



The Planning Inspectorate



The Planning Inspectorate  
Yr Arolygiaeth Gynllunio

The Planning Act 2008

## **The Fenwick Solar Farm**

Examining Authority's/ Inspector's Report  
of Findings and Conclusions

and

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

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Examining Authority

**Rory Cridland** LLM, Solicitor (Lead member)

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18 November 2025

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# OVERVIEW

File Ref: EN010152

The application, dated 31 October 2024, was made under section 37 of the Planning Act 2008 and was received in full by the Planning Inspectorate on 1 November 2024.

The applicant is Fenwick Solar Project Limited

The application was accepted for examination on 29 November 2024.

The examination of the application began on 19 March 2025 and was completed on 3 September 2025.

The development proposed comprises the construction, operation, maintenance and decommissioning of a solar photovoltaic electricity generating facility, with a total capacity exceeding 50 megawatts together with a battery energy storage system and an export and import connection to the national grid (via the existing National Grid Thorpe Marsh substation) and other associated development.

## **Summary of Recommendation:**

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

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**ERRATA SHEET – FENWICK SOLAR FARM PROJECT Ref. EN010152**

**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 18 November 2025**

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

<b>Vol</b>	<b>PDF Page No.</b>	<b>Para</b>	<b>Error</b>	<b>Correction</b>
	<b>23</b>	3.2.73	Typographical – missing word	Add “weight” after “very great/substantial”
	<b>26</b>	3.3.26 (third bullet)	Typographical – spelling	Replace “planning” with “planting”
	<b>136</b>	7.2.3	Typographical – missing word	Add “recently” after “adopted in the most”

# **1. INTRODUCTION**

## **1.1. BACKGROUND TO THE EXAMINATION**

- 1.1.1. An application (the application) for the Fenwick Solar Farm project (the proposed development), was submitted by Fenwick Solar Project Limited (the applicant) to the Planning Inspectorate on 1 November 2024 under section (s) 37 of the Planning Act 2008 (PA2008) and accepted for examination under s55 of the PA2008 on 29 November 2024. 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 proposed development is for the construction, operation, maintenance and decommissioning of a solar photovoltaic (PV) electricity generating facility, with a total capacity exceeding 50 megawatts (MW) together with a battery energy storage system (BESS) and an export and import connection to the national grid (via the existing National Grid Thorpe Marsh substation). The proposed development is a generating station and falls within s14(1) of the PA2008 and meets the definition of a Nationally Significant Infrastructure Project (NSIP) set out in s15(2) of the PA2008. As such, the proposed development requires development consent in accordance with s31 of the PA2008.
- 1.1.3. The legislative tests for whether the proposed development is a NSIP were considered by the Secretary of State for Levelling Up, Housing and Communities in deciding whether to accept the application for examination in accordance with s55 of the PA2008 [\[PD-002\]](#).
- 1.1.4. The [Examination Library](#) provides a record of all application documents and submissions to the examination, each of which is given a unique reference number (for example [APP-001]). The reference numbers are used throughout this report, and hyperlinks are included to allow the reader to access them directly.
- 1.1.5. This report does not contain extensive summaries of the documents and representations received. Readers are referred to relevant material using linked EL references. Full regard has been had to all such material and to all important and relevant matters arising from it in all conclusions drawn by the ExA and the recommendation made in this report.

## **1.2. APPOINTMENT OF THE EXAMINING AUTHORITY**

- 1.2.1. On 28 January 2025 Mr Rory Cridland and Mrs Samantha Murphy were appointed as the ExA for the application under s61 and s65 of the PA2008 [\[PD-004\]](#).

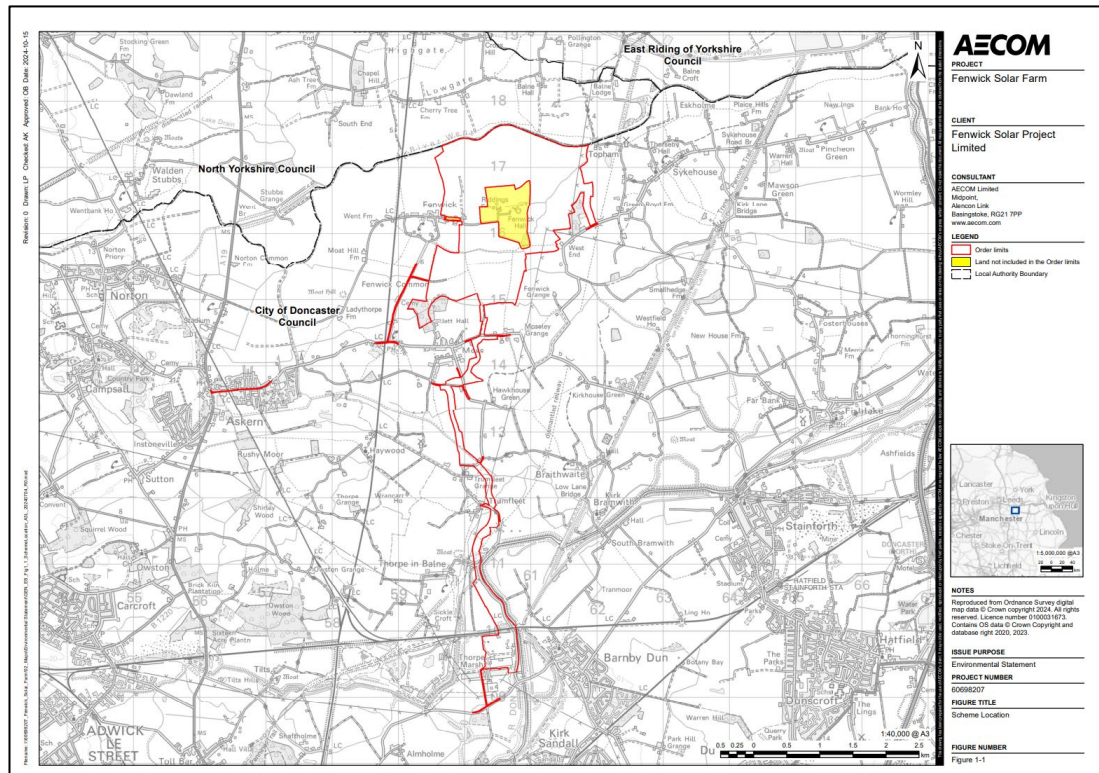
## **1.3. THE APPLICATION**

### **LOCATION OF THE PROPOSED DEVELOPMENT**

- 1.3.1. The location of the proposed development is shown in the Location Plan [\[APP-069\]](#) (extract shown in Figure 1 below) and the Land Plan [\[APP-006\]](#). The site lies within the City of Doncaster administrative area and is wholly in England.



**Figure 1: Location Plan**



(Source: ES Figure 1-1 (Scheme Location) [[APP-069](#)])

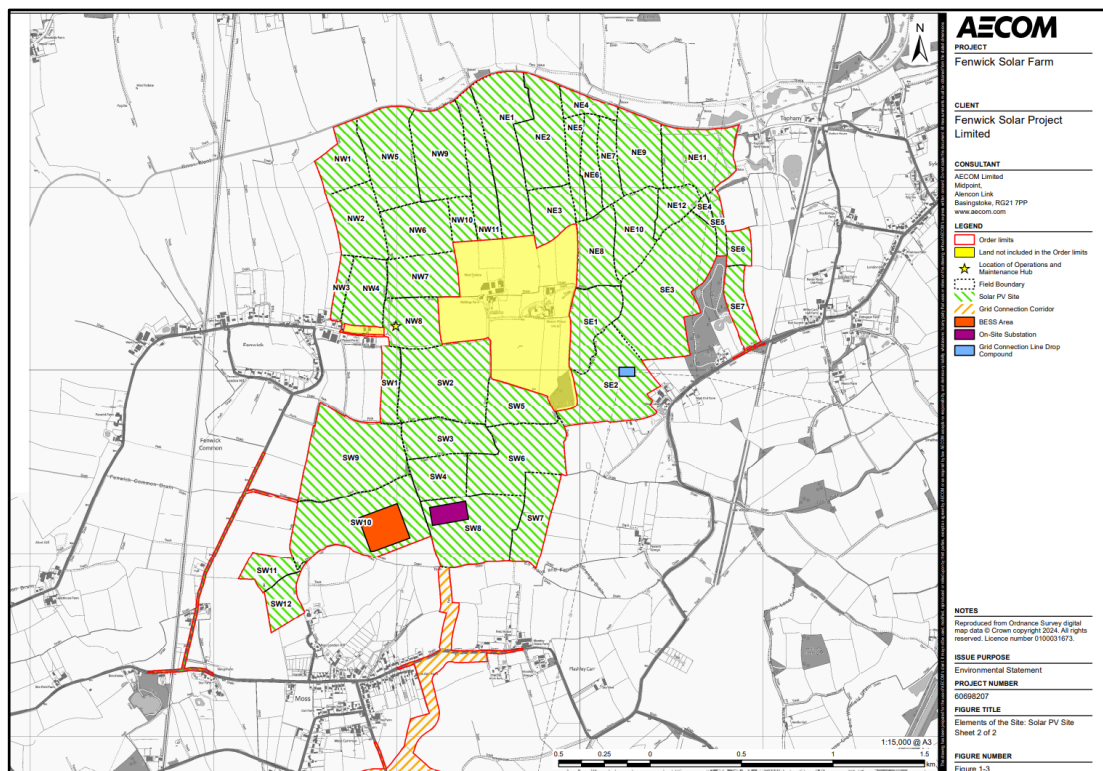
- 1.3.2. Environmental Statement (ES) Chapter 2 (The Scheme) [[APP-054](#)] and the Planning Statement [[APP-190](#)] provide a detailed description of the characteristics of the site and the surrounding area.
- 1.3.3. In summary, the site is approximately 509 hectares (ha) of mostly flat agricultural land under arable production with some areas of pasture, interspersed with individual trees, hedgerows, tree belts and farm access tracks. It comprises approximately 407ha for the solar PV site, and the grid connection corridor (GCC) which stretches around 6.3 kilometres (km) in length from the solar PV site to the existing National Grid Thorpe Marsh substation. The Order limits also includes a section of public highway at the junction of the A19 and Station Road (C53), approximately 3km to the west in the town of Askern to allow for abnormal indivisible load (AIL) vehicle access and escort.
- 1.3.4. The River Went marks the northern boundary of the solar PV site. The River Don skirts along the eastern boundary of the GCC. The village of Fenwick is located to the west of the solar PV site. The villages of Moss, Topham and Skyehouse are located approximately 1km to the south and east respectively.
- 1.3.5. There are no international, national or regionally designated nature conservation sites, no designated heritage assets or international, national or regional landscape designations within the Order limits. A high-pressure fuel pipeline crosses the northwestern corner of the solar PV site. A Network Rail freight line crosses in an east/ west direction north of the existing National Grid Thorpe Marsh substation. The M62 is approximately 4km to the north and the M18 approximately 7km to the east of the solar PV site respectively. Moss Road (C53) runs in an east/ west direction south of the solar PV site from the A19 through Moss and eastwards to East Yorkshire.

- 1.3.6. The majority of the site is located within Flood Zone 1 (low risk of flooding) with the northern and eastern parts of the solar PV site lying within Flood Zone 2 (medium risk of flooding) with pockets of Flood Zone 3 (high risk of flooding). The northern section of the GCC lies within Flood Zone 2 and the southern section of the GCC lies within Flood Zone 3. The existing Thorpe Marsh substation lies within both Flood Zone 2 and 3.

## DESCRIPTION OF THE PROPOSED DEVELOPMENT

- 1.3.7. Schedule 1 of the applicant's final draft Development Consent Order (dDCO) [REP5-004] sets out the formal description of the various elements of the proposed development. These are summarised below, and their locations are shown on the Works Plan [APP-214]. Further details can be found in ES Chapter 2 (The Scheme) [APP-054].
- 1.3.8. An extract showing the different elements of the site, together with field numbers is shown in Figure 2 below:

**Figure 2: Elements of the Site and field numbers**



(Source: ES Fig 1-3 [APP-071])

- 1.3.9. In summary, the proposed development works comprise:
- Work No. 1 – a ground mounted solar PV generating station with a gross electrical output capacity of over 50MW including solar panels, field stations including inverters, transformers, switchgear and monitoring and control systems together with associated development within the meaning of section 115(2) of the PA2008;
  - Work No. 2 – an energy storage facility comprising of a BESS, transformers and associated bunding, inverters, switch gear, power conversion systems and

ancillary equipment; monitoring and control systems, heating, ventilation and air conditioning systems, electrical cabling, bunded impermeable surface to manage surface water drainage; fire safety infrastructure, containers and related ancillary equipment;

- Work No. 3 – construction of an onsite substation of up to 400 kilovolt (kV) along with associated switch room buildings and ancillary equipment;
- Work No. 4 – works to the National Grid Thorpe Marsh substation to facilitate connection of the proposed development to the National Electricity Transmission System (NETS);
- Work No. 5 – works in connection with laying electrical cables connecting Works No. 1, 2, 3 and 4 to one another, laying electrical cables connecting Work No.3 to an existing on site 400kV overhead line tower, landscaping, biodiversity and heritage mitigation and enhancement measures, earthworks; temporary footpath diversions and permissive paths, hardstanding and parking areas; drainage (including sustainable drainage systems (SuDS)) and irrigation infrastructure, fencing, gates, boundary treatment and other means of enclosure; security apparatus, improvement of tracks and other means of access, construction and decommissioning compounds; and works to divert and underground existing electrical overhead lines;
- Work No. 6 – provision of up to five temporary construction and decommissioning compounds including areas of hardstanding, car parking, site and welfare offices, workshops, security infrastructure (including cameras, perimeter fencing and lighting), areas to store materials and equipment, site drainage/ waste management infrastructure (include sewerage) and electricity, water, waste water and telecommunications connections;
- Work No. 7 – development of operations and maintenance buildings including parking areas;
- Work No. 8 – works to facilitate permanent and temporary access;
- Work No. 9 – works to create and maintain areas of habitat management including landscape and biodiversity enhancement measures; habitat creation and management; construction of drainage infrastructure and means of access.

### **Associated Development**

#### **The Battery Energy Storage System (Work No. 2)**

- 1.3.10. The proposed development would include a BESS area in field SW10. The main purpose of the BESS is to provide peak generation electric energy time shifting and grid balancing services to the grid by capturing electricity generated from the PV panels and storing it in the batteries. It would then dispatch the stored energy to the electricity grid when it is most required.
- 1.3.11. In addition, it would also store surplus energy from the grid and provide balancing services to the NETS to help manage the increasing penetration of (variable) renewable generation on the transmission network.
- 1.3.12. The BESS batteries would be housed in individual shipping style containers, mounted on concrete foundations, compacted gravel or piles. They would also

house associated equipment including transformers and bunding; inverters, switch gear, power conversion systems and ancillary equipment; monitoring and control systems; heating, ventilation and air conditioning systems; electrical cables; fire safety infrastructure; and containers or similar structures to house spare parts and materials required for the day-to-day operation of the BESS facility.

- 1.3.13. The applicant explains that the design and precise number of individual BESS units is subject to further development but that the maximum number of containers would be 432 (each being a maximum of 3.5m high). This is secured as a maximum parameter in the outline design parameters statement (ODPS) [\[REP2-027\]](#). However, in the event that the BESS is not built out, the application provides for this area to be used to house additional PV Arrays.

#### **On-site Substation (Work No. 3)**

- 1.3.14. A 400kV on-site substation (OSS) would be connected to the field stations and the BESS and would step up the voltage from 3kV to 400kV ready for export to the existing Thorpe Marsh substation or step down the voltage to allow for excess electricity in the grid to be stored in the BESS. It would comprise a single transformer bay, associated electrical infrastructure including busbar, circuit breakers and isolators, car parking and control and metering buildings. It would also include a separate control building (with welfare facilities) and would be securely fenced with galvanised palisade security fencing with mandatory warning signage.

