# Botley West Solar Farm

Applicant's Comments on the Host Authorities Response to Question 2.7.4 (as set out in Annex 1 of REP4-074)

September 2025

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# 1 Applicant's Comments on the Host Authorities Response to Question 2.7.4 (as set out in Annex 1 of REP4-074)

**Table 1.1: Applicant's Response to Question 2.7.4**

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| **3. Art.2(1) (interpretation)**<br><br>The "permitted preliminary works" are excluded from the definition of "commence". Several of the excluded works seem significant; for instance, sub-paragraph (c) includes "works in relation to construction compounds and access to construction compounds" and sub-paragraph (h) includes "site clearance (including vegetation removal, demolition of existing buildings or structures".<br><br>The OHA would welcome more information in respect of these, including (in respect of sub-paragraph (h) for example) which existing buildings and structures are proposed to be demolished, and how the works mentioned in that sub-paragraph.<br><br>It would be helpful if the relevant paragraphs of the ES which assess the "permitted preliminary works" could be flagged up.<br><br>In addition, several of the excluded works are temporary in nature. For example – | This exclusion is deliberate and the reason for this is set out at section 3.2 of the Explanatory Memorandum **[REP1-006]**.<br><br>This exclusion is required to enable the undertaker to carry out certain enabling phase works and preparatory works prior to the submission of relevant details for approval under all of the requirements contained in Schedule 2 to the Order so that certain works can be carried out without "commencing" the authorised development, in order to build the required flexibility into how the authorised development can be constructed. The works identified in the "permitted preliminary works" include pre commencement activities such as surveys, monitoring and site investigations which are considered appropriate as the nature of these works means they are not expected to give rise to environmental effects requiring mitigation. | The OHA understand the exclusion is deliberate and while the OHA appreciate the Applicant's response, they do not consider it is a response to the points raised in their original comments. The OHA would be grateful if such a response could be provided. | In response to the OHA's specific queries regarding the signficance of the works covered in the definition of permitted preliminary works:<br><br>• Paragraph (c) – At Deadline 1, the Applicant updated the DCO to reduce the scope of paragraph (c) of the permitted preliminary works to ensure that 'works in relation to construction compounds and accesses to construction compounds (including below ground site preparation for temporary facilities for the use of contractors)' will constitute commencement and trigger the need to have discharged the pre-commencement requirements.<br><br>• Paragraph (h) – The Applicant recognises that the nature of these works may be signficant enough to require mitigation. As such, the Applicant has drafted requirement 6 (landscape and ecology management) to ensure that for the purposes of that requirement, 'commence' will include paragraph (h). In other words, that Requirement must be discharged before the works under paragraph (h) can be carried out. This has strong precedent in solar DCOs including the Longfield Solar Farm Order 2023, the Mallard Pass Solar Farm Order 2024 and the Gate Burton Energy Park Order 2024. |

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| •Sub-paragraph (c) includes the provision of "temporary facilities for the use of contractors";<br><br>•Sub-paragraph (f) provides for "temporary means of enclosure, fencing and site security for construction";<br><br>•Sub-paragraph (g) provides for "the temporary display of site notices or advertisements".<br><br>Does the Applicant have any idea of what "temporary" might mean in each of these scenarios?<br><br>Also, for sub-paragraphs (f) and (g) what will happen to the land after it has been put to its temporary use? For instance, will it be reinstated (say) to a condition suitable for its former use?<br><br>Regarding fencing, the OHA assume the works falling within sub-paragraph (f) would be captured by requirement 8 (fencing and other means of enclosure) and the OHA would be grateful if the applicant could confirm this is the case. | | | With regard to where 'permitted preliminary works' have been considered in the ES, such works cover environmental surveys including geotechnical and intrusive archaeological surveys. These would be subject to the attendance of an Ecological Clerk of Works and, for archaeology, subject to a prior agreed Written Scheme of Investigation. These requirements are set out clearly in the outline Code of Construction Practice, for example:<br><br>Ecology – CoCP para 1.6.5 - *"The Ecological Clerk of Works (ECoW) will report on ecological matters and will be responsible for undertaking pre-construction surveys and monitoring. The ECoW will be the primary point of contact for ecological matters and will assist with site induction and tool-box talks, where necessary, to ensure ecological constraints are identified to all staff. The ECoW will be a suitably experienced professional ecologist. "*<br><br>Archaeology – CoCP – para 1.10.1 - *"One or more Written Scheme(s) of Investigation (WSI) will be developed in line with the Outline WSI [EN010147/APP/7.6.5]. The WSI(s) will provide details on the archaeological work required ahead of and during construction of the Project."*<br><br>Permitted preliminary works regarding contamination and remediation is similarly addressed within the CoCP at Para 1.10.46 - "*Where ground investigation identifies potential risks to sensitive receptors from contamination, a remediation strategy would be prepared and agreed with the Environment Agency/relevant local planning authority prior to its implementation."*<br><br>Concerning advance planting, all planting would be completed based on the Landscape, Ecology |

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| | | | and Amenities Plan [REP2-016] as has been assessed by the ES.<br><br>In relation to the temporary nature of some of the works:<br><br>• **Facilities for contractors –**<br><br>The facilities for construction will be temporary welfare facilities which have to be provided for HSE requirements.<br><br>• **Means of enclsoure –**<br><br>The means of enclosure will be temporary Herras system fencing which can me relocated on the site.<br><br>• **Display of site notices –**<br><br>The display of site notices will be site notices required by the HSE.<br><br>In respect of sub-paragraph (f), Requirement 8 deals with fencing and other means of enclosure. Sub-paragraph (3) of Requirement 8 confirms that for this requirement, 'commence' includes the permitted preliminary works. Therefore, details of the fencing (including what will happen after it has been put to temporary use) will be governed pursuant to the written details submitted and approved under that Requirement.<br><br>In respect of sub-paragraph (g), whilst site notices and advertisments are not a form of development, the discharge of Requirements 11 (Construction), 12 (Operation) and 14 (Decommissioning) will govern each phase of development and what happens with key infrastructure at each stage. For example, the outline Decommissioning Plan |

