing field access at the point marked 4/15 on Sheet 4 of the streets, rights of way and access plans to be stopped up.
East Riding of Yorkshire	Proposed Access off Tottering Lane	Proposed access to be constructed at the point marked 4/16 on Sheet 4 of the streets, rights of way and access plans.
East Riding of Yorkshire	Field Access off Tottering Lane	Existing field access at the point marked 4/17 on Sheet 4 of the streets, rights of way and access plans to be retained and improved.
East Riding of Yorkshire	Field Access off Tottering Lane	Existing field access at the point marked 4/18 on Sheet 4 of the streets, rights of way and access plans to be stopped

		up.
East Riding of Yorkshire	Field Access off Ings Lane	Existing field access at the point marked 6/02 on Sheet 6 of the streets, rights of way and access plans to be stopped up.
East Riding of Yorkshire	Field Access off Ings Lane	Existing field access at the point marked 6/03 on Sheet 6 of the streets, rights of way and access plans to be retained and improved.
East Riding of Yorkshire	Field Access off Ings Lane	Existing field access at the point marked 6/05 on Sheet 6 of the streets, rights of way and access plans to be stopped up.
East Riding of Yorkshire	Proposed Passing Place off Ings Lane	Proposed passing place to be constructed to the west of the point marked 6/05 on Sheet 6 of the streets, rights of way and access plans.
East Riding of Yorkshire	Field Access off Ings Lane	Existing field access at the point marked 6/08 on Sheet 6 of the streets, rights of way and access plans to be stopped up.
East Riding of Yorkshire	Field Access off Ings Lane	Existing field access at the point marked 6/09 on Sheet 6 of the streets, rights of way and access plans to be stopped up.
East Riding of Yorkshire	Proposed Passing Place off Ings Lane	Proposed passing place to be constructed to the east of the point marked 6/09 on Sheets 6 and 7 of the streets, rights of way and access plans.
East Riding of Yorkshire	Field Access off Ings Lane	Existing field access at the point marked 7/02 on Sheet 7 of the streets, rights of way and access plans to be retained and improved.
East Riding of Yorkshire	Field Access off B1228 Street Lane	Existing field access at the point marked 8/01 on Sheet 8 of the streets, rights of way and access plans to be retained and improved.
East Riding of Yorkshire	Field Access off Wood Lane	Existing field access at the point marked 9/02 on Sheet 9 of the streets, rights of way and access plans to be retained and improved.
East Riding of Yorkshire	Field Access off Wood Lane	Existing field access at the point marked 9/16 on Sheet 9 of the streets, rights of way and access plans to be retained and improved.

East Riding of Yorkshire	Field Access off Spaldington Road	Existing field access at the point marked 10/02 on Sheet 10 of the streets, rights of way and access plans to be stopped up.
East Riding of Yorkshire	Field Access off Spaldington Road	Existing field access at the point marked 10/03 on Sheet 10 of the streets, rights of way and access plans to be stopped up.
East Riding of Yorkshire	Field Access off Spaldington Road	Existing field access at the point marked 10/05 on Sheet 10 of the streets, rights of way and access plans to be stopped up.
East Riding of Yorkshire	Field Access off Willitoft Road	Existing field access at the point marked 10/07 on Sheet 10 of the streets, rights of way and access plans to be stopped up.
East Riding of Yorkshire	Field Access off Willitoft Road	Existing field access at the point marked 10/08 on Sheet 10 of the streets, rights of way and access plans to be retained and improved.
East Riding of Yorkshire	Field Access off Willitoft Road	Existing field access at the point marked 10/12 on Sheet 10 of the streets, rights of way and access plans to be stopped up.
East Riding of Yorkshire	Field Access off Spaldington Road	Existing field access at the point marked 10/18 on Sheet 10 of the streets, rights of way and access plans to be retained and improved.
East Riding of Yorkshire	Field Access off Spaldington Road	Existing field access at the point marked 10/24 on Sheet 10 of the streets, rights of way and access plans to be stopped up.
East Riding of Yorkshire	Field Access off A614	Existing field access at the point marked 12/03 on Sheet 12 of the streets, rights of way and access plans to be retained and improved.
East Riding of Yorkshire	Field Access off B1228 Street Lane	Existing field access at the point marked 13/01 on Sheet 13 of the streets, rights of way and access plans to be stopped up.
East Riding of Yorkshire	Field Access off B1228 Street Lane	Existing field access at the point marked 13/03 on Sheet 13 of the streets, rights of way and access plans to be retained and improved.
East Riding of Yorkshire	Field Access off B1228 Street	Existing field access at the

	Lane	point marked 13/06 on Sheet 13 of the streets, rights of way and access plans to be retained and improved.
East Riding of Yorkshire	Field Access off Wood Lane	Existing field access at the point marked 14/02 on Sheet 14 of the streets, rights of way and access plans to be stopped up.
East Riding of Yorkshire	Field Access off Wood Lane	Existing field access at the point marked 14/03 on Sheet 14 of the streets, rights of way and access plans to be retained and improved.
East Riding of Yorkshire	Proposed Passing Place off Wood Lane	Proposed passing place to be constructed at the point marked 14/07 on Sheet 14 of the streets, rights of way and access plans.
East Riding of Yorkshire	Field Access of Rowlandhall Lane	Existing field access at the point marked 15/07 on Sheet 15 of the streets, rights of way and access plans to be stopped up.
East Riding of Yorkshire	Proposed Passing Place off Rowlandhall Lane	Proposed passing place to be constructed to north of the point marked 15/08 on Sheet 15 of the streets, rights of way and access plans.
East Riding of Yorkshire	Proposed Passing Place off Rowlandhall Lane	Proposed passing place to be constructed at the point marked 15/09 on Sheet 15 of the streets, rights of way and access plans.
East Riding of Yorkshire	Proposed Passing Place off Rowlandhall Lane	Proposed passing place to be constructed to south of the point marked 15/10 on Sheet 15 of the streets, rights of way and access plans.
East Riding of Yorkshire	Field Access off Unnamed Road	Existing field access at the point marked 15/11 on Sheet 15 of the streets, rights of way and access plans to be stopped up.
East Riding of Yorkshire	Field Access of Wood Lane	Existing field access at the point marked 15/12 on Sheet 15 of the streets, rights of way and access plans to be retained and improved.
East Riding of Yorkshire	Field Access off Brind Lane	Existing field access at the point marked 15/16 on Sheet 15 of the streets, rights of way and access plans to be stopped up.
East Riding of Yorkshire	Field Access off Brind Lane	Existing field access at the point marked 15/20 on Sheet

		15 of the streets, rights of way and access plans to be stopped up.
East Riding of Yorkshire	Field Access off Rowlandhall Lane	Existing field access at the point marked 16/01 on Sheet 16 of the streets, rights of way and access plans to be retained and improved.
East Riding of Yorkshire	Field Access off Unnamed Road	Existing field access at the point marked 17/07 on Sheet 17 of the streets, rights of way and access plans to be stopped up.
East Riding of Yorkshire	Field Access off Brind Lane	Existing field access at the point marked 17/09 on Sheet 17 of the streets, rights of way and access plans to be stopped up.
East Riding of Yorkshire	Field Access off Wood Lane	Existing field access at the point marked 18/06 on Sheet 18 of the streets, rights of way and access plans to be retained and improved.
East Riding of Yorkshire	Proposed Passing Place off Wood Lane	Proposed passing place to be constructed at the point marked 18/07 on Sheet 18 of the streets, rights of way and access plans.
North Yorkshire Council	Field Access off A63 Hull Road	Existing field access at the point marked 19/08 on Sheet 19 of the streets, rights of way and access plans to be retained and improved.
North Yorkshire Council	Proposed Access off Unnamed Access Track	Proposed access to be constructed at the point marked 19/18 on Sheet 19 of the streets, rights of way and access plans.
North Yorkshire Council	Field Access off Pear Tree Avenue	Existing field access at the point marked 21/09 on Sheet 21 of the streets, rights of way and access plans to be retained and improved.
North Yorkshire Council	Field Access off Pear Tree Avenue	Existing field access at the point marked 21/10 on Sheet 21 of the streets, rights of way and access plans to be retained and improved.
North Yorkshire Council	Field Access off New Road	Existing field access at the point marked 22/01 on Sheet 22 of the streets, rights of way and access plans to be retained and improved.
North Yorkshire Council	Proposed Access off New Road	Proposed access to be constructed at the point marked 22/04 on Sheet 22 of

		the streets, rights of way and access plans.
North Yorkshire Council	Field Access off Carr Lane	Existing field access at the point marked 22/10 on Sheet 22 of the streets, rights of way and access plans to be retained and improved.

PART 2

TEMPORARY ALTERATION OF LAYOUT

(1) *Area*	*(2)* *Street*	*(3)* *Description of the Alteration*
East Riding of Yorkshire	Field Access off B1228 Street Lane	Existing field access at the point marked 8/02 on Sheet 8 of the streets, rights of way and access plans to be managed during construction.
East Riding of Yorkshire	Proposed Temporary Passing Place off Wood Lane	Existing informal passing place to be temporarily upgraded and maintained during construction at the point marked 9/03 on Sheet 9 of the streets, rights of way and access plans.
East Riding of Yorkshire	Proposed Temporary Passing Place off Wood Lane	Existing informal passing place to be temporarily upgraded and maintained during construction at the point marked 9/09 on Sheet 9 of the streets, rights of way and access plans.
East Riding of Yorkshire	Proposed Temporary Passing Place off Wood Lane	Existing informal passing place to be temporarily upgraded and maintained during construction at the point marked 9/14 on Sheet 9 of the streets, rights of way and access plans.
East Riding of Yorkshire	Proposed Temporary Passing Place off Wood Lane	Existing informal passing place to be temporarily upgraded and maintained during construction south of the point marked 9/16 on Sheet 9 of the streets, rights of way and access plans.
East Riding of Yorkshire	Proposed Temporary Passing Place off Wood Lane	Existing informal passing place to be temporarily upgraded and maintained during construction east of the point marked 14/07 on Sheet 14 of the streets, rights of way and access plans.
East Riding of Yorkshire	Proposed Temporary Passing	Existing informal passing

	Place off Wood Lane	place to be temporarily upgraded and maintained during construction at the point marked 14/04 on Sheet 14 of the streets, rights of way and access plans.
East Riding of Yorkshire	Proposed Temporary Passing Place off Wood Lane	Existing informal passing place to be temporarily upgraded and maintained during construction west of the point marked 14/06 on Sheet 14 of the streets, rights of way and access plans.
East Riding of Yorkshire	Proposed Temporary Passing Place off Wood Lane	Existing informal passing place to be temporarily upgraded and maintained during construction east of the point marked 14/03 on Sheet 14 of the streets, rights of way and access plans.
North Yorkshire Council	Access off A63 Hull Road	Existing access at the point marked 19/14 on Sheet 19 of the streets, rights of way and access plans to be managed during construction.
North Yorkshire Council	Private Means of Access off Unnamed Access Track	Existing access at the point marked 19/16 on Sheet 19 of the streets, rights of way and access plans to be managed during construction.

SCHEDULE 6

Article 11

STREETS AND PUBLIC RIGHTS OF WAY

PART 1

STREETS TO BE TEMPORARILY CLOSED (SINGLE LANE CLOSURES / ROAD CLOSURE)

(1) *Area*	*(2)* *Street*	*(3)* *Measures*
East Riding of Yorkshire	Willitoft Road	Temporarily closed to all traffic save for traffic under the direction of the undertaker for the width of the street to facilitate the construction of the authorised development for the length shown in green on Sheet 2 of the streets, rights of way and access plans.
East Riding of Yorkshire	Tottering Lane	Temporarily closed to all traffic save for traffic under the direction of the undertaker for the width of the street to facilitate the construction of the authorised development for the lengths shown in green on Sheets 3 and 4 of the streets, rights of way and access plans.
East Riding of Yorkshire	Willitoft Road south of junction of Tottering Lane with Willitoft Road	Temporarily closed to all traffic save for traffic under the direction of the undertaker for the width of the street to facilitate the construction of the authorised development for the length shown in green on Sheet 4 of the streets, rights of way and access plans.
East Riding of Yorkshire	Ings Lane	Temporarily closed to all traffic save for traffic under the direction of the undertaker for the width of the street to facilitate the construction of the authorised development for the length shown in green on Sheets 6 and 7 of the streets, rights of way and access plans.
East Riding of Yorkshire	Ings Lane	Temporarily closed to all traffic save for traffic under the direction of the undertaker for the width of the street to facilitate the construction of the authorised development for

		the length shown in green on Sheet 7 of the streets, rights of way and access plans.
East Riding of Yorkshire	B1228 Street Lane	Temporarily closed to all traffic save for traffic under the direction of the undertaker for the width of the street to facilitate the construction of the authorised development for the length shown in green on Sheet 8 of the streets, rights of way and access plans.
East Riding of Yorkshire	B1228 North of the Junction of Wood Lane and B1228 Street Lane	Temporarily closed to all traffic save for traffic under the direction of the undertaker for the width of the street to facilitate the construction of the authorised development for the length shown in green on Sheet 9 of the streets, rights of way and access plans.
East Riding of Yorkshire	Wood Lane to North East of Junction with B1228 Street Lane	Temporarily closed to all traffic save for traffic under the direction of the undertaker for the width of the street to facilitate the construction of the authorised development for the length shown in green on Sheet 9 of the streets, rights of way and access plans.
East Riding of Yorkshire	Wood Lane to South West of Junction with B1228 Street Lane	Temporarily closed to all traffic save for traffic under the direction of the undertaker for the width of the street to facilitate the construction of the authorised development for the length shown in green on Sheets 9 and 14 of the streets, rights of way and access plans.
East Riding of Yorkshire	Willitoft Road between Spaldington and Spaldington Common	Temporarily closed to all traffic save for traffic under the direction of the undertaker for the width of the street to facilitate the construction of the authorised development for the length shown in green on Sheet 10 of the streets, rights of way and access plans.
East Riding of Yorkshire	Spaldington Road adjacent to Spaldington Common	Temporarily closed to all traffic save for traffic under the direction of the undertaker for the width of the street to facilitate the construction of the authorised development for the lengths shown in green on Sheet 10 of the streets, rights

		of way and access plans.
East Riding of Yorkshire	A614	Temporarily closed to all traffic save for traffic under the direction of the undertaker for the width of the street to facilitate the construction of the authorised development for the length shown in green on Sheet 12 of the streets, rights of way and access plans.
East Riding of Yorkshire	B1228 Street Lane	Temporarily closed to all traffic save for traffic under the direction of the undertaker for the width of the street to facilitate the construction of the authorised development for the lengths shown in green on Sheet 13 of the streets, rights of way and access plans.
East Riding of Yorkshire	Wood Lane adjacent to junction with Brind Lane	Temporarily closed to all traffic save for traffic under the direction of the undertaker for the width of the street to facilitate the construction of the authorised development for the lengths shown in green on Sheet 14 of the streets, rights of way and access plans.
East Riding of Yorkshire	Wood Lane	Temporarily closed to all traffic save for traffic under the direction of the undertaker for the width of the street to facilitate the construction of the authorised development for the length shown in green on Sheets 14 and 15 of the streets, rights of way and access plans.
East Riding of Yorkshire	Rowlandhall Lane North of Level Crossing to junction with Wood Lane	Temporarily closed to all traffic save for traffic under the direction of the undertaker for the width of the street to facilitate the construction of the authorised development for the length shown in green on Sheet 15 of the streets, rights of way and access plans.
East Riding of Yorkshire	Rowlandhall Lane adjacent to Level Crossing	Temporarily closed to all traffic save for traffic under the direction of the undertaker for the width of the street to facilitate the construction of the authorised development for the length shown in green on Sheet 15 of the streets, rights of way and access plans.
East Riding of Yorkshire	Rowlandhall Lane	Temporarily closed to all

		traffic save for traffic under the direction of the undertaker for the width of the street to facilitate the construction of the authorised development for the length shown in green on Sheet 16 of the streets, rights of way and access plans.
East Riding of Yorkshire	Wood Lane South West of Level Crossing	Temporarily closed to all traffic save for traffic under the direction of the undertaker for the width of the street to facilitate the construction of the authorised development for the lengths shown in green on Sheet 18 of the streets, rights of way and access plans.
East Riding of Yorkshire	Station Road	Temporarily closed to all traffic save for traffic under the direction of the undertaker for the width of the street to facilitate the construction of the authorised development for the length shown in green on Sheet 18 of the streets, rights of way and access plans.
North Yorkshire Council	A63 Hull Road	Temporarily closed to all traffic save for traffic under the direction of the undertaker for the width of the street to facilitate the construction of the authorised development for the length shown in green on Sheet 19 of the streets, rights of way and access plans.
North Yorkshire Council	Unnamed Access Road	Temporarily closed to all traffic save for traffic under the direction of the undertaker for the width of the street to facilitate the construction of the authorised development for the length shown in green on Sheet 19 of the streets, rights of way and access plans.
North Yorkshire Council	Pear Tree Avenue	Temporarily closed to all traffic save for traffic under the direction of the undertaker for the width of the street to facilitate the construction of the authorised development for the length shown in green on Sheet 21 of the streets, rights of way and access plans.
North Yorkshire Council	New Road	Temporarily closed to all traffic save for traffic under the direction of the undertaker

		for the width of the street to facilitate the construction of the authorised development for the length shown in green on Sheet 22 of the streets, rights of way and access plans.
North Yorkshire Council	Carr Lane	Temporarily closed to all traffic save for traffic under the direction of the undertaker for the width of the street to facilitate the construction of the authorised development for the length shown in green on Sheet 22 of the streets, rights of way and access plans.