#### **The Grid Connection (Work No. 4 or Work No 5b)**

- 1.3.15. The connection to the NETS would either be by underground cabling along the GCC or via a grid connection line drop (GCLD) in field SE2. Where the GCLD option is selected, it would supersede the requirement for the GCC with cabling being confined to the solar PV site and the GCC would no longer form part of the proposed development. The optionality for the grid connection is controlled by Article 3(3) and Schedule 2, requirement 4 of the dDCO.
- 1.3.16. The GCC would have an average width of 100m with wider areas to allow for additional working area for horizontal directional drilling (HDD). It is anticipated that the works to the solar PV site and the GCC would commence in tandem. The GCC would require approximately 12 months, and the solar PV site would require approximately 24 months. Installation of the cabling would use a mixture of trenched and trenchless crossing techniques depending on the ground conditions and environmental sensitivities.

#### **Other Associated Development**

- 1.3.17. The application also includes other associated development including Work Nos. 5, 6, 7, 8 and 9.
- 1.3.18. Further associated development within the Order limits is also proposed as may be necessary or expedient for the purposes of, or in connection with, the proposed development.
- 1.3.19. It is anticipated the operational phase would be for approximately 40 years with the decommissioning phase commencing no earlier than 2070.



## RELEVANT PLANNING HISTORY

- 1.3.20. The relevant planning history is set out within the Planning Statement [\[APP-190\]](#). For the Order limits, this is relatively limited due to the predominantly agricultural use of the land. Applications in proximity to the solar PV site include the demolition of grade II listed Lily Hall and the erection of one replacement residential farmworker's dwelling and associated works at Riddings Farm.
- 1.3.21. Applications in proximity to the GCC include the construction of a gas fired combined cycle gas turbine electricity generating station at the former Thorpe Marsh Power Station, the construction and operation of an energy hub at Thorpe Marsh Ash Fields, the installation of a BESS at land at Fordstead Lane in Almholme, and the installation of an underground cable to Thorpe Bank via Armthorpe Lane.

## 1.4. THE EXAMINATION

### RELEVANT REPRESENTATIONS

- 1.4.1. A total of 55 relevant representations (RR) were submitted including statutory consultees, the local authority, the parish council, non-statutory organisations and persons with an interest in the land as well as members of the public. The majority of RR received from members of the public oppose the proposed development with one expressing support.

### START OF THE EXAMINATION

- 1.4.2. The preliminary meeting (PM) [\[EV1-001\]](#) took place on 19 March 2025. The Rule 6 letter [\[PD-005\]](#) set out a provisional timetable for examining the application, an initial assessment of principal issues (IAPI) and several procedural decisions outlining additional information that would be required from the applicant during the examination. Following the PM, the examination timetable was finalised and published in the Rule 8 Letter dated 31 March 2025 [\[PD-006\]](#).
- 1.4.3. The examination began on 19 March 2025 and concluded on 3 September 2025. The principal components of, and events surrounding, the examination are summarised below.
- 1.4.4. The following parties notified us that they wished to formally withdraw their objection or representation:
- Historic England [\[PD1-003\]](#)
  - Exolum Pipeline Systems Limited [\[REP2-074\]](#)
  - Northern Powergrid (Yorkshire) Plc. [\[REP4-044\]](#)
  - National Grid Electricity Transmission [\[REP1-051\]](#)

### PROCEDURAL DECISIONS

- 1.4.5. The procedural decisions taken by us are recorded in the EL referenced [\[PD-\]](#). They detail our decisions relating to the procedure of the examination and had no bearing on our consideration of the planning merits of the proposed development.

### STATEMENTS OF COMMON GROUND

- 1.4.6. We requested the submission of Statements of Common Ground (SoCG) between the applicant and various IPs in our Rule 6 letter, Annex F [\[PD-005\]](#). By the close of the examination, the following bodies had concluded and signed SoCG with the applicant:

- City of Doncaster Council (CDC) [\[REP5-011\]](#)
- The Environment Agency (EA) [\[REP5-013\]](#)
- Natural England (NE) [\[REP1-035\]](#)
- National Highways [\[REP1-034\]](#)
- Yorkshire Wildlife Trust [\[REP2-050\]](#).

1.4.7. The SoCGs with the following bodies remained unsigned at the end of the Examination:

- Burnet Heritage Trust [\[REP5-015\]](#)
- South Yorkshire Fire and Rescue Service [\[REP3-023\]](#)

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

## WRITTEN QUESTIONS

1.4.9. We asked two rounds of written questions:

- ExQ1 9 May 2025 [\[PD-007\]](#)
- ExQ2 9 July 2025 [\[PD-010\]](#)

1.4.10. We made the following requests for further information and comments under Rule 17 of the Infrastructure Planning (Examination Procedure) Rules 2010:

- 1 August 2025 [\[PD-013\]](#) - where we sought responses from the applicant to comments made by NE at deadline 4 [\[REP4-042\]](#) regarding Pink-footed geese, further information from the applicant with regards to operational waste management; and made a request for the applicant to fully consolidate versions of amended documents.

## SITE INSPECTIONS

1.4.11. We carried out the following unaccompanied site inspections (USIs):

- 18 March 2025. A note of the USI can be found at [\[EV4-001\]](#).
- 18 June 2025. A note of the USI can be found at [\[EV4-002\]](#).

## HEARINGS

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

1.4.13. The following ISHs were held:

- ISH1 on the dDCO on 20 March 2025. The agenda can be found at [\[EV3-001\]](#) and recordings can be found at [\[EV3-003\]](#) and [\[EV3-005\]](#).
- ISH2 on the dDCO on 17 June 2025. The agenda can be found at [\[EV6-001\]](#) and a recording is available at [\[EV6-002\]](#).
- ISH3 on environmental matters on 18 June 2025. The agenda can be found at [\[EV6-001\]](#) and a recording can be found at [\[EV6-004\]](#).

1.4.14. A CAH was held on 17 June 2025. The agenda is at [\[EV5-001\]](#) and a recording is available at [\[EV5-002\]](#).

- 1.4.15. An OFH was held on 19 March 2025. The agenda is at [\[EV2-001\]](#) and a recording is available at [\[EV2-002\]](#).

## **1.5. CHANGES TO THE APPLICATION**

- 1.5.1. Changes to the key application documents, including the wording of the dDCO, were submitted and updated during the examination. The changes sought to address points raised by Interested Parties (IPs) and the ExA and to update or provide additional information resulting from changes and discussions that had occurred during the examination.
- 1.5.2. The applicant's changes to the application documents, together with any additional information submitted, are detailed in the Guide to the Application submitted at deadline 5 [\[REP5-002\]](#). This provides a full guide to all documents submitted as part of the application and was updated at each deadline when new or revised documents were submitted.

## **1.6. PRIVATE AGREEMENTS**

- 1.6.1. By the close of the examination, some parties had confirmed that, during the examination, they had reached private agreements with the applicant regarding protection of their assets and/ or interests. These are referred to, where relevant, in subsequent sections of this report.

## **1.7. OTHER 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 Consents and Agreements Position Statement [\[APP-017\]](#).

## **1.8. STRUCTURE OF THIS REPORT**

- 1.8.1. The structure of the remainder of this report is as follows:
- [Chapter 2](#) identifies how the application is to be determined and summarises the key legislation and policy context that applies to the decision.
  - [Chapter 3](#) sets out the findings and conclusions in relation to the individual planning issues that arose from the application and during the examination.
  - [Chapter 4](#) summarises considerations arising from Habitats Regulations Assessment (HRA).
  - [Chapter 5](#) sets out the balance of planning considerations arising from Chapters 2, 3 and 4 in the light of important and relevant factual, legal and policy considerations.
  - [Chapter 6](#) sets out the ExA's examination of land rights and related matters.
  - [Chapter 7](#) considers the implications of the matters arising from the preceding chapters for the Development Consent Order (DCO).
  - [Chapter 8](#) summarises all relevant considerations and sets out the ExA's recommendation to the SoS.
- 1.8.2. This report is supported by the following appendices:
- [Appendix A](#) – Reference Tables
  - [Appendix B](#) – List of Abbreviations
  - [Appendix C](#) – The Recommended DCO

## **2. HOW THE APPLICATION IS DETERMINED**

### **2.1. INTRODUCTION**

- 2.1.1. This chapter identifies the key legislation, policy and Local Impact Reports (LIRs) that our recommendation is made against. Additional detail is provided in [Appendix A](#) to this report.

### **2.2. LEGISLATION AND POLICY**

#### **PLANNING ACT 2008**

- 2.2.1. The PA2008 provides for two different decision-making processes for NSIP applications; firstly, where a relevant National Policy Statement (NPS) has been designated and has effect (s104); and secondly, where there is no designated NPS or there is a designated NPS, but it does not have effect (s105).
- 2.2.2. The proposed development is a solar PV electricity generating station together with associated development, including a BESS, electricity substation and grid connection. All of these elements are covered by designated NPSs, namely NPS EN-1, NPS EN-3 and NPS EN-5. As such, the proposed development falls within s104 of the PA2008.
- 2.2.3. Section 104(2) of the PA2008 sets out the matters to which the SoS must have regard when making a decision. These include:
- any relevant NPS;
  - any duly submitted LIR;
  - any matters prescribed in relation to the development; and
  - any other matters the SoS thinks are both important and relevant to the decision.
- 2.2.4. 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.
- 2.2.5. This report sets out our findings, conclusions and recommendations taking these matters into account and applying s104 of the PA2008.



## **OTHER LEGISLATION**

- 2.2.6. A full list of relevant legislation, including the Equality Act 2010, Human Rights Act 1998 and the Climate Change Act 2008 (as amended), can be found in [Appendix A](#) of this Report.
- 2.2.7. In reaching our findings and recommendations, we have considered all applicable legislation.

## **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, we consider that the following NPSs are relevant to the application: NPS EN-1, NPS EN-3 and NPS EN-5. These NPSs form the primary policy context for this examination.
- 2.3.2. This report sets out our findings, conclusions and recommendation 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 here. Specific provisions of the NPSs are considered further in [Chapter 3](#) of this report where relevant to individual topic matters.

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

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

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

- 2.3.4. NPS EN-3 has brought solar PV schemes with a generating capacity of over 50MW within its remit. It sets out additional policies for renewable energy infrastructure that should be read in addition to the overarching policies set out in NPS EN-1. Specifically, Section 2.10 of NPS EN-3 is concerned with impacts and other matters which are specific to solar PV, including site selection, climate change adaptation and resilience, good design and flexibility in project details.
- 2.3.5. NPS EN-3 also covers situations where the impact or issue is generic and is dealt with in NPS EN-1 but there are further specific considerations arising from the technologies covered. Considerations in the case of solar PV include site location factors, site capacity, site layout, design and appearance, project lifetime and decommissioning as well as environmental impacts.

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

- 2.3.6. NPS EN-5 covers the long-distance transmission system (400kV and 275kV lines) and the lower voltage distribution system (132kV to 230v lines from transmission substations to the end user); and associated infrastructure, for example substations and converter stations that facilitate the conversion between direct and alternating current (AC).
- 2.3.7. The application includes a new OSS (Work No.3) which would be within a fenced compound within the solar PV site. Grid connection cables connecting Work No. 3

to the National Grid Thorpe Marsh Substation (Work No.4) or cables for the grid connection line drop (Work No.5) both comprising three 400kV single core AC cables would be installed. These elements of the proposed development, as associated development, would come within the scope of NPS EN-5.

- 2.3.8. NSP EN-5 includes additional policy on: factors influencing site selection and design; biodiversity and geological conservation; landscape and visual; noise and vibration; Electric and Magnetic Fields and Sulphur Hexafluoride.

## **2.4. OTHER NATIONAL POLICY**

- 2.4.1. Other relevant Government policy has been taken into account, including the following:

- Noise Policy Statement for England (2010)
- Written Ministerial Statement (WMS) by the former Secretary of State for Communities and Local Government (March 2015)
- Net Zero: The UK's Contribution to Stopping Global Warming Emissions (2019)
- Ten Point Plan for a Green Industrial Revolution (2020)
- Energy White Paper: Powering our Net Zero Future (2020)
- Net Zero Strategy: Build Back Greener (2021)
- British Energy Security Strategy (2022)
- Powering up Britain (DESNZ, 2023)
- Environment Improvement Plan (2023)
- Clean Power 2030 Action Plan (2024)
- WMS 'Solar and protecting our Food Security and Best and Most Versatile (BMV) Land (May 2024)
- The National Planning Policy Framework (December 2024) (NPPF) and associated Planning Practice Guidance (PPG)
- Solar roadmap: UK Powered by solar (2025)

## **2.5. LOCAL IMPACT REPORTS**

- 2.5.1. A LIR was submitted into the examination at deadline 1 by CDC [\[REP1-048\]](#). Its content has been considered throughout the examination and in this report. It must be considered during the decision by the SoS pursuant to PA2008 s104(2)(b).
- 2.5.2. The issues it raises are considered in further detail in relation to relevant topic matters in [Chapter 3](#) of this report.
- 2.5.3. 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. Table A4 of [Appendix A](#) lists the individual local policies that are relevant to the proposed development.

## **2.6. ENVIRONMENTAL IMPACT ASSESSMENT**

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

- 2.6.2. On 1 June 2023, the applicant submitted a Scoping Report under Regulation 10 of the EIA Regulations in order to request an opinion about the scope of the ES to be prepared (the Scoping Opinion) [\[APP-132\]](#).
- 2.6.3. On 11 July 2023, the Planning Inspectorate provided a Scoping Opinion [\[APP-133\]](#).
- 2.6.4. Overall, we are satisfied 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.
- 2.6.5. Furthermore, we are satisfied that changes to the documentation during the examination, including the ES, do not individually or cumulatively undermine the scope and assessment of the ES. [Chapter 3](#) of this report will summarise the significant environmental effects under each topic section.

## **2.7. HABITATS REGULATIONS ASSESSMENT**

- 2.7.1. The SoS is the competent authority for the purposes of the Conservation of Habitats and Species Regulations 2017 (as amended) (Habitats Regulations). The Habitats Regulations were amended by the Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019.
- 2.7.2. The proposed development is one that has been identified as not giving rise to the potential for likely significant effects (LSE) on European sites. A No Significant Effects Report (NSER) [\[REP2-038\]](#) was submitted with the application.
- 2.7.3. As is the convention, and to inform SoS decisions prepared under the PA2008, a separate record of considerations relevant to HRA is set out in [Chapter 4](#) of this report.

## **2.8. TRANSBOUNDARY EFFECTS**

- 2.8.1. A transboundary screening under Regulation 32 of the EIA Regulations was undertaken on behalf of the SoS on 11 July 2023 following the applicant's request for an Environmental Impact Assessment (EIA) Scoping Opinion. No significant effects that could impact on another European Economic Area (EEA) member state in terms of extent, magnitude, probability, duration, frequency or reversibility were identified.
- 2.8.2. A second screening was published on 18 March 2025. Again, no significant effects that could impact on another EEA state were identified.
- 2.8.3. The Regulation 32 duty is an ongoing duty, and on that basis, we have considered whether any facts have emerged to change these screening conclusions, up to the point of closure of the examination. We are satisfied there is no change to the screening conclusions.

## **3. THE PLANNING ISSUES**

### **3.1. INTRODUCTION**

3.1.1. This chapter sets out our findings and conclusions on the planning issues. It is structured to firstly examine the matters of principle, including need, climate change, alternatives and the approach to good design, followed by individual topic headings. The order in which all these section headings are presented should not be taken to imply any order of merit.

3.1.2. In each section, we report on the main issues for each topic. Findings and conclusions are then drawn along with whether the effects weigh for or against the making of the Order on the following scale:

- neutral weight that does not affect the balance of the Order being made;
- a little weight,
- moderate weight,
- great weight, or
- very great weight/ substantial weight.

3.1.3. The conclusions and weights for each topic are then taken forward to Chapter 5 for the overall consideration of the planning balance and the case for development.

3.1.4. Our conclusions take account of all relevant legislation and policy, and of all written and oral submissions. We focus on matters that we consider to be important and relevant to the decision and do not necessarily report on matters that we consider are either not controversial, are agreed between the parties, or are adequately justified by the applicant.