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| | | | confirms that at the end of the Project lifespan, all land will be returned to the landowner and available for its original use.<br><br>Finally, for completeness but as set out above, the Applicant confirms that works falling within sub-paragraph (f) would be captured by Requirement 8 (fencing and other means of enclosure). This is confirmed by sub-paragraph (3) of Requirement 8 which says that "*For the purposes of sub-paragraph (1), "commence" includes any permitted preliminary works*". |
| **7. Art.6(1)(a) (application and modification of statutory provisions)**<br>This provision seeks to disapply s.23 of the Land Drainage Act 1991. As stated elsewhere in this LIR (Chapter 6.6 (hydrology and flood risk)) OCC (the lead local flood authority) would prefer to maintain the tried and tested regime under s.23, rather than replace it with a regime which includes, for instance, shorter timeframes for determining applications. OCC therefore opposes the disapplication of s.23. | As set out at 3.2.15 of the Explanatory Memorandum **[REP1-006]**, the Applicant has sought disapplication of section 23 of the Land Drainage Act 1991 on the basis that this will be addressed through protective provisions for the protection of the relevant drainage authorities (Part 3 of Schedule 15 to the Order). To the extent that any aspects of the Land Drainage Act 1991 remain relevant to the protective provisions included for the protection of drainage authorities, these are being negotiated with those drainage authorities and agreed wording will be incorporated into the draft DCO in due course. | No protective provisions have yet been agreed, though the OHA is keen that discussions on these now progress in earnest. As mentioned in the OHA Comment row, the Joint LIR **[REP1-072]** provides additional information on this point. Please note the cross-reference in the OHA Comment row is incorrect. The correct cross-reference is to Chapter 7.5 (Hydrology and Flood Risk) of the Joint LIR **[REP1-072]**. | The Applicant's response to ExQ2.7.2 provides a detailed and thorough explanation as to the benefit to the project of modifying s23 in the manner proposed by the dDCO and sets out why the application of the protective provisions included at Part 3 of Schedule 15 are preferable for the Project and the OHAs. The Applicant would welcome the OHA's specific comments on those draft protective provisions and/or that response. |
| **8. Art.6(3) (application and modification of statutory provisions)**<br><br>The effect of this provision is that any hedgerow to which the Hedgerow Regulations 1997 apply can be removed if required "for carrying out any development or in the exercise of any functions that are authorised by the" Order. (This power is wide-ranging. For | The Applicant disagrees on the basis that "carrying out any development or in exercise of any functions that are authorised" by the DCO will be limited to what powers the DCO grants to the Applicant within the Order Limits.<br><br>As set out in the Explanatory Memorandum [REP1-006], that wording is also consistent with the Sheringham | For clarity and the avoidance of doubt, the OHA would prefer their wording<br><br>which explicitly links art.6(3) with the power under art.38(4).<br><br>In the light of the OHA's objection to the Applicant's proposed amendments to Schedule 12 (as set out in the reply to Question 2.7.10) – where certain | This is rejected – the Hedgerow provisions at Article 6(3) are necessary to give legislative clarity that the removal of any hedgerow to which the Hedgerow Regulations 1997 relates pursuant to the DCO (which may include hedgerows removed pursuant to Article 38(4) or other provisions, for example Article 38(5) and Schedule 12) is permitted for the carrying out of any development or the exercise of any functions which have been authorised by the |

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| instance, unlike art.38(4) (felling or lopping of trees and removal of hedgerows), it does not appear to be limited to hedgerows within the Order limits).<br><br>The OHAs consider the power under art.6(3) be limited to art.38(4) e.g. –<br><br>"(3) Regulation 6(1) of the Hedgerows Regulations 1997 has effect as though after sub-paragraph (e) there were added—<br><br>"(ea) for the purposes of article 38(4) of carrying out any development or in the exercise of any functions that are authorised by the Botley West Solar Farm Order 202[ ];" The OHA's concerns with art.38 are set out below. | Shoal and Dudgeon Extensions Offshore Wind Farm Order 2024. | hedgerow works are now proposed outside the Order Limits – the OHA is particularly keen for its proposed amendment to be included. | Order. This is precedented, for example see the Heckington Fen Solar Park Order 2025. |
| **10.Part 3 (streets)**<br><br>OCC would welcome discussions on the Applicant's proposed highways powers which, in their current form, are too wide-ranging. For instance, and to name but four of these concerns, OCC is concerned by (i) the absence of a need for consent before carrying out the street works mentioned in article 8(1) (street works), (ii) the absence of a need for consent before carrying out the works mentioned in article 9(1) (power to alter layout, etc. of streets), and (iii) how OCC will be resourced to carry out additional highways-related work proposed by the draft DCO (iv) the lack of certainty regarding whether any | The Applicant would welcome further discussion with the local authorities on this matter if that would assist, but directs the local authorities to Article 9 which says "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)". | OCC welcomes the Applicant's commitment to enter into an agreement under section 278 of the Highways Act 1980 to address the highways impacts of the project. OCC hopes that discussions can now progress in earnest with a view to completing an agreement as soon as possible. | No further comment at this stage. |