PART 2

PUBLIC RIGHTS OF WAY TO BE TEMPORARILY CLOSED AND DIVERTED

(1) *Area*	*(2)* *Public right of way*	*(3)* *Measures*
East Riding of Yorkshire	FOGGF13	Public Right of Way to be temporarily stopped up and diverted between points PRoW-04/01 and PRoW-04/02 as shown on Sheet 4 of the streets, rights of way and access plans to facilitate the construction of the authorised development.
East Riding of Yorkshire	Howden Public Right of Way	Public Right of Way to be temporarily stopped up and diverted between points PRoW-04/02 and PRoW-04/03 as shown on Sheet 4 of the streets, rights of way and access plans to facilitate the construction of the authorised development.
East Riding of Yorkshire	BUBWF10	Public Right of Way to be temporarily stopped up and diverted between points PRoW-08/04 and PRoW-08/05 as shown on Sheet 8 of the streets, rights of way and access plans to facilitate the construction of the authorised development.
East Riding of Yorkshire	Howden Public Right of Way	Public Right of Way to be temporarily stopped up and diverted between points PRoW-10/04 and PRoW-10/05 as shown on Sheet 10 of the streets, rights of way and

		access plans to facilitate the construction of the authorised development.
East Riding of Yorkshire	WRESF06	Public Right of Way to be temporarily stopped up and diverted between points PRoW-16/03 and PRoW-16/04 as shown on Sheet 16 of the streets, rights of way and access plans to facilitate the construction of the authorised development.
East Riding of Yorkshire	35.47/1/1	Public Right of Way to be temporarily stopped up and diverted between points PRoW-21/03 and PRoW-21/04 as shown on Sheet 21 of the streets, rights of way and access plans to facilitate the construction of the authorised development.

PART 3

PERMANENT USE OF MOTOR VEHICLES ON PUBLIC RIGHT OF WAY

(1) *Area*	*(2)* *Public right of way*	*(3)* *Measures*
East Riding of Yorkshire	FOGGF13	Permanent use of motor vehicles under the direction of the undertaker between points PRoW-03/01 and PRoW-03/02 as shown on Sheet 3 of the streets, rights of way and access plans to facilitate the construction and operation of the authorised development.
East Riding of Yorkshire	FOGGF13	Permanent use of motor vehicles under the direction of the undertaker between points PRoW-04/01 and PRoW-04/02 as shown on Sheet 4 of the streets, rights of way and access plans to facilitate the construction and operation of the authorised development.
East Riding of Yorkshire	SPALF15	Permanent use of motor vehicles under the direction of the undertaker between points PRoW-04/05 and PRoW-06/03 as shown on Sheets 4 and 6 of the streets, rights of way and access plans to facilitate the construction and operation of the authorised development.

East Riding of Yorkshire	FOGGF05	Permanent use of motor vehicles under the direction of the undertaker between points PRoW-05/01 and PRoW-06/01 as shown on Sheets 5 and 6 of the streets, rights of way and access plans to facilitate the construction and operation of the authorised development.
East Riding of Yorkshire	FOGGF05	Permanent use of motor vehicles under the direction of the undertaker between points PRoW-06/02 and PRoW-06/04 as shown on Sheet 6 of the streets, rights of way and access plans to facilitate the construction and operation of the authorised development.
East Riding of Yorkshire	SPALB08	Permanent use of motor vehicles under the direction of the undertaker between points PRoW-07/01 and PRoW-07/02 as shown on Sheet 7 of the streets, rights of way and access plans to facilitate the construction and operation of the authorised development.
East Riding of Yorkshire	BUBWF10	Permanent use of motor vehicles under the direction of the undertaker from points PRoW-08/04 and PRoW-08/05 as shown on Sheet 8 of the streets, rights of way and access plans to facilitate the construction and operation of the authorised development.
East Riding of Yorkshire	SPALF17	Permanent use of motor vehicles under the direction of the undertaker between points PRoW-10/01 and PRoW-10/02 as shown on Sheet 10 of the streets, rights of way and access plans to facilitate the construction and operation of the authorised development.
East Riding of Yorkshire	WRESF06	Permanent use of motor vehicles under the direction of the undertaker between points PRoW-16/01 and PRoW-16/02 as shown on Sheet 16 of the streets, rights of way and access plans to facilitate the construction and operation of the authorised development.
East Riding of Yorkshire	WRESF06	Permanent use of motor vehicles under the direction of

		the undertaker between points PRoW-16/03 and PRoW-17/01 as shown on Sheets 16 and 17 of the streets, rights of way and access plans to facilitate the construction and operation of the authorised development.
East Riding of Yorkshire	WRESF10	Permanent use of motor vehicles under the direction of the undertaker between points PRoW-16/05 and PRoW-16/06 as shown on Sheet 16 of the streets, rights of way and access plans to facilitate the construction and operation of the authorised development.
East Riding of Yorkshire	WRESF08	Permanent use of motor vehicles under the direction of the undertaker between points PRoW-16/07 and PRoW-16/08 as shown on Sheet 16 of the streets, rights of way and access plans to facilitate the construction and operation of the authorised development.
East Riding of Yorkshire	WRESF09	Permanent use of motor vehicles under the direction of the undertaker between points PRoW-17/01 and PRoW-17/03 as shown on Sheet 17 of the streets, rights of way and access plans to facilitate the construction and operation of the authorised development.

PART 4

TEMPORARY MANAGEMENT OF PUBLIC RIGHTS OF WAY

(1) *Area*	*(2)* *Public right of way*	*(3)* *Measure (Public Right of Way to be managed during construction to maintain Public Right of Way continuity and access through the site).*
East Riding of Yorkshire	BUBWF17	Public Right of Way between points PRoW-02/01 and PRoW-03/01 as shown on Sheets 2 and 3 of the streets, rights of way and access plans to be managed during construction of the authorised development.
East Riding of Yorkshire	FOGGF13	Public Right of Way between points PRoW-03/01 and

		PRoW-04/01 as shown on Sheets 3 and 4 of the streets, rights of way and access plans to be managed during construction of the authorised development.
East Riding of Yorkshire	SPALF16	Public Right of Way between points PRoW-04/03 to PRoW-04/04 as shown on Sheet 4 of the streets, rights of way and access plans to be managed during construction of the authorised development.
East Riding of Yorkshire	SPALF15	Public Right of Way between points PRoW-04/05 and PRoW-06/03 as shown on Sheets 4 and 6 of the streets, rights of way and access plans to be managed during construction of the authorised development.
East Riding of Yorkshire	FOGGF05	Public Right of Way between points PRoW-05/01 and PRoW-06/01 as shown on Sheets 5 and 6 of the streets, rights of way and access plans to be managed during construction of the authorised development.
East Riding of Yorkshire	FOGGF05	Public Right of Way between points PRoW-06/02 and PRoW-06/04 as shown on Sheet 6 of the streets, rights of way and access plans to be managed during construction of the authorised development.
East Riding of Yorkshire	SPALF19	Public Right of Way between points PRoW-06/05 and PRoW-06/06 as shown on Sheet 6 of the streets, rights of way and access plans to be managed during construction of the authorised development.
East Riding of Yorkshire	SPALB08	Public Right of Way between points PRoW-07/01 and PRoW-07/03 as shown on Sheet 7 of the streets, rights of way and access plans to be managed during construction of the authorised development.
East Riding of Yorkshire	BUBWS11	Public Right of Way between points PRoW-08/01 and PRoW-08/03 as shown on Sheet 8 of the streets, rights of way and access plans to be managed during construction

		of the authorised development.
East Riding of Yorkshire	BUBWF10	Public Right of Way between points PRoW-08/02 and PRoW-08/04 as shown on Sheet 8 of the streets, rights of way and access plans to be managed during construction of the authorised development.
East Riding of Yorkshire	SPALF17	Public Right of Way between points PRoW-10/01 and PRoW-10/03 as shown on Sheet 10 of the streets, rights of way and access plans to be managed during construction of the authorised development.
East Riding of Yorkshire	SPALF18	Public Right of Way between points PRoW-10/06 and PRoW-11/01 as shown on Sheets 10 and 11 of the streets, rights of way and access plans to be managed during construction of the authorised development.
East Riding of Yorkshire	EASTB17	Public Right of Way between points PRoW-11/02 and PRoW-11/03 as shown on Sheet 11 of the streets, rights of way and access plans to be managed during construction of the authorised development.
East Riding of Yorkshire	WRESF07	Public Right of Way between points PRoW-15/01 and PRoW-17/02 as shown on Sheets 15 and 17 of the streets, rights of way and access plans to be managed during construction of the authorised development.
East Riding of Yorkshire	WRESF06	Public Right of Way between points PRoW-16/01 and PRoW-16/02 as shown on Sheet 16 of the streets, rights of way and access plans to be managed during construction of the authorised development.
East Riding of Yorkshire	WRESF06	Public Right of Way between points PRoW-16/04 and PRoW-17/01 as shown on Sheets 16 and 17 of the streets, rights of way and access plans to be managed during construction of the authorised development.
East Riding of Yorkshire	WRESF10	Public Right of Way between points PRoW-16/05 and PRoW-16/06 as shown on

		Sheet 16 of the streets, rights of way and access plans to be managed during construction of the authorised development.
East Riding of Yorkshire	WRESF08	Public Right of Way between points PRoW-16/07 and PRoW-16/08 as shown on Sheet 16 of the streets, rights of way and access plans to be managed during construction of the authorised development.
East Riding of Yorkshire	WRESF09	Public Right of Way between points PRoW-17/01 and PRoW-17/03 as shown on Sheet 17 of the streets, rights of way and access plans to be managed during construction of the authorised development.
North Yorkshire Council	35.45/9/1	Public Right of Way between points PRoW-18/01 and PRoW-18/02 as shown on Sheet 18 of the streets, rights of way and access plans to be managed during construction of the authorised development.
East Riding of Yorkshire	WRESF12	Public Right of Way between points PRoW-18/03 and PRoW-18/04 as shown on Sheet 18 of the streets, rights of way and access plans to be managed during construction of the authorised development.
North Yorkshire Council	35.45/6/1	Public Right of Way between points PRoW-21/01 and PRoW-21/02 as shown on Sheet 21 of the streets, rights of way and access plans to be managed during construction of the authorised development.
North Yorkshire Council	35.47/1/2	Public Right of Way between points PRoW-22/01 and PRoW-22/02 as shown on Sheet 22 of the streets, rights of way and access plans to be managed during construction of the authorised development.

PART 5

TEMPORARY USE OF MOTOR VEHICLES ON PUBLIC RIGHTS OF WAY

(1) *Area*	*(2)* *Public right of way*	*(3)* *Measures*
East Riding of Yorkshire	FOGGF13	Temporary use of motor vehicles under the direction of

		the undertaker between points PRoW-03/01 and PRoW-03/02 as shown on Sheet 3 of the streets, rights of way and access plans to facilitate construction of the authorised development.
East Riding of Yorkshire	BUBWS11	Temporary use of motor vehicles under the direction of the undertaker between points PRoW-08/01 and PRoW-08/03 as shown on Sheet 8 of the streets, rights of way and access plans to facilitate construction of the authorised development.
East Riding of Yorkshire	BUBWF10	Temporary use of motor vehicles under the direction of the undertaker between points PRoW-08/02 and PRoW-08/04 as shown on Sheet 8 of the streets, rights of way and access plans to facilitate construction of the authorised development.
East Riding of Yorkshire	SPALF17	Temporary use of motor vehicles under the direction of the undertaker between points PRoW-10/02 and PRoW-10/03 as shown on Sheet 10 of the streets, rights of way and access plans to facilitate construction of the authorised development.
North Yorkshire Council	35.47/1/1	Temporary use of motor vehicles under the direction of the undertaker between points PRoW-21/03 and PRoW-21/04 as shown on Sheet 21 of the streets, rights of way and access plans to facilitate construction of the authorised development.
North Yorkshire Council	35.47/1/2	Temporary use of motor vehicles under the direction of the undertaker between points PRoW-22/01 and PRoW-22/02 as shown on Sheet 22 of the streets, rights of way and access plans to facilitate construction of the authorised development.

SCHEDULE 7

Article 13

PERMANENT MEANS OF ACCESS TO WORKS

(1) *Area*	*(2)* *Public right of way*	*(3)* *Description of Means of Access*
East Riding of Yorkshire	Proposed Access off Willitoft Road	Proposed access to be constructed at the point marked 2/03 on Sheet 2 of the streets, rights of way and access plans.
East Riding of Yorkshire	Proposed Access off Tottering Lane	Proposed access to be constructed at the point marked 3/05 on Sheet 3 of the streets, rights of way and access plans.
East Riding of Yorkshire	Proposed Access off Tottering Lane	Proposed access to be constructed at the point marked 4/11 on Sheet 4 of the streets, rights of way and access plans.
East Riding of Yorkshire	Proposed Access off Tottering Lane	Proposed access to be constructed at the point marked 4/16 on Sheet 4 of the streets, rights of way and access plans.
North Yorkshire Council	Proposed Access off Unnamed Access Track	Proposed access to be constructed at the point marked 19/18 on Sheet 19 of the streets, rights of way and access plans.
North Yorkshire Council	Proposed Access off New Road	Proposed access to be constructed at the point marked 22/04 on Sheet 22 of the streets, rights of way and access plans.