#### **Initial Assessment of Principal Issues**

3.1.5. As required by section (s) 88 of the PA2008 and Rule 5 of the Infrastructure Planning (Examination Procedure) Rules 2010, we carried out an IAPI arising from the application in advance of the PM. This formed an initial assessment of the issues based on the application documents and submitted RR. The list of issues relates to all phases of the proposed development. The IAPI was raised at the PM and no other key topics were identified during the examination. The IAPI can be found in Annex C of the Rule 6 letter [\[PD-005\]](#).

3.1.6. We consider the issues raised by IPs were broadly in line with the IAPI and were subject to written and oral questioning during the examination. We have nevertheless had regard to all submissions from IPs.

#### **The Planning Issues in this Report**

3.1.7. The principal issues considered during the examination fall under the following broad headings:

- The principle of the development
- Landscape and visual impact
- Historic environment
- Biodiversity and ecology
- Traffic and transport
- Agriculture and soils
- Noise and vibration

- Water environment and flood risk
- Socio-economic and recreation effects
- Other planning matters

## 3.2. THE PRINCIPLE OF THE DEVELOPMENT

### Introduction

- 3.2.1. This section covers the need for the proposed development, having regard to its overall scope, scale and output as well as the approach taken to good design, site selection and alternatives. The impact of the proposed development on climate change and the reduction in greenhouse gas (GHG) emissions is an intrinsic part of the need case and is therefore also considered below.

### Policy Context

#### Need

- 3.2.2. NPS EN-1 explicitly includes solar PV generating stations with a capacity of more than 50MW within its scope. It makes clear that the SoS should assess all applications for development consent for such infrastructure on the basis that the government has demonstrated there is an urgent need for it.
- 3.2.3. Furthermore, it advises 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 (NPS EN-1, paragraphs 3.2.6 to 3.2.8). In addition, it recognises the strategic importance of solar generation in the UK's energy generation mix as well as the contribution it can make to achieving net zero, providing security of supply and an affordable, reliable system.
- 3.2.4. Moreover, it recognises the 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 intermittent low carbon generation, including solar, and to provide balancing services to the grid.
- 3.2.5. In addition, it advises that the case for a new connection is demonstrated if the proposed development represents an efficient and economical means of connecting a new generating station to the network (paragraph 3.3.78).
- 3.2.6. The consideration of need in 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 2.10.10).
- 3.2.7. Similarly, NPS EN-5 advises that new network infrastructure is needed to support the development of other technologies, including those in NPS EN-3 (paragraph 1.1.4). In this case, the proposed new substation, cable connections and associated infrastructure come within the scope the NPS EN-5.

#### *The NPPF and Local Development Plan Policies*

- 3.2.8. Chapter 14 of the NPPF indicates that the planning system should support the transition to a low carbon future in a changing climate, taking full account of flood risk and coastal change.

- 3.2.9. Paragraph 168 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.
- 3.2.10. Furthermore, the PPG makes clear that while there are particular planning considerations that relate to large scale solar farms, increasing the amount of energy from renewable sources, including solar, will help ensure the UK has a secure energy supply. It will also help reduce GHG emissions, slow down climate change and stimulate investment in new jobs and businesses.
- 3.2.11. Likewise, Policy 58 of the Doncaster Local Plan (DLP)<sup>1</sup> supports the development of renewable and low carbon energy generation, while seeking to protect the interests of local communities as well as historical, cultural and environmental assets.

### **Climate Change and GHG Emissions**

- 3.2.12. 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 virtue of the Climate Change Act 2008 (2050 Target Amendment) Order 2019.
- 3.2.13. 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.
- 3.2.14. Section 4.10 of NPS EN-1 advises that the resilience of the project to climate change should be assessed in the ES accompanying an application 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 at the time the ES was prepared. It makes clear that applicants should 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.
- 3.2.15. 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 ES.
- 3.2.16. In addition, NPS EN-1 recognises that the Energy White Paper: Powering our net zero future and the British Energy Security Strategy 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.
- 3.2.17. 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.
- 3.2.18. Similar guidance can be found in the NPPF, the PPG as well as the DLP, all of which seek to minimise carbon dioxide emissions and ensure new development is resilient to the impacts of climate change.

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<sup>1</sup> September 2021.

## **Alternatives and Site Selection**

- 3.2.19. 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, 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.
- 3.2.20. Furthermore, given the urgent need for new energy infrastructure, the consideration of alternatives should be carried out in a proportionate manner. As such, NPS EN-1 advises that the SoS should only consider those alternatives that can meet the objectives of the proposed development and have a realistic prospect of delivering the same capacity in the same timescale.
- 3.2.21. Moreover, it advises that the SoS should not refuse an application because there would be fewer adverse impacts from developing similar infrastructure on another suitable site. In addition, it makes clear that alternatives not considered by an applicant should only be considered to the extent that the SoS considers them to be both important and relevant to the decision.
- 3.2.22. NPS EN-3 advises that the government does not seek to direct applicants to particular sites (paragraph 2.3.5) and that the SoS should not use a consecutive approach, such as giving priority to the re-use of previously developed land for renewable developments (paragraph 2.3.9).

## **Good Design**

- 3.2.23. NPS EN-1 and NPS EN-3 make clear that good design is a means by which many policy objectives in the NPSs can be met, for example in terms of siting and use of appropriate technologies to help mitigate impacts.
- 3.2.24. Furthermore, they also make clear that applicants should consider how good design can be applied to a project during the early stages of the project lifecycle. It does, however, also acknowledge that the nature of energy infrastructure development will often limit the extent to which it can contribute to the enhancement of the quality of the area.
- 3.2.25. In addition, NPS EN-3 notes that proposals for renewable energy infrastructure should demonstrate good design, particularly in respect of landscape and visual amenity, co-location and in the approach to mitigation. In doing so, it should take into account several factors including its proximity to available grid capacity, orientation, topography, previous land use, and flood risk.
- 3.2.26. In terms of decision making, NPS EN-1 advises that the SoS needs to be satisfied that energy infrastructure developments are sustainable and, having regard to regulatory and other constraints, are as attractive, durable and adaptable as they can be.

## **The Application**

### **Need**

- 3.2.27. The applicant's need case is set out in its Statement of Need [[APP-192](#)]. In summary, it identifies the urgent need for low carbon electricity generation established in the energy NPSs and considers that the ability of the proposed



development to contribute to meeting that need should be afforded significant weight.

- 3.2.28. Furthermore, it points to the Government's commitment to sustained growth in solar capacity as a key part of its strategy for low-cost decarbonisation of the energy sector, noting that the proposed development is an essential step in meeting the government's objectives – including ensuring security of supply of low cost, renewable energy.
- 3.2.29. Moreover, it draws attention to the role of storage in providing flexibility and balancing services to the NETS, explaining that its main purpose is to provide peak time shifting and grid balancing services to the grid by capturing electricity generated from the PV panels and storing it in the batteries. It would then dispatch the stored energy to the electricity grid when it is most required. It would also store surplus energy from the grid and use it to provide balancing services to the NETS.

### **Climate change and GHG emissions**

- 3.2.30. ES Chapter 6 (Climate Change) [\[APP-224\]](#) sets out the applicant's findings in relation to climate change. It evaluates the whole life impact of GHG emissions arising from the construction, operation and decommissioning of the proposed development in line with the Institute of Environmental Management and Assessment (IEMA<sup>2</sup>) guidance for the assessment of GHGs, climate change resilience and adaption in EIAs.
- 3.2.31. It assesses both direct and indirect emissions and takes into account embodied carbon within construction materials. Furthermore, it considers the downstream impacts of the proposed development, its resilience to the impacts of climate change as well as the combined impact of the proposed development and future climate change on the receiving environment.
- 3.2.32. ES Chapter 6 is supported by ES Appendix 6-2 (Climate Change Risk Assessment) [\[APP-139\]](#) and ES Appendix 6-3 (In-Combination Climate Change Impact Assessment (ICCI) – Environmental Technical Disciplinary Risk Assessment) [\[APP-140\]](#). These consider the climate change risks associated with each phase of the proposed development including extreme weather events, sea level rise, temperature changes, rainfall changes and changes in wind patterns – with no significant risks identified.
- 3.2.33. A full list of the legislation, policy and guidance on climate change considered by the applicant can be found in ES Appendix 6-1 (Legislation, Policy and Guidance (Climate Change)) [\[APP-138\]](#).

### **Mitigation**

- 3.2.34. The proposed development includes a number of embedded design mitigation measures which seek to avoid and reduce impacts and effects on climate change. These include:
- the segregation of construction waste to increase its recyclability
  - adopting the Considerate Constructors Scheme
  - minimising the creation of waste

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<sup>2</sup> Now the Institute of Sustainability and Environmental Professionals (ISEP)



- maximising the use of materials with lower levels of embodied carbon
- minimising the number of Heavy Goods Vehicles (HGVs) and other vehicles on the local road network
- ensuring conformity with European Union vehicle emissions standards for the types of plant and vehicles used
- encouraging the use of lower carbon modes of transportation

3.2.35. Further details of the embedded mitigation measures can be found in Section 6.6 of ES Chapter 6 (Climate Change) [APP-224] and are identified in the framework Construction Environmental Management Plan (fCEMP) [REP3-013], the framework Operational Environment Management Plan (fOEMP) [REP5-007] the framework Construction Traffic Management Plan (fCTMP) [REP4-027 and APP-207], the framework Landscape and Ecological Management Plan (fLEMP) [REP3-017] and the framework Decommissioning Environmental Management Plan (fDEMP) [REP4-019].

3.2.36. Final, detailed versions of these plans are secured by requirement 6 (Landscape and Ecological Management Plan (LEMP)), requirement 11 (Construction and Environmental Management Plan (CEMP)), requirement 12 (Operational Environmental Management Plan (OEMP)) requirement 13 (Construction Traffic Management Plan (CTMP)) and requirement 18 (Decommissioning Environmental Management Plan (DEMP)) of the dDCO.

3.2.37. A full list of the embedded mitigation measures can be found in the Environmental Commitments and Mitigation Register [REP4-015].

## **Assessment of effects**

### *Construction*

3.2.38. ES Chapter 6 identifies that the greatest source of GHG emissions would arise during the construction stage as a result of embodied carbon from the manufacture of products, with the PV panels and batteries making the largest contribution. Table 6-12 of ES Chapter 6 provides a breakdown of the embodied emissions from the manufacture of materials with total embodied emissions estimated at around 266,278 tonnes of carbon dioxide equivalent (tCO<sub>2</sub>e) [APP-224].

3.2.39. In addition, the applicant has identified additional emissions during construction from the transportation of products, worker commuting, waste (including transport), fuel use and water use. It estimates that worst case total GHG emissions from construction activities would be around 303,740 tCO<sub>2</sub>e annualised, representing around 0.0172% of the UK's 5<sup>th</sup> Carbon Budget.

3.2.40. Overall, the applicant considers that during construction there would be a minor adverse effect on the climate which is not significant in EIA terms.

### *Operation/maintenance*

3.2.41. Table 6-15 of ES Chapter 6 sets out the operational emissions identified during operation and maintenance [APP-224]. In summary, it indicates that during the 40-year operational period, around 97% of total embodied emissions would arise from the replacement of components with the remainder resulting from the transportation of materials, worker transport, grid electricity and water/wastewater. Total operational emissions over the 40-year lifespan are estimated at 237,905 tCO<sub>2</sub>e.

3.2.42. Furthermore, it indicates that GHG savings from displacement would result in the offsetting of construction emissions within 5 years of operation (ES Chapter 6, paragraph 6.7.38). This would result in a considerable reduction in emissions over the proposed development's 40-year lifetime, estimated at around 3.5million tCO<sub>2</sub>e when compared to other forms of fossil fuel generation.

3.2.43. As such, the applicant considers a significant beneficial effect would occur during operation.

#### *Decommissioning*

3.2.44. Turning then to decommissioning, Table 6-18 of ES Chapter 6 sets out the sources of emissions during decommissioning. However, the applicant acknowledges there is a very high degree of uncertainty over the total estimate of GHG emissions produced during this stage. As a result, for the purposes of the assessment, the applicant has taken a conservative approach and assumed that decommissioning emissions from the use of plant, worker travel, water and wastewater consumption would be the same as during construction.

3.2.45. It estimates that around 70% of the materials and components will be recovered at the end-of-life stage, with around 30% going to landfill. However, it notes that this is likely to be a highly conservative estimate as it would expect a higher proportion of materials to be recycled due to developments in both technology and in recycling processes.

3.2.46. While it recognises there would be some GHG emissions resulting from the decommissioning stage, with total emissions estimated at around 1,035 tCO<sub>2</sub>e, it notes that actual emissions are anticipated to be lower due to grid decarbonisation and vehicle electrification in line with the UK's commitment to achieving net zero by 2050. Overall, it considers that while there would be a minor adverse effect, it would not be significant.

#### *Cumulative effects*

3.2.47. Section 6.10 of ES Chapter 6 [\[APP-244\]](#) considers the cumulative GHG emissions from the proposed development together with other committed and planned development and identifies no likely significant adverse effects. It notes that an assessment of GHG emissions is, by its very nature, a cumulative assessment as the main receptor is the global climate. On this basis, the applicant concludes that its ICCI assessment in ES Appendix 6-3 (ICCI Environmental Technical Disciplinary Risk Assessment [\[APP-140\]](#)) is sufficient to capture the effects of the proposed development on climate change.

3.2.48. While the applicant recognises that there may be some cumulative effects from combined GHG emissions during construction, it considers the offset from reduced GHG emissions during the operational phase of the proposed development (when compared to other fossil fuel sources of generation) would considerably outweigh them [\[APP-244\]](#).

#### **Consideration of alternatives and good design**

3.2.49. The applicant's consideration of alternatives is set out in ES Chapter 3 (Alternatives and Design Evolution) [\[APP-055\]](#). This explains how the applicant followed an iterative process, with the proposed development undergoing various stages of design evolution, and consideration given to alternative sites, technologies, layouts,

substation locations, cable routes and connection points before deciding on the proposed development.

- 3.2.50. It explains that site selection was driven by the need for an available grid connection, with the Thorpe Marsh substation being identified as having available capacity following discussions with National Grid.
- 3.2.51. It then goes on to consider the compatibility of the connection point and the surrounding land and its ability to accommodate the proposed development. In doing so, it takes into account a range of planning, environmental and spatial criteria including levels of irradiation, topography, land use (including Agricultural Land Classification (ALC)), land availability, proximity to residential dwellings and public rights of way (PRoW) and accessibility. It also considers the presence of internationally and nationally designated sites, landscape designations, flood risk, heritage assets and the potential impacts on biodiversity.

### **Issues considered during the Examination**

#### *Need, site selection and alternatives*

- 3.2.52. CDC acknowledged in its RR [\[RR-001\]](#) that there is a recognised need and support for renewable energy and low carbon generation in national policy and that the proposed development would contribute towards the UK's GHG emissions targets. Furthermore, it noted that the promotion of renewable and low carbon sources of energy in suitable locations are central to achieving CDC's commitments on carbon reduction and combating the effects of climate change.
- 3.2.53. Representatives of Moss and Fenwick Village Hall raised concerns about the size and location of the proposed development [\[RR-017\]](#), noting that it would take up a significant area of land within the parish. Furthermore, it questioned the need for developer-led schemes where a primary objective was to make profit in areas where no other type of development would be allowed. It objected to what it considered would result in the industrialisation of the countryside and considered this was not the right approach for energy security in the UK. In addition, it questioned the need for battery storage pointing to another nearby proposal for battery storage near Thorpe Marsh.
- 3.2.54. Similar concerns were raised by the Fenwick Solar Farm Action Group [\[REP1-059\]](#), and local residents [\[REP1-056\]](#), [\[REP1-060\]](#), [\[REP1-061\]](#) and [\[REP1-062\]](#), a number of whom referred to the low efficiency of solar panels, and expressed a preference for alternative forms of renewable energy such as wind, or roof-mounted solar [\[REP1-055\]](#), [\[REP1-067\]](#).