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| streets which will be resurfaced will be resurfaced to a standard OCC considers satisfactory. | | | |
| **11. Art.11(4)(b) (temporary closure of public rights of way)**<br><br>By art.11(4)(b), the street authority's consent is required before certain streets or public rights of way are interfered with and "the street authority may attach reasonable conditions to any such consent".<br><br>Similarly, by art.17(3), (discharge of water) –<br>"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".<br>There are other provisions in the draft Order which require the consent of a consenting body (for example articles 9(4)(power to alter layout, etc., of streets), 16(4)(b) (traffic regulation measures), 18(4)(a) and (b) (authority to survey and investigate the land) and 38(6)) (felling or lopping of trees and removal of hedgerows); however, these provisions are silent as to the power to attach or impose reasonable conditions. For consistency with arts.11(4)(b) and 17(3), the OHA consider the power to attach conditions should be attached to each consenting provision, as follows –<br>Article 9(4) – | The Applicant does not consider that such amendments are necessary as the current wording does not prevent the relevant authority from already imposing reasonable conditions when granting consent. The current drafting is also consistent with a range of other solar DCOs granted by the Secretary of State. | The OHA consider the current wording is inconsistent and the requested amendments should be made. As mentioned in the OHA Comment row, certain provisions which refer to the grant of consent state that conditions may be attached to that consent; however, other provisions which refer to the grant of consent are silent as to the power to attach conditions.<br><br>It is surely preferable for the drafting within a statutory instrument, which is as much a piece of legislation as an Act of Parliament, to be consistent to avoid any confusion in future.<br>The OHA note the current drafting is consistent with other solar DCOs, from the OHA's analysis of other solar DCO Examination Authority Recommendations and Reports and Decision Letters, this point does not seem to have been picked up on previously. While the precedent point is noted, the OHA believe drafting can always be improved and consider that their proposed amendments would improve the drafting in the instant Order because it would aid clarity. | The Applicant does not intend to depart from the existing precedent as the Applicant does not consider there to be any detriment by sticking with that wording. |

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| "(4) The powers conferred by paragraph (2) may not be exercised without the consent of the street authority and the street authority may attach reasonable conditions to any such consent".<br>Article 16(4)(b) –<br>"(4) Before exercising the power conferred by paragraph (2) the undertaker must—<br>(a) consult with the chief officer of police in whose area the<br>road is situated; and<br>(b) obtain the written consent of the traffic authority and the street authority may attach reasonable conditions to any such consent".<br>Article 38(6) –<br>"(6) The undertaker may not pursuant to paragraphs (1) and (5) fell or lop a tree or remove hedgerows within the extent of the publicly maintainable highway without the prior consent of the highway authority, and the highway authority may attach reasonable conditions to any such consent". | | | |
| **12. Art.11 (temporary closure of public rights of way) and art.11 (permanent closure of public rights of way)**<br><br>The OHAs concerns with the public rights of way provisions are set out in Chapter 6.9 (traffic and transport (including public rights of way)). The OHAs would welcome a discussion on | The Applicant would welcome further discussion with the local authorities on this matter if that would assist.<br><br>The Applicant assumes the reference regarding permanent closure of public rights of way is to Article 12, rather than Article 11. | The Applicant's assumption is correct: the reference should be to article 12, rather than article 11.<br><br>Discussions on this points are currently taking place. The OHA will update the ExA in respect of the discussions at D5. | As confirmed by the OHAs, discussions are ongoing between the Applicant and OHA's regarding the PRoW offering.<br>To confirm, as a result of Change Request 2, the Applicant is removing its power under Article 12 (Permanent Stopping Up Of Public Rights of Way) as it no longer seeks any permanent stopping up and diversions. |

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| those concerns with a view to agreeing the best way forward. | | | |
| **13. Art.15 (agreements with street authorities)**<br><br>Officers are concerned by the scope of the powers proposed under Part 3; however, it is possible most concerns can be addressed by making the proposed works under Part 3 subject to an agreement drafted in line with OCC's standard highways agreement. OCC will share this with the Applicant and would welcome discussions on the same. | The Applicant would welcome further discussion with the local authorities on this matter if that would assist. | OCC welcomes the Applicant's commitment to enter into an agreement under section 278 of the Highways Act 1980 to address the highways impacts of the project. OCC hopes that discussions can now progress in earnest with a view to completing an agreement as soon as possible. | No further comment at this stage. |
| **14. Art.16(7)(a) and (b) (traffic regulation measures)**<br><br>These provisions refer to the "instrument" which must include any provision made by the undertaker under art.16(1) or (2).<br><br>OCC considers it would be helpful if a copy of the made instrument were made available by the undertaker and also sent to OCC. In the light of this, OCC would suggest a new art.16(8) to provide as follows –<br><br>"(8) A copy of the instrument referred to in paragraph (7)(a) must be held at the registered office address of the undertaker for inspection during normal working hours and, as soon as reasonably practicable after being | This provision is typical of a number of solar DCOs and the Applicant expects that the written instrument will be of a similar form to that provided by other undertakers. We note that that Article 16(5) requires publication of the undertaker's intention to exercise the relevant powers to the chief officer of the police and the relevant traffic authority. The undertaker is also required to provide notice in relevant newspapers that the provisions relate to. On that basis, there is already a clear notice mechanism prior to the powers being exercised and the Applicant does not consider any further amendments are required. | OCC disagrees. As traffic authority, it is important for OCC to have a complete picture of what is happening to its traffic network and the provision of a copy of the "instrument" would aid this. It is also likely that OCC will be the first port of call for a person with an interest in the "instrument" and, as such, it would be helpful if it could be provided with a copy of the same once it has been made. Sending a copy of the instrument which affects the traffic network to the traffic authority once it has been made would be reasonable and would impose a negligible administrative burden on the Applicant.<br><br>Since OCC considers the provision to it of a copy of the instrument, OCC would propose to amend the suggested new art.16(8) as follows –<br><br>"(8) As soon as reasonably practicable after the instrument referred to in | The Applicant has updated the draft DCO to accommodate the OHA's request, albeit with some amended drafting which the Applicant does not expect to be controversial. |

