

Tween Bridge Solar Farm

8.35 Response to Annex 1 of CDC's Deadline 7 Submission

Planning Act 2008

Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009

Deadline 8 October 2026

Document Reference: 8.35

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1 Introduction

- 1.1.1. The purpose of this report is to provide the response made by RWE Renewables UK Solar and Storage Ltd (the Applicant) to matters raised by the City of Doncaster Council in their written submissions relating to the Draft Development Consent Order (DCO) **[REP7-007]** at Examination Deadline 7 for Tween Bridge Solar Farm ('the Scheme').

2 Applicant's Response to Annex 1 of CDC's Deadline 7 Submission [REP7-007]

Ref:	Directed to:	Commentary or Question	The Applicant's Response and CDC's Response	Applicant's Deadline 8 Response
2. Part 2 – Principal Powers				
DCO.2.1	Applicant	Article 3 • Please amend article 3(1) as follows: "Subject to the provisions of this Order and the requirements in Schedule 2 (requirements), the undertaker is granted development consent for the authorised development to be carried out within the Order limits." • Please also delete article 3(2). The ExA has considered the applicant's response to EXQ2 2.5.1 (Articles) [REP4-O62], including the precedents cited. However, this issue was directly addressed and settled in one of the most recently made solar DCOs. In the Peartree made solar DCO the applicant (RWE Renewables UK Solar and Storage Limited) proposed exactly the same wording in revision 11 of its dDCO. The SoS made the order excluding the wording at Article 3(2). Reasons are given in the ExA recommendation report (paragraphs 7.43 to 7.46) and the SoS decision letter. Please could the applicant therefore amend the dDCO accordingly, deleting Article 3(2), by deadline 6.	The Applicant has amended article 3(1) in the Draft DCO [Document Reference 3.1 Revision 9] submitted alongside this submission, as requested. However, the Applicant has not removed article 3(2). The Applicant considers there is a strong justification for the provision in the case of this scheme. In particular, it is necessary to ensure that there are no local acts or other legislation that might hinder the construction, operation, maintenance and decommissioning of the authorised development. Including this article ensures that the construction, operation, maintenance and decommissioning of the authorised development are not jeopardised by any incompatible statutory provisions which might exist, i.e. a provision which would be an absolute restriction that could not be dealt with unless by statutory amendment. The provision would prevent delay in this situation by ensuring that the authorised development could be constructed without impediment. The Applicant has carried out a proportionate search of local legislation that applies within reasonably close proximity to land within the Order limits. The specific local enactments identified through the Applicant's proportionate search of local legislation are disapplied under article 9 (Application and modification of statutory provisions) via Schedule 3 to the Order insofar as the provisions still in force are inconsistent with how the powers in the Order can be exercised.	The Applicant provided a detailed justification for the retention of article 3(2) as part of Responses to ExA Written Questions 2 [REP4-O62], in response to ExQ2.5.1. The provision is heavily precededented and whilst it is correct to say that most of the Orders in which it features are highway orders, it is also precededented in: • National Grid (Yorkshire Green Energy Enablement Project) Development Consent Order 2024, article 3. • Boston Alternative Energy Facility Order 2023, article 3. In any event, the justification for the inclusion of the provision is not circumscribed by the specific infrastructure concerned. For the detailed reasons which the Applicant has cited, it is considered that there is a compelling case for the inclusion of the provision in this case. In this regard, CDC has only said that "it struggles to see the need for article 3(2) in this case". Given the absence of any reasoning for CDC's view, the Applicant does not consider that any weight should be attributed to CDC's submissions on this matter.

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		For the same reason please amend article 5 as follows: '(1) The undertaker may at any time maintain the authorised development, except to the extent that this Order or an agreement made under this Order provides otherwise. (2) This article only authorises the carrying out of maintenance works within the Order limits. (3) This article does not authorise the carrying out of any works which are likely to give rise to any materially new or materially different effects that have not been assessed in the environmental statement'.	The Applicant stresses that the DCO regime is intended to operate as a 'one-stop shop' and excluding the provision runs the risk of delaying this nationally significant infrastructure project. The Applicant also notes that Article 3(2) would only operate to the extent of any inconsistency between this Order and another enactment. It does not disapply statutory controls generally and does not remove any requirement for separate consents where those consents are expressly preserved by the Planning Act 2008 or this Order. The provision therefore serves a limited and targeted purpose in avoiding unintended legislative conflict. For completeness, this provision was not subject to specific consideration in the ExA's recommendation report on Peartree Hill. <u>CDC's reply: CDC notes the Applicant's concern here is with local enactments and that Schedule 3 includes those local enactments which it considers ought to be disapplied. CDC further notes the article is preceded in National Highways DCOs rather than in solar schemes. While there might be merit in including this provision in a linear scheme, CDC struggles to see the need for article 3(2) in this instance.</u>	
3. Part 3 – Streets				
DCO.3.1	Applicant	Article 11 Draft DCO [REP5-002] article 11 does not require that the applicant obtains approval from the street authority. The vast majority of recently made solar	The Applicant's position is that: The distinction between the Peartree Hill DCO, and the Draft DCO [Document Reference 3.1 Revision 9] is that the proposed power in	The Applicant does not consider that this further drafting is necessary and has not been able to identify any precedent for this approach. For example, the drafting does not feature in the Fenwick Solar Farm

