



Planning Inspectorate

The Planning Act 2008

Beacon Fen Energy Park

Examining Authority's Report
of Findings and Conclusions
and

Recommendation to the Secretary of State for
Energy Security and Net Zero

Examining Authority

Andre Pinto BA MA MRTPI

22 MAY 2026

ERRATA

OVERVIEW AND SUMMARY

Application Information Details	
File Ref	EN010151
Application Dated	7 April 2025
Inspectorate Received Data	8 April 2025
Applicant	Beacon Fen Energy Park Limited
Accepted for examination	1 May 2025
Examination Started	23 September 2025
Examination Closed	23 February 2026
Relevant Secretary of State(s)	SoS for Energy Security & Net Zero
Recommendation Submitted	22 May 2026

The proposed development comprises of a ground-mounted solar photovoltaic ('PV') electricity generation and battery energy storage system ('BESS'), together with associated grid connection infrastructure, with a generation capacity of approximately 400 megawatts ('MW') of electricity and a 600MW BESS, which makes clear the NSIP grounds.

SUMMARY OF RECOMMENDATION

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

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Planning Inspectorate

ERRATA SHEET – Beacon Fen Energy Park - Ref. EN010151

Examining Authority's Report of Findings and Conclusions and Recommendation to the Secretary of State for the Department of Energy Security and Net Zero, dated 22 May 2026

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

Page No.	Paragraph	Error	Correction
8	1.4.3	"The applicant submitted a formal change request on 18 December 2026"	CR-025 letter requesting change is dated 17 December 2025
9	1.4.6	"The ExA agreed with the Applicant that the proposed change was so material". This is contrary to the underlying document PD-015	The ExA agreed with the Applicant that the proposed change was not so material"
29	3.2.69	"the use of the proposed the BESS"	Removal of "the" BESS
47	3.4.43	"it was reported to the applicant by the three landowners that they mostly work by themselves However the proposed development"	Missing full stop or other punctuation?
49	3.4.50	At the end of the paragraph it says "In relation to the cable corridor"	Not clear if this is intended to relate to the next paragraph or there are words missing.
87	3.7.35	"... both designated and on-designated..."	"... both designated and <u>non</u> -designated..."
96	3.7.88	Last line - "of a designed heritage assets."	Should read " designated ", and grammar needs correcting.
97	3.7.89	"However, as non-designated heritage	"However, as non-designated heritage assets do not enjoy the same level of protection..."

Page No.	Paragraph	Error	Correction
		assets do not enjoy the same level protection...”	
116	3.9.42	“... it finds these effects to the minor and not significant”	“... it finds these effects to be minor and not significant”
122	3.9.70	Any loss of BMV land agricultural land	Should be “Any loss of BMV agricultural land....”
188	6.7.23	Section 1222(2) PA2008	
188	6.7.26	‘...as such Bicker Drove Limited in a statutory undertaker (SU) for the purposes of the Planning Act 2008.’	Should be is
189-190	6.7.33-6.7.35	These three paragraphs are a repeat of paragraphs 6.7.6-6.7.8. They relate to LCJ Mountain Farms Limited, but it appears they have been copied into the section relating to UK Transition Power Holdings Limited.	
214	7.4.4	Paragraph 110 (6) - to read 116.(6)	Should read paragraph 116 to read (1)
216	7.4.4	“(3) The undertaker must not exercise the powers conferred by sections 271 or 272 of the 1990 Act, of access of Network Rail” The recommended DCO has additional wording	(3) The undertaker must not exercise the powers conferred by sections 271 or 272 of the 1990 Act, article 35 (statutory undertakers), article 25 (statutory authority to override easements and other rights) or article 28 (private rights) in relation to any right of access of Network Rail ”

1. INTRODUCTION

1.1. BACKGROUND TO THE EXAMINATION

- 1.1.1. An application for the Beacon Fen Energy Park Project (the proposed development), reference EN010151, was submitted by Beacon Fen Energy Park Limited (the applicant) to the Planning Inspectorate on 8 April 2025 under section (s) 37 of the Planning Act 2008 (PA2008) and accepted for examination under s55 of the PA2008 on 1 May 2025 [[PD-005](#)]. This report sets out the Examining Authority's (ExA) findings, conclusions and recommendations to the Secretary of State for Energy Security and Net Zero (SoS).
- 1.1.2. The legislative tests for whether the proposed development is a Nationally Significant Infrastructure Project (NSIP) were considered by the SoS for Housing, Communities and Local Government (SoSHCLG) in its decision to accept the application for examination in accordance with s55 of the PA2008 [[PD-005](#)].
- 1.1.3. The proposed development comprises the construction, operation and decommissioning of a ground mounted solar photovoltaic electricity generating facility of over 50 megawatts (MW) capacity, Battery Energy Storage System (BESS), bespoke access corridor and associated export and connection infrastructure to the Bicker Fen Substation. It would be located wholly in England.
- 1.1.4. The proposed development therefore falls within s15(2) of PA2008 and meets the definition of an NSIP set out in s14(1)(a) of the PA2008. As such, the proposed development requires development consent in accordance with s31 of PA2008.
- 1.1.5. The [Examination Library](#) (EL) provides a record of all application documents and submissions to the examination, each of which is given a unique reference number e.g. [[APP-001](#)]. The reference numbers are used throughout this report and hyperlinks are included to allow the reader to access them directly.
- 1.1.6. This report does not contain extensive summaries of the documents and representations received. Readers are referred to relevant material using linked EL references. Full regard has been had to all such material and to all important and relevant matters arising from it in all conclusions drawn by the ExA and the recommendation made in this report.

1.2. APPOINTMENT OF THE EXAMINING AUTHORITY

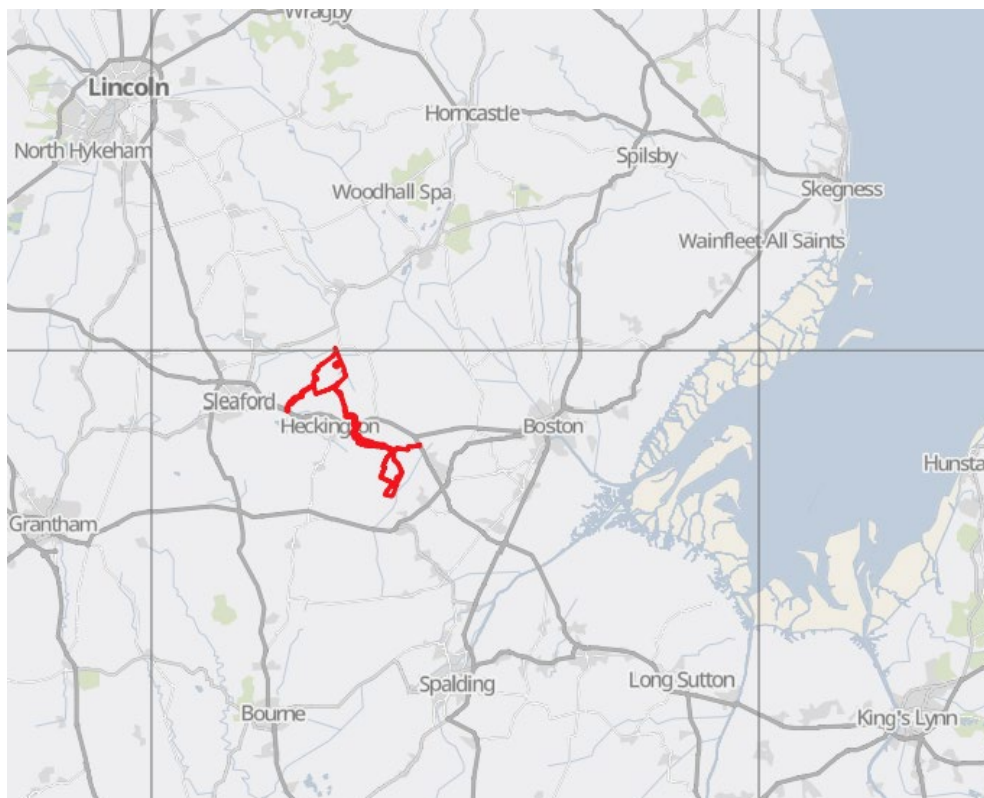
- 1.2.1. On 10 July 2025, Mr André Pinto, was appointed as the ExA for the application under s61 and s65 of PA2008 [[PDA-001](#)].

1.3. THE APPLICATION

LOCATION OF THE PROPOSED DEVELOPMENT

- 1.3.1. The proposed development is located approximately 6.5 kilometres (km) northeast of the village of Sleaford and 2.5km north of Heckington, within the administrative area of Lincolnshire County Council (LCC). At the local level, the majority of the proposed development lies within the administrative boundaries of North Kesteven District Council (NKDC), with the southern extent of the proposed cable corridor and ground works for the connection to the Bicker Fen Substation within Boston Borough Council (BBC). The site is wholly located in England.
- 1.3.2. The location of the proposed development, see Figure 1 below, is shown in Figure 2.1 Location Plan [\[APP-007\]](#) of the applicant's documents and the final versions of the Land Plans [\[REP7-003\]](#).

Figure 1: Location plan

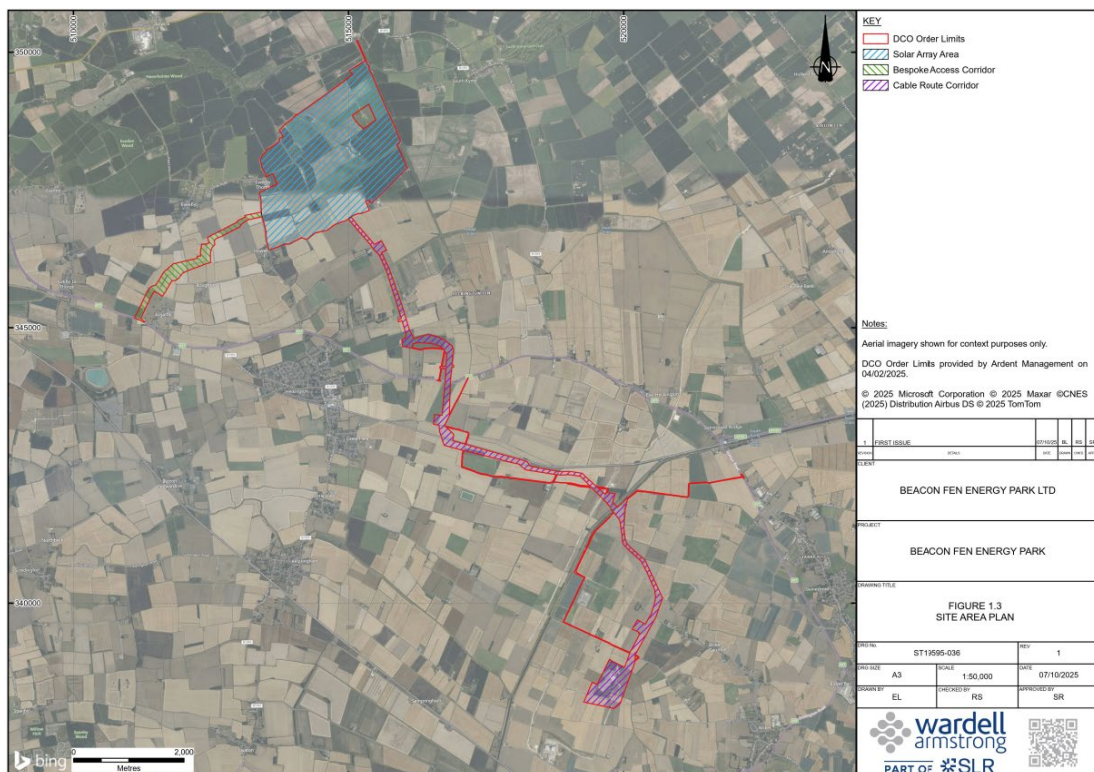


Source: Extract from Figure 1.1 Site Location Plan [\[APP-192\]](#)

- 1.3.3. The following site descriptors are used throughout this recommendation report:
- Proposed development - the entire development proposal including the photovoltaic (PV) panel area, the BESS, the proposed access road, the proposed cable route to Bicker Fen substation and associated infrastructure.
 - The development site - the entire order limits of the site.

- Solar array area - comprises the PV panel area, the BESS, the onsite substation and ancillary infrastructure associated with those components only.
- Bespoke access road - the proposed road from the A17 facilitating access to the solar array area.
- Bespoke access corridor - the land within the order limits in which the bespoke access road would be located.
- Cable corridor - the land within the order limits used in order to deliver the cable route connecting the solar array area to the Bicker Fen Substation.

Figure 2: Site area plan



Source: Extract from Figure 1.3 Site Area Plan [[REP2-024](#)]

- 1.3.4. Chapter 2 of the Environmental Statement (ES) [[APP-053](#)] provides a description of the existing site and the surrounding area.
- 1.3.5. The solar array area is located to the approximately 1.7km north of Heckington, with Howell immediately to the south-west, Ewerby Thorpe immediately to the west, and Ewerby approximately 1.1km further in the same direction. Anwick is located approximately 2.7km north west of the solar array area, with North Kyme 2.4km to the north and South Kyme 1.5km to the east, approximately. The solar array area and the bespoke access corridor are both located wholly within NKDC and LCC.
- 1.3.6. The bespoke access corridor is located circa 500m south of Ewerby and it extends circa 3km south-west from the solar array area connecting it to the A17, south west of Asgarby.
- 1.3.7. The cable corridor is located wholly within the boundaries of LCC and predominantly within the administrative area of NKDC. However, the

southern section of the cable corridor is located within BBC, where it connects with the Bicker Fen Substation, which is also located within BBC.

DESCRIPTION OF THE PROPOSED DEVELOPMENT

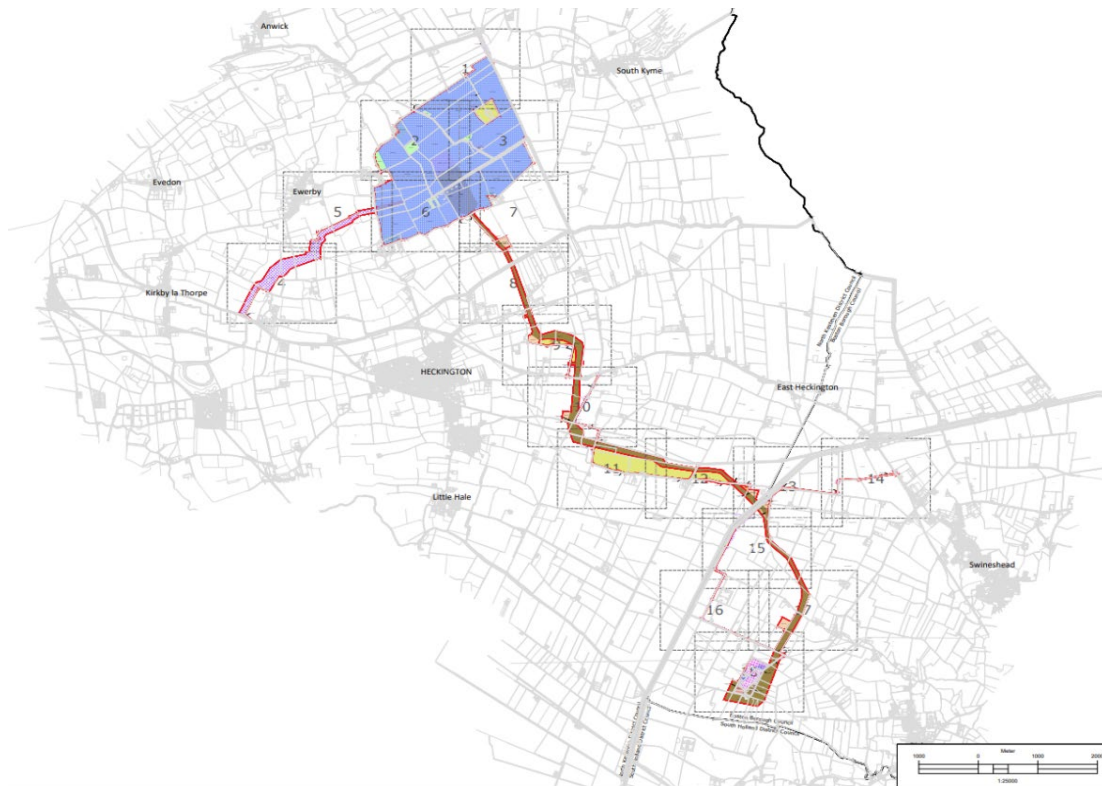
- 1.3.8. The proposed development is approximately 757 hectares (ha) in size, with the solar array area covering an area of approximately 529ha, the cable corridor an area of approximately 183ha and the bespoke access corridor an area of approximately 45.4ha.
- 1.3.9. The solar array area comprises predominantly agricultural land in arable use, which is intersected by several ditches and dykes, with sparse tree cover including small woodland blocks and scattered hedgerow trees. There is a single residential property located in the centre of the solar array area, but it is excluded from the development site, and a small reservoir in the south west corner which is included within the order limits.
- 1.3.10. The solar array area is bound to the south, west and north by local highways, and to the east by Car Dyke. The near totality of the Hodge Dike is also included. The Public Right of Way (PRoW) Ewer/12/1 extends across the north-eastern corner of the solar array area, close to its northern boundary. There are no other PRoW included within the solar array area.
- 1.3.11. The cable corridor is made up of predominantly agricultural land and extends circa 13km south-east from the solar array area to Bicker Fen substation. There are a number of properties located in relative close proximity to the cable corridor and a number of local highways which cross the proposed cable corridor, including the A17, as well as several PRoW. A number of waterways including Heckington Eau, Great Hale Eau and South Forty Foot Drain also cross the proposed cable corridor. The railway line, linking Heckington west to Sleaford and east to Swineshead, intersects the mid-section of the corridor.
- 1.3.12. The bespoke access corridor comprises predominantly agricultural land and extends south from the solar array area until it joins the A17. It is located approximately 500m south of Ewerby and approximately 2.1km west of Heckington. There are a number of properties located in close proximity to the bespoke access corridor in Boughton and Asgarby. Asgarby Road crosses the bespoke access corridor and there are four PRoW located within the corridor. PRoW are proposed to be closed only temporarily during construction and managed during operation.
- 1.3.13. The proposed development works are summarised below:
- Work No. 1 – ground mounted solar photovoltaic generating station.
 - Work No. 2 – battery energy storage system (BESS) with a metal façade and associated equipment, inverters, monitoring and control systems, heating and ventilation, electric cabling and associated fire safety infrastructure.
 - Work No. 3 – onsite substation and associated works.

- Work No. 4 – works in connection with the laying of the high voltage electrical cabling including those connecting Work No. 3 and Work No. 5, the installation of bridge crossings over watercourses and drains, diversion of existing electrical overhead lines and the construction of construction compounds.
- Work No. 5 – works to the existing substation including the creation of a new generation bay and extension of the substation’s electrical apparatus, underground and above ground electrical cables and conductors, cabling works, temporary laydown area and landscaping and biodiversity mitigation and enhancements.
- Work No. 6 – works including electric cables connecting several parts of the proposed development, fencing, gates and boundary treatment, security and monitoring measures, lighting, landscaping and biodiversity enhancements, footpath diversions, earthworks and sustainable drainage system ponds.
- Work No. 7 – construction and decommissioning compounds in connection to the delivery of Works No. 1, 2, and 3.
- Work No. 8 – works related to the creation of the bespoke access road.
- Work No. 9 - works related to the areas of habitat management, including habitat creation.
- Work No. 10 - works to facilitate access to Works No. 1 to 9 including creation of accesses from public highway and works for the widening and surfacing of public highway.

1.3.14. Further details of the proposal for each Work No. can be found in schedule 1 Authorised Development of the draft Development Consent Order (dDCO), the last version of which is [\[AS-039\]](#).

1.3.15. The illustrative layout of the Works Plan is shown below in Figure 3.

Figure 3: Illustrative plan of proposed development



Source: Extract from 2.4 Works Plan [[REP2-024](#)]

RELEVANT PLANNING HISTORY

- 1.3.16. Tables 1A to 1D in appendix 1 of the Planning Statement [[REP5-010](#)] detail the planning history within or overlapping the development site. Given the proximity of the development site to Bicker Fen Substation, there are a number of energy-related developments included in the area that have been either granted planning permission or awaiting determination. These have been considered with regard to cumulative effects and include nationally significant infrastructure. Ecotricity (Heck Fen Solar) Limited's project, reference number EN010123 and Triton Knoll Offshore Wind Farm Limited's project reference number EN020019, are both proposed to connect to Bicker Fen Substation (please see table 1D in appendix 1 of the Planning Statement [[REP5-010](#)]).
- 1.3.17. The Zone of Influence (Zoi) proposed for the applicant's cumulative assessment originally comprised a 5km distance out from the application boundary, as it aligned with or exceeded the study area for the majority of environmental assessments carried out. However, through further engagement and due to the potential for effects in combination with other Nationally Significant Infrastructure Projects (NSIPs) within LCC's area, the applicant decided to expand the Zoi to include DCO developments within the LCC's area that had been consented and were under construction, were consented and were not yet under construction, were submitted but not determined and any proposed applications that had not been submitted, but

had been notified to the Planning Inspectorate (PINS) as proposed projects and appeared on the portal.

- 1.3.18. The result of the application of the process highlighted above was the applicant's long list of schemes for cumulative assessment set out in Appendix 4.1 Cumulative Assessment Long List [\[APP-081\]](#).
- 1.3.19. The long list was further reviewed to restrict the cumulative assessment only to schemes which are likely to result in significant effects when considered cumulatively with the proposed development, leading to the creation of the Cumulative Assessment Short List [\[APP-082\]](#).
- 1.3.20. The applicant also submitted Technical Note Cumulative Effects Assessment Update [\[REP5-049\]](#) in which it provided an evaluation of additional schemes identified during the examination to ascertain if any updates of the cumulative effect assessment carried out were necessary. The applicant concluded that no update was required.

1.4. CHANGES TO THE APPLICATION

- 1.4.1. Changes to the key application documents, including the wording of the dDCO, were submitted and updated during the examination. The changes sought to address points raised by interested parties (IP) and the ExA and to update or provide additional information resulting from changes and discussions that had occurred during the examination. These changes did not materially alter the scheme.
- 1.4.2. The applicant's changes to the application documents, together with any additional information submitted, are detailed in the Application Guide submitted at each deadline, with the last version of it submitted at deadline 8 [\[REP8-002\]](#). This provides a guide to all documents submitted as part of the application and was updated when new or revised documents were submitted. It provides a full record of all documentation submitted into the examination.

CHANGE REQUEST

- 1.4.3. The applicant submitted a formal change request on 18 December 2026.
- 1.4.4. The change request, as set out in [\[CR-025\]](#), comprised:
- A new overhead line (OHL) tower up to 56.2m in height with four legs supported on a square excavation of up to 7m by 7m wide, and up to 5m deep, located anywhere within the revised area of Work No. 5C.
 - Either a single span of new 400kV overhead cables between the new OHL tower and one of the existing towers, or alternatively underground electrical cables as part of Work No. 5C.
 - Modification of either or both existing towers contained within Work No. 5.
 - Construction of new access, within the existing extent of Work No. 10, in the form of a new bell mouth adjoining Vicarage Drove to the south-east or south of the substation for access the extension and pylon/tower.

- Extension of the temporary laydown (Work No. 5D) to an area that is largely existing hardstanding adjacent to the south.
- Vegetation removal and infilling of the existing drainage pond adjacent the Substation to construct the Substation extension works (Work No. 5E).

1.4.5. As set out in the applicant's Notification of Proposed Change to the DCO Application [[AS-029](#)], it was the applicant's view that the requirements of the Infrastructure Planning (Compulsory Acquisition) Regulations 2010 (the CA Regulations) did not apply to the change request. However, the applicant still proposed to carry out non-statutory consultation on the proposed change for a 28-day period, starting on 10 November 2025.

1.4.6. On 19 December 2025 the ExA issued [[PD-015](#)] accepting the change request into the examination. The ExA agreed with the applicant that the proposed change was so material that it constituted a materially different project. The proposed change were not considered, individually or cumulatively, to lead to the project being different in nature or substance to that which was originally applied for. The ExA agreed that the proposed change also did not trigger the CA Regulations.

1.5. INITIAL ASSESSMENT OF PRINCIPAL ISSUES (IAP)

1.5.1. As required by section (s) 88 of the PA2008 and rule 5 of the Infrastructure Planning (Examination Procedure) Rules 2010 (EPR), the ExA made an initial assessment of principal issues (IAP) arising from the application in advance of the preliminary meeting (PM). This formed an initial assessment of the issues based on the application documents and submitted relevant representations (RR).

1.5.2. The list of issues relates to all phases of the proposed development. The IAP was raised at the PM and no other key topics were identified during the examination. The IAP can be found in annex C of the Rule 6 letter [[PD-003](#)]. The issues identified in the IAP are as follows:

- General matters
- Need, site selection and alternatives
- Land rights and related matters
- Draft Development Consent Order (dDCO)
- Biodiversity and ecology
- Historic environment
- Landscape and visual
- Land use
- Socio-economics
- Traffic and transport
- Water environment and flood risk
- Cumulative effects

1.5.3. The ExA did not identify a need to change its assessment of principal issues following from the change request.

1.6. THE EXAMINATION

- 1.6.1. The PM took place on 23 September 2025 [\[EV1-003\]](#). The ExA's procedural decisions (PD) and the examination timetable took full account of matters raised at the PM. They were provided in the Rule 8 letter of 01 October 2025 [\[PD-008\]](#). The principal components of and events around the examination can be seen in the examination timetable [\[PD-008\]](#) and are summarised below.

Table 1: Summary of the principal components of and events around the examination

Written questions and requests for information	
Rule 17 request for further information	[PD-010]
ExQ1	[PD-007]
ExQ2	[PD-013]
ExQ3	[PD-016]
Hearings	
The following ISHs were held:	
ISH1	[EV2-001] to [EV2-010]
ISH2	[EV4-001] to [EV4-010]
ISH3	[EV5-001] to [EV5-010]
The following CAHs were held:	
CAH1	[EV3-001] to [EV3-006]
OFH1 announced but cancelled as ExA was not given notice from any IP of their wish to participate or attend.	
The following OFH was held:	
OFH2	[EV6-001] and [EV6-002]
Site inspections	
The ExA carried out the following unaccompanied site inspection (USI):	[PD-002]
The ExA carried out the following access required site inspection (ARSI):	[PD-011]

PROCEDURAL DECISIONS

- 1.6.2. The PDs taken by the ExA are recorded in the EL referenced [\[PD-002\]](#) to [\[PD-017\]](#). They detail the ExA's decisions relating to the procedure of the examination and did not bear on the ExA's consideration of the planning merits of the proposed development. All were broadly discharged as intended and no further reference is made to them in this recommendation.

STATEMENTS OF COMMON GROUND

- 1.6.3. By the end of the examination, signed statements of common ground (SoCG) between the applicant and interested parties (IPs) were submitted and are available in the EL. The applicants' final Statement of Commonality [\[REP8-028\]](#) summarises the status of agreement on SoCGs at the end of the examination. The SoCGs with the following body remained unsigned at the end of the examination:

- South Kyme Parish Council [\[REP7-043\]](#)

- 1.6.4. The signed SoCGs have been taken fully into account by the ExA in all relevant sections of this recommendation. The weight (if any) to be afforded to unsigned SoCGs in particular contexts is considered in the relevant sections of this recommendation.

1.7. UNDERTAKINGS, OBLIGATIONS, AGREEMENTS AND CONSENTS

- 1.7.1. In addition to the consents required under the PA2008, the applicant would require other consents to construct, operate and maintain the proposed development. These are identified in the Other Consents and Licences Statement [\[REP1-005\]](#), [\[REP1-006\]](#).

2. HOW THE APPLICATION IS DETERMINED

2.1. INTRODUCTION

- 2.1.1. This section identifies the key legislation, policy and local impact reports (LIRs) that the ExA recommendations have taken into account.

2.2. LEGISLATION AND POLICY

- 2.2.1. This section identifies the key legislation and policy that the ExA considers to be important and relevant to its findings and recommendations to the SoS. More detail is provided in appendix C of this recommendation.

PLANNING ACT 2008 (PA2008)

- 2.2.2. The Planning Act 2008 (PA2008) provides a different basis for decision-making for Nationally Significant Infrastructure Project (NSIP) applications where a relevant national policy statement (NPS) (s104) has effect from that where no NPS has effect (s105). This is an application in respect of which there are more than one NPS in effect, and where NPS review processes were also in train during the examination. The content of and progress of draft or replacement NPSs must also be considered.
- 2.2.3. The Examining Authority (ExA) has considered the statutory basis for examination, reporting and decision-making [\[PD-003\]](#) and has concluded that these must proceed under PA2008 s104 (decisions in cases where NPSs have effect). There are no substantial elements of the proposed development that fall outside the remit of relevant NPS policies and so PA2008 s105 (decisions in cases where no NPSs have effect) is not relevant.
- 2.2.4. A NPS has effect once it has been designated as such by parliament. It continues then to have effect until it is withdrawn. In the process of withdrawal, a draft replacement NPS may include transitional provisions which clarify how an application prepared under a withdrawn NPS is to be managed moving forward. Draft (including replacement) NPSs do not have effect until they in turn are designated, and then only subject to any transitional provisions that may apply. However, the content of draft NPSs is a matter that is capable of forming an important and relevant matter (PA2008 s104(2)(d)) to be considered by the Secretary of State for Energy Security and Net Zero (SoS) in their decision.
- 2.2.5. Section 104(2) of the PA2008 sets out the matters to which the SoS must have regard when making its decision. These include:
- any relevant NPS
 - any duly submitted local impact report (LIR)
 - any matters prescribed in relation to the development
 - any other matters the SoS thinks are both important and relevant to the decision

- 2.2.6. Section 104(3) of the PA2008 requires the SoS to decide the application in accordance with any relevant NPS that has effect in relation to this application, subject to the exceptions in s104(4) to (8) as follows:
- where deciding the application in accordance with any relevant NPS would lead to the UK being in breach of any of its international obligations.
 - where deciding the application in accordance with any relevant NPS would lead to the SoS being in breach of any duty imposed on her or him by or under any enactment.
 - where deciding the application in accordance with any relevant NPS would be unlawful by virtue of any enactment.
 - where the adverse impact of the proposed development would outweigh its benefits and/or
 - where any condition prescribed for deciding an application otherwise than in accordance with a NPS is met.
- 2.2.7. This recommendation sets out the ExA's findings, conclusions and recommendations taking these matters into account and applying s104 of the PA2008.

OTHER LEGISLATION

- 2.2.8. A full list of relevant primary and secondary legislation, including but not limited to duties arising under the Equality Act 2010, Human Rights Act 1998 and the Climate Change Act 2008 (as amended), can be found in appendix C of this recommendation. All applicable legislation has been considered by the ExA as required and its findings and recommendations are framed so as to identify and enable the SoS to discharge all applicable statutory considerations or duties.

2.3. NATIONAL POLICY STATEMENTS

- 2.3.1. NPSs set out government policy on different types of national infrastructure development. Having regard to the purposes of s104(2)(a) of the PA2008, the ExA considers that the following NPSs are relevant to the application:
- Overarching National Policy Statement for energy 2023 (NPS EN-1)
 - National Policy Statement for renewable energy infrastructure 2023 (NPS EN-3)
 - National Policy Statement for electricity networks infrastructure 2023 (NPS EN-5)
- 2.3.2. As the 2025 versions of NPS EN1, NPS EN3 and NPS EN5 came into force on the 6 January 2026, the ExA asked the applicant, in GCT.3.2 [PD-016] to confirm if it believed that any of the documents submitted in support of the proposed development needed to be changed in light of the adoption of the 2025 version of the NPSs. The applicant confirmed, in [REP7-052] that it did not consider that changes brought forward by the new versions of the NPSs mentioned above were of a nature which would be material to the

consideration of the application or necessitate any updates to the application documents.

- 2.3.3. The 2023 NPSs form the primary policy context for this examination. This recommendation sets out the ExA's findings, conclusions and recommendations taking these matters into account and applying the approach set out in s104 of the PA2008. The purpose and broad content of these NPSs is summarised in this recommendation. Appendix C provides further detail on the NPSs of relevance to the proposed development.

OTHER NATIONAL POLICY

- 2.3.4. Other important and relevant government policy has been taken into account by the ExA, including the following:

- Overarching National Policy Statement for Energy 2025 (NPS EN-1 2025)
- National Policy Statement for Renewable Energy Infrastructure 2025 (NPS EN-3 2025)
- National Policy Statement for Electricity Networks Infrastructure 2025 (NPS EN-5 2025)
- The National Planning Policy Framework: Energy White Paper: powering our net-zero future (HM Government, 2020)
- Net Zero Strategy: Build Back Greener (HM Government, 2021)
- Carbon Budget and Growth Delivery Plan (UK Government, 2025)
- The Seventh Carbon Budget (UK CCC, 2025)
- Powering up Britain: the net-zero growth plan (HM Government, 2023)
- British Energy Security Strategy (HM Government, 2022)
- Future Energy Scenarios: ESO pathways to Net Zero (ESO, 2024)
- The UK's Modern Industrial Strategy (UK Government, 2025)
- The Clean Growth Strategy: Leading the Way to a Low Carbon Future (HM Government, 2018)
- Clean Power 2030 Action Plan (UK Government, 2024)
- UK Infrastructure: A 10 Year Strategy (HM Treasury; NI&STA, 2025)
- A Green Future: Our 25 Year Plan to Improve the Environment (HM Government, 2018)
- Environmental Improvement Plan (DEFRA, 2023)
- Written Ministerial Statement (WMS) 'Building the homes we need' (July 2024)
- Written Ministerial Statement (WMS) 'Solar and Protecting our Food Security and Best Most Versatile (BMV) Land (May 2024).
- Solar Roadmap: United Kingdom Powered by Solar (July 2025)

- 2.3.5. The applicant has submitted a Planning Statement [[APP-277](#)] which includes an assessment of all relevant national and local planning policy, as the applicant sees it. Appendix 3.1, 3.B and 3.C of the Planning Statement [[APP-277](#)] provides further detail on how the applicant believes it has complied with all relevant plans and policies.

- 2.3.6. Appendix C provides further detail on the relevance of each of the above policies to the proposed development. These policies are also discussed in more detail in chapter 3 of this report.

2.4. LOCAL IMPACT REPORTS (LIRS)

- 2.4.1. Three LIRs were submitted into the examination at deadline 1 (D1) by the following local authorities:
- Lincolnshire County Council [[REP1-044](#)]
 - North Kesteven District Council [[REP1-054](#)]
 - South and East Lincolnshire Council Partnership on behalf of Boston Borough Council [[REP1-059](#)]
- 2.4.2. LIR content has been considered through the examination and in this recommendation. It must be considered during the decision by the SoS pursuant to PA2008 s104(2)(b).
- 2.4.3. The issues raised are considered in further detail in relation to relevant planning issues in chapter 3 of this recommendation. Appendix C sets out the individual local policies that are relevant to the proposed development. Individual policies are referred to as required and relevant in chapter 3 of this report.
- 2.4.4. Amongst other matters, LIRs identify local policies (including those from the development plan) which are capable of being important and relevant considerations under s104(2)(d) of the PA2008. For an application proceeding under s104 PA2008, subsection (3) requires the SoS to decide the application in accordance with any relevant NPS, except to the extent that one or more of the exceptions set out in subsections (4) to (8) applies. Where a relevant local policy and designated NPS policy are in conflict, the effect of this duty (subject to any applicable exception) is to establish a presumption in favour of NPS policy in the SoS's decision-making.

2.5. ENVIRONMENTAL IMPACT ASSESSMENT (EIA)

- 2.5.1. The applicant provided a notification under regulation 8(1)(b) of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 (EIA Regulations) of its intention to provide an Environmental Statement (ES). Therefore, in accordance with regulation 6(2)(a) of the EIA Regulations, the ExA determined that the proposed development was EIA development.
- 2.5.2. On 19 April 2023, the applicant submitted a Scoping Report to the SoS under Regulation 10 of the EIA Regulations in order to request an opinion about the scope of the ES to be prepared (a scoping opinion) [[APP-071](#)].
- 2.5.3. On 23 May 2023 the Planning Inspectorate provided a scoping opinion [[APP-072](#)].

- 2.5.4. Overall, the ExA considers that the ES, as supplemented with additional information during the examination, is sufficient to enable the SoS to take a decision in compliance with the EIA regulations.
- 2.5.5. The ExA considered that changes to the ES made during the examination, together with the change requests (see section 1.4 of this recommendation) did not individually or cumulatively undermine the scope and assessment of the ES. Section 3 of this recommendation will summarise the environmental effects under each topic section.

2.6. HABITATS REGULATIONS ASSESSMENT

- 2.6.1. The SoS is the competent authority for the purposes of the Conservation of Habitats and Species Regulations 2017 (Habitats Regulations). The Habitats Regulations were amended by the Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019.
- 2.6.2. The proposed development is one that has been identified as giving rise to the potential for likely significant effects (LSE) on European sites and hence is subject to a Habitats Regulations Assessment (HRA). In accordance, a Shadow HRA Report has been provided [[REP7-016](#)].
- 2.6.3. As is the convention and to inform SoS decisions prepared under the PA2008, a separate record of considerations relevant to HRA has been set out in appendix B of this recommendation, a summary of which can be found in section 4.

2.7. TRANSBOUNDARY EFFECTS

- 2.7.1. The proposed development is of local and regional impact. Transboundary effects are those which would affect the environment in another state within the European Economic Area (EEA).
- 2.7.2. A transboundary screening under regulation 32 of the EIA Regulations was undertaken on behalf of the SoS on 26 May 2023 following the applicant's request for an EIA scoping opinion. No significant effects were identified on the environment in a European Economic Area (EEA) member state.
- 2.7.3. On the 21 May 2025 a second screening was undertaken on behalf of the SoS further to acceptance of the application for examination. Again, no significant effects were identified on the environment in any EEA state.
- 2.7.4. The Regulation 32 duty is an ongoing duty, and on that basis, the ExA has considered whether any facts have emerged to change these screening conclusions, up to the point of closure of the examination. The ExA is content that there would be no transboundary LSE on the environment in a EEA state.

3. THE PLANNING ISSUES

3.1. INTRODUCTION

3.1.1. This section sets out the Examining Authority's (ExA) findings and conclusions on the planning issues. The section is structured firstly to review the initial assessment of principal issues (IAP1) and explains how the issues identified there have been managed. It then examines matters of principle, including need and alternatives. It then addresses individual planning issues, set out in individual subsections. The order in which these section headings are presented should not be taken to imply any order of merit.

3.1.2. In each section, the ExA identifies the policy background, followed by a summary of the application as made, then reports on the main issues for each topic. Findings and conclusions are drawn for each topic. These in turn identify whether the effects carry a little weight, moderate weight, great weight, or very great weight for or against the making of the Development Consent Order (DCO).

THE PLANNING ISSUES IN THIS REPORT

3.1.3. The ExA considers that the issues raised by interested parties (IP) were broadly in line with the IAP1 and were subject to written and oral questioning during the examination. These are the issues that the ExA has used to structure most of the following sections in this recommendation which address each issue in turn. To facilitate efficient consideration of the relationships between certain issues and to avoid repetition in analysis, the ExA has varied the order of its consideration of issues arising from the IAP1. It should also be noted that the IAP1 is a high-level framework. The ExA has nevertheless had regard to all important relevant matters arising from submissions from IPs and has reported on these, if required, within each chapter below.

3.1.4. The planning issues considered in this recommendation are as follows:

- Section 3.2: The principle of the proposed development
- Section 3.3: Alternatives, site selection and good design
- Section 3.4: Socioeconomics
- Section 3.5: Landscape and visual
- Section 3.6: Biodiversity and the natural environment
- Section 3.7: Historic environment
- Section 3.8: Flood risk and water environment
- Section 3.9: Land use
- Section 3.10: Other matters
- Section 3.11: Cumulative effects

3.2. THE PRINCIPLE OF THE PROPOSED DEVELOPMENT INTRODUCTION

- 3.2.1. This section of the report deals with the need for the proposed development, its overall size and generating capacity, as well as its impact on climate change and reduction in greenhouse gas (GHG) emissions. Matters that relate to alternatives, site selection and good design are dealt with in section 3.3 of this report.

POLICY BACKGROUND

NEED

NPS EN-1

- 3.2.2. The Overarching National Policy Statement for Energy (NPS EN-1), sets out the policy context for the development of nationally significant energy infrastructure. It states that energy is vital to economic prosperity and social well-being and therefore it is important that the UK's supplies of energy remain secure, reliable and affordable. It also recognises the role that renewable electricity generation proposals, such as solar, can have in addressing the key challenges ahead in decarbonising energy.
- 3.2.3. In addition to this, NPS EN-1 also states that the Secretary of State for Energy Security and Net Zero (SoS) should assess all applications for development consent of renewable energy generation projects, such as solar, on the basis that the government has demonstrated an urgent need for it. Furthermore, in paragraphs 3.2.7 to 3.2.8, the NPS states that the SoS has determined that substantial weight should be given to this need and that the SoS is not required to consider separately the specific contribution of an individual project to satisfying that need.
- 3.2.4. Sections 2.2. and 2.3 of NPS EN-1 provide further information in relation to the need to decarbonise the power sector by referencing the government's requirement for the UK to reduce GHG emissions by 78¹ per cent by 2035 and the target to cut GHG emissions to net zero by 2050². The NPS EN-1 acknowledges the need for a step change in the decarbonisation of the UK's energy system if the UK is to achieve these targets.
- 3.2.5. The important role of solar energy in achieving these objectives is acknowledged in paragraph 3.3.20 to 3.3.24, where it is stated that wind and solar are the lowest cost ways of generating electricity therefore helping to reduce costs and providing a clean and secure source of electricity supply.
- 3.2.6. NPS EN-1, in paragraphs 3.3.25 to 3.3.31, recognises the need for increased flexibility provided by new electricity storage and its role in achieving net zero. In particular, it notes its ability to help maximise the useable output from

¹ [UK enshrines new target in law to slash emissions by 78% by 2035 - GOV.UK](https://www.gov.uk/government/news/uk-enshrines-new-target-in-law-to-slash-emissions-by-78-percent-by-2035)

² [Net Zero Strategy: Build Back Greener - GOV.UK](https://www.gov.uk/government/consultations/net-zero-strategy-build-back-greener)

intermittent low carbon generation, including solar, and to provide balancing services to the grid.

- 3.2.7. NPS EN-1, in paragraph 4.2.4 states that the government has concluded that there is a critical national priority (CNP) for the provision of nationally significant low carbon infrastructure. However, paragraph 4.2.7 clarifies that CNP policy does not create an additional or cumulative need case or weighting to that which is already outlined for each type of energy infrastructure. The policy instead applies following the normal consideration of the need case, the impacts of the project and the application of the mitigation strategy. Consequently, CNP will be further covered in chapter 5 of this report and not considered here as part of the principle of the proposed development.
- 3.2.8. The 2025 version of the Overarching National Policy Statement for Energy 2025 (NPS EN-1 2025) is broadly in agreement with the NPS EN-1 and it does not substantially change its objectives or policy in relation to the issues mentioned above.

NPS EN-3

- 3.2.9. The consideration of need in National Policy Statement for Renewable Energy (NPS EN-3) largely reflects NPS EN-1 while also making clear that the government is supportive of solar that is “co-located with other functions (for example, agriculture, onshore wind generation, or storage) to maximise the efficiency of land use” (paragraph 2.10.32).
- 3.2.10. Section 2.10 of NPS EN-3 deals specifically with solar photovoltaic (PV) generation. Paragraph 2.10.9 confirms that solar is a key part of the government’s strategy for low-cost decarbonisation of the energy sector.
- 3.2.11. Paragraph 2.10. states that along with associated infrastructure, a solar farm currently requires between 2 to 4 acres for each megawatt (MW) of output. However, the same paragraph also states that this can vary significantly depending on the site and also that, as technology develops and becomes more efficient, this ratio may change.
- 3.2.12. There is a recognition, in paragraph 2.10.55, that the installed generating capacity of a solar farm will decline over time and there is a range of degradation sources that developers need to consider as part of their decision-making process on what technology to use. To account for this degradation, overplanting of solar panel arrays may be considered. Footnote 98 then expands on this by stating overplanting means that the installed generating capacity is larger than the grid connection, so that the degradation of panel efficiency is factored-in and the grid connection is maximised across the lifetime of the development. Reasonable overplanting is acceptable as long as the electricity export does not exceed the installed capacity threshold throughout the operational life of the development, and the impacts are assessed on this basis.

- 3.2.13. The 2025 version of the Overarching National Policy Statement for Energy 2025 (NPS EN-1 2025) is broadly in agreement with the NPS EN-1 and it does not substantially change its objectives or policy in relation to the issues mentioned above.
- 3.2.14. The 2025 version of the National Policy Statement for Renewable Energy Infrastructure 2025 (NPS EN-3 2025) is broadly in agreement with the NPS EN-3 and it does not substantially change its objectives or policy in relation to the issues mentioned above.

NPS EN-5

- 3.2.15. National Policy Statement for electricity networks infrastructure (NPS EN-5) supplements NPS EN-1 by providing technology specific information. In this case the proposed new substations, cable connections and associated infrastructure come within the scope of the NPS EN-5.
- 3.2.16. Paragraphs 2.2.1 and 2.2.2 of NPS EN-5 state that the SoS should bear in mind that the initiating and terminating points of new electricity networks infrastructure are not substantially within the control of the applicant as these require a connection to the network, and/or system capacity and resilience requirements determined by the National Electricity System Operator (NESO).
- 3.2.17. The 2025 version of the National Policy Statement for Electricity Networks Infrastructure (NPS EN-5 2025) is broadly in agreement with the NPS EN-5 and it does not substantially change its objectives or policy in relation to the issues mentioned above.

National Planning Policy Framework (NPPF)

- 3.2.18. The NPPF's objective is to ensure that the planning system promotes sustainable development. So that this is pursued in a positive way, at the heart of the NPPF is a presumption in favour of sustainable development. In relation to decision making, this means approving development proposal that accord with an up-to-date development plan without delay.
- 3.2.19. Section 14 of the NPPF sets out the need for the planning system to support the transition to a low carbon future, including by supporting renewable and low carbon energy and associated infrastructure. In paragraph 168 the NPPF advises that when determining planning applications for renewable and low carbon development, local planning authorities should not require applicants to demonstrate the overall need for renewable or low carbon energy and should give significant weight to the benefits associated with renewable and low carbon energy generation, including contribution to a net zero future.
- 3.2.20. With regard to conserving and enhancing the natural environment, footnote 65 sets out that where significant development of agricultural land is demonstrated to be necessary, areas of poorer quality land should be preferred to those of a higher quality.

Local Development Plans and local policies

- 3.2.21. The Central Lincolnshire Local Plan (2023) (CLLP) policy S14 Renewable Energy sets out the authority's commitment to supporting the transition to a net zero carbon future and seeks to maximise appropriately located renewable energy, supporting schemes where the impacts are or will be made acceptable. It includes a presumption in favour of ground-based photovoltaics and associated infrastructure, including commercial large scale proposals subject to a range of criteria.
- 3.2.22. Policy S16 Wider Energy Infrastructure confirms support for proposals which are necessary for, or form part of, the transition to a net zero carbon sub-region. However it is caveated by the requirement that any such proposals should take all reasonable opportunities to mitigate any harm arising and take care to select not only appropriate locations for such facilities but also design solutions (reference to policy S53) which minimises harm arising.
- 3.2.23. Policy 31: Climate Change and renewable and Low carbon Energy of the South East Lincolnshire Local Plan 2011-2036 (SELLP) further strengthens this commitment.

CLIMATE CHANGE AND GHG EMISSIONS

- 3.2.24. The Climate Change Act 2008 (CCA2008) sets a legally binding target for the UK to reduce its net GHG emissions from 1990 levels. This target is currently set at 100% by 2050 as set out in the Climate Change Act 2008 (2050 Target Amendment) Order 2019.
- 3.2.25. Furthermore, the UK is a signatory to the Paris Agreement under the United Nations Framework Convention on Climate Change. This provides a framework to keep global warming well below 2°C, while pursuing efforts to limit the temperature increase to 1.5°C.
- 3.2.26. Section 4.10 Climate Change Adaptation and Resilience of NPS EN-1 advises that the resilience of the project to climate change should be assessed in the Environmental Statement (ES) and that applicants for new energy infrastructure should demonstrate that they have taken into account the potential impacts of climate change using the latest UK climate projections available. It makes clear that applicants should also assess the impacts on, and from, their proposed energy project across a range of climate change scenarios, in line with appropriate expert advice and guidance available at the time.
- 3.2.27. Furthermore, it makes clear that while applications do not need to be assessed in terms of carbon emissions against carbon budgets, proposals for energy infrastructure projects should nevertheless include a GHG assessment as part of their assessment.

- 3.2.28. In addition to this, NPS EN-1 recognises that the Energy White Paper: Powering our net zero future³ and the British Energy Security Strategy⁴ both emphasise the importance of the government's net zero commitment and efforts to fight climate change, as well as the need to maintain a secure and reliable energy system.
- 3.2.29. While all steps should be taken to reduce and mitigate climate change impacts, it is accepted that there will be residual emissions from energy infrastructure, particularly during the economy wide transition to net zero, and potentially beyond.
- 3.2.30. Similar guidance can be found in the NPPF, the Planning Practice Guidance (PPG) and the CLLP all of which seek to minimise carbon dioxide emissions and ensure new development is resilient to the impacts of climate change.

Other Local policy and guidance

- 3.2.31. The North Kesteven District Council (NKDC) Climate Emergency Strategy 2022-23 aims to achieve net zero 2030 targets through a 95% reduction in GHG and carbon emissions, and the NKDC Climate Emergency Action Plan 2022-23 establishes the actions being taken to reach such aims. This includes an 'energy' theme which focuses on reducing fossil fuel dependence and associated emissions by promoting and supporting renewable energy generation opportunities in the district.

THE APPLICATION

NEED

- 3.2.32. The applicant's need case is mainly set out in its Planning Statement [[REP7-018](#)], particularly in sections 4, 6.2 and 7.4. In section 4 of the Planning Statement [[REP7-018](#)] the applicant discusses the key drivers underpinning the need for renewable energy in the UK, including the Climate Change Act 2008, the Clean Power 2030 Action Plan (December 2024)⁵, the Seventh Carbon Budget⁶ Report covering the period 2038-2042 and the Future Energy Scenarios: ESO Pathways to Net Zero (July 2024)⁷. The applicant provides an analysis of the government's commitment to sustained growth in solar energy capacity and its strategy for low-cost decarbonisation of the energy sector.
- 3.2.33. In section 6.2 the applicant provides a summary of the general principles that should be applied to energy infrastructure projects and how the proposed development complies with the relevant parts of the NPS EN-1, NPS EN-3 and NPS EN-5. In section 7.4 the applicant discusses the benefits of the

³ [Energy White Paper](#)

⁴ [British energy security strategy](#)

⁵ [Clean Power 2030 Action Plan - GOV.UK](#)

⁶ [The Seventh Carbon Budget - Climate Change Committee](#)

⁷ The national Energy System Operator (NESO) published a more recent version of this document in 2025, [Future Energy Scenarios 2025: Pathways to Net Zero](#). However, the overall stance in relation to urgent need has not materially been altered from the 2024 version which has been used by the applicant for the purposes of the assessment.

proposed development and provides a summary of how these match objectives set out in relevant national policy, including need.

- 3.2.34. Overall, the applicant identifies an urgent need for low carbon electricity generation proposals and reiterates national policy objectives linked to the delivery of such forms of development. The applicant recognises, in paragraph 6.2.20 of the Planning Statement [\[REP7-018\]](#) that the SoS has determined that substantial weight should be given to the urgent need for energy infrastructure when considering applications for development consent.
- 3.2.35. The applicant also makes reference, in section 4 of the Planning Statement [\[REP7-018\]](#), to the government's objectives to accelerate the decarbonisation of the current electricity system by 2030, to deliver sufficient levels of low carbon generation and electricity storage to meet the anticipated doubling of electricity demand by 2050 necessary for the electrification of transportation and heating.
- 3.2.36. In summary, and according to the applicant as set out in paragraph 4.9.13 of the Planning Statement [\[REP7-018\]](#), urgent and unprecedented actions are required on a global scale to halt climate change. A rapid increase in the supply of low carbon electricity is needed for the UK to meet its legally binding climate change targets. Solar generation and battery storage are a critical part of the UK's strategy to achieve net zero by 2050, and the UK's Seventh Carbon Budget, and a key step towards these is the government's national mission for 'Clean Power by 2030'.

CLIMATE CHANGE AND GHG EMISSIONS

- 3.2.37. ES Chapter 12: Climate Change [\[APP-063\]](#) sets out the applicant's findings in relation to climate change, in particular the likely significant effects of GHG and carbon emissions on the global climate and the impacts of climate change on the proposed development.
- 3.2.38. In its assessment, the applicant evaluates the whole life impact of GHG emissions arising from the construction, operation and eventual decommissioning of the proposed development in part A of ES Chapter 12: Climate Change [\[APP-063\]](#), and in part B the impact of climate change on the proposed development, also for construction, operation and decommissioning phases.
- 3.2.39. The applicant's assessment of GHG emissions is based on a combination of detailed information as well as UK default values for current industry standards and indicative material specifications for some of the renewable energy products. The applicant has looked at the significance of anticipated effects, taking into consideration direct and indirect impacts and embodied emissions.
- 3.2.40. The applicant has found that, although the proposed development would result in short-term release of GHG emissions during construction, which have a long-term and permanent adverse effect on global warming and

climate change, there are savings predicted during the operational phase of the proposed development. This is due to the generation of solar energy which would, when compared with a natural gas equivalent, lead to an overall reduction of GHG emissions. Consequently, the proposed development is considered by the applicant, as stated in paragraph 12.16.4, to have a significant beneficial effect on climate change.

- 3.2.41. In relation to the impact of climate change on the proposed development, the applicant finds that the consequence of climatic impacts is low, based on the sensitivity of the receptors and various climatic factors.
- 3.2.42. To reach this conclusion the applicant has assessed the proposed development against the current worst-case scenario, as to account for any deviation from the projected climate change patterns and increased volatility.
- 3.2.43. The applicant found that, as construction is expected to occur in the next few years, when the climate is unlikely to have changed drastically from what it is today, the effect of climate change during the construction phase would be negligible and not significant. The applicant has also found that during the operational phase, although the effect of climate change would increase to minor adverse, this would still remain not significant in environmental assessment terms.
- 3.2.44. Finally, and in relation to decommissioning, the applicant has found that although weather patterns may be more erratic and volatile than during the construction phase, the process will be short and temporary. Provided that suitable planning is made to ensure site safety during this time, no excessive risks are anticipated and therefore the impact of climate change on the proposed development would be negligible and not significant.

ISSUES CONSIDERED DURING THE EXAMINATION

EXAMINING AUTHORITY QUERIES

- 3.2.45. Recognising that, as low carbon energy infrastructure, the need for the proposed development is established by the NPS EN1, the Examining Authority (ExA) did not question or raise concerns in relation to the applicant's overall case for need. Similarly, the ExA did not question the applicant's proposed Battery Energy Storage System (BESS) as both NPSs EN-1 and EN-3 clearly state that storage can play an important role, especially when co-located with other renewable generation. The ExA considered, consequently, that the inclusion of the BESS would provide an opportunity to integrate low carbon energy generation and storage, therefore maximising the potential of the proposed development.
- 3.2.46. Although the ExA did not have concerns regarding the BESS itself, it did have questions in relation to the capacity of the proposed BESS, particularly when considered alongside the overall generating capacity of the proposed development, and how likely it would be that a BESS would be fully used.
- 3.2.47. The ExA explored this issue at Issue Specific Hearing 1 (ISH1), where it asked a series of questions to better understand the applicant's approach to

the BESS. Following from the ExA questioning on this issue, the ExA asked the applicant to provide further information on this matter as set out in action point 7 of [\[EV2-002\]](#), which the applicant responded to in [\[REP1-030\]](#). In its response, the applicant confirmed that the overall energy generating capacity of the proposed development would be approximately 400MW and that the applicant has secured an import and export grid connection agreement of 600MW.

- 3.2.48. The applicant also confirmed that the proposed BESS would have an overall output capacity of 600MW and that it would be, in the applicant's opinion, regularly used to its full capacity, particularly at times when it would not be optimal to let the energy produced by the solar array feed direct to the national grid. The storage capacity of the proposed BESS would be able to secure surplus energy that may not be exported directly to the grid and therefore contribute to energy security by releasing stored energy only when needed.
- 3.2.49. Following from this response, the ExA also asked the National Grid, in [\[PD-010\]](#), for its view on this matter, as well as NESO in ExQ2 NED.2.1 [\[PD-013\]](#). The National Grid replied favourably to this approach in [\[REP2-058\]](#).
- 3.2.50. The ExA also had questions in relation to the overall land take, timing for the connection to the grid and overplanting.
- 3.2.51. The ExA, at ISH1, asked the applicant a series of questions in relation to the acres of land required per MW peak of output. The applicant provided further explanation for their calculations in their response to action point 7 [\[EV2-002\]](#) which confirmed that, if one considers the fence-line within the indicative design [\[REP2-028\]](#), which corresponds roughly to the solar panel array area, then the ratio of the proposed development is 2.96 acres of land per MW of maximum output, which would be in line with the NPS EN-3.
- 3.2.52. In relation to the timing for the connection to the grid, the applicant's response to ExQ1 NED.1.2 [\[REP2-040\]](#), confirmed that it had entered into a Grid Connection Agreement with NESO in May 2022 and that this agreement specifies the import and export capacities of 600MW in 3 'stages' between 2029 and 2033, which are detailed in the Electricity Grid Connection Statement [\[APP-285\]](#).
- 3.2.53. In relation to overplanting, the applicant's response to ExQ1 NED.1.13 [\[REP2-040\]](#) sought to clarify its position. The applicant confirmed, following from questioning from the ExA on this matter at ISH1, that it is taking a relative industry standard approach of aiming for an overplanting ratio of DC:AC of between 1.3 : 1 and 1.5 : 1. However the applicant wanted to also clarify that the proposed development does not include overplanting in the NPS EN-3 footnote 92⁸ sense of the term as the proposed development will

⁸ NPS EN-3 refers to overplanting in footnote 92 which states that: "Overplanting" refers to the situation in which the installed generating capacity or nameplate capacity of the facility is

not create a situation in which the installed generating capacity or nameplate capacity of the facility is larger than the generator's grid connection.

HOST LOCAL AUTHORITIES (HLA) CONCERNS

- 3.2.54. All the HLAs recognised in their Local Impact Reports (LIRs) the positive effects that the proposed development would have in terms of assisting the government in pursuing its objectives of decarbonising the energy sector, reducing carbon emissions and increasing energy security in the country. NKDC in its LIR [\[REP1-054\]](#) makes clear reference to there being an urgent national need for this type of infrastructure and so does Lincolnshire County Council (LCC) in its LIR [\[REP1-044\]](#).
- 3.2.55. However, both LCC and NKDC have raised concerns in their LIRs in relation to the proposed BESS being considered associated development.
- 3.2.56. In order to address this concern, the ExA requested, as set out in action point 7 of [\[EV2-002\]](#) that the applicant provides further information on why it believes that the proposed BESS constitutes associated development under the Planning Act 2008 (PA2008). The applicant's response in [\[REP1-030\]](#) include reference to other previously made DCOs which incorporated a BESS as associated development, namely Cleve Hill, Sunnica, Gate Burton and West Burton.
- 3.2.57. However, the key question raised by the LCC and NKDC was linked with the size of the proposed BESS. Due to its capacity and physical dominance within the landscape, as the BESS would be taller than the proposed solar panels, physically and functionally it would not be subservient to the proposed development and therefore should not be considered associated development.
- 3.2.58. The applicant responded that: "associated development" is defined in section 115(2) of the PA2008 as development which is associated with the principal development (i.e. the NSIP) and that has a direct relationship with it. The PA2008 does not provide any particular definition of what can comprise "associated development". The applicant goes on to state that paragraph 5 of the PA2008 Guidance (PA2008 Guidance) sets out four principles for associated development. Those 4 principles: direct relationship, subordinacy, cross subsidisation and proportionality, are addressed in turn by the applicant. It considers that there is a direct functional relationship between the BESS and the proposed development, that the BESS is subordinate in the sense that the generation of renewable energy is the main purpose of the proposed development and what is fundamental to the delivery of the net zero objectives, cross subsidisation is relevant only to the extent that is economically rational to invest in solar and BESS together, and the BESS is

larger than the generator's grid connection. This allows developers to take account of degradation in panel array efficiency over time, thereby enabling the grid connection to be maximised across the lifetime of the site. For further analysis on the acceptability of overplanting, applicants should have regard to the judgment in the case, *Ross v Secretary of State for Housing, Communities and Local Government and Renewable Energy Systems Ltd* [2025] EWHC 1183 (Admin), and any subsequent caselaw.

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proportional, as the power capacity of the associated development matches the grid export capacity available and the associated development is expected to be regularly fully utilised.

CONCLUSIONS

- 3.2.59. The ExA notes that there seemed to be consensus amongst all parties in relation to need and there was no 'in principle' objection by any of the parties. Overall, and as set out in national policy, there is an urgent need for renewable energy generating projects and this is recognised by the Local Host Authorities (HLA).
- 3.2.60. The ExA is of the view that, in relation to need, there is a compelling case for the delivery of renewable energy at pace, including solar, as set in this section and in accordance with the policies and aims included in NPS EN-1, NPS EN-3 and NPS EN-5. Solar generation will play an important role in securing the UK's supply of energy while also assisting the government in reaching its target to cut GHG emissions to net zero by 2050. The ExA agrees that the proposed development will assist in this.
- 3.2.61. Paragraphs 3.3.58 of the NPS EN-1 stress the urgent need for new electricity infrastructure and paragraph 4.1.3 the presumption in favour of granting consent when assessing applications for energy Nationally Significant Infrastructure Projects (NSIPs). The ExA notes the connection to the Bicker Fen substation and the agreement secured for the generation of 400MW of electricity which provides significant certainty in relation to deliverability at pace.
- 3.2.62. The ExA finds that the proposed development will play a significant role in assisting the government with this objective in accordance with the objectives set out in paragraphs 3.3.20 to 3.3.24 of NPS-EN1.
- 3.2.63. National policy clearly states that, given the level of urgency of need identified, the SoS should start with a presumption in favour of granting development consent, unless more specific and relevant policies set out in the relevant NPSs clearly indicate that consent should be refused.
- 3.2.64. However, the ExA also notes that although local plan policies are important and relevant considerations for the SoS when carrying out the assessment of new nationally significant infrastructure projects, the adopted suite of policy considerations form the basis for the SoS's and therefore should be given more weight when considering the need case. For the reasons stated above in this section of the report, the ExA find that the need case has been made for the proposed development.
- 3.2.65. In relation to the overall size of the proposed development and its generating capacity, the ExA finds that the applicant has provided enough information to demonstrate that the proposed development meets the principle of maximising the use of the grid connection. The ExA also notes that the proposed development does seem to be comparable to the typical ratio set

out in paragraph 2.10.17 of NPS EN-3 in relation to land take/solar energy production.

- 3.2.66. Essential to this and to facilitate the maximization of the grid connection, is the BESS. The BESS would serve a worthwhile storage purpose and is therefore an important component of the proposed development, in accordance with NPS EN-1 paragraphs 3.3.25 to 3.3.31. Furthermore, the Solar Roadmap: United Kingdom Powered by Solar⁹ states, that BESS co located with solar should be assessed by network companies as reducing output when there is peak generation and contributing output at times of peak demand. In other words, benefiting rather than hindering the electricity system.
- 3.2.67. The ExA does recognise that the proposed BESS would be a physically dominant feature of the proposed development and of an overall capacity which is larger than the BESS proposed in other recently granted DCOs. However, the ExA is of the view that, taking into consideration the main purpose of the proposed development and the guidance set out in the PA2008 Guidance on associated development applications for major infrastructure projects¹⁰ PA2008 Guidance, the BESS component should be considered associated development. It is, nevertheless, as set out in paragraph 5 of the PA2008 Guidance, for the SoS to decide on a case by case basis whether or not development should be treated as associated development or not.
- 3.2.68. The ExA acknowledges that some of the detail of the proposed development would be subject to post-consent approval. In this regard, by setting out the overall parameters for site layout and design, flexibility has been retained and would allow the applicant to adjust and respond to any innovations in relation PV solar panel technology that might occur between the application and the construction phase. However, the ES assesses the worst-case scenario allowing adequate consideration of whether the proposed development would be acceptable in environmental terms.
- 3.2.69. Matters to be taken to chapter 5 and the planning balance:
- The proposed development is considered low carbon infrastructure under paragraph 4.2.5 of NPS EN-1. Furthermore, and in accordance with sections 2.2. and 2.3 of NPS EN-1, it would assist in decarbonising the power sector, reduce GHG emissions and assist in the achievement of the target to cut GHG emissions to net zero by 2050.
 - Paragraphs 3.2.6, 3.2.7 and 4.2.2 of NPS EN-1 establish an urgent need for the proposed development, which should be given substantial weight, for it assist the government in meeting its energy security and net zero ambitions.

⁹ [UK Solar Roadmap 2025](#)

¹⁰ [Planning Act 2008: Guidance on associated development applications for major infrastructure projects](#)

- It is for the SoS to decide on a case by case basis whether or not development should be treated as associated development but it is the ExA's view that the BESS component of the proposed development should be treated as associated development.
- Paragraph 3.3.26 of NPS EN-1 supports the use of the proposed the BESS in order to reduce the costs of the electricity system and increase flexibility.
- Accordingly, and subject to consideration of the specific impacts of the proposed development in the remainder of this chapter, the ExA considers that the principle of the proposed development accords with national policy.
- The ExA therefore gives these matters very great weight in favour of making of the order.

3.3. ALTERNATIVES, SITE SELECTION AND GOOD DESIGN

INTRODUCTION

- 3.3.1. This section of the report deals with alternatives, as these were considered by the applicant, in relation to the development site, the bespoke access road, the cable corridor, the BESS and other supporting infrastructure. This section also deals with design and the applicant's design approach. This section should be read in conjunction with 3.2 Principle of the Proposed Development which covers need, overall size and generating capacity.

POLICY BACKGROUND

NPS EN-1

- 3.3.2. Paragraph 4.3.9 of NPS EN-1 makes clear that there is no general requirement for applicants to consider alternatives or to establish whether the proposed project represents the best option. However, as set in paragraph 4.3.15, applicants are required to include in their ES information about reasonable alternatives they have studied as well as an indication of the main reasons for the choices made, taking into account the environmental, social and economic effects including technical and commercial feasibility.
- 3.3.3. Paragraphs 4.3.22 to 4.3.29 provide further information on how much weight the SoS should give to the consideration of alternatives. It states that, given the level and urgency of need for new energy infrastructure, the consideration of alternatives should be carried out in a proportionate manner and only alternatives that have a realistic prospective of being delivered at the same timescale and meet the objectives of the proposed development should be considered.
- 3.3.4. Paragraph 4.3.24 also confirms that the SoS should not refuse an application for development on one site simply because fewer adverse impacts would

result from developing similar infrastructure on another suitable site, as it is possible that all suitable sites for energy infrastructure may be needed.

- 3.3.5. NPS EN-1 also provides the SoS with guidance in relation to network connection, in section 4.11 by recognising that the connection of a proposed electricity generation plant to the electricity network is an important consideration for applicants wanting to construct or extend a generation plant.
- 3.3.6. The 2025 version of the Overarching National Policy Statement for Energy 2025 (NPS EN-1 2025) is broadly in agreement with the NPS EN-1 and it does not substantially change its objectives or policy in relation to the issues mentioned above.

NPS EN-3

- 3.3.7. In relation to factors influencing site selection and design NPS EN-3 paragraph 2.3.5 confirms that it is for applicants to decide what applications to bring forward and that the government, in general, will not seek to direct applicants to particular sites as it recognises that most renewable energy resources can only be developed where the resource exists and where it is economically viable. Paragraph 2.3.9 also states that, due to the critical level of need established in NPS EN-1, the SoS should not use a consecutive approach in the consideration of renewable energy projects, such as giving priority to the re-use of previously developed land for renewable developments.
- 3.3.8. Paragraphs 2.10.18 to 2.10.48 further address the factors influencing site selection and design. In relation to site selection, it is important to note that NPS EN-3 recognises that irradiance and site topography are key considerations for the applicant in identifying a potential site, as well as a suitable network connection. Paragraph 2.10.24 states, in relation to network connections, that the connection voltage, availability of network capacity and the distance from the solar farm to the existing network can have a significant effect on the commercial feasibility of it and therefore, to maximise existing grid infrastructure, minimise disruption to existing local community infrastructure or biodiversity and reduce overall costs, applicants may choose a site based on nearby available grid export capacity.
- 3.3.9. The 2025 version of the National Policy Statement for Renewable Energy Infrastructure 2025 (NPS EN-3 2025) is broadly in agreement with the NPS EN-3 and it does not substantially change its objectives or policy in relation to the issues mentioned above.

NPS EN-5

- 3.3.10. NPS EN-5 is relevant to the site selection in relation to the proposed substations and electricity cable connection, which constitute associated development for which consent is sought along with the solar PV generating station.

- 3.3.11. It states, in paragraphs 2.2.1 and 2.2.2 that the SoS should bear in mind that the initiating and terminating points of new electricity networks infrastructure is not substantially within the control of the applicant and that the siting is determined by, not only the location of new generating stations or other infrastructure requiring connection to the network, but also by the system capacity and resilience requirements.
- 3.3.12. However, NPS EN-5 also stresses, in paragraph 2.2.10, that applicants must take into account the duty placed on all electricity transmission and distribution licence holders, when formulating proposals for new electricity network infrastructure, to take reasonable steps to mitigate any effect which the proposals would have on the natural beauty of the countryside or on any such flora, fauna, features, sites, buildings or objects.
- 3.3.13. The 2025 version of the National Policy Statement for Electricity Networks Infrastructure (NPS EN-5 2025) is broadly in agreement with the NPS EN-5 and it does not substantially change its objectives or policy in relation to the issues mentioned above.

THE APPLICATION

- 3.3.14. The applicant's case for site selection is set out mainly in Appendix 2 - Site Selection Report of the Planning Statement [[APP-277](#)] while the site selection process and the alternatives considered by the applicant are mainly set out in ES Chapter 3 Alternatives and Design Evolution [[APP-054](#)] and the Design and Access Approach Document (DAAD) [[APP-278](#)].

SITE SELECTION

- 3.3.15. As set in the Appendix 2 of the Planning Statement [[APP-277](#)], the applicant has followed a four stage assessment to evaluate the location of the development site against other potential areas for solar development identified, so as to establish whether the proposed development would be in a comparatively suitable location for a proposed solar development requiring a land area of 300ha.
- 3.3.16. The four stages followed by the applicant are set out below:
- Stage 1 - identification of the search area, where irradiation and topography were the key factors identified for the location of the proposed development
 - Stage 2 - identification of unconstrained land via a review of relevant national and local planning policies as well as constraints relating to viability and cumulative impacts
 - Stage 3 - identification of potential alternative sites via the application of key operational criteria for large scale solar development, namely: size, land assembly and topography. The use of previously development land was also considered
 - Stage 4 - evaluation of potential alternative sites against a range of planning, environmental and operational considerations

- 3.3.17. The applicant confirms, in section 2.2 of Appendix 2 of the Planning Statement [[APP-277](#)], that it started its search for suitable development sites in the east of England due to combination of high levels of irradiation, large flat open areas of land and a general lack of constraints. The region also has a significant amount of pre-existing transmission infrastructure which, according to the applicant, would reduce the likelihood of new overhead infrastructure being required to connect the generator to the transmission system.
- 3.3.18. Furthermore, the applicant also confirms that early conversations and engagement with NESO lead to the identification of South Lincolnshire and the wider East Midlands area as a potential suitable location for the proposed development, leading then to discussions around a connection to the Bicker Fen Substation.
- 3.3.19. The applicant also confirms that initial searches and assessment of potential sites began by reviewing large landholdings capable of entering into voluntary commercial agreements within timescales that would allow the connection date to be met while also minimising land take in flood risk zone 3 (please also see the Water Environment and Flood Risk section of this report) and Best and Most Versatile (BMV) agricultural land.
- 3.3.20. The applicant's assessment resulted in the identification of two Potential Alternative Areas ('PAS') with no PAS of a suitable size identified on previously developed land. The evaluation concluded that no PAS are of lower grade agricultural land than the development site and all are significantly constrained in comparison due to environmental, technical and land ownership factors.
- 3.3.21. Given the assessment findings, the applicant considered that there were no other more suitable locations to make use of the available capacity at Bicker Fen Substation than the proposed development site.

ALTERNATIVES AND DESIGN EVOLUTION

- 3.3.22. In ES Chapter 3 Alternatives and Design Evolution [[APP-054](#)] the applicant sets out its consideration of alternatives and the design evolution of the proposed development including the design principles and concepts that have been adopted and shaped the proposal.
- 3.3.23. As set out in paragraph 3.5.3 of ES Chapter 3 [[APP-054](#)], the key alternatives considered in relation to the evolution of the proposed development consisted of the removal of the option to use the Beacon Fen South site, the location and extent of the cable corridor and the bespoke access road.

Removal of Beacon Fen South

- 3.3.24. In relation to the removal of Beacon Fen South, the applicant moved away from including it as part of the final proposal due to it being located in an area identified by Anglian Water for the proposed Lincolnshire reservoir. The area in question, located southwest of Helpringham and Burton Pedwardine, would have overlapped with Anglian Water's reservoir project, potentially

creating a delay to the delivery of the proposal. Such a delay would jeopardise the proposed development's contribution to the urgent need for renewable energy as well as potentially increasing the number of challenges that would need to be resolved in relation to any interface issues.

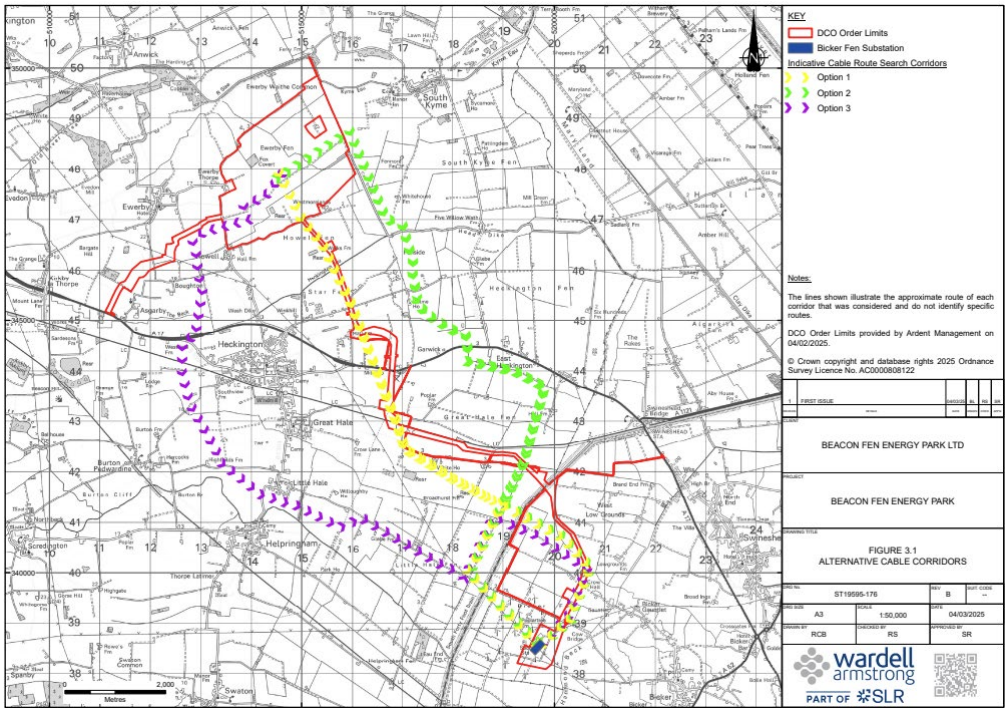
3.3.25. The applicant does confirm that Beacon Fen South and Beacon Fen North (with Beacon Fen North being the solar array area currently taken forward as part of the proposed development) was considered as having similar likely significant effects to those associated with Beacon Fen North. Consequently, by reducing the site, it was considered that the current proposed development would likely result in fewer environmental effects than the alternative option of developing both sites in combination while still meeting the original objectives of delivering solar energy generation of 400-600MW and supporting BESS.

Cable Corridor

3.3.26. The alternatives considered for the cable corridor are set out in table 3.2 of ES Chapter 3 [APP-054] and further discussed in Appendix 3.1 Cable Route Corridor Appraisal [APP-079]. Figure 3.1 Alternative Cable Corridors [APP-197] illustrates the alternatives considered by the applicant in relation to the location of the proposed cable corridor.

3.3.27. In summary, following the removal of Beacon Fen South from the proposed development, the applicant identified 3 possible cable corridors that could provide a connection between the solar array area and the Bicker Fen substation. Please see figure 4 below which illustrates the 3 main options considered.

Figure 4: Alternative Cable Corridors



3.3.28.

Extract from Figure 3.1 Alternative Cable Corridors

- Option 1 (yellow): Direct connection, east of Heckington
- Option 2 (green): Connection to the east of Heckington, aligning with Heckington Fen
- Option 3 (purple): Connection within the original search area, to the west and south of Heckington and north of Helpringham.

- 3.3.29. Table 1 RAG Assessment of Cable Corridor Route Options [[APP-079](#)] summarises the applicant's assessment of the likely environmental effects associated with each one of the options considered and set out above.
- 3.3.30. According to the applicant's assessment, option 1 was the only option that offered no or a limited number of issues that could be managed via design and/or mitigation across the whole set of environmental considerations assessed, with option 2 potentially causing significant issues in relation to cultural heritage. Option 3 would cause similar issues in relation to cultural heritage but also a number of potential issues that could require mitigation in relation to ecology, landscape and visual effects, traffic and access, noise and vibration and air quality.
- 3.3.31. The applicant goes on to summarise its options analysis in paragraphs 4.3.42 to 4.3.49 of Appendix 3.1 Cable Route Corridor Appraisal [[APP-079](#)] in which it confirms that option 1 was selected as the most suitable corridor to be taken forward as it benefits from being the shortest and most direct route, thereby reducing the number of receptors affected and the overall geographical extent of effects. According to the applicant, option 1 also avoids the known areas of high archaeological significance, which were identified as the key constraint in the area.
- 3.3.32. Following from this assessment, and once option 1 had been defined and established as the preferred option, the applicant carried out further refinement of option 1 for the Preliminary Environmental Information Report (PEIR) by adjusting the route to cross the South Forty Foot Drain further north, reducing the number of Local Wildlife Sites (LWS). The route was also aligned with the existing railway line in order to include areas that have likely already been disturbed, therefore reducing the risk of impacting significant archaeology.
- 3.3.33. Further to this work and following from statutory consultation, the applicant carried out further refinement of the cable corridor including the consideration of a geophysical survey, an aerial assessment on the proposed route, an arboricultural assessment and a review of existing residential receptors so as to either exclude these where possible or ensure that sufficient buffers were incorporated.
- 3.3.34. The applicant also reports, in paragraphs 5.1.8 to 5.1.11 of [[APP-079](#)], that an alternative cable corridor was proposed by a landowner which would initially follow the route of option 1, up to the intersection with the railway line, but then, rather than running east alongside the railway line, it would continue south through agricultural fields towards Little Hale Drove. It was proposed that this alternative route would then be installed within the highway and/or verges of Little Hale Drove heading east towards Bicker Fen substation.

- 3.3.35. The applicant confirms, in paragraph 5.1.9, that the alternative proposed had already been considered as part of the exploration of reasonable alternatives to components of the proposed development, but that it was not considered to be preferable to option 1. This was mainly due to the fact that the applicant could not commit to a corridor that would only span the width of the highway and verges as it would require a larger buffer to be retained alongside the highway in the event of currently known constraints and this would impinge on surrounding arable fields.
- 3.3.36. The applicant also confirms, in paragraph 5.1.10, that having reviewed the alternative route against appraisal work already undertaken, it found that the alternative route would potentially affect a higher number of LWS resulting in greater ecological effects, potentially have greater cultural heritage effects due to its proximity to Car Dyke, have greater visual and socio-economic effects due to affecting a higher number of Public Rights of Way (PRoW) and also having an impact on a greater number of land interests.

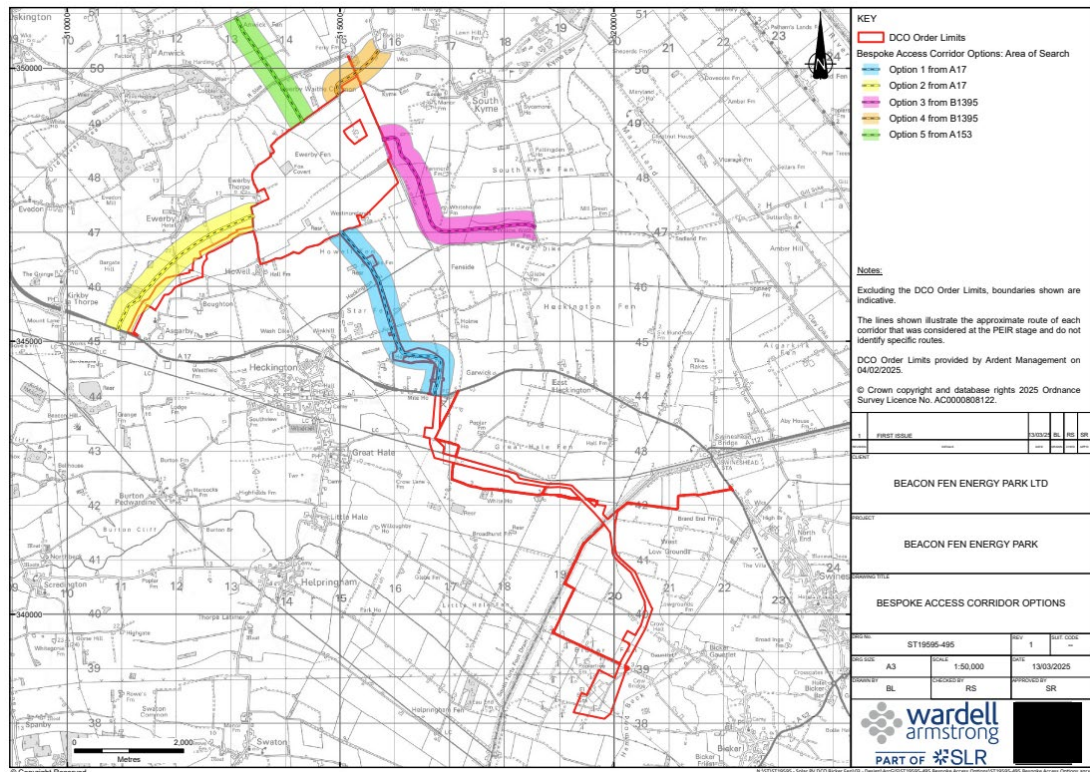
Bespoke Access Corridor

- 3.3.37. Chapter 3 [\[APP-054\]](#) provides a summary, in table 3.3, of the alternatives considered for the proposed bespoke access corridor while Appendix 3.2 Bespoke Access Road Options Appraisal [\[APP-080\]](#) provides further detail regarding the process undertaken by the applicant for its identification and justification.
- 3.3.38. As set out in paragraph 1.2.2 of Appendix 3.2 Bespoke Access Road Options Appraisal [\[APP-080\]](#), the primary purpose of the access road to the site is to facilitate the construction phase of the proposed development and the secondary purpose is to support the proposed development during operation and decommissioning phases. The need for a new bespoke access road and corridor was identified by the applicant following a review of existing options, as set out in section 3 of Appendix 3.2 Bespoke Access Road Options Appraisal [\[APP-080\]](#).
- 3.3.39. Having considered 8 potential routes to the solar array area using the existing highway network and having also considered the general constraints to construction access utilising existing highway, the applicant found that, out of the total 8 potential routes, 4 were excluded at desktop stage due to significant environmental effects such as effects on local residents and vulnerable road users, or due to weight restrictions or the physical infrastructure of the local road network. The remaining 4 routes were also assessed by the applicant but even when considered alongside mitigation, the constraints identified would likely lead to adverse effects on both the local community and the efficiency of construction. The applicant therefore concluded that a bespoke access road, linking the site directly to the A-road network should be explored.
- 3.3.40. To that end, 5 options were then considered:

- Option 1 (blue): South from the site to the A17, within the Cable corridor
- Option 2 (yellow): South-west from the site to the A17

- Option 3 (red): East from the site to the B1395 south of South Kyme
- Option 4 (orange): East from the site to the B1395 north of South Kyme
- Option 5 (green): North from the site to the A153

Figure 5: Bespoke Access Road



Extract from Appendix 3.2 Bespoke Access Road Options Appraisal [APP-080]

- 3.3.41. The wider environmental effects of the proposed options are set out in section 4 of the Appendix 3.2 [APP-080] and summarised in table 1 - Bespoke Access Road Options RAG Assessment.
- 3.3.42. The applicant's assessment demonstrates that, given the benefits and limitations identified for each one of the options considered, option 2 would be the applicant's preferred option both from a highway design perspective and in terms of minimising environmental impacts. The main benefit of a bespoke access road was the elimination of potential impacts on existing road users by separating the material construction traffic from general traffic using the public highways. It also reduced the risk of traffic management issues prolonging the construction programme and provided reliable means of access for all stages of the proposed development including any necessary equipment replacement such as high voltage transformers. Furthermore, option 2 requires less environmental intervention compared to the other options to integrate it into the surrounding environment.

Design, layout and alternative technologies

- 3.3.43. The applicant also considered a series of alternatives in relation to layout, other components of the design of the solar array area and technology.

- 3.3.44. In relation to the solar array area layout, as set out in paragraph 3.6.2 of ES Chapter 3 [\[APP-054\]](#), the layout of the solar array area evolved through the incorporation of buffers and offsets required for environmentally sensitive features such as hedgerows, waterbodies and drainage, woodland, existing habitats, residential properties and footpaths.
- 3.3.45. In relation to the technologies, the applicant has stated that it seeks to keep a degree of flexibility s to ensure that it can adjust the proposed development s to utilise the latest technologies available at the time of construction. This is to enable potential improvements in efficiency and functionality beyond what can be achieved by current technologies.
- 3.3.46. In relation to other components of the design of the solar array area these are set out in table 3.4 of Appendix 3.2 [\[APP-080\]](#) and include alternatives for the site layout, particularly the onsite substation and the proposed BESS, panel heights, the type of inverters used and the type of transformers.

ISSUES CONSIDERED DURING THE EXAMINATION

EXAMINING AUTHORITY QUERIES

- 3.3.47. The ExA asked a series of written questions to the applicant in relation to alternatives, particularly in relation to the cable corridor (ExQ1 NED.1.6), the bespoke access road and corridor (ExQ1 NED.1.11, ExQ1 NED.1.12) and the proposed technology to be used (ExQ1 NED.1.1) [\[PD-007\]](#). In addition to these, the ExA also asked the applicant several questions in relation to site selection and alternatives at ISH1 [\[EV2-001\]](#), some of which assisted the ExA in the drafting of ExQ1.
- 3.3.48. One of the key concerns for the ExA was to understand the applicant's approach in relation to the bespoke access corridor and how the proposed design of the road evolved, as this would represent a new man-made feature on the landscape. The ExA therefore wanted some further re-assurance from the applicant that all options had been thoroughly explored and that the applicant's preferred option, 2, did represent the best option for the proposed development, considering the likely environmental effects of the proposed structure as well as any proposed mitigation.
- 3.3.49. Considering that option 1 would broadly accompany the proposed cable corridor, the ExA wanted to better understand why this was not the applicant's preferred option as it could, potentially, minimise the extent of works and land take. In response to ExQ1 NED.1.11, applicant clarified in [\[REP2-040\]](#) that, although it considered this option as it could potentially deliver the access corridor with little additional land take, there were significant challenges identified, mainly the need for engineering and detailed foundation design to be developed for the crossing of the Heckington Eau, which has raised flood defences. The applicant went on to state that the substantial nature of the vehicular bridge needed in order to be able to support the type of vehicles and loads needed for the construction phase, coupled with the existing raised flood defences, would result in an increase in land take due to the need for significant larger earthworks footprints.

- 3.3.50. In relation to the proposed technology to be used, the ExA asked ExQ1 NED.1.1 [\[PD-007\]](#) which sought to confirm what alternatives were considered by the applicant. The applicant confirmed in its response to [\[REP2-040\]](#) that it did not wish to fix the application to a specific panel make, model or type in order to accommodate any technological improvements that may occur between the development of the application and its construction, if development consent is granted. However, the applicant also confirmed for its indicative design and to inform its assessment, that it selected a type of panel that is widely used and has emerged as the technology with the largest market share.

HLA CONCERNS

- 3.3.51. It is worth noting that none of the HLAs raised significant concerns regarding the applicant's approach to alternatives, site selection or design considerations.

OTHER IPS

- 3.3.52. An on-going challenge to the applicant's approach to alternatives has been presented by LCJ Mountain Farms Limited. LCJ Mountain Farms Limited submitted, at every examination deadline, written representations detailing its objection to the applicant's approach to alternatives and particularly raised concerns regarding the option selected for the construction of the proposed cable corridor.
- 3.3.53. In addition to these written representations, LCJ Mountain Farms Limited also submitted written responses to the Examining Authority's Questions (ExQs) and participated in hearings where Mr Mountain, on behalf of LCJ Mountain Farms Limited, was able to put his views across on this specific topic.
- 3.3.54. In order to try to reach agreement between the parties, the ExA requested the applicant engages with LCJ Mountain Farms Limited so as to better understand its concerns in relation to alternatives and requested the applicant to carry a comparative analysis between the applicant's cable corridor and LCJ Mountain Farm Limited's proposed alternative route in order to clarify the assessment carried out and to better understand the environmental effects of both options. Engagement continued throughout the examination, however agreement between both parties in relation to the cable alignment was not reached.
- 3.3.55. In light of the above, the ExA requested in ExQ3 NED.3.1 [\[PD-016\]](#), LCJ Mountain Farms Limited to submit a summary of outstanding issues and concerns in relation to the applicant's approach to alternatives and the preferred cable corridor route. In response to ExQ3 NED.3.1, stated that it concerns in relation to the alternatives presented are linked with:

- the work carried out by the applicant is not auditable/not like-for-like and therefore the applicant's comparative analysis is not decision-safe
- the appellant does not quantify construction logistics as the main pathway of effects, and

- it does not evidence a structured alternatives search (host site/configuration and export corridor) with consistent decision criteria over time, including agricultural sensitivity and cumulative effects.

3.3.56. Melbourne Holdings Limited, also raised concerns in relation to the applicant's approach to alternatives. In [\[REP7-064\]](#), it states that the proposed cable alignment is not dictated by topographical or physical constraints and that it appears to have been selected for convenience and efficiency rather than it being the only viable option. Melbourne Holdings Limited also states that it recognises that avoiding the land which it objects to would result in a longer cable route. However, it is of the view that that a clear and transparent assessment of alternative alignments has not been presented or an explanation as to why routes that avoid productive agricultural land were discounted.

CONCLUSIONS

3.3.57. The ExA acknowledges that IPs raised general concerns regarding the applicant's approach to alternatives, particularly in relation to the cable corridor.

3.3.58. Paragraph 4.3.9, of the NPS EN-1 does not contain any general requirement to consider alternatives or to establish whether the proposed project represents the best option, but applicants are required to include in their ES information about the main alternatives they have studied and include an indication of the main reasons for the choice made, taking into account the environmental, social and economic effects including technical and commercial feasibility. Furthermore, paragraph 4.3.24 of NPS EN-1 states that the SoS should not refuse an application for development on one site simply because fewer adverse impacts would result from developing similar infrastructure on another suitable site.

3.3.59. In relation to the concerns raised by IPs during the examination, particularly those focused on the applicant's consideration of alternatives for the location of the cable corridor, the ExA finds that the applicant has included a description of the main alternatives considered and the reasons for selecting the preferred options for the proposed development as required by NPS EN-1. These matters are set out in ES Chapter 3 Alternatives and Design Evolution [\[APP-054\]](#), the DAAD [\[APP-278\]](#) and Appendix 3.1 Cable Route Corridor Appraisal [\[APP-079\]](#). They include the process and reasoning applied in relation to site selection, site layout, the proposed bespoke access corridor and road, the cable corridor, the proposed solar technology, the proposed BESS and other supporting technology.

3.3.60. Through the examination process, the ExA tested other alternatives considered by the applicant as well as the main reasons that lead to the present proposal, particularly in relation to the proposed solar technology and how the applicant envisages the future proofing of the proposed development. The applicant clarified that different types of solar technology were considered and that the current proposal includes some degree of flexibility to incorporate or consider any future development that might occur.

- 3.3.61. Consideration should also be given to paragraph 2.3.9 of NPS EN-3 which states that, due to the critical level of need established in the NPF EN-1, the SoS should not use a consecutive approach in the consideration of renewable energy projects. The ExA has come to a position on this matter in section 3.2 of this report, Furthermore, and in line with paragraph 2.10.18 to 2.10.48 of NPS EN-3 and paragraphs 2.2.1 and 2.2.2 of NPS EN-5 it is important to recognise that applicants are limited in relation to the location of new renewable energy generation facilities due to external factors such as suitable network connection, system capability and resilience requirements. The applicant has demonstrated that it has considered, and was limited by, these factors in relation to site selection and alternatives.
- 3.3.62. It is the ExA's view that the applicant has provided adequate information on a range of alternative configurations and locations for the proposed development, including the cable corridor route, and associated works and infrastructure which meets the requirements set out in NPS EN-1, NPS EN-3, NPS EN-5, and the EIA Regulations 2017. Consequently, the ExA concludes that these requirements are satisfied. However, these conclusions will be balanced against other considerations in the report's general conclusions. The planning balance is considered in chapter 5 of this report.
- 3.3.63. Matters to be taken to chapter 5 and the planning balance
- The applicant has provided adequate information on a range of alternative configurations and locations for the proposed development and associated works and infrastructure which meet the requirements set out in NPS EN-1, NPS EN-3, NPS EN-5, and the EIA Regulations 2017.
 - The ExA was able to test the alternatives considered by the applicant as well as the main reasons that lead to the present proposal, particularly in relation to the location of the cable corridor and the bespoke access corridor and road and how the applicant envisages the future proofing of the proposed development. The application includes some degree of flexibility to incorporate or consider any future development that might occur
 - Consequently, the ExA concludes that these requirements are satisfied.

3.4. SOCIOECONOMICS

INTRODUCTION

- 3.4.1. This section of the report considers the effects of the proposed development on employment, local procurement, tourism, business premisses, community assets and recreational use of PRoW. Cumulative effects are considered in section 3.11. Also, effects on transport, increased exposure to noise, air pollution and traffic are considered under Other Matters in section 3.10 of this report.

POLICY BACKGROUND

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

- 3.4.2. Section 5.13 of NPS EN-1 covers socio-economic impacts and paragraph 5.13.4 states that applicants should consider all relevant socio-economic impacts which may include the creation of jobs and training opportunities, the contribution to the development of low-carbon industries, the provision of additional local services and improvement to local infrastructure and facilities, any indirect beneficial impacts for the region, effects on tourism and other users, the impact of a changing influx of workers, and cumulative effects.
- 3.4.3. Paragraph 5.13.6 states that applicants are encouraged, where possible, to demonstrate that local suppliers have been considered in any supply chain.
- 3.4.4. Paragraph 5.13.8 relates to mitigation and it states that the SoS should consider whether mitigation measures are necessary to mitigate any adverse socio-economic impacts of the development.
- 3.4.5. Paragraph 5.13.9 states that the SoS should have regard to the potential socio-economic impacts of new energy infrastructure identified by the applicant and from any other sources that the SoS considers to be both relevant and important to its decision.
- 3.4.6. Paragraph 5.13.10 states that the SoS may conclude that limited weight is to be given to assertions of socio-economic impacts that are not supported by evidence (particularly in view of the need for energy infrastructure as set out in the NPS), with paragraph 5.13.11 stating that any relevant positive provisions the applicant has made or is proposing to make to mitigate impacts should be considered.
- 3.4.7. Paragraph 5.13.12 advises that the SoS may wish to include a requirement to secure the approval of an employment and skills plan, including arrangements to promote local employment and skills development opportunities.
- 3.4.8. The 2025 version of the Overarching National Policy Statement for Energy 2025 (NPS EN-1 2025) is broadly in agreement with the NPS EN-1 and it does not substantially change its objectives or policy in relation to the issues mentioned above.

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

- 3.4.9. Paragraphs 2.10.40 to 2.10.45 of NPS EN-3 relate to PRoW, with the NPS recognising that solar development proposals may affect the provision of PRoW including temporary closures or diversions. Where PRoW cross a proposed development site, they should be kept open during the construction phase as far as is practicable and safe (paragraph 2.10.41). Proposed development should be designed to ensure continued recreational use of PRoW during the lifetime of a development proposal, minimising the visual

impacts of the development for those using the PRow (paragraph 2.10.34 and 2.10.43).

- 3.4.10. Paragraph 2.10.44 of NPS EN-3 states that applicants should consider and maximise opportunities to facilitate enhancements to the PRow network and the inclusion, through site layout and design of access, of new opportunities for the public to access and cross proposed solar development sites. An outline PRow management plan to demonstrate how PRow would be managed to ensure they are safe to use should also be provided (paragraph 2.10.45).
- 3.4.11. The 2025 version of the National Policy Statement for Renewable Energy Infrastructure 2025 (NPS EN-3 2025) is broadly in agreement with the NPS EN-3 and it does not substantially change its objectives or policy in relation to the issues mentioned above.

NPPF

- 3.4.12. The NPPF includes policies which seek to promote social cohesion, the delivery of healthy and safe communities (section 8 promoting healthy and safe communities) and the achievement of well-designed places which create a welcoming and distinctive place to live, work and visit. This includes access to accessible green infrastructure, sports facilities, local shops, access to healthier food, allotments and layouts that encourage walking and cycling.
- 3.4.13. The NPPF, in section 6, also recognises the role that planning can perform in building a strong and competitive economy, which includes ensuring that sufficient land of the right types is available in the right places and at the right time to support growth, innovation and improved productivity.

LOCAL POLICY

- 3.4.14. The CLLP includes Policy S48, Walking and Cycling Infrastructure which seeks to promote the delivery of that type of infrastructure within the local area.

THE APPLICATION

- 3.4.15. The applicant's assessment of the socio-economic effects of the proposed development is set out in ES Chapter 15 (Socio-economics) [\[APP-066\]](#), supported by, amongst others:
- Appendix 15.2 Assessment Methodology [\[APP-181\]](#)
 - Figure 15.1 Direct Area of Influence [\[APP-271\]](#)
 - Figure 15.2 Indirect Area of Influence [\[APP-272\]](#)
 - Figure 15.3 Public Rights of Way [\[APP-273\]](#)
- 3.4.16. The methodology adopted by the applicant for the socio-economic assessment of the likely effects of the proposed development is set out in section 15.4 of ES Chapter 15 [\[APP-066\]](#), although it considers that there is no established UK methodology for ES assessment of socio-economics. However, the applicant confirms that the method for the baseline data

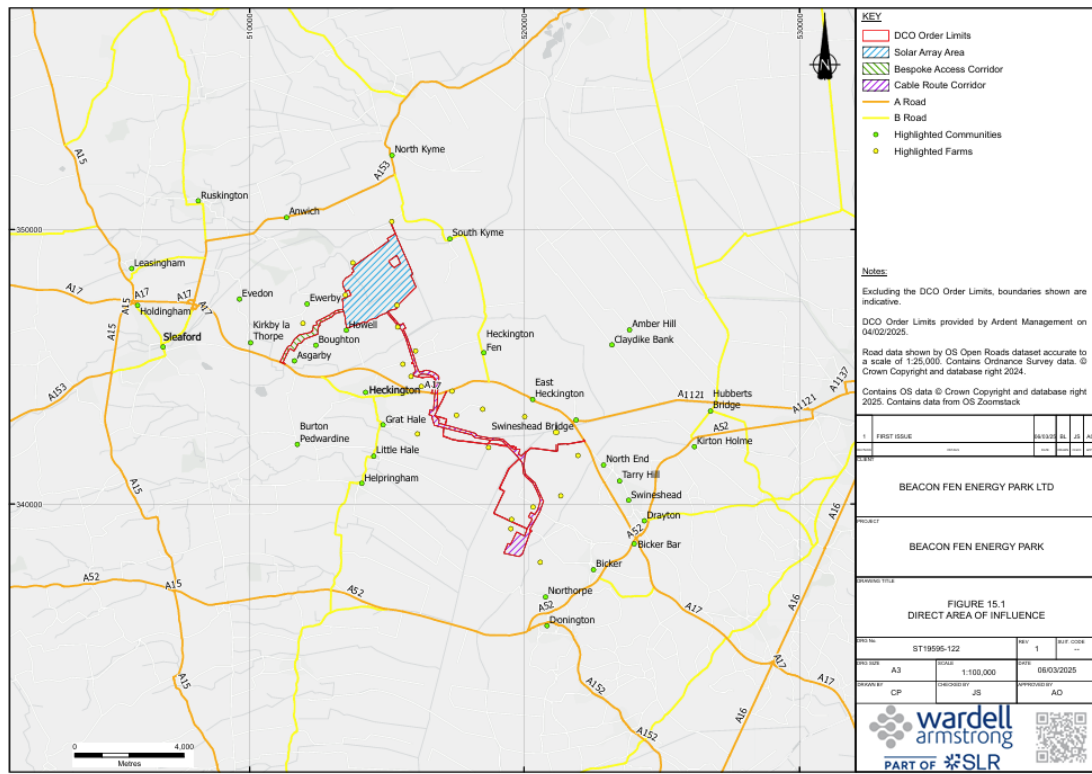
collection and assessment has been carried out in accordance with global industry best practice and guidance.

- 3.4.17. The applicant starts by defining the development's Area of Influence (AoI) which is divided between Direct AoI [\[APP-271\]](#) and Indirect AoI [\[APP-272\]](#).
- 3.4.18. The Direct AoI [\[APP-271\]](#), as set in paragraph 15.4.2 of ES Chapter 15 [\[APP-066\]](#) is limited mostly to the North Kesteven District, although the southern part of the cable corridor reaches the Boston Borough, and comprises the communities located within the proposed development area, including a 500m buffer zone, as well as communities that may be affected by land use changes, access to recreation, impact on tourism and any other economic displacement.
- 3.4.19. The Indirect AoI [\[APP-272\]](#) comprises communities potentially impacted by labour requirements for the proposed development, economic benefits and supply chain impacts, as well as traffic on roads connecting to the proposed development. Employment impacts were limited to a 60-minute travel area and the bigger settlements that are well-connected to the Proposed Development area mark an approximate border of the Indirect AoI.
- 3.4.20. In relation to effects on PRoW [\[APP-273\]](#) users, as set in paragraph 15.4.4 of ES Chapter 15 [\[APP-066\]](#), the applicant's assessment considered footpaths affected by temporary closure within the boundary and adjacent to the Order limits. The study area includes all PRoWs located within the boundary of, and adjacent to, the DCO Order Limits, including those which are likely to be impacted by construction.
- 3.4.21. The applicant has determined the level of effect by considering social receptor sensitivity and magnitude of impact, with any effect that is assessed as moderate or above considered to be significant.

BASELINE

- 3.4.22. Section 15.5 of the ES [\[APP-066\]](#) describes the applicant's approach to the establishment of the baseline conditions, in both the Direct AoI and the Indirect AoI, with socio-economic data primarily focusing on North Kesteven District, as that is where the majority of the proposed development is proposed to be located. The applicant also identified local receptors in Figure 15.1 Direct AoI [\[APP-271\]](#), the sensitivity of receptors and future baseline conditions, which are likely to remain similar to the existing socio-economic baseline.

Figure 6: Direct Aol



Source: Figure 15.1 Direct Aol [APP-271]

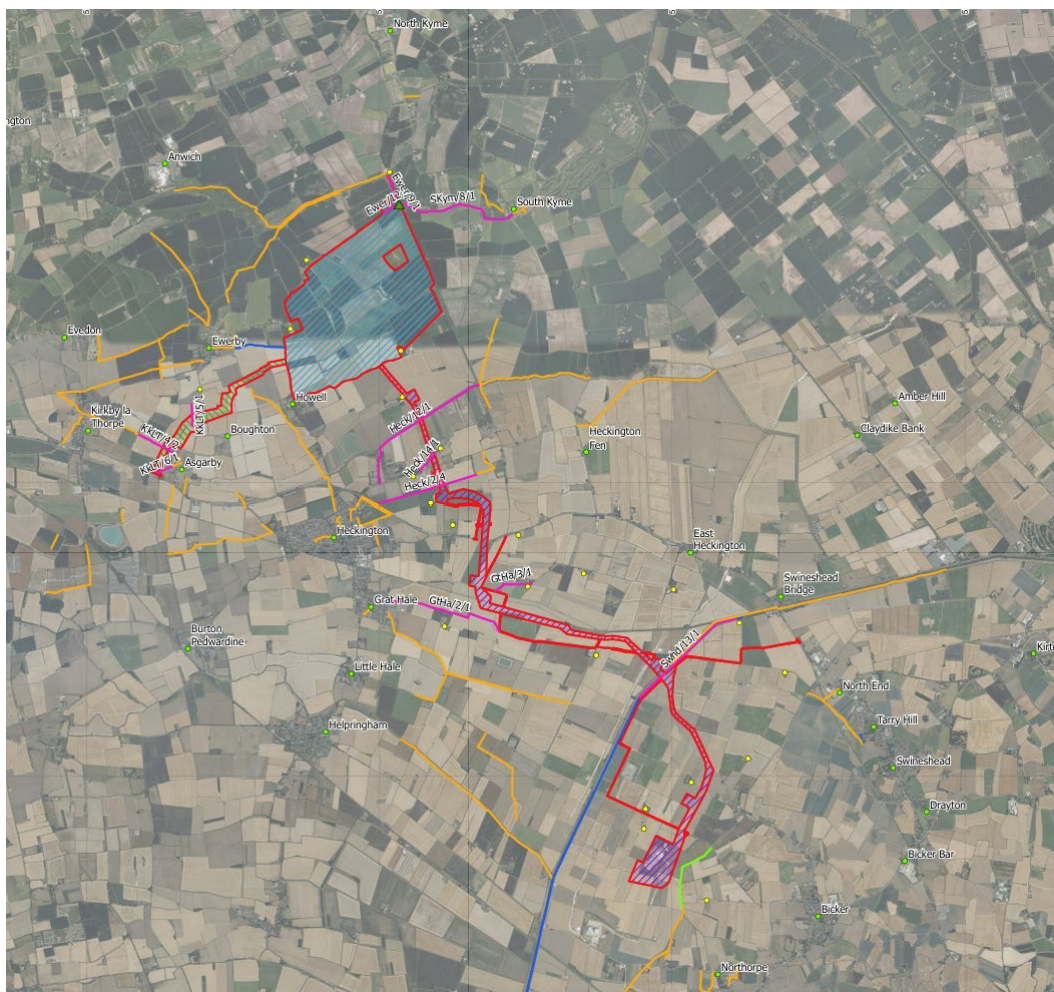
- 3.4.23. The applicant found that working age population in North Kesteven accounts for 60.7% of the total population, which is a lower ratio than for the national population. North Kesteven has a considerably higher ratio of residents aged 65 and over (23.4%) than the national population percentage (18.4%) which can suggest a more vulnerable population in terms of age and health in North Kesteven.
- 3.4.24. Unemployment in both the Direct Aol and Indirect Aol is lower than the national average (3.7%) with North Kesteven having deprivation indicators that are equal or below the national average and significantly lower than the county.
- 3.4.25. In relation to Gross Value Added (GVA) in 2021, North Kesteven's GVA per head (£21,498) was above the regional GVA average and Boston Borough's local GVA (£18,667), but lower than average GVA per head in England (£31,138). The biggest contributors to local GVA in North Kesteven are manufacturing; public administration, defence; and real estate. In Boston they are manufacturing; wholesale and retail trade; repair of motor vehicles, human health and social work activities.
- 3.4.26. In addition to the points above, in paragraph 15.5.14, the applicant also confirms that, during the meeting with the NKDC, it was confirmed that the food processing industry is an important employer and contributor to GVA, locally. In 2021, the total GVA from manufacture of food, beverages, textiles and clothing was £241 million, which makes up around 9% of all industries' GVA.

3.4.27. Retail is also significant and concentrated in Sleaford.

3.4.28. The Ewerby and Evedon Parish Chairman provided details of livelihoods close to the solar array area, highlighting around 4 farmers in the parish with some additional seasonal employment being created during harvest, vibrant pubs in Ewerby and surrounding areas including some with function rooms and guest rooms, food processing in Anwick and some people from Ewerby working for NKDC.

3.4.29. In relation to tourism and recreation, although there are no accessible PRowS within the solar array area, there are PRowS crossing the cable corridor and the bespoke access corridor. The locations of these PRowS are illustrated in Figure 15.3 [APP-273].

Figure 7: PRow within and around the Order limits



Extract from Figure 15.3 PRow within and around the DCO Order Limits [APP-273]

3.4.30. The applicant recognises, in relation to establishing the use of existing PRow, that use may differ seasonally but that there are at least 2 local recreation initiatives promoting walks, one which uses PRowS that lie within the cable corridor. In addition, the applicant recognises that walking is quite popular to the north of the solar array area in Haverholme due to a well

developed network of footpaths. Cycling is also popular, according to the Ewerby and Evedon Parish Chairman as well as well as fishing.

- 3.4.31. Tourism and visitor attractions drew 2.9 million visitors to come into or move within North Kesteven for days out or holidays in 2023, generating a total value of £201 million for the local economy and directly supporting the full-time equivalent of more than 2,000 jobs across the year. NKDC confirmed it is interested in exploring visitor economy opportunities which could involve the promotion of renewable energy.

ASSESSMENT OF EFFECTS

Construction Phase

- 3.4.32. The bespoke access road and cable route can commence at the same time and construction is anticipated to last between 6 to 12 months for bespoke access road and 12 to 24 months for the cable connection. Construction of the solar array area would follow and last between 24 to 36 months, which makes the duration of the effects in relation to the construction phase short-term.
- 3.4.33. Construction would require approximately 556 full time equivalent (FTE) jobs for a 24-36 month period with an estimated total net employment gain from the proposed development of approximately 417 jobs. Approximately 373 jobs likely to be kept within the Aol. The local workforce of North Kesteven and Boston is assessed have a low and medium sensitivity respectively, resulting in a minor beneficial, not significant, impact for the North Kesteven workforce and a significant moderate beneficial impact for the Boston Borough workforce.
- 3.4.34. In relation to GVA, the Aol would see an average total rise of £838 per construction worker, which is a 0.98% rise in the total GVA per worker. Boston would see the biggest rise of GVA per worker (6.97%) in the Aol in the most beneficial scenario (70% of workers outside Aol coming from Boston), compared to only 1.27% in North Kesteven. The applicant finds that this would result in a minor beneficial impact for North Kesteven businesses and residents (not significant) and moderate beneficial for Boston Borough businesses and residents (significant).
- 3.4.35. In relation to access to PRoW and cycle routes, the applicant recognises that, dependent on the final design of the cable route and access road, approximately 13 PRoW may be affected.
- 3.4.36. As set out in ES paragraph 15.6.71, there are 3 PRoWs that would be impacted by land take for the bespoke access corridor. These are LL|KkLT|5/1, LL|KkLT|4/2 and LL|KkLT|6/1 (adjacent). They would be affected by temporary closures during construction. Temporary closures are expected on PRoWs crossing the cable route. However, the applicant's PRoW survey recorded relatively low usage (slightly higher for LL|Heck|2/4) of the footpaths and a network of alternative routes. The impact would be short-term, reversible, and local.

- 3.4.37. Other additional PRowWs would be closed, but only temporarily.
- 3.4.38. Access to the fishing reservoir within the solar array area would not be maintained and affect about a dozen users. There is, however, an alternative popular fishing site in the village of Threekingham, around 10km south of Sleaford. Therefore the applicant finds a minor adverse impact which is not significant.
- 3.4.39. In relation to cycling and horse riding, most activity is on low traffic local roads. The construction phase access strategy requires the majority of development traffic to utilise the A17 and the bespoke access road, therefore avoiding local roads. The only local roads that would be used to access construction sites are Carterplot Road/Great Hale Drove for access to Cable Route Compounds 3 and 4, and Bicker Drove/Vicarage Drove for access to Bicker Fen substation. The applicant considers that construction traffic impact on these local roads would be not significant, and construction traffic flows would therefore have no significant effect on non-motorised road users' amenity or safety.
- 3.4.40. In addition to the above, and considering the embedded mitigation measures proposed in the outline Construction Traffic Management Plan (oCTMP), the latest version of which is [\[REP6-027\]](#), the impact of the construction phase is unlikely to have a measurable effect on the wellbeing of people, resulting in a minor adverse impact. The effect is not significant.
- 3.4.41. Increased exposure to noise and traffic could also potentially impact on the lives of nearby individuals or groups. However, the socio-economic impact from noise and traffic is unlikely to have a measurable effect on these social receptors therefore resulting in a minor adverse effect which is not significant in ES terms.
- 3.4.42. The applicant also assessed the potential socio-economic effects of the proposed development due to restricted access to land and economic displacement of farming activities.
- 3.4.43. Within the solar array area, the economic displacement of farming activities it was reported to the applicant by the three landowners that they mostly work by themselves. However the proposed development would lead to the displacement of 1.3 FTE jobs due to land acquisition. The applicant has assessed that the impact would be long-term, resulting in medium magnitude of change for full-time and temporary agricultural workers. There would be no economic displacement impact for the landowners due to the change in livelihood and income giving a negligible magnitude of change. The effect is assessed to be negligible for landowners and minor for full time and seasonal agricultural workers.
- 3.4.44. In ES paragraph 15.6.36, the applicant confirms that, in relation to the cable corridor, the impact coming from economic displacement of farmers would be short-term, reversible and local, resulting in a low to medium magnitude of change. The impact would be negligible for landowners (who are also farmers) thanks to commercial arrangements entered into with the landowner

to secure the necessary land interests, and which address any economic displacement effects. There would be a minor adverse for temporary agricultural workers which is not significant.

