Botley West Solar Farm

Applicant's Response to the ExA's Schedule of Changes to dDCO

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1 Legislative context for the provision of Requirements

1.1.1 For context, the MHCLG Guidance, '*Planning Act 2008: Content of a Development Consent Order required for Nationally Significant Infrastructure Projects'* (the DCO Guidance) confirms that pursuant to section 120(1) of the Planning Act 2008, "*An order granting development consent may impose requirements in connection with the development for which consent is granted*". Pursuant to subsection (2), such requirements may correspond with conditions which could have been imposed on the grant of planning permission under the Town and Country Planning Act 1990.

1.1.2 In that context, the relevant paragraphs of the National Planning Policy Framework and associated Planning Practice Guidance concerning conditions will generally apply. Requirements should therefore be "*precise, enforceable, necessary, relevant to the development, relevant to planning and reasonable in all other respects*". This test is reiterated as being appropriate for Nationally Significant Infrastructure Projects at paragraph 4.1.16 of the Overarching National Policy Statement for energy (NPS EN-1).

1.1.3 The Applicant's responses to the Examining Authority's proposed schedule of changes to the draft DCO [**PD-015**] are provided in this context.

2 Applicant's Response to the ExA's Schedule of Changes to the dDCO

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PC001 New Requirement	**Pre-commencement works** "*No part of the authorised development may commence until details of the following have been submitted to and approved by the Secretary of State:* *(1)* *a) the planning permission and/or development consent for the National Grid Electricity Transmission proposed Substation at Farmoor Reservoir (if delivered outside the Order limits);*	There are evident discrepancies between the National Grid delivery programme and that of the applicant for the Proposed Development with a range of dates from October 2027 to late 2029. To further complicate matters, the Oxfordshire Host Authorities have reported a screening opinion has been sought by National Grid that seems to straddle the Order limits. The proposed development should only take place once there is certainty that the important and relevant national grid infrastructure is in place. Without that	The Applicant has set out its position on this in detail in its response to ExQ2.7.7 [**REP4-037**], by reference to a KC Opinion submitted on Five Estuaries Offshore Wind Farm. In summary, the Applicant strongly rejects the need for a Grampian Requirement and maintains that such a requirement is not necessary and is therefore inconsistent with the DCO Guidance. The main reasons for this position, as set out in that response, are summarised below: 1. **Grid connection agreement** – there is a contractual arrangement in place between the

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	b) a construction programme that aligns the completion of the National Grid Electricity Transmission proposed substation and the connection offer of the Applicant (regardless of whether the substation is to be delivered within or outside the Order limits). *(2) With respect to paragraph (1) above, in the event of the National Grid substation being delivered within the Order limits, this shall be in accordance with the layout shown on sheet 13a of the Works Plans. In the event that National Grid substation is to be delivered outside of the Order limits (outside the scope of this Order), Work No.2 shall not occur and, instead, the layout shown on sheet 13b of the Works Plans shall be implemented."*	infrastructure first being secured, it would be a waste of resources and/ or disadvantageous to landowners for the applicant to commence construction or acquire land compulsorily. The provision is deemed necessary for the proper functioning of the development consent regime.	Applicant and NGET. The delivery of the generation asset to facilitate that connection is a matter for the Applicant, which is the prinicpal development of this DCO application. The delivery of the substation connection is a matter for National Grid (either through the separate planning permission or via some alternative approach as National Grid sees fit). 2. **Delivery** – in practice, such a requirement is not necessary because if there is any uncertainty as to whether or not the NGET substation is to be delivered in accordance with the agreed connection date, then the developer of the solar farm would never deliver the project for commercial reasons. Cost would only be commited if there is commercial certainty of connection. Notwithstanding, the discharge of Requirement 5 (detailed design approval) gives legal certainty as to how the Project is to be delivered alongside the new NGET substation. Having dealt with the application for that planning permission, the relevant planning authority will be well aware of the programme for implementation of the New National Grid Substation at the time of discharging the DCO Requirement. 3. **Fallback position** – irrespective of the above, the DCO includes consenting powers for the NGET substation. This gives absolute certainty that there will be timely consent available for the new substation, to allow NGET to facilitate the connection. The Applicant has therefore ensured deliverability through Work No. 2, meaning this