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		DCOs include this requirement, including the made Peartree DCO, for which RWE was the applicant. The made Fenwick DCO does not include this requirement. However, in that case, the applicant and CDC agreed a draft Framework Highway Agreement and a separate article required this agreement to be reached before various works in part 3 (including street works). The applicant should therefore either include a Framework Highway Agreement or amend article 11 to include the following additional wording: '(4) The powers conferred by paragraph (1) must not be exercised without prior written consent of the street authority.' Alternatively, confirm whether and how protective provisions would address these issues as alluded to by the applicant in table 3-11 of the SoCG [REP5-047].	article 11 of the draft DCO is limited by reference to "the streets specified in Schedule 4". By contrast, the Peartree Hill DCO permits the relevant street works in "any of the streets as are within the Order limits". In these circumstances, a requirement for approval is considered duplicative and unnecessary because the relevant streets have already been specifically identified in Schedule 4, are subject to a detailed examination process and would be authorised by the Secretary of State if the Order is made. 2. The Applicant's approach here is identical to that adopted in the recently consented Beacon Fen Energy Park Order 2026 (see article 11) and Byers Gill Solar Order 2025 (see article 9) – both of which where there was no Framework Agreement – as well as the West Burton Solar Project Order 2025 (article 8), the Tillbridge Solar Order 2025 (article 8), the Oaklands Farm Solar Park Order 2025 (see article 8), the Dean Moor Solar Farm Order 2026 (see article 10), and the Springwell Solar Farm Order 2026 (see article 8). In respect of these Orders, the Applicant has been unable to find any indication that the omission of a consent provision is in any way related to a Framework Agreement. The Fenwick DCO is, in other words, an outlier. In addition, unlike the Fenwick DCO, the Draft DCO includes a number of additional controls. 3. In particular, the Applicant considers there are appropriate controls already in place, including (not least) the fact that the CDC permit scheme would apply (see article 12 of the Draft	Order 2026, which CDC has cited extensively during the course of the Examination. Article 12 already clarifies that the permit scheme applies, with modifications, to street works carried out under articles 11, 14 and 17 of the draft DCO [Document Reference 3.1 Revision 10]. The addition of a further cross-reference to article 12 within article 11 would therefore be unnecessary. It is also worth noting that the permit scheme would apply to all works authorised by articles 11, 14 and 17 of the Draft DCO, whereas CDC's drafting proposal only applies to street works carried out under article 11. CDC's proposal is therefore both unnecessary and incomplete, in the Applicant's view. It is similarly unnecessary for the power in article 11 to be expressly subject to the protective provisions in Schedule 14. This is already the clear effect of the Draft DCO. The same is true of the Schedule 2 Requirements, for example, which would serve to control the way in which any street works are implemented, and CDC has not sought to suggest that the power in article 11 should be subject to the Schedule 2 Requirements. Paragraph 121 of the protective provisions for the protection of local highway authorities is also important. It states: <i>Application</i> <i>121. The provisions of this Part of this Schedule have effect and apply to highway works within the administrative area of the local highway authority,</i>

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			DCO). The Protective Provisions for Local Highway Authorities (which apply to CDC) at Part 10 of Schedule 14 also secure a requirement that "the highway works must not commence until ... the detailed design information and a programme of works has been submitted to and approved by the local highway authority" (paragraph 137), and sets out a process by which "highway works must be carried out to the satisfaction of the local highway authority" (paragraph 138). 4. In circumstances where appropriate control over the works is provided in the Protective Provisions, the Applicant considers it inappropriate and unnecessary to further deviate from all but one of the recent precedents identified above. <u>CDC's reply</u> <u>CDC considers the ExA's and Applicant's concerns here could be addressed by making article 11(1) subject to article 12 and to the local highway authority protective provisions. This change to article 11(1) would not impose another obligation on the Applicant but would clarify the relationship between this article and the other provisions mentioned above. For example –</u> <u>"11.—(1) The Subject to article 12 (application of permit scheme) and Part 10 (for the protection of local highway authorities) of Schedule 14 (protective provisions) the undertaker may, for the purposes of the authorised development, enter on</u>	<i>unless otherwise agreed in writing between the undertaker and the local highway authority.</i> The "highway works" are defined as "... any works authorised by this Order undertaken on, to or under any highway which is maintainable by the local highway authority". It is therefore sufficiently clear that the protective provisions apply to all highway works authorised by Part 3 of the Draft DCO. This includes the works authorised by articles 11, 14 and 17 of the Draft DCO. No drafting change is therefore necessary.