SCHEDULE 8

Article 15

TRAFFIC REGULATION MEASURES

(1) *Area*	*(2)* *Extent of temporary traffic signal and banksman control area*
Junction of A163 Highfield Road and B1228 Street Lane to facilitate abnormal load manoeuvre.	Extents of traffic signals and banksman control presented on Sheet 1 of the traffic regulation measures plans.
Willitoft Road Eastbound and Westbound Carriageway to facilitate the construction of the authorised development.	Extents of traffic signals and banksman control presented on Sheet 2 of the traffic regulation measures plans.
Tottering Lane Northbound and Southbound Carriageway to facilitate the construction of the authorised development.	Extents of traffic signals and banksman control presented on Sheets 3 and 4 of the traffic regulation measures plans.
Willitoft Road Northbound and Southbound Carriageway south of junction of Tottering Lane with Willitoft Road 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.
Wood Lane Northbound and Southbound Carriageway commencing to the North East of the Junction with B1228 Street Lane to facilitate the construction of the authorised development.	Extents of traffic signals and banksman control presented on Sheets 4 and 9 of the traffic regulation measures plans.
Ings Lane Eastbound and Westbound Carriageway to facilitate the construction of the authorised development.	Extents of traffic signals and banksman control presented on Sheets 6 and 7 of the traffic regulation measures plans.
B1228 Street Lane Northbound and Southbound Carriageway 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.
B1228 Street Lane Northbound and Southbound Carriageway North of the Junction with Wood Lane and B1228 Street Lane 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.
Wood Lane Northbound and Southbound Carriageway inclusive of Wood Lane and B1228 Street Lane to facilitate the construction of the authorised development.	Extents of traffic signals and banksman control presented on Sheets 9, 13, 14 and 15 of the traffic regulation measures plans.
Willitoft Road Northbound and Southbound Carriageway between Spaldington Common and village of Spaldington to facilitate the construction of the authorised development.	Extents of traffic signals and banksman control presented on Sheet 10 of the traffic regulation measures plans.
Spaldington Road Eastbound and Westbound Carriageway within Spaldington Common to facilitate the construction of the authorised development.	Extents of traffic signals and banksman control presented on Sheet 10 of the traffic regulation measures plans.
Spaldington Road Eastbound and Westbound Carriageway adjacent to the west of Spaldington Common facilitate the construction of the authorised development.	Extents of traffic signals and banksman control presented on Sheet 10 of the traffic regulation measures plans.
A614 Northbound and Southbound	Extents of traffic signals and banksman control

Carriageway to facilitate the construction of the authorised development.	presented on Sheet 12 of the traffic regulation measures plans.
B1228 Street Lane Northbound and Southbound Carriageway commencing to the North of the Junction of B1228 Street Lane with Spaldington Road 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.
Rowlandhall Lane Northbound and Southbound north of the level crossing to facilitate the construction of the authorised development.	Extents of traffic signals and banksman control presented on Sheet 15 of the traffic regulation measures plans.
Rowlandhall Lane Northbound and Southbound adjacent to the level crossing to facilitate the construction of the authorised development.	Extents of traffic signals and banksman control presented on Sheet 15 of the traffic regulation measures plans.
Rowlandhall Lane 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.
Wood Lane Eastbound and Westbound Carriageway commencing to the Southwest of the Level Crossing to facilitate the construction of the authorised development.	Extents of traffic signals and banksman control presented on Sheet 18 of the traffic regulation measures plans.
Station Road Northbound and Southbound Carriageway to facilitate the construction of the authorised development.	Extents of traffic signals and banksman control presented on Sheet 18 of the traffic regulation measures plans.
A63 Hull Road Eastbound and Westbound Carriageway to facilitate the construction of the authorised development.	Extents of traffic signals and banksman control presented on Sheet 19 of the traffic regulation measures plans.
Pear Tree Avenue Eastbound and Westbound Carriageway 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.
Carr Lane Eastbound and Westbound Carriageway to facilitate the construction of the authorised development.	Extents of traffic signals and banksman control presented on Sheet 22 of the traffic regulation measures plans.
New Road Northbound and Southbound and Wren Hall Lane Eastbound and Westbound Carriageway to facilitate the construction of the authorised development.	Extents of traffic signals and banksman control presented on Sheet 22 of the traffic regulation measures plans.

SCHEDULE 9

Article 22

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) 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;

(c) 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;

(d) 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;

(e) restrict and remove the erection of buildings or structures, restrict the altering of ground levels, restrict and remove the planting of trees or carrying out operations or actions (including but not limited to blasting and piling) which may obstruct, interrupt or interfere with the exercise of the rights or damage the authorised development; and

(f) 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.

"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;

(1) *Plot reference number shown on the Land Plans*	*(2)* *Purposes for which rights over land may be required and restrictive covenants imposed*
1/01	Access rights
1/03	Access rights
1/04	Access rights
2/05	Access rights
3/10	Cable rights
4/13	Cable rights
4/14	Cable rights
4/21	Cable rights
4/22	Cable rights
4/23	Cable rights
4/24	Cable rights
4/25	Cable rights
4/27	Cable rights
4/28	Cable rights
6/34	Cable rights
6/35	Cable rights
6/36	Cable rights
6/37	Cable rights
9/40	Cable rights
10/43	Access rights
10/44	Cable rights
10/45	Cable rights
10/46	Access rights
11/49	Cable rights
12/52	Access rights
4/53	Cable rights
9/54	Cable rights
9/55	Cable rights
9/56	Cable rights
9/57	Cable rights
13/60	Cable rights
8/61	Cable rights
9/62	Cable rights
8/63	Cable rights
8/64	Access rights
8/66	Cable rights

14/68	Cable rights
14/72	Cable rights
14/75	Cable rights
14/76	Cable rights
14/77	Cable rights
14/78	Cable rights
15/81	Cable rights
15/83	Cable rights
16/87	Cable rights
16/89	Cable rights
16/90	Cable rights
16/91	Access rights
15/92	Cable rights
15/93	Cable rights
15/94	Cable rights
18/95	Cable rights
18/96	Cable rights
18/97	Cable rights
18/98	Cable rights
18/99	Cable rights
18/100	Cable rights
18/101	Cable rights
18/102	Cable rights
18/103	Cable rights
18/104	Cable rights
18/105	Cable rights
18/106	Cable rights
18/107	Cable rights
18/108	Cable rights
18/109	Cable rights
18/110	Cable rights
19/111	Cable rights
19/112	Cable rights
19/113	Cable rights
19/114	Cable rights
19/115	Cable rights
19/116	Cable rights
19/117	Cable rights
19/118	Cable rights
19/119	Cable rights
19/120	Cable rights
19/121	Access rights
19/122	Cable rights
19/123	Cable rights
19/124	Cable rights
19/125	Cable rights
19/126	Cable rights
19/127	Cable rights
19/128	Cable rights
19/129	Cable rights
20/130	Cable rights

20/131	Cable rights
20/132	Cable rights
20/133	Cable rights
20/134	Cable rights
20/135	Cable rights
20/136	Cable rights
20/137	Cable rights
20/138	Cable rights
21/139	Cable rights
21/140	Cable rights
21/141	Cable rights
21/142	Cable rights
21/143	Cable rights
21/144	Cable rights
21/145	Cable rights
21/146	Cable rights
21/147	Cable rights
21/148	Cable rights
21/149	Cable rights
21/150	Cable rights
22/151	Cable rights
21/152	Cable rights
21/153	Cable rights
22/154	Cable rights
22/155	Cable rights
22/156	Cable rights
22/157	Cable rights
22/158	Access rights
22/159	Access rights
22/160	Access rights
22/161	Access rights
22/162	Access rights
22/163	Access rights
22/164	Cable rights
22/165	Cable rights
22/166	Cable rights
22/167	Cable rights
22/168	Cable rights
22/169	Cable rights
22/170	Cable rights
22/171	Cable rights
22/172	Cable rights
22/173	Access rights

SCHEDULE 10

Article 22

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 East Yorkshire Solar Farm 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 East Yorkshire Solar Farm Order 202[*]) to acquire an interest in the land; and

(c) the acquiring authority enters on and takes possession of that land

the authority is deemed for the purposes of subsection (3)(a) to have entered on that land where it entered on that land for the purpose of exercising that right.

Application of Part 1 of the 1965 Act

4. Part 1 (compulsory purchase under Acquisition of Land Act 1946) of the 1965 Act, as applied by section 125 (application of compulsory acquisition provisions) of the 2008 Act to the acquisition of land under article 20 (compulsory acquisition of land) and as modified by article 27 (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 22 (compulsory acquisition of rights)—

(a) with the modifications specified in paragraph 5; and

(**a**) 1973 c. 26.

(b) with such other modifications as may be necessary.

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); paragraph 2(3) of Schedule 2 (absent and untraced owners); and

(c) 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 20 (compulsory acquisition of land)), it has power, exercisable in equivalent circumstances and subject to equivalent conditions, to enter for the purpose of exercising that right or enforcing that restrictive covenant (which is deemed for this purpose to have been created on the date of service of the notice); and sections 11A (powers of entry: further notices of entry)(**b**), 11B (counter-notice requiring possession to be taken on specified date)(**c**), 12 (penalty for unauthorised entry)(**d**) and 13 (refusal to give possession to acquiring authority)(**e**) of the 1965 Act are modified correspondingly.

(6) Section 20(**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

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(**a**) Section 11 was amended by section 34(1) of, and Schedule 4 to, the Acquisition of Land 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.

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.

(7) Section 22 (interests omitted from purchase) of the 1965 Act as modified by article 27(4) (modification of Part 1 of the Compulsory Purchase Act 1965) is so modified as to enable the acquiring authority, in circumstances corresponding to those referred to in that section, to continue to be entitled to exercise the right acquired or restrictive covenant imposed, subject to compliance with that section as respects compensation.

(8) For Schedule 2A 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 24 (application of the 1981 Act) of the East Yorkshire Solar Farm Order 202[*] in respect of the land to which the notice to treat relates.

(2) But see article 25(3) (acquisition of subsoil only) of the East Yorkshire Solar Farm 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 29

LAND OF WHICH TEMPORARY POSSESSION MAY BE TAKEN

(1) *Plot reference number shown on the Land Plans*	*(2)* *Purpose for which temporary possession may be taken*
1/02	Temporary use to facilitate the construction of Work No. 7
9/58	Temporary use to facilitate the construction of Work Nos. 3, 4 & 7
9/59	Temporary use to facilitate the construction of Work Nos. 3, 4 & 7
16/88	Temporary use to facilitate the construction of Work Nos. 4 & 5

SCHEDULE 12

Article 40

DOCUMENTS AND PLANS TO BE CERTIFIED

PART 1

DOCUMENTS FORMING THE ENVIRONMENTAL STATEMENT TO BE CERTIFIED

(1) *Document name*	*(2)* *Document reference*	*(3)* *Revision number*	*(4)* *Date*	*(5)* *Examination Library Reference*
Environmental statement	EN010143/APP/6.1	0	19 January 2024	APP-052 to APP-070
Technical Appendices	EN010143/APP/6.2	0	16 November 2023	APP-071 to APP-132
Figures	EN010143/APP/6.3	0	16 November 2023	APP-133 to APP-229

PART 2

EXAMINATION DOCUMENTS FORMING PART OF THE ENVIRONMENTAL STATEMENT TO BE CERTIFIED

(1) *Document name*	*(2)* *Document reference*	*(3)* *Revision number*	*(4)* *Date*	*(5)* *Examination Library Reference*
Environmental Statement Chapter 10 – Landscape and Visual Amenity	EN010143/APP/6.1	2	18 June 2024	REP1-014
Environmental Statement Chapter 11 – Noise and Vibration	EN010143/APP/6.1	1	18 June 2024	REP1-016
Appendix 7-4 – Archaeological Trial Trenching Evaluation Report	EN010143/APP/6.2	1	18 June 2024	REP1-018
Appendix 8-10 – Great Crested Newt District Level Licensing Impact Assessment and Conservation	EN010143/APP/6.2	1	18 June 2024	REP1-019

Payment Certificate				
Appendix 9-3 – Flood Risk Assessment, Annexes	EN010143/APP/6.2	1	03 September 2024	REP5-011
Appendix 11-4 – Construction and Operational Noise Assessment	EN010143/APP/6.2	1	18 June 2024	REP1-023
Appendix 13-4 – Transport Assessment	EN010143/APP/6.2	1	18 June 2024	REP1-025
Environmental Statement Chapter 7 – Cultural Heritage	EN010143/APP/6.1	1	27 June 2024	REP2-006
Appendix 17-1 – Shortlist of Cumulative Schemes	EN010143/APP/6.2	1	27 June 2024	REP2-008
Figure 2-3 – Indicative Site Layout	EN010143/APP/6.3	1	18 June 2024	REP1-028
Figure 10-8 – Representative Viewpoint Locations	EN010143/APP/6.3	1	18 June 2024	REP1-029
Figure 10-10 – Viewpoint Photography VP02	EN010143/APP/6.3	1	18 June 2024	REP1-030
Figure 10-11 – Viewpoint Photography VP03	EN010143/APP/6.3	1	18 June 2024	REP1-031
Figure 10-12 – Viewpoint Photography VP04	EN010143/APP/6.3	1	18 June 2024	REP1-032
Figure 10-14 – Viewpoint Photography VP06	EN010143/APP/6.3	1	18 June 2024	REP1-033
Figure 10-15 – Viewpoint Photography VP07	EN010143/APP/6.3	1	18 June 2024	REP1-034
Figure 10-21 – Viewpoint Photography VP12a	EN010143/APP/6.3	1	18 June 2024	REP1-035
Figure 10-25 – Viewpoint	EN010143/APP/6.3	1	18 June 2024	REP1-036

Photography VP16				
Figure 10-27 – Viewpoint Photography VP18	EN010143/APP/6.3	1	18 June 2024	REP1-037
Figure 10-31 – Viewpoint Photography VP22	EN010143/APP/6.3	1	18 June 2024	REP1-038
Figure 10-34 – Viewpoint Photography VP25	EN010143/APP/6.3	1	18 June 2024	REP1-039
Figure 10-35 – Viewpoint Photography VP26	EN010143/APP/6.3	1	18 June 2024	REP1-040
Figure 10-36 – Viewpoint Photography VP27	EN010143/APP/6.3	1	18 June 2024	REP1-041
Figure 10-37 – Viewpoint Photography VP08	EN010143/APP/6.3	1	18 June 2024	REP1-042
Figure 10-42 – Photomontage VP05	EN010143/APP/6.3	1	18 June 2024	REP1-043
Figure 10-45 – Photomontage VP09	EN010143/APP/6.3	1	18 June 2024	REP1-044
Figure 10-46 – Photomontage VP10a	EN010143/APP/6.3	1	18 June 2024	REP1-045
Figure 10-53 – Photomontage VP19	EN010143/APP/6.3	1	18 June 2024	REP1-046
Figure 10-54 – Photomontage VP25	EN010143/APP/6.3	1	18 June 2024	REP1-047
Figure 11-1 – Baseline Monitoring and Sensitive Receptor Locations	EN010143/APP/6.3	1	18 June 2024	REP1-048
Figure 13-4 – Roads Likely to be Used to Access the Site	EN010143/APP/6.3	1	18 June 2024	REP1-049
Figure 16-1 – Dust Risk Assessment Zones	EN010143/APP/6.3	1	18 June 2024	REP1-050

Framework construction traffic management plan	EN010143/APP/6.2	4	03 September 2024	AS-034
Framework site waste management plan	EN010143/APP/6.2	0	16 November 2023	APP-124
Framework surface water drainage strategy	EN010143/APP/6.2	1	18 June 2024	REP1-021

PART 3

OTHER DOCUMENTS TO BE CERTIFIED

(1) *Document name*	*(2)* *Document reference*	*(3)* *Revision number*	*(4)* *Date*	*(5)* *Examination Library Reference*
Book of reference	EN010143/APP/4.3	4	15 August 2024	REP4-004
Crown land plans	EN010143/APP/2.2	0	16 November 2023	APP-007
Framework construction environmental management plan	EN010143/APP/7.7	4	15 August 2024	REP4-010
Framework decommissioning environmental management plan	EN010143/APP/7.9	2	23 July 2024	REP3-014
Framework landscape and ecological management plan	EN010143/APP/7.14	3	23 July 2024	AS-040
Framework operational environmental management plan	EN010143/APP/7.8	3	23 July 2024	AS-036
Framework public rights of way management plan	EN010143/APP/7.13	0	16 November 2023	APP-245
Framework skills, supply chain and employment plan	EN010143/APP/7.15	0	16 November 2023	APP-247
Framework soil management plan	EN010143/APP/7.10	1	18 June 2024	REP1-058
Land plans	EN010143/APP/2.1	1	19 January 2024	AS-004
Outline design principles statement	EN010143/APP/7.4	1	18 June 2024	REP1-051

Overarching written scheme of investigation for archaeological mitigation	EN010143/APP/8.23	1	23 July 2024	REP3-030
Streets, rights of way and access plan	EN010143/APP/2.4	3	03 September 2024	AS-027 to AS-028
Traffic regulation measures plan	EN010143/APP/2.5	3	03 September 2024	AS-029 to AS-031
Works plan	EN010143/APP/2.3	0	16 November 2023	APP-008

SCHEDULE 13

Article 42

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 14

Article 43

PROTECTIVE PROVISIONS

PART 1

FOR THE PROTECTION OF ELECTRICITY, GAS, WATER AND SEWERAGE UNDERTAKERS

1. For the protection of the utility undertakers referred to in this Part of this Schedule (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 alternative apparatus adequate to enable the utility undertaker in question to fulfil its statutory functions in a manner not less efficient than previously;

"apparatus" means—

(a) in the case of an electricity undertaker, electric lines or electrical plant (as defined in the Electricity Act 1989(**a**)), belonging to or maintained by that utility undertaker;

(b) in the case of a gas undertaker, any mains, pipes or other apparatus belonging to or maintained by a gas transporter for the purposes of gas supply;

(c) in the case of a water undertaker—

(i) mains, pipes or other apparatus belonging to or maintained by that utility undertaker for the purposes of water supply; and

(ii) any water mains or service pipes (or part of a water main or service pipe) that is the subject of an agreement to adopt made under section 51A of the Water Industry Act 1991;

(d) in the case of a sewerage undertaker—

(i) any drain or works vested in the utility undertaker under the Water Industry Act 1991(**b**); and

(ii) any sewer which is so vested or is the subject of a notice of intention to adopt given under section 102(4) of that Act or an agreement to adopt made under section 104 of that Act.

and includes a sludge main, disposal main (within the meaning of section 219 of that Act) or sewer outfall and any manholes, ventilating shafts, pumps or other accessories forming part of any such sewer, drain or works, and includes any structure in which apparatus is or is to be lodged or which gives or will give access to apparatus; and

(e) any other mains, pipelines or cables that are not the subject of the protective provisions in Parts 2 to 6 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;

(**a**) 1989 c. 29.
(**b**) 1991 c. 56.