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| made, a copy must be served on the highway authority". | | paragraph 7(a) being made, a copy of it must be served on the highway authority". | |
| **16. Art.35 (consent to transfer the benefit of the Order)**<br><br>If the benefit of the Order is transferred, each of the OHA wish to be notified of the same and request that art.35 is amended accordingly. | The notification process under Article 35 is related to the Secretary of State's specific role within this Article, so that they hold a record of what benefits have been transferred, and what of those benefits have or have not required its consent. The Applicant considers the proposed amendment to be inappropriate on the basis that:<br><br>• The OHA do not have any role in granting consent for the transfer of benefits;<br><br>• There is no separate provision for notification of other parties regarding the transfer of benefits that the Secretary of State consents to;<br><br>• The current wording is consistent with a range of other recently consented Solar DCOs, including East Yorkshire and West Burton. | The dDCO provides the OHA with an important role in the discharge of requirements and other consents and it clearly in the interests of good administration for them to be informed of any transfer, particularly if such a transfer would have an impact on any role which the dDCO demands they undertaker.<br><br>The provision of the requested notification would impose a negligible administrative burden on the OHA and the request for its inclusion in art.35 is reasonable.<br><br>The OHA note that the forthcoming Fenwick Solar Farm Order [REP4-004] includes, at art.36(8) (consent to transfer the benefit of the Order), a similar provision, namely –<br><br>"A copy of any decision by the Secretary of State to approve a transfer or grant under paragraph (3) or the notification of a transfer or grant issues under paragraph (4) shall be provided by the undertaker to the relevant authority as soon as reasonably practicable following issuance;"<br><br>Similarly, the Examining Authority's recommended DCO for the forthcoming Gatwick Airport Northern Runway project (published 27 February 2025) includes | The Applicant has updated the draft DCO to accommodate the OHA's request. |

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| | | the following provision at art.8(6) (consent to transfer benefit of Order) –<br><br>"The undertaker must notify a local highway authority in the event that it exercises the power in paragraph (1) to transfer or grant to a person other than that local highway authority the benefit of the Order in respect of local highway works in an area for which that local highway authority is the relevant highway authority".<br>The OHA's request is consistent with the latest approach to the drafting of<br>this provision. | |
| **17. Art.38 (felling or lopping of trees and removal of hedgerows)**<br><br>By article 38(4), the undertaker may "… undertake works to or remove any hedgerows within the Order limits that may be required".<br><br>Paragraph 22.1 of PINS Advice Note Fifteen: drafting Development Consent Orders states –<br><br>"Applicants may wish to include an Article within the draft DCO to allow the removal of hedgerows (if necessary) for the purposes of carrying out the Authorised Development. The draft DCO can include an Article with powers which remove the obligation on the Undertaker to first secure consent under The Hedgerows Regulations 1997 …It is recommended that DCO | The specific hedgerows to be removed are captured within Schedule 12 of the DCO. As the hedgerow removal plans is an Approved Document subject to Requirement 3 of Schedule 2, amendments to the hedgerow removal plans must not be given unless the relevant planning authority is satisfied that the amendment is unlikely to give rise to materially new or materially different environmental effects.<br><br>There are a range of other mechanisms within the draft DCO that prevent the general use of hedgerow removal powers in a manner that would generate materially different environmental effects to what have been assessed in the ES. In particular, the CoCP and LEMP must be prepared and approved by the relevant planning authority prior to commencement. The CoCP must include a CTMP. To the extent that these are | The OHA's concerns regarding hedgerows are set out in the reply to Question 2.7.10, particularly those works now proposed outside the Order Limits. | The Applicant's position is set out in its response to ExQ2.7.10. |

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| Articles of this kind are made relevant to the specific hedgerows intended for removal. To support the ExA, the Article should include a Schedule and a plan to specifically identify the hedgerows to be removed (whether in whole or in part). This will allow the question of their removal to be examined in detail. Alternatively, the Article within the DCO could be drafted to include powers for general removal of hedgerows (if they cannot be specifically identified) but this must be subject to the later consent of the local authority".<br><br>The draft DCO does not include a schedule and plan identifying the hedgerows to be removed under article 38(4). Similarly, the requirement to obtain consent under art.38 is limited to the scenario described in art.38(6) i.e. when proposing to "remove hedgerows within the extent of the publicly maintainable highway" when the highway authority's consent is required.<br><br>In the light of the above, the OHA consider art.38(4) should be amended to reflect the advice mentioned above. | developed in a way that is inconsistent with the hedgerow removal plans:<br><br>• Depending on the inconsistency, they may not satisfy the relevant requirement of being in "substantial accordance" with the outline plan; or • Under Schedule 16, paragraph 2(3), any applications made to the relevant planning authority to discharge a requirement 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. Again, to the extent that removal of hedgerows not identified in Schedule 12 would result in discharge of a requirement in a way that has materially different environmental effects, it would be open to the relevant planning authority to refuse to discharge the requirement. | | |
| **18. Art.39 (trees subject to tree preservation orders)**<br><br>Paragraphs 22.2 and 22.3 of PINS Advice Note Fifteen: | Consistent with the recently consented East Yorkshire DCO, the Applicant does not consider that a schedule identifying specific trees for removal is necessary, noting the comprehensive mitigation package already proposed for trees affected by the Project within CoCP and LEMP. Moreover, the carrying out of the | Please see the OHA's reply in [REP3-072] on this point: page 6, paragraph 16.3.1 (replacement trees) –<br><br>"OHA welcome the inclusion of this paragraph, but it should be further amended to cover all trees removed. Furthermore, whilst OCC recognises that | The Applicant has responded to [**REP3-072**] at Deadline 4, in its response to other Deadline 3 submissions [**REP4-038**]. Namely:<br><br>"*Suitable tree replanting can be agreed upon detailed design. As detailed design will provide the surety of which trees are impacted and therefore inform new tree planting to mitigate for* |