#### *ExA's consideration*

- 3.2.55. As low carbon energy infrastructure, the need for the proposed development is established by the NPSs. Furthermore, it would help deliver a more secure energy system and could be delivered ahead of other forms of low carbon generation. In addition, both NPSs EN-1 and EN-3 are clear that storage can play an important role, especially when co-located with other renewable generation, and we consider the inclusion of the BESS provides an opportunity to integrate low carbon energy generation and storage.
- 3.2.56. Moreover, even though there is no requirement for the applicant to consider alternative forms of renewable energy generation, we accept the design process

adopted by the applicant from the early stages has helped shape its proposals. We are satisfied the applicant has explained the reasons for its choice of site as well as the alternatives it has considered.

- 3.2.57. While we acknowledge that rooftop solar generation and wind may be required to help meet the net-zero target and that there are other sources of renewable energy generation available, the energy NPSs make clear that there is an urgent need for all forms of renewable energy generation, including large scale ground mounted solar and battery storage.
- 3.2.58. Overall, we are satisfied that the applicant's approach to design, alternatives and site selection has helped to balance the generation of large amounts of low carbon renewable energy against the need to minimise the environmental impacts on its surroundings.

#### *Climate change*

- 3.2.59. No specific concerns were raised by CDC or other IPs in respect of the applicant's assessment of climate change, with CDC noting in its LIR [\[REP1-048\]](#) that the proposed development would result in significant positive impacts in terms of clean, renewable energy production. It also notes that the proposal would generate around 12,940,146 MWh of electricity over its 40-year lifespan.

#### *ExA's considerations*

- 3.2.60. We are satisfied that the applicant's assessment is sufficiently robust and considers both direct and indirect effects on climate change, including the likely downstream effects. While we acknowledge that during the construction and decommissioning phase there would be some adverse effects in relation to GHG emissions, we consider the applicant has taken reasonable steps to reduce them.
- 3.2.61. Furthermore, we accept that, over the whole life of the proposed development, there would be a significant beneficial effect due to displacement of GHG emissions from other sources of fossil fuel generation. This is sufficient to outweigh the negative effects from construction and decommissioning to the effect that, over the lifetime of the project, it would result in negative GHG emissions.
- 3.2.62. Overall, we consider the information provided by the applicant is sufficient and demonstrates that the proposed development would result in a considerable reduction in carbon emissions when compared to fossil fuel-based forms of electricity generation.

#### *Efficient use of land and overplanting*

- 3.2.63. In our first set of written questions, we asked for further explanation of how the proposed development represented an efficient use of land, noting that NPS EN-3 indicates that, along with associated infrastructure, a solar farm requires between 2 and 4 acres for each MW of output.
- 3.2.64. In response, the applicant drew attention to the fact that the land acreage used is not directive and NPS EN-3 acknowledges that it will vary significantly depending on the site, with some being smaller and some being larger. Furthermore, the applicant highlighted that different approaches have been taken to the MW per acre calculation, with many being considered against the solar PV site only and excluding grid connection corridors or biodiversity/mitigation areas [\[REP2-059\]](#)

(ExQ1.3.1)]. The applicant noted that taking a similar approach to that taken in other projects determined under the PA2008 would result in between 2.69 – 3.32 acres per MW of generation.

- 3.2.65. We also sought further information on the expected levels of overplanting (ExQ1.3.2). In response, the applicant explained that the overplanting ratio will be determined as part of the detailed design with an indicative overplanting ratio based on its illustrative layout being approximately 1.49. Furthermore, it explained that its approach to overplanting has sought to address both panel degradation and other factors such as the difference between the maximum output and the actual output as well as fluctuations in levels of sunlight over the course of the day/year in order to maximise energy generation.

*ExA's considerations*

- 3.2.66. We accept that in terms of acreage per MW of electricity generated, the proposed development is comparable to other large scale solar schemes and, excluding associated development, would fall within the estimated range set out in NPS EN-3.
- 3.2.67. Furthermore, we note that NPS EN-3 does not restrict the scheme design or overplanting of a site and that the appropriateness of overplanting should be considered on a holistic basis. Overall, we are satisfied that the applicant's approach to overplanting is reasonable.

**Conclusions on need, climate change, consideration of alternatives and good design**

- 3.2.68. We consider the urgent need for the proposed development is made out by NPS EN-1 and NPS EN-3. Furthermore, we consider the proposed development would contribute towards meeting this need, would help in the transition to a low carbon system, would contribute to a more secure energy system and would generally be in accordance with NPS EN-1, NPS EN-3 and NPS EN-5. It would also be in accordance with the NPPF, PPG and the DLP, all of which give support for the principle of low carbon generation.
- 3.2.69. While we acknowledge that during the construction phase there would be some adverse effects in relation to GHG emissions, we consider the applicant has taken reasonable steps to reduce them. Moreover, we accept that over the whole life of the proposed development there would be a significant beneficial effect due to displacement of GHG emissions from other sources of fossil fuel generation. This is sufficient to outweigh the negative effects from construction and decommissioning to the effect that, over the lifetime of the project, it would result in negative GHG emissions.
- 3.2.70. Likewise, we are satisfied that the application contains sufficient details of the alternatives, including the approach to site selection, different technology and alternatives routes for key components (and how these were considered as part of the overall project design), to meet the requirements of NPSs and the EIA Regulations.
- 3.2.71. Furthermore, we are satisfied that the proposed development would represent an efficient use of land and that the applicant has demonstrated its approach to overplanting is reasonable.

- 3.2.72. Accordingly, we consider the proposed development would meet the requirements of NPS EN-1, NPS EN-3 and NPS EN-5, the NPPF and local development plan policies. It would also contribute towards meeting the UK's obligations under the CCA2008 and the Paris Agreement 2015.
- 3.2.73. The contribution to meeting the urgent need for low carbon generating infrastructure, its contribution to security of supply and the GHG emission impacts of the proposed development are benefits that weigh heavily in favour of making the Order and carry very great/ substantial in the planning balance.

### **3.3. LANDSCAPE AND VISUAL IMPACTS**

#### **Introduction**

- 3.3.1. This section considers the landscape and visual effects of the proposed development. The proposed development is not located in any national designation for landscape protection. Matters relating to glint and glare are considered in [section 3.11](#) below.

#### **Policy Context**

- 3.3.2. NPS EN-1 recognises 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 the landscape setting of the proposed development (paragraph 5.10.1). Furthermore, it recognises that all proposed energy infrastructure is 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).
- 3.3.3. Moreover, it 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 (paragraph 5.10.6). 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 have been recognised and incorporated into the design, delivery and operation of the proposed development (paragraph 5.10.19).
- 3.3.4. NPS EN-1 also notes that it will be necessary for the SoS to judge whether the visual effects on sensitive visual 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).
- 3.3.5. It also recognises that the scale of such projects 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 that it is not offset by the benefits (including need) of the project. In reaching a judgment, the SoS should consider whether any adverse impact is temporary and/or capable of being reversed in a reasonable timescale (paragraph 5.10.35).
- 3.3.6. The SoS should also consider whether the project has been designed carefully. In doing so, he should 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 (paragraph 5.10.37).



- 3.3.7. In addition, 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 applications will be expected to direct considerable effort towards minimising the landscape and visual impact of solar PV arrays (paragraph 2.5.2).
- 3.3.8. It recognises that while there is a need to ensure that solar PV installations are adequately secured, it advises that security measures such as fencing should consider the need to minimise the impact on the landscape and the visual impact.
- 3.3.9. In addition, NPS EN-3 recognises that due to their size, solar sites may affect the provision of local footpath networks and PRow (paragraph 2.10.40). 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.
- 3.3.10. It also encourages applicants to minimise, where possible the visual impact of the development for those using PRow, taking into account the impacts this may have on any other visual amenities in the surrounding landscape.
- 3.3.11. NPS EN-5 notes that applicants should consider carefully the placement of substations in the local landscape and consider opportunities for screening them.
- 3.3.12. 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.
- 3.3.13. The DLP also contains a number of policies which seek to protect and enhance the intrinsic value of the landscape and to ensure proposals are sensitive to their landscape setting. These include DLP Policy 25 (Development in the Countryside Area), Policy 32 (Woodlands, trees and Hedgerows), Policy 33 (Landscape), Policy 48 (Landscaping of New Developments), Policy 54 (Pollution) and Policy 58 (Low Carbon and Renewable Energy). Further details can be found in Appendix A.

### **The Application**

- 3.3.14. ES Chapter 10 [\[REP2-007\]](#) sets out the applicant's assessment of the effect of the proposed development on landscape and visual amenity. It is supported by the following documents:
- ES Appendix 10-1 (Legislation, Policy and Guidance (Landscape and Visual Amenity)) [\[APP-161\]](#)
  - ES Appendix 10-2 (Landscape and Visual Impact Assessment Methodology) [\[REP2-019\]](#)
  - ES Appendix 10-3 (Landscape Character Baseline) [\[APP-163\]](#)
  - ES Appendix 10-4 (Visual Baseline) [\[APP-164\]](#)
  - ES Appendix 10-5 (Landscape Assessment) [\[REP2-022\]](#)
  - ES Appendix 10-6 (Visual Assessment) [\[APP-166\]](#)
  - ES Appendix 10-7 (Arboricultural Impact Assessment) [\[APP-236\]](#) and [\[APP-240\]](#)
  - ES Figure 1-1 (Scheme Location) [\[APP-069\]](#)
  - ES Figure 1-3 (Elements of the Site) [\[APP-228\]](#)
  - ES Figure 2-2 (Public Rights of Way) [\[APP-073\]](#)
  - ES Figure 10-1 (Landscape and Visual Amenity Study Area and Relevant Designations) [\[APP-103\]](#)
  - ES Figure 10-2 (National and Regional Character Areas) [\[APP-104\]](#)

- ES Figure 10-3 (Local Landscape Character Areas) [[APP-105](#)]
- ES Figure 10-4 (Topography) [[APP-106](#)]
- ES Figure 10-5 (Hydrology and Woodland) [[APP-107](#)]
- ES Figure 10-6 (Screened Zone of Theoretical Visibility (ZTV) – Solar PV Panels) [[REP2-009](#)]
- ES Figure 10-7 (Screened ZTV – OSS and BESS) [[REP2-010](#)]
- ES Figure 10-8 (Screened ZTV – All Features) [[REP2-011](#)]
- ES Figure 10-9 (Representative Viewpoint Locations) [[REP2-012](#)]
- ES Figure 10-10 (Viewpoint Photography) [[REP2-013](#)]
- ES Figure 10-11 (Tree Preservation Order and Important Hedgerows for the Solar PV Site) [[APP-113](#)]
- ES Figure 10-12 (CPRE Light Pollution and Dark Skies) [[APP-114](#)]
- ES Figure 10-13 (Photomontages) [[APP-115](#)]
- ES Figure 10-14 (Bare Earth ZTV – All features) [[REP2-062](#)]
- Landscape and Visual Supplementary Report [[REP2-061](#)]

## Methodology

- 3.3.15. Full details of the Landscape and Visual Impact Assessment (LVIA) Methodology can be found in ES Appendix 10-2 (LVIA Methodology) [[REP2-019](#)]. It follows the Landscape Institute and IEMA Guidelines for Landscape and Visual Impact Assessment, 3rd Edition (2013) and assesses both the landscape and visual effects of the proposed development during construction, operation and decommissioning.
- 3.3.16. It recognises that landscape and visual effects are interrelated but assesses each separately. It explains that landscape effects relate to changes to the landscape as a resource, including physical changes to the fabric or individual elements of the landscape, its aesthetic or perceptual qualities and its overall landscape character; whereas visual effects relate to changes to people's visual amenity and views from the loss or addition of features within their views due to the proposed development.
- 3.3.17. Published landscape character assessments at the national, regional and local level have been reviewed to identify landscape character types and landscape character areas (LCA). These include NE's national character areas, the East Riding of Yorkshire Landscape Character Assessment (2018), the North Yorkshire and York Characterisation Project (2011) and the Doncaster Landscape Character Assessment (2007)<sup>3</sup>.
- 3.3.18. The applicant explains that in order to enable a more detailed assessment of the existing landscape character at a more relevant scale, local landscape character areas (LLCA) have been identified via desk study and fieldwork surveys in line with NE's advice<sup>4</sup>. These LLCA can be found in ES Figure 10-3 (Local Landscape Character Areas) [[APP-105](#)] and form the basis of the assessment of landscape effects.
- 3.3.19. In addition, it recognises that glint and glare effects have the potential to contribute to landscape and visual effects. Accordingly, although glint and glare is considered further in [section 3.11](#) below, the applicant has incorporated the glint and glare effects identified within its glint and glare assessment where applicable.

<sup>3</sup> As well as the Doncaster Character Assessment update (2020).

<sup>4</sup> NE, An Approach to Landscape Character Assessment (2014).



### *The study area*

- 3.3.20. ES Chapter 10 [\[REP2-007\]](#) explains that the study area was determined by the potential visibility of the proposed development within the surrounding landscape. However, for the purposes of the assessment, the study area was divided into two parts; the solar PV site study area and the GCC study area.
- 3.3.21. The solar PV site study area was defined by a combination of ZTVs and professional judgement (see ES Figure 10-6 [\[REP2-009\]](#), ES Figure 10-7 [\[REP2-010\]](#), ES Figure 10-8 [\[REP2-011\]](#) and ES Figure 10-14 [\[REP2-062\]](#)). With only one location having been identified as having potential for landscape or visual effects beyond 2km (being Askern Hill around 4.8km to the southwest), the solar PV site study area was limited to 2km (with people visiting Askern Hill included in the visual assessment as a single receptor beyond the solar PV site study area).
- 3.3.22. A smaller area of 500m to either side of the GCC was selected for the GCC study area on the basis that it was unlikely that significant landscape or visual effects would occur beyond this distance.
- 3.3.23. The extent of the solar PV site study area and the GCC study area can be found in ES Figure 10-1 (Landscape and visual amenity study area and relevant designations) [\[APP-103\]](#).

### *Outline Design Parameters*

- 3.3.24. ES Chapter 10 explains the need for flexibility in the design of the proposed development and that the maximum (and where relevant, minimum) parameters as set out in the ODPS [\[REP2-027\]](#) have been considered and used in the assessment of landscape and visual amenity. This includes assessing landscape and visual effects against the maximum height for solar PV panels and field stations (3.5m), and the maximum height for structures associated with the BESS and OSS compound.

### *Representative Viewpoints*

- 3.3.25. Representative viewpoints were agreed with CDC and can be found in the Examination Library [\[REP2-012\]](#), [\[REP2-013\]](#) and [\[APP-115\]](#).

### **Mitigation**

- 3.3.26. ES Chapter 10 explains that the proposal has been designed, as far as practicable, to avoid and reduce impacts and effects on landscape and visual amenity through an iterative process which has embedded mitigation measures into the design. These include:
- the careful siting of the solar PV panels within the landscape and following the existing field pattern, protecting existing vegetation and maximising natural screening provided by existing field boundaries
  - siting larger infrastructure, for example the OSS and BESS, away from residential receptors to minimise visual effects
  - avoiding land adjacent to settlements or, where not possible, establishing minimum offsets (50m) and incorporating new planning to screen the panels while maintaining a sense of openness
  - avoiding land adjacent to the local road network or, where not possible, incorporating bespoke offsets and mitigation planting to provide screening

- minimising instances of development on both sides of PRoW and incorporating suitable offsets (15m where development is on one side and 20m where it is on both, creating a 40m wide corridor between fence lines)
- new planting and gapping up of existing planting to reduce instances where solar panels are on both sides of a PRoW
- incorporating minimum offsets from trees and woodlands, hedgerows and watercourses to ensure the retention of the existing structure of the landscape.
- using existing tracks, lanes and access points to minimise disturbance to vegetation
- minimising the removal of important hedgerows and their replacement where this is not possible
- creating new green infrastructure including substantial offsets along Fleet Drain and the River Went (along with mitigation planting along the site's northern boundary), the introduction of neutral and modified grassland beneath the solar PV panels and the gapping up of existing hedgerows
- sensitive design in relation to fencing
- sensitive design of lighting to avoid and minimise landscape and visual effects

3.3.27. In addition, the fLEMP [\[REP3-017\]](#) contains details of the landscape and ecological strategy for the proposed development including details of how existing and proposed habitats will be protected and managed throughout the different stages. It also confirms that the final LEMP will include details of the ongoing maintenance and management (including the long-term management) of the landscape mitigation and will contain provisions to ensure that any plants found to be diseased or damaged will be replaced with the same species. It also makes provision for an Ecological Clerk of Works to ensure that construction related mitigation measures are properly implemented, monitored and maintained.