(b) a gas transporter within the meaning of Part 1 of the Gas Act 1986(**a**);

(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 11 (temporary closure 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.

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 42 (arbitration).

(5) The utility undertaker in question must, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with article 42 (arbitration), and after the grant to the utility undertaker of any such facilities and rights as are referred to in

(**a**) 1986 c. 44. A new section 7 was substituted by section 5 of the Gas Act 1995 (c. 45) and was further amended by section 76 of the Utilities Act 2000 (c. 27)

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 42 (arbitration).

(2) If the facilities and rights to be afforded by the undertaker in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are in the opinion of the arbitrator less favourable on the whole to the utility undertaker in question than the facilities and rights enjoyed by it in respect of the apparatus to be removed and the terms and conditions to which those facilities and rights are subject, the arbitrator must make such provision for the payment of compensation by the undertaker to that utility undertaker as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

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 42 (arbitration) to be necessary, then, if such placing involves cost in the construction of works under this Part of this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to the utility undertaker in question by virtue of sub-paragraph (1) is to be reduced by the amount of that excess.

(4) For the purposes of sub-paragraph (3)—

(a) an extension of apparatus to a length greater than the length of existing apparatus 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.—(1) 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;

"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 31 (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.

(**a**) 2003 c. 21.

(3) The operator must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise of the claim or demand is to be made without the consent of the undertaker which, if it withholds such consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

(4) Any difference arising between the undertaker and the operator under this Part of this Schedule must be referred to and settled by arbitration under article 42(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(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" 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 (or 9 metres in the case of any drainage work under the control of the Ouse and Derwent Internal Drainage Board) 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 (such plans to include any proposals for access for maintenance to the drainage 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 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 42. (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 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;

"the waterway" means each and every part of the River Ouse 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 16 (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 19 (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 29 (temporary use of land for constructing the authorised development) or article 30 (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 20 (compulsory acquisition of land), article 22 (compulsory acquisition of rights), 25 (acquisition of subsoil) or 31 (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.—(1) 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 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) 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 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;

(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 16 (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 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 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 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 to 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 42 (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.—(1) 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 14 will, so far as appropriate, apply to those activities as if they were a specified work.

PART 5

FOR THE PROTECTION OF THE ENVIRONMENT AGENCY

44.—(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;

"fishery" means any waters containing fish and fish in, or migrating to or from, such waters and the spawn, spawning ground, habitat or food of such fish;

"main river" has the same meaning given in section 113 of the Water Resources Act 1991;

"plans" includes sections, drawings, specifications, calculations and method statements;

"remote defence" means any berm, wall or embankment that is constructed for the purposes of preventing or alleviating flooding from, or in connection with, any main river;

"specified work" means so much of any work or operation authorised by this Order as is in, on, under, over or within;

(a) 8 metres of the base of a remote defence which is likely to—

(i) endanger the stability of, cause damage or reduce the effectiveness of that remote defence, or

(ii) interfere with the Agency's access to or along that remote defence;

(b) 16 metres of a drainage work involving a tidal main river or 8 metres of a drainage work involving a non-tidal main river; or

(c) 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—

(d) 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

(e) 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.

Submission and approval of plans

45.—(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 55.

(3) Any approval of the Agency required under this paragraph—

(a) must not be unreasonably withheld or delayed;

(b) is deemed to have been refused if it is neither given nor refused within 2 months of the submission of the plans or receipt of further particulars if such particulars have been requested by the Agency for approval; and

(c) may be given subject to such reasonable requirements as the Agency may have for the protection of any drainage work or the fishery or for the protection of water resources, or for the prevention of flooding or pollution or for nature conservation or in the discharge of its environmental duties.

(4) The Agency must use its reasonable endeavours to respond to the submission of any plans before the expiration of the period mentioned in sub-paragraph 45(3)(b).

(5) In the case of a refusal, if requested to do so the Agency must provide reasons for the grounds of that refusal.

Construction of protective works

46. Without limiting paragraph 45 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

47.—(1) Subject to sub-paragraph 47(2), any specified work, and all protective works required by the Agency under paragraph 46, 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

48.—(1) If any part of a specified work or any protective work required by the Agency is constructed otherwise than in accordance with the requirements of this Part of this Schedule, the Agency may by notice in writing require the undertaker at the undertaker's own expense to comply with the requirements of this Part of this Schedule or (if the undertaker so elects and the Agency in writing consents, such consent not to be unreasonably withheld or delayed) to remove, alter or pull down the work and, where removal is required, to restore the site to its former condition to such extent and within such limits as the Agency reasonably requires.

(2) Subject to sub-paragraph (3) if, within a reasonable period, being not less than 28 days beginning with the date when a notice under sub-paragraph (1) is served upon the undertaker, the undertaker has failed to begin taking steps to comply with the requirements of the notice and has not subsequently made reasonably expeditious progress towards their implementation, the Agency may execute the works specified in the notice and any reasonable expenditure incurred by the Agency in so doing is recoverable from the undertaker.

(3) In the event of any dispute as to whether sub-paragraph (1) is properly applicable to any work in respect of which notice has been served under that sub-paragraph, or as to the reasonableness of any requirement of such a notice, the Agency must not, except in the case of an emergency, exercise the powers conferred by sub-paragraph (2) until the dispute has been finally determined in accordance with paragraph 55.

Maintenance of works

49.—(1) Subject to sub-paragraph (6) the undertaker must from the commencement of the construction of the specified works maintain in good repair and condition and free from obstruction any drainage work which is situated within the 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 (5) if, within a reasonable period, being not less than 28 days beginning with the date on which a notice in respect of any drainage work is served under sub-paragraph (2) on the undertaker, the undertaker has failed to begin taking steps to comply with the requirements of the notice and has not subsequently made reasonably expeditious progress towards their implementation, the Agency may do what is necessary for such compliance and any reasonable expenditure incurred by the Agency in so doing is recoverable from the undertaker.

(4) If there is any failure by the undertaker to obtain consent or comply with conditions imposed by the Agency in accordance with these protective provisions the Agency may serve written notice requiring the undertaker to cease all or part of the specified works and the undertaker must cease the specified works or part thereof until it has obtained the consent or complied with the condition unless the cessation of the specified works or part thereof would cause greater damage than compliance with the written notice.

(5) In the event of any dispute as to the reasonableness of any requirement of a notice served under sub-paragraph (2), the Agency must not, except in the case of an emergency, exercise the powers conferred by sub-paragraph (3) until the dispute has been finally determined in accordance with paragraph 55.

(6) This paragraph does not apply to—

(a) drainage works which are vested in the Agency, or which the Agency or another person is liable to maintain and is not proscribed by the powers of the Order from doing so; and

(b) any obstruction of a drainage work expressly authorised in the approval of specified works plans and carried out in accordance with the provisions of this Part of this Schedule provided that any obstruction is removed as soon as reasonably practicable.

Remediating impaired drainage work

50. 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

51. If by reason of construction of the specified work the Agency's access to flood defences or equipment maintained for flood defence purposes is materially obstructed, the undertaker must provide such alternative means of access that will allow the Agency to maintain the flood defence or use the equipment no less effectively than was possible before the obstruction within 24 hours of or as soon as reasonably practicable after the undertaker becoming aware of such obstruction.

Free passage of fish

52.—(1) The undertaker must take all such measures as may be reasonably practicable to prevent any interruption of the free passage of fish in the fishery during the construction of any specified work.

(2) If by reason of—

(a) the construction of any specified work; or

(b) the failure of any such work,

damage to the fishery is caused, or the Agency has reason to expect that such damage may be caused, the Agency may serve notice on the undertaker requiring it to take such steps as may be reasonably practicable to make good the damage, or, as the case may be, to protect the fishery against such damage.

(3) If within such time as may be reasonably practicable for that purpose after the receipt of written notice from the Agency of any damage or expected damage to a fishery, the undertaker

fails to take such steps as are described in sub-paragraph (2), the Agency may take those steps and any expenditure incurred by the Agency in so doing is recoverable from the undertaker.

(4) In any case where immediate action by the Agency is reasonably required in order to secure that the risk of damage to the fishery is avoided or reduced, the Agency may take such steps as are reasonable for the purpose, and may recover from the undertaker any expenditure incurred in so doing provided that notice specifying those steps is served on the undertaker as soon as reasonably practicable after the Agency has taken, or commenced to take, the steps specified in the notice.

Indemnity

53. 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.

54.—(1) The undertaker is responsible for and indemnifies the Agency against all costs and losses, liabilities, claims and demands not otherwise provided for in this Schedule which may be reasonably incurred or suffered by the Agency by reason of, or arising out of—

(a) the construction, operation or maintenance of any specified works comprised within the authorised development or the failure of any such works comprised within them; or

(b) any act or omission of the undertaker, its employees, contractors or agents or others whilst engaged upon the construction, operation or maintenance of the authorised development or dealing with any failure of the authorised development.

(2) For the avoidance of doubt, in sub-paragraph (1)—

"costs" includes—

(a) expenses and charges;

(b) staff costs and overheads; and

(c) legal costs;

"losses" includes physical damage;

"claims" and "demands" include as applicable—

(a) costs (within the meaning of this sub-paragraph (2)) incurred in connection with any claim or demand; and

(b) any interest element of sums claimed or demanded; and

"liabilities" includes—

(a) contractual liabilities;

(b) tortious liabilities (including liabilities for negligence or nuisance);

(c) liabilities to pay statutory compensation or for breach of statutory duty; and

(d) liabilities to pay statutory penalties imposed on the basis of strict liability (but does not include liabilities to pay other statutory penalties).

(3) The Agency must give to the undertaker reasonable notice of any such claim or demand and must not settle or compromise a claim without the agreement of the undertaker and that agreement must not be unreasonably withheld or delayed.

(4) The Agency must, at all times take reasonable steps to prevent and mitigate any such claims, demands, proceedings, costs, damages, expenses or loss.

(5) The fact that any work or thing has been executed or done by the undertaker in accordance with a plan approved by the Agency, or to its satisfaction, or in accordance with any directions or

award of an arbitrator, must not relieve the undertaker from any liability under the provisions of this Part of this Schedule.

(6) Nothing in this paragraph imposes any liability on the undertaker with respect to any costs, charges, expenses, damages, claims, demands or losses to the extent that they are attributable to the neglect or default of the Agency, its officers, servants, contractors or agents.

Disputes

55. Any dispute arising between the undertaker and the Agency under this Part of this Schedule must, if the parties agree, be determined by arbitration under article 42 (arbitration), but failing agreement be determined by the Secretary of State for Environment, Food and Rural Affairs or its successor and the Secretary of State for the department of Energy Security and Net Zero or its successor acting jointly on a reference to them by the undertaker or the Agency, after notice in writing by one to the other.

PART 6

FOR THE PROTECTION OF RAILWAY INTERESTS

56. 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 70 of this Part of this Schedule any other person on whom rights or obligations are conferred by that paragraph.

57. In this Part of this Schedule—

"asset protection agreement" means an agreement to regulate the construction and maintenance of the specified work in a form prescribed from time to time by Network Rail;

"construction" includes execution, placing, alteration and reconstruction and "construct" and "constructed" have corresponding meanings;

"the engineer" means an engineer appointed by Network Rail for the purposes of this Order;

"network licence" means the network licence, as the same is amended from time to time, granted to Network Rail Infrastructure Limited by the Secretary of State in exercise of their powers under section 8 (licences) of the Railways Act 1993(**a**);

"Network Rail" means Network Rail Infrastructure Limited (company number 02904587, whose registered office is at Waterloo General Office, London SE1 8SW) and any associated company of Network Rail Infrastructure Limited which holds property for railway purposes, and for the purpose of this definition "associated company" means any company which is (within the meaning of section 1159 of the Companies Act 2006(**b**) the holding company of Network Rail Infrastructure Limited, a subsidiary of Network Rail Infrastructure Limited or another subsidiary of the holding company of Network Rail Infrastructure Limited and any successor to Network Rail Infrastructure Limited's railway undertaking;

"plans" includes sections, designs, design data, software, drawings, specifications, soil reports, calculations, descriptions (including descriptions of methods of construction), staging proposals, programmes and details of the extent, timing and duration of any proposed occupation of 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

(**a**) 1993 c. 43.
(**b**) 2006 c. 46.

(b) any easement or other property interest held or used by Network Rail or a tenant or licencee 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.

58.—(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.

59.—(1) 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 16 (discharge of water);

(d) article 19 (authority to survey and investigate the land);

(e) article 20 (compulsory acquisition of land);

(f) article 22 (compulsory acquisition of rights);

(g) article 25 (acquisition of subsoil only);

(h) article 26 (power to override easements and other rights);

(i) article 29 (temporary use of land for constructing the authorised development);

(j) article 30 (temporary use of land for maintaining the authorised development);

(k) article 31 (statutory undertakers);

(l) article 23 (private rights);

(m) article 38 (felling or lopping of trees and removal of hedgerows);

(n) article 39 (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 31 (statutory undertakers), article 26 (power to override easements and other rights) or article 23 (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.

60.—(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 60(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.

61.—(1) Any specified work and any protective works to be constructed by virtue of paragraph 60(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 60;

(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.

62. 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.

63. 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.

64.—(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 60(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 65(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.

65. 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 60(3) or in constructing any protective works under the provisions of paragraph 60(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.

66.—(1) In this paragraph—

"EMI" means, subject to sub-paragraph 66(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 60(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 66(5), the undertaker must in the design and construction of the authorised development take all measures necessary to prevent EMI and must establish with Network Rail (both parties acting reasonably) appropriate arrangements to verify their effectiveness.

(4) In order to facilitate the undertaker's compliance with sub-paragraph (3)—

(a) the undertaker must consult with Network Rail as early as reasonably practicable to identify all Network Rail's apparatus which may be at risk of EMI, and thereafter must continue to consult with Network Rail (both before and after formal submission of plans under paragraph 60(1)) in order to identify all potential causes of EMI and the measures required to eliminate them;

(b) Network Rail must make available to the undertaker all information in the possession of Network Rail reasonably requested by the undertaker in respect of Network Rail's apparatus identified pursuant to sub-paragraph 66(4)(a); and

(c) Network Rail must allow the undertaker reasonable facilities for the inspection of Network Rail's apparatus identified pursuant to sub-paragraph 66(4)(a).

(5) In any case where it is established that EMI can only reasonably be prevented by modifications to Network Rail's apparatus, Network Rail must not withhold its consent unreasonably to modifications of Network Rail's apparatus, but the means of prevention and the method of their execution must be selected in the reasonable discretion of Network Rail, and in relation to such modifications paragraph 60(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 66(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 61.

(9) To the extent that it would not otherwise do so, the indemnity in paragraph 70(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 61 applies.

(10) For the purpose of paragraph 65(a) any modifications to Network Rail's apparatus under this paragraph shall be deemed to be protective works referred to in that paragraph.

67. 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.

68. 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.

69. 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.