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			proposed requirement is not necessary nor reasonable in all other aspects. The response to ExQ2.7.7 expands on these points and raises other to explain how the proposed requriement is not necessary and therefore would be contrary to the DCO Guidance and national policy. Irrespective of the argument made by the Applicant of with respect to non-compliance, the unacceptable practical implication of the proposed requirement is that it would impose an unreasonable impediment to delivery as implementation would be unnecessarily delayed which would impact project programme. Paragraph 3.2.6 of NPS EN-1 makes it abundantly clear that there is a need for the sorts of infrastructure covered by that NPS, including the Project, which is urgent. Paragraph 3.3.63 contiues to clarify that "*Government strongly supports the delivery of CNP Infrastructure and it should be progressed as quickly as possibly*". To delay the delivery of the Project unnecessarily when the consent being sought ensures deliverability, would therefore be contrary to both the DCO Guidance and national policy across multiple levels.
PC002 New Requirement	**Decommissioning Fund** (1) No phase of the authorised development may commence until a decommissioning fund or other form of financial guarantee that secures the cost of performance of all decommissioning obligations under Requirement 14 of this Order has been submitted to and approved by the local planning authority.	The applicant has made some pledges towards decommissioning, though has previously answered that nothing can be guaranteed regarding funds being available for decommissioning [REP1- 019, page 33]. The applicant has also stated that if development consent is granted, the interest would fall back to having just an "adequate equity ratio."	Securing Decommissioning The Applicant maintains its position from earlier submissions that the imposition of a Requirement for a decommissioning fund is not necessary or reasonable in all aspects, and therefore this requirement does not meet the tests required by the DCO Guidance and reiterated in national policy. This position is supported by the recent SoS decision making in the Oakland Solar Park.

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	(2) The value of the decommissioning fund or other form of financial guarantee shall be agreed between the undertaker and the local planning authority or, failing agreement, determined (on application by either party) by a suitably qualified independent professional as being sufficient to meet the costs of all decommissioning obligations referred to in Requirement 14 of this Order. (3) The decommissioning fund or other form of financial guarantee shall be maintained in favour of the local planning authority until the date of completion of the works to be undertaken in accordance with Requirement 14 of this Order. (4) The value of the decommissioning fund or other form of financial guarantee shall be reviewed by agreement between the Undertaker and the local planning authority by a suitably qualified independent professional no less than every five years and increased or decreased to take account of any variation in costs of compliance with decommissioning obligations and best practice prevailing at the time of each review.	The provision is deemed necessary to ensure that decommissioning would be adequately financed and the restoration of the land to its original condition is secured.	The Oakland Solar Park ExA's Recommendation Report deals with Decommissioning timing and funding [see 3.2.82 – 3.2.87]. This gives the ExA's opinion that 'Requirement 27' (a draft requirement for a decommissioning fund or other form of financial guarantee) "*…is necessary to ensure that the undertaker's financial resources would be available for decommissioning and thereby provide key security that it would be carried out appropriately, consistent with ensuring that the Proposed Development is temporary, and consistent with the ES*". This aligns with the opinion of the ExA for the Project set out in this proposed requirement PC002. However, on Oakland Solar Park, the SoS' Decision Letter [see 4.38 – 4.45] confirms – by reference to the decommissioning and restoration requirement in the DCO and outline decommissioning plan – that "*the Secretary of State considers that sufficient information has been provided… to demonstrate how decommissioning would be secured and how the application site land would be returned to the beneficial use of the landowners*". This is comparable to mechanisms already secured within the draft DCO [**CR2-009**] for this Project: • Requirement 14 of Schedule 2 of the draft DCO includes a requirement for decommissioning and restoration. This aligns with the principle of Requirement 22 of the Oakland Solar Park DCO; • Under Requirement 14, decommissioning must be implemented in accordance with a decommissioning plan approved by the LPA substantially in accordance with the outline decommissioning plan (sub-paragraph (3) and