- 3.4.45. In relation to local shops and hospitality services, the applicant finds that the magnitude of change would be low (very short-term, spatially localised and reversible), resulting in a minor adverse, not significant, impact for local residents, with the exception of moderate adverse significant impact on vulnerable groups (especially the elderly) in the area.
- 3.4.46. In relation to population immigration, although the data shows there would be an increased demand for accommodation due to an increase in workers linked to the construction of the proposed development, the existing supply of bedspaces in both the Direct and Indirect Aol, would be sufficient to accommodate construction employees. Therefore, the overall magnitude of change is assessed to be low (unlikely to result in any measurable change to baseline conditions), which results in minor adverse, not significant, impact on North Kesteven residents.
- 3.4.47. Finally, in relation to tourist and recreational attractions, the proposed development is unlikely to have a measurable change on tourist and recreation baseline conditions at construction phase as it would be very short term, localised and affecting a limited number of social receptors, with the impact on tourist attractions being minor adverse and therefore not significant in ES terms.

Operational Phase

- 3.4.48. The applicant assumes that 12 to 14 FTE jobs would be created per year during the 40-year operational phase, with approximately 4-5 FTE net jobs in the Direct Aol and 8-9 in the Indirect Aol. The local workforce has a low sensitivity for North Kesteven and medium for Boston Borough, which results in a negligible to minor impact, with the effect being not significant.
- 3.4.49. The applicant finds that the operational phase of the proposed development would have a negligible impact on traffic, accommodation and recreation with no material impact on the three biggest attractions in the vicinity of the proposed development during the operational phase. Although there would be a long-term effect, this would affect a low number of receptors leading to a negligible adverse, not significant, effect.
- 3.4.50. In relation to restricted access to land and economic displacement of farming activities during the operational phase, the key aspects would be the bespoke access road, which would remain in situ during the 40-year operational period, as well as the solar array area. The land take from the temporary bespoke access road would lead to long-term economic displacement of farming activities. However, the applicant considers that landowners would have been compensated for economic displacement as embedded mitigation and a very limited number of seasonal workers would be affected. The project design has reduced buffers to a minimum, thereby limiting the impact from economic displacement. The impact has therefore

been assessed as negligible. Land take for the solar array area would cause loss of temporary jobs (economic displacement of 1-3 FTE jobs) and around 4 FTE jobs of which three are landowners. This magnitude of change has been assessed as minor adverse for temporary agricultural workers and negligible for landowners. In relation to the cable corridor.

- 3.4.51. In terms of access to recreation and as part of the embedded design enhancements, PRow Ewer/12/1 would be extended in a south and westerly direction as a permissive path terminating in the vicinity of Ewerby Thorpe. The solar array area would not restrict access to identified recreational facilities apart from the reservoir. In relation to the cable route, there would be no access impacts on the PRow as the cabling would remain underground. The access route corridor would pass through 2 PRow (LL|KkLT|4/2 and LL|KkLT|5/1). Embedded mitigation includes the creation of managed crossings for these footpaths, as set out in the the Bespoke Access Road Construction Method Statement [\[APP-075\]](#) which is secured through the outline Construction Environmental Management Plan (oCEMP) [\[APP-077, REP8-015\]](#). Consequently, the impact on those PRow is not expected to be significant. Overall, taking into account the enhancement of the PRow network, the applicant finds that the impact on recreation would be negligible and the effect not significant in ES terms.

Decommissioning Phase

- 3.4.52. Generally speaking, the socio-economic effects of the proposed development at decommissioning phase would be similar to the construction phase, with net employment of approximately 262 jobs (after accounting for operations jobs lost post-closure) resulting in a minor beneficial impact for the North Kesteven workforce and moderate beneficial for the Boston Borough workforce, assuming receptor sensitivity would remain unchanged. The effect would be not significant for the North Kesteven workforce but significant for the Boston Borough workforce.

MITIGATION

- 3.4.53. Additional mitigation and enhancement measures relevant to socio-economic impacts are included in the outline Skills, Supply Chain and Employment Plan (oSSCEP) [\[APP-179\]](#), the latest version of which is [\[REP7-030\]](#) This plan aims to enhance beneficial impacts from employment creation by reducing influx of workers and mitigating impacts related to loss of employment.

ISSUES CONSIDERED DURING THE EXAMINATION

EXAMINING AUTHORITY QUERIES

- 3.4.54. The ExA asked written questions to the applicant at ExQ1 [\[PD-007\]](#) and ExQ2 [\[PD-013\]](#) in relation to the socio-economic effects of the proposed development, namely in relation to PRow, access to recreation and other community facilities.

- 3.4.55. ExQ1 SEC.1.1 was concerned with the effects of the proposed development, at operational phase, on existing PRow. In its response [\[REP2-040\]](#), the applicant confirmed that it is not proposed stop up any existing PRow during the operational stage of the proposed development and that an outline Public Right of Way Management Plan (oPRowMP) [\[REP2-039\]](#) was going to be submitted and includes mitigation and management measures for existing PRows during the construction and operational phases. The latest version of the oPRowMP is [\[REP5-044\]](#). Draft dDCO [\[AS-039\]](#) requirement 18 would ensure that the development is implemented in accordance with a detailed version of this plan.
- 3.4.56. ExQ1 SEC.1.4 related to the effects of the proposed development on PRow LL|Ewer|12/1 which the applicant proposes to extend and make accessible, to the benefit of future PRow users. The applicant clarified that the route would be determined via discharge of requirement 15 of the dDCO [\[AS-039\]](#).
- 3.4.57. In ExQ1 SEC.1.5 the ExA asked the applicant for further information regarding the effects of the proposed development on, and the severance of, access to existing recreational routes, facilities and visitor destinations. The applicant responded, in [\[REP2-040\]](#) that impacts have been reviewed and found to be not significant in relation to direct impacts on visitor attractions, impact on non-motorised users and impacts on PRow, including during construction when there is the possibility of temporary closures.

HLA CONCERNS

- 3.4.58. LCC and NKDC raised concerns in their LIR [\[REP1-044\]](#) and [\[REP1-054\]](#) respectively, regarding the socio-economic effects of the proposed development, particularly on PRow and the cumulative effects of the proposal on the local economy (for cumulative effects, please see section 3.11 of this report).
- 3.4.59. In relation to PRow, the main concern for LCC was the closure of kkLT/4/2 and Heck/2/4. LCC was of the view that the temporary closure of multiple footpaths during the construction phase would be likely to result in a detrimental impact on the accessibility and functionality of the wider PRow network and therefore considered that there would be an overall negative effect on the PRow network. LCC also raised concerns in its LIR [\[REP1-044\]](#) about the wording of Article 15 in the draft DCO [\[APP-039\]](#) which appears to give blanket powers for the undertaker to temporarily close, divert or alter any PRow (please see chapter 7 of this report).
- 3.4.60. NKDC [\[REP1-054\]](#), in addition to concerns regarding cumulative effects (see section 3.11 of this report), raised concerns in relation to the effect of the proposed development on footpath Heck/12/1, particularly as this is used for the Heckington Fen Stepping Out walking group. However, notwithstanding the potential adverse cumulative impacts on the tourism economy and visitor accommodation, given the commitment to improving skills, employment and the local supply chain and the provision of a new permissive path, the Council considers the impacts on socio-economics to be neutral.

- 3.4.61. The final version of the Statement of Common Ground (SoCG) between the applicant and NKDC [\[REP8-043\]](#) confirms that the only outstanding matter in relation to the socio-economics is linked to the oSSCEP. The applicant replied in the same document that the oSSCEP [\[REP7-030\]](#) has been restructured to distinguish between those measures delivered by and on behalf of the undertaker, from those that would require third party funding. The applicant considers that the majority of the benefits of the oSSCEP would arise from the measures that are delivered by and on behalf of the undertaker, and therefore believes that the absence of secured funding for third party delivery of certain benefits (such as training) does not significantly impact the deliverability or the benefits of the oSSCEP.
- 3.4.62. Boston Borough Council in its LIR [\[REP1-059\]](#) finds that the socio-economic impacts of the extension to the Bicker Fen Substation and the construction of the cable corridor would have a neutral effect overall.
- 3.4.63. The final SoCG with LCC [\[REP7-035\]](#) does not include any matters unresolved in relation to socio-economic effects, nor does the final SOCG with Boston Borough Council.
- 3.4.64. However, the final SoCG with South Kyme Parish Council [\[REP7-043\]](#) includes several matters that have not been agreed in relation to the socio-economic effects of the proposed development, namely, the loss of farmland and employment opportunities. The applicant, in its response in the same document, states that the potential reduction of food production as a result of the proposed development would be negligible when viewed in the context of food production in the UK and that, as a result of the proposed development, 556 full time jobs for the 24-36 months of construction would be created and 15 full time net direct and indirect jobs would be created during the operational phase. These would be a higher number of jobs than those that are anticipated to be displaced by the proposed development.

CONCLUSIONS

- 3.4.65. The ExA agrees with the applicant that, after applying enhancement measures, during construction, the effect from employment generation and GVA would be significant beneficial for Boston Borough. However, I am also mindful that this significant benefit would be temporary (24 to 36 months) as it would occur during the construction phase only.
- 3.4.66. The applicant is also providing a new permissive path across the solar array area, during the operational period, which provides additional walking and recreational opportunities which counts in favour of the proposal, albeit as a small benefit in the ExA's view.
- 3.4.67. In addition, I consider that the provisions in the oSSCEP [\[REP7-030\]](#) are likely to deliver benefits (such as training) which add to the overall socio-economic benefits of the proposed development. This accords with NPS EN-1 paragraph 5.13.11.

- 3.4.68. In conclusion, I consider that socio-economic matters should be afforded a little positive weight in the overall planning balance.
- 3.4.69. Matters to be taken to chapter 5 and the planning balance:
- The ExA is satisfied that the applicant has undertaken a thorough assessment of the socio-economic effects of the proposed development, as detailed in ES Chapter 15 [\[APP-066\]](#) and its accompanying appendices, as per section 5.13 of NPS EN-1 and the NPS EN-3, namely paragraphs 2.10.40 to 2.10.45.
 - Whilst the proposed development would lead to some adverse effects, these are not considered significant effects because of either their magnitude of change (being temporary) or the sensitivity of the receptors, once proposed mitigation is considered. The only significant effect is beneficial, in relation to employment generation and GVA for Boston Borough. However, I am also mindful that this significant benefit would temporary only (24 to 36 months) during the construction phase.
 - The applicant is also providing a new permissive path across the solar array area, during the operational period, which provides additional walking and recreational opportunities. This is a benefit of the proposal, albeit small in the ExA's view.
 - Therefore, and in conclusion, I consider that socio-economic matters should be afforded a little positive weight in the overall planning balance.

3.5. LANDSCAPE AND VISUAL

INTRODUCTION

- 3.5.1. This section of the report considers the landscape and visual effects of the development including the suitability of the study area and selected viewpoints, the effects of the proposed development on sensitive receptors including residential receptors and PRow, and proposed mitigation measures. Matters relating to glint and glare are considered in section 3.10 Other Matters of this report.
- 3.5.2. The proposed development is not located in any national designation for landscape protection.

POLICY BACKGROUND

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

- 3.5.3. In paragraph 5.10.1, NPS EN-1 starts by recognising that the landscape and visual effects of energy projects will vary on a case-by-case basis according to the type of development, its location and its landscape setting.

Furthermore, it recognises that all proposed energy infrastructure projects are likely to have landscape and visual impacts and that these will sometimes be hard to mitigate. In addition, it notes that there may also be beneficial impacts on landscape character arising from mitigation (paragraphs 5.10.5 and 5.10.13).

- 3.5.4. Paragraph 5.10.6 makes clear that projects need to be designed carefully, having regard to siting, operational and other relevant constraints, aiming to minimise harm to the landscape and providing reasonable mitigation where possible and appropriate. Landscape and visual matters should be considered in the early stages of design, allowing the applicant to demonstrate in the ES how negative effects have been minimised and opportunities for creating positive benefits or enhancements recognised and incorporated into the design, delivery and operation of the proposed development (paragraph 5.10.19).
- 3.5.5. NPS EN-1 also notes that it will be necessary for the SoS to judge whether the visual effects on sensitive receptors outweigh the benefits of the project. With this in mind, it advises that applicants should include a landscape and visual assessment in their ES which takes account of any relevant policies in local development plans (paragraph 5.10.14).
- 3.5.6. Paragraph 5.10.35 also recognises that the scale of projects of national significance means that they will often be visible across a very wide area and the SoS will need to judge whether any adverse impact on the landscape would be so damaging as to not be offset by the benefits (including need) of the project. In reaching a judgement on this matter, the SoS should consider whether any adverse impact is temporary and/or capable of being reversed in a reasonable timescale.
- 3.5.7. Paragraph 5.10.37 of the NPS also states that the SoS should consider whether a project has been designed carefully and, in doing so, take account of environmental effects on the landscape and siting, operational and other relevant constraints, and whether the applicant has sought to minimise harm to the landscape, including by appropriate mitigation.
- 3.5.8. The 2025 version of the Overarching National Policy Statement for Energy 2025 (NPS EN-1 2025) is broadly in agreement with the NPS EN-1 and it does not substantially change its objectives or policy in relation to the issues mentioned above.

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

- 3.5.9. In line with NPS EN-1, NPS EN-3 advises that proposals for renewable energy infrastructure should demonstrate good design, particularly in respect of landscape and visual amenity. Furthermore, it makes clear that applicants will be expected to direct considerable effort towards minimising the landscape and visual impact of solar PV (paragraph 2.5.2).

- 3.5.10. NPS EN-3 also makes it clear that the effort to minimise landscape and visual impact of solar PV should also include the effects of proposed security measures, such as fencing.
- 3.5.11. In addition, paragraph 2.10.40 recognises that due to their size, solar sites may affect the provision of local footpath networks and PRow. However, while it recognises that PRow may need to be temporarily closed or diverted to enable construction, it makes clear that applicants should keep, as far as is practicable and safe, all PRow that cross the site open.
- 3.5.12. It also encourages applicants to minimise, where possible, the visual impact of new proposed development on users of PRow, taking into account the impacts that any proposed measures may have on any other visual amenities in the surrounding landscape.
- 3.5.13. The 2025 version of the National Policy Statement for Renewable Energy Infrastructure 2025 (NPS EN-3 2025) is broadly in agreement with the NPS EN-3 and it does not substantially change its objectives or policy in relation to the issues mentioned above.

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

- 3.5.14. In relation to proposed substations and electricity cable connections, NPS EN-5 notes that applicants should consider carefully the placement of substations in the local landscape and consider opportunities for screening them.
- 3.5.15. The 2025 version of the National Policy Statement for Electricity Networks Infrastructure (NPS EN-5 2025) is broadly in agreement with the NPS EN-5 and it does not substantially change its objectives or policy in relation to the issues mentioned above.

NPPF

- 3.5.16. Paragraph 174 of the NPPF indicates that decision makers should contribute to and enhance the natural and local environment by, amongst other things, recognising the intrinsic character and beauty of the countryside.

LOCAL POLICY

- 3.5.17. The CLLP includes a series of policies which seek to promote sustainable growth for Central Lincolnshire, including Policy 1 which seeks to restrict development in the countryside to agricultural, renewable energy infrastructure or minerals and waste. In addition to this, the CLLP includes policy S53 Design and Amenity, which seeks to promote high quality sustainable design that contributes to the character of the area and local landscape. Policy 31 of the SELLP states that development of renewable energy facilities and associated infrastructure will be permitted provided that, individually or cumulatively, there would be no significant harm to visual amenity and landscape character.

THE APPLICATION

3.5.18. The applicant's assessment of landscape and visual effects is mainly set out in ES Chapter 6 Landscape and Visual [\[APP-057\]](#), supported by:

- Appendix 6.2 Landscape and Visual Methodology [\[APP-084\]](#)
- Appendix 6.3 Landscape Character Baseline and Sensitivity [\[APP-085\]](#)
- Appendix 6.4 Visual Assessment [\[APP-086\]](#)
- Appendix 6.5 Residential Visual Amenity Assessment [\[APP-087\]](#)
- Appendix 6.6 Arboricultural Impact Assessment [\[APP-088\]](#)
- Appendix 6.7 Outline Landscape and Ecological Management Plan (oLEMP) [\[APP-089\]](#)
- Figure 6.2 Screened Zone of Theoretical Visibility with Viewpoints [\[APP-204\]](#)
- Figure 6.4 Landscape Designations [\[APP-206\]](#)
- Figure 6.5 Landscape Character [\[APP-207\]](#)
- Figure 6.6 Recreational routes, facilities and visitor destinations [\[APP-208\]](#)
- Figure 6.7 Residential Properties [\[APP-209\]](#)
- Figures 6.8 to 6.26 Baseline Panoramas 1 to 19 [\[APP-210\]](#), [\[APP-211\]](#), [\[APP-212\]](#), [\[APP-213\]](#), [\[APP-214\]](#), [\[APP-215\]](#), [\[APP-216\]](#), [\[APP-216\]](#), [\[APP-217\]](#), [\[APP-218\]](#), [\[APP-219\]](#), [\[APP-220\]](#), [\[APP-221\]](#), [\[APP-222\]](#), [\[APP-223\]](#), [\[APP-224\]](#), [\[APP-225\]](#), [\[APP-226\]](#), [\[APP-227\]](#), [\[APP-228\]](#)
- Figures 6.27 to 6.30 Photomontages 1 to 4 [\[APP-229\]](#), [\[APP-230\]](#), [\[APP-231\]](#), [\[APP-232\]](#)
- Figure 6.31 Landscape Strategy Plan [\[REP2-021\]](#), [\[REP2-022\]](#), [\[REP2-023\]](#)
- Figure 6.32 Vegetation Removal Plan [\[REP2-025\]](#), [\[REP2-026\]](#), [\[REP2-027\]](#)

METHODOLOGY

3.5.19. Appendix 6.2 Landscape and Visual Methodology [\[APP-084\]](#) sets out full details of the applicant's methodology for the Landscape and Visual Impact Assessment (LVIA). The LVIA follows the recommendations and guidelines set out in the Guidelines for Landscape and Visual Impact Assessment¹¹ (GLVIA3) and other relevant guidance.

3.5.20. The applicant explains that the LVIA is part of an iterative EIA process which aims to “design out” significant effects via a range of environmental measures including avoidance and design that aims to reduce or eliminate significant effects.

3.5.21. The applicant confirms that the general approach to the assessment consists of the identification of landscape receptors, which are described as components of the landscape that are likely to be affected by the scheme and include the landscape character of the site, the landscape character area the site is within, the surrounding landscape character areas and the designated landscapes within the study area. As set out in paragraph 1.3.4 of

¹¹ Guidelines for Landscape and Visual Impact Assessment, Third Edition, by the Landscape Institute and Institute of Environmental Management and Assessment (2013).

Appendix 6.2 Landscape and Visual Methodology [\[APP-084\]](#), the level of the landscape effects is determined by a consideration of the sensitivity of the landscape receptors and the magnitude of the change.

- 3.5.22. To define the sensitivity of the landscape receptors, the applicant considers the susceptibility of a landscape receptor to change and its landscape value allowing for, through the employment of professional judgement, to combine and analyse the identified value. This is set out in table 1.3 Landscape sensitivity of 1.3 of the Appendix 6.2 Landscape and Visual Methodology [\[APP-084\]](#).
- 3.5.23. Following from this, the applicant then considered the magnitude of the landscape effect which, as set out in paragraph 1.7.1, was determined by considering size/scale of the effect, its geographical extent, duration and reversibility.
- 3.5.24. The applicant's methodology for the assessment of visual effects is set out in sections 1.10 to 1.14 of Appendix 6.2 Landscape and Visual Methodology [\[APP-084\]](#). The applicant confirms, in paragraph 1.11.1 that the visual assessment identifies people within the study area who would be affected by changes to views and visual amenity, referred to as 'visual receptors'. Visual receptors include residents, visitors, recreational receptors, workers and people travelling through the landscape.
- 3.5.25. Similar to landscape effects, the level visual effects is determined by a consideration of the sensitivity of the visual receptors and the magnitude of the change.
- 3.5.26. To define the sensitivity of the visual receptors, the applicant considered the susceptibility of a visual receptor to the type of change generated and the value that people attach to the affected views. The applicant goes on to state, in paragraph 1.11.4 that the nature or magnitude of the effects on visual receptors depends upon the size or scale of the changes, the geographical extent of the area influenced, and the duration and reversibility of the effects. In the same paragraph it goes on to state that, in visual assessment terms, the magnitude is also determined by the distance from the viewer, the extent of change in the field of vision, the proportion or number of viewers affected and the duration of activity apparent from each viewpoint, or a sequence of points that may have transient views, for instance along a road.
- 3.5.27. The application of the methodology set out above to both landscape and visual receptors allowed the applicant to determine the significance of the effects, assess direct and indirect effects and consider their cumulative impact.
- 3.5.28. Finally, the applicant also sets out the methodology used for the residential visual amenity assessment (RVAA) in section 1.18 of Appendix 6.2 Landscape and Visual Methodology [\[APP-084\]](#), the results of which are set out in Appendix 6.5 Residential Visual Amenity Assessment [\[APP-087\]](#).

- 3.5.29. The applicant confirms that the adopted methodology for the RVAA corresponds to the GLVIA3's and that its aim is to provide a more detailed assessment of the effects of the proposed development on residential receptors with the aim of allowing a judgement to be made as to whether the residents at these properties would be likely to experience unsatisfactory living conditions.

ASSESSMENT OF EFFECTS

- 3.5.30. The applicant's detailed assessment of landscape and visual effects is set out in ES Chapter 6 Landscape and Visual [\[APP-057\]](#).
- 3.5.31. The applicant confirms, in paragraph 6.4.2 that a study area for the assessment has been defined, as recommended by relevant guidance, through a combination of the Zone of Theoretical Visibility (ZTV) [\[APP-203\]](#) analysis and professional judgement further verified by field surveys. The combination of these factors resulted in the definition of a study area that covered an area of 5km from the proposed development boundary. The applicant considered that, beyond this distance, the proposed development would be unlikely to give rise to significant landscape or visual effects.
- 3.5.32. In order to assess the landscape and visual effects of the proposed development, it was necessary, first of all, to establish the current baseline conditions of the landscape surrounding the proposed development, as well as the visual baseline for key visual receptors within the LVIA study area that may experience a change in views as a consequence of the proposed development, which included views from residential receptors and settlements, views from PRow, views from people at work and views from road users.

Landscape effects

- 3.5.33. Although the proposed development is not located within or deemed to affect any national statutory landscape designations, regional or local non-statutory landscape designations, there are two national landscape character areas present within the LVIA study area, which are the Lincolnshire Edge and The Fens. At a local level, the proposed development is located within the Fenland Character Sub Area, the Holland Reclaimed Fen Landscape Character Area (LCA) and the Central Clays and Gravels Sub Area. The LVIA has assessed landscape effects at development site level and effects on landscape character more widely.

Construction Phase

- 3.5.34. The applicant claims, in paragraph 6.10.5 of ES Chapter 6 [\[APP-057\]](#) that, during the construction phase the key effects are associated with the solar array area, the on-site substation and associated infrastructure, with arable land use within the solar array area being transformed through the introduction of large scale construction works. The applicant also states in the same paragraph that construction of the cable corridor would result in some vegetation removal, soil stripping, excavation, the introduction of

temporary material stockpiles, access tracks and associated movement and activity.

- 3.5.35. The applicant also confirms that major adverse (significant) effects were identified at development site level during construction and moderate adverse (significant) effects for the Fenland Sub Area and Holland Reclaimed Fen LCA. The applicant states that the introduction of the bespoke access road would result in minor adverse and not significant effect on the landscape of the Central Gravels and Clays Sub Area, as the effects during construction would be short term and reversible due to the proposed implementation of reinstatement measures and the landscape mitigation scheme.

Operational Phase

- 3.5.36. Although the applicant anticipates there would be a return to a more settled state at operational stage, the applicant does recognise that the development site would be, at operational phase, characterised by the presence of energy infrastructure within the solar array area and other support infrastructure within the bespoke access corridor. The applicant also recognises, in paragraph 6.0.11 of ES Chapter 6 [\[APP-057\]](#), that the landscape mitigation measures proposed would initially have limited presence and efficacy, but that, with time, would progressively provide increasing assimilation with the landscape context as the vegetation becomes established.

- 3.5.37. Significant operational phase landscape effects comprise:

- Major adverse effects on the landscape character of the development site at year zero, reducing to moderate adverse at year 15.
- Moderate adverse effects on the Fenland Sub Area in year zero reducing to minor adverse (not significant) at year 15.

- 3.5.38. The applicant also confirms that the predicted effects on the Holland Reclaimed LCA would reduce to minor adverse (not significant) in year zero following cessation of construction activity and restoration of agricultural land use.

Decommissioning Phase

- 3.5.39. The applicant confirms, in paragraph 6.6.81 of ES Chapter 6 [\[APP-057\]](#) that, within the solar array area and in relation to the bespoke access corridor, the effects at decommissioning stage would be comparable to those experienced during the construction phase, introducing a similar scale and pattern of activity and movement into the development site for a similar time period.

- 3.5.40. The applicant proposes that the cable within the cable corridor is left in place therefore decommissioning activity is not anticipated.

- 3.5.41. The applicant also confirms that, as per construction phase, at the decommissioning phase landscape effects would include major adverse (significant) effects at site level. However, effects on the Fenland Sub Area would be minor adverse (not significant) as a result of the visual containment provided by establishment of mitigation planting. The applicant also confirms

that the decommissioning of the bespoke access road would lead to major adverse (significant) effects at the development site level and minor adverse (not significant) effects for the Central Clays and Gravels Sub Area.

Visual effects

Construction Phase

- 3.5.42. The applicant acknowledges, in paragraph 6.10.8 of ES Chapter 6 [\[APP-057\]](#), that major adverse (significant) visual effects were identified to a significant number of receptors, during the construction phase, due to visual change resulting from the introduction of activity and associated infrastructure within a predominantly agricultural landscape. These include the residents of property groups R1, R2, R4, R5, R9, R10, R11, R12, R15 and R20 (see Figure 6.7 Residential Properties [\[APP-209\]](#)).
- 3.5.43. In addition to the residential receptors identified above, the applicant also recognises that recreational users of Bridleway Ewer/1103/1, PRow network to the east of Great and Little Hale, PRow network to the north west of Heckington, Public Footpath Bick/2/1, PRow network to the west of Asgarby Lane (see Figure 6.6 Recreational routes, facilities and visitor destinations [\[APP-208\]](#)) and transport receptors using Black Drove/Ferry Lane/Halfpenny Toll Lane and Howell Fen Drove, would also experience a level of visual change that the applicant classified as major adverse (significant).
- 3.5.44. In addition to the effects identified above, the applicant also acknowledges that, during the construction phase, other receptors would experience moderate adverse (significant) effects, namely:
- Residents of property groups R6, R7, R13 and R18 (see Figure 6.7 Residential Properties [\[APP-209\]](#)).
 - Recreational users of PRow network to the east of Asgarby Lane, (see Figure 6.6 Recreational routes, facilities and visitor destinations [\[APP-208\]](#)).
 - Transport receptors using the A17, the A153, Asgarby Lane, Heckington Lane/Halfpenny Toll Lane and those using minor road network adjacent to and crossing the southern extent of the Cable corridor including Tileban Lane and Bicker Drove.

Operational Phase

- 3.5.45. Following the completion of the construction of the proposed development, significant visual effects would remain as a result of the proposed development linked to the change in views introduced by the solar array area and the bespoke access road. No significant visual effects have been identified in relation to views of the cable corridor.
- 3.5.46. The applicant also recognises, in paragraph 6.0.11 of ES Chapter 6 [\[APP-057\]](#), that the landscape mitigation measures proposed would initially have limited presence and efficacy, but that, with time, would progressively provide increasing assimilation with the landscape context as the vegetation becomes established.

- 3.5.47. Significant operational phase visual effects have been identified on the following receptors at year zero:
- Residents of property groups R1, R2, and R4 (see Figure 6.7 Residential Properties [\[APP-209\]](#)) as major adverse.
 - Residents of property group R20, as moderate adverse effects.
 - Recreational users of the PRoW network near the River Slea, the PRoW network west of Asgarby and to the west of Asgarby Lane, Bridleway Ewer/1103/1 as moderate adverse effects.
 - Transport receptors using Black Drove/Ferry Lane/Halfpenny Toll Lane and Howell Fen Drove as moderate adverse effects.

- 3.5.48. At year 15, when the proposed mitigation planting would be more established, the applicant states that there would be a reduction in the number of visual receptors experiencing significant adverse effects. However, moderate adverse (significant) effects would be expected, namely:
- residents of property R4, Gashes Barn
 - recreational users of the PRoW network near the River Slea
 - recreational receptors using the PRoW network to the west of Asgarby Lane

Decommissioning Phase

- 3.5.49. The applicant confirms, in paragraph 6.6.181 of ES Chapter 6 [\[APP-057\]](#) that the visual effects at the decommissioning phase would be of a similar level to those at the construction phase. However, the applicant claims that the extent of the visual influence would be less because, at decommissioning stage, mitigation and enhancement planting combined with hedgerow management measures would provide more visual containment of the solar array area.
- 3.5.50. As a result, the applicant's assessment is that, during the decommissioning phase of the solar array area, residents at Gashes Barn (R4) would experience moderate adverse (significant) effects during decommissioning. The applicant also confirms that Ewerby Thorpe Farm (R1a), Ewerby Thorpe Lodge (R1b), Crown Cottage (R20a) and Keepers Cottage (R20b) (see Figure 6.7 Residential Properties [\[APP-209\]](#)) would experience minor adverse effects, which would not be significant as a result of the establishment of mitigation planting.
- 3.5.51. In relation to PRoW users, as a result of the decommissioning of the solar array area, the applicant also confirms that mitigation planting would result in very limited significant visual effects, with users of PRoW network near the River Slea, including; PRoW Ewer/8/2, Ewer/8/1, Ewer/9/1, Ewer/12/1 and Anwi/2/2 experiencing moderate adverse (significant) effects.
- 3.5.52. Associated with the decommissioning of the bespoke access road, there would be significant effects to PRoW users, users of recreational paths and transport network users. However, these effects would be temporary, short term and reversible.

ISSUES CONSIDERED DURING THE EXAMINATION

EXAMINING AUTHORITY QUERIES

- 3.5.53. The ExA asked a series of written questions of the applicant in relation to landscape and visual effects, particularly in relation to the effects of the proposed development on PRowS and residential receptors (ExQ1 LSV.1.5, LSV.1.9, LSV.1.10, LSV.1.11, LSV.1.12) [\[PD-007\]](#) and the effects of the proposed new access road and corridor on the landscape (ExQ1 LSV.1.6, LSV.1.7 LSV.1.8) [\[PD-007\]](#). In addition to these written questions, the ExA further examined the applicant's landscape and visual assessment and the methodology used at ISH2 [\[EV4-001\]](#) where further questions were asked in relation to the applicant's approach.
- 3.5.54. Following from ISH2, the ExA issued further written questions on landscape and visual matters, at ExQ2 [\[PD-013\]](#) (LSV.2.1, LSV.2.2 and LSV.2.3) and ExQ3 [\[PD-016\]](#) (LSV.3.1 to LSV.3.5) which related mainly either to the effects of the proposed development on Gashes Barn (R4) or on other residential receptors.

Effects of the proposed development on PRowS

- 3.5.55. The ExA had concerns in relation to the visual effects of the proposed development on users of existing PRowS near the River Slea and Kyme Eau, particularly users of Public Footpath Ewer/8/1, Ewer/8/2, Ewer/9/1, Ewer/12/1, SKym/911/1, Bridleway Ewer/1103/1 as well as the PRow network west of Asgarby and to the west of Asgarby Lane.
- 3.5.56. The users of these particular elements of the PRow network would be more likely be affected by views of the proposed development across adjoining fields, due to their proximity to the solar array area and/or the bespoke access road. Also the absence, at present, of any features that would naturally screen user's views from those two elements of the proposed development further contributed to the ExA's concerns.
- 3.5.57. Although the ExA acknowledged that the proposed mitigation would offer some screening of both the solar array and the bespoke access road, some taller elements of the proposed development, such as the BESS with a height of up to 4.5 metres (m) and the top of the solar panels, which can be raised at a height of up to 3.90m from the ground, could still be visible from the PRow network.
- 3.5.58. In response to these concerns [\[REP2-040\]](#), as set out in ExQ1 LSV.1.4 and LSV.1.5 [\[PD-007\]](#), the applicant states that it has reviewed the potential visual and landscape effects of the proposed development, taking into consideration the bare Zone of Theoretical Visibility (ZTV) [\[APP-203\]](#), which determines the broad extent of influence of the proposed development in a bare earth scenario as well as the screened ZTV [\[APP-204\]](#) which considers the screening effects of intervening vegetation and built development.
- 3.5.59. The applicant, as set out in its response to LSV.1.5 confirms that the solar array area has been designed to maximise retention of existing vegetation

(see Vegetation Removal Plan [[APP-236](#), [APP-0237](#), [APP-238](#)]) which would provide, during the construction phase, screening of views from parts of the PRoW network. The applicant also states that existing hedgerows would be managed to a height of up to 3.5m during the construction phase providing further visual mitigation. Further to this, and for the operational phase, the Landscape Strategy Plan ([[APP-233](#), [APP-234](#), [APP-235](#)]) has been designed to provide visual mitigation for specific receptors, including strengthening the boundary hedgerow to the north and west of the solar array area which would aim the screening for users of this part of the PRoW network.

3.5.60. In relation to the construction of the proposed new bespoke access road and its effects on users of the PRoW network, proposed mitigation measures would include retention and protection of existing vegetation as well as the use of hoardings where visual screening is required, as set out in the outline Construction Environmental Management Plan (CEMP) [[REP8-015](#)]. In order to minimise the effects of the proposed development at operational phase, the indicative alignment of the bespoke access road has been informed by, where possible, routing the road to the edge of field boundaries. This would allow the use, as stated in paragraph 6.6.43 of ES Chapter 6 [[APP-057](#)], of existing enclosure provided by nearby woodlands and hedgerows.

3.5.61. However, as stated in paragraph 6.6.132 of ES Chapter 6 [[APP-057](#)], the applicant acknowledges significant adverse effects are anticipated to be experienced by users of the PRoW at year zero and at year 15, as per paragraph 6.6.140 brought by the solar array area. Further, that users of the PRoW network at year zero and at year 15 are also expected to experience significant adverse effects, as stated in paragraphs 6.6.169 and 6.6.177 of ES Chapter 6 [[APP-057](#)] brought by the bespoke access corridor and road.

Effects of the proposed development on residential receptors

3.5.62. The ExA asked the applicant several questions, in writing ([[PD-007](#)], [[PD-013](#)] and [[PD-016](#)]) and at ISH2 [[EV4-001](#)] in relation to the applicant's assessment of visual effects on residential receptors. It is also worth noting that the ExA's questioning was also informed by an unaccompanied site inspection (USI) [[PD-002](#)] and a access required site inspection (ARSI) [[PD-011](#)], which gave an opportunity for the ExA to become familiar with the application site and the surrounding area, as well as the location and outlook of identified sensitive receptors in relation to the proposed development.

3.5.63. As stated in ExQ1 LSV.1.9, the applicant recognised in ES Chapter 6 [[APP-057](#)] that some residential receptors would experience significant adverse effects during the construction phase of the proposed development. These are set out in table 6.8 of ES Chapter 6 [[APP-057](#)]. The applicant also recognised, in the same table, that some residential receptors would experience significant adverse effects at operational year zero but found that, at year 15, only Gashes Barn (R4) would experience significant adverse effects.

- 3.5.64. At ISH2 the ExA questioned these assertions from the applicant, particularly in light of the applicant's own evidence presented in the RVAA [\[APP-087\]](#).
- 3.5.65. In this assessment [\[APP-087\]](#) the applicant seeks to supplement the LVIA and provide further detailed understanding of the level of change in residential amenity brought by the proposed development. The assessment also seeks to establish if the level of change in residential amenity is enough to reach or exceed the 'Residential Visual Amenity Threshold'¹².
- 3.5.66. The ExA used the photomontages (section 1.5 Figures) included in the RVAA [\[APP-087\]](#) in order to illustrate that the applicant's own evidence seems to demonstrate a degree of change in the level of residential amenity that, although it may be not enough to reach or exceed the residential visual amenity threshold, amounts to a level of change in residential amenity that could be considered significant in ES terms.
- 3.5.67. As a result, the ExA requested, in the actions points from ISH2 [\[EV4-010\]](#), the applicant to provide further justification for its conclusion on residual significant effects in respect of receptor groups R1, R2, R3(3a) and R20. These residential groups were selected due to their proximity to the solar array area, and also due to the fact that views from these receptors, or at least one of the receptors within the group identified by the applicant, were characterised by unobstructed or relatively unobstructed views across open agricultural fields, providing a sense of space and expansiveness.
- 3.5.68. The applicant's response in [\[REP4-026\]](#) confirms that the applicant maintains its view in relation to the effects of the proposed development on receptor R2a (as illustrated in figure 1a,b,c of RVAA [\[APP-087\]](#)) and also group R2. The applicant states that at year zero of the operational phase, moderate adverse effects would be experienced by receptor R2a (Howell Fen Farmhouse) because of the introduction of the solar arrays into the relatively open views from the western elevation of the dwelling. However at year 15, the effects would reduce to minor adverse (not significant) on the basis of the establishment of native shrub belt with trees to the edge of the solar PV exclusion zone and to the west and northeast of the property group which would progressively screen views of the energy infrastructure. The applicant did not address the question in relation to R1, R3 or R20.

HLA CONCERNS

- 3.5.69. LCC and NKDC, in support of their respective LIRs, submitted a Landscape and Visual Review of the DCO application for Beacon Fen Energy Park.

¹² Landscape Institute (Technical Guidance Note (TGN) 2/19 states, in relation to Residential Visual Amenity Threshold that, it is not uncommon for significant adverse effects on views and visual amenity to be experienced by people at their place of residence as a result of introducing a new development into the landscape. In itself this does not necessarily cause particular planning concern. However, there are situations where the effect on a residential property's outlook / visual amenity is so great that it is not generally considered in the public interest to permit such conditions to occur where they did not exist before.

- 3.5.70. The Landscape and Visual Review raised concerns regarding the significant effects of the proposed development on local landscape character and visual amenity across all phases of the development. LCC goes on to state that the development would fundamentally alter the character of the site and its surroundings, replacing open, agricultural fields with extensive solar infrastructure and that it would result in a substantial and long-term change to the openness, tranquillity, and rural character of the area.
- 3.5.71. The Landscape and Visual Review states that significant adverse visual effects are also predicted for a range of receptors, due to the transformation from rural agricultural views to those containing large-scale solar arrays and that, in addition to concerns regarding compliance with the Landscape Institute Technical Guidance Note LITGN 2024-01, LCC also has concerns that the mitigation planting itself could generate adverse visual effects through blocking or foreshortening views and appearing out of context.
- 3.5.72. In addition to this, and more specifically at paragraph 5.17 of appendix 1 of LCC's LIR [\[REP1-044\]](#) and appendix A of NKDC's LIR [\[REP1-054\]](#) the HLAs note that, although the applicant's assessment has identified a significant level of change to a variety of visual receptors during construction, these reduce significantly in the early years of the operational phase and subsequent phases. This suggests a potential over reliance upon mitigation planting to screen the proposals without full attention to the impacts of the proposed screening on the landscape.
- 3.5.73. Furthermore, paragraphs 5.18 to 5.20 of appendix 1 of LCC's LIR [\[REP1-044\]](#)/Appendix A of NKDC's LIR [\[REP1-054\]](#) state that there is a disagreement with several reductions in the level of significant of effects at year 15 through the establishment of mitigation planting. The Landscape and Visual Review states that the applicant has made the assumption for several receptors that, by screening the views of the scheme with planting, the effects would be reduced. It goes on to state that, in several instances, the view from receptors would be completely altered from that of the existing, baseline view, predominantly by blocking or foreshortening expansive views across an open rural landscape. These are predominantly from residential properties in close proximity to the solar array, for example, receptor groups R1, R2, R3, R4 (Gashes Barn) and R20.
- 3.5.74. The Landscape and Visual Review concludes by saying that it judges that the year 15 effects on all these nearby residential receptors would be at least moderate and significant, as the panels are proposed to be located very close to these receptors and the mitigation planting itself, designed to screen panels, would change the view detrimentally; completely changing the character and openness of the view, and appearing out of character in this location.

Changes to the ES and the applicant's assessment

- 3.5.75. At deadline 5, the applicant submitted an updated version of the RVAA [\[REP5-066\]](#) in response to comments made by the HLAs. Changes made

were linked to R11 Poplar Tree Farm, which was changed from negligible adverse to minor adverse in relation to year 15 of operational phase.

3.5.76. The applicant also amended the Visual Assessment [\[REP5-064\]](#) and revised its position in relation to, amongst other things:

- Table 1.15 Baseline Panorama 15: View from Howell Fen Drove, amending its effects at operational phase year 15 from moderate adverse to major adverse.
-
- Table 1.20 visual effects on settlements within 2km of the proposed development - amending the effect of the proposed development from moderate adverse (significant) to minor adverse (not significant) in relation to:
 - Great Hale at construction phase (potential views of the cable corridor)
 - Northorpe village at construction phase (potential views of cable corridor)
 - R1a Ewerby Thorpe Farm and b. Lodge at operational phase (year 15)
 - R3 Copperhill Kennels Cattery, Waithe Farmhouse, The Grange, Ferry Farm and Mere House (potential views of solar array area) at operational phase (year zero)
 - R10 White House Farm at operational phase (year zero)
- Table 1.20 visual effects on settlements within 2km of the proposed development - amending the effect of the proposed development from major adverse to moderate adverse in relation to:
 - R4 Gashes Barn (potential views of solar array area) at operational phase (year 15)
 - R13 Kingtress Lodge, Cowbridge Farm (potential views of cable corridor) at construction phase
 - R14 Butlers, Acorn Lodge, Milldrain Lodge (potential views of cable corridor) at construction phase
- Table 1.20 visual effects on settlements within 2km of the proposed development - amending the effect of the proposed development from minor adverse (not significant) to moderate adverse (significant) in relation to:
 - R7 Hall Farm (potential views of cable corridor) at construction phase
- Table 1.22 residual effects from key recreational receptors (PRoWs) and transport receptors within 2km ZTV, from moderate adverse to major adverse:
 - Views from Black Drove (linking Ewerby Waithe Common with Howell) (potential views of solar array area) at construction phase
- Added to table 1.22 residual effects from key recreational receptors (PRoWs) and transport receptors within 2km ZTV. The effects on Howell Fen Drove are deemed by the applicant to be major adverse (significant)

at construction phase and operation phase year zero), minor adverse (not significant) at operation phase year 15 and decommissioning.

- 3.5.77. The applicant also amended ES Chapter 6 [\[REP5-011\]](#) in response to comments made by the HLAs and ExQ2, mainly to reflect the effects of soil stockpiles of up to a height of 0.5 to 1m created by excavation works and placed adjacent to the bespoke access road. In addition to this, the applicant made amendments to reflect the downgrading of visual and landscape effects on recreational receptors using PRowS near the River Sleas and to the west of Asgarby Lane.

CONCLUSIONS

- 3.5.78. Having carefully reviewed the information submitted, the ExA is satisfied that the information provided by the applicant in its ES is sufficient to understand the significance of the effects of the proposed development on the surrounding landscape and on sensitive visual receptors within the study area.
- 3.5.79. Significant effects are predicted to be experienced by several receptors at all phases of the proposed development, both in relation to landscape and visual. These are summarised in section 6.10 Summary of ES Chapter 6 [\[REP5-011\]](#).
- 3.5.80. However, as raised throughout the examination by both the ExA and the HLAs there are concerns in relation to the applicant's assessment of the effects of the proposed development at the operational phase (year 15), particularly how the applicant has considered the landscape and visual effects of the proposed mitigation.
- 3.5.81. Although the ExA accepts that the proposed mitigation would provide visual screening of the proposed development and consequently minimise views of it from identified sensitive receptors, the view from certain sensitive receptors would be significantly altered from the existing baseline view, which is characterised by unobstructed open views across several agricultural fields that provide a sense of openness and expansiveness.
- 3.5.82. The proposed mitigation would screen the proposed development from sensitive receptors and help provide assimilation into the surrounding landscape. However, it would still interfere and significantly reduce expansive views across an open rural landscape. As set out in the Landscape and Visual Review included in Appendix 1 of LCC's LIR [\[REP1-044\]](#)/Appendix A of NKDC's LIR [\[REP1-054\]](#) this is particularly the case for those residential properties located in close proximity to the solar array area namely, receptor groups , R1, R2, R3, R4 (Gashes Barn) and R20, as well as those PRow located in close proximity to the solar array area.
- 3.5.83. This view has been informed by the ExA's review of all of the information submitted during the examination, as well as the ExA's USI and ARSI.
- 3.5.84. The ExA therefore disagrees with the applicant's assessment of the overall visual effect of the proposed development at operational phase (year 15) for

receptor groups R1 (1a and 1b), R2, R3a, R4 (Gashes Barn) and R20 group receptor.

- 3.5.85. The ExA finds that the visual amenity of R3b, R3c and R3d would not be as compromised as that of R3a and therefore agrees with the applicant's overall assessment and that R3a represent the worst-case scenario for the group.
- 3.5.86. In addition, and for the reasons stated above, the ExA disagrees with the applicant's overall assessment of visual effects at operational phase (years 15) on users of certain PRowS namely PRowS near River Slea Ewer/8/2, Ewer/8/1 and Anwi/2/2.
- 3.5.87. Overall, the ExA is of the view that the applicant has considered landscape and visual matters in the early stages of siting and design and has demonstrated in the ES how negative effects have been minimised in accordance with paragraph 5.10.19 of NPS EN-1.
- 3.5.88. In accordance with paragraphs 5.10.29, 30 and 38 of NPS EN-1 the ExA considers that the level of detailed design which the applicant has provided and is secured by requirement 7 in schedule 2 of the dDCO [\[AS-039\]](#) is acceptable; and that this provides the local authorities with sufficient design content secured to ensure future consenting would meet landscape, visual and good design objectives.
- 3.5.89. The NPS EN-1 does state that all proposed energy infrastructure is likely to have landscape and visual effects and while I accept that the design of the proposed development has evolved via an iterative design process which has incorporated embedded mitigation to reduce landscape and visual impacts, a number of significant landscape and visual effects have been identified at all stages of the proposed development.
- 3.5.90. While some of these are short term and reversible on decommissioning, a number of residual significant effects would be experienced long term, through the whole operational lifetime of the proposed development. These significant effects would be spread across a considerable area and would affect a number of residential receptor and PRow users. These are matters which, I find, weigh against the proposed development and I attribute this moderate weight in the overall planning balance.
- 3.5.91. Matters to be taken forward to chapter 5 and the planning balance:
- The ExA concludes that the proposed development complies with NPS EN-1 paragraphs 5.10.16, 5.10.17 and 5.10.19 in terms of assessment and how negative effects have been minimised and with paragraphs 5.10.20 to 22 regarding impacts including measures to avoid and reduce effects.
 - The ExA concludes that the proposed development complies with NPS EN-1 paragraph 5.10.24 regarding landscape enhancement and how magnitude has been defined in accordance with paragraph 5.10.25.

- The ExA disagrees with the applicant's overall assessment of effects on certain receptors and believes that, although proposed mitigation will go some way to minimise effects, the proposed development would result in a significant level of change in relation to the visual amenity of certain residential receptors and also for users of certain PRoW. These would be temporary and capable of being reversed, but would also be long term effects that would affect a considerable area.
- ExA therefore concludes that landscape and visual matters weigh against making the DCO and this harm has been attributed moderate weight in the planning balance.

3.6. BIODIVERSITY AND THE NATURAL ENVIRONMENT

INTRODUCTION

- 3.6.1. This section of the report considers the effects of the proposed development on ecology and biodiversity, including protected habitats and species, biodiversity net gain, hedgerows and trees. Matters relating specifically to the Conservation of Habitats and Species Regulations 2017 (the Habitats Regulations 2017) are considered separately in chapter 4. Cumulative effects are considered in section 3.11.

POLICY BACKGROUND

NPS EN-1

- 3.6.2. NPS EN-1 section 5.4 Biodiversity defines the government's policy regarding the effects of energy projects on biodiversity. NPS EN-1 requires projects to ensure that they not only avoid, mitigate and compensate for harm and follow the mitigation hierarchy, but also consider opportunities for enhancement. Biodiversity Net Gain (BNG), as set out in NPS EN-1 paragraphs 4.6.1 and 4.6.2, is an essential component of this. Paragraph 4.6.10 makes it clear that BNG should be applied after compliance with the mitigation hierarchy and does not change or replace existing environmental obligations.
- 3.6.3. NPS EN-1 paragraph 5.4.12 recognises that sites of regional and local biodiversity interest, which includes local nature reserves and local wildlife sites, are areas of substantive nature conservation value that make an important contribution to ecological networks and nature's recovery. Paragraphs 5.4.14 to 5.4.15 cover ancient woodland, ancient trees, veteran trees and other irreplaceable habitats and recognise that ancient woodland is a valuable biodiversity resource both for its diversity of species but also for its longevity as woodland.
- 3.6.4. The protection and enhancement of habitats and species, including those that receive statutory protection under a range of legislative provisions, is set out in paragraph 5.4.16, alongside other species and habitats identified as being of principal importance for the conservation of biodiversity.

- 3.6.5. Paragraph 5.4.17 requires applicants, via their ES to clearly set out any effects on international, national and locally designated sites of ecological conservation importance, on protected species and on habitats and other species identified as being of principal importance for the conservation of biodiversity, including irreplaceable habitats. This should include how the project has taken advantage of opportunities to conserve and enhance biodiversity conservation interests (paragraph 5.4.17) and how the wider ecosystem services and benefits of natural capital have been considered when designing enhancement measures (paragraph 5.4.20).
- 3.6.6. Paragraph 5.4.22 states that consideration of the movement of mobile/ migratory species such as birds, fish and terrestrial mammals, alongside their potential to interact with infrastructure, should be taken into account in the design and location of energy NSIPs. Furthermore, applicants should include measures to mitigate the direct and indirect effects of development on ancient woodland, ancient and veteran trees or other irreplaceable habitats during both construction and operational phases (paragraph 5.4.32).
- 3.6.7. Paragraph 5.4.33 requires applicants to consider any reasonable opportunities to maximise the restoration, creation and enhancement of wider biodiversity. Furthermore, paragraph 5.4.34 advises that consideration should be given to improvements to, and impacts on, habitats and species in, around and beyond developments, beyond those under protection and identified as being of principal importance.
- 3.6.8. The 2025 version of the Overarching National Policy Statement for Energy 2025 (NPS EN-1 2025) is broadly in agreement with the NPS EN-1 and it does not substantially change its objectives or policy in relation to the issues mentioned above.

NPS EN-3

- 3.6.9. In line with NPS EN-1, NPS EN-3 requires, in paragraph 2.10.76 that the applicant identifies, in its ecological assessment, any risks from developing the proposed site. Moreover, paragraphs 2.10.77 to 2.10.79 indicate that habitats, alongside a range of species, may require assessment and an evaluation of the likely impacts which should specify mitigation as to avoid or minimise impacts as well as any further surveys which may be required.
- 3.6.10. Paragraph 2.10.83 of NPS EN-3 states that consideration of how site boundaries are managed should be given and if hedges/scrub is to be removed, further surveys may be necessary to account for impacts. The paragraph goes on to say that any fencing used as part of the proposed development should account for enabling mammal, reptile and other fauna access into the site if required.
- 3.6.11. Paragraph 2.10.89 of NPS EN-3 relates specifically to solar farms and acknowledges that solar farms have the potential to increase the biodiversity value of a site which can, in some instances, result in significant benefits and enhancements beyond BNG. The NPS also states, in line with the Environmental Improvement Plan, that proposed enhancements should aim

to achieve environmental gains and BNG which might include maintaining, or extending, existing habitats and potentially creating new important habitats. Applicants are advised to develop an ecological programme for the monitoring of impacts upon the flora and any particular ecological receptors with the results utilised to inform any changes needed (paragraphs 2.10.128 – 2.10.129).

- 3.6.12. The 2025 version of the National Policy Statement for Renewable Energy Infrastructure 2025 (NPS EN-3 2025) is broadly in agreement with the NPS EN-3 and it does not substantially change its objectives or policy in relation to the issues mentioned above.

NPS EN-5

- 3.6.13. In relation to proposed substations and electricity cable connections, NPS EN-5 states that it will be important for the applicant to supplement the guidance set out in NPS EN-1 with the recognition that the linear nature of electricity networks infrastructure can allow for opportunities to reconnect important habitats via green corridors, and the re-establishment of appropriate hedgerows (paragraph 2.5.1).

- 3.6.14. The 2025 version of the National Policy Statement for Electricity Networks Infrastructure (NPS EN-5 2025) is broadly in agreement with the NPS EN-5 and it does not substantially change its objectives or policy in relation to the issues mentioned above.

NPPF

- 3.6.15. Paragraph 193 of the NPPF advises that permission should be refused where significant harm to biodiversity and habitats cannot be avoided, adequately mitigated or as a last resort, compensated for.

LOCAL POLICY

- 3.6.16. The CLLP includes a series of different policies which seek to safeguard green infrastructure in the central Lincolnshire authorities and work actively with partners to maintain and improve the quantity, quality, accessibility and management of the green infrastructure network. Policy S60 of the CLLP states that development proposals will be considered in the context of the relevant Local Authority's duty to promote the protection and recovery of priority species and habitats. Where adverse impacts are likely, development will only be supported where the need for and benefits of the development clearly outweigh these impacts. In such cases, appropriate mitigation or compensatory measures will be required.
- 3.6.17. Policy 28 of the SELLP states that gaps in the ecological network will be addressed by ensuring that all development proposals provide an overall net gain in biodiversity.

THE APPLICATION

3.6.18. The applicant's assessment of effects on biodiversity and the natural environment is mainly set out in ES Chapter 7 (Ecology) [\[APP-058\]](#), supported by:

- Appendix 7.1 Legislation [\[APP-090\]](#)
- Appendix 7.2 Planning Policy [\[APP-091\]](#)
- Appendix 7.3 Preliminary Ecological Appraisal [\[APP-092\]](#)
- Appendix 7.4 Great Crested Newt Habitat Suitability Index and eDNA Report [\[APP-093\]](#)
- Appendix 7.5 Wintering Bird Report [\[APP-094\]](#)
- Appendix 7.6 Breeding Bird Report [\[APP-095\]](#)
- Appendix 7.7 Bat Activity Survey [\[APP-096\]](#)
- Appendix 7.8 Badger Report [\[APP-097\]](#)
- Appendix 7.9 Riparian Mammals Report [\[APP-098\]](#)
- Appendix 7.10 Reptile Survey Report [\[APP-099\]](#)
- Appendix 7.11 Botanical Survey Report Solar Array Area [\[APP-100\]](#)
- Appendix 7.12 Great Crested Newt Survey Report (Solar Array Area) [\[APP-101\]](#)
- Appendix 7.13 Bat Roost Assessment Report (Solar Array Area) [\[APP-102\]](#)
- Appendix 7.14 Invertebrate Report [\[APP-103\]](#)
- Appendix 7.15 Botanical Survey Report (Cable Route and Access Road) [\[APP-104\]](#)
- Appendix 7.16 Bat Roost Assessment Report (Cable Route and Access Road) [\[APP-105\]](#)
- Appendix 7.17 Wintering Bird Survey Report (Cable Route and Access Road) [\[APP-106\]](#)
- Appendix 7.18 Bat Activity Survey Report (Cable Route and Access Road) [\[APP-107\]](#)
- Appendix 7.19 Riparian Mammal Survey Report (Cable Route and Access Road) Part 1 [\[APP-108\]](#), Part 2 [\[APP-109\]](#), Part 3 [\[APP-110\]](#), Part 4 [\[APP-111\]](#)
- Appendix 7.20 Preliminary Ecological Appraisal Report (Cable Route and Access Road) [\[APP-112\]](#)
- Appendix 7.21 Solar Farm Great Crested Newt Survey Report (Cable Route and Access Road) [\[APP-113\]](#)
- Appendix 7.22 Breeding Bird Survey Report (Cable Route and Access Road) [\[APP-114\]](#), and [\[APP-115\]](#) and [\[APP-116\]](#)
- Figure 7.1 International Sites within 20km of the Site [\[APP-239\]](#)
- Figure 7.2 SSSI within 10km of Site [\[APP-240\]](#)
- Figure 7.3 Local Wildlife Sites within 2km [\[APP-241\]](#)
- Figure 7.4 Ancient Woodlands Priority Habitat within 1km of the Site [\[APP-242\]](#)

METHODOLOGY

3.6.19. The methodology adopted by the applicant for the assessment of the likely effects of the proposed development on ecology, particularly the potential for

likely significant effects arising from land take, airborne and waterborne contamination, habitat fragmentation and disturbance, are set out in section 7.4 of ES Chapter 7 (Ecology) [\[APP-058\]](#).

- 3.6.20. The applicant started by defining the study area, which was determined based on the best practice guidance and a high-level overview of the types of ecological features and receptors present and the potential effects that could occur as a consequence of the proposed development. This then enabled the identification of specific areas which required ecological survey.
- 3.6.21. When considering the potential effects of the proposed development on the ecological features within the study area, the applicant looked at the significance criteria, as set out in paragraph 7.4.12, namely:
- Extent, which includes the spatial or geographical area over which the environmental change could occur
 - Magnitude, which is the size, amount intensity or volume of environmental change
 - Duration, which is the length of time which the environmental change may occur
 - Frequency, the number of times the environmental change may occur
 - Timing, which is the period of day/year(s) during which the environmental change may occur
 - Reversibility, which is whether the environmental change can be reversed
- 3.6.22. Through applying the significance criteria and the magnitude of change, as set out in table 7.4 of ES Chapter 7 (Ecology) [\[APP-058\]](#), the applicant was then able to determine significance. Significance is therefore a decision whether the conservation status of an ecological feature would alter as a result of a change and effects can be adverse, if the favourable conservation status of an ecological feature would be lost, or beneficial if change brings on improvements in quality or extends a beneficial habitat.
- 3.6.23. The applicant also confirms, in paragraph 7.4.18, that it has adopted a mitigation hierarchy which, first of all, seeks to avoid impacts, then minimise impacts, then restore after impacts and, if none of the previous measures can be carried out, provide for compensation.

Baseline

- 3.6.24. Section 7.5 of ES Chapter 7 (Ecology) [\[APP-058\]](#) sets out the baseline. There are no statutory designated sites present within the order limits but there are 5 within the study area (within 20km of the development site). These are: the Wash RAMSAR, the Wash Special Protection Area (SPA), the Wash and North Norfolk Coast Special Area for Conservation (SAC), Horbling Fen Site of Special Scientific Interest (SSSI) and Wilsford & Rauceby Warrens SSSI. These are all detailed and included within table 7.5 of ES Chapter 7 (Ecology) [\[APP-058\]](#) and set out in figures 7.1 'International Sites within 20km of the Site' [\[APP-239\]](#) and 7.2 'SSSI within 10km of Site' [\[APP-240\]](#).

KEY

- DCO Order Limits
- 20km Search Area
- Special Areas of Conservation
- Special Protection Areas
- RAMSAR

Notes:

Excluding the DCO Order Limits, boundaries shown are indicative.

DCO Order Limits provided by Ardent Management on 04/02/2025.

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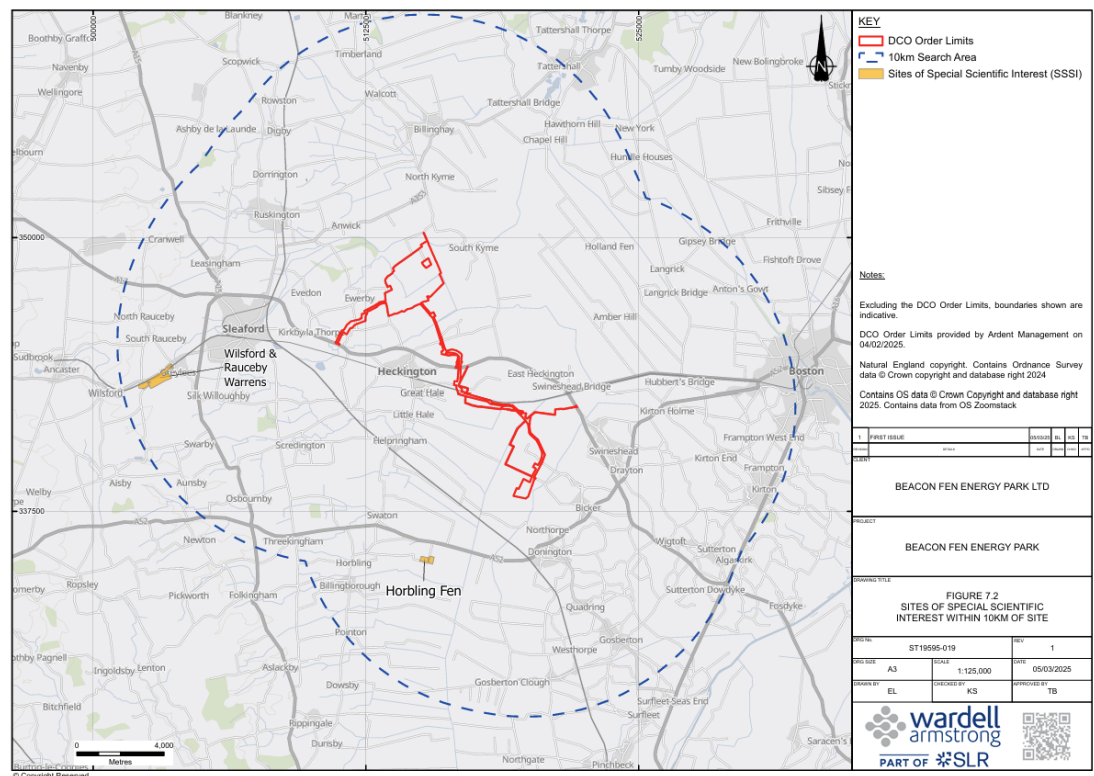
Contains OS data © Crown Copyright and database right 2025. Contains data from OS Zoomstack.

Project	Beacon Fen Energy Park Ltd				
Product	Beacon Fen Energy Park				
Revision Title	FIGURE 7.1 INTERNATIONAL SITES WITHIN 20KM OF THE SITE				
Rev No.	ST 19995-018	Rev	1		
Rev Date	A3	Scale	1:200,000	Date	05/03/2025
Drawn By	EL	Checked By	K5	Approved By	TB

wardell armstrong
PART OF SLR

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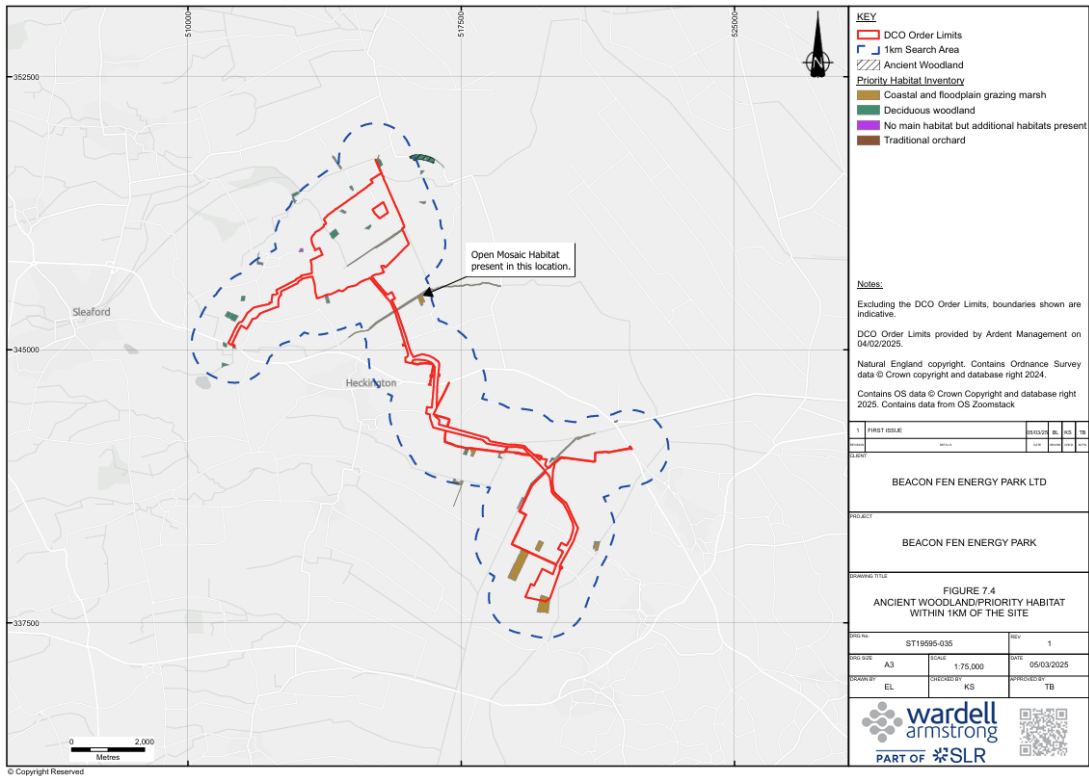
Figure 9: Sites of Special Scientific Interest (SSSI)



BEACON FEN ENERGY PARK: EN010151
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MAY 2026

- 3.6.25. In addition to the above designated sites, there are also 10 local wildlife sites within a 2km radius of the proposed development site. These are included in table 7.6 of ES Chapter 7 (Ecology) [APP-058] and shown in Figure 7.3 'Local Wildlife Sites within 2km' [APP-241].
- 3.6.26. Habitats of Principal Importance (HPIs) and ancient woodland are present within 1km of the development site. These are set out in Figure 7.4 'Ancient Woodlands Priority Habitat within 1km of the Site' [APP-242] and include coastal and floodplain grazing marsh, deciduous woodland, traditional orchard and open mosaic habitat.

Figure 10: Ancient Woodland/Priority Habitats



Source: Figure 7.4 Ancient Woodland/Priority Habitat within 1km of the Site [APP-242]

- 3.6.27. In addition to the habitats of principal importance, ancient woodlands and the statutory and non-statutory designated sites above, other sensitive receptors have also been identified. These are set out in paragraphs 7.5.13 to 7.5.65 of ES Chapter 7 (Ecology) [APP-058] and summarised in table 7.7 which includes identified sensitive ecological features, their importance in the context of the proposed development and justification for scoping them in or out of further assessment.

ASSESSMENT OF EFFECTS

- 3.6.28. The applicant's assessment of effects is set out in section 7.6 of ES Chapter 7 (Ecology) [APP-058]. The assessment presented by the applicant takes into consideration embedded mitigation proposed as either an integral, committed and deliverable part of the proposed development, or construction practice which would be secured within the DCO. The applicant has detailed,

in table 7.8 of ES Chapter 7 (Ecology) [\[APP-058\]](#) how embedded environmental measures have been included the ecology assessment. Table 7.8 also includes details on how these embedded measures are proposed to be secured which include the oCEMP, the latest version of which is [\[REP8-015\]](#), the BNG Strategy, the latest version of which is [\[REP7-032\]](#) and the outline Landscape and Ecological Management Plan (oLEMP), the latest version of which is [\[REP8-017\]](#).

- 3.6.29. The assessment considers the likely effects of the proposed development during construction, operational and decommissioning phases.
- 3.6.30. During the construction phase, and in relation to the Wash RAMSAR and SPA site, the applicant has found that there is potential for the gadwall population to be disturbed by noise created and increased personnel on the proposed development site. Given the close proximity and sensitive nature of this species, noise created as a result of construction activities the ES concludes that this would have a temporary low adverse impact on the gadwall population which is deemed significant.
- 3.6.31. In relation to the Wash and North Norfolk Coast SAC, the applicant acknowledges that, during the construction phase, there would be the need for the cable corridor and bespoke access road to cross ditches that could be used by otters. Excavation for and construction of crossings could directly injure or kill otters or damage or cause the loss of their holts. This is assessed as having a temporary very low adverse impact on the Wash and North Norfolk Coast SAC and its features, the resultant effect on its conservation status is deemed significant.
- 3.6.32. The applicant assessed impact on great crested newts within the bespoke access road and cable corridor and in the vicinity of the proposed development site. As a result of a loss of potential habitat and individuals due to habitat removal during construction, it concluded adverse effects for great crested newts, with the resulting effect on the conservation status being significant.
- 3.6.33. Wintering and breeding birds, bats, water voles and otters. These are detailed in paragraphs 7.6.42 to 7.6.65 of ES Chapter 7 (Ecology) [\[APP-058\]](#).
- 3.6.34. No significant adverse effects are expected from the operational phase of the proposed development. However, the applicant does anticipate there would be significant beneficial effects during the operational phase linked to the proposed BNG, which would have a permanent medium beneficial effect, and linked to wetland habitats and associated species, which would have a permanent low beneficial impact.
- 3.6.35. The applicant anticipates that many of the impacts during the decommissioning phase would be the same as for the construction phase. However, as part of the decommissioning phase, the solar array area would be restored to arable use. The applicant considers that this would result in the loss of most or all of the habitats created to deliver BNG. It does however note that some habitats would be maintained such as field boundaries, which

it concludes would be a greater enhancement that if the proposed development did not occur resulting in a permanent low adverse effect which is not significant.

- 3.6.36. As significant effects were identified, the applicant has considered what additional mitigation could be provided. This is set in section 7.7 of ES Chapter 7 (Ecology) [[APP-058](#)]. These include proposal for:
- Mitigation of construction leading to mortality, injury, disturbance or habitat loss
 - Mitigation of construction leading to great crested newt mortality, injury, disturbance or habitat loss
 - Mitigation of construction leading to water vole mortality, injury, disturbance or habitat loss
 - Mitigation of construction land take leading to habitat loss
- 3.6.37. The applicant has committed to undertake pre-construction surveys, these would be used, for, amongst other things, to inform the need for protected species licencing. Mitigation for great crested newts is to be discussed further with Natural England (NE) and include the installation of barriers, creation of improved habitat and post-construction monitoring of populations.
- 3.6.38. The pre-construction surveys are also to be undertaken in relation to presence and location of invasive and non -invasive species to inform the Biosecurity Management Plan. Pre-construction surveys would inform the requirement for a water vole licence should embedded mitigation through buffers for ditches not be sufficient.
- 3.6.39. To mitigate for habitat loss, the oCEMP secures temporary crossings for bats to maintain corridors and vegetation and seed banks are to be stored separately from subsoil.
- 3.6.40. The additional mitigation measures proposed in section 7.7 of ES Chapter 7 (Ecology) [[APP-058](#)] are all proposed to be secured via the oCEMP [[REP8-015](#)] along with further best practice construction methods.
- 3.6.41. No averse significant effects were concluded from the operation phases and therefore no further mitigation measures are proposed beyond those of best practice in the oLEMP.
- 3.6.42. In relation to the decommissioning phase, the applicant anticipates that equivalent mitigation measures to those used in the construction phase would be followed, subject to the relevant regulatory controls and processes which exist at that point in time.
- 3.6.43. ES Chapter 7, table 7.9 summary of impacts, mitigation and residual effects from construction phase details the applicant's assessment of residual effects following from consideration of the proposed additional mitigation. No residual significant effects are anticipated.

- 3.6.44. ES Chapter 7, table 7.10 does the same as table 7.9 but for the operational phase. Significant residual effects anticipated are all beneficial with no significant adverse effects predicted.
- 3.6.45. No significant effects are predicted during the decommissioning phase, as confirmed in table 7.11 Summary of impacts, mitigation and residual effects from decommissioning phase.

ISSUES CONSIDERED DURING THE EXAMINATION

EXAMINING AUTHORITY QUERIES

- 3.6.46. The ExA set out a series of written questions to the applicant in relation to biodiversity and the natural environment at ExQ1 [\[PD-007\]](#), particularly in relation to the applicant's shadow Habitats Regulation Assessment (HRA) Report (ExQ1 BIO.1.6 to BIO1.15), the effects of the proposed development on certain sensitive receptors (ExQ1 BIO.1.1, BIO.1.3, BIO.1.4) and the applicant's overall approach and methodology (ExQ1 BIO.1.2 and BIO.1.5).
- 3.6.47. The applicant responded to the ExA's questions, at [\[REP2-040\]](#), and confirmed, in response to ExQ1 BIO.1.1, that although the reinstatement of removed vegetation and hedgerows at decommissioning stage, is proposed, it would not be like for like in terms of maturity and therefore not carry the same biodiversity value. To mitigate against the loss of habitat identified during the construction phase, the applicant has committed to replace hedgerows lost in alternative locations, in line with the oCEMP. However, it would take approximately 20 years for replacement hedgerows and vegetation to reach their target condition for biodiversity (in accordance with the BNG Statutory Metric Calculation Tool, Defra 2025).
- 3.6.48. The applicant confirms, in its response to ExQ1 BIO.1.1 that the biodiversity value of the vegetation and hedgerows re-instated on the bespoke access road during the decommissioning phase (i.e. approximately 40 years post construction) have not been quantified within the Biodiversity Net Gain Strategy [\[APP-280\]](#) and for the purposes of the strategy the hedgerows in those locations are assumed to be lost. This biodiversity value is compensated for during the construction phase elsewhere on site to make sure that the appropriate biodiversity net gain for the site as a whole is reached.
- 3.6.49. Noting that fencing would be required during the construction phase, the applicant confirmed, in response to ExQ1 BIO.1.4 and BIO.1.5 that the impacts of proposed fencing, during construction and operational phases, have been considered, particularly its effects on mammals. Further, that the provision of access gaps to allow small mammals to pass through (whilst retaining the deer-proof element) has been included as mitigation.

- 3.6.50. In response to BIO.1.5, which relates to the applicant's consideration of options in order to maximise biodiversity, the applicant states that opportunities have been identified and the design of the proposed development adapted, where possible, for the benefit of biodiversity. This included improvements in ecological connectivity, a minimum 5m buffer

around watercourses and strengthening and planting up of approximately 2.78km of hedgerows. Diversity of grasses has also been considered, and new floodplain grassland would be created in the north-east corner of the development site. These have been set out in the oCEMP and the oLEMP, which are secured via requirements 12 and 7.

- 3.6.51. In addition to these written questions, the ExA further examined the applicant's assessment of effects on biodiversity and the natural environment at ISH2 [\[EV4-001\]](#) where further questions were asked in relation to the applicant's approach. Following from the ExA's questioning and issues raised at ISH2, an updated version of ES Chapter 7 was then submitted to examination [\[REP5-013\]](#).
- 3.6.52. The deadline 5 submission included, amongst other things, an update on the effects of the proposed development on some sensitive receptors during the construction phase of the development, namely on the Great Hale Eau LWS, mitigation of construction leading to water vole mortality, injury, disturbance or habitat loss, further detail on the assessment of effects of the proposed development on wintering birds, including gadwall and lapwing at operational and decommissioning phases, and breeding birds. In response to ISH2 action points 11 and 12, the applicant also revised tables 7.9, 7.10 and 7.11 updating details in relation to the summary of impacts, mitigation and residual effects from construction, operation and decommissioning phases.
- 3.6.53. The updated BNG Assessment Report [\[REP5-037\]](#) included specification of a minimum 30% biodiversity net gain in area-based habitat units, a minimum of 10% biodiversity net gain in hedgerow units and 10% biodiversity net gain in watercourse units across all of the proposed development at the operational phase.
- 3.6.54. Further written questions were then asked of the applicant in the Planning Inspectorate's Report on the Implications for European Sites (RIES) [\[PD-014\]](#) and at ExQ3 [\[PD-016\]](#). The applicant responded in Appendix 1 of Responses to ExQ2 [\[REP5-048\]](#) and a final version of ES Chapter 7 was submitted at deadline 8 [\[REP8-013\]](#).
- 3.6.55. The applicant responded to ExQ3 in [\[REP7-052\]](#), including confirmation that any changes as a result of the updated ES Chapter 7 had been considered, including updating the Habitat Regulation Assessment as a result of agreement being reached with NE in relation to lapwing and gadwall.

Concerns from NE

- 3.6.56. NE raised concerns regarding the applicant's approach to assessing the significant effects of the proposed development on biodiversity and the natural environment and maintained these throughout the examination, most of these were resolved by the end of the examination. This is confirmed in NE's Beacon Fen Risk & Issues Log [\[REP8-036\]](#) and in the final SoCG between the applicant and NE [\[REP7-045\]](#).

- 3.6.57. According to the final SoCG [\[REP7-045\]](#) and the Beacon Fen Risk & Issues Log [\[REP8-036\]](#) there is one matter outstanding which is related to Agricultural Land Classification (ALC) and the effects of the cable corridor. NE requests that an ALC survey of the grid connection corridor is carried out to inform the micro-siting of the connection corridor and other potentially damaging activities away from BMV land, as far as reasonably practicable, pre-consent. The applicant is proposing to carry out detailed soil surveys of the cable corridor post-consent/re-construction.
- 3.6.58. NE considers this matter not agreed but not considered to be material to the granting of the DCO.
- 3.6.59. The ExA has given this matter significant consideration and, in light of the information provided, including NE's comments in the final SoCG [\[REP7-045\]](#), the ExA is of the view that the requirements set out in the oCEMP and in the outline Soil management Plan (oSMP) are sufficient to ensure that detailed soil surveys of the cable corridor post-consent/pre-construction would be carried out. This is also secured in requirement 16 of the DCO.

HLA concerns

- 3.6.60. LCC in its LIR [\[REP1-044\]](#) raised concerns in relation to the applicant's assessment of the effects of the proposed development on biodiversity, namely that additional information and clarification was required to ensure that a precise assessment of the potential impacts was possible as well as concern about the applicant's approach to its calculation of BNG.
- 3.6.61. Although the SoCG [\[REP7-035\]](#) with LCC does not include reference to any outstanding matters in relation to biodiversity and the natural environment, at the end of the examination, as set out in LCC's closing summary statement [\[REP8-030\]](#), the council states that the applicant has not yet addressed the council's concerns regarding insufficient mitigation provision for ground nesting farmland birds, in particular skylark.
- 3.6.62. The council did note the applicant's response to ExQ3 BIO.3.2 [\[REP7-052\]](#) and confirmation of engagement with Lincolnshire Wildlife Trust to deliver offsite enhancements for skylark and suggests that any additional opportunities identified should be included in the Landscape and Ecological Management Plan (LEMP). However, the council states that it also raised similar concerns in relation to the effects of the proposed development on bats and stressed the importance of securing a robust programme of post construction bat monitoring. The applicant has not committed itself to the establishment of such a programme.
- 3.6.63. LCC is of the opinion that, until those matters have been addressed, the ExA cannot be confident that the ecological impacts of the proposed development have been fully mitigated.
- 3.6.64. The ExA has given this matter careful consideration and notes the applicant's response to ExQ3 BIO.3.2 [\[REP7-052\]](#) which makes reference to the installation of bird and bat boxes being added to section 6.7.14 of the oCEMP

[[REP5-017](#)] which stipulates detailed locations would be provided in the detailed LEMP. Management of these boxes is committed to in section 1.6.48 of the oLEMP, the latest version of which is [[REP8-017](#)].

- 3.6.65. In addition, considering there is a commitment from the applicant to provide on-going management of the proposed bat boxes and a commitment to the development of a monitoring programme based on the elements identified in the LEMP, the ExA is of the view that a monitoring programme is adequately secured. In relation to ground nesting farmland birds, in particular skylark, the ExA does find that there is no clear evidence to demonstrate that the proposed development would have a negative effect. Furthermore, the ExA notes the applicant's response [[REP8-032](#)] that the applicant has provided avoidance measures for impacts on skylark, including open space within the PV exclusion zones, which would be managed to support a greater density of skylark than at present. This is secured in the oLEMP [[REP8-017](#)].
- 3.6.66. NKDC final SoCG [[REP8-019](#)] states, in relation to ecology, that new impacts are identified in the impact assessment that were not assessed previously. In particular, a direct impact from the cable route on the Great Hale Eau LWS which NKDC states could be avoided if trenchless techniques were used. It also includes concerns regarding the loss of a pond (pond 43) in relation to works at Bicker Fen Substation, located in the administrative area of BBC.
- 3.6.67. The applicant's response to those points is also included and detailed within the final SoCG [[REP8-019](#)] where the applicant confirms there are no new impacts on the Great Hale Eau LWS and that the applicant considers it is not proportionate to apply trenchless methods to this crossing when this measure is not necessary to avoid likely significant effects. The ExA would agree with the view of the applicant on this matter.
- 3.6.68. In relation to the concern raised regarding the loss of pond 43, the applicant states that, in line with the Flood Risk Assessment (FRA) [[CR-029](#)] a replacement attenuation pond would be incorporated of an equivalent size. To ensure rapid recovery within 2 years (the timescale required to be considered temporary loss), the re-instated attenuation pond would be constructed using the retained topsoil/seedbank of the original pond in line with section 7.6.15 of the Ecology Chapter [[REP5-013](#)]. The ExA would agree with the view of the applicant on this matter.
- 3.6.69. BBC final SoCG [[REP7-039](#)] list that concerns previously expressed during the examination in relation to funding for off-site biodiversity enhancements, the Ecological Steering Group and BNG have been agreed.

CONCLUSIONS

- 3.6.70. I am satisfied that the applicant has undertaken a thorough ecological assessment that details the effects on protected species, habitats and ecologically designated sites as required by NPS EN-1 and NPS EN-3. Furthermore, I am satisfied that the ES details the mitigation measures necessary to avoid or minimise impacts, including from noise and

disturbance, and that these would be delivered through requirements 7 (LEMP), 12 (CEMP), 16 (Soil Management) of the dDCO [\[AS-039\]](#).

- 3.6.71. NPS EN-1 paragraph 5.4.39 requires the applicant to have regard to the Environment Act 2021. The applicant states that the proposed development would provide an anticipated minimum 30% biodiversity net gain in area-based habitat units, a minimum of 10% biodiversity net gain in hedgerow units and 10% biodiversity net gain in watercourse units. It is the ExA's view that the applicant has paid adequate regard to the Environment Act 2021.
- 3.6.72. NPS EN-1 paragraph 5.4.43 requires adequate mitigation to be provided if significant harm is identified. ES Chapter 7 Ecology [\[REP8-013\]](#) concludes that there would be no significant adverse effects resulting from the proposed development. The ExA agrees with this conclusion. NPS EN-1 paragraphs 5.4.44 and 47 require appropriate requirements to ensure delivery and maintenance of any mitigation or biodiversity net gain measures. The ongoing maintenance of proposed planting and habitat creation is detailed in the oLEMP [\[REP8-017\]](#) and secured via requirement 7 of the dDCO [\[AS-039\]](#).
- 3.6.73. NPS paragraph 5.4.46 relates to opportunities for building-in beneficial biodiversity features. The ExA considers that adequate mitigation and enhancement measures have been incorporated into the proposed development, as set out in ES Chapter 7 Ecology [\[REP8-013\]](#) and secured through schedule 12 of the dDCO [\[AS-039\]](#).
- 3.6.74. I also consider the evidence presented as part of the examination demonstrates that international sites, SSSI and ancient woodland/priority habitat sites and species have been adequately considered and assessed for significant effects in line with the EIA Regulations 2017. I am satisfied that the evidence presented demonstrates that, with the embedded mitigation and enhancement measures identified above, the proposed development would conserve and enhance biodiversity within the order limits.
- 3.6.75. Taking all the evidence into account, I am satisfied that ecology and biodiversity matters have been adequately assessed in accordance with the requirements of NPS EN-1 and NPS EN-3, the NPPF and relevant development plan policies. I note the applicant's commitment to provide enhancement measures and that BNG levels are secured in the dDCO. This weighs positively in favour of the proposed development and I consider that it should be afforded a little positive weight in the overall planning balance.
- 3.6.76. Matters to be taken to chapter 5 and the planning balance:
- The ExA concludes that the proposed development complies with NPS EN-1 paragraph 5.4.39 with regard to the statutory targets in the Environment Act 2021.
 - The ExA concludes that the proposed development complies with NPS EN-1 paragraphs 5.4.43 to 5.4.48 with regard to providing mitigation or biodiversity net gain measures. The applicant has

incorporated beneficial biodiversity enhancement measures into the proposed development, although any weight given to gains is likely to be limited.

- The ExA concludes that the proposed development complies with NPS EN-1 paragraphs 5.4.50, 5.4.52 to 5.4.55 with regard to Sites of Special Scientific Interest, regional and local sites, irreplaceable habitats, and protection and enhancement of habitats and species including Ancient Woodland Priority Habitats.
- The ExA concludes that the proposed development complies with NPS EN-3 paragraph 2.10.76 to 2.10.79 with regard to identifying ecological risk.
- The ExA concludes that the proposed development complies with NPS EN-3 paragraphs 2.10.89 and 2.10.90 with regard to enhancing biodiversity.
- Overall, the ExA finds that biodiversity and natural environment considerations weigh positively in favour of the proposed development and should be afforded a little positive weight in the planning balance.

3.7. HISTORIC ENVIRONMENT

INTRODUCTION

- 3.7.1. This section of the report considers the effects of the proposed development on heritage and the historic environment, including above ground heritage assets and below ground archaeological features. Cumulative effects are considered in section 3.11.

POLICY BACKGROUND

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

- 3.7.2. Section 5.9 of NPS EN-1 provides advice on the historic environment and paragraph 5.9.1 states that the construction, operation and decommissioning of energy infrastructure has the potential to result in adverse impacts, at and below the surface of the ground, in relation to historic environment.
- 3.7.3. Paragraph 5.9.3 confirms that, in relation to heritage assets, significance of the asset derives not only from its physical presence, but also from its setting.
- 3.7.4. Paragraph 5.9.4 states that some heritage assets have a level of significance that justifies official designation, which includes, amongst others, scheduled monuments, listed buildings, registered parks and gardens and conservation areas. Paragraph 5.9.7 states that the SoS should also consider the impacts of energy infrastructure on non-designated heritage assets, including those that are locally listed, on the basis of clear evidence that such heritage assets

have a significance that merits consideration even though of lesser significance than designated heritage assets.

- 3.7.5. In relation to the applicant's assessment, paragraph 5.9.9 states that the applicant should undertake an assessment of any likely significant heritage impacts of the proposed development and describe these along with how the mitigation hierarchy has been applied. This should include consideration of heritage assets above, at, and below the surface of the ground. Consideration would also need to be given to the possible impacts, including cumulative, on the wider historic environment.
- 3.7.6. Paragraph 5.9.15 states that applicants should look for opportunities for new development within conservation areas and within the setting of heritage assets, to enhance or better reveal their significance. Proposals that preserve those elements of the setting that make a positive contribution to the asset (or which better reveal its significance) should be treated favourably.
- 3.7.7. Where heritage assets may be affected by a proposed development, paragraph 5.9.22 requires the identification and assessment of the particular significance of those assets, including the setting. This should take account of information provided with the application, or submitted during the examination, any historic landscape character records and relevant historic environment records (HER), representations made by interested parties and expert advice.
- 3.7.8. Paragraph 5.9.23 also clearly states that the SoS must also comply with the requirements on listed buildings, conservation areas and scheduled monuments set out in Regulation 3¹³ of the Infrastructure Planning (Decisions) Regulations 2010 (Decisions Regulations).
- 3.7.9. Paragraph 5.9.25 states that the SoS should consider the desirability of sustaining and, where appropriate, enhancing the significance of heritage assets, the contribution of their settings and the positive contribution that their conservation can make to sustainable communities.
- 3.7.10. Paragraph 5.9.27 goes on to state that, when considering the impact of a proposed development on the significance of designated heritage assets, the SoS should give great weight to the asset's conservation. The more important the asset, the greater the weight should be. This is irrespective of whether any potential harm amounts to substantial harm, total loss, or less than substantial harm to its significance.
- 3.7.11. Paragraph 5.9.28 reinforces this point by stating that the SoS should give considerable importance and weight to the desirability of preserving all

¹³ Regulation 3 of the Infrastructure Planning (Decisions) Regulations 2010 requires the SoS to have regard to the desirability of preserving a listed building or its setting or any features of special architectural or historic interest which it possesses, the desirability of preserving or enhancing the character or appearance of a conservation area, and the desirability of preserving a scheduled monument or its setting.

heritage assets and that any harm or loss of significance of a designated heritage asset (from its alteration or destruction, or from development within its setting) should require clear and convincing justification.

- 3.7.12. Paragraph 5.9.30 adds that substantial harm to or loss of significance of assets of the highest significance, including scheduled monuments, grade I and II listed buildings, should be wholly exceptional.
- 3.7.13. Paragraph 5.9.31 states that, where the proposed development will lead to substantial harm to (or total loss of significance of) a designated heritage asset, the SoS should refuse consent unless it can be demonstrated that the substantial harm to, or loss of, significance is necessary to achieve substantial public benefits that outweigh that harm or loss.
- 3.7.14. Paragraph 5.9.32 goes on to say that, where the proposed development will lead to less than substantial harm to the significance of the designated heritage asset, this harm should be weighed against the public benefits of the proposal.
- 3.7.15. Paragraph 5.9.33 states that in weighing applications that directly or indirectly affect non-designated heritage assets, a balanced judgement will be required having regard to the scale of any harm or loss and the significance of the heritage asset.
- 3.7.16. Paragraph 5.9.36 states that, when considering applications for development affecting the setting of a designated heritage asset, the SoS should give appropriate weight to the desirability of its preservation and, when considering applications that do not do this, the SoS should give great weight to any negative effects, when weighing them against the wider benefits of the application. The greater the negative impact on the significance of the designated heritage asset, the greater the benefits that will be needed to justify approval.
- 3.7.17. The 2025 version of the Overarching National Policy Statement for Energy 2025 (NPS EN-1 2025) is broadly in agreement with the NPS EN-1 and it does not substantially change its objectives or policy in relation to the issues mentioned above.

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

- 3.7.18. Paragraph 2.10.108 of NPS EN-3 states that above ground impact of solar PV developments may include the effects on the setting of listed buildings and other designated heritage assets as well as on historic landscape character, while paragraph 2.10.109 says that below ground impacts, although generally limited, may include direct impacts on archaeological deposits through ground disturbance associated with trenching, cabling, foundations, fencing, temporary haul routes, and the like.
- 3.7.19. Paragraph 2.10.113 states that, where a site on which development is proposed includes, or has the potential to include, heritage assets with archaeological interest, the applicant should submit an appropriate desk-

based assessment and, where necessary, a field evaluation. These should be carried out using expertise where necessary and in consultation with the local planning authority. These assessments should identify archaeological study areas and propose appropriate schemes of investigation, and design measures, to ensure the protection of relevant heritage assets.

- 3.7.20. Paragraph 2.10.118 states that, as the significance of a heritage asset derives not only from its physical presence but also from its setting, careful consideration should be given to the impact of large-scale solar farms which depending on their scale, design, and prominence, may cause substantial harm to the significance of the asset.
- 3.7.21. Paragraph 2.10.160 states that solar farms are generally consented on the basis that they will be time-limited in operation. The SoS should therefore consider the length of time for which consent is sought when considering the impacts of any indirect effect on the historic environment, such as effects on the setting of designated heritage assets.
- 3.7.22. The 2025 version of the National Policy Statement for Renewable Energy Infrastructure 2025 (NPS EN-3 2025) is broadly in agreement with the NPS EN-3 and it does not substantially change its objectives or policy in relation to the issues mentioned above.

NPPF

- 3.7.23. Paragraphs 202 to 221 of the NPPF relate to the conservation and enhancement of the historic environment and, in broad terms, confirm the same principles as set in NPS EN-1 and NPS EN-3 with paragraph 202 stating that heritage assets are irreplaceable and should be conserved in a manner appropriate to their significance.
- 3.7.24. Paragraph 213 also states that any harm to, or loss of, the significance of a designated heritage asset (from its alteration or destruction, or from development within its setting), should require clear and convincing justification.
- 3.7.25. Paragraph 215 states that, where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal including, where appropriate, securing its optimum viable use.

LOCAL POLICY

- 3.7.26. The CLLP includes Policy S57 which seeks to protect, conserve and enhance the historic environment of Central Lincolnshire. The policy also states that, where development proposals would result in less than substantial harm to a designated heritage asset, permission will only be granted where the public benefits, including, where appropriate, securing its optimum viable use, outweigh the harm. In addition to this, development proposals affecting archaeological remains, whether known or potential, designated or undesignated, should take every practical and reasonable step to protect and, where possible, enhance their significance.

- 3.7.27. Policy 29 of the SELLP states that development proposals will be required to conserve and enhance the character and appearance of designated and non-designated heritage assets.

THE APPLICATION

- 3.7.28. The applicant's assessment of effects on heritage and the historic and cultural environment is mainly set out in ES Chapter 8 (Cultural Heritage) [\[APP-059\]](#), supported by:
- Appendix 8.1 Archaeological Desk Based Assessment [\[APP-117\]](#)
 - Appendix 8.2 Heritage Statement [\[APP-118\]](#)
 - Appendix 8.3 Aerial and LiDAR Assessment - Solar Array [\[APP-119\]](#)
 - Appendix 8.4 Aerial and LiDAR Assessment - Access and Cable Routes [\[APP-120\]](#)
 - Appendix 8.5 WSI for Geophysical Survey for the Solar Array [\[APP-121\]](#)
 - Appendix 8.6 Geophysical Survey Summary Report Solar Array Area Part 1 [\[APP-122\]](#), Part 2 [\[APP-123\]](#), Part 3 [\[APP-124\]](#), Part 4 [\[APP-125\]](#), Part 5 [\[APP-126\]](#)
 - Appendix 8.7 WSI for Geophysical Survey of the Cable and Access Routes [\[APP-127\]](#)
 - Appendix 8.8 Geophysical Survey Report - Cable and Access Routes Part 1 [\[APP-128\]](#), Part 2 [\[APP-129\]](#), Part 3 [\[APP-130\]](#), Part 4 [\[APP-131\]](#), Part 5 [\[APP-132\]](#), Part 6 [\[APP-133\]](#), Part 7 [\[APP-134\]](#), Part 8 [\[APP-135\]](#), Part 9 [\[APP-136\]](#), Part 10 [\[APP-137\]](#), Part 11 [\[APP-138\]](#), Part 12 [\[APP-139\]](#), Part 13 [\[APP-140\]](#), Part 14 [\[APP-141\]](#), Part 15 [\[APP-142\]](#), Part 16 [\[APP-143\]](#), Part 17 [\[APP-144\]](#), Part 18 [\[APP-145\]](#), Part 19 [\[APP-146\]](#), Part 20 [\[APP-147\]](#), Part 21 [\[APP-148\]](#)
 - Appendix 8.9 Written Scheme of Investigation for Trial Trenching [\[APP-149\]](#)
 - Appendix 8.10a Trial Trenching Report - Solar Array [\[APP-150\]](#) and [\[APP-151\]](#)
 - Appendix 8.10b Trial Trenching Report - Targeted Access Route [\[APP-152\]](#)
 - Appendix 8.11 Archaeological Mitigation Strategy [\[APP-153\]](#)
 - Appendix 8.12 Legislation and Policy [\[APP-154\]](#)
 - Appendix 7.14 Invertebrate Report [\[APP-103\]](#)
 - Figure 8.1.1 Designated Heritage Assets within 5km [\[APP-243\]](#)
 - Figure 8.1.2 Scoped in Designated Heritage Assets within 5km [\[APP-244\]](#)
 - Figure 8.2 Non-Designated Heritage Assets by Period within 2km Sheet 1-5 [\[APP-245\]](#)
 - Figure 8.3 Field Reference Sheet 1-2 [\[APP-246\]](#)
 - Figure 8.4 Historic Landscape Characterisation [\[APP-247\]](#)
 - Figure 8.5 Geophysical survey interpretation of the DCO Order Limits [\[APP-248\]](#)
 - Figure 8.6 Aerial and LiDAR Interpretation [\[APP-249\]](#)
 - Figure 8.7 Trial Trenching Plan with Archaeological Remains Highlighted [\[APP-250\]](#)
 - Figure 8.8 Historic Mapping (Solar Array) [\[APP-251\]](#)

METHODOLOGY

- 3.7.29. The methodology adopted by the applicant for the assessment of the likely effects of the proposed development on the historic environment, particularly the potential for likely significant effects on buried archaeological remains and on the significance of heritage designations as a result of introducing changes within the setting of a heritage designation, is set out in section 8.4 of ES Chapter 8 (Cultural Heritage) [\[APP-059\]](#).
- 3.7.30. The study area for the identification of designated heritage assets potentially sensitive to the proposed development was set at 5km from the development site, as per Figure 8.1.1 Designated Heritage Assets within 5km (Appendix 8.1 Archaeological Desk Based Assessment) [\[APP-117\]](#). However, the applicant confirmed that this approach was flexible and that designated heritage assets beyond the 5km study area have also been considered.
- 3.7.31. The study area for non-designated heritage assets was set at 2km from the development site, as significant effects are not likely beyond this distance.
- 3.7.32. The assessment methodology and significance criteria are set in paragraphs 8.4.5 to 8.4.19. In addition to the assessment methodology having been agreed with LCC, the significance criteria approach taken is said to be that advocated by the International Council on Monuments and Sites, the Institute of Environmental Management and Assessment and National Highways.
- 3.7.33. The applicant clarifies that, following consideration of the sensitivity of the receptor and the magnitude of the impact, and assessment to classify the effects of the proposed development, having taken into consideration any embedded mitigation, is the carried out. Professional judgement is then used in order to assess whether effects are significant or not significant, with full consideration of the significance of an asset and the derivation of that significance.

Baseline

- 3.7.34. Section 8.5 of ES Chapter 8 (Cultural Heritage) [\[APP-059\]](#) describes the applicant's approach to establishing the baseline conditions for the assessment. In order to achieve this, the applicant considered the physical and historical characteristics of the site and carried out an Archaeological Desk Based Assessment [\[APP-117\]](#) of the study area.
- 3.7.35. The applicant has identified that, within a 2km radius of the development sites, there are 67 Listed Buildings which include 6 Grade I and 5 Grade II* Listed Buildings. There are also 6 Scheduled Monuments and 2 conservation areas. Within a 5km radius of the site there are an additional 18 Scheduled Monuments, 284 Listed Buildings (including 7 Grade I and 10 Grade II*) and 8 conservation areas. The key sensitive receptors identified by the applicant, both designated and on-designated, are set out in paragraphs 8.6.4, 8.6.5 and 8.6.6.

ASSESSMENT OF EFFECTS

- 3.7.36. Section 8.7 of ES Chapter 8 (Cultural Heritage) [[APP-059](#)] sets out the applicant's assessment of likely significant effects on heritage assets (including historic hedgerows, historic landscape character) cultural assets and buried archaeological remains, with the overall significance of effects being set out after consideration has been given to both embedded and essential mitigations. The applicant's overall assessment is summarised in table 8.11 Cultural Heritage - Summary Assessment Matrix.
- 3.7.37. The assessment considers the likely effects of the proposed development at construction, operational and decommissioning phases.

Construction phase

- 3.7.38. During the construction phase, there is the potential for both direct and indirect impacts to arise. Direct impacts could arise as a result of ground disturbance associated with the installation of the solar PV modules and associated infrastructure, including the bespoke access corridor, cable corridor and proposed landscaping. Indirect impacts could arise during construction phase due to noise and visual intrusion as a result of the presence and operation of plant, cranes, vehicles and other material needed for the construction of the proposed development.
- 3.7.39. The anticipated effects of the proposed development during the construction phase on archaeological assets are set out in table 8.7 and on heritage assets in table 8.8 of ES Chapter 8 (Cultural Heritage) [[APP-059](#)].
- 3.7.40. The applicant anticipates that, with only embedded mitigation, a number of archaeological assets would experience significant effects, with all but one being moderate adverse, and one being moderate to major adverse: the Car Dyke along the eastern boundary of the solar array and between Fields C22/C23.
- 3.7.41. In relation to heritage assets, only one asset would be expected to experience significant effects, the Church of St. Andrew, Asgarby, a Grade I Listed Building, which would be moderate adverse.

Operational phase

- 3.7.42. During the operational phase there is still potential for the proposed development to physically impact buried archaeological remains through maintenance or repair works. However, it is anticipated that most of the areas where impact may have occurred would have been previously mitigated by design. Consequently, and taking into consideration that the applicant finds the archaeological remains to be of largely of low significance, there would be potential for slight adverse effect to the archaeological resource which the applicant has defined as non-significant.
- 3.7.43. During the operational phase, there is also potential for impacts on the historic landscape character through the presence of the proposed development which would alter the predominant land use of the area, from

arable land to energy infrastructure. However, as there would be the potential for the site to be used as pasture, thereby retaining some of its agricultural use, and no current field boundaries would be altered, therefore retaining the existing land formation, the applicant anticipates the impact to be not significant.

- 3.7.44. Finally, indirect impacts to heritage assets during the operational phase could also arise as a result of changes introduced within their settings, which may affect the overall significance of the heritage assets. Having considered the potential for impacts and the nature of the different components of the proposed development, the applicant found that although adverse effects would occur, these would be slight and therefore not significant.

Decommissioning phase

- 3.7.45. In paragraph 8.7.12 of ES Chapter 8 (Cultural Heritage) [[APP-059](#)] the applicant recognises there would be temporary impacts to the setting of designated assets in the study area during decommissioning, resulting from the use of machinery to dismantle the proposed development and so would affect the setting of the same heritage assets as the construction phase. However, the applicant states that impacts would be no greater than those assessed during construction as decommissioning would be temporary with a duration of works shorter than construction.
- 3.7.46. The applicant also notes that the cable route would not be subject to decommissioning activity and therefore there would be no impact to those assets solely within the vicinity of the cable route.
- 3.7.47. In paragraph 8.7.14 the applicant states that the historic landscape character would be temporarily impacted during the decommissioning stage through the presence of construction activity but that, upon removal of the elements that constitute the proposed development, the land would be restored back to agricultural land use meaning all impacts upon the existing historic landscape character would be removed.

MITIGATION

- 3.7.48. For the construction phase, an Archaeological Mitigation Strategy (AMS) [[REP2-019](#)] has been prepared with the aim to understand the process for mitigation either by design or record, and to assist in demarcating known areas of impact. This is secured by requirement 11 of the dDCO. The applicant also states that the solar array area would not require mitigation as it has been proportionately evaluated by geophysical surveys and trial trenching as well as the bespoke access road, which has been evaluated via targeted trial trenching.
- 3.7.49. At operational phase there would be limited potential for further impacts to the archaeological resources and works carried out in accordance with the mitigation strategy would make any further impacts unlikely to arise. The applicant also clarifies that areas of stand-off and landscaping would be included as part of the proposed development so as to mitigate potential

adverse impacts to heritage assets, as shown in the Indicative Site Layout Plan [\[REP2-028\]](#).

- 3.7.50. At the decommissioning phase, there is potential for impacts to the below ground archaeological resource (not previously disturbed or mitigated) within the solar array area, as a result of the removal of the panels, landscaping and associated infrastructure. If the bespoke access road were to be removed there would be a requirement for mitigation but only in areas that have not had archaeological evaluation from trial trenching done before for the construction phase. This approach has also been outlined in the AMS [\[REP2-019\]](#).

RESIDUAL EFFECTS

- 3.7.51. The applicant confirms, in paragraph 8.9.2, that the Church of St Andrew, Asgarby, a Grade I Listed Building (NHLE 1061832) would still be assessed as having moderate adverse (significant) residual effects from the construction of the proposed development. The applicant, however, is of the view that, once construction is complete, the bespoke access road would only be used for maintenance and its use greatly reduced, therefore reducing the effect on the heritage asset to not significant. All other residual effects on heritage assets would be not significant. The same would apply to archaeological remains, once mitigation is considered. Such mitigation would be preservation by record in a worst-case scenario.

ISSUES CONSIDERED DURING THE EXAMINATION

EXAMINING AUTHORITY QUERIES

- 3.7.52. The ExA asked several written questions to the applicant at ExQ1 [\[PD-007\]](#), ExQ2 [\[PD-013\]](#) and ExQ3 [\[PD-016\]](#) in relation to its assessment of the effects of the proposed development on the historic environment. Key concerns for the ExA were the impacts of the proposed development in relation to certain historic and cultural assets, the proposed mitigation and the applicant's assessment of significance.
- 3.7.53. ExQ1 HEN.1.2 sought clarification from the applicant in relation to the interpretation of significance, in the context of the ES, and how non significant effects and no effects should be interpreted in the context of regulation 3 of the Infrastructure Planning (Decisions) Regulations 2010 (Decisions Regulations).
- 3.7.54. In its response [\[REP2-040\]](#) the applicant acknowledges that in EIA terms a not significant effect is not the same as no effect. The applicant also states that, as it has adopted a precautionary approach and identified a worst-case scenario when assessing the effects of the proposed development, it is possible that an alternative and subjective view of the setting change would be considered not of sufficient magnitude as to trigger an impact at all.
- 3.7.55. ExQ1 HEN.1.6 questioned the applicant's reasoning in relation to its assessment of the effects of the proposed development on Gashes Barn (HER MLI121916) and Westmorelands (HER MLI121926) (see Figure 8.2

Non-Designated Heritage Assets by Period Within 2KM Sheet 4 of 5 [[APP-245](#)]), which are both local non-designated heritage assets within a 2km radius of the proposed development.

- 3.7.56. The ExA's concerns were linked to the fact that, for both these assets, the applicant reported, in table 8.11 Cultural Heritage - Summary Assessment Matrix [[APP-059](#)], that major adverse impacts would be experienced. However, these effects would be not significant due to landscaping being used to create a sense of separation.
- 3.7.57. The applicant replied in [[REP2-040](#)] that the reference to major adverse was made in error and that the correct terminology should have been slight adverse, in line with the assessment set out in table 8.9 Operational Phase - Heritage Assets.
- 3.7.58. ExQ1 HEN.1.7 relates to the applicant's assessment of effects on certain archaeological assets, namely the irreversible removal of the Victorian Pumping Station in N1 [[APP-246](#)] and the Car Dyke along the eastern boundary of the solar array and between C22/C23 (MLI60706) (see Figure 8.2 Non-Designated Heritage Assets by Period Within 2KM Sheet 2 of 5 [[APP-245](#)]) at construction phase which are proposed to be preserved by record. The ExA asked why preservation by record was considered sufficient mitigation to reduce an effect such as the removal of an asset to a not significant effect. The applicant's response included in [[REP2-040](#)] states that the post preservation by record proposed can be regarded as off-setting the impacts in acknowledgement that the release of heritage capital through the knowledge gathered by archaeological recording provides a beneficial counter-weight to the adverse impact.
- 3.7.59. ExQ1 HEN.1.8 seeks to obtain clarification from the applicant on the same point, but in more general terms, querying the applicant's approach in relation to preservation by record and whether it is an appropriate mitigation for heritage and archaeological assets. The applicant's response [[REP2-040](#)] stresses the role of mitigation by design, the work carried out in order to avoid having any impact on identified archaeological assets and to develop protocols to ensure any unexpected assets worthy of preservation in situ are also avoided. However, the applicant does recognise that certain assets, of very low or low value, would be removed and preserved by record only. The applicant also states that this would offset the negative impact of their removal by allowing for a greater understanding of the historic environment within this region.
- 3.7.60. ExQ1 HEN.1.11 [[PD-007](#)] seeks clarification from the applicant in relation to the assessment of the impact of the proposed development on the setting of South Kyme Tower, the Church of St. Mary and All Saints and the Church of St. Oswald, Howell. The ExA was particularly concerned regarding the effects on the setting of these assets due either to their proximity to the proposed development or the relationship between the surrounding area and the historic asset itself.

- 3.7.61. In relation to South Kyme Tower [\[REP2-040\]](#), the applicant confirmed it recognises that the proposed development may have a slight adverse effect on the asset through change within the wider setting of South Kyme Tower. This effect is slight adverse as the main interactions between South Kyme Tower and the wider landscape are to the east towards the village and the manor house and the north toward the church. Views west towards the proposed development are not as important in respect of understanding the historic and architectural interest of the asset.
- 3.7.62. In relation to the Church of St. Mary and All Saints, the applicant states in [\[REP2-040\]](#) that the proposed development would only cause changes in the wider setting of the asset, which would result in a slight adverse effect on the asset. This is due to the distance between the Church of St. Mary and All Saints and the proposed development and also due to the embedded mitigation proposed by the applicant which would enhance the structure of Midfodder Dike by infilling, further preventing views towards the proposed development. The applicant also notes that key views to and from the church would be from the south, southeast and east, across the graveyard, towards the manor house, the tower and the access track towards the village high street, not in the general direction of the proposed development.
- 3.7.63. In relation to the Church of St. Oswald, Howell, the applicant stresses the original use and functionality of the asset being linked to its intended enclosure and seclusion. The applicant also recognises the historic association of this asset with the surrounding assets including Howell Hall. However, and similarly to the Church of St. Mary and All Saints, the church of St. Oswald has limited intervisibility with the proposed development, therefore leading the applicant to classify the change in the wider setting of the asset as having a slight adverse effect.

CONCERNS FROM HISTORIC ENGLAND (HE)

- 3.7.64. HE raised some concerns at the start of the examination [\[RR-008\]](#) in relation to the applicant's assessment of the impacts of the proposed development on certain assets, mainly South Kyme Tower, Church of St Mary and All Saints and the Church of St Oswald, Howell, as well as on archaeological remains.
- 3.7.65. Question HEN.1.1 was posed by the ExA to HE and the HLAs and asked if those parties were in general agreement with the methodology and overall assessment of effects on cultural heritage. HE responded, in [\[REP2-049\]](#) that they were broadly in agreement with the applicant's methodology and overall assessment.
- 3.7.66. As confirmed by the SoCG signed by both the applicant and HE [\[REP3-005\]](#), all outstanding matters were agreed upon before the end of the examination.

HLA CONCERNS

- 3.7.67. LCC in its LIR [\[REP1-044\]](#) raised concerns in relation to the applicant's assessment of the effects of the proposed development on the historic environment stating that the proposed development would result in adverse impacts on the setting of designated and non-designated heritage assets.

LCC was particularly concerned with the effects of the proposed development on the character and coherence of the historic farmstead network, which LCC believed should be assessed with a group-value methodology. In paragraph 9.20 of the LIR [\[REP1-044\]](#) LCC states that the significance and special interest of these assets would be eroded by the change in landscape character arising from the solar farm and associated infrastructure. Greater weight should be given to these impacts in decision-making and that less than substantial harm must still be weighed against the public benefits of the proposal.

- 3.7.68. LCC agrees with the applicant's assessment of the proposed development having a slight adverse impacts on archaeology.
- 3.7.69. NKDC's LIR [\[REP1-054\]](#) raised similar concerns in relation to the impact of the proposed development on the setting of designated and non-designated heritage assets. NKDC stated, in paragraph 15.14 of the LIR [\[REP1-054\]](#) that the council considered that greater weight and bespoke consideration of Kyme Tower, Asgarby Hall, St Andrew's Church, Boughton House and Howell Hall together with non-designated heritage farmsteads is required in order to inform a bespoke mitigation strategy for these heritage assets rather than a reliance on embedded mitigation.
- 3.7.70. The HLAs were given an opportunity to raise their concerns at ISH2 and the ExA followed-up on those concerns in the actions from ISH2 [\[EV4-010\]](#) and ExQ2 HEN.2.4 [\[PD-013\]](#), requesting further information on the effects of the proposed development on South Kyme Tower (action 8) and for an assessment of the group value of the historic farmstead (action 10).
- 3.7.71. In response to this, the applicant submitted as part of Response to Remaining Action Points [\[REP5-026\]](#) Appendix 5: Non-designated Farmstead Appraisal which looked at the group value of the historic farmstead network. Following from identification of the appropriate farmsteads with NKDC and LCC. Overall, the applicant came to the conclusion that the identified assets would experience no more than a neutral significance of effect as a result of the impact of the proposed development on their group heritage value.
- 3.7.72. The applicant also submitted as part of the Response to Remaining Action Points [\[REP5-026\]](#) Appendix 4: South Kyme Heritage Appraisal (with a subsequent update at deadline 7 [\[REP7-047\]](#)), which concluded that there would be a slight adverse impact to the wider setting of Kyme Tower and its heritage landscape due to the introduction of solar panels in the wider horizon, which would be visible from the ground base and first floor of the tower. The applicant goes on to state that, given the restrictions to accessing the top of the tower, and the elements of the tower's setting which contribute to its heritage significance, it considered that the wider landscape does not substantially contribute to this significance. The applicant goes on to state that any changes to this wider landscape beyond the appreciable elements of Kyme Tower's heritage significance and immediate setting would result in less than substantial harm to the significance of this asset.

- 3.7.73. NKDC confirmed, in its SoCG [\[REP8-043\]](#), that it remained in disagreement with the applicant in relation to its conclusions in respect of the effects of the proposed stockpiles to screen the bespoke access road on St. Andrew's Church, the effects of the proposed development on South Kyme Tower and its opposition to the absence of a group heritage assessment of the assets at Asgarby. NKDC recognises the work carried out by the applicant in relation to the Kyme Tower Heritage Appraisal, as set out in Appendix 4 of Response to Remaining Action Points [\[REP5-026\]](#), however it does not have enough confidence that the level of harm remains as previously identified.
- 3.7.74. The applicant's response to NKDC's comments is also included in the SoCG [\[REP8-043\]](#) and it stresses the work that the applicant has carried out in assessing the effects of the proposed development, that the assessments undertaken have been appropriate and robust and that suggestions put forward for the mitigation of impacts on St. Andrew's Church would have adverse effects.
- 3.7.75. The final positions of both NKDC and the applicant were confirmed in their closing summary statements ([\[REP8-032\]](#) for NKDC and [\[REP8-029\]](#) for the applicant).