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| drafting Development Consent Orders state –<br><br>"22.2 Applicants may also wish to include powers allowing them to fell, lop or cut back roots of trees subject to a Tree Preservation Order (TPO). This power can extend to trees which are otherwise protected by virtue of being situated in a conservation area. To support the ExA inclusion of this power should be accompanied by a Schedule and plan to specifically identify the affected trees.<br><br>22.3 Trees subject to TPO and/ or are otherwise protected (and likely to be affected) should be specifically identified. It is not appropriate for this power to be included on a precautionary basis. Proper identification of affected trees will enable the ExA to give full consideration to the particular characteristics that gave rise to their designation and the desirability of continuing such protection".<br><br>In the light of the advice mentioned above, the OHA consider this article should be accompanied by a Schedule and Plan. | authorised development is subject to the Requirements at Schedule 2 of the draft DCO. Requirement 6 secures the need for a Landscape and Ecology Management Plan (LEMP) to be submitted for approval, which must be substantially in accordance with the outline LEMP. The Applicant has updated the oLEMP at Deadline 2 to include an obligation to require replacement where required by the street authority. Namely:<br><br>"*where an individual tree subject to a TPO must be removed to facilitate part of the scheme and the local authority requires replacement, a new tree of equivalent species and ultimate size will be agreed with the LPA. Planted in the same place or as near as reasonably practicable to the position of the removed tree, subject to operational requirements. Replacement planting for individual trees will utilise Standard tree stock (8- 10cm girth) and will be planted in the next planting season following removal. The final species and planting location will be agreed in advance with the LPA*".<br><br>The Applicant therefore maintains that the general power is suitably controlled. | the majority of trees removed would not be within the authority of the council, OCC would expect the applicant to plant at least 2 trees for every tree removed in line with Policy 3 of the Tree Policy for Oxfordshire. The OHA also considers it important that the development's scheme design should seek to avoid the impact on TPO in the first instance before considering replacement planting. In addition, OCC requests that CAVAT (Capital Asset Value for Amenity Trees) assessments should be provided for OCC trees that require removal as part of the development in line with Council's tree policy". | *these losses. Should Highways trees be impacted, appropriate Arboricultural Policies will be pursued, and if required a CAVAT assessment will be completed to start to inform any tree-related payments to the HA*". |
| **19. Art.45 (procedure in relation to certain approvals etc.)**<br><br>Sub-section (2) states –<br><br>(2) Where paragraph (1) applies to any consent, agreement or approval, such consent, agreement or approval must | The Applicant considers it appropriate for this to remain, on the basis that while the deeming mechanisms are intended to provide a ceiling within which the consenting authority must respond regarding an approval, the consenting authority should still avoid unreasonable delays in providing approvals. There may be circumstances, depending on the | The OHA maintain the position set out in the OHA Comment row. The Applicant considers the period of 8 weeks to be a reasonable maximum period for the determination of applications. If determination does not take place within that period, the deeming provision can take effect. In the light of this, the reference to "delay" is unnecessary | The Applicant maintains its position.<br><br>If the relevant authority is in a position to give its consent, agreement or approval at a time earlier than eight weeks after the application was submitted, then in the interests of the efficient delivery of the Nationally Significant Infrastructure Project there is no reason why the |

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| not be unreasonably withheld or delayed.<br><br>By art. 45(4) if within 8 weeks after the application for consent has been submitted to a consenting authority the authority has not notified the undertaker of its disapproval, it is deemed to have approved the application for consent. Owing to the deeming provision, the OHA do not consider the reference to delaying consent in art.45(2) is necessary and so the words "or delayed" should be omitted. | approval in question, where a delay is unreasonable but the deemed provision has not been engaged. | because a suitable sanction is already included in the Order. | DCO should facilitate the unreasonably delay of that consent, agreement or approval. |
| **20. Requirements: general (phasing scheme)**<br><br>Most solar DCOs include a requirement which require the submission of a written scheme setting out the phase or phases of construction, which includes a timetable for the construction of the phase or phases and a plan identifying the phasing area. Examples include – Cleve Hill Solar Park Order 2020 (SI2020/547), Little Crow Solar Park Order 2022 (SI2022/436), Longfield Solar Farm Order 2023 (SI2023/734), Mallard Pass Solar Farm Order 2024 (SI2024/796), Gate Burton Energy Park Order 2024 (SI2024/807), and Cottam Solar Project Order 2024 (2024/943). An example of such a requirement is –<br><br>"No part of the authorised development may commence until a written scheme setting out the phase or phases of construction of the authorised | The Applicant does not consider it necessary or appropriate for a phasing requirement to be included in the DCO. Some flexibility is required over the construction phase, taking into account matters such as supply chain, weather conditions and availability of contractors. As the ES has assessed an approximate construction phase, based on a reasonable worst-case effects envelope for construction related effects, there is no specific effects management basis for including a phasing requirement.<br><br>The Applicant will however maintain an open dialogue with the OHAs through the detailed design and construction phases of the Project and will ensure OHAs are aware of any matters requiring their input. | The OHA will obviously welcome the open dialogue proposed. If no phasing requirement is proposed, the OHA would welcome a mechanism by which the Applicant provides the OHA with a timetable of forthcoming applications for the discharge of consents under the Order, which can be updated periodically. This will allow the OHA to plan for those applications and devote resources accordingly. The mechanism could be a requirement on the face of the dDCO or a provision in a Planning Performance Agreement, should such a PPA be agreed prior to the Order coming into force. | To confirm, the Project will not be constructed in phases, hence the rejection of the suggestion for a construction phase requirement.<br><br>Also, the the Applicant has incorporated paragraph 7 (Register of requirements) into Schedule 16 of the dDCO to ensure the local authorities have clear and consistent oversight of the full suite of discharge applications. This aligns with the wording proposed by the ExA and is considered sufficient by the Applicant, as the draft Requirements already give clarity on when the relevant plans must be submitted (for example, pre-commencement or prior to the final date of commissioning). |