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			<u>so much of any of the streets specified in Schedule 4 (streets subject to street works) and may— ..."</u>	
DCO.3.6	Applicant	Article 16(5)b Please replace article 16(5)b with the following (see Peartree): 'any other street or public right of way without the consent of the street authority, which may attach reasonable conditions to the consent, such consent not to be unreasonably withheld.' This is already addressed under article 16(9) of the dDCO [REP5-002].	The Applicant has not made the requested amendment to the Draft DCO [Document Reference 3.1 Revision 9]. The Applicant considers that there may be circumstances where a consent not being granted in a period less than 28 days would constitute the consent being 'unreasonably delayed'. For example, if an application was refused, and then promptly re-submitted to remedy any alleged deficiency, in those circumstances, taking the full 28 days may not be appropriate. Whilst the Applicant is not seeking to modify the period for deemed consent, ensuring that the consent is provided expeditiously is considered to be appropriate for the delivery of a nationally significant infrastructure project. <u>CDC's reply</u> <u>CDC is unconvinced by the Applicant's justification. The Applicant has chosen 28 days because it considers (though CDC disagrees) that it is an appropriate time limit. The idea that a local planning authority would, for no good reason, hold up the granting of a consent that is an appropriate form to be consented is fanciful and unsupported by any evidence. CDC maintains its position on the inappropriateness of 28 days as a determination period. Further details are set out in the following documents –</u>	The Applicant has no further submissions to make in relation to this matter and has already set out its position in full in the following documents: • Applicant Responses to Interested Party Comments on the ExA's Commentary on the dDCO [REP7-005]; • Applicant Responses to ExA Commentary on the dDCO [REP6-047]; • Statement of Common Ground with City of Doncaster Council [Document Reference 9.1 Revision 6], item 5 of Table 3-5; and • Comments on Local Impact Reports (City of Doncaster Council) [REP2-089] item 9 of section 4.

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			• <u>Annex 2 to CDC's Local Impact Report [REP1-062], row 6 (pages 4 and 5);</u> • <u>Written summary of oral submissions made at hearings in w/c 22 June 2023 [REP3-081], Table 1, row 6 (page 15);</u> • <u>Statement of Common Ground (Rev 5) [REP6-064], Table 3-11, row 3, page 118; and</u> • <u>Response to ExQ3 [REP6-091], Table 1, DCO 3.3.</u>	
5. Part 4 – Supplemental Powers				
DCO.4.2	Applicant	Article 22 Delete 'or delayed' from article 22(4)(b) as this is already addressed in article 22(6).	The Applicant has not made the requested amendment to the Draft DCO [Document Reference 3.1 Revision 9]. The Applicant considers that there may be circumstances where a consent not being granted in a period less than 28 days would constitute the consent being 'unreasonably delayed'. For example, if an application was refused, and then promptly re-submitted to remedy any alleged deficiency, in those circumstances, taking the full 28 days may not be appropriate. Whilst the Applicant is not seeking to modify the period for deemed consent, ensuring that the consent is provided expeditiously is considered to be appropriate for the delivery of a nationally significant infrastructure project. <u>CDC's reply Please see CDC's reply to DCO. 3.6.</u>	The Applicant's response is set out against CDC's reply to DCO.3.6 immediately above.
6. Part 6 – Miscellaneous and General				
DCO.6.4	Applicant	Article 49	The Applicant has made an application for a correction to the Peartree Hill DCO to reinstate these	The Applicant has provided its detailed explanation for the inclusion of this provision in the Applicant's

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		Please delete article 49. This is the consistent approach taken in all recent solar DCOs including Peartree and One Earth made DCOs. As such, whilst the ExA acknowledges the applicant's attempted justification for this provision, it should be removed.	provisions. The Applicant therefore does not agree, or consider it appropriate, to remove these provisions. The Applicant relies on, and repeats, the justification set out in the Explanatory Memorandum [Document Reference 3.2 Revision 7]. In short, these paragraphs are necessary, appropriate and precedent. For completeness, the Government has announced that the recommendations of the Nuclear Regulatory Taskforce were accepted in full, and that they would be applied across all sectors. The removal of the provisions plainly conflict with Recommendation 28, and we would submit that this does not reflect the Secretary of State's intent, or policy. Recommendation 28(d) explicitly recommends that model provisions for DCOs should be re-instated, and these should include "A provision which ensures that overlapping consents do not lead to enforcement action being taken." The Applicant's proposed drafting is substantially the same as article 56 of The A122 (Lower Thames Crossing) Development Consent Order 2025 which is referenced within the recommendation as an example. <u>CDC's reply</u> <u>CDC notes that, not only does this article not feature in solar DCOs, but that the Secretary of State has deleted it from draft solar DCOs at determination stage. If article 49 is to be retained on this occasion, CDC considers it should include for the avoidance of doubt, after paragraph (4), the following paragraph –</u>	Responses to Stakeholder Responses to ExQ1 [REP2-087], in response to ExQ5.1.8, and in Applicant Responses to the ExA Commentary on the dDCO [REP6-047], in response to DCO6.4. The Applicant does not consider that the additional drafting (paragraph (4A)) proposed by CDC is necessary because it is already sufficiently clear that nothing in article 49 would prevent enforcement action being taken in respect of a breach of a planning permission or this Order. This is not the intent or effect of article 49.