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			(5)). This is expressly relied on by the SoS in the Oakland Solar Park decision letter to allow the SoS to reach its decision that a separate funding requirement would not be necessary, as the inclusion of the decommissioning and restoration requirement "*would provide DCC and SDDC the opportunity to participate at the decommissioning stage to ensure that their decommissioning concerns are addressed"*. As such, applying that principle to this Project, a separate funding requirement is not necessary as Requirement 14 already secures decommissioning in a similar manner which would allow the relevant planning authority to participate to ensure that its concerns are addressed at that stage. • Also, to be clear, paragraph 2.1.1 of the outline Decommissioning Plan [**REP4-030**] confirms that the "*land within the Project Site Boundary will be returned to the respective landowners and to its original use after decommissioning*". This gives certainty to the ExA and the SoS that sufficient information is provided to demonstrate how the application site land would be returned to the beneficial use of the landowners. • Finally, a new undertaker would remain obligated to implement Requirement 14. Article 34 of the DCO states that the "*benefit transferred or granted ("the transferred benefit") must include any rights that are conferred, and <u>any obligations</u> that are imposed, by virtue of the provisions to which the benefit relates*" (our emphasis). This is expressly referred to by the SoS in Oakland Solar Park in reaching the decision that a separate funding requirement

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			would not be necessary. Therefore, the inclusion of corresponding positions in this Project's DCO supports the position that an additional Requirement is not necessary. Funding and Policy In the Oakland Solar Park decision letter, at paragraph 4.44, the SoS notes that there is no policy requirement for a decommissioning fund to be imposed. Paragraphs 2.10.146 to 2.10.151 of NPS EN-3 set out the considerations for the SoS in relation to project lifetime and decommissioning of solar developments. As is supported by the Oakland Solar Park decision letter, these provisions of national policy are complied with through the inclusion of a decommissioning and restoration requirement only, which is a consistent approach with other consented solar DCOs. Paragraph 2.10.68 of NPS EN-3 also acknowledges that solar panels can be decommissioned relatively easily and cheaply. In any event, the Funding Statement includes a cost estimate which "*covers all aspects of the Project*", including decommissioning. Therefore, the ExA and SoS have all of the usual information available to identify how decommissioning is proposed to be secured in absence of a decommissioning fund. Conclusion The Oaklands Farm Solar Park makes it clear that where an application secures decommissioning and restoration as a Requirement, the SoS does not consider that imposing a separate decommissioning fund requirement to be necessary. This decision supports other long standing solar DCO precedent. Therefore, to include

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			such a requirement here when the draft DCO includes a decommissioning and restoration requirement using well precedented wording, would be contrary to the DCO Guidance and national policy.
PC003 New Requirement	**Development Consent Obligations** (1) The authorised development must not begin for the purposes of section 155(1) of the 2008 Act unless and until the undertaker completes the following development consent obligations pursuant to section 111 of the Local Government Act, section 106 of the 1990 Act and section 278 of 1980 Act— (a) the Oxfordshire County Council development consent obligation. (b) the West Oxfordshire District Council development consent obligation. (c) the Cherwell District Council development consent obligation; and (d) the Vale of White Horse District Council development consent obligation.	The ExA notes the positions of all parties on the need for (or otherwise) planning obligations and side agreements. The applicant has stated commitment towards the delivery numerous community benefits 'if development consent is granted'. There has also been written commitment to undertaking highways works. The applicant has, and it is acknowledged, stated there is no need for a planning obligation. Whilst recognising these matters are subject to different regimes (i.e. section 111 of the Local Government Act, section 106 of the Town and Country Planning Act and section 278 of the Highways Act), the ExA consider such matters should not be left to side agreements in the post-consent phase but formally recognised in the DCO process. The proposed new requirement would give legitimacy to the legal obligations being sought for the project.	This response takes each commitment in turn by reference to the relevant securing mechanism. <u>Community Benefits (s111)</u> The delivery of community benefits is a discretionary offering and falls outside the planning balance and is therefore intentionally not secured under the DCO. The Applicant cannot bring any such commitment into the planning balance and therefore this requirement would be ultra vires, and subject to challenge. It is also contrary to DCO Guidance and national policy as it is not enforceable or relevant to planning. To be clear, this does not mean that the Applicant is not committed to delivering community benefits. This includes the community benefit fund which has been agreed with the OHAs (£525 per MW). The Applicant is also in discussions with the OHAs to provide a seperate fund for the delivery of offsite improvements to the public rights of way network. <u>Highways Works (s278)</u> The draft DCO gives consent to the undertaker to carry out highways works. This is secured through Part 3 (Streets works) of the draft DCO, specifically Article 9 (Power to alter layout, etc. of streets) which authorises works akin to those that may ordinarily be consented pursuant to a s278 agreement. It is therefore not necessary from a planning perspective for an obligation