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| development has been submitted to the relevant planning authorities.<br><br>The written scheme submitted pursuant to subparagraph (2) must include a timetable for the construction of the phase or phases of the authorised development and a plan identifying the phasing area.<br><br>The scheme submitted and approved pursuant to sub-paragraph (2) must be implemented as approved.<br><br>Notice of the date of final commissioning must be given to the relevant planning authority within 15 working days of the date of final commissioning for that phase".<br>The OHA would welcome the inclusion of such a requirement because being provided with the scheme (particularly the timetable) would allow the relevant planning authorities to prepare resources for discharging requirements etc. | | | |
| **23. R.7 (biodiversity net gain)**<br><br>The OHAs consider that sub-paragraph (2) should be amended as follows –<br><br>"(2) The biodiversity net gain plan must be substantially in accordance with the outline landscape and ecology management plan and the biodiversity net gain statement and must be implemented as approved and | The Applicant does not consider any amendment to Requirement 7 is required on the basis that the oLEMP will require each LEMP to demonstrate how the Project contributes to the achievement of BNG. | The OHA consider their suggested approach is reasonable and consistent with recent DCO drafting. For example, in addition to the example given in the OHA Comment row, requirement 7(2) (biodiversity net gain) of the East Yorkshire Solar Farm Order 2025 states –<br><br>"(2) The biodiversity net gain strategy must include details of how the strategy will secure a minimum of 80.42% biodiversity net gain in area- based | No amendment to the Requirement is necessary to ensure that the biodiversity net gain plan submitted pursuant to that Requirement is substantially in accordance with the biodiversity net gain statement.<br><br>This is because, as per our earlier response, Requirement 7 already requires the biodiversity net gain plan to be substantially in accordance with the outline landscape and ecology management plan (LEMP). Section 9 of the outline LEMP confirms that the approach to |

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| maintained throughout the operation of the relevant part of the authorised development to which the plan relates".<br><br>The biodiversity net gain statement sets out the approach to BNG adopted by the project and is set out in ES Volume 3, Appendix 9.13 [APP-162] and so its inclusion in R.7(2) is appropriate on this basis.<br><br>The OHAs note that Requirement 9 of the Cottam Solar Project Order 2024 (2024/943) includes the following subparagraph -"The biodiversity net gain strategy must include details of how the strategy will secure a minimum of 76.8% biodiversity net gain in habitat units, a minimum of 56.1% biodiversity net gain in hedgerow units and a minimum of 10% biodiversity net gain in river units for all of the authorised development during the operation of the authorised development, and the metric that has been used to calculate that those percentages will be reached".<br><br>The OHAs consider it would be helpful if a similar provision (albeit with updated figures etc.) were included in requirement 7 of the instant Order. | | habitat units, a minimum of 10.30% biodiversity net gain in hedgerow units, and 10.09% biodiversity net gain in watercourse units for all of the authorised development during the operation of the authorised development, using the Department of Environment, Food and Rural Affairs' 4.0 metric to calculate those percentages (or such other biodiversity metric approved by the relevant planning authority in consultation with the relevant statutory nature conservation body)".<br><br>Moreover, requirement 7(2) of the forthcoming Fenwick Solar Farm Order [REP4-004] includes a similar provision. | Biodiversity Net Gain (BNG) that has been adopted by the Project is as set out in the Biodiversity Net Gain Statement. This sets the basis for the figures then secured in the oLEMP, for example "*It is anticipated that the Project will achieve a BNG of at least 70% for habitat units across the authorised development*".<br><br>In summary, the provisions of the biodiversity net gain statement are suitably incorporated into the oLEMP which is then secured under the DCO pursuant to Requirement 6. |
| **24. R.8 (fencing and other means of enclosure)**<br><br>As explained in Chapter 6.3 (historic environment) of the LIR, the OHA consider a specific heritage related requirement is required in respect of the Grade II listed Milestone located on Oxford Road and this could be included | Chapter 7 - Historic Environment of the ES [**APP-044**] assessed potential effects of the Project on the Oxford Road Milestone. It was concluded that there would be only minor residual adverse effects, with no further mitigation or monitoring required. On that basis the Applicant does not consider it necessary to include a specific requirement within | The OHA's Joint LIR [REP1-072] states (at paragraphs 7.2.67 and 7.2.68) –<br><br>"*Milestone on the Oxford Road (NHLE number 1181978) lies within the cable route area. The impact assessment is that there will be a minor adverse impact during construction, operation and decommissioning. It is not proposed to* | As set out in MHCLG Guidance, '*Planning Act 2008: Content of a Development Consent Order required for Nationally Significant Infrastructure Projects'*, DCO Requirements should be "*precise, enforceable, necessary, relevant to the development, relevant to planning and reasonable in all other respects*".<br><br>The Applicant reiterates its assessment conclusion that there will be only minor residual |

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| at the end of existing Requirement 8, as follows – "(7) No part of the authorised development may commence until a detailed scheme of protection for the Grade II listed Milestone located on Oxford Road (NHLE number 1181978) ("the Milestone") has been submitted to and approved by the relevant planning authority.<br><br>(8) The scheme mentioned in sub-paragraph (7) must (a) explain how the Milestone will be protected by fencing during the construction and decommissioning of the authorised development; and<br>(b) be implemented as approved".<br>This addition to R.8 is required to protect and safeguard the milestone during construction and decommissioning. | the draft DCO providing specific protections for the Milestone. | *move the asset which is significant both for its age and its specific location relative to the areas it marks. As it is not proposed to change the asset's location, VWHDC is satisfied that the impact to its significance will be minor changes to the road conditions largely during construction and decommissioning.*<br><br>*In order to be satisfied that there is no risk to the asset during these periods it is suggested that should consent permission be granted for the scheme, a requirement is attached to any order which agrees, prior to commencement, protection measures to be installed during commissioning and again during decommissioning which protect the asset from any damage. These agreed measures must be retained in place until such time that all construction and decommissioning works have been completed. The reason is to preserve the asset in line with both Local Policy and Sections 16 and 66 of The Planning (Listed Buildings and Conservation Areas) Act 1990*".<br><br>It will be noted that this is a relatively small Milestone and potentially easy to miss by (say) a HGV or other vehicle. In the light of the above, the OHA consider the request for addition protection in the requirement to be reasonable and would encourage the Applicant to accept the drafting proposed in the OHA Comment row. | adverse effects which is not significant. As set out in the Joint LIR, VWHDC is satisfied that the impact to its significance will be minor changes to the road conditions only.<br><br>Therefore, to impose a Requirement as requested by the OHAs would be contrary to the DCO Guidance because the mitigation being proposed is not necessary as the significance of effect is already assessed as not significant without any such mitigation in place. |
| **26. R.11(2) (code of construction practice)** | The Applicant seeks further clarification from the OHA as to what specific measures they consider would be | The cross-reference in the OHA Comment row is incorrect. The correct cross-reference is to Chapter 7.4 | The Applicant is satisfied that the provisions set out in the outline Code of Construction Practice (as secured under Requirement 10 of the dDCO) |