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			<u>(4A) Where any development to which this article relates is carried out or used pursuant to a planning permission granted under the 1990 Act or development consent granted under the 2008 Act, nothing in this article prevents any enforcement action under the 1990 Act or the 2008 Act being taken in relation to any breach of that permission or consent where that breach is not an inconsistency for the purposes of paragraph (2) or (3).</u>	
7. Schedule 2 – Requirements				
DCO.7.2	NLC, CDC, and the Applicant	Requirement 8(3)(a) The ExA notes CDC's response to EXQ2 Q2.2.5 [REP4-082]. Could CDC and the applicant please come to an agreement on draft wording for dDCO Requirement 8(3)(a). Reference should be made to specific percentages for different area-based habitat units. The applicant is advised to acknowledge the approach taken by the SoS and ExA in considering the Peartree solar farm made Order. In that case, the applicant's final dDCO omitted any commitment to % BNG in the wording of the LEMP requirement. However, paragraph 3.4.54 of the recommendation report shows that the applicant provided additional wording, including area-based habitat unit BNG percentages, on a without prejudice basis. Ultimately that alternative wording was included in the made DCO. In addition, the applicant should also note the examples cited in	Paragraph 5.4.45 of EN-1 sets out that <i>"The Secretary of State should consider what appropriate requirements should be attached to any consent and/or in any planning obligations entered into, in order to ensure that any mitigation or biodiversity net gain measures, <u>if offered</u>, are delivered and maintained."</i> For completeness, the Biodiversity Net Gain Statement for Energy – which does not apply to the Scheme – is similarly clear that <i>"<u>If</u> applicants propose to secure any significant on-site biodiversity gains through requirements in the DCO, they must include these provisions in the draft DCO."</i> Nothing in national policy requires specific percentages above 10% BNG to be secured in the DCO. The Applicant's assessment in Appendix 7.12 Biodiversity Net Gain Assessment [Document Reference 6.3.7.12 Revision 4], demonstrates that the Scheme would achieve approximately 28.09% in habitat units, 172.88% in hedgerow units and 10.26% in watercourse units. These gains are substantially in excess of the minimum 10% BNG required under the	The Applicant is grateful for CDC's confirmation that it is content with the biodiversity net gain (BNG) percentages incorporated within Requirement 8(3)(a) of the Draft DCO [Document Reference 3.1 Revision 10]. The Applicant has addressed CDC's request for the provision of a BNG monitoring fee in detail within Applicant Responses to IP Comments on the ExA's Commentary on the dDCO [REP6-047], in response to DCO7.2. In summary: - the Scheme is not subject to the mandatory BNG regime established under the Environment Act 2021; - notwithstanding this, the Draft DCO secures BNG commitments significantly in excess of the statutory minimum requirement for habitat and hedgerow units; - the Applicant, rather than CDC, is responsible for undertaking and reporting the monitoring

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		CDC's response to EXQ2 Q2.2.5. If a different approach is proposed for Tween Bridge then the applicant will need to fully justify this. If the applicant refuses to amend the DCO as above, then it should please provide the alternative wording (setting out area-based habitat unit percentages) to allow the SoS the option of including wording with accurate percentages. CDC and the applicant should also explain how CDC's involvement in monitoring would be secured and funded within the dDCO. NLC should also provide representations confirming whether it intends to be involved in the monitoring of new habitats in relation to BNG.	statutory BNG regime despite the fact that the statutory BNG does not apply to the Scheme. Notwithstanding this position, the Applicant acknowledges the approach that has been taken in a number of made solar DCOs, including the approach ultimately adopted by the Secretary of State in the Peartree Hill Solar Farm Order. Having considered the Examining Authority's comments and the examples referred to in City of Doncaster Council's response to EXQ2 Q2.2.5 [REP4-082], the Applicant has updated Requirement 8(3)(a) of the Draft DCO at Deadline 6 [Document Reference 3.1 Revision 9] to include specific BNG percentages for each unit type. The Applicant notes that the amended wording of Requirement 8(3)(a) has been agreed with and endorsed by CDC. The revised drafting secures a minimum BNG of: • 20% in habitat units; • 100% in hedgerow units; and • 10% in watercourse units. The Applicant considers that this approach appropriately reflects the direction of travel emerging from recently made solar DCOs whilst retaining a reasonable degree of flexibility in the delivery of the landscaping and ecological mitigation strategy over the lifetime of the Scheme. The Applicant would note that in the Peartree Hill DCO, the assessment reported a net gain of 61.78%, 41.85% and 10.06% respectively. These were translated into requirements for a 55%, 35% and 10% gain in the made Order respectively.	required under the Outline Landscape and Ecological Management Plan; and • neither the Biodiversity Gain Statement for Energy NSIPs nor any other relevant policy or legislative requirement identifies a requirement for a monitoring payment to be made to the local planning authority, not least of all in circumstances such as these where the Applicant is responsible for undertaking and reporting the BNG monitoring. Accordingly, the Applicant does not consider that there is a justification for securing a BNG fee for CDC. In response to the specific points raised by CDC, the Applicant does not agree (responding to CDC numbered points 1 and 2) that paragraph 5.4.45 of NPS EN-1 supports the provision of a monitoring fee for CDC in the circumstances of this Scheme. The requirement in EN-1 that BNG measures are "delivered and maintained" is addressed through the provisions of Requirement 8 and the Outline LEMP, which secure both the long-term management of habitats and a monitoring regime. However, the responsibility for undertaking that management and monitoring rests with the Applicant, not CDC. Whilst monitoring reports will be provided to CDC at prescribed intervals, this is a transparency mechanism designed to keep the relevant local planning authorities informed of progress against the approved management objectives. The requirement to submit those reports does not create any obligation on CDC to undertake ecological surveys, verify the Applicant's findings, prepare independent