CONCLUSIONS

GENERAL CONSIDERATIONS

- 3.7.76. The ExA has carefully reviewed all of the information submitted and has given great consideration to the matters above. In reaching its conclusions, the ExA has had regard to the desirability of preserving listed buildings and their settings, preserving or enhancing the character or appearance of conservation areas and preserving schedule monuments and their settings, as set out in regulation 3 of the Infrastructure Planning (Decisions) Regulations 2010.
- 3.7.77. The ExA has also taken into consideration relevant national and local policy including the need to give considerable importance and weight to the desirability of preserving all heritage assets and its setting and opportunities for new development within the setting of heritage assets, to enhance or better reveal their significance.
- 3.7.78. The ExA also notes, as per paragraph 5.9.36 of the NPS EN-1, when considering applications for development affecting the setting of a designated heritage asset, the SoS should give appropriate weight to the desirability of preserving the setting of such assets and treat favourably applications that preserve those elements of the setting that make a positive contribution to, or better reveal the significance of, the asset. When considering applications that do not do this, the Secretary of State should give great weight to any negative effects, when weighing them against the wider benefits of the application. The greater the negative impact on the significance of the designated heritage asset, the greater the benefits that would be needed to justify approval.

- 3.7.79. HE, LCC and NKDC are all content with the applicant's assessment methodology and have agreed it is appropriate. Overall, and as a whole, the ExA has no reason to disagree with this view and finds that the applicant has undertaken an appropriate assessment of the likely significant heritage impacts of the proposed development and, in that regard, finds there is compliance with paragraphs 5.9.9, 5.9.10 and 5.9.11 of NPS EN-1 and paragraphs 2.10.108, 2.10.109, 2.10.113 and 2.10.160 of NPS EN-3.

Construction Phase

- 3.7.80. The applicant has confirmed that the setting of Church of St Andrew, Asgarby, a Grade I Listed Building (NHLE 1061832) would experience a moderate adverse (significant) residual effect from the construction of the proposed development. The ExA agrees with this assessment and gives this harm great weight. However, considering proposed mitigation and the measures secured in the DCO, CEMP and the AMS, the ExA finds this harm to be less than substantial.
- 3.7.81. In addition to this, table 8.11 of ES Chapter 8 (Cultural Heritage) [[APP-059](#)] identifies heritage assets that, following embedded and additional mitigation measures, would experience effects, ranging from slight to major adverse, as well as the permanent removal of some archaeological assets.
- 3.7.82. However, proposed mitigation is also proposed for known and unknown archaeological remains which includes avoidance through preservation by design and, where mitigation by design is not possible or warranted, mitigation through preservation by record.
- 3.7.83. Having considered the relevant paragraphs in the NPS EN-1 and NPS EN-3 alongside what would constitute a reasonable worst-case scenario, the low likelihood of finding archaeological remains of any importance and the secured mitigation proposed in the eventuality that any archaeological remains were to be found, the ExA agrees with the applicant that the effects would be not significant.
- 3.7.84. Other assets would be affected by the construction of the proposed development, namely, Churchyard Cross at St Oswald's Churchyard, a Scheduled Monument (NHLE 1009228) and Church of St Oswald, Howell, a Grade II* Listed Building (NHLE 1061833), Church of St Andrew, Asgarby, a Grade I Listed Building (NHLE 1061832), Church of St Andrew, Ewerby and Evedon, a Grade I Listed Building (NHLE 1360562), Gashes Barn, a non designated heritage asset (HER MLI121916), Unnamed Farmstead, Ewerby and Evedon, Non-Designated (HER MLI121913), Westmorelands (Asgarby Fen Farm), Non-Designated (HER MLI121926). The ExA notes that a significant effect is predicted for the setting of the Church of St Andrew, Asgarby, a Grade I Listed Building (NHLE 1061832) but no significant effects have been identified for any of the other designated heritage assets during the construction phase.
- 3.7.85. Having given careful consideration to the proposed mitigation measures, the nature of the impacts identified and their significance, the ExA agrees with

the applicant's assessment of no significant effects of the proposed development during construction phase on all assets except Church of St Andrew, Asgarby, (NHLE 1061832). However, less than substantial harm is still harm. However, for the reasons above, the ExA classes this harm to be low level and less than substantial.

- 3.7.86. In relation to Church of St Andrew, Asgarby, (NHLE 1061832), the ExA agrees with the applicant that this harm would be significant but limited, due to the duration of the construction phase and the proposed mitigation measures secured through the DCO, the CEMP and the AMS. For these reasons, although the ExA this harm great weight, considering proposed mitigation and the measures secured in the DCO, CEMP and the AMS, the ExA finds this harm to be less than substantial.

Operational Phase

- 3.7.87. In relation to the operational phase, the applicant has identified that adverse effects, although deemed not significant in ES terms, would be experienced in relation to remains of medieval monastery, moated manor house, fishponds and post-medieval garden, a Scheduled Monument (NHLE 1008317), Kyme Tower, a Grade I Listed Building (NHLE 1204786); Churchyard Cross at St Oswald's Churchyard, a Scheduled Monument (NHLE 1009228) and Church of St Oswald, Howell, a Grade II* Listed Building (NHLE 1061833); Church of St Andrew, Asgarby, a Grade I Listed Building (NHLE 1061832); Church of St Andrew, Ewerby and Evedon, a Grade I Listed Building (NHLE 1360562); Church of St Andrew, Heckington, a Grade I Listed Building (NHLE 1360590); Church of St Mary and All Saints, South Kyme a Grade II* Listed Building (NHLE 1061749); Church of St Denys, a Grade II* Listed Building (NHLE 1360592); The Old Rectory, a Grade II Listed Building (NHLE 1061834); Boughton House, a Grade II Listed Building (NHLE 1061835); Howell Hall, a Grade II Listed Buildings (NHLE 1168460); Austhorpe Farm, Grade II Listed Building (NHLE 1306847); Thorpe House, a Grade II Listed Building (NHLE 1360566); Gashes Barn, a non designated heritage asset (HER MLI121916); Unnamed Farmstead, Ewerby and Evedon, a non designated heritage asset (HER MLI121913), Westmorelands (Asgarby Fen Farm), a non designated heritage asset (HER MLI121926).
- 3.7.88. ExA notes no significant effects are identified to any of the identified heritage assets. However, no significant effects is not no harm and the ExA is mindful that NPS EN-1 states that the SoS should give great weight to any negative effects. Having carefully considered the proposed mitigation measures, the position of each individual heritage asset in relation to the proposed development and the nature of the impact identified and its significance, the ExA agrees with the applicant's assessment of effects of the proposed development during operation in all cases but still attaches great weight to any harm identified to the setting of a designed heritage assets.
- 3.7.89. In relation to non-designated heritage assets, the ExA also agrees, in all cases but one (Gashes Barn), with the applicant's assessment that no significant effects would be experienced during the operational phase of the

development. However, as non-designated heritage assets do not enjoy the same level protection, the ExA attaches less weight to any harm in the overall balance than to designated heritage assets. However, considering the nature of the impact, and the proposed mitigation measures and its temporary nature, the ExA finds this harm to be less than substantial.

- 3.7.90. In relation to Gashes Barn, the ExA finds that the duration of the operational phase and the extent of the changes to the setting of this asset brought about by the proposed development, including the proposed mitigation measures that would be put in place in order to provide a visual barrier between Gashes Barn and the proposed development, as set out in section 3.5 of this report, would be such as to represent a significant effect on the property.
- 3.7.91. In coming to this conclusion, the ExA is mindful that Gashes Barn is a non designated heritage asset and, consequently, not subject to the same level of protection as designated heritage assets. However, the ExA does wish to recognise its local value, as a non designated heritage asset, and acknowledge the level of change introduced by the proposed development as not being non-significant.
- 3.7.92. The ExA is also mindful of paragraph 5.9.24 of NPS EN-1 which requires the SoS to consider the particular nature of the significance of heritage assets and the value that they hold for this and future generations and paragraph 5.9.33 which states that in weighing applications that directly or indirectly affect non-designated heritage assets, a balanced judgement will be required having regard to the scale of any harm or loss and the significance of the heritage asset.
- 3.7.93. Having given careful consideration to the proposed mitigation measures, the nature of the impacts identified and their significance, as well as the nature and significance of each affected asset, the ExA agrees with the applicant's assessment of no significant effects of the proposed development during operational phase and for these reasons, classes this harm to be low level.

Decommissioning Phase

- 3.7.94. As set out by the applicant in its assessment and above, the anticipated effected at the decommissioning phase, would be similar to those at construction phase, with decommissioning effects anticipated for Churchyard Cross at St Oswald's Churchyard, a Scheduled Monument (NHLE 1009228) and Church of St Oswald, Howell, a Grade II* Listed Building (NHLE 1061833), Church of St Andrew, Asgarby, a Grade I Listed Building (NHLE 1061832), Church of St Andrew, Ewerby and Evedon, a Grade I Listed Building (NHLE 1360562), Gashes Barn, a non designated heritage asset (HER MLI121916), Unnamed Farmstead, Ewerby and Evedon. Non-Designated (HER MLI121913), Westmorelands (Asgarby Fen Farm), Non-Designated (HER MLI121926).
- 3.7.95. Similar to the construction phase and, having given careful consideration to the proposed mitigation measures, the nature of the impact identified and its significance, the ExA agrees with the applicant's assessment of no significant

effects of the proposed development during decommissioning phase and classes this harm to be low level.

Overall Conclusions

- 3.7.96. Nevertheless, however low, where there is harm, and harm has been identified on all stages of the proposed development, the SoS must give that harm considerable importance and weight. Paragraph 5.9.32 of NPS EN-1 require, where the proposed development would lead to less than substantial harm to the significance of designated heritage assets, this harm to be weighed against the public benefits of the proposal. This matter will be taken into consideration and addressed as part of chapter 5, the planning balance.
- 3.7.97. Matters to be taken to chapter 5 and the planning balance:
- The ExA agrees with the applicant that there would be significant effects from the proposed development on the setting of Church of St Andrew, Asgarby, a Grade I Listed Building (NHLE 1061832) during the construction phase. The ExA gives this harm great weight. However, considering proposed mitigation and the measures secured in the DCO, CEMP and the AMS, the ExA finds this harm to be less than substantial.
 - The ExA also agrees with the applicant that the proposed development would lead to non-significant effects on the setting of several other heritage assets at construction phase as set out in table of ES Chapter 8 (Cultural Heritage) [\[APP-059\]](#). However, the ExA find this harm to be less than substantial.
 - The ExA agrees with the applicant that there would be no significant effects from the proposed development on any designated heritage assets at the operational phase and decommissioning phase. However, no significant effects is not no harm.
 - Having carefully considered the proposed mitigation measures, the position of each individual heritage asset in relation to the proposed development and the nature of the impact identified and its significance, the ExA agrees with the applicant's assessment of effects of the proposed development during operation in all cases of designated heritage assets but still attaches great weight to any harm identified to the setting of a designed heritage assets. However, considering the nature of the impact, and the proposed mitigation measures and its temporary nature, the ExA finds this harm to be less than substantial.
 - However, the ExA disagrees with the applicant in relation to its assessment of effects on Gashes Barn during operational phase and it is of the view that it is significant and that the proposed development, after considering proposed mitigation, would suffer a significant adverse effect.
 - In coming to this position the ExA is mindful of Gashes Barn being a non-designated heritage asset as well as paragraph 5.9.33 of NPS

EN-1 which states that in weighing applications that directly or indirectly affect non-designated heritage assets, a balanced judgement will be required having regard to the scale of any harm or loss and the significance of the heritage asset.

- The SoS should give considerable importance and weight to the desirability of preserving all heritage assets, with any harm or loss requiring clear and convincing justification (paragraph 5.9.28). Less than substantial harm to designated heritage assets is to be weighed against the public benefits of the proposal, in accordance with paragraphs 5.9.28, 5.9.32 and 5.9.36 of NPS EN-1 and paragraph 2.3.8 of NPS EN-3. This exercise is undertaken in chapter 5.

3.8. FLOOD RISK AND WATER ENVIRONMENT

INTRODUCTION

- 3.8.1. This section of the report considers the effects of the proposed development on the water environment and flood risk. Cumulative effects are considered in section 3.11.

POLICY BACKGROUND

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

- 3.8.2. Section 5.16 of NPS EN-1 provides advice on water quality and resources with paragraph 5.16.1 recognising that infrastructure development can have an adverse effect on the water environment, including groundwater and inland surface water. Paragraph 5.16.2 acknowledges that during the construction, operation, and decommissioning phases, development can lead to increased demand for water, involve discharges to water, and cause adverse ecological effects resulting from physical modifications to the water environment. It also states that there may be an increased risk of spills and leaks of pollutants to the water environment leading to adverse impacts on health or on protected species and habitats.
- 3.8.3. Paragraph 5.16.3 states that where a proposed development is likely to have effects on the water environment, the applicant should undertake an assessment of the existing status of, and impacts of the proposed project on, water quality, water resources and the physical characteristics of the water environment, and how this might change due to the impact of climate change on rainfall patterns and consequently water availability across the water environment, as part of the ES.
- 3.8.4. Paragraph 5.16.6 states that applicants should avoid locating potentially polluting activities in the most sensitive locations for groundwater, in particular Source Protection Zone 1 (SPZ) and close to nationally important drinking water supplies. Applicants should consider implementing protective measures to control the risk of pollution to groundwater, for example, through the use of protective barriers.

- 3.8.5. Paragraph 5.16.7 sets out the matters to be covered in the ES. As advised in paragraph 5.16.8 of NPS EN-1, the SoS should consider whether mitigation measures are needed over and above any which may form part of the project application including the use of a construction management plan.
- 3.8.6. Paragraphs 5.8.36 to 5.8.42 set out a series of issues about which the SoS should be satisfied, including that:
- the application is supported by an appropriate FRA. Paragraphs 5.8.15 to 5.8.20 set out the requirements for FRAs
 - the sequential test has been applied and satisfied as part of site selection. Paragraphs 5.8.9 to 5.8.11 make clear that applicants should apply the sequential, and where relevant, the exception, test as set out in the PPG Flood Risk and Coastal Change
 - a sequential approach has been applied at the site level to minimise risk by directing the most vulnerable uses to areas of lowest flood risk
 - the proposal is in line with any relevant national and local flood risk management strategy
 - a Sustainable Drainage System (SuDS) has been used unless there is clear evidence that its use would be inappropriate
 - in flood risk areas, the project is designed and constructed to remain safe and operational during its lifetime, without increasing flood risk elsewhere (subject to the exceptions set out in paragraph 5.8.42)
 - the project includes safe access and escape routes where required, as part of an agreed emergency plan, and that any residual risk can be safely managed over the lifetime of the development
 - land that is likely to be needed for present or future flood risk management infrastructure has been appropriately safeguarded.
- 3.8.7. Paragraph 5.8.38 of NPS EN-1 specifies that the DCO, or any associated planning obligations, will need to make provision for appropriate operation and maintenance of any SuDS throughout the project's lifetime. Where this is secured through the adoption of any SuDS features, any necessary access rights to property will need to be granted.
- 3.8.8. Paragraph 5.8.39, requires that where relevant, the SoS should be satisfied that the most appropriate body is being given the responsibility for maintaining any SuDS, considering the nature and security of the infrastructure on the proposed site. Responsible bodies could include, for example the landowner, the relevant lead local flood authority or water and sewerage company (through the Ofwat-approved Sewerage Sector Guidance), or another body, such as an Internal Drainage Board (IDB).
- 3.8.9. Mitigation should manage surface water and the impact of the natural water cycle on people and property, including the use of SuDS. The DCO will need to make provision for the appropriate operation and maintenance of any SuDS throughout the project's lifetime (paragraphs 5.8.24 to 5.8.28 and 5.8.38)
- 3.8.10. Paragraph 5.8.40 states that if the Environment Agency (EA) continues to have concerns and objects to the granting of development consent on the

grounds of flood risk, the SoS can grant consent, but would need to be satisfied before deciding whether or not to do so that all reasonable steps have been taken by the applicant and the authority to try to resolve the concerns.

- 3.8.11. Paragraph 5.8.42 goes on to state that exceptionally, where an increase in flood risk elsewhere cannot be avoided or wholly mitigated, the SoS may grant consent if they are satisfied that the increase in present and future flood risk can be mitigated to an acceptable and safe level and taking account of the benefits of and need for nationally significant energy infrastructure.
- 3.8.12. The 2025 version of the Overarching National Policy Statement for Energy 2025 (NPS EN-1 2025) is broadly in agreement with the NPS EN-1 and it does not substantially change its objectives or policy in relation to the issues mentioned above.

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

- 3.8.13. Paragraph 2.10.84 of NPS EN-3 advises that the FRA will need to consider the impact of drainage, but as solar PV panels will drain to the existing ground, the impact will not generally be significant.
- 3.8.14. Paragraph 2.10.85 to 2.10.88 go on to say that where access tracks need to be provided, permeable tracks should be used, and localised SuDS, such as swales and infiltration trenches, should be used to control any run-off where recommended. Where culverting for access is unavoidable, applicants should demonstrate that no reasonable alternatives exist and, where necessary, will only be in place for the construction period. Given the temporary nature of solar PV farms, sites should be configured or selected to avoid the need to impact on existing drainage systems and watercourses.
- 3.8.15. The 2025 version of the National Policy Statement for Renewable Energy Infrastructure 2025 (NPS EN-3 2025) is broadly in agreement with the NPS EN-3 and it does not substantially change its objectives or policy in relation to the issues mentioned above.

NPPF

- 3.8.16. Paragraph 170 of the NPPF is clear that inappropriate development in areas at risk of flooding should be avoided by directing development away from areas at highest risk (whether existing or future) and paragraphs 173 to 175 state that all plans should apply a sequential, risk-based approach to the location of development, taking into account all sources of flood risk, to steer new development to areas with the lowest risk of flooding from any source. The later paragraphs 177 to 180 advise that having applied the sequential test, if it is not possible for development to be located in areas with a lower risk of flooding (taking into account wider sustainable development objectives), the exception test that meets the following criteria would need to be applied:

- the development would provide wider sustainability benefits to the community that outweigh the flood risk
- the development will be safe for its lifetime taking account of the vulnerability of its users, without increasing flood risk elsewhere, and, where possible, will reduce flood risk.

3.8.17. Paragraphs 181 to 182 of NPPF emphasise that when determining any planning applications, local planning authorities should ensure that flood risk is not increased elsewhere, that applications which could affect drainage on or around the site should incorporate SuDS to control flow rates and reduce volumes of runoff and, should be proportionate to the nature and scale of the proposal.

LOCAL POLICY

3.8.18. The CLLP includes Policy S21 which states that all development proposals will be considered against the NPPF, including application of the sequential and, if necessary, the exception test. Proposals should demonstrate that they are informed by and take account of the best available information from all sources of flood risk and by site specific FRA where appropriate; that the development will be safe during its lifetime taking into account the impacts of climate change; how the wider scope for flood risk reduction has been positively considered; and that they have incorporated SuDS/Integrated Water Management into the proposal, unless they can be shown to be inappropriate.

3.8.19. CLLP Policy S12 (Water Efficiency and Sustainable Water Management) states that in addition to the wider flood and water related policy requirements of Policy S21, all development comprising new buildings with outside hard surfacing must ensure such surfacing is permeable (unless there are technical and unavoidable reasons for not doing so).

3.8.20. Policy 4 (Approach to Flood Risk) of the SELLP states that development proposals within an area at risk of flooding (Flood Zones 2 and 3) will be permitted where the application is supported with a site-specific FRA, covering risk from all sources including the impacts of climate change, and which:

- demonstrates that the vulnerability of the proposed use is compatible with the flood zone
- identifies the relevant predicted flood risk level, and mitigation measures that demonstrates how the development will be made safe
- incorporates the use of SuDS (unless it is demonstrated that this is not technically feasible) and confirms how these will be maintained/managed for the lifetime of development
- demonstrates that the proposal will not increase risk elsewhere and that opportunities through layout, form of development and green infrastructure have been considered as a way of providing flood betterment and reducing flood risk overall
- ensures suitable access is safeguarded for the maintenance of water resources, drainage, and flood risk management infrastructure.

THE APPLICATION

3.8.21. The applicant's assessment of effects of the proposed development on flood risk and the water environment are mainly set out in ES Chapter 11 (Water Resources and Flood Risk) [\[APP-062\]](#), supported by, amongst others:

- Appendix 8.5 WSI for Geophysical Survey for the Solar Array [\[APP-121\]](#)
- Appendix 11.1 Flood Risk Assessment [\[APP-162\]](#)
- Appendix 11.2 Planning Policy and Legislation [\[APP-163\]](#)
- Appendix 11.3 Summary of Watercourses Crossings and Photographs [\[APP-164\]](#)
- Appendix 11.6 Water Framework Directive Assessment [\[APP-167\]](#)
- Figure 11.1 Regional Surface Water Catchment [\[APP-257\]](#)
- Figure 11.2 Local Surface Water Catchments [\[APP-258\]](#)
- Figure 11.5 Abstractions and Discharges [\[APP-261\]](#)
- Figure 11.6 Watercourse Crossings [\[APP-262\]](#).

METHODOLOGY

3.8.22. The methodology adopted by the applicant for the assessment of the likely effects of the proposed development on the water environment and flood risk, is set out in section 11.4 of ES Chapter 11 (Water Resources and Flood Risk) [\[APP-062\]](#).

3.8.23. The applicant started by carrying out a desktop study to establish the baseline water environment and other relevant features up to 2km from the boundary of the development site. This is set out in Figure 11.5 Abstractions and Discharges [\[APP-261\]](#).

3.8.24. The assessment methodology and significance criteria are set in paragraphs 11.4.2 to 11.4.5 of ES Chapter 11 (Water Resources and Flood Risk) [\[APP-062\]](#). The applicant confirms in paragraph 11.4.2 that the criteria used to determine the sensitivity of receptors is based on international and national designations, work undertaken by the EA and the professional judgement of the assessment team.

BASELINE

3.8.25. Section 11.5 of ES Chapter 11 (Water Resources and Flood Risk) [\[APP-062\]](#) describes the applicant's approach to the establishment of the baseline conditions for the assessment. The applicant confirms that it considered the climate in the area where the proposed development is located, the site's surface water catchment area, the geology and hydrogeology of the site, flood risk, private water supplies, discharges and abstractions, hydro ecology and Designated Sites.

3.8.26. Climate information is set out in detail with the applicant confirming that it has used data from the closest meteorological office climate station for the period between 1991-2020 in order to establish the current baseline conditions. For surface water, in addition to the information gathered from the EA's Black Sluice IDB for the the South Forty Foot Drain surface water catchment (where 77.2% of the development site is located), the applicant also carried

out hydrological walkover surveys which were undertaken in July 2023, March 2024 and December 2024.

- 3.8.27. The applicant describes the work carried out in relation to geology and hydrogeology in paragraphs 11.5.25 to 11.5.35 and the work carried out to establish the current baseline conditions in relation to flood risk in paragraphs 11.5.36 to 11.5.38.
- 3.8.28. In relation to flood risk the applicant confirms that a FRA has been carried out (Appendix 11.1 Flood Risk Assessment [[APP-162](#)]) which shows that eastern areas of the solar array area are located within fluvial Flood Zone 2 (medium probability) and fluvial Flood Zone 3 (high probability). Southern sections of the cable corridor and the Bicker Fen National Grid Substation are also located within Flood Zone 3. Southern and western areas of the development site (including the entirety of the bespoke access corridor and western portion of the solar array area) are largely located within Flood Zone 1 (low probability).
- 3.8.29. The majority of site is shown to be at a very low risk of surface water flooding and any flooding would generally be less than 300 mm. Three significant overland flow routes extend through the solar array area. The risk of groundwater flooding is considered to be low to medium and the risk of flooding from sewers and artificial sources is considered to be very low.
- 3.8.30. For the future baseline conditions the applicant has taken the UK Climate Projections of an increase in rainfall values of 10% to 40% and a predicted +1 °C to +5 °C change in temperature values. The applicant confirms that the FRA [[APP-162](#)] takes account of climate change allowances.

CONCEPTUAL SITE HYDROGEOLOGICAL MODEL (CSHM)

- 3.8.31. The CSHM illustrates water movement pathways from the ground surface to the bedrock. The CSHM forms the basis of the applicant's assessment of effects and provides an explanation of how the proposed development may affect the baseline water environment by looking at the evolution of the conceptual relationship between potential sources, pathways and receptors in the context of the water environment through the construction, operational and decommissioning phases.
- 3.8.32. The construction phase is considered by the applicant to be the phase of the proposed development when receptors would be at higher risk, in comparison to the operational phase, due to the various activities required to construct the proposed development.
- 3.8.33. The primary risks to receptors in relation to water quality as identified by the applicant are:
- Increased sedimentation from ground disturbance (creation of access roads, footbridges and the digging of cable trenches are examples of activities that would all cause ground disturbance)
 - Contamination from introduced contamination sources (that is oil/fuel)

- 3.8.34. As panels do not require deep excavation for their foundations and would only be piled 1.0 to 2.5m into the ground, there would be minimal ground disturbance during solar panel installation.
- 3.8.35. There would also be potential for surface water abstractions, which could potentially cause a reduction in surface water levels and flows in watercourses subject to the abstraction and downstream watercourses. However, the applicant does state that all required licences would be applied for once detailed design stage information is available and the EA consulted.
- 3.8.36. At operational phase, there would be the potential risk of contamination associated with the accidental release of oil and fuel from maintenance vehicles, but also contamination risk from a BESS battery acid breach.
- 3.8.37. In addition to this, at the operational phase, there may be potential effects from impermeable structures on water quality causing a reduction in recharge to the underlying aquifer and a local reduction in groundwater levels as well as an increase in runoff to surface water drains/ponds which may lead to flooding. Also, rainfall onto the angled panels may cause erosion beneath the lower edge of each panel, resulting in erosion and sediment laden runoff, the long-term use of watercourse crossings may lead to disruption/blockage of watercourse flow leading to flooding and the continued use of surface water/groundwater abstractions leading to a reduction in the availability of water for other users.
- 3.8.38. As a whole, the decommissioning phase would have similar risks to the construction phase due to vehicle movements and removal of infrastructure, with potential sources of contamination and disturbance being introduced. The removal of impermeable features and areas would result in pre-development runoff conditions and rainfall runoff being re-established, as well as the reinstatement of the soil profile, and re-vegetation may lead to pre-development interception and evapotranspiration rates and pre-development runoff condition.

ASSESSMENT OF EFFECTS

Embedded Mitigation

- 3.8.39. After looking at the potential receptors, their sensitivity and the level of risk posed to each from the proposed development (table 11.11 of ES Chapter 11 [APP-062]), the applicant then carried out an assessment of effects, as set out in section 11.7 of ES Chapter 11 (Water Resources and Flood Risk) [APP-062].
- 3.8.40. The assessment of effects took into consideration the proposed embedded mitigation which includes design considerations to avoid hydrologically sensitive areas and the careful consideration of the location of the proposed development's built components to create a distance of up to 5m from watercourses and waterbodies wherever possible. In addition SuDS would be developed and maintained throughout to provide conveyance and storage for surface water runoff, as well as water quality treatment and biodiversity enhancement.

- 3.8.41. Other proposed flood risk embedded mitigation measures include raising the solar panels up to 600mm above depth of flooding; transformers being constructed on raised bunds up to 600mm above the 1 in 100+ climate change breach flood depth; base fence panels designed to have sufficient width to allow debris to flow and prevent blockage; and temporary and permanent proposed bridge crossings, , constructed in accordance with flood permits granted by the EA, LCC or the IDB to ensure there would be no increased flood risk upstream or to the development site itself.
- 3.8.42. The applicant, in paragraphs 11.7.6 to 11.7.10 specifies the mitigation measures proposed specifically for the construction phase of the proposed development. It would adopt best practice industry guidance in relation to preventing adverse impacts on water resources. The applicant also highlights the role of the oCEMP [[APP-077](#)], the latest version of which is [[REP8-015](#)]. With respect to the protection of water resources, the applicant says that the oCEMP would provide practical measures to avoid and minimise the impact of the proposed development on ground and surface waters, as well as providing emergency preparedness and corrective actions together with measures for monitoring, recording, and disseminating information. A detailed CEMP would be submitted and approved under dDCO requirement 12.
- 3.8.43. The operational phase mitigation would be mainly concentrated on mitigating the effects on flow rates and volumes of watercourse within the surface water catchments through the design of a suitable water drainage scheme. The drainage proposals are intended to ensure that the existing greenfield rate of surface water runoff discharged to the adjacent watercourses would be maintained and able to accommodate climatic changes, in line with Appendix 11.1 Flood Risk Assessment [[APP-162](#)].
- 3.8.44. In order to mitigate the potential for pollution from maintenance activities during the operational phase, all vehicles and plant would carry a spill kit. Mitigation measures for the BESS and fire safety management, are set out in the certified outline Battery Safety Management Plan (oBSMP). Further details would be set out in a detailed BSMP to be submitted and approved under dDCO requirement 6.
- 3.8.45. Also, during the operational phase cable trenches would be designed to be completely isolated from rainfall using clay capping and from nearby watercourses using clay plugs placed within cable trenches to prevent flow within backfilled trenches to prevent this.
- 3.8.46. The mitigation at decommissioning phase would be similar to construction phase mitigation. An outline Decommissioning Environmental Management Plan (oDEMP) [[APP-078](#)], the latest version of which is [[REP7-022](#)] would be submitted to the local planning authority for approval along with the ES.

Construction phase effects

- 3.8.47. Potential construction phase impacts are set out in table 11.12 of ES Chapter 11 (Water Resources and Flood Risk) [[APP-062](#)]. The applicant confirms, in

paragraph 11.7.17 that, with the proposed mitigation in place, the magnitude of change from the baseline condition caused by the construction activities identified in table 11.12, above, has been assessed as negligible or low for all activities. Consequently, no effect arising from the construction phase have been found to be greater than minor adverse, which is assessed as not significant as per table 11.15 of ES Chapter 11 [\[APP-062\]](#).

Operational phase effects

- 3.8.48. Potential operational impacts on the water environment are set out in table 11.13 of ES Chapter 11 (Water Resources and Flood Risk) [\[APP-062\]](#). With mitigation in place, the applicant confirms that the magnitude of change from caused by the operational phase activities has been assessed as negligible or low for all activities. The potential change to the water environment is likely to not lead to effects greater than minor adverse, which are assessed as not significant (see table 11.15) of ES Chapter 11 [\[APP-062\]](#).

Decommissioning phase effects

- 3.8.49. Decommissioning phase impacts are set out in table 11.14 of ES Chapter 11 [\[APP-062\]](#). Similar to both the construction and operational phases, with mitigation in place, the magnitude of change has been assessed as negligible or low for all operations, particularly with the use of SuDS and the implementation of such measures as pollution incident response plans and sediment runoff containment and treatment. These have been assessed as not significant, as per table 11.15 of ES Chapter 11 [\[APP-062\]](#).

ISSUES CONSIDERED DURING THE EXAMINATION

ENVIRONMENT AGENCY (EA)

- 3.8.50. The EA raised a series of concern in relation to the applicant's approach to flood risk and the water environment throughout the whole examination which can be evidenced by the submissions received, namely [\[RR-006\]](#), [\[REP1-039\]](#), [\[REP2-046\]](#), [\[REP3-012\]](#), [\[REP5-053\]](#), [\[REP6-044\]](#), [\[REP7-057\]](#) and [\[REP8-035\]](#).
- 3.8.51. In addition to these, the EA also responded to questions from the ExA in relation to water environment and flood risk at ExQ1 [\[REP2-047\]](#), ExQ2 [\[REP5-054\]](#) and ExQ3 [\[REP7-058\]](#). The ExA will report on these in further detail under "Examining Authority Queries".
- 3.8.52. All of the EA's concerns, as confirmed by [\[REP8-035\]](#) and the final SoCG [\[REP8-025\]](#), were resolved by the end of the examination including previous concerns linked to the applicant's flood risk baseline and the details for the discharging of requirements linked to the Landscape and Ecological Management Plan (LEMP) and the Construction Environmental Management Plan. The EA confirmed that these issues were resolved with the applicant's submission of the deadline 7's dDCO [\[REP7-004\]](#).

EXAMINING AUTHORITY QUERIES

- 3.8.53. Since concerns and issues raised by the EA were only resolved by both parties at the last deadline before the close of the examination, the ExA did not have an opportunity to fully review and scrutinise the applicant's approach to water environment and FRA. However, the ExA did ask several questions of both the EA and the applicant throughout the examination in order to examine the applicant's approach.
- 3.8.54. ExQ1 WFR.1.1 was connected to the applicant's approach to flood risk and asked for confirmation of whether its approach was in line with the latest update of the Ministry of Housing, Communities and Local Government's (MHCLG) Flood Risk and Coastal Change Planning Practice Guidance (PPG). The applicant's reply [\[REP2-040\]](#) confirms that the proposal is in accordance with the updated PPG.
- 3.8.55. ExQ1 WFR.1.2 sought views from the applicant, the EA and other organisations in relation to the monitoring information provided in the oCEMP and if organisations considered that the information provided was sufficient to be relied upon to inform the final CEMP. The applicant confirmed in its response that it felt that the oCEMP, when considered alongside the dDCO, provided sufficient and adequate provisions to ensure compliance with any water issues during construction and monitoring of any issues. This was also the view of NE [\[REP2-059\]](#). The EA, however, confirmed that it was not of the view that the information provided in the oCEMP was sufficient in a series of different areas.
- 3.8.56. The applicant acknowledged the concerns raised by the EA and by the ExA and updated the oCEMP accordingly. As previously stated, all of the EA's concerns were resolved by the end of the examination including those in relation to the CEMP as confirmed by [\[REP8-035\]](#) and the final SoCG [\[REP8-025\]](#).
- 3.8.57. ExQ2 WFR.2.1 [\[PD-013\]](#) requested an update on progress made by the applicant and the EA on flood risk. This question was asked of both parties following from ISH3 where the ExA asked several questions of the applicant in relation to its approach to flood risk and the water environment, including the FRA [\[APP-162\]](#). It became apparent, from the EA's intervention, that there was still some level of disagreement in relation to flood risk methodology and the approach taken at that stage. Both the applicant, in [\[REP5-048\]](#) and the EA in [\[REP5-054\]](#) confirmed that discussions were still ongoing and work was being carried out in order to reach agreement.
- 3.8.58. The final version of the FRA [\[REP7-026\]](#) has now been agreed by the EA.

HLA CONCERNS

- 3.8.59. LCC in its LIR [\[REP1-044\]](#) states that the Council, in its capacity as lead Local Flood Authority, reviewed the application documents and, in terms of surface water flood risk, agrees with the applicant's conclusion that the flood risk from this development would be low. The council does state that the bespoke haul road would require mitigation. However, subject to the

development being carried out as proposed within the dDCO and the proposed mitigation measures implemented and secured, the council considered the surface water flood risk from the development would be acceptable and that impact would be neutral.

- 3.8.60. However, the council did raise concerns regarding the sequential and exception tests having been appropriately applied. In the final Statement of Common Ground between LCC and the applicant [\[REP7-035\]](#), LCC does state that, having reviewed the additional information submitted, it remains concerned regarding the sequential test, specifically how smaller non-contiguous sites have been included in the assessment.
- 3.8.61. The applicant's full response to these outstanding concerns is set out in [\[REP8-029\]](#) Applicant's Closing Statement, under Water Resources and Flood Risk. The applicant states that it is of the firm opinion that the location of the proposed development has passed the sequential test. The applicant also states that it has updated at deadline 5 the Sequential Test Assessment (STA) (see Annex G of the Site Selection Report in the Planning Statement [\[REP5-010\]](#)) to include non-contiguous sites.
- 3.8.62. The applicant sets out in the STA that, despite the applicant's preference for one contiguous site, the applicant has agreed to give consideration to non-contiguous sites for the purposes of the sequential test and confirms that it has re-run the test with those additional sites under a separate methodology. The STA also sets out the methodology used for this work and for the identification of non-contiguous sites. The overall conclusion of the work carried out was that there were no suitable and reasonably available sites appropriate for the proposed development in areas with a lower risk of flooding and, therefore that the proposed development passes the sequential test.
- 3.8.63. It is worth noting that BBC and NKDC have not raised significant concerns in relation to water environment and flood risk in their LIRs and such matters are not outstanding in the final version of the SoCG with BBC [\[REP7-039\]](#) or with NKDC [\[REP7-037\]](#).

CONCLUSIONS

GENERAL CONSIDERATIONS

- 3.8.64. The ExA is satisfied that the applicant has undertaken a thorough assessment of flood risk and other water-related potential impacts of the proposal and, having carefully considered the information submitted and in light of the additional work carried out in relation to non-contiguous sites, the ExA finds no reason to disagree with the applicant's view on this matter. Consequently, the ExA therefore believes the applicant has shown that the proposed development passes the sequential test and is of the view that both the sequential and exception test have been satisfied.
- 3.8.65. While the site includes areas at higher risk of flooding, they are limited in extent. I accept that the proposed development has been designed to make it resilient to, and to avoid worsening, flood risk in those areas. Effective

embedded mitigation is also proposed, which includes the use of SuDS. In accordance with paragraph 5.8.38 of NPS EN-1. SuDS management and maintenance is set out in the FRA [\[REP6-029\]](#).

- 3.8.66. The ExA also notes that the EA, by the end of the examination, had raised no objections to the applicant's approach and final results in relation to flood risk or impacts of the proposed development on the water environment. Effective mitigation is also included in the oCEMP [\[REP8-015\]](#), oDEMP [\[REP7-021\]](#) and the oBSMP [\[REP5-035\]](#). There is nothing to suggest that the proposal would have significant adverse effects on surface or ground water quality or hydromorphology or that it would put at risk Water Framework Directive (WFD) targets for water bodies in and around the site. With the mitigation measures in the oCEMP [\[REP8-015\]](#), oDEMP [\[REP7-021\]](#) and the oBSMP [\[REP5-035\]](#) in place, I am content that the proposed development would not have significant adverse effects on the water environment.
- 3.8.67. Overall, I conclude that there would be no significant adverse effects on flood risk and the water environment, and the proposal would accord with the relevant provisions of NPSs EN-1 and EN-3, the NPPF, the PPG on Flood Risk and Coastal Change and the relevant development plan policies. However, an absence of harm does not weigh positively in favour of the proposal and as such, matters relating to the water environment attract neutral weight in the planning balance.
- 3.8.68. Matters to be taken to chapter 5 and the planning balance:
- The ExA is satisfied that the applicant has undertaken a thorough assessment of flood risk and other water-related potential impacts of the proposal and finds that the applicant has shown that the proposed development passes the sequential test and exception test.
 - There is nothing to suggest that the proposal would have significant adverse effects on surface or ground water quality or hydromorphology or that it would put at risk WFD targets for water bodies in and around the site.
 - Appropriate mitigation measures are outlined in the oCEMP [\[REP8-015\]](#), oDEMP [\[REP7-021\]](#) and the oBSMP [\[REP5-035\]](#) and would be finalised under requirements secured in the dDCO [\[AS-039\]](#).
 - Overall, I conclude that there would be no significant adverse effects on flood risk and the water environment, and that the proposal would accord with the relevant provisions of NPSs EN-1 and EN-3, the NPPF, the PPG on Flood Risk and Coastal Change and relevant development plan policies. However, an absence of harm does not weigh positively in favour of the proposal and as such, matters relating to flood risk and the water environment attract neutral weight in the planning balance.

3.9. LAND USE

INTRODUCTION

- 3.9.1. This section of the report considers the effects of the proposed development on land use, including BMV agricultural land. Cumulative effects are considered in section 3.11.

POLICY BACKGROUND

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

- 3.9.2. Section 5.11 of NPS EN-1 covers land use and paragraph 5.11.1 recognising that infrastructure development can have a direct effect on existing use of the proposed site and may have indirect effects on the use, or planned use, of land in the vicinity for other types of development.
- 3.9.3. Paragraph 5.11.4 acknowledges that the development of land will affect soil resources including physical loss of, and damage to, soil through, for example, structural damage. Furthermore, it notes that indirect impacts may arise from changes in the local water regime, organic matter content, soil biodiversity and soil process.
- 3.9.4. Paragraph 5.11.8 states that the applicant, in its assessment, should identify existing and proposed land uses near the project, any effects of replacing an existing development or use of the site with the proposed project or preventing a development or use on a neighbouring site from continuing. Applicants should also assess any effects of precluding a new development or use proposed in the development plan. The assessment should be proportionate to the scale of the preferred scheme and its likely impacts on such receptors.
- 3.9.5. Paragraph 5.11.12 states that applicants should seek to minimise impacts on the BMV agricultural land (defined as land in grades 1, 2 and 3a of the ALC) and preferably use land in areas of poorer quality (grades 3b, 4 and 5).
- 3.9.6. As part of their assessment, as stated in paragraph 5.11.13, applicants should identify any effects and seek to minimise impacts on soil health and protect and improve soil quality taking into account any mitigation measures proposed.
- 3.9.7. Paragraph 5.11.14 encourages applicants to develop and implement a Soil Management Plan which could help minimise potential land contamination. The sustainable reuse of soils needs to be carefully considered in line with good practice guidance.
- 3.9.8. Paragraph 5.11.15 states that developments should contribute to and enhance the natural and local environment by preventing new and existing developments from contributing to, being put at unacceptable risk from, or being adversely affected by, unacceptable levels of soil, air, water or noise pollution or land instability.

- 3.9.9. In relation to mitigation, paragraph 5.11.23 states in the case of most energy infrastructure there may be little that can be done to mitigate the direct effects of an energy project on the existing use of the proposed site (assuming that some of that use can still be retained post project construction). Applicants should nevertheless seek to minimise these effects and the effects on existing or planned uses near the site through good design, including the layout of the project and the protection of soils during construction.
- 3.9.10. Paragraph 5.11.34 states that the SoS should ensure that applicants do not site their scheme on the BMV agricultural land without justification and where development of agricultural land is demonstrated to be necessary, areas of poorer quality land should be preferred to those of a higher quality.
- 3.9.11. The 2025 version of the Overarching National Policy Statement for Energy 2025 (NPS EN-1 2025) is broadly in agreement with the NPS EN-1 and it does not substantially change its objectives or policy in relation to the issues mentioned above.

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

- 3.9.12. Paragraph 2.10.29 of NPS EN-3 reiterates the principles in NPS EN-1 by stating that, when determining the suitability of a proposed site location applicants should, where possible, utilise suitable previously developed land, brownfield land, contaminated land and industrial land. It goes on to state that, where the proposed use of any agricultural land has been shown to be necessary, poorer quality land should be preferred to higher quality land, avoiding the use of BMV agricultural land where possible. This is also stressed in paragraph 2.10.31 of NPS EN-3.
- 3.9.13. Paragraph 2.10.30 states that whilst the development of ground mounted solar arrays is not prohibited on BMV agricultural land, the impacts of such are expected to be considered in line with other paragraphs in the NPS EN-3.
- 3.9.14. Paragraph 2.10.32 states that where sited on agricultural land, consideration may be given to whether the proposal allows for continued agricultural use and/or can be co-located with other functions to maximise the efficiency of land use.
- 3.9.15. Paragraph 2.10.34 encourages applicants to develop and implement a Soil Resources and Management Plan to help use and manage soils sustainably and minimise adverse impacts on soil health and potential land contamination.
- 3.9.16. The Written Ministerial Statement ‘Solar and protecting our food security and BMV land¹⁴’ (May 2024) reiterates the position noting that applicants for NSIP projects should avoid the use of BMV agricultural land where possible.

¹⁴ [Written statements - Written questions, answers and statements - UK Parliament](#)

- 3.9.17. Paragraph 2.10.86 of NPS EN-3 advises that, given the temporary nature of solar PV farms, sites should be configured or selected to avoid the need to impact on existing drainage systems and watercourses.
- 3.9.18. The 2025 version of the National Policy Statement for Renewable Energy Infrastructure 2025 (NPS EN-3 2025) is broadly in agreement with the NPS EN-3 and it does not substantially change its objectives or policy in relation to the issues mentioned above.

NPPF

- 3.9.19. Paragraph 88 of the NPPF mentions that planning policies and decisions should enable the development and diversification of agricultural businesses and paragraph 187 states that planning policies and decisions should contribute to and enhance the natural and local environment by recognising economic and other benefits of BMV agricultural land.

LOCAL POLICY

- 3.9.20. The CLLP includes Policy S67, BMV Agricultural Land which states that all development proposals should protect the best and most versatile agricultural land so as to protect opportunities for food production and the continuance of the agricultural economy.
- 3.9.21. The policy goes on to state that significant development resulting in the loss of BMV agricultural land will only be supported if the need for the proposed development has been clearly established, there is insufficient lower grade land available at that settlement, the benefits and/or sustainability considerations outweigh the need to protect such land, the impacts of the proposal upon ongoing agricultural operations have been minimised and, where feasible, once any development which is supported has ceased its useful life the land will be restored to its former use.
- 3.9.22. Policy 31 (Climate Change and Renewable and Low Carbon Energy) of the SELLP states that the development of renewable energy facilities and associated infrastructure will be permitted provided, individually, or cumulatively, there would be no significant harm to agricultural land.

THE APPLICATION

- 3.9.23. The applicant's assessment of effects of the proposed development on land use are set out in ES Chapter 14 (Soils and Agricultural Land) [\[APP-065\]](#), supported by, amongst others:
- Appendix 14.1 Agricultural Quality of Land at Beacon Fen North [\[APP-173\]](#)
 - Appendix 14.2 ALC Report 2023 [\[APP-174\]](#)
 - Appendix 14.3 ALC Report Beacon Fen Construction Access Track 2024 [\[APP-175\]](#)
 - Appendix 14.4 Outline Soil Management Plan 2024 [\[APP-176\]](#)
 - Figure 14.1 ALC Map Solar Array Area [\[APP-267\]](#)
 - Figure 14.2 Soil Associations Solar Array Area [\[APP-268\]](#)

- Figure 14.3 Agricultural Land Classification Map Access Route Corridor [\[APP-269\]](#)
- Figure 14.4 Soil Associations within Bespoke Access Route Corridor [\[APP-270\]](#)

- 3.9.24. The methodology adopted by the applicant for the assessment of the likely effects of the proposed development on land use is set out in section 14.4 of ES Chapter 14 [\[APP-065\]](#). It uses guidance including Institute of Quarrying (2021) 'Good Practice Guide for Handling Soils in Mineral Workings' and Institute of Environmental Management and Assessment (2022) (IEMA) 'A New Perspective on Land and Soil in Environmental Impact Assessment'.
- 3.9.25. The applicant acknowledges, in paragraph 14.4.1 that the majority of the land for all elements of the proposed development is under agricultural management for arable production, consisting of 529 ha for the solar array area, 183 ha for the cable corridor and 45 ha for the bespoke access corridor. Consequently, the potential impact on agricultural land and soil resources resulting from activities associated with the construction of the proposed development, been considered and forms the basis of the applicant's assessment in relation to land use.
- 3.9.26. The applicant's assessment has looked at quantity and quality of the agricultural land that may be affected, as well as the sensitivity of the soil receptor (that is, the resistance and resilience of the soil environment in terms of susceptibility to erosion and/or presence of organic soils/peat and the degree of loss of soil resource) that may be affected.
- 3.9.27. As some elements of the proposed development involve soil stripping and soil sealing for the duration of the proposed development's lifetime, namely the creation of access tracks, the substation, and BESS the applicant's assessment has considered this as 'permanent' development, as a worst-case scenario, based on the definition of permanent land-take and hard development in the IEMA guidance.
- 3.9.28. Whilst storing the stripped soils for the duration of the operational phase could enable these areas to be restored to agricultural use following decommissioning, these works would have more direct and potentially permanent impacts on the agricultural potential of the land.

BASELINE

- 3.9.29. Section 14.5 of ES Chapter 14 (Soils and Agricultural Land) [\[APP-065\]](#) describes the applicant's approach to the establishment of the baseline conditions for the assessment. The applicant carried out separate ALC surveys for each one of the main components of the proposed development, namely the solar array site, the cable corridor and the bespoke access corridor. To be able to assess the likely significant effects of the proposed development on the site, the applicant also looked at soil characteristics for the main components of the proposed development as set out in paragraphs 14.5.13 to paragraph 14.5.25, and then the sensitivity of the receptors.

- 3.9.30. The summaries of the detailed ALC surveys for the solar array site, the cable corridor and the bespoke access corridor are set in tables 14.8, 14.9 and 14.10 respectively of ES Chapter 14 [\[APP-065\]](#).
- 3.9.31. In relation to the solar array site, the detailed ALC assessment found that 49.5% (261.43ha) of the land included was subgrade 3b, 44.6% (235.52ha) subgrade 3a and 2.8% (14.61ha) grade 2 agricultural land. It is worth noting that the applicant does explain, in paragraph 14.5.5, that there is a slight discrepancy between the total area of 528.17ha in table 14.8 and the updated 529.16ha area in other parts of the ES. However, this small adjustment would not substantially change the relative proportions of ALC grades and the assessment carried out.
- 3.9.32. In relation to the cable corridor, the applicant found that it was comprised of mainly grade 2 agricultural land (145.73ha, 79.57%) with portions of grade 1 (28.18ha, 15.39%) and grade 3 (9.24ha, 6.28%).
- 3.9.33. Finally, for the bespoke access corridor, the applicant found that mostly consisted of subgrade 3a and grade 2 quality agricultural land, with some areas of subgrade 3b and non-agricultural land use also recorded, with grade 3a 22.08 ha, 49% and grade 2 16.6 ha or 37%.
- 3.9.34. The key sensitive receptors and the potential impacts upon them are set out in paragraph 14.5.26 of ES Chapter 14 [\[APP-065\]](#) and, in summary are:
- Agricultural land, some of which is classed as BMV, may be subject to loss as a result of the proposed development. The applicant has assessed that grade 1 and 2 agricultural land is of very high sensitivity, with subgrade 3a being of high sensitivity and subgrade 3b (which is not classed as BMV) being of medium sensitivity.
 - Loss of soil resource as a result of the proposed development due to soil erosion from water and wind. For the purposes of the assessment, a medium sensitivity for soil loss within the solar array area and bespoke access corridor has been applied as a worst-case scenario. In relation to the cable corridor, due to the presence of both clay textured and sandy textured soils, the applicant has identified the soil to be of medium sensitivity to erosion as a worst-case scenario, to account for the presence of both soil types.
 - Damage to soil resource (soil structural damage) as a result of the proposed development due to soil handling. The majority of soils present on the development site have been deemed to have medium sensitivity to structural damage. However, where a sandy loam textured topsoil or subsoil and wetness class II has been recorded, the soils are likely to have a low sensitivity and, thus, has a high resilience to structural damage.

ASSESSMENT OF EFFECTS

- 3.9.35. The applicant's assessment of effects starts by considering the design layout and the implications of the proposed development and its design on land take.

- 3.9.36. Table 14.13 of ES Chapter 14 [\[APP-065\]](#) sets out the land use breakdown for the proposed development. The applicant states, in paragraph 14.6.2, that 75% (395.62 ha) of the solar array area would be covered by the solar array, which would be piled directly into the ground without prior soil removal. In total, the solar array would cover 191.71 ha of BMV land. The applicant also confirms in paragraph 14.6.3 that the total area of proposed built infrastructure resulting in permanent loss is estimated to be 23.31 ha, which constitutes 4.4% of the agricultural soil within the solar array area. The applicant also confirms that the built development is proposed to be mostly situated on a mixture of subgrade 3a and subgrade 3b agricultural land, with avoidance of BMV land being considered unavoidable due to site layout and design constraints.
- 3.9.37. The applicant also states that, during the construction phase, 18.91ha of land within the bespoke access corridor would be made unavailable for agriculture. The bespoke access road and the associated works within the bespoke access corridor cover an area of 3.98ha which would remain unavailable for the operational phase and is assumed to be permanently lost due to long-term soil sealing. The remaining land within the bespoke access corridor either side of the bespoke access road (14.93ha) would be returned to agriculture post construction.
- 3.9.38. Detailed ALC survey data show that the bespoke access corridor predominantly consists of subgrade 3a quality land (49%) with areas of grade 2 (37%).
- 3.9.39. To inform the assessment of the effects, the applicant also considered proposed embedded mitigation, set out in paragraphs 15.6.6 to 14.6.11 of ES Chapter 14 [\[APP-065\]](#).
- 3.9.40. The proposed embedded mitigation measures are secured through the oSMP [\[APP-176\]](#), the last version of which is [\[REP7-028\]](#), which was based on the findings of the site-specific soil survey of the solar array area and bespoke access corridor, and high-level desk-based soils and ALC data for the cable corridor. The oSMP is also secured through the dDCO [\[AS-039\]](#).

Solar array area

- 3.9.41. The effects of the solar array area at construction, operational and decommissioning phases are set out in section 14.7 of ES Chapter 14 [\[APP-065\]](#). The applicant found that the solar array area would lead to a major significant effect on land during the construction phase. This effect results from the permanent loss of 23.31ha of BMV land due to construction works.
- 3.9.42. Although the applicant has recognised that there would be impacts on soil resources due to the construction of the solar array area, linked to potential damage to soils and loss of soil resources, it finds these effects to be minor and not significant.
- 3.9.43. During operational phase, although the land within the solar array area may be available for grazing, this has not been confirmed at this stage and

therefore, based on a worst-case assessment, approximately 529ha of land within the solar array area would remain out of agricultural production for the duration of the 40-year operational period. This, in the applicant's view, would result in a minor not significant effect. The assessment of the effects on soil resources and damage to soil is found to be minor and not significant in ES terms.

- 3.9.44. During the decommissioning phase, the main threats to soils and land relate to the vehicles/plant traffic and incorrect soil handling, which can cause damage to soil structure through compaction and smearing. However, for the purposes of the decommissioning phase, the measures included in the oSMP would form a part of (and are therefore secured through) the oDEMP [\[APP-078\]](#), the latest version of which is [\[REP7-022\]](#). The oDEMP which is also secured through schedule 12 of the dDCO [\[AS-039\]](#).

Cable corridor

- 3.9.45. In relation to the cable corridor, ES Section 14.8 [\[APP-065\]](#), anticipates there would be a significant major or moderate negative effect on land during the construction phase. This is due to the fact that the proposed cable route is largely routed through land with a high likelihood of BMV land being present (>60% area BMV). The applicant does assume that, with the embedded mitigation measures proposed, any loss of land resulting from laying the cable within the cable corridor, along with the temporary access tracks, would be temporary as the land would be reinstated to agricultural use following construction.
- 3.9.46. The applicant recognises that there would be both loss of soil resource and damage to soil resource. However, with embedded mitigation, the applicant considers the impact to be minor and not significant on both receptors.
- 3.9.47. The applicant does not cover, in section 14.8 of ES Chapter 14 [\[APP-065\]](#) the effects of the cable corridor at operational stage, but it does confirm, in the summary table starting on page 61 (unlabelled) that operational and decommissioning phase impacts have not been assessed for the cable corridor as there would be no further loss of land or soil disturbance during these phases.

Bespoke access corridor

- 3.9.48. In ES section 14.9 [\[APP-065\]](#) applicant found that the construction of the bespoke access corridor would lead to a moderate significant effect on land during the construction phase, based on professional judgement, given the proportion of grade 2 land involved. This level of effect is linked to the removal of 18.91 ha of land from agricultural production, temporarily and only during the construction phase. However, as a worst-case assessment, the applicant has considered the permanent loss of 3.98ha of agricultural land, including BMV land, as a result of the construction of the bespoke access corridor.
- 3.9.49. The loss of soil resource and damage to soil resource during construction phase have been assessed as minor and not significant. This is due to the

proposed embedded mitigation which would ensure that any loss of the soil resource through erosion resulting from the construction of the bespoke access corridor would be minimised and any temporarily displaced soil would be reinstated to its baseline condition following the temporary construction works.

- 3.9.50. In relation to damage to soil, the embedded mitigation measures in place would help ensure that any damage resulting from soil stripping and storage of soils to accommodate the bespoke access corridor would be minimised leading to no permanent change to the quality of the soil resource.
- 3.9.51. In relation to the operational phase, the 3.98ha area lost to the bespoke access road was not assessed further as the construction phase assessment was based on the assumption that the land would be permanently lost.
- 3.9.52. In relation to the decommissioning phase, the applicant anticipates that any effects on agricultural land and the soil resource (in terms of loss and structural damage) resulting from the removal of the bespoke access road during decommissioning would be the same as those identified during the construction phase, that is, minor and not significant.

ISSUES CONSIDERED DURING THE EXAMINATION

EXAMINING AUTHORITY QUERIES

- 3.9.53. The ExA asked written questions to the applicant at ExQ1 [\[PD-007\]](#) and ExQ2 [\[PD-013\]](#) in relation to the effects of the proposed development on land use. Key concerns for the ExA were the effects of the proposed development on agricultural land, particularly BMV land, proposed mitigation and the applicant's methodology for the assessment. In addition to written questions, the ExA also asked several questions to the applicant on land use at ISH3 [\[EV5-001\]](#).
- 3.9.54. ExQ1 LUS.1.1 was concerned with the applicant's approach to minimising BMV land take in line with the 15 May 2024 Written Ministerial Statement (WMS) entitled 'Solar and protecting our Food Security and BMV Land'. In its response [\[REP2-040\]](#), the applicant states that the Site Selection Report, found at Appendix 2 of the Planning Statement [\[APP-277\]](#), outlines that agricultural land quality, and seeking to minimise the impacts of the Proposed Development on BMV land, was a key consideration in its site selection process. Furthermore, the proposed development layout has been designed as to minimise the use of BMV land for hard standing and to allow for the reinstatement of land for agricultural use following decommissioning. The applicant also explains that all of the alternative sites identified presented similar or higher quantities of BMV land in comparison to the proposed development site and therefore, while ALC was an important consideration in site selection, it was one of several factors which were balanced to determine a preferred site.
- 3.9.55. ExQ1 LUS.1.2 asked the applicant for further information in relation to the consideration of other potential land uses that could be co-located alongside the proposed development, such as the grazing of animals or supporting

pollinators. In its response [\[REP2-040\]](#) the applicant confirmed that the possibility of co-utilising the site for grazing was being investigated and the viability of this would be determined at a later stage. The applicant also confirmed that sheep grazing had not been accounted for as part of the ES assessments (as mitigation or otherwise) given the uncertainty as to whether it would be used. Finally, the applicant confirmed that the installation of beehives is something that the applicant exploring but no weight has been ascribed to this in the planning balance as it is not secured.

3.9.56. ExQ1 LUS.1.4 and WFR.1.1 asked the applicant for further explanation of its assessment of the identified loss of agricultural land at construction phase being a major adverse effect while classing the same loss at operational phase as minor adverse. The applicant clarified that it assumed there would be no further development of built infrastructure and therefore no further loss of agricultural land or soil disturbance during the operational phase. The applicant also states that, although it has assumed that the land would not be available for agricultural production over the 40-year operational period, most of the soil would remain functional over this period and the agricultural potential of the land would remain intact. The temporary and reversible removal of the solar array area from agricultural production during the operational phase therefore constitutes a low magnitude of change. The applicant also states that the approach taken to not "reassess" the loss of agricultural land from development of permanent infrastructure during the operational phase is the same as that for other approved solar DCOs.

3.9.57. At ISH3 the ExA asked a series of questions in relation to the applicant's overall approach to soil and agricultural land with the aim to better understand the applicant's approach. The applicant's response is set out in [\[REP4-027\]](#) and it confirms the applicant's assessment in relation to BMV land and that much of the land included within the Order limits qualifies as BMV agricultural land.

HLA CONCERNS

3.9.58. Both LCC and NKDC consider that the ALC reports are reliable, and that the oSMP would be effective. However, both LCC and NKDC have raised concerns in their LIR [\[REP1-044\]](#) and [\[REP1-054\]](#) respectively, regarding the effects of the proposed development on soils and agricultural land, with both local authorities stating that the proposed development would have a negative effect on agricultural land.

3.9.59. However, the final version of the SoCG between the applicant and NKDC [\[REP8-043\]](#) confirms that there were no outstanding matters in relation to land use and BMV with the applicant and NKDC agreeing that the applicant has reduced and mitigated impacts on the loss of agricultural land as far as practicable.

3.9.60. On the other hand, some of LCC's concerns in relation to land use remained unresolved by the end of the examination, as confirmed in its SoCG [\[REP7-035\]](#) and the Closing Summary Statement [\[REP8-030\]](#). In the SoCG [\[REP7-035\]](#) LCC reiterates its concern in relation to the temporary and permanent

loss of BMV land, particularly in relation to the cumulative effects of large-scale solar energy projects across Lincolnshire which, in the local authority's view, would result in a significant and lasting loss of BMV for agricultural purposes. In the same document the applicant responds to these concerns by stating that the site selection and design evolution process sought to minimise the impacts on BMV land and that cumulative impacts anticipated are not significant and are reversible.

- 3.9.61. LCC states in its Closing Summary Statement [[REP8-030](#)] that it remains concerned in relation to the cumulative effect of the proposed development on agricultural land and the loss of BMV across Lincolnshire. LCC acknowledges that NPS EN-3 confirms that land type is not a determining factor and that the effects on agricultural land are one of a number of material planning considerations that need to be weighed in the overall planning balance. Nevertheless it is LCC's view that, taken collectively, national policies remain clear and consistent that only where the proposed use of any agricultural land over and above despoiled and brownfield land has been shown to be necessary, poorer quality land should be preferred to higher quality land.
- 3.9.62. LCC goes on to state that the Written Ministerial Statement May 2024 sets out that any proposal for a solar farm involving BMV agricultural land needs to be justified by the most compelling evidence and that the principles of conserving and enhancing the natural environment are also embedded in the NPPF.
- 3.9.63. Consequently, it is LCC's view that 493.27ha agricultural land would be lost to the development, of which 277.3ha (56%) is classified as BMV (ALC grade 2 and 3a) and that such loss is not insignificant. LCC also acknowledges that consideration has been given to alternatives, in the context of land use, but that the permanent loss of 20.37ha of BMV and the temporary loss 256.93ha of BMV land is significant, particularly when it is considered that 'temporary' means the operational lifespan of the proposed development, which is up to 40 years.

Other IPs

- 3.9.64. LCJ Mountain Farms Limited stated, in [[REP8-041](#)], that its concerns regarding the effects of the proposed development on agricultural land and how these have been assessed remain unresolved. LCJ Mountain Farms Limited maintains that the applicant's desk based ALC assessment is not sufficiently detailed and granular to fully understand the effects of the proposed development on the ground or to take into consideration the heterogenous nature of the fields.
- 3.9.65. However, the applicant's position is that using the provisional ALC data to inform the comparative analysis of the applicant's proposed cable corridor, was a proportionate approach and the best means of ensuring that there is a common methodology across the different cable route options assessed. However, LCJ Mountain Farms Limited remains of the view that the proposed amended alternative route for the cable corridor has a comparative

advantage to the proposed route because, although it would still be located in BMV land, it would only include grade 2 land and no grade 1 land.

CONCLUSIONS

GENERAL CONSIDERATIONS

- 3.9.66. The ExA is satisfied that the applicant has undertaken a thorough assessment of soils and BMV agricultural land within the order limits and that no significant evidence has been presented disputing the methodology or validity of its findings.
- 3.9.67. The ExA also recognises that the findings of Chapter 14 of the ES (Soils and Agricultural Land) are disputed by Mr Mountain on behalf of LCJ Mountain Farms Limited. However the ExA is of the view that the applicant has presented significant evidence in relation to the methodology used and its findings, justifying its consideration and approach to ALC data. The ExA also notes that the assessment has been carried out in consultation with NE.
- 3.9.68. The applicant has acknowledged in its assessment that much of the land included within the Order limits qualifies as BMV agricultural land and although I acknowledge that the majority of the land included in the order limits could revert to its previous use on decommissioning, and that the land resource itself would improve over time, the proposed development would still, however, lead to the temporary or permanent loss of approximately 493.27ha of agricultural land, based on the information provided in table 14.13 of ES Chapter 14 [\[APP-065\]](#), 56.22% of which is classed as BMV.
- 3.9.69. Based on the information provided in the same table, the ExA also notes that the proposed development would lead to the permanent loss of 29.99ha of agricultural land, approximately 67.92% of which is classed as BMV and the temporary loss of 463.28ha of agricultural land, 54.98% of which classed as BMV.

Table 2: Land Use per element of the proposed development (adapted from table 14.13 of ES Chapter 14 [\[APP-065\]](#))

Land Use	Grade 1 (ha)	Grade 2 (ha)	Subgrade 3A (ha)	BMV Land (ha)	Total (Agr.) (ha)	BMV as % of Total Land
Solar array area						
Permanent land loss subtotal	0	0.01	14.06	14.07	23.31	60.36%
Temporary land loss subtotal	0	11.69	180.02	191.71	395.64	48.46%

Overall subtotal	0	11.88	194.08	205.96	418.95	49.16%
Cable corridor						
Permanent land loss subtotal	0	2.70	0	2.70	2.70	100%
Temporary land loss subtotal	2.23	49.82	0.33	52.38	52.71	99.37%
Overall subtotal	2.23	52.52	0.33	55.08	55.41	99.40%
Bespoke access corridor						
Permanent land loss subtotal	0	1.47	1.95	3.42	3.98	85.93%
Temporary land loss subtotal	0	5.52	7.32	12.84	14.93	99.40%
Overall subtotal	0	6.99	9.27	16.26	18.91	85.99%
Order Limits Total						
Permanent Land Loss	0	4.36	16.01	20.37	29.99	67.92%
Temporary Land Loss	2.23	67.03	187.67	254.7	463.28	54.98%
Order Limits Total	2.23	71.39	203.68	277.3	493.27	56.22%

3.9.70. Any loss of BMV land agricultural land is to be discouraged and both the temporary loss of 254.7ha and the permanent loss of 20.37ha weighs against the application. The ExA does agree with LCC that a temporary loss of 254.7ha of BMV is significant particularly considering that temporary loss means the operational lifespan of the proposed development, which is up to 40 years.

3.9.71. Also, although there is the possibility of using some of the proposed land within the order limits for other uses, including agricultural uses such as grazing and bee keeping, such uses of land have not been secured and therefore cannot be taken into consideration. However, the ExA acknowledges that there might be a marginal benefit in relation to soil quality as soil management proposals over the operational phase have been considered and the land management strategies would prioritise supporting ecological benefits and improvements in soil quality.

- 3.9.72. In conclusion, although the ExA, accepts that the applicant has sought to minimise the impacts on BMV agricultural land and where BMV agricultural land is lost, it would be limited in extent and duration and could revert to its use, considering that approximately 56.22% of the land lost within the order limits is classed as BMV, the 40 year lifespan of the proposed development, and the level of protection that national policy gives to BMV land, I consider that matters relating to soil and BMV agricultural land should be afforded great negative weight in the overall planning balance.
- 3.9.73. Matters to be taken to chapter 5 and the planning balance:
- The ExA is of the view that a thorough assessment of soils and BMV agricultural land within the order limits was carried out and that no significant evidence has been presented disputing the methodology or validity of its findings.
 - However, the ExA also notes that the proposed development would lead to the permanent loss of 29.99ha of agricultural land, approximately 67.92% of which is classed as BMV and the temporary loss of 463.28ha of agricultural land, 54.98% of which classed as BMV.
 - Overall, the loss of 254.7ha of BMV land (approximately 55% of the total area temporarily due to the proposed development) is in the ExA's view, a significant effect, even if temporarily, particularly considering that temporary loss means the operational lifespan of the proposed development, which is up to 40 years.
 - In conclusion, the ExA, accepts that the applicant has sought to minimise the impacts on BMV agricultural land and where BMV agricultural land is lost, it would be limited in extent and duration and could revert to its use. In addition, there would be some benefit to soil resources over the long term as a result of the oSMP and this is supported by NPS EN-1 paragraph 5.11.14. However, considering that approximately 56.22% of the land lost within the order limits is classed as BMV and the 40 year lifespan of the proposed development, there would be significant conflict with the protection of BMV land provided by NPS EN-1 paragraphs 5.11.12 and 5.11.34, NPS EN-3 paragraph 2.10.29 and the aims of the May 2024 WMS.
 - Furthermore, no proposals for the co-location of a continued agricultural use have been firmly secured or committed to by the applicant, so no consideration was given to this in line with paragraph 2.10.32 of NPS EN-3.
 - As such, I consider that matters relating to soil and BMV agricultural land should be afforded great negative weight in the overall planning balance.

3.10. OTHER MATTERS

INTRODUCTION

This section of the report considers various remaining policy topics and important and relevant consideration that need to be taken into account in the planning balance. These are matters that are addressed in the NPSs or otherwise cover legislative and policy considerations drawn to the attention of the ExA.

The 2025 versions of the Overarching National Policy Statement for Energy 2025 (NPS EN-1 2025), the National Policy Statement for Renewable Energy Infrastructure 2025 (NPS EN-3 2025) and the National Policy Statement for Electricity Networks Infrastructure (NPS EN-5 2025) are broadly in agreement with the NPS EN-1, NPS EN-3 and NSP EN-5 respectively, and it does not substantially change its objectives or policy in relation to the issues mentioned below.

CLIMATE CHANGE ADAPTATION AND RESILIENCE

INTRODUCTION

- 3.10.1. This section of the report considers the effects of climate change on the proposed development, namely resilience to climate change, as set out in Chapter 12 Climate Change of the ES [\[APP-063\]](#). In addition to this, the effects of the proposed development on climate change, including GHG emissions, are addressed in section 3.2 of this report, as well as the implications of climate change on flooding which are addressed in section 3.8.

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

- 3.10.2. Section 4.10 of NPS EN-1 requires consideration of climate change adaptation and resilience in the ES. Applicants should assess the impacts on, and from, the proposed energy project across a range of climate change scenarios, using advice and guidance available.
- 3.10.3. Paragraph 4.10.13 states that the SoS should be satisfied that applicants for new energy infrastructure have taken these into account and that, as per paragraph 4.10.15 that there are not features of the design of new energy infrastructure critical to its operation which may be seriously affected by more radical changes to the climate beyond that projected in the latest set of UK climate projections.

NPPF

- 3.10.4. The NPPF includes policies which seek to minimise carbon dioxide emissions and ensure new development is resilient to the impacts of climate change.

THE APPLICATION

- 3.10.5. The applicant's assessment of the effects of the proposed development on climate change are set out in ES Chapter 12 (Climate Change) [\[APP-063\]](#), supported by:
- Appendix 12.2 Climate Change Guidance and Legislation [\[APP-168\]](#)
- 3.10.6. ES Chapter 12 (Climate Change) [\[APP-063\]](#) sets out the applicant's approach to the assessment of the likely significant effects of the proposed development on climate and the vulnerability of the proposed development to climate change. The applicant's assessment has been divided into Part A, where the assessment of impacts on climate change (greenhouse gas emissions) is set out (please see section 3.2), and then Part B which includes the assessment of climate change resilience.
- 3.10.7. The applicant confirms, in relation to the assessment on climate resilience, that during construction and decommissioning, effects on the proposed development of climate change are deemed to be negligible and not significant. During the operational phase, the combination of consequence and likelihood determined a minor adverse not significant effect on the proposed development from various climatic impacts.

ISSUES CONSIDERED DURING THE EXAMINATION

- 3.10.8. No queries or concerns have been raised by any of the HLAs in relation to the applicant's approach to climate change as set out in ES Chapter 12 [\[APP-063\]](#) or by any other statutory body. No substantive concerns were raised by IPs during examination.
- 3.10.9. With no substantive concerns raised in relation to the applicant's assessment or approach on climate change adaptation and resilience, coupled with the ExA's own assessment, the ExA did not feel the need to ask specific questions in relation to the applicant's assessment or approach on this matter.

CONCLUSIONS

- 3.10.10. The ExA is satisfied that the applicant has undertaken a thorough assessment of the climate change resilience of the project and that the assessment is based on reasonable assumptions and is proportionate.
- 3.10.11. Paragraph 4.10.13 states that SoS should be satisfied that applicants for new energy infrastructure have taken these into account and that, as per paragraph 4.10.15 that there are not features of the design of new energy infrastructure critical to its operation which may be seriously affected by more radical changes to the climate beyond that projected in the latest set of UK climate projections.
- 3.10.12. The ExA concludes that these requirements are satisfied.

TRANSPORT

INTRODUCTION

- 3.10.13. This section of the report considers the effects of the proposed development on transport, as set out in Chapter 9 Access and Traffic of the ES [\[APP-060\]](#).

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

- 3.10.14. Section 5.14 of NPS EN-1 relates to traffic and transport.
- 3.10.15. Paragraph 5.14.1 of NPS EN-1 recognises that the transport of materials, goods and personnel to and from a development during all project phases can have a variety of impacts on the surrounding transport infrastructure and potentially on connecting transport networks, for example through increased congestion.
- 3.10.16. Paragraph 5.14.2 states that environmental impacts may result particularly from trips generated on roads which may increase noise and air pollution as well as GHG emissions.
- 3.10.17. Paragraph 5.14.5 requires the production of a transport appraisal if a project is likely to have significant transport implications and states that it should include a vision for transport.
- 3.10.18. The preparation of a travel plan is required by paragraph 5.14.7 and should adopt a vision-led approach to identify demand management and monitoring and fall back measures that proactively mitigate transport impacts. It should provide details of proposed measures to improve access by active, public and shared transport, reduce the need for parking, contribute to decarbonisation of the transport network and improve user travel options by offering genuine modal choice.
- 3.10.19. Paragraph 5.14.21 of NPS EN-1 states that the SoS should only consider refusing development on highways grounds if there would be an unacceptable impact on highway safety, residual cumulative impacts on the road network would be severe, or it does not show how consideration has been given to the provision of adequate active public or shared transport access and provision.
- 3.10.20. NPS EN-3 requires applicants to consider the suitability of the access routes to the proposed site for both the construction and operational phase of the proposal recognising the construction phase is likely to raise more issues (paragraph 2.12.35). Paragraph 2.12.37 states that developers will usually need to construct on-site access routes for construction, operation and maintenance activities, such as footpaths, earthworks, or landscaping.

NPPF AND LOCAL POLICY

- 3.10.21. The NPPF seeks to promote sustainable transport and states that transport issues should be considered from the earliest stages of plan-making and

development proposals, using a vision-led approach to identify transport solutions that deliver well-designed, sustainable and popular places.

- 3.10.22. The CLLP includes Policy S5 which states that proposals for renewable energy schemes, including ancillary development, will be supported where the direct, indirect, individual and cumulative impacts on traffic and transport, amongst other considerations, are made acceptable. The SELLP Policy 33: Delivering a More Sustainable Transport Network states local authorities will work with developers to make the best use of, and seek improvements to, existing transport infrastructure and services within, and connecting to South East Lincolnshire. Development proposals are required to have regard to the need for better promotion and management of the existing transport network.

THE APPLICATION

- 3.10.23. The applicant's assessment of the effects of the proposed development on transport is set out in Chapter 9 Access and Traffic of the ES [\[APP-060\]](#), supported by:
- Appendix 9.1 Transport Assessment Parts 1, 2 and 3 [\[APP-155, APP-156, APP-157\]](#)
 - Appendix 9.2 Policy and Guidance [\[APP-158\]](#)
 - Appendix 9.3 Outline Construction Traffic Management Plan (oCTMP) [\[APP-159\]](#)
 - Figure 9.1 Access Routes and Most Recent Traffic Counts [\[APP-252\]](#)
- 3.10.24. ES Chapter 9 (Access and Traffic) [\[APP-063\]](#) sets out the applicant's approach to the assessment of the likely significant effects of the proposed development on access and traffic.
- 3.10.25. The Scoping Report [\[APP-071\]](#) proposed to include traffic impacts associated with the construction phase. Taking advice from the Scoping Opinion [\[APP-072\]](#) and NKDC, traffic impacts associated with replacing equipment during the operational phase would also be assessed but in less detail.
- 3.10.26. Access to the development site is proposed to be done via a new bespoke access road from the A17 west of Heckington and several access points along the cable corridor, including via the existing private Triton Knoll Access Road. Access for abnormal loads is also addressed.
- 3.10.27. The methodology adopted by the applicant is set out in section 9.4 of ES Chapter 9 [\[APP-060\]](#) and it includes the establishment of the extent of the study area, the assessment methodology that was adopted and the significance criteria.
- 3.10.28. The applicant determined the baseline conditions of the assessment, as set out in section 9.5 of ES Chapter 9 [\[APP-060\]](#), including the identification of sensitive receptors. The 3 main types of sensitive receptors are defined in groups and are
- people living and/or working on roads affected by the proposed development

- motorists and heavy vehicle users of the A17 and other roads affected by construction traffic
- non-motorised road users; pedestrians, cyclists and/or equestrians on study area roads

- 3.10.29. The applicant also confirms, in relation to future baseline conditions, that no significant changes in baseline traffic are expected between 2027 and 2028 or between 2028 and 2032.
- 3.10.30. The assessment of likely effects, after embedded mitigation, is set out in section 9.6 of ES Chapter 9 [\[APP-060\]](#). The applicant confirms, in relation to construction phase development impacts, that the combined total of Heavy Goods Vehicles (HGVs) and light vehicle travelling to the development site over the whole construction duration has an estimated Annual Average Daily Traffic (AADT) impact on the A17 of 168 vehicles, of which 36 are HGVs. The estimated development impact on the study area and the magnitude of change, referring to magnitude of impact criteria, has been assessed by the applicant as negligible adverse, and therefore not significant in ES terms.
- 3.10.31. The impact on motorists, freight vehicles and non-motorised road users on public roads crossing the construction traffic route has been found to be negligible and not significant. This is due to construction traffic giving way to public traffic and all road users, consistent with the highway code and visibility on all crossing locations being suitable. Consequently, no safety impacts are likely and there are no likely delays to road users and that no additional traffic management measures are required, considering peak flows.
- 3.10.32. As set in paragraph 9.6.11, operational phase access and traffic effects are largely related to on-site employment, estimated to be a maximum of 6 staff at any time. The traffic impact of this level of activity is negligible in relation to the construction phase and for this reason not within scope. However, there would be requirement for periodic replacement of some or all the solar array and BESS elements, for example, due to very gradual performance reduction or in rare instances due to damage.
- 3.10.33. Based on experience of solar park construction elsewhere and information from solar panel manufacturers, the applicant assumed that replacing circa 25% of the solar panels could generate 1,000 two-way HGV movements. Assuming replacement would take place over 3 months and with no additional works, this would lead to an indicative AADT traffic impact of 11 HGVs or approximately 25% of the HGV impact of the proposed development construction. Replacement of BESS units would generate a two-way vehicle trip per unit, so that traffic impact is unlikely to exceed solar panel replacement. Given that the construction effects of the proposed development are negligible, it is very likely that equipment replacement would have a negligible and not significant effect as well.

ISSUES CONSIDERED DURING THE EXAMINATION

- 3.10.34. No significant concerns have been raised by any of the HLAs, including LCC in its capacity as LHA, in relation to the applicant's approach to transport as set out in ES Chapter 9 (Access and Traffic) [\[APP-063\]](#), with LCC confirming in their LIR [\[REP1-044\]](#) that the methodology for the transport assessment was agreed with the Council and the Council believes it provides a reasonable estimate of construction traffic that would be associated with the development. The LHA do not expect capacity issues on the highway network as a result of this development.
- 3.10.35. The ExA asked questions of the applicant in relation to transport at ExQ1, namely TT.1.1, TT.1.2 and TT.1.3, which the applicant has responded to at [\[REP2-040\]](#). The ExA's questions were mainly related to the bespoke access road which the applicant is proposing as the main access to the solar array area for the construction and maintenance of the solar array. The applicant has clarified that a 6m wide bespoke access road is needed and required to be retained during the operational phase to facilitate Abnormal Indivisible Loads (AILs), in case equipment needs to be replaced, without impacting the existing local highway network. Also, the bespoke access road is needed to ensure that a route is available for decommissioning, without the additional impacts of removing the road for operation and then reconstructing it prior to decommissioning. In its response to ExQ1 TT.1.2, which queried the possibility of reducing the width of the proposed bespoke road, the applicant also clarified that reducing the carriageway to 5.5m would only allow vehicles to pass at very low speeds, increasing the risk of collision and also reducing the carriageway to single track, which would then require frequent passing places in order to allow HGVs to pass.

CONCLUSIONS

- 3.10.36. The ExA is satisfied that the applicant has undertaken a thorough assessment of traffic and transport matters that meets the requirements of NPS EN-1 and NPS EN-3 alongside the NPPF.
- 3.10.37. The ExA is also satisfied that, with the measures included in the proposed oCTMP [\[REP6-027\]](#) and Delivery Management Plan (DMP), which include control and monitoring of construction traffic, the proposal would be adequately mitigated during its construction and operational phases. The decommissioning phase would be controlled and monitored via the detailed oDEMP [\[REP7-022\]](#). Together these would meet the requirements of NPS EN-1 and NPS EN-3, the NPPF and relevant local policies.
- 3.10.38. Therefore and in conclusion, I consider that transport matters should be afforded neutral weight in the overall planning balance.
- 3.10.39. Matters to be taken to chapter 5 and the planning balance
- The ExA is satisfied that the applicant has undertaken a thorough assessment of traffic and transport matters that meets the

requirements of NPS EN-1, NPS EN-3 and NPS EN-5, alongside the NPPF and relevant local policies.

- Taking the proposed embedded mitigation into consideration, which includes the proposed oCTMP [\[REP6-027\]](#) and the oDEMP [\[REP7-022\]](#), the ExA does not see any evidence to disagree with the applicant's assessment of no significant effects in relation to transport.
- Therefore and in conclusion, I consider that transport matters should be afforded neutral weight in the overall planning balance.

NOISE AND VIBRATION

INTRODUCTION

- 3.10.40. This section of the report considers the effects of the proposed development on noise and vibration as set out in Chapter 10 Noise and Vibration of the ES [\[APP-061\]](#).

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

- 3.10.41. Section 5.12 of NPS EN-1 relates to noise and vibration.
- 3.10.42. Paragraphs 5.12.1 and 5.12.4 of NPS EN-1 recognise that excessive noise can result in wide ranging impacts on the quality of human life and health, on the environment, wildlife and biodiversity, and on the use and enjoyment of an area.
- 3.10.43. Paragraph 5.12.5 describes the factors that would determine the likely noise impact of a proposed development including operational noise and its characteristics, proximity to noise sensitive receptors and to wildlife or protected species.
- 3.10.44. Where development proposals are likely to give rise to noise impacts, paragraph 5.12.6 of NPS EN-1 sets out what detail a noise assessment should include such as a description of noise generating features, tonal characteristics, details of the existing noise environment (including predicted changes to it), and steps to mitigate and minimise potential adverse effects. This should include potential noise from ancillary activities such as transportation (paragraph 5.12.8).
- 3.10.45. Paragraph 5.12.9 states that relevant British Standards (BS) or other guidance in the calculation of noise should be used. Furthermore, paragraph 5.12.12 requires the submission of an impact assessment and mitigation plan. Potential mitigation measures are detailed within paragraphs 5.12.14 and 5.12.15 and can include reducing the noise at source, using good design and layout to minimise noise transmission, selection of the quietest or most acceptable plant available, containment of noise within buildings, and insulation.
- 3.10.46. Paragraph 5.12.16 states that development proposals are required to have regard to statutory requirements for noise including the Noise Policy

Statement for England (NPSE), the NPPF and the government's associated planning guidance on noise. The NPSE sets out policy aims that seek to avoid significant adverse impacts, mitigate and minimise adverse impacts; and where possible contribute to the improvement of health and quality of life. It sets out the definition of 'significant adverse effects' and 'adverse effects' with regards to detectable levels of noise; these being the lowest observed adverse effect level (LOAEL) and significant observed adverse effect level (SOAEL).

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

- 3.10.47. NPS EN-3 recognises that traffic and transport may cause noise and vibration during construction. However, paragraph 2.10.162 states that for the operational phase of a development proposal, limited weight is likely to be attributed to traffic and transportation noise and vibration impacts.

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

- 3.10.48. NPS EN-5 recognises that noise, including tonal hum, can arise from substation equipment and whether it is audible externally depends on a number of factors. As with NPS EN-1, paragraph 2.9.39 requires the use of relevant BS in conducting a noise assessment for substations. For mitigation and maintenance, paragraph 2.10.9 requires the selection of quieter cost-effective plant while paragraph 2.10.10 requires details of maintenance arrangements to be provided within the ES. Paragraph 2.11.7 states the SoS should ensure appropriate assessment methodologies have been used alongside the demonstration of appropriate mitigation measures.

NPPF AND LOCAL POLICY

- 3.10.49. The NPPF advises that in determining whether a new development is appropriate for its location, the likely effects (including cumulative effects) of pollution on health, living conditions and the natural environment should be considered. Furthermore, it indicates that decisions should mitigate and reduce to a minimum potential adverse impact resulting from noise and avoid noise giving rise to significant adverse impacts on health and quality of life.
- 3.10.50. The CLLP policy S53 Design and Amenity requires development to avoid adverse impacts associated with noise, dust and air quality, and requires schemes to minimise the need for resources both in construction and operation of buildings and be easily adaptable to avoid unnecessary waste production.

THE APPLICATION

- 3.10.51. The applicant's assessment of the effects of the proposed development on noise and vibration is set out in Chapter 10 Noise and Vibration of the ES [\[APP-061\]](#), supported by:

- Appendix 10.1 Policy Legislation and Guidance [\[APP-160\]](#)

- Appendix 10.2 Noise Survey Results [\[APP-161\]](#)
- Figure 10.1 Proposed Solar Array Site Existing Noise Sensitive Receptors and Measurement Positions [\[APP-253\]](#)
- Figure 10.2 Operational Noise Contours - Light Periods [\[APP-254\]](#)
- Figure 10.3 Operational Noise Contours - Dark Periods [\[APP-255\]](#)
- Figure 10.4 Locations of plan items to be mitigated (Embedded Mitigation) [\[APP-256\]](#)

- 3.10.52. ES Chapter 10 (Noise and Vibration) [\[APP-061\]](#) sets out the applicant's approach to the assessment of the likely significant effects of noise and vibration from the construction and decommissioning phases of the proposed development on existing sensitive receptors (ESR). Noise sources considered as part of the assessment include the solar array area, cable corridor and the bespoke access road and construction traffic.
- 3.10.53. Chapter 10 also covers the potential effects of noise from the operational use on ESRs relating to noise generated by electrical fixed plant associated with the solar array area including the photovoltaic panels (solar PV) and BESS during the operational phase of the proposed development.
- 3.10.54. The assessment methodology adopted by the applicant is set out in section 10.3 of ES Chapter 10 [\[APP-061\]](#). It includes the establishment of the extent of the study area, the assessment methodology that was adopted, the establishment of receptor sensitivity to noise and vibration sources created by the proposed development and significance evaluation methodology.
- 3.10.55. The applicant determined the baseline conditions of the assessment, as set out in section 10.4 of ES Chapter 10 [\[APP-061\]](#), including the identification of sensitive receptors, which are listed in table 10.3 of ES Chapter 10 [\[APP-061\]](#) and shown in Figure 10.1 Proposed Solar Array Site Existing Noise Sensitive Receptors and Measurement Positions [\[APP-253\]](#).
- 3.10.56. The applicant also confirms in paragraph 10.4.16, that sensitive dwellings and community facilities beyond the selected ESRs could also be affected by noise from the proposed development. However, the impacts at the other ESRs would be less than those experienced at the ESRs identified above. Mitigation measures during the construction and/or decommissioning phase are presented within Appendix 2.4 outline Construction Environment Management Plan (oCEMP), the latest version of which is [\[REP8-015\]](#) and Appendix 2.5 outline Decommissioning Environment Management Plan (oDEMP), the latest version of which is [\[REP7-022\]](#). Mitigation measures have been developed to reduce impacts to acceptable levels at the above ESRs. For the operational phase, embedded design measures have been implemented to reduce and mitigate sound levels to a minimum at the ESRs.
- 3.10.57. The assessment of likely effects is set out in section 10.5 of ES Chapter 10 [\[APP-061\]](#).
- 3.10.58. In relation to construction traffic noise, the applicant has found that for the 3 ESRs that are located closest to the bespoke access road, the significance of the effects is minor adverse, and therefore not significant in ES terms, as

although the sensitivity of the receptors is medium, the magnitude of change from the baseline is low.

- 3.10.59. In relation to site works during the construction phase, for all receptors and for all construction activity, the significance of effect is negligible, and therefore the effect of construction noise is not significant.
- 3.10.60. In relation to vibration from construction phase activities, the applicant's assessment has looked at 2 different types of construction activity: vibratory compaction and percussive piling compaction, which are likely to be the worse-case activity that may impact ESRs. In relation to vibratory compaction the maximum vibration level of 5.0mm/s-1 for vibratory compaction has been calculated at receptor R8, which would translate to a minor adverse and therefore not significant effect. For percussive piling compaction, a maximum vibration level of 0.5 mm/s-1 has been calculated at receptor R11 which would translate into a negligible effect which is not significant.
- 3.10.61. As mentioned previously, for the assessment of effect at the operational phase, the applicant considered noise generated by electrical fixed plant associated with the solar array area including the photovoltaic panels (solar PV) and BESS.
- 3.10.62. As set out in paragraphs 10.5.67 to 10.5.71, the applicant has found that for the daylight period between 04:00-22:00 the predicted rating levels of noise at all receptors are equal to or below 45 decibels (dB).
- 3.10.63. For R1, R2, R3, R4, R5 and R6 where the background noise sound level is equal or below 35dB, the worst-case magnitude of change is medium, leading to a moderate adverse effect which is potentially significant.
- 3.10.64. For receptors R7, R8, R9, R10, and R11, where the background sound level is >35dB, the worst-case magnitude of change is medium, leading to a moderate adverse effect which is potentially significant. For receptors R7, R8, R9, R10, and R11, for which the rating level is equal to or below 45dB, when considering the internal ambient sound level within an ESR, a worst-case scenario has been used. This scenario assesses internal sound levels through a partially open window, which provides approximately 15dB attenuation. Therefore, a rating level of 4dB at the façade would result in an internal sound level of 30dB. As such, the recommended internal sound levels in accordance with BS 8233¹⁵ will be achieved for habitable spaces. The applicant therefore concludes that the magnitude of change is now negligible and, as such, the significance of effect is negligible and the effect from operational noise during daylight periods is not significant.
- 3.10.65. In relation to darkness periods between 22:00 – 04:00, for receptors R1, R2, R3, R4, R5, R6, R7, R8, R9, R10 and R11 where the background sound level is equal to or below 35 dB, the worst-case magnitude of change is medium, leading to a moderate adverse effect which is potentially significant. For

¹⁵ British Standards Institution (2014). BS 8223:2014, Guidance on sound insulation and noise reduction on buildings. BSI: London, UK

receptors where the effects are potentially significant, the internal ambient sound level has been considered. When considering the internal ambient sound level within an ESR, a worst-case scenario has been used. This scenario assesses internal sound levels through a partially open window, which provides approximately 15dB attenuation. Therefore, a rating level of 45dB at the façade would result in an internal sound level of 30dB. As such, the recommended internal sound levels in accordance with BS 8233 would be achieved for habitable spaces.

- 3.10.66. In relation to the decommissioning phase, the applicant confirms, in paragraph 10.5.81, that the assessment of effects likely mirror those reported for the construction phase.
- 3.10.67. No secondary mitigation is proposed for any of the phases in addition to the embedded mitigation measures, as the impacts are considered to be not significant.

ISSUES CONSIDERED DURING THE EXAMINATION

- 3.10.68. No significant concerns have been raised by any of the HLAs in relation to the applicant's approach to vibration and noise. However LCC do state in their LIR [\[REP1-044\]](#) that although public health is satisfied that noise issues during all phases of the development have been considered in relevant chapters, it suggests that the ExA should be guided by the opinion of the NKDC Environmental Health Services and the UK Health Security Agency (UKHSA). The UKHSA in their relevant representation [\[RR-016\]](#) did not raise concerns in relation to noise and the NKDC in their LIR [\[REP1-054\]](#) have found the likely effects of the proposed development in relation to noise and vibration to be neutral.
- 3.10.69. In addition to the above, the ExA did not have significant concerns in relation to the applicant's assessment on effects from noise and vibration.

CONCLUSIONS

- 3.10.70. The ExA is satisfied that the applicant has undertaken a thorough assessment of noise and vibration matters that meets the requirements of NPS EN-1, NPS EN-3 and NPS EN-5, alongside the NPPF and relevant local policies.
- 3.10.71. The ExA is also satisfied that the measures included in the proposed oCTMP [\[REP6-027\]](#) and the oDEMP [\[REP7-022\]](#) contain good practice construction and decommissioning methods which would assist the applicant in mitigating against any potential effects. Taking the proposed embedded mitigation into consideration, the ExA does not see any evidence to disagree with the applicant's assessment of no significant effects in relation to noise and vibration.
- 3.10.72. Matters to be taken to chapter 5 and the planning balance:

→ The ExA is satisfied that the applicant has undertaken a thorough assessment of noise and vibration matters that meets the

requirements of NPS EN-1, NPS EN-3 and NPS EN-5, alongside the NPPF and relevant local policies.

- Taking the proposed embedded mitigation into consideration, which includes the proposed oCTMP [\[REP6-027\]](#) and the oDEMP [\[REP7-022\]](#), the ExA does not see any evidence to disagree with the applicant's assessment of no significant effects in relation to noise and vibration.
- Therefore and in conclusion, I consider that noise and vibration should be afforded neutral weight in the overall planning balance.

GLINT AND GLARE

INTRODUCTION

- 3.10.73. This section of the report considers the potential glint and glare effects from the solar PV arrays associated with the proposed development, as set out in Chapter 13 Glint and Glare of the ES [\[APP-064\]](#).

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

- 3.10.74. EN-1 does not contain specific guidance on glint and glare in respect of solar farms. However, paragraph 5.5.57 does state that, in relation to lighting, that it must also be designed in such a way as to ensure there is no glare or dazzle to pilots and/or ATC and prevention of confusion with aeronautical lighting.

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

- 3.10.75. Paragraphs 2.10.102 to 2.10.106 of NPS EN-3 address glint and glare. They outline that, at certain angles, solar panels may reflect the sun's rays causing glint and glare and that receptors should qualitatively be mapped to identify potential glint and glare issues. When a quantitative glint and glare assessment is necessary, the geometric possibility of affecting nearby receptors should be considered alongside an assessment of potential impact and impairment based on the angle and duration of incidence.
- 3.10.76. Paragraph 2.10.134 states that applicants should consider using solar panels comprising of (or be covered with) anti-glare/anti-reflective coating with a specified angle of maximum reflection attenuation for the lifetime of the permission.
- 3.10.77. Paragraph 2.10.135 recognises that screening between potentially affected receptors and the reflecting panels may be required to mitigate effects.

THE APPLICATION

- 3.10.78. The applicant's assessment of the potential glint and glare effects from the solar PV arrays is set out in chapter 13 Glint and Glare of the ES [\[APP-064\]](#), supported by:

- Appendix 13.1 Legislation, Policy and Guidance [[APP-169](#)]
- Appendix 13.2a ForgeSolar Glint Report Road Railway and Aviation [[APP-170](#)]
- Appendix 13.2b ForgeSolar Glint Report OPs1-40 [[APP-171](#)]
- Appendix 13.3 Mathematical Equations [[APP-172](#)]
- Figure 13.1 Road and Rail Receptors [[APP-263](#)]
- Figure 13.2 Aviation Receptors [[APP-264](#)]
- Figure 13.3 Observation Point Receptors [[APP-265](#)]
- Figure 13.4 Zone of Theoretical Visibility [[APP-266](#)]

- 3.10.79. ES Chapter 13 [[APP-064](#)] sets out the applicant's approach to the assessment of the glint and glare likely significant effects from the solar PV arrays and it considers the potential for likely significant effects on ground-based receptors, including road, rail and local residential dwellings. In addition, glint and glare effects on aircraft operating in the surrounding area have also been considered.
- 3.10.80. The assessment methodology adopted by the applicant is set out in section 13.4 of ES Chapter 13 [[APP-064](#)]. It includes the establishment of the extent of the study area, the methodology adopted and the significance criteria, which includes: sensitivity, magnitude of change and significance of the effect.
- 3.10.81. The applicant determined the baseline conditions of the assessment, as set out in section 13.4 of ES Chapter 13 [[APP-064](#)], including the identification of sensitive receptors. As per paragraph 13.5.11, these are: motorists driving on local roads, the railway line in relation to effects for the train driver, aerodromes in the area in relation to effects on pilots and air traffic control and occupants of residential/commercial properties.
- 3.10.82. In its assessment, the applicant has considered embedded mitigation, which includes: glare and reduction of effects on sensitive receptors as far as practically possible within the design of the solar array area, proposed new planting, the choice of fixed panels over tracking panels at a certain height and the use of anti-reflective coating (ARC).
- 3.10.83. Table 13.5 of ES Chapter 13 [[APP-064](#)] summarises the assessment of significance of effects for road receptors. No significant effects were identified.
- 3.10.84. Table 13.6 provides a review of the observation points assessment which was carried out owing to the size of the solar array area. A total of 39 observation point receptors have been identified by the applicant and assessed for likely glare effects based on the use of the fixed panels. Of these, 32 observation points represent residential dwellings, 5 being associated with commercial premises and 2 churches. Table 13.8 which includes the applicant's assessment of significance of effects for each one of the observation points that were deemed suitable for further assessment, states no significant effects have been identified.

- 3.10.85. In terms of aviation, as per table 13.9 of ES Chapter 13 [\[APP-064\]](#), no significant effects have been identified for any of the aviation receptors.
- 3.10.86. No secondary or additional mitigation is proposed, in addition to the embedded mitigation measures, as no significant effects have been identified.

ISSUES CONSIDERED DURING THE EXAMINATION

- 3.10.87. No significant concerns have been raised by any of the HLAs in relation to the applicant's glint and glare assessment with NKDC in their LIR [\[REP1-054\]](#) having found that the proposed development would have a neutral impact in relation to glint and glare. LCC do state in their LIR [\[REP1-044\]](#) that although public health is satisfied that glint and glare issues have been considered, it suggests that the ExA should be guided by the opinion of the NKDC Environmental Health Services and the UKHSA. The UKHSA in their relevant representation [\[RR-016\]](#) did not raise concerns in relation to glint and glare.
- 3.10.88. In addition to the above, the ExA did not have significant concerns in relation to the applicant's assessment of potential glint and glare effects from the proposed development.

CONCLUSIONS

- 3.10.89. The ExA is satisfied that the applicant has undertaken a thorough assessment of glint and glare matters that meets the requirements of NPS EN-1 and NPS EN-3.

The ExA is also satisfied that the embedded design mitigation, namely proposed new planting, the choice of fixed panels over tracking panels at a certain height and the use of ARC, assists in mitigating any negative effects, as secured through the outline Landscape and Ecological Environmental Management Plan (oLEMP) [\[REP8-017\]](#) and the DAAD [\[REP8-011\]](#).

- 3.10.90. In conclusion, I consider that glint and glare matters should be afforded neutral weight in the overall planning balance.

- 3.10.91. Matters to be taken to chapter 5 and the planning balance

- The ExA is satisfied that the applicant has undertaken a thorough assessment of glint and glare matters that meets the requirements of NPS EN-1, NPS EN-3.
- Taking the proposed embedded mitigation into consideration, which includes measures set out in the outline Landscape and Ecological Environmental Management Plan (oLEMP) [\[REP8-017\]](#) and the DAAD [\[REP8-011\]](#) the ExA does not see any evidence to disagree with the applicant's assessment of no significant effects in relation to glint and glare.
- Therefore and in conclusion, I consider that glint and glare matters should be afforded neutral weight in the overall planning balance.

AIR QUALITY

INTRODUCTION

- 3.10.92. This section of the report considers the potential effects of the proposed development on air quality, as set out in Chapter 16 Air Quality of the ES [\[APP-067\]](#).

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

- 3.10.93. Section 5.2 of the NPS EN-1 recognises that the development of energy infrastructure can have adverse effects on air quality. Paragraph 5.2.1 states that the construction, operation and decommissioning phases can involve emissions to air which could lead to adverse impacts on health, on protected species and habitats, or on the wider countryside and species. Air emissions include particulate matter (for example dust) up to a diameter of 10 microns (PM10) and up to a diameter of 2.5 microns (PM2.5) as well as gases such as sulphur dioxide, carbon monoxide and nitrogen oxides (NOx).
- 3.10.94. Paragraph 5.2.3 states that for many air pollutants there is not a threshold below which there is no health impact so it is important that energy infrastructure schemes consider not just how a scheme may impact statutory air quality limits, objectives or targets but also measures to mitigate all emissions in order to minimise human exposure to air pollution, especially for those who are more susceptible to the impacts of poor air quality.
- 3.10.95. Paragraph 5.2.7 states that proximity to emission sources can have significant impacts on sensitive receptor sites for air quality, such as education or healthcare sites, residential use or sensitive or protected ecosystems. Projects near a sensitive receptor site for air quality should only be proposed in exceptional circumstances if no viable alternative site is available.
- 3.10.96. Paragraphs 5.2.8 to 5.2.14 relate to the applicant's assessment and set out what should be included in an air quality assessment. Paragraph 5.2.9 states that the ES should describe existing air quality concentrations and the relative change in air quality from existing levels; any significant air quality effects, mitigation action taken and any residual effects, distinguishing between the project stages and taking account of any significant emissions from any road traffic generated by the project; the absolute emissions, concentration change and absolute concentrations as a result of the proposed project, after mitigation methods have been applied; and any potential eutrophication impacts.
- 3.10.97. Paragraph 5.2.16 states that the SoS should give air quality considerations substantial weight where a project would lead to a deterioration in air quality. However, air quality considerations will also be important where substantial changes in air quality levels are expected, even if this does not lead to any breaches of statutory limits, objectives or targets.

- 3.10.98. Paragraph 5.2.19 states that, in all cases, the SoS must take account of any relevant statutory air quality limits, objectives and targets. If a project will lead to non-compliance with a statutory limit, objective or target the SoS should refuse consent.

THE APPLICATION

- 3.10.99. The applicant's assessment of the effects of the proposed development on air quality are set out in Chapter 16 Air Quality of the ES [\[APP-067\]](#), supported by:
- Appendix 16.1 Legislation, Policy and Guidance [\[APP-180\]](#)
 - Appendix 16.2 Assessment Methodology [\[APP-181\]](#)
 - Appendix 16.3 Copies of Relevant Correspondence [\[APP-182\]](#)
 - Figure 16.1 Construction Dust Receptor Plan [\[APP-274\]](#)
- 3.10.100. ES Chapter 16 [\[APP-067\]](#) sets out the applicant's approach to the assessment of the likely significant effects of the proposed development on air quality, particularly on sensitive receptor locations. Sensitive locations are those where the public may be exposed to pollutants generated by the construction and/or operational phases of the proposed development. The assessment also included consideration of any likely significant air quality effects relating to the decommissioning phase, in terms of dust deposition and pollutant emissions associated with construction vehicles.
- 3.10.101. The methodology adopted by the applicant is set out in section 16.4 of ES Chapter 13 [\[APP-064\]](#) and it includes: the establishment of the extent of the study area, the assessment methodology that was adopted in relation to the identification of construction phase impacts and operational phase impacts and the significance criteria.
- 3.10.102. The applicant determined the baseline conditions of the assessment, as set out in section 16.5 of ES Chapter 16 [\[APP-067\]](#), including the identification of sensitive receptors, which included dust-sensitive receptors within a 250m of the solar array area, dust-sensitive receptors within a 250m of the cable corridor and dust-sensitive receptors within a 250m of the proposed access road.
- 3.10.103. In its assessment of effects, the applicant has considered embedded mitigation, which includes the Dust Mitigation Plan to be implemented as part of the oCEMP [\[REP8-015\]](#), which is secured through requirement 12 of the dDCO [\[AS-039\]](#). During the decommissioning phase, site specific mitigation would be implemented via the oDEMP [\[REP7-022\]](#) secured through requirement 18 of the dDCO [\[AS-039\]](#).
- 3.10.104. As set out in paragraph 16.10.4 of ES Chapter 16 [\[APP-067\]](#) with appropriate site-specific construction dust mitigation in place, the residual effects on receptor locations are considered to be direct, temporary, medium term and the level of effect not significant. Review of traffic data for the construction phase confirms that the relevant assessment thresholds would not be exceeded, and therefore the residual effects on receptor locations are

considered to be direct, temporary, medium-term and the level of effect not significant. Based on information detailed in ES Chapter 9 [APP-060], it is considered that the residual effect of operational phase traffic generation on local air quality would be not significant.

- 3.10.105. No secondary or additional mitigation is proposed, in addition to the embedded mitigation measures, as no significant effects have been identified.

ISSUES CONSIDERED DURING THE EXAMINATION

- 3.10.106. No significant concerns have been raised by any of the HLAs in relation to the applicant's air quality assessment with NKDC in their LIR [REP1-054] having found that the proposed development would have a neutral impact in relation to air quality. LCC do state in their LIR [REP1-044] that although public health is satisfied that air quality issues have been considered, it suggests that the ExA should be guided by the opinion of the NKDC Environmental Health Services and the UKHSA. The UKHSA in their relevant representation [RR-016] did not raise concerns in relation to air quality.
- 3.10.107. In addition to the above, the ExA did not have significant concerns in relation to the applicant's assessment of potential air quality effects from the proposed development.

CONCLUSIONS

- 3.10.108. The ExA is satisfied that the applicant has undertaken a thorough assessment of air quality matters that meets the requirements of NPS EN-1.
- 3.10.109. The ExA is also satisfied that the proposed embedded mitigation included in the DMP, to be implemented as part of the oCEMP [REP8-015], and the oDEMP [REP7-022] will be sufficient to mitigate against any likely significant effects in relation to air quality. The oCEMP is secured via requirement 12 and the oDEMP through requirement 18 of the dDCO [AS-039].
- 3.10.110. In conclusion, I consider that air quality matters should be afforded neutral weight in the overall planning balance.
- 3.10.111. Matters to be taken to chapter 5 and the planning balance
- The ExA is satisfied that the applicant has undertaken a thorough assessment of air quality matters that meets the requirements of NPS EN-1.
 - Taking the proposed embedded mitigation into consideration, which includes measures set out in the oCEMP [REP8-015], and the oDEMP [REP7-022] the ExA does not see any evidence to disagree with the applicant's assessment of no significant effects in relation to air quality.
 - Therefore and in conclusion, I consider that air quality should be afforded neutral weight in the overall planning balance.

WASTE

INTRODUCTION

- 3.10.112. This section of the report considers waste and how the proposed development would deal with waste, as set out, primarily in Chapter 17 Other Environmental Topics of the ES [[APP-068](#)] and Appendix 17.2 Waste and Recycling Strategy [[APP-189](#)].

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

- 3.10.113. Section 5.15 of NPS EN-1 deals with resources and waste. Paragraph 5.15.3 states that disposal of waste should only be considered where other waste management options are not available or where it is the best overall environmental outcome.
- 3.10.114. Paragraph 5.15.9 states that arrangements setting out the sustainable management of waste and use of resources should be described and should include information on how re-use and recycling will be maximised in addition to the proposed waste recovery and disposal system for all waste generated by the development.
- 3.10.115. In relation to the SoS decision making, paragraph 5.15.14 states that the SoS should consider the extent to which the applicant has proposed an effective system for managing hazardous and non-hazardous waste arising from construction, operation and decommissioning.
- 3.10.116. Paragraph 5.15.15 states that the SoS should be satisfied that any such waste would be properly managed, that the waste from the proposed facility can be dealt with appropriately and that adequate steps have been taken to minimise the volume of waste arisings.
- 3.10.117. Paragraphs 5.15.16 and 5.15.17 state that the SoS should use requirements or obligations to ensure that appropriate measures for waste management are applied and include a condition on revision of waste management plans at reasonable intervals when giving consent.

THE APPLICATION

- 3.10.118. Appendix 17.2 Waste and Recycling Strategy (WRS) [[APP-189](#)], the latest version of which is [[REP5-033](#)], and Chapter 17 Other Environmental Topics of the ES [[APP-068](#)] are the main documents that set out the applicant's approach to waste.
- 3.10.119. The applicant confirms, in paragraph 17.4.2 of ES Chapter 17 [[APP-068](#)] that the WRS has been prepared as an indicative document that is intended to inform the preparation of a Site Waste Management Plan (SWMP) during the construction and decommissioning phases of the proposed development. The SWMP would be prepared as part of the in line with the oCEMP [[REP8-015](#)] and the oDEMP [[REP7-022](#)] prior to construction and decommissioning of the Proposed Development.

- 3.10.120. The WRS [\[REP5-033\]](#), considers the aims of international, national and local policy in regard to commitments to manage resources more efficiently in order to prevent and minimise waste where possible, to sustainably manage waste and increase overall recycling rates.
- 3.10.121. The applicant confirms, in paragraph 17.4.3 of ES Chapter 17 [\[APP-068\]](#) that the construction phase is not anticipated to generate large amounts of waste owing to the absence of large-scale earthworks and the fact that the electrical infrastructure will be manufactured offsite and delivered for installation when required. The types of waste associated with construction include (but are not limited to) general waste from site welfare facilities, packaging waste from incoming materials, and waste from construction of supporting infrastructure, such as fencing and access tracks or roads.
- 3.10.122. During construction phase, approximately 169 tonnes per annum of welfare waste is anticipated. This is considered to have a negligible impact on the local waste management facilities expected to deal with the waste. Similarly, due to the small number of structures to be constructed as part of the proposed development, the wider construction waste volume is also estimated to be negligible.
- 3.10.123. Operationally, waste will be predominantly associated with equipment replacement and maintenance and largely made up of recyclable materials, such as metals.
- 3.10.124. During the decommissioning phase, waste will be managed in a phased approach in accordance with the oDEMP [\[REP7-022\]](#).
- 3.10.125. In conclusion, significant effects in relation to waste are not considered likely to occur due to the measures set out in the oCEMP [\[REP8-015\]](#) and the oDEMP [\[REP7-022\]](#) and appropriate legislative controls that are in place meaning that waste can be effectively managed throughout each stage of the proposed development.

ISSUES CONSIDERED DURING THE EXAMINATION

- 3.10.126. No concerns were raised by any of the HLAs in relation to the applicant's approach to waste or by any other statutory bodies.
- 3.10.127. In addition to the above, the ExA did not have significant concerns in relation to the applicant's assessment of potential waste effects from the proposed development.

CONCLUSIONS

- 3.10.128. Noting that no concerns were raised by any of the HLAs in relation to the applicant's approach to waste, or by any other statutory bodies, the ExA finds that the waste assessment methodology, and the consideration given to recycling and waste management is satisfactory and addresses the requirement set in national policy, namely NPS EN-1.

- 3.10.129. The ExA also considers that appropriate mitigation is secured in the form of a SWMP, to be prepared in line with the WRS [\[APP-189\]](#) and secured through the oCEMP via requirement 12 and the oDEMP through requirement 18 of the dDCO [\[AS-039\]](#). The ExA is therefore satisfied that waste will be managed appropriately on-site and off-site, that adequate steps have been taken to minimise volume of waste arisings and that revisions of waste management plans would occur.
- 3.10.130. Consequently, the ExA concludes that these requirements are satisfied and that the applicant's assessment accords with the requirements set in NPS EN-1.
- 3.10.131. Matters to be taken to chapter 5 and the planning balance:
- The ExA finds that the waste assessment methodology, and the consideration given to recycling and waste management is satisfactory and addresses the requirement set in national policy, namely NPS EN-1.
 - Appropriate mitigation is secured in the form of a SWMP, to be prepared in line with the WRS [\[APP-189\]](#) and secured through the oCEMP via requirement 12 and the oDEMP through requirement 18 of the dDCO [\[AS-039\]](#).
 - Consequently, the ExA concludes that these requirements are satisfied.

MAJOR ACCIDENTS AND DISASTERS

INTRODUCTION

- 3.10.132. This section of the report considers how the proposed development would deal with major accidents and disasters, as set out primarily in Chapter 17 Other Environmental Topics of the ES [\[APP-068\]](#).

INFRASTRUCTURE PLANNING (ENVIRONMENTAL IMPACT ASSESSMENT (EIA)) REGULATIONS 2017 (THE EIA REGULATIONS)

- 3.10.133. Regulation 5(4) requires the assessment of expected significant effects arising from the proposed development's vulnerability to major accidents.

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

- 3.10.134. Paragraphs 4.12.2 deals with pollution controls and paragraph 4.13.5 states that applicants should consult with the Health and Safety Executive (HSE) on matters relating to safety.

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

- 3.10.135. Paragraphs 2.10.46 to 2.10.48 deal with security and lighting, with paragraph 2.10.46 stating that security is a key consideration for developers and that applicants may wish to consider not only the availability of natural defences

such as steep gradients, hedging and rivers but also perimeter security measures such as fencing, electronic security, CCTV and lighting.

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

- 3.10.136. Paragraph 2.4.3 states that electricity network infrastructure must in the first instance be safe and secure and that functional design constraints of safety and security may limit an applicant's ability to influence the aesthetic appearance of that infrastructure.

THE APPLICATION

- 3.10.137. Chapter 17 Other Environmental Topics of the ES [\[APP-068\]](#) is the main document that set out the applicant's approach to major accidents and disasters, which include extreme weather events, flooding, fire, road accidents, rail accidents, aviation disasters, utilities failure plant disease, criminal damage and unexploded ordnance.
- 3.10.138. Table 17.3 of ES Chapter 17 [\[APP-068\]](#) sets out the major accidents and disasters associated with the proposed development as these were considered by the applicant, including the identification of the potential receptor for each one of the major accidents and disasters considered and the applicant's assessment on how potential effects have been addressed.
- 3.10.139. Particularly in relation to fire, the BESS would be monitored by the onsite control systems, which would be active at all times and feed cloud monitoring services, and a 24/7 remote control room that would monitor for critical health and safety faults. Further information on fire safety can be found in the oBSMP [\[REP5-035\]](#). Given the robust testing and stringent legislative controls that are in place regarding battery manufacture, the applicant's view is that significant effects in relation to fire are not considered to be likely and the topic, therefore, does not require further consideration within this ES.