70.—(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 41 (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; or

(b) by reason of any act or omission of the undertaker or of any person in its employ or of its contractors or others whilst engaged upon a specified work;

(c) by reason of any act or omission of the undertaker or any person in its employ or of its contractors or others whilst accessing to or egressing from the authorised development;

(d) in respect of any damage caused to or additional maintenance required to, railway property or any such interference or obstruction or delay to the operation of the railway as a result of access to or egress from the authorised development by the undertaker or any person in its employ or of its contractors or others;

(e) in respect of costs incurred by Network Rail in complying with any railway operational procedures or obtaining any regulatory consents which procedures are required to be followed or consents obtained to facilitate the carrying out or operation of the authorised development;

and the undertaker must indemnify and keep indemnified Network Rail from and against all claims and demands arising out of or in connection with a specified work or any such failure, act or omission: and the fact that any act or thing may have been done by Network Rail on behalf of the undertaker or in accordance with plans approved by the engineer or in accordance with any requirement of the engineer or under the engineer's supervision shall not (if it was done without negligence on the part of Network Rail or of any person in its employ or of its contractors or agents) excuse the undertaker from any liability under the provisions of this sub-paragraph.

(2) Network Rail must—

(a) give the undertaker reasonable written notice of any such claims or demands;

(b) not make any settlement or compromise of such a claim or demand without the prior consent of the undertaker; and

(c) take such steps as are within its control and are reasonable in the circumstances to mitigate any liabilities relating to such claims or demands.

(3) The sums payable by the undertaker under sub-paragraph (1) shall if relevant include a sum equivalent to the relevant costs.

(4) Subject to the terms of any agreement between Network Rail and a train operator regarding the timing or method of payment of the relevant costs in respect of that train operator, Network Rail must promptly pay to each train operator the amount of any sums which Network Rail receives under sub-paragraph (3) which relates to the relevant costs of that train operator.

(5) The obligation under sub-paragraph (3) to pay Network Rail the relevant costs shall, in the event of default, be enforceable directly by any train operator concerned to the extent that such sums would be payable to that operator pursuant to sub paragraph (4).

(6) In this paragraph—

"the relevant costs" means the costs, losses and expenses (including loss of revenue) reasonably incurred by each train operator as a consequence of any specified work including but not limited to any restriction of the use of Network Rail's railway network as a result of the construction, maintenance or failure of a specified work or any such act or omission as mentioned in sub-paragraph (1); and

"train operator" means any person who is authorised to act as the operator of a train by a licence under section 8 of the Railways Act 1993.

71. 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 70) 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).

72. 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.

73. 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.

74. 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.

75. 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 35 (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.

76. 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 40 (certification of plans and documents, etc.) are certified by the Secretary of State, provide a set of those plans to Network Rail in a format specified by Network Rail.

77. Any dispute arising under this Part of this Schedule, unless otherwise provided for, must be referred to and settled by arbitration in accordance with article 42 (arbitration) and the Rules at Schedule 13 (arbitration Rules).

PART 7

FOR THE PROTECTION OF NATIONAL GRID ELECTRICITY TRANSMISSION PLC AS ELECTRICITY UNDERTAKER

Application

78.—(1) For the protection of National Grid as referred to in this Part of this Schedule the following provisions have effect, unless otherwise agreed in writing between the undertaker and National Grid.

(2) Subject to sub-paragraph (3) or to the extent otherwise agreed in writing between the undertaker and National Grid, where the benefit of this Order is transferred or granted to another person under article 35 (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 and the transferee or grantee (as the case may be); and

(b) written notice of the transfer or grant must be given to National Grid on or before the date of that transfer or grant.

(3) Sub-paragraph (2) does not apply where the benefit of the Order is transferred or granted to National Grid (but without prejudice to paragraph 93(3)(b)).

Interpretation

79. 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 or such lower amount as may be agreed in writing by National Grid. Such insurance shall be maintained (a) during the construction period of the authorised works; and (b) after the construction period of the authorised works in respect of any 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; and

(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 to cover the undertaker's liability to National Grid to a total liability cap of £50,000,000.00 (fifty million pounds) or such lower amount as approved in writing by National Grid (in a form reasonably satisfactory to National Grid and where required by National Grid, accompanied with a legal opinion confirming the due capacity and authorisation of the parent company to enter into and be bound by the terms of such guarantee); or

(b) a bank bond or letter of credit from an acceptable credit provider in favour of National Grid to cover the undertaker's liability to National Grid for an amount 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 in writing by National Grid (in a form reasonably satisfactory to National Grid);

"alternative apparatus" means appropriate alternative apparatus to the satisfaction of National Grid to enable National Grid to fulfil its statutory functions in a manner no less efficient than previously;

"apparatus" means any electric lines or electrical plant as defined in the Electricity Act 1989(**a**), belonging to or maintained by National Grid together with any replacement apparatus and such other apparatus constructed pursuant to the Order that becomes operational apparatus of National Grid for the purposes of transmission, distribution and/or supply and includes any structure in which apparatus is or will be lodged or which gives or will give access to apparatus;

"authorised works" has the same meaning as is given to the term "authorised development" in article 2 (interpretation) of this Order and includes any associated development authorised by the Order and for the purposes of this Part of this Schedule includes the use and maintenance of the authorised works and construction of any works authorised by this Schedule;

"commence" has the same meaning as is given in article 2 (interpretation) of this Order and "commencement" will be construed to have the same meaning save that for the purposes of this Part of this Schedule only, the terms "commence" and "commencement" include operations for the purposes of intrusive archaeological investigations and intrusive investigations of the existing condition of the ground or structures within 15 metres in any direction of National Grid's apparatus;

"deed of consent" means a deed of consent, crossing agreement, deed of variation or new deed of grant agreed between the parties acting reasonably in order to vary or replace existing easements, agreements, enactments and other such interests so as to secure land rights and interests as are necessary to carry out, maintain, operate and use the apparatus in a manner consistent with the terms of this Part of this Schedule;

"functions" includes powers and duties;

"ground mitigation scheme" means a scheme approved by National Grid (such approval not to be unreasonably withheld or delayed) setting out the necessary measures (if any) for a ground subsidence event;

"ground monitoring scheme" means a scheme for monitoring ground subsidence which sets out the apparatus which is to be subject to such monitoring, the extent of land to be monitored, the manner in which ground levels are to be monitored, the timescales of any monitoring activities and the extent of ground subsidence which, if exceeded, shall require the undertaker to submit for National Grid's approval a ground mitigation scheme;

"ground subsidence event" means any ground subsidence identified by the monitoring activities set out in the ground monitoring scheme that has exceeded the level described in the ground monitoring scheme as requiring a ground mitigation scheme;

"in" in a context referring to apparatus or alternative apparatus in land includes a reference to apparatus or alternative apparatus under, over, across, along or upon such land;

"Incentive Deduction" means any incentive deduction National Grid Electricity Transmission plc receives under its electricity transmission licence which is caused by an event on its transmission system that causes electricity not to be supplied to a demand customer and which arises as a result of the authorised works;

"maintain" and "maintenance" shall include the ability and right to do any of the following in relation to any apparatus or alternative apparatus of National Grid: construct, use, repair, alter, inspect, renew or remove the apparatus;

"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;

(**a**) 1989 c. 29.

"National Grid Connection Works" means any part of Work No. 3 as described in Schedule 1 of this Order (authorised development) and shown on sheet 22 of 22 of the works plans;

"NGESO" means as defined in the STC;

"plan" or "plans" include all designs, drawings, specifications, method statements, soil reports, programmes, calculations, risk assessments and other documents that are reasonably necessary properly and sufficiently to describe and assess the works to be executed;

"parent company" means a parent company of the undertaker acceptable to and which shall have been approved by National Grid acting reasonably;

"SEGL2 Project" means the 2GW High Voltage Direct Current (HVDC) electrical superhighway from Peterhead in Aberdeenshire to Drax in North Yorkshire known as Scotland to England Green Link 2;

"SEGL2 Site" includes –

(a) Land on which any SEGL2 apparatus is situated; and

(b) Land on which SEGL2 apparatus is anticipated to be situated which is necessary for the construction, use or maintenance of the SEGL2 Project (in so far as the same has been notified by National Grid in writing to the undertaker);

"Solar array works" means any part of Work Nos. 1, 2 and 4 that are within 15 metres of the SEGL2 Site;

"specified works" means any of the authorised works or activities undertaken in association with the authorised works which—

(a) will or may be situated over, or within 15 metres measured in any direction of any apparatus the removal of which has not been required by the undertaker under paragraph 89(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 89(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" means as defined in the STC; and

"undertaker" means the undertaker as defined in article 2 (interpretation) of this Order.

Interaction with the SEGL2 Project

80.—(1) Without limiting any other provision of this Part of this Schedule, the undertaker must use reasonable endeavours to avoid any conflict arising between the construction, maintenance and operation of the authorised development and the SEGL2 Project. For the purposes of this paragraph, "reasonable endeavours" means—

(a) undertaking consultation on the detailed design and programming of the National Grid connection works and all works associated with or ancillary to the National Grid connection works to ensure that the design and programme for the National Grid connection works does not unreasonably impede or interfere with the SEGL2 Project;

(b) undertaking consultation on the detailed design and programming of the Solar array works and all works associated with or ancillary to the Solar array works to ensure that

the design and programme for the Solar array works does not unreasonably impede or interfere with the SEGL2 Project;

(c) having regard to the proposed programme of works for the SEGL2 Project as may be made available to the undertaker by National Grid and facilitating a co-ordinated approach to the programme, land assembly, and the carrying out of the National Grid connection works and the SEGL2 Project;

(d) providing a point of contact for continuing liaison and co-ordination throughout the construction and operation of the authorised development; and

(e) keeping National Grid informed on the programme of works for the authorised development.

National Grid connection works

81. The undertaker must not carry out the National Grid connection works, or any part of it except with the approval of National Grid in accordance with paragraph 82.

82.—(1) Before beginning to construct any National Grid connection works, or any part of it, the undertaker must submit to National Grid plans of the relevant National Grid connection works (or part of it) and such further particulars available to it as National Grid may reasonably request within 21 days of receipt of the plans.

(2) The undertaker must not commence any works to which sub-paragraph (1) applies until National Grid has given written approval of the plan so submitted.

(3) Any approval of National Grid requested under paragraph 81 or sub-paragraph (2)—

(a) may be given subject to reasonable conditions; and

(b) must not be unreasonably withheld or delayed.

(4) Any National Grid connection works must not be constructed except in accordance with such plans as may be approved in writing by National Grid or as amended from time to time by agreement between the undertaker and National Grid.

(5) The undertaker will not be required to comply with sub-paragraph (1) where it needs to carry out emergency works as defined in the 1991 Act but in that case it must give to National Grid notice as soon as is reasonably practicable and a plan of those works and must comply with sub-paragraphs (2) and (3) insofar as is reasonably practicable in the circumstances.

83. The undertaker must give to National Grid not less than 14 days' notice in writing of its intention to commence construction of any National Grid connection works and notice in writing of its completion not later than 7 days after the date on which it is completed and National Grid will be entitled by its officer to watch and inspect the construction of such works.

84.—(1) If any part of the National Grid connection works is constructed otherwise than in accordance with paragraph 82(4) above National Grid may by notice in writing identify the extent to which the National Grid connection works do not comply with the approved details and request the undertaker at the undertaker's own expense carry out remedial works so as to comply with the requirements of paragraph 82(4) of this Schedule or such alternative works as may be agreed with National Grid or as otherwise may be agreed between the parties.

(2) Subject to sub-paragraph (3), if within a reasonable period, being not less than 28 days beginning with the date when a notice under sub-paragraph (2) 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, National Grid may execute the works specified in the notice and any reasonable expenditure incurred by National Grid in so doing will be recoverable from the undertaker.

(3) In the event of any dispute as to whether sub-paragraph (2) 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, National Grid will not, except in the case of an emergency, exercise the powers conferred by sub-paragraph (2) until the dispute has been finally determined in accordance with paragraph 97.

On Street Apparatus

85. Except for paragraphs 86 (apparatus of National Grid in stopped up streets), 91 (retained apparatus), 92 (expenses) and 93 (indemnity) of this Schedule which will apply in respect of the exercise of all or any powers under the Order affecting the rights and apparatus of National Grid, the other provisions of this Schedule do not apply to apparatus in respect of which the relations between the undertaker and National Grid are regulated by the provisions of Part 3 of the 1991 Act.

Apparatus of National Grid in stopped up streets

86.—(1) Where any street is stopped up under article 11 (temporary closure of streets and public rights of way), if National Grid has any apparatus in the street or accessed via that street National Grid has the same rights in respect of that apparatus as it enjoyed immediately before the stopping up and the undertaker must grant to National Grid, or procure the granting to National Grid of, legal easements reasonably satisfactory to National Grid in respect of such apparatus and access to it prior to the stopping up of any such street but nothing in this paragraph affects any right of the undertaker or National Grid to require the removal of that apparatus under paragraph 89 or the power of the undertaker, subject to compliance with this sub-paragraph, to carry out works under paragraph 91.

(2) Notwithstanding the temporary stopping up or diversion of any street under the powers of article 11 (temporary closure of streets and public rights of way), National Grid is at liberty at all times to take all necessary access across any such stopped up street and to execute and do all such works and things in, upon or under any such street as may be reasonably necessary or desirable to enable it to maintain any apparatus which at the time of the stopping up or diversion was in that street.

Protective works to buildings

87. The undertaker, in the case of the powers conferred by article 18 (protective works 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 which must not unreasonably be withheld.

Acquisition of land

88.—(1) Regardless of any provision in this Order or anything shown on the land plans or contained in the book of reference to the Order, the undertaker may not: (a) appropriate or acquire or take temporary possession of any land or apparatus; or (b) appropriate, acquire, extinguish, interfere with or override any easement, other interest or right and/or apparatus of National Grid otherwise than by agreement.

(2) As a condition of an agreement between the parties in sub-paragraph (1), prior to the carrying out of any part of the authorised works (or in such other timeframe as may be agreed between National Grid and the undertaker) that is subject to the requirements of this Part of this Schedule that will cause any conflict with or breach the terms of any easement or other legal or land interest of National Grid or affect the provisions of any enactment or agreement regulating the relations between National Grid and the undertaker in respect of any apparatus laid or erected in land belonging to or secured by the undertaker, the undertaker must as National Grid reasonably requires enter into such deeds of consent upon such terms and conditions as may be agreed between National Grid and the undertaker acting reasonably and which must be no less favourable on the whole to National Grid unless otherwise agreed by National Grid, and it will be the responsibility of the undertaker to procure and/or secure the consent and entering into of such deeds and variations by all other third parties with an interest in the land at that time who are affected by such authorised works.

(3) Save where otherwise agreed in writing between National Grid and the undertaker, the undertaker and National Grid agree that where there is any inconsistency or duplication between the provisions set out in this Part of this Schedule relating to the relocation 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 and/or other enactments relied upon by National Grid as of right or other use in relation to the apparatus, then the provisions in this Schedule shall prevail.

(4) Any agreement or consent granted by National Grid under paragraph 90 or any other paragraph of this Part of this Schedule, shall not be taken to constitute agreement under sub-paragraph (1).

Removal of apparatus

89.—(1) If, in the exercise of the powers conferred by this Order, the undertaker acquires any interest in or possesses temporarily any land in which any apparatus is placed, that apparatus must not be removed under this Part of this Schedule and any right of National Grid to maintain that apparatus in that land must not be extinguished until alternative apparatus has been constructed, and is in operation to the reasonable satisfaction of National Grid in accordance with sub-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 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 reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph (3), secure any necessary consents for the alternative apparatus and afford to National Grid to its satisfaction (taking into account paragraph 90(1) below) the necessary facilities and rights—

(a) for the construction of alternative apparatus in other land of or land secured by the undertaker; and

(b) subsequently for the maintenance of that apparatus.

(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of or land secured by the undertaker, or the undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraph (2), in the land in which the alternative apparatus or part of such apparatus is to be constructed, National Grid may in its sole discretion, on receipt of a written notice to that effect from the undertaker, take such steps as are reasonable in the circumstances to assist the undertaker to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed save that this obligation shall not extend to the requirement for National Grid to use its compulsory purchase powers to this end unless it elects to so do.

(4) Any alternative apparatus to be constructed in land of or land secured by the undertaker under this Part of this Schedule must be constructed in such manner and in such line or situation as may be agreed between National Grid and the undertaker.

(5) National Grid must, after the alternative apparatus to be provided or constructed has been agreed, and subject to a written diversion agreement having been entered into between the parties and the grant to National Grid of any such facilities and rights as are referred to in sub-paragraph (2) or (3), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by the undertaker to be removed under the provisions of this Part of this Schedule.