3.3.28. Section 10.7 of ES Chapter 10 [\[REP2-007\]](#) provides further details on the mitigation proposed. Full details of all landscape and visual mitigation measures can be found in the Environmental Commitments and Mitigation Register [\[REP4-015\]](#) and are secured in requirement 4 (Detailed design approval), requirement 6 (LEMP), requirement 11 (CEMP), requirement 13 (OEMP), and requirement 18 (DEMP) of the dDCO.

## **Assessment of Effects**

### **Landscape effects**

3.3.29. A full assessment of all landscape effects can be found in ES Appendix 10-5 (Landscape Assessment) [\[REP2-022\]](#). Landscape character areas and local landscape character areas can be found in ES Figures 10-2 (LCAs) [\[APP-104\]](#) and ES Figure 10-3 (LLCAs) [\[APP-105\]](#).

### *Construction*

3.3.30. Table 10-5 of ES Chapter 10 (LVIA) [\[REP2-007\]](#) provides a summary of the assessment of landscape effects of the proposed development during construction.

3.3.31. It identifies moderate adverse (significant) effects to LCA F2 (Owsten to Sykehouse Settled Clay Farmlands) as a result of physical alterations to the landscape at the solar PV Site and GCC as a result of construction activity. This would, however, be short term (0-2 years) and reversible.

- 3.3.32. In addition, major adverse (significant) landscape effects are predicted for LLCA 2 (Fenwick Farmland) and the site itself as a result of construction activity taking place across a large part of the LLCA. Furthermore, moderate adverse (significant) effects are also predicted for LLCA 1 (Fenwick Village), LLCA 3 (River Went farmlands), LLCA 5 (River Went Corridor), LLCA 8 (Moss Village) and LLCA 9 (Moss Farmlands). These would all result from construction activity and would be both short term (0-2 years) and reversible.

#### *Operation - Year 1*

- 3.3.33. Moderate adverse (significant) effects are also predicted for LCA F2 (Owsten to Sykehouse Settled Clay Farmlands) at year 1 of operation as a result of changes in land use across all fields occupied by solar PV panels or associated development within the solar PV site. However, these changes would only affect a small geographical area within the LCA and would only be perceived from its immediate surroundings within the solar PV site. While long term, these landscape effects would be reversible on decommissioning as a result of the removal of the panels and associated infrastructure from the solar PV site.
- 3.3.34. In addition, moderate adverse (significant) effects to LLCA 1 (Fenwick Village) are predicted at year 1 of operation resulting from the presence of solar PV panels in field numbers NW3, NW4 and NW8 (see sheets 1 and 3 of the Indicative Site Layout Plan [\[APP-074\]](#)), with the remainder of the solar PV site being perceived to varying degrees from the LLCA. Again, while these effects would be long term, they would be reversible on decommissioning.
- 3.3.35. As mitigation planting would yet to have established, moderate adverse (significant) effects are also predicted at year 1 of operation for LLCA 2 (Fenwick Farmland), LLCA 3 (River Went Farmlands), LLCA 5 (River Went Corridor) and across the solar PV site itself. Taking into account that most mitigation planting would not be effective at the start of the operational period, moderate adverse (significant) effects are predicted across the solar PV site itself.

#### *Operation - Year 15*

- 3.3.36. Table 10-7 sets out the potential landscape effects in year 15 of operation.
- 3.3.37. As noted above, moderate adverse (significant) effects would still be experienced within the site itself. In addition, moderate adverse (significant) effects are predicted for LLCA 2 (Fenwick Farmland). The applicant notes that while the structural planting proposed would have established, reducing the perceptibility of the proposed development from the surrounding area, the solar PV site would still occupy around two thirds of the LLCA and would result in an evident change in land use and character. The effect would be long term, albeit reversible on decommissioning.

#### *Decommissioning*

- 3.3.38. Potential landscape effects at decommissioning are set out in Table 10-8 of ES Chapter 10 [\[REP2-007\]](#).
- 3.3.39. In summary, the effects of decommissioning are anticipated to be similar to those during construction. Major adverse (significant) effects are identified for LLCA 2 – Fenwick Farmland and the site itself as decommissioning activity would be present across most of the solar PV site. In addition, moderate adverse (significant) effects

are identified for LLCA 3 – River Went Farmlands. All decommissioning landscape effects during decommissioning would be short term (0-2 years) and reversible.

*Cumulative landscape effects and effect interactions*

- 3.3.40. ES Appendix 10-2 (LVIA Methodology) [\[REP2-019\]](#) explains that the assessment of cumulative effects considers the cumulative effects of the proposed development alongside other cumulative developments identified within the study area. It identifies, for each receptor, the areas where the predicted effects of the proposed development could interact with effects arising from other cumulative developments on the same landscape receptor on a spatial and/ or temporal basis.
- 3.3.41. A list of the cumulative developments identified can be found in ES Figure 15-3 (Location of Short List Schemes) [\[APP-067\]](#). These were agreed with CDC and relied on by it in formulating its LIR and subsequent submission.
- 3.3.42. ES Chapter 10 [\[REP2-007\]](#) explains that cumulative landscape effects may result where effects arising from several developments combine increasing the prevalence of such developments within a landscape to the extent that the new development becomes a defining characteristic. Potential cumulative landscape effects are outlined in Table 10-10.
- 3.3.43. In summary, due to the intervening vegetation and the distance between the solar PV site and the other developments identified, the effects on landscape receptors do not increase as a result of the introduction of the proposed development alongside the short list of cumulative developments set out in ES Figure 15-3 [\[APP-067\]](#).
- 3.3.44. Potential effect interactions are identified in Tables 15-1 (Potential Effect Interactions during the Construction and Decommissioning Phases) and Table 15-2 (Potential Effect Interactions during the Operation and Maintenance Phase) of ES Chapter 15 [\[APP-067\]](#). No significant effect interactions have been identified on landscape receptors.

**Visual effects**

- 3.3.45. A full assessment of visual effects can be found in ES Appendix 10-6 (Visual Assessment) [\[APP-166\]](#).

*Construction*

- 3.3.46. Table 10-5 of ES Chapter 10 (LVIA) [\[REP2-007\]](#) provides a summary of the assessment of the visual effects of the proposed development during construction.

*Residential receptors*

- 3.3.47. Moderate adverse (significant) effects are predicted for some residents of Fenwick, Moss, West End and Trumfleet. In particular, the residents to the north of Lawn Lane due to construction activity on fields NW3 and NW4 (see sheets 1 and 3 of the Indicative Site Layout Plan [\[APP-074\]](#)).
- 3.3.48. Likewise, while most views of construction activity from Moss would be screened by intervening vegetation, moderate adverse (significant) effects are identified for properties in the east of Moss, including for the occupiers of Lilac Cottage, Jett Hall Farm, Sunrise Cottage and the Old School.

- 3.3.49. Moderate adverse (significant) effects would be experienced from West End Cottage and South Fork as a result of construction activity in fields SE3 and SE2 respectively (see sheets 2 and 4 of the Indicative Site Layout Plan [\[APP-074\]](#)).
- 3.3.50. There would also be moderate adverse (significant) effects from the north facing first floor windows of Glebe House, Trumfleet as a result of views of construction activity within the GCC.

#### *Users of PRow*

- 3.3.51. ES Chapter 10 [\[REP2-007\]](#) notes that there would be close up and open views of construction activity within the southwest and southeast of the solar PV site from public footpaths Fenwick 10, 11, 12, 13, 14 15 and 16, Moss 5 and Sykehouse 29 resulting in major adverse (significant) effects. The location and approximate route of these footpaths can be seen in ES Figure 2-2 (PRow) [\[APP-073\]](#).
- 3.3.52. Likewise, direct and open views towards construction activity in the north of the solar PV site are predicted for rights of way along the River Went, with moderate adverse (significant) effects identified for PRow 35.3/15/1, 35.3/15/2 and 35.3/8/1.
- 3.3.53. In addition, moderate adverse (significant) effects are predicted for users of PRow Moss 6, 7, 20 and 21 and Thorpe in Balne 5, 6, 7, 11 and 13. These would be as a result of direct views of construction activity within the solar PV site from the northern extent of Moss 6 and 7 and close up views of construction activity along the GCC from Moss 20 and 21 and Thorpe in Balne 5, 6, 7, 11 and 13.
- 3.3.54. The location and approximate route of these PRow can be seen in ES Figure 2-2 (PRow) [\[APP-073\]](#).

#### *Operation - Year 1*

- 3.3.55. Table 10-6 of ES Chapter 10 (LVIA) [\[REP2-007\]](#) provides a summary of the assessment of visual effects of the proposed development at year 1 of operation.

#### *Residential receptors*

- 3.3.56. Moderate adverse (significant) effects are predicted from the north facing windows of properties on the northern side of Lawn Lane, Fenwick due to filtered views of solar PV panels on fields NW3 and NW4 (see sheets 1 and 3 of the Indicative Site Layout Plan [\[APP-074\]](#)). These would be long term (over 5 years) but reversible.
- 3.3.57. Moderate adverse (significant) effects are also identified for properties in the east of Moss, including the occupiers of Lilac Cottage, Jett Hall Farm, Sunrise Cottage and the Old School as landscape mitigation would not have established.
- 3.3.58. Similarly, moderate adverse (significant) effects would be experienced from West End Cottage and South Fork as a result of direct views towards solar PV panels in fields SE3 and SE2 respectively (see sheets 2 and 4 of the Indicative Site Layout Plan [\[APP-074\]](#)).
- 3.3.59. The visual effects experienced from the north facing first floor windows of Glebe House, Trumfleet during the construction phase are predicted to have reduced to negligible due to the work to the GCC having been completed.

#### *Users of PRow*

- 3.3.60. Table 10-6 [\[REP2-007\]](#) notes that solar PV panels within the southwest of the solar PV site would be visible at close range resulting in major adverse (significant) visual effects for users of PRow Fenwick 10, 11, 12, 13, 14, 15 and 16, Moss 5 and Sykehouse 29.
- 3.3.61. Furthermore, moderate adverse (significant) effects have been identified for users of PRow 35.3/15/1, 35.3/15/2 and 35.3/8/1 as a result of direct and open views of the rear of the solar PV panels being visible in fields NW1, NW5, NW9, NW11, NE1, NE2, NE5, NE6, NE7 and NE9 (see sheets 1 and 2 of the Indicative Site Layout Plan [\[APP-074\]](#)).
- 3.3.62. In addition, moderate adverse (significant) effects are predicted for users of PRow Moss 6 and Moss 7 as a result of direct and close views of the solar PV site from the northern extents of these PRow.
- 3.3.63. The location and approximate route of these PRow can be seen in ES Figure 2-2 (PRow) [\[APP-073\]](#). All effects during construction are identified as being long term (over 5 years) and reversible.

#### *Operation - Year 15*

- 3.3.64. Table 10-7 of ES Chapter 10 (LVIA) [\[REP2-007\]](#) provides a summary of the assessment of visual effects of the proposed development at year 15 of operation.

#### *Residential receptors*

- 3.3.65. In summary, with the proposed planting and landscape mitigation having become firmly established, most residential receptors are predicted as likely to experience either minor adverse, negligible adverse or neutral visual effects.
- 3.3.66. Moderate adverse (significant) effects are, however, identified for the residents of Jet Hall Farm in winter due to the visibility of solar PV panels from the upper storey windows of that property. This would reduce to minor adverse (not significant) during summer.

#### *Users of PRow*

- 3.3.67. ES Chapter 10 [\[REP2-007\]](#) and ES Appendix 10-6 (Visual Assessment) [\[APP-166\]](#) note that close up and open views of solar PV panels within fields SW1, SW3, SW4, SW5, SW6, SW7, SW8 and SW9 would remain from public footpaths Fenwick 10, 12, 13, 14, 15 and 16, Moss 5 and Sykehouse 29 causing a pronounced change to views. Major adverse (significant) effects would still be experienced by users of these footpaths during winter, reducing to moderate adverse (significant) during summer.
- 3.3.68. In addition, moderate adverse (significant) effects would be experienced by users of PRow Fenwick 11 during winter (reducing to minor adverse (not significant) during summer. These would be long term (over 5 years) and reversible on decommissioning.
- 3.3.69. The location and approximate route of these PRow can be seen in ES Figure 2-2 (PRow) [\[APP-073\]](#).



### *Decommissioning*

- 3.3.70. Table 10-8 of ES Chapter 10 [\[REP2-007\]](#) provides a summary of the visual effects predicted at decommissioning. In summary, moderate adverse (significant) effects are predicted for residents of Jet Hall Farm.
- 3.3.71. Major adverse (significant) effects have been identified for users of PRow Fenwick 10, 12, 13, 14 15 and 16, Moss 5 and Sykehouse 29 due to close up views of decommissioning activity including vehicle movement and the removal of solar PV panels and their mounting structures.
- 3.3.72. In addition, moderate adverse (significant) effects are predicted for users of PRow Fenwick 11 and for Moss 6 and 7.
- 3.3.73. The location and approximate route of these PRow can be seen in ES Figure 2-2 (PRow) [\[APP-073\]](#). All of the above are considered to be short term (0-2 years) and reversible.

### *Cumulative visual effects and effect interactions*

- 3.3.74. Table 10-10 of ES Chapter 10 [\[REP2-007\]](#) provides a summary of the cumulative visual effects identified at all stages of the proposed development.
- 3.3.75. In summary, due to the intervening vegetation and the distance between the solar PV site and the other developments identified, the effects on visual receptors do not increase as a result of the introduction of the proposed development alongside the short list of cumulative developments set out in ES Figure 15-3 [\[APP-067\]](#).
- 3.3.76. Potential effect interactions are identified in Table 15-1 (Potential Effect Interactions during the Construction and Decommissioning Phases) and Table 15-2 (Potential Effect Interactions during the Operation and Maintenance Phase) [\[APP-067\]](#) of ES Chapter 15. No significant effect interactions have been identified on visual receptors.

### **Issues considered during the Examination**

- 3.3.77. At the start of the examination, the landscape and visual impact of the proposed development on its surroundings was a matter of concern for a number of IPs including the CDC, local residents and community groups.
- 3.3.78. CDC raised a number of concerns in its RR [\[RR-001\]](#) regarding the scale of the proposed solar development and its potential to result in significant adverse landscape and visual effects - particularly for local residents and users of the PRow network. It emphasised the importance of securing robust and enforceable mitigation measures, including sensitive siting and design, appropriate planting and screening, and inclusive access strategies. It also called for greater clarity around cumulative impacts, lighting during construction, and the long-term maintenance of landscape features.
- 3.3.79. Additionally, it noted the need to balance site security with visual amenity, supporting the proposed fencing and CCTV approach while opposing more intrusive physical barriers.
- 3.3.80. In its LIR [\[REP1-048\]](#), CDC explained that it had commissioned land use consultants to assist it in its assessment of landscape and visual impacts and that it had carried out a detailed analysis as part of its RR. It recognised the importance of

good design while also acknowledging that all energy infrastructure will have some adverse and visual impacts.