ISSUES CONSIDERED DURING THE EXAMINATION

- 3.10.140. LCC in their LIR [\[REP1-044\]](#) raised concerns regarding the potential negative impacts that could arise to human health from the proposed development in case of fire related accidents linked to the BESS. In the final SoCG between the applicant and LCC [\[REP7-035\]](#) concerns regarding adequate separation between BESS units, which could potentially lead to an increase in the risk of fire, remains a concern for LCC and a matter unresolved between parties.
- 3.10.141. The applicant states, in the same document [\[REP7-035\]](#), that it notes that incoming NFPA 855¹⁶ (2026) mandates that every BESS must undergo Large Scale Fire Testing to establish minimum equipment spacing distances where a BESS fire does not propagate to adjacent BESS. Testing must demonstrate that firefighters are not required to intervene to prevent fire propagation. At the detailed design stage, once a BESS technology has been

¹⁶ e National Fire Protection Association (NFPA) 855 Standard for the Installation of Stationary Energy Storage Systems.

selected, a detailed Battery Safety Management Plan (BSMP) would be developed in accordance with relevant standards and guidance to define measures applicable to the selected BESS enclosures. The detailed BSMP would be submitted to and approved by the relevant planning authority (LCC) in accordance with requirement 6 in schedule 2 to the dDCO [AS-039]. Lincolnshire Fire and Rescue Service would be consulted when the application to discharge requirement 6 is being determined.

- 3.10.142. The ExA, at ExQ3 GCT.3.3 asked for the applicant to confirm how it has considered the potential need for the use of PFBs or PFA chemicals in case of a fire and how it has mitigated against its release, including if a lead line base has been proposed as potential mitigation. The applicant replied in [REP7-052] that the outline BSMP [REP5-035] details the measures to protect environmental measures from fires and that section 8.3 of Appendix 11.1 Flood Risk Assessment [REP6-029] details the proposed firewater management strategy. The Flood Risk Assessment [REP6-029] states that, in the event of a fire, all firewater runoff would be retained within the BESS and onsite substation area. Containment would be within basins lined with impermeable geomembrane and filled with aggregate, surrounding the BESS units; or within a lined lagoon. An impermeable geomembrane would be installed beneath the BESS and onsite substation plateau and all associated drainage features (e.g. attenuation tanks/ponds) to prevent the infiltration of firewater runoff to the ground. There is, therefore, no pathway for potentially contaminated water to discharge to downstream watercourses or infiltrate to the ground.
- 3.10.143. No concerns were raised by any of the other HLAs in relation to the applicant's approach to major accidents and disasters or by any other statutory bodies.
- 3.10.144. In addition to the above, the ExA did not have significant concerns in relation to the applicant's assessment of potential effects of major accidents and disasters.

CONCLUSIONS

- 3.10.145. In light of the applicant's response to the concerns raised by LCC in relation to adequate separation for BESS units, the ExA is of the view that the proposed development, via the BSMP, would effectively address LCC's concerns and mitigate against any likely risk adequately.
- 3.10.146. Consequently, the ExA's view is that the applicant's approach to the assessment of fire risk, safety and security is based on reasonable assumptions and is proportionate and therefore meets the required policy standard.
- 3.10.147. The ExA is of the view that the applicant has taken into consideration the potential risks and hazards associated with the BESS and has provided sufficient levels of mitigations across a range of reasonable worst-case scenarios and that given the measures secured in the dDCO, risk would be low and not significant during the construction and operation stages.

- 3.10.148. Consequently, the ExA concludes that these requirements are satisfied and that the applicant's assessment accords with the requirements set out in EIA Regulations 2017, NPS EN-1, NPS EN-3 and NPS EN-5.
- 3.10.149. Matters to be taken to chapter 5 and the planning balance:
- The ExA's view is that the applicant's approach to the assessment of fire risk, safety and security is based on reasonable assumptions and is proportionate and therefore meets the required policy standard.
 - The ExA is of the view that the applicant has taken into consideration the potential risks and hazards associated with the BESS and has provided sufficient levels of mitigations across a range of reasonable worst-case scenarios and that given the measures secured in the dDCO, risk would be low and not significant during the construction and operation stages.
 - Consequently, the ExA concludes that these requirements are satisfied.

3.11. CUMULATIVE EFFECTS

INTRODUCTION

- 3.11.1. This section of the report considers the cumulative effects arising from the proposed development, both in relation to the intra-cumulative effects (or intra-project), and the inter-cumulative effects (or inter-project).

POLICY BACKGROUND

INFRASTRUCTURE PLANNING (ENVIRONMENTAL IMPACT ASSESSMENT (EIA)) REGULATIONS 2017 (THE EIA REGULATIONS)

- 3.11.2. The EIA Regulations at schedule 4 require that an ES should include "a description of the likely significant effects on the environment resulting from, inter alia, (e) the cumulation of effects with other existing and/or approved projects, taking into account any existing environmental problems relating to areas of particular environmental importance likely to be affected or the use of natural resources".

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

- 3.11.3. Paragraph 4.1.5 of NPS EN-1 states that, in considering any proposed development, in particular when weighing its adverse impacts against its benefits, the SoS should take into account its potential adverse impacts, including on the environment, and including any long-term and cumulative adverse impacts, as well as any measures to avoid, reduce, mitigate or compensate for any adverse impacts, following the mitigation hierarchy.

LOCAL POLICY

- 3.11.4. The CLLP includes Policy S14 supports proposals for renewable energy schemes where the direct, indirect and cumulative impacts on the following consideration are met or would be made acceptable.

THE APPLICATION

- 3.11.5. The applicant's assessment of inter and intra cumulative effects arising from the proposed development is presented for each topic within the individual technical ES chapters (Chapters 6 to 16), with a summary of the cumulative effects set out in Chapter 18 Cumulative Effects [\[APP-069\]](#) of the ES. The methodology followed by the applicant is set out in Chapter 4 Scope and Methodology [\[APP-055\]](#) of the ES.

INTRA-CUMULATIVE EFFECTS

- 3.11.6. As set out in paragraph 4.6.2 of ES Chapter 4 [\[APP-055\]](#) the assessment of intra-cumulative effects considers the interactions between multiple residual environmental impacts of the proposed development (in isolation) likely to be experienced for each type of receptor and assesses the significance of these cumulative effects. The methodology for this has adopted the following principles:
- Residual effects have been taken as the basis for the assessment. Negligible residual effects have been excluded from the assessment on the basis that they have an imperceptible impact on the environment and so are unlikely to contribute any significant adverse intra-cumulative effects.
 - The sensitivity of receptors and magnitude of impacts has been identified and combined in order to determine the potential for significant adverse intra-cumulative effects.
 - Additional mitigation, if required, has been developed to address any significant intra-cumulative effects.
- 3.11.7. As set out in paragraph 18.6.5 ES Chapter 18 [\[APP-069\]](#), the applicant acknowledges that there is potential for significant intra-cumulative effect during construction, up to moderate adverse, on the Church of St Andrew at Asgarby, a Grade I Listed Building (NHLE 1061832) due to intervisibility, new movement in the landscape, an increase in traffic noise (previously restricted to the A17 south of the church and the village road), increase in vehicular lighting, an increase in air pollutants and the presence of new highway infrastructure within a predominantly agricultural and historical landscape.
- 3.11.8. The applicant states, in paragraph 18.6.6 of ES Chapter 18 [\[APP-069\]](#), that the remaining potential intra-cumulative effects would not be significant following the implementation of embedded and additional mitigation, as set out within Appendix 2.3 Embedded Mitigation [\[APP-076\]](#) and Chapter 19: Summary of Significant Environmental Effects [\[APP-070\]](#).

INTER-CUMULATIVE EFFECTS

- 3.11.9. The assessment of inter-cumulative effects considers where there is the potential for the proposed development to result in significant effects in combination with other developments.
- 3.11.10. As set out in paragraph 18.4.1 of ES Chapter 18 [\[APP-069\]](#), the assessment of inter-cumulative effects was undertaken in a four staged approach:
- 1) Stage 1 - establish the study area and identify a long list of 'other development' (the 'development schedule');
 - 2) Stage 2 - identify a shortlist of 'other development' for the cumulative impact assessment;
 - 3) Stage 3 - Information gathering;
 - 4) Stage 4 - Assessment.
- 3.11.11. The long and short list of cumulative developments which has been considered was [\[APP-081\]](#) and [\[APP-082\]](#) respectively.
- 3.11.12. Table 18.3 summary of inter-cumulative effects, sets out the inter-project cumulative effects that have been assessed within technical chapters 6 to 16 of the ES.

Landscape and Visual

- 3.11.13. The applicant confirms, in table 18.3 that, in relation to effects on landscape character, there would be no significant adverse inter-cumulative effects.
- 3.11.14. At a national level the introduction of further development within the National Character Area (NCA) 46 – The Fens focussed on the area between Swineshead and Heckington would result in the increased characterising presence of energy infrastructure. Overall, this is predicted to have a notable but not significant effect on NCA 46. At all phases of development, the contribution of the proposed development to this overall cumulative scenario would be negligible adverse, not significant.
- 3.11.15. At the local level there would be minor adverse (not significant) cumulative effects on the Fenland Sub Area associated with the in combination effects of the proposed development and Heckington Fen Solar Park at all development phases assuming construction and decommissioning activity would be at least partially concurrent. In relation to the Holland Fen LCA there would be minor adverse (not significant) effects at construction and decommissioning phases assuming a worst-case scenario of simultaneous construction activity associated with the cable routes for the proposed development, Heckington Fen Solar Park and works associated with Vicarage Drove Solar Farm.
- 3.11.16. Cumulative visual effects at construction would primarily be limited to those resulting from the in combination presence of construction activity associated with the cable routes connecting into Bicker Fen Substation. Major to moderate significant visual effects have been identified for residential, recreational and transport receptors in the cable corridor for the proposed

development in isolation and it is not anticipated that the temporary introduction of further construction activity associated with other identified cumulative schemes would increase the level of effect for these receptors. Therefore, no significant cumulative visual effects are predicted. On completion of the proposed development and cessation of construction activity within the cable corridor route there would be limited intervisibility between the proposed development and other considered cumulative schemes. There would be no significant adverse cumulative visual effects at the operational phase. As the cable route would remain in situ, there would also be no significant visual effects at the decommissioning phase.

Ecology

- 3.11.17. With the implementation of identified mitigation measures, no inter-cumulative effects are anticipated by the applicant.

Cultural Heritage

- 3.11.18. Although the applicant has considered that the inter-cumulative impact upon the archaeological resource during construction could be slight to moderate adverse, assuming appropriate mitigation is incorporated by the proposed development and Triton Knoll Electrical System scheme, effects would not be significant.
- 3.11.19. The applicant considered that the inter-cumulative effect upon archaeological assets during construction with Heckington Fen Solar Park could be slight to moderate adverse. Assuming appropriate mitigation is incorporated by both schemes, effects would not be significant.
- 3.11.20. In relation to cumulative effects with Outer Dowing Offshore Wind Generating Station as well as Lincolnshire Reservoir, the applicant has considered that the inter-cumulative effect upon the archaeological resources during construction could be slight to moderate adverse. Assuming appropriate mitigation is incorporated by both schemes, effects would not be significant.
- 3.11.21. In addition to the proposal mentioned above, the applicant also considered the cumulative effects of various other non NSIPs schemes (as set out in table 8.10 of ES Chapter 8 [[APP-059](#)]) and no significant inter-cumulative effects have been identified.

Access and Transport

- 3.11.22. No significant inter-cumulative effects were identified by the applicant as a result of the cumulative impact assessment for the proposed development, primarily due to the other developments either recording traffic impacts that do not impact the study area or are unlikely to generate traffic during the construction phase of the proposed development.

Noise and Vibration

- 3.11.23. Although there is one receptor (R28) located within 300m of the cable corridor and 300m of the cable corridor for the Heckington Fen Solar Park development, the highest predicted sound level at this receptor is 49dBA (as

a result of the use of trenchless methods such as horizontal directional drilling (HDD)) during the construction phase. Assuming a worst-case scenario of both developments simultaneously implementing HDD works, the predicted cumulative sound level at the receptor would be 52dBA, which is below the 65dBA threshold stated in BS 5228-1 and, as such, the significance of effect is negligible and not significant.

Water Resources

- 3.11.24. With the implementation of identified mitigation measures, no inter-cumulative effects are anticipated by the applicant.

Soil and Agricultural Land

- 3.11.25. The applicant has considered, as part of its inter-cumulative assessment, the total agricultural land take associated with the considered NSIP developments as well as total agricultural land take associated with the considered non-NSIP developments. When considering all the considered developments within the administrative boundaries of LCC boundary, they equate to 2% (11,962.85ha) of the agricultural land, of which 0.82% (4,927ha) is BMV land, as set in ES Chapter 18 [APP-069]. With appropriate mitigation measures in place, the associated inter-cumulative effect in terms of the loss of agricultural BMV land would be moderate, which is significant.

Socio-Economics

- 3.11.26. In terms of potential inter-cumulative impacts upon local accommodation, the effect is considered to be not significant by the applicant, similarly to local services. In terms of job creation within the region, the applicant has reported that the proposed development would have beneficial inter-cumulative effects.

Air Quality

- 3.11.27. With the implementation of identified mitigation measures, no inter-cumulative effects are anticipated by the applicant. Additionally, any effects would be temporary, only lasting the duration of any overlapping construction and/or decommissioning works.

ISSUES CONSIDERED DURING THE EXAMINATION

EXAMINING AUTHORITY QUERIES

- 3.11.28. The ExA asked written questions to the applicant at ExQ1 [PD-007] relation to the cumulative effects of the proposed development. Key concerns for the ExA were the applicant's assessment of significant cumulative effects in relation to the loss of agricultural BMV land, the applicant's assessment of cumulative effects on certain group receptors, and what additional mitigation had been considered. The ExA also asked further questions at ISH3 in relation to cumulative effects [EV5-001].
- 3.11.29. ExQ1 CU.1.1 [PD-007] was concerned with the applicant's assessment of cumulative effects in relation to land use and BMV agricultural land. The ExA

asked the applicant what further consideration was given to the cumulative effects of the proposal in relation to BMV and how the applicant had addressed the cumulative effects of the proposed development on BMV land.

- 3.11.30. In its response [\[REP2-040\]](#), the applicant stated that most of the agricultural land affected by development (about 2% of all agricultural land across LCC and considered as part of the cumulative effects assessment, only 0.82% is BMV Land. Also, since most of the land affected is linked to solar development proposal, the land take may be considered temporary and reversible, with the permanent land take limited to areas of built development. The applicant goes on to state that this approach to assessing cumulative effects on BMV land is in accordance with the IEMA (2022) guidance¹⁷ and there was no further consideration on BMV land that is required as part of the cumulative impact assessment.
- 3.11.31. The applicant also confirms in its responses that the areas of permanent land take for the proposed development totals 29.99ha, which put it above the 20ha threshold for a high magnitude of impact. The estimates for the permanent land take are conservative worst-case and include the access road at a width that is likely to be reduced, construction compounds that would be removed during the operational phase and access tracks that would be removed during operation or are already in place as part of the existing farm infrastructure. The values also include part of the substation extension area that has already been consented by Heckington Fen (2.4ha). Accounting for this, only an additional 0.3ha would be required for Beacon Fen's generation bay. The removal of these temporary design elements from the permanent land take values and the reduction in land for the substation extension could see the total land take of BMV land fall below the 20ha threshold for high magnitude of impact.
- 3.11.32. ExQ1 CU.1.2 [\[PD-007\]](#) raised concerns with the cumulative effect of the proposed development on certain residential receptor groups, namely R1, R2, R4 and R20.
- 3.11.33. In its response [\[REP2-040\]](#), the applicant stated that the residential properties adjacent to the proposed solar array area, specifically, R1 group receptor, R2 group receptor, R4 Gashes Barn and R20 group receptor were primarily considered in relation to the potential for cumulative visual effects in association with Heckington Fen Solar Park. The applicant confirms that it reviewed the information submitted in respect to Heckington Fen Solar Park and that some potential intervisibility was identified between projects. The applicant's cumulative visual assessment therefore considered a range of viewpoints, for both the Heckington Fen Solar Park and the proposed development, which are located in the area between the respective developments.

¹⁷ Institute of Environmental Management & Assessment (IEMA). (2022). A New Perspective on Land and Soil in Environmental Impact Assessment. IEMA

- 3.11.34. The applicant has found that there would be no or very limited intervisibility in relation to group receptors R1, R4 and R20 because of intervening areas and linear belts of vegetation cover at Howell and in the wider landscape.
- 3.11.35. ExQ1 CU.1.3 [\[PD-007\]](#) asked the applicant for further information regarding what additional mitigation had been considered. The applicant replied, in [\[REP2-040\]](#) that additional mitigation in relation to cumulative visual effects had not been identified because of the limited intervisibility and potential for cumulative visual effects to occur.
- 3.11.36. An updated Technical Note on Cumulative Effects [\[REP5-049\]](#) was submitted into examination to address ISH2 action point 5 in relation to concerns raised on the completeness of the applicant's assessment of cumulative effects and to ensure that all relevant projects were included.
- 3.11.37. Additional schemes identified by LCC, NKDC and BBC were evaluated in order to determine if any updates to the applicant's assessment were required. After reviewing additional submissions, the applicant considered that an update to the Cumulative Effects Assessment was not required [\[REP5-049\]](#).

HLA CONCERNS

- 3.11.38. In addition to the issues raised by the ExA, LCC and NKDC also raised concerns regarding the applicant's approach to cumulative effects, some of those concerns remaining unresolved by the end of the examination.
- 3.11.39. The final SoCG with LCC [\[REP7-035\]](#) makes several points in relation to cumulative effects and how these have been taken into consideration. In relation to land use, LCC state that as more solar energy development proposals come forward within Lincolnshire, LCC is concerned in relation to the cumulative effects of solar energy generation proposals on land use and agriculture. LCC state that cumulative loss of BMV agricultural land in Lincolnshire is reaching 7,044ha. This is a significant figure and one that continues to increase as projects come forward and, with no threshold set for where the cumulative amount of BMV being lost becomes unacceptable, LCC argue that no further loss of BMV should be permitted and that this is in line with the purposes of a cumulative assessment.
- 3.11.40. In addition to this, LCC also state in final SoCG with LCC [\[REP7-035\]](#) that there are significant concerns about cumulative landscape and visual effects arising from this development together with other renewable and energy infrastructure projects in the wider area. While nearby cumulative schemes assessed in the ES are relatively modest, the scale of other proposed NSIPs and large-scale energy developments could collectively lead to extensive and lasting changes to the regional landscape. LCC go on to state that the council is of the view that the development would result in an unacceptable significant negative impact upon the landscape character and visually both individually and cumulatively with other projects, which results in the conclusion that the scheme would be contrary to local development plan policies.

- 3.11.41. In relation to ecology and cumulative effects, LCC state [\[REP7-035\]](#) that it remains concerned about the potential for cumulative impacts on ground nesting bird species, particularly skylark, arising from the number of similar developments across the county and also on the bat population, due to current uncertainties surrounding the impacts of large scale solar development on the bat population. In relation to skylark, the council believes that each development should ensure that it provides adequate mitigation for its own impacts on ground nesting birds to avoid the potential for cumulative impacts as far as possible, otherwise a cumulative significant negative effect could occur.
- 3.11.42. NKDC in their final statement [\[REP8-032\]](#), echoed LCC's concerns in relation to the cumulative effects of the proposed development on ground nesting birds, namely skylark, and LCC's concerns in relation to cumulative landscape and visual effects. The applicant's response [\[REP8-032\]](#) in relation to cumulative effects on breeding birds, states that the applicant has provided avoidance measures for impacts on skylark, including open space within the PV exclusion zones, which would be managed to support a greater density of skylark than at present. The grassland habitat throughout the site would support birds from farmland off-site, improving their breeding success and compensating for territories lost on site. The applicant considers avoidance and compensation measures would result in a not significant effect on skylark alone and in combination with other projects therefore addressing NPS policies on mitigation hierarchy.
- 3.11.43. In the final SoCG between the applicant and NKDC [\[REP8-043\]](#), NKDC state that it has concerns regarding the cumulative effects of nearby projects on national, county and regional landscape areas, with the cumulative effects combined having the potential to lead to adverse effects on landscape character across character areas. NKDC goes on to state that, while it acknowledges that the applicant has assessed cumulative landscape and visual effects in accordance with its stated methodology, NKDC's Comments on Submissions Received by Deadline 5 [\[REP6-042\]](#). NKDC maintains its position that the scoped cumulative approach does not fully capture the scale, pace and geographical extent of large-scale solar and associated energy infrastructure currently coming forward across Lincolnshire and adjoining parts of Nottinghamshire. NKDC considers that, over a relatively short period of time, large scale solar development is likely to become a widespread and defining characteristic across extensive areas of the region. NKDC end by stating, in relation to this topic, that the matter of disagreement relates not to the applicant's assessment within the defined LVIA Study Area, but to the extent to which the DCO examination should acknowledge the wider cumulative landscape implications of multiple NSIP energy developments across the region.
- 3.11.44. The applicant's response, also in [\[REP8-043\]](#), states that several exchanges between both parties have occurred during examination in relation to cumulative effect, with the applicant having responded, in [\[REP2-041\]](#), to the NKDC comments made on their LIR. The applicant reiterates that the LVIA has been updated to acknowledge that energy infrastructure is likely to be a

more influential aspect of the future baseline scenario. However, the applicant maintains the position that the focus of the assessment should be the contribution of the proposed development in association with schemes identified at scoping within the defined LVIA Study Area to cumulative landscape and visual effects. In this respect it has been found that introduction of the proposed development would not result in any significant cumulative landscape or visual effects.

- 3.11.45. NKDC [\[REP8-043\]](#) also raised concerns in relation to the cumulative effects of the proposed development on St Andrew's Church and South Kyme Tower, with NKDC stating that, it has reviewed and are content that the Kyme Tower Heritage Appraisal (Appendix 4 to the Applicant's Responses to Remaining Action Points [\[REP5 046\]](#)) provides greater clarity of the potential impact, but considers it would be more appropriate if a ZTV study was produced to give a greater theoretical understanding of the views of the panels within the landscape. The applicant states in [\[REP8-043\]](#) that it believes that the assessments undertaken to date have been appropriate and robust, including Appendix 4 and Appendix 5 of [\[REP5-046\]](#) which updated the assessment carried out by the applicant in relation to the effects of the proposed development on Kyme Tower and on the non-designated farmstead assets.

CONCLUSIONS

- 3.11.46. The ExA is satisfied that the applicant has undertaken a thorough assessment of cumulative effects resulting from the proposed development, both intra-cumulative and inter-cumulative effects.
- 3.11.47. Significant intra-cumulative effects have been identified and acknowledged by the applicant in relation to Church of St Andrew at Asgarby, a Grade I Listed Building (NHLE 1061832). Significant inter-cumulative effects have been also identified and acknowledged by the applicant on soils and agricultural land soil as a result of the proposed development.
- 3.11.48. In relation to the cumulative effects of the proposed development on the Church of St Andrew at Asgarby, a Grade I Listed Building (NHLE 1061832), these are a result of changes in the setting mainly due to the construction and use of the bespoke access road, leading to an increase in noise and vehicle movement. Although the ExA accepts that the main cumulative effect of the proposed development would be likely to be experienced mainly during construction phase and during working hours only (and potentially decommissioning stage), there is still the potential for, albeit sporadically and not significant in ES terms, for cumulative effects to be experienced during operational phase. Consequently, for the reasons set above, the ExA find that although there would be harm to the heritage asset, this harm would be less than substantial.
- 3.11.49. In any case, even if the ExA were to consider only temporary effects during the construction phase, any harm, including less than substantial cumulative harm to the significance of a heritage asset, should be weighed against the

public benefits of the proposed development, and this is considered at chapter 5 of this report.

- 3.11.50. In coming to its position, the ExA has taken into consideration the mitigation measures against the effects of the proposed development already proposed, including the inclusion of stockpiles to mitigate the effects on the setting of St Andrew's Church. These are to be secured via the DAAD [\[REP8-011\]](#) and the Landscape and Strategy Plan [\[CR-019, CR-020, CR-021\]](#), secured through the dDCO [\[AS-039\]](#).
- 3.11.51. In relation to the inter-cumulative effects of the proposed development on soils and land use, the ExA accepts the applicant's assessment that there is the potential for a moderate significant effect. However, as it is acknowledged by LCC, in [\[REP7-035\]](#), there is no threshold set for where the cumulative amount of BMV being lost becomes unacceptable and the ExA is also mindful that the cumulative effect of the proposed development, when added to all considered developments within the administrative boundaries are of LCC, equate to 2% (11,962.85ha) of the agricultural land, of which 0.82% (4,927ha) is BMV land.
- 3.11.52. Having reviewed the information provided, ExA also agrees with the applicant, in relation to cumulative effects on breeding birds, that the assessment carried out, considering proposed avoidance and compensation measures, would not result in a significant effect on skylark alone and in combination with other projects. This addresses relevant NPS policy on mitigation hierarchy and on cumulative effects.
- 3.11.53. Both NKDC and LCC raised concerns regarding the applicant's cumulative effects assessment on the landscape character of the area, arguing that the recent proliferation of large scale solar development is likely to become a widespread and defining characteristic across extensive areas of the region. This could lead to a significant change in the character of the area, from being dominated by agricultural use and open fields, to a more industrial landscape marked by large solar developments. Although the ExA does recognise and acknowledge that there is a high number of other solar generating energy projects within the area, the ExA must come to a position in relation to the cumulative effects of this proposed development on the character of the wider area.
- 3.11.54. Having reviewed the information submitted by the applicant and by LCC and NKDC on this matter, the ExA does agree with the applicant that the proposed development is not likely to significantly affect the character of the wider area when considered cumulatively with other projects.
- 3.11.55. The ExA is of this view mainly due to the fact that during construction phase, works are temporary and sufficiently distant from other considered energy schemes with limited intervisibility potential, therefore reducing the potential for cumulative effects to occur. Also, on completion and cessation of construction activity within the cable corridor route there would be limited intervisibility between the proposed development and other considered cumulative schemes.

- 3.11.56. Overall, the ExA is satisfied that mitigation through design and then by additional mitigation, particularly by way of landscape screening and via the outline Landscape and Ecological Management Plan (oLEMP) [REP8-017] and the Landscape Strategy Plan [CR-019, CR-020, CR-021], secured through the dDCO [AS-039], would sufficiently reduce any negative cumulative landscape and visual effects.
- 3.11.57. In conclusion, the ExA considers the applicant's cumulative effects assessment fulfils the requirements of the EIA Regulations and the NPS EN-1, which are important and relevant considerations.
- 3.11.58. The ExA agrees with the applicant's assessment and finds significant cumulative effects from the loss of BMV land in the Lincolnshire region. However, the ExA is also mindful that the cumulative loss would still represent a small proportion of the overall agricultural land within Lincolnshire.
- 3.11.59. The ExA also find there would be adverse effects, leading to harm, in relation to the setting of Church of St Andrew, Asgareby. The ExA finds that although there would be harm to the heritage asset, this harm would be less than substantial and therefore would need to be weighted in the overall balance against the benefits of the proposal.
- 3.11.60. The ExA, while being mindful of the need to concentrate on the cumulative effects only, finds that these matters attract a little negative weight in the planning balance.
- 3.11.61. Matters to be taken to chapter 5 and the planning balance
- the ExA considers the applicant's cumulative effects assessment fulfils the requirements of the EIA Regulations and the NPS EN-1, which are important and relevant considerations. The ExA finds there to be adverse effects arising from the cumulative loss of BMV land in the Lincolnshire region, and harm in relation to the setting of Church of St Andrew, Asgareby. The ExA find that although there would be harm to the heritage asset, this harm would be less than substantial and would need to be weighted in the overall balance against the benefits of the proposal.
 - In relation to the cumulative effects of the proposed development on the Church of St Andrew at Asgarby, a Grade I Listed Building (NHLE 1061832), the ExA considers that, although the proposed development, cumulatively, would lead to less than substantial harm to the significance of a heritage asset due to impacts on its setting, this harm should be weighed against the public benefits of the proposal.
 - However, the ExA also notes that the proposed development would lead to the permanent loss of 29.99ha of agricultural land, approximately 67.92% of which is classed as BMV and the temporary loss of 463.28ha of agricultural land, 54.98% of which classed as BMV.

- In relation to the inter-cumulative effects of the proposed development on soils and land use, the ExA accepts the applicant's assessment that there is the potential for a moderate significant effect.
- Having reviewed the information provided, ExA also agrees with the applicant, in relation to cumulative effects on breeding birds, that the assessment carried out, considering proposed avoidance and compensation measures, would not result in a significant effect on skylark alone and in combination with other projects.
- In relation to cumulative effects on the landscape character of the area, although the ExA does recognise and acknowledge that there is a high number of other solar generating energy projects within the area, the ExA must come to a position in relation to the cumulative effects of this proposed development on the character of the wider area and having reviewed the information submitted by the applicant and by LCC and NKDC on this matter, the ExA does agree with the applicant that, when considered alongside proposed mitigation, the proposed development is not likely to significantly affect the character of the wider area when considered cumulatively.
- Overall, these cumulative matters attract a little negative weight in the planning balance.

4. HRA SUMMARY

4.1. INTRODUCTION

- 4.1.1. This chapter sets out the Examining Authority's (ExA's) summary conclusions relevant to habitats regulations assessment (HRA). This would assist the Secretary of State (SoS), as the competent authority, in performing their duties under the Conservation of Habitats and Species Regulations 2017 ('the Habitats Regulations'). Records of examination procedure, evidence and reasoning to support the conclusions reported upon here are set out in appendix B.
- 4.1.2. For the purposes of this recommendation, in line with the Habitats Regulations and relevant government policy, the term 'European sites', includes:
- Special areas of conservation (SACs), candidate, and proposed SACs
 - Special protection areas (SPAs) and potential SPAs
 - Listed and proposed Ramsar sites
 - any sites identified or required as compensatory measures for adverse effects on any of these sites
- 4.1.3. The ExA has been mindful throughout the examination of the need to ensure that the SoS has the information reasonably required to carry out their duties as the competent authority. It has sought evidence from the applicant and relevant interested parties (IPs), including from Natural England (NE) as the appropriate nature conservation body (ANCB), through written questions and issue-specific hearings (ISHs).
- 4.1.4. In accordance with the precautionary principle embedded in the habitats regulations, consent for this proposed development may be granted only after having ascertained that it will not adversely affect the integrity of European site(s) and no reasonable scientific doubt remains¹⁸.
- 4.1.5. Where it relates to a European Site, a likely significant effect is referred to as a likely significant effects (LSE) and an adverse effect on integrity is referred to as an AEol in this chapter and in the supporting Appendix.

4.2. INFORMATION AND EVIDENCE

- 4.2.1. The proposed development is not directly connected with, or necessary to, the management of a European site, and therefore the implications of the project with respect to adverse effects on potentially affected European sites must be assessed by the SoS.

¹⁸ CJEU Case C-127/02 Waddenzee 7 September 2004, Reference for a preliminary ruling from the Raad van State (Netherlands) in the proceedings: Landelijke Vereniging tot Behoud van de Waddenzee and Nederlandse Vereniging tot Bescherming van Vogels v Staatssecretaris van Landbouw, Natuurbeheer en Visserij.

- 4.2.2. The applicant's assessment of effects is presented in the following application document(s):
- Shadow Habitat Regulations Assessment (Shadow HRA) [\[APP-050\]](#)
 - updated at deadline (DL) 2 [\[REP2-013\]](#)
 - updated at DL7 [\[REP7-016\]](#)
 - HRA: Plan and projects with the potential for in-combination effects drawing ST19595-548 [\[REP5-048\]](#)
- 4.2.3. All deliberations on this information and evidence are set out in appendix B.

4.3. SUMMARY OF MATTERS CONSIDERED

- 4.3.1. It was generally agreed by all relevant IPs that the correct sites had been identified and included in the applicant's HRA Report and supporting evidence.
- 4.3.2. The main HRA matters raised by the ExA, NE and other IPs and discussed during the examination include:
- The methodology applied to the screening stage of the HRA.
 - The inclusion of the Lapwing qualifying feature of the Wash SPA and Ramsar sites and Functionally Linked Land (FLL).
 - Other projects considered in the in-combination assessment.
 - The adequacy of mitigation measures for lapwing and gadwall qualifying features of the Wash SPA and Ramsar sites.
- 4.3.3. These matters are discussed in the RIES [\[PD-014\]](#) and in the sections of appendix B, as appropriate.
- 4.3.4. Matters which were undisputed by IPs, including NE as the ANCB were:
- The sites and qualifying features assessed by the applicant
 - No adverse effects on integrity (AEoI) on the Wash and North Norfolk Coast SAC otter qualifying feature [\[RR-015\]](#)
 - No hydrological connectivity or risk of impacts from water quality to the Wash SPA and Ramsar site [\[RR-015\]](#)
 - Agreement on methodology, data and approach undertaken [\[REP2-059, BIO1.9\]](#)

4.4. SUMMARY OF FINDINGS IN RELATION TO LSE

- 4.4.1. The European sites and qualifying features that were considered in the applicant's assessment of LSE are:
- The Wash SPA and Ramsar (14.2km from the order limits)
 - The Wash and North Norfolk Coast SAC (14.2km from the order limits)
- 4.4.2. Table 4 of the Shadow HRA Report [\[REP7-017\]](#) lists the sites, qualifying features and the impact pathways with potential to result in likely significant effects.

Table 3: European sites and pathways

European Site and qualifying feature(s)	LSE Pathway
The Wash SPA and Ramsar – Gadwall	Loss/impact to functionally linked habitat
The Wash SPA and Ramsar	Changes to the water quality and hydrological regime change
The Wash and North Norfolk SAC – Otter	Loss/impact to functionally linked habitat
The Wash and North Norfolk SAC	Changes to the water quality and hydrological regime change

4.4.3. During the examination, NE [\[RR-015\]](#) noted that whilst lapwing was not a named criteria feature, it should be considered as part of the waterbird assemblage. NE requested the applicant assess the Wash SPA and Ramsar qualifying feature of lapwing for loss/impact to functionally linked land. The applicant updated its HRA [\[REP7-017\]](#) to include this impact pathway.

4.4.4. The conclusions of LSE alone or in-combination were not contested during the examination.

The Wash SPA and Ramsar - lapwing – loss/impact to functionally linked land

The applicant updated its HRA [\[REP7-017\]](#) to include this impact pathway.

OVERALL SUMMARY

4.4.5. In light of information set out above, the ExA considers that the proposed development is likely to have a significant effect from the impacts identified in Table 3 on the qualifying features of the European sites identified when considered alone, or in combination with other plans or projects.

4.5. SUMMARY OF FINDINGS IN RELATION TO AEOL

4.5.1. The European sites and qualifying features for which LSE were identified were further assessed by the applicant to determine if they could be subject to AEOL from the proposed development, either alone or in combination. The assessment of AEOL was made in light of the conservation objectives for the European sites [\[REP7-016\]](#). No concerns were raised in relation to further impacts to be assessed for AEOL beyond those discussed at the screening stage.

4.5.2. The applicant's Shadow HRA [\[REP7-016\]](#) concluded that the proposed development will not result in AEOL of the following European sites and features:

- The Wash and North Norfolk Coast SAC - otter
- The Wash SPA and Ramsar - lapwing and gadwall

- 4.5.3. NE [\[RR-015\]](#) stated that with mitigation measures set out in the Shadow HRA [\[APP-050\]](#), specifically the use of HDD to avoid impacts on the otter qualifying feature of the Wash and North Norfolk Coast SAC, it concurred that an AEol unlikely to occur.
- 4.5.4. NE confirmed in its final risk and issues log [NE3, [REP8-036](#)] that with the updates presented within the oCEMP [\[REP7-020\]](#) and the applicant's HRA report [\[REP7-016\]](#), it was content with the mitigation measures proposed, noting that it also acknowledged the applicant's justification for an inability to avoid the winter working. It concluded that all its concerns in relation to gadwall and lapwing had therefore been resolved [\[REP7-045\]](#).
- 4.5.5. No matters relating to AEol were raised in relation to in-combination AEol. It was agreed by NE [\[RR-015\]](#) that in-combination effects with the only project screened in for assessment, Heckington Fen Solar Farm, were unlikely to occur.

OVERALL SUMMARY

- 4.5.6. In light of information set out above, the ExA considers that the proposed development is not likely to have an adverse effect on integrity from the impacts identified in paragraph 4.5.2 on the qualifying features of the European sites identified when considered alone, or in combination with other plans or projects.

4.6. HRA CONCLUSIONS

- 4.6.1. On the basis of the information set out in appendix B and taking into account the position of NE and EA, the ExA's findings are that, subject to the mitigation measures to be secured in the DCO, AEol on the Wash and North Norfolk Coast SAC or the Wash SPA and Ramsar site from the proposed development when considered alone or in-combination with other plans or projects can be excluded from the impact-effect pathways assessed.
- 4.6.2. The ExA considers that there is sufficient information before the SoS to enable them to undertake an Appropriate Assessment in order to fulfil their duty under the requirements of the Habitats Regulations.

5. CONCLUSION ON THE CASE FOR DEVELOPMENT CONSENT

5.1. INTRODUCTION

- 5.1.1. This section provides an evaluation of the planning merits and sets out whether there is a case for making a Development Consent Order (DCO) for the of the proposed development. It does so in the light of the legal and policy context set out in [Chapter 2](#) and the applicable legal and policy requirements for individual topics identified in [Chapters 3](#) and [4](#) of this report.
- 5.1.2. In reaching our conclusions, we have taken into account 3 Local Impact Reports (LIRs), all relevant representations (RRs), written representations (WRs) responses to our written questions and Rule 17 requests for further information as well as all other representations made during the course of the examination, including those made at hearings.

5.2. SUMMARY OF THE MAIN PLANNING ISSUES

- 5.2.1. This sub-section summarises the conclusions on the main planning issues.

THE PRINCIPLE OF THE PROPOSED DEVELOPMENT

- 5.2.2. The proposed development is considered low carbon infrastructure under paragraph 4.2.5 of NPS EN-1. Furthermore, and in accordance with sections 2.2. and 2.3 of NPS EN-1, it would assist in decarbonising the power sector, reduce greenhouse gas (GHG) emissions and assist in the achievement of the target to cut GHG emissions to net zero by 2050.
- 5.2.3. Paragraphs 3.2.6, 3.2.7 and 4.2.2 of NPS EN-1 establish an urgent need for the proposed development, which should be given substantial weight, for it assist the government in meeting its energy security and net zero ambitions.
- 5.2.4. It is for the Secretary of State for Energy Security and Net Zero (SoS) to decide, on a case by case basis, whether or not development should be treated as associated development but it is the Examining Authority's (ExA) view that the Battery Energy Storage System (BESS) component of the proposed development should be treated as associated development.
- 5.2.5. Paragraph 3.3.26 of NPS EN-1 supports the use of the proposed BESS in order to reduce the costs of the electricity system and increase flexibility.
- 5.2.6. Accordingly, and subject to consideration of the specific impacts of the proposed development in the remainder of this chapter, the ExA considers that the principle of the proposed development accords with national policy.
- 5.2.7. The ExA therefore gives these matters very great weight in favour of making of the order.

ALTERNATIVES, SITE SELECTION AND GOOD DESIGN

- 5.2.8. The applicant has provided adequate information on a range of alternative configurations and locations for the proposed development and associated works and infrastructure which meet the requirements set out in NPS EN-1, NPS EN-3, NPS EN-5, and the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 (EIA Regulations).
- 5.2.9. The ExA was able to test the alternatives considered by the applicant as well as the main reasons that lead to the present proposal, particularly in relation to the location of the cable corridor and the bespoke access corridor and road and how the applicant envisages the future proofing of the proposed development. The application includes some degree of flexibility to incorporate or consider any future development that might occur.
- 5.2.10. Consequently, the ExA concludes that these requirements are satisfied.

SOCIOECONOMICS

- 5.2.11. The ExA is satisfied that the applicant has undertaken a thorough assessment of the socio-economic effects of the proposed development, as detailed in ES Chapter 15 [\[APP-066\]](#) and its accompanying appendices, as per section 5.13 of NPS EN-1 and NPS EN-3, namely paragraphs 2.10.40 to 2.10.45.
- 5.2.12. Whilst the proposed development would lead to some adverse effects, these are not considered significant effects because of either their magnitude of change (being temporary) or the sensitivity of the receptors, once proposed mitigation is considered. The only significant effect is beneficial, in relation to employment generation and Gross Value Added for Boston Borough. However, I am also mindful that this significant benefit would be temporary only (24 to 36 months) during the construction phase.
- 5.2.13. The applicant is also providing a new permissive path across the solar array area, during the operational period, which provides additional walking and recreational opportunities. This is a benefit of the proposal, albeit small in the ExA's view.
- 5.2.14. Therefore, and in conclusion, I consider that socio-economic matters should be afforded a little positive weight in the overall planning balance.

LANDSCAPE AND VISUAL

- 5.2.15. The ExA concludes that the proposed development complies with NPS EN-1 paragraphs 5.10.16, 5.10.17 and 5.10.19 in terms of assessment and how negative effects have been minimised and with paragraphs 5.10.20 to 22 regarding impacts including measures to avoid and reduce effects.
- 5.2.16. The ExA concludes that the proposed development complies with NPS EN-1 paragraph 5.10.24 regarding landscape enhancement and how magnitude has been defined in accordance with paragraph 5.10.25.

- 5.2.17. The ExA disagrees with the applicant's overall assessment of effects on certain receptors and believes that, although proposed mitigation would go some way to minimise effects, the proposed development would result in a significant level of change in relation to the visual amenity of certain residential receptors and also for users of certain public right of way (PRoW). These would be temporary and capable of being reversed, but would also be long term effects that would affect a considerable area.
- 5.2.18. ExA therefore concludes that landscape and visual matters weigh against making the DCO and this harm has been attributed moderate weight in the planning balance.

BIODIVERSITY AND THE NATURAL ENVIRONMENT

- 5.2.19. The ExA concludes that the proposed development complies with NPS EN-1 paragraph 5.4.39 with regard to the statutory targets in the Environment Act 2021.
- 5.2.20. The ExA concludes that the proposed development complies with NPS EN-1 paragraphs 5.4.43 to 5.4.48 with regard to providing mitigation or biodiversity net gain measures. The applicant has incorporated beneficial biodiversity enhancement measures into the proposed development, although any weight given to gains is likely to be limited.
- 5.2.21. The ExA concludes that the proposed development complies with NPS EN-1 paragraphs 5.4.50, 5.4.52 to 5.4.55 with regard to Sites of Special Scientific Interest, regional and local sites, irreplaceable habitats, and protection and enhancement of habitats and species including Ancient Woodland Priority Habitats.
- 5.2.22. The ExA concludes that the proposed development complies with NPS EN-3 paragraph 2.10.76 to 2.10.79 with regard to identifying ecological risk.
- 5.2.23. The ExA concludes that the proposed development complies with NPS EN-3 paragraphs 2.10.89 and 2.10.90 with regard to enhancing biodiversity.
- 5.2.24. Overall, the ExA finds that biodiversity and natural environment considerations weigh positively in favour of the proposed development and should be afforded a little positive weight in the planning balance.

HISTORIC ENVIRONMENT

- 5.2.25. The ExA agrees with the applicant that there would be significant effects from the proposed development on the setting of Church of St Andrew, Asgarby, a Grade I Listed Building (NHLE 1061832) during the construction phase. The ExA gives this harm great weight. However, considering proposed mitigation and the measures secured in the DCO, Construction Environmental Management Plan (CEMP) and the Archaeological Mitigation Strategy (AMS), the ExA finds this harm to be less than substantial.
- 5.2.26. The ExA also agrees with the applicant that the proposed development would lead to non-significant effects on the setting of several other heritage assets

at construction phase as set out in table 8.1 of ES Chapter 8 (Cultural Heritage) [APP-059]. However, the ExA find this harm to be less than substantial.

- 5.2.27. The ExA agrees with the applicant that there would be no significant effects from the proposed development on any designated heritage assets at the operational phase and decommissioning phase. However, no significant effects is not no harm.
- 5.2.28. Having carefully considered the proposed mitigation measures, the position of each individual heritage asset in relation to the proposed development and the nature of the impact identified and its significance, the ExA agrees with the applicant's assessment of effects of the proposed development during operation in all cases of designated heritage assets but still attaches great weight to any harm identified to the setting of a designed heritage assets. However, considering the nature of the impact, and the proposed mitigation measures and its temporary nature, the ExA finds this harm to be less than substantial.
- 5.2.29. However, the ExA disagrees with the applicant in relation to its assessment of effects on Gashes Barn during operational phase and it is of the view that the proposed development, after considering proposed mitigation, would suffer a significant adverse effect.
- 5.2.30. In coming to this position the ExA is mindful of Gashes Barn being a non-designated heritage asset as well as paragraph 5.9.33 of NPS EN-1 which states that in weighing applications that directly or indirectly affect non-designated heritage assets, a balanced judgement would be required having regard to the scale of any harm or loss and the significance of the heritage asset.
- 5.2.31. The SoS should give considerable importance and weight to the desirability of preserving all heritage assets, with any harm or loss requiring clear and convincing justification (paragraph 5.9.28). Less than substantial harm to designated heritage assets is to be weighed against the public benefits of the proposal, in accordance with paragraphs 5.9.28, 5.9.32 and 5.9.36 of NPS EN-1 and paragraph 2.3.8 of NPS EN-3. This exercise is undertaken in chapter 5.

FLOOD RISK AND WATER ENVIRONMENT

- 5.2.32. The ExA is satisfied that the applicant has undertaken a thorough assessment of flood risk and other water-related potential impacts of the proposal and finds that the applicant has shown that the proposed development passes the sequential test and exception test.
- 5.2.33. There is nothing to suggest that the proposal would have significant adverse effects on surface or ground water quality or hydromorphology or that it would put at risk Water Framework Directive (WFD) targets for water bodies in and around the site.

- 5.2.34. Appropriate mitigation measures are outlined in the outline Construction Environmental Management Plan (oCEMP) [\[REP8-015\]](#), outline Decommissioning Environmental Management Plan (oDEMP) [\[REP7-021\]](#) and the outline Battery Safety Management Plan (oBSMP) [\[REP5-035\]](#) and would be finalised under requirements secured in the draft Development Consent Order (dDCO) [\[AS-039\]](#).
- 5.2.35. Overall, I conclude that there would be no significant adverse effects on flood risk and the water environment, and that the proposal would accord with the relevant provisions of NPSs EN-1 and EN-3, the National Planning Policy Framework (NPPF), the Planning Practice Guidance (PPG) on Flood Risk and Coastal Change and relevant development plan policies. However, an absence of harm does not weigh positively in favour of the proposal and as such, matters relating to flood risk and the water environment attract neutral weight in the planning balance.

LAND USE

- 5.2.36. The ExA is of the view that a thorough assessment of soils and Best and Most Versatile (BMV) agricultural land within the order limits was carried out and that no significant evidence has been presented disputing the methodology or validity of its findings.
- 5.2.37. However, the ExA also notes that the proposed development would lead to the permanent loss of 29.99ha of agricultural land, approximately 67.92% of which is classed as BMV and the temporary loss of 463.28ha of agricultural land, 54.98% of which classed as BMV.
- 5.2.38. Overall, the loss of 254.7ha of BMV land (approximately 55% of the total area temporarily due to the proposed development) is in the ExA's view, a significant effect, even if temporarily, particularly considering that temporary loss means the operational lifespan of the proposed development, which is up to 40 years.
- 5.2.39. In conclusion, the ExA, accepts that the applicant has sought to minimise the impacts on BMV agricultural land and where BMV agricultural land is lost, it would be limited in extent and duration and could revert to its use. In addition, there would be some benefit to soil resources over the long term as a result of the oSMP and this is supported by NPS EN-1 paragraph 5.11.14. However, considering that approximately 56.22% of the land lost within the order limits is classed as BMV and the 40 year lifespan of the proposed development, there would be significant conflict with the protection of BMV land provided by NPS EN-1 paragraphs 5.11.12 and 5.11.34, NPS EN-3 paragraph 2.10.29 and the aims of the May 2024 Written Ministerial Statement.
- 5.2.40. Furthermore, no proposals for the co-location of a continued agricultural use have been firmly secured or committed to by the applicant, so no consideration was given to this in line with paragraph 2.10.32 of NPS EN-3.
- 5.2.41.

- 5.2.42. As such, I consider that matters relating to soil and BMV agricultural land should be afforded great negative weight in the overall planning balance.

OTHER MATTERS

CLIMATE CHANGE ADAPTATION AND RESILIENCE

- 5.2.43. The ExA is satisfied that the applicant has undertaken a thorough assessment of the climate change resilience of the project and that the assessment is based on reasonable assumptions and is proportionate.
- 5.2.44. Paragraph 4.10.13 states that SoS should be satisfied that applicants for new energy infrastructure have taken these into account and that, as per paragraph 4.10.15 that there are not features of the design of new energy infrastructure critical to its operation which may be seriously affected by more radical changes to the climate beyond that projected in the latest set of UK climate projections.
- 5.2.45. The ExA concludes that these requirements are satisfied.

TRANSPORT

- 5.2.46. The ExA is satisfied that the applicant has undertaken a thorough assessment of traffic and transport matters that meets the requirements of NPS EN-1, NPS EN-3 and NPS EN-5, alongside the NPPF and relevant local policies.
- 5.2.47. Taking the proposed embedded mitigation into consideration, which includes the proposed outline Construction Traffic Management Plan (oCTMP) [\[REP6-027\]](#) and the oDEMP [\[REP7-022\]](#), the ExA does not see any evidence to disagree with the applicant's assessment of no significant effects in relation to transport.
- 5.2.48. Therefore and in conclusion, I consider that transport matters should be afforded neutral weight in the overall planning balance.

NOISE AND VIBRATION

- 5.2.49. The ExA is satisfied that the applicant has undertaken a thorough assessment of noise and vibration matters that meets the requirements of NPS EN-1, NPS EN-3 and NPS EN-5, alongside the NPPF and relevant local policies.
- 5.2.50. Taking the proposed embedded mitigation into consideration, which includes the proposed oCTMP [\[REP6-027\]](#) and the oDEMP [\[REP7-022\]](#), the ExA does not see any evidence to disagree with the applicant's assessment of no significant effects in relation to noise and vibration.
- 5.2.51. Therefore and in conclusion, I consider that noise and vibration should be afforded neutral weight in the overall planning balance.

GLINT AND GLARE

- 5.2.52. The ExA is satisfied that the applicant has undertaken a thorough assessment of glint and glare matters that meets the requirements of NPS EN-1, NPS EN-3.
- 5.2.53. Taking the proposed embedded mitigation into consideration, which includes measures set out in the outline Landscape and Ecological Environmental Management Plan (oLEMP) [\[REP8-017\]](#) and the Design and Access Approach Document [\[REP8-011\]](#) the ExA does not see any evidence to disagree with the applicant's assessment of no significant effects in relation to glint and glare.
- 5.2.54. Therefore and in conclusion, I consider that glint and glare matters should be afforded neutral weight in the overall planning balance.

AIR QUALITY

- 5.2.55. The ExA is satisfied that the applicant has undertaken a thorough assessment of air quality matters that meets the requirements of NPS EN-1.
- 5.2.56. Taking the proposed embedded mitigation into consideration, which includes measures set out in the oCEMP [\[REP8-015\]](#), and the oDEMP [\[REP7-022\]](#) the ExA does not see any evidence to disagree with the applicant's assessment of no significant effects in relation to air quality.
- 5.2.57. Therefore and in conclusion, I consider that air quality should be afforded neutral weight in the overall planning balance.

WASTE

- 5.2.58. The ExA finds that the waste assessment methodology, and the consideration given to recycling and waste management is satisfactory and addresses the requirement set in national policy, namely NPS EN-1.
- 5.2.59. Appropriate mitigation is secured in the form of a Site Waste Management Plan, to be prepared in line with the Waste and Recycling Strategy [\[APP-189\]](#) and secured through the oCEMP via requirement 12 and the oDEMP through requirement 18 of the dDCO [\[AS-039\]](#).
- 5.2.60. Consequently, the ExA concludes that these requirements are satisfied.

MAJOR ACCIDENTS AND DISASTERS

- 5.2.61. The ExA's view is that the applicant's approach to the assessment of fire risk, safety and security is based on reasonable assumptions and is proportionate and therefore meets the required policy standard.
- 5.2.62. The ExA is of the view that the applicant has taken into consideration the potential risks and hazards associated with the BESS and has provided sufficient levels of mitigations across a range of reasonable worst-case scenarios and that given the measures secured in the dDCO, risk would be low and not significant during the construction and operation stages.

5.2.63. Consequently, the ExA concludes that these requirements are satisfied.

CUMULATIVE EFFECTS

5.2.64. The ExA considers the applicant's cumulative effects assessment fulfils the requirements of the EIA Regulations and the NPS EN-1, which are important and relevant considerations. The ExA finds there to be adverse effects arising from the cumulative loss of BMV land in the Lincolnshire region, and harm in relation to the setting of Church of St Andrew, Asgarby. The ExA find that although there would be harm to the heritage asset, this harm would be less than substantial and would need to be weighted in the overall balance against the benefits of the proposal.

5.2.65. In relation to the cumulative effects of the proposed development on the Church of St Andrew at Asgarby, a Grade I Listed Building (NHLE 1061832), the ExA considers that, although the proposed development, cumulatively, would lead to less than substantial harm to the significance of a heritage asset due to impacts on its setting, this harm should be weighed against the public benefits of the proposal.

5.2.66. However, the ExA also notes that the proposed development would lead to the permanent loss of 29.99ha of agricultural land, approximately 67.92% of which is classed as BMV and the temporary loss of 463.28ha of agricultural land, 54.98% of which classed as BMV.

5.2.67. In relation to the inter-cumulative effects of the proposed development on soils and land use, the ExA accepts the applicant's assessment that there is the potential for a moderate significant effect.

5.2.68. Having reviewed the information provided, ExA also agrees with the applicant, in relation to cumulative effects on breeding birds, that the assessment carried out, considering proposed avoidance and compensation measures, would not result in a significant effect on skylark alone and in combination with other projects.

5.2.69. In relation to cumulative effects on the landscape character of the area, although the ExA does recognise and acknowledge that there is a high number of other solar generating energy projects within the area, the ExA must come to a position in relation to the cumulative effects of this proposed development on the character of the wider area and having reviewed the information submitted by the applicant and by LCC and NKDC on this matter, the ExA does agree with the applicant that, when considered alongside proposed mitigation, the proposed development is not likely to significantly affect the character of the wider area when considered cumulatively.

5.2.70. Overall, these cumulative matters attract a little negative weight in the planning balance.

THE ENVIRONMENTAL STATEMENT

- 5.2.71. The ExA is satisfied that the applicant has provided sufficient information to enable the SoS to understand the environmental effects of the proposed development.
- 5.2.72. Changes to the documentation during the examination did not individually or cumulatively undermine the scope of, and assessments contained in, the ES. Consideration has been given to the adequacy of the ES generally and to matters arising from it. Section 3 of this report summarises the environmental effects, including the measures proposed to mitigate the likely significant effects identified by the applicant.
- 5.2.73. Overall, we consider that the ES, as supplemented with additional information submitted during the examination, is sufficient to enable the SoS to take a decision in compliance with the EIA Regulations.

HRA CONSIDERATIONS

- 5.2.74. The ExA is satisfied that the correct European sites and qualifying features have been identified for the purposes of HRA assessment, and that all potential impacts which could give rise to significant effects have been identified. I have concluded that no Likely Significant Effect (LSE) exist, either alone or in-combination with other plans and projects.
- 5.2.75. The ExA considers that there is sufficient information before the SoS to enable them to undertake an appropriate assessment in order to fulfil their duty under the requirements of the Habitats Regulations.

HERITAGE BALANCE

- 5.2.76. NPS EN-1 paragraph 5.9.23 states that the SoS must comply with the requirements set out in the Infrastructure Planning (Decisions) Regulations 2010. Regulation 3 requires the SoS to have regard to desirability of: preserving a listed building or its setting or any features of special architectural or historic interest which it possesses; preserving or enhancing the character or appearance of a conservation area; and preserving an affected scheduled monument or its setting.
- 5.2.77. When considering the impact of a proposed development on the significance of a designated heritage asset, the SoS should give great weight to the asset's conservation. The more important the asset, the greater the weight should be. This is irrespective of whether any potential harm amounts to substantial harm, total loss, or less than substantial harm to its significance (paragraph 5.9.27). The SoS should give considerable importance and weight to the desirability of preserving all heritage assets, with any harm or loss requiring clear and convincing justification (paragraph 5.9.28).
- 5.2.78. NPS EN-1 paragraph 5.9.6 outlines that non-designated heritage assets of archaeological interest, that are demonstrably of equivalent significance to Scheduled Monuments, should be considered subject to the policies for designated heritage assets.

- 5.2.79. NPS EN-1 paragraph 5.9.32 states that where the proposed development would lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of a proposal, including, where appropriate securing its optimum viable use.
- 5.2.80. NPS EN-1 paragraph 5.9.36 states that, when considering applications for development affecting the setting of a designated heritage asset, the SoS should give appropriate weight to the desirability of preserving the setting of such assets and treat favourably applications that preserve those elements of the setting that make a positive contribution to, or better reveal the significance of, the asset. When considering applications that do not do this, the SoS should give great weight to any negative effects, when weighing them against the wider benefits of the application. The greater the negative impact on the significance of the designated heritage asset, the greater the benefits that would be needed to justify approval.
- 5.2.81. NPS EN-3, the NPPF and the relevant development plan policies generally reflect the requirements in NPS EN-1 with regard to designated and non-designated heritage assets.

CHURCH OF ST. ANDREW, ASGARBY, GRADE I LISTED BUILDING

- 5.2.82. In section 3.7, the ExA confirmed that it agrees with the applicant that there would be significant effects from the proposed development on the setting of Church of St Andrew, Asgarby, a Grade I Listed Building (NHLE 1061832) during the construction phase. The ExA also confirmed that although it agreed with the applicant's assessment that effects would be greatly reduced during the operational phase, leading to an assessment of less than significant effect. However, the ExA has found that there would still be some harm. Having reviewed the information submitted and taking into consideration the proposed mitigation measures secured in the dDCO [[AS-039](#)], the oCEMP [[REP8-015](#)] and the AMS [REP2-19] and the nature and duration of the effects, the ExA finds this harm to be less than substantial for both the construction and operational phases.

OTHER DESIGNATED HERITAGE ASSETS

- 5.2.83. Other designated heritage assets would be affected by the construction of the proposed development, namely: Churchyard Cross at St Oswald's Churchyard, a Scheduled Monument (NHLE 1009228) and Church of St Oswald, Howell, a Grade II* Listed Building (NHLE 1061833), Church of St Andrew, Asgarby, a Grade I Listed Building (NHLE 1061832), Church of St Andrew, Ewerby and Evedon, a Grade I Listed Building (NHLE 1360562).
- 5.2.84. In addition, the following designated assets would also be affected during the operational phase: Remains of medieval monastery, moated manor house, fishponds and post-medieval garden, a Scheduled Monument (NHLE 1008317), Kyme Tower, a Grade I Listed Building (NHLE 1204786); Churchyard Cross at St Oswald's Churchyard, a Scheduled Monument (NHLE 1009228) and Church of St Oswald, Howell, a Grade II* Listed Building (NHLE 1061833); Church of St Andrew, Asgarby, a Grade I Listed Building (NHLE 1061832); Church of St Andrew, Ewerby and Evedon, a

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Grade I Listed Building (NHLE 1360562); Church of St Andrew, Heckington, a Grade I Listed Building (NHLE 1360590); Church of St Mary and All Saints, South Kyme a Grade II* Listed Building (NHLE 1061749); Church of St Denys, a Grade II* Listed Building (NHLE 1360592); The Old Rectory, a Grade II Listed Building (NHLE 1061834); Boughton House, a Grade II Listed Building (NHLE 1061835); Howell Hall, a Grade II Listed Buildings (NHLE 1168460); Austhorpe Farm, Grade II Listed Building (NHLE 1306847); Thorpe House, a Grade II Listed Building (NHLE 1360566).

- 5.2.85. In section 3.7, the ExA confirmed that it agrees with the applicant's assessment of no significant effect. However the ExA finds that there would still be potential harm to the setting of these designated heritage assets.
- 5.2.86. Having reviewed the information submitted and taking into consideration the proposed mitigation measures secured in the dDCO [[AS-039](#)], the oCEMP [[REP8-015](#)] and the AMS [REP2-19] and the nature and duration of the effects, the ExA finds this harm to be less than substantial during both the construction and operational phases.

GASHES BARN

- 5.2.87. ExA disagrees with the applicant in relation to its assessment of effects on Gashes Barn during operational phase and it is of the view that it is significant and that the proposed development, after considering proposed mitigation, would suffer a significant adverse effect.
- 5.2.88. The ExA is mindful of Gashes Barn being a non-designated heritage asset as well as paragraph 5.9.33 of NPS EN-1 which states that in weighing applications that directly or indirectly affect non-designated heritage assets, a balanced judgement would be required having regard to the scale of any harm or loss and the significance of the heritage asset.
- 5.2.89. Considering the scale of harm and the significance of the heritage asset, the ExA is of the view that the adverse effects, albeit significant during the operational phase, would be at the lower end of the scale and represent less than substantial harm.

OTHER NON-DESIGNATED HERITAGE ASSETS

- 5.2.90. The ExA agreed with the applicant's assessment of non-significant effects of the proposed development on all other non-designated heritage assets at both the construction and operational phases of the proposed development. These are: Gashes Barn, a non designated heritage asset (HER MLI121916), Unnamed Farmstead, Ewerby and Evedon, Non-Designated (HER MLI121913), Westmorelands (Asgarby Fen Farm), Non-Designated (HER MLI121926)
- 5.2.91. Considering the scale of harm and the significance of the heritage asset, the ExA is of the view that the adverse effects would be at the lower end of the scale and represent less than substantial harm.

BALANCE

- 5.2.92. The proposed development would cause less than substantial harm to the designated and non-designated heritage assets identified above. I afford great weight to each asset's conservation, in accordance with NPS EN-1. NPS EN-1 explains that this harm should be weighed against the public benefits of the proposal, including, where appropriate securing its optimum viable use.
- 5.2.93. The proposed development would make a significant contribution to secure and reliable energy provision, whilst also resulting in significant climate change benefits. I afford very great weight to these benefits. There would be other more minor benefits, including socio-economic benefits associated with the temporary construction and decommissioning periods. These are all public, as opposed to private, benefits.
- 5.2.94. Given the significance and importance of the public benefits, as emphasised in NPS EN-1, I consider that they would clearly outweigh the less than substantial harm which would arise. I also note that the harm would be temporary, although in some instances long term. However the harm is mostly non-significant, and even when significant, on the lower end of the scale.
- 5.2.95. I therefore conclude that the proposed development would accord with NPS EN-1, NPS EN-3, the NPPF and the relevant development plan policies in relation to historic environment effects. As such, whilst we attribute 'great weight' to the conservation of the identified heritage assets, having applied the heritage balance we conclude that a little negative weight should be afforded to the harm which would be caused.

5.3. OVERALL PLANNING BALANCE

- 5.3.1. In accordance with NPS EN-1 paragraph 4.1.5 the ExA has considered the benefits and adverse effects of the proposed development. In doing so I have taken into account the mitigation hierarchy, as set out in the Planning Statement [\[REP7-015\]](#), and complimented by ES Chapters 6 to 17 [\[APP-057, APP-058, APP-059, APP-060, APP-061, APP-062, APP-063, APP-064, APP-065, APP-066, APP-067, APP-068\]](#) and the DAAD [\[REP8-011\]](#). I have also established the weight to be afforded to the effects which would arise, as set out in table 4 below.

Table 4: Summary of findings on main planning issues

Issue	Finding	Weighting	Section
Principal of the Proposed Development (inc. Need)	Positive	Very great	Section 3.2
Socioeconomics	Positive	A little	Section 3.4
Biodiversity	Positive	A little	Section 3.6

Alternatives, Site Selection and Good Design	Neutral	Requirement satisfied	Section 3.3
Flood Risk and Water Environment	Neutral	Does not affect the balance	Section 3.8
Other Matters	Neutral	Does not affect the balance	Section 3.10
Cumulative Effects	Negative	A little	Section 3.11
Historic Environment	Negative	A little	Section 3.7
Landscape and Visual	Negative	Moderate	Section 3.5
Land Use	Negative	Great	Section 3.9

- 5.3.2. Paragraph 4.1.3 of NPS EN-1 establishes a presumption in favour of granting consent to energy NSIPs, and the ExA is satisfied that it applies to the proposed development.
- 5.3.3. The urgent need for the proposed development and beneficial impacts on climate change bring very great weight and are powerful factors for the making of the order. These are supported by a little weight in relation to biodiversity and socio-economic benefits.
- 5.3.4. On the other side of the balance are land use impacts, which bring great weight against the DCO being made, landscape and visual impacts, which bring moderate weight against the DCO, and historic environment impacts and cumulative effects which bring a little weight against the DCO being made.
- 5.3.5. Taking the above into account, the ExA finds that the matters in favour of the DCO being made, including the urgent need, outweigh those against. Other matters bring both benefits and adverse effects, but none of those, either individually or cumulatively, lead to a different conclusion.
- 5.3.6. The SoS should give considerable importance and weight to the desirability of preserving all heritage assets, with any harm or loss requiring clear and convincing justification (paragraph 5.9.28). Less than substantial harm to designated heritage assets is to be weighed against the public benefits of the proposal, in accordance with paragraphs 5.9.28, 5.9.32 and 5.9.36 of NPS EN-1 and paragraph 2.3.8 of NPS EN-3. This exercise is undertaken in chapter 5.
- 5.3.7. In relation to the adverse land use, the ExA justification for siting the scheme on the best and most versatile land has been provided when economic and other benefits are taken into consideration, in line with paragraph 5.11.34 of NPS EN-1.

- 5.3.8. In relation to landscape and visual, the ExA finds that the impacts would not be so damaging as to not be offset by the benefits (including need) and, that that regard, the ExA finds that paragraph 5.10.35 of NPS EN-1 is complied with.
- 5.3.9. The adverse visual effects on sensitive receptors are outweighed by the benefits of the project and therefore the ExA is satisfied in relation to paragraph 5.10.14 of NPS EN-1.
- 5.3.10. The adverse effects on heritage assets and the historic environment has been weighed against the wider benefits of the proposal, and therefore the ExA is satisfied that paragraphs 5.9.32 and 5.9.36 NPS EN-1 are complied with.
- 5.3.11. NPS EN-1 paragraph 4.1.7 further states that, for CNP Infrastructure it is likely that the need case would outweigh the residual effects in all but the most exceptional cases, but that this presumption does not apply to residual impacts which present an unacceptable risk to, or interference with, human health and public safety, defence, irreplaceable habitats, or unacceptable risk to the achievement of net zero.

CRITICAL NATIONAL PRIORITY (CNP) CONSIDERATIONS

- 5.3.12. The NPS EN-1, in paragraph 4.2.4 states that, due to the government's commitment to fully decarbonising the power system by 2035 and to ensure that the UK is more energy independent, resilient and secure, the government has concluded that there is a critical national priority (CNP) for the provision of nationally significant low carbon infrastructure.
- 5.3.13. As set out in section 3.2 of this report, the ExA has concluded that the proposed development is low carbon energy infrastructure under paragraph 4.2.5 of the NPS EN-1 and therefore should be considered as CNP infrastructure in accordance with paragraph 3.3.62 of NPS EN-1.
- 5.3.14. Paragraph 3.3.63 of NPS EN-1 includes that subject to any legal requirements, the urgent need for CNP Infrastructure to achieving our energy objectives, together with the national security, economic, commercial, and net zero benefits, would, in general, outweigh any other residual impacts not capable of being addressed by application of the mitigation hierarchy.
- 5.3.15. Paragraph 4.1.7 of NPS EN-1 states that for CNP Infrastructure it is likely that the need case would outweigh the residual effects in all but the most exceptional cases, but that this presumption does not apply to residual impacts which present an unacceptable risk to, or interference with, human health and public safety, defence, irreplaceable habitats, or unacceptable risk to the achievement of net zero.
- 5.3.16. The ExA notes is it for the SoS to consider CNP and its application. The ExA is satisfied with the application of the mitigation hierarchy and with the identification of residual impacts and therefore finds no reason for the

proposed development to fall outside the 'general outweighing' set out in paragraphs 3.3.63 of NPS EN-1.

- 5.3.17. However, if the SoS disagrees with the ExA and seeks to consider CNP and how it applies to the proposed development, the ExA does not find any reason why CNP should not apply.

6. LAND POWERS AND RELATED MATTERS

6.1. INTRODUCTION

- 6.1.1. The application includes proposals for the compulsory acquisition (CA) and temporary possession (TP) of land and rights over land. The applicant is seeking the power to acquire rights over land, the power to extinguish rights over land, the power to occupy land temporarily, and the power to impose restrictive covenants.
- 6.1.2. This section discusses whether the evidence before the examination justifies the granting of those powers, having regard to all relevant legislation and guidance, before providing our conclusions and recommendations. Consideration is also given to statutory undertakers (SU) land, detriments to the undertakings of SU, and relevant protective provisions.

6.2. LEGISLATIVE REQUIREMENTS

THE PLANNING ACT 2008 (PA2008)

COMPULSORY ACQUISITION

- 6.2.1. PA2008 section 122(2) states that the land subject to CA, including rights, must be required for the development to which the development consent relates or must be required to facilitate or be incidental to the development. [Planning Act 2008: guidance related to procedures for the compulsory acquisition of land \(CA Guidance\)](#) states that in respect of land required for the development, the land to be taken must be no more than is reasonably required and be proportionate.
- 6.2.2. Section 122(3) states that there must be a compelling case in the public interest to acquire the land, which means that the public benefit derived from the CA must outweigh the private loss that would be suffered by those whose land is affected. In balancing public interest against private loss, CA must be justified in its own right.
- 6.2.3. Section 123 requires that one of three procedural conditions in subsections (2) to (4) must be met, namely:
- (2) the application included a request for CA of the land to be authorised
 - (3) all persons with an interest in the land consent to the inclusion of the provision
 - (4) the prescribed procedure is followed in relation to the land
- 6.2.4. Several general considerations also must be addressed, either as a result of following the applicable guidance or in accordance with legal duties on decision makers:
- All reasonable alternatives to CA must have been explored.
 - The applicant must have a clear idea of how it intends to use the land subject to CA powers.

- The applicant must be able to demonstrate that funds are available to meet the compensation liabilities that might flow from the exercise of CA powers.
- The decision-maker must be satisfied that the purposes stated for the CA are legitimate and sufficiently justify the inevitable interference with the human rights of those affected.

6.2.5. Section 115(2) provides that, in addition to the development for which consent is required, under part 3 of the PA2008 (the principal development), consent may also be granted for associated development. The PA2008 defines associated development as development which is associated with the principal development.

STATUTORY UNDERTAKERS

6.2.6. Section 127 and s138 of the PA2008 are relevant to SU land, rights, and apparatus.

6.2.7. Section 127 has provisions in relation to CA of land or rights over SU's land. It includes provisions which state that, if a SU makes a representation that is not withdrawn before the end of the examination, then CA may only be authorised if there is no serious detriment to the carrying on of the undertaking or, if purchased, it can be replaced by other land belonging to, or available for acquisition by, the undertakers without serious detriment to the carrying on of the undertaking.

6.2.8. Section 138 has provisions for the extinguishment of SUs' rights and removal of apparatus if the SoS is satisfied that it is necessary for the purpose of carrying out the development to which the order relates.

TEMPORARY POSSESSION

6.2.9. Further to part 1 of schedule 5 of the PA2008 at paragraph 2, TP powers are capable of being within the scope of a DCO. PA2008 and the associated CA Guidance do not contain the same level of specification and tests to be met in relation to the granting of TP powers as, by definition, such powers do not seek to permanently deprive or amend a person's interests in land. Based on the PA2008, TP requires:

- Justification that the TP powers are needed to enable the construction of the proposed development
- Demonstration that the TP powers are compatible with human rights tests
- That there are suitable compensation provisions for interference with a relevant right of interest

CROWN LAND

6.2.10. Section 135(1) of the PA2008 precludes the CA of interests in crown land unless the land is held otherwise than by or on behalf of the crown, and the appropriate crown authority consents to the acquisition. Section 135(2) precludes a DCO from including any provision applying to crown land or crown rights without consent from the appropriate crown authority.

NEIGHBOURHOOD PLANNING ACT 2017

- 6.2.11. The Neighbourhood Planning Act 2017 includes several provisions related to the TP of land including notice requirements, the service of counter notices and compensation. These provisions were never brought to force and were removed under the Planning and Infrastructure Act 2025.
- 6.2.12. As such, the SoS may wish to remove these from the recommended DCO (rDCO) (found at appendix A of this Report).

6.3. THE REQUEST FOR CA AND TP POWERS

- 6.3.1. The application draft Development Consent Order (dDCO) [\[APP-039\]](#) and all subsequent versions ([\[AS-039\]](#) being the final version) include provision for CA of freehold interests and private rights, the extinguishment of existing rights and the creation of new rights over land. They also contain provisions for the TP of land.
- 6.3.2. The application was also accompanied by an Explanatory Memorandum (EM), the latest draft version of which is [\[AS-041\]](#), a Book of Reference (BoR), the latest version of which is [\[REP7-011\]](#), a Statement of Reasons (SoR), the latest version of which is [\[REP6-008\]](#), a Funding Statement, the latest version of which is [\[REP7-009\]](#), Land Plans, the latest version of which is [\[REP7-003\]](#), a Crown Land Plan [\[APP-009\]](#), a Detailed Land and Rights Negotiations Tracker (Negotiations Tracker), the latest version of which is [\[REP8-009\]](#).
- 6.3.3. These set out the land and rights sought by the applicant, together with the reasons for their requirement and compensation provisions. Taken together with submissions made to the examination, they form the basis of the ExA's considerations in this section.
- 6.3.4. The application includes proposals for the CA and TP of land and rights over land. The application also includes proposals for the CA of crown land. There is no open space, common land or fuel or field garden allotments (special category Land) included or affected by the order limits.

6.4. THE CA AND TP POWERS SOUGHT

- 6.4.1. The scope of the powers sought are set out mainly in section 4.3 of SoR [\[REP6-008\]](#) and are for:
- Acquisition of all interests in land, including the freehold (article 23 of the dDCO [\[AS-039\]](#)) - shown edged red and shaded pink on the Land Plans [\[REP7-003\]](#).
 - Statutory authority to override easements and other rights (article 25 of the dDCO [\[AS-039\]](#)), which permits the carrying out or use of the authorised development notwithstanding that it involves an interference with easements or rights.
 - Permanent acquisition of new rights and imposition of restrictive covenants (article 27 of the dDCO [\[AS-039\]](#)) - shown edged red and

shaded blue on Land Plans [\[REP7-003\]](#). This permits the creation of new rights (including imposing restrictive covenants).

- Extinguishment of private rights (article 28 of the dDCO [\[AS-039\]](#)) as there may be unknown rights, restrictions, easements or servitudes affecting that land which also need to be extinguished in order to facilitate the proposed development.
- Acquisition of all interests in land, including freehold, in respect of subsoil and airspace only (article 30 of the dDCO [\[AS-039\]](#)).
- Temporary use of land (articles 32 and 34 of the dDCO [\[AS-039\]](#)), which permits the applicant to take temporary possession of any part of the order land where it has not yet exercised powers of compulsory acquisition, and to seek temporary possession only over specified plots, shown edged red and shaded green on the Land Plans [\[REP7-003\]](#). The dDCO also includes provision for use of airspace within the order land (article 37 in the dDCO [\[AS-039\]](#)).

6.5. THE PURPOSES FOR WHICH LAND IS REQUIRED

6.5.1. The purposes for which the CA and TP powers are required are set out in the SoR [\[REP6-008\]](#), principally in section 5.

6.5.2. In summary, the applicant explains that the powers for CA of rights over land (including restrictions) in the order are required for the construction, operation, maintenance and decommissioning of the proposed development. The power to compulsorily acquire rights over land is required to ensure there is no impediment to the delivery of the project.

6.5.3. The applicant has already negotiated and completed property agreements with the freehold owners of the land comprising the solar array area, which represents the significant majority of the order land. Notwithstanding the above, the applicant states it is necessary to be granted the compulsory acquisition powers included in the dDCO [\[AS-039\]](#) to protect against a scenario whereby the freehold owners of the solar array area do not grant a lease of their land in accordance with the terms of the completed option agreements. The applicant also needs powers to extinguish private rights in the solar array area to the extent that they would conflict with the proposed development.

6.5.4. The applicant has also agreed heads of terms with most of the affected landowners along the bespoke access corridor and cable corridor, and agreement is expected to be reached during examination with the majority of the remaining parties. To date, no option agreements have been secured for the bespoke access corridor and cable corridor and as such, the applicant would require powers of compulsory acquisition to ensure deliverability of the proposed development.

6.5.5. Whilst seeking compulsory acquisition powers, the applicant confirms it would continue to seek to acquire the land and rights and other interests in, on and over the land by agreement. This approach of making the application for powers of compulsory acquisition in the application for the dDCO [\[AS-](#)

[039](#)] and, in parallel, conducting negotiations to acquire land by agreement, accords with paragraph 26 of the CA Guidance.

- 6.5.6. The inclusion of powers of compulsory acquisition in the dDCO [\[AS-039\]](#) is to ensure that this can be achieved. The relevant powers and the land and interests sought are no more than is required to facilitate the proposed development, its construction, operation, maintenance and decommissioning.
- 6.5.7. The applicant puts that the location and extent of the rights has been carefully considered and designed in order to take the minimum amount of rights required, and is therefore necessary, proportionate and justifiable.

STATUTORY UNDERTAKERS

- 6.5.8. If a statutory undertaker makes a representation about the CA of land or a right over land which has been acquired for the purpose of its undertaking, and this is not withdrawn, s127 of PA2008 applies. In these circumstances, the DCO can only include a provision authorising the CA of that land or right if the SoS is satisfied that the land or right can be purchased without serious detriment to the carrying on of the undertaking, or that any such detriment can be made good by use of alternative land.
- 6.5.9. Section 138 of the PA2008 applies where a statutory undertaker has a relevant right or relevant apparatus in land over which CA is sought. In those circumstances, the DCO can only authorise the extinguishment of the right or removal of the apparatus if the SoS is satisfied that this is necessary for the purpose of carrying out the development to which the Order relates.
- 6.5.10. The land affected by the proposed development includes interests owned by several statutory undertakers, which are considered further in this section.

6.6. EXAMINATION OF THE CA AND TP CASE

THE EXAMINATION PROCESS

- 6.6.1. The ExA's approach to the question of whether CA powers should be granted, and if so, what it should recommend to the SoS to grant, has been to seek to apply the relevant sections of the PA2008; notably s122 and s123, the CA Guidance, and the Public Sector Equality Duty (PSED) established by the Equalities Act 2010. In addition, and in light of the representations received and the evidence submitted, the ExA has also considered whether a compelling case has been made in the public interest, balancing the public interest against private loss.
- 6.6.2. In examining the application, the ExA considered all written material in respect of CA and TP and asked written questions regarding the applicant's approach to CA/TP in the first written questions [\[PD-007\]](#), namely identification of land subject to CA, need for CA and consideration of section 122 requirements and the compliance with Equality Act 2010. Further questions were asked of the applicant at ExQ2 [\[PD-013\]](#) in relation to the CA of new rights over a private road (Black Drove) which is the only access to Gashes Barn plot 1-4, as per Land Plans [\[REP7-003\]](#).

- 6.6.3. In addition, CA and TP issues were explored in further detail at a Compulsory Acquisition Hearing 1 (CAH1) [\[EV3-001\]](#).
- 6.6.4. By the end of the examination agreements had not been reached with all statutory undertakers, with a number of cases in which objections had not been withdrawn and differences remained. Objections and concerns have also been raised by APs regarding CA and TP matters. These are considered later in this section.

THE APPLICANT'S CASE

- 6.6.5. The applicant's case for the CA and TP powers sought is set out in the SoR [\[REP6-008\]](#) as well as the applicant's explanation of how it considers its proposals meet the tests set out in s122 of PA2008. It also describes how the applicant considers it has demonstrated the general considerations of the CA Guidance.
- 6.6.6. In summary, and as previously mentioned, the applicant states that all the land (see Land Plans [\[REP7-003\]](#)) included in the dDCO [\[AS-039\]](#) is the minimum land take required and is therefore necessary to achieve the scheme's objectives. The applicant confirms that it has sought to minimise private loss of land by only seeking compulsory acquisition powers for the minimum possible area and find that the granting of CA powers represents a proportionate and legitimate interference with private rights and to be in the public benefit.
- 6.6.7. The applicant also confirms, in paragraph 5.1.3 that the applicant has already negotiated and completed property agreements with the freehold owners of the land comprising the solar array area, which represents the significant majority of the order land. The applicant confirms, in the same paragraph, that it has also agreed terms to acquire the rights required to deliver the proposed development over all of the land included in the bespoke access corridor and 66% of the land included in the cable corridor over which voluntary agreements are considered necessary.
- 6.6.8. Entitlement to compensation is provided by the existing national Compensation Code and article 47 and schedule 9 of the dDCO [\[AS-039\]](#) and any dispute in respect of the compensation payable can be referred to the Upper Tribunal (Lands Chamber).
- 6.6.9. The applicant also addresses potential infringements of human rights with respect to article 1 of The First Protocol, article 6 and article 8 of the European Convention on Human Rights. In relation to article 1 it considers that there is a compelling public interest case for the CA powers. Regarding article 6, it summarises the engagement with landowners and states that persons with an interest in the land have had full opportunity to comment on the proposal. In relation to article 8 as the proposed development does not require the acquisition of any residential dwellinghouses, dwellinghouses would not be directly affected and therefore it is not anticipated that the convention rights protected by article 8 would be engaged.

- 6.6.10. The Land Plans [\[REP7-003\]](#) show the location of each plot and uses colour-coding to identify the land or rights proposed to be acquired permanently or used temporarily. The Works Plan [\[REP8-003\]](#) show the location of the works proposed. The dDCO [\[AS-039\]](#) provides description of each Works number. Schedule 8 identifies the land, on a plot by plot basis, in which only new rights etc may be required and schedule 10 land, on a plot by plot basis, of which temporary possession may be taken.

ALTERNATIVES

- 6.6.11. The CA Guidance indicates that the applicant should be able to demonstrate to the satisfaction of the SoS that all reasonable alternatives to CA (including modifications to the scheme) have been explored.
- 6.6.12. The applicant's approach to the consideration of alternatives in relation to CA is set out in section 5.4 of the SoR [\[REP6-008\]](#).
- 6.6.13. The applicant confirms, in paragraph 5.4.1, that it considered all reasonable alternatives to CA by, throughout the pre-application stage, taking into account land ownership when designing and siting the proposed development and minimising the need for CA by attempting to agree private voluntary agreements with the relevant owners.
- 6.6.14. As stated in paragraph 5.4.2, the applicant has reached agreement with all of the freehold owners of the solar array area for a lease of the land for the lifetime of the proposed development. The applicant has been engaged in negotiations with all other owners of land over which voluntary agreements are considered necessary within the Order Land, with agreement reached over all of the land included in the bespoke access corridor and 66% of the land included in the cable route corridor.
- 6.6.15. The applicant goes on to state that, in paragraph 5.4.8, that it has undertaken a clear process to identify an appropriate site and has considered alternatives within the Site Selection Report (which can be found at Appendix 2 of the Planning Statement [\[REP7-018\]](#)). None of the alternatives would provide the substantial benefits that the proposed development would provide, or would involve additional impacts or disadvantages in terms of land take, environmental, technical and other considerations, and therefore it is considered that there are no more suitable locations to make use of the available capacity at Bicker Fen substation than the development site.

AVAILABILITY AND ADEQUACY OF FUNDS

- 6.6.16. The applicant's Funding Statement, the latest version of which is [\[REP7-009\]](#), explains the applicant's access to finance to fund the works to be authorised by the order.
- 6.6.17. As confirmed in [\[REP7-009\]](#), the applicant estimates that the construction cost of the proposed development would be approximately £550m, which includes an amount to cover any compensation payable as a consequence of the use of any compulsory acquisition powers included in the dDCO [\[AS-039\]](#).

- 6.6.18. The ExA also notes that article 47 - Guarantees in respect of payment of compensation in the dDCO [[AS-039](#)] requires the applicant to put in place either a guarantee, or an alternative form of security, either one the form and amount of which to have been approved by the Secretary of State, in respect of the liabilities of the undertaker to pay compensation pursuant to the CA provisions.
- 6.6.19. Based on the information provided and the applicant's Funding Statement [[REP7-009](#)], the ExA is satisfied that the necessary funds would be available to the applicant to cover the likely costs of CA.

6.7. CONSIDERATION OF INDIVIDUAL OBJECTIONS AND ISSUES

- 6.7.1. The following affected persons (APs) submitted representations regarding land rights and related matters which remained unresolved, or with status not confirmed, by the end of the examination:

- LCJ Mountain Farms Limited
- Leslie Christopher John Mountain and Patricia Lynn Mountain
- Melbourne Holdings Limited
- UK Transition Power Holdings Limited
- Environment Agency
- AGR Renewables
- Anglian Water
- Cadent Gas Limited
- Network Rail Infrastructure Limited
- Triton Knoll OFTO Limited
- Vicarage Drove Energy Centre Limited

- 6.7.2. The following APs did not submit representations regarding land rights and related matters. However, parties have failed to reach an agreement in relation to land rights and related matters by the end of the examination. In the absence of an agreement, the ExA considers that their position should be interpreted as an objection to the CA and/or TP of land. These are:

- Gerard Amaury Arnaud March Phillips De Lisle
- Patrick Simon Benjamin
- Peter Andrew March Phillips De Lisle
- Roythornes Trustees Limited
- Simon John Henry Still De Lisle
- The Lincoln Diocesan Trust and Board of Finance Limited
- The Vicarage Drove Project Limited

- 6.7.3. The ExA was kept updated throughout the examination on how matters were progressing with the APs and SUs, with the applicant providing regular updates on the status of the negotiations via the Detailed Land and Rights Negotiations Tracker (Negotiations Tracker) the last version of which is [[REP8-009](#)]. The Negotiations Tracker details the status of all the objections received and its evolution throughout the examination.

- 6.7.4. All outstanding objections/representations on CA and TP issues are considered below.

LCJ MOUNTAIN FARMS LIMITED

PLOTS 11-3, 11-6, 12-2, 12-7, 12-8, 12-9, 12-10, 12-11, 12-14, 12-16, 12-17, 12-18, 12-19, 13-4, 13-18, 13-5, 9-9, 9-11, 11-8, 12-1

- 6.7.5. A RR [\[RR-026\]](#) was submitted on behalf of LCJ Mountain Farms Limited which detailed an objection to the CA rights and TP of land on the grounds of failure to properly consider alternative cable routes, environmental impacts and impact on intended commercial and infrastructure proposals. Further detail on the issues and concerns raised in the RR were submitted in [\[PDA-012\]](#), [\[REP1-041\]](#), [\[REP1-042\]](#), [\[REP1-043\]](#), [\[REP2-050\]](#), [\[REP2-051\]](#), [\[REP2-052\]](#), [\[REP2-053\]](#), [\[REP2-054\]](#), [\[REP3-015\]](#), [\[REP4-036\]](#), [\[REP4-037\]](#), [\[REP4-038\]](#), [\[REP4-039\]](#), [\[REP4-040\]](#), [\[REP4-041\]](#), [\[REP5-060\]](#), [\[REP5-061\]](#), [\[REP6-046\]](#), [\[REP6-047\]](#), [\[REP6-047\]](#), [\[REP7-062\]](#), [\[REP7-063\]](#), [\[REP8-040\]](#), [\[REP8-041\]](#).
- 6.7.6. The applicant has responded to the submissions made throughout the examination and on the topics raised on behalf of LCJ Mountain Farms Limited. In relation to the consideration of alternative cable routes and the environmental impacts, the ExA's position on these issues has been set in chapter 3 of this report. In relation to impact on intended commercial and infrastructure proposals, the ExA asked in ExQ3 CA.3.2 if LCJ Mountain Farms Limited believed that the effect of the proposed development would result in blight of the agricultural unit and/or make the agricultural units economically unviable. In response to the ExA question, LCJ Mountain Farms Limited submitted [\[REP7-063\]](#), and confirmed that it did not contend that the agricultural unit would become economically unviable, but argued that the proposed development would cause material adverse economic effects and constraints at unit level beyond the 12 metre (m) permanent easement, and therefore materially affect LCJ Mountain Farms Limited.
- 6.7.7. The applicant responded to LCJ Mountain Farms Limited submission in their Closing Statement [\[REP8-029\]](#) and state that, in relation to CA of right and TP of land, that the powers sought by the applicant are justified, as explained in general terms in the Statement of Reasons [\[REP6-008\]](#). The applicant goes on to state that the land in question and to which LCJ Mountain Farms Limited objection relates to, is necessary for the delivery of the cable route corridor, which is an unavoidable and essential link between the solar array area and the point of connection to the grid.
- 6.7.8. It does appear that LCJ Mountain Farms Limited objection centres on the applicant's consideration of alternatives for the cable route corridor. However, in chapter 3 of this report the ExA has come to a position on this issue and is of the view that the consideration of alternatives presented by the applicant satisfies relevant requirements as set in national policy. Consequently, the ExA does agree with the applicant that the land is required for the delivery of the proposed development.

- 6.7.9. As stated by the applicant in Closing Statement [\[REP8-029\]](#) the urgent need for the proposed development as set in the national policy statement EN-1 supports that there is a compelling case in the public interest for the grant of the powers sought and that reasonable alternatives have been considered and discounted and the powers are necessary. Whilst CA powers are sought over a certain corridor to allow necessary siting flexibility post-consent to accommodate ground conditions and other utilities, the construction corridor over which rights would ultimately be required would be 30m wide, with the final cable route easement being only 12m wide. Agricultural activity would be able to continue above the installed underground cable. The extent of powers sought is therefore wholly proportionate. To the extent that LCJ Mountain Farms Limited can evidence any loss in due course, it would be entitled to make a compensation claim using the ordinary statutory regime.
- 6.7.10. In light of the above, the ExA is satisfied that the plots 11-3, 11-6, 12-2, 12-7, 12-8, 12-9, 12-10, 12-11, 12-14, 12-16, 12-17, 12-18, 12-19, 13-4, 13-18, 13-5, 9-9, 9-11, 11-8, 12-1 are required for the proposed development, to facilitate it or is incidental to it and as such meets the test set out in section 1222(2) of the PA2008. The ExA is also satisfied that appropriate mechanisms have been secured to compensate for the CA or TP land as set within the dDCO [\[AS-039\]](#).
- 6.7.11. Accordingly, while the ExA accept that the CA and TP powers sought might result in some adverse impacts to the owner's private interests, in view of the established need for energy generation and the need to provide certainty in terms of project delivery, the ExA considers there is a compelling case in the public interest for the land to be acquired compulsorily. The ExA is therefore satisfied that it meets the tests in s122(3) PA2008.

PATRICIA LYNN MOUNTAIN AND LESLIE CHRISTOPHER JOHN MOUNTAIN

PLOT 12-1

- 6.7.12. A RR [\[RR-028\]](#) was submitted on behalf of Leslie Christopher John Mountain which detailed an objection to the CA rights and TP of land on the grounds of failure to properly consider alternative cable routes, environmental impacts and impact on intended commercial and infrastructure proposals.
- 6.7.13. In [\[REP1-029\]](#) the applicant responded to the RR by referring back to its response to [\[RR-026\]](#) which raised the same concerns as [\[RR-028\]](#). In its response the applicant stated that it was of the view that proper consideration to alternative cable routes had been given, as well as other environmental impacts, and that, in relation to the impact on intended commercial and infrastructure proposals, that the applicant was in negotiations with other potentially affected infrastructure proposals in order to agree heads of terms as to protect other interests in the land.
- 6.7.14. The ExA notes, in relation to the concerns raised in [\[RR-028\]](#) that these points have either been already addressed by the ExA in chapter 3, namely the issue of consideration of alternatives and also other environmental effects. In relation to the impact on intended commercial and infrastructure

proposals, the ExA will address any outstanding issues, if any, within this section of the report.

- 6.7.15. In any case, and in relation to plot 12-1, the ExA is satisfied that the plot is required for the proposed development, to facilitate it or is incidental to it and as such meets the test set out in section 1222(2) of the PA2008. The ExA is also satisfied that appropriate mechanisms have been secured to compensate for the CA or TP land as set within the dDCO [[AS-039](#)].
- 6.7.16. Also, while the ExA accept that the CA and TP powers sought might result in some adverse impacts to the owner's private interests, in view of the established need for energy generation and the need to provide certainty in terms of project delivery, the ExA considers there is a compelling case in the public interest for the land to be acquired compulsorily. The ExA is therefore satisfied that it meets the tests in s122(3) PA2008.

MELBOURNE HOLDINGS LIMITED

PLOTS 7-2, 7-3

- 6.7.17. No RR was submitted by Melbourne Holdings Limited, but a submission was accepted at deadline A [[PDA-013](#)] for this AP. Two further representations were received, one at deadline 5 [[REP5-059](#)] and another one at deadline 7 [[REP7-064](#)].
- 6.7.18. Melbourne Holdings Limited set out its final position in [[REP7-064](#)]. In its representation, Melbourne Holdings Limited state that it objects to the inclusion of their land within the order and to the CA of rights and the TP of land as they wish to continue farming it as part of an active agricultural enterprise.
- 6.7.19. Melbourne Holdings Limited state that their objection is linked to the scale, duration and permanence of the impact, impact of existing agricultural activity, the consideration of alternatives by the applicant which, in the view of the AP, leads to the compulsory acquisition not being justified.
- 6.7.20. In the Closing Statement [[REP8-029](#)], the applicant replies to these concerns. In relation to the cable route corridor, the applicant refers back to its response in [[REP6-039](#)] which confirms the proposed cable route corridor was largely designed to follow field boundaries within Melbourne Holdings Limited and minimise land take. However, this has not been possible for the entirety of its land.
- 6.7.21. In [[REP8-029](#)] the applicant also states that, although it is seeking flexibility to acquire new rights over plot 7-2, shown on sheet 7 and 8 of the Land Plans [[REP7-003](#)] the applicant's maximum construction corridor would be limited to only 30m width within the plot, as per the oCEMP [[REP8-015](#)]. Within the construction corridor, permanent rights would be vested over a maximum corridor of just 12m width to facilitate the operation and maintenance of the proposed development.

- 6.7.22. In relation to the soil structure and impact on activity, the applicant states that, in [\[REP8-029\]](#), that following completion of the proposed works, Melbourne Holdings Limited land can continue to be used for agricultural purposes, with any residual impacts on the land (including the retained land) to be compensated in accordance with the compensation code as secured mainly through part 5 of the dDCO [\[AS-039\]](#) and/or the voluntary land agreement, if one is reached.
- 6.7.23. As such, in relation to plots 7-2 and 7-3, the ExA is satisfied that the plots are required for the proposed development, to facilitate it or is incidental to it and as such meets the test set out in section 122(2) of the PA2008. The ExA is also satisfied that appropriate mechanisms have been secured to compensate for the CA or TP land as set within the dDCO [\[AS-039\]](#).
- 6.7.24. Also, while the ExA accept that the CA and TP powers sought might result in some adverse impacts to the owner's private interests, in view of the established need for energy generation and the need to provide certainty in terms of project delivery, the ExA considers there is a compelling case in the public interest for the land to be acquired compulsorily. The ExA is therefore satisfied that it meets the tests in s122(3) PA2008.

UK TRANSITION POWER HOLDINGS LIMITED

PLOTS 17-7, 18-11

- 6.7.25. Before the ExA can come to a position on the objection put forward by Fidra Energy Limited, it is necessary to address the issue raised by both parties in relation to the applicability, or not, of section 127 and 138 of the PA2008 in relation to the objection put forward by Fidra Energy on behalf of Bicker Drove Limited.
- 6.7.26. Fidra Energy Limited confirmed, in [\[REP8-039\]](#), that Bicker Drove Limited has the benefit of an electricity generation licence pursuant to the Electricity Act 1989 and, as such Bicker Drove Limited in a statutory undertaker (SU) for the purposes of the Planning Act 2008. The ExA accepts this assertion and agrees that Bicker Drove Limited should be considered a SU for the purpose of this examination.
- 6.7.27. However, the ExA also notes, as per the BoR [\[REP7-011\]](#) and as stated by the applicant in [\[REP8-029\]](#), that Bicker Drove Limited holds no land interest in plot 17-7 or 18-11, with the plots interest being in the ownership of other companies which have not been confirmed to the ExA as being SUs.
- 6.7.28. As such, the ExA find that sections 127 and 138 of the PA2008 are not engaged by Fidra Energy's representation on behalf of Bicker Drove Limited, as these sections apply to land that belongs to a SU or that a SU has a relevant right to, and there is no register of Bicker Drove Limited having an interest in any of the plots mentioned above.
- 6.7.29. Consequently, although the ExA thanks Fidra Energy Limited for the submission of a set of protective provisions for its consideration, protective

provisions exist to safeguard land right for SU which, for the reasons set above, do not apply in this instance.

- 6.7.30. A RR [\[RR-020\]](#) was submitted by Fidra Energy Limited in relation to the Bicker Drove Limited project and the effects of the proposed development on Fidra Energy's proposal. Further detail on the issues and concerns raised in the RR was then provided via [\[REP2-048\]](#), [\[REP3-014\]](#), [\[REP7-061\]](#), [\[REP7-065\]](#), with Fidra Energy's final position being set out in [\[REP8-039\]](#).
- 6.7.31. In [\[REP8-039\]](#) Fidra Energy confirm their position and their objection to the CA of new rights in relation to plot 18-11 despite there being occasional dialogue between both parties to try and come to an agreement.
- 6.7.32. The Applicant's Closing Statement [\[REP8-029\]](#) provides a response to this issue and states that there is limited flexibility within the cable route corridor in this area and the it is being driven by the need to preserve the deliverability of the proposed development, for which there is an urgent need as set in the national policy statement EN-1. Furthermore, the applicant also highlights in its response that is vital that it retains the full extent of plot 18-11 due to potential cable routing obstacles which would require a variance in the cable route to the Bicker Fen substation. Whilst only 30m within the 100m+ area would ultimately be required for the construction corridor (with the area further reducing to 12m for the permanent easement), the applicant believes it needs to be able to route the 30m strip anywhere within that area to ensure the proposed development is deliverable.
- 6.7.33. The applicant has responded to the submissions made throughout the examination and on the topics raised on behalf of LCJ Mountain Farms. In relation to the consideration of alternative cable routes and the environmental impacts, the ExA's position on these issues has been set in chapter 3 of this report. In relation to impact on intended commercial and infrastructure proposals, the ExA asked in ExQ3 CA.3.2 if LCJ Mountain Farms believed that the effect of the proposed development would result in blight of the agricultural unit and/or make the agricultural units economically unviable. In response to the ExA question, LCJ Mountain Farms Limited submitted [\[REP7-063\]](#), and confirmed that it did not contend that the agricultural unit would become economically unviable, but argued that the proposed development would cause material adverse economic effects and constraints at unit level beyond the 12m permanent easement, and therefore materially affect LCJ Mountain Farms Limited.
- 6.7.34. The applicant responded to LCJ Mountain Farms Limited submission in their Closing Statement [\[REP8-029\]](#) and state that, in relation to CA of right and TP of land, that the powers sought by the applicant are justified, as explained in general terms in the Statement of Reasons [\[REP6-008\]](#). The applicant goes on to state that the land in question and to which LCJ Mountain Farms Limited objection relates to, is necessary for the delivery of the cable route corridor, which is an unavoidable and essential link between the solar array area and the point of connection to the grid.

- 6.7.35. It does appear that LCJ Mountain Farms Limited objection centres on the applicant's consideration of alternatives for the cable route corridor. However, in chapter 3 of this report the ExA has come to position on this issue and is of the view that the consideration of alternatives presented by the applicant satisfies relevant requirements as set in national policy. Consequently, the ExA does agree with the applicant that the land is required for the delivery of the proposed development.
- 6.7.36. In light of the above, the ExA is satisfied that the plot 18-11 is required for the delivery of the proposed development, to facilitate it or is incidental to it and as such meets the test set out in section 1222(2) of the PA2008. The ExA is also satisfied that appropriate mechanisms have been secured to compensate for the CA or TP land as set within the dDCO [[AS-039](#)].
- 6.7.37. Accordingly, while the ExA accept that the CA and TP powers sought might result in some adverse impacts to the owner's private interests, in view of the established need for energy generation and the need to provide certainty in terms of project delivery, the ExA considers there is a compelling case in the public interest for that the land to be acquired compulsorily. The ExA is therefore satisfied that it meets the tests in s122(3) PA2008.

GERARD AMAURY ARNAUD MARCH PHILLIPPS DE LISLE, PATRICK SIMON BENJAMIN, PETER ANDREW MARCH PHILLIPPS DE LISLE, ROYTHORNES TRUSTEES LIMITED, SIMON JOHN HENRY STILL DE LISLE, THE LINCOLN DIOCESAN TRUST AND BOARD OF FINANCE LIMITED, THE VICARAGE DROVE PROJECT LIMITED

PLOTS 18-44, 9-12, 14-2, 14-3, 14-4, 14-5, 14-6, 14-7, 14-8, 14-9, 13-11, 13-12, 13-14, 13-16, 13-17, 14-1, 15-2, 15-3, 15-4, 18-50, 17-7, 18-11

- 6.7.38. The ExA has not received any RR and WR from any of the APs mentioned above or in relation to any of the above mentioned plots. However, the ExA notes that parties have failed to reach an agreement in relation to land rights and related matters by the end of the examination. In the absence of an agreement, the ExA considers that their position should be interpreted as an objection to the CA and/or TP of land.
- 6.7.39. The ExA has considered the land requirements and powers being sought for each plot mentioned above, individually. As the reasons why the APs object to the CA and or TP of land are not clear, the ExA is interpreting their objection as a general objection to the powers sought over their land.
- 6.7.40. All the plots included above are needed for works associated with Work No.10, with the exception of plots 9-12, 17-7, 18-11 and 18-50 which is associated with Work 4A. As set out in the dDCO [[AS-039](#)], Work No. 4A is works to lay high voltage electrical cables and Work No. 10 is works to facilitate access to Work Nos.1 to 9.
- 6.7.41. Having carefully reviewed the Works Plans [[REP8-003](#)] and the Land Plans [[REP7-003](#)], alongside the description and purpose of the works proposed as set out in the dDCO [[AS-039](#)], the ExA is satisfied that these plots are

required for the proposed development, to facilitate it or are incidental to it and as such meet the test set out in section 122(2) of the PA2008.

- 6.7.42. Accordingly, while the ExA accepts that the CA powers sought might result in some adverse impacts to the owner's private interests, in view of the established need for energy generation and the need to provide certainty in terms of project delivery, the ExA considers there is a compelling case in the public interest for that the land to be acquired compulsorily. The ExA is therefore satisfied that it meets the tests in s122(3) PA2008.

STATUTORY UNDERTAKERS

- 6.7.43. Section 127 of the PA2008 applies to land acquired by SU for the purposes of their undertaking, and places restrictions on the CA, or CA of a new right, of such land where a representation is made in relation to a DCO application and is not withdrawn by the close of the examination. The dDCO at article 35 [\[AS-039\]](#), includes provision to authorise the CA of land and rights held by SUs for the purpose of their undertaking.
- 6.7.44. If section 127 applies, CA of SU's land can only be authorised if the SoS is satisfied:
- that the land can be purchased and not replaced without serious detriment to the SU or, if purchased, can be replaced by other land belonging to or available for purchase by the undertakers without detriment (section 127(3)); or
 - the right can be purchased without serious detriment to the SU, or any detriment to the SU, in consequence of the acquisition of the right, can be made good by the undertaker by the use of other land belonging to or available for acquisition by them (section 127(6)).
- 6.7.45. Section 138 of the PA2008 applies where an order authorises the acquisition of land (compulsorily or by agreement) and there subsists over the land a relevant right or there is on, under or over the land relevant apparatus.
- 6.7.46. At the close of the examination the applicant's position in relation to these matters is contained in the Negotiations Tracker [\[REP8-009\]](#). Where outstanding objections or issues remain, these matters are summarised below.
- 6.7.47. It is worth noting that agreement with Black Sluice Internal Drainage Board was reached and confirmed in the final version of the Statement of Common Ground (SoCG) [\[REP2-033\]](#). Agreement with National Gas Transmissions PLC was also reached and confirmed in the SoCG [\[REP8-022\]](#). Agreement with National Grid Electricity Transmission PLC has also been agreed and this is confirmed in [\[REP7-059\]](#) subject to the protective provisions included being incorporated in the dDCO, as included in [\[AS-039\]](#). Agreement with National Grid Viking Link Limited has also been reached and confirmed in SoCG [\[REP8-023\]](#).

ENVIRONMENT AGENCY (EA)

PLOTS 3-5, 3-7, 6-1, 8-1, 8-3, 13-7, 13-9, 3-6, 8-2, 13-11, 13-12, 13-14, 13-16, 13-17, 14-1, 15-2, 15-3, 15-4

- 6.7.48. The EA has not raised any concerns regarding CA or the rights being requested in respect of any of the plots mentioned above in any of its representations. The RR received from the EA [\[RR-006\]](#) did not mention any concerns regarding the applicant's proposal for the plots mentioned above. Furthermore, the EA has confirmed, in their response to ExQ1 CA.1.3 and CA.1.4 [\[REP2-047\]](#) that it was not aware of any inaccuracies in relation to the BoR [\[APP-015\]](#) or the SoR [\[AS-013\]](#) or Land Plans [\[AS-005\]](#). In response to EXQ1 CA.1.8 [\[REP2-047\]](#) the EA also confirmed it did not have any concerns regarding the legitimacy, proportionality or necessity of the CA or TP powers sought by the applicant in relation to the land the EA has an interest in.
- 6.7.49. The ExA is satisfied that the CA powers sought over these plots are required for, or to facilitate, the proposed development. In view of the established urgent need for the low carbon infrastructure of the type proposed, the ExA is also satisfied that there is a compelling case in the public interest for the CA of rights over the land. As such, it meets the tests set out in section 122 of the PA2008.
- 6.7.50. The ExA is therefore satisfied that the measures included in the dDCO [\[AS-039\]](#) as discussed and agreed with the EA would be sufficient to ensure that there would be no serious detriment to the carrying on of its undertaking. As such, the ExA considers that the tests set out in section 127 and section 138 of the PA2008 are met.

AGR RENEWABLES (SPV VICARAGE DROVE BESS LIMITED)

PLOT 18-44

- 6.7.51. WR [\[REP5-058\]](#) was submitted by AGR Renewables in relation to the potential interaction between the proposed development and AGR's project SPV Vicarage Drove BESS Limited (VDBL).
- 6.7.52. In their representation, AGR Renewables state that VDBL has apparatus consented over and adjacent to and/or across land included in the order and that they understand that the proposed development cuts across the field boundary at plot 18-44 where VDBL proposes an attenuation pond as well as its critical electrical infrastructure (transformers and control buildings). As such, AGR Renewables state that they wish to protect their rights and interests in land and AGR Renewables's apparatus during and after construction of the proposed development including in areas in which compulsory acquisition and/or temporary possession powers or rights are sought by the applicant.
- 6.7.53. AGR Renewables also state that progress has been made with the applicant in relation to securing appropriate levels of protection and safeguard of AGR Renewables interests in the land. The applicant's response [\[REP6-039\]](#) confirms that negotiations were progressing and both parties were hoping to

reach an agreement in relation to a form of private asset protection agreement and protective provisions together with appropriate assurance in respect of the cable crossing.

- 6.7.54. However, no formal confirmation was submitted to the ExA prior to the close of the examination, that agreement had been reached between both parties.
- 6.7.55. Given progress on negotiations so far, the ExA sees no reason why a voluntary agreement cannot be completed within the post-examination period and therefore would recommend an agreement between the parties.
- 6.7.56. However, in the event that such an agreement is not forthcoming, the ExA is mindful that the protective provisions in Part 1 of Schedule 11 offer protection to affected undertakers. In light of such provisions as secured within the dDCO [[AS-039](#)], the ExA is therefore satisfied that the measures included would be sufficient to ensure that there would be no serious detriment to the carrying on of AGR Renewables undertaking. As such, the ExA considers that the tests set out in section 127 and section 138 of the PA2008 are met.
- 6.7.57. The ExA is satisfied that the CA powers sought over these plots are required for, or to facilitate, the proposed development. In view of the established urgent need for the low carbon infrastructure of the type proposed, the ExA is also satisfied that there is a compelling case in the public interest for the CA of rights over the land. As such, it meets the tests set out in section 122 of the PA2008.

AGR RENEWABLES (AGR SOLAR 2 LIMITED & AGR SOLAR 3 LIMITED)

- 6.7.58. WRs [[REP5-056](#)] and [[REP5-057](#)] were submitted by AGR Renewables in relation to the potential interaction between the proposed development and AGR's Cowbridge Solar Farm and Little Hale Fen Solar Farm.
- 6.7.59. In their representation, AGR Renewables state that both Cowbridge Solar Farm and Little Hale Fen Solar Farm have apparatus consented over and adjacent to and/or across land included in the order, particularly the grid connection cable route and infrastructure in and around the point of connection at the Bicker Fen substation.
- 6.7.60. As such, AGR Renewables state that they wish to protect their rights and interests in land and AGR Renewables's apparatus during and after construction of the proposed development including in areas in which compulsory acquisition and/or temporary possession powers or rights are sought by the applicant.
- 6.7.61. AGR Renewables also state that progress has been made with the applicant in relation to securing appropriate levels of protection and safeguard of AGR Renewables interests in the land. The applicant's response [[REP6-039](#)] confirms that negotiations were progressing and both parties were hoping to reach an agreement in relation to a form of private asset protection agreement and protective provisions together with appropriate assurance in respect of the cable crossing.

- 6.7.62. However, no formal confirmation was submitted to the ExA prior to the close of the examination, that agreement had been reached between both parties.
- 6.7.63. Given progress on negotiations so far, the ExA sees no reason why a voluntary agreement cannot be completed within the post-examination period and therefore would recommend an agreement between the parties.
- 6.7.64. However, in the event that such an agreement is not forthcoming, the ExA is mindful that the protective provisions in part 1 of schedule 11 offer protection to affected undertakers. In light of such provisions as secured within the dDCO [\[AS-039\]](#), the ExA is therefore satisfied that the measures included would be sufficient to ensure that there would be no serious detriment to the carrying on of AGR Renewables undertaking. As such, the ExA considers that the tests set out in section 127 and section 138 of the PA2008 are met.
- 6.7.65. The ExA is satisfied that the CA powers sought over these plots are required for, or to facilitate, the proposed development. In view of the established urgent need for the low carbon infrastructure of the type proposed, the ExA is also satisfied that there is a compelling case in the public interest for the CA of rights over the land. As such, it meets the tests set out in section 122 of the PA2008.

CADENT GAS LIMITED (CADENT)

PLOT 4-1

- 6.7.66. RR [\[RR-017\]](#) was submitted by Cadent stating that it was not satisfied that the then proposed dDCO [\[APP-039\]](#) included all the land and rights required to accommodate the diversions that Cadent believed it would have to in order to secure its gas distribution network and act in accordance with its statutory obligations.
- 6.7.67. Further detail was then submitted into the examination in [\[REP1-035\]](#) and [\[REP3-013\]](#) with Cadent confirming that although progress was being made in relation to protective provisions, agreement had not been reached. The applicant responded to Cadent at [\[REP4-025\]](#) confirming that progress was being made and negotiations were ongoing.
- 6.7.68. In the Negotiations Tracker [\[REP8-009\]](#) the applicant confirms that a side agreement had been agreed with Cadent and that the applicant was expecting confirmation on protective provisions shortly.
- 6.7.69. However, no formal confirmation was submitted to the ExA prior to the close of the examination, that agreement had been reached between both parties.
- 6.7.70. Given progress on negotiations so far, the ExA sees no reason why a voluntary agreement cannot be completed within the post-examination period and therefore would recommend an agreement between the parties. This also appears to be in line with the applicant's Negotiations Tracker [\[REP8-009\]](#) which reports that agreement had been reached and what being signed by the end of the examination.

- 6.7.71. However, in the event that such an agreement is not forthcoming, the ExA is of the view that the protective provisions advanced by Cadent in [\[REP3-013\]](#) have, by and large, been included in the dDCO [\[AS-039\]](#). Cadent, in [\[REP3-013\]](#) seem to agree with this. However, and judging from the information included in [\[REP3-013\]](#), it appears that the main point of disagreement was to do with arbitration, with Cadent seeking to carve out the scope of arbitration matters relating to facilities and rights granted to Cadent, the adequacy of insurance and security and the obligations dealing with the protection of Cadent's retained apparatus. No form of words was proposed or advanced by Cadent to cover this specific point.
- 6.7.72. The applicant, in [\[REP4-025\]](#) replied that it has sought a compromised position in relation to the arbitration exclusions that Cadent have requested but cannot agree to there being no means to resolve any difference between the parties, or challenge the reasonableness of Cadent's actions, on certain matters because this would cause a significant detriment for Beacon Fen Energy Park in delivering the proposed development.
- 6.7.73. Having carefully considered the above, the ExA is of the view that there must be a way to resolve differences between the parties and challenge the reasonableness of Cadent's actions, particularly in view of the urgent need for the proposed development. Consequently, the ExA does agree with the applicant that a form of resolution is needed. To this effect, the ExA does acknowledge article 45 Arbitration of the dDCO [\[AS-039\]](#).
- 6.7.74. ExA is therefore satisfied that the measures included would be sufficient to ensure that there would be no serious detriment to the carrying on of Cadent undertaking. As such, the ExA considers that the tests set out in Section 127 and Section 138 of the PA2008 are met.
- 6.7.75. The ExA is satisfied that the CA powers sought over these plots are required for, or to facilitate, the proposed development. In view of the established urgent need for the low carbon infrastructure of the type proposed, the ExA is also satisfied that there is a compelling case in the public interest for the CA of rights over the land. As such, it meets the tests set out in section 122 of the PA2008.