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			The revised percentages proposed remain comfortably above the minimum 10% BNG threshold established by the statutory regime, whilst recognising that ecological designs may evolve over the operational lifetime of the Scheme. Along with CDC's endorsement of these percentages, the Applicant therefore considers that the amended Requirement 8(3)(a), as submitted at Deadline 6, provides an appropriate and proportionate mechanism for securing substantial biodiversity enhancements. In respect of CDC's involvement in monitoring and how that would be secured and funded within the Draft DCO [Document Reference 3.1 Revision 9], the Applicant notes as follows. First, the statutory BNG regime under the Environment Act 2021 will apply to NSIPs accepted for examination on or after 2 November 2026 and therefore, the Scheme falls outside that mandatory regime. Notwithstanding this position, the Applicant has voluntarily committed to delivering the statutory minimum requirement of 10% BNG and has secured an associated long-term management and monitoring framework through the Draft DCO, via Requirement 8 and the Outline Landscape and Ecology Management Plan (LEMP) [Document Reference 7.6 Revision 6]. The Applicant is therefore, already going above and beyond its required statutory obligations. The Applicant considers that CDC is not proposed to have an active monitoring role in respect of BNG and therefore there is no separate monitoring function that requires securing or funding through the Draft DCO. The monitoring of BNG delivered through the Scheme is the responsibility of the Applicant and is	assessments, certify compliance or otherwise carry out a formal monitoring function. The Applicant also notes that the June 2026 Biodiversity Gain Statement for Energy NSIPs, which establishes the policy framework for the statutory BNG regime applying to future energy NSIPs (after 2 November 2026), requires significant on-site gains to be secured through requirements and supported by a habitat management and monitoring plan, with habitats managed and maintained for at least 30 years and monitoring reports submitted in accordance with that plan. The Statement also identifies the matters that must be secured through DCO requirements where on-site gains are relied upon. Notably, whilst the Statement contains detailed provisions regarding monitoring, management, reporting and the role of the discharging authority, it does not identify any expectation or requirement for local planning authorities to receive a monitoring fee in connection with those activities. The Applicant considers this to be notable given that the Statement was specifically prepared to establish the BNG framework for energy NSIPs and therefore provides the most directly relevant statement of current Government policy in this area, akin to National Policy Statements. Nor does the Applicant agree (responding to CDC numbered point 3) that a monitoring contribution would satisfy the tests in Regulation 122 of the Community Infrastructure Levy Regulations 2010. The ecological mitigation strategy, habitat management obligations and monitoring framework are already secured through Requirement 8 and the approved detailed LEMP, post consent. The development is therefore capable of being made