- 3.3.81. It concluded that the proposed development would have a negative impact on the character and visual amenity in the local area and would be contrary to the NPS and local development plan policy. However, it noted that discussions were continuing with the applicant to resolve any remaining points of difference.
- 3.3.82. A number of local residents [for example, [RR-025](#), [RR-040](#), [RR-045](#), [RR-048](#), [RR-054](#), [REP1-055](#), [REP1-060](#), [REP1-062](#), [REP1-063](#), [REP1-064](#), [REP1-065](#), and [REP1-067](#)] drew attention to the perceived impact the proposed development would have on their daily lives. In particular, the loss of the Fenwick's rural setting and the industrialisation of the countryside [[RR-014](#) and [RR-025](#)], the impact on the character of the village [[RR-023](#)], and the potential of the proposed development to significantly impact on the landscape, character and visual amenity of the surrounding area [[RR-028](#) and [RR-035](#)]. Furthermore, concerns were raised that the solar panels and fencing would destroy the wide-open views and create an unpleasant corridor along nearby PRow, resulting in the visual degradation of the area [[RR-028](#), [RR-034](#) and [RR-035](#)].
- 3.3.83. In ExQ1 (ExQ1.5.1) [[PD-007](#)], we asked the applicant to explain how it had considered opportunities to demonstrate good design in terms of the siting of the various elements of the proposed development in order to mitigate their effects on the landscape. We also sought further information on the assessment of the site as a receptor in its own right (ExQ1.5.6), the assumptions made in relation to the working area for the GCC (ExQ1.5.5), representative viewpoints (ExQ1.5.2 and ExQ1.5.7) and how the proposed development has responded to the landscape strategy for the relevant LCAs (ExQ1.5.9).
- 3.3.84. In response [[REP2-059](#)], the applicant noted that it had adopted a number of design commitments to minimise the visual impact on the landscape including:
- its siting between two robust physical features (the East Coast Mainline and the disused railway), which contain it from the surrounding environment
  - offsets from the River Went, which is considered to be a landscape more sensitive to change
  - the siting of solar PV infrastructure within the existing field pattern to retain the existing landscape structure and scale as far as possible
  - limiting the height of the solar PV panels to maximise screening potential
  - locating larger infrastructure, including the BESS and OSS, away from the most sensitive receptors and maximising the benefit of existing screening
  - utilising existing access points where possible to minimise the loss of existing vegetation
- 3.3.85. As part of the ongoing discussions between the applicant and CDC, the applicant provided a Landscape and Visual Supplementary Report [[REP2-061](#)] which includes clarifications on the methodology, an updated representative viewpoint plan [[REP2-012](#)], details of updates to various ES appendices and figures and a review of sensitivity judgements for LLCAs and users of PRow.
- 3.3.86. In addition, it provides clarification on lighting and its consideration in the visual impact assessment, assesses impacts on the site itself, reviews judgements for a number of landscape and visual receptors and describes how the proposed development has positively responded to the published landscape character assessment. It also provides supplementary detail on the identification of cumulative



developments and their assessment and includes details of updates made to the fLEMP as a result of discussions between the applicant and CDC.

- 3.3.87. Following the applicant's submission and the resultant updates to application documents, CDC confirmed that it had no outstanding concerns in relation to landscape and visual matters.

### **Conclusions on Landscape and Visual Effects**

- 3.3.88. We are satisfied that the information provided by the applicant in its ES is sufficient to understand the significant effects of the proposed development on the surrounding landscape and on sensitive visual receptors within the study area.
- 3.3.89. As a result of the scale of the proposed development, significant landscape effects are predicted at all stages, with effects at a regional level being predicted for LCA F2: Owston to Sykehouse Settled Clay Farmlands during both construction and year 1 of operation.
- 3.3.90. In addition, significant effects are predicted to occur at LLCA 1, LLCA 2, LLCA 3, LLCA 5, LLCA 8 and LLCA 9 during construction and at LLCA 1, LLCA 2, LLCA 3, LLCA 5 and the solar PV site itself at year 1 of operation. These would reduce by year 15 at which point only LLCA 2 and the solar PV site are identified as continuing to experience significant effects (moderate adverse).
- 3.3.91. In terms of its visual impact, due to its dispersed nature, significant effects would be experienced at a number of residential receptors including residents to the north of Lawn Lane, residents of Moss (Lilac Cottage, Jet Hall Farm, Sunrise Cottage and the Old School), residents of West End (West End Cottage and South Fork), and residents of Glebe House. These would arise for all properties (except Glebe House) during both construction and at year 1 of operation, reducing to non-significant by year 15 for all residential receptors apart from the residents of Jet Hall Farm who are predicted to continue to experience moderate adverse (significant) effects.
- 3.3.92. Major adverse (significant) visual effects would be experienced by users of the PRoW within the solar PV site itself at all stages of the proposed development. In addition, moderate adverse (significant) visual effects would be experienced by users of PRoW along the River Went to the north of the solar PV site, to the south of the solar PV site and along the GCC during construction and at year 1 of operation. However, these effects are predicted to have reduced to non-significant by year 15.
- 3.3.93. As NPS EN-1 makes clear, all proposed energy infrastructure is likely to have landscape and visual effects. However, while we 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. While some of these are short term and others are reversible on decommissioning, a number of residual significant effects would be experienced for many years to come. These are matters which weigh against the proposed development.
- 3.3.94. Nevertheless, we acknowledge that in the present case the landscape is not a protected one and that while not eliminated, we agree with CDC that the landscape and visual effects have been minimised. We are also satisfied that the applicant has given sufficient consideration to good design to meet the requirements of NPSs.

While the level of harm identified weighs against the proposal, we consider it should be afforded moderate negative weight in the overall planning balance.

## **3.4. THE HISTORIC ENVIRONMENT**

### **Introduction**

- 3.4.1. This section considers the effect of the proposed development on the historic environment including above ground heritage assets and below ground archaeological features.

### **Policy Context**

- 3.4.2. Regulation 3 of the Infrastructure Planning (Decisions) Regulations 2010 requires the SoS to have regard to the desirability of preserving a listed building or its setting or any features of special architectural or historic interest which it possesses, the desirability of preserving or enhancing the character or appearance of a conservation area, and the desirability of preserving a scheduled monument or its setting.
- 3.4.3. Paragraph 5.9.9 of NPS EN-1 states that an assessment of any likely significant heritage impacts of the proposed development should be undertaken by the applicant as part of the EIA and should describe these impacts 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 alongside consideration of the possible impacts, including cumulative, on the wider historic environment. It should also include reference to any historic landscape character assessments and associated studies as a means of assessing impacts relevant to the proposed project.
- 3.4.4. With regards to archaeological heritage assets, to ensure work is undertaken in a timely manner in accordance with a written scheme of investigation and to ensure appropriate procedures are in place for the identification and treatment of undiscovered heritage assets with archaeological interest, the inclusion of requirements in the DCO may be considered (paragraphs 5.9.18 and 5.9.21 NPS EN-1).
- 3.4.5. Where heritage assets may be affected by a proposed development, paragraph 5.9.22 requires identification and assessment of the particular significance of those assets, including the setting. This should take account of information provided with the application, submitted during the examination, any historic landscape character records and relevant historic environment records (HER), representations made by interested parties and expert advice.
- 3.4.6. Paragraph 5.9.24 states that in considering the impact of a proposed development on any heritage assets, the SoS should consider the particular nature of the significance of the heritage assets and the value they hold for this and future generations.
- 3.4.7. When considering the impact of a proposed development on the significance of a designated heritage asset, paragraph 5.9.27 also states the SoS should give great weight to the asset's conservation. The more important the asset, the greater the weight should be irrespective of whether any potential harm amounts to substantial harm, total loss, or less than substantial harm to its significance. Paragraph 5.9.28 states that the SoS should give considerable importance and weight to the

desirability of preserving all heritage assets and any harm or loss of significance of a designated heritage asset should require clear and convincing justification.

- 3.4.8. Where a proposal 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 the proposal (paragraph 5.9.32). Appropriate weight should be attributed to the desirability of preserving the setting of heritage assets with proposals treated favourably where they preserve those elements of the setting that make a positive contribution or better reveal the significance of the asset (paragraph 5.9.35). 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.
- 3.4.9. Paragraph 2.10.113 of NPS EN-3 states that where a site on which development is proposed includes or has the potential to include, heritage assets with archaeological interest, a desk-based assessment and where necessary, a field evaluation, should be submitted.
- 3.4.10. More broadly, paragraph 2.10.118 recognises that the significance of a heritage asset derives not only from its physical presence but also from its setting and that 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.
- 3.4.11. The ability to microsite specific elements of a proposed development during the construction phase should be an important consideration when assessing the risk of damage to archaeology, as required by paragraph 2.10.137.
- 3.4.12. Similar advice on the preservation and enhancement of heritage assets and the requirement to balance the effects of a proposal on designated assets and non-designated heritage assets (NDHA) against a proposal's benefits can be found in the NPPF and relevant policies of the DLP.

### **The Application**

- 3.4.13. ES Chapter 7 (Cultural Heritage) [\[REP1-011\]](#) deals with heritage assets both above and below ground and is supported by:
- ES Appendix 7-1 (Legislation, Policy and Guidance (Cultural Heritage) [\[APP-141\]](#)
  - ES Appendix 7-2 (Cultural Heritage Desk Based Assessment Rev 1) [\[REP1-017\]](#)
  - ES Appendix 7-3 (Cultural Heritage Gazetteer of Heritage Assets) [\[APP-143\]](#)
  - ES Appendix 7-4 (Geophysical Survey Report) [\[APP-233\]](#)
  - ES Figure 7-1 (Designated Heritage Assets) [\[APP-087\]](#)
  - ES Figure 7-2 (Non-Designated Heritage Assets) [\[APP-088\]](#)
  - ES Figure 7-3 (Previous Events) [\[APP-089\]](#)
  - ES Figure 7-4 (Historic Landscapes) [\[APP-090\]](#)
  - ES Figure 7-5 (Additional Non-Designated Assets) [\[APP-091\]](#)
  - Framework Archaeological Mitigation Strategy [\[REP2-054\]](#)
  - Trial Trenching Evaluation Report [\[REP1-045\]](#)
  - Heritage Statement (Appendix C to the Planning Statement) [\[APP-246\]](#)

## Methodology

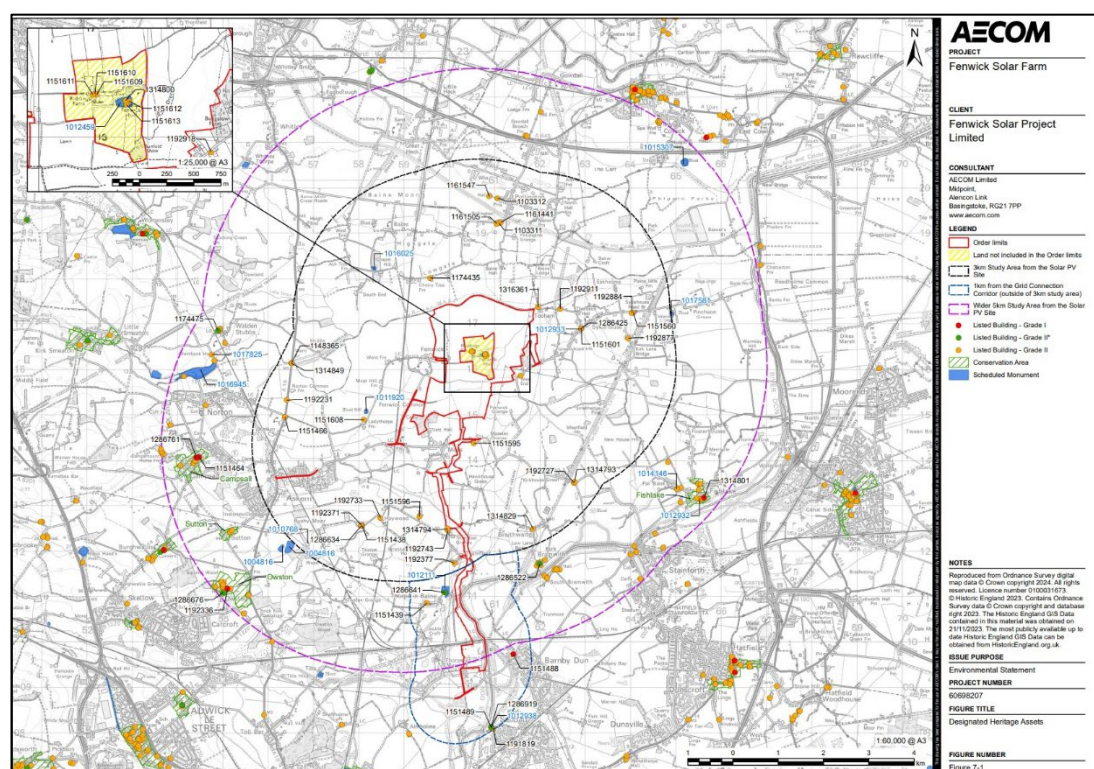
- 3.4.14. Section 7.4 of ES Chapter 7 [\[REP1-011\]](#) sets out that the methodology and the extent of the study area (Figures 7-1 [\[APP-087\]](#) and 7-2 [\[APP-088\]](#)) is based on good practice and professional judgement. Paragraph 7.4.35 of ES Chapter 7 provides clarification that a major (significant) effect would amount to substantial harm, a moderate adverse (significant) effect would amount to less than substantial harm as would a minor or negligible (not significant) effect; whereas a neutral effect would be classified as no harm.
- 3.4.15. A core study area of 3km from the solar PV site was used for data gathering and identification of historic and archaeological designated assets. This included the GCC where it falls within this study area. This study area was extended to 5km for assets of high value including scheduled monuments, grade I and II\* listed buildings and grade I and II\* registered parks and gardens where these may be impacted through change to their setting from the proposal. This was guided by modelling the proposed developments Zone of Theoretical Visibility.
- 3.4.16. In addition, a 1km study area was adopted for the GCC which was considered proportionate to the level of impact due to the underground nature of the activity; and a 1km study area was used for NDHA including archaeological remains.

### *Baseline*

- 3.4.17. ES Appendix 7.2 (Cultural Heritage Desk Based Assessment [\[REP1-017\]](#)) sets out the baseline for the Order limits and study areas including details of walkover surveys. Within the 3km study area there are 38 designated heritage assets comprising 5 scheduled monuments and 33 listed buildings. Within the 3km - 5km study area there are 14 designated heritage assets comprising 7 scheduled monuments, 4 grade I listed buildings and 3 grade II\* listed buildings alongside 3 conservation areas.
- 3.4.18. Within the 1km study area from the GCC and outside of the 3km study area for the solar PV area, there are 8 designated heritage assets including 2 scheduled monuments and 6 listed buildings alongside 49 NDHA comprising archaeological activity/findspots and non-designated buildings. In addition to this, the applicant states that the walkover survey identified 3 non-designated historic buildings which are not recorded on the HER these being: Haggs Farm, Croft Farm and West End Farm. These assets are shown in ES Figure 7.1 (Designated Heritage Assets) [\[APP-087\]](#). An extract is provided in [Figure 3](#) below.
- 3.4.19. The trial trenching carried out for the solar PV site identified areas of Iron Age/Romano-British settlement activity. As such, the potential to encounter previously unrecorded archaeological remains is considered to be high. Given the medieval moated scheduled monument site at Fenwick Hall, this provides a clear focus around which medieval activities would have clustered alongside medieval villages at Moss and Thorpe in Balne.
- 3.4.20. The Cultural Heritage Desk Based Assessment [\[REP1-017\]](#), Geophysical Survey Report [\[APP-233\]](#) and Trial Trenching Evaluation Report [\[REP1-045\]](#) set out that fields NE3, NE8 and NE10 within the solar PV site were not trenched due to ecological constraints, and that field SE5 was subsequently descoped (see [Figure 2](#) above for locations of field parcels).

- 3.4.21. No trial trenching or evaluation surveys were conducted along the GCC with survey work proposed post consent. Figure 5 of the framework Archaeological Mitigation Strategy (fAMS) [REP2-054] identifies the location of the surveys undertaken.
- 3.4.22. Seven designated assets and 10 NDHA were identified for detailed assessment in ES Chapter 7 and the Heritage Statement [APP-246] given the potential for impacts from the proposed development. These are listed in paragraphs 7.6.31 and 7.6.32 of ES Chapter 7.