NATIONAL GRID ELECTRICITY DISTRIBUTION (EAST MIDLANDS) PLC

PLOTS 18-57, 2-2, 3-8, 6-2, 1-1, 2-1, 2-3, 4-1, 4-6, 9-1, 9-3, 9-7, 9-8, 9-9, 9-10, 9-12, 10-6, 10-11, 11-5, 11-6, 11-7, 11-8, 12-5, 14-1, 14-11, 16-1, 17-4, 17-5, 17-7, 18-1, 18-3, 18-4, 18-5, 18-6, 18-7, 18-8, 18-9, 18-14, 18-19, 9-4, 18-16, 18-53

- 6.7.76. The ExA has not received any RR and WR from National Grid Electricity Distribution (East Midlands) PLC raising any concerns regarding CA or the TP of land being requested by the applicant in respect of any of the plots mentioned above.
- 6.7.77. In the Negotiations Tracker [\[REP8-009\]](#) the applicant confirms that an agreement on protective provisions was expected shortly following the close of the examination. In the absence of any evidence to the contrary, the ExA

is satisfied that the CA powers sought over these plots are required for, or to facilitate, the proposed development. In view of the established urgent need for the low carbon infrastructure of the type proposed, the ExA is also satisfied that there is a compelling case in the public interest for the CA of rights over the land. As such, it meets the tests set out in section 122 of the PA2008.

- 6.7.78. The ExA is therefore satisfied that the measures included in the dDCO [[AS-039](#)], as discussed with National Grid Electricity Distribution (East Midlands) Plc, would be sufficient to ensure that there would be no serious detriment to the carrying on of its undertaking. As such, the ExA considers that the tests set out in section 127 and section 138 of the PA2008 are met.

NETWORK RAIL INFRASTRUCTURE LIMITED

PLOT 10-14

- 6.7.79. RR [[RR-011](#)] was submitted by Network Rail Infrastructure Limited (Network Rail) stating that it was objecting to the proposed CA of new rights over railway land as this was likely to interfere with the safe and efficient operation of the railway and cause serious detriment to be carrying on of Network Rail's statutory undertaking.
- 6.7.80. Further detail was then submitted into the examination in [[REP1-053](#)] and final position set out in [[REP8-038](#)]. In [[REP8-038](#)] Network Rail confirmed that protective provisions hadn't been agreed with the applicant and that Network Rail was of the view that the protective provision included in [[REP8-038](#)], namely proposed paragraph 110), were not included in the dDCO [[AS-039](#)], granting the order would cause serious detriment to Network Rail's statutory undertaking.
- 6.7.81. The applicant, as part of its response to ExQ2 CA.3.3 [[REP7-052](#)], has set out its final position in relation to Network Rail's objection. The applicant states that the substantive issue outstanding between the parties is disagreement regarding which powers under the DCO are to be exercised only with Network Rail's prior approval, insofar as they apply to any railway property. The applicant goes on to state that the applicant is not prepared to grant the full extent of the limitation sought by Network Rail which would have the effect of conditioning the carrying out and maintenance of the authorised development (articles 3 and 5), as well as those related to compulsory acquisition/temporary possession (articles 23, 27, 30, 32, 34 and 35).
- 6.7.82. Having carefully considered the information and the evidence presented, and considering that the changes proposed by Network Rail would only apply to railway property, the ExA finds that the protective provisions, as set by Network Rail in [[REP8-038](#)] are necessary in order to adequately safeguard Network Rail's operational interests, statutory obligations and their duty to overarching public safety. These will be reflected in the ExA's rDCO in appendix A.
- 6.7.83. The ExA is satisfied that the CA powers sought over these plots are required for, or to facilitate, the proposed development. In view of the established

urgent need for the low carbon infrastructure of the type proposed, the ExA is also satisfied that there is a compelling case in the public interest for the CA of rights over the land. As such, it meets the tests set out in section 122 of the PA2008.

- 6.7.84. The ExA is therefore satisfied that the measures included in the rDCO would then be sufficient to ensure that there would be no serious detriment to the carrying on of Network Rail's undertaking. As such, the ExA considers that the tests set out in section 127 and section 138 of the PA2008 are met.

TRITON KNOLL OFTO LIMITED

PLOTS 13-11, 13-12, 13-14, 13-16, 13-17, 14-1, 15-2, 15-4, 18-2, 18-10, 13-10, 13-13, 14-3, 14-4, 14-5, 14-6, 14-7, 14-8, 14-9, 15-1, 15-3, 18-6, 18-9, 18-13, 18-14, 18-16, 18-19, 18-52, 18-56, 13-15

- 6.7.85. [\[RR-033\]](#) was submitted by Triton Knoll OFTO Limited (Triton Knoll) stating that it required protective provision in order to provide appropriate levels of protection to its assets similar to those granted for the Heckington Fen Solar Park. Triton Knoll also confirm that engagement with the applicant was on-going in order to try and reach an agreement between both parties.
- 6.7.86. No further information was submitted by Triton Knoll on this matter with the applicant responding to Triton Knoll RR in [\[REP1-029\]](#). However, in the Negotiations Tracker [\[REP8-009\]](#) the applicant confirms that an agreement on protective provisions was expected to be reached shortly following the close of the examination.
- 6.7.87. In the absence of any evidence to the contrary, the ExA is satisfied that the CA powers sought over these plots are required for, or to facilitate, the proposed development. In view of the established urgent need for the low carbon infrastructure of the type proposed, the ExA is also satisfied that there is a compelling case in the public interest for the CA of rights over the land. As such, it meets the tests set out in section 122 of the PA2008.
- 6.7.88. The ExA is therefore satisfied that the measures included in the dDCO [\[AS-039\]](#), as discussed with Triton Knoll, would be sufficient to ensure that there would be no serious detriment to the carrying on of its undertaking. As such, the ExA considers that the tests set out in section 127 and section 138 of the PA2008 are met.
- 6.7.89. However, no formal confirmation was submitted to the ExA prior to the close of the examination, that agreement had been reached between both parties.
- 6.7.90. Given progress on negotiations so far, the ExA sees no reason why a voluntary agreement cannot be completed within the post-examination period and therefore would recommend an agreement between the parties.
- 6.7.91. However, in the event that such an agreement is not forthcoming, the ExA is mindful that the protective provisions in part 1 of schedule 11 offer protection to affected undertakers. In light of such provisions as secured within the dDCO [\[AS-039\]](#), the ExA is therefore satisfied that the measures included

would be sufficient to ensure that there would be no serious detriment to the carrying on of Triton Knoll's undertaking. As such, the ExA considers that the tests set out in section 127 and section 138 of the PA2008 are met.

- 6.7.92. The ExA is satisfied that the CA powers sought over these plots are required for, or to facilitate, the proposed development. In view of the established urgent need for the low carbon infrastructure of the type proposed, the ExA is also satisfied that there is a compelling case in the public interest for the CA of rights over the land. As such, it meets the tests set out in section 122 of the PA2008.

VICARAGE DROVE ENERGY CENTRE LIMITED

PLOTS 18-52, 18-56

- 6.7.93. RR [\[RR-034\]](#) was submitted by Vicarage Drove Energy Centre Limited (VDECL) stating that whilst VDECL did not object to the principle of the proposed development, the extent of the VDECL land over which rights are sought is excessive. VDECL acknowledged that the applicant had adopted a precautionary approach to the land required for its cable run, including optionality as to the route of entry into the Bicker Fen substation to the east of the VDECL Land, however due to the potential conflict the the operation of VDECL's solar farm, an objection was submitted until agreement was reached on protective provisions.
- 6.7.94. Further detail was then submitted into the examination with VDECL's final position set out in [\[AS-049\]](#). In it, VDECL confirm that it does not consider the protective provisions included in the dDCO [\[REP8-004\]](#) to be sufficient protection for its statutory undertaking. The main point of contention between the parties appears to be linked to the fact that there is no equivalent to paragraph 5 of part 1 in the protective provisions drafted for the protection of Vicarage Drove Energy Centre Limited, as set out in part 12 of Schedule 11 protective provisions in the final dDCO [\[AS-039\]](#).
- 6.7.95. In relation to this matter, the applicant's Negotiations Tracker [\[REP8-009\]](#) confirms that agreement had been expected to be reached shortly after the examination. However, no formal confirmation was submitted to the ExA prior to the close of the examination, that agreement had been reached between both parties.
- 6.7.96. Given progress on negotiations so far, the ExA sees no reason why a voluntary agreement cannot be completed within the post-examination period and therefore would recommend an agreement between the parties.
- 6.7.97. However, in the event that such an agreement is not forthcoming, the ExA is mindful that the protective provisions in part 1 of schedule 11 offer protection to affected undertakers. In light of such provisions as secured within the dDCO [\[AS-039\]](#), the ExA is therefore satisfied that the measures included would be sufficient to ensure that there would be no serious detriment to the carrying on of VDECL's undertaking. As such, the ExA considers that the tests set out in section 127 and section 138 of the PA2008 are met.

- 6.7.98. The ExA is satisfied that the CA powers sought over these plots are required for, or to facilitate, the proposed development. In view of the established urgent need for the low carbon infrastructure of the type proposed, the ExA is also satisfied that there is a compelling case in the public interest for the CA of rights over the land. As such, it meets the tests set out in section 122 of the PA2008.

CROWN LAND

- 6.7.99. The following plots have crown land interests:
- Plot 1-4, 3438.22 square metres (Crown Estate)
 - Plot 2-2, 369642.99 square metres (Crown Estate)
 - Plot 3-5, 26770.29 square metres (Crown Estate)
 - Plot 3-7, 25207.53 square metres (Crown Estate)
 - Plot 6-1, 696.70 square metres (Crown Estate)
 - Plot 7-2, 67546.89 square metres (Crown Estate)
 - Plot 7-3, 24232.05 square metres (Crown Estate)
 - Plot 8-1, 1059.54 square metres (Crown Estate)
 - Plot 8-3, 1407.57 square metres (Crown Estate)
- 6.7.100. Full details of the individual plots are listed in parts 1 and 4 of the BoR [\[REP7-011\]](#) and shown on the Crown Land Plan [\[APP-009\]](#).
- 6.7.101. No representations have been received by the Crown Estate nor has the Crown Authority engaged with the examination. However, the ExA did ask, in ExQ3 CA.3.5 for an update on the negotiations in relation to crown land with the applicant confirming, in [\[REP7-052\]](#), that negotiations with the Crown Estate have progressed, and that the section 135 consent letter had been agreed in principle and is in the final stages of completion. The applicant also confirmed that anticipated being able to submit the signed section 135 consent letter at the final deadline of the examination (deadline 8).
- 6.7.102. The applicant stated in its deadline 8 Cover Letter that section 135 consent had been granted by The Crown Estate Commissioners (TCE) and that the applicant understood that TCE had written to PINS to confirm the same for this deadline 8. Unfortunately, the ExA has not been contacted by TCE in order to confirm the position. In light of that, the ExA is of the view that the SoS may wish to request confirmation from TCE that section 135 consent had been granted.

6.8. CONCLUSIONS

- 6.8.1. The approach taken by the ExA to the question of whether and what land rights powers the ExA should recommend that the SoS grant is to apply the relevant sections of the PA2008, including section 122 and section 123, the CA Guidance, the Human Rights Act 1998 and, in the light of the representations received, to consider whether a compelling case is made in the public interest, balancing the public interest against private loss.

- 6.8.2. The dDCO [\[AS-039\]](#) deals with the proposed development itself and CA and TP powers. The case for CA and TP powers is not considered until the ExA forms a view on the case for the development overall. The ExA has considered the case for development in the preceding chapters and in chapter 4 and has concluded that the case is made.
- 6.8.3. In considering whether there is a compelling case in the public interest to acquire the land (s122(3) of the PA2008), the ExA takes into account the applicant's case for CA and TP, the individual issues and objections raised, and all submissions made to the examination, as set out above in the chapter.
- 6.8.4. This chapter deals with need for CA and TP, the purposes for which the powers are requested, alternatives to CA and TP, individual objections and issues, statutory undertakers and protective provisions, availability and adequacy of funds and potential impediments, and human rights and the compelling case in the public interest.
- 6.8.5. In relation to the application for CA and TP powers, the ExA finds:
- There is a clear need for all the land included in the BoR to be subject to CA and TP, the land sought for the proposed development and subject to CA would be land required for the purposes of section 122(2)(a) and (b) of the PA2008 and that it meets the tests set out in that section.
 - The application site is selected appropriately, all reasonable alternatives to CA have been explored and that there are no alternatives which ought to be preferred.
 - There is a need to secure the land and rights required to construct, operate and maintain the proposed development within a reasonable timeframe, and the extent of land over which powers are sought would be no more than is reasonably required and it is proportionate to the needs of the proposed development.
 - The private loss to those affected is in part mitigated through the selection of the land, minimisation of the extent of the rights and interests to be acquired and the inclusion, where relevant, of protective provisions in favour of those affected.
 - The proposed development represents a significant public benefit, and in all cases, relating to individual objections and issues, CA and TP is justified to enable its implementation.
 - In relation to all SUs, the ExA is satisfied that the measures included in the rDCO (appendix A) are sufficient to ensure that there would be no serious detriment to the carrying on of the SUs undertaking. As such, the ExA considers that the tests set out in section 127 and section 138 of the PA2008 are met.
 - The powers sought by the applicant in relation to SUs are necessary for the proposed development and consistent with s138 of the PA2008.
 - Adequate and secure funding would be likely to be available for CA.
 - The examination has ensured a fair and public hearing and any interference with human rights arising from implementation of the proposed development would be for a legitimate purpose that would

justify such interference in the public interest and to a proportionate extent.

- Compensation would be available for quantifiable loss.

- 6.8.6. The ExA has had regard to the Human Rights Act 1998. In some cases, there would be interference with private and family life and home in contravention of article 8, and interference in the peaceful enjoyment of possessions in contravention of article 1 of the First Protocol of the Human Rights Act 1998. Regarding article 6, the examination has ensured a fair and public hearing. The weight of national policy in favour of the proposed development and the wider public interest justifies the interference with human rights. The ExA therefore concludes that any interference with human rights arising from implementation of the proposed development would be proportionate and would strike a fair balance between the rights of the individual and the public interest.
- 6.8.7. Taking the above factors together, the ExA considers that the SoS can be satisfied that there is a compelling case in the public interest for CA and that the proposed development would comply with the PA2008 in this regard.
- 6.8.8. Concerns were raised in relation to the approach to alternatives, and the overall scale and extent of land required for the proposed development. However, the ExA concludes, for the reasons set above, that the applicant's approach to these matters complies with the CA Guidance in terms of being reasonable and proportionate. With regards the specific point about the flexibility sought within the order land and the provisions for overplanting, the ExA has agreed that the flexibility sought is necessary to deliver the benefits of the proposed development.
- 6.8.9. The ExA is satisfied with the application for TP powers because the rights sought are for identified legitimate purposes and are compatible with human rights tests and considers that the rDCO (appendix A) secures land rights powers appropriately in relation to the relevant legislation and policy.

7. DRAFT DEVELOPMENT CONSENT ORDER AND RELATED MATTERS

7.1. INTRODUCTION

- 7.1.1. This chapter provides an overview and comments on the Development Consent Order (DCO), the applicant's updates to the draft DCO (dDCO) during the examination, and the changes to the applicant's final dDCO [\[AS-039\]](#) leading to the recommended DCO (rDCO), which is included in [appendix A](#).
- 7.1.2. The first version of the dDCO [\[APP-039\]](#) together with an Explanatory Memorandum (EM) [\[APP-040\]](#) were submitted as part of the application and a further 8 revisions were submitted with the final copy being the Rule 17 response & end of examination version [\[AS-039\]](#). A tracked changes version and a Schedule of Changes to the Draft DCO were submitted with each copy.
- 7.1.3. The National Planning Statement (NPS) EN-1 includes references to requirements and states that the Secretary of State (SoS) should only impose requirements that are necessary, relevant to planning, relevant to the development to be consented, enforceable, precise, and reasonable in all other respects (paragraph 4.1.16). It also states that the SoS should consider the guidance in the National Planning Policy Framework (NPPF) and the [Planning Practice Guidance: Use of Planning Conditions](#) or any successor documents, where appropriate.

7.2. THE ORDER AS APPLIED FOR

- 7.2.1. The application's dDCO was based on the Infrastructure Planning (Model Provisions) (England and Wales) Order 2009 but departs from those clauses to draw upon drafting used in made orders for similar developments and other developments under the Planning Act 2008 (PA2008). Although there has been a change of approach to the use of Model Provisions since the Localism Act 2011, they remain a starting point for the consideration of the DCO.
- 7.2.2. Precedent cases have also been considered where appropriate. In particular, it draws on the Little Crow Solar Park Order 2022, the Longfield Solar Farm Order 2023, Gate Burton Energy Park Order 2024, the Cottam Solar Project Order 2024 and West Burton Solar Project Order 2025 adopting similar approaches to many of the articles included in the dDCO [\[AS-039\]](#).
- 7.2.3. There are 6 parts containing 51 articles and 14 schedules within the dDCO [\[AS-039\]](#) arranged in the following manner:

Table 5: Summary of the Structure of the dDCO

Part 1 - Preliminary	Includes Article (Art.) 1 and Art.2 which provide for the way in which the order should be cited, when it

	comes into force and defines various terms used in the order.
Part 2 - Principal Powers	Includes Art. 3 to 10 set out the principal powers requested within the DCO including the grant of development consent, allow for the use and maintenance of the proposed development, and sets out who has the benefit of the order and how those powers can be transferred. It includes provisions in relation to the disapplication and modification of provisions in the Neighbourhood Planning Act 2017, Hedgerows Regulations 1997, the Forestry Act 1967, Highways Act 1980 and the Local Government (Miscellaneous Provisions) Act 1976. Art. 9 seeks to ensure that the land on which the development would be constructed would be "operational land" and Art. 10 seeks to prevent any person from bringing statutory nuisance proceedings under the Environmental Protection Act 1990 in respect of noise.
Part 3 - Streets	Includes Art. 11 to 19 which allow for the execution of street works, alter the layout of streets, allow for the use of private roads, the temporary prohibition or restriction of use of streets and public rights of way (PRoWs), create new accesses to works, enter into agreements with street authorities and take traffic measure regulations.
Part 4 - Supplemental powers	Includes Art. 20 to 22 providing supplemental powers for the discharge of water, protective works to buildings and the authority to survey and investigate land.
Part 5 - Powers of acquisition and possession of land	Includes Art. 23 to 37. All articles relate to the acquisition and possession of land, including the compulsory acquisition of land, statutory authority to override easements and other rights, imposition of time limits for the acquisition of land compulsorily, compulsory acquisition of rights and imposition of restrictive covenants, extinguishment of private rights, acquisition of subsoil and airspace only and the temporary use of land. Article 35 relates to land belonging to statutory undertakers and 36 to the recovery of costs of new connections.
Part 6 - Miscellaneous and general	Includes Art. 38 to 49 which detail miscellaneous and general provisions in relation to removal of human remains, prevent double recovery, crown rights, certification, service of notices, felling or lopping of hedgerows and trees, arbitration, procedure in relation to certain approvals

	compensation, landlord and tenant law and national grid extension works.
Schedules 1-14	Contain information referred to in the articles, including the description of the authorised development, requirements, procedure for discharge of requirements, streets subject to street works, alteration of streets, permanent and temporary alteration of layout, PRowS to be temporarily closed, permanent and temporary use of motor vehicles on PRowS, access to works, traffic regulations, land in which only new rights may be acquired, modification of compensation and compulsory purchase enactments for the creation of new rights and imposition of new restrictive covenants, land of which temporary possession may be taken, hedgerows, protective provisions, documents to be certified, removal of hedgerows and arbitration rules.

7.3. EXAMINATION OF THE DRAFT DCO

- 7.3.1. An Issue Specific Hearing, ISH3 [\[EV5-001\]](#) was held to enable the ExA to ask questions on the applicant's proposed approach to the dDCO and the applicant to present and explain its dDCO alongside any amendments made up to that point of the examination. The ExA also invited comments from the host local authorities (HLAs), statutory consultees, statutory undertakers and other interested parties (IPs) on the dDCO.
- 7.3.2. The ExA asked several written questions on the dDCO at ExQ1 [\[PD-007\]](#) and at ExQ3 [\[PD-016\]](#), in addition to a schedule of changes to the dDCO [\[PD-017\]](#) which proposed some amendments to the dDCO. Further to this, the ExA also issued a Rule 17 request [\[PD-018\]](#) which had a direct bearing on the dDCO leading to the submission of a final draft of the dDCO [\[AS-039\]](#).
- 7.3.3. During the examination the applicant sought to make various changes to the dDCO. These changes, which include small alterations, typographical changes, corrections and drafting improvements to each successive version of the dDCO, are set out in the final version of the applicant's Schedule of Changes [\[AS-038\]](#). The applicant has also replied to the questions posed and the ExA's schedule of changes to the dDCO.
- 7.3.4. The notable changes made to the dDCO during the examination, and the reasons for them, are summarised in the table below, table 6.
- 7.3.5. The ExA is satisfied that all of these changes are justified by the evidence and can be recommended for inclusion in the DCO if the SoS concludes that development consent should be granted.
- 7.3.6. In addition, the ExA is suggesting further changes to the dDCO [\[AS-039\]](#) with the rDCO in Appendix A. Those changes are included in table 7.

Table 6: Summary of proposed changes done during the examination and the ExA's reasoning for accepting

Provision	Proposed Change	Why the change is necessary/ExA's reasoning
Article 2(1) Interpretation	Add: "'outline public rights of way management plan" means the document of that name identified in the table at Schedule 12 (documents and plans to be certified) and which is certified by the Secretary of State as the outline public rights of way management plan for the purposes of this Order".	Definition added as a result of there being a new management plan. ExA agrees with amendments for accurateness and consistency.
Article 2(1) Interpretation	Add: "flood risk assessment conclusions" means the document of that name identified in the table at Schedule 12 (documents and plans to be certified) and which is certified by the Secretary of State as the flood risk assessment conclusions for the purposes of this Order;"	Definition added as a result of the inclusion of new requirement (Requirement 20 - flood risk). ExA agrees with amendments for accurateness and consistency.
Article 2(1) Interpretation	Add: "flood risk operational mitigation" means the document of that name identified in the table at Schedule 12 (documents and plans to be certified) and which is certified by the Secretary of State as the flood risk operational mitigation for the purposes of this Order;"	Definition added as a result of the inclusion of new requirement (Requirement 20 - flood risk). ExA agrees with amendments for accurateness and consistency.
Article 2(1) Interpretation	Add: "waste and recycling strategy" means the document of that name identified in the table at Schedule 12 (documents and plans to be certified) and which is certified by the Secretary of State as the	Definition added as a result of the inclusion of new requirement (Requirement 20 - flood risk). ExA agrees with amendments for accurateness and consistency.

Provision	Proposed Change	Why the change is necessary/ExA's reasoning
	waste and recycling strategy for the purposes of this Order;"	
Article 12 - Application of the permit scheme	Additional article	Article added to clarify the interaction between the street works articles of the Order and the application of the relevant permitting schemes of the local highways authority. ExA agrees with addition of article as to provide clarity.
Article 22 - Authority to survey and investigate the land	Add: " (7) Section 13 (refusal to give possession to acquiring authority) of the 1965 Act applies to the entry onto, or possession of, land under this article to the same extent as it applies to the compulsory acquisition of land under this Order by virtue of section 125 (application of compulsory acquisition provisions) of the 2008 Act.	Paragraph added to ensure that section 13 of the Compulsory Purchase Act 1965 applies to the power granting authority to survey and investigate the land. ExA agrees with addition of paragraph 7 as it provides clarity in relation to application of section 13 of the Compulsory Purchase Act 1965.
Article 38 - Removal of human remains	Removal of Article from the DCO, as requested by the ExA	ExA was of the view that the article was not needed as it is unlikely that the proposed development would disturb human remains as part of the proposed works. The proposed works do include underground works, however these are not in the proximity of any known burial grounds.

Provision	Proposed Change	Why the change is necessary/ExA's reasoning
		Applicant agreed to the removal of article.
Article 44 - Felling or lopping of trees or removal of hedgerows	Add: " as shown on the vegetation removal plan" to paragraph (5)(a) and (b) and add paragraph 11 to read: " Paragraphs (1) to (10) are subject to paragraphs 7, 8 and 12 of Part 1 (requirements) of Schedule 2".	Additions to make the article clearer and more precise in its wording. ExA agrees with addition of article as to provide clarity.
Article 49 - National Grid extension works	Additional article	Article added to allow for a scenario in which National Grid would need to extend the existing Bicker Fen National Grid substation in advance of the applicant commencing the DCO works. This is also linked with optionality needed in terms of the design of the extension to Bicker Fen substation with National Grid considering two different options for the design of the connection and the worst-case scenario has been contemplated. ExA agrees with addition of article as to provide flexibility, within a 'Rochdale Envelope' approach.
Article 50 - Funding Contributions	Additional article	Secures the payment of contribution for the Beacon Fen ecological steering group (as per Requirement 7 - landscape and ecological management

Provision	Proposed Change	Why the change is necessary/ExA's reasoning
		plan) to North Kesteven District Council, with the agreement of all HLAs. ExA agrees with addition of article as to provide clarity.
Article 51 - Ecology and planting contributions	Additional article	Secures the payment of an ecology and planting contribution for the provision of hedgerow planting, gapping up of existing hedgerows or another improvement to connectivity for biodiversity between natural habitats within the administrative area of Boston Borough Council. This Article is triggered by the commencement of work No. 4A within the administrative of Boston Borough Council.
Article 51 - Ecology and planting contributions	Amend 9 (b) to read: "ecology purpose" means the provision of hedgerow planting, gapping up of existing hedgerows or another improvement to connectivity for biodiversity between natural habitats or visual amenity within the administrative area of Boston Borough Council and in reasonable proximity to the southern boundary of the existing substation;"	Addition made in order to provide clarity to the article in response to the Rule 17 request issued by the ExA.
Schedule 1 - Authorised Development	Add to (c): "(ii) installation of a new 400 kV transmission tower to be located between an existing tower which will link into	Addition made to the wording of Work No.5C to reflect changes to the infrastructure required

Provision	Proposed Change	Why the change is necessary/ExA's reasoning
	the new electrical bay comprising part of Work 5B; and"	to facilitate the extension of Bicker Fen substation. ExA agrees with addition of article as to provide clarity.
Schedule 2, Part 1, Requirement 5(1) - Detailed design approval	Add: "such approval to be in consultation with Lincolnshire County Council as local highway authority in relation to paragraph (f).	Addition to clarify the role of the local highway authority in relation to approval for vehicular and pedestrian access, parking and circulation areas. ExA agrees with addition of requirement as to provide clarity and certainty.
Schedule 2, Part 1, Requirement 7(2) Landscape and ecological management plan (LEMP)	Add: and must include—(a) terms of reference for the ecological steering group, including details for the group's membership which is to include a representative from each of the relevant planning authorities; and (b) details of how the plan will secure funding for both the ecological steering group and provision of ecology and planting in Boston Borough Council's administrative area.	Addition made to align with amendments made at Deadline 5 to the Outline Landscape and Ecological Management Plan and to make clear that any detailed LEMP submitted for approval must include terms of reference for the ecological steering group (ESG), and funding by the undertaker for the Councils' involvement in the ESG and offsite planting in Boston Borough Council. ExA agrees with addition of requirement as to provide clarity and certainty.
Schedule 2, Part 1,	Add: The biodiversity net gain strategy must include details of	Addition made to include the minimum

Provision	Proposed Change	Why the change is necessary/ExA's reasoning
Requirement 8(2) - Biodiversity Net Gain	how the strategy will secure a minimum of 30% biodiversity net gain in area-based habitat units, a minimum of 10% biodiversity net gain in hedgerow units, and 10% 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' Statutory Metric (February 2024).	biodiversity net gain percentages that the applicant is committed to delivering, following from comments from the ExA and local authorities. ExA requested change and agrees with addition to provide certainty and consistency with other similar DCOs.
Schedule 2, Part 1, Requirement 18 - Public Rights of Way	Add new requirement	New requirements added, following from ISH1, which secures that the authorised development may not commence until a public rights of way management plan ('PRoWMP') has been submitted to and approved by the relevant planning authority. ExA agrees with addition of requirement as to provide clarity and certainty.
Schedule 2, Part 1, Requirement 20 - Flood Risk	Add new requirement	New requirement added in discussion with the Environment Agency in order to provide clarity in relation to requirements for mitigation of flood risk during the lifetime of the proposed development and the role of the undertaker and of the

Provision	Proposed Change	Why the change is necessary/ExA's reasoning
		flood risk strategy. ExA agrees with addition of requirement as to provide clarity and certainty.
Schedule 2, Part 1, Requirement 20 - Flood Risk	Add: "Any strategy approved pursuant to this requirement must be implemented as approved and maintained throughout the construction and operation of the" to read: (3) Any strategy approved pursuant to this requirement must be implemented as approved and maintained throughout the construction and operation of the authorised development.	Amendment made in response to request from the Environment Agency. ExA agrees with amendment to the requirement as it links it the requirement more directly to the construction and operational phases of the proposed development.
Schedule 2, Part 1, Requirement 21 - Contaminated land and groundwater	Add new requirement	New requirement added following from discussions with Lincolnshire County Council (LCC) and other HLAs regarding the management of waste from the proposed development. ExA agrees with addition of requirement as to provide clarity and certainty.
Schedule 2, Part 1, Requirement 27 -Fees	Amend fee amount in paragraph (2)(a), (b) and (c) and text to read: "(2) The fee payable for each application under sub-paragraph (1) is as follows— (a) a fee of £2,578 for the first application for the discharge of	Amendments made as a result of further negotiations and discussions with the local authorities and required in order to accurately reflect latest agreed positions. ExA agrees with

Provision	Proposed Change	Why the change is necessary/ExA's reasoning
	each of the requirements 5(detailed design approval), 6 (battery safety management), 7 (landscape and ecological management plan), 8 (biodiversity net gain) 10 (surface and foul water drainage), 12 (construction environmental management plan), 13 (construction traffic management plan), 16 (soils management), requirement 17 (skills, supply chain and employment), 19 (decommissioning and restoration), requirement 20 (flood risk) and requirement 22 (operational waste) (b) a fee of £588 for each subsequent application for the discharge of each of the requirements listed in paragraph (a) and any application under requirement 5 in respect of the requirements listed in paragraph (a); and (c) a fee of £298 for any application for the discharge of— (i) any other requirements not listed in paragraph (a);(ii) any application under requirement 3 (approved details and amendments to them) in respect of requirements not listed in paragraph (a); and(iii) any approval required by a document referred to by any requirement or a document approved pursuant to any requirement"	amendments for accurateness.

Provision	Proposed Change	Why the change is necessary/ExA's reasoning
Schedule 8 - Land in which only new rights etc. may be acquired	Delete: "18-15, 18-18 To construct, operate, maintain and use Work No. 5E, and to construct, operate, maintain, use, inspect and alter any protective works, access works, utility apparatus or other ancillary or related development (as set out in Schedule 1 (authorised development)) in connection therewith.	Removal of reference to plots 18-15, 18-18 as to reflect updates to Land Plans [REP7-003] ExA agrees with amendments for accurateness and consistency.
Schedule 8 - Land in which only new rights etc. may be acquired	Delete reference to 18-17 and amend reference to 18-57 to read: To construct, operate, maintain and use Work No. 5C4A, Work No. 5D5C and Work No. 5E, and to construct, operate, maintain, use, inspect and alter any protective works, access works, utility apparatus or other ancillary or related development (as set out in Schedule 1 (authorised development)) in connection therewith.	Removal of reference to plot 18-17 and amendment to the wording in relation to plot 18-57 to reflect minor changes to the land plots over which the Applicant is seeking powers to compulsorily acquire rights and impose restrictive covenants. ExA agrees with amendments for accurateness and consistency.
Schedule 13 - Hedgerows	Delete reference to removal of part of the hedgerow (approx. 30 metres) as shown within the area identified by yellow shading on the vegetation removal plan (Sheet 25 of 26), reference H1125.	Removal of hedgerow reference H1125 as powers no longer needed. ExA agrees with amendments for accurateness and consistency.

7.4. DCO MATTERS OF CONTENTION AND OBJECTIONS OUTSTANDING

- 7.4.1. This section addresses matters which had not been agreed between IPs and the applicant by the end of the examination and certain matters which have been the subject of the ExA's written questions and/or discussion at hearings about potential changes to the applicant's final dDCO [\[AS-039\]](#).
- 7.4.2. Table 7 below, sets out those DCO provisions that the ExA recommends are changed. The recommended changes are reflected in the recommended DCO (rDCO) in [Appendix A](#).
- 7.4.3. As confirmed in the final Statement of Commonality (SoC) [\[REP8-027\]](#) matters remained unresolved in relation to the text proposed within the dDCO between the applicant and some of the parties included in the SoC and for which the applicant was asked to prepare statements of common ground. In addition, not all matters in relation to statutory undertakers are resolved. Outstanding matters between the applicant and statutory undertakers are addressed in chapter 6 under Land Rights and Related Matters. Matters raised by Network Rail Infrastructure Limited and Vicarage Drove Energy Centre Limited and addressed in the table below as far as these relate to the provisions included within the dDCO [\[AS-039\]](#).
- 7.4.4. Changes that the ExA accepts are necessary, are not the subject of outstanding disagreements and do not materially affect the delivery of or controls over the proposed development, are not discussed here.

Table 7: Summary of the main proposed changes after examination and the ExA's reasoning for why change is necessary

Provision	Proposed Change	Why the change is necessary/ExA's reasoning
Schedule 11 Protective Provisions - Part 10	Paragraph 110. - (6) to read: 116. (6) The undertaker must not exercise the powers conferred by— article 3 (development consent etc. granted by the Order); article 5 (maintenance of the authorised development); article 20 (discharge of water); article 22 (authority to survey and investigate the land); article 23 (compulsory acquisition of land);	To protect the SUs land and rights over land and to guarantee the continuation of its statutory undertaking, as justified and set out in chapter 6 of this report.

Provision	Proposed Change	Why the change is necessary/ExA's reasoning
	article 24 (compulsory acquisition of land – incorporation of the mineral code); article 25 (statutory authority to override easements and other rights); article 27 (compulsory acquisition of rights and imposition of restrictive covenants); article 28 (private rights); article 30 (acquisition of subsoil and airspace only); article 32 (temporary use of land for carrying out the authorised development); article 34 (temporary use of land for maintaining or decommissioning the authorised development); article 35 (statutory undertakers); article 37 (Use of airspace within the Order land); article 44 (felling or lopping of trees or removal of hedgerows); p) the powers conferred by section 11(3) (power of entry) of the 1965 Act; q) the powers conferred by section 203 (power to override easements and rights) of the Housing and Planning Act 2016; r) the powers conferred by section 172 (right to enter and survey land) of the Housing and Planning Act 2016; s) any powers under in respect of the temporary possession of land under the Neighbourhood Planning Act 2017; in respect of any railway property unless the exercise of such powers is with the consent of Network Rail.	

Provision	Proposed Change	Why the change is necessary/ExA's reasoning
	(2) The undertaker must not in the exercise of the powers conferred by this Order prevent pedestrian or vehicular access to any railway property, unless preventing such access is with the consent of Network Rail. (3) The undertaker must not exercise the powers conferred by sections 271 or 272 of the 1990 Act, of access of Network Rail to railway property, but such right of access may be diverted with the consent of Network Rail. (4) The undertaker must not under the powers of this Order acquire or use or acquire new rights over, or seek to impose any restrictive covenants over, any railway property or extinguish any existing rights of Network rail, in respect of any third party property, except with the consent of Network Rail. (5) The undertaker must not under the powers of this Order do anything which would result in railway property being incapable of being used or maintained or which would affect the safe running of trains on the railway. (6) Where Network Rail is asked to give its consent pursuant to this paragraph, such consent must not be unreasonably withheld but may be given subject to reasonable conditions but it shall never be unreasonable to withhold consent for reasons of operational or railway safety (such matters to be in Network Rail's absolute discretion). (7) The undertaker must enter into an asset protection agreement prior to the carrying out of any specified work.	
Schedule 11	Add:	To address concerns raised by

Provision	Proposed Change	Why the change is necessary/ExA's reasoning
Protective Provisions - Part 12	Acquisition of land 157. Regardless of any provision in this Order or anything shown on the land plans, the undertaker must not acquire any apparatus owned, occupied or maintained by VDEC at Vicarage Drove Energy Centre for the purposes of electricity generation and storage otherwise than by agreement.	VDEC in [AS-049] and provide protection for its statutory undertaking.

7.5. STATUTORY NUISANCE

- 7.5.1. The application is accompanied by a Statement of Statutory Nuisance (SSN) [\[APP-275\]](#) in accordance with regulation 5(2)(f) of the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009).
- 7.5.2. The SSN should be read in conjunction with The Environmental Statement (ES) (documents reference 6.2 ES Vol.1 [\[APP-050\]](#) to [\[APP-070\]](#), documents reference 6.3 ES Vol.2 [\[APP-071\]](#) to [\[APP-190\]](#) and 6.4 ES Vol.3 [\[APP-192\]](#) to [\[APP-274\]](#), and the oCEMP [\[REP8-015\]](#).
- 7.5.3. The SSN sets out appropriate mitigation measures to ensure that the proposed development has no significant effects that would give rise to a statutory nuisance. It is therefore demonstrated that no statutory nuisance effects are considered likely to occur and it is not expected that the construction, operation (and maintenance) and decommissioning of the proposed development would cause a statutory nuisance.
- 7.5.4. Whilst it is not expected that the proposed development would cause a statutory nuisance, the SSN highlights the dDCO [\[AS-039\]](#) accompanying the application contains a provision, Article 10 (Defence to proceedings in respect of statutory nuisance), that would provide a defence to proceedings brought under sub-paragraph (g) of Section 79(1) of the EPA (noise emitted from premises so as to be prejudicial to health or a nuisance), subject to certain criteria outlined under that article.
- 7.5.5. Having reviewed the SSN, the ExA is content that the applicant has appropriately identified the scope of potential nuisance sources from the construction, operation and maintenance of the proposed development. The ExA agrees with this conclusion.
- 7.5.6. Taking a precautionary approach to do this, Art. 10 of the dDCO [\[AS-039\]](#) contains a defence to proceedings in respect of statutory nuisance of a type that is commonly provided for in NSIPs. The drafting is based on other made DCOs. The ExA agrees that the necessary steps to reduce the risk of nuisance events have been taken and that this provision is an appropriate

provision against circumstances where unforeseen but unavoidable nuisance occurs.

7.6. CONCLUSIONS

- 7.6.1. Taking into consideration section 120 of the Planning Act, the ExA has considered all versions of the dDCO and considered the degree to which the final dDCO [[AS-039](#)] has addressed outstanding matters.
- 7.6.2. The ExA is satisfied that the requirements set out in the final version of the dDCO [[AS-039](#)] provide mitigation for potential adverse effects identified in the ES and sufficiently address the issues raised during the course of the examination. The recommended DCO (rDCO) is in [appendix A](#) and reflects the changes included in table 7.
- 7.6.3. Taking all matters raised in this chapter and all matters relevant to the DCO raised in the remainder of this report fully into account, if the SoS is minded to make the order, the ExA recommend it should be made in the form set out in [appendix A](#).
- 7.6.4. The ExA considers that the rDCO includes requirements that are necessary, relevant to planning, relevant to the development to be consented, enforceable, precise, and reasonable in line with the NPS EN1 (Paragraph 4.1.16).

8. SUMMARY OF FINDINGS AND CONCLUSIONS

8.1. INTRODUCTION

- 8.1.1. This chapter summarises the ExA's conclusions arising from the report and sets out the primary recommendation to the Secretary of State for Energy Security and Net Zero (SoS).

8.2. CONSIDERATION OF FINDINGS AND CONCLUSIONS

- 8.2.1. The ExA's conclusions are subject to the provisions of the recommended Development Consent Order (rDCO) in appendix A. With the mitigation secured by the rDCO in appendix A, the adverse impacts arising from the proposed development, and cumulatively with other developments, would be unlikely to outweigh its benefits.
- 8.2.2. The ExA has considered the proposed development against s104 of the Planning Act 2008(PA2008) and finds it is within the scope of the Overarching National Policy Statement for Energy, the National Policy Statement for Renewable Energy Infrastructure and the National Policy Statement for Electricity Networks Infrastructure. Consequently, these are relevant National Policy Statements and have effect. The ExA finds no evidence that s104(4) to (8) of the PA2008 apply and, as required by s104(3), concludes that the application should be decided in accordance with the relevant National Policy Statements.
- 8.2.3. As the ExA noted in chapter 5 above, the urgent need for low carbon energy is established in relevant National Policy Statements and the proposed development would assist in its timely delivery. In relation to s104(2) and s104(3) of the PA2008, the ExA concludes that making the rDCO would be in accordance with the relevant National Policy Statements, relevant development plans, and other relevant policy.
- 8.2.4. In reaching the above conclusions, the ExA has had regard to the Local Impact Reports produced by Lincolnshire County Council, North Kesteven District Council and Boston Borough Council. The ExA has also had regard to all matters that it considered to be both important and relevant in reaching its conclusions. The ExA has considered relevant legislation and guidance.
- 8.2.5. The ExA has had regard to the applicant's Habitats Regulations Assessment Screening Report and Natural England's comments. Whilst the SoS is the competent authority under the Conservation of Habitats and Species Regulations 2017, and will make the definitive assessment, the ExA concludes that the proposed development would not be likely to give rise to adverse effects on the integrity of European Sites. The ExA finds that there is sufficient information for the SoS to enable undertaking of an appropriate assessment and to fulfil its duty under the requirements under the Conservation of Habitats and Species Regulations 2017. The ExA sees no

reason for Habitats Regulations Assessment matters to prevent the making of the Development Consent Order.

- 8.2.6. With regard to designated heritage assets and in consideration of Regulation 3 of the Infrastructure Planning (Decisions) Regulations 2010 (Decisions Regulations), the ExA has found the proposed development would result in less than substantial harm to designated heritage assets. However, those harms are outweighed by the very great public benefit from the provision of low carbon energy to meet the need identified in NPS EN-1 and by the other benefits of the application as summarised in chapter 5.
- 8.2.7. In terms of biodiversity and considering Regulation 7 of the Decisions Regulations, the ExA has had regard to the United Nations Environmental Programme Convention on Biological Diversity of 1992 and is satisfied that biodiversity, ecological and nature conservation issues have been adequately assessed and the requirements of NPS EN-1 are met. Furthermore, the ExA considers the Biodiversity Net Gain arising from the proposed development would enhance biodiversity, as well as assist in enhancing ecological and nature conservation effects. As such, it considers that it has fulfilled its biodiversity duty in accordance with the Natural Environment and Rural Communities Act 2006.
- 8.2.8. In relation to the application for Compulsory Acquisition (CA) and Temporary Possession (TP) powers, the ExA concluded that:
- The application site has been appropriately selected.
 - All reasonable alternatives to CA have been explored.
 - The applicant would have access to the necessary funds and the rDCO provides a clear mechanism whereby the necessary funding can be guaranteed.
 - There is a clear need for all the land included in the Book of Reference (BoR) to be subject to CA or TP.
 - There is a need to secure the land and rights required to construct, operate and maintain the proposed development within a reasonable timeframe, and the proposed development represents a significant public benefit to weigh in the balance.
 - The private loss to those affected has been mitigated through the selection of the land.
 - The minimisation of the extent of the rights and interests proposed to be acquired and the inclusion, where relevant, of protective provisions in favour of those affected.
 - That in all cases relating to individual objections and issues that CA and TP is justified to enable implementation of the proposed development.
 - The powers sought satisfy the conditions set out in s122 and s123 of the PA2008 as well as the CA Guidance.
- 8.2.9. The ExA has had regard to the provisions of the Human Rights Act 1998. In some cases, there would be interference with private and family life and home in contravention of Article 8, and interference in the peaceful enjoyment of possessions in contravention of Article 1 of the First Protocol of

the Human Rights Act 1998. In relation to Article 6 (entitlement to a fair and public hearing), the examination has ensured a fair and public hearing. The weight of policy in favour of the proposed development and the wider public interest qualifies any interference with the human rights affected. The ExA finds that any interference with human rights arising from implementation of the proposed development would be proportionate and strike a fair balance between the rights of the individual and the public interest.

- 8.2.10. The ExA has had regard to the Public Sector Equality Duty (PSED). The ExA finds no harm to the interests of persons who share a protected characteristic or have any adverse effect on the relationships between such persons and persons who do not share a protected characteristic. The ExA has found no breach of the PSED.
- 8.2.11. The ExA concludes that there is a compelling case in the public interest for the powers sought and that the benefits of the proposed development outweigh the harm to heritage assets, the adverse visual and landscape effects, the adverse cumulative effects and the adverse land use effects due to the loss of best and most versatile land, although the ExA does give great weight to the effects of the proposed development on land use.

8.3. MATTERS THE SECRETARY OF STATE MAY WISH TO CONSIDER

- 8.3.1. The SoS may wish to seek an update from the applicant and certain affected persons, namely: Gerard Amaury Arnaud March Phillips de Lisle, Patrick Simon Benjamin, Peter Andrew March Phillipps de Lisle, Roythornes Trustees Limited, Simon John Henry Still de Lisle, The Lincoln Diocesan Trust and Board of Finance Limited, The Vicarage Drove Project Limited in relation to the status of their objection to the CA and/or TP of land as a voluntary agreement was expected to be reached with the applicant.
- 8.3.2. The SoS may also wish to seek an update from the applicant and certain SUs, namely: AGR Solar 2 Limited, AGR Solar 3 Limited, National Grid Electricity Distribution (East Midlands) PLC, Network Rail Infrastructure Limited, Triton Knoll OFTO Limited, Vicarage Drove BESS Limited and Vicarage Drove Energy Centre in relation to the status of their objection to the CA and/or TP of land, status of any negotiations in relation to protective provisions since the end of the examination and the status of any voluntary agreement which they might have entered to with the applicant.
- 8.3.3. The SoS may also consider if article 8 (1) of the rDCO in appendix A, should be deleted in light of The Planning and Infrastructure Act 2025.

8.4. RECOMMENDATION

- 8.4.1. The ExA's findings and conclusions, which considered important and relevant matters and all submissions, are set out in this report. The ExA complies with all applicable legal duties and does not take account of any matters that are not relevant to the recommendations. The ExA finds no important and

relevant matters that would individually or collectively lead to a different recommendation.

- 8.4.2. The ExA considers that the proposed development meets the tests in s104 of the PA2008. On that basis, the ExA recommend that the SoS makes the Beacon Fen Development Consent Order in the form attached in appendix A.

APPENDIX A: THE RECOMMENDED DEVELOPMENT CONSENT ORDER

2026 No. 0000

INFRASTRUCTURE PLANNING

The Beacon Fen Energy Park Order 202*

Made - - - - 2026

Coming into force 2026

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An application has been made to the Secretary of State under section 37 of the Planning Act 2008^(a) (“the 2008 Act”) and in accordance with the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009^(b) for an Order granting development consent.

The application was examined by the Examining Authority (appointed by the Secretary of State) pursuant to Chapter 3 of Part 6 of the 2008 Act and carried out in accordance with Chapter 4 of Part 6 of the 2008 Act and the Infrastructure Planning (Examination Procedure) Rules 2010^(c).

The Examining Authority, having considered the application together with the documents that accompanied it and the representations made and not withdrawn, in accordance with section 74(2)^(d) of the 2008 Act has submitted a report to the Secretary of State setting out their findings, conclusions and recommendation in respect of the application.

The Secretary of State, having considered the report and recommendation of the Examining Authority, having taken into account the environmental information in accordance with regulation 4 of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017^(e) and having had regard to the documents and matters referred to in section 104(2)^(f) of the 2008 Act, has decided to make an Order granting development consent for the development described in the application.

The Secretary of State, in exercise of the powers conferred by sections 114^(g), 115^(h), 120⁽ⁱ⁾, 122^(j) and 123^(k) of the 2008 Act, makes the following Order—

-
- (a) 2008 c. 29. Parts 1 to 7 were amended by Chapter 6 of Part 6 of and Schedule 13 to the Localism Act 2011 (c. 20).
(b) S.I. 2009/2264.
(c) S.I. 2010/103, amended by S.I. 2012/635.
(d) As amended by paragraph 29(1) and (3) of Part 1 of Schedule 13 to the Localism Act 2011 (c. 20).
(e) S.I. 2017/572.
(f) Section 104(2) was amended by paragraph 49 of Schedule 13 to the Localism Act 2011 and section 58(5) of the Marine and Coastal Access Act 2009 (c.23).
(g) As amended by paragraph 55 of Part 1 of Schedule 13 to the Localism Act 2011.
(h) As amended by section 160 of the Housing and Planning Act 2016 (c. 22) and section 43 of the Wales Act 2017 (c. 4).
(i) As amended by section 140 and paragraph 60 of Part 1 of Schedule 13 to the Localism Act 2011.
(j) As amended by paragraph 62 of Part 1 of Schedule 13 to the Localism Act 2011.
(k) Ibid.

PART 1

Preliminary

Citation and commencement

1. This Order may be cited as the Beacon Fen Energy Park Order 202* and comes into force on [].

Interpretation

- 2.—(1) In this Order, unless the context requires otherwise—

- “the 1961 Act” means the Land Compensation Act 1961(a);
- “the 1965 Act” means the Compulsory Purchase Act 1965(b);
- “the 1980 Act” means the Highways Act 1980(c);
- “the 1981 Act” means the Compulsory Purchase (Vesting Declarations) Act 1981(d);
- “the 1984 Act” means the Road Traffic Regulation Act 1984(e);
- “the 1989 Act” means the Electricity Act 1989(f);
- “the 1990 Act” means the Town and Country Planning Act 1990(g);
- “the 1991 Act” means the New Roads and Street Works Act 1991(h);
- “the 2008 Act” means the Planning Act 2008(i);
- “the 2015 Order” means the Town and Country Planning (General Permitted Development) (England) Order 2015;
- “address” includes any number or address used for the purposes of electronic transmission;
- “apparatus” has the same meaning as in Part 3 (street works in England and Wales) of the 1991 Act except that, unless otherwise provided, it further includes pipelines (and parts of them), aerial markers, cathodic protection test posts, field boundary markers, transformer rectifier kiosks, electricity cables, telecommunications equipment and electricity cabinets;
- “archaeological mitigation strategy” means the document of that name identified in the table at Schedule 12 (documents and plans to be certified) and which is certified by the Secretary of State as the archaeological mitigation strategy for the purposes of this Order;
- “authorised development” means the development and associated development described in Schedule 1 (authorised development) and any other development authorised by this Order which is development within the meaning of section 32 (meaning of “development”) of the 2008 Act;
- “book of reference” means the document of that name identified in the table at Schedule 12 (documents and plans to be certified) and which is certified by the Secretary of State as the book of reference for the purposes of this Order;
- “building” includes any structure or erection or any part of a building, structure or erection;
- “business day” means a day other than Saturday or Sunday which is not Christmas Day, Good Friday or a bank holiday under section 1 of the Banking and Financial Dealings Act 1971(j);

-
- (a) 1961 c. 33.
 - (b) 1965 c. 56.
 - (c) 1980 c. 66.
 - (d) 1981 c. 66.
 - (e) 1984 c. 27.
 - (f) 1989 c. 29.
 - (g) 1990 c. 8.
 - (h) 1991 c. 22.
 - (i) 2008 c. 29.
 - (j) 1971 c. 80.

“carriageway” has the meaning given in section 329 (further provision as to interpretation) of the 1980 Act;

“commence” means to carry out any material operation, as defined in section 155 (when development begins) of the 2008 Act, forming part of the authorised development other than permitted preliminary works, and “commencement” and “commenced” must be construed accordingly;

“crown land plan” means the plan of that name identified in the table at Schedule 12 (documents and plans to be certified) and which is certified by the Secretary of State as the crown land plan for the purposes of this Order;

“cycle track” has the same meaning as in section 329 (further provision as to interpretation) of the 1980 Act;

“cycleway” means a way constituting or comprised in a highway, being a way over which the public have the following, but no other, rights of way, that is to say, a right of way on pedal cycles (other than pedal cycles which are motor vehicles within the meaning of the Road Traffic Act 1988^(a)) with a right of way on foot and a right of way on horseback or leading a horse;

“date of final commissioning” means the date on which the authorised development commences operation by generating electricity on a commercial basis but excluding the generation of electricity during commissioning and testing;

“electronic transmission” means a communication transmitted—

- (a) by means of an electronic communications network; or
- (b) by other means but while in electronic form;

“environmental statement” means the document of that name identified in the table at Schedule 12 (documents and plans to be certified) and which is certified by the Secretary of State as the environmental statement for the purposes of this Order;

“environmental statement addendum” means the document of that name identified in the table at Schedule 12 (documents and plans to be certified) and which is certified by the Secretary of State as the environmental statement for the purposes of this Order;

“existing substation” means the existing substation at Bicker Fen, Bicker, Lincolnshire, PE20 3BQ, owned and operated by NGET;

“flood risk assessment conclusions” means the document of that name identified in the table at Schedule 12 (documents and plans to be certified) and which is certified by the Secretary of State as the flood risk assessment conclusions for the purposes of this Order;

“flood risk operational mitigation” means the document of that name identified in the table at Schedule 12 (documents and plans to be certified) and which is certified by the Secretary of State as the flood risk operational mitigation for the purposes of this Order;

“footway” and “footpath” have the same meanings as in section 329 (further provision as to interpretation) of the 1980 Act;

“highway”, “highway authority” and “local highway authority” have the same meaning as in the 1980 Act^(b);

“land plans” means the plans of that name identified in the table at Schedule 12 (documents and plans to be certified) and which is certified by the Secretary of State as the land plans for the purposes of this Order;

“maintain” includes inspect, upkeep, repair, refurbish, adjust, alter, remove, reconstruct and replace in relation to the authorised development, but not remove, reconstruct or replace the whole of, the authorised development, provided such works do not give rise to any materially new or materially different environmental effects to those identified in the environmental statement; and any derivative of “maintain” must be construed accordingly;

(a) 1988 c. 52.

(b) 1980 c. 66. “highway” is defined in section 328(1). For “highway authority” see section 1.

“National Grid” means National Grid Electricity Transmission plc, company number 2366977, whose registered office is at 1-3 Strand, London, WC2N 5EH, being a licence holder within the meaning of Part 1 of the 1989 Act;

“National Grid 2005 permission” means planning permission B/05/0046 granted by Boston Borough Council on 20 April 2005 (and any variation thereof);

“Order land” means the land shown on the land plans and crown land plan which is within the limits of land to be acquired or used and described in the book of reference;

“Order limits” means the limits shown on the land plans, crown land plan and works plan within which the authorised development may be carried out and land acquired or used;

“outline battery safety management plan” means the document of that name identified in the table at Schedule 12 (documents and plans to be certified) and which is certified by the Secretary of State as the outline battery safety management plan for the purposes of this Order;

“outline construction environmental management plan” means the document of that name identified in the table at Schedule 12 (documents and plans to be certified) and which is certified by the Secretary of State as the outline construction environmental management plan for the purposes of this Order;

“outline construction traffic management plan” means the document of that name identified in the table at Schedule 12 (documents and plans to be certified) and which is certified by the Secretary of State as the outline construction traffic management plan for the purposes of this Order;

“outline decommissioning environmental management plan” means the document of that name identified in the table at Schedule 12 (documents and plans to be certified) and which is certified by the Secretary of State as the outline decommissioning environmental management plan for the purposes of this Order;

“outline design principles” means the document of that name identified in the table at Schedule 12 (documents and plans to be certified) and which is certified by the Secretary of State as the outline design principles for the purposes of this Order;

“outline drainage strategy” means the document of that name identified in the table at Schedule 12 (documents and plans to be certified) and which is certified by the Secretary of State as the outline drainage strategy for the purposes of this Order;

“outline landscape and ecological management plan” means the document of that name identified in the table at Schedule 12 (documents and plans to be certified) and which is certified by the Secretary of State as the outline landscape and ecological management plan for the purposes of this Order;

“outline public rights of way management plan” means the document of that name identified in the table at Schedule 12 (documents and plans to be certified) and which is certified by the Secretary of State as the outline public rights of way management plan for the purposes of this Order;

“outline skills, supply chain and employment plan” means the document of that name identified in the table at Schedule 12 (documents and plans to be certified) and which is certified by the Secretary of State as the outline skills, supply chain and employment plan for the purposes of this Order;

“outline soil management plan” means the document of that name identified in the table at Schedule 12 (documents and plans to be certified) and which is certified by the Secretary of State as the outline soil management plan for the purposes of this Order;

“the permit scheme” means the Lincolnshire Permit Scheme for Road Works and Street Works Order 2016, which scheme is made under Part 3 of the Traffic Management Act 2004;

“permitted preliminary works” means operations consisting of—

- (a) pre-construction surveys and/or monitoring;
- (b) site clearance (including vegetation removal and demolition of existing structures);

- (c) advanced planting works;
- (d) archaeological investigations;
- (e) environmental surveys;
- (f) investigations for the purpose of assessing ground conditions;
- (g) remedial work in respect of contamination or other adverse ground conditions;
- (h) diversion and laying of services;
- (i) erection of any temporary means of enclosure; and
- (j) the temporary display of site notices and/or advertisements;

“relevant planning authority” means the local planning authority for the area in which the land to which the provisions of this Order apply is situated and as more particularly described for the purposes of the requirements in Part 1 of Schedule 2 (requirements);

“requirement” means a requirement set out in Part 1 of Schedule 2 (requirements), and a reference to a numbered requirement is a reference to the requirement set out in the paragraph of that Part of that Schedule with the same number;

“statutory undertaker” means any person falling within section 127(8) or section 138(4A) of the 2008 Act and includes a public communications provider as defined in section 151(1) of the Communications Act 2003^(a) and an operator of an electronic communications code network as defined in paragraph 1(1) of Schedule 17 to the Communications Act 2003^(b);

“street” means a street within the meaning of section 48 (streets, street works and undertakers) of the 1991 Act, together with land on the verge of a street or between two carriageways, and includes any footpath and part of a street;

“street authority”, in relation to a street, has the same meaning as in Part 3 of the 1991 Act^(c);

“street works” means the works listed in article 11(1) (street works);

“streets, rights of way and access plans” means the plans of that name identified in the table at Schedule 12 (documents and plans to be certified) and which is certified by the Secretary of State as the streets, rights of way and access plans for the purposes of this Order;

“subsidiary” has the same as in section 1159 of the Companies Act 2006^(d);

“subsoil” means any stratum of land that is below the surface of the ground;

“traffic authority” has the same meaning as in section 121A (traffic authorities) of the 1984 Act^(e);

“undertaker” means Beacon Fen Energy Park Ltd (company registration number 13347752 whose registered address is Stirling Square, 5-7 Carlton Gardens, London, England, SW1Y 5AD) or any person who has the benefit of this Order in accordance with articles 6 (benefit of the Order) and 7 (consent to transfer benefit of the Order);

“Upper Tribunal” means the Lands Chamber of the Upper Tribunal;

“waste and recycling strategy” means the document of that name identified in the table at Schedule 12 (documents and plans to be certified) and which is certified by the Secretary of State as the waste and recycling strategy for the purposes of this Order;

“watercourse” includes all rivers, streams, ditches, drains, canals, cuts, culverts, dykes, sluices, sewers and passages through which water flows except a public sewer or drain;

“work” means a work set out in Schedule 1 (authorised development);

(a) 2003 c. 21.

(b) 2003 c. 21.

(c) “street authority” is defined in section 49, which was amended by paragraph 117 of Schedule 1 to the Infrastructure Act 2015 (c. 7).

(d) 2006 c.46.

(e) Section 121A was inserted by paragraph 70 of Schedule 8 to the 1991 Act, and subsequently amended by section 271 of the Greater London Authority Act 1999 (c. 29); section 1(6) of, and paragraphs 70 and 95 of Schedule 1 to the Infrastructure Act 2015; and S.I. 1999/1920 and S.I. 2001/1400.

“works plan” means the plan of that name identified in the table at Schedule 12 (documents and plans to be certified) and which is certified by the Secretary of State as the works plan for the purposes of this Order; and

“vegetation removal plan” means the plan of that name identified in the table at Schedule 12 (documents and plans to be certified) and which is certified by the Secretary of State as the vegetation removal plan for the purposes of this Order.

(2) References in this Order to rights over land include references to rights to do or restrain or to place and maintain anything in, on or under land or in the airspace above its surface and to any trusts or incidents (including restrictive covenants) to which the land is subject and references in this Order to the imposition of restrictive covenants are references to the creation of rights over land which interfere with the interests or rights of another and are for the benefit of land which is acquired under this Order or over which rights are created and acquired under this Order or is otherwise comprised in this Order.

(3) All distances, directions, capacities and lengths referred to in this Order are approximate distances between lines or points on a numbered work comprised in the authorised development and shown on the works plan and streets, rights of way and access plans are taken to be measured along that work.

(4) References in this Order to numbered works are references to the works comprising the authorised development as numbered in Schedule 1 (authorised development) and shown on the works plan and a reference in this Order to a work designated by a number, or by a combination of letters and numbers, is a reference to the work so designated in that Schedule and a reference to “Work No. 4” or “numbered work 4” means numbered works 4A and 4B inclusive and the same principle applies to such numbered works that contain letters.

(5) All areas described in square metres in the book of reference are approximate.

(6) In this Order “include” or “includes” must be construed without limitation unless the contrary intention appears.

(7) References in this Order to any statutory body include that body’s successor in respect of functions which are relevant to this Order.

(8) In this Order, references to materially new or materially different environmental effects in comparison with those reported in the environmental statement must not be construed so as to include the avoidance, removal or reduction of an adverse environmental effect or positive environmental effect, or the increase of an assessed positive environmental effect, that was reported in the environmental statement as a result of the authorised development.

(9) References in this Order to any statute, order, regulation or similar instrument are to be construed as a reference to the statute, order, regulation or instrument as amended by any subsequent statute, order, regulation or instrument or as contained in any subsequent re-enactment.

PART 2

Principal powers

Development consent etc. granted by the Order

3.—(1) Subject to the provisions of this Order including the requirements in Part 1 of Schedule 2 (requirements), the undertaker is granted development consent for the authorised development to be carried out within the Order limits.

(2) Each numbered work must be situated within the corresponding numbered area shown on the works plan.

(3) Any enactment applying to land within or immediately adjacent to the Order limits has effect subject to the provisions of this Order.

Authorisation of use

4.—(1) The undertaker is authorised to operate and use the authorised development for which development consent is granted by this Order.

(2) Paragraph (1) does not relieve the undertaker of any duty to obtain any permit, licence or other obligation under any other legislation that may be required from time to time to authorise the operation or use of any part of the authorised development.

Maintenance of the authorised development

5. 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.

Benefit of the Order

6.—(1) Subject to article 7 (consent to transfer benefit of the Order) the provisions of this Order have effect solely for the benefit of the undertaker, save for Work No. 5 in relation to which the provisions of this Order have effect for the benefit of the undertaker and National Grid.

(2) Paragraph (1) does not apply to the works for which consent is granted by this Order for the express benefit of owners and occupiers of land, statutory undertakers and other persons affected by the authorised development.

Consent to transfer benefit of the Order

7.—(1) Subject to paragraph (3), the undertaker may—

- (a) transfer to another person (“the transferee”) any or all of the benefit of the provisions of this Order and such related statutory rights as may be agreed between the undertaker and the transferee; and
- (b) grant to another person (“the lessee”) for a period agreed between the undertaker and the lessee any or all of the benefit of the provisions of this Order and such related statutory rights as may be so agreed between the undertaker and the lessee.

(2) Where a transfer or grant has been made in accordance with paragraph (1) references in this Order to the undertaker except in paragraph (8) are to include references to the transferee or the lessee.

(3) The prior written consent of the Secretary of State is required for the exercise of the powers of paragraph (1) except where—

- (a) the transferee or lessee is National Grid;
- (b) the transferee or lessee is the holder of a licence under section 6 (licences authorising supply etc.) of the 1989 Act; or
- (c) the time limits for claims for compensation in respect of the acquisition of land or effects upon land under this Order have elapsed and—
 - (i) no such claims have been made;
 - (ii) any such claim has been made and has been compromised or withdrawn;
 - (iii) compensation has been paid in full and final settlement of any such claim;
 - (iv) payment of compensation into court has taken place in lieu of settlement of any such claim; or
 - (v) it has been determined by a tribunal or court of competent jurisdiction in respect of any such claim that no compensation is payable.

(4) Where the consent of the Secretary of State is not required, the undertaker must notify the Secretary of State in writing before transferring or granting a benefit referred to in paragraph (1).

(5) The notification referred to in paragraph (4) must state—

- (a) the name and contact details of the person to whom the benefit of the powers will be transferred or granted;
- (b) subject to paragraph (6), the date on which the transfer will take effect;
- (c) the powers to be transferred or granted;
- (d) pursuant to paragraph (8), the restrictions, liabilities and obligations that will apply to the person exercising the powers transferred or granted; and
- (e) where relevant, a plan showing the works or areas to which the transfer or grant relates.

(6) The date specified under paragraph (5)(b) must not be earlier than the expiry of 14 business days from the date of the receipt of the notification.

(7) The notification given must be signed by the undertaker and the person to whom the benefit of the powers will be transferred or granted as specified in that notification.

(8) Where the undertaker has transferred any benefit, or for the duration of any period during which the undertaker has transferred any benefit—

- (a) the benefit transferred or granted (“the transferred benefit”) must include any rights that are conferred, and any obligations that are imposed, by virtue of the provisions to which the benefit relates;
- (b) the transferred benefit will reside exclusively with the transferee or, as the case may be, the lessee and the transferred benefit will not be enforceable against the undertaker; and
- (c) the exercise by a person of any benefits or rights conferred in accordance with any transfer or grant under paragraph (1) is subject to the same restrictions, liabilities and obligations as would apply under this Order if those benefits or rights were exercised by the undertaker.

Disapplication, application and modification of legislative provisions

8.—(1) The provisions Neighbourhood Planning Act 2017^(a) do not apply in relation to the construction of any work or the carrying out of any operation required for the purposes of, or in connection with, the construction, operation, maintenance or decommissioning of any part of the authorised development insofar as they relate to the temporary possession of land under articles 32 (temporary use of land for carrying out the authorised development) and 34 (temporary use of land for maintaining or decommissioning the authorised development) of this Order.

(2) Regulation 6 of the Hedgerows Regulations 1997^(b) is modified so as to read for the purposes of this Order only as if there were inserted after paragraph (1)(j) the following—

“(k) or for carrying out or the maintenance of development which has been authorised by the Beacon Fen Energy Park Order 202[].”

(3) For the purposes of section 9 (requirement of licence for felling) of the Forestry Act 1967^(c) any felling comprised in the carrying out of any work or operation required for the purposes of, or in connection with, the authorised development is deemed to be immediately required for the purpose of carrying out development authorised by planning permission granted under the 1990 Act.

(4) Section 141 of the 1980 Act (restriction on planting trees etc. in or near carriageway) does not apply to any tree or shrub planted with the agreement of the highway authority in the course of the authorised development before completion of construction.

(5) Notwithstanding the provisions of section 208 (liability) of the 2008 Act, for the purposes of regulation 6 of the Community Infrastructure Levy Regulations 2010^(d) any building comprised in the authorised development is deemed to be—

(a) 2017 c. 20.

(b) S.I. 1997/1160.

(c) 1967 c. 10. Section 9 was amended by section 4 of, and paragraph 141 of, Schedule 2 to, the Planning (Consequential Provisions) Act 1990 (c. 11) and S.I. 2013/755. There are other amendments to section 9 that are not relevant to this Order.

(d) S.I. 2010/948, amended by S.I. 2011/987. There are other amending instruments but none are relevant to this Order.

- (a) a building into which people do not normally go; or
- (b) a building into which people go only intermittently for the purpose of inspecting or maintaining fixed plant or machinery.

(6) Section 42 of the Local Government (Miscellaneous Provisions) Act 1976^(a) (certain future local Acts, etc., to be subject to the planning enactments, etc., except as otherwise provided) will not apply to the extent that it would make provisions of this Order authorising the construction, operation and maintenance and decommissioning of the authorised development subject to other provisions.

Planning permission

9.—(1) Development consent granted by this Order is to be treated as specific planning permission for the purposes of section 264(3) (cases in which land is to be treated as operational land for the purposes of that Act) of the 1990 Act.

(2) The authorised development may be carried out or continue to be carried out pursuant to this Order notwithstanding the initiation of development pursuant to any planning permission which may be physically incompatible with the authorised development or inconsistent with any provision of this Order.

(3) Any conditions of any planning permission granted prior to the date of this Order that are incompatible with the requirements of this Order or the authorised development shall cease to have effect from the date the authorised development is commenced and for the purpose of this article planning permissions deemed to be granted pursuant to the 2015 Order shall be deemed to be granted prior to the date of this Order.

(4) Nothing in this Order restricts the undertaker from seeking or implementing, or the relevant planning authority from granting, planning permission for development within the Order limits.

(5) In this article—

- (a) “initiate” means when development of land shall be taken to be begun as per section 56 (time when development begun) of the 1990 Act, and “initiated” and “initiation” are defined accordingly; and
- (b) “planning permission” means planning permission granted under the 1990 Act including planning permission deemed to be granted under article 3 (permitted development) of Schedule 2 to the 2015 Order.

Defence to proceedings in respect of statutory nuisance

10.—(1) Where proceedings are brought under section 82(1) (summary proceedings by person aggrieved by statutory nuisance) of the Environmental Protection Act 1990^(b) in relation to a nuisance falling within paragraph (g) of section 79(1) of that Act (noise emitted from premises so as to be prejudicial to health or a nuisance) no order may be made, and no fine may be imposed, under section 82(2) of that Act if the defendant shows that the nuisance—

- (a) relates to premises used by the undertaker for the purposes of, or in connection with, the authorised development and that the nuisance is attributable to the carrying out or use of the authorised development in accordance with a notice served under section 60 (control of noise on construction sites), or a consent given under section 61 (prior consent for work on construction sites), of the Control of Pollution Act 1974^(c); or
- (b) is a consequence of the construction, operation, maintenance or decommissioning of the authorised development and cannot reasonably be avoided.

^(a) 1976 c. 57. Section 42 was amended by section 15(6) of the Food and Environment Protection Act 1985 (c. 48).

^(b) 1990 c. 43.

^(c) 1974 c. 40. Section 61(9) was amended by section 162 and paragraph 15 of Schedule 3 to the Environment Protection Act 1990 (c. 25). There are other amendments to 1974 Act which are not relevant to this Order.

(2) Section 61(9) (prior consent for work on construction sites) of the Control of Pollution Act 1974 does not apply where the consent relates to the use of premises by the undertaker for the purposes of, or in connection with, the authorised development.

(3) In this article “premises” has the same meaning as in section 79 of the Environmental Protection Act 1990.

PART 3

Streets

Street works

11.—(1) The undertaker may, for the purposes of the authorised development, enter on so much of any of the streets specified in Schedule 3 (streets subject to street works) and may—

- (a) break up or open the street, or any sewer, drain or tunnel under it;
- (b) drill, tunnel or bore under the street;
- (c) place and keep apparatus in the street;
- (d) maintain apparatus in the street, change its position or remove it;
- (e) repair, replace or otherwise alter the surface or structure of the street or any culvert under the street; and
- (f) execute any works required for or incidental to any works referred to in sub-paragraphs (a) to (e).

(2) The authority given by paragraph (1) is a statutory right or licence for the purposes of sections 48(3) (streets, street works and undertakers) and 51(1) (prohibition of unauthorised street works) of the 1991 Act.

(3) Where the undertaker is not the street authority, the provisions of sections 54 (notice of certain works) to 106 (index of defined expressions) of the 1991 Act apply to any street works carried out under paragraph (1).

Application of the permit scheme

12.—(1) — The permit scheme applies with the modifications set out in this article to street works carried out under the power conferred by article 11 (street works) of this Order.

(2) For the purposes of this Order—

- (a) a permit may not be refused or granted subject to conditions which relate to the imposition of moratoria; and
- (b) a permit may not be granted subject to conditions where compliance with those conditions would constitute a breach of this Order or where the undertaker would be unable to comply with those conditions pursuant to the powers conferred by this Order.

(3) References to moratoria in paragraph (2) mean restrictions imposed under section 58A (restrictions on works following substantial street works) of the 1991 Act.

(4) Without restricting the undertaker’s recourse to any alternative appeal mechanism which may be available under the permit scheme or otherwise, the undertaker may appeal any decision to refuse to grant a permit or to grant a permit subject to conditions pursuant to the permit scheme in accordance with the mechanism set out in Part 2 of Schedule 2 (procedure for discharge of requirements).

Power to alter layout, etc., of streets

13.—(1) The undertaker may for the purposes of the authorised development alter the layout of or carry out any works in the street—

- (a) in the case of the streets specified in column 2 of the table in Part 1 (permanent alteration of layout) of Schedule 4 (alteration of streets) permanently in the manner specified in relation to that street in column 3; and
- (b) in the case of the streets as specified in column 2 of the table in Part 2 (temporary alteration of layout) of Schedule 4 (alteration of streets) temporarily in the manner specified in relation to that street in column 3.

(2) Without prejudice to the specific powers conferred by paragraph (1), but subject to paragraphs (3) and (4), the undertaker may, for the purposes of the authorised development, alter the layout of any street and, without limitation on the scope of this paragraph, the undertaker may—

- (a) alter the level or increase the width of any kerb, footpath, footway, cycleway, cycle track or verge; and
- (b) make and maintain passing places.

(3) The undertaker must restore any street that has been temporarily altered under this Order to the reasonable satisfaction of the street authority.

(4) The powers conferred by paragraph (2) may not be exercised without the consent of the street authority.

(5) Paragraphs (3) and (4) do not apply where the undertaker is the street authority for a street in which the works are being carried out.

Construction and maintenance of altered streets

14.—(1) The permanent alterations to each of the streets specified in Part 1 (permanent alteration of layout) of Schedule 4 (alteration of streets) to this Order must be completed to the reasonable satisfaction of the highway authority where applicable and, unless otherwise agreed by the street authority, the alterations must be maintained by and at the expense of the undertaker for a period of 12 months from their completion and from the expiry of that period by and at the expense of the street authority.

(2) Subject to paragraph (3), the temporary alterations to each of the streets specified in Part 2 (temporary alteration of layout) of Schedule 4 (alteration of streets) must be completed to the reasonable satisfaction of the street authority and the temporary alterations must be maintained by and at the expense of the undertaker.

(3) Those restoration works carried out pursuant to article 13(3) (power to alter layout, etc., of streets) must be completed to the reasonable satisfaction of the street authority and must be maintained by the undertaker for a period of 12 months from their completion and from the expiry of that period by and at the expense of the street authority.

(4) In any action against the undertaker in respect of loss or damage resulting from any failure by it to maintain a street under this article, it is a defence (without prejudice to any other defence or the application of the law relating to contributory negligence) to prove that the undertaker had taken such care as in all the circumstances was reasonably required to secure that the part of the street to which the action relates was not dangerous to traffic.

(5) For the purposes of a defence under paragraph (4), a court must in particular have regard to the following matters—

- (a) the character of the street including the traffic which was reasonably to be expected to use it;
- (b) the standard of maintenance appropriate for a street of that character and used by such traffic;
- (c) the state of repair in which a reasonable person would have expected to find the street;
- (d) whether the undertaker knew, or could reasonably have been expected to know, that the condition of the part of the street to which the action relates was likely to cause danger to users of the street; and

- (e) where the undertaker could not reasonably have been expected to repair that part of the street before the cause of action arose, what warning notices of its condition had been displayed,

but for the purposes of such a defence it is not relevant that the undertaker had arranged for a competent person to carry out or supervise the maintenance of that part of the street to which the action relates unless it is also proved that the undertaker had given that person proper instructions with regard to the maintenance of the street and that those instructions had been carried out.

(6) Paragraphs (2) to (5) do not apply where the undertaker is the street authority for a street in which the works are being carried out.

Use of private roads

15.—(1) The undertaker may use any private road within the Order limits for the passage of persons or vehicles (with or without materials, plant and machinery) for the purposes of, or in connection with, the authorised development.

(2) The undertaker must compensate the person liable for the repair of a road to which paragraph (1) applies for any loss or damage which that person may suffer by reason of the exercise of the power conferred by paragraph (1).

(3) Any dispute as to a person's entitlement to compensation under paragraph (2), or as to the amount of such compensation, is to be determined under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

Temporary prohibition or restriction of use of streets and public rights of way

16.—(1) For the purposes of the authorised development, the undertaker may temporarily close, prohibit the use of, restrict the use of, authorise the use of, alter or divert any street or public right of way and may for any reasonable time—

- (a) divert the traffic or a class of traffic from the street or public right of way;
- (b) authorise the use of motor vehicles on classes of public rights of way where, notwithstanding the provisions of this article, there is otherwise no public right to use motor vehicles; and
- (c) subject to paragraph (2), prevent all persons from passing along the street or public right of way.

(2) The undertaker must provide reasonable access for pedestrians going to or from premises abutting a street or public right of way affected by the temporary closure, prohibition, restriction, alteration or diversion of a street or public right of way under this article if there would otherwise be no such access.

(3) Without prejudice to the generality of paragraph (1), the undertaker may temporarily close, prohibit the use of, authorise the use of, restrict the use of, alter or divert—

- (a) the public rights of way specified in column 2 of the table in Part 1 (public rights of way to be temporarily closed) of Schedule 5 (streets and public rights of way) to the extent specified in column 3 of that table;
- (b) the public right of way specified in column 2 of the table in Part 2 (permanent use of motor vehicles on public rights of way) of Schedule 5 (streets and public rights of way) to the extent specified in column 3 of that table;
- (c) the public rights of way specified in column 2 of the table in Part 3 (temporary use of motor vehicles on public rights of way) of Schedule 5 (streets and public rights of way) to the extent specified in column 3 of that table; and
- (d) the public rights of way specified in column 2 of the table in Part 4 (temporary management of public rights of way) of Schedule 5 (streets and public rights of way) to the extent specified in column 3 of that table.

(4) For the purposes of paragraphs (1) and (3), the undertaker must not temporarily close, prohibit the use of, authorise the use of, restrict the use of, alter or divert—

- (a) any street or public right of way specified in paragraph (3) without first consulting the street authority; and
- (b) any other street or public right of way without the consent of the street authority, and the street authority may attach reasonable conditions to any such consent.

(5) Any person who suffers loss by the suspension of any private right of way under this article is entitled to compensation to be determined, in case of dispute, under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

(6) Without prejudice to the scope of paragraph (1), the undertaker may use any street or public right of way which has been temporarily closed under the powers conferred by this article and within the Order limits as a temporary working site, subject to the undertaker returning the street or public right of way to its previous condition after such use ends.

(7) In this article expressions used in this article and in the 1984 Act have the same meaning.

Access to works

17.—(1) The undertaker may, for the purposes of the authorised development—

- (a) form and lay out the permanent means of access, or improve existing means of access, in the locations specified in Part 1 (permanent means of access to works) of Schedule 6 (access to works);
- (b) form and lay out the temporary means of access in the location specified in Part 2 (temporary means of access to works) of Schedule 6 (access to works); and
- (c) with the approval of the relevant planning authority after consultation with the highway authority, form and lay out such other means of access or improve existing means of access, at such locations within the Order limits as the undertaker reasonably requires for the purposes of the authorised development.

(2) If the relevant planning authority receives an application for approval under paragraph (1)(c) and fails to notify the undertaker of its decision within 56 days of receiving the application, that authority will be deemed to have granted approval.

Agreements with street authorities

18.—(1) A street authority and the undertaker may enter into agreements with respect to—

- (a) the construction, strengthening, improvement, repair or reconstruction of any street including any structure carrying the street over or under the authorised development under the powers conferred by this Order;
- (b) the maintenance of the structure of any bridge or tunnel carrying a street over or under the authorised development;
- (c) any stopping up, prohibition, restriction, alteration or diversion of a street authorised by this Order;
- (d) the undertaking in the street of any of the works referred to in article 11 (street works), article 13 (Power to alter layout, etc., of streets) and article 14 (construction and maintenance of altered streets);
- (e) the adoption by a street authority which is the highway authority of works—
 - (i) undertaken on a street which is existing public maintainable highway; or
 - (ii) which the undertaker and highway authority agree to be adopted as public maintainable highway; or
- (f) such works as the parties may agree.

(2) If such agreement provides that the street authority must undertake works on behalf of the undertaker the agreement may, without prejudice to the generality of paragraph (1)—

- (a) make provision for the street authority to carry out any function under this Order which relates to the street in question;

- (b) specify a reasonable time for the completion of the works; and
- (c) contain such terms as to payment and otherwise as the parties consider appropriate.

Traffic regulation measures

19.—(1) Subject to the provisions of this article the undertaker may at any time, in the interests of safety and for the purposes of, or in connection with, the authorised development, temporarily place traffic signs and signals in the extents of the road specified in column 1 of the table in Schedule 7 (traffic regulation measures) and the placing of those traffic signs and signals is deemed to have been permitted by the traffic authority for the purposes of section 65 of the 1984 Act and the Traffic Signs Regulations and General Directions 2016(a).

(2) Subject to the provisions of this article and without limitation to the exercise of the powers conferred by paragraph (1), the undertaker may make temporary provision for the purposes of the authorised development—

- (a) as to the speed at which vehicles may proceed along any road;
- (b) permitting, prohibiting or restricting the stopping, waiting, loading or unloading of vehicles on any road;
- (c) as to the prescribed routes for vehicular traffic or the direction or priority of vehicular traffic on any road;
- (d) permitting, prohibiting or restricting the use by vehicular traffic or non-vehicular traffic of any road; and
- (e) suspending or amending in whole or in part any order made, or having effect as if made, under the 1984 Act.

(3) No speed limit imposed by or under this Order applies to vehicles falling within regulation 3(4) of the Road Traffic Exemptions (Special Forces) (Variation and Amendment) Regulations 2011(b) when in accordance with regulation 3(5) of those regulations.

(4) Before exercising the power conferred by paragraph (2) the undertaker must—

- (a) consult with the chief officer of police in whose area the road is situated; and
- (b) obtain the written consent of the traffic authority such consent not to be unreasonably withheld.

(5) The undertaker must not exercise the powers in paragraphs (1) or (2) unless it has—

- (a) given not less than 4 weeks' notice in writing of its intention so to do to the chief officer of police and to the traffic authority in whose area the road is situated; and
- (b) not less than 7 days before the provision is to take effect published the undertaker's intention to make the provision in one or more newspapers circulating in the area in which any road to which the provision relates is situated.

(6) Any provision made under the powers conferred by paragraphs (1) or (2) of this article may be suspended, varied or revoked by the undertaker from time to time by subsequent exercise of the powers conferred by paragraph (1) or (2).

(7) Any provision made by the undertaker under paragraphs (1) or (2)—

- (a) must be made by written instrument in such form as the undertaker considers appropriate;
- (b) has effect as if duly made by the traffic authority in whose area the road is situated as a traffic regulation order under the 1984 Act and the instrument by which it is effected may specify specific savings and exemptions to which the provision is subject; and
- (c) is deemed to be a traffic order for the purposes of Schedule 7 to the Traffic Management Act 2004(c) (road traffic contraventions subject to civil enforcement).

(a) S.I. 2016/362.

(b) S.I. 2011/935.

(c) 2004 c. 18.

PART 4

Supplemental powers

Discharge of water

20.—(1) Subject to paragraphs (3) and (4) the undertaker may use any watercourse or any public sewer or drain for the drainage of water in connection with the authorised development and for that purpose may lay down, take up and alter pipes and may on any land within the Order limits, make openings into, and connections with, the watercourse, public sewer or drain.

(2) Any dispute arising from the making of connections to or the use of a public sewer or drain by the undertaker under paragraph (1) is to be determined as if it were a dispute under section 106 (right to communicate with public sewers) of the Water Industry Act 1991(a).

(3) The undertaker must not discharge any water into any watercourse, public sewer or drain except with the consent of the person to whom it belongs or the person or body otherwise having authority to give such consent; and such consent may be given subject to such terms and conditions as that person may reasonably impose, but must not be unreasonably withheld.

(4) The undertaker must not carry out any works to or make any opening into any public sewer or drain except—

- (a) in accordance with plans approved by the person to whom the sewer or drain belongs, but such approval must not be unreasonably withheld; and
- (b) where that person has been given the opportunity to supervise the making of the opening.

(5) The undertaker must not, in carrying out or maintaining works pursuant to this article, damage or interfere with the bed or banks of any watercourse forming part of a main river other than in accordance with a permit granted by the Environment Agency.

(6) The undertaker must take such steps as are reasonably practicable to secure that any water discharged into a watercourse or public sewer or drain under this article is as free as may be practicable from gravel, soil or other solid substance, oil or matter in suspension.

(7) This article does not authorise a groundwater activity or a water discharge activity within the meaning of the Environmental Permitting (England and Wales) Regulations 2016(b).

(8) In this article—

- (a) “public sewer or drain” means a sewer or drain which belongs to Homes England, the Environment Agency, an internal drainage board, a joint planning board, a local authority, a National Park Authority, a sewerage undertaker or an urban development corporation; and
- (b) other expressions, excluding watercourse, used both in this article and in the Water Resources Act 1991(c) have the same meaning as in that Act.

(9) If a person who receives an application for consent under paragraph (3) or approval under paragraph (4)(a) fails to notify the undertaker of a decision within 28 days of receiving an application, that person is deemed to have granted consent or given approval, as the case may be.

Protective works to buildings

21.—(1) Subject to the following provisions of this article, the undertaker may at its own expense carry out such protective works to any building lying within the Order limits as the undertaker considers necessary or expedient.

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- (a) 1991 c. 56. Section 106 was amended by section 35(8)(a) of the Competition and Service (Utilities) Act 1992 (c. 43) and sections 36(2) and 99 of the Water Act 2003 (c. 37). There are other amendments to the section which are not relevant to this Order.
 - (b) S.I. 2016/1154. “Groundwater activity” is defined in paragraph 3 of Schedule 22. “Water discharge activity” is defined in paragraph 3 of Schedule 21.
 - (c) 1991 c.57.

(2) Protective works may be carried out—

- (a) at any time before or during the construction of any part of the authorised development in the vicinity of the building; or
- (b) after the completion of that part of the authorised development in the vicinity of the building at any time up to the end of the period of five years beginning with the date of final commissioning.

(3) For the purpose of determining how the powers under this article are to be exercised, the undertaker may enter and survey any building falling within paragraph (1) and any land within its curtilage.

(4) For the purpose of carrying out protective works under this article to a building, the undertaker may (subject to paragraphs (5) and (6))—

- (a) enter the building and any land within its curtilage; and
- (b) where the works cannot be carried out reasonably conveniently without entering land which is adjacent to the building but outside its curtilage, enter the adjacent land (but not any building erected on it).

(5) Before exercising—

- (a) a right under paragraph (1) to carry out protective works to a building;
- (b) a right under paragraph (3) to enter a building and land within its curtilage;
- (c) a right under paragraph (4)(a) to enter a building and land within its curtilage; or
- (d) a right under paragraph (4)(b) to enter land,

the undertaker must, except in the case of emergency, serve on the owners and occupiers of the building or land not less than 14 days' notice of its intention to exercise that right and, in a case falling within sub-paragraph (a), (c) or (d), specifying the protective works proposed to be carried out.

(6) Where a notice is served under paragraph (5)(a), (5)(c) or (5)(d), the owner or occupier of the building or land concerned may, by serving a counter-notice within the period of 10 days beginning with the day on which the notice was served, require the question whether it is necessary or expedient to carry out the protective works or to enter the building or land to be referred to arbitration under article 45 (arbitration).

(7) The undertaker must compensate the owners and occupiers of any building or land in relation to which rights under this article have been exercised for any loss or damage arising to them by reason of the exercise of those rights.

(8) Where—

- (a) protective works are carried out under this article to a building; and
- (b) within the period of five years beginning with the date of final commissioning it appears protective works are inadequate to protect the building against damage caused by the construction or use of that part of the authorised development,

the undertaker must compensate the owners and occupiers of the building for any loss or damage sustained by them.

(9) Nothing in this article relieves the undertaker from any liability to pay compensation under section 10(2) (compensation for injurious affection) of the 1965 Act.

(10) Any compensation payable under paragraph (7) or (8) must be determined, in case of dispute, under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

(11) Section 13 (refusal to give possession to acquiring authority) of the 1965 Act applies to the entry onto, or possession of, land under this article to the same extent as it applies to the compulsory acquisition of land under this Order by virtue of section 125 (application of compulsory acquisition provisions) of the 2008 Act.

(12) In this article “protective works” in relation to a building means—

- (a) underpinning, strengthening and any other works the purpose of which is to prevent damage which may be caused to the building by the construction, maintenance or use of the authorised development; and
- (b) any works the purpose of which is to remedy any damage which has been caused to the building by the construction, maintenance or use of the authorised development.

Authority to survey and investigate the land

22.—(1) The undertaker may for the purposes of this Order enter on any land shown within the Order limits or which may be affected by the authorised development and—

- (a) survey or investigate the land;
- (b) without prejudice to the generality of sub-paragraph (a), make trial holes in such positions on the land as the undertaker thinks fit to investigate the nature of the surface layer and subsoil and remove soil samples;
- (c) without prejudice to the generality of sub-paragraph (a), carry out ecological or archaeological investigations on such land; and
- (d) place on, leave on and remove from the land apparatus for use in connection with the survey and investigation of land and making of trial holes.

(2) No land may be entered or equipment placed or left on or removed from the land under paragraph (1) unless at least 14 days' notice has been served on every owner and occupier of the land.

(3) Any person entering land under this article on behalf of the undertaker—

- (a) must, if so required entering the land, produce written evidence of their authority to do so; and
- (b) may take with them such vehicles and equipment as are necessary to carry out the survey or investigation or to make the trial holes.

(4) No trial holes may be made under this article—

- (a) in land located within the highway boundary without the consent of the highway authority; or
- (b) in a private street without the consent of the street authority but such consent must not be unreasonably withheld.

(5) The undertaker must compensate the owners and occupiers of the land for any loss or damage arising by reason of the exercise of the authority conferred by this article, such compensation to be determined, in case of dispute under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

(6) If either a highway authority or a street authority which receives an application for consent fails to notify the undertaker of its decision within 28 days of receiving the application for consent—

- (a) under paragraph (4)(a) in the case of a highway authority; or
- (b) under paragraph (4)(b) in the case of a street authority,

that authority is deemed to have granted consent.

(7) Section 13 (refusal to give possession to acquiring authority) of the 1965 Act applies to the entry onto, or possession of, land under this article to the same extent as it applies to the compulsory acquisition of land under this Order by virtue of section 125 (application of compulsory acquisition provisions) of the 2008 Act.

PART 5

Powers of acquisition and possession of land

Compulsory acquisition of land

23.—(1) The undertaker may—

- (a) acquire compulsorily so much of the Order land as is required for the authorised development or to facilitate it or as is incidental to it; and
- (b) use any land so acquired for the purposes authorised by this Order or for any other purposes in connection with or ancillary to the authorised development.

(2) This article is subject to article 26 (time limit for exercise of authority to acquire land compulsorily), article 27 (compulsory acquisition of rights and imposition of restrictive covenants), article 30 (acquisition of subsoil and airspace only), article 32 (temporary use of land for carrying out the authorised development), article 41 (crown rights) and Schedule 11 (protective provisions).

Compulsory acquisition of land – incorporation of the mineral code

24.—(1) Parts 2 and 3 of Schedule 2 to the Acquisition of Land Act 1981^(a) (Minerals) are incorporated in this Order subject to the modifications that—

- (a) paragraph 8(3) is not incorporated;
- (b) for “the acquiring authority” substitute “the undertaker”; and
- (c) for “undertaking” substitute “authorised development”.

Statutory authority to override easements and other rights

25.—(1) The carrying out or use of development authorised by this Order and the doing of anything else authorised by this Order is authorised, including for the purpose specified in section 158(2) (nuisance: statutory authority) of the 2008 Act, notwithstanding that it involves—

- (a) an interference with an interest or right to which this article applies; or
- (b) a breach of a restriction as to user of land arising by virtue of contract.

(2) The undertaker will pay compensation to any person whose land is injuriously affected by—

- (a) an interference with an interest or right to which this article applies; or
- (b) a breach of a restriction as to user of land arising by virtue of contract,

authorised by virtue of this Order and the operation of section 158 of the 2008 Act.

(3) The interests and rights to which this article apply are any easement, liberty, privilege, right or advantage annexed to land and adversely affecting other land, including any natural right to support and includes restrictions as to the user of land arising by the virtue of a contract.

(4) Subsection (2) of section 10 of the 1965 Act applies to paragraph (2) by virtue of section 152(5) of the 2008 Act (compensation in case where no right to claim in nuisance).

(5) Any rule or principle applied to the construction of section 10 of the 1965 Act applies to the construction of paragraph (2) (with any necessary modifications).

(a) 1981 c. 67.

Time limit for exercise of authority to acquire land compulsorily

26.—(1) After the end of the period of five years beginning on the day on which this Order is made—

- (a) no notice to treat may be served under Part 1 of the 1965 Act; and
- (b) no declaration may be executed under section 4 of the 1981 Act as applied by article 29 (application of the 1981 Act)(a),

in relation to any part of the Order land.

Compulsory acquisition of rights and imposition of restrictive covenants

27.—(1) Subject to paragraph (2) and article 32 (temporary use of land for carrying out the authorised development), the undertaker may acquire compulsorily such rights over the Order land or impose such restrictive covenants over the Order land as may be required for any purpose for which that land may be acquired under article 23 (compulsory acquisition of land), by creating them as well as by acquiring rights already in existence.

(2) Subject to the provisions of this paragraph, article 28 (private rights) and article 35 (statutory undertakers), in the case of the Order land specified in column 1 of Schedule 8 (land in which only new rights etc. may be acquired) the undertaker's powers of compulsory acquisition are limited to the acquisition of existing rights and benefit of restrictive covenants over that land and the creation and acquisition of such new rights and the imposition of restrictive covenants for the purpose specified in relation to that land in column 2 of that Schedule.

(3) Subject to section 8 (other provisions as to divided land) of the 1965 Act, where the undertaker creates or acquires an existing right over land or the benefit of a restrictive covenant under paragraph (1) or (2), the undertaker will not be required to acquire a greater interest in that land.

(4) Schedule 9 (modification of compensation and compulsory purchase enactments for creation of new rights and imposition of restrictive covenants) has effect for the purpose of modifying the enactments relating to compensation and the provisions of the 1965 Act in their application in relation to the compulsory acquisition under this article of a right over land by the creation of a new right or the imposition of a restrictive covenant.

(5) In any case where the acquisition of rights or imposition of a restrictive covenant under paragraph (1) is required for the purposes of diverting, replacing or protecting the apparatus of a statutory undertaker, the undertaker may, with the consent of the Secretary of State, transfer the power to acquire such rights or impose restrictive covenants to the statutory undertaker in question.

(6) The exercise by a statutory undertaker of any power in accordance with a transfer under paragraph (5) is subject to the same restrictions, liabilities and obligations as would apply under this Order if that power were exercised by the undertaker.

(7) This article is subject to article 41 (crown rights).

Private rights

28.—(1) Subject to the provisions of this article, all private rights or restrictive covenants over land subject to compulsory acquisition under this Order will be extinguished—

(a) 1981 c. 66. Sections 2(3), 6(2) and 11(6) were amended by section 4 of, and paragraph 52 of Schedule 2 to, the Planning (Consequential Provisions) Act 1990 (c. 11). Sections 10 and 11 and Schedule 1 were amended by S.I. 2009/137. Section 15 was amended by sections 56 and 321(1) of, and Schedules 8 and 16 to, the Housing and Regeneration Act 2008 (c. 17). Paragraph 1 of Schedule 2 was amended by section 76 of, and Part 2 of Schedule 9 to, the Housing Act 1988 (c. 50); section 161(4) of, and Schedule 19 to, the Leasehold Reform, Housing and Urban Development Act 1993 (c. 28); and sections 56 and 321(1) of, and Schedule 8 to, the Housing and Regeneration Act 2008. Paragraph 3 of Schedule 2 was amended by section 76 of, and Schedule 9 to, the Housing Act 1988 and section 56 of, and Schedule 8 to, the Housing and Regeneration Act 2008. Paragraph 2 of Schedule 3 was repealed by section 277 of, and Schedule 9 to, the Inheritance Tax Act 1984 (c. 51). There are other amendments to the 1981 Act which are not relevant to this Order.

- (a) as from the date of acquisition of the land, or of the right, or of the benefit of the restrictive covenant by the undertaker, whether compulsorily or by agreement; or
- (b) on the date of entry on the land by the undertaker under section 11(1) (power of entry) of the 1965 Act,

whichever is the earlier.

(2) Subject to the provisions of this article, all private rights or restrictive covenants over land subject to the compulsory acquisition of rights or the imposition of restrictive covenants under this Order cease to have effect in so far as their continuance would be inconsistent with the exercise of the right or compliance with the restrictive covenant—

- (a) as from the date of the acquisition of the right or imposition of the restrictive covenant by the undertaker (whether the right is acquired compulsorily, by agreement or through the grant of a lease of the land by agreement); or
- (b) on the date of entry on the land by the undertaker under section 11(1) (power of entry) of the 1965 Act in pursuance of the right,

whichever is the earliest.

(3) Subject to the provisions of this article, all private rights or restrictive covenants over land of which the undertaker takes temporary possession under this Order will be suspended and unenforceable for as long as the undertaker remains in lawful possession of the land.

(4) Any person who suffers loss by the extinguishment or suspension of any private right or restrictive covenant under this article is entitled to compensation to be determined, in case of dispute, under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

(5) This article does not apply in relation to any right to which section 138 (extinguishment of rights, and removal of apparatus, of statutory undertakers etc.) of the 2008 Act or where article 35 (statutory undertakers) applies.

(6) Paragraphs (1) to (3) have effect subject to—

- (a) any notice given by the undertaker before—
 - (i) the completion of the acquisition of the land or the acquisition of rights or the imposition of restrictive covenants over or affecting the land;
 - (ii) the undertaker's appropriation of the land;
 - (iii) the undertaker's entry onto the land; or
 - (iv) the undertaker's taking temporary possession of the land,
 that any or all of those paragraphs do not apply to any right of way specified in the notice; and
- (b) any agreement made at any time between the undertaker and the person in or to whom the right of way in question is vested or belongs.

(7) Where an agreement referred to in paragraph (6)(b)—

- (a) is made with a person in or to whom the right is vested or belongs; and
- (b) is expressed to have effect also for the benefit of those deriving title from or under that person,

the agreement is effective in respect of the persons so deriving title, whether the title was derived before or after the making of the agreement.

(8) References in this article to private rights over land include any right of way, trust, incident, restrictive covenant, easement, liberty, privilege, right or advantage annexed to land and adversely affecting other land, including any natural right to support; and include restrictions as to the user of land arising by virtue of a contract, agreement or undertaking having that effect.

Application of the 1981 Act

29.—(1) The 1981 Act applies as if this Order were a compulsory purchase order.

- (2) The 1981 Act, as applied, has effect with the following modifications.
- (3) In section 1 (application of act) for subsection (2) there is substituted—

“(2) This section applies to any Minister, any local or other public authority or any other body or person authorised to acquire land by means of a compulsory purchase order.”
- (4) In section 5 (earliest date for execution of declaration), in subsection (2), omit the words from “, and this subsection” to the end.
- (5) Omit section 5A (time limit for general vesting declaration)(a).
- (6) In section 5B (extension of time limit during challenge)(b)—
 - (a) for “section 23 of the Acquisition of Land Act 1981 (application to High Court in respect of compulsory purchase order)” substitute “section 118 of the Planning Act (legal challenges relating to applications for orders granting development consent)”; and
 - (b) for “the three year period mentioned in section 5A” substitute “the five year period mentioned in article 26 (time limit for exercise of authority to acquire land compulsorily) of the Beacon Fen Energy Park Order 202[]”.
- (7) In section 6 (notices after execution of declaration)(c) for subsection (1)(b) there is substituted—

“(1)(b) on every other person who has given information to the acquiring authority with respect to any of that land further to the invitation published and served under section 134 of the Planning Act 2008.”
- (8) In section 7 (constructive notice to treat)(d), in subsection (1)(a), omit “(as modified by section 4 of the Acquisition of Land Act 1981)”.
- (9) In Schedule A1 (counter-notice requiring purchase of land not in general vesting declaration)(e), omit paragraph 1(2).
- (10) References to the 1965 Act in the 1981 Act are to be construed as references to the 1965 Act as applied by section 125 of the 2008 Act (application of compulsory acquisition provisions) to the compulsory acquisition of land under this Order.

Acquisition of subsoil and airspace only

30.—(1) The undertaker may acquire compulsorily so much of, or such rights in, the subsoil of and the airspace over the land referred to in paragraph 23(1) of article 23 (compulsory acquisition of land) or article 27 (compulsory acquisition of rights and imposition of restrictive covenants) as may be required for any purpose for which that land may be acquired under that provision instead of acquiring the whole of the land.

- (2) Where the undertaker acquires any part of, or rights in, the subsoil of, or the airspace over, any land under paragraph (1), the undertaker is not required to acquire an interest in any other part of the land.
- (3) The following do not apply in connection with the exercise of the power under paragraph (1) in relation to subsoil or airspace only—
 - (a) Schedule 2A (counter-notice requiring purchase of land not in notice to treat) to the 1965 Act;
 - (b) Schedule A1 (counter-notice requiring purchase of land not in general vesting declaration) to the 1981 Act; and
 - (c) Section 153(4A) (blighted land: proposed acquisition of part interest; material detriment test) of the 1990 Act.

(a) 1981 c. 66. Section 5A was inserted by section 182(2) of the Housing and Planning Act 2016 (c. 22).
 (b) 1981 c. 66. Section 5B was as inserted by section 202(2) of the Housing and Planning Act 2016 (c. 22).
 (c) 1981 c. 66. Section 6 was amended by paragraph 52(2) of Schedule 2 to the Planning (Consequential Provisions) Act 1990 (c. 11) and paragraph 7 of Schedule 15 to the Housing and Planning Act 2016 (c. 22).
 (d) 1981 c. 66. Section 7 was amended by paragraph 3 of Schedule 18 to the Housing and Planning Act 2016 (c. 22).
 (e) As inserted by paragraph 6 of Schedule 18 to the Housing and Planning Act 2016 (c. 22).

(4) Paragraphs (2) and (3) do not apply where the undertaker acquires a cellar, vault, arch or other construction forming part of a house, building or manufactory or airspace above a house, building or manufactory.

Modification of the 1965 Act

31.—(1) Part 1 of the 1965 Act, as applied to this Order by section 125 (Application of compulsory acquisition provisions) of the 2008 Act, is modified as follows—

- (a) In section 4 (Time limit for giving notice to treat) for “after the end of the period of 3 years beginning the day on which the compulsory purchase order becomes operative” substitute “after the end of the period stated in article 26 (time limit for exercise of authority to acquire land compulsorily) of the Beacon Fen Energy Park Order 202[]”.
- (b) In section 4A(1) (Extension of time limit during challenge)(a) for “section 23 of the Acquisition of Land Act 1981 (Application to High Court in respect of compulsory purchase order), the three year period mentioned in section 4” substitute “section 118 of the Planning Act 2008 (Legal challenges relating to applications for orders granting development consent), the five year period mentioned in article 26 (time limit for exercise of authority to acquire land compulsorily) of the Beacon Fen Energy Park Order 202[]”
- (2) In section 11A (Powers of entry: further notice of entry)(b)—
 - (a) in subsection (1)(a), after “land” insert “under that provision”; and
 - (b) in subsection (2), after “land” insert “under that provision”.
- (3) In section 22(2) (Expiry of time limit for exercise of compulsory purchase power not to affect acquisition of interests omitted from purchase), for “section 4 of this Act” substitute “article 26 (time limit for exercise of authority to acquire land compulsorily) of the Beacon Fen Energy Park Order 202[]”.
- (4) In Schedule 2A (counter-notice requiring purchase of land not in notice to treat)—
 - (a) for paragraphs 1(2) and 14(2) substitute—

“(2) But see article 29(3) (acquisition of subsoil and airspace only) of the Beacon Fen Energy Park Order 202[], which excludes the acquisition of subsoil and airspace only from this Schedule”; and
 - (b) after paragraph 29, insert—

“PART 4

Interpretation

30. In this Schedule, references to entering on and taking possession of land do not include doing so under articles 22 (authority to survey and investigate the land), 32 (temporary use of land for carrying out the authorised development), 34 (temporary use of land for maintaining or decommissioning the authorised development), or 37 (use of airspace within the Order land) of the Beacon Fen Energy Park Order 202[].”

Temporary use of land for carrying out the authorised development

32.—(1) The undertaker may, in connection with the construction of the authorised development—

- (a) enter on and take temporary possession of—

(a) 1965 c. 56. Section 4A(1) was inserted by section 202(1) of the Housing and Planning Act 2016 (c. 22).
(b) 1965 c. 56. Section 11A was inserted by section 186(3) of the Housing and Planning Act 2016 (c. 22).

- (i) so much of the land specified in column 1 of the table in Schedule 10 (land of which temporary possession may be taken) for the purpose specified in relation to the land in column 2 of that table; and
 - (ii) any land within the Order land in respect of which no notice of entry has been served under section 11 (Powers of entry) of the 1965 Act and no declaration has been made under section 4 (execution of declaration) of the 1981 Act^(a);
- (b) remove any electric line, electrical plant, structures, apparatus, fences, debris, buildings and vegetation from that land;
 - (c) construct temporary works, haul roads, security fencing, bridges, structures and buildings comprised within the authorised development on that land;
 - (d) use the land for the purposes of a temporary working site with access to the working site in connection with the authorised development;
 - (e) construct any works on that land as are mentioned in Schedule 1 (authorised development); and
 - (f) carry out mitigation works required under the requirements in Part 1 of Schedule 2 (requirements).

(2) Not less than 14 days before entering on and taking temporary possession of land under this article the undertaker must serve notice of the intended entry on the owners and occupiers of the land.

(3) The undertaker may not, without the agreement of the owners of the land, remain in possession under this article after the end of the period of one year beginning with the date of completion of the part of the authorised development which temporary possession of the land was taken unless the undertaker has, by the end of that period, served a notice of entry under section 11 (Powers of entry) of the 1965 Act or made a declaration under section 4 (execution of declaration) of the 1981 Act in relation to that land.

(4) Before giving up possession of land of which temporary possession has been taken under this article, the undertaker must either acquire the land or, unless otherwise agreed with the owners of the land, remove all works and restore the land to the reasonable satisfaction of the owners of the land, except that the undertaker is not required to—

- (a) replace any electric line, electrical plant, structure, apparatus, fence, debris, building or vegetation removed under this article;
- (b) remove any drainage works installed by the undertaker under this article;
- (c) remove any new road surface or other improvements carried out under this article to any street specified in Schedule 3 (streets subject to street works);
- (d) restore the land to a condition better than the relevant land was in before temporary possession;
- (e) remove any ground strengthening works which have been placed on the land to facilitate construction, operation, maintenance or decommissioning of the authorised development;
- (f) remove any measures installed over or around statutory undertakers' apparatus to protect that apparatus from the authorised development; or
- (g) remove or reposition any apparatus belonging to statutory undertakers or necessary mitigation works.

(5) The undertaker must pay compensation to the owners and occupiers of land of which temporary possession is taken under this article for any loss or damage arising from the exercise in relation to the land of the provisions of any power conferred by this article and, for the avoidance of doubt, this will include compensation in respect of any loss or damage further to any ground strengthening works within paragraph (4)(e) carried out by the undertaker in or on that land.

(a) 1981 c. 66. Section 4 was amended by section 184 and 185 of, and paragraphs 1 and 2 of Schedule 18 to, the Housing and Planning Act 2016 (c. 22).

(6) Any dispute as to a person's entitlement to compensation under paragraph (5), or as to the amount of the compensation, will be determined under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

(7) Any dispute as to the satisfactory removal of works and restoration of land under paragraph (4) does not prevent the undertaker giving up possession of the land.

(8) Nothing in this article affects any liability to pay compensation under section 152 (Compensation in case where no right to claim in nuisance) of the 2008 Act^(a) or under any other enactment in respect of loss or damage arising from the carrying out of the authorised development, other than loss or damage for which compensation is payable under paragraph (5).

(9) Where the undertaker takes possession of land under this article, the undertaker is not required to acquire the land or any interest in it.

(10) Section 13 (Refusal to give possession to acquiring authority) of the 1965 Act applies to the temporary use of land pursuant to this article to the same extent as it applies to the compulsory acquisition of land under this Order by virtue of section 125 (Application of compulsory acquisition provisions) of the 2008 Act.

(11) Nothing in this article prevents the taking of temporary possession more than once in relation to any land specified in paragraph (1).

Time limit for exercise of authority to temporarily use land for carrying out the authorised development

33.—(1) Subject to paragraph (2), the authority to enter onto land pursuant to article 32 (temporary use of land for carrying out the authorised development) ceases to apply to any land after the period of five years beginning on the day on which the Order is made.

(2) Paragraph (1) will not prevent the undertaker remaining in possession of land after the end of that period, if the land was entered and possession was taken before the end of that period.

Temporary use of land for maintaining or decommissioning the authorised development

34.—(1) Subject to paragraph (2), at any time during the maintenance period relating to any part of the authorised development, the undertaker may—

- (a) enter on and take temporary possession of any land within the Order land if such possession is reasonably required for the purpose of maintaining the authorised development;
- (b) enter on any land within the Order land for the purpose of gaining such access as is reasonably required for the purpose of maintaining the authorised development; and
- (c) construct such temporary works (including the provision of means of access) and buildings on the land as may be reasonably necessary for that purpose.

(2) Paragraph (1) does not authorise the undertaker to take temporary possession of—

- (a) any house or garden belonging to a house; or
- (b) any building (other than a house) if it is for the time being occupied.

(3) Not less than 28 days before entering on and taking temporary possession of land under this article the undertaker must serve notice of the intended entry on the owners and occupiers of the land.

(4) The undertaker is not required to serve notice under paragraph (2) where the undertaker has identified a potential risk to the safety of—

- (a) the authorised development or any of its parts;

^(a) 2008 c. 29. Section 152 was amended by S.I. 2009/1307.

- (b) the public; and/or
- (c) the surrounding environment,

and in such circumstances, the undertaker may enter the land under paragraph (1) subject to giving such period of notice as is reasonably practicable in the circumstances.

(5) The undertaker may only remain in possession of land under this article for so long as may be reasonably necessary to carry out the maintenance of the part of the authorised development for which possession of the land was taken.

(6) Before giving up possession of land of which temporary possession has been taken under this article, the undertaker must remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land.

(7) The undertaker must pay compensation to the owners and occupiers of land of which temporary possession is taken under this article for any loss or damage arising from the exercise in relation to the land of the provisions of this article.

(8) Any dispute as to a person's entitlement to compensation under paragraph (7), or as to the amount of the compensation, will be determined under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

(9) Nothing in this article affects any liability to pay compensation under section 10(2) (further provisions as to compensation for injurious affection) of the 1965 Act or under any other enactment in respect of loss or damage arising from the maintenance of the authorised development, other than loss or damage for which compensation is payable under paragraph (7).

(10) Where the undertaker takes possession of land under this article, the undertaker is not required to acquire the land or any interest in it.

(11) Section 13 (refusal to give possession to acquiring authority) of the 1965 Act applies to the temporary use of land pursuant to this article to the same extent as it applies to the compulsory acquisition of land under this Order by virtue of section 125 (Application of compulsory acquisition provisions) of the 2008 Act.

(12) In this article the "maintenance period" means the period of five years beginning with the date of final commissioning of the part of the authorised development for which temporary possession is required under this article.

Statutory undertakers

35.—(1) Subject to the provisions of Schedule 11 (protective provisions), the undertaker may—

- (a) acquire compulsorily the land belonging to statutory undertakers within the Order land and described in the book of reference;
- (b) acquire compulsorily existing rights, create and acquire new rights and impose restrictive covenants over the land belonging to statutory undertakers within the Order land and described in the book of reference;
- (c) extinguish or suspend the rights of, remove, alter, renew, relocate or reposition the apparatus belonging to statutory undertakers over or within the Order land; and
- (d) construct the authorised development in such a way as to interfere with any highway or cross underneath or over apparatus belonging to statutory undertakers and other like bodies within the Order land.

Recovery of costs of new connections

36.—(1) Where any apparatus of a public utility undertaker or of a public communications provider is removed under article 35 (statutory undertakers) any person who is the owner or occupier of premises to which a supply was given from that apparatus is entitled to recover from the undertaker compensation in respect of expenditure reasonably incurred by that person, in consequence of the removal, for the purpose of effecting a connection between the premises and any other apparatus from which a supply is given.

(2) Paragraph (1) does not apply in the case of the removal of a public sewer but where such a sewer is removed under article 35 (statutory undertakers), any person who is—

- (a) the owner or occupier of premises the drains of which communicated with that sewer; or
- (b) the owner of a private sewer which communicated with that sewer,

is entitled to recover from the undertaker compensation in respect of expenditure reasonably incurred by that person, in consequence of the removal, for the purpose of making the drain or sewer belonging to that person communicate with any other public sewer or with a private sewage disposal plant.