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			to be included within the DCO to facilitate the highways works for the Project. However, as explained in its response to ExQ2.7.6, the Applicant accepts that a highways side agreement (i.e. an agreement akin to a s278 agreement but without the provisions to grant the consent for the works, noting the DCO grants that consent) are a reasonable request in relation to more substantial highways works. As such, the CTMP, as appended to the Code of Construction Practice [**CR2-045**] includes an obligation for a 'highways side agreement' to be entered into for specific works – see paragraphs 1.6.7 and 1.7.3. The CTMP/CoCP is secured through Requirement 11 of the draft DCO, therefore it would not be necessary for a standalone obligation for the Applicant to enter into those agreements as this would duplicate an existing obligation that is already secured. The Applicant rejects the proposal from the OHAs that all works under Part 3 of the dDCO require a similar agreement. This is supported by the Applicant's response to ExQ2.7.6. In any event, the appropriate mechanism to secure any such obligation would be through expanding the provisions in the CTMP rather than a DCO requirement. The Applicant is in discussions with the OHAs to consider whether a further compromise can be reached in respect of the obligation to enter into a highways side agreement. Finally, it is worth noting that Article 9(4) is intentionally drafted to confirm that: "*The powers conferred by paragraph (2) may not be exercised without the consent of the street authority, such consent to be in a form reasonably required by the street authority*" (our emphasis). This ensures that consent of the street authority is required whilst retaining sufficient flexibility

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			in the DCO for that consent to be in an appropriate form but without binding it to a particular form. The Applicant's response to ExQ2.7.6 supports the Applicant's position that Article 9 is sufficient to deliver the sorts of highways works that may otherwise be delivered under a s278 agreement. the Applicant accepts that a highways side agreement may be a reasonable request in relation to more substantial highways works. <u>Planning obligation (s106)</u> The Applicant does not consider there to be any need for a s106 agreement as all of the mitigation proposed for the Project is already secured through the various Requirements under Schedule 2 of the draft DCO. In any event, it would not be appropriate to require a s106 obligation by way of DCO Requirements. To the extent any s106 may become required as part of the DCO process, this would be entered into with the OHAs (as relevant) and or delivered through a unilateral undertaking prior to end of Examination.
PC004 New Requirement	**Farmland Bird Strategy** (1) No part of Work No. 1 may commence until a Farmland Bird Strategy (FBS) has been submitted to and approved by the Secretary of State in consultation with the relevant statutory nature conservation body and the local planning authority for the area in which the compensation measure is to be provided.	Noting the status of both skylark and corn bunting as Red List Birds of Conservation Concern and Species of Principal Importance, as well as The Environmental Targets (Biodiversity) (England) Regulations 2023, the Applicant, NE, and OHA are invited to provide comments on the wording for a potential farmland bird compensation plan requirement within the Order. The retention of 17.6ha of land as skylark mitigation, whilst welcomed, is not	As requested by the ExA at Issue Specific Hearing 2 (ISH2), the Applicant has considered this request as a 'Skylark Mitigation Strategy', rather than the Farmland Bird Strategy described. The Applicant does not consider that such a strategy is necessary or reasonable and therefore to impose such a Requirement would be contrary to DCO Guidance and national policy. The Applicant assessed the impact on farmland birds including skylark (both wintering and breeding) in ES