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			set out in the Outline LEMP to ensure that the delivery is of BNG is in line with the commitments. Section 7 of the Outline LEMP sets out the monitoring arrangements for habitats created and enhanced as part of the Scheme. Paragraph 7.16 confirms that monitoring reports will be prepared by the Applicant and submitted to the relevant local planning authorities in years 2, 5, 10, 15, 20, 25, 30 and 35 following commencement of development. These reports will assess habitat condition and progress towards target outcomes, identify any areas where habitats are not meeting management objectives, and set out any remedial measures or revised management prescriptions required. The Outline LEMP is secured through Requirement 8 of Schedule 2 to the Draft DCO which requires that the provision of a detailed LEMP is to be substantially in accordance with the Outline LEMP. Accordingly, as per paragraph 7.16, CDC's role is limited to receiving monitoring information prepared by the Applicant. The Draft DCO does not require CDC to undertake habitat surveys, produce monitoring reports, review ecological data, certify compliance or carry out any other active monitoring function. The Applicant therefore considers that there is no monitoring role for CDC that requires a dedicated funding mechanism. The Applicant acknowledges that, in the Town and Country Planning Act 1990 context, local planning authorities will often seek monitoring fees through section 106 agreements in connection with biodiversity net gain obligations. However, the circumstances are materially different in this case. As noted, the Scheme is not subject to the	acceptable in planning terms without the payment of a monitoring fee. The Applicant does not accept that a contribution is "necessary" merely to enable CDC to review information that the Applicant is itself obliged to prepare and submit. Equally, any review undertaken by CDC would be discretionary rather than a function required by the Outline LEMP. In those circumstances, the Applicant does not consider that a monitoring payment could properly be characterised as necessary to make the development acceptable in planning terms. In relation to enforcement (CDC numbered point 4), the Applicant agrees that enforcement powers are only engaged where a potential breach is identified. However, that does not alter the fact that the Applicant is responsible for undertaking the monitoring, reporting the results and implementing any remedial measures identified through the approved management regime. The ongoing provision of reports to CDC gives the authority visibility over compliance with those obligations and provides an evidential basis upon which it may act should concerns arise. The existence of that enforcement framework does not, in the Applicant's view, justify the creation of a separate funded monitoring role when it could be undertaken through CDC's existing regulatory and enforcement functions should concerns arise. In relation to precedent (CDC numbered point 5), the Applicant agrees that there is established precedent for monitoring fees in the context of BNG obligations in the Town and Country Planning Act 1990 context, where BNG has now been a statutory obligation since early 2024. The same cannot be said within the NSIP context for DCO projects which are not yet subject

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			mandatory biodiversity net gain regime introduced by the Environment Act 2021 and the Applicant's voluntary commitment to deliver biodiversity net gain is secured voluntarily through Requirement 8 and the Outline LEMP. Further, the monitoring of biodiversity net gain is proposed to be undertaken by the Applicant, with monitoring reports provided to the relevant local authorities at prescribed intervals. CDC is therefore not required to undertake any active monitoring function. In those circumstances, the Applicant does not consider that a monitoring contribution under a section 106 agreement would satisfy the tests set out in Regulation 122 of the Community Infrastructure Levy Regulations 2010. Such a contribution would not be necessary to make the Scheme acceptable in planning terms, given that BNG and the associated monitoring regime are already secured through the Draft DCO. Nor would it be directly related to a function undertaken by CDC, as responsibility for monitoring and reporting rests with the Applicant. Accordingly, the Applicant does not consider that a separate monitoring fee or section 106-style monitoring arrangement would be justified in this case. The Applicant also notes that the Biodiversity Gain Statement for Energy NSIPs does not identify a requirement for local planning authorities to receive a monitoring fee, let alone in circumstances where the Applicant is responsible for undertaking and reporting the monitoring. Finally, and in any event, compliance with Requirement 8 would be enforceable through the statutory enforcement mechanisms available under the Planning Act 2008 in the event of any breach of the Draft DCO. The Applicant therefore considers	to the mandatory BNG regime, not least of all those where the monitoring regime is the responsibility of the Applicant. CDC has not provided any precedent examples for projects within that category demonstrating that this is not the current industry standard for such projects. As noted, the recently published Biodiversity Gain Statement for Energy NSIPs does not identify any expectation or requirement for local planning authorities to receive a monitoring fee. The Applicant therefore remains of the view (responding to CDC numbered point 6) that Requirement 8 and the Outline LEMP provide a fair, comprehensive and proportionate mechanism for securing the delivery, maintenance and monitoring of BNG and that there is no justification for the inclusion of a separate BNG monitoring fee.

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			that the Draft DCO already contains an appropriate mechanism to secure the delivery, management and monitoring of BNG outcomes. The existence of those enforcement powers does not necessitate the establishment of a separate monitoring role for CDC or the payment of a monitoring fee. Responsibility for implementing, monitoring and reporting on BNG remains with the Applicant throughout the monitoring period. <u>CDC's reply</u> <u>Regarding the drafting of requirement 8(3)(a) (landscape and ecology management plans) CDC is content with the drafting included in the Deadline 6 version of the draft DCO [REP6-003]. It will be noted that, in Table 1 of CDC's Response to ExQ3 [REP6-091], (DCO 3.3.) reference is made to achieving "a minimum of 25% biodiversity net gain in area habitat units". The reference to 25% was an error; CDC considers 20% is acceptable. Regarding CDC's involvement in BNG monitoring, there are several reasons why a monitoring fee should be secured by section 106 agreement or in the draft Order –</u> <u>1. By paragraph 5.4.45 of EN-1 the Secretary of State must consider what appropriate requirements should be attached to any consent to ensure BNG measures are "delivered and maintained". The emphasis on delivery and maintenance suggests an ongoing supervisory function. While the Applicant proposes to submit monitoring reports to CDC at certain anniversaries, the receipt of each report will generate work for</u>	