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| As explained in Chapter 6.5 (Ecology, Nature Conservation and Trees) of the LIR, the OHA consider that, under sub-paragraph (2), the code of construction practice should also include a construction environmental management plan. A draft construction environmental management plan should be submitted into the examination as soon as possible and officers would we willing to discuss its proposed contents after Deadline 2. | captured by a construction environmental management plan that are not already captured by the management plans already proposed for the Project. | (Ecology, Nature Conservation and Trees) of the Joint LIR [REP1-072].<br><br>The OHA maintain their position as set out in that Chapter. | and other Requirements / management plans are sufficient to secure the necessary mitigation for the delivery of the construction phase of the Project. It would be unnecessary duplication to require a separate construction environmental management plan as it would serve the same purpose. |
| **27. R.14 (decommissioning and restoration)**<br><br>The OHAs note that Requirement 21(2) and (3) of the Cottam Solar Project Order 2024 (2024/943) differ from R.14 of the instant draft Order as follows –<br><br>"(1) The date of decommissioning must be no later than37.5 years following the date of final commissioning.<br><br>(2) Unless otherwise agreed with the relevant planning authority to which this requirement applies, no later than 12 months prior to the date the undertaker intends to decommission any part of the authorised development, the undertaker must notify that relevant planning authority of the intended date of | The Applicant agrees to the inclusion of the new requirement 21(2) as proposed by the OHA, requiring the Applicant to provide notice of the date it intends to commission any part of the Project.<br><br>In respect of a longer period of 8 weeks under Requirement 21(3) for providing the relevant part of the decommissioning plan, Schedule 16 already provides an 8 week timeframe for discharging requirements, as does the general deemed approval procedure under Part 2 Article 45. Such timeframes should remain consistent within the Draft DCO as otherwise the decommissioning plan could be deemed to be approved while the relevant planning authority is still within the 10 week period if specified under Requirement 14. We note that it would be open to the Applicant to provide documents to the relevant planning authority sooner and that the Draft DCO is intended to provide for the minimum time period within which the decommissioning plan must be provided. | The OHA welcome the inclusion of new requirement 14(2) but, as mentioned in the OHA Comment row, in requirement 14(3), the OHAs would welcome the slightly longer notification period of 10 weeks in respect of the submission of the decommissioning plan. | The Applicant has updated the draft DCO to accommodate the OHA's request, albeit with some amended drafting which the Applicant does not expect to be controversial. |

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| decommissioning for that part of the authorised development.<br><br>(3) Unless otherwise agreed with the relevant planning authority to which this article applies, no later than ten weeks prior to the intended date of decommissioning of any part of the authorised development notified pursuant to sub-paragraph (2), the undertaker must submit to that relevant planning authority for that part a ecommissioning plan for approval".<br><br>The OHAs consider it would be helpful if the notification mentioned in R.21(2) of the Cottam order was also provided to the relevant planning authority under the instant draft Order.<br><br>Similarly, the OHAs would welcome the slightly longer notification period of 10 weeks in respect of the submission of the decommissioning plan. | The Applicant also does not consider this to be necessary, particularly if an additional notice mechanism is being introduced 12 months in advance of decommissioning. This gives the relevant planning authority plenty advance warning that the decommissioning plan or relevant part is to be provided for approval. | | |
| **29. Proposed new requirement (2)**<br><br>During Issue Specific Hearing 1, there was a discussion on whether a Grampian condition should be included in the draft DCO preventing the undertaker from (i) exercising compulsory purchase powers and (ii) commencing the authorised development until planning permission has been granted for the proposed National Grid substation. The OHAs consider such a provision would be sensible because it would ensure that | The Applicant's position, as set out at Issue Specific Hearing 1, remains that a Grampian condition is not necessary. Please refer to the Applicant's Written Summary of Oral Submissions at Issue Specific Hearing 1 [REP1- 019]. | The OHA maintain the position set out in the OHA Comment row. | The Applicant has set out a thorough and detailed position on this point in its response to ExQ2.7.7. |

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| infrastructure which is important to the instant application has been consented before the instant works can be commenced. | | | |
| **30. Proposed new requirement (3)**<br><br>Prior to the commencement of the development, it is anticipated that works will have recently been completed on the A40 and the OHAs would not want these to be dug up under powers contained in the DCO (for instance, for the purposes of installing the authorised development's cable route). In the light of this, the OHAs consider the draft DCO should include a provision which prevents this happening. As matters stands now, the OHA's understand the cable route could cross the area of recently completed works. The OHAs would like clarity that the undertaker will either avoid the refurbished section of road or utilise HDD at a sufficient depth to prevent any harm to the new road. The OHAs consider this could be secured via a requirement to submit details of any proposed cable crossing of the A40 prior to them starting works on that section of the cable routing. | The Applicant refers to [APP-062] 6.4 of the ES - Figures 2.1a - 2.4d -<br><br>Illustrative Masterplan Figure 2.2F Central site area 6 of 6 which indicates the location of the cable route crossing the A40 road.<br><br>It is noted that OHA's have stated that there is the intention to re-surface this area of road.<br><br>The Applicant has been in discussions with OCC highways team, and has agreed that any prior works to the roads, and surface will be advised, in advance of the works commencing by OCC highways team, to enable the Applicant to manage their phasing and workstreams to minimise the damage to newly completed works. The Applicant will use all reasonable endeavours to achieve this, but due to programme and logistical constraints this may not always be achievable.<br><br>In relation to and HDD to this crossing of the A40, this option was considered, but there was not a location for an exit point for the HDD, therefore open cut trenching was discussed with OCC in this location. As the Applicant cannot control the nature and timing of the works proposed to the | Please see the reply to Question 2.16.2. | Please also see the Applicant's reply to Question 2.16.2.<br><br>By way of an update at Deadline 5, the Applicant has shared various details of the works with OCC, including the specifications for the cable ducting. The Applicant awaits a cost estimate from OCC. |