(3) This article does not have effect in relation to apparatus to which Part 3 (street works in England and Wales) of the 1991 Act applies.

(4) In this article—

“public communications provider” has the meaning given in section 151(1) (interpretation of Chapter 1) of the Communications Act 2003; and

“public utility undertaker” has the meaning given in section 329 (further provision as to interpretation) of the 1980 Act.

Use of airspace within the Order land

37.—(1) The undertaker may enter into and use so much of the airspace over any land within the Order land as may be required for the authorised development and may use the airspace for those purposes or any other purposes ancillary to the authorised development.

(2) The undertaker may exercise any power conferred by paragraph (1) in relation to land without being required to acquire any part of the land or any easement or right in the land.

(3) Subject to paragraph (4), any person who is an owner or occupier of land used under paragraph (1) without the undertaker acquiring any part of that person’s interest in the land, and who suffers loss as a result, is entitled to compensation to be determined, in case of dispute, under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

(4) Compensation is not payable under paragraph (3) to any person who is an undertaker to whom section 85 (Sharing cost of necessary measures) of the 1991 Act applies in respect of measures of which the allowable costs are to be borne in accordance with that section.

PART 6

Miscellaneous and general

Article not used

38. [Article not used]

No double recovery

39.—(1) Compensation will not be payable in respect of the same matter both under this Order and under any other enactment, any contract or any rule of law.

Protective provisions

40.—(1) Schedule 11 (protective provisions) to this Order shall have effect.

Crown rights

41.—(1) Nothing in this Order affects prejudicially any estate, right, power, privilege, authority or exemption of the Crown and in particular, nothing in this Order authorises the undertaker or any

lessee or licensee to take, use, enter upon or in any manner interfere with any land or rights of any description—

- (a) belonging to His Majesty in right of the Crown and forming part of The Crown Estate without the consent in writing of the Crown Estate Commissioners;
- (b) belonging to His Majesty in right of the Crown and not forming part of The Crown Estate without the consent in writing of the government department having the management of that land; or
- (c) belonging to a government department or held in trust for His Majesty for the purposes of a government department without the consent in writing of that government department.

(2) Paragraph (1) does not apply to the exercise of any right under this Order for the compulsory acquisition of an interest in any Crown land (as defined in section 227 (“Crown land” and “the appropriate Crown authority”) of the 2008 Act) which is for the time being held otherwise than by or on behalf of the Crown.

(3) A consent under paragraph (1) may be given unconditionally or subject to terms and conditions and is deemed to have been given in writing where it is sent electronically.

Certification of plans, etc.

42.—(1) The undertaker must, as soon as practicable after the making of this Order, submit to the Secretary of State copies of all documents and plans listed in the table at Schedule 12 (documents and plans to be certified) for certification that they are true copies of the documents referred to in this Order.

(2) A plan or document so certified is admissible in any proceedings as evidence of the contents of the document of which it is a copy.

(3) Where a plan or document certified under paragraph (1)—

- (a) refers to a provision of this Order (including any specified requirement) when it was in draft form; and
- (b) identifies the provision by number or combination of numbers and letters, which is different from the number or combination of numbers and letters by which the corresponding provision of this Order is identified in the Order as made;

the reference in the plan or document concerned must be construed for the purposes of this Order as referring to the provisions (if any) corresponding to that provision in the Order as made.

(4) Where any plan or document set out in Schedule 12 (documents and plans to be certified) requires to be amended to reflect the terms of the Secretary of State’s decision to make the Order, that plan or document in the form amended to the Secretary of State’s satisfaction is the version of the plan or document required to be certified under paragraph (1).

Service of notices

43.—(1) A notice or other document required or authorised to be served for the purposes of this Order may be served—

- (a) by post;
- (b) by delivering it to the person on whom it is to be served or to whom it is to be given or supplied; or
- (c) with the consent of the recipient and subject to paragraphs (5) to (8) by electronic transmission.

(2) Where the person on whom a notice or other document to be served for the purposes of this Order is a body corporate, the notice or document is duly served if it is served on the secretary or clerk of that body.

(3) For the purposes of section 7 (references to service by post) of the Interpretation Act 1978^(a) as it applies for the purposes of this article, the proper address of any person in relation to the service on that person of a notice or document under paragraph (1) is, if that person has given an address for service, that address, and otherwise—

- (a) in the case of the secretary or clerk of a body corporate, the registered or principal office of that body; and
- (b) in any other case, the last known address of that person at the time of service.

(4) Where for the purposes of this Order a notice or other document is required or authorised to be served on a person as having an interest in, or as the occupier of, land and the name or address of that person cannot be ascertained after reasonable enquiry, the notice may be served by—

- (a) addressing it to that person by name or by the description of “owner”, or as the case may be “occupier”, of the land; and
- (b) either leaving it in the hands of a person who is or appears to be resident or employed on the land or leaving it conspicuously affixed to some building or object on or near the land.

(5) Where a notice or other document required to be served or sent for the purposes of this Order is served or sent by electronic transmission the requirement is to be taken to be fulfilled only where—

- (a) the recipient of the notice or other document to be transmitted has given consent to the use of electronic transmission in writing or by electronic transmission;
- (b) the notice or document is capable of being accessed by the recipient;
- (c) the notice or document is legible in all material respects; and
- (d) the notice or document is in a form sufficiently permanent to be used for subsequent reference.

(6) Where the recipient of a notice or other document served or sent by electronic transmission notifies the sender within 7 days of receipt that the recipient requires a paper copy of all or part of that notice or other document the sender must provide such a copy as soon as reasonably practicable.

(7) Any consent to the use of electronic communication given by a person may be revoked by that person in accordance with paragraph (8).

(8) Where a person is no longer willing to accept the use of electronic transmission for any of the purposes of this Order—

- (a) that person must give notice in writing or by electronic transmission revoking any consent given by that person for that purpose; and
- (b) such revocation is final and takes effect on a date specified by the person in the notice but that date must not be less than 7 days after the date on which the notice is given.

(9) This article does not exclude the employment of any method of service not expressly provided for by it.

(10) In this article “legible in all material respects” means that the information contained in the notice or document is available to that person to no lesser extent than it would be if served, given or supplied by means of a notice or document in printed form.

Felling or lopping of trees or removal of hedgerows

44.—(1) Subject to paragraphs (2) and (7), the undertaker may fell or lop any tree or shrub near any part of the authorised development, or cut back its roots, if it reasonably believes it to be necessary to do so to prevent the tree or shrub—

(a) 1978 c. 30.

(a) from obstructing or interfering with the construction, maintenance, operation or decommissioning of the authorised development or any apparatus used in connection with the authorised development; or

(b) from constituting a danger to persons using the authorised development.

(2) In carrying out any activity authorised by paragraph (1), the undertaker must do no unnecessary damage to any tree or shrub and must pay compensation to any person for any loss or damage arising from such activity.

(3) Any dispute as to a person's entitlement to compensation under paragraph (2), or as to the amount of compensation, must be determined under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

(4) The undertaker may, for the purposes of the authorised development and subject to paragraph (2), remove any hedgerows within the Order limits that may be required for the purposes of constructing the authorised development.

(5) Without prejudice to the generality of paragraph (4), the undertaker may, for the purposes of the authorised development and subject to paragraph (2)—

(a) remove those parts of the important hedgerows within the Order limits and specified in Part 1 (removal of important hedgerows) of Schedule 13 (hedgerows) as shown on the vegetation removal plan; and

(b) remove those parts of the hedgerows as are within the Order limits and specified in Part 2 (removal of hedgerows) of Schedule 13 (hedgerows) as shown on the vegetation removal plan.

(6) In this article “hedgerow” and “important hedgerow” have the same meaning as in the Hedgerow Regulations 1997(a).

(7) The undertaker may fell or lop any tree that is subject to a tree preservation order within or overhanging land within the Order limits or cut back its roots if it reasonably believes it to be necessary to do so in order to prevent the tree from obstructing or interfering with the construction, maintenance, operation or decommissioning of the authorised development or any apparatus used in connection with the authorised development.

(8) In carrying out any activity authorised by paragraph (7)—

(a) the undertaker must do no unnecessary damage to any tree and must pay compensation to any person for any loss or damage arising from such activity; and

(b) the duty contained in section 206(1) (replacement of trees) of the 1990 Act does not apply.

(9) The authority given by paragraph (7) constitutes a deemed consent under the relevant tree preservation order.

(10) Any dispute as to a person's entitlement to compensation under paragraph (8), or as to the amount of compensation, is to be determined under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

(11) Paragraphs (1) to (10) are subject to paragraphs 7, 8 and 12 of Part 1 (requirements) of Schedule 2.

Arbitration

45.—(1) Any difference under any provision of this Order, unless otherwise provided for, shall be referred to and settled in arbitration in accordance with the rules at Schedule 14 (arbitration rules) of this Order, by a single arbitrator to be agreed upon by the parties, within 14 days of receipt of the notice of arbitration, or if the parties fail to agree within the time period stipulated, to be appointed on application of either party (after giving written notice to the other) by the Secretary of State.

(a) S.I. 1997/1160.

(2) Any matter for which the consent or approval of the Secretary of State is required under any provision of this Order shall not be subject to arbitration.

Procedure in relation to certain approvals etc.

46.—(1) Where an application is made to or request is made of, a consenting authority for any consent, agreement or approval required or contemplated by any of the provisions of the Order (not including the requirements), such consent, agreement or approval to be validly given, must be given in writing.

(2) Where paragraph (1) applies to any consent, agreement or approval, such consent, agreement or approval must not be unreasonably withheld or delayed.

(3) Part 2 of Schedule 2 (procedure for discharge of requirements) has effect in relation to all consents, agreements or approvals required, granted, refused or withheld in relation to the requirements.

(4) Save for applications made pursuant to Part 2 of Schedule 2 (procedure for discharge of requirements) and where stated to the contrary if, within ten weeks (or such longer period as may be agreed between the undertaker and the relevant consenting authority in writing) after the application or request has been submitted to a consenting authority it has not notified the undertaker of its disapproval and the grounds of disapproval, it is deemed to have approved the application or request.

(5) Where any application is made as described in paragraph (1), the undertaker must include a statement in such application that refers to the timeframe for consideration of the application and the consequences of failure to meet that timeframe as prescribed by paragraph (4).

(6) Part 2 of Schedule 2 (procedure for discharge of requirements) does not apply in respect of any consents, agreements or approvals contemplated by the provisions of Schedule 11 (protective provisions) or any dispute under article 21(6) (protective works to buildings) to which paragraph (4) applies.

(7) In this article “consenting authority” means the relevant planning authority, highway authority, traffic authority, street authority, the owner of a watercourse, sewer or drain or the beneficiary of any of the protective provisions contained in Schedule 11 (protective provisions).

Guarantees in respect of payment of compensation

47.—(1) The undertaker must not exercise the powers conferred by the provisions referred to in paragraph (2) in relation to any land unless it has first put in place either—

- (a) a guarantee, the form and amount of which has been approved by the Secretary of State in respect of the liabilities of the undertaker to pay compensation pursuant to the provisions referred to in paragraph (2); or
- (b) an alternative form of security, the form and amount of which has been approved by the Secretary of State in respect of the liabilities of the undertaker to pay compensation pursuant to the provisions referred to in paragraph (2).

(2) The provisions are—

- (a) article 23 (compulsory acquisition of land);
- (b) article 27 (Compulsory acquisition of rights and imposition of restrictive covenants);
- (c) article 28 (private rights);
- (d) article 30 (acquisition of subsoil and airspace only);
- (e) article 32 (temporary use of land for carrying out the authorised development);
- (f) article 34 (temporary use of land for maintaining or decommissioning the authorised development); and
- (g) article 35 (statutory undertakers).

(3) A guarantee or alternative form of security given in respect of any liability of the undertaker to pay compensation under this Order is to be treated as enforceable against the guarantor or person providing the alternative form of security by any person to whom such compensation is payable and must be in such a form as to be capable of enforcement by such a person.

(4) Nothing in this article requires a guarantee or alternative form of security to be in place for more than 15 years after the date on which the relevant power is exercised.

Application of landlord and tenant law

48.—(1) This article applies to—

- (a) any agreement for leasing to any person the whole or any part of the authorised development or the right to operate the same; and
- (b) any agreement entered into by the undertaker with any person for the construction, operation, maintenance or decommissioning of the authorised development, or any part of it,

so far as any such agreement relates to the terms on which any land which is the subject of a lease granted by or under that agreement is to be provided for that person's use.

(2) No enactment or rule of law regulating the rights and obligations of landlords and tenants may prejudice the operation of any agreement to which this article applies.

(3) Accordingly, no such enactment or rule of law to which paragraph (2) applies in relation to the rights and obligations of the parties to any lease granted by or under any such agreement so as to—

- (a) exclude or in any respect modify any of the rights and obligations of those parties under the terms of the lease, whether with respect to the termination of the tenancy or any other matter;
- (b) confer or impose on any such party any right or obligation arising out of or connected with anything done or omitted on or in relation to land which is the subject of the lease, in addition to any such right or obligation provided for by the terms of the lease; or
- (c) restrict the enforcement (whether by action for damages or otherwise) by any party to the lease of any obligation of any other party under the lease.

National Grid extension works

49.—(1) If National Grid elects to undertake any elements of the works described in Work No. 5 pursuant to planning permission granted under Part 3 of the 1990 Act or Article 3 of the 2015 Order then the requirements contained in Part 1 of Schedule 2 (requirements) will not have effect in so far as they relate to those works and National Grid will serve written notice of the same on the relevant planning authority.

(2) As from the date on which Work No. 5 is commenced any conditions of the National Grid 2005 permission that relate to the land at plot 18-19 cease to have effect to the extent they are inconsistent with the authorised development or with anything done or approved under the requirements in Part 1 of Schedule 2 (requirements).

Funding contributions

50.—(1) Prior to the commencement of the authorised development the undertaker must make funding contributions—

- (a) to North Kesteven District Council in the sum of £118,000;
- (b) to Lincolnshire County Council in the sum of £13,500;
- (c) to Boston Borough Council in the sum of £13,500; and
- (d) to North Kesteven District Council in the sum of £1,470.

(2) Each of the relevant planning authorities is to allocate the funding contributions referred to in paragraphs (1)(a) to (c) to the reasonable costs of their representatives in being part of the Beacon Fen ecological steering group pursuant to the landscape and ecological management plan approved pursuant to requirement 7.

(3) North Kesteven District Council is to allocate the funding contribution referred to in paragraph (1)(d) to officer time, materials or other measures for publicising its Stepping Out (or successor) programme including taking photography of the path, creating a PDF map available for public download and installing wayfinding signage, rubbish bins, and footfall counter.

(4) The funding contributions referred to paragraph (1) shall be adjusted on each anniversary of the date this Order comes into force up until the point of payment by a percentage equal to the index value of the Consumer Price Index (CPI) most recently published prior to that anniversary, provided that in no event shall any annual adjustment exceed 5%.

Ecology and planting contribution

51.—(1) The undertaker must allocate the ecology and planting contribution to the ecology purpose as follows—

- (a) From commencement of any part of Work No. 4A within the administrative area of Boston Borough Council the undertaker must offer relevant landowners the ecology and planting contribution and provide to Boston Borough Council:
 - (i) confirmation that agreement has been reached with relevant landowners to allocate part or all of the ecology and planting contribution for the ecology purpose; and
 - (ii) evidence of the payment of part or all of the ecology and planting contribution to such relevant landowners or the expenditure of part or all of the ecology and planting contribution for the ecology purpose;
- (b) If the undertaker has not provided confirmation to Boston Borough Council as required by paragraph (1)(a) in relation to the full amount of the ecology and planting contribution prior to the date of final commissioning of the final part of the authorised development the undertaker must allocate the remaining unallocated ecology and planting contribution to:
 - (i) provide the ecology purpose and confirm details in writing to Boston Borough Council; or
 - (ii) Boston Borough Council.

(2) If the undertaker has allocated all or part of the ecology and planting contribution to Boston Borough Council in accordance with paragraph (1)(b)(ii), Boston Borough Council is to allocate such funding to the ecology purpose.

(3) The ecology and planting contribution shall be adjusted on each anniversary of the date this Order comes into force up until the point of payment by a percentage equal to the index value of the Consumer Price Index (CPI) most recently published prior to that anniversary, provided that in no event shall any annual adjustment exceed 5%.

(4) In this article –

- (a) “ecology and planting contribution” means a funding contribution in the sum of £15,000, and for the avoidance of doubt where the ecology and planting contribution is allocated to multiple relevant landowners the total amount allocated for all landowners combined will not exceed £15,000;
- (b) “ecology purpose” means the provision of hedgerow planting, gapping up of existing hedgerows or another improvement to connectivity for biodiversity between natural habitats or visual amenity within the administrative area of Boston Borough Council and in reasonable proximity to the southern boundary of the existing substation; and
- (c) “relevant landowners” means one or more landowners of land within the administrative area of Boston Borough Council and also either within Work No. 4A or within the highway.

Signatory text

Address
Date

Name
[]

SCHEDULES

SCHEDULE 1

Article 3

AUTHORISED DEVELOPMENT

1. In this Schedule—

“balance of solar system (BoSS) plant” means inverters, transformers and switch gear and would be either—

(a) solar stations being a station comprising centralised inverters, transformers and switch gear with each component for each solar station either—

(i) a “solar station” located outside, with a concrete foundation slab or placed on metal skids for each of the inverters and transformers and switch gear; or

(ii) housed together within a container sitting on a concrete foundation slab or placed on metal skids; or

(b) string inverters attached either to mounting structures or a ground mounted frame, switchgear and transformers on a concrete foundation slab or placed on metal skids;

“bespoke access road” means the access road connecting Work Nos 1 to 4 to the A17 required to facilitate the construction, ongoing maintenance and decommissioning of the authorised development;

“CCTV” means a closed circuit television security system;

“electrical cables” means—

(a) cables of differing types and voltages installed for the purposes of conducting electricity, auxiliary cables, cables connecting to direct current (DC) boxes, earthing cables and optical fibre cables; and

(b) works associated with cable laying including jointing pits, handstanding adjoining the jointing pits, combiner boxes, fibre bays, cable ducts, cable protection, joint protection, manholes, kiosks, marker posts, underground cable marker, tiles and tape, send and receive pits for horizontal directional drilling, trenching, lighting, and a pit or container to capture fluids associated with drilling;

“energy storage” means equipment used for the storage of electrical energy;

“inverter” means electrical equipment required to convert direct current power to alternating current;

“mounting structure” means a frame or rack made of galvanised steel, anodised aluminium or other material designed to support the solar panels and mounted on piles driven into the ground, piles rammed into a pre-drilled hole, a pillar attaching to a steel ground screw, or pillars fixed to a concrete foundation;

“permissive paths” means existing access tracks providing restricted public access within the Order limits;

“solar panel” means a solar photovoltaic panel or module designed to convert solar irradiance to electrical energy;

“substation” means a substation containing electrical equipment required to switch, transform, convert electricity and provide reactive power compensation;

“switch gear” means a combination of electrical disconnect switches, fuses or circuit breakers used to control, protect and isolate electrical equipment; and

“transformer” means a structure serving to transform electricity to a different voltage.

2. In the Districts of North Kesteven and Boston and in the County of Lincolnshire a nationally significant infrastructure project as defined in sections 14 and 15 of the 2008 Act and associated development under section 115(1)(b) of the 2008 Act.

The nationally significant infrastructure project comprises one generating station with a gross electrical output capacity of over 50 megawatts comprising all or any of the work numbers in this Schedule or any part of any work number in this Schedule—

Work No. 1— a ground mounted solar photovoltaic generating station with a gross electrical output capacity of over 50 megawatts including—

- (a) solar panels fitted to mounting structures; and
- (b) balance of solar system (BoSS) plant.

and associated development within the meaning of section 115(2) of the 2008 Act comprising—

Work No. 2— a battery energy storage system compound and associated works including—

- (a) battery energy storage system (BESS) units each comprising an enclosure for BESS electro-chemical components and associated equipment, with the enclosure being of metal façade, joined or close coupled to each other, mounted on a reinforced concrete foundation slab or concrete piles;
- (b) transformers and associated bunding;
- (c) inverters, switch gear, power conversion systems (PCS) and ancillary equipment;
- (d) containers or enclosures housing all or any of Work Nos. 2(b) and (c) and ancillary equipment;
- (e) monitoring and control systems housed within the containers or enclosures comprised in Work Nos. 2(a) or (d) or located separately in its own container or enclosure;
- (f) heating, ventilation and air conditioning (HVAC) systems either housed on or within each of the containers or enclosures comprised in Work Nos. 2(a), (d) and (e), attached to the side or top of each of the containers or enclosures, or located separate to but near to each of the containers or enclosures;
- (g) electrical cables including electrical cables connecting to Work No. 3;
- (h) fire safety infrastructure including water storage tanks, lagoons and a shut-off valve for containment of fire water and hard standing to accommodate emergency vehicles;
- (i) containers or similar structures to house spare parts and materials required for the day to day operation of the BESS facility; and
- (j) office, warehouse and plant storage building comprising—
 - (i) offices and welfare facilities;
 - (ii) storage facilities;
 - (iii) waste storage within a fenced compound;
 - (iv) parking areas; and
 - (v) a warehouse building for the storage of spare parts, operational plant and vehicles.

Work No. 3— development of an onsite substation and associated works including—

- (a) substation, switch room buildings and ancillary equipment including reactive power units;
- (b) monitoring and control systems for this Work No. 3 and Work Nos. 1 and 2 housed within a control building or located separately in their own containers or control rooms;
- (c) water storage tanks;
- (d) 400 kilovolt harmonic filter compound; and
- (e) office, warehouse and plant storage building comprising—
 - (i) offices and welfare facilities;
 - (ii) storage facilities;

- (iii) waste storage within a fenced compound;
- (iv) parking areas; and
- (v) a warehouse building for the storage of spare parts, operational plant and vehicles.

Work No. 4— works in connection with electrical cabling including—

- (a) Work No. 4A— works to lay high voltage electrical cables including—
 - (i) works to lay electrical cables connecting Work No. 3 to Work No. 5 including open cut trenching, tunnelling, boring and drilling works for trenchless crossings;
 - (ii) works to allow electrical cable crossings of non-navigable rivers, other watercourses and drains, permissive paths, public rights of way and other highways;
 - (iii) works to allow installation of bridge crossings over non-navigable rivers and other watercourses and drains;
 - (iv) works to divert and underground existing electrical overhead lines and other services;
 - (v) laying down of internal access tracks, ramps, means of access, footpaths, roads, landscaping and vegetation management, signage and information boards; and
 - (vi) construction laydown areas, including site and welfare offices and areas to store materials and equipment.
- (b) Work No. 4B— construction compounds in connection with Work No.4A including—
 - (i) areas of hardstanding;
 - (ii) car parking;
 - (iii) site and welfare offices, canteens and workshops;
 - (iv) area to store materials and equipment;
 - (v) storage and waste skips;
 - (vi) areas for offloading and turning;
 - (vii) security infrastructure, including cameras, perimeter fencing and lighting;
 - (viii) site drainage and waste management infrastructure (including sewerage); and
 - (ix) electricity, water, waste water and telecommunications connections.

Work No. 5— works to the existing substation including—

- (a) Work No. 5A— creation of a new generation bay and associated works at the existing substation including—
 - (i) an electrical bay including associated outdoor air insulated switchgear (AIS) or indoor gas insulated switchgear (GIS) and electrical apparatus, circuit breakers, disconnectors and earth switches;
 - (ii) substation electrical apparatus, including bus-bars, steel supports, insulation posts, cable sealing ends, surge arrestors, instrument transformers;
 - (iii) control building; and
 - (iv) underground and above ground electrical cables and electrical connectors, including cables for power, control and communication with electrical bays and to connect into Work No. 5B, including associated outdoor AIS or indoor GIS and electrical apparatus.
- (b) Work No. 5B— an extension to the existing substation including—
 - (i) outdoor AIS or indoor GIS, including circuit breakers, disconnectors and earth switches;
 - (ii) substation electrical apparatus, including bus-bars, bus-section and a bus-coupler, steel supports, insulation posts, cable sealing ends, surge arrestors, instrument transformers; and

- (iii) underground and above ground electrical cables and electrical conductors, including cables for power, control and communication with electrical bays and to connect into Work No. 5A and the existing network within the existing substation, including associated outdoor AIS or indoor GIS and electrical apparatus.
- (c) Work No. 5C— cabling works and overhead line works in connection with the extension to the existing substation including—
 - (i) a cable sealing end compound and construction of new circuit bays connecting into the existing substation and/or Work No. 5B;
 - (ii) installation of a new 400 kV transmission tower which will be linked via overhead and/or underground cables to the existing substation (including Work No. 5B) and to existing overhead lines and/or towers;
 - (iii) underground and above ground electrical cables and electrical conductors, connecting to an existing 400kV transmission tower, the new 400 kV transmission tower and the new electrical bay; and
 - (iv) modifications to existing towers.
- (d) Work No. 5D— temporary laydown area including—
 - (i) areas of hardstanding, compacted ground or tracking matting;
 - (ii) car parking and access;
 - (iii) area to store materials and equipment, including electrical cables;
 - (iv) site and welfare offices and cabins;
 - (v) security infrastructure, including cameras, perimeter fencing and lighting;
 - (vi) site drainage and waste management infrastructure (including sewerage); and
 - (vii) electricity, water, waste water and telecommunications connections.
- (e) Work No. 5E— further works in connection with the extension to the existing substation including—
 - (i) landscaping and biodiversity mitigation and enhancement measures including planting; and
 - (ii) the laying and construction of drainage infrastructure.

Work No. 6— works including—

- (a) electrical cables, including but not limited to electrical cables connecting Work Nos. 1, 2 and 3 to one another and connecting solar panels to one another and the BoSS;
- (b) fencing, gates, boundary treatment and other means of enclosure;
- (c) works for the provision of security and monitoring measures such as CCTV columns, lighting columns and lighting, cameras, weather stations, communication infrastructure, and perimeter fencing;
- (d) landscaping and biodiversity mitigation and enhancement measures including planting;
- (e) improvement, maintenance and use of existing private tracks;
- (f) laying down of internal access tracks, ramps, means of access, footpaths, crossing of watercourses, including via footbridges, and roads, including the laying and construction of drainage infrastructure, signage and information boards;
- (g) laying down of temporary footpath diversions, permissive paths, signage and information boards;
- (h) earthworks;
- (i) sustainable drainage system ponds, runoff outfalls, general drainage and irrigation infrastructure, systems and improvements or extensions to existing drainage and irrigation systems;
- (j) construction and decommissioning compounds, including site and welfare offices and areas to store materials and equipment;

- (k) works to divert and underground existing electrical overhead lines and other services; and
- (l) works to facilitate connection to an existing water main including laying a new section of pipework and all associated works.

Work No. 7— construction and decommissioning compounds in connection with Work Nos. 1, 2 and 3 including—

- (a) areas of hardstanding;
- (b) car parking;
- (c) site and welfare offices, canteens and workshops;
- (d) area to store materials and equipment;
- (e) storage and waste skips;
- (f) areas for offloading and turning;
- (g) security infrastructure, including cameras, perimeter fencing and lighting;
- (h) site drainage and waste management infrastructure (including sewerage); and
- (i) electricity, water, waste water and telecommunications connections.

Work No. 8— works to create the bespoke access road including—

- (a) creation of accesses from the public highway;
- (b) works to divert and underground existing electrical overhead lines and other services;
- (c) creation of visibility splays;
- (d) works to widen and surface the public highway and private means of access;
- (e) creation of public right of way crossings;
- (f) works to create associated drainage infrastructure, including works to existing drainage infrastructure;
- (g) creation of temporary construction compounds;
- (h) erection of temporary fencing and hording and permanent access gates; and
- (i) works to facilitate connection to an existing water main including laying a new section of pipework and all associated works.

Work No. 9— areas of habitat management including—

- (a) landscape and biodiversity enhancement measures;
- (b) habitat creation and management, including earthworks, landscaping, and the laying and construction of drainage infrastructure; and
- (c) fencing, gates, boundary treatment and other means of enclosure.

Work No. 10— works to facilitate access to Work Nos. 1 to 9 including—

- (a) creation of accesses from the public highway;
- (b) creation of visibility splays; and
- (c) works to widen and surface the public highway and private means of access.

In connection with and in addition to Work Nos. 1 to 10 further associated development within the Order limits including—

- (a) works for the provision of fencing and security measures such as CCTV and lighting;
- (b) laying down of internal access tracks;
- (c) ramps, means of access, non-motorised links, footpaths, footways;
- (d) boundary treatments, including means of enclosure;
- (e) bunds, embankments, trenching and swales;
- (f) habitat creation and management including earthworks, landscaping, means of enclosure and the laying and construction of drainage infrastructure;

- (g) works to existing irrigation systems and works to alter the position and extent of such irrigation systems;
- (h) surface water drainage systems, storm water attenuation systems including storage basins, oil water separators, including channelling and culverting and works to existing drainage networks;
- (i) electrical, gas, water, foul water drainage and telecommunications infrastructure connections, diversions and works to, and works to alter the position of, such services and utilities connections;
- (j) works to alter the course of, or otherwise interfere with, non-navigable rivers, streams or watercourses;
- (k) site establishments and preparation works including site clearance (including vegetation removal, demolition of existing buildings and structures); earthworks (including soil stripping and storage and site levelling) and excavations; the alteration of the position of services and utilities; and works for the protection of buildings and land;
- (l) works required for the strengthening, improvement, maintenance, or reconstruction of any street;
- (m) tunnelling, boring and drilling works;
- (n) works for the benefit of protection of land affected by the authorised development;
- (o) working sites in connection with the construction and decommissioning of the authorised development and its restoration; and
- (p) other works to mitigate any adverse effects of the construction, maintenance, operation or decommissioning of the authorised development,

and further associated development comprising such other works or operations as may be necessary or expedient for the purposes of or in connection with the authorised development but only within the Order limits and insofar as they are unlikely to give rise to any materially new or materially different environmental effects from those assessed in the environmental statement.

SCHEDULE 2 REQUIREMENTS

Article 3

PART 1 REQUIREMENTS

Interpretation

1. In this Schedule—

“relevant planning authority” means—

- (a) Lincolnshire County Council for the purposes of—
 - (i) requirement 6 (battery safety management);
 - (ii) requirement 10 (surface and foul water drainage);
 - (iii) requirement 11 (archaeology);
 - (iv) requirement 13 (construction traffic management plan);
 - (v) requirement 18 (public rights of way);
 - (vi) requirement 20 (flood risk); and
 - (vii) requirement 22 (operational waste);
 - (b) North Kesteven District Council and Boston Borough Council for the purposes of—
 - (i) requirement 3 (approved details and amendments to them);
 - (ii) requirement 4 (community liaison group);
 - (iii) requirement 5 (detailed design approval);
 - (iv) requirement 7 (landscape and ecological management plan);
 - (v) requirement 8 (biodiversity net gain);
 - (vi) requirement 9 (fencing and other means of enclosure);
 - (vii) requirement 12 (construction environmental management plan);
 - (viii) requirement 14 (operational noise);
 - (ix) requirement 16 (soils management);
 - (x) requirement 17 (skills, supply chain and employment);
 - (xi) requirement 19 (decommissioning and restoration); and
 - (xii) requirement 21 (contaminated land and groundwater), and
- “relevant planning authorities” means Lincolnshire County Council, North Kesteven District Council and Boston Borough Council, as applicable.

Commencement of the authorised development

2. The authorised development must not be commenced after the expiration of five years from the date this Order comes into force.

Approved details and amendments to them

3.—(1) With respect to the documents certified under article 42 (certification of plans, etc.) and any plans, details or schemes which have been approved pursuant to any requirement (together the “approved documents, plans, details or schemes”), the undertaker may submit to the relevant planning authority or relevant planning authorities (as applicable) for approval any amendments to

any of the approved documents, plans, details or schemes and, following approval by the relevant planning authority or relevant planning authorities (as applicable), the relevant approved documents, plans, details or schemes is to be taken to include the amendments as so approved pursuant to this paragraph.

(2) Approval under sub-paragraph (1) for the amendments to any of the approved documents, plans, details or schemes must not be given except where it has been demonstrated to the satisfaction of the relevant planning authority or the relevant planning authorities (as applicable) that the subject matter of the approval sought is unlikely to give rise to any materially new or materially different environmental effects from those assessed in the environmental statement.

Community liaison group

4.—(1) Prior to the commencement of the authorised development the undertaker must submit to the relevant planning authority for approval the terms of reference for a community liaison group whose aim is to facilitate liaison between representatives of people living in the vicinity of the Order limits and other relevant organisations in relation to the construction of the authorised development.

(2) The community liaison group must be established prior to commencement of the authorised development and must be administered by the undertaker, and operated, in accordance with the approved terms of reference.

(3) The community liaison group is to continue to meet until the date of final commissioning of the final part of the authorised development unless otherwise agreed with the relevant planning authority.

Detailed design approval

5.—(1) No part of the authorised development may commence until details of—

- (a) the layout;
- (b) scale;
- (c) proposed finished ground levels;
- (d) external appearance;
- (e) hard surfacing materials;
- (f) vehicular and pedestrian access, parking and circulation areas;
- (g) refuse or other storage units, signs and lighting;
- (h) drainage, water, power and communications cables and pipelines;
- (i) landscaping works, planting works and programme for implementation;
- (j) fencing;
- (k) security measures; and
- (l) any mitigation measures necessary to address noise impacts,

relating to that part have been submitted to and approved in writing by the relevant planning authority for that part or, where the part falls within the administrative areas of multiple relevant planning authorities, each of the relevant planning authorities, such approval to be in consultation with Lincolnshire County Council as local highway authority in relation to paragraph (f).

(2) The details submitted must accord with—

- (a) the works plan; and
 - (b) the outline design principles, or such variation thereof as may be approved by the relevant planning authority pursuant to requirement 3.
- (3) The authorised development must be carried out in accordance with the approved details.

Battery safety management

6.—(1) Work No. 2 must not commence until a battery safety management plan has been submitted to and approved by the relevant planning authority.

(2) The battery safety management plan must prescribe measures to facilitate safety during the construction, operation and decommissioning of Work No. 2.

(3) The battery safety management plan must be substantially in accordance with the outline battery safety management plan.

(4) The relevant planning authority must consult with the Environment Agency, North Kesteven District Council and Lincolnshire Fire and Rescue before determining an application for approval of the battery safety management plan.

(5) The battery safety management plan must be implemented as approved and maintained throughout the construction, operation and decommissioning of the authorised development.

Landscape and ecological management plan

7.—(1) No part of the authorised development may commence until a written landscape and ecological management plan has been submitted to and approved by the relevant planning authority for that part or, where the part falls within the administrative areas of multiple relevant planning authorities, each of the relevant planning authorities, in consultation with Lincolnshire County Council and the Environment Agency.

(2) The landscape and ecological management plan must be substantially in accordance with the outline landscape and ecological management plan and must include terms of reference for the ecological steering group which is to be known as the Beacon Fen ecological steering group, including details for the group's membership which is to include a representative from each of the relevant planning authorities.

(3) The landscape and ecological management plan must be implemented as approved and maintained throughout the operation of the relevant part of the authorised development to which the plan relates.

(4) For the purposes of sub-paragraph (1) “commence” includes part (b) (site clearance (including vegetation removal and demolition of existing structures)) of permitted preliminary works.

Biodiversity net gain

8.—(1) No part of the authorised development may commence until a biodiversity net gain strategy has been submitted to and approved by the relevant planning authority.

(2) The biodiversity net gain strategy must include details of how the strategy will secure a minimum of 30% biodiversity net gain in area-based habitat units, a minimum of 10% biodiversity net gain in hedgerow units, and 10% 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' Statutory Metric (February 2024).

(3) The biodiversity net gain strategy must be substantially in accordance with the outline landscape and ecological management plan and must be implemented as approved and maintained throughout the operation of the relevant part of the authorised development to which the plan relates.

Fencing and other means of enclosure

9.—(1) No part of the authorised development may commence until written details of all proposed temporary fences, walls or other means of enclosure have been submitted to and approved by the relevant planning authority or, where the part falls within the administrative areas of multiple relevant planning authorities, each of the relevant planning authorities.

(2) No part of the authorised development may commence until written details of all permanent fences, walls or other means of enclosure for that part (which must be substantially in accordance with the relevant outline design principles) have been submitted to and approved by the relevant planning authority or, where the part falls within the administrative areas of multiple relevant planning authorities, each of the relevant planning authorities.

(3) For the purposes of sub-paragraph (1), “commence” includes any permitted preliminary works.

(4) Any construction site must remain securely fenced in accordance with the approved details under sub-paragraph (1) at all times during construction of the authorised development.

(5) Any temporary fencing must be removed on completion of the part of construction of the authorised development for which it was used.

(6) Any approved permanent fencing in a part must be completed before the date of final commissioning in respect of such part.

Surface and foul water drainage

10.—(1) No part of the authorised development may commence until written details of the surface water drainage scheme and (if any) foul water drainage system (both of which must be substantially in accordance with the principles in the outline drainage strategy) have been submitted to and approved by the relevant planning authority for that part, such approval to be in consultation with Anglian Water Services Limited and the Environment Agency.

(2) Any approved scheme must be implemented as approved and maintained throughout the construction and operation of the authorised development.

Archaeology

11.—(1) The authorised development must be implemented in accordance with the archaeological mitigation strategy.

(2) No part of the authorised development may commence until a written scheme of archaeological investigation (which must accord with the archaeological mitigation strategy) for that part has been submitted to and approved by the relevant planning authority.

(3) For the purposes of sub-paragraph (1), “commence” includes any permitted preliminary works.

(4) Any archaeological works or watching brief must be carried out in accordance with the approved scheme.

Construction environmental management plan

12.—(1) No part of the authorised development may commence until a construction environmental management plan (which must be substantially in accordance with the outline construction environmental management plan) for that part has been submitted to and approved by the relevant planning authority, or, where the part falls within the administrative areas of multiple relevant planning authorities, each of the relevant planning authorities, in consultation with Lincolnshire County Council and the Environment Agency.

(2) All construction works associated with the authorised development must be carried out in accordance with the approved construction environmental management plan.

Construction traffic management plan

13.—(1) No part of the authorised development may commence until a construction traffic management plan for that part has been submitted to and approved by the relevant planning authority, such approval to be in consultation with the relevant highway authority.

(2) The construction traffic management plan must be substantially in accordance with the outline construction traffic management plan.

- (3) The construction traffic management plan must be implemented as approved.

Operational noise

14.—(1) No part of numbered Works No. 1, No. 2 and No. 3 may commence until an operational noise assessment containing details of how the design of that numbered work has incorporated mitigation to ensure the operational noise rating levels as set out in the environmental statement are to be complied with for that part has been submitted to and approved by the relevant planning authority for that part or, where the part falls within the administrative areas of multiple relevant planning authorities, each of the relevant planning authorities.

(2) The design as described in the operational noise assessment must be implemented as approved and maintained throughout the operation of the relevant part of the authorised development to which the plan relates.

Permissive path

15.—(1) A permissive path which runs between points PP 1/01 and PP 4/01 on the streets, rights of way and access plans must be provided and open to the public one year following the date of final commissioning of Work No. 1.

(2) The permissive path must be maintained and access by the public permitted for 364 days a year except where closure is required for maintenance or in an emergency until the date of decommissioning.

Soils management

16.—(1) No part of the authorised development may commence until a soil management plan (which must be substantially in accordance with the outline soil management plan as relevant to construction activities) for that part has been submitted to and approved by the relevant planning authority or, where the part falls within the administrative areas of multiple relevant planning authorities, each of the relevant planning authorities.

(2) All construction works associated with the authorised development must be carried out in accordance with the soil management plan approved pursuant to sub-paragraph (1).

(3) Prior to the date of final commissioning for any part of the authorised development, a soil management plan (which must be substantially in accordance with the outline soil management plan as relevant to operational activities) for that part must be submitted to and approved by the relevant planning authority for that part or, where the part falls within the administrative areas of multiple relevant planning authorities, each of the relevant planning authorities.

(4) The operation of the authorised development must be carried out in accordance with the soil management plan approved pursuant to sub-paragraph (3) and maintained throughout the operation of the relevant part of the authorised development to which the plan relates.

(5) Prior to the start of any decommissioning works for any part of the authorised development, a soil management plan (which must be substantially in accordance with the outline soil management plan as relevant to decommissioning activities) for that part must be submitted to and approved by the relevant planning authority for that part or, where the part falls within the administrative areas of multiple relevant planning authorities, each of the relevant planning authorities.

(6) The decommissioning of the authorised development must be carried out in accordance with the soil management plan approved pursuant to sub-paragraph (5).

Skills, supply chain and employment

17.—(1) No part of the authorised development may commence until a skills, supply chain and employment plan in relation to that part has been submitted to and approved by the relevant planning authority for that part or, where the part falls within the administrative areas of multiple

planning authorities, each of the relevant planning authorities following consultation with Lincolnshire County Council.

(2) The skills, supply chain and employment plan must be substantially in accordance with the outline skills, supply chain and employment plan.

(3) Any skills, supply chain and employment plan prepared in accordance with this paragraph must identify opportunities for individuals and businesses to access employment and supply chain opportunities associated with that part of the authorised development and the means for publicising such opportunities.

(4) The skills, supply chain and employment plan must be implemented as approved and maintained throughout the operation of the relevant part of the authorised development to which the plan relates.

Public rights of way

18.—(1) No part of the authorised development may commence until a public rights of way management plan for any sections of public rights of way shown to be temporarily closed on the streets, rights of way and access plans for that part has been submitted to and approved by the relevant planning authority.

(2) The public rights of way management plan must be substantially in accordance with the outline public rights of way management plan.

(3) The public rights of way management plan must be implemented as approved unless otherwise agreed with the relevant planning authority.

Decommissioning and restoration

19.—(1) Decommissioning of Work Nos. 1, 2 and 3 of the authorised development must commence no later than 40 years following the date of final commissioning of the authorised development.

(2) Unless otherwise agreed with the relevant planning authority, no later than 12 months prior to the date the undertaker intends to decommission any part of the authorised development, the undertaker must notify the relevant planning authority of the intended date of decommissioning.

(3) Within 12 months of the date notified pursuant to sub-paragraph (2), the undertaker must submit to the relevant planning authority for that part a decommissioning environmental management plan for approval (following consultation with the Environment Agency and Lincolnshire County Council) which must include a decommissioning traffic management plan and site waste management plan.

(4) Where the undertaker decides to decommission a part of the authorised development that falls within the administrative areas of multiple planning authorities, the decommissioning environmental management plan must be submitted to each relevant planning authority and the approval of all relevant planning authorities is required for the purposes of this paragraph.

(5) The decommissioning environmental management plan must be substantially in accordance with the outline decommissioning environmental management plan.

(6) No decommissioning works may be carried out until the relevant planning authority has approved the decommissioning environmental management plan submitted in relation to those works.

(7) The decommissioning environmental management plan must be implemented as approved.

(8) This requirement is without prejudice to any other consents or permissions that may be required to decommission any part of the authorised development.

Flood risk

20.—(1) No part of the authorised development may commence until for that part, a flood mitigation strategy has been submitted to and approved by the relevant planning authority in consultation with the Environment Agency.

(2) The flood risk mitigation strategy submitted pursuant to sub-paragraph (1) must set out the flood risk mitigation incorporated in the detailed design for the part of the authorised development which is the subject of the strategy and—

- (a) confirm that such mitigation accords with the flood risk operational mitigation; or
- (b) to the extent such mitigation does not accord with the flood risk operational mitigation, demonstrate how the mitigation proposed does not give rise to impacts on flood risk that are worse than those set out in the flood risk assessment conclusions; and
- (c) include details of the design of any floodplain compensation scheme required for that part based on the flood risk operational mitigation and which does not give rise to impacts on flood risk and floodplain storage that are worse than those set out in the flood risk assessment conclusions.

(3) Any strategy approved pursuant to this requirement must be implemented as approved and maintained throughout the construction and operation of the authorised development.

Contaminated land and groundwater

21. If, during the carrying out of any part of the authorised development, contamination not previously identified is found to be present within such part, no further development (unless otherwise agreed in writing with the relevant planning authority) must be carried out on the part on which the contamination has been found until the process set out at section 11.7 of ES chapter 11 (under the heading “operation phase”) has been followed.

Operational waste

22.—(1) Prior to the date of final commissioning of any part of Work Nos. 1, 2 and 3 an operational site waste management plan for that part must be submitted to and approved by the relevant planning authority.

(2) The operational site waste management plan must be substantially in accordance with the waste and recycling strategy (as appropriate to the operation of the authorised development).

(3) The operational site waste management plan must be implemented as approved and maintained throughout the operation of the relevant part of the authorised development to which the plan relates.

PART 2

PROCEDURE FOR DISCHARGE OF REQUIREMENTS

Interpretation

23. In this Part of this Schedule—

“discharge” means any consent, agreement or approval required by—

- (a) a requirement;
- (b) a document referred to by a requirement; or
- (c) a document that has been approved pursuant to a requirement;

“requirement consultee” means any body or authority named in a requirement as a body to be consulted by the relevant planning authority in discharging that requirement; and

“start date” means the date of the notification given by the Secretary of State under paragraph 26(2)(c).

Applications made under requirement

24.—(1) Where an application has been made to the relevant planning authority for any discharge, the relevant planning authority must give notice to the undertaker of its decision on the application within a period of ten weeks beginning with the later of—

- (a) the day immediately following that on which the application is received by the authority;
- (b) the day immediately following that on which further information has been supplied by the undertaker under paragraph 25; or
- (c) such longer period that is agreed in writing by the undertaker and the relevant planning authority.

(2) Subject to paragraph 26, in the event that the relevant planning authority does not determine an application within the period set out in sub-paragraph (1), the relevant planning authority is to be taken to have granted all parts of the application (without any condition or qualification) at the end of that period.

(3) Any application made to the relevant planning authority pursuant to sub-paragraph (1) must—

- (a) 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; and
- (b) include confirmation that the application has been notified and provided to the requirement consultees in accordance with sub-paragraph (5), if the provision governing or requiring the application specifies that consultation with a requirement consultee is required (such confirmation to include contact details for the requirement consultees).

(4) Where an application has been made to the relevant planning authority for any discharge and the relevant planning authority does not determine the application within the period set out in sub-paragraph (1) and the application is accompanied by a report pursuant to sub-paragraph (3)(a) which states that the subject matter of such application is likely to give rise to any materially new or materially different environmental effects compared to those in the environmental statement then the application is to be taken to have been refused by the relevant planning authority at the end of that period.

(5) Where an application has been made to the relevant planning authority for any discharge, the undertaker will also submit a copy of that application to any requirement consultee.

Further information and consultation

25.—(1) In relation to any application to which this Schedule applies, the relevant planning authority may request such reasonable further information from the undertaker as is necessary to enable it to consider the application.

(2) In the event that the relevant planning authority considers such further information to be necessary and the provision governing or requiring the application does not specify that consultation with a requirement consultee is required, the relevant planning authority must, within 20 business days of receipt of the application, notify the undertaker in writing specifying the further information required.

(3) If the provision governing or requiring the application specifies that consultation with a requirement consultee is required, the relevant planning authority must issue the consultation to the requirement consultee within 10 business days of receipt of the application, and must notify the undertaker in writing specifying any further information the relevant planning authority considers necessary or that is requested by the requirement consultee within 10 business days of receipt of such a request and in any event within 20 business days of receipt of the

application (or such other period as is agreed in writing between the undertaker and the relevant planning authority).

(4) In the event that the relevant planning authority does not give notification as specified in sub-paragraph (2) or (3) it is deemed to have sufficient information to consider the application and is not thereafter entitled to request further information without the prior agreement of the undertaker.

(5) Where further information is requested under this paragraph in relation to part only of an application, that part is to be treated as separate from the remainder of the application for the purposes of calculating time periods in paragraph 24 and this paragraph 25.

Appeals

26.—(1) The undertaker may appeal in the event that—

- (a) the relevant planning authority refuses an application for any discharge or grants it subject to conditions;
- (b) the relevant planning authority is deemed to have refused an application pursuant to paragraph 24(4);
- (c) on receipt of a request for further information pursuant to paragraph 25 the undertaker considers that either the whole or part of the specified information requested by the relevant planning authority is not necessary for consideration of the application; or
- (d) on receipt of any further information requested, the relevant planning authority notifies the undertaker that the information provided is inadequate and requests additional information which the undertaker considers is not necessary for consideration of the application.

(2) The steps to be followed in the appeal process are as follows—

- (a) any appeal by the undertaker must be made within 42 days of the date of the notice of the decision or the determination, or (where no determination has been made) the expiry of the time period set out in paragraph 24(1), giving rise to the appeal referred to in sub-paragraph (1);
- (b) the undertaker must submit the appeal documentation to the Secretary of State and must on the same day provide copies of the appeal documentation to the relevant planning authority and any requirement consultee;
- (c) the Secretary of State must appoint a person to determine the appeal as soon as reasonably practicable and must forthwith notify the appeal parties of the identity of the appointed person and the address to which all correspondence for the appointed person's attention should be sent;
- (d) the relevant planning authority and any requirement consultee must submit written representations to the appointed person in respect of the appeal within 10 business days of the start date and must ensure that copies of their written representations are sent to each other and to the undertaker on the day on which they are submitted to the appointed person;
- (e) the undertaker may make any counter-submissions to the appointed person within 10 business days of receipt of written representations pursuant to paragraph (d);
- (f) the appointed person must make their decision and notify it to the appeal parties, with reasons, as soon as reasonably practicable; and
- (g) the appointment of the person pursuant to paragraph (c) may be undertaken by a person appointed by the Secretary of State for this purpose instead of by the Secretary of State.

(3) In the event that the appointed person considers that further information is necessary to enable the appointed person to consider the appeal they must as soon as reasonably practicable, notify the appeal parties in writing specifying the further information required.

(4) Any further information required pursuant to sub-paragraph (3) must be provided by the relevant party to the appointed person and the other appeal parties on the date specified by the

appointed person (the “specified date”), and the appointed person must notify the appeal parties of the revised timetable for the appeal on or before that day. The revised timetable for the appeal must require submission of written representations to the appointed person within 10 business days of the specified date, but otherwise the process and time limits set out in paragraphs (d) to (f) of sub-paragraph (2) apply.

(5) The appointed person may—

- (a) allow or dismiss the appeal; or
- (b) reverse or vary any part of the decision of the relevant planning authority (whether the appeal relates to that part of it or not),

and may deal with the application as if it had been made to them in the first instance.

(6) The appointed person may proceed to a decision on an appeal taking into account only such written representations as have been sent within the relevant time limits.

(7) The appointed person may proceed to a decision even though no written representations have been made within the relevant time limits, if it appears to them that there is sufficient material to enable a decision to be made on the merits of the case.

(8) The decision of the appointed person on an appeal is to be final and binding on the parties, unless proceedings are brought by a claim for judicial review.

(9) If an approval is given by the appointed person pursuant to this Schedule, it is to be deemed to be an approval for the purpose of Part 1 of this Schedule as if it had been given by the relevant planning authority. The relevant planning authority may confirm any determination given by the appointed person in identical form in writing but a failure to give such confirmation (or a failure to give it in identical form) is not to be taken to affect or invalidate the effect of the appointed person’s determination.

(10) Save where a direction is given pursuant to sub-paragraph (11) requiring the costs of the appointed person to be paid by the relevant planning authority, the reasonable costs of the appointed person must be met by the undertaker.

(11) On application by the relevant planning authority or the undertaker, the appointed person may give directions as to the costs of the appeal parties and as to the parties by whom the costs of the appeal are to be paid. In considering whether to make any such direction and the terms on which it is to be made, the appointed person must have regard to advice on planning appeals and award costs published in Planning Practice Guidance: Appeals (March 2014) or any circular or guidance which may from time to time replace it.

Fees

27.—(1) Where an application is made to the relevant planning authority for any consent, agreement or approval required by a requirement, a fee is to apply and must be paid to the relevant planning authority for each application.

(2) The fee payable for each application under sub-paragraph (1) is as follows—

- (a) a fee of £2,578 for the first application for the discharge of each of the requirements 5 (detailed design approval), 6 (battery safety management), 7 (landscape and ecological management plan), 8 (biodiversity net gain) 10 (surface and foul water drainage), 12 (construction environmental management plan), 13 (construction traffic management plan), 16 (soils management), requirement 17 (skills, supply chain and employment), 19 (decommissioning and restoration), requirement 20 (flood risk) and requirement 22 (operational waste);
- (b) a fee of £588 for each subsequent application for the discharge of each of the requirements listed in paragraph (a) and any application under requirement 5 in respect of the requirements listed in paragraph (a); and
- (c) a fee of £298 for any application for the discharge of—
 - (i) any other requirements not listed in paragraph (a);

- (ii) any application under requirement 3 (approved details and amendments to them) in respect of requirements not listed in paragraph (a); and
- (iii) any approval required by a document referred to by any requirement or a document approved pursuant to any requirement.

(3) Any fee paid under this Part of this Schedule must be refunded to the undertaker within four weeks of—

- (a) the application being rejected as invalidly made; or
- (b) the relevant planning authority failing to determine the application within the relevant period in paragraph 24(1),

unless within that period the undertaker agrees, in writing, that the fee is to be retained by the relevant planning authority and credited in respect of a future application.

(4) The fees specified in sub-paragraph (2) shall be adjusted on each anniversary of the date this Order comes into force by a percentage equal to the index value of the Consumer Price Index (CPI) most recently published prior to that anniversary, provided that in no event shall any annual adjustment exceed 5%.

SCHEDULE 3

Article 11

STREETS SUBJECT TO STREET WORKS

<i>(1) Area</i>	<i>(2) Street</i>	<i>(3) Description of the street works</i>
North Kesteven District Council	Halfpenny Toll Lane	Works to upgrade existing access for the length shown in green at access point 2/01 on sheet 2 of the streets, rights of way and access plans.
North Kesteven District Council	Halfpenny Toll Lane	Works to upgrade existing access for the length shown in green at access point 2/03 on sheet 2 of the streets, rights of way and access plans.
North Kesteven District Council	Heckington Road	Works to construct Work No. 8 and upgrade existing access to provide primary access to Work Nos. 1, 2 and 3 for the length shown in green on sheet 4 of the streets, rights of way and access plans.
North Kesteven District Council	Howell Fen Drove	Works to upgrade existing access for the length shown in green on sheet 5 of the streets, rights of way and access plans.
North Kesteven District Council	Howell Fen Drove	Works to construct access for the construction of Work No. 4 for the length shown in green on sheet 5 of the streets, rights of way and access plans.
North Kesteven District Council	A17 layby	Works to construct access for the construction of Work No. 8 for the length shown in green on sheet 6 of the streets, rights of way and access plans.
North Kesteven District Council	Asgarby Road	Works to construct Work No. 8 for the length shown in green on sheet 6 of the streets, rights of way and access plans.
North Kesteven District Council	Littleworth Drove	Works to construct access for the construction of Work No. 4 for the length shown in green on sheet 7 of the streets, rights of way and access plans.
North Kesteven District Council	A17	Works to upgrade existing access for the length shown in green on sheet 8 of the streets, rights of way and access plans.
North Kesteven District Council	A17	Works to facilitate the construction of Work No. 4 for the length shown in green on sheet 8 of the streets, rights of

North Kesteven District Council	Carterplot Road	way and access plans. Works to enable construction vehicle access for the construction of Work No. 4 for the length shown in green on sheet 8 of the streets, rights of way and access plans.
North Kesteven District Council	Carterplot Road/Great Hale Drove	Works to enable construction vehicle access for the construction of Work No. 4 for the length shown in green on sheet 9 of the streets, rights of way and access plans.
North Kesteven District Council	Great Hale Drove	Works to enable construction vehicle access for the construction of Work No. 4 for the length shown in green on sheet 10 of the streets, rights of way and access plans.
North Kesteven District Council	A17	Works to manage existing access for the length shown in green on sheet 12 of the streets, rights of way and access plans.
Boston Borough Council	Bicker Drove	Works to manage traffic associated with access to the existing substation for the length shown in green on sheets 13 and 14 of the streets, rights of way and access plans.
Boston Borough Council	North Drove	Works to manage the construction of Work No. 4 for the length shown in green on sheet 16 of the streets, rights of way and access plans.
Boston Borough Council	Bicker Drove/Vicarage Drove	Works to manage construction of Work No. 4 and traffic associated with access to the existing substation for the length shown in green on sheet 16 of the streets, rights of way and access plans.
Boston Borough Council	Vicarage Drove	Works to accommodate construction access to the existing substation for the length shown in green on sheet 17 of the streets, rights of way and access plans.

SCHEDULE 4

ALTERATION OF STREETS

Article 13

PART 1

PERMANENT ALTERATION OF LAYOUT

<i>(1) Area</i>	<i>(2) Street</i>	<i>(3) Description of alteration</i>
North Kesteven District Council	Field Access Halfpenny Toll Lane	Permanent alteration of layout at the point marked 2/01 on sheet 2 of the streets, rights of way and access plans.
North Kesteven District Council	Field Access Halfpenny Toll Lane	Permanent alteration of layout at the point marked 2/03 on sheet 2 of the streets, rights of way and access plans.
North Kesteven District Council	Proposed access off Heckington Road	Permanent alteration of layout at the point marked 4/01 on sheet 4 of the streets, rights of way and access plans.
North Kesteven District Council	Access track off Heckington Road	Permanent alteration of layout at the point marked 4/02 on sheet 4 of the streets, rights of way and access plans.
North Kesteven District Council	Field Access at Howell Fen Drove	Permanent alteration of layout at the point marked 5/01 on sheet 5 of the streets, rights of way and access plans.
North Kesteven District Council	Proposed accesses off Howell Fen Drove	Permanent alteration of layout at the points marked 5/05 and 5/06 on sheet 5 of the streets, rights of way and access plans.
North Kesteven District Council	Proposed access off A17 Layby	Permanent alteration of layout at the point marked 6/01 on sheet 6 of the streets, rights of way and access plans.
North Kesteven District Council	Proposed accesses off Asgarby Road	Permanent alteration of layout at the points marked 6/03 and 6/04 on sheet 6 of the streets, rights of way and access plans.
North Kesteven District Council	Proposed accesses off Littleworth Drove	Permanent alteration of layout at the points marked 7/01 and 7/02 on sheet 7 of the streets, rights of way and access plans.
North Kesteven District Council	Access track off A17	Permanent alteration of layout at the point marked 8/01 on sheet 8 of the streets, rights of way and access plans.
North Kesteven District Council	Proposed access off Carterplot Road	Permanent alteration of layout at the point marked 9/02 on sheet 9 of the streets, rights of way and access plans.

Boston Borough Council	Access to the existing substation at Vicarage Drove	Permanent alteration of layout at the point marked 17/03 on sheet 17 of the streets, rights of way and access plans.

PART 2

TEMPORARY ALTERATION OF LAYOUT

<i>(1) Area</i>	<i>(2) Street</i>	<i>(3) Description of alteration</i>
North Kesteven District Council	Carterplot Road	Temporary alteration of layout within the area shaded green on sheet 8 of the streets, rights of way and access plans.
North Kesteven District Council	Carterplot Road and Great Hale Drove	Temporary alteration of layout within the area shaded green on sheet 9 of the streets, rights of way and access plans.
North Kesteven District Council	Great Hale Drove	Temporary alteration of layout within the area shaded green on sheet 10 of the streets, rights of way and access plans.
Boston Borough Council	Bicker Drove	Temporary alteration of layout within the area shaded green on sheets 13 and 14 of the streets, rights of way and access plans.
Boston Borough Council	Bicker Drove and Vicarage Drove	Temporary alteration of layout within the area shaded green on sheet 16 of the streets, rights of way and access plans.
Boston Borough Council	Vicarage Drove	Temporary alteration of layout within the area shaded green on sheet 17 of the streets, rights of way and access plans.

SCHEDULE 5

Article 16

STREETS AND PUBLIC RIGHTS OF WAY

PART 1

PUBLIC RIGHTS OF WAY TO BE TEMPORARILY CLOSED

<i>(1) Area</i>	<i>(2) Public right of way</i>	<i>(3) Measures</i>
North Kesteven District Council	Ewer/12/1	Temporarily closed to all traffic save for traffic under the direction of the undertaker between points PRow-1/01 and PRow-1/02 as shown in blue on sheet 1 of the streets, access and rights of way plans.
North Kesteven District Council	KkLT/5/1	Temporarily closed to all traffic save for traffic under the direction of the undertaker between points PRow-6/03 and PRow-6/04 as shown in blue on sheet 6 of the streets, access and rights of way plans.
North Kesteven District Council	KkLT/4/2	Temporarily closed to all traffic save for traffic under the direction of the undertaker between points PRow-6/01 and PRow-6/02 as shown in blue on sheet 6 of the streets, access and rights of way plans.
North Kesteven District Council	Heck/14/1	Temporarily closed to all traffic save for traffic under the direction of the undertaker between points PRow-7/01 and PRow-7/02 as shown in blue on sheet 7 of the streets, access and rights of way plans.
North Kesteven District Council	Heck/2/4	Temporarily closed to all traffic save for traffic under the direction of the undertaker between points PRow-8/01 and PRow-8/02 as shown in blue on sheet 8 of the streets, access and rights of way plans.

PART 2

PERMANENT USE OF MOTOR VEHICLES ON PUBLIC RIGHTS OF WAY

<i>(1) Area</i>	<i>(2) Public right of way</i>	<i>(3) Measures</i>
North Kesteven District Council	Ewer/9/1	Permanent use of motor

Council	vehicles under the direction of the undertaker between points PRow-1/01 and PRow-1/03 as shown in blue on sheet 1 of the streets, access and rights of way plans to facilitate construction, operation and decommissioning of the authorised development.

PART 3

TEMPORARY USE OF MOTOR VEHICLES ON PUBLIC RIGHTS OF WAY

<i>(1) Area</i>	<i>(2) Public right of way</i>	<i>(3) Measure</i>
North Kesteven District Council	Ewer/12/1	Use of motor vehicles under the direction of the undertaker between points PRow-1/01 and PRow-1/02 as shown in blue on sheet 1 of the streets, access and rights of way plans to facilitate construction of the authorised development.
North Kesteven District Council	KkLT/5/1	Use of motor vehicles under the direction of the undertaker between points PRow-6/03 and PRow-6/04 as shown in blue on sheet 6 of the streets, access and rights of way plans to facilitate construction of the authorised development.
North Kesteven District Council	KkLT/4/2	Use of motor vehicles under the direction of the undertaker between points PRow-6/01 and PRow-6/02 as shown in blue on sheet 6 of the streets, access and rights of way plans to facilitate construction of the authorised development.
North Kesteven District Council	Heck/14/1	Use of motor vehicles under the direction of the undertaker between points PRow-7/01 and PRow-7/02 as shown in blue on sheet 7 of the streets, access and rights of way plans to facilitate construction of the authorised development.
North Kesteven District Council	Heck/2/4	Use of motor vehicles under the direction of the undertaker between points PRow-8/01 and PRow-8/02 as shown in blue on sheet 8 of the streets, access and rights of way plans to facilitate construction of the

PART 4

TEMPORARY MANAGEMENT OF PUBLIC RIGHTS OF WAY

<i>(1) Area</i>	<i>(2) Public right of way</i>	<i>(3) Measure (public right of way to be managed during construction to maintain public right of way continuity and access through the authorised development)</i>
North Kesteven District Council	Ewer/12/1	Public right of way between points PRow-1/01 and PRow-1/02 as shown in blue on sheet 1 of the streets, access and rights of way plans to be managed during construction of the authorised development.
North Kesteven District Council	Ewer/9/1	Public right of way between points PRow-1/01 and PRow-1/03 as shown in blue on sheet 1 of the streets, access and rights of way plans to be managed during construction of the authorised development.
North Kesteven District Council	KkLT/5/1	Public right of way between points PRow-6/03 and PRow-6/04 as shown in blue on sheet 6 of the streets, access and rights of way plans to be managed during construction of the authorised development.
North Kesteven District Council	KkLT/4/2	Public right of way between points PRow-6/01 and PRow-6/02 as shown in blue on sheet 6 of the streets, access and rights of way plans to be managed during construction of the authorised development.
North Kesteven District Council	Heck/14/1	Public right of way between points PRow-7/01 and PRow-7/02 as shown in blue on sheet 7 of the streets, access and rights of way plans to be managed during construction of the authorised development.
North Kesteven District Council	Heck/2/4	Public right of way between points PRow-8/01 and PRow-8/02 as shown in blue on sheet 8 of the streets, access and rights of way plans to be managed during construction of the authorised development.

SCHEDULE 6

ACCESS TO WORKS

Article 17

PART 1

PERMANENT MEANS OF ACCESS TO WORKS

<i>(1) Area</i>	<i>(2) Street</i>	<i>(3) Description of means of access</i>
North Kesteven District Council	Halfpenny Toll Lane Westbound	The provision of a permanent means of access to the authorised development from the point marked 2/01 on sheet 2 of the streets, rights of way and access plans.
North Kesteven District Council	Halfpenny Toll Lane Southbound	The provision of a permanent means of access to the authorised development from the point marked 2/03 on sheet 2 of the streets, rights of way and access plans.
North Kesteven District Council	Heckington Road Northbound	The provision of a permanent means of access to the authorised development from the point marked 4/01 on sheet 4 of the streets, rights of way and access plans.
North Kesteven District Council	Heckington Road Southbound	The provision of a permanent means of access to the authorised development from the point marked 4/02 on sheet 4 of the streets, rights of way and access plans.
North Kesteven District Council	Howell Fen Drove Eastbound	The provision of a permanent means of access to the authorised development from the point marked 5/02 on sheet 5 of the streets, rights of way and access plans.
North Kesteven District Council	A17 Layby	The provision of a permanent means of access to the authorised development from the point marked 6/01 on sheet 6 of the streets, rights of way and access plans.
North Kesteven District Council	Asgarby Road Northbound	The provision of a permanent means of access to the authorised development from the point marked 6/03 on sheet 6 of the streets, rights of way and access plans.
North Kesteven District Council	Asgarby Road Southbound	The provision of a permanent

Council	means of access to the authorised development from the point marked 6/04 on sheet 6 of the streets, rights of way and access plans.

PART 2

TEMPORARY MEANS OF ACCESS TO WORKS

<i>(1) Area</i>	<i>(2) Street</i>	<i>(3) Description of means of access</i>
North Kesteven District Council	Howell Fen Drove Eastbound	The provision of a temporary means of access to the authorised development from the point marked 5/05 on sheet 5 of the streets, rights of way and access plans.
North Kesteven District Council	Howell Fen Drove Westbound	The provision of a temporary means of access to the authorised development from the point marked 5/06 on sheet 5 of the streets, rights of way and access plans.
North Kesteven District Council	Littleworth Drove Eastbound	The provision of a temporary means of access to the authorised development from the point marked 7/01 on sheet 7 of the streets, rights of way and access plans.
North Kesteven District Council	Littleworth Drove Westbound	The provision of a temporary means of access to the authorised development from the point marked 7/02 on sheet 7 of the streets, rights of way and access plans.
North Kesteven District Council	A17 Eastbound	The provision of a temporary means of access to the authorised development from the point marked 8/01 on sheet 8 of the streets, rights of way and access plans.
North Kesteven District Council	Carterplot Road Northbound	The provision of a temporary means of access to the authorised development from the point marked 9/02 on sheet 9 of the streets, rights of way and access plans.

SCHEDULE 7

Article 19

TRAFFIC REGULATION MEASURES

<i>(1) Area</i>	<i>(2) Extent of temporary traffic signal and banksman control area</i>
Halfpenny Toll Lane	Extents of banksman control and temporary traffic signal control to enable street works for the improvement of access 2/01 in the area shaded green shown on sheet 2 of the streets, rights of way and access plans.
Halfpenny Toll Lane	Extents of banksman control and temporary traffic signal control to enable street works for the improvement of access 2/03 in the area shaded green shown on sheet 2 of the streets, rights of way and access plans.
Heckington Road	Extents of banksman control and temporary traffic signal control to enable street works for the creation of access 4/01 and improvement of access 4/02 in the area shaded green shown on sheet 4 of the streets, rights of way and access plans.
Howell Fen Drove	Extents of banksman control and temporary traffic signal control to enable street works for the improvement of access 5/02 in the area shaded green shown on sheet 5 of the streets, rights of way and access plans.
Howell Fen Drove	Extents of banksman control and temporary traffic signal control to enable street works for the creation of accesses 5/05 and 5/06 in the area shaded green shown on sheet 5 of the streets, rights of way and access plans.
A17 Layby	Extents of banksman control and temporary traffic signal control to enable street works for the creation of access 6/01 in the area shaded green shown on sheet 6 of the streets, rights of way and access plans.
A17 Layby	Extents of temporary closure to all non-site traffic, to allow establishment and operation of a construction traffic access to the authorised development between points TTRO-6/01 and TTRO-6/02 as shown on sheet 6 of the streets, rights of way and access plans.
Asgarby Road	Extents of banksman control and temporary traffic signal control to enable street works for the creation of accesses 6/03 and 6/04 in the area shaded green shown on sheet 6 of the streets, rights of way and access plans.
Littleworth Drove	Extents of banksman control and temporary traffic signal control to enable street works for the creation of accesses 7/01 and 7/02 in the area shaded green shown on sheet 7 of the streets, rights of way and access plans.

A17

Extents of banksman control and temporary traffic signal control to enable street works for the improvement of access 8/01 in the area shaded green shown on sheet 8 of the streets, rights of way and access plans.

Carterplot Road

Extents of banksman control and temporary traffic signal control to enable street works for the creation of access 9/02 in the area shaded green shown on sheet 9 of the streets, rights of way and access plans.

SCHEDULE 8

Article 27

LAND IN WHICH ONLY NEW RIGHTS ETC. MAY BE ACQUIRED

<i>(1) Plot reference(s) (as shown on the land plans)</i>	<i>(2) Purpose for which rights over land may be acquired and restrictive covenants imposed</i>
7-2, 8-1, 8-2, 8-3, 8-4, 8-5, 8-6, 8-7, 9-1, 9-2, 9-3, 9-9, 9-10, 9-12, 10-3, 10-4, 10-10, 10-12, 10-13, 10-14, 11-1, 11-2, 11-3, 11-6, 11-7, 11-8, 12-1, 12-2, 12-3, 12-8, 12-10, 12-12, 12-13, 12-14, 12-19, 13-3, 13-6, 13-7, 13-8, 13-9, 13-10, 17-1, 17-2, 17-3, 17-4, 17-5, 17-7, 18-1, 18-6, 18-7, 18-9, 18-10, 18-11, 18-25, 18-26, 18-27, 18-28, 18-30, 18-31, 18-32, 18-33, 18-34, 18-35, 18-37, 18-38, 18-39, 18-40, 18-41, 18-42, 18-43, 18-44, 18-46, 18-48, 18-49, 18-50, 18-51, 18-52, 18-54, 18-55, 18-56	To construct, operate, maintain and use Work No. 4A and to construct, operate, maintain, use, inspect and alter any protective works, access works, utility apparatus or other ancillary or related development (as set out in Schedule 1 (authorised development)) in connection therewith.
10-5, 13-4, 15-1	To construct, operate, maintain and use Work No. 4A and Work No. 4B, and to construct, operate, maintain, use, inspect and alter any protective works, access works, utility apparatus or other ancillary or related development (as set out in Schedule 1 (authorised development)) in connection therewith.
18-19	To construct, operate, maintain and use Work No. 4A, Work No. 5A, Work No. 5B, Work No. 5C, and Work No. 5E, and to construct, operate, maintain, use, inspect and alter any protective works, access works, utility apparatus or other ancillary or related development (as set out in Schedule 1 (authorised development)) in connection therewith.
18-8, 18-12	To construct, operate, maintain and use Work No. 4A, Work No. 5D, and Work No. 10, and to construct, operate, maintain, use, inspect and alter any protective works, access works, utility apparatus or other ancillary or related development (as set out in Schedule 1 (authorised development)) in connection therewith.
3-5, 3-6, 3-7, 3-9	To construct, operate, maintain and use Work No. 4A and Work No. 6, and to construct, operate, maintain, use, inspect and alter any protective works, access works, utility apparatus or other ancillary or related development (as set out in Schedule 1 (authorised development)) in connection therewith.
7-1, 9-5, 9-6, 9-7, 9-8, 10-8, 11-4, 12-4, 12-9, 12-17, 13-11, 18-3, 18-20, 18-21, 18-22, 18-23, 18-24, 18-29, 18-36, 18-45, 18-47, 18-53	To construct, operate, maintain and use Work No. 4A and Work No. 10, and to construct, operate, maintain, use, inspect and alter any protective works, access works, utility apparatus or other ancillary or related development (as set out in Schedule 1 (authorised development)) in connection therewith.

18-57	To construct, operate, maintain and use Work No. 4A, Work No. 5C and Work No. 5E, and to construct, operate, maintain, use, inspect and alter any protective works, access works, utility apparatus or other ancillary or related development (as set out in Schedule 1 (authorised development)) in connection therewith.
18-13, 18-14, 18-16	To construct, operate, maintain and use Work No. 5D and Work No. 5E, and to construct, operate, maintain, use, inspect and alter any protective works, access works, utility apparatus or other ancillary or related development (as set out in Schedule 1 (authorised development)) in connection therewith.
3-1, 3-2, 3-3, 3-4, 6-1	To construct, operate, maintain and use Work No. 6, and to construct, operate, maintain, use, inspect and alter any protective works, access works, utility apparatus or other ancillary or related development (as set out in Schedule 1 (authorised development)) in connection therewith.
1-3, 1-4	To construct, operate, maintain and use Work No. 6 and Work No. 9, and to construct, operate, maintain, use, inspect and alter any protective works, access works, utility apparatus or other ancillary or related development (as set out in Schedule 1 (authorised development)) in connection therewith.
4-2, 4-3, 4-4, 4-5, 4-6, 5-1, 5-2, 5-3	To construct, operate, maintain and use Work No. 8, and to construct, operate, maintain, use, inspect and alter any protective works, access works, utility apparatus or other ancillary or related development (as set out in Schedule 1 (authorised development)) in connection therewith.
1-1, 1-2, 2-1, 2-3, 4-1, 6-3, 9-11, 10-1, 10-2, 10-6, 10-9, 10-11, 11-5, 12-5, 12-6, 12-7, 12-11, 12-15, 12-16, 12-18, 13-1, 13-2, 13-12, 13-13, 13-14, 13-16, 13-17, 13-18, 14-1, 14-2, 14-3, 14-4, 14-5, 14-6, 14-7, 14-8, 14-9, 14-10, 14-11, 15-2, 15-3, 15-4, 16-1, 18-2, 18-4, 18-5	To construct, operate, maintain and use Work No. 10, and to construct, operate, maintain, use, inspect and alter any protective works, access works, utility apparatus or other ancillary or related development (as set out in Schedule 1 (authorised development)) in connection therewith.

MODIFICATION OF COMPENSATION AND COMPULSORY PURCHASE ENACTMENTS FOR CREATION OF NEW RIGHTS AND IMPOSITION OF RESTRICTIVE COVENANTS

Compensation enactments

1. The enactments for the time being in force with respect to compensation for the compulsory purchase of land apply, with the necessary modifications as respects compensation, in the case of a compulsory acquisition under this Order of a right by the creation of a new right or the imposition of a restrictive covenant as they apply as respects compensation on the compulsory purchase of land and interests in land.

2.—(1) Without limiting the scope of paragraph 1, the Land Compensation Act 1973(a) has effect subject to the modifications set out in sub-paragraph (2).

(2) In section 44(1) (compensation for injurious affection), as it applies to compensation for injurious affection under section 7 (measure of compensation in case of severance) of the 1965 Act as substituted by paragraph 5—

- (a) for “land is acquired or taken from” substitute “a right or restrictive covenant over land is purchased from or imposed on”; and
- (b) for “acquired or taken from him” substitute “over which the right or the restrictive covenant is enforceable”.

3.—(1) Without limiting the scope of paragraph 1, the 1961 Act has effect subject to the modification set out in sub-paragraph (2).

(2) For section 5A(5A) (Relevant valuation date) of the 1961 Act, after “If” substitute—

- “(a) the acquiring authority enters on land for the purpose of exercising a right in pursuance of a notice of entry under section 11(1) of the 1965 Act (as modified by paragraph 7 of Schedule 9 to the Beacon Fen Energy Park Order 202[];
 - (b) the acquiring authority is subsequently required by a determination under paragraph 3 of Schedule 2A to the 1965 Act (as modified by paragraph 10 of Schedule 9 to the Beacon Fen Energy Park Order 202[]) to take the additional land; and
 - (c) the acquiring authority enters on and takes possession of that land,
- the authority is deemed for the purposes of subsection (3)(a) to have entered on that land when it entered on that land for the purpose of exercising that right.”

Application of the 1965 Act

4.—(1) The 1965 Act has effect with the modifications necessary to make it apply to the compulsory acquisition under this Order of a right by the creation of a new right, or to the imposition under this Order of a restrictive covenant, as it applies to the compulsory acquisition under this Order of land, so that, in appropriate contexts, references in that Act to land must be read (according to the requirements of the particular context) as referring to, or as including references to—

- (a) the right acquired or to be acquired, or the restriction imposed or to be imposed; or
- (b) the land over which the right is or is to be exercisable, or the restriction is or is to be enforceable.

(a) 1973 c. 26.

(2) Without limiting the scope of sub-paragraph (1), Part 1 of the 1965 Act applies in relation to the compulsory acquisition under this Order of a right by the creation of a new right or, in relation to the imposition of a restriction, with the modifications specified in the following provisions of this Schedule.

5. For section 7 (Measure of compensation in case of severance) of the 1965 Act substitute—

“Measure of compensation in case of severance

7. In assessing the compensation to be paid by the acquiring authority under this Act, regard must be had not only to the extent (if any) to which the value of the land over which the right is to be acquired or the restrictive covenant is to be imposed is depreciated by the acquisition of the right or the imposition of the covenant but also to the damage (if any) to be sustained by the owner of the land by reason of its severance from other land of the owner, or injuriously affecting that other land by the exercise of the powers conferred by this or the special Act.”

6. The following provisions of the 1965 Act (which state the effect of a deed poll executed in various circumstances where there is no conveyance by persons with interests in the land), that is to say—

- (a) section 9(4) (Refusal to convey, failure to make title, etc);
- (b) paragraph 10(3) of Schedule 1 (Persons without power to sell their interests);
- (c) paragraph 2(3) of Schedule 2 (Absent and untraced owners); and
- (d) paragraphs 2(3) and 7(2) of Schedule 4 (Common land),

are modified to secure that, as against persons with interests in the land which are expressed to be overridden by the deed, the right which is to be compulsorily acquired or the restrictive covenant which is to be imposed is vested absolutely in the acquiring authority.

7. Section 11 (Powers of entry) of the 1965 Act is modified to secure that, as from the date on which the acquiring authority has served notice to treat in respect of any right or restriction, it has power, exercisable in equivalent circumstances and subject to equivalent conditions, to enter for the purpose of exercising that right or enforcing that restrictive covenant (which is deemed for this purpose to have been created on the date of service of the notice); and sections 11A (Powers of entry: further notices of entry), 11B (Counter-notice requiring possession to be taken on specified date), 12 (Unauthorised entry) and 13 (Refusal to give possession to acquiring authority) of the 1965 Act are modified correspondingly.

8. Section 20 (Tenants at will, etc) of the 1965 Act applies with the modifications necessary to secure that persons with such interests in land as are mentioned in that section are compensated in a manner corresponding to that in which they would be compensated on a compulsory acquisition under this Order of that land, but taking into account only the extent (if any) of such interference with such an interest as is actually caused, or likely to be caused, by the exercise of the right or the enforcement of the restrictive covenant in question.

9. Section 22 (Interests omitted from purchase) of the 1965 Act is modified so as to enable the acquiring authority, in circumstances corresponding to those referred to in that section, to continue to be entitled to exercise the right acquired, subject to compliance with that section as respects compensation.

10. For Schedule 2A of the 1965 Act substitute—

“SCHEDULE 2A

Counter-notice requiring purchase of land

Introduction

1.—(1) This Schedule applies where an acquiring authority serve a notice to treat in respect of a right over, or restrictive covenant affecting, the whole or part of a house, building or factory and have not executed a general vesting declaration under section 4 of the 1981 Act as applied by article 29 (application of the 1981 Act) of the Beacon Fen Energy Park Order 202[] in respect of the land to which the notice to treat relates.

(2) But see article 30 (acquisition of subsoil and airspace only) of the Beacon Fen Energy Park Order 202[] which excludes acquisition of subsoil or airspace only from this Schedule.

2. In this Schedule, “house” includes any park or garden belonging to a house.

Counter-notice requiring purchase of land

3. A person who is able to sell the house, building or factory (“the owner”) may serve a counter-notice requiring the authority to purchase the owner’s interest in the house, building or factory.

4. A counter-notice under paragraph 3 must be served within the period of 28 days beginning with the day on which the notice to treat was served.

Response to counter-notice

5. On receiving a counter-notice, the acquiring authority must decide whether to—

- (a) withdraw the notice to treat;
- (b) accept the counter-notice; or
- (c) refer the counter-notice to the Upper Tribunal.

6. The authority must serve notice of their decision on the owner within the period of 3 months beginning with the day on which the counter-notice is served (“the decision period”).

7. If the authority decides to refer the counter-notice to the Upper Tribunal they must do so within the decision period.

8. If the authority does not serve notice of a decision within the decision period they are to be treated as if they had served notice of a decision to withdraw the notice to treat at the end of that period.

9. If the authority serves notice of a decision to accept the counter-notice, the compulsory purchase order and the notice to treat are to have effect as if they included the owner’s interest in the house, building or factory.

Determination by Upper Tribunal

10. On a referral under paragraph 7, the Upper Tribunal must determine whether the acquisition of the right or the imposition of the restrictive covenant would—

- (a) in the case of a house, building or factory, cause material detriment to the house, building or factory; or
- (b) in the case of a park or garden, seriously affect the amenity or convenience of the house to which the park or garden belongs.

11. In making its determination, the Upper Tribunal must take into account—

- (a) the effect of the acquisition of the right or the imposition of the covenant;
- (b) the use to be made of the right or covenant proposed to be acquired or imposed;
and
- (c) if the right or covenant is proposed to be acquired or imposed for works or other purposes extending to other land, the effect of the whole of the works and the use of the other land.

12. If the Upper Tribunal determines that the acquisition of the right or the imposition of the covenant would have either of the consequences described in paragraph 10, it must determine how much of the house, building or factory the authority ought to be required to take.

13. If the Upper Tribunal determines that the authority ought to be required to take some or all of the house, building or factory, the compulsory purchase order and the notice to treat are to have effect as if they included the owner's interest in that land.

14.—(1) If the Upper Tribunal determines that the authority ought to be required to take some or all of the house, building or factory, the authority may at any time within the period of 6 weeks beginning with the day on which the Upper Tribunal makes its determination withdraw the notice to treat in relation to that land.

(2) If the acquiring authority withdraws the notice to treat under this paragraph they must pay the person on whom the notice was served compensation for any loss or expense caused by the giving and withdrawal of the notice.

(3) Any dispute as to the compensation is to be determined by the Upper Tribunal.”

SCHEDULE 10

Article 32

LAND OF WHICH TEMPORARY POSSESSION MAY BE TAKEN

<i>(1) Plot reference number shown on the land plans</i>	<i>(2) Purpose for which temporary possession may be taken</i>
7-3, 10-7, 13-5, 13-15, 17-6	Temporary use to facilitate the carrying out of Work No. 4B and further associated development.
9-4	Temporary use to facilitate the carrying out of Work No. 4B, Work No.10 and further associated development.

SCHEDULE 11

PROTECTIVE PROVISIONS

Article 40

PART 1

FOR THE PROTECTION OF ELECTRICITY, GAS, WATER AND SEWERAGE UNDERTAKERS

Application

1. For the protection of the affected undertakers referred to in this Part of this Schedule (save for any utility undertakers which are specifically protected by any other Part of this Schedule, which will take precedence) the following provisions have effect, unless otherwise agreed in writing between the undertaker and the affected undertaker concerned.

Interpretation

2. In this Part of this Schedule—

“affected undertaker” means—

- (a) any licence holder within the meaning of Part 1 (electricity supply) of the 1989 Act;
- (b) a gas transporter within the meaning of Part 1 (gas supply) of the Gas Act 1986(a);
- (c) a water undertaker within the meaning of the Water Industry Act 1991(b); or
- (d) a sewerage undertaker within the meaning of Part 1 (preliminary) of the Water Industry Act 1991,

for the area of the authorised development but, for the avoidance of doubt, does not include the undertakers specified in Parts 3 to 11 of this Schedule, and in relation to any apparatus, means the undertaker to whom it belongs or by whom it is maintained;

“alternative apparatus” means alternative apparatus adequate to enable the affected undertaker in question to fulfil its statutory functions in a manner not less efficient than previously;

“apparatus” means—

- (e) in the case of an electricity undertaker, electric lines or electric plant (as defined in the 1989 Act), belonging to or maintained by that affected undertaker;
- (f) in the case of a gas undertaker, any mains, pipes or other apparatus belonging to or maintained by a gas transporter for the purposes of gas supply;
- (g) in the case of a water undertaker—
 - (i) mains, pipes or other apparatus belonging to or maintained by that affected undertaker for the purposes of water supply; and
 - (ii) any water mains or service pipes (or part of a water main or service pipe) that is the subject of an agreement to adopt made under section 51A (agreements to adopt water main or service pipe at future date) of the Water Industry Act 1991;
- (h) in the case of a sewerage undertaker—
 - (i) any drain or winks vested in the affected undertaker under the Water Industry Act 1991; and

(a) 1986 c. 44. A new section 7 was substituted by section 5 of the Gas Act 1995 (c. 45) and was further amended by section 76 of the Utilities Act 2000 (c. 27).
(b) 1991 c. 56.

- (ii) any sewer which is so vested or is the subject of a notice of intention to adopt given under section 102(4) (adoption of sewers and disposal works) of that Act or an agreement to adopt made under section 104 of that Act,

and includes a sludge main, disposal main (within the meaning of section 219 (general interpretation) of that Act) or sewer outfall and any manholes, ventilating shafts, pumps or other accessories forming part of any such sewer, drain or works, and includes any structure in which apparatus is or is to be lodged or which gives or will give access to apparatus;

“functions” includes powers and duties; and

“in” in a context referring to apparatus or alternative apparatus in land includes a reference to apparatus or alternative apparatus under, over or upon land.

Precedence of the 1991 Act in respect of apparatus in the streets

3. This Part of this Schedule does not apply to apparatus in respect of which the relations between the undertaker and the affected undertaker are regulated by the provisions of Part 3 (water supply) of the Water Industry Act 1991.

Apparatus in temporarily closed streets

4. Regardless of the temporary prohibition or restriction of use of streets under the powers conferred by article 16 (temporary prohibition or restriction of use of streets and public rights of way), a utility undertaker is at liberty at all times to take all necessary access across any such street and to execute and do all such works and things in, upon or under any such street as may be reasonably necessary to enable it to maintain any apparatus which at the time of the prohibition or restriction was in that street.

Acquisition of land

5. Regardless of any provision in this Order or anything shown on the land plans, the undertaker must not acquire any apparatus otherwise than by agreement.

Removal of apparatus

6.—(1) If, in the exercise of the powers conferred by this Order, the undertaker acquires any interest in any land in which any apparatus is placed or over which access to any apparatus is enjoyed or requires that the utility undertaker’s apparatus is relocated or diverted, that apparatus must not be removed under this part of this Schedule, and any right of a utility undertaker to maintain that apparatus in that land and to gain access to it must not be extinguished, until alternative apparatus has been constructed and is in operation, and access to it has been provided, to the reasonable satisfaction of the utility undertaker in question in accordance with sub- paragraphs (2) to (7).

(2) If, for the purpose of executing any works in, on or under any land purchased, held, or used under this Order, the undertaker requires the removal of any apparatus placed in that land, it must give to the affected undertaker in question written notice of that requirement, together with a plan and section of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order an affected undertaker reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph (3), afford to the affected undertaker the necessary facilities and rights for the construction of alternative apparatus in other land of the undertaker and subsequently for the maintenance of that apparatus.

(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of the undertaker, or the undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraph (1), in the land in which the alternative apparatus or part of such apparatus is to be constructed, the affected undertaker in question must, on receipt of a written notice to that effect from the undertaker, as soon as reasonably possible use reasonable

endeavours to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed.

(4) Any alternative apparatus to be constructed in land of the undertaker under this Part of this Schedule must be constructed in such manner and in such line or situation as may be agreed between the affected undertaker in question and the undertaker or in default of agreement settled by arbitration in accordance with article 45 (arbitration).

(5) The affected undertaker in question must, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with article 45 (arbitration) and after the grant to the affected undertaker of any such facilities and rights as are referred to in sub-paragraph (1) or (3), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by the undertaker to be removed under the provisions of this Part of this Schedule.

(6) Regardless of anything in sub-paragraph (5), if the undertaker gives notice in writing to the affected undertaker in question that it desires itself to execute any work, or part of any work in connection with the construction or removal of apparatus in any land controlled by the undertaker, that work, instead of being executed by the affected undertaker, must be executed by the undertaker without unnecessary delay under the superintendence, if given, and to the reasonable satisfaction of the affected undertaker.

(7) Nothing in sub-paragraph (6) authorises the undertaker to execute the placing, installation, bedding, packing, removal, connection or disconnection of any apparatus, or execute any filling around the apparatus (where the apparatus is laid in a trench) within 300 millimetres of the apparatus.

Facilities and rights for alternative apparatus

7.—(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to an affected undertaker facilities and rights for the construction and maintenance in land of the undertaker of alternative apparatus in substitution for apparatus to be removed, those facilities and rights must be granted upon such terms and conditions as may be agreed between the undertaker and the affected undertaker in question or in default of agreement settled by arbitration in accordance with article 45 (arbitration).

(2) If the facilities and rights to be afforded by the undertaker in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are in the opinion of the arbitrator less favourable on the whole to the affected undertaker in question than the facilities and rights enjoyed by it in respect of the apparatus to be removed and the terms and conditions to which those facilities and rights are subject, the arbitrator must make such provision for the payment of compensation by the undertaker to that affected undertaker as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

Retained apparatus

8.—(1) Not less than 28 days before starting the execution of any works of the type referred to in paragraph 6(1) that are near to, or will or may affect, any apparatus the removal of which has not been required by the undertaker under paragraph 6(1), the undertaker must submit to the affected undertaker in question a plan, section and description of the works to be executed.

(2) Those works must be executed only in accordance with the plan, section and description submitted under sub-paragraph (1) and in accordance with such reasonable requirements as may be made in accordance with sub-paragraph (3) by the affected undertaker for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and the affected undertaker is entitled to watch and inspect the execution of those works.

(3) Any requirements made by an affected undertaker under sub-paragraph (2) must be made within a period of 21 days beginning with the date on which a plan, section and description under sub-paragraph (1) are submitted to it.

(4) If an affected undertaker in accordance with sub-paragraph (3) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraphs 1 to 7 apply as if the removal of the apparatus had been required by the undertaker under paragraph 6(1).

(5) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 28 days before commencing the execution of any works, a new plan, section and description instead of the plan, section and description previously submitted, and having done so the provisions of this paragraph apply to and in respect of the new plan, section and description.

(6) The undertaker is not required to comply with sub-paragraph (1) in a case of emergency but in that case it must give to the affected undertaker in question notice as soon as is reasonably practicable and a plan, section and description of those works as soon as reasonably practicable subsequently and must comply with sub-paragraph (2) in so far as is reasonably practicable in the circumstances.

Expenses and costs

9.—(1) Subject to the following provisions of this paragraph, the undertaker must repay to an affected undertaker the reasonable expenses incurred by that affected undertaker in, or in connection with, the inspection, removal, alteration or protection of any apparatus or the construction of any new apparatus which may be required in consequence of the execution of any such works as are referred to in paragraph 6(1).

(2) There must be deducted from any sum payable under sub-paragraph (1) the value of any apparatus removed under the provisions of this Part of this Schedule, that value being calculated after removal.

(3) If in accordance with the provisions of this Part of this Schedule—

- (a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions; or
- (b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was,

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or, in default of agreement, is not determined by arbitration in accordance with article 45 (arbitration) to be necessary, then, if such placing involves cost in the construction of works under this Part of this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to the affected undertaker in question by virtue of sub-paragraph (1) must be reduced by the amount of that excess.

(4) For the purposes of sub-paragraph (3)—

- (a) an extension of apparatus to a length greater than the length of existing apparatus is not to be treated as a placing of apparatus of greater dimensions than those of the existing apparatus; and
- (b) where the provision of a joint in a cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole is to be treated as if it also had been agreed or had been so determined.

(5) An amount which apart from this sub-paragraph would be payable to an affected undertaker in respect of works by virtue of sub-paragraph (1) must, if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on the affected undertaker any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, be reduced by the amount which represents that benefit.

10.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any such works referred to in paragraph 6(1), any damage is caused to any apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works) or property of an affected undertaker, or there is any interruption in any service provided, or in the supply of any goods, by any affected undertaker, the undertaker must—

- (a) bear and pay the cost reasonably incurred by that affected undertaker in making good such damage or restoring the supply; and
- (b) provide reasonable compensation to that affected undertaker for any other expenses, loss, damages, penalty or costs incurred by the affected undertaker,

by reason or in consequence of any such damage or interruption.

(2) Nothing in sub-paragraph (1) imposes any liability on the undertaker with respect to any damage or interruption to the extent that it is attributable to the act, neglect or default of an affected undertaker, its officers, servants, contractors or agents.

(3) An affected undertaker must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise may be made without the consent of the undertaker which, if it withholds such consent, will have the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

Enactments and agreements

11. Nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and an affected undertaker in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

PART 2

FOR THE PROTECTION OF OPERATORS OF ELECTRONIC COMMUNICATIONS CODE NETWORKS

12. For the protection of any operator, the following provisions have effect, unless otherwise agreed in writing between the undertaker and the operator.

13. In this Part of this Schedule—

“the 2003 Act” means the Communications Act 2003(a);

“the code rights” has the same meaning as in the Paragraph 3 of the electronic communications code(b);

“electronic communications apparatus” has the same meaning as in the electronic communications code;

“the electronic communications code” has the same meaning as in Chapter 1 of Part 2 of the 2003 Act;

“electronic communications code network” means—

- (a) so much of an electronic communications network or infrastructure system provided by an electronic communications code operator as is not excluded from the application of the electronic communications code by a direction under section 106 (Application of the electronic communications code) of the 2003 Act; and
- (b) an electronic communications network which the undertaker is providing or proposing to provide.

(a) 2003 c. 21.

(b) See section 106 of the 2003 Act. Section 106 was amended by section 4(3) of the Digital Economy Act 2017 (c. 30).

“electronic communications code operator” means a person in whose case the electronic communications code is applied by a direction under section 106 (Application of the electronic communications code) of the 2003 Act;

“infrastructure system” has the same meaning as in the electronic communications code and references to providing an infrastructure system are to be construed in accordance with paragraph 7(2) of that code; and

“operator” means the operator of an electronic communications code network.

14. The exercise of the powers conferred by this Order is subject to Part 10 (undertaker’s works affecting electronic communications apparatus) of the electronic communications code.

15.—(1) Subject to sub-paragraph (2), if as a result of the authorised development or its construction, or of any subsidence resulting from any of the authorised development—

(a) any damage is caused to any electronic communications apparatus belonging to an operator (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of the authorised development), or other property of an operator; or

(b) there is any interruption in the supply of the service provided by an operator,

the undertaker must bear and pay the cost reasonably incurred by the operator in making good such damage or restoring the supply and make reasonable compensation to that operator for any other reasonable expenses, loss, damages, penalty or costs incurred by it, by reason, or in consequence of, any such damage or interruption.

(2) Nothing in sub-paragraph (1) imposes any liability on the undertaker with respect to any damage or interruption to the extent that it is attributable to the act, neglect or default of an operator, its officers, servants, contractors or agents.

16. The operator must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise of the claim or demand is to be made without the consent of the undertaker and if such consent, is withheld, the undertaker has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

17. Any difference arising between the undertaker and the operator under this Part of this Schedule must be referred to and settled by arbitration under article 45 (arbitration).

18. This Part of this Schedule does not apply to—

(a) any apparatus in respect of which the relations between the undertaker and an operator are regulated by the provisions of Part 3 (street works in England and Wales) of the 1991 Act; or

(b) any damage, or any interruption, caused by electro-magnetic interference arising from the construction or use of the authorised development.

19. Nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and an operator in respect of any apparatus in land belonging to the undertaker on the date on which this Order is made.

PART 3

FOR THE PROTECTION OF ANGLIAN WATER SERVICES LIMITED

Application

20. For the protection of Anglian Water the following provisions have effect, unless otherwise agreed in writing between the undertaker and Anglian Water.

Interpretation

21. In this Part of this Schedule—

“1991 Act” means the New Roads and Street Works Act 1991;

“alternative apparatus” means alternative apparatus adequate to enable Anglian Water to fulfil its statutory functions in a manner no less efficient than previously;

“Anglian Water” means Anglian Water Services Limited, or any successor in its functions, and, only in respect of any matter relating to, or connected with, the Lincolnshire Reservoir Project, any entity granted an infrastructure provider project licence under the Water Industry (Specified Infrastructure Projects) (English Undertakers) Regulations 2013 in relation to the Lincolnshire Reservoir Project;

“apparatus” means—

- (a) works, mains, pipes or other apparatus belonging to or maintained by Anglian Water for the purposes of water supply and sewerage;
- (b) any drain or works vested in Anglian Water under the Water Industry Act 1991;
- (c) any sewer which is so vested or is the subject of a notice of intention to adopt given under section 102(4) of that Act or an agreement to adopt made under section 104 of that Act,
- (d) any drainage system constructed for the purpose of reducing the volume of surface water entering any public sewer belonging to Anglian Water; and
- (e) includes a sludge main, disposal main or sewer outfall and any manholes, ventilating shafts, pumps or other accessories forming part of any such sewer, drain or works, and includes any structure in which any apparatus under this definition is or is to be lodged or which gives or will give access to apparatus,

and for the purpose of this definition, where words are defined by section 219 of that Act, they shall be taken to have the same meaning;

“functions” includes powers and duties;

“in”, in a context referring to apparatus or alternative apparatus in land, includes a reference to apparatus or alternative apparatus under, over or upon land;

“Lincolnshire Reservoir Land” means the land which Anglian Water anticipates to be required for the construction, commissioning, operation and maintenance of the Lincolnshire Reservoir Project, as notified in writing by Anglian Water to the undertaker, which may be updated from time to time;

“Lincolnshire Reservoir Project” means the proposals being promoted by Anglian Water by way of an application for a development consent order, to construct, operate and maintain a reservoir exceeding 30 million cubic metres of water storage, together with associated development which is anticipated to include, but is not limited to, water transfer pipelines, abstraction facilities, pumping stations, treatment works, renewable energy generation, access roads, utility diversions, rail works, parking, wildlife and environmental areas, and recreation facilities on land south-east of Sleaford, Lincolnshire; and

“plan” includes all designs, drawings, specifications, method statements, soil reports, programmes, calculations, risk assessments and other documents that are reasonably necessary properly and sufficiently to describe the works to be executed.

On street apparatus

22. This Part of this Schedule does not apply to apparatus in respect of which the relations between the undertaker and Anglian Water are regulated by the provisions of Part 3 of the 1991 Act.

Apparatus in stopped up streets

23.—(1) Where any street is stopped up under article 16 (temporary prohibition or restriction of use of streets and public rights of way), where Anglian Water has apparatus in the street or accessed by virtue of that street, it has the same powers and rights in respect of that apparatus as it enjoyed

immediately before the stopping up and the undertaker must grant to Anglian Water legal easements reasonably satisfactory to Anglian Water in respect of such apparatus and access to it, but nothing in this paragraph affects any right of the undertaker or of Anglian Water to require the removal of that apparatus under paragraph 26 or the power of the undertaker to carry out works under paragraph 28.

(2) Regardless of the temporary stopping up or diversion of any highway under the powers conferred by article 16 (temporary prohibition or restriction of use of streets and public rights of way), Anglian Water is at liberty at all times to take all necessary access across any such stopped up highway and to execute and do all such works and things in, upon or under any such highway as may be reasonably necessary or desirable to enable it to maintain any apparatus which at the time of the stopping up or diversion was in that highway.

Protective works to buildings

24. The undertaker, in the case of the powers conferred by article 21 (protective works to buildings), must exercise those powers so as not to obstruct or render less convenient the access to any apparatus.

Acquisition of land

25. Regardless of any provision in this Order or anything shown on the land plans, the undertaker must not acquire any apparatus otherwise than by agreement.

Removal of apparatus

26.—(1) If, in the exercise of the powers conferred by this Order, the undertaker acquires any interest in any land in which any apparatus is placed or requires that Anglian Water's apparatus is relocated or diverted, that apparatus must not be removed under this Part of this Schedule, and any right of Anglian Water to maintain that apparatus in that land must not be extinguished, until—

- (a) alternative apparatus has been constructed and is in operation to the reasonable satisfaction of Anglian Water in accordance with sub-paragraphs (2) to (8); and
- (b) facilities and rights have been secured for that alternative apparatus in accordance with paragraph 27.

(2) If, for the purpose of executing any works in, on or under any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, the undertaker must give to Anglian Water 28 days' written notice of that requirement, together with a plan of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order an undertaker reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph (3), afford to Anglian Water the necessary facilities and rights for the construction of alternative apparatus in other land of the undertaker and subsequently for the maintenance of that apparatus.

(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of the undertaker, or the undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraph (2) in the land in which the alternative apparatus or part of such apparatus is to be constructed Anglian Water must, on receipt of a written notice to that effect from the undertaker, as soon as reasonably possible use its best endeavours to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed.

(4) Any alternative apparatus to be constructed in land of the undertaker under this Part of this Schedule must be constructed in such manner and in such line or situation as may be agreed between Anglian Water and the undertaker or in default of agreement settled by arbitration in accordance with article 45 (arbitration).

(5) Anglian Water must, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with article 45 (arbitration), and after the grant to Anglian Water of any such facilities and rights as are referred to in sub-paragraphs (2) or (3), proceed without unnecessary delay to construct and bring into operation the alternative

apparatus and subsequently to remove any apparatus required by the undertaker to be removed under the provisions of this Part of this Schedule.

(6) Regardless of anything in sub-paragraph (5), if Anglian Water gives notice in writing to the undertaker that it desires the undertaker to execute any work, or part of any work in connection with the construction or removal of apparatus in any land of the undertaker or to the extent that Anglian Water fails to proceed with that work in accordance with sub-paragraph (5) or the undertaker and Anglian Water otherwise agree, that work, instead of being executed by Anglian Water, must be executed by the undertaker without unnecessary delay under the superintendence, if required, and to the reasonable satisfaction of Anglian Water.

(7) If Anglian Water fails either reasonably to approve, or to provide reasons for its failure to approve along with an indication of what would be required to make acceptable, any proposed details relating to required removal works under sub-paragraph (2) within 28 days of receiving a notice of the required works from the undertaker, then such details are deemed to have been approved. For the avoidance of doubt, any such “deemed consent” does not extend to the actual undertaking of the removal works, which shall remain the sole responsibility of Anglian Water or its contractors unless these works are to be carried out by the undertaker in accordance with sub paragraph (6).

(8) Whenever alternative apparatus is to be or is being substituted for existing apparatus, the undertaker shall, before taking or requiring any further step in such substitution works, use reasonable endeavours to comply with Anglian Water’s reasonable requests for a reasonable period of time to enable Anglian Water to—

- (a) make network contingency arrangements; or
- (b) bring such matters as it may consider reasonably necessary to the attention of end users of the utility in question.

(9) In respect of apparatus constructed or being constructed by Anglian Water for the purposes of the Lincolnshire Reservoir Project—

- (a) this paragraph applies whether or not such apparatus is operational;
- (b) “best endeavours” in sub-paragraph (3) shall be read as “reasonable endeavours” and
- (c) “28 days” in sub-paragraph (2) and (7) shall be read as “42 days”.

Facilities and rights for alternative apparatus

27.—(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to a utility undertaker facilities and rights for the construction and maintenance in land of the undertaker of alternative apparatus in substitution for apparatus to be removed, those facilities and rights are to be granted upon such terms and conditions as may be agreed between the undertaker and Anglian Water or in default of agreement settled by arbitration in accordance with article 45 (arbitration).

(2) If the facilities and rights to be afforded by the undertaker in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are in the opinion of the arbitrator less favourable on the whole to Anglian Water than the facilities and rights enjoyed by it in respect of the apparatus to be removed and the terms and conditions to which those facilities and rights are subject, the arbitrator must make such provision for the payment of compensation by the undertaker to Anglian Water as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

(3) Such facilities and rights as are set out in this paragraph are deemed to include any statutory permits granted to the undertaker in respect of the apparatus in question, whether under the Environmental Permitting Regulations 2010 or other legislation.

Retained apparatus

28.—(1) Not less than 28 days before starting the execution of any works in, on or under any land purchased, held, appropriated or used under this Order that are near to, or will or may affect, any apparatus (or any means of access to it) the removal of which has not been required by the

undertaker under paragraph 26(2), the undertaker must submit to Anglian Water a plan of the works to be executed.

(2) Those works must be executed only in accordance with the plan submitted under sub-paragraph (1) and in accordance with such reasonable requirements as may be made in accordance with sub-paragraph (3) by Anglian Water for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and Anglian Water is entitled to watch and inspect the execution of those works.

(3) Any requirements made by Anglian Water under sub-paragraph (2) must be made within a period of 21 days beginning with the date on which a plan under sub-paragraph (1) is submitted to it.

(4) If Anglian Water in accordance with sub-paragraph (3) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraphs 20 to 22 and 25 to 27 apply as if the removal of the apparatus had been required by the undertaker under paragraph 26(2).

(5) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 28 days before commencing the execution of any works, a new plan instead of the plan previously submitted, and having done so the provisions of this paragraph apply to and in respect of the new plan.

(6) The undertaker is not required to comply with sub-paragraph (1) in a case of emergency but in that case must give to Anglian Water notice as soon as is reasonably practicable and a plan of those works as soon as reasonably practicable subsequently and must comply with sub-paragraph (3) in so far as is reasonably practicable in the circumstances, using its best endeavours to keep to a minimum the impact of those emergency works on Anglian Water's apparatus, the operation of its water and sewerage network and end-users of its services.

(7) For the purposes of sub-paragraph (1) and without prejudice to the generality of the principles set out in that sub-paragraph, works are deemed to be in land near Anglian Water's apparatus (where it is a pipe) if those works fall within the following distances measured from the medial line of such apparatus—

- (a) 4 metres where the diameter of the pipe is less than 250 millimetres;
- (b) 5 metres where the diameter of the pipe is between 250 and 400 millimetres, and
- (c) a distance to be agreed on a case by case basis and before the submission of the plan under sub-paragraph (1) where the diameter of the pipe exceeds 400 millimetres.

Expenses and costs

29.—(1) Subject to the following provisions of this paragraph, the undertaker must repay to Anglian Water all expenses reasonably incurred by Anglian Water in, or in connection with, the inspection, removal, alteration or protection of any apparatus or the construction of any new apparatus which may be required in consequence of the execution of any such works as are referred to in this Part of this Schedule.

(2) There must be deducted from any sum payable under sub-paragraph (1) the value of any apparatus removed under the provisions of this Part of this Schedule that value being calculated after removal.

(3) If in accordance with the provisions of this Part of this Schedule—

- (a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions; or
- (b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was situated, and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or, in default of agreement, is not determined by arbitration in accordance with article 45 (arbitration) to be necessary, then, if such placing involves cost in the construction of works under this

Part of this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to Anglian Water by virtue of sub-paragraph (1) must be reduced by the amount of that excess.

(4) For the purposes of sub-paragraph (3)—

- (a) an extension of apparatus to a length greater than the length of existing apparatus is not to be treated as a placing of apparatus of greater dimensions than those of the existing apparatus; and
- (b) where the provision of a joint in a pipe or cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole is to be treated as if it also had been agreed or had been so determined.

30.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction or maintenance of any of the authorised development or of any such works referred to in paragraphs 24 or 26(2), or by reason of any subsidence resulting from such development or works, any damage is caused to any apparatus or alternative apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of such development or works) or property of Anglian Water, or there is any interruption in any service provided, or in the supply of any goods, by Anglian Water, the undertaker must—

- (a) bear and pay the cost reasonably incurred by Anglian Water, accompanied by an invoice or claim from Anglian Water, in making good such damage or restoring the supply; and
- (b) make reasonable compensation to Anglian Water for any other expenses, loss, damages, penalty or costs incurred by the undertaker,

by reason or in consequence of any such damage or interruption.

(2) The fact that any act or thing may have been done by Anglian Water on behalf of the undertaker or in accordance with a plan approved by Anglian Water or in accordance with any requirement of Anglian Water or under its supervision does not, subject to sub-paragraph (3), excuse the undertaker from liability under the provisions of sub-paragraph (1) unless Anglian Water fails to carry out and execute the works properly with due care and attention and in a skilful and professional like manner or in a manner that does not accord with the approved plan.

(3) Nothing in sub-paragraph (1) imposes any liability on the undertaker with respect to any damage or interruption to the extent that it is attributable to the unlawful or unreasonable act, neglect or default of Anglian Water, its officers, servants, contractors or agents.

(4) Anglian Water must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise is to be made, without the consent of the undertaker (such consent not to be unreasonably withheld or delayed) who, if withholding such consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

(5) Anglian Water must use reasonable endeavours to mitigate in whole or in part and to minimise any costs, expenses, loss, demands and penalties to which the undertaker must bear and pay the costs for.

Cooperation

31. Where in consequence of the proposed construction of any of the authorised development, the undertaker or Anglian Water requires the removal of apparatus under paragraph 26(2) or Anglian Water makes requirements for the protection or alteration of apparatus under paragraph 28, the undertaker must use all reasonable endeavours to co-ordinate the execution of the works in the interests of safety and the efficient and economic execution of the authorised development and taking into account the need to ensure the safe and efficient operation of Anglian Water's undertaking, using existing processes where requested by Anglian Water, provided it is appropriate

to do so, and Anglian Water must use all reasonable endeavours to co-operate with the undertaker for that purpose.

32. Where the undertaker identifies any apparatus which may belong to or be maintainable by Anglian Water but which does not appear on any statutory map kept for the purpose by Anglian Water, it shall inform Anglian Water of the existence and location of the apparatus as soon as reasonably practicable.

33. Nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and Anglian Water in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

Interface with the Lincolnshire Reservoir Project

34. As regards the interface (including any potential interface) between the authorised development and the Lincolnshire Reservoir Project, the undertaker and Anglian Water agree to-

- (a) work positively and collaboratively with each other to manage that interface, including having regard to the impact that each project's design, construction and operation and maintenance may have on the other party's project;
- (b) engage proactively with the other party's project, including providing timely responses to any consultations, public examinations, or reasonable requests for informal engagement concerning that interface; and
- (c) use reasonable endeavours to agree the details of a cooperation framework in relation to the interface (pursuant to the outline construction environmental management plan and outline decommissioning environmental management plan) within 56 days of the undertaker providing a draft cooperation framework to Anglian Water, and for the purposes of agreeing the cooperation framework pursuant to the outline construction environmental management plan the undertaker will provide the draft cooperation agreement framework to Anglian Water within 12 months of the date this Order comes into force.

35. The undertaker will work with Anglian Water during the design and construction of the authorised development to ensure that where the two projects interface there is no impediment to any works associated with or required for the Lincolnshire Reservoir Project crossing under the cabling infrastructure of the authorised development in a timely and cost-effective manner. Without prejudice to the generality of the previous sentence, the undertaker must only construct Work No. 4 to a maximum depth of 10 metres below ground level within the area shown edged blue on the plans appended to the outline construction environmental management plan (drawing title: Extend of Beacon Fen Energy Park Limited Order Boundary and Anglian Water Restriction), unless otherwise agreed with Anglian Water.

36. Before finalising the detailed design of any part of the authorised development which is within or within 500m of the Lincolnshire Reservoir Land, the undertaker will provide Anglian Water with the opportunity (within a period of at least 42 days) to review and comment on the proposed detailed design of such part of the authorised development, and will consider any comments reasonably made by Anglian Water where this would influence the consenting, design, construction, operation or maintenance of the Lincolnshire Reservoir Project.

37. Before finalising the detailed design of any part of the Lincolnshire Reservoir Project which is within or within 500m of the Order Limits, Anglian Water will provide the undertaker with the opportunity (within a period of at least 42 days) to review and comment on the proposed detailed design of any such part of the Lincolnshire Reservoir Project, and will consider any comments reasonably made by the undertaker where this would influence the construction, design or operation of the authorised development.

38. The undertaker will not unreasonably withhold consent for Anglian Water to enter onto land within the undertaker's control to undertake pre-consent surveys and site investigations as

reasonably necessary for the preparation of the Lincolnshire Reservoir Project development consent order application, subject to the undertaker being given—

- (a) at least 14 days written notice of any non-intrusive surveys;
- (b) at least 28 days written notice of any intrusive surveys,

and Anglian Water will comply with any conditions reasonably imposed by the undertaker in granting such consent and will reimburse the undertaker any costs reasonably incurred by it in facilitating the undertaking of the surveys.

39. The undertaker and Anglian Water may by written agreement substitute any period of time for those periods set out in this Part of this Schedule.

PART 4

FOR THE PROTECTION OF NATIONAL GAS TRANSMISSION PLC AS GAS UNDERTAKER

Application

40.—(1) For the protection of National Gas as referred to in this Part of this Schedule the following provisions have effect, unless otherwise agreed in writing between the undertaker and National Gas.