**Figure 3: Designated Heritage Assets**



(Source: ES Figure 7-1 Designated Heritage Assets [APP-087])

## Mitigation

- 3.4.23. Section 7.7 of ES Chapter 7 [REP1-011] explains that mitigation measures for heritage assets have been embedded in the design of the proposed development in order to avoid, reduce or mitigate significant effects. These include:
- the exclusion of several fields immediately surrounding the Fenwick Hall moated site, Fenwick Hall Farm and Lily Hall (at Riddings Farm) to preserve the open, agricultural fields surrounding them
  - a heritage buffer area in the field adjacent to Fenwick Hall moated site including a 20m buffer zone agreed with Historic England that has been extended to the field to include archaeological remains
  - enhancement of hedgerow along Lawn Lane to reduce visual intrusion and change to setting of Haggs Farm and Croft Farm and to protect the character and approach to the designated assets at Fenwick Hall and Riddings Farm
  - replanting and enhancement of hedgerows/ boundaries that are remnants of the medieval/ post medieval historic landscape and are 'important' hedgerows
  - enhancement of existing hedgerows in proximity to designated heritage assets to screen views and reduce impact on setting



- a heritage buffer in field SE1 and through parts of fields NE8, NE10, NE11 and NE12 (as shown in [Figure 2](#) above) to allow for preservation in-situ for archaeological remains associated with Fenwick Hall moated site and possible Iron Age/ Romano-British settlement corridor that extends northwards along Fleet Drain. No construction, operational and maintenance related activities, access routes or laydown areas would take place within this buffer area.

3.4.24. The delivery of these embedded mitigation measures would be through the CEMP, OEMP and DEMP as set out within requirements 11 (CEMP), 12 (OEMP) and 18 (DEMP) respectively. Framework versions of these documents having been provided as part of the submission and can be found in the examination library (references [\[REP3-013\]](#), [\[REP5-007\]](#) and [\[REP4-019\]](#)).

### **Assessment of Effects**

3.4.25. Section 7.8 and Tables 7-5 (Summary of Assessment of Effects – Cultural Heritage (Construction)) and 7-6 (Summary of Assessment of Effects – Cultural Heritage (Operation and Maintenance)) of ES Chapter 7 [\[REP1-011\]](#) sets out the likely impacts and effects of the proposal on heritage (designated and non-designated) assets.

3.4.26. The applicant has identified in paragraph 7.8.4 of ES Chapter 7 the following temporary and short-term impacts that could result in temporary changes to the setting of heritage assets during the construction and decommissioning phases:

- onsite - the presence and movement of plant and machinery, the presence of construction compounds, noise, lighting
- offsite - increased volumes of traffic on the local road network

3.4.27. In addition, paragraph 7.8.5 outlines long term reversible and permanent impacts beyond the construction phase including:

- any below ground disturbance associated with the haul road construction, trenches for cabling, establishment of the construction compounds and installation of the solar PV panels
- site clearance activities that may result in partial or total loss of important elements of the historic landscape including hedgerows and areas of ridge and furrow
- impacts through change to setting of heritage assets from the introduction of new physical form in the landscape

### *Designated Assets*

3.4.28. ES Chapter 7 and the Heritage Statement contained in Appendix C of the Planning Statement [\[APP-246\]](#) identify that the proposed development would have moderate adverse (significant) effects to the setting of two scheduled monuments:

- Thorpe in Balne moated site, chapel and fishpond including grade II\* listed remains of chapel; and
- Fenwick Hall moated site.

3.4.29. These assets derive their significance from being buried medieval moated sites within open countryside landscape. Their setting is their proximity to the medieval villages of Fenwick and Thorpe in Balne alongside the surrounding agricultural landscape, the other moated sites in the wider landscape, and areas of ridge and

furrow. These all contribute to understanding the historical function of the assets. Full details can be found in section 7.8 of ES Chapter 7 [\[REP1-011\]](#).

- 3.4.30. During the construction phase, heritage assets at Thorpe in Balne would be located approximately 180m from the GCC bringing construction activities into the setting of the scheduled monument. The applicant concludes within ES Chapter 7 [\[REP1-011\]](#) that the magnitude of impact would be low due to the temporary nature of the GCC construction activities and the intervening vegetation restricting views between the heritage assets and the GCC. However, due to the high value of the assets this would result in a moderate adverse effect, which is considered to be significant equating to less than substantial harm. No additional mitigation measures are proposed to mitigate the moderate adverse (significant) effect due to the temporary nature of this effect. No effect is expected during the operational and decommissioning phases due to the cables being underground.
- 3.4.31. Whereas, for Fenwick Hall moated site all three phases would introduce built elements and activity into the immediate and wider landscape, altering the open landscape and the ability to appreciate the asset within it. This would be reversible on decommissioning of the proposed development; however, all three phases would also result in the permanent loss of areas of ridge and furrow within fields through physical impacts as described above, which the applicant states are already degraded.
- 3.4.32. Embedded mitigation measures are proposed in section 7.7 of the ES Chapter 7 in the form of a separation distance assisting in preserving the asset's immediate setting. However, no additional mitigation measures are proposed to mitigate the moderate adverse (significant) effect on Fenwick Hall moated site during the construction and operational phases as the effect is considered reversible on decommissioning. Nevertheless, the wider landscape and the setting of Fenwick Hall moated schedule monument would change and as such, a moderate adverse (significant) effect would remain.
- 3.4.33. For residual effects on the Fenwick Hall moated site and Thorpe in Balne moated site and grade II\* listed chapel, the applicant reports that the residual effect (albeit reversible) would remain as moderate adverse. As a result, in line with the methodology set out in [paragraph 3.4.14](#) above, the applicant considers it would result in less than substantial harm in heritage policy terms [\[APP-246\]](#).
- 3.4.34. In addition, minor (and negligible) adverse (not significant) effects have been identified for:
- the Moat Hill moated site scheduled monument
  - Parkshaw moated site scheduled monument
  - grade II listed Lily Hall, grade II dovecote and attached outbuilding and grade II barn and granary all at Riddings Farm
  - grade II shelter shed and attached loose box and grade II barn and attached outbuildings at Fenwick Hall
  - grade II Glebe Farmhouse and barn.
- 3.4.35. These assets are reported to derive their significance from their functional relationship with buildings and structures that are within their immediate setting alongside the wider rural agricultural landscape which they are positioned within. Section 7.8 of ES Chapter 7 provides further information on these assets. The applicant concludes this would lead to less than substantial harm in heritage policy terms [\[APP-246\]](#).



### *Non-designated Heritage Assets*

- 3.4.36. ES Chapter 7 identifies moderate adverse (significant) effects on below ground NDHA at the following locations:
- Field NW5 Iron Age/ Romano-British settlement enclosure
  - Field SE3 Iron Age/ Romano-British enclosure and field system
  - Field SW10 linear anomalies representing Iron Age/ Romano-British field system
  - Field NE1 former field boundary and Iron Age/ Romano-British settlement activity
  - Fields NE1, NW7, NE9, NE10, NE11, SW3, SW6, SW8, SW9 and SW10 appearing to form a foci of settlement in the wider Iron Age/ Romano-British landscape
  - Crop marks near Moss
  - High potential to encounter archaeological assets of Iron Age, Romano, medieval and post medieval value along the GCC.
- 3.4.37. The value of these assets derives from the ability to inform on past human activity, and they are considered to have the potential to be of regional importance.
- 3.4.38. Section 7.9 of ES Chapter 7 [\[REP1-011\]](#) sets out additional mitigation and enhancement measures for areas identified as having known buried archaeological remains. This includes the use of pre-cast concrete blocks instead of piled mounts to enable preservation in-situ of archaeological remains or the micro-siting of elements to avoid archaeological remains altogether. Protective fencing is proposed around the perimeter of archaeological mitigation areas to be installed prior to the construction phase to ensure exclusion from the development.
- 3.4.39. For buried archaeological remains that cannot be avoided by design, Section 7.10 of ES Chapter 7 [\[REP1-011\]](#) outlines the recording of these assets would compensate for any loss and would reduce the magnitude of impact from moderate to minor resulting in no significant residual effects. The submitted fAMS [\[REP2-054\]](#) sets out the scope and guiding principles for further mitigation for each archaeological mitigation area. These may be preservation in-situ, strip, map and recording, or a watching brief. The fAMS states that should any significant finds be identified, targeted strip, map and record may be required. The fAMS includes a protocol for dealing with unexpected archaeological discoveries during construction. The fAMS has been agreed with the archaeological advisor to South Yorkshire Archaeological Service (SYAS). A watching brief is proposed for parts of Fields SE3 (for access tracks and trenching), SW9 and SW10 (construction of the BESS and construction compound), and NE1 (landscape and ecological areas).
- 3.4.40. Evaluation surveys are proposed along the GCC post consent to confirm the spatial extent of remains. The survey findings would inform further detailed design and avoidance measures with the scope and type of mitigation measures to be set out within the final archaeological mitigation strategy.
- 3.4.41. All archaeological works would be carried out in accordance with the final archaeological mitigation strategy and approved site-specific written schemes of investigation in consultation with the archaeological adviser and submitted to CDC for approval. This is secured by requirement 10 (archaeology) of the dDCO. Nevertheless, moderate adverse (significant) effects are identified to a number of archaeological assets and their setting as a result of physical impacts from installing panels, laying cables and ecological enhancement measures, all of which could result in loss of the asset and/ or its significance. Such loss would be permanent.

- 3.4.42. The three non-designated historic buildings (Haggs Farm, Croft Farm and West End Farm) are all located around the solar PV site with their setting being the rural agricultural landscape that surrounds them. ES Chapter 7 explains that the farmhouses have experienced alterations and are surrounded by modern buildings. The applicant has assessed the magnitude of impact to the farms as very low with assets of very low value resulting in a negligible effect. Given the intervening vegetation, the temporary nature of the proposal (albeit extended over a period) and that it is reversible on decommissioning, the applicant reports that the proposed development would not alter the appreciation of the farmhouses as part of working farms within a wider agricultural landscape.

*Cumulative effects and effect interactions*

- 3.4.43. Section 7.11 of ES Chapter 7 assesses the potential for the proposed development to interact with projects that are detailed on the short list within ES Chapter 15 [APP-067] up to 5km from the solar PV site. Of these, a significant cumulative effect was identified for the construction phase upon the following grade II listed buildings: the barn and granary, the dovecote, and attached outbuilding at Riddings Farm. The significant cumulative effect arises because planning permission and listed building consent has been granted for the demolition of Lily Hall, a grade II listed farmhouse also at Riddings Farm. Lily Hall forms part of the functional and historic setting of this group of listed buildings.
- 3.4.44. The applicant states that the proposed development, in combination with the demolition of Lily Hall, would affect the setting of the remaining listed buildings. Therefore, the harm arising from this cumulative impact is considered to be less than substantial [APP-246]. The applicant outlines that no suitable mitigation measures have been identified to reduce this significant cumulative effect and as such, a significant residual cumulative effect would remain on the two listed buildings.
- 3.4.45. ES Chapter 15 also assesses the potential for effect interactions of two or more predicted environmental effects from the proposed development upon a receptor. Table 15-1 (Potential Effect Interactions during the Construction and Decommissioning Phases) and Table 15-2 (Potential Effect Interactions during the Operation and Maintenance Phase) detail the findings of this assessment. They conclude that for all phases of the development, there would be no significant effect on heritage assets from the interaction of effects.

**Issues considered during the Examination**

- 3.4.46. Historic England withdrew from the examination [PD1-003] having no comments on the methodology, baseline or assessment provided within the ES.

*Designated heritage assets*

- 3.4.47. CDC, in its LIR [REP1-048], raised no concerns in relation to designated heritage assets. It did, however, request that should the vacant listed buildings around and close to Fenwick Hall and Lily Hall be brought into residential use prior to the discharge of requirement 14 (operational noise) that they would be taken into account as part of the discharge of that requirement. In response [REP2-060], the applicant confirmed these buildings would be considered when producing the Operational Noise Assessment.

### *Archaeology*

- 3.4.48. In its RR [\[RR-001\]](#), CDC noted that the applicant has undertaken detailed consultation with its own archaeological advisor (SYAS) which was satisfied that the work undertaken provides sufficient information to understand the impact of the purposed development on archaeological assets.
- 3.4.49. It was in broad agreement with the archaeological mitigation strategy and that following the findings of the trial trenching, 17 areas were identified as containing archaeological remains that could be susceptible to harm from the proposed development. It recognised a range of mitigation measures are proposed with a final mitigation strategy to be agreed once design decisions are made. The LIR confirmed it was satisfied with the scope, parameters and procedures set out within the fAMS [\[REP2-054\]](#) for future work.
- 3.4.50. At ExQ1 [\[PD-007\]](#), we requested further details of the positioning of construction compounds in relation to heritage assets. In response [\[REP2-059\]](#), the applicant explained that whilst a significant effect on underground non designated archaeological assets had been identified at locations where construction compounds would be situated, mitigation measures including strip, map and record alongside an archaeological watching brief are proposed within the fAMS to manage this effect. Furthermore, the applicant explained the extent of the compounds are based on a worst-case scenario and may not require all the area identified. This would then allow for the micro-siting of the compounds within those larger areas minimising the harm to heritage assets by their avoidance.
- 3.4.51. At the close of the examination, the SoCG between the applicant and CDC [\[REP5-011\]](#) (in consultation with the SYAS) was agreed pertaining to how archaeological work within the Order limits would be conducted, how mitigation measures are provided for within the fAMS [\[REP2-054\]](#) and how operational noise would be considered on presently uninhabited buildings.

### *ExA's consideration*

- 3.4.52. We agree with the findings of ES Chapter 7 of a moderate adverse (significant) effect to certain archaeological assets within the Order limits. The anticipated harm or loss to these assets would not allow for the asset's conservation and consequently this carries negative weight in the planning balance.
- 3.4.53. We acknowledge that reasonable steps have been taken through the provision of embedded mitigation measures to ensure the avoidance of archaeological assets where possible or their preservation in-situ. In doing so, no effect would occur to assets in those locations.
- 3.4.54. We also recognise that where archaeological remains cannot avoid impact or loss, the applicant has advanced preservation by record as additional mitigation and concludes the magnitude of impact on individual archaeological assets is reduced to minor, resulting in no significant effects. Whilst recognising this approach, we note that the SoS has taken then view in other made solar DCOs that preservation by record is not an acceptable form of mitigation and instead considers it to amount to best practice. We concur. However, we are satisfied that the overall package of mitigation measures advanced by the applicant would ensure any potential adverse effects on archaeological assets would be minimised.

## Conclusions on the Historic Environment

- 3.4.55. As required by Regulation 3 of the Infrastructure Planning (Decisions) Regulations 2010, we have had regard to the desirability of preserving designated heritage assets, including listed buildings and their settings, the character and/ or appearance of Conservation Areas and Scheduled Monuments or their settings.
- 3.4.56. We are satisfied the applicant has provided an assessment of any likely significant heritage effects of the proposed development informed by information from the HER or CDC as required by NPS EN-1, NPS EN-3, the NPPF and DLP policies. No comments have been made by IPs, and we note the agreement by CDC within the SoCG [\[REP5-011\]](#) to the findings of the ES. We are also satisfied the applicant has described the significance of the heritage assets affected including the contribution made by their setting in accordance with NPS EN-1 and paragraph 207 of the NPPF.
- 3.4.57. The proposal would affect the rural agricultural landscape to which designated and NDHAs are positioned. In doing so, it would affect the settings of those assets and negatively impact on their significance. We note, for the purposes of the ES and with proposed embedded mitigation that significant effects have been identified for the scheduled monument Thorpe in Balne moated site, chapel and fishpond including grade II\* listed remain of chapel, schedule monument Fenwick Hall moated site, and archaeological assets across the Order limits. The embedded mitigation measures including a heritage buffer zone and enhancement/ retention of hedgerows at Fenwick Hall moated site go some way to mitigating this effect, nevertheless a significant effect remains, and no additional mitigation is proposed. No additional mitigation is proposed for Thorpe in Balne moated site, chapel and fishpond including grade II\* listed remain of chapel, due to the temporary nature of the construction phase along the GCC.
- 3.4.58. We therefore consider the proposed development would lead to less than substantial harm to the above-mentioned designated assets due to the impacts to their setting, which contributes to their significance, albeit at the lower end of the scale.
- 3.4.59. The proposed additional mitigation for archaeological heritage assets, including the use of pre-cast concrete blocks, micro siting of elements of the proposed development to avoid archaeological remains, post consent evaluation surveys along the GCC; and the use of an archaeological mitigation strategy secured by requirement 10 (archaeology) in the dDCO; would assist in safeguarding these heritage assets. However, a significant effect would remain on archaeological assets where harm or loss cannot be avoided.
- 3.4.60. Paragraph 5.9.28 of NPS EN-1 states that the SoS should give considerable importance and weight to the desirability of preserving all 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. Paragraphs 5.9.32 and 5.9.33 of NPS EN-1 also state that any harmful impact on the significance of a designated heritage asset should be weighed against the public benefit of development, and in weighing options that directly or indirectly affect NDHAs, a balanced judgement will be required having regard to the scale of any harm or loss and the significance of the heritage asset. This judgement is carried out in the planning balance section of this report in [Chapter 5](#) of this report.