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	(2) The FBS must include— (a) the location where the compensation measures will be delivered and the suitability of that location (including why the location is appropriate ecologically and likely to support successful compensation), and confirmation that the necessary landowner agreement(s) are in place; (b) details of the capacity and ability of the compensation areas to compensate for the impact of the authorised development on skylarks and corn bunting; (c) an implementation timetable for delivery including any arrangements made with a third party for implementation of the measures; (d) details for the ongoing management and maintenance of the compensation measures; (e) details for the ongoing monitoring and reporting of the effectiveness of the compensation measures identified in the FBCP including— (i) survey methods; (ii) survey programmes; (iii) success criteria; and (iv) timescales for the monitoring reports to be delivered;	detailed to any degree as to its management or how nesting/ breeding bird habitat is going to be created. None of the other species noted by the OHA appear to be provided for, and yet this opportunity for biodiversity gain should be taken. This follows both the recent consultation from the SoS on the Five Estuaries Offshore Wind Farm and the request from the OHA for a farmland bird strategy to be produced, albeit without explicit wording.	Chapter 9 Ecology and Nature Conservation [**REP4-010**] and concluded that a significant adverse effect from habitat loss on wintering birds could not be avoided; many species of wintering bird feed on post-harvest seed and within the soil of open, wet fields that occur over winter in an arable landscape. Given the scale of the Project, it was not considered possible to fully mitigate the effect on this receptor of changing the land use from primarily arable to solar energy generation, hence the identification of a significant effect. Effects on breeding farmland birds due to habitat loss were not considered significant but were still minor adverse (as set out in ES Chapter 9 Ecology and Nature Conservation); primarily, the minor adverse conclusion was due to the effect of the Project on ground nesting birds including skylark. However, many other species of farmland birds make use of hedgerows and associated margins for breeding/foraging and would therefore be able to continue breeding/foraging post construction. It is the Applicant's position that mitigation measures to mitigate impacts on skylark as far as is practical within the context of the Project site, are secured under the DCO. For example: • 53.6ha of new grassland habitat creation to be managed for birds (both wintering and breeding), as set out in section 7 of the oLEMP [**CR2-051**]. • In addition, the creation of circa 100ha of the floodplain meadow and associated matrix of habitats within the Evenlode Corridor as set out in paragraph 8.2.2 of the oLEMP [**CR2-051**] would also provide additional habitat for farmland birds (both wintering and breeding).

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	(f) details of any adaptive management measures, with details of the factors used to trigger any alternative and/or adaptive management measures; and (g) details of how survey and monitoring data will be shared in the appropriate formats with the relevant Local Environmental Records Centre(s) and relevant national/regional environmental recording schemes, and any potential research collaborations. (3) The undertaker must implement the measures set out in the FBS approved by the Secretary of State, unless otherwise agreed by the Secretary of State following consultation with the relevant statutory nature conservation body and the local planning authority for the area in which the compensation measure is to be provided. (4) Results from the monitoring and reporting scheme referred to in paragraph 2(e) must be submitted at least annually to the Secretary of State, the relevant statutory nature conservation body, and the local planning authority for the area in which the compensation measure is to be provided. This must include details of the effectiveness of the compensation		While it is acknowledged that all of this new habitat won't be usable by skylark for breeding purposes, it still represents up to approximately 153ha of new grassland habitat creation that could be used by skylark for breeding and foraging. In addition, although not quantified at this stage, there would be new areas of scrub planting alongside existing hedgerows to create variation in habitat structure (ecotones) committed to within section 7 of the oLEMP, and over 50km of new and enhanced hedgerow, all of which will also provide enhanced invertebrate populations that skylark depend on when breeding. There will also be no further pesticide inputs across the whole Project site (unless under very exceptional circumstances) also benefiting the invertebrate population and hence skylark feeing their young. Further, unlike the agricultural baseline where farmland bird habitat provision is dictated by crop rotation, the habitats to be created within the Project will be available for skylark use for the full duration of the operation of the Project and, on an annual basis, will be left undisturbed for the duration of breeding (March to August). During this period, it would be normal for skylark to raise multiple (potentially up to four) broods) which is not possible in an arable landscape where crops are cut early. With respect to skylark, as set out in the Applicant's Skylark Technical Note (Annex 6 of Applicant's response to ExQ2 [**REP4-037**], the vagaries of habitat availability within an agricultural landscape mean that populations of birds that rely on specific conditions to successfully breed/feed can fluctuate significantly (as demonstrated by the skylark population observed on the Project site). From a population stability perspective, this fluctuation is detrimental; two or three years of the 'incorrect' crop could lead to local