Facilities and rights for alternative apparatus

90.—(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to or secures for National Grid facilities and rights in land for the construction, use, maintenance and protection of alternative apparatus in substitution for apparatus to be removed, those facilities and rights must be granted upon such terms and conditions as may be agreed between the undertaker and National Grid and must be no less favourable on the whole to National

Grid than the facilities and rights enjoyed by it in respect of the apparatus to be removed unless otherwise agreed by National Grid.

(2) If the facilities and rights to be afforded by the undertaker in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are less favourable on the whole to National Grid 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 97 (arbitration) of this Part of this Schedule and the arbitrator must make such provision for the payment of compensation by the undertaker to National Grid as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

Retained apparatus: protection

91.—(1) Not less than 56 days before the commencement of any specified works, the undertaker must submit to National Grid a plan of the works to be executed and seek from National Grid details of the underground extent of their electricity assets.

(2) In relation to specified works the plan to be submitted to National Grid under sub-paragraph (1) must include a method statement and describe—

(a) the exact position of the works;

(b) the level at which these are proposed to be constructed or renewed;

(c) the manner of their construction or renewal including details of excavation, positioning of plant;

(d) the position of all apparatus;

(e) by way of detailed drawings, every alteration proposed to be made to or close to any such apparatus;

(f) any intended maintenance regimes;

(g) an assessment of risks of rise of earth issues; and

(h) a ground monitoring scheme, where required.

(3) In relation to any works which will or may be situated on, over, under or within 10 metres of any part of the foundations of an electricity tower or between any two or more electricity towers, the plan to be submitted under sub-paragraph (1) must, in addition to the matters set out in sub-paragraph (2), include a method statement describing—

(a) details of any cable trench design including route, dimensions, clearance to pylon foundations;

(b) demonstration that pylon foundations will not be affected prior to, during and post construction;

(c) details of load bearing capacities of trenches;

(d) details of any cable installation methodology including access arrangements, jointing bays and backfill methodology;

(e) a written management plan for high voltage hazard during construction and ongoing maintenance of any cable route;

(f) written details of the operations and maintenance regime for any cable, including frequency and method of access;

(g) assessment of earth rise potential if reasonably required by National Grid's engineers; and

(h) evidence that trench bearing capacity is to be designed to support overhead line construction traffic of up to and including 26 tonnes in weight.

(4) The undertaker must not commence any works to which sub-paragraphs (2) or (3) apply until National Grid has given written approval of the plan so submitted.

(5) Any approval of National Grid required under sub-paragraph (4)—

(a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraph (6) or (8); and

(b) must not be unreasonably withheld or delayed.

(6) In relation to any work to which sub-paragraphs (2) or (3) apply, National Grid may require such modifications to be made to the plans as may be reasonably necessary for the purpose of securing its apparatus against interference or risk of damage, for the provision of protective works or for the purpose of providing or securing proper and convenient means of access to any apparatus.

(7) Works executed under sub-paragraphs (2) or (3) must be executed in accordance with the plan, submitted under sub-paragraph (1) or as relevant sub-paragraph (6) as approved or as amended from time to time by agreement between the undertaker and National Grid and in accordance with such reasonable requirements as may be made in accordance with sub-paragraphs (6) or (8) by National Grid for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and National Grid will be entitled to watch and inspect the execution of those works.

(8) Where National Grid requires any protective works to be carried out by itself or by the undertaker (whether of a temporary or permanent nature) such protective works, inclusive of any measures or schemes required and approved as part of the plan approved pursuant to this paragraph, must be carried out to National Grid's satisfaction prior to the commencement of any authorised works for which protective works are required and National Grid shall give notice of its requirement for such works within 42 days of the date of submission of a plan pursuant to this paragraph (except in an emergency).

(9) If National Grid 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) shall apply as if the removal of the apparatus had been required by the undertaker under paragraph 89(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 any authorised works, a new plan, instead of the plan previously submitted, and having done so the provisions of this paragraph shall apply to and in respect of the new plan.

(11) The undertaker will not be required to comply with sub-paragraph (1) where it needs to carry out emergency works as defined in the 1991 Act but in that case it must give to National Grid notice as soon as is reasonably practicable and a plan of those works and must comply with sub-paragraphs (6), (7) and (8) insofar as is reasonably practicable in the circumstances and comply with sub-paragraph (11) at all times.

(12) At all times when carrying out any works authorised under the Order, the undertaker must comply with National Grid's policies for development near overhead lines EN43-8 and HSE's guidance note 6 "Avoidance of Danger from Overhead Lines".

Expenses

92.—(1) Save where otherwise agreed in writing between National Grid and the undertaker and subject to the following provisions of this paragraph, the undertaker must pay to National Grid within 30 days of receipt of an itemised invoice or claim from National Grid all charges, costs and expenses reasonably anticipated within the following three months or reasonably and properly incurred by National Grid in, or in connection with, the inspection, removal, relaying or replacing, alteration or protection of any apparatus or the construction of any new or alternative apparatus which may be required in consequence of the execution of any authorised works including without limitation—

(a) any costs reasonably incurred by or compensation properly paid by National Grid in connection with the acquisition of rights or the exercise of statutory powers for such apparatus including without limitation all costs incurred by National Grid as a consequence of National Grid—

(i) using its own compulsory purchase powers to acquire any necessary rights under paragraph 89(3); or

(ii) exercising any compulsory purchase powers in the Order transferred to or benefitting National Grid;

(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 97 (arbitration) to be necessary, then, if such placing involves cost in the construction of works under this Part of this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to National Grid by virtue of sub-paragraph (1) will be reduced by the amount of that excess save to the extent that it is not possible in the circumstances to obtain the existing type of apparatus at the same capacity and dimensions or place at the existing depth in which case full costs will be borne by the undertaker.

(4) For the purposes of sub-paragraph (3)—

(a) an extension of apparatus to a length greater than the length of existing apparatus will not be treated as a placing of apparatus of greater dimensions than those of the existing apparatus; and

(b) where the provision of a joint in a pipe or cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole will be treated as if it also had been agreed or had been so determined.

(5) Any amount which apart from this sub-paragraph would be payable to National Grid in respect of works by virtue of sub-paragraph (1) will, if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on National Grid any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, be reduced by the amount which represents that benefit.

Indemnity

93.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any works authorised by this Part of this Schedule or in consequence of the construction, use maintenance or failure of any of the authorised works by or on behalf of the undertaker or in consequence of any act or default of the undertaker (or any person employed or

authorised by him) in the course of carrying out such works, including without limitation works carried out by the undertaker under this Part of this Schedule or any subsidence resulting from any of these works, any damage is caused to any apparatus or alternative apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of the authorised works) or property of National Grid, or there is any interruption in any service provided, or in the supply of any goods, by National Grid, or National Grid becomes liable to pay any amount to any third party, the undertaker will—

(a) bear and pay on demand accompanied by an invoice or claim from National Grid the cost reasonably and properly incurred by National Grid in making good such damage or restoring the supply; and

(b) indemnify National Grid for any other expenses, loss, demands, proceedings, damages, claims, penalty or costs incurred by or recovered from National Grid, by reason or in consequence of any such damage or interruption or National Grid becoming liable to any third party and including STC Claims or an Incentive Deduction other than arising from any default of National Grid.

(2) The fact that any act or thing may have been done by National Grid on behalf of the undertaker or in accordance with a plan approved by National Grid or in accordance with any requirement of National Grid or under its supervision will not (unless sub-paragraph (3) applies), excuse the undertaker from liability under the provisions of this sub-paragraph (1) unless National Grid fails to carry out and execute the works properly with due care and attention and in a skilful and workman like manner or in a manner that does not accord with the approved plan.

(3) Nothing in sub-paragraph (1) shall impose any liability on the undertaker in respect of—

(a) any damage or interruption to the extent that it is attributable to the neglect or default of National Grid, 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 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 35 (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 (3)(b) will be subject to the full terms of this Part of this Schedule including this paragraph 93; 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 must give the undertaker reasonable notice of any such third party claim or demand and no settlement, admission of liability or compromise must, unless payment is required in connection with a statutory compensation scheme, be made without first consulting the undertaker and considering their representations.

(5) National Grid must, in respect of any matter covered by the indemnity given by the undertaker in this paragraph, at all times act reasonably and in the same manner as it would as if settling third party claims on its own behalf from its own funds.

(6) National Grid must use its reasonable endeavours to mitigate and to minimise any costs, expenses, loss, demands, and penalties to which the indemnity under this paragraph applies where it is within National Grid's reasonable ability and control to do so and which expressly excludes any obligation to mitigate liability arising from third parties which is outside of National Grid's control and if reasonably requested to do so by the undertaker National Grid must provide an explanation of how the claim has been minimised, where relevant.

(7) Not to commence construction (and not to permit the commencement of such construction) of the authorised works on any land owned by National Grid or in respect of which National Grid has an easement or wayleave for its apparatus or any other interest or to carry out any works within 15 metres of National Grid's apparatus until the following conditions are satisfied:

(a) unless and until National Grid is satisfied acting reasonably (but subject to all necessary regulatory constraints) that the undertaker has first provided the acceptable security (and provided evidence that it shall maintain such acceptable security for the construction period of the authorised works referred to in sub-paragraph (7) from the proposed date of commencement of construction of those works) and National Grid has confirmed the same to the undertaker in writing; and

(b) unless and until National Grid is satisfied acting reasonably (but subject to all necessary regulatory constraints) that the undertaker has procured acceptable insurance (and provided evidence to National Grid that it shall maintain such acceptable insurance for the construction period of the authorised works referred to in sub-paragraph (7) from the proposed date of commencement of construction of those works) and National Grid has confirmed the same in writing to the undertaker.

(8) In the event that the undertaker fails to comply with paragraph 93(7) of this Part of this Schedule, nothing in this Part of this Schedule shall prevent National Grid from seeking injunctive relief (or any other equitable remedy) in any court of competent jurisdiction.

Enactments and agreements

94. Save to the extent provided for to the contrary elsewhere in this Part of this Schedule or by agreement in writing between National Grid and the undertaker, nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and National Grid in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

Co-operation

95.—(1) Where in consequence of the proposed construction of any part of the authorised works, the undertaker or National Grid requires the removal of apparatus under paragraph 89(2) or National Grid makes requirements for the protection or alteration of apparatus under paragraph 91, the undertaker shall use its best endeavours to co-ordinate the execution of the works in the interests of safety and the efficient and economic execution of the authorised works and taking into account the need to ensure the safe and efficient operation of National Grid's undertaking and National Grid shall use its best endeavours to co-operate with the undertaker for that purpose.

(2) For the avoidance of doubt whenever National Grid's consent, agreement or approval is required in relation to plans, documents or other information submitted by the undertaker or the taking of action by the undertaker, it must not be unreasonably withheld or delayed.

Access

96. If in consequence of the agreement reached in accordance with paragraph 88(1) or the powers granted under this Order the access to any apparatus is materially obstructed, the undertaker must provide such alternative means of access to such apparatus as will enable National Grid to maintain or use the apparatus no less effectively than was possible before such obstruction.

Arbitration

97. Save for differences or disputes arising under paragraphs 89(2), 89(4), 90(1) and 91 any difference or dispute arising between the undertaker and National Grid under this Part of this Schedule must, unless otherwise agreed in writing between the undertaker and National Grid, be determined by arbitration in accordance with article 42 (arbitration).

Notices

98. Notwithstanding 45 (service of notices), any plans submitted to National Grid by the undertaker pursuant to paragraph 91 must be submitted using the LSBUD system

(https://lsbud.co.uk/) or to such other address as National Grid may from time to time appoint instead for that purpose and notify to the undertaker in writing.

PART 8

FOR THE PROTECTION OF NORTHERN POWERGRID (YORKSHIRE) PLC

99. For the protection of Northern Powergrid (Yorkshire) Plc the following provisions have effect, unless otherwise agreed in writing between the undertaker and Northern Powergrid.

100. In this Part of this Schedule—

"1991 Act" means the New Roads and Street Works Act 1991;

"alternative apparatus" means alternative apparatus adequate to enable Northern Powergrid to fulfil its statutory functions in a manner not less efficient than previously;

"apparatus" means apparatus (as defined in article 2 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 apparatus;

"authorised works" means so much of the works authorised by this Order which affect existing Northern Powergrid's apparatus within the Order limits;

"functions" includes powers and duties;

"in", in a context referring to apparatus or alternative apparatus in land, includes a reference to apparatus or alternative apparatus under, over or upon land;

"Order" means the East Yorkshire Solar Farm Order 202*;

"Order limits" means as defined in article 2 of the Order;

"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; and

"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.

101. 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.

102. Regardless of the temporary prohibition or restriction of use of streets under the powers conferred by article 11 (temporary closure 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.

103. 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 override any easement or other interest of Northern Powergrid otherwise than by agreement with Northern Powergrid, such agreement not to be unreasonably withheld or delayed.

104. 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 interests supporting the use, maintenance or renewal of such equipment including any easements other than by agreement of Northern Powergrid (such agreement not to be unreasonably

withheld or delayed) and having regard to Northern Powergrid's existing and known future requirements for such land or interests.

105.—(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, or other form of written agreement in a form reasonably acceptable to Northern Powergrid which shall include rights to retain and subsequently maintain the apparatus being replaced or diverted for the lifetime of that alterative apparatus, all to the reasonable satisfaction of 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 42 days' advance written notice of that requirement, together with a plan and section of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order 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);

(b) in the event that the undertaker is not able to procure the necessary land interest or rights referred to in sub-paragraph (3)(a) Northern Powergrid must, on receipt of a written notice to that effect from the undertaker and subject to paragraph 108, as soon as reasonably practicable use reasonable endeavours to procure the necessary facilities and rights in the land in which the alternative apparatus is to be constructed save that this obligation shall not extend to the requirement for Northern Powergrid to use its compulsory purchase powers to this end; and

(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 (3)(a) and/or (b), the undertaker shall use its compulsory purchase powers under the Order (where available) unless otherwise agreed by 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 42 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 42 (arbitration) of the Order, 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.

106.—(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 42 (interpretation) of the Order.

(2) If the facilities and rights to be afforded by the undertaker in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are in the opinion of the arbitrator less favourable on the whole to Northern Powergrid than the facilities and rights enjoyed by it in respect of the apparatus to be removed and the terms and conditions to which those facilities and rights are subject, the arbitrator must make such provision for the payment of compensation by the undertaker to Northern Powergrid as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

107.—(1) Not less than 56 days before starting the execution of any works in, on or under any land purchased, held, appropriated or used under the Order that are near to (including conducting any activities whether intentionally or unintentionally, through for example ground or machinery collapse, which may affect Northern Powergrid's apparatus or encroach on safety distances to live equipment) or will or may affect, any apparatus the removal of which has not been required by the undertaker under paragraph 105(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 35 days beginning with the date on which a plan, section and description under sub-paragraph (1) are submitted to it.

(4) If Northern Powergrid in accordance with sub-paragraph (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, sub-paragraphs (1) to (3) apply as if the removal of the apparatus had been required by the undertaker under paragraph 105.

(5) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 35 days before commencing the execution of any works, a new plan, section and description instead of the plan, section and description previously submitted, and having done so the provisions of this paragraph apply to and in respect of the new plan, section and description.

(6) The undertaker is not required to comply with sub-paragraph (1) in a case of emergency but in that case it must give to Northern Powergrid notice as soon as is reasonably practicable and a plan, section and description of those works as soon as reasonably practicable subsequently and must comply with sub-paragraph (2) in so far as is reasonably practicable in the circumstances.

108.—(1) Subject to the following provisions of this paragraph, the undertaker must repay to Northern Powergrid within 51 days of receipt of an itemised invoice or claim the reasonable and proper expenses, costs or charges 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 paragraphs 105(2) and 105(3) including within limitation:

(a) any costs reasonably incurred or compensation properly paid in connection with the acquisition of rights or the exercise of statutory powers for such apparatus including without limitation in the event that it is agreed Northern Powergrid elects to use

compulsory purchase powers to acquire any necessary rights under paragraph 105(3) all costs reasonably incurred as a result of such action;

(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, plus a capitalised sum to cover the reasonable cost of adequately 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) Where any payment falls due pursuant to paragraph 108(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 fifty 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'); and

(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 of receipt of the same where payment has not been made.