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			<u>CDC. For instance, CDC will need to consider the contents of each document (at years 2, 5, 10, 15, 20, 25, 30 and 35) and, where necessary, question the document's conclusions. It would be unreasonable for CDC not to do this and so the idea that CDC's role is "limited to receiving monitoring information" (and nothing else) is fanciful. A fee is necessary to ensure CDC can perform its role satisfactorily.</u> <u>2. The fact the BNG commitment is voluntary does not weaken the justification for a monitoring fee. The BNG commitments secured through Requirement 8 will require meaningful scrutiny over the 35-year monitoring period. The scale and duration of the BNG commitments are points in favour of (rather than points against) the case for properly resourcing CDC for this work.</u> <u>3. The Applicant's argument that a monitoring contribution would not satisfy the tests in Regulation 122 of the Community Infrastructure Levy Regulations 2010 is incorrect. The tests require that a planning obligation is (a) necessary to make the development acceptable in planning terms, (b) directly related to the development and (c) fairly and reasonably related in scale and kind to the development. A monitoring fee satisfies each test: (a) it is necessary because, without adequate resources, CDC cannot meaningfully assess whether the BNG commitments are being achieved, thereby undermining the effectiveness of the ecological mitigation strategy; (b) it is directly related to the development because it funds oversight of obligations arising specifically from this authorised development; and (c) a proportionate monitoring fee calculated by</u>	

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			<u>reference to anticipated officer time and ecological consultancy costs would be fairly and reasonably related in scale to the monitoring burden created by the authorised development.</u> <u>4. The Applicant's reference to the Planning Act's enforcement regime does not do away with the need for a monitoring fee. Enforcement is a remedy of last resort and depends upon CDC first identifying a breach. Without adequate resources to review the submitted reports CDC would be unable to discharge this function effectively. The availability of enforcement powers is of little practical value if CDC cannot identify when enforcement may be justified. A monitoring fee serves to make the enforcement regime meaningful.</u> <u>5. There is established precedent for monitoring fees in the context of BNG obligations. While the mandatory BNG regime does not apply to the authorised development, the rationale for monitoring fees is the same. The fact that BNG is provided voluntarily does not change the fact that Requirement 8 will give rise to work for CDC and the Applicant (and not the public purse) should pay for that.</u> <u>6. It would be unfair for the burden of monitoring the Applicant's BNG commitments to fall on CDC, particularly given the 35-year monitoring period and the technical complexity of the work involved.</u>	
DCO.7.3	Applicant and CDC	Requirement 12 In relation to CDC's response to EXQ2 2.5.1 [REP5-058], could the applicant	The Applicant understands this query to relate to CDC's request that, in addition to a WSI for each stage,	CDC has accurately captured the Applicant's position in relation to this matter.

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		please confirm how the archaeological mitigation would be finalised and how this would be secured in the draft DCO. Is the applicant suggesting that this would be included within the Written Scheme of Investigation (WSI)? If so, shouldn't Requirement 12 be amended to at least refer to the requirement to set out proposed mitigation within the WSI (perhaps as part 1 of the WSI)? Could CDC provide exact proposed wording for requirement 12 in the event that agreement cannot be reached with the applicant?	there should also be a final Archaeological Mitigation Strategy. Requirement 12(2) of the Draft DCO secures the Outline AMS [Document Reference 6.3.8.6 Revision 3] by stipulating that the written scheme of investigation for each development phase must be substantially in accordance with the Outline AMS [Document Reference 6.3.8.6 Revision 3]. Requirement 12 also provides approval rights to the relevant local planning authority of a written scheme of investigation for each phase of development. To confirm, the Applicant's position is therefore that appropriate archaeological mitigation, tailored to each phase of development, is secured and implemented at each stage of the authorised development. This approach allows mitigation measures to be refined as further information becomes available, while remaining substantially in accordance with the outline strategy. It is not clear what additional benefit would be delivered by requiring submission of a final Archaeological Mitigation Strategy, over and above the existing requirement for approved WSIs that must substantially accord with the outline strategy. The proposed approach also reflects the staged nature of the authorised development. Requiring final mitigation measures to be fixed in advance of phase-specific investigation risks reducing, rather than improving, the effectiveness of archaeological mitigation. In response to the specific question as to whether "Requirement 12 [should] be amended to at least refer to the requirement to set out proposed mitigation within the WSI". The Applicant does not consider this	In summary, Requirement 12(2) of the Draft DCO [Document Reference 3.1 Revision 10] secures the Outline AMS [Document Reference 6.3.8.6 Revision 3] by stipulating that the written scheme of investigation for each development phase must be substantially in accordance with the Outline AMS [REP6-O28]. Requirement 12 also provides approval rights to the relevant local planning authority of a written scheme of investigation for each phase of development. The Applicant's position is therefore that appropriate archaeological mitigation, tailored to each phase of development, is secured and implemented at each stage of the authorised development. This approach allows mitigation measures to be refined as further information becomes available, while remaining substantially in accordance with the outline strategy. It is not clear what additional benefit would be delivered by requiring, as CDC suggest, submission of a final Archaeological Mitigation Strategy, over and above the existing requirement for approved WSIs that must substantially accord with the outline strategy. The Applicant's proposal also reflects the staged nature of the authorised development. Requiring final mitigation measures to be fixed in advance of phase-specific investigation risks reducing, rather than improving, the effectiveness of archaeological mitigation. The Applicant would note that the drafting of Requirement 12 is identical to Requirement 13 of the Peartree Hill Solar Farm Order 2026.