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	measures delivered. If the undertaker, or on receipt of a monitoring report, the Secretary of State, determines that the compensation measures delivered have been ineffective the undertaker must provide proposals for any alternative and/or adaptive management measures to address this. Any proposals to address the ineffectiveness of the compensation measures must thereafter be implemented by the undertaker as approved in writing by the Secretary of State in consultation with the relevant 6 statutory nature conservation body and the local planning authority for the area in which the compensation measure is to be provided. (5) The FBS approved under paragraph (1) includes any amendments that may subsequently be approved in writing by the Secretary of State.		extinction as conditions necessary for successful breeding are not present. Change in farmland practices in this manner is one of the main factors considered to be driving the dramatic decrease in populations of many species of farmland birds. Such a situation would not occur within the Project site as all habitats will remain available for birds to use every year. Therefore, as set out in the technical note, while the maximum population of skylark the Project site can support might be lower than if all fields within the Project supported spring-sown cereals, the consistency of habitat provision will ensure the maintenance of a stable, long-term and therefore more resilient population. The benefit of solar sites to farmland bird species has been demonstrated by research published by the University of Cambridge and RSPB (Copping *et al*. 2025) demonstrating the benefit of solar sites managed for wildlife with respect to both the diversity and abundance of farmland birds compared to arable baselines and of the work by Solar Habitat UK, in association with the University of Lancaster (Solar Habitat 2025) demonstrating prevalence of farmland birds within solar sites. This work built on research in Slovakia in 2024 that demonstrated similar results with respect to solar sites compared to agricultural controls (Jarčuška *et al*. 2024). None of this research with respect to the benefits of solar developments for farmland birds has been acknowledged by the OHA in their submissions. Further, the Project's proposed habitat creation and assessment of impacts/effects with respect to farmland birds is comparable to other consented

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			NSIP-scale solar farms. For example, the Cottam Solar Project found 232 skylark territories in circa 1,200ha site. Mitigation comprised provision of 45ha of set-aside grassland and 26ha of wetland grassland. The East Yorkshire Solar Farm found 125 skylark territories on 1,200ha. Mitigation comprised 20ha of diverse grassland seed mixes and 18ha of other grasslands. The Applicant is not aware of any consented solar DCO where the SoS considered that a requirement relating to farmland birds was necessary, despite impacts/effects/mitigation being broadly similar. The creation of all these habitats, their management and the associated benefits they provide to farmland birds, is described in the oLEMP as secured via Requirement 6 of the dDCO. Notwithstanding the above, in order to provide the ExA and other IPs with additional information as to how the land to be used for skylark mitigation within the Project will be created and managed, the oLEMP has been updated at Deadline 6, in particular to ensure that management for skylark is a specific aim of the relevant habitat (section 10.2) and to clarify timings of works and associated management regimes for the grasslands where they would breed and forage (Table 11.1). Therefore, the Applicant has considered the provision of both mitigation and compensation with respect to skylark and concluded that the loss of potential territories was offset sufficiently by the certainty of such habitat being available every year (in line with

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			the approach of other solar DCOs) to ensure that the effect was not significant in EIA terms such that additional, off-site mitigation might be required. Such provision would require changes to agricultural practices (such as the creation of skylark plots) that could increase the impact that the Project would make on best and most versatile (BMV) land and associated agricultural practices. The measures would be long-term (for the duration of the operation of the Project) and therefore place an undue restriction on the farming practice of any willing landowner. Such long-term restrictions would have negative implications for the management of such farms including their ability to adapt to changing climate, government policy and farming practices. The Applicant is therefore of the view that a residual minor adverse impact to skylark, which is mitigated below the level of significance through the existing delivery (as set out in the updated oLEMP), should be set against the great positive weight in favour of the development of CNP infrastructure under the NPS. The Applicant has not, therefore, submitted wording for a requirement on the basis that it is of the view that such a requirement is not necessary as the appropriate mitigation is already secured.
PC005 Article 6	Delete sub-paragraph (a) in relation to s23 of the Land Drainage Act 1991(a). Subsequent renumbering of the list of disapplied provisions.	In answer to ExQ2.7.2, the applicant makes clear the disapplication could only take place with agreement from the relevant drainage board (the Local Lead Flood Authority). In this instance the LLFA object to the disapplication. It is suggested such reference is therefore removed from the Order.	Following discussion with the OHA's, the Applicant understands that the primary concern of OCC (as lead LLFA) relates to the timings for approval within the protective provisions. If that is the only outstanding matter of concern for OCC, then the Applicant expects that agreement can be reached shortly which would enable the disapplication provisions to remain within Artilce 6.