(3) There is to be deducted from any sum payable under sub-paragraph (1) the value of any apparatus removed under the provisions of this Part of this Schedule, that value being calculated after removal and for the avoidance of doubt, if the apparatus removed under the provisions of this Part of this Schedule has nil value, no sum will be deducted from the amount payable under sub-paragraph (1) if in accordance with the provisions of this Part of this Schedule—

(a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions; or

(b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was,

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or, in default of agreement, is not determined by arbitration in accordance with article 42 (arbitration) of the 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 apart from this sub-paragraph would be payable to Northern Powergrid by virtue of sub-paragraph (1) is to be reduced by the amount of that excess, save where it is not possible on account of reasonable project time limits communicated in a reasonable timeframe to the undertaker and/or supply issues to obtain the existing type of operations, capacity, dimensions or place at the existing depth in which case full costs shall be borne by the undertaker.

(4) For the purposes of sub-paragraph (3)—

(a) an extension of apparatus to a length greater than the length of existing apparatus is not to be treated as a placing of apparatus of greater dimensions than those of the existing apparatus where such extension is required in consequence of the execution of any such works as are referred to in paragraph 105(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.

109.—(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 in paragraph 105(2), or in consequence of the, maintenance or failure of any of the authorised works by or on behalf of the undertaker or in consequence of any act or default of the undertaker (or any person employed or authorised by it) in the course of carrying out such works, including without limitation works carried out by the undertaker under this Schedule or any subsidence resulting from any of these works any damage is caused to any apparatus 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 as a consequence of any default, negligence or omission by the undertaker in carrying out the authorised works, the undertaker must—

(a) bear and pay the cost reasonably incurred by Northern Powergrid in making good such damage or restoring the supply; and

(b) indemnify Northern Powergrid for other reasonable expenses, loss, damages, penalty, proceedings, claims or costs incurred by or recovered from Northern Powergrid,

by reason or in consequence of any such damage or interruption or Northern Powergrid becoming liable to any third party.

(2) Nothing in sub-paragraph (1) imposes any liability on the undertaker with respect to—

(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.

(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 109 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 109 for claims reasonably incurred by Northern Powergrid.

(5) Subject to sub-paragraphs (3) and (4), the fact that any act or thing may have been done by Northern Powergrid on behalf of the undertaker or in accordance with a plan approved by Northern Powergrid or in accordance with any requirement of Northern Powergrid as a consequence of the authorised development or under its supervision will not (unless sub-paragraph (2) applies), excuse the undertaker from liability under the provisions of this sub-paragraph (5) where the undertaker fails to carry out and execute the works properly with due care and attention and in a skilful and workman like manner or in a manner that does not materially accord with the approved plan or as otherwise agreed between the undertaker and the Northern Powergrid.

110. 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.

111. Any difference under the provisions of this Part of the Schedule, unless otherwise agreed is to be referred to and settled by arbitration in accordance with article 42 (arbitration) of the Order.

112. 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 105 or otherwise or Northern Powergrid makes requirements for the protection or alteration of apparatus under paragraph 107, the undertaker shall use reasonable endeavours to co-ordinate the execution of the works in the interests of safety and the need to ensure the safe and efficient operation of Northern Powergrid's 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 co-operate with each other for those purposes.

113. If in consequence of an agreement reached in accordance with paragraph 102 or the powers granted under this Order the access to any apparatus or alternative apparatus is materially obstructed, the undertaker shall provide such alternative means of access to such apparatus or alternative apparatus as will enable Northern Powergrid to maintain or use the said apparatus no less effectively than was possible before such obstruction.

114. The plans submitted to Northern Powergrid by the undertaker pursuant to this Part of the Schedule must be sent to Northern Powergrid at property@northernpowergrid.com or such other address as Northern Powergrid may from time to time appoint instead for that purpose and notify to the undertaker in writing.

115. 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.

116. 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 – 4m below ground level.

PART 9

FOR THE PROTECTION OF NATIONAL GAS TRANSMISSION PLC

Application

117.—(1) For the protection of National Gas as referred to in this Part of this Schedule the following provisions have effect, unless otherwise agreed in writing between the undertaker and National Gas.

(2) Subject to sub-paragraph (3) or to the extent otherwise agreed in writing between the undertaker and National Gas, where the benefit of this Order is transferred or granted to another person under article 35 (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 Gas and the transferee or grantee (as the case may be); and

(b) written notice of the transfer or grant must be given to National Gas on or before the date of that transfer or grant.

(3) Sub-paragraph (2) does not apply where the benefit of the Order is transferred or granted to National Gas (but without prejudice to paragraph 127(3)(b)).

Interpretation

118. 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 (ii) "A3" if the rating is assigned by Moody's Investors Services Inc.;

"acceptable insurance" means general third party liability insurance effected and maintained by the undertaker with a combined property damage and bodily injury limit of indemnity of not less than £50,000,000.00 (fifty million pounds) per occurrence or series of occurrences arising out of one event. Such insurance shall be maintained: (a) during the construction period of the authorised works; and (b) after the construction period of the authorised works in

respect of any use and maintenance of the authorised development by or on behalf of the undertaker which constitute specified works and arranged with an insurer whose security/credit rating meets the same requirements as an "acceptable credit provider", such insurance shall include (without limitation):

(a) a waiver of subrogation and an indemnity to principal clause in favour of National Gas; and

(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 Gas to cover the undertaker's liability to National Gas to a total liability cap of not less than £50,000,000.00 (fifty million pounds) (in a form reasonably satisfactory to National Gas and where required by National Gas, accompanied with a legal opinion confirming the due capacity and authorisation of the parent company to enter into and be bound by the terms of such guarantee); or

(b) a bank bond or letter of credit from an acceptable credit provider in favour of National Gas to cover the undertaker's liability to National Gas for an amount of not less than £10,000,000.00 (ten million pounds) per asset per event up to a total liability cap of £50,000,000.00 (fifty million pounds) (in a form reasonably satisfactory to National Gas);

"alternative apparatus" means appropriate alternative apparatus to the satisfaction of National Gas to enable National Gas to fulfil its statutory functions in a manner no less efficient than previously;

"apparatus" means any mains, pipes or other apparatus belonging to or maintained by National Gas for the purposes of gas supply together with any replacement apparatus and such other apparatus constructed pursuant to the Order that becomes operational apparatus of National Gas for the purposes of transmission, distribution and/or supply and includes any structure in which apparatus is or will be lodged or which gives or will give access to apparatus;

"authorised works" has the same meaning as is given to the term "authorised development" in article 2(1) of this Order and includes any associated development authorised by the Order and for the purposes of this Part of this Schedule includes the use and maintenance of the authorised works and construction of any works authorised by this Schedule;

"commence" and "commencement" in this Part of this Schedule shall include any below ground surveys, monitoring, ground work operations or the receipt and erection of construction plant and equipment;

"deed of consent" means a deed of consent, crossing agreement, deed of variation or new deed of grant agreed between the parties acting reasonably in order to vary or replace existing easements, agreements, enactments and other such interests so as to secure land rights and interests as are necessary to carry out, maintain, operate and use the apparatus in a manner consistent with the terms of this Part of this Schedule;

"functions" includes powers and duties;

"ground mitigation scheme" means a scheme approved by National Gas (such approval not to be unreasonably withheld or delayed) setting out the necessary measures (if any) for a ground subsidence event;

"ground monitoring scheme" means a scheme for monitoring ground subsidence which sets out the apparatus which is to be subject to such monitoring, the extent of land to be monitored, the manner in which ground levels are to be monitored, the timescales of any monitoring activities and the extent of ground subsidence which, if exceeded, shall require the undertaker to submit for National Gas's approval a ground mitigation scheme;

"ground subsidence event" means any ground subsidence identified by the monitoring activities set out in the ground monitoring scheme that has exceeded the level described in the ground monitoring scheme as requiring a ground mitigation scheme;

"in" in a context referring to apparatus or alternative apparatus in land includes a reference to apparatus or alternative apparatus under, over, across, along or upon such land;

"maintain" and "maintenance" shall include the ability and right to do any of the following in relation to any apparatus or alternative apparatus of National Gas: construct, use, repair, alter, inspect, renew or remove the apparatus;

"National Gas" means National Gas Transmission plc (Company Number 02006000) whose registered office is at National Gas House, Warwick Technology Park, Gallows Hill, Warwick, CV34 6DA or any successor as a gas transporter within the meaning of Part 1 of the Gas Act 1986;

"Network Code" means the network code prepared by National Gas pursuant to Standard Special Condition A11(3) of its Gas Transporter's Licence, which incorporates the Uniform Network Code, as defined in Standard Special Condition A11(6) of National Gas' Gas Transporter Licence, as both documents are amended from time to time;

"Network Code Claims" means any claim made against National Gas by any person or loss suffered by National Gas under the Network Code arising out of or in connection with any failure by National Gas to make gas available for off take at, or a failure to accept gas tendered for delivery from, any entry point to or exit point from the gas national transmission system as a result of the authorised works or any costs and/or expenses incurred by National Gas as a result of or in connection with, it taking action (including purchase or buy back of capacity) for the purpose of managing constraint or potential constraint on the gas national transmission system which may arise as a result of the authorised works;

"plan" or "plans" include all designs, drawings, specifications, method statements, soil reports, programmes, calculations, risk assessments and other documents that are reasonably necessary properly and sufficiently to describe and assess the works to be executed;

"parent company" means a parent company of the undertaker acceptable to and which shall have been approved by National Gas acting reasonably;

"specified works" means any of the authorised works or activities undertaken in association with the authorised works which:

(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 123(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 123(2) or otherwise; and/or

(c) includes any of the activities that are referred to in paragraph 8 of T/SP/SSW/22 (National Gas's policies for safe working in proximity to gas apparatus "Specification for safe working in the vicinity of National Grid, High pressure Gas pipelines and associated installation requirements for third parties" T/SP/SSW/22);

"undertaker" means the undertaker as defined in article 2(1) of this Order.

On Street Apparatus

119. Except for paragraphs 120 (apparatus of National Gas in stopped up streets), 125 (retained apparatus: protection), 126 (expenses) and 127 (indemnity) of this Schedule which will apply in respect of the exercise of all or any powers under the Order affecting the rights and apparatus of National Gas, the other provisions of this Schedule do not apply to apparatus in respect of which the relations between the undertaker and National Gas are regulated by the provisions of Part 3 of the 1991 Act.

Apparatus of National Gas in stopped up streets

120.—(1) Where any street is stopped up under article 11 (temporary closure of streets and public rights of way), if National Gas has any apparatus in the street or accessed via that street National Gas has the same rights in respect of that apparatus as it enjoyed immediately before the stopping up and the undertaker must grant to National Gas, or procure the granting to National

Gas of, legal easements reasonably satisfactory to National Gas in respect of such apparatus and access to it prior to the stopping up of any such street or highway but nothing in this paragraph affects any right of the undertaker or National Gas to require the removal of that apparatus under paragraph 123 or the power of the undertaker, subject to compliance with this sub-paragraph, to carry out works under paragraph 125.

(2) Notwithstanding the temporary stopping up, closure or diversion of any highway under the powers of article 11 (temporary closure of streets and public rights of way), National Gas is at liberty at all times to take all necessary access across any such stopped up or closed highway and to execute and do all such works and things in, upon or under any such highway as may be reasonably necessary or desirable to enable it to maintain any apparatus which at the time of the stopping up or diversion was in that highway.

Protective works to buildings

121. The undertaker, in the case of the powers conferred by article 18 (protective works to buildings), must exercise those powers so as not to obstruct or render less convenient the access to any apparatus without the written consent of National Gas.

Acquisition of land

122.—(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 belonging to National Gas; or (b) appropriate, acquire, extinguish, interfere with or override any easement, other interest or right and/or apparatus of National Gas otherwise than by agreement (such agreement not to be unreasonably withheld).

(2) As a condition of an agreement between the parties in sub-paragraph (1), prior to the carrying out of any part of the authorised works (or in such other timeframe as may be agreed between National Gas and the undertaker) that is subject to the requirements of this Part of this Schedule that will cause any conflict with or breach the terms of any easement or other legal or land interest of National Gas or affect the provisions of any enactment or agreement regulating the relations between National Gas and the undertaker in respect of any apparatus laid or erected in land belonging to or secured by the undertaker, the undertaker must as National Gas reasonably requires enter into such deeds of consent upon such terms and conditions as may be agreed between National Gas and the undertaker acting reasonably and which must be no less favourable on the whole to National Gas unless otherwise agreed by National Gas, and it will be the responsibility of the undertaker to procure and/or secure the consent and entering into of such deeds and variations by all other third parties with an interest in the land at that time who are affected by such authorised works.

(3) Save where otherwise agreed in writing between National Gas and the undertaker, the undertaker and National Gas agree that where there is any inconsistency or duplication between the provisions set out in this Part of this Schedule relating to the relocation and/or removal of apparatus/including but not limited to the payment of costs and expenses relating to such relocation and/or removal of apparatus) and the provisions of any existing easement, rights, agreements and licences granted, used, enjoyed or exercised by National Gas and/or other enactments relied upon by National Gas as of right or other use in relation to the apparatus, then the provisions in this Schedule shall prevail.

(4) Any agreement or consent granted by National Gas under paragraph 125 or any other paragraph of this Part of this Schedule, shall not be taken to constitute agreement under sub-paragraph (1).

Removal of apparatus

123.—(1) If, in the exercise of the powers conferred by this Order, the undertaker acquires any interest in or possesses temporarily any land in which any apparatus is placed, that apparatus must not be removed under this Part of this Schedule and any right of National Gas to maintain that

apparatus in that land must not be extinguished until alternative apparatus has been constructed, and is in operation to the reasonable satisfaction of National Gas in accordance with sub-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 Gas advance written notice of that requirement, together with a plan of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order National Gas reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph (3), secure any necessary consents for the alternative apparatus and afford to National Gas to its satisfaction (taking into account paragraph 124(1) below) the necessary facilities and rights:

(a) for the construction of alternative apparatus in other land of or land secured by the undertaker; and

(b) subsequently for the maintenance of that apparatus.

(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of or land secured by the undertaker, or the undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraph (2) in the land in which the alternative apparatus or part of such apparatus is to be constructed, National Gas may in its sole discretion, on receipt of a written notice to that effect from the undertaker, take such steps as are reasonable in the circumstances to assist the undertaker to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed save that this obligation shall not extend to the requirement for National Gas to use its compulsory purchase powers to this end unless it elects to so do.

(4) Any alternative apparatus to be constructed in land of or land secured by the undertaker under this Part of this Schedule must be constructed in such manner and in such line or situation as may be agreed between National Gas and the undertaker.

(5) National Gas must, after the alternative apparatus to be provided or constructed has been agreed, and subject to a written diversion agreement having been entered into between the parties and the grant to National Gas of any such facilities and rights as are referred to in sub-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) The provisions of this paragraph 123 only apply to the extent that the apparatus to be removed by the undertaker forms part of National Gas' undertaking and has not already been abandoned or decommissioned by National Gas and any existing rights in respect of the abandoned or decommissioned apparatus have been surrendered.

Facilities and rights for alternative apparatus

124.—(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to or secures for National Gas facilities and rights in land for the construction, use, maintenance and protection of alternative apparatus in substitution for apparatus to be removed, those facilities and rights must be granted upon such terms and conditions as may be agreed between the undertaker and National Gas and must be no less favourable on the whole to National Gas than the facilities and rights enjoyed by it in respect of the apparatus to be removed unless otherwise agreed by National Gas.

(2) If the facilities and rights to be afforded by the undertaker in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are less favourable on the whole to National Gas than the facilities and rights enjoyed by it in respect of the apparatus to be removed and the terms and conditions to which those facilities and rights are subject the matter may be referred to arbitration in accordance with paragraph 131 (arbitration) of this Part of this Schedule and the arbitrator must make such provision for the payment of compensation by the undertaker to National Gas as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

Retained apparatus: protection

125.—(1) Not less than 56 days before the commencement of any specified works the undertaker must submit to National Gas a plan and, if reasonably required by National Gas, a ground monitoring scheme in respect of those works.

(2) In relation to specified works the plan to be submitted to National Gas under sub-paragraph (1) must include a method statement and describe—

(a) the exact position of the works;

(b) the level at which these are proposed to be constructed or renewed;

(c) the manner of their construction or renewal including details of excavation, positioning of plant etc;

(d) the position of all apparatus;

(e) by way of detailed drawings, every alteration proposed to be made to or close to any such apparatus; and

(f) any intended maintenance regimes.