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			is necessary: the outline AMS is clear that the WSIs would in turn include the relevant and appropriate mitigation. The Applicant would note that the drafting of Requirement 12 is identical to Requirement 13 of the Peartree Hill Solar Farm Order 2026. CDC in [REP5-058] suggests that "CDC does not see this as an additional document but rather an update to the outline Archaeological Mitigation Strategy". With respect, this is a distinction without a difference: in effect, CDC is suggesting that the Applicant should update and provide a separate document in circumstances where specific and appropriate mitigation, subject to local authority approval, is already secured via a different document. <u>CDC's reply</u> <u>CDC maintains its position, as set out in EXQ2 2.5.1 [REP5-058] and its Response to ExQ3 [REP6-091], Table 1, Requirement 12.</u>	No amendment to Requirement 12 is therefore justified in the Applicant's view. For the Applicant's full responses on this matter, see: - Applicant's response to DCO7.3 in Applicant Responses to ExA's Commentary on dDCO [REP6-047]. Applicant Response to Deadline 5 submissions [REP6-048], Table 5, ref 2.2. Applicant Responses to Stakeholder Responses to ExQ2 [REP5-041], Table 1 ref Q2.5.1. - Applicant's response to ExQ2.6.5 in Written Responses to ExQ2 [REP4-062]. - Applicant's response to ExQ6.0.14 in Response to Written Questions [REP2-087].
9. Schedule 14 – Protective Provisions				
DCO.9.2	CDC, NLC and the Applicant	Part 10 Could NLC and CDC please provide representations on the protective provisions at part 10 of schedule 14 to the dDCO [REP5-003]? The applicant is advised that protective provisions should be drafted to apply to 'the highway authorities' as opposed to just CDC. This will ensure consistency of approach across administrative boundaries. For that reason, NLC should review the	Following ongoing discussions with CDC, the Applicant at Deadline 5 inserted Protective Provisions for the benefit of CDC as local highway authority. The Applicant continues to negotiate with CDC in relation to these. The PPs are based on those included for the protection of local highway authorities in the Northampton Gateway Rail Freight Interchange Order 2019 (SI 2019/1358) and the East Midlands Gateway Rail Freight Interchange and Highway Order 2016 (SI 2016/17), though amended to better suit CDC's	The Applicant, CDC and NLC have continued to discuss protective provisions ahead of Deadline 8 such that an agreement on all relevant matters has now been reached. The agreed version has been included in the draft DCO at Deadline 8 [Document Reference 3.1 Revision 10] .

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		protective provisions in conjunction with the applicant and CDC. The ExA also suggests that these protective provisions should serve to provide necessary functions from Article 18 (now deleted) of the originally submitted dDCO [AS-002].	circumstances and the terms of its own proposed Framework Agreement. In relation to the request that this be extended to NLC, the Applicant received a request from NLC ahead of Deadline 6 seeking equivalent protection. The Applicant has no objection to this request and has therefore amended the Draft DCO [Document Reference 3.1, Revision 9], submitted at Deadline 6, to extend the benefit of those provisions to NLC. The Applicant notes that the highway authority protective provisions in Part 10 of Schedule 14 to the Draft DCO are not yet agreed. The Applicant received CDC's latest comments on the drafting of these provisions on 17 September 2026 and is currently engaging with the parties with a view to reaching an agreement before the close of examination. The Applicant intends to provide a substantive response to CDC's comments shortly after Deadline 6. Accordingly, the Applicant anticipates setting out its full position on the highway protective provisions in the Justification for the Applicant's Preferred Protective Provisions [Document Reference 8.23, Revision 3], to be updated and submitted at Deadline 8. The Applicant is hopeful that, by that time, the provisions will have been agreed between the parties. In relation to the (now deleted) article 18, which previously made provision for agreements with street authorities, the Protective Provisions secure the appropriate mechanisms for approvals, payments, and commuted sums (which covers the agreements that would previously have fallen within the rubric of article 18).	

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			<u>CDC's reply</u> <u>CDC provided its comments on the Applicant's proposed LHA PPs on 17 September 2026 and awaits the Applicant's comments on the same.</u>	