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| | A40, it is not realistic to include a Requirement within the<br><br>DCO that prevents the Applicant from undertaking works in this location where necessary to deliver the Project. However, the Applicant acknowledges that there is a need to work closely with the OHAs in delivering works in this area, and commercially motivated to do this in the most efficient and effect manner possible on the basis that any damage to the road from cabling works will need to be remediated. | | |
| **31. Proposed new requirement (4)**<br><br>The OHAs are concerned by the prospect of the consequences arising from panel replacement works on the road network and waste management sites. The OHAs consider these concerns could be addressed by including a requirement which requires the undertaker to submit a document like the decommissioning plan (and which would include provision for traffic and waste management) or the replacement panels when the number of panels to be replaced exceeds (say) 50 panels. | The Applicant does not consider that such a requirement is necessary, with the Applicant already assessing the worst-case scenario in terms of effects from the Operational Phase, including replacement activities. The Outline Operational Management Plan [APP-234] requires the Applicant to prepare an Operational Waste Management Plan (OWMP) for managing waste from operational phase activities, including replacement. Traffic effects from this phase are assessed as being negligible. | Please see the reply to Question 2.7.8 for the OHA's latest position on this issue. | Please also see the Applicant's reply to ExQ2.7.8.<br><br>In short, the Applicant updated the outline Operational Management Plan at Deadline 4 to secure that the Applicant will not replace more than 30% of panels in a single year. On that basis, the requirement proposed by the OHAs would be otiose. |
| **32. Schedule 16 (procedure for discharge of requirements) – paragraph 5 (fees)**<br><br>The first point to make is that while the relevant planning authorities will be required to deal with applications for consent under articles and under | The Applicant notes that the ability of the relevant planning authority to recover fees prescribed in accordance with the Town and Country Planning (Fees for Applications, Deemed Applications, Requests and Site Visits) (England) Regulations 2012 has precedent from a number of other Solar DCOs, as set out in the Explanatory Memorandum [APP-017]. | The OHA maintain their position set out in the OHA Comment row.<br><br>The Applicant has demanded, in its Order, that the OHA must discharge requirements and other consents. By section 120(2) of the Planning Act 2008, it could have chosen another body or | The Applicant will continue its engagement with the OHA's in this regard. |

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| requirements, by paragraph 5(1) of Schedule 16, a fee is only payable in respect of requirements. The OHAs consider that a fee should also be paid for dealing with applications under articles. The Council's approach is consistent with the standard drafting for a provision dealing with procedure for the discharge of approvals, as set out in Appendix 1 to PINS Advice Note 15, which concerns drafting DCOs.<br><br>The second point to make is that the proposed fee is too low. Paragraph 5(1) applies the fee prescribed in regulation 16(1)(b) of the Town and Country Planning (Fees for Applications, Deemed Applications, Requests and Site Visits) (England) Regulations 2012. This amounts to £145. If we assume an hourly rate of £100 for an officer to deal with this work, it would mean the officer would have to deal with any discharge application within approx.1 hrs and 24 minutes before dealing with the application was costing the relevant authority money. It is unlikely that any application will be capable of determination within that time period. While no local authority can make a profit for this work, it is reasonable for it to seek the full recovery of the actual costs incurred.<br><br>This is not only about fairness but also about the way in which the Order is drafted. For example, by paragraph 2(2) of Schedule 16, the relevant planning authority will have 8 weeks to make its decision on any application and if no decision is made within that period, | Recognising the OHA's concerns about the sufficiency of those regulations, the Applicant notes the DCO provides flexibility for adjustments to these fees to reflect future amendments to the regulations, through the wording "*as may be amended or replaced from time to time*".<br><br>The Applicant does not consider it necessary for there to be a general cost-recovery mechanism for provision of approvals under the DCO, but welcomes further engagement with the OHA on exploring the potential for planning performance agreements. | bodies to discharge requirements. It has therefore chosen to involve the OHAs. Moreover, the Applicant has imposed on the OHA a regime which can allow for the deemed consent of applications in a certain circumstances. This means that the OHA will have to prioritise any application under the DCO.<br><br>In these circumstances, it is only fair that the cost of the work the Applicant is requiring the OHA to do, will be met by the Applicant. This applies to the cost of discharging requirements and any other consent under the Order.<br><br>The OHA welcome the Applicant's willingness to explore planning performance agreements and would suggest that discussions on these now begin in earnest. | |

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| consent will be deemed to have been granted. By article 45(4) of the Order, a similar regime applies in respect of consents sought under articles. Dealing with any application for consent under this Order will therefore be a matter of high priority for the relevant planning authority and it is possible that external help will be sought to ensure matters are dealt with on time.<br><br>Rather that the regime currently proposed in the Order, the OHAs considers it would be preferable if the Applicant and OHAs entered into a planning performance agreement ("PPA") for the full recovery of the OHA's costs in discharging any application under the Order. The OHAs consider there is enough time to agree a PPA during the Examination and would be willing to share a first draft of such an agreement with the Applicant in order to progress matters.<br><br>Once the PPA is agreed, existing paragraph 5 can be replaced with a provision which states fees for applications will be paid in accordance with the PPA. | | | |