(3) The undertaker must not commence any works to which sub-paragraphs (1) and (2) apply until National Gas has given written approval of the plan so submitted.

(4) Any approval of National Gas required under sub-paragraph (3)—

(a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraphs (5) or (6); and,

(b) must not be unreasonably withheld.

(5) In relation to any work to which sub-paragraphs (1) and/or (2) apply, National Gas may require such modifications to be made to the plans as may be reasonably necessary for the purpose of securing its apparatus against interference or risk of damage for the provision of protective works or for the purpose of providing or securing proper and convenient means of access to any apparatus.

(6) Works executed under sub-paragraphs (1) or (2) must be executed in accordance with the plan, submitted under sub-paragraph (1) or as relevant sub-paragraph (5), as approved or as amended from time to time by agreement between the undertaker and National Gas and in accordance with such reasonable requirements as may be made in accordance with sub-paragraphs (5) or (7) by National Gas for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and National Gas will be entitled to watch and inspect the execution of those works.

(7) Where National Gas requires any protective works to be carried out by itself or by the undertaker (whether of a temporary or permanent nature) such protective works, inclusive of any measures or schemes required and approved as part of the plan approved pursuant to this paragraph, must be carried out to National Gas' satisfaction prior to the commencement of any specified works for which protective works are required and National Gas must give notice of its requirement for such works within 42 days of the date of submission of a plan pursuant to this paragraph (except in an emergency).

(8) If National Gas in accordance with sub-paragraphs (5) or (7) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraphs 117 to 119 and 122 to 124 apply as if the removal of the apparatus had been required by the undertaker under paragraph 123(2).

(9) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 56 days before commencing the execution of the specified works, a new plan, instead of the plan previously submitted, and having done so the provisions of this paragraph will apply to and in respect of the new plan.

(10) The undertaker will not be required to comply with sub-paragraph (1) where it needs to carry out emergency works as defined in the 1991 Act but in that case it must give to National Gas notice as soon as is reasonably practicable and a plan of those works and must comply with sub-

paragraphs (6), (7) and (8) insofar as is reasonably practicable in the circumstances and comply with sub-paragraph (11) at all times.

(11) At all times when carrying out any works authorised under the Order the undertaker must comply with National Gas's policies for safe working in proximity to gas apparatus "Specification for safe working in the vicinity of National Gas, High pressure Gas pipelines and associated installation requirements for third parties T/SP/SSW22" and HSE's "HS(~G)47 Avoiding Danger from underground services".

(12) As soon as reasonably practicable after any ground subsidence event attributable to the authorised development the undertaker shall implement an appropriate ground mitigation scheme save that National Gas retains the right to carry out any further necessary protective works for the safeguarding of its apparatus and can recover any such costs in line with paragraph 126.

Expenses

126.—(1) Save where otherwise agreed in writing between National Gas and the undertaker and subject to the following provisions of this paragraph, the undertaker must pay to National Gas within 30 days of receipt of an itemised VAT invoice or claim from National Gas all charges, costs and expenses reasonably anticipated within the following three months or reasonably and properly incurred by National Gas in, or in connection with, the inspection, removal, relaying or replacing, alteration or protection of any apparatus or the construction of any new or alternative apparatus which may be required in consequence of the execution of any authorised works including without limitation—

(a) any costs reasonably incurred by or compensation properly paid by National Gas in connection with the acquisition of rights or the exercise of statutory powers for such apparatus including without limitation all costs incurred by National Gas as a consequence of National Gas:

(i) using its own compulsory purchase powers to acquire any necessary rights under paragraph 123(3); or

(ii) exercising any compulsory purchase powers in the Order transferred to or benefitting National Gas;

(b) in connection with the cost of the carrying out of any diversion work or the provision of any alternative apparatus, where no written diversion agreement is otherwise in place;

(c) the cutting off of any apparatus from any other apparatus or the making safe of redundant apparatus;

(d) the approval of plans;

(e) the carrying out of protective works, plus a capitalised sum to cover the cost of maintaining and renewing permanent protective works; and/or

(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 131 (arbitration) to be

necessary, then, if such placing involves cost in the construction of works under this Part of this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to National Gas by virtue of sub-paragraph (1) will be reduced by the amount of that excess save to the extent that it is not possible in the circumstances to obtain the existing type of apparatus at the same capacity and dimensions or place at the existing depth in which case full costs will be borne by the undertaker.

(4) For the purposes of sub-paragraph (3)—

(a) an extension of apparatus to a length greater than the length of existing apparatus will not be treated as a placing of apparatus of greater dimensions than those of the existing apparatus; and

(b) where the provision of a joint in a pipe or cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole will be treated as if it also had been agreed or had been so determined.

(5) Any amount which apart from this sub-paragraph would be payable to National Gas in respect of works by virtue of sub-paragraph (1) will, if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on National Gas any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, be reduced by the amount which represents that benefit.

Indemnity

127.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any works authorised by this Part of this Schedule or in consequence of the construction, use maintenance or failure of any of the authorised works by or on behalf of the undertaker or in consequence of any act or default of the undertaker (or any person employed or authorised by him) in the course of carrying out such works, including without limitation works carried out by the undertaker under this Part of this Schedule or any subsidence resulting from any of these works, any damage is caused to any apparatus or alternative apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of the authorised works) or property of National Gas, or there is any interruption in any service provided, or in the supply of any goods or energy, by National Gas, or National Gas becomes liable to pay any amount to any third party, the undertaker will—

(a) bear and pay on demand accompanied by an invoice or claim from National Gas the cost reasonably and properly incurred by National Gas in making good such damage or restoring the supply; and

(b) indemnify National Gas for any other expenses, loss, demands, proceedings, damages, claims, penalty or costs incurred by or recovered from National Gas, by reason or in consequence of any such damage or interruption or National Gas becoming liable to any third party and including Network Code Claims other than arising from any default of National Gas.

(2) The fact that any act or thing may have been done by National Gas on behalf of the undertaker or in accordance with a plan approved by National Gas or in accordance with any requirement of National Gas or under its supervision will not (unless sub-paragraph (3) applies), excuse the undertaker from liability under the provisions of this sub-paragraph (2) unless National Gas fails to carry out and execute the works properly with due care and attention and in a skilful and workman like manner or in a manner that does not accord with the approved plan.

(3) Nothing in sub-paragraph (1) shall impose any liability on the undertaker in respect of—

(a) any damage or interruption to the extent that it is attributable to the neglect or default of National Gas, its officers, servants, contractors or agents;

(b) any authorised works and/or any other works authorised by this Part of this Schedule carried out by National Gas as an assignee, transferee or lessee of the undertaker with the benefit of the Order pursuant to section 156 of the Planning Act 2008 or article 35 (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 (3)(b) will be subject to the full terms of this Part of this Schedule including this paragraph 127; and/or

(c) any indirect or consequential loss of any third party (including but not limited to loss of use, revenue, profit, contract, production, increased cost of working or business interruption) arising from any such damage or interruption, which is not reasonably foreseeable.

(4) National Gas must give the undertaker reasonable notice of any such third party claim or demand and no settlement, admission of liability or compromise must, unless payment is required in connection with a statutory compensation scheme, be made without first consulting the undertaker and considering their representations.

(5) National Gas must, in respect of any matter covered by the indemnity given by the undertaker in this paragraph, at all times act reasonably and in the same manner as it would as if settling third party claims on its own behalf from its own funds.

(6) National Gas must use its reasonable endeavours to mitigate and to minimise any costs, expenses, loss, demands, and penalties to which the indemnity under this paragraph applies where it is within National Gas's reasonable ability and control to do so and which expressly excludes any obligation to mitigate liability arising from third parties which is outside of National Gas's control and if reasonably requested to do so by the undertaker National Gas must provide an explanation of how the claim has been minimised, where relevant.

(7) Not to commence construction (and not to permit the commencement of such construction) of the authorised works on any land owned by National Gas or in respect of which National Gas has an easement or wayleave for its apparatus or any other interest or to carry out any works within 15 metres of National Gas' apparatus until the following conditions are satisfied:

(a) unless and until National Gas is satisfied acting reasonably (but subject to all necessary regulatory constraints) that the undertaker has first provided the acceptable security (and provided evidence that it shall maintain such acceptable security for the construction period of the authorised works referred to in sub-paragraph (7) from the proposed date of commencement of construction of those works) and National Gas has confirmed the same to the undertaker in writing; and

(b) unless and until National Gas is satisfied acting reasonably (but subject to all necessary regulatory constraints) that the undertaker has procured acceptable insurance (and provided evidence to National Gas that it shall maintain such acceptable insurance for the construction period of the authorised works referred to in sub-paragraph 127(7) from the proposed date of commencement of construction of those works) and National Gas has confirmed the same in writing to the undertaker.

(8) In the event that the undertaker fails to comply with paragraph 127(7) of this Part of this Schedule, nothing in this Part of this Schedule shall prevent National Gas from seeking injunctive relief (or any other equitable remedy) in any court of competent jurisdiction.

Enactments and agreements

128. Save to the extent provided for to the contrary elsewhere in this Part of this Schedule or by agreement in writing between National Gas and the undertaker, nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and National Gas in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

Co-operation

129.—(1) Where in consequence of the proposed construction of any part of the authorised works, the undertaker or National Gas requires the removal of apparatus under paragraph 123(2) or National Gas makes requirements for the protection or alteration of apparatus under paragraph 125, the undertaker shall use its best endeavours to co-ordinate the execution of the works in the interests of safety and the efficient and economic execution of the authorised works and taking

into account the need to ensure the safe and efficient operation of National Gas's undertaking and National Gas shall use its best endeavours to co-operate with the undertaker for that purpose.

(2) For the avoidance of doubt whenever National Gas's consent, agreement or approval is required in relation to plans, documents or other information submitted by the undertaker or the taking of action by the undertaker, it must not be unreasonably withheld or delayed.

Access

130. If in consequence of the agreement reached in accordance with paragraph 122(1) or the powers granted under this Order the access to any apparatus is materially obstructed, the undertaker must provide such alternative means of access to such apparatus as will enable National Gas to maintain or use the apparatus no less effectively than was possible before such obstruction.

Arbitration

131. Save for differences or disputes arising under paragraph 123(2), 123(4), 124(1) and 125 any difference or dispute arising between the undertaker and National Gas under this Part of this Schedule must, unless otherwise agreed in writing between the undertaker and National Gas, be determined by arbitration in accordance with article 42 (arbitration).

Notices

132. Notwithstanding article 45 (service of notices), any plans submitted to National Gas by the undertaker pursuant to paragraph 125 must be submitted to https://lsbud.co.uk/ or such other address as National Gas may from time to time appoint instead for that purpose and notify to the undertaker in writing.

SCHEDULE 15

Article 44

NOT USED

1. Not used.

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;

"start date" means the date of the notification given by the Secretary of State under paragraph 4(2)(b); and

"working day" means any day other than a Saturday, Sunday or English bank or public holiday.

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 will 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 eight 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 20 working days of receipt of the application, notify the undertaker in writing specifying the further information required.

(3) If the provision governing or requiring the application specifies that consultation with a requirement consultee is required, the relevant planning authority must issue the consultation to the requirement consultee within 10 working days of receipt of the application, and must notify the undertaker in writing specifying any further information the relevant planning authority considers necessary or that is requested by the requirement consultee within 10 working days of receipt of such a request and in any event within 20 working days of receipt of the application (or such other period as is agreed in writing between the undertaker and the relevant planning authority).

(4) In the event that the relevant planning authority does not give notification as specified in sub-paragraph (2) or (3) it is deemed to have sufficient information to consider the application and is not thereafter entitled to request further information without the prior agreement of the undertaker.

(5) Where further information is requested under this paragraph in relation to part only of an application, that part is to be treated as separate from the remainder of the application for the purposes of calculating time periods in paragraph 2 and paragraph 3.

Appeals

4.—(1) The undertaker may appeal in the event that—

(a) the relevant planning authority refuses an application for any consent, agreement or approval required by a requirement included in this Order or grants it subject to conditions;

(b) the relevant planning authority is deemed to have refused an application pursuant to paragraph 2(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) the undertaker must submit the appeal documentation to the Secretary of State and must on the same day provide copies of the appeal documentation to the relevant planning authority and any requirement consultee;

(b) the Secretary of State must appoint a person to determine the appeal as soon as reasonably practicable and must forthwith notify the appeal parties of the identity of the appointed person and the address to which all correspondence for the appointed person's attention should be sent;

(c) the relevant planning authority and any requirement consultee must submit written representations to the appointed person in respect of the appeal within 10 working days of the start date and must ensure that copies of their written representations are sent to each other and to the undertaker on the day on which they are submitted to the appointed person;

(d) the undertaker may make any counter-submissions to the appointed person within 10 working days of receipt of written representations pursuant to sub-paragraph (c);

(e) the appointed person must make their decision and notify it to the appeal parties, with reasons, as soon as reasonably practicable and in any event within 30 working days of the deadline for the receipt of counter-submissions pursuant to sub-paragraph (d); and

(f) the appointment of the person pursuant to sub-paragraph (b) may be undertaken by a person appointed by the Secretary of State for this purpose instead of by the Secretary of State.

(3) In the event that the appointed person considers that further information is necessary to enable the appointed person to consider the appeal they must, within five working days of the appointed person's appointment, notify the appeal parties in writing specifying the further information required.

(4) Any further information required pursuant to sub-paragraph (3) must be provided by the relevant party to the appointed person and the other appeal parties on the date specified by the appointed person (the "specified date"), and the appointed person must notify the appeal parties of the revised timetable for the appeal on or before that day. The revised timetable for the appeal must require submission of written representations to the appointed person within 10 working days of the specified date, but otherwise the process and time limits set out in sub-paragraphs (c) to (2)(e) of sub-paragraph (2) apply.

(5) The appointed person may—

(a) allow or dismiss the appeal; or

(b) reverse or vary any part of the decision of the relevant planning authority (whether the appeal relates to that part of it or not),

and may deal with the application as if it had been made to them in the first instance.

(6) The appointed person may proceed to a decision on an appeal taking into account only such written representations as have been sent within the relevant time limits.

(7) The appointed person may proceed to a decision even though no written representations have been made within the relevant time limits, if it appears to them that there is sufficient material to enable a decision to be made on the merits of the case.

(8) The decision of the appointed person on an appeal is to be final and binding on the parties, unless proceedings are brought by a claim for judicial review.

(9) If an approval is given by the appointed person pursuant to this Schedule, it is to be deemed to be an approval for the purpose of Schedule 2 (requirements) as if it had been given by the relevant planning authority. The relevant planning authority may confirm any determination given by the appointed person in identical form in writing but a failure to give such confirmation (or a failure to give it in identical form) is not to be taken to affect or invalidate the effect of the appointed person's determination.

(10) Save where a direction is given pursuant to sub-paragraph (11) requiring the costs of the appointed person to be paid by the relevant planning authority, the reasonable costs of the appointed person must be met by the undertaker.

(11) On application by the relevant planning authority or the undertaker, the appointed person may give directions as to the costs of the appeal parties and as to the parties by whom the costs of the appeal are to be paid. In considering whether to make any such direction and the terms on which it is to be made, the appointed person must have regard to advice on planning appeals and award costs published in Planning Practice Guidance: Appeals (March 2014) or any circular or guidance which may from time to time replace it.

Fees

5.—(1) Where an application is made to the relevant planning authority for written consent, agreement or approval in respect of a requirement, the fee prescribed under regulation 16(1)(b) of the Town and Country Planning (Fees for Applications, Deemed Applications, Requests and Site

Visits) (England) Regulations 2012(**a**) (as may be amended or replaced from time to time)) is to apply and must be paid to the relevant planning authority for each application.

(2) Any fee paid under this Schedule must be refunded to the undertaker within four weeks of—

(a) the application being rejected as invalidly made; or

(b) the relevant planning authority failing to determine the application within 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.

(**a**) S.I. amended by S.I. 2013/2153, S.I. 2014/357. S.I. 2014/643, S.I.2017/1314 and S.I. 2019/1154.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order authorises East Yorkshire Solar Farm Limited (company number 14103404) (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 40 (certification of plans and documents, etc) of this Order may be inspected free of charge during working hours at East Riding of Yorkshire Council at County Hall, Beverley, East Riding of Yorkshire, HU17 9BA.