(2) Subject to sub-paragraph (3) or to the extent otherwise agreed in writing between the undertaker and National Gas, where the benefit of this Order is transferred or granted to another person under article 7 (consent to transfer benefit of the Order) –

- (a) any agreement of the type mentioned in subparagraph (1) has effect as if it had been made between National Gas and the transferee or grantee (as the case may be); and
- (b) written notice of the transfer or grant must be given to National Gas on or before the date of that transfer or grant.

(3) Sub-paragraph (2) does not apply where the benefit of the Order is transferred or granted to National Gas under article 7 (*consent to transfer benefit of the Order*) (but without prejudice to paragraph 50(3)(b)).

Interpretation

41. In this Part of this Schedule—

“acceptable credit provider” means a bank or financial institution with a credit rating that is not lower than: (i) “A-” if the rating is assigned by Standard & Poor’s Ratings Group or Fitch Ratings; and “A3” if the rating is assigned by Moody’s Investors Services Inc.;

“acceptable insurance” means general third party liability insurance effected and maintained by the undertaker with a combined property damage and bodily injury limit of indemnity of not less than £50,000,000.00 (fifty million pounds) per occurrence or series of occurrences arising out of one event. Such insurance must be maintained (a) during the construction period of the authorised works; and (b) after the construction period of the authorised works in respect of any use and maintenance of the authorised development by or on behalf of the undertaker which constitute specified works and arranged with an insurer whose security/credit rating meets the same requirements as an “acceptable credit provider”, such insurance must include (without limitation):

- (a) a waiver of subrogation and an indemnity to principal clause in favour of National Gas
- (b) pollution liability for third party property damage and third party bodily damage arising from any pollution/contamination event with a (sub)limit of indemnity of not less than £10,000,000.00 (ten million pounds) per occurrence or series of occurrences arising out of one event or £20,000,000.00 (twenty million pounds) in aggregate;

“acceptable security” means either:

- (a) a parent company guarantee from a parent company in favour of National Gas to cover the undertaker's liability to National Gas to a total liability cap of £50,000,000.00 (fifty million pounds) (in a form reasonably satisfactory to National Gas and where required by National Gas, accompanied with a legal opinion confirming the due capacity and authorisation of the parent company to enter into and be bound by the terms of such guarantee); or
- (b) a bank bond or letter of credit from an acceptable credit provider in favour of National Gas to cover the undertaker's liability to National Gas for an amount of not less than £10,000,000.00 (ten million pounds) per asset per event up to a total liability cap of £50,000,000.00 (fifty million pounds) (in a form reasonably satisfactory to National Gas);

“alternative apparatus” means appropriate alternative apparatus to the satisfaction of National Gas to enable National Gas to fulfil its statutory functions in a manner no less efficient than previously;

“apparatus” means any mains, pipes or other apparatus belonging to or maintained by National Gas for the purposes of gas supply together with any replacement apparatus and such other apparatus constructed pursuant to the Order that becomes operational apparatus of National Gas for the purposes of transmission, distribution and/or supply and includes any structure in which apparatus is or will be lodged or which gives or will give access to apparatus;

(c) “authorised works” has the same meaning as is given to the term “authorised development” in article 2(1) of this Order and includes any associated development authorised by the Order and for the purposes of this Part of this Schedule includes the use and maintenance of the authorised works and construction of any works authorised by this Part of this Schedule;

(d) “commence” and “commencement” in this Part of this Schedule includes any below ground surveys, monitoring, ground work operations or the receipt and erection of construction plant and equipment;

“deed of consent” means a deed of consent, crossing agreement, deed of variation or new deed of grant agreed between the parties acting reasonably in order to vary or replace existing easements, agreements, enactments and other such interests so as to secure land rights and interests as are necessary to carry out, maintain, operate and use the apparatus in a manner consistent with the terms of this Part of this Schedule;

“functions” includes powers and duties;

“ground mitigation scheme” means a scheme approved by National Gas (such approval not to be unreasonably withheld or delayed) setting out the necessary measures (if any) for a ground subsidence event;

“ground monitoring scheme” means a scheme for monitoring ground subsidence which sets out the apparatus which is to be subject to such monitoring, the extent of land to be monitored, the manner in which ground levels are to be monitored, the timescales of any monitoring activities and the extent of ground subsidence which, if exceeded, requires the undertaker to submit for National Gas's approval a ground mitigation scheme;

“ground subsidence event” means any ground subsidence identified by the monitoring activities set out in the ground monitoring scheme that has exceeded the level described in the ground monitoring scheme as requiring a ground mitigation scheme;

“in” in a context referring to apparatus or alternative apparatus in land includes a reference to apparatus or alternative apparatus under, over, across, along or upon such land;

“maintain” and “maintenance” includes the ability and right to do any of the following in relation to any apparatus or alternative apparatus of National Gas: construct, use, repair, alter, inspect, renew or remove the apparatus;

“National Gas” means National Gas Transmission PLC (Company Number 02006000) whose registered office is at National Grid House Warwick Technology Park, Gallows Hill, Warwick, CV34 6DA or any successor as a gas transporter within the meaning of Part 1 of the Gas Act 1986;

“Network Code” means the network code prepared by National Gas pursuant to Standard Special Condition A11(3) of its Gas Transporter’s Licence, which incorporates the Uniform Network Code, as defined in Standard Special Condition A11(6) of National Gas’s Gas Transporters Licence, as both documents are amended from time to time;

“Network Code Claims” means any claim made against National Gas by any person or loss suffered by National Gas under the Network Code arising out of or in connection with any failure by National Gas to make gas available for off take at, or a failure to accept gas tendered for delivery from, any entry point to or exit point from the gas national transmission system as a result of the authorised works or any costs and/or expenses incurred by National Gas as a result of or in connection with, it taking action (including purchase or buy back of capacity) for the purpose of managing constraint or potential constraint on the gas national transmission system which may arise as a result of the authorised works;

“plan” or “plans” include all designs, drawings, specifications, method statements, soil reports, programmes, calculations, risk assessments and other documents that are reasonably necessary properly and sufficiently to describe and assess the works to be executed;

“parent company” means a parent company of the undertaker acceptable to and approved by National Grid acting reasonably;

“specified works” means any of the authorised works or activities undertaken in association with the authorised works which:

- (e) will or may be situated over, or within 15 metres measured in any direction of any apparatus the removal of which has not been required by the undertaker under paragraph 46(2) or otherwise; and/or
- (f) may in any way adversely affect any apparatus the removal of which has not been required by the undertaker under paragraph 46(2) or otherwise; and/or
- (g) includes any of the activities that are referred to in paragraph 8 of T/SP/SSW/22 (National Gas’s policies for safe working in proximity to gas apparatus) “Specification for safe working in the vicinity of National Gas Transmission high pressure gas pipelines and associated installation – requirements for third parties T/SP/SSW/22 (March 2024).”

On Street Apparatus

42. Except for paragraphs 43 (*apparatus of National Gas in stopped up streets*), 48 (*retained apparatus: protection*) and 50 (*indemnity*) of this Part of this Schedule which will apply in respect of the exercise of all or any powers under the Order affecting the rights and apparatus of National Gas, the other provisions of this Part of this Schedule do not apply to apparatus in respect of which the relations between the undertaker and National Gas are regulated by the provisions of Part 3 of the 1991 Act.

Apparatus of National Gas in stopped up streets

43.—(1) Where any street is stopped up under article 16 (*temporary prohibition or restriction of use of streets and public rights of way*), if National Gas has any apparatus in the street or accessed via that street National Gas has the same rights in respect of that apparatus as it enjoyed immediately before the stopping up and the undertaker must grant to National Gas, or procure the granting to National Gas of, legal easements reasonably satisfactory to National Gas in respect of such apparatus and access to it prior to the stopping up of any such street or highway but nothing in this paragraph affects any right of the undertaker or National Gas to require the removal of that apparatus under paragraph 46 or the power of the undertaker, subject to compliance with this subparagraph, to carry out works under paragraph 48.

(2) Notwithstanding the temporary stopping up or diversion of any street under the powers of article 16 (*temporary prohibition or restriction of use of streets and public rights of way*), National Gas is at liberty at all times to take all necessary access across any such stopped up street and to execute and do all such works and things in, upon or under any such street as may be reasonably necessary or desirable to enable it to maintain any apparatus which at the time of the stopping up or diversion was in that street.

Protective works to buildings

44. The undertaker, in the case of the powers conferred by article 21 (*protective work to buildings*), must exercise those powers so as not to obstruct or render less convenient the access to any apparatus without the written consent of National Gas.

Acquisition of land

45.—(1) Regardless of any provision in this Order or anything shown on the land plans or contained in the book of reference to the Order, the undertaker may not

- (a) appropriate or acquire or take temporary possession of any land or apparatus; or
- (b) appropriate, acquire, extinguish, interfere with or override any easement, other interest or right and/or apparatus of National Gas,
- (c) otherwise than by agreement.

(2) As a condition of an agreement between the parties in sub-paragraph (1), prior to the carrying out of any part of the authorised works (or in such other timeframe as may be agreed between National Gas and the undertaker) that is subject to the requirements of this Part of this Schedule that will cause any conflict with or breach the terms of any easement or other legal or land interest of National Gas or affect the provisions of any enactment or agreement regulating the relations between National Gas and the undertaker in respect of any apparatus laid or erected in land belonging to or secured by the undertaker, the undertaker must as National Gas reasonably requires enter into such deeds of consent upon such terms and conditions as may be agreed between National Gas and the undertaker acting reasonably and which must be no less favourable on the whole to National Gas unless otherwise agreed by National Gas, and it will be the responsibility of the undertaker to procure and secure the consent and entering into of such deeds and variations by all other third parties with an interest in the land at that time who are affected by such authorised works.

(3) Save where otherwise agreed in writing between National Gas and the undertaker, the undertaker and National Gas agree that where there is any inconsistency or duplication between the provisions set out in this Part of this Schedule relating to the relocation or removal of apparatus (including but not limited to the payment of costs and expenses relating to such relocation or removal of apparatus) and the provisions of any existing easement, rights, agreements and licences granted, used, enjoyed or exercised by National Gas or other enactments relied upon by National Gas as of right or other use in relation to the apparatus, then the provisions in this Part of this Schedule prevail.

(4) Any agreement or consent granted by National Gas under paragraph 48 (*retained apparatus: protection*) or any other paragraph of this Part of this Schedule, is not to be taken to constitute agreement under sub-paragraph (1).

Removal of apparatus

46.—(1) If, in the exercise of the powers conferred by this Order, the undertaker acquires any interest in or possesses temporarily any land in which any apparatus is placed, that apparatus must not be removed under this Part of this Schedule and any right of National Gas to maintain that apparatus in that land must not be extinguished until alternative apparatus has been constructed, and is in operation to the reasonable satisfaction of National Gas in accordance with sub-paragraph (2) to (5).

(2) If, for the purpose of executing any works in, on, under or over any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, it must give to National Gas advance written notice of that requirement, together with a plan of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order National Gas reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph (3), secure any necessary consents for

the alternative apparatus and afford to National Gas to its satisfaction (taking into account paragraph 47(1) below) the necessary facilities and rights—

- (a) for the construction of alternative apparatus in other land of or land secured by the undertaker; and
- (b) subsequently for the maintenance of that apparatus.

(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of or land secured by the undertaker, or the undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraph (2) in the land in which the alternative apparatus or part of such apparatus is to be constructed, National Gas may in its sole discretion, on receipt of a written notice to that effect from the undertaker, take such steps as are reasonable in the circumstances to assist the undertaker to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed save that this obligation does not extend to the requirement for National Gas to use its compulsory purchase powers to this end unless it elects to do so.

(4) Any alternative apparatus to be constructed in land of or land secured by the undertaker under this Part of this Schedule must be constructed in such manner and in such line or situation as may be agreed between National Gas and the undertaker.

(5) National Gas must, after the alternative apparatus to be provided or constructed has been agreed, and subject to a written diversion agreement having been entered into between the parties and the grant to National Gas of any such facilities and rights as are referred to in sub-paragraph (2) or (3), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by the undertaker to be removed under the provisions of this Part of this Schedule.

Facilities and rights for alternative apparatus

47.—(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to or secures for National Gas facilities and rights in land for the construction, use, maintenance and protection of alternative apparatus in substitution for apparatus to be removed, those facilities and rights must be granted upon such terms and conditions as may be agreed between the undertaker and National Gas and must be no less favourable on the whole to National Gas than the facilities and rights enjoyed by it in respect of the apparatus to be removed unless otherwise agreed by National Gas.

(2) If the facilities and rights to be afforded by the undertaker in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are less favourable on the whole to National Gas than the facilities and rights enjoyed by it in respect of the apparatus to be removed and the terms and conditions to which those facilities and rights are subject, the matter may be referred to arbitration in accordance with paragraph 54 (*Arbitration*) of this Part of this Schedule and the arbitrator must make such provision for the payment of compensation by the undertaker to National Gas as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

Retained apparatus: protection

48.—(1) Not less than 56 days before the commencement of any specified works the undertaker must submit to National Gas a plan and, if reasonably required by National Gas, a ground monitoring scheme in respect of those works.

(2) In relation to specified works the plan to be submitted to National Gas under sub-paragraph (1) must include a method statement and describe—

- (a) the exact position of the works;
- (b) the level at which these are proposed to be constructed or renewed;
- (c) the manner of their construction or renewal including details of excavation, positioning of plant etc;
- (d) the position of all apparatus;

- (e) by way of detailed drawings, every alteration proposed to be made to or close to any such apparatus; and
- (f) any intended maintenance regimes.

(3) The undertaker must not commence any works to which sub-paragraphs (1) and (2) apply until National Gas has given written approval of the plan so submitted.

(4) Any approval of National Gas required under sub-paragraph (3)—

- (a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraphs (5) or (6); and,
- (b) must not be unreasonably withheld.

(5) In relation to any work to which sub-paragraphs (1) and/or (2) apply, National Gas may require such modifications to be made to the plan as may be reasonably necessary for the purpose of securing its apparatus against interference or risk of damage for the provision of protective works or for the purpose of providing or securing proper and convenient means of access to any apparatus.

(6) In relation to any work to which sub-paragraphs (1) or (2) apply, such works must be executed in accordance with—

- (a) the plan, submitted under sub-paragraph (1) or as relevant sub paragraph (5), as approved or as amended from time to time by agreement between the undertaker and National Gas; and
- (b) such reasonable requirements as may be made in accordance with sub-paragraphs (5) or (7) by National Gas for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and National Gas will be entitled to watch and inspect the execution of those works.

(7) Where, under sub-paragraph (6), National Gas requires any protective works to be carried out by itself or by the undertaker (whether of a temporary or permanent nature), such protective works, inclusive of any measures or schemes required and approved as part of the plan approved pursuant to this paragraph, must be carried out to National Gas's satisfaction prior to the commencement of any specified works for which protective works are required and National Gas must give notice of its requirement for such works within 42 days of the date of submission of a plan pursuant to this paragraph (except in an emergency).

(8) If National Gas in accordance with sub-paragraphs (5) or (7) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraphs 40 to 42 and 45 to 47 apply as if the removal of the apparatus had been required by the undertaker under paragraph 46(2) (*removal of apparatus*).

(9) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 56 days before commencing the execution of the specified works, a new plan, instead of the plan previously submitted, and having done so the provisions of this paragraph will apply to and in respect of the new plan.

(10) The undertaker will not be required to comply with sub-paragraph (1) where it needs to carry out emergency works as defined in the 1991 Act but in that case it must give to National Gas notice as soon as is reasonably practicable and a plan of those works and must comply with sub-paragraphs (5), (6) and (7) insofar as is reasonably practicable in the circumstances and comply with sub paragraph (11) at all times;

(11) At all times when carrying out any works authorised under the Order the undertaker must comply with National Gas's policies for safe working in proximity to gas apparatus "Specification for safe working in the vicinity of National Gas Transmission high pressure gas pipelines and associated installation – requirements for third parties T/SP/SSW/22" (March 2024) and HSE's "HSG47 (Third Edition) Avoiding Danger from underground services" (2014).

(12) As soon as reasonably practicable after any ground subsidence event attributable to the authorised development the undertaker will implement an appropriate ground mitigation

scheme save that National Gas retains the right to carry out any further necessary protective works for the safeguarding of its apparatus and can recover any such costs in line with paragraph 49.

Expenses

49. (1) Save where otherwise agreed in writing between National Gas and the undertaker and subject to the following provisions of this paragraph, the undertaker must pay to National Gas within 30 days of receipt of an itemised invoice or claim from National Gas all charges, costs and expenses reasonably anticipated within the following three months or reasonably and properly incurred by National Gas in, or in connection with, the inspection, removal, relaying or replacing, alteration or protection of any apparatus or the construction of any new or alternative apparatus which may be required in consequence of the execution of any authorised works including without limitation—

- (a) any costs reasonably incurred by or compensation properly paid by National Gas in connection with the acquisition of rights or the exercise of statutory powers for such apparatus including without limitation all costs incurred by National Gas as a consequence of National Gas—
 - (i) using its own compulsory purchase powers to acquire any necessary rights under paragraph 46(3); or
 - (ii) exercising any compulsory purchase powers in the Order transferred to or benefitting National Gas;
- (b) in connection with the cost of the carrying out of any diversion work or the provision of any alternative apparatus, where no written diversion agreement is otherwise in place;
- (c) the cutting off of any apparatus from any other apparatus or the making safe of redundant apparatus;
- (d) the approval of plans;
- (e) the carrying out of protective works, plus a capitalised sum to cover the cost of maintaining and renewing permanent protective works;
- (f) the survey of any land, apparatus or works, the inspection and monitoring of works or the installation or removal of any temporary works reasonably necessary in consequence of the execution of any such works referred to in this Part of this Schedule.

(2) There will be deducted from any sum payable under sub-paragraph (1) the value of any apparatus removed under the provisions of this Part of this Schedule and which is not re-used as part of the alternative apparatus, that value being calculated after removal.

(3) If in accordance with the provisions of this Part of this Schedule—

- (a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions; or
- (b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was situated,

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or, in default of agreement, is not determined by arbitration in accordance with paragraph 54 (*arbitration*) to be necessary, then, if such placing involves cost in the construction of works under this Part of this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to National Gas by virtue of sub-paragraph 44(1) will be reduced by the amount of that excess save to the extent that it is not possible in the circumstances to obtain the existing type of apparatus at the same capacity and dimensions or place at the existing depth in which case full costs will be borne by the undertaker.

(4) For the purposes of sub-paragraph (3)—

- (a) an extension of apparatus to a length greater than the length of existing apparatus will not be treated as a placing of apparatus of greater dimensions than those of the existing apparatus; and
- (b) where the provision of a joint in a pipe or cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole will be treated as if it also had been agreed or had been so determined.

(5) Any amount which apart from this sub-paragraph would be payable to National Gas in respect of works by virtue of sub-paragraph (1) will, if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on National Gas any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, be reduced by the amount which represents that benefit.

Indemnity

50. (1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any works authorised by this Part of this Schedule or in consequence of the construction, use maintenance or failure of any of the authorised works by or on behalf of the undertaker or in consequence of any act or default of the undertaker (or any person employed or authorised by him) in the course of carrying out such works, including without limitation works carried out by the undertaker under this Part of this Schedule or any subsidence resulting from any of these works, any damage is caused to any apparatus or alternative apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of the authorised works) or property of National Gas, or there is any interruption in any service provided, or in the supply of any goods or energy, by National Gas, or National Gas becomes liable to pay any amount to any third party, the undertaker will—

- (a) bear and pay on demand accompanied by an invoice or claim from National Gas the cost reasonably and properly incurred by National Gas in making good such damage or restoring the supply; and
- (b) indemnify National Gas for any other expenses, loss, demands, proceedings, damages, claims, penalty or costs incurred by or recovered from National Gas, by reason or in consequence of any such damage or interruption or National Gas becoming liable to any third party and including Network Code Claims other than arising from any negligence or default of National Gas.

(2) The fact that any act or thing may have been done by National Gas on behalf of the undertaker or in accordance with a plan approved by National Gas or in accordance with any requirement of National Gas or under its supervision will not (unless sub-paragraph (3) applies), excuse the undertaker from liability under the provisions of sub-paragraph (1) unless National Gas fails to carry out and execute the works properly with due care and attention and in a skilful and workman like manner or in a manner that does not accord with the approved plan.

(3) Nothing in sub-paragraph (1) imposes any liability on the undertaker in respect of-

- (a) any damage or interruption to the extent that it is attributable to the neglect or default of National Gas, its officers, servants, contractors or agents;
- (b) any authorised works or any other works authorised by this Part of this Schedule carried out by National Gas as an assignee, transferee or lessee of the undertaker with the benefit of the Order pursuant to section 156 of the Planning Act 2008 or article 7 (*consent to transfer benefit of the Order*) subject to the proviso that once such works become apparatus ("new apparatus"), any authorised works yet to be executed and not falling within this sub-paragraph (b) will be subject to the full terms of this Part of this Schedule including this paragraph 50; and
- (c) any indirect or consequential loss of any third party (including but not limited to loss of use, revenue, profit, contract, production, increased cost of working or business interruption) arising from any such damage or interruption, which is not reasonably foreseeable.

(4) National Gas must give the undertaker reasonable notice of any such third party claim or demand and no settlement, admission of liability or compromise must, unless payment is required in connection with a statutory compensation scheme, be made without first consulting the undertaker and considering their representations.

(5) National Gas must, in respect of any matter covered by the indemnity given by the undertaker in this paragraph, at all times act reasonably and in the same manner as it would as if settling third party claims on its own behalf from its own funds.

(6) National Gas must use its reasonable endeavours to mitigate and to minimise any costs, expenses, loss, demands, and penalties to which the indemnity under this paragraph applies where it is within National Gas's reasonable ability and control to do so and which expressly excludes any obligation to mitigate liability arising from third parties which is outside of National Gas's control and if reasonably requested to do so by the undertaker National Gas must provide an explanation of how the claim has been minimised, where relevant.

(7) Not to commence construction (and not to permit the commencement of such construction) of the specified works on any land owned by National Gas or in respect of which National Gas has an easement or wayleave for its apparatus or any other interest or to carry out any works within 15 metres of National Gas's apparatus until the following conditions are satisfied:

- (a) unless and until National Gas is satisfied acting reasonably (but subject to all necessary regulatory constraints) that the undertaker has first provided the acceptable security (and provided evidence that it will maintain such acceptable security for the construction period of the authorised works from the proposed date of commencement of construction of the authorised works) and National Gas has confirmed the same to the undertaker in writing; and
- (b) unless and until National Gas is satisfied acting reasonably (but subject to all necessary regulatory constraints) that the undertaker has procured acceptable insurance (and provided evidence to National Gas that it will maintain such acceptable insurance for the construction period of the authorised works from the proposed date of commencement of construction of the authorised works) and National Gas has confirmed the same in writing to the undertaker.

(8) In the event that the undertaker fails to comply with 50(7) of this Part of this Schedule, nothing in this Part of this Schedule will prevent National Gas from seeking injunctive relief (or any other equitable remedy) in any court of competent jurisdiction.

Enactments and agreements

51. Save to the extent provided for to the contrary elsewhere in this Part of this Schedule or by agreement in writing between National Gas and the undertaker, nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and National Gas in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

Co-operation

52.—(1) Where in consequence of the proposed construction of any part of the authorised works, the undertaker or National Gas requires the removal of apparatus under paragraph 46(2) or National Gas makes requirements for the protection or alteration of apparatus under paragraph 48 (*retained apparatus: protection*), the undertaker must use its best endeavours to co-ordinate the execution of the works in the interests of safety and the efficient and economic execution of the authorised works and taking into account the need to ensure the safe and efficient operation of National Gas's undertaking and National Gas must use its best endeavours to co-operate with the undertaker for that purpose.

(2) For the avoidance of doubt whenever National Gas's consent, agreement or approval is required in relation to plans, documents or other information submitted by the undertaker or the taking of action by the undertaker, it must not be unreasonably withheld or delayed.

Access

53. If in consequence of the agreement reached in accordance with paragraph 45(1) or the powers granted under this Order the access to any apparatus is materially obstructed, the undertaker must provide such alternative means of access to such apparatus as will enable National Gas to maintain or use the apparatus no less effectively than was possible before such obstruction.

Arbitration

54. Save for differences or disputes arising under paragraph 46(2), 46(4), 47(1) and 48(11) any difference or dispute arising between the undertaker and National Gas under this Part of this Schedule must, unless otherwise agreed in writing between the undertaker and National Gas, be determined by arbitration in accordance with article 45 (*arbitration*).

Notices

55. Notwithstanding article 43 (*service of notices*), any plans submitted to National Gas by the undertaker pursuant to paragraph 48 must be submitted to <https://lsbud.co.uk/> or such other address as National Gas may from time to time appoint instead for that purpose and notify to the undertaker in writing.

PART 5

FOR THE PROTECTION OF NATIONAL GRID VIKING LINK LIMITED

Application

56. (1) For the protection of Viking Link as referred to in this Part of this Schedule the following provisions have effect, unless otherwise agreed in writing between the undertaker and Viking Link.

(2) Subject to sub-paragraph (3) or to the extent otherwise agreed in writing between the undertaker and Viking Link, where the benefit of this Order is transferred or granted to another person under article 7 (*Consent to transfer benefit of the Order*)—

- (a) any agreement of the type mentioned in sub-paragraph (1) has effect as if it had been made between Viking Link and the transferee or grantee (as the case may be); and
- (b) written notice of the transfer or grant must be given to Viking Link on or before the date of that transfer or grant.

(3) Sub-paragraph (2) does not apply where the benefit of the Order is transferred or granted to Viking Link or National Grid under article 7 (*Consent to transfer benefit of the Order*) (but without prejudice to paragraph 66(3)(b)).

Interpretation

57. In this Part of this Schedule—

“alternative apparatus” means appropriate alternative apparatus to the satisfaction of Viking Link to enable Viking Link to fulfil its statutory functions in a manner no less efficient than previously;

“apparatus” means any electric lines or electrical plant as defined in section 64 of the 1989 Act belonging to or maintained by Viking Link together with any replacement apparatus and such other apparatus constructed pursuant to the Order that becomes operational apparatus of Viking Link for the purposes of the conveyance of electricity between Great Britain and Denmark and includes any structure in which apparatus is or will be lodged or which gives or will give access to apparatus;

“authorised works” has the same meaning as is given to the term “authorised development” in article 2(1) of this Order and includes any associated development authorised by the Order and

for the purposes of this Part of this Schedule includes the use and maintenance of the authorised works and construction of any works authorised by this Part of this Schedule;

“commence” and “commencement” in this Part of this Schedule includes any below ground surveys, monitoring, ground work operations or the receipt and erection of construction plant and equipment;

“deed of consent” means a deed of consent, crossing agreement, deed of variation or new deed of grant agreed between the parties acting reasonably in order to vary or replace existing easements, agreements, enactments and other such interests so as to secure land rights and interests as are necessary to carry out, maintain, operate and use the apparatus in a manner consistent with the terms of this Part of this Schedule;

“functions” includes powers and duties;

“ground mitigation scheme” means a scheme approved by Viking Link (such approval not to be unreasonably withheld or delayed) setting out the necessary measures (if any) for a ground subsidence event;

“ground monitoring scheme” means a scheme for monitoring ground subsidence which sets out the apparatus which is to be subject to such monitoring, the extent of land to be monitored, the manner in which ground levels are to be monitored, the timescales of any monitoring activities and the extent of ground subsidence which, if exceeded, requires the undertaker to submit for Viking Link’s approval a ground mitigation scheme;

“ground subsidence event” means any ground subsidence identified by the monitoring activities set out in the ground monitoring scheme that has exceeded the level described in the ground monitoring scheme as requiring a ground mitigation scheme;

“in” in a context referring to apparatus or alternative apparatus in land includes a reference to apparatus or alternative apparatus under, over, across, along or upon such land;

“maintain” and “maintenance” includes the ability and right to do any of the following in relation to any apparatus or alternative apparatus of Viking Link: construct, use, repair, inspect, renew or remove the apparatus of Viking Link;

“Viking Link” means National Grid Viking Link Limited (Company Number 09075537) whose registered office is at 1-3 Strand, London, UK WC2N 5EH or any successor as a licence holder within the meaning of Part 1 of the 1989 Act;

“plan” or “plans” include all designs, drawings, specifications, method statements, soil reports, programmes, calculations, risk assessments and other documents that are reasonably necessary properly and sufficiently to describe and assess the works to be executed; and

“specified works” means any of the authorised works or activities undertaken in association with the authorised works which:

- (a) will or may be situated over, or within 15 metres measured in any direction of any apparatus; or
- (b) may in any way adversely affect any apparatus; and

On Street Apparatus

58. Except for paragraphs 59 (*Apparatus in stopped up streets*); 64 (*Apparatus: protection*), 65 (*Expenses*) and 66 (*Indemnity*) of this Part of this Schedule which will apply in respect of the exercise of all or any powers under the Order affecting the rights and apparatus of Viking Link, the other provisions of this Part of this Schedule do not apply to apparatus in respect of which the relations between the undertaker and Viking Link are regulated by the provisions of Part 3 of the 1991 Act.

Apparatus in stopped up streets

59.—(1) Where any street is stopped up under article 16 (*Temporary prohibition or restriction of use of streets and public rights of way*), if Viking Link has any apparatus in the street or accessed via that street Viking Link has the same rights in respect of that apparatus as it enjoyed immediately

before the stopping up and the undertaker must grant to Viking Link, or procure the granting to Viking Link of, legal easements reasonably satisfactory to Viking Link in respect of such apparatus and access to it prior to the stopping up of any such street but nothing in this paragraph affects any right of the undertaker or Viking Link to require the removal of that apparatus under paragraph 62 or the power of the undertaker, subject to compliance with this sub-paragraph, to carry out works under paragraph 64 (*Apparatus: protection*).

(2) Notwithstanding the temporary stopping up or diversion of any street under the powers of article 16 (*Temporary prohibition or restriction of use of streets and public rights of way*), Viking Link is at liberty at all times to take all necessary access across any such stopped up street and to execute and do all such works and things in, upon or under any such street as may be reasonably necessary to enable it to maintain any apparatus which at the time of the stopping up or diversion was in that street.

Protective works to buildings

60. The undertaker, in the case of the powers conferred by article 21 (*Protective work to buildings*), must exercise those powers so as not to obstruct or render less convenient the access to any apparatus without the written consent of Viking Link.

Acquisition of land

61.—(1) Regardless of any provision in this Order or anything shown on the land plans or contained in the book of reference to the Order, the undertaker may not—

- (a) appropriate or acquire or take temporary possession of any land or apparatus of Viking Link; or
- (b) appropriate, acquire, extinguish, interfere with or override any easement, other interest or right and/or apparatus of Viking Link,

otherwise than by agreement with Viking Link (such agreement not to be unreasonably withheld).

(2) As a condition of an agreement between the parties in sub-paragraph (1), prior to the carrying out of any part of the authorised works (or in such other timeframe as may be agreed between Viking Link and the undertaker) that is subject to the requirements of this Part of this Schedule that will cause any conflict with or breach the terms of any easement or other legal or land interest of Viking Link or affect the provisions of any enactment or agreement regulating the relations between Viking Link and the undertaker in respect of any apparatus laid or erected in land belonging to or secured by the undertaker, the undertaker must as Viking Link reasonably requires enter into such deeds of consent upon such terms and conditions as may be agreed between Viking Link and the undertaker acting reasonably and which must be no less favourable on the whole to Viking Link unless otherwise agreed by Viking Link, and it will be the responsibility of the undertaker to procure and secure the consent and entering into of such deeds and variations by all other third parties with an interest in the land at that time who are affected by such authorised works.

(3) Save where otherwise agreed in writing between Viking Link and the undertaker the undertaker and Viking Link agree that where there is any inconsistency or duplication between the provisions set out in this Part of this Schedule relating to the relocation and/or removal of apparatus/including but not limited to the payment of costs and expenses relating to such relocation and/or removal of apparatus and the provisions of any existing easement, rights, agreements and licences granted, used, enjoyed or exercised by Viking Link and/or other enactments relied upon by Viking Link as of right or other use in relation to the apparatus, then the provisions in this Part of this Schedule prevail.

(4) Any agreement or consent granted by Viking Link under paragraph 64 (*Apparatus: protection*) or any other paragraph of this Part of this Schedule, is not to be taken to constitute agreement under sub-paragraph (1).

Removal of apparatus

62.—(1) If, in the exercise of the powers conferred by this Order, the undertaker acquires any interest in or possesses temporarily any land in which any apparatus is placed, that apparatus must not be removed under this Schedule and any right of Viking Link to maintain that apparatus in that land must not be extinguished until alternative apparatus has been constructed, and is in operation to the reasonable satisfaction of Viking Link in accordance with sub-paragraphs (2) to (5).

(2) If, for the purpose of executing any works comprised in the authorised development in, on, under or over any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, it must give to Viking Link advance written notice of that requirement, together with a plan of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order Viking Link reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph (3), secure any necessary consents for the alternative apparatus and afford to Viking Link to its satisfaction (taking into account paragraph 63(1) (*Facilities and rights for alternative apparatus*) below) the necessary facilities and rights—

- (a) for the construction of alternative apparatus in other land of or land secured by the undertaker; and
- (b) subsequently for the maintenance of that apparatus.

(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of or land secured by the undertaker, or the undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraph (2) in the land in which the alternative apparatus or part of such apparatus is to be constructed, Viking Link may, in its sole discretion, on receipt of a written notice to that effect from the undertaker, as soon as reasonably possible use its best endeavours to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed.

(4) Any alternative apparatus to be constructed in land of or land secured by the undertaker under this Schedule must be constructed in such manner and in such line or situation as may be agreed between Viking Link and the undertaker.

(5) Viking Link must, after the alternative apparatus to be provided or constructed has been agreed, and subject to a written diversion agreement having been entered into between the parties and the grant to Viking Link of any such facilities and rights as are referred to in sub-paragraphs (2) or (3), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by the undertaker to be removed under the provisions of this Part of this Schedule.

Facilities and rights for alternative apparatus

63.—(1) Subject to sub-paragraph (2), where, in accordance with the provisions of this Schedule, the undertaker affords to or secures for Viking Link facilities and rights in land for the construction, use, maintenance and protection of alternative apparatus in substitution for apparatus to be removed, those facilities and rights must be granted upon such terms and conditions as may be agreed between the undertaker and Viking Link and must be no less favourable on the whole to Viking Link than the facilities and rights enjoyed by it in respect of the apparatus to be removed unless otherwise agreed by Viking Link.

(2) If the facilities and rights to be afforded by the undertaker in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are less favourable on the whole to Viking Link than the facilities and rights enjoyed by it in respect of the apparatus to be removed and the terms and conditions to which those facilities and rights are subject the matter may be referred to arbitration in accordance with paragraph 70 (*Arbitration*) of this Schedule and the arbitrator must make such provision for the payment of compensation by the undertaker to Viking Link as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case. In respect of the appointment of an arbitrator under this sub-paragraph, article 45 (*Arbitration*) applies.

Apparatus: protection

64.—(1) Not less than 56 days before the commencement of any specified works, the undertaker must submit to Viking Link a plan of the works to be executed and seek from Viking Link details of the underground extent of their electricity assets.

(2) In relation to specified works the plan to be submitted to Viking Link under sub-paragraph (1) must include a method statement and describe—

- (a) the exact position of the works;
- (b) the level at which these are proposed to be constructed or renewed;
- (c) the manner of their construction or renewal including details of excavation, positioning of plant;
- (d) the position of all apparatus;
- (e) by way of detailed drawings, every alteration proposed to be made to or close to any such apparatus;
- (f) any intended maintenance regimes;
- (g) an assessment of risks of rise of earth issues; and
- (h) a ground monitoring scheme in respect of those works, if reasonably required by Viking Link.

(3) The undertaker must not commence any works to which sub-paragraph (2) applies until Viking Link has given written approval of the plan so submitted.

(4) Any approval of Viking Link required under sub-paragraph (3)—

- (a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraphs (5) or (7); and
- (b) must not be unreasonably withheld.

(5) In relation to any work to which sub-paragraph (2) applies, Viking Link may require such modifications to be made to the plans as may be reasonably necessary for the purpose of securing its apparatus against interference or risk of damage, for the provision of protective works or for the purpose of providing or securing proper and convenient means of access to any apparatus.

(6) Specified works must be executed in accordance with—

- (a) the plan, submitted under sub-paragraph (1) or as relevant sub-paragraph (5), as approved or as amended from time to time by agreement between the undertaker and Viking Link; and
- (b) such reasonable requirements as may be made in accordance with sub-paragraphs (5) or (7) by Viking Link for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and Viking Link will be entitled to watch and inspect the execution of those works.

(7) Where, under sub-paragraph (6), Viking Link requires any protective works to be carried out by itself or by the undertaker such protective works (whether of a temporary or permanent nature) inclusive of any measures or schemes required and approved as part of the plan approved pursuant to this paragraph, must be carried out to Viking Link's reasonable satisfaction prior to the commencement of any specified works for which protective works are required and Viking Link must give notice of its requirement for such works within 42 days of the date of submission of a plan pursuant to this paragraph (except in an emergency).

(8) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 56 days before commencing the execution of the specified works, a new plan, instead of the plan previously submitted, and having done so the provisions of this paragraph will apply to and in respect of the new plan.

(9) The undertaker will not be required to comply with sub-paragraph (1) where it needs to carry out emergency works as defined in the 1991 Act but in that case it must give to Viking

Link notice as soon as is reasonably practicable and a plan of those works and must comply with sub-paragraphs (5), (6) and (7) insofar as is reasonably practicable in the circumstances.

(10) If Viking Link in accordance with sub-paragraphs (5) or (7) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, sub-paragraphs (1) to (3) and (6) to (8) apply as if the removal of the apparatus had been required by the undertaker under paragraph 62(2) (*Removal of apparatus*).

Expenses

65.—(1) Subject to the following provisions of this paragraph, the undertaker must pay to Viking Link within 30 days of receipt of an itemised invoice or claim from Viking Link all charges, costs and expenses reasonably anticipated within the following three months or reasonably and properly incurred by Viking Link in, or in connection with, the inspection, removal, relaying or replacing, alteration or protection of any apparatus which may be required in consequence of the execution of any authorised works including without limitation—

- (a) any costs reasonably incurred by or compensation properly paid by Viking Link in connection with the acquisition of rights or the exercise of statutory powers for such apparatus including without limitation all costs incurred by Viking Link as a consequence of Viking Link exercising any compulsory purchase powers in the Order transferred to or benefitting Viking Link;
- (b) the approval of plans under this Part of this Schedule;
- (c) the carrying out of protective works, plus a capitalised sum to cover the cost of maintaining and renewing permanent protective works; and
- (d) the survey of any land, apparatus or works, the inspection and monitoring of works or the installation or removal of any temporary works reasonably necessary in consequence of the execution of any such works referred to in this Part of this Schedule.

Indemnity

66.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any works authorised by this Part of this Schedule or in consequence of the construction, use maintenance or failure of any of the authorised works by or on behalf of the undertaker or in consequence of any act or default of the undertaker (or any person employed or authorised by him) in the course of carrying out such works, including without limitation works carried out by the undertaker under this Part of this Schedule or any subsidence resulting from any of these works, any damage is caused to any apparatus or alternative apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of the authorised works) or property of Viking Link, or there is any interruption in any service provided, or in the supply of any goods, by Viking Link, the undertaker will—

- (a) bear and pay on demand accompanied by an invoice or claim from Viking Link the cost reasonably and properly incurred by Viking Link in making good such damage or restoring the supply; and
- (b) indemnify Viking Link for any other expenses, loss, demands, proceedings, damages, claims, penalty or costs incurred by or recovered from Viking Link, by reason or in consequence of any such damage or interruption other than arising from any default of Viking Link

(2) The fact that any act or thing may have been done by Viking Link on behalf of the undertaker or in accordance with a plan approved by Viking Link or in accordance with any requirement of Viking Link or under its supervision will not (unless sub-paragraph (3) applies), excuse the undertaker from liability under the provisions of sub-paragraph (1) unless Viking Link fails to carry out and execute the works properly with due care and attention and in a skilful and workman like manner or in a manner that does not accord with the approved plan.

(3) Nothing in sub-paragraph (1) imposes any liability on the undertaker in respect of—

- (a) any damage or interruption to the extent that it is attributable to the neglect or default of Viking Link, its officers, servants, contractors or agents;
- (b) any authorised works or any other works authorised by this Part of this Schedule carried out by Viking Link as an assignee, transferee or lessee of the undertaker with the benefit of the Order pursuant to section 156 of the Planning Act 2008 or article 7 (*Consent to transfer benefit of Order*) subject to the proviso that once such works become apparatus (“new apparatus”), any authorised works yet to be executed and not falling within this sub-paragraph 66(3)(b) will be subject to the full terms of this Part of this Schedule including this paragraph 66; and/or
- (c) any indirect or consequential loss of any third party (including but not limited to loss of use, revenue, profit, contract, production, increased cost of working or business interruption) arising from any such damage or interruption, which is not reasonably foreseeable.

(4) Viking Link must give the undertaker reasonable notice of any such third party claim or demand and no settlement, admission of liability or compromise must, unless payment is required in connection with a statutory compensation scheme, be made without first consulting the undertaker and considering their representations (such representations not to be unreasonably withheld or delayed).

(5) Viking Link must, in respect of any matter covered by the indemnity given by the undertaker in this paragraph, at all times act reasonably and in the same manner as it would as if settling third party claims on its own behalf from its own funds.

(6) Viking Link must use its reasonable endeavours to mitigate and to minimise any costs, expenses, loss, demands, and penalties to which the indemnity under this paragraph applies where it is within Viking Link’s reasonable ability and control to do so and which expressly excludes any obligation to mitigate liability arising from third parties which is outside of Viking Link’s control and if reasonably requested to do so by the undertaker Viking Link must provide an explanation of how the claim has been minimised, where relevant.

(7) Any dispute between the undertaker and Viking Link regarding the terms, cover or insured level of the insurance policy shall be resolved in accordance with paragraph 70 (*Arbitration*).

Enactments and agreements

67. Save to the extent provided for to the contrary elsewhere in this Part of this Schedule, nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and Viking Link in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

Co-operation

68.—(1) Where in consequence of the proposed construction of any part of the authorised works, Viking Link makes requirements for the protection or alteration of apparatus under paragraph 64, the undertaker must use its best endeavours to co-ordinate the execution of the works in the interests of safety and the efficient and economic execution of the authorised works and taking into account the need to ensure the safe and efficient operation of Viking Link’s undertaking and Viking Link must use its best endeavours to co-operate with the undertaker for that purpose.

(2) For the avoidance of doubt whenever Viking Link’s consent, agreement or approval is required in relation to plans, documents or other information submitted by the undertaker or the taking of action by the undertaker, it must not be unreasonably withheld or delayed.

Access

69. If in consequence of the agreement reached under paragraph 61(1) (*Acquisition of land*) or the powers granted under this Order the access to any apparatus is materially obstructed, the undertaker

must provide such alternative means of access to such apparatus as will enable Viking Link to maintain or use the apparatus no less effectively than was possible before such obstruction.

Arbitration

70. Save for differences or disputes arising under paragraph 64 (*Apparatus: protection*), any difference or dispute arising between the undertaker and Viking Link under this Part of this Schedule must, unless otherwise agreed in writing between the undertaker and Viking Link, be determined by arbitration in accordance with article 45 (*Arbitration*).

Notices

71. Notwithstanding article 43 (Service of notices), any plans submitted to Viking Link by the undertaker pursuant to paragraph 64 (*Apparatus: protection*) must be submitted using the “LSBUD” system (<https://lsbud.co.uk/>) or to such other address as Viking Link may from time to time appoint instead for that purpose and notify to the undertaker in writing.

PART 6

FOR THE PROTECTION OF LINCOLNSHIRE FIRE & RESCUE SERVICE

Application

72. For the protection of Lincolnshire Fire and Rescue as referred to in this Part of this Schedule the following provisions have effect, unless otherwise agreed in writing between the undertaker and Lincolnshire Fire and Rescue.

Interpretation

73. In this Part of this Schedule—

“Index” means the Consumer Price Index;

“Index Linked” means an increase in the sums payable on an annual basis or pro rata per diem from the first day following the first year of operation of the authorised development, to the date of payment, based upon the relevant Index last published before the first day following the first year of operation of the authorised development; and

“Lincolnshire Fire and Rescue” means Lincolnshire County Council in its capacity as a fire and rescue authority pursuant to section 1(2)(a) of the Fire and Rescue Services Act 2004.

Site visits

74. The undertaker must, prior to the date of final commissioning of Work No. 2 or Work No. 3, use reasonable endeavours to facilitate a site familiarisation exercise in connection with Work No. 2 or Work No. 3 of the authorised development for Lincolnshire Fire and Rescue for the purposes of providing the necessary assurance to Lincolnshire Fire and Rescue that all the required systems and measures are in place in accordance with the battery storage safety management plan.

75. Following the anniversary of the date of final commissioning of Work No. 2 or Work No. 3 of the authorised development, the undertaker must use reasonable endeavours to facilitate an annual review of the site by Lincolnshire Fire and Rescue at the reasonable request of Lincolnshire Fire and Rescue, up until the date of decommissioning of Work No. 2 or Work No. 3 of the authorised development.

Costs

76. Pursuant to the provisions set out in paragraphs 74 and 75, the undertaker must pay to Lincolnshire Fire and Rescue—

- (a) £16,665 in the first year of operation of the authorised development for, or in connection with Lincolnshire Fire and Rescue’s attendance at the site familiarisation exercise facilitated by the undertaker pursuant to paragraph 74, such sum to be paid on a date mutually agreed between the parties (the “Payment Date”); and
- (b) £1,530 in each subsequent year of operation of the authorised development until the later of the date of decommissioning of Work No. 2 and the date of decommissioning of Work No. 3, payable on the anniversary of the Payment Date, if in that year an annual review has taken place pursuant to paragraph 75.

77. The costs payable under sub-paragraph 76(b) are to be Index Linked.

Arbitration

78. Any difference or dispute arising between the undertaker and Lincolnshire Fire and Rescue under this Part of this Schedule must be determined by arbitration in accordance with article 45 (arbitration).

PART 7

FOR THE PROTECTION OF ECOTRICITY (HECK FEN SOLAR) LIMITED

79. The provisions of this Part of this Schedule apply for the protection of Heckington Fen unless otherwise agreed in writing between the undertaker and Heckington Fen.

80. In this Part of this Schedule—

“Heckington Fen” means Ecotricity (Heck Fen Solar) Limited (company number 13225224) whose registered office address is at Lion House, Rowcroft, Stroud, England, GL5 3BY;

“Heckington Fen Solar Park” means the proposed solar and battery storage park on land near Boston, Lincolnshire, consented by the Heckington Fen Solar Park Order 2025;

“Heckington Fen Works” means works to install cables, structures or other infrastructure within the Interface Area in conjunction with the proposed Heckington Fen Solar Park;

“Interface Area” means those areas hatched yellow on the Interface Area Plan; and

“Interface Area Plan” means the plan entitled Interface Area Plan and certified as the Interface Area Plan for the purposes of this Part of this Schedule.

81. The undertaker does not need to comply with the obligations in this Part of this Schedule where the order authorising the Heckington Fen Solar Park has expired without the authorised development having been commenced.

82. The undertaker must consult with Heckington Fen in the formulation of the proposed method of working and timing of execution of the undertaker’s works within the Interface Area, not less than 60 days prior to such works commencing, and have regard to reasonable representations received from Heckington Fen made at least 30 days prior to such works commencing.

83. The undertaker and Heckington Fen must act in good faith and use reasonable endeavours to cooperate to formulate the proposed method of working and timing of execution of works within the Interface Area (in accordance with paragraph 82 above) in a way which enables the undertaker and Heckington Fen to deliver the authorised development and the Heckington Fen Works respectively.

84. The undertaker must give to Heckington Fen not less than 30 days’ written notice of its intention to commence the construction of the undertaker’s works within the Interface Area and, not more than 14 days after completion of their construction, must give Heckington Fen written notice of the completion.

85. The undertaker must at all reasonable times during construction of the undertaker's works in the Interface Area allow Heckington Fen and its servants and agents reasonable access to the Interface Area and all reasonable facilities for inspection of the works within the Interface Area.

86. In the event that Heckington Fen notifies the undertaker that it no longer has an interest in the Interface Area or no longer proposes to carry out works in the Interface Area, the undertaker does not need to comply with the obligations in paragraphs 82 to 85 above.

87. Any difference or dispute arising between Heckington Fen and the undertaker must, unless otherwise agreed in writing between Heckington Fen and the undertaker, be determined by arbitration in accordance with article 45 (arbitration) of the Order.

PART 8

FOR THE PROTECTION OF TRITON KNOLL LIMITED

Application

88.—(1) For the protection of Triton Knoll as referred to in this Part of this Schedule the following provisions have effect, unless otherwise agreed in writing between the undertaker and Triton Knoll.

(2) Where the benefit of this Order is transferred or granted to another person under article 7 (*consent to transfer benefit of the Order*)—

- (a) any agreement of the type mentioned in sub-paragraph (1) has effect as if it had been made between Triton Knoll and the transferee or grantee (as the case may be); and
- (b) written notice of the transfer or grant must be given to Triton Knoll on or before the date of that transfer or grant.

Interpretation

89. In this Part of this Schedule—

“alternative apparatus” means appropriate alternative apparatus to the reasonable satisfaction of Triton Knoll to enable Triton Knoll to fulfil its statutory functions in a manner no less efficient than previously;

“apparatus” means any electric lines or electrical plant as defined in the 1989 Act, belonging to or maintained by Triton Knoll together with any replacement apparatus and such other apparatus constructed pursuant to the Order that becomes operational apparatus of Triton Knoll for the purposes of transmission, distribution or supply and includes any structure in which apparatus is or will be lodged or which gives or will give access to apparatus;

“authorised works” has the same meaning as is given to the term “authorised development” in article 2(1) of this Order and includes any associated development authorised by the Order and for the purposes of this Part of this Schedule includes the use and maintenance of the authorised works and construction of any works authorised by this Part of this Schedule;

“commence” and “commencement” in this Part of this Schedule includes any below ground surveys, monitoring, ground work operations or the receipt and erection of construction plant and equipment;

“functions” includes powers and duties;

“ground mitigation scheme” means a scheme approved by Triton Knoll (such approval not to be unreasonably withheld or delayed) setting out the necessary measures (if any) for a ground subsidence event;

“ground monitoring scheme” means a scheme for monitoring ground subsidence which sets out the apparatus which is to be subject to such monitoring, the extent of land to be monitored, the manner in which ground levels are to be monitored, the timescales of any monitoring

activities and the extent of ground subsidence which, if exceeded, requires the undertaker to submit for Triton Knoll's approval a ground mitigation scheme;

"ground subsidence event" means any ground subsidence identified by the monitoring activities set out in the ground monitoring scheme that has exceeded the level described in the ground monitoring scheme as requiring a ground mitigation scheme;

"in" in a context referring to apparatus or alternative apparatus in land includes a reference to apparatus or alternative apparatus under, over, across, along or upon such land;

"maintain" and "maintenance" includes the ability and right to construct, use, repair, alter, inspect, renew or remove any apparatus or alternative apparatus of Triton Knoll;

"plan" or "plans" include all designs, drawings, specifications, method statements, soil reports, programmes, calculations, risk assessments and other documents that are reasonably necessary properly and sufficiently to describe and assess the works to be executed;

"specified works" means any of the authorised works or activities undertaken in association with the authorised works which—

- (a) will or may be situated over, or within 15 metres measured in any direction of any apparatus the removal of which has not been required by the undertaker under paragraph 93(2) or otherwise; or
- (b) may in any way adversely affect any apparatus the removal of which has not been required by the undertaker under paragraph 93(2) or otherwise;

"Triton Knoll" means Triton Knoll OFTO Limited (company number 14141892) whose registered office is at 3rd Floor (South), 200 Aldersgate Street, London, United Kingdom, EC1A 4HD; and

"Triton Knoll access track" means the area of the Order land comprised of plots 13-11, 13-12, 13-14, 13-16, 13-17, 14-1, 14-2, 14-3, 14-4, 14-5, 14-6, 14-7, 14-8, 14-9, 15-2, 15-3 and 15-4 contained in the book of reference to the Order connecting the A17 to Doubletwelves Drove required in connection with Work No.10.

On Street Apparatus

90. Except for paragraph 95 (*retained apparatus: protection*), and 97 (*indemnity*) of this Part of this Schedule which will apply in respect of the exercise of all or any powers under the Order affecting the rights and apparatus of Triton Knoll, the other provisions of this Part of this Schedule do not apply to apparatus in respect of which the relations between the undertaker and Triton Knoll are regulated by the provisions of Part 3 of the 1991 Act.

Protective works to buildings

91. The undertaker, in the case of the powers conferred by article 21 (*protective works to buildings*), must exercise those powers so as not to obstruct or render less convenient the access to any apparatus without the written consent of Triton Knoll (such consent not to be unreasonably withheld).

Acquisition of land

92.—(1) Save in respect of the Triton Knoll access track (to which the restrictions of this paragraph do not apply for the avoidance of doubt), the undertaker may not—

- (a) appropriate or acquire or take temporary possession of any land or apparatus of Triton Knoll; or
- (b) appropriate, acquire, extinguish, interfere with or override any easement, other interest or right or apparatus of Triton Knoll,

otherwise than by agreement (such agreement not to be unreasonably withheld or delayed).

(2) As a condition of an agreement between the parties in sub-paragraph (1), prior to the carrying out of any part of the authorised works (or in such other timeframe as may be agreed

between Triton Knoll and the undertaker) that is subject to the requirements of this Part of this Schedule that will cause any conflict with or breach the terms of any easement or other legal or land interest of Triton Knoll or affect the provisions of any enactment or agreement regulating the relations between Triton Knoll and the undertaker in respect of any apparatus laid or erected in land belonging to or secured by the undertaker, the undertaker must as Triton Knoll reasonably requires enter into such deeds of consent upon such terms and conditions as may be agreed between Triton Knoll and the undertaker acting reasonably and which must be no less favourable on the whole to Triton Knoll unless otherwise agreed by Triton Knoll, and it will be the responsibility of the undertaker to procure and secure the consent and entering into of such deeds and variations by all other third parties with an interest in the land at that time who are affected by such authorised works.

(3) The undertaker and Triton Knoll agree that where there is any inconsistency or duplication between the provisions set out in this Part of this Schedule relating to the relocation or removal of apparatus (including but not limited to the payment of costs and expenses relating to such relocation or removal of apparatus) and the provisions of any existing easement, rights, agreements and licences granted, used, enjoyed or exercised by Triton Knoll or other enactments relied upon by Triton Knoll as of right or other use in relation to the apparatus, then the provisions in this Part of this Schedule prevail, save to the extent otherwise agreed in writing between the undertaker and Triton Knoll.

(4) Any agreement or consent granted by Triton Knoll under paragraph 95 or any other paragraph of this Part of this Schedule, is not to be taken to constitute agreement under sub-paragraph (1).

Removal of apparatus

93.—(1) If, in the exercise of the powers conferred by this Order, the undertaker acquires any interest in or possesses temporarily any land in which any apparatus is placed, that apparatus must not be removed under this Part of this Schedule and any right of Triton Knoll to maintain that apparatus in that land must not be extinguished until alternative apparatus has been constructed, and is in operation to the reasonable satisfaction of Triton Knoll in accordance with sub-paragraph (2) to (5).

(2) If, for the purpose of executing any works in, on, under or over any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, it must give to Triton Knoll advance written notice of that requirement, together with a plan of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order Triton Knoll reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph (3), secure any necessary consents for the alternative apparatus and afford to Triton Knoll to its reasonable satisfaction (taking into account paragraph 94(1) below) the necessary facilities and rights—

- (a) for the construction of alternative apparatus in other land of or land secured by the undertaker; and
- (b) subsequently for the maintenance of that apparatus.

(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of or land secured by the undertaker, or the undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraph (2) in the land in which the alternative apparatus or part of such apparatus is to be constructed, Triton Knoll must, on receipt of a written notice to that effect from the undertaker, take such steps as are reasonable in the circumstances in an endeavour to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed save that this obligation does not extend to the requirement for Triton Knoll to use its compulsory purchase powers to this end unless it elects to so do.

(4) Any alternative apparatus to be constructed in land of or land secured by the undertaker under this Part of this Schedule must be constructed in such manner and in such line or situation as may be agreed between Triton Knoll and the undertaker.

(5) Triton Knoll must, after the alternative apparatus to be provided or constructed has been agreed, and subject to the grant to Triton Knoll of any such facilities and rights as are referred to in sub-paragraph (2) or (3), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by the undertaker to be removed under the provisions of this Part of this Schedule.

Facilities and rights for alternative apparatus

94.—(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to or secures for Triton Knoll facilities and rights in land for the construction, use, maintenance and protection of alternative apparatus in substitution for apparatus to be removed, those facilities and rights must be granted upon such terms and conditions as may be agreed between the undertaker and Triton Knoll and must be no less favourable on the whole to Triton Knoll than the facilities and rights enjoyed by it in respect of the apparatus to be removed unless otherwise agreed by Triton Knoll (acting reasonably).

(2) If the facilities and rights to be afforded by the undertaker in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are less favourable on the whole to Triton Knoll than the facilities and rights enjoyed by it in respect of the apparatus to be removed and the terms and conditions to which those facilities and rights are subject, the matter may be referred to arbitration in accordance with paragraph 101 (*arbitration*) of this Part of this Schedule and the arbitrator must make such provision for the payment of compensation by the undertaker to Triton Knoll as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

Retained apparatus: protection

95.—(1) Not less than 56 days (or such lesser period agreed by Triton Knoll, acting reasonably) before the commencement of any specified works the undertaker must—

- (a) submit to Triton Knoll a plan of those works to be executed including a ground monitoring scheme; and
- (b) seek from Triton Knoll details of the underground extent of their electricity assets.

(2) The plan to be submitted to Triton Knoll under sub-paragraph (1) must include a method statement and describe—

- (a) the exact position of the works;
- (b) the level at which these are proposed to be constructed or renewed;
- (c) the manner of their construction or renewal including details of excavation, positioning of plant;
- (d) the position of all apparatus;
- (e) by way of detailed drawings, every alteration proposed to be made to or close to any such apparatus;
- (f) any intended maintenance regimes;
- (g) an assessment of risks of rise of earth issues; and
- (h) a methodology to demonstrate that all such works will have no adverse effect on the rating of the apparatus.

(3) The undertaker must not commence any specified works until Triton Knoll has given written approval of the plan so submitted (and the ground monitoring scheme).

(4) Any approval of Triton Knoll required under sub-paragraph (3)—

- (a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraphs (5), (7) and (8); and
- (b) must not be unreasonably withheld or delayed.

(5) Triton Knoll may require such modifications to be made to the plan as may be reasonably necessary for the purpose of securing its apparatus against interference or risk of damage, for

the provision of protective works or for the purpose of providing or securing proper and convenient means of access to any apparatus. Triton Knoll must give notice of its requirement for such works as soon as reasonably practicable and in any event within 42 days of the date of submission of a plan pursuant to sub-paragraph (1) (except in an emergency).

(6) Specified works must be executed in accordance with—

- (a) the plan, submitted under sub-paragraph (1) (and the ground monitoring scheme), as approved or as amended from time to time by agreement between the undertaker and Triton Knoll; and
- (b) All conditions imposed under sub-paragraph (4)(a), and Triton Knoll will be entitled to watch and inspect the execution of all specified works.

(7) Where Triton Knoll requires any protective works to be carried out by itself or by the undertaker (whether of a temporary or permanent nature) such protective works, inclusive of any measures or schemes required and approved as part of the plan approved pursuant to this paragraph, must be carried out to Triton Knoll's reasonable satisfaction prior to the commencement of any specified works (or any relevant part thereof) (unless otherwise agreed by Triton Knoll, acting reasonably).

(8) If Triton Knoll, in accordance with sub-paragraphs (5) or (7) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraphs 88 to 90 and 92 to 94 apply as if the removal of the apparatus had been required by the undertaker under paragraph 93(2) (*removal of apparatus*).

(9) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 56 days before commencing the execution of the specified works, a new plan, instead of the plan previously submitted, and having done so the provisions of this paragraph will apply to and in respect of the new plan.

(10) The undertaker is not required to comply with sub-paragraph (1) where it needs to carry out emergency works as defined in the 1991 Act but in that case it must give to Triton Knoll notice as soon as is reasonably practicable and a plan of those works and must comply with sub-paragraphs (5), (6) and (7) insofar as is reasonably practicable in the circumstances.

(11) Following completion of the works the undertaker shall submit a written report demonstrating that the works have had no adverse effect on the rating of the apparatus.

(12) As soon as reasonably practicable after any ground subsidence event attributable to the authorised development the undertaker will implement an appropriate ground mitigation scheme and Triton Knoll retains the right to carry out any further necessary protective works for the safeguarding of its apparatus and can recover any such costs pursuant to paragraph 96 (*expenses*).

Expenses

96.—(1) Subject to the following provisions of this paragraph, the undertaker must pay to Triton Knoll within 40 days of receipt of an itemised invoice or claim (accompanied by supporting evidence) from Triton Knoll all charges, costs and expenses reasonably and properly incurred by Triton Knoll in, or in connection with, the inspection, removal, relaying or replacing, alteration or protection of any apparatus or the construction of any new or alternative apparatus which may be required in consequence of the execution of any authorised works including without limitation—

- (a) any costs reasonably incurred by or compensation properly paid by Triton Knoll in connection with the acquisition of rights or the exercise of statutory powers for such apparatus including without limitation all costs incurred by Triton Knoll as a consequence of Triton Knoll—
 - (i) using its own compulsory purchase powers to acquire any necessary rights under paragraph 93(3); or
 - (ii) exercising any compulsory purchase powers in the Order transferred to or benefitting Triton Knoll;

- (b) in connection with the cost of the carrying out of any diversion work or the provision of any alternative apparatus, where no written diversion agreement is otherwise in place;
- (c) the cutting off of any apparatus from any other apparatus or the making safe of redundant apparatus;
- (d) the approval of plans under this Part of this Schedule;
- (e) the carrying out of protective works, plus a capitalised sum to cover the cost of maintaining and renewing permanent protective works;
- (f) the supervision and surveillance of all specified works by Triton Knoll and its engineers, including the cost of travel, under paragraph 95(6)(b); and
- (g) the survey of any land, apparatus or works, the inspection and monitoring of works or the installation or removal of any temporary works reasonably necessary in consequence of the execution of any such works referred to in this Part of this Schedule.

(2) There will be deducted from any sum payable under sub-paragraph (1) the value of any apparatus removed under the provisions of this Part of this Schedule and which is not re-used as part of the alternative apparatus, that value being calculated after removal.

(3) If in accordance with the provisions of this Part of this Schedule—

- (a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions; or
- (b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was situated,

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or, in default of agreement, is not determined by arbitration in accordance with paragraph 101 (*arbitration*) to be necessary, then, if such placing involves cost in the construction of works under this Part of this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to Triton Knoll by virtue of sub-paragraph (1) will be reduced by the amount of that excess save to the extent that it is not possible in the circumstances to obtain the existing type of apparatus at the same capacity and dimensions or place at the existing depth in which case full costs will be borne by the undertaker.

(4) For the purposes of sub-paragraph (3)—

- (a) an extension of apparatus to a length greater than the length of existing apparatus will not be treated as a placing of apparatus of greater dimensions than those of the existing apparatus; and
- (b) where the provision of a joint in a pipe or cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole will be treated as if it also had been agreed or had been so determined.

(5) Any amount which apart from this sub-paragraph would be payable to Triton Knoll in respect of works by virtue of sub-paragraph (1) will, if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on Triton Knoll any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, be reduced by the amount which represents that benefit.

Indemnity

97.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any works authorised by this Part of this Schedule or in consequence of the construction use maintenance or failure of any of the authorised works by or on behalf of the undertaker or in consequence of any act or default of the undertaker (or any person employed or authorised by him) in the course of carrying out such works, including without limitation works carried out by the undertaker under this Part of this Schedule or any subsidence resulting from any of these works, any damage is caused to any apparatus or alternative apparatus (other than apparatus the repair of which

is not reasonably necessary in view of its intended removal for the purposes of the authorised works) or property of Triton Knoll, or there is any interruption in any service provided, or in the supply of any goods, by Triton Knoll, or Triton Knoll becomes liable to pay any amount to any third party, the undertaker will—

- (a) bear and pay on demand accompanied by an invoice or claim from Triton Knoll the cost reasonably and properly incurred by Triton Knoll in making good such damage or restoring the supply; and
- (b) indemnify Triton Knoll for any other expenses, loss, demands, proceedings, damages, claims, penalty or costs incurred by or recovered from Triton Knoll, by reason or in consequence of any such damage or interruption or Triton Knoll becoming liable to any third party.

(2) The fact that any act or thing may have been done by Triton Knoll on behalf of the undertaker or in accordance with a plan approved by Triton Knoll or in accordance with any requirement of Triton Knoll as a consequence of the authorised works or under its supervision will not (unless sub-paragraph (3) applies), excuse the undertaker from liability under the provisions of sub-paragraph (1) unless Triton Knoll fails to carry out and execute the works properly with due care and attention and in a skilful and workman like manner or in a manner that does not accord with the approved plan.

(3) Nothing in sub-paragraph (1) imposes any liability on the undertaker in respect of—

- (a) any damage or interruption to the extent that it is attributable to the neglect or default of Triton Knoll, its officers, servants, contractors or agents;
- (b) any authorised works or any other works authorised by this Part of this Schedule carried out by Triton Knoll as an assignee, transferee or lessee of the undertaker with the benefit of the Order pursuant to section 156 of the Planning Act 2008 or article 7 (*consent to transfer benefit of Order*) subject to the proviso that once such works become apparatus (“new apparatus”), any authorised works yet to be executed and not falling within this sub-paragraph (3)(b) will be subject to the full terms of this Part of this Schedule including this paragraph 97; and
- (c) any indirect or consequential loss of any third party (including but not limited to loss of use, revenue, profit, contract, production, increased cost of working or business interruption) arising from any such damage or interruption, which is not reasonably foreseeable.

(4) Triton Knoll must give the undertaker reasonable notice of any such third party claim or demand and no settlement, admission of liability or compromise must be made (unless payment is required in connection with a statutory compensation scheme) without first consulting the undertaker and considering their representations (such representations not to be unreasonably withheld or delayed).

(5) Triton Knoll must, in respect of any matter covered by the indemnity given by the undertaker in this paragraph, at all times act reasonably and in the same manner as it would as if settling third party claims on its own behalf from its own funds.

(6) Triton Knoll must use its reasonable endeavours to mitigate and to minimise any costs, expenses, loss, demands, and penalties to which the indemnity provisions under this paragraph applies where it is within Triton Knoll’s reasonable ability and control to do so and which expressly excludes any obligation to mitigate liability arising from third parties which is outside of Triton Knoll’s control and if reasonably requested to do so by the undertaker Triton Knoll must provide an explanation of how the claim has been minimised, where relevant.

Enactments and agreements

98. Save to the extent provided for to the contrary elsewhere in this Part of this Schedule, nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and Triton Knoll in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

Co-operation

99.—(1) Where in consequence of the proposed construction of any part of the authorised works, the undertaker or Triton Knoll requires the removal of apparatus under paragraph 93(2) (*Removal of apparatus*) or Triton Knoll makes requirements for the protection or alteration of apparatus under paragraph 95 (*Retained apparatus: protection*), the undertaker must use its reasonable endeavours to co-ordinate the execution of the works (which are subject to this Part of this Schedule) in the interests of safety and the efficient and economic execution of the authorised works and taking into account the need to ensure the safe and efficient operation of Triton Knoll’s undertaking and Triton Knoll must use its reasonable endeavours to co-operate with the undertaker for that purpose.

(2) For the avoidance of doubt whenever Triton Knoll’s consent, agreement or approval is required in relation to plans, documents or other information submitted by the undertaker or the taking of action by the undertaker, it must not be unreasonably withheld or delayed.

Access

100. If in consequence of the powers granted under this Order the access to any apparatus is materially obstructed, the undertaker must provide such alternative means of access to such apparatus as will enable Triton Knoll to maintain or use the apparatus no less effectively than was possible before such obstruction.

Arbitration

101. Save for differences or disputes arising under paragraph 93(2), 93(4), and 94(1), any difference or dispute arising between the undertaker and Triton Knoll under this Part of this Schedule must be determined by arbitration in accordance with article 45 (*arbitration*).

Notices

102. Notwithstanding article 43 (*service of notices*), any plans submitted to Triton Knoll by the undertaker pursuant to paragraph 95 (*Retained apparatus: protection*) must be submitted to Triton Knoll at its registered office or to such other address as Triton Knoll may from time to time appoint instead for that purpose and notify to the undertaker in writing.

PART 9

FOR THE PROTECTION OF BICKER FEN WINDFARM LIMITED

103. The provisions of this Part of this Schedule apply for the protection of Bicker Fen unless otherwise agreed in writing between the undertaker and Bicker Fen.

104. In this Part of this Schedule—

“Bicker Fen” means Bicker Fen Windfarm Limited (company number 06708662) whose registered office address is at 5th Floor, 20 Fenchurch Street, London, England, EC3M 3BY;

“Bicker Fen interface area” means the area of the Order land comprised of plots 18-9 and 18-48 contained in the book of reference; and

“Bicker Fen Wind Farm” means the wind farm located on land near Boston, Lincolnshire.

Co-ordination and co-operation

105. The undertaker must consult with Bicker Fen in the formulation of the proposed method of working and timing of execution of the undertaker’s works within the Bicker Fen interface area, not less than 60 days prior to such works commencing, and have regard to reasonable representations received from Bicker Fen made at least 30 days prior to such works commencing.

106. The undertaker and Bicker Fen must act in good faith and use reasonable endeavours to cooperate to formulate the proposed method of working and timing of execution of works within the Bicker Fen interface area (in accordance with paragraph 105 above) in a way which enables—

- (a) the undertaker to deliver the authorised development; and
- (b) Bicker Fen to operate and maintain Bicker Fen Wind Farm.

107. The undertaker must give to Bicker Fen not less than 30 days' written notice of its intention to commence the construction of the undertaker's works within the Bicker Fen interface area and, not more than 14 days after completion of their construction, must give Bicker Fen written notice of the completion.

108. The undertaker must at all reasonable times during construction of the undertaker's works in the Bicker Fen interface area allow Bicker Fen and its servants and agents reasonable access to the Bicker Fen interface area and all reasonable facilities for inspection of the works within the Bicker Fen interface area.

109. In the event that Bicker Fen notifies the undertaker that it no longer has an interest in the Bicker Fen interface area, the undertaker does not need to comply with the obligations in paragraphs 105 to 108 above.

Indemnity

110.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction, use, maintenance or failure of any of the authorised works by or on behalf of the undertaker or in consequence of any act or default of the undertaker (or any person employed or authorised by it) in the course of carrying out such works, including without limitation works carried out by the undertaker under this Part of this Schedule or any subsidence resulting from any of these works, any damage is caused to any infrastructure forming part of Bicker Fen Wind Farm, the undertaker will

- (a) bear and pay on demand (accompanied by an invoice or claim from Bicker Fen) the cost reasonably incurred by Bicker Fen in making good such damage; and
- (b) indemnify Bicker Fen up to a sum of £10,000,000 (ten million pounds) for any other expenses, loss, demands, proceedings, damages, claims, penalty or costs incurred by or recovered from Bicker Fen, by reason or in consequence of any such damage other than arising from any negligence or default of Bicker Fen.

(2) Nothing in sub-paragraph (1) will impose any liability on the undertaker in respect of any damage to the extent that it is attributable to the neglect or default of Bicker Fen, its officers, servants, contractors or agents.

(3) Bicker Fen must give the undertaker reasonable notice of any third party claim or demand and no settlement or compromise must, unless payment is required in connection with a statutory compensation scheme, be made without first consulting the undertaker and considering its representations.

(4) Before carrying out any of the authorised works within the Bicker Fen interface area the undertaker must put in place a policy of insurance with a reputable insurer the coverage and level of cover to be first agreed in writing between the undertaker and Bicker Fen (but to be no more than £10,000,000 (ten million pounds) per occurrence or series of occurrences arising out of one event), and evidence of such insurance to be provided on request and thereafter maintained for the duration of the carrying out of any specified works.

111. The total amount payable by the undertaker pursuant to this Part of this Schedule shall not exceed £10,000,000 (ten million pounds).

112. Any difference or dispute arising between Bicker Fen and the undertaker must, unless otherwise agreed in writing between Bicker Fen and the undertaker, be determined by arbitration in accordance with article 45 (arbitration) of the Order.

PART 10

FOR THE PROTECTION OF RAILWAY INTERESTS

113. The provisions of this Part of this Schedule have effect, unless otherwise agreed in writing between the undertaker and Network Rail and, in the case of paragraph 127 of this Part of this Schedule any other person on whom rights or obligations are conferred by that paragraph.

114. In this Part of this Schedule—

“asset protection agreement” means an agreement to regulate the construction and maintenance of the specified work in a form prescribed from time to time by Network Rail;

“construction” includes execution, placing, alteration and reconstruction and “construct” and “constructed” have corresponding meanings;

“the engineer” means an engineer appointed by Network Rail for the purposes of this Order;

“network licence” means the network licence, as the same is amended from time to time, granted to Network Rail Infrastructure Limited by the Secretary of State in exercise of their powers under section 8 (licences) of the Railways Act 1993;

“Network Rail” means Network Rail Infrastructure Limited (company number 02904587, whose registered office is at Waterloo General Office, London SE1 8SW) and any associated company of Network Rail Infrastructure Limited which holds property for railway purposes, and for the purpose of this definition “associated company” means any company which is (within the meaning of section 1159 of the Companies Act 2006) the holding company of Network Rail Infrastructure Limited, a subsidiary of Network Rail Infrastructure Limited or another subsidiary of the holding company of Network Rail Infrastructure Limited and any successor to Network Rail Infrastructure Limited’s railway undertaking;

“plans” includes sections, designs, design data, software, drawings, specifications, soil reports, calculations, descriptions (including descriptions of methods of construction), staging proposals, programmes and details of the extent, timing and duration of any proposed occupation of railway property;

“railway operational procedures” means procedures specified under any access agreement (as defined in the Railways Act 1993) or station lease;

“railway property” means any railway belonging to Network Rail and—

- (a) any station, land, works, apparatus and equipment belonging to Network Rail or connected with any such railway; and
- (b) any easement or other property interest held or used by Network Rail or a tenant or licensee of Network Rail for the purposes of such railway or works, apparatus or equipment;

“regulatory consents” means any consent or approval required under:

- (a) the Railways Act 1993;
- (b) the network licence; and/or
- (c) any other relevant statutory or regulatory provisions;

by either the Office of Rail and Road or the Secretary of State for Transport or any other competent body including change procedures and any other consents, approvals of any access or beneficiary that may be required in relation to the authorised development;

“specified work” means so much of any of the authorised development as is situated upon, across, under, over or within 15 metres of, or may in any way adversely affect, railway property and, for the avoidance of doubt, includes the maintenance of such works under the powers conferred by article 5 in respect of such works.

115.—(1) Where under this Part of this Schedule Network Rail is required to give its consent or approval in respect of any matter, that consent or approval is subject to the condition that Network Rail complies with any relevant railway operational procedures and any obligations under its network licence or under statute.

(2) In so far as any specified work or the acquisition or use of railway property is or may be subject to railway operational procedures, Network Rail must—

- (a) co-operate with the undertaker with a view to avoiding undue delay and securing conformity as between any plans approved by the engineer and requirements emanating from those procedures; and
- (b) use their reasonable endeavours to avoid any conflict arising between the application of those procedures and the proper implementation of the authorised development pursuant to this Order

116.—(1) The undertaker must not exercise the powers conferred by—

- (a) article 3 (*development consent etc. granted by the Order*);
- (b) article 5 (*maintenance of the authorised development*);
- (c) article 20 (*discharge of water*);
- (d) article 22 (*authority to survey and investigate the land*);
- (e) article 23 (*compulsory acquisition of land*);
- (f) article 24 (*compulsory acquisition of land – incorporation of the mineral code*);
- (g) article 25 (*statutory authority to override easements and other rights*);
- (h) article 27 (*compulsory acquisition of rights and imposition of restrictive covenants*);
- (i) article 28 (*private rights*);
- (j) article 30 (*acquisition of subsoil and airspace only*);
- (k) article 32 (*temporary use of land for carrying out the authorised development*);
- (l) article 34 (*temporary use of land for maintaining or decommissioning the authorised development*);
- (m) article 35 (*statutory undertakers*);
- (n) article 37 (Use of airspace within the Order land)
- (o) article 44 (*felling or lopping of trees or removal of hedgerows*);
- (p) the powers conferred by section 11(3) (power of entry) of the 1965 Act;
- (q) the powers conferred by section 203 (power to override easements and rights) of the Housing and Planning Act 2016;
- (r) the powers conferred by section 172 (right to enter and survey land) of the Housing and Planning Act 2016;
- (s) any powers under in respect of the temporary possession of land under the Neighbourhood Planning Act 2017;

in respect of any railway property unless the exercise of such powers is with the consent of Network Rail.

(2) The undertaker must not in the exercise of the powers conferred by this Order prevent pedestrian or vehicular access to any railway property, unless preventing such access is with the consent of Network Rail.

(3) The undertaker must not exercise the powers conferred by sections 271 or 272 of the 1990 Act, article 35 (*statutory undertakers*), article 25 (*statutory authority to override easements and other rights*) or article 28 (*private rights*), in relation to any right of access of Network Rail to railway property, but such right of access may be diverted with the consent of Network Rail.

(4) The undertaker must not under the powers of this Order acquire or use or acquire new rights over, or seek to impose any restrictive covenants over, any railway property or extinguish any existing rights of Network rail, in respect of any third party property, except with the consent of Network Rail.

(5) The undertaker must not under the powers of this Order do anything which would result in railway property being incapable of being used or maintained or which would affect the safe running of trains on the railway.

(6) Where Network Rail is asked to give its consent pursuant to this paragraph, such consent must not be unreasonably withheld but may be given subject to reasonable conditions but it shall never be unreasonable to withhold consent for reasons of operational or railway safety (such matters to be in Network Rail's absolute discretion).

(7) The undertaker must enter into an asset protection agreement prior to the carrying out of any specified work.

117.—(1) The undertaker must before commencing construction of any specified work supply to Network Rail proper and sufficient plans of that work for the reasonable approval of the engineer and the specified work must not be commenced except in accordance with such plans as have been approved in writing by the engineer or settled by arbitration.

(2) The approval of the engineer under sub-paragraph (1) must not be unreasonably withheld, and if by the end of the period of 28 days beginning with the date on which such plans have been supplied to Network Rail the engineer has not intimated their disapproval of those plans and the grounds of such disapproval the undertaker may serve upon the engineer written notice requiring the engineer to intimate approval or disapproval within a further period of 28 days beginning with the date upon which the engineer receives written notice from the undertaker. If by the expiry of the further 28 days the engineer has not intimated approval or disapproval, the engineer shall be deemed to have approved the plans as submitted.

(3) If by the end of the period of 28 days beginning with the date on which written notice was served upon the engineer under sub-paragraph (2), Network Rail gives notice to the undertaker that Network Rail desires itself to construct any part of a specified work which in the opinion of the engineer will or may affect the stability of railway property or the safe operation of traffic on the railways of Network Rail then, if the undertaker desires such part of the specified work to be constructed, Network Rail must construct it without unnecessary delay on behalf of and to the reasonable satisfaction of the undertaker in accordance with the plans approved or deemed to be approved or settled under this paragraph, and under the supervision (where appropriate and if given) of the undertaker.

(4) When signifying their approval of the plans the engineer may specify any protective works (whether temporary or permanent) which in the engineer's opinion should be carried out before the commencement of the construction of a specified work to ensure the safety or stability of railway property or the continuation of safe and efficient operation of the railways of Network Rail or the services of operators using the same (including any relocation de-commissioning and removal of works, apparatus and equipment necessitated by a specified work and the comfort and safety of passengers who may be affected by the specified works), and such protective works as may be reasonably necessary for those purposes must be constructed by Network Rail or by the undertaker, if Network Rail so desires, and such protective works must be carried out at the expense of the undertaker in either case without unnecessary delay and the undertaker must not commence the construction of the specified works until the engineer has notified the undertaker that the protective works have been completed to their reasonable satisfaction.

118.—(1) Any specified work and any protective works to be constructed by virtue of paragraph 117(4) must, when commenced, be constructed—

- (a) without unnecessary delay in accordance with the plans approved or deemed to have been approved or settled under paragraph 117;
- (b) under the supervision (where appropriate and if given) and to the reasonable satisfaction of the engineer;
- (c) in such manner as to cause as little damage as is possible to railway property; and
- (d) so far as is reasonably practicable, so as not to interfere with or obstruct the free, uninterrupted and safe use of any railway of Network Rail or the traffic thereon and the use by passengers of railway property.

(2) If any damage to railway property or any such interference or obstruction shall be caused by the carrying out of, or in consequence of the construction of a specified work, the undertaker must, notwithstanding any such approval, make good such damage and must pay to Network Rail all reasonable expenses to which Network Rail may be put and compensation for any loss which it may sustain by reason of any such damage, interference or obstruction.

(3) Nothing in this Part of this Schedule imposes any liability on the undertaker with respect to any damage, costs, expenses or loss attributable to the negligence of Network Rail or its servants, contractors or agents or any liability on Network Rail with respect of any damage, costs, expenses or loss attributable to the negligence of the undertaker or its servants, contractors or agents.

119.—(1) The undertaker must—

- (a) at all times afford reasonable facilities to the engineer for access to a specified work during its construction; and
- (b) supply the engineer with all such information as they may reasonably require with regard to a specified work or the method of constructing it.

120. Network Rail must at all times afford reasonable facilities to the undertaker and its agents for access to any works carried out by Network Rail under this Part of this Schedule during their construction and must supply the undertaker with such information as it may reasonably require with regard to such works or the method of constructing them.

121.—(1) If any permanent or temporary alterations or additions to railway property are reasonably necessary in consequence of the construction or completion of a specified work in order to ensure the safety of railway property or the continued safe operation of the railway of Network Rail, such alterations and additions may be carried out by Network Rail and if Network Rail gives to the undertaker 56 days' notice (or in the event of an emergency or safety critical issue such notice as is reasonable in the circumstances) of its intention to carry out such alterations or additions (which must be specified in the notice), the undertaker must pay to Network Rail the reasonable cost of those alterations or additions including, in respect of any such alterations and additions as are to be permanent, a capitalised sum representing the increase of the costs which may be expected to be reasonably incurred by Network Rail in maintaining, working and, when necessary, renewing any such alterations or additions.

(2) If during the construction of a specified work by the undertaker, Network Rail gives notice to the undertaker that Network Rail desires itself to construct that part of the specified work which in the opinion of the engineer is endangering the stability of railway property or the safe operation of traffic on the railways of Network Rail then, if the undertaker decides that part of the specified work is to be constructed, Network Rail must assume construction of that part of the specified work and the undertaker must, notwithstanding any such approval of a specified work under paragraph 117(3), pay to Network Rail all reasonable expenses to which Network Rail may be put and compensation for any loss which it may suffer by reason of the execution by Network Rail of that specified work.

(3) The engineer must, in respect of the capitalised sums referred to in this paragraph and paragraph 122(a) provide such details of the formula by which those sums have been calculated as the undertaker may reasonably require.

(4) If the cost of maintaining, working or renewing railway property is reduced in consequence of any such alterations or additions a capitalised sum representing such saving must be set off against any sum payable by the undertaker to Network Rail under this paragraph.

122. The undertaker must repay to Network Rail all reasonable fees, costs, charges and expenses reasonably incurred by Network Rail—

- (a) in constructing any part of a specified work on behalf of the undertaker as provided by paragraph 117(3) or in constructing any protective works under the provisions of paragraph 117(4) including, in respect of any permanent protective works, a capitalised sum representing the cost of maintaining and renewing those works;

- (b) in respect of the approval by the engineer of plans submitted by the undertaker and the supervision by the engineer of the construction of a specified work;
- (c) in respect of the employment or procurement of the services of any inspectors, signallers, watch-persons and other persons whom it shall be reasonably necessary to appoint for inspecting, signalling, watching and lighting railway property and for preventing, so far as may be reasonably practicable, interference, obstruction, danger or accident arising from the construction or failure of a specified work;
- (d) in respect of any special traffic working resulting from any speed restrictions which may in the opinion of the engineer, require to be imposed by reason or in consequence of the construction or failure of a specified work or from the substitution or diversion of services which may be reasonably necessary for the same reason; and
- (e) in respect of any additional temporary lighting of railway property in the vicinity of the specified works, being lighting made reasonably necessary by reason or in consequence of the construction or failure of a specified work.

123.—(1) In this paragraph—

“EMI” means, subject to sub-paragraph (2), electromagnetic interference with Network Rail apparatus generated by the operation of the authorised development where such interference is of a level which adversely affects the safe operation of Network Rail’s apparatus; and

“Network Rail’s apparatus” means any lines, circuits, wires, apparatus or equipment (whether or not modified or installed as part of the authorised development) which are owned or used by Network Rail for the purpose of transmitting or receiving electrical energy or of radio, telegraphic, telephonic, electric, electronic or other like means of signalling or other communications.

(2) This paragraph applies to EMI only to the extent that such EMI is not attributable to any change to Network Rail’s apparatus carried out after approval of plans under paragraph 117(1) for the relevant part of the authorised development giving rise to EMI (unless the undertaker has been given notice in writing before the approval of those plans of the intention to make such change).

(3) Subject to sub-paragraph (5), the undertaker must in the design and construction of the authorised development take all measures necessary to prevent EMI and must establish with Network Rail (both parties acting reasonably) appropriate arrangements to verify their effectiveness.

(4) In order to facilitate the undertaker’s compliance with sub-paragraph (3)-

- (a) the undertaker must consult with Network Rail as early as reasonably practicable to identify all Network Rail’s apparatus which may be at risk of EMI, and thereafter must continue to consult with Network Rail (both before and after formal submission of plans under paragraph 117(1)) in order to identify all potential causes of EMI and the measures required to eliminate them;
- (b) Network Rail must make available to the undertaker all information in the possession of Network Rail reasonably requested by the undertaker in respect of Network Rail’s apparatus identified pursuant to sub-paragraph (a); and
- (c) Network Rail must allow the undertaker reasonable facilities for the inspection of Network Rail’s apparatus identified pursuant to sub-paragraph (a).

(5) In any case where it is established that EMI can only reasonably be prevented by modifications to Network Rail’s apparatus, Network Rail must not withhold its consent unreasonably to modifications of Network Rail’s apparatus, but the means of prevention and the method of their execution must be selected in the reasonable discretion of Network Rail, and in relation to such modifications paragraph 117(1) has effect subject to the sub-paragraph.

(6) Prior to the commencement of operation of the authorised development the undertaker shall test the use of the authorised development in a manner that shall first have been agreed with Network Rail and if, notwithstanding any measures adopted pursuant to sub-paragraph (3), the testing of the authorised development causes EMI then the undertaker must

immediately upon receipt of notification by Network Rail of such EMI either in writing or communicated orally (such oral communication to be confirmed in writing as soon as reasonably practicable after it has been issued) forthwith cease to use (or procure the cessation of use of) the undertaker's apparatus causing such EMI until all measures necessary have been taken to remedy such EMI by way of modification to the source of such EMI or (in the circumstances, and subject to the consent, specified in sub-paragraph (5)) to Network Rail's apparatus.

(7) In the event of EMI having occurred –

- (a) the undertaker must afford reasonable facilities to Network Rail for access to the undertaker's apparatus in the investigation of such EMI;
- (b) Network Rail must afford reasonable facilities to the undertaker for access to Network Rail's apparatus in the investigation of such EMI;
- (c) Network Rail must make available to the undertaker any additional material information in its possession reasonably requested by the undertaker in respect of Network Rail's apparatus or such EMI; and
- (d) the undertaker shall not allow the use or operation of the authorised development in a manner that has caused or will cause EMI until measures have been taken in accordance with this paragraph to prevent EMI occurring.

(8) Where Network Rail approves modifications to Network Rail's apparatus pursuant to sub-paragraphs (5) or (6) –

- (a) Network Rail must allow the undertaker reasonable facilities for the inspection of the relevant part of Network Rail's apparatus; and
- (b) any modifications to Network Rail's apparatus approved pursuant to those sub-paragraphs must be carried out and completed by the undertaker in accordance with paragraph 118.

(9) To the extent that it would not otherwise do so, the indemnity in paragraph 127(1) applies to the costs and expenses reasonably incurred or losses suffered by Network Rail through the implementation of the provisions of this paragraph (including costs incurred in connection with the consideration of proposals, approval of plans, supervision and inspection of works and facilitating access to Network Rail's apparatus) or in consequence of any EMI to which sub-paragraph (6) applies.

(10) For the purpose of paragraph 122(a) any modifications to Network Rail's apparatus under this paragraph shall be deemed to be protective works referred to in that paragraph.

(11) In relation to any dispute arising under this paragraph the reference in article 45 (*Arbitration*) to the Institution of Civil Engineers shall be read as a reference to the Institution of Engineering and Technology.

124. If at any time after the completion of a specified work, not being a work vested in Network Rail, Network Rail gives notice to the undertaker informing it that the state of maintenance of any part of the specified work appears to be such as adversely affects the operation of railway property, the undertaker must, on receipt of such notice, take such steps as may be reasonably necessary to put that specified work in such state of maintenance as not adversely to affect railway property.

125. The undertaker must not provide any illumination or illuminated sign or signal on or in connection with a specified work in the vicinity of any railway belonging to Network Rail unless it has first consulted Network Rail and it must comply with Network Rail's reasonable requirements for preventing confusion between such illumination or illuminated sign or signal and any railway signal or other light used for controlling, directing or securing the safety of traffic on the railway.

126. Any additional expenses which Network Rail may reasonably incur in altering, reconstructing or maintaining railway property under any powers existing at the making of this Order by reason of the existence of a specified work must, provided that 56 days' previous notice of the commencement of such alteration, reconstruction or maintenance has been given to the undertaker, be repaid by the undertaker to Network Rail.

127. —(1) The undertaker must pay to Network Rail all reasonable costs, charges, damages and expenses not otherwise provided for in this Part of this Schedule (subject to article 39 (*No double recovery*)) which may be occasioned to or reasonably incurred by Network Rail—

- (a) by reason of the construction, maintenance or operation of a specified work or the failure thereof;
- (b) by reason of any act or omission of the undertaker or of any person in its employ or of its contractors or others whilst engaged upon a specified work;
- (c) by reason of any act or omission of the undertaker or any person in its employ or of its contractors or others whilst accessing to or egressing from the authorised development;
- (d) in respect of any damage caused to or additional maintenance required to, railway property or any such interference or obstruction or delay to the operation of the railway as a result of access to or egress from the authorised development by the undertaker or any person in its employ or of its contractors or others; or
- (e) in respect of costs incurred by Network Rail in complying with any railway operational procedures or obtaining any regulatory consents which procedures are required to be followed or consents obtained to facilitate the carrying out or operation of the authorised development,

and the undertaker must indemnify and keep indemnified Network Rail from and against all claims and demands arising out of or in connection with a specified work or any such failure, act or omission: and the fact that any act or thing may have been done by Network Rail on behalf of the undertaker or in accordance with plans approved by the engineer or in accordance with any requirement of the engineer or under the engineer's supervision shall not (if it was done without negligence on the part of Network Rail or of any person in its employ or of its contractors or agents) excuse the undertaker from any liability under the provisions of this sub-paragraph.

(2) Network Rail must –

- (a) give the undertaker reasonable written notice of any such claims or demands
- (b) not make any settlement or compromise of such a claim or demand without the prior consent of the undertaker; and
- (c) take such steps as are within its control and are reasonable in the circumstances to mitigate any liabilities relating to such claims or demands.

(3) The sums payable by the undertaker under sub-paragraph (1) shall if relevant include a sum equivalent to the relevant costs.

(4) Subject to the terms of any agreement between Network Rail and a train operator regarding the timing or method of payment of the relevant costs in respect of that train operator, Network Rail must promptly pay to each train operator the amount of any sums which Network Rail receives under sub-paragraph (3) which relates to the relevant costs of that train operator.

(5) The obligation under sub-paragraph (3) to pay Network Rail the relevant costs shall, in the event of default, be enforceable directly by any train operator concerned to the extent that such sums would be payable to that operator pursuant to sub-paragraph (4).

(6) In this paragraph—

“the relevant costs” means the costs, losses and expenses (including loss of revenue) reasonably incurred by each train operator as a consequence of any specified work including but not limited to any restriction of the use of Network Rail's railway network as a result of the construction, maintenance or failure of a specified work or any such act or omission as mentioned in sub-paragraph (1); and

“train operator” means any person who is authorised to act as the operator of a train by a licence under section 8 of the Railways Act 1993.

128. Network Rail must, on receipt of a request from the undertaker, from time to time provide the undertaker free of charge with written estimates of the costs, charges, expenses and other liabilities for which the undertaker is or will become liable under this Part of this Schedule (including the

amount of the relevant costs mentioned in paragraph 127) and with such information as may reasonably enable the undertaker to assess the reasonableness of any such estimate or claim made or to be made pursuant to this Part of this Schedule (including any claim relating to those relevant costs).

129. In the assessment of any sums payable to Network Rail under this Part of this Schedule there must not be taken into account any increase in the sums claimed that is attributable to any action taken by or any agreement entered into by Network Rail if that action or agreement was not reasonably necessary and was taken or entered into with a view to obtaining the payment of those sums by the undertaker under this Part of this Schedule or increasing the sums so payable.

130. The undertaker and Network Rail may, subject in the case of Network Rail to compliance with the terms of its network licence, enter into, and carry into effect, agreements for the transfer to the undertaker of—

- (a) any railway property shown on the works and land plans and described in the book of reference;
- (b) any lands, works or other property held in connection with any such railway property; and
- (c) any rights and obligations (whether or not statutory) of Network Rail relating to any railway property or any lands, works or other property referred to in this paragraph.

131. Nothing in this Order, or in any enactment incorporated with or applied by this Order, prejudices or affects the operation of Part I of the Railways Act 1993.

132. The undertaker must give written notice to Network Rail if any application is proposed to be made by the undertaker for the Secretary of State's consent, under article 7 (*consent to transfer benefit of the Order*) of this Order and any such notice must be given no later than 28 days before any such application is made and must describe or give (as appropriate)—

- (a) the nature of the application to be made;
- (b) the extent of the geographical area to which the application relates; and
- (c) the name and address of the person acting for the Secretary of State to whom the application is to be made.

133. The undertaker must no later than 28 days from the date that the plans submitted to and certified by the Secretary of State in accordance with article 42 (*certification of plans etc.*) are certified by the Secretary of State, provide a set of those plans to Network Rail in a format specified by Network Rail.

134. Any dispute arising under this Part of this Schedule, unless otherwise provided for, must be referred to and settled by arbitration in accordance with article 45 (*arbitration*).

PART 11

FOR THE PROTECTION OF CADENT GAS LIMITED AS GAS UNDERTAKER

Application

135. For the protection of Cadent the following provisions will, unless otherwise agreed in writing between the undertaker and Cadent, have effect.

Interpretation

136. In this Part of this Schedule—

“1991 Act” means the New Roads and Street Works Act 1991;

“acceptable credit provider” means a bank or financial institution with a credit rating that is not lower than: (i) “A-” if the rating is assigned by Standard & Poor's Ratings Group or Fitch Ratings; and “A3” if the rating is assigned by Moody's Investors Services Inc.;

“acceptable insurance” means a third party liability insurance effected and maintained by the undertaker to a level of not less than £50,000,000 (fifty million pounds) per occurrence or series of occurrences arising out of one event. Such insurance must be maintained for the construction period of the authorised works which constitute specified works and arranged with an internationally recognised insurer of repute operating in the London and worldwide insurance market underwriters whose security/credit rating meets the same requirements as an “acceptable credit provider”, such policy must include (but without limitation):

- (a) Cadent as a Co-Insured;
- (b) a cross liabilities clause;
- (c) a waiver of subrogation in favour of Cadent; and
- (d) contractors’ pollution liability for third party property damage and third party bodily damage arising from a pollution/contamination event with cover of £10,000,000.00 (ten million pounds) per event or £20,000,000.00 (twenty million pounds) in aggregate;

“acceptable security” means either:

- (a) evidence provided to Cadent’s reasonable satisfaction that the Undertaker has a tangible net worth of not less than £50,000,000.00 (Fifty Million Pounds (or an equivalent financial measure);
- (b) a parent company guarantee from a parent company in favour of Cadent to cover the undertaker’s liability to Cadent to a cap of not less than £50,000,000 (fifty million pounds) per asset per event up to a total liability cap of £50,000,000 (fifty million pounds) (in a form reasonably satisfactory to Cadent and where required by Cadent, accompanied with a legal opinion confirming the due capacity and authorisation of the parent company to enter into and be bound by the terms of such guarantee); or
- (c) a bank bond or letter of credit from an acceptable credit provider in favour of Cadent Gas Limited to cover the undertaker’s liability to Cadent for an amount of not less than £50,000,000 (fifty million pounds) per asset per event up to a total liability cap of £50,000,000 (fifty million pounds) (in a form reasonably satisfactory to Cadent);

“alternative apparatus” means appropriate alternative apparatus to the satisfaction of Cadent to enable Cadent to fulfil its statutory functions in a manner no less efficient than previously;

“apparatus” means any gas mains, pipes, pressure governors, ventilators, cathodic protections, (including transformed rectifiers and any associated groundbeds or cables), cables, marker posts, block valves, hydrogen above ground installations or other apparatus belonging to or maintained by Cadent for the purposes of Cadent’s undertaking together with any replacement apparatus and such other apparatus constructed pursuant to this Order that becomes operational apparatus of Cadent for the purposes of Cadent’s undertaking and includes any structure in which apparatus is or will be lodged or which gives or will give access to apparatus;

“authorised works” has the same meaning as is given to the term “authorised development” in article 2 of this Order and includes any associated development authorised by the Order and for the purposes of this Part of this Schedule includes the use and maintenance of the authorised works and construction of any works authorised by this Part of this Schedule;

“Cadent” means Cadent Gas Limited and includes its successors in title or any successor as a gas transporter within the meaning of Part 1 of the Gas Act 1986;

“Cadent’s undertaking” means the rights, duties and obligations of Cadent Gas Limited as a public gas transporter within the meaning of Section 7 of the Gas Act 1986 (as amended by the Gas Act 1995);

“commence” has the same meaning as in article 2 of this Order and commencement will be construed to have the same meaning save that for the purposes of this Part of the Schedule the terms commence and commencement include operations for the purposes of intrusive archaeological investigations and intrusive investigations of the existing condition of the ground or of structures within 15 metres in any direction of Cadent’s apparatus;

“deed of consent” means a deed of consent, crossing agreement, deed of variation or new deed of grant agreed between the parties acting reasonably in order to vary and/or replace existing easements, agreements, enactments and other such interests so as to secure land rights and interests as are necessary to carry out, maintain, operate and use the apparatus in a manner consistent with the terms of this Part of this Schedule;

“functions” includes powers and duties;

“ground mitigation scheme” means a scheme approved by Cadent (such approval not to be unreasonably withheld or delayed) setting out the necessary measures (if any) for a ground subsidence event;

“ground monitoring scheme” means a scheme for monitoring ground subsidence which sets out the apparatus which is to be subject to such monitoring, the extent of land to be monitored, the manner in which ground levels are to be monitored, the timescales of any monitoring activities and the extent of ground subsidence which, if exceeded, must require the undertaker to submit for Cadent’s approval a ground mitigation scheme;

“ground subsidence event” means any ground subsidence identified by the monitoring activities set out in the ground monitoring scheme that has exceeded the level described in the ground monitoring scheme as requiring a ground mitigation scheme;

“in” in a context referring to apparatus or alternative apparatus in land includes a reference to apparatus or alternative apparatus under, over, across, along or upon such land;

“maintain” and “maintenance” will include the ability and right to do any of the following in relation to any apparatus or alternative apparatus of Cadent including retain, lay, construct, inspect, maintain, protect, use, access, enlarge, replace, renew, remove, decommission or render unusable or remove the apparatus;

“plan” or “plans” include all designs, drawings, specifications, method statements, soil reports, programmes, calculations, risk assessments and other documents that are reasonably necessary to properly and sufficiently describe and assess the works to be executed;

“parent company” means a parent company of the undertaker acceptable to Cadent and which will have been approved by Cadent acting reasonably;

“rights” includes rights and restrictive covenants, and in relation to decommissioned apparatus the surrender of rights, release of liabilities and transfer of decommissioned apparatus; and

“specified works” means any of the authorised works or activities (including maintenance) undertaken in association with the authorised works which:

- (a) will or may be situated over, or within 15 metres measured in any direction of any apparatus the removal of which has not been required by the undertaker under paragraph 141(2) or otherwise;
- (b) may in any way adversely affect any apparatus the removal of which has not been required by the undertaker under paragraph 141(2) or otherwise; and/or
- (c) include any of the activities that are referred to in CD/SP/SSW/22 (Cadent’s policies for safe working in the vicinity of Cadent’s Assets); and

“undertaker” means the undertaker as defined in article 2 of this Order.

On Street Apparatus

137.—(1) Except for paragraphs 138 (*apparatus in stopped up streets*), 141 (*Removal of Apparatus*) in so far as paragraph 137(2) applies, 142 (*facilities and Rights for Alternative Apparatus*) in so far as sub-paragraph 137(2) below applies, 143 (*retained apparatus: protection*), 144 (*expenses*) and 145 (*indemnity*) of this Part of this Schedule which will apply in respect of the exercise of all or any powers under the Order affecting the rights and apparatus of Cadent, the other provisions of this Part of this Schedule do not apply to apparatus in respect of which the relations between the undertaker and Cadent are regulated by the provisions of Part 3 of the 1991 Act.

(2) Paragraphs 141 and 142 of this Part of this Schedule will apply to diversions even where carried out under the 1991 Act, in circumstances where any apparatus is diverted from an

alignment within the existing adopted public highway but not wholly replaced within existing adopted public highway.

(3) Notwithstanding article 11 (*street works*) or any other powers in the Order generally, section 85 of the 1991 Act in relation to cost sharing and the regulations made thereunder will not apply in relation to any diversion of apparatus of Cadent under the 1991 Act.

Apparatus of Cadent in stopped up streets

138. Notwithstanding the temporary stopping up or diversion of any highway under the powers of article 15 (*Temporary prohibition or restriction of use of streets and public rights of way*), Cadent will be at liberty at all times to take all necessary access across any such stopped up highway and/or to execute and do all such works and things in, upon or under any such highway as it would have been entitled to do immediately before such temporary stopping up or diversion in respect of any apparatus which at the time of the stopping up or diversion was in that highway.

Protective works to buildings

139.—(1) The undertaker, in the case of the powers conferred by article 21 (*protective work to buildings*), must exercise those powers so as not to obstruct or render less convenient the access to any apparatus without the written consent of Cadent and, if by reason of the exercise of those powers any damage to any apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal or abandonment) or property of Cadent or any interruption in the supply of gas by Cadent, as the case may be, is caused, the undertaker must bear and pay on demand the cost reasonably incurred by Cadent in making good such damage or restoring the supply; and, subject to sub-paragraph (2), will—

- (a) pay compensation to Cadent for any loss sustained by it; and
- (b) indemnify Cadent against all claims, demands, proceedings, costs, damages and expenses which may be made or taken against or recovered from or incurred by Cadent, by reason of any such damage or interruption.

(2) Nothing in this paragraph imposes any liability on the undertaker with respect to any damage or interruption to the extent that such damage or interruption is attributable to the act, neglect or default of Cadent or its contractors or workers; and Cadent will give to the undertaker reasonable notice of any claim or demand as aforesaid and no settlement or compromise thereof shall be made by Cadent, save in respect of any payment required under a statutory compensation scheme, without first consulting the undertaker and giving the undertaker an opportunity to make representations as to the claim or demand.

Acquisition of land

140.—(1) Regardless of any provision in this Order or anything shown on the land plans or contained in the book of reference to the Order, the undertaker may not appropriate or acquire any land interest or appropriate, acquire, extinguish, interfere with or override any easement, other interest or right and/or apparatus of Cadent otherwise than by agreement.

(2) As a condition of agreement between the parties in sub-paragraph 140(1), prior to the carrying out of any part of the authorised works (or in such other timeframe as may be agreed between Cadent and the undertaker) that are subject to the requirements of this Part of this Schedule that will cause any conflict with or breach the terms of any easement or other legal or land interest of Cadent or affects the provisions of any enactment or agreement regulating the relations between Cadent and the undertaker in respect of any apparatus laid or erected in land belonging to or secured by the undertaker, the undertaker must as Cadent reasonably requires enter into such deeds of consent and variations upon such terms and conditions as may be agreed between Cadent and the undertaker acting reasonably and which must be no less favourable on the whole to Cadent unless otherwise agreed by Cadent, and it will be the responsibility of the undertaker to procure and/or secure the consent and entering into of such deeds and variations by all other third parties with an interest in the land at that time who are affected by such authorised works.

(3) The undertaker and Cadent agree that where there is any inconsistency or duplication between the provisions set out in this Part of this Schedule relating to the relocation or removal of apparatus including but not limited to the payment of costs and expenses relating to such relocation or removal of apparatus and the provisions of any existing easement, rights, agreements and licences granted, used, enjoyed or exercised by Cadent or other enactments relied upon by Cadent as of right or other use in relation to the apparatus, then the provisions in this Part of Schedule will prevail.

(4) Any agreement or consent granted by Cadent under paragraph 143 or any other paragraph of this Part of this Schedule, will not be taken to constitute agreement under sub-paragraph 140(1).

(5) As a condition of an agreement between the parties in sub-paragraph 140(1) that involves decommissioned apparatus being left in situ in land owned by the undertaker the undertaker must accept a surrender of any existing easement or other interest of Cadent in such decommissioned apparatus and consequently acquire title to such decommissioned apparatus and release Cadent from all liabilities in respect of such de-commissioned apparatus from the date of such surrender save that any liabilities related to subsisting breaches by Cadent of the existing easement or other interest at the time of such surrender will remain with Cadent.

(6) Where an undertaker acquires land which is subject to any Cadent right or interest (including, without limitation, easements and agreements relating to rights or other interests) and the provisions of paragraph 141 do not apply, the undertaker must:

- (a) retain any notice of Cadent's easement, right or other interest on the title to the relevant land when registering the undertaker's title to such acquired land; and
- (b) (where no such notice of Cadent's easement, right or other interest exists in relation to such acquired land or any such notice is registered only on the Land Charges Register) include (with its application to register title to the undertaker's interest in such acquired land at the Land Registry) a notice of Cadent's easement, right or other interest in relation to such acquired land.

Removal of apparatus

141.—(1) If, in the exercise of any agreement reached in accordance with paragraph 140 or in any other authorised manner, the undertaker acquires any interest in any land in which any apparatus is placed, that apparatus must not be decommissioned or removed under this Part of this Schedule and any right of Cadent to maintain that apparatus in that land must not be extinguished until alternative apparatus has been constructed, is in operation, and the rights and facilities referred to in sub-paragraph (2) have been provided, to the satisfaction of Cadent and in accordance with sub-paragraphs (2) to (5) inclusive.

(2) If, for the purpose of executing any works in, on, under or over any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, it must give to Cadent advance written notice of that requirement, together with a plan and section of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order Cadent reasonably needs to move or remove any of its apparatus) the undertaker must afford to Cadent to its satisfaction (taking into account paragraph 142(1) below) the necessary facilities and rights:

- (a) for the construction of alternative apparatus (including appropriate working areas required to reasonably and safely undertake necessary works by Cadent in respect of the apparatus);
- (b) subsequently for the maintenance of that apparatus (including appropriate working areas required to reasonably and safely undertake necessary works by Cadent in respect of the apparatus); and
- (c) to allow access to that apparatus (including appropriate working areas required to reasonably and safely undertake necessary works by Cadent in respect of the apparatus).

(3) If the undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraph (2), in the land in which the alternative apparatus or part of such apparatus is to be constructed, Cadent may, on receipt of a written notice to that effect from the undertaker, take such steps as are reasonable in the circumstances in an endeavour to assist the undertaker in obtaining the necessary facilities and rights in the land in which the alternative apparatus is to be constructed save that this obligation will not extend to the requirement for Cadent to use its compulsory purchase powers to this end unless it (in its absolute discretion) elects to so do.

(4) Any alternative apparatus to be constructed in land of or land secured by the undertaker under this Part of this Schedule must be constructed in such manner and in such line or situation as may be agreed between Cadent and the undertaker.

(5) Cadent must, after the alternative apparatus to be provided or constructed has been agreed, and subject to the prior grant to Cadent of such facilities and rights as are referred to in sub-paragraph (2) or (3) have been afforded to Cadent to its satisfaction, then proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to decommission or remove any apparatus required by the undertaker to be decommissioned or removed under the provisions of this Part of this Schedule.

Facilities and rights for alternative apparatus

142.—(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to or secures for Cadent facilities and rights in land for the access to, construction and maintenance alternative apparatus in substitution for apparatus to be decommissioned or removed, those facilities and rights must be granted upon such terms and conditions as may be agreed between the undertaker and Cadent and must be no less favourable on the whole to Cadent than the facilities and rights enjoyed by it in respect of the apparatus to be decommissioned or removed unless otherwise agreed by Cadent.

(2) If the facilities and rights to be afforded by the undertaker and agreed with Cadent under paragraph 142(1) above in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are less favourable on the whole to Cadent than the facilities and rights enjoyed by it in respect of the apparatus to be decommissioned or removed (in Cadent's opinion) then the terms and conditions to which those facilities and rights are subject in the matter will be referred to arbitration in accordance with paragraph 149 (*Arbitration*) of this Part of this Schedule and the arbitrator will make such provision for the payment of compensation by the undertaker to Cadent as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

Retained apparatus: protection of Cadent

143.—(1) Not less than 56 days (or such time period as may be agreed in writing between Cadent and the undertaker) before the commencement of any specified works the undertaker must submit to Cadent a plan and, if reasonably required by Cadent, a ground monitoring scheme in respect of those works.

(2) The plan to be submitted to Cadent under sub-paragraph (1) must include a method statement and describe—

- (a) the exact position of the works;
- (b) the level at which these are proposed to be constructed or renewed;
- (c) the manner of their construction or renewal including details of excavation, positioning of plant etc.;
- (d) the position of all apparatus;
- (e) by way of detailed drawings, every alteration proposed to be made to or close to any such apparatus; and
- (f) any intended maintenance regimes.

(3) The undertaker must not commence any works to which sub-paragraphs (1) and (2) apply until Cadent has given written approval of the plan so submitted.

(4) Any approval of Cadent required under sub-paragraph (3)—

- (a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraphs (5) or (7); and,
- (b) must not be unreasonably withheld or delayed.

(5) In relation to any work to which sub-paragraphs (1) or (2) apply, Cadent may require such modifications to be made to the plans as may be reasonably necessary for the purpose of securing apparatus against interference or risk of damage or for the purpose of providing or securing proper and convenient means of access to any apparatus.

(6) Works to which this paragraph applies must only be executed in accordance with the plan, submitted under sub-paragraphs (1) and (2) or as relevant sub-paragraph (4), as approved or as amended from time to time by agreement between the undertaker and Cadent and in accordance with all conditions imposed under sub-paragraph (4)(a), and Cadent will be entitled to watch and inspect the execution of those works.

(7) Where Cadent requires any protective works to be carried out by itself or by the undertaker (whether of a temporary or permanent nature) such protective works, inclusive of any measures or schemes required and approved as part of the plan approved pursuant to this paragraph, must be carried out to Cadent's satisfaction prior to the commencement of any authorised works (or any relevant part thereof) for which protective works are required prior to commencement.

(8) If Cadent, in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraphs 135 to 137 and 140 to 142 apply as if the removal of the apparatus had been required by the undertaker under paragraph 141(2) provided that such written notice must be given by Cadent to the undertaker no later than as part of the approval of a plan submitted pursuant to sub-paragraph (1).

(9) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 56 days before commencing the execution of the specified works, a new plan, instead of the plan previously submitted, and having done so the provisions of this paragraph will apply to and in respect of the new plan.

(10) The undertaker will not be required to comply with sub-paragraph (1) where it needs to carry out emergency works as defined in the 1991 Act but in that case it must give to Cadent notice as soon as is reasonably practicable and a plan of those works and must comply with—

- (a) the conditions imposed under sub-paragraph (4)(a) insofar as is reasonably practicable in the circumstances; and
- (b) sub-paragraph (11) at all times.

(11) At all times when carrying out any works authorised under the Order the undertaker must comply with Cadent's policies for safe working in proximity to gas apparatus "CD/SP/SSW/22 (Cadent's policies for safe working in the vicinity of Cadent's Assets" and HSE's "HS(~G)47 Avoiding Danger from underground services".

(12) As soon as reasonably practicable after any ground subsidence event attributable to the authorised works the undertaker must implement an appropriate ground mitigation scheme save that Cadent retains the right to carry out any further necessary protective works for the safeguarding of its apparatus and can recover any such costs in line with paragraph 144.

Expenses

144.—(1) Subject to the following provisions of this paragraph, the undertaker must pay to Cadent within 30 days of receipt of an invoice all charges, costs and expenses reasonably anticipated or reasonably incurred by Cadent in, or in connection with, the inspection, removal, relaying or replacing, alteration or protection of any apparatus or the construction of any new or alternative apparatus which may be required in consequence of the execution of any authorised works as are referred to in this Part of this Schedule including without limitation—

- (a) any costs reasonably incurred by or compensation properly paid by Cadent in connection with the negotiation or acquisition of rights or the exercise of statutory powers for such apparatus including without limitation all costs (including professional fees) incurred by Cadent as a consequence of Cadent;
 - (i) using its own compulsory purchase powers to acquire any necessary rights under paragraph 141(3) if it elects to do so; or
 - (ii) exercising any compulsory purchase powers in the Order transferred to or benefitting Cadent;
- (b) in connection with the cost of the carrying out of any diversion work or the provision of any alternative apparatus;
- (c) the cutting off of any apparatus from any other apparatus or the making safe of redundant apparatus;
- (d) the approval of plans;
- (e) the carrying out of protective works, plus a capitalised sum to cover the cost of maintaining and renewing permanent protective works;
- (f) the survey of any land, apparatus or works, the inspection and monitoring of works or the installation or removal of any temporary works reasonably necessary in consequence of the execution of any such works referred to in this Part of this Schedule;
- (g) any watching brief pursuant to paragraph 143(6).