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		This suggestion is not prejudicial to any subsequent or prospective agreement between the applicant and the LLFA on protective provisions regarding this matter. Should such provisions be agreed prior to the close of the Examination, the ExA may withdraw this suggested change.	To the extent the consent of OCC is not recieved, then the Applicant accepts that s23 cannot be disapplied. The provision may be removed by the Applicant if it becomes clear that agreement will not be reached during the Examination process, or by the Secretary of State in granting the DCO (as was the case in the Gate Burton DCO where consent of an Internal Drainage Board was not recieved in time).
PC006 Requirement 7	Add sub-paragraph (3) to read "The biodiversity net gain plan must include details of how the strategy will secure a minimum of 81.28% biodiversity net gain in area-based habitat units, a minimum of 59.18% biodiversity net gain in hedgerow units, and xxx% 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)."	The ExA consider this provision secures the delivery of the ambitious biodiversity net gain objectives of the applicant. This would be consistent with the wording used in other recently made Development Consent Orders for solar projects. The "xxx" is not a typo. The applicant had committed [REP4-037, Q2.1.13] to include watercourse units in its assessment to appease the Environment Agency, Natural England and the OHA. The Deadline 5 version of the BNG statement does not do this.	The Applicant has updated the draft DCO at Deadline 6 to secure specific BNG figures on the face of the Order. The proposed drafting which has been included within the draft DCO is copied below: "*...(2) The biodiversity net gain plan must include details of how the strategy will secure a minimum of 70% biodiversity net gain in area-based habitat units, a minimum of 50% biodiversity net gain for hedgerow units, and a minimum of 20% biodiversity net gain for watercourse units as substantially in accordance with the outline landscape and ecology management plan and measured 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).* *(3) The biodiversity net gain plan must be implemented as approved."* To be clear, the figures included for habitat units and hedgerow units reflect those set out in section 9 of the oLEMP [**CR2-051**]. These are the BNG benefits being relied upon in the planning balance and therefore are appropriate for inclusion on the face of the DCO.

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			Whilst net gain has not been targeted for watercourses on the basis that none are being impacted by the Project, in response to the request of the ExA and in recognition of the fact that the Project can deliver watercourse benefits, the Applicant has also added a commitment to 20% BNG for watercourse units. To be clear, the Applicant is aware that the BNG Statement (updated at Deadline 6) shows higher expected figures of BNG for each unit type. However, those figures are provided on an indicative basis only and the Applicant is not seeking to rely on those higher figures in the planning balance. In other words, the Applicant is only relying on 70%, 50% and 20% BNG for habitat, hedgerow and watercourse units, respectively. The Applicant accepts that without securing the higher figures as part of the DCO Requirement, the surplus BNG (i.e. any BNG achieved by the final designs over and above the 70%, 50% and 20% figures committed to) cannot be considered in the planning balance. For completeness, the Applicant reiterates that it is not necessary or reasonable in all other aspects for any higher commitments to be unilaterally imposes by either the ExA or SoS. As set out in paragraph 9.1.3 of the oLEMP, the Environment Act 2021 only includes a requirement for developers to deliver 10% BNG. The figures proposed to be secured through Requirement 7 (as explained above), are far in excess of that statutory target. Notwithstanding, the requirement in the Environment Act 2021 is not yet applicable to projects consented under the Planning Act 2008 until May 2026. As such, the regime is not currently binding on the

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			Project and it would not therefore be necessary or relevant to planning to impose a Requirement that unreasonably commits the Applicant to a higher biodiversity gain than that required by legislation or being relied upon in the planning balance. The Applicant has secured a commitment to BNG that is far in excess of a statutory target, which is not even mandatory yet for the Project. Just because the Project will likely achieve an even greater gain than that, does not make it necessary or appropriate for the Applicant to be obliged to secure those higher figures as a legally binding obligation, particularly as the Applicant is not relying on those higher figures in the planning balance.