(2) There will be deducted from any sum payable under sub-paragraph (1) the value of any apparatus removed under the provisions of this Part of this Schedule and which is not re-used as part of the alternative apparatus, that value being calculated after removal.

(3) If in accordance with the provisions of this Part of this Schedule—

- (a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions; or
- (b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was situated,

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or, in default of agreement, is not determined by arbitration in accordance with article 45 (*Arbitration*) to be necessary, then, if such placing involves cost in the construction of works under this Part of this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to Cadent by virtue of sub-paragraph (1) will be reduced by the amount of that excess save where it is not possible or appropriate in the circumstances (including due to statutory or regulatory changes) to obtain the existing type of apparatus at the same capacity and dimensions or place at the existing depth in which case full costs will be borne by the undertaker.

(4) For the purposes of sub-paragraph (3)—

- (a) an extension of apparatus to a length greater than the length of existing apparatus will not be treated as a placing of apparatus of greater dimensions than those of the existing apparatus; and
- (b) where the provision of a joint in a pipe or cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole will be treated as if it also had been agreed or had been so determined.

(5) An amount which apart from this sub-paragraph would be payable to Cadent in respect of works by virtue of sub-paragraph (1) will, if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on Cadent any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, be reduced by the amount which represents that benefit.

Indemnity

145.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any such works authorised by this Part of this Schedule (including without limitation relocation, diversion, decommissioning, construction and maintenance of apparatus or alternative apparatus) or in consequence of the construction, use, maintenance or failure of any of the authorised works by or on behalf of the undertaker or in consequence of any act or default of the undertaker (or any person employed or authorised by it) in the course of carrying out such works, including without limitation works carried out by the undertaker under this Part of this Schedule or any subsidence resulting from any of these works, any damage is caused to any apparatus or alternative apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of the authorised works) or property of Cadent, or there is any interruption in any service provided, or in the supply of any goods, by Cadent, or Cadent becomes liable to pay any amount to any third party, the undertaker will—

- (a) bear and pay on demand (accompanied by an invoice or claim from Cadent) the cost reasonably incurred by Cadent in making good such damage or restoring the supply; and
- (b) indemnify Cadent for any other expenses, loss, demands, proceedings, damages, claims, penalty or costs incurred by or recovered from Cadent, by reason or in consequence of any such damage or interruption or Cadent becoming liable to any third party as aforesaid other than arising from any negligence or default of Cadent.

(2) The fact that any act or thing may have been done by Cadent on behalf of the undertaker or in accordance with a plan approved by Cadent or in accordance with any requirement of Cadent or under its supervision including under any watching brief will not (unless sub-paragraph (3) applies) excuse the undertaker from liability under the provisions of sub-paragraph (1) unless Cadent fails to carry out and execute the works properly with due care and attention and in a skilful and workman like manner or in a manner that does not accord with the approved plan or in a manner as may otherwise be agreed between the undertaker and Cadent.

(3) Nothing in sub-paragraph (1) will impose any liability on the undertaker in respect of-

- (a) any damage or interruption to the extent that it is attributable to the neglect or default of Cadent, its officers, servants, contractors or agents; and
- (b) any authorised works or any other works authorised by this Part of this Schedule carried out by Cadent as an assignee, transferee or lessee of the undertaker with the benefit of the Order pursuant to section 156 of the Planning Act 2008 or article 7 (*consent to transfer benefit of the Order*) subject to the proviso that once such works become apparatus (“new apparatus”), any authorised works yet to be executed and not falling within this paragraph (b) will be subject to the full terms of this Part of this Schedule including this paragraph 145.

(4) Cadent must give the undertaker reasonable notice of any such third party claim or demand and no settlement or compromise must, unless payment is required in connection with a statutory compensation scheme, be made without first consulting the undertaker and considering its representations.

(5) The undertaker must not commence construction (and must not permit the commencement of such construction) of the specified works until Cadent is satisfied acting reasonably (but subject to all necessary regulatory constraints) that the undertaker has procured acceptable insurance (and provided evidence to Cadent that it will maintain such acceptable insurance for the construction period of the specified works from the proposed date of commencement of construction of the specified works) and Cadent has confirmed the same in writing to the undertaker.

(6) In the event that the undertaker fails to comply with sub-paragraph 145(5) of this Part of this Schedule, nothing in this Part of this Schedule will prevent Cadent from seeking injunctive relief (or any other equitable remedy) in any court of competent jurisdiction.

Enactments and agreements

146. Save to the extent provided for to the contrary elsewhere in this Part of this Schedule or by agreement in writing between Cadent and the undertaker, nothing in this Part of this Schedule will affect the provisions of any enactment or agreement regulating the relations between the undertaker and Cadent in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

Co-operation

147.—(1) Where in consequence of the proposed construction of any of the authorised works, the undertaker or Cadent requires the removal of apparatus under paragraph 141(5) or Cadent makes requirements for the protection or alteration of apparatus under paragraph 143, the undertaker will use its best endeavours to co-ordinate the execution of the works in the interests of safety and the efficient and economic execution of the authorised works and taking into account the need to ensure the safe and efficient operation of Cadent's undertaking and Cadent will use its best endeavours to co-operate with the undertaker for that purpose.

(2) For the avoidance of doubt whenever Cadent's consent, agreement or approval is required in relation to plans, documents or other information submitted by the undertaker or the taking of action by the undertaker, Cadent's consent must not be unreasonably withheld or delayed.

Access

148. If in consequence of any agreement reached in accordance with paragraph 140(1) or the powers granted under this Order the access to any apparatus (including appropriate working areas required to reasonably and safely undertake necessary works by Cadent in respect of the apparatus) is materially obstructed, the undertaker must provide such alternative rights and means of access to such apparatus as will enable Cadent to maintain or use the apparatus no less effectively than was possible before such obstruction.

Arbitration

149. Save for differences or disputes arising under sub-paragraphs 141(2), 141(4), 142(1), paragraph 145(5) and paragraph 143 any difference or dispute arising between the undertaker and Cadent under this Part of this Schedule must, unless otherwise agreed in writing between the undertaker and Cadent, be determined by arbitration in accordance with article 45 (*arbitration*) and in settling any difference or dispute, the arbitrator must have regard to the requirements of Cadent for ensuring the safety, economic and efficient operation of Cadent's apparatus.

Notices

150. The plans submitted to Cadent by the undertaker pursuant to paragraph 143(1) must be sent to Cadent Gas Limited Plant Protection by e-mail to plantprotection@cadentgas.com copied by e-mail to landservices@cadentgas.com and sent to the General Counsel Department at Cadent's registered office or such other address as Cadent may from time to time appoint instead for that purpose and notify to the undertaker.

PART 12

FOR THE PROTECTION OF VICARAGE DROVE ENERGY CENTRE LIMITED

151. The provisions of this Part of this Schedule apply for the protection of VDEC unless otherwise agreed in writing between the undertaker and VDEC.

Interpretation

152. In this Part of this Schedule—

“apparatus” means the cables, photovoltaic panels, structures or other infrastructure owned, occupied or maintained by VDEC at Vicarage Drove Energy Centre for the purposes of electricity generation and storage;

“maintain” shall include the ability and right to construct, use, repair, inspect, renew or remove the apparatus of VDEC at Vicarage Drove Energy Centre;

“plan” and “plans” includes sections, drawings, specifications, designs, design data, software, soil reports, calculations, descriptions (including descriptions of methods of construction), staging proposals, programmes and details of the extent, timing and duration of any proposed occupation of the VDEC interface area;

“specified works” means so much of any works or operations authorised by this Order (or authorised by any planning permission intended to operate in conjunction with this Order) as is within the VDEC interface area;

“VDEC” means Vicarage Drove Energy Centre Limited (company number 12290001) whose registered office address is at 6th Floor, 338 Euston Road, London, England, NW1 3BG;

“VDEC interface area” means the area of the Order land comprised of plots 18-52 and 18-56 contained in the book of reference; and

“Vicarage Drove Energy Centre” means the solar farm located on land near Boston, Lincolnshire.

Retained apparatus: protection

153. The undertaker must consult with VDEC on the plans and formulation of the proposed method of working and timing of execution of any specified works, not less than 56 days prior to such works commencing and have regard to reasonable representations received from VDEC made at least 28 days prior to such works commencing.

154. The undertaker must give to VDEC not less than 28 days’ written notice of its intention to commence the construction of any specified works and, not more than 14 days after completion of their construction, must give VDEC written notice of the completion.

155. Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 56 days before commencing the execution of any specified works, a new method of working and plan, instead of the plan previously submitted, and having done so the provisions of this paragraph shall apply to and in respect of the new plan.

156. The undertaker must at all reasonable times during construction of any specified works allow VDEC and its servants and agents reasonable access to the VDEC interface area and all reasonable facilities for inspection of the specified works.

Acquisition of land

157. Regardless of any provision in this Order or anything shown on the land plans, the undertaker must not acquire any apparatus owned, occupied or maintained by VDEC at Vicarage Drove Energy Centre for the purposes of electricity generation and storage otherwise than by agreement.

Access

158. If in consequence of the exercise of powers granted under this Order the access to Vicarage Drove Energy Centre is materially obstructed, the undertaker must provide such alternative means of access to Vicarage Drove Energy Centre as will enable VDEC to operate and maintain its apparatus no less effectively than was possible before such obstruction.

Expenses

159. Save where otherwise agreed in writing between VDEC and the undertaker and subject to the following provisions of this paragraph, the undertaker must pay to VDEC within 30 days of receipt

of an itemised invoice or claim from VDEC all charges, costs and expenses reasonably and properly incurred by VDEC comprising the review of plans under this Part of this Schedule.

Indemnity

160.—(1) Subject to paragraphs (2) to (6), if by reason or in consequence of the construction of any works authorised by this Part of this Schedule or in consequence of the construction, use, maintenance or failure of any of the specified works by or on behalf of the undertaker or in consequence of any act or default of the undertaker (or any person employed or authorised by it) in the course of carrying out such works, (including without limitation works carried out by the undertaker under this Schedule or any subsidence resulting from any of these works), any damage is caused to any apparatus (other than apparatus located within the VDEC interface area), the undertaker will bear and pay within 60 days of receipt of an invoice or claim from VDEC the cost reasonably and properly incurred by VDEC in making good such damage.

(2) The fact that any act or thing may have been done by VDEC on behalf of the undertaker or in accordance with a plan reviewed by VDEC or in accordance with any requirement of VDEC or under its supervision will not (unless sub-paragraph (3) applies), excuse the undertaker from liability under the provisions of this sub-paragraph (1) unless VDEC fails to carry out and execute the works properly with due care and attention and in a skilful and workmanlike manner or in a manner that does not accord with the approved plan.

(3) Nothing in sub-paragraph (1) shall impose any liability on the undertaker in respect of—

- (a) any damage or interruption to the extent that it is attributable to the act, neglect or default of VDEC, its officers, servants, contractors or agents; or
- (b) any indirect or consequential loss of any third party (including but not limited to loss of use, revenue, profit, contract, production, increased cost of working or business interruption) arising from any such damage or interruption, which is not reasonably foreseeable.

(4) VDEC must give the undertaker reasonable notice of any such third party claim or demand and no settlement, admission of liability, compromise or demand must, unless payment is required in connection with a statutory compensation scheme, be made without first consulting the undertaker and considering its representations.

(5) VDEC must, in respect of any matter covered by the indemnity given by the undertaker in this paragraph, at all times act reasonably and in the same manner as it would as if settling third party claims on its own behalf from its own funds.

(6) VDEC must use its reasonable endeavours to mitigate and to minimise any costs, expenses, loss, demands, and penalties to which the indemnity under this paragraph applies where it is within VDEC's reasonable ability and control to do so and if reasonably requested to do so by the undertaker VDEC must provide an explanation of how the claim has been minimised, where relevant.

Arbitration

161. Any difference or dispute arising between VDEC and the undertaker must, unless otherwise agreed in writing between VDEC and the undertaker, be determined by arbitration in accordance with article 45 (arbitration) of the Order.

PART 13
FOR THE PROTECTION OF NATIONAL GRID AS ELECTRICITY
UNDERTAKER

Application

162.—(1) For the protection of National Grid as referred to in this Schedule the following provisions have effect, unless National Grid is acting with the benefit of the Order or as otherwise agreed in writing, between the undertaker and National Grid.

(2) Subject to sub paragraph (3) or to the extent otherwise agreed in writing between the undertaker and National Grid, where the benefit of this Order is transferred or granted to another person under article 7 (*consent to transfer benefit of the Order*) –

- (a) any agreement of the type mentioned in sub-paragraph (1) has effect as if it had been made between National Grid and the transferee or grantee (as the case may be); and
- (b) written notice of the transfer or grant must be given to National Grid on or before the date of that transfer or grant

(3) Sub-paragraph (2) does not apply where the benefit of the Order is transferred or granted to National Grid (but without prejudice to paragraph 171(3)(b)).

Interpretation

163. In this Part of this Schedule—

“acceptable credit provider” means a bank or financial institution with a credit rating that is not lower than: (i) “A-” if the rating is assigned by Standard & Poor’s Ratings Group or Fitch Ratings; and “A3” if the rating is assigned by Moody’s Investors Services Inc.;

“acceptable insurance” means general third party liability insurance effected and maintained by the undertaker with a combined property damage and bodily injury limit of indemnity of not less than £50,000,000.00 (fifty million pounds) per occurrence or series of occurrences arising out of one event. Such insurance shall be maintained (a) for the duration of the construction period of the authorised works; and (b) after the construction period of the authorised works in respect of any use and maintenance of the authorised development by or on behalf of the undertaker which constitute specified works and arranged with an insurer whose security/credit rating meets the same requirements as an “acceptable credit provider”, such insurance shall include (without limitation):

- (a) a waiver of subrogation and an indemnity to principal clause in favour of National Grid;
- (b) pollution liability for third party property damage and third party bodily damage arising from any pollution/contamination event with a (sub)limit of indemnity of not less than £10,000,000.00 (ten million pounds) per occurrence or series of occurrences arising out of one event or £20,000,000.00 (twenty million pounds) in aggregate;

“acceptable security” means either—

- (a) a parent company guarantee from a parent company in favour of National Grid to cover the undertakers liability to National Grid to a total liability cap of £50,000,000.00 (fifty million pounds) (in a form reasonably satisfactory to National Grid and where required by National Grid, accompanied with a legal opinion confirming the due capacity and authorisation of the parent company to enter into and be bound by the terms of such guarantee); or
- (b) a bank bond or letter of credit from an acceptable credit provider in favour of National Grid to cover the undertaker’s liability to National Grid for an amount of not less than £10,000,000.00 (ten million pounds) per asset per event up to a total liability cap of £50,000,000.00 (fifty million pounds) (in a form reasonably satisfactory to National Grid); or “alternative apparatus” means appropriate alternative apparatus to the satisfaction of National Grid to enable National Grid to fulfil its statutory functions in a manner no less efficient than previously;

“apparatus” means any electric lines or electrical plant as defined in the 1989 Act, belonging to or maintained by National Grid; together with any replacement apparatus and such other apparatus whether or not constructed pursuant to the Order that becomes operational apparatus of National Grid for the purposes of transmission, distribution and/or supply and includes any structure in which apparatus is or will be lodged or which gives or will give access to apparatus;

“authorised works” has the same meaning as is given to the term “authorised development” in article 2(1) (*interpretation*) of this Order and includes any associated development authorised by the Order and for the purposes of this Schedule includes the use and maintenance of the authorised works and construction of any works authorised by this Schedule;

“commence” and “commencement” has the same meaning as in article 2(1) (*interpretation*) of this Order except for the purposes of this Schedule only where it shall include any below ground surveys, ground work operations or the erection of construction plant and equipment;

“deed of consent” means a deed of consent, crossing agreement, deed of variation or new deed of grant agreed between the parties acting reasonably in order to vary or replace existing easements, agreements, enactments and other such interests so as to secure land rights and interests as are necessary to carry out, maintain, operate and use the apparatus in a manner consistent with the terms of this Schedule;

“functions” includes powers and duties;

“ground mitigation scheme” means a scheme approved by National Grid (such approval not to be unreasonably withheld or delayed) setting out the necessary measures (if any) for a ground subsidence event;

“ground monitoring scheme” means a scheme for monitoring ground subsidence which sets out the apparatus which is to be subject to such monitoring, the extent of land to be monitored, the manner in which ground levels are to be monitored, the timescales of any monitoring activities and the extent of ground subsidence which, if exceeded, is to require the undertaker to submit for National Grid’s approval a ground mitigation scheme;

“ground subsidence event” means any ground subsidence identified by the monitoring activities set out in the ground monitoring scheme that has exceeded the level described in the ground monitoring scheme as requiring a ground mitigation scheme;

“in” in a context referring to apparatus or alternative apparatus in land includes a reference to apparatus or alternative apparatus under, over, across, along or upon such land;

“Incentive Deduction” means any incentive deduction National Grid Electricity Transmission plc receives under its electricity transmission licence which is caused by an event on its transmission system that causes electricity not to be supplied to a demand customer and which arises as a result of the authorised works;

“maintain” and “maintenance” shall include the ability and right to do any of the following in relation to any apparatus or alternative apparatus of National Grid; construct, use, repair, alter, inspect, renew or remove the apparatus;

“NESO” means as defined in the STC;

“plan” or “plans” include all designs, drawings, specifications, method statements, soil reports, programmes, calculations, risk assessments and other documents that are reasonably necessary properly and sufficiently to describe and assess the works to be executed;

“parent company” means a parent company of the undertaker acceptable to and which shall have been approved by National Grid acting reasonably; “specified works” means any of the authorised works which—

- (a) will or may be situated over, or within 15 metres measured in any direction of any apparatus the removal of which has not been required by the undertaker under paragraph 167(2) (*removal of apparatus*) or otherwise; or
- (b) may in any way adversely affect any apparatus the removal of which has not been required by the undertaker under paragraph 167(2) or otherwise; and

(c) includes any of the activities that are referred to in development near overhead lines EN43-8 and HSE's guidance note 6 "Avoidance of Danger from Overhead Lines";

"STC" means the System Operator Transmission Owner Code prepared by the electricity transmission owner and NESO as modified from time to time;

"STC Claims" means any claim made under the STC against National Grid Electricity Transmission plc arising out of or in connection with the de-energisation (whereby no electricity can flow to or from the relevant system through the generator or interconnector's equipment) of a generator or interconnector party solely as a result of the de-energisation of plant and apparatus forming part of National Grid Electricity Transmission plc's transmission system which arises as a result of the authorised works; and

"Transmission Owner" means as defined in the STC.

On Street Apparatus

164. Except for paragraphs 164 (*apparatus of National Grid in affected streets*), 169 (*retained apparatus: protection*), 170 (*expenses*) and 171 (*indemnity*) of this Part of this Schedule which apply in respect of the exercise of all or any powers under this Order affecting the rights and apparatus of National Grid, the other provisions of this Part of this Schedule do not apply to apparatus in respect of which the relations between the undertaker and National Grid are regulated by the provisions of Part 3 (street works in England and Wales) of the 1991 Act.

Apparatus of National Grid in affected streets

165.—(1) Where any street is stopped up under article 13 (*power to alter layout etc. of streets*), article 11 (*street works*), article 17 (*access to works*), if National Grid has any apparatus in the street or accessed via that street National Grid has the same rights in respect of that apparatus as it enjoyed immediately before the stopping up and the undertaker must grant to National Grid, or procure the granting to National Grid of, legal easements reasonably satisfactory to National Grid in respect of such apparatus and access to it prior to the stopping up of any such street or highway but nothing in this paragraph affects any right of the undertaker or National Grid to require the removal of that apparatus under paragraph 167 (*removal of apparatus*) or the power of the undertaker, subject to compliance with this sub-paragraph, to carry out works under paragraph 169 (*retained apparatus: protection*).

(2) Notwithstanding the temporary closure or diversion of any highway under the powers of article 16 (*temporary prohibition or restriction of use of streets and public rights of way*), National Grid is at liberty at all times to take all necessary access across any such closed highway or public right of way and to execute and do all such works and things in, upon or under any such highway as may be reasonably necessary to enable it to maintain any apparatus which at the time of the closure or diversion was in that highway or public right of way.

Protective works to buildings

166. The undertaker, in the case of the powers conferred by article 21 (*protective works to buildings*), must exercise those powers so as not to obstruct or render less convenient the access to any apparatus without the written consent of National Grid.

Acquisition of land

167.—(1) Regardless of any provision in this Order or anything shown on the land plans or contained in the book of reference to the Order, the undertaker may not (a) appropriate or acquire or take temporary possession of any land or apparatus belonging to National Grid or (b) appropriate, acquire, extinguish, interfere with or override any easement, other interest or right and/or apparatus of National Grid otherwise than by agreement.

(2) As a condition of an agreement between the parties in sub-paragraph (1), prior to the carrying out of any part of the authorised works (or in such other timeframe as may be agreed between National Grid and the undertaker) that is subject to the requirements of this Part of this

Schedule that will cause any conflict with or breach the terms of any easement or other legal or land interest of National Grid or affect the provisions of any enactment or agreement regulating the relations between National Grid and the undertaker in respect of any apparatus laid or erected in land belonging to or secured by the undertaker, the undertaker must as National Grid reasonably requires enter into such deeds of consent upon such terms and conditions as may be agreed between National Grid and the undertaker acting reasonably and which must be no less favourable on the whole to National Grid unless otherwise agreed by National Grid, and it will be the responsibility of the undertaker to procure and/or secure the consent and entering into of such deeds and variations by all other third parties with an interest in the land at that time who are affected by such authorised works.

(3) Save where otherwise agreed in writing between National Grid and the undertaker, the undertaker and National Grid agree that where there is any inconsistency or duplication between the provisions set out in this Part of this Schedule relating to the relocation and/or removal of apparatus (including but not limited to the payment of costs and expenses relating to such relocation and/or removal of apparatus) and the provisions of any existing easement, rights, agreements and licences granted, used, enjoyed or exercised by National Grid and/or other enactments relied upon by National Grid as of right or other use in relation to the apparatus, then the provisions in this Part of this Schedule shall prevail.

(4) Any agreement or consent granted by National Grid under paragraph 175 (*retained apparatus: protection*) or any other paragraph of this Part of this Schedule, shall not be taken to constitute agreement under sub-paragraph (1).

Removal of apparatus

168.—(1) If, in the exercise of the powers conferred by this Order, the undertaker acquires any interest in or possesses temporarily any land in which any apparatus is placed, that apparatus must not be removed under this Schedule and any right of National Grid to maintain that apparatus in that land must not be extinguished until alternative apparatus has been constructed, and is in operation to the reasonable satisfaction of National Grid in accordance with sub-paragraphs (2) to (5).

(2) If, for the purpose of executing any works comprised in the authorised development in, on, under or over any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, it must give to National Grid advance written notice of that requirement, together with a plan of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order National Grid reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph (3), secure any necessary consents for the alternative apparatus and afford to National Grid to its satisfaction (taking into account paragraph 168(1) (*facilities and rights for alternative apparatus*) below) the necessary facilities and rights—

- (a) for the construction of alternative apparatus in other land of or land secured by the undertaker; and
- (b) subsequently for the maintenance of that apparatus.

(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of or land secured by the undertaker, or the undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraph (2) in the land in which the alternative apparatus or part of such apparatus is to be constructed, National Grid may, in its sole discretion, on receipt of a written notice to that effect from the undertaker, take such steps as are reasonable in the circumstances to assist the undertaker to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed save that this obligation shall not extend to the requirement for National Grid to use its compulsory purchase powers to this end unless it elects to do so.

(4) Any alternative apparatus to be constructed in land of or land secured by the undertaker under this Schedule must be constructed in such manner and in such line or situation as may be agreed between National Grid and the undertaker.

(5) National Grid must, after the alternative apparatus to be provided or constructed has been agreed, and subject to a written diversion agreement having been entered into between the parties and the grant to National Grid of any such facilities and rights as are referred to in sub-paragraphs (2) or (3), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by the undertaker to be removed under the provisions of this Part of this Schedule.

Facilities and rights for alternative apparatus

169.—(1) Subject to sub-paragraph (2), where, in accordance with the provisions of this Schedule, the undertaker affords to or secures for National Grid facilities and rights in land for the construction, use, maintenance and protection of alternative apparatus in substitution for apparatus to be removed, those facilities and rights must be granted upon such terms and conditions as may be agreed between the undertaker and National Grid and must be no less favourable on the whole to National Grid than the facilities and rights enjoyed by it in respect of the apparatus to be removed unless otherwise agreed by National Grid.

(2) If the facilities and rights to be afforded by the undertaker in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are less favourable on the whole to National Grid than the facilities and rights enjoyed by it in respect of the apparatus to be removed and the terms and conditions to which those facilities and rights are subject the matter may be referred to arbitration in accordance with paragraph 175 (*arbitration*) of this Schedule and the arbitrator must make such provision for the payment of compensation by the undertaker to National Grid as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case. In respect of the appointment of an arbitrator under this sub-paragraph, article 45 (*arbitration*) applies.

Retained apparatus: protection

170.—(1) Not less than 56 days before the commencement of any specified works the undertaker must submit to National Grid a plan of the works to be executed and seek from National Grid details of the underground extent of their electricity assets.

(2) In relation to the Specified Works the plan to be submitted to National Grid under sub-paragraph (1) must include a method statement which shows and describes—

- (a) the exact position of the specified works;
- (b) the level at which the specified works are proposed to be constructed or renewed;
- (c) the manner of their construction or renewal including details of excavation, positioning of plant;
- (d) the position of all apparatus;
- (e) by way of detailed drawings, every alteration proposed to be made to or close to any such apparatus;
- (f) any intended maintenance regimes;
- (g) an assessment of risks of rise of earth issues; and
- (h) a ground monitoring scheme, where required.

(3) In relation to any specified works which will or may be situated on, over, under or within 10 metres of any part of the foundations of an electricity tower or between any two or more electricity towers, the plan to be submitted under sub-paragraph (1) must, in addition to the matters set out in sub-paragraph (2), include a method statement describing—

- (a) details of any cable trench design including route, dimensions, clearance to pylon foundations;
- (b) demonstration that pylon foundations will not be affected prior to, during and post construction;
- (c) details of load bearing capacities of trenches;

- (d) details of any cable installation methodology including access arrangements, jointing bays and backfill methodology;
- (e) a written management plan for high voltage hazard during construction and ongoing maintenance of any cable route;
- (f) written details of the operations and maintenance regime for any cable, including frequency and method of access;
- (g) assessment of earth rise potential if reasonably required by National Grid's engineers; and
- (h) evidence that trench bearing capacity is to be designed to support overhead line construction traffic of up to and including 26 tonnes in weight.

(4) The undertaker must not commence any works to which sub-paragraphs (2) or (3) apply until National Grid has given written approval of the plan so submitted.

(5) Any approval of National Grid required under sub-paragraph (4)—

- (a) may be given subject to reasonable conditions for any purpose mentioned in subparagraphs (6) or (8); and
- (b) must not be unreasonably withheld or delayed.

(6) In relation to any work to which sub-paragraphs (2) or (3) apply, National Grid may require such modifications to be made to the plans as may be reasonably necessary for the purpose of securing its apparatus against interference or risk of damage, for the provision of protective works or for the purpose of providing or securing proper and convenient means of access to any apparatus and National Grid must notify the undertaker of such modifications within a period of 56 days beginning with the date on which the plan required under sub-paragraph (1) has been submitted to National Grid.

(7) Works executed under sub-paragraphs (2) or (3) must be executed in accordance with the plan, submitted under sub-paragraph (1) or as relevant sub-paragraph (10), as approved or as amended from time to time by agreement between the undertaker and National Grid and in accordance with such reasonable requirements as may be made in accordance with subparagraphs (6) or (8) by National Grid for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and National Grid will be entitled to watch and inspect the execution of those works.

(8) Where National Grid requires any protective works to be carried out by itself or by the undertaker (whether of a temporary or permanent nature) such protective works, inclusive of any measures or schemes required and approved as part of the plan approved pursuant to this paragraph, must be carried out to National Grid's satisfaction prior to the commencement of any specified works (or any relevant part thereof) for which protective works are required and National Grid shall give notice of its requirement for such works within 42 days of the date of submission of a plan pursuant to this paragraph (except in an emergency).

(9) If National Grid in accordance with sub-paragraphs (6) or (8) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraph 167(2) (*removal of apparatus*) applies as if the removal of the apparatus had been required by the undertaker.

(10) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 56 days before commencing the execution of the works for which a plan has been submitted for specified works (or part thereof), a new plan for such works, instead of the plan previously submitted, and having done so the provisions of this paragraph shall apply to and in respect of the new plan.

(11) The undertaker will not be required to comply with sub-paragraph (1) where it needs to carry out emergency works as defined in the 1991 Act but in that case it must give to National Grid notice as soon as is reasonably practicable and a plan of those works and must comply with sub-paragraphs (6), (7), and (8) insofar as is reasonably practicable in the circumstances and comply with sub-paragraph (12) at all times.

(12) At all times when carrying out any specified works authorised under this Order, the undertaker must comply with National Grid's policies for development near overhead lines EN43-8 and HSE's guidance note 6 "Avoidance of Danger from Overhead Lines".

Expenses

171.—(1) Save where otherwise agreed in writing between National Grid and the undertaker and subject to the following provisions of this paragraph, the undertaker must pay to National Grid within 30 days of receipt of an itemised invoice or claim from National Grid all charges, costs and expenses reasonably anticipated within the following three months or reasonably and properly incurred by National Grid in, or in connection with, the inspection, removal, relaying or replacing, alteration or protection of any apparatus or the construction of any new or alternative apparatus which may be required in consequence of the execution of any authorised works including without limitation—

- (a) any costs reasonably incurred by or compensation properly paid by National Grid in connection with the acquisition of rights or the exercise of statutory powers for such apparatus including without limitation all costs incurred by National Grid as a consequence of National Grid—
 - (i) using its own compulsory purchase powers to acquire any necessary rights under paragraph 167(3); or
 - (ii) exercising any compulsory purchase powers in the Order transferred to or benefitting National Grid;
- (b) in connection with the cost of the carrying out of any diversion work or the provision of any alternative apparatus, where no written diversion agreement is otherwise in place;
- (c) the cutting off of any apparatus from any other apparatus or the making safe of redundant apparatus;
- (d) the approval of plans;
- (e) the carrying out of protective works, plus a capitalised sum to cover the cost of maintaining and renewing permanent protective works; and
- (f) the survey of any land, apparatus or works, the inspection and monitoring of works or the installation or removal of any temporary works reasonably necessary in consequence of the execution of any such works referred to in this Schedule.

(2) There will be deducted from any sum payable under sub-paragraph (1) the value of any apparatus removed under the provisions of this Schedule and which is not re-used as part of the alternative apparatus, that value being calculated after removal.

(3) If in accordance with the provisions of this Schedule—

- (a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions; or
- (b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which existing apparatus was situated,

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or, in default of agreement, is not determined by arbitration in accordance with paragraph 169 to be necessary, then, if such placing involves cost in the construction of works under this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this subparagraph would be payable to National Grid by virtue of sub-paragraph (1) will be reduced by the amount of that excess save to the extent that it is not possible in the circumstances to obtain the existing type of apparatus at the same capacity and dimensions or place at the existing depth in which case full costs will be borne by the undertaker.

(4) For the purposes of sub-paragraph (3)—

- (a) an extension of apparatus to a length greater than the length of existing apparatus will not be treated as a placing of apparatus of greater dimensions than those of the existing apparatus; and
- (b) where the provision of a joint in a pipe or cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole will be treated as if it also had been agreed or had been so determined.

(5) Any amount which apart from this sub-paragraph would be payable to National Grid in respect of works by virtue of sub-paragraph (1) will, if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on National Grid any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, be reduced by the amount which represents that benefit.

(6) Where reasonably anticipated charges, costs or expenses have been paid by the undertaker pursuant to sub-paragraph (1), if the actual charges, costs or expenses incurred by National Grid are less than the amount already paid by the undertaker National Grid will repay the difference to the undertaker as soon as reasonably practicable.

Indemnity

172.—(1) Subject to sub-paragraphs (2) to (7), if by reason or in consequence of the construction of any works authorised by this Schedule or in consequence of the construction, use, maintenance or failure of any of the authorised works by or on behalf of the undertaker or in consequence of any act or default of the undertaker (or any person employed or authorised by it) in the course of carrying out such works, (including without limitation works carried out by the undertaker under this Schedule or any subsidence resulting from any of these works), any damage is caused to any apparatus or alternative apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of the authorised works) or property of National Grid or there is any interruption in any service provided, or in the supply of any goods by National Grid, or National Grid becomes liable to pay any amount to any third party, the undertaker will—

- (a) bear and pay within 30 days of receipt of an invoice or claim from National Grid the cost reasonably and properly incurred by National Grid in making good such damage or restoring the supply; and
- (b) indemnify National Grid for any other expenses, loss, demands, proceedings, damages, claims, penalty or costs incurred by or recovered from National Grid, by reason or in consequence of any such damage or interruption or National Grid becoming liable to any third party and including STC Claims or an incentive deduction other than arising from any default of National Grid.

(2) The fact that any act or thing may have been done by National Grid on behalf of the undertaker or in accordance with a plan approved by National Grid or in accordance with any requirement of National Grid or under its supervision will not (unless sub-paragraph (3) applies), excuse the undertaker from liability under the provisions of this sub-paragraph (1) unless National Grid fails to carry out and execute the works properly with due care and attention and in a skilful and workmanlike manner or in a manner that does not accord with the approved plan.

(3) Nothing in sub-paragraph (1) shall impose any liability on the undertaker in respect of—

- (a) any damage or interruption to the extent that it is attributable to the act, neglect or default of National Grid, its officers, servants, contractors or agents;
- (b) any authorised works and/or any other works authorised by this Schedule carried out by National Grid as an assignee, transferee or lessee of the undertaker with the benefit of this Order pursuant to section 156 of the 2008 Act or articles 6 (*benefit of the Order*) or 7 (*consent to transfer benefit of the Order*) subject to the proviso that once such works become apparatus (“new apparatus”), any authorised works yet to be executed and not falling within this sub-paragraph (b) will be subject to the full terms of this Schedule including this paragraph; and

(c) any indirect or consequential loss of any third party (including but not limited to loss of use, revenue, profit, contract, production, increased cost of working or business interruption) arising from any such damage or interruption, which is not reasonably foreseeable.

(4) National Grid must give the undertaker reasonable notice of any such third party claim or demand and no settlement, admission of liability, compromise or demand must, unless payment is required in connection with a statutory compensation scheme, be made without first consulting the undertaker and considering its representations.

(5) National Grid must, in respect of any matter covered by the indemnity given by the undertaker in this paragraph, at all times act reasonably and in the same manner as it would as if settling third party claims on its own behalf from its own funds.

(6) National Grid must use its reasonable endeavours to mitigate and to minimise any costs, expenses, loss, demands, and penalties to which the indemnity under this paragraph applies where it is within National Grid's reasonable ability and control to do so and which expressly excludes any obligation to mitigate liability arising from third parties which is outside of National Grid's control and if reasonably requested to do so by the undertaker National Grid must provide an explanation of how the claim has been minimised, where relevant

(7) The undertaker must not commence construction (and not permit the commencement of such construction) of the specified works on any land owned by National Grid or in respect of which National Grid has an easement or wayleave for its Apparatus or other interest or to carry out any works within 15 metres of National Grid apparatus until the following conditions are satisfied:

(a) unless and until National Grid is satisfied acting reasonably (but subject to all necessary regulatory constraints) that the undertaker has first provided the acceptable security (and provided evidence that it shall maintain such acceptable security for the construction period of the authorised works (or maintenance thereof) from the proposed date of commencement of construction or maintenance of the authorised works) and National Grid has confirmed the same to the undertaker in writing; and

(b) unless and until National Grid is satisfied acting reasonably (but subject to all necessary regulatory constraints) that the undertaker has procured acceptable insurance (and provided evidence to National Grid that it shall maintain such acceptable insurance for the construction period of the authorised works (or maintenance thereof) from the proposed date of commencement of construction or maintenance of the authorised works) and National Grid has confirmed the same in writing to the undertaker.

(8) In the event that the undertaker fails to comply with sub-paragraph (7) of this paragraph 171 (*Indemnity*), nothing in this Schedule shall prevent National Grid from seeking injunctive relief (or any other equitable remedy) in any court of competent jurisdiction.

Enactments and agreements

173. Save to the extent provided for to the contrary elsewhere in this Schedule or by agreement in writing between National Grid and the undertaker, nothing in this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and National Grid in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

Cooperation

174.—(1) Where in consequence of the proposed construction of any part of the authorised works, the undertaker or National Grid requires the removal of apparatus under paragraph 167(2) (*removal of apparatus*) or National Grid makes requirements for the protection or alteration of apparatus under paragraph 169 (*retained apparatus: protection*), the undertaker shall use reasonable endeavours to coordinate the execution of the works in the interests of safety and the efficient and economic execution of the authorised works and taking into account the need to ensure the safe and

efficient operation of National Grid's undertaking and National Grid shall use reasonable endeavours to cooperate with the undertaker for that purpose.

(2) For the avoidance of doubt whenever National Grid's consent, agreement or approval is required in relation to plans, documents or other information submitted by the undertaker or the taking of action by the undertaker, it must not be unreasonably withheld or delayed.

Access

175. If in consequence of the agreement reached in accordance with paragraph 166(1) (*acquisition of land*) or the powers granted under this Order the access to any apparatus is materially obstructed, the undertaker must provide such alternative means of access to such apparatus as will enable National Grid to maintain or use the apparatus no less effectively than was possible before such obstruction.

Arbitration

176. Save for differences or disputes arising under paragraphs 167(2), 167(4), 168(1) and 169 any, difference or dispute arising between the undertaker and National Grid under this Schedule must, unless otherwise agreed in writing between the undertaker and National Grid, be determined by arbitration in accordance with article 45 (*arbitration*).

Notices

177. Notwithstanding article 47 (*service of notices*), any plans submitted to National Grid by the undertaker pursuant to paragraph 169 (*retained apparatus: protection*) must be submitted using the LSBUD system (<https://lsbud.co.uk/>) or to such other address as National Grid may from time to time appoint instead for that purpose and notify to the undertaker in writing.

PART 14

FOR THE PROTECTION OF NATIONAL GRID ELECTRICITY DISTRIBUTION (EAST MIDLANDS) PLC

Application

178. For the protection of NGED the following provisions have effect, unless otherwise agreed in writing between the undertaker and NGED.

Interpretation

179. In this Part of this Schedule—

“alternative apparatus” means alternative apparatus adequate to enable NGED to fulfil its statutory functions in a manner not less efficient than previously and where the context requires includes any part of such alternative apparatus;

“alternative rights” means all and any necessary legal easements, leases, consents or permissions required by NGED in order to permit or authorise a diversion and to permit or authorise NGED to lay, keep, operate, maintain, adjust, repair, alter, relay, renew, supplement, inspect, examine, test and remove the alternative apparatus;

“apparatus” means electric lines or electrical plant as defined in the Electricity Act 1989(a), belonging to or maintained by NGED;

(a) 1989 C. 29. The definition of “electricity plant” (in section 64) was amended by paragraphs 24 and 38(1) and (3) of Schedule 6 to the Utilities Act 2000 (c.27).

“diversion” means an alteration to the NGED Network in order to enable or facilitate the authorised development;

“functions” includes powers and duties;

“in” in a context referring to apparatus or alternative apparatus in land includes a reference to apparatus or alternative apparatus under, over or upon land;

“NGED” means National Grid Electricity Distribution (East Midlands) plc (company number 02366923) whose registered office is at Avonbank, Feeder Road, Bristol, BS2 0TB;

“NGED Network” means NGED’s distribution network operated pursuant to its distribution licence issued pursuant to section 6 of the 1989 Act; and

“plan” or “plans” includes all designs, drawings, specifications, method statements, programmes, calculations, risk assessments and other documents that are reasonably necessary to properly and sufficiently describe and assess the works to be executed;

“specified work” means so much of any of the authorised development that is carried out within 15 metres of any apparatus;

other terms have the meaning given in article 2 (interpretation).

Precedence of 1991 Act in respect of apparatus in streets

180. This Part of this Schedule does not apply to apparatus in respect of which the relations between the undertaker and NGED are regulated by the provisions of Part 3 (street works in England and Wales) of the 1991 Act.

Access to NGED apparatus in streets

181. Regardless of the temporary prohibition or restriction of use of streets under the powers conferred by article 16 (*temporary prohibition or restriction of use of streets and public rights of way*), NGED is at liberty at all times to take all necessary access across any such street and to execute and do all such works and things in, upon or under any such street as may be reasonably necessary or desirable to enable it to maintain any apparatus which at the time of the prohibition or restriction was in that street.

No acquisition except by agreement

182. Regardless of any provision in this Order or anything shown on the land plans, the undertaker must not acquire any apparatus otherwise than by agreement.

Removal of apparatus

183.—(1) If, in the exercise of the powers conferred by this Order, the undertaker requires that apparatus is relocated or diverted, that apparatus must not be removed under this Part of this Schedule and any right of NGED to maintain that apparatus in that land must not be extinguished until (a) alternative apparatus has been constructed, (b) alternative rights have been acquired or granted for the alternative apparatus, (c) the alternative apparatus is in operation and (d) access to it has been provided if necessary, to the reasonable satisfaction of NGED in accordance with sub-paragraphs (2) to (10) or with such alternative or supplementary provisions as the undertaker and NGED may agree between them.

(2) If, for the purpose of executing any works in, on or under any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, it must give to NGED written notice of that requirement, together with a plan of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed.

(3) If as a direct consequence of the exercise of any of the powers conferred by this Order NGED reasonably needs to remove or divert any of its apparatus and the removal of that apparatus has not been required by the undertaker under sub-paragraph (2) then NGED must

give to the undertaker advance written notice of that requirement, together with a plan of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and this Part has effect as if the removal or diversion of such apparatus had been required by the undertaker under sub-paragraph (2).

(4) If as a direct consequence of the removal or diversion of apparatus under sub-paragraph (2) or (3) alternative apparatus is to be constructed in land owned or controlled by the undertaker then the undertaker must afford to NGED the necessary facilities alternative rights and any necessary third party consent or approvals for the construction of alternative apparatus in the other land owned or controlled by the undertaker.

(5) If the undertaker or NGED requires to remove or divert any apparatus placed within the Order land and alternative apparatus is to be constructed in land not owned or controlled by the undertaker as a consequence of the removal or diversion of apparatus then NGED shall use its reasonable endeavours, as soon as reasonably possible, to obtain alternative rights in the land in which the alternative apparatus is to be constructed.

(6) If alternative apparatus is to be constructed in land not owned or controlled by the undertaker and NGED is unable to obtain such alternative rights as are mentioned in sub-paragraph (5), the undertaker and NGED shall consider whether there is an alternative engineering solution that can achieve the diversion without the need for the use of compulsory powers. Should such an alternative engineering solution not be practicable and deliverable in a reasonable timescale and at a reasonable cost (which shall be determined by the undertaker acting reasonably), NGED may but shall not be compelled to use the powers of compulsory acquisition set out in this Order or the Electricity Act 1989 to obtain the necessary facilities and rights in the land outside the Order limits in which the alternative apparatus is to be constructed in accordance with a timetable agreed between NGED and the undertaker.

(7) Any alternative apparatus required pursuant to sub-paragraphs (2) or (3) must be constructed in such manner and in such line or situation as may be agreed between NGED and the undertaker or in default of agreement settled in accordance with paragraph 187.

(8) NGED must, after the alternative apparatus to be provided or constructed has been agreed or settled pursuant to paragraph 187, and after the acquisition by or grant to NGED of any such facilities and alternative rights as are referred to in sub-paragraphs (2) to (6), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by the undertaker to be removed under the provisions of this Part of this Schedule.

(9) Regardless of anything in sub-paragraph (8), if the undertaker gives notice in writing to NGED that it desires itself to execute any work, or part of any work in connection with the construction or removal of apparatus in any land controlled by the undertaker, that work, instead of being executed by NGED, must be executed by the undertaker—

- (a) in accordance with plans and specifications and in such line or situation agreed between the undertaker and NGED, or, in default of agreement, determined in accordance with paragraph 187; and
- (b) without unnecessary delay to the reasonable satisfaction of NGED.

(10) Nothing in sub-paragraph (9) authorises the undertaker to execute the placing, installation, bedding, packing, removal, connection or disconnection of any apparatus or alternative apparatus, or execute any filling around the apparatus or alternative apparatus (where the apparatus or alternative apparatus is laid in a trench) within 600 millimetres of the point of connection or disconnection.

Facilities and rights for alternative apparatus

184.—(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to NGED facilities and rights for the construction and maintenance in land of the undertaker of alternative apparatus in substitution for apparatus to be removed, those facilities and rights must be granted upon such terms and conditions as may be agreed between the undertaker and NGED or in default of agreement settled in accordance with paragraph 187.

(2) In settling those terms and conditions in respect of alternative apparatus to be constructed in the land of the undertaker, the expert must—

- (a) give effect to all reasonable requirements of the undertaker for ensuring the safety and efficient operation of the authorised development and for securing any subsequent alterations or adaptations of the alternative apparatus which may be required to prevent interference with any proposed works of the undertaker;
- (b) have regard to the terms and conditions, if any, applicable to the apparatus for which the alternative apparatus is to be substituted;
- (c) have regard to NGED's ability to fulfil its service obligations and comply with its licence conditions; and
- (d) have regard to the standard form rights NGED ordinarily secures for the type of alternative apparatus to be constructed in the circumstances similar to the authorised development.

(3) If the facilities and alternative rights to be afforded by the undertaker in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and alternative rights are to be granted, are in the opinion of the expert less favourable on the whole to NGED than the facilities and rights enjoyed by it in respect of the apparatus to be removed and the terms and conditions to which those facilities and rights are subject, the expert must make such provision for the payment of compensation by the undertaker to NGED as appears to the expert to be reasonable having regard to all the circumstances of the particular case.

Retained apparatus

185.—(1) Not less than 60 days before the undertaker intends to start the execution of any specified work where the removal of the apparatus in question has not been required under paragraph 5, the undertaker shall submit to NGED a plan of the works to be executed. Any submission must note the time limits imposed on NGED under sub-paragraph (3) below.

(2) Subject to sub-paragraph (3) below the undertaker shall not commence any works to which sub-paragraph (1) applies until NGED has identified, without unreasonable delay, any reasonable requirements it has for the alteration or protection of the apparatus, or for securing access to it.

(3) If by the expiry of 60 days beginning with the date on which a plan under sub-paragraph (1) is submitted NGED has not advised the undertaker in writing of any reasonable requirements for the alteration or protection of the apparatus, or for securing access to it, it shall be deemed not to have any such requirements and the undertaker shall be at liberty to proceed with the works.

(4) The works referred to in sub-paragraph (1) must be executed only in accordance with the plan submitted under sub-paragraph (1), and in accordance with any reasonable requirements as may be notified in accordance with sub-paragraph (2) by NGED and NGED shall be entitled to watch and inspect the execution of those works.

(5) At all times when carrying out the authorised development the undertaker shall comply with NGED's *Avoidance of Danger from Electricity Overhead Lines and Underground Cables* (2014), the Energy Network Association's *A Guide to the Safe Use of Mechanical Plant in the Vicinity of Electricity Overhead Lines* (undated), the Health and Safety Executive's *GS6 Avoiding Danger from Overhead Power Lines* and the Health and Safety Executive's *HSG47 Avoiding Danger from Underground Services (Third Addition)* (2014) as the same may be replaced from time to time.

(6) If NGED, in accordance with sub-paragraph (2) and in consequence of the works proposed by the undertaker, reasonably requires the removal or diversion of any apparatus and gives advance written notice to the undertaker of that requirement, this Part of this Schedule applies as if the removal or diversion of the apparatus had been required by the undertaker under paragraph 182(2).

(7) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 60 days before commencing the execution of any works, a

new plan instead of the plan previously submitted, and having done so the provisions of this paragraph apply to and in respect of the new plan.

(8) The undertaker is not required to comply with sub-paragraph (1) in a case of emergency but in that case it must give to NGED notice as soon as is reasonably practicable and a plan of those works as soon as reasonably practicable subsequently and must comply with any reasonable requirements stipulated by NGED under sub-paragraph (2) and with sub-paragraphs (4) and (5) in so far as is reasonably practicable in the circumstances. Nothing in this sub-paragraph prevents NGED from exercising its rights under sub-paragraph (6).

Expenses and costs

186.—(1) Subject to the following provisions of this paragraph, the undertaker must pay to NGED the proper and reasonable expenses reasonably incurred by NGED in or in connection with, the inspection, removal, diversion, alteration or protection of any apparatus, the construction of any alternative apparatus and the acquisition or grant of alternative rights for the alternative apparatus, arising as a result of the powers conferred upon the undertaker pursuant to this Order.

(2) The value of any apparatus removed under the provisions of this Part of this Schedule must be deducted from any sum payable under sub-paragraph (1), that value being calculated after removal.

(3) If in accordance with the provisions of this Part of this Schedule NGED requires that alternative apparatus of better type, of greater capacity, of greater dimensions or at a greater depth is placed in substitution for existing apparatus—

- (a) for NGED's network requirements; and
- (b) over and above what is necessary as a consequence of and for the purpose of the authorised development,

NGED shall reduce the amount payable by the undertaker pursuant to sub-paragraph (1) by an amount equal to the cost of such additional requirements.

(4) For the purposes of sub-paragraph (3)—

- (a) an extension of apparatus to a length greater than the length of existing apparatus is not to be treated as a placing of apparatus of greater dimensions than those of the existing apparatus; and
- (b) where the provision of a joint in a cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole is to be treated as if it also had been agreed or had been so determined.

(5) An amount which apart from this sub-paragraph would be payable to NGED in respect of works by virtue of sub-paragraph (1) must, if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on NGED any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, be reduced by the amount which represents that benefit.

Liability

187.—(1) Subject to sub-paragraph (2), if by reason or in consequence of the construction of any specified work or any subsidence resulting from any such work any damage is caused to any apparatus or alternative apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of the authorised works) or property of NGED the undertaker is to—

- (a) bear and pay the cost reasonably incurred by NGED in making good such damage or restoring the supply; and
- (b) reimburse NGED for any other expenses, loss, damages, penalty or costs reasonably and properly incurred by NGED, by reason or in consequence of any such damage or interruption.

(2) Nothing in sub-paragraph (1) imposes any liability on the undertaker with respect to any damage or interruption to the extent that it is attributable to the act, neglect or default of NGED, its officers, servants, contractors or agents.

(3) NGED must give the undertaker reasonable notice of any such claim, including third-party claims, or demand and no settlement, admission of liability, compromise, or demand is to be made without the consent of the undertaker, unless payment is required in connection with a compensation scheme. If the undertaker withholds such consent, NGED is to have the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

(4) NGED must act reasonably in relation to any claim or demand served under sub-paragraph (1) and use its reasonable endeavours to mitigate and minimise any costs, expenses, loss, demands, proceedings and penalties to which a claim or demand under sub-paragraph (1) applies and at all times act reasonably and in the same manner as it would as if settling third party claims on its own behalf from its own funds.

(5) NGED's liability to the undertaker for negligence or breach of contract, in respect of each diversion, shall be limited to the value of that diversion and NGED shall not otherwise be liable to the undertaker for any losses or costs incurred by the undertaker resulting from delays to the authorised development as a result of its failure to undertake works to deliver any alternative apparatus.

Expert determination

188.—(1) Article 45 (*arbitration*) shall apply to any difference or dispute as to the legal interpretation of this Schedule and as provided for in sub-paragraph (7).

(2) Save as provided for in sub-paragraph (1) or sub-paragraph (7) any difference or dispute under this Part of this Schedule must be referred to and settled by a single independent and suitable person who holds appropriate professional qualifications and is a member of a professional body relevant to the matter in dispute acting as an expert, such person to be agreed by the differing parties or, in the absence of agreement, identified by the President of the Institution of Civil Engineers or the President of the Institution of RICS or the President of the Institution of Engineering and Technology (as relevant and agreed between NGED and the undertaker, both acting reasonably and without delay).

(3) All parties involved in settling any difference must use best endeavours to do so within 14 days from the date of a dispute first being notified in writing by one party to the other and in the absence of the difference being settled within that period the expert must be appointed within 21 days of the notification of the dispute.

(4) The costs and fees of the expert and the costs of NGED and the undertaker are payable by the parties in such proportions as the expert may determine. In the absence of such determination the costs and fees of the expert are payable equally by the parties who shall each bear their own costs.

(5) The expert must—

- (a) invite the parties to make submission to the expert in writing and copied to the other party to be received by the expert within 14 days of the expert's appointment;
- (b) permit a party to comment on the submissions made by the other party within 7 days of receipt of the submission;
- (c) issue a decision within 14 days of receipt of the submissions under sub-paragraph (b); and
- (d) give reasons for the decision.

(6) The expert must consider where relevant—

- (a) the development outcome sought by the undertaker;
- (b) the ability of the undertaker to achieve its outcome in a timely and cost-effective manner;
- (c) the nature of the power sought to be exercised by the undertaker;

- (d) the effectiveness, cost and reasonableness of proposals for mitigation arising from any party;
- (e) NGED's service obligations and licence conditions; and
- (f) any other important and relevant consideration.

(7) Any determination by the expert is final and binding, except in the case of manifest error in which case the difference that has been subject to expert determination may be referred to and settled by arbitration under article 45.

Enactments and agreements

189. Save to the extent provided for to the contrary elsewhere in this Schedule or by agreement in writing between NGED and the undertaker, nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and NGED in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

Co-operation

190.—(1) Where in consequence of the proposed construction of any part of the authorised development, the undertaker or NGED requires the removal and/or diversion of apparatus under paragraph 182 (*removal of apparatus*) or NGED makes requirements for the protection or alteration of apparatus under paragraph 184 (*retained apparatus*), the undertaker must use its reasonable endeavours to co-ordinate the execution of the authorised works in the interests of safety and the efficient and economic operation of NGED's undertaking and NGED must use its reasonable endeavours to co-operate with the undertaker for that purpose.

(2) For the avoidance of doubt whenever NGED's consent, agreement or approval is required in relation to plans, documents or other information submitted by NGED or the taking of action by NGED, it must not be unreasonably withheld or delayed.

Access

191. If in consequence of the agreement reached under paragraph 181 (*no acquisition except by agreement*) or the powers granted under this Order the access to any apparatus is materially obstructed, the undertaker must provide such alternative means of access to such apparatus as will enable NGED to maintain or use the apparatus no less effectively than was possible before such obstruction.

SCHEDULE 12

Article 42

DOCUMENTS AND PLANS TO BE CERTIFIED

PART 1

DOCUMENTS AND PLANS

<i>(1) Document name</i>	<i>(2) Document reference</i>	<i>(3) Revision number</i>	<i>(4) Date</i>
Archaeological mitigation strategy	6.3.74	2	October 2025
Book of reference	4.3	9	February 2026
Crown land plan	2.3	1	April 2025
Environmental statement	6.1-6.4	1	April 2025
Environmental statement addendum	10.5	1	December 2025
Flood risk assessment conclusions	Section 10.3 of Environmental Statement Appendix 11.1 Flood Risk Assessment (document reference 6.3.81)	5	February 2026
Flood risk operational mitigation	Section 9.2 of Environmental Statement Appendix 11.1 Flood Risk Assessment (document reference 6.3.81)	5	February 2026
Land plans	2.2	4	December 2025
Outline battery safety management plan	7.2	2	December 2025
Outline construction environmental management plan	6.3.7	5	February 2026
Outline construction traffic management plan	6.3.78	6	February 2026
Outline decommissioning environmental management plan	6.3.8	4	February 2026
Outline design principles	Appendix 1 to the Design and Access Approach Document (document reference 5.6)	4	February 2026
Outline drainage strategy	Section 8 of Environmental Statement Appendix 11.1 Flood Risk Assessment (document reference 6.3.81)	4	January 2026

Outline landscape and ecological management plan	6.3.19	6	February 2026
Outline public rights of way management plan	9.5	2	December 2025
Outline skills, supply chain and employment plan	6.3.98	2	February 2026
Outline soil management plan	6.3.95	4	February 2026
Streets, rights of way and access plans	2.5	2	June 2025
Waste and recycling strategy	6.3.103	2	December 2025
Works plan	2.4	4	February 2026
Vegetation removal plan	6.4.43	2	December 2025

PART 2

SUBSTITUTE DOCUMENTS

<i>(1) Originating document</i>	<i>(2) Replacement or supplementary part</i>	<i>(3) Document reference</i>	<i>(4) Date</i>	<i>(5) Examination library reference</i>
Environmental statement	Chapter 2: Proposed Development	6.2.2	January 2026	[REP6-017]
Environmental statement	Chapter 6: Landscape and Visual	6.2.6	December 2025	[REP5-011]
Environmental statement	Appendix 6.4: Visual assessment	6.3.16	December 2025	[REP5-021]
Environmental statement	Appendix 6.5: Residential visual amenity assessment	6.3.17	December 2025	[REP5-023]
Environmental statement	Chapter 7: Ecology	6.2.7	February 2026	
Environmental statement	Chapter 11: Water resources and flood risk	6.2.11	December 2025	[REP5-015]
Environmental statement	Appendix 11.3: Summary of watercourse crossings and photographs	6.3.83	December 2025	[REP5-029]
Environmental statement	Chapter 17: Other environmental topics	6.2.17	October 2025	[REP1-007]

SCHEDULE 13

HEDGEROWS

Article 44

PART 1

REMOVAL OF IMPORTANT HEDGEROWS

<i>(1) Area</i>	<i>(2) Number of Important Hedgerow and extent of removal</i>	<i>(3) Purpose of removal</i>
North Kesteven District Council	Removal of part of the hedgerow (approximately 9m in length) as shown within the area identified by purple shading with the extent of important hedgerow identified by a green dashed line on the vegetation removal plan (Sheet 1 of 26), reference H3.	To facilitate construction of Work Nos. 1, 2 and 3.
North Kesteven District Council	Removal of part of the hedgerow (approximately 2m in length) as shown within the area identified by purple shading with the extent of important hedgerow identified by a green dashed line on the vegetation removal plan (Sheet 1 of 26), reference H4.	To facilitate construction of Work Nos. 1, 2 and 3.
North Kesteven District Council	Removal of part of the hedgerow (approximately 10m in length) as shown within the area identified by purple shading with the extent of important hedgerow identified by a green dashed line on the vegetation removal plan (Sheet 1 of 26), reference H32.	To facilitate construction of Work Nos. 1, 2 and 3.
North Kesteven District Council	Removal of part of the hedgerow (approximately 2m in length) as shown within the area identified by purple shading with the extent of important hedgerow identified by a green dashed line on the vegetation removal plan (Sheet 3 of 26), reference H14.	To facilitate construction of Work Nos. 1, 2 and 3.
North Kesteven District Council	Removal of a total length of hedgerow (approximately 11.6m), as shown within the area identified by yellow	To facilitate construction of Work No. 8.

	shading with the extent of important hedgerow identified by a green dashed line on the vegetation removal plan (Sheet 13 of 26), reference H037.	
North Kesteven District Council	Removal of part of the hedgerow (approximately 15m), as shown within the area identified by yellow shading with the extent of important hedgerow identified by a green dashed line on the vegetation removal plan (Sheet 13 of 26), reference H038.	To facilitate construction of Work No. 8.
North Kesteven District Council	Removal of part of the hedgerow (approximately 15m), as shown within the area identified by yellow shading with the extent of important hedgerow identified by a green dashed line on the vegetation removal plan (Sheet 13 of 26), reference H039.	To facilitate construction of Work No. 8.
North Kesteven District Council	Removal of a total length of hedgerow (approximately 8.5m), as shown within the area identified by yellow shading with the extent of important hedgerow identified by a green dashed line on the vegetation removal plan (Sheet 13 of 26), reference H050.	To facilitate construction of Work No. 8.
North Kesteven District Council	Removal of part of the hedgerow (approximately 15m in length) as shown within the area identified by yellow shading with the extent of important hedgerow identified by a green dashed line on the vegetation removal plan (Sheet 14 of 26), reference H015.	To facilitate construction of Work No. 8.
North Kesteven District Council	Removal of part of the hedgerow (approximately 15m in length) as shown within the area identified by yellow shading with the extent of important hedgerow identified by a green dashed line on the vegetation removal plan (Sheet 14 of 26), reference H016.	To facilitate construction of Work No. 8.
North Kesteven District	Removal of part of the	To facilitate construction of

Council	hedgerow (approximately 15m), as shown within the area identified by yellow shading with the extent of important hedgerow identified by a green dashed line on the vegetation removal plan (Sheet 14 of 26), reference H021.	Work No. 8.
North Kesteven District Council	Removal of part of the hedgerow (approximately 15m), as shown within the area identified by yellow shading with the extent of important hedgerow identified by a green dashed line on the vegetation removal plan (Sheet 14 of 26), reference H022.	To facilitate construction of Work No. 8.
North Kesteven District Council	Removal of a total length of hedgerow (approximately 6.6m), as shown within the area identified by yellow shading with the extent of important hedgerow identified by a green dashed line on the vegetation removal plan (Sheet 14 of 26), reference H023.	To facilitate construction of Work No. 8.
North Kesteven District Council	Removal of a total length of hedgerow (approximately 7.8m), as shown within the area identified by yellow shading with the extent of important hedgerow identified by a green dashed line on the vegetation removal plan (Sheet 14 of 26), reference H024.	To facilitate construction of Work No. 8.
North Kesteven District Council	Removal of part of the hedgerow (approximately 15m), as shown within the area identified by yellow shading with the extent of important hedgerow identified by a green dashed line on the vegetation removal plan (Sheet 14 of 26), reference H025.	To facilitate construction of Work No. 8.
North Kesteven District Council	Removal of a total length of hedgerow (approximately 7.3m), as shown within the area identified by yellow shading with the extent of important hedgerow identified by a green dashed line on the vegetation removal plan	To facilitate construction of Work No. 8.

	(Sheet 14 of 26), reference H026.	
North Kesteven District Council	Removal of part of the hedgerow (approximately 15m), as shown within the area identified by yellow shading with the extent of important hedgerow identified by a green dashed line on the vegetation removal plan (Sheet 14 of 26), reference H032.	To facilitate construction of Work No. 8.
North Kesteven District Council	Removal of part of the hedgerow (approximately 15m in length) as shown within the area identified by yellow shading with the extent of important hedgerow identified by a green dashed line on the vegetation removal plan (Sheet 14 of 26), reference H033.	To facilitate construction of Work No. 8.
North Kesteven District Council	Removal of part of the hedgerow (approximately 15m in length) as shown within the area identified by yellow shading with the extent of important hedgerow identified by a green dashed line on the vegetation removal plan (Sheet 14 of 26), reference H036.	To facilitate construction of Work No. 8.
North Kesteven District Council	Removal of part of the hedgerow (approximately 15m in length) as shown within the area identified by yellow shading with the extent of important hedgerow identified by a green dashed line on the vegetation removal plan (Sheet 14 of 26), reference H041.	To facilitate construction of Work No. 8.
North Kesteven District Council	Removal of part of the hedgerows (approximately 15m), as shown within the area identified by yellow shading with the extent of important hedgerow identified by a green dashed line on the vegetation removal plan (Sheet 14 of 26), reference H042.	To facilitate construction of Work No. 8.
North Kesteven District Council	Removal of part of the hedgerow (approximately 15m), as shown within the area identified by yellow shading with the extent of	

	important hedgerow identified by a green dashed line on the vegetation removal plan (Sheet 14 of 26), reference H043.	
North Kesteven District Council	Removal of part of the hedgerow (approximately 15m in length) as shown within the area identified by yellow shading with the extent of important hedgerow identified by a green dashed line on the vegetation removal plan (Sheet 14 of 26), reference H044.	To facilitate construction of Work No. 8.
North Kesteven District Council	Removal of part of the hedgerow (approximately 15m in length) as shown within the area identified by yellow shading with the extent of important hedgerow identified by a green dashed line on the vegetation removal plan (Sheet 14 of 26), reference H045.	To facilitate construction of Work No. 8.
North Kesteven District Council	Removal of a total length of hedgerow (approximately 8.6m), as shown within the area identified by yellow shading with the extent of important hedgerow identified by a green dashed line on the vegetation removal plan (Sheet 15 of 26), reference H005.	To facilitate construction of Work No. 8.
North Kesteven District Council	Removal of part of the hedgerow (approximately 30m in length) as shown within the area identified by yellow shading with the extent of important hedgerow identified by a green dashed line on the vegetation removal plan (Sheet 16 of 26), reference H1049.	To facilitate construction of Work No. 4.
North Kesteven District Council	Removal of part of the hedgerow (approximately 4.9m in length) as shown within the area identified by yellow shading with the extent of important hedgerow identified by a green dashed line on the vegetation removal plan (Sheet 16 of 26), reference H1050.	To facilitate construction of Work No. 4.
North Kesteven District Council	Removal of part of the hedgerow (approximately 30m	To facilitate construction of Work No. 4.

	in length) as shown within the area identified by yellow shading with the extent of important hedgerow identified by a green dashed line on the vegetation removal plan (Sheet 16 of 26), reference H1052.	
North Kesteven District Council	Removal of part of the hedgerow (approximately 30m), as shown within the area identified by yellow shading with the extent of important hedgerow identified by a green dashed line on the vegetation removal plan (Sheet 18 of 26), reference H1042.	To facilitate construction of Work No. 4.
North Kesteven District Council	Removal of a total length of hedgerow (approximately 26.7m), as shown within the area identified by yellow shading with the extent of important hedgerow identified by a green dashed line on the vegetation removal plan (Sheet 18 of 26), reference H1064.	To facilitate construction of Work No. 4.
North Kesteven District Council	Removal of a total length of hedgerow (approximately 19.7m), as shown within the area identified by yellow shading with the extent of important hedgerow identified by a green dashed line on the vegetation removal plan (Sheet 20 of 26), reference H1006.	To facilitate construction of Work No. 4.
North Kesteven District Council	Removal of part of the hedgerow (approximately 30m), as shown within the area identified by yellow shading with the extent of important hedgerow identified by a green dashed line on the vegetation removal plan (Sheet 20 of 26), reference H1007.	To facilitate construction of Work No. 4.
Boston Borough Council	Removal of part of the hedgerow (approximately 30m), as shown within the area identified by yellow shading with the extent of important hedgerow identified by a green dashed line on the vegetation removal plan (Sheet 26 of 26), reference	To facilitate construction of Work No. 4.

Boston Borough Council	H1018. Removal of part of the hedgerow (approximately 30m), as shown within the area identified by yellow shading with the extent of important hedgerow identified by a green dashed line on the vegetation removal plan (Sheet 26 of 26), reference H1019.	To facilitate construction of Work No. 4.
Boston Borough Council	Removal of part of the hedgerow (approximately 30m), as shown within the area identified by yellow shading with the extent of important hedgerow identified by a green dashed line on the vegetation removal plan (Sheet 26 of 26), reference H1020.	To facilitate construction of Work No. 4.
Boston Borough Council	Removal of part of the hedgerow (approximately 15.7m), as shown within the area identified by yellow shading with the extent of important hedgerow identified by a green dashed line on the vegetation removal plan (Sheet 26 of 26), reference H1021.	To facilitate construction of Work No. 4.
Boston Borough Council	Removal of a total length of hedgerow (approximately 17.6m), as shown within the area identified by yellow shading with the extent of important hedgerow identified by a green dashed line on the vegetation removal plan (Sheet 26 of 26), reference H1022.	To facilitate construction of Work No. 4.
Boston Borough Council	Removal of part of the hedgerow (approximately 30m), as shown within the area identified by yellow shading with the extent of important hedgerow identified by a green dashed line on the vegetation removal plan (Sheet 26 of 26), reference H1023.	To facilitate construction of Work No. 4.
Boston Borough Council	Removal of a total length of hedgerow (approximately 9.8m), as shown within the area identified by yellow shading with the extent of important hedgerow identified	To facilitate construction of Work No. 4.

	by a green dashed line on the vegetation removal plan (Sheet 26 of 26), reference H1024.	
Boston Borough Council	Removal of part of the hedgerow (approximately 30m), as shown within the area identified by yellow shading with the extent of important hedgerow identified by a green dashed line on the vegetation removal plan (Sheet 26 of 26), reference H1026.	To facilitate construction of Work No. 4.
Boston Borough Council	Removal of a total length of hedgerow (approximately 15.4m), as shown within the area identified by yellow shading with the extent of important hedgerow identified by a green dashed line on the vegetation removal plan (Sheet 26 of 26), reference H1027.	To facilitate construction of Work No. 4.
Boston Borough Council	Removal of part of the hedgerow (approximately 30m), as shown within the area identified by yellow shading with the extent of important hedgerow identified by a green dashed line on the vegetation removal plan (Sheet 26 of 26), reference H1028.	To facilitate construction of Work No. 4.
Boston Borough Council	Removal of a total length of hedgerow (approximately 23.7m), as shown within the area identified by yellow shading with the extent of important hedgerow identified by a green dashed line on the vegetation removal plan (Sheet 26 of 26), reference H1029.	To facilitate construction of Work No. 4.
Boston Borough Council	Removal of part of the hedgerow (approximately 30m), as shown within the area identified by yellow shading with the extent of important hedgerow identified by a green dashed line on the vegetation removal plan (Sheet 26 of 26), reference H1033.	To facilitate construction of Work No. 4.
Boston Borough Council	Removal of a total length of hedgerow (approximately 8.5m), as shown within the	To facilitate construction of Work No. 4.

	area identified by yellow shading with the extent of important hedgerow identified by a green dashed line on the vegetation removal plan (Sheet 26 of 26), reference H1034.	
Boston Borough Council	Removal of part of the hedgerow (approximately 30m in length) as shown within the area identified by yellow shading with the extent of important hedgerow identified by a green dashed line on the vegetation removal plan (Sheet 26 of 26), reference H1041.	To facilitate construction of Work No. 8.

PART 2

REMOVAL OF HEDGEROWS

<i>(1) Area</i>	<i>(2) Number of Hedgerow and extent of removal</i>	<i>(3) Purpose of removal</i>
North Kesteven District Council	Removal of part of the hedgerow (approximately 1.6m in length) as shown within the area identified by purple shading on the vegetation removal plan (Sheet 2 of 26), reference H11.	To facilitate construction of Work Nos. 1, 2 and 3.
North Kesteven District Council	Removal of part of the hedgerow (approximately 5.5m in length) as shown within the area identified by purple shading on the vegetation removal plan (Sheet 3 of 26), reference H33.	To facilitate construction of Work Nos. 1, 2 and 3.
North Kesteven District Council	Removal of part of the hedgerow (approximately 23m in length) as shown within the area identified by purple shading on the vegetation removal plan (Sheet 6 of 26), reference H29.	To facilitate construction of Work Nos. 1, 2 and 3.
North Kesteven District Council	Removal of part of the hedgerow (approximately 2m in length) as shown within the area identified by purple shading on the vegetation removal plan (Sheet 8 of 26), reference H16.	To facilitate construction of Work Nos. 1, 2 and 3.
North Kesteven District Council	Removal of part of the hedgerow (approximately 4m	To facilitate construction of Work Nos. 1, 2 and 3.

	in length) as shown within the area identified by purple shading on the vegetation removal plan (Sheet 9 of 26), reference H24.	
North Kesteven District Council	Removal of part of the hedgerow (approximately 16m in length) as shown within the area identified by purple shading on the vegetation removal plan (Sheet 12 of 26), reference H39.	To facilitate construction of Work Nos. 1, 2 and 3.
North Kesteven District Council	Removal of part of a hedgerow (approximately 15m), as shown within the area identified by yellow shading on the vegetation removal plan (Sheet 14 of 26), reference H027.	To facilitate construction of Work No. 8.
North Kesteven District Council	Removal of part of the hedgerow (approximately 15m in length) as shown within the area identified by yellow shading on the vegetation removal plan (Sheet 14 of 26), reference H028.	To facilitate construction of Work No. 8.
North Kesteven District Council	Removal of part of the hedgerow (approximately 16.7m in length) as shown within the area identified by yellow shading on the vegetation removal plan (Sheet 15 of 26), reference H008.	To facilitate construction of Work No. 8.
North Kesteven District Council	Removal of part of the hedgerow (approximately 30m in length) as shown within the area identified by yellow shading on the vegetation removal plan (Sheet 16 of 26), reference H1048.	To facilitate construction of Work No. 4.
North Kesteven District Council	Removal of part of the hedgerow (approximately 5.4m in length) as shown within the area identified by yellow shading on the vegetation removal plan (Sheet 18 of 26), reference H1059.	To facilitate construction of Work No. 4.
Boston Borough Council	Removal of part of the hedgerow (approximately 30m), as shown within the area identified by yellow shading on the vegetation removal plan (Sheet 25 of 26), reference H1125.	To facilitate construction of Work No. 4.
Boston Borough Council	Removal of part of the	To facilitate construction of

	hedgerow (approximately 30m in length) as shown within the area identified by yellow shading on the vegetation removal plan (Sheet 26 of 26), reference H1114.	Work No. 4.
Boston Borough Council	Removal of part of the hedgerow (approximately 30m in length) as shown within the area identified by yellow shading on the vegetation removal plan (Sheet 26 of 26), reference H1122.	To facilitate construction of Work No. 4.

SCHEDULE 14

ARBITRATION RULES

Article 45

Primary objective

1.—(1) The primary objective of these arbitration rules is to achieve a fair, impartial, final and binding award on the substantive difference between the parties (save as to costs) within 4 months from the date the arbitrator is appointed pursuant to article 45 (arbitration) of the Order.

(2) The arbitration is deemed to have commenced when a party (“the claimant”) serves a written notice of arbitration on the other party (“the respondent”).

Time periods

2.—(1) All time periods in these arbitration rules will be measured in days and this is to include weekends, but not bank or public holidays.

(2) Time periods will be calculated from the day after the arbitrator is appointed which must be either—

- (a) the date the arbitrator notifies the parties in writing of his/her acceptance of an appointment by agreement of the parties; or
- (b) the date the arbitrator is appointed by the Secretary of State.

Timetable

3.—(1) The timetable for the arbitration is to be that set out in sub-paragraphs (2) to (4) unless amended in accordance with sub-paragraph 5(3).

(2) Within 14 days of the arbitrator being appointed, the claimant must provide both the respondent and the arbitrator with—

- (a) a written statement of claim which describes the nature of the differences between the parties, the legal and factual issues, the claimant’s contentions as to those issues, the amount of its claim and the remedy it is seeking; and
- (b) all statements of evidence and copies of all documents on which it relies, including contractual documentation, correspondence (including electronic documents), legal precedents and expert witness reports.

(3) Within 14 days of receipt of the claimant’s statements under sub-paragraph (2) by the arbitrator and respondent, the respondent must provide the claimant and the arbitrator with—

- (a) a written statement of defence responding to the claimant’s statement of claim, all statement in respect of the nature of the differences, the legal and factual issues in the claimant’s claim, its acceptance of any element(s) of the claimant’s claim, its contentions as to those elements of the claimant’s claim it does not accept;
- (b) all statements of evidence and copies of all documents on which it relies, including contractual documentation, correspondence (including electronic documents), legal precedents and expert witness reports; and
- (c) any objections it wishes to make to the claimant’s statements, comments on the claimant’s expert report(s) (if submitted by the claimant) and explanations for the objections.

(4) Within 7 days of the respondent serving its statements under sub-paragraph (3), the claimant may make a statement of reply by providing both the respondent and the arbitrator with—

- (a) a written statement responding to the respondent's submissions, including its reply in respect of the nature of the difference, the issues (both factual and legal) and its contentions in relation to the issues;
- (b) all statements of evidence and copies of documents in response to the respondent's submissions;
- (c) any expert report in response to the respondent's submissions;
- (d) any objections to the statements of evidence, expert reports or other documents submitted by the respondent; and
- (e) written submissions in response to the legal and factual issues involved.

Procedure

4.—(1) The parties' pleadings, witness statements and expert reports (if any) must be concise. No single pleading is to exceed 30 single-sided A4 pages using 10pt Arial font.

(2) The arbitrator must make an award on the substantive difference(s) based solely on the written material submitted by the parties unless the arbitrator decides that a hearing is necessary to explain or resolve any matters.

(3) Either party may, within 2 days of delivery of the last submission, request a hearing giving specific reasons why it considers a hearing is required.

(4) Within 7 days of receiving the last submission, the arbitrator must notify the parties whether a hearing is to be held and the length of that hearing.

(5) Within 10 days of the arbitrator advising the parties that he/she is to hold a hearing, the date and venue for the hearing must be fixed by agreement with the parties, save that if there is no agreement the arbitrator must direct a date and venue which he/she considers is fair and reasonable in all the circumstances. The date for the hearing must not be less than 35 days from the date of the arbitrator's direction confirming the date and venue of the hearing.

(6) A decision will be made by the arbitrator on whether there is any need for expert evidence to be submitted orally at the hearing. If oral expert evidence is required by the arbitrator, then any expert(s) attending the hearing may be asked questions by the arbitrator.

(7) There will be no process of examination and cross-examination of experts, but the arbitrator will invite the parties to ask questions of the experts by way of clarification of any answers given by the expert(s) in response to the arbitrator's questions. Prior to the hearing the procedure for the expert(s) will be that—

- (a) at least 28 days before a hearing, the arbitrator will provide a list of issues to be addressed by the expert(s);
- (b) if more than one expert is called, they will jointly confer and produce a joint report or reports within 14 days of the issues being provided; and
- (c) the form and content of a joint report must be as directed by the arbitrator and must be provided at least 7 days before the hearing.

(8) Within 14 days of a hearing or a decision by the arbitrator that no hearing is to be held the parties may by way of exchange provide the arbitrator with a final submission in connection with the matters in dispute and any submissions on costs. The arbitrator will take these submissions into account in the award.

(9) The arbitrator may make other directions or rulings as considered appropriate in order to ensure that the parties comply with the timetable and procedures to achieve an award on the substantive difference within 4 months of the date on which the arbitrator is appointed, unless both parties otherwise agree to an extension to the date for the award.

(10) If a party fails to comply with the timetable, procedure or any other direction then the arbitrator may continue in the absence of a party or submission or document, and may make a decision on the submitted information attaching the appropriate weight to any evidence submitted beyond any timetable or in breach of any procedure and/or direction.

(11) The arbitrator's award must include reasons. The parties will accept that the extent to which reasons are given must be proportionate to the issues in dispute and the time available to the arbitrator to deliver the award.

Arbitrator's powers

5.—(1) The arbitrator has all the powers of the Arbitration Act 1996(a), including the non-mandatory sections, save where modified by these arbitration rules in this Schedule.

(2) There will be no discovery or disclosure, except that the arbitrator will have the power to order the parties to produce such documents as are reasonably requested by another party no later than the statement of reply, or by the arbitrator, where the documents are manifestly relevant, specifically identified and the burden of production is not excessive. Any application and orders should be made by way of a Redfern Schedule without any hearing.

(3) Any time limits fixed in accordance with this procedure or by the arbitrator may be varied by agreement between the parties, subject to any such variation being acceptable to and approved by the arbitrator. In the absence of agreement, the arbitrator may vary the timescales and/or procedure—

- (a) if the arbitrator is satisfied that a variation of any fixed time limit is reasonably necessary to avoid a breach of the rules of natural justice; and
- (b) only for such a period that is necessary to achieve fairness between the parties.

(4) On the date the award is made, the arbitrator will notify the parties that the award is completed, signed and dated, and that it will be issued to the parties on receipt of cleared funds for the arbitrator's fees and expenses.

Costs

6.—(1) The costs of the arbitration must include the fees and expenses of the arbitrator, the reasonable fees and expenses of any experts and the reasonable legal and other costs incurred by the parties for the arbitration.

(2) Where the difference involves connected/interrelated issues, the arbitrator will consider the relevant costs collectively.

(3) The final award must fix the costs of the arbitration and decide which of the parties will bear them or in what proportion they will be borne by the parties.

(4) The arbitrator will award recoverable costs on the general principle that each party should bear its own costs, having regard to all material circumstances, including such matters as exaggerated claims and/or defences, the degree of success for different elements of the claims, claims that have incurred substantial costs, the conduct of the parties and the degree of success of a party.

Confidentiality

7.—(1) The parties agree that any hearings held as part of the arbitration will take place in private.

(2) The parties and arbitrator agree that any matters, materials, documents, awards, expert reports and the like are confidential and must not be disclosed to any third party without prior written consent of the other party, save for any application to the Courts or where disclosure is required under any legislative or regulatory requirement.

(a) 1996 c. 23.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order authorises Beacon Fen Energy Park Ltd (referred to in this Order as the undertaker) to construct, operate, maintain and decommission a ground mounted solar photovoltaic generating station with a gross electrical output capacity over 50 megawatts and associated development. The Order would permit the undertaker to acquire, compulsorily or by agreement, land and rights in land and to use land for this purpose.

A copy of the Order plans and the book of reference mentioned in the Order and certified in accordance with article 42 (certification of plans, etc) of this Order may be inspected free of charge during working hours at Lincolnshire County Council, County Offices, Newland, Lincoln LN1 1YL.

APPENDIX B: HABITATS REGULATIONS ASSESSMENT

B.1 FINDINGS AND CONCLUSIONS IN RELATION TO HABITATS REGULATIONS ASSESSMENT

B.1.1 INTRODUCTION

B.1.1.1 This chapter sets out the Examining Authority's (ExA's) analysis and conclusions relevant to the Habitats Regulations Assessment (HRA). This would assist the Secretary of State for Energy Security and Net Zero (SoS), as the competent authority, in performing their duties under The Conservation of Habitats and Species Regulations 2017 ('The Habitats Regulations').

B.1.1.2 This Chapter is structured as follows:

- Section B.1.5: Findings in relation to Likely Significant Effects on the UK National Site Network and other European sites
- Section B.1.6: Conservation Objectives for sites and features
- Section B.1.7: Findings in relation to Adverse Effects on Integrity

B.1.1.3 In accordance with the precautionary principle embedded in The Habitats Regulations, consent for the proposed development may be granted only after having ascertained that it would not adversely affect the integrity of European site(s) and no reasonable scientific doubt remains (CJEU Case C-127/02 Waddenzee 7 September 2004).

B.1.1.4 For the purpose of this report, in line with The Habitats Regulations and relevant government policy, the term 'European sites' includes Special Areas of Conservation (SAC), Special Protection Areas (SPA), and Ramsar sites and sites identified or required as compensatory measures for adverse effects on any of these sites.

B.1.1.5 Policy considerations and the legal obligations under The Habitats Regulations are described in Chapter 2 of this Report.

B.1.1.6 The ExA has been mindful throughout the examination of the need to ensure that the SoS has such information as may reasonably be required to carry out their duties as the competent authority. I have sought evidence from the applicant and the relevant Interested Parties (IPs), including Natural England (NE) as the Appropriate Nature Conservation Body (ANCB), through written questions and Issue Specific Hearings.

B.1.2 RIES AND CONSULTATION

B.1.2.1 The ExA produced a Report on the Implications for European Sites (RIES) [\[PD-014\]](#) which compiled, documented, and signposted HRA-relevant information provided in the DCO application and examination representations

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up to Deadline 4 (21 November 2025). The RIES was issued to set out the ExA's understanding of HRA-relevant information and the position of the IPs in relation to the effects of the proposed development on European sites at that point in time. Consultation on the RIES took place between (8 December 2025) and (12 January 2026). Comments were received from the applicant [\[REP5-048\]](#) and NE [\[REP6-045\]](#). The applicant responded to comments by NE [\[REP7-051\]](#). These comments have been taken into account in the drafting of this chapter.

- B.1.2.2 The ExA's recommendation is that the RIES, and consultation on it, may be relied upon as an appropriate body of information to enable the Secretary of State to fulfil their duties of consultation under regulation 63(3) of The Habitats Regulations, should the SoS wish to do so.

B.1.3 PROPOSED DEVELOPMENT DESCRIPTION AND HRA IMPLICATIONS

- B.1.3.1 The proposed development is described in chapter 1.3 of this report.
- B.1.3.2 The spatial relationship between the Order Limits of the proposed development and European sites is shown in drawing ST19595-501, [\[REP7-016\]](#).
- B.1.3.3 The proposed development is not directly connected with, or necessary to, the management of a European site [box 1, [REP7-016](#)]. Therefore, the SoS must make an 'appropriate assessment' of the implications of the proposed development on potentially affected European sites in light of their conservation objectives.
- B.1.3.4 The applicant's assessment of effects is presented in the following application document(s):
- B.1.3.5 Shadow Habitat Regulations Assessment (Shadow HRA) [\[APP-050\]](#), updated at deadline (DL)2 [\[REP2-013\]](#) and DL7 [\[REP7-016\]](#)
- B.1.3.6 HRA: Plan and projects with the potential for in-combination effects drawing ST19595-548 [\[REP5-048\]](#).
- B.1.3.7 This chapter would refer to the latest version of the shadow HRA [\[REP7-016\]](#) unless otherwise specified.
- B.1.3.8 The applicant did not submit details of an evidence plan in relation to HRA matters but consulted NE on the content and outcomes of its shadow HRA through the pre-application period [appendix 1, [REP7-016](#)] and during the examination [\[REP7-045\]](#).
- B.1.3.9 The applicant did not identify any likely significant effects (LSE) on non-UK European sites in European Economic Area (EEA) States in its shadow HRA Report [\[REP7-016\]](#). No such impacts were raised for discussion by any IPs

during the examination in relation to transboundary matters relevant to HRA. Only UK European sites are therefore addressed in this report.

B.1.4 CHANGE REQUESTS

- B.1.4.1 The applicant submitted a change request on 18 December 2025 [\[CR-025\]](#). The change request comprised details of an updated design by National Grid Transmission for the proposed extension to the Bicker Fen substation. Details of the change request are discussed in Chapter 1.5 of this report. The applicant confirmed in response to BIO.3.1 [\[PD-016\]](#) that there were no HRA implications as a result of the change request [\[REP7-052\]](#).

B.1.5 SUMMARY OF HRA MATTERS CONSIDERED DURING THE EXAMINATION

- B.1.5.1 The main HRA matters raised by the ExA, NE and other IPs and discussed during the examination include:

- The methodology applied to the screening stage of the HRA.
- The inclusion of the Lapwing qualifying feature of the Wash SPA and Ramsar sites and Functionally Linked Land (FLL).
- Other projects considered in the in-combination assessment.
- The adequacy of mitigation measures for lapwing and gadwall qualifying features of the Wash SPA and Ramsar sites.

- B.1.5.2 These matters are discussed in the sections below, as appropriate.

- B.1.5.3 Matters which were undisputed by IPs, including NE as the ANCB were:

- The sites and qualifying features assessed by the applicant;
- No adverse effects on integrity (AEoI) on the Wash and North Norfolk Coast SAC otter qualifying feature [\[RR-015\]](#);
- No hydrological connectivity or risk of impacts from water quality to the Wash SPA and Ramsar site [\[RR-015\]](#);
- Agreement on methodology, data and approach undertaken [\[REP2-059, BIO1.9\]](#)

B.1.6 FINDINGS IN RELATION TO LIKELY SIGNIFICANT EFFECTS (LSE)

- B.1.6.1 Under regulation 63 of The Habitats Regulations, the competent authority must consider whether a development will have Likely Significant Effects (LSE) on a European site, either alone or in combination with other plans or projects. The purpose of the LSE test is to identify the need for an 'appropriate assessment' (AA) and the activities, sites or plans and projects to be included for further consideration in the AA.

- B.1.6.2 The European sites and qualifying features that were considered in the applicant's assessment of LSE are:

- The Wash SPA and Ramsar (14.2km from the order limits)
- The Wash and North Norfolk Coast SAC (14.2km from the order limits)

- B.1.6.3 The applicant's Shadow HRA [\[REP7-016\]](#) sets out the methodology applied to determining what would constitute a 'significant effect' for the purposes of the assessment.
- B.1.6.4 The Shadow HRA assessed the potential impacts during construction, operation and maintenance and decommissioning. The applicant considered that all potential impacts during the decommissioning phase would be similar to, and potentially less than, those outlined in the construction phase [\[APP-050\]](#).
- B.1.6.5 It was noted by the ExA [\[BIO.1.6, PD-007\]](#) that the Shadow HRA provided very little information on the methodology for the screening assessment and therefore the ExA sought information on the screening distances and pathways identified to inform the sites to be assessed.
- B.1.6.6 The applicant confirmed [\[REP2-040, BIO1.6\]](#) the screening distances used and how these had been determined. It also set out [\[REP2-040, BIO1.7\]](#) the approach to determining which qualifying features were screened into the assessment.

B.1.7 LSE FROM THE PROPOSED DEVELOPMENT ALONE

- B.1.7.1 Section 4.4 of the Shadow HRA [\[REP7-016\]](#) details the potential impact pathways from the proposed development, along with the potential geographical extent of effects. Table 4 of the Shadow HRA lists the sites, qualifying features and the impact pathways with potential to result in likely significant effects.

Table B.1: European sites and pathways

European Site and qualifying feature(s)	LSE Pathway
The Wash SPA and Ramsar – Gadwall	Loss/impact to functionally linked habitat
The Wash SPA and Ramsar	Changes to the water quality and hydrological regime change
The Wash and North Norfolk SAC – Otter	Loss/impact to functionally linked habitat
The Wash and North Norfolk SAC	Changes to the water quality and hydrological regime change

- B.1.7.2 During the examination, NE [\[RR-015\]](#) noted that whilst lapwing was not a named criteria feature, it should be considered as part of the waterbird assemblage. NE requested that the applicant assess, for the Wash SPA and

Ramsar, lapwing for loss/impact to functionally linked land. The applicant updated its HRA [\[REP7-017\]](#) to include this impact pathway.

B.1.8 LSE FROM THE PROPOSED DEVELOPMENT IN COMBINATION

- B.1.8.1 Section 5.3 of the initial Shadow HRA [\[APP-050\]](#) detailed the applicant's approach to assessing in-combination LSE. The projects included in the in-combination assessment were detailed in table 5 of the Shadow HRA [\[APP-050\]](#). This table includes the reasoning for screening each plan/project in or out of the HRA and, following a request in the RIES [\[PD-007\]](#), the applicant supplied a plan to demonstrate the location of these projects in relation to the proposed development [\[ST19595-548, REP5-048\]](#).
- B.1.8.2 It was noted that the shadow HRA [\[APP-050\]](#) did not explicitly state whether it had considered the potential for in-combination effects at the screening stage. The applicant responded to ExQ1 BIO.1.11 [\[REP2-040\]](#) to confirm that in-combination effects were taken into account at the screening stage. It explained that the Heckington Fen Solar Park was identified as the only development considered likely to result in in-combination effects through hydrological connections and loss of functionally linked land associated with qualifying winter wetland bird species.
- B.1.8.3 The applicant further noted that the full list of projects set out in Appendix 4.2: Cumulative Assessment Shortlist [\[APP-082\]](#) were not included in the Shadow HRA [\[APP-050\]](#) as no potential effects were identified. The Shadow HRA [\[REP2-013\]](#) was updated to clarify this information. The conclusion remained unchanged. NE [\[REP4-022\]](#) confirmed agreement on this matter.
- B.1.8.4 Further projects were highlighted by North Kesteven District Council [\[REP2-061\]](#), Lincolnshire County Council [\[REP1-044\]](#) and Boston Borough Council [\[REP2-063\]](#) during the examination in relation to the applicant's cumulative effects assessment in the ES [\[APP-069\]](#). The ExA queried whether there were any implications for the HRA from the additional projects [\[PD-007\]](#).
- B.1.8.5 In response, the applicant confirmed in Appendix 1 of [\[REP5-048\]](#), that Land at Little Hale Fen had been considered in the Shadow HRA and that other projects identified would not result in in-combination effects due to the distance from the proposed development and a lack of overlap in construction timings.
- B.1.8.6 No further representations were received on this matter by the close of the examination and the ExA is satisfied that the applicant's assessment has includes a satisfactory consideration of in-combination LSE.

B.1.9 LSE ASSESSMENT OUTCOMES

- B.1.9.1 The applicant concluded [\[REP7-016\]](#) a potential for LSE on the sites and features set out in table B.2 below. These were further assessed by the applicant to determine if they could be subject to AEoI, as a result of the

proposed development alone or in combination with other plans and projects, in view of their conservation objectives.

Table B.2: Sites, qualifying features and pathways screened in by the applicant

European Site and qualifying feature (s)	LSE Pathway
The Wash SPA and Ramsar – Gadwall and Lapwing (waterbird assemblage)	Loss/impact on functionally linked habitat
The Wash and North Norfolk SAC – Otter	Loss/impact on functionally linked habitat

B.1.9.2 The ExA is satisfied, on the basis of the information provided, that the correct impact-effect pathways on each site have been assessed for both alone and in-combination likely significant effects.

B.1.9.3 Taking into account the reasoning set out in the Shadow HRA [\[REP7-017\]](#) and examination representations, as discussed above, the ExA considers that the proposed development is likely to have a significant on the qualifying features of the European sites identified in table B.2 when considered alone, or in combination with other plans or projects. The applicant's conclusions in relation to LSE were not disputed further by IPs or NE during the examination.

B.1.10 CONSERVATION OBJECTIVES

B.1.10.1 The conservation objectives for the sites and features identified in table B.2 above are set out in chapter 3 of the applicant's Shadow HRA [\[REP7-016\]](#).

B.1.10.2 The ExA through ExQ1 BIO.1.9 [\[PD-007\]](#) sought information from NE on whether the site(s) are in favourable or unfavourable condition. NE responded by providing an overview of feature and unit condition and links to further information on condition of features.

B.1.10.3 There were no matters raised during the examination in relation to the conservation objectives.

B.1.11 FINDINGS IN RELATION TO ADVERSE EFFECTS ON INTEGRITY (AEI)

B.1.11.1 The European sites and qualifying features for which LSE were identified were further assessed by the applicant to determine if they could be subject to AEI from the proposed development, either alone or in combination. The assessment of AEI was made in light of the conservation objectives for the European sites [\[REP7-016\]](#). No concerns were raised in relation to further

impacts to be assessed for AEol beyond those discussed at the screening stage.

B.1.11.2 The ExA is satisfied, based on the information provided that the correct impacts have been assessed. This section discusses the conclusions with respect to AEol for each site.

B.1.11.3 The outcomes of the applicant's assessment of effects on integrity are summarised in section 5 of the HRA Report [\[REP7-016\]](#).

B.1.12 SITES FOR WHICH THE APPLICANT CONCLUDED AEOI CAN BE EXCLUDED

B.1.12.1 The applicant's Shadow HRA [\[REP7-016\]](#) concluded that the proposed development will not result in AEol of the following European sites and features:

- The Wash and North Norfolk Coast SAC - otter
- The Wash SPA and Ramsar - lapwing and gadwall

B.1.12.2 NE [\[RR-015\]](#) also noted agreement with the applicant on the assessment in the Shadow HRA, that hydrological connectivity from the proposed development and the Wash SPA and Ramsar and the North Norfolk Coast SAC, is acknowledged. NE confirmed agreement with the applicant's conclusions that, as a result of the distance between the proposed development and the designations and the embedded mitigation through the oCEMP, that any pollutants from the proposed development would be unlikely to alter the background pollution at the designations. Therefore, NE agreed with the conclusion of no AEol on either site through this pathway.

B.1.12.3 The EA [\[REP2-047\]](#) raised concerns relating to the level of information provided in the oCEMP on mitigation measures relating to both sites listed above. Following further discussions and further detail being included in the oCEMP, the EA confirmed that all matters were resolved by the close of the examination.

B.1.13 THE WASH AND NORTH NORFOLK COAST (WNNC) SAC – OTTER – LOSS/IMPACTS TO FUNCTIONALLY LINKED LAND (FLL)

B.1.13.1 The ExA BIO.1.15 [\[PD-007\]](#) also sought confirmation from the applicant and NE that the consideration of LSE on the otter feature of the WNNC SAC had included the impact of Horizontal Directional Drilling (HDD) launch sites. The applicant confirmed [\[REP2-040\]](#) that this had been considered as part of the worst-case scenario assessed. The Environment Agency (EA) noted this matter as resolved following the updated Construction Environmental Management Plan (CEMP) [\[REP2-017\]](#) and [\[REP2-018\]](#).

B.1.13.2 NE [\[RR-015\]](#) stated that with mitigation measures set out in the Shadow HRA [\[APP-050\]](#), specifically the use of HDD to avoid impacts on the otter

qualifying feature of the Wash and North Norfolk Coast SAC, it concurred that an AEol unlikely to occur.

B.1.14 THE WASH SPA AND RAMSAR SITE – GADWALL AND WATERBIRD ASSEMBLAGE (LAPWING COMPONENT) – LOSS/IMPACT TO FUNCTIONALLY LINKED LAND

- B.1.14.1 The applicant updated the Shadow HRA [\[REP2-013\]](#) to include an assessment of the lapwing component of the waterbird assemblage as a qualifying feature of the Wash SPA and Ramsar sites. NKDC [\[REP1-054\]](#) raised concerns relating to whether a 70bD threshold for gadwall would mitigate AEol, noting that this was primarily a matter for NE. NKDC [\[REP3-010\]](#) however noted that this matter was agreed.
- B.1.14.2 The applicant updated the Shadow HRA to include Lapwing, following this update The ExA sought confirmation, through the RIES [\[PD-007\]](#), of NE's view on the mitigation measures that the applicant had set out in [\[REP2-013\]](#) in relation to avoiding AEol on both lapwing and Gadwall. NE responded [\[REP6-045\]](#) to state that it maintained concern that the applicant's proposed 60m buffer between construction work and locations of Lapwing and Gadwall qualifying features would result in noise levels at these locations remaining at 70dB, which it considered high enough for disturbance of both species. NE did however note that further discussions were ongoing with the applicant in relation to development of mitigation measures.
- B.1.14.3 Additional mitigation measures were included in [\[REP7-016\]](#) in the form of a wider 200m buffer to FLL and adaptive monitoring during the construction phase, with the potential for additional measures to be employed, such as acoustic fencing, as a result of ongoing monitoring by an Ecological Clerk of Works. These were reflected in the applicant's updated oCEMP [\[REP7-020\]](#).
- B.1.14.4 NE confirmed in its final risk and issues log NE3 [\[REP8-036\]](#) that with the updates presented within the oCEMP [\[REP7-020\]](#) and the applicant's HRA report [\[REP7-016\]](#), it was content with the mitigation measures proposed, noting that it also acknowledged the applicant's justification for an inability to avoid the winter working. This matter was discussed and progressed outside of the examination. It concluded that all its concerns in relation to gadwall and lapwing had therefore been resolved [\[REP7-045\]](#).
- B.1.14.5 No matters relating to AEol were raised in relation to in-combination AEol. It was agreed by NE [\[RR-015\]](#) that in-combination effects with the only project screened in for assessment, Heckington Fen Solar Farm, were unlikely to occur.

B.1.15 HRA CONCLUSIONS

- B.1.15.1 The proposed development is not directly connected with, or necessary to, the management of a European site. Therefore, the SoS must make an 'appropriate assessment' of the implications of the proposed development on potentially affected European sites in light of their Conservation Objectives.

APPENDIX B: HABITATS REGULATIONS ASSESSMENT (HRA)

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- B.1.15.2 Three European sites and their qualifying features were considered in the applicant's assessment of LSE. LSE were identified from the proposed development alone.
- B.1.15.3 The methodology and outcomes of the applicant's screening for LSE on European sites were subject to some discussion and scrutiny during the examination. The applicant agreed to the inclusion of the lapwing component of the waterbird assemblage in the assessment for effects for the Wash SPA and Ramsar sites.
- B.1.15.4 The ExA is therefore satisfied that the correct European sites and qualifying features have been identified for the purposes of assessment, and that all potential impact pathways which could give rise to significant effects have been identified and assessed.
- B.1.15.5 The ExA's findings are that, subject to the mitigation measures discussed above, being secured in the dDCO and management plans, AEoI on the Wash SPA and Ramsar Sites and the Wash and North Norfolk Coast SAC from the proposed development when considered alone or in-combination with other plans or projects can be excluded from the impact-effect pathways assessed.
- B.1.15.6 The ExA considers that there is sufficient information before the SoS to enable them to undertake an appropriate assessment in order to fulfil their duty under the requirements of The Habitats Regulations.

APPENDIX C: RELEVANT LEGISLATION AND POLICIES

Relevant Legislation

- Acquisition of Land Act 1981
- Air Quality (England) Regulations 2000
- Air Quality Standards Regulations 2010 (as amended)
- The Air Quality (Amendment of Domestic Regulations) (EU Exit) Regulations 2019
- Ancient Monuments and Archaeological Areas Act 1979
- Building Act 1984 and the Building Regulations 2010
- Carbon Budget Order 2021
- Climate Change Act 2008 (Credit Limit) Order 2021
- Conservation of Habitats and Species Regulations 2017 (the Habitat Regulations 2017)
- Contaminated Land (England) (Amendment) Regulations 2012 ('Contaminated Land Regulations')
- Control of Pollution Act 1974
- Compulsory Purchase Act 1965
- Compulsory Purchase (Vesting Declarations) Act 1981
- Countryside and Rights of Way Act 2000
- Equality Act 2010
- Electricity Act 1989
- The Environment Act 1995
- Environment Act 2021
- Environment (Amendment etc.) (EU Exit) Regulations 2019
- Environmental Damage (Prevention and Remediation) (England) Regulations 2015
- Environment (Miscellaneous Amendments) (EU Exit) Regulations 2020
- Environmental Permitting (England and Wales) Regulations 2016
- Environmental Protection Act 1990
- Environmental Noise (England) Regulations 2006 (as amended)
- Environmental Permitting (England and Wales) Regulations 2016
- Environmental Permitting (England and Wales) (Amendment) (EU Exit) Regulations 2019

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Relevant Legislation

- European Commission Circular Economy Package Environmental Protection Act 1990
- European Landscape Convention (ELC) (Council of Europe, 2016)
- Hedgerow Regulations 1997
- Flood Risk Regulations 2009
- Flood and Water Management Act 2010
- Groundwater (Water Framework Directive) (England) Direction 2016
- Hazardous Waste (England and Wales) Regulations 2005
- Health and Safety at Work etc. Act 1974
- Health and Social Care Act 2012
- The Hedgerows Regulations 1997
- Highways Act 1980
- Human Rights Act 1998
- The Infrastructure Planning (Decisions) Regulations 2010
- The Infrastructure Planning (Environmental Impact Assessment) Regulations 2017
- Land Drainage Act 1991
- Levelling Up and Regeneration Act 2023
- Localism Act 2011
- Marine and Coastal Access Act 2009
- National Parks and Access to the Countryside Act 1949
- National Parks and Access to the Countryside Act 2000
- Natural Environment and Rural Communities Act 2006
- Neighbourhood Planning Act 2017
- Noise Insulation Regulations 1975
- The Planning Act 2008
- Planning (Hazardous Substances) Act 1990
- Planning (Listed Buildings and Conservation Areas) Act 1990
- Pollution Prevention and Control Act 1999
- Protection of Badgers Act 1992

Relevant Legislation

- Town and Country Planning Act 1990
- Waste (England and Wales) Regulations 2011
- Waste Electrical and Electronic Equipment Regulations 2013
- Water Abstraction and Impounding (Exemptions) Regulations 2017
- Water Act 2003
- Water Act 2014
- Water Framework Directive (2000/60/EC)
- Water Framework Directive (Standards and Classification) Directions (England and Wales) 2015
- Water Environment (Water Framework Directive) (England and Wales) Regulations 2017
- Water Industry Act 1991
- Water Resources (Abstraction and Impounding) Regulations 2006
- Water Resources Act 1991
- Water Supply (Water Quality) Regulations 2018
- Wild Mammals (Protection) Act 1996
- Wildlife and Countryside Act 1981

Climate Change Act 2008

The Climate Change Act 2008 establishes statutory climate change projections and carbon budgets.

Equality Act 2010

This establishes a duty (the Public Sector Equality Duty) to eliminate discrimination, advance equality of opportunity and foster good relations between persons who share a protected characteristic and persons who do not.

Human Rights Act 1998

The consideration of the land rights power requested by the applicant can engage various articles under the Human Rights Act 1998.

National Policy

Overarching National Policy Statement for Energy (NPS EN-1) (dated November 2023, designated on 17 January 2024)

NPS EN-1 sets out the need for new nationally significant electricity infrastructure and the Critical National Priority for low carbon infrastructure, including solar photovoltaic electricity generating stations. It sets out general principles and generic impacts to be considered in considering applications for energy Nationally Significant Infrastructure Projects (NSIPs). All other energy National Policy Statements sit under the policy framework that it provides.

National Policy Statement for Renewable Energy (NPS EN-3) (dated November 2023, designated on 17 January 2024)

NPS EN-3 details assessment criteria specific to different types of renewable energy infrastructure, including energy from solar photovoltaic electricity generating stations. The assessment criteria for energy from solar photovoltaic generation proposals include impacts relating to site selection and design, climate change, biodiversity, landscape and visual, cultural heritage, traffic, and noise and vibration.

National Policy Statement for Electricity Networks Infrastructure (NPS EN-5) (dated November 2023, designated on 17 January 2024)

NPS EN-5, amongst other things, provides policy for underground electricity distribution systems that constitute Associated Development to a solar photovoltaic NSIP.

National Policy

Other national policy and guidance

- The National Planning Policy Framework: Energy White Paper: powering our net-zero future (HM Government, 2020)
- Net Zero Strategy: Build Back Greener (HM Government, 2021)
- Carbon Budget and Growth Delivery Plan (UK Government, 2025)
- The Seventh Carbon Budget (UK CCC, 2025)
- Powering up Britain: the net-zero growth plan (HM Government, 2023)
- British Energy Security Strategy (HM Government, 2022)
- Future Energy Scenarios: ESO pathways to Net Zero (ESO, 2024)
- The UK's Modern Industrial Strategy (UK Government, 2025)
- The Clean Growth Strategy: Leading the Way to a Low Carbon Future (HM Government, 2018)
- Clean Power 2030 Action Plan (UK Government, 2024)
- UK Infrastructure: A 10 Year Strategy (HM Treasury; NI&STA, 2025)
- A Green Future: Our 25 Year Plan to Improve the Environment (HM Government, 2018)
- Environmental Improvement Plan (DEFRA, 2023)
- Written Ministerial Statement (WMS) 'Building the homes we need' (July 2024)
- Written Ministerial Statement (WMS) 'Solar and Protecting our Food Security and Best Most Versatile (BMV) Land (May 2024).
- Solar Roadmap: United Kingdom Powered by Solar (July 2025)

Relevant Local Policies	
North Kesteven District Council	Central Lincolnshire Local Plan 2023-2043
Lincolnshire County Council	Central Lincolnshire Local Plan 2023-2043
Boston Borough Council	South East Lincolnshire Local Plan 2011-2036

APPENDIX D: ABBREVIATIONS LIST

Abbreviation	Definition
AC	Alternating Current
AADT	Annual Average Daily Traffic
AEoI	Adverse effect on integrity
AIL(s)	Abnormal Indivisible Load
ALC	Agricultural Land Classification
AMS	Archaeological Mitigation Strategy
ANCB	Appropriate Nature Conservation Body
AoI	Area of Influence
AP	Affected Person
APFP Regs	The Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009
AQMA	Air Quality Management Area
ATC	Air Traffic Control
ARC	Anti-Reflective Coating
BBC	Boston Borough Council
BESS	Battery Energy Storage System
BMV	Best and Most Versatile
BNG	Biodiversity Net Gain
BoR	Book of Reference
BS	British Standard
BSMP	Battery Safety Management Plan
CA	Compulsory Acquisition
CA Guidance	Planning Act 2008: guidance related to procedures for the compulsory acquisition of land
CAA	Civil Aviation Authority
CAH	Compulsory Acquisition Hearing
CCTV	Closed-circuit television
CSHM	Conceptual Site Hydrogeological Model

Abbreviation	Definition
CEMP	Construction Environmental Management Plan
CIEEM	Chartered Institute of Ecology and Environmental Management
CLLP	Central Lincolnshire Local Plan
CNP	Critical National Priority
CO2	Carbon Dioxide
COPA	Control of Pollution Act 1974
CTMP	Construction Traffic Management Plan
D	Deadline
DC	Direct current
dB	Decibel
DCO	Development Consent Order
dDCO	Draft Development Consent Order
DAAD	Design and Access Approach Document
DEFRA	Department for the Environment, Food and Rural Affairs
DEMP	Decommissioning Environmental Management Plan
DESNZ	Department for Energy Security and Net Zero
DfT	Department for Transport
EA	Environment Agency
EEA	European Economic Area
EIA	Environmental Impact Assessment
EIA Regulations	The Infrastructure Planning (Environmental Impact Assessment) Regulations 2017
EM	Explanatory Memorandum
EPR	The Infrastructure Planning (Examination Procedure) Rules 2010
EPS	European Protected Species
ES	Environmental Statement
ESR	Existing Sensitive Receptors
EU	European Union

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Abbreviation	Definition
ExA	Examining Authority
ExQ1	Examining Authority's First Written Questions
ExQ2	Examining Authority's Second Written Questions
ExQ3	Examining Authority's Third Written Questions
FRA	Flood Risk Assessment
FTE	full time equivalent
GHG	Greenhouse Gas
GVA	Gross Value Added
GW	Gigawatt
ha	Hectare
Habitats Regulations	The Conservation of Habitats and Species Regulations 2017
HDD	Horizontal Directional Drilling
HE	Historic England
HER	Historic Environment Records
HGV	Heavy Goods Vehicle
HLA	Host Local Authorities
HRA	Habitats Regulation Assessment
HSE	Health and Safety Executive
IAP1	Initial Assessment of Principal Issues
IDB	Internal Drainage Board
IEMA	Institute of Environmental Management and Assessment
INNS	Invasive Non-Native Species
IP	Interested Party
IROPI	Imperative reasons of overriding public interest
ISH	Issue Specific Hearing
kg	Kilogram
km	Kilometre
kV	Kilovolts

Abbreviation	Definition
LA	Local Authority
LCC	Lincolnshire County Council
LCA	Landscape Character Area
LEMP	Landscape and Ecological Management Plan
LHA	Local Highways Authority
LIR	Local Impact Report
LLFA	Lead Local Flood Authority
LNR	Local Nature Reserve
LOAEL	Lowest Observable Adverse Effect Level
LPA	Local Planning Authority
LSE	Likely Significant Effect
LTP	Local Transport Plan
LV	Limit Value
LVIA	Landscape and Visual Impact Assessment
LWS	Local Wildlife Site
m	Metre
MHCLG	Ministry of Housing, Communities and Local Government
MoD	Ministry of Defence
MW	Megawatts
MWh	Megawatt hours
NCA	National Character Areas
NE	Natural England
NGET	National Grid Electricity Transmission
NKDC	North Kesteven District Council
NIA	Noise Important Area
NMU(s)	Non-motorised users
NO2	Nitrogen Dioxide
NPPF	National Planning Policy Framework
NPSE	Noise Policy Statement for England

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Abbreviation	Definition
NPS	National Policy Statement
NPS EN-1	Overarching National Policy Statement for Energy
NPS EN-1 2025	Overarching National Policy Statement for Energy (2025)
NPS EN-3	National Policy Statement for Renewable Energy Infrastructure
NPS EN-3 2025	Overarching National Policy Statement for Energy (2025)
NPS EN-5	National Policy Statement for Electricity Networks Infrastructure
NPS EN-5 2025	National Policy Statement for Electricity Networks Infrastructure (2025)
NSIP	Nationally Significant Infrastructure Project
OEMP	Operational Environmental Management Plan
OFH	Open Floor Hearing
PA2008	Planning Act 2008
PD	Procedural Decision
PM	Preliminary Meeting
PP	Protective Provision
PPG	Planning Practice Guidance
PRoW	Public Right of Way
PSED	Public sector equality duty
PV	Photovoltaic
R	Requirement
rDCO	Recommended Development Consent Order
RIES	Report on the Implications for European Sites
RR	Relevant Representation
RVAA	Residential Visual Amenity Assessment
s	Section
SAC	Special Area of Conservation
SELLP	South East Lincolnshire Local Plan 2011-2036
SLA	Special Landscape Area

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Abbreviation	Definition
SM	Scheduled Monument
SMP	Soil Management Plan
SNCB	Statutory Nature Conservation Bodies
SOAEL	Significant Observed Adverse Effect Levels
SoCG	Statement of Common Ground
SoR	Statement of Reasons
SoS	Secretary of State for Energy Security and Net Zero
SoSHCLG	Secretary of State for Housing, Communities and Local Government
SPA	Special Protection Area
SPD	Supplementary Planning Document
SPI	Species of Principal Importance
SPZ	Source Protection Zone
SRN	Strategic Road Network
SSSI	Site of Special Scientific Interest
STA	Sequential Test Assessment
SuDS	Sustainable Drainage Systems
SWMP	Site Waste Management Plan
TP	Temporary Possession
UK	United Kingdom
UKHSA	UK Health Security Agency
USI	Unaccompanied Site Inspection
WFD Regulations	Water Environment (Water Framework Directive) (England and Wales) Regulations 2017
WFD	Water Framework Directive
WHS	World Heritage Site
WR	Written Representation
WRS	Waste and Recycling Strategy
WSI	Written Scheme of Investigation

Abbreviation	Definition
Zol	Zone of Influence
ZTV	Zone of Theoretical Visibility