## **3.5. TRAFFIC AND TRANSPORT**

### **Introduction**

- 3.5.1. This section considers the effect of the proposed development on traffic and transport including the number and types of vehicles that would be associated with each phase and the access arrangements to and from different parts of the site.

### **Policy Context**

- 3.5.2. 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. 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. In addition, paragraph 5.14.3 outlines that disturbance caused by traffic and AILs during the construction phase will depend on the scale and type of proposal.
- 3.5.3. NPS EN-1 also requires the production of a transport appraisal if a project is likely to have significant transport implications (paragraph 5.14.5). The preparation of a travel plan is required by paragraph 5.14.7 and should include a variety of demand management and monitoring measures to mitigate transport impacts. Any assessment conducted is expected to consider any possible disruption to services and infrastructure such as road, rail and airports, as set out in paragraph 5.14.8.
- 3.5.4. Where mitigation is needed, paragraph 5.14.11 requires possible demand management measures to be considered including reducing the need to travel by consolidating trips, locating development in areas already accessible by active travel, retiming travel outside of the known peak times, and rerouting to use parts of the network that are less busy.
- 3.5.5. 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 2.10.35). Furthermore, it notes that given that potential for solar farm sites are largely in rural areas, access for the delivery of solar arrays and associated infrastructure during construction can be a significant consideration (paragraph 2.10.36).
- 3.5.6. In addition, paragraph 2.10.37 of NPS EN-3 recognises that developers will usually need to construct on-site access routes for operation and maintenance activities, such as footpaths, earthworks or landscaping, with some access routes needing to be constructed to connect solar farms to the public road network (paragraph 2.10.38). Accordingly, it requires applications to include the full extent of the access routes necessary for operation and maintenance and an assessment of their effects (paragraph 2.10.39).
- 3.5.7. NPS EN-3 also requires applicants to assess the various potential routes to the site for delivery of materials and select the route that is most appropriate (paragraph 2.10.123). Where this is not known, the applicant should assess the worst-case impact of additional vehicles on the likely potential routes (paragraph 2.10.124). Furthermore, it should ensure that all sections of roads and bridges on the proposed delivery route can accommodate the weight and volume of the loads and width of vehicles (paragraph 2.10.125).

- 3.5.8. Where a cumulative impact is likely because multiple energy infrastructure developments are proposing to use a common access route and pass through the same towns and villages, a cumulative transport assessment should be provided as part of the ES (paragraph 2.10.126).
- 3.5.9. Similar advice can be found in the NPPF, PPG and the DLP, all of which indicate that transport issues should be considered from the earliest stages of development proposals to ensure that the potential impacts on transport networks are understood, addressed and mitigated.

### **The Application**

- 3.5.10. ES Chapter 13 (Transport and Access) [\[REP1-015\]](#) sets out the applicant's assessment of the effect of the proposed development on traffic and transport. It is supported by:
- ES Appendix 13-1 (Legislation, Policy and Guidance (Transport and Access)) [\[APP-176\]](#)
  - ES Appendix 13-2 (Traffic Flow Diagrams) [\[REP4-014\]](#)
  - ES Appendix 13-3 (Base Counts) [\[APP-178\]](#)
  - ES Appendix 13-4 (Transport Assessment) [\[APP-179\]](#)
  - ES Figure 13-1 (Transport and Access Study Area) [\[APP-123\]](#)
  - ES Figure 13-2 (Traffic Survey Locations) [\[APP-124\]](#)
  - ES Figure 13-3 (Indicative HGV Routing) [\[APP-230\]](#)
  - ES Figure 13-4 (Study Area Road Network) [\[APP-126\]](#)
  - ES Figure 13-5 (Traffic Accident Locations) [\[APP-127\]](#)
  - Traffic Flow Diagrams [\[REP2-065\]](#)
  - Grid Connection Corridor Construction Vehicle Access Route [\[REP2-063\]](#)

### **Methodology**

- 3.5.11. Section 13.4 of ES Chapter 13 [\[REP1-015\]](#) sets out the methodology used to assess the potential effects of the proposed development and outlines the study area. This can be seen on Figure 13-4 [\[APP-126\]](#).
- 3.5.12. Traffic surveys were carried out to establish the baseline vehicular traffic flow (locations of these can be seen on Figure 13-2 [\[APP-124\]](#)) and the methodology has been based on the IEMA Guidelines 'Environmental Assessment of Traffic and Movement' (2023). As a result, the applicant has included in its assessment:
- highway links where traffic flows will increase by more than 30% or the number of HGVs will increase by more than 30%
  - highway links of high sensitivity where traffic flows have increased by 10% or more
- 3.5.13. Table 13-1 of ES Chapter 13 sets out the receptor sensitivity criteria used, and Table 13-3 sets out the impact magnitude criteria. Where baseline traffic flows were found to be low, professional judgement was applied in the impact magnitude criteria (paragraph 13.4.27). Two scenarios for weekday assessment were used and are considered to represent the worst-case scenario, these being the baseline year (2023) and the peak construction year (2028) with and without development.

### **Baseline**

- 3.5.14. Section 13.5 of ES Chapter 13 [\[REP1-015\]](#) sets out the baseline conditions for the Order limits and study area. It considers the highway network (both strategic and



local), public transport facilities, equestrian facilities, cycling and walking opportunities, and access points to the Order limits.

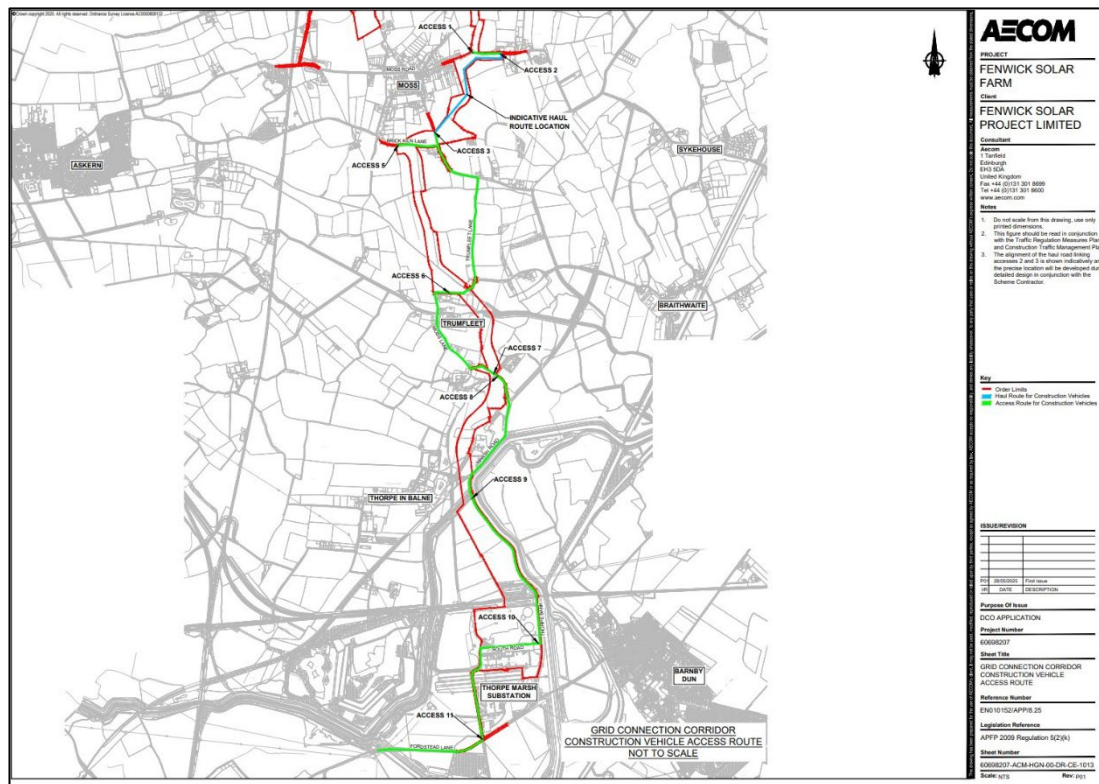
- 3.5.15. The baseline sets out personal injury collision (PIC) data (paragraphs 13.5.3 – 13.5.53) for the period between January 2018 and March 2023. It includes key routes and junctions that are anticipated to be used by HGVs and construction worker traffic travelling to/ from the solar PV site and the GCC alongside collision causation factors. Traffic accident locations can be seen on Figure 13-5 [\[APP-127\]](#). The data presented indicates there is no specific accident pattern or a particular location within the study area that would warrant ameliorative actions.
- 3.5.16. To establish baseline traffic flows for the study area, Automatic Traffic Counts (ATCs) were undertaken at 23 locations in 2023 alongside using the National Highways WEBTRIS portal for the strategic road network (SRN). Baseline traffic flows 2023 are presented in Tables 13-13 and 13-14. Tables 13-16 and 13-17 present baseline traffic flows for the anticipated year of peak construction (2028), for the same ATC links in the absence of the proposed development.

### **Access and Routing**

- 3.5.17. ES Chapter 13 [\[REP1-015\]](#) explains 75% of construction workers would gain access to the solar PV site via Access Point 4 (see ES Figure 2-4 [\[APP-075\]](#)). Construction workers would not travel north of Hags Lane. The remaining 25% would access the solar PV site via Access Point 1. When leaving the solar PV site, all construction workers and minibuses would use Access Point 1. Access to the solar PV site via West Lane would only be for emergency use. Worker and HGV distribution over the highway network and ATCs can be seen in ES Appendix 13-2 [\[REP4-014\]](#) and in [\[REP2-065\]](#).
- 3.5.18. HGV and tractor trailer access to the solar PV site and GCC is shown on Figure 13-3 [\[APP-230\]](#). For the solar PV site this would be via Access Point 1. For the GCC, HGVs and tractor trailers would gain access using a combination of the local road network and internal access roads. This can be seen in Figure 4 below alongside ES Figure 2-4 (Location of Temporary Construction Compounds and Indicative HDD Areas) [\[APP-075\]](#), and the swept pathway for access by tractor trailer or HGV at access points along the GCC can be seen in the fCTMP Part 2 [\[APP-251\]](#).
- The construction AM peak hour would be 06:00 – 07:00 and the construction PM peak hour would be 19:00 – 20:00. Both of these would be outside of the network AM peak hour (08:00 – 09:00) and network PM peak hour (17:00 – 18:00).
- 3.5.19. The main access to the solar PV site during the operational phase would be Access Point 12. It is anticipated that up to two permanent members of staff would be on site at any one time. Access by HGV for maintenance and replacement of panels or other parts, batteries, inverters and transformers would be via Access Point 1. It is not anticipated that any regular access would be required to the GCC during this phase.



**Figure 4: Grid Connection Corridor HGV Access Route**



(Source: Grid Connection Corridor Construction Vehicle Access Route [REP2-063])

## Mitigation

3.5.20.

Section 13.6 of ES Chapter 13 [REP1-015] sets out a number of embedded mitigation measures which are intended to be implemented during the construction and decommissioning phases. These include:

- the creation of suitable access points to enable movement of vehicles into the Order limits where appropriate
- where junction bell mouths require creation, these would be designed to meet the Design Manual for Roads and Bridges (DMRB)
- the completion of swept path analysis for AILs, HGVs and tractor/ trailers where routing is appropriate
- the routing of HGVs and AILs in accordance with the indicative HGV routing plan [APP-230]
- utilising internal routes within the solar PV site to avoid using the highway network
- where development traffic may have to use the road network, implementing traffic management such as the use of banksmen and manned controls,
- routing a proportion of inbound construction workers via Fenwick Common Lane/ Haggs Lane
- restricting HGV arrivals and departures to between 09:00 and 17:00
- implementing a delivery management system to control bookings of HGV deliveries from the start of the construction phase alongside a monitoring system to record the routes HGVs travel to/ from the Order limits
- encouraging construction workers to car share where possible alongside the use of a minibus to transfer construction workers from pick up locations to the Order limits

- the provision of limited car parking on site

3.5.21. These commitments are included in the fCTMP [\[REP4-027\]](#) and [\[APP-251\]](#) and would be secured by the final versions of the CTMP via requirement 13 of the dDCO [\[REP5-004\]](#).

3.5.22. The Order limits also include a section of highway at the junction of the A19 and Station Road in Askern to allow for AIL vehicle access and escort at that junction. Paragraphs 5.3.16 – 5.3.20 of the fCTMP [\[REP4-027\]](#) outline traffic management measures for this element of the proposed development.

3.5.23. For the operational phase, embedded mitigation measures would include vehicles travelling to the Order limits being encouraged to use the most direct route and higher order roads.

3.5.24. The mitigation of decommissioning effects is proposed to be secured through a Decommissioning Traffic Management Plan (DTMP) which would be produced prior to commencement of the decommissioning phase and would be based on the fCTMP. The DTMP would form part of the final DEMP, which is secured by requirement 18 (DEMP).

### **Assessment of Effects**

3.5.25. The effects on traffic and transport are assessed in section 13.7 of ES Chapter 13 [\[REP1-015\]](#).

#### *Construction Phase*

3.5.26. The construction phase is anticipated to create the greatest impact from additional development related traffic, particularly during the first 12 months of construction. During that period peak construction traffic is expected to be:

- 280 daily two-way construction worker vehicle movements of which:
  - 248 movements would be made by private worker vehicles (124 arriving in the morning and 124 departing in the afternoon); of which 16 daily two-way movements are expected to access the GCC
  - 32 movements would be made by minibus (eight arriving and eight departing in the morning; and eight arriving and eight departing in the afternoon)
- 36 two-way HGV movements (18 in and 18 out) which would be either articulated lorries or tractor trailer movements. Of these, six daily two-way movements would be associated with the GCC
- Up to five AILs to be delivered during the period of construction to the solar PV site

3.5.27. A summary of the significance of effects for the peak construction AM and PM peak hours for all ATC links can be found in Tables 13-22 and 13-23 respectively. These identify that significant effects would occur at ATC links 9 (Moss Road – Askern village), 10 (Moss Road – east of Askern village), 11 (Fenwick Common Lane), 12 (Trumfleet Lane – south of Moss), 13 (Marsh Road), and 14 (Thorpe Bank). This is because of these ATCs being expected to experience an increase in traffic flow of more than 30% resulting in a medium or high magnitude of impact in combination with the sensitivity of the transportation link.

- 3.5.28. This is particularly so for Fenwick Common Lane (ATC 11) which is expected to experience a 763.1% increase in traffic during the AM peak. The low baseline traffic levels on ATC 11 alongside the proposed increase in construction worker traffic is accountable for this high percentage increase.
- 3.5.29. Due to there being a 30% or higher increase in total traffic at ATC links 9, 10, 11, 12, 13 and 14, these links were assessed further with regard to accidents and safety. This concluded that given there is no pattern of safety issues that could be aggravated by the proposed development, a magnitude rating of very low was given to the ATC links.
- 3.5.30. For the other ATC links, whilst the percentage increases are above the 30% threshold, the actual increase in traffic would be small and it is expected there is sufficient capacity on the road network to accommodate these additional trips. The ES notes that the baseline hourly two-way traffic flows would be very low. To take account of this low baseline, professional judgement was used within the assessment, and the magnitude of impact was lowered by one step. This gives the impact magnitude as medium instead of high. No significant effects were identified for ATC links 1-8 and 15-23.

#### *Operational Phase*

- 3.5.31. ES Chapter 13 states that the operational phase is not anticipated to generate significant levels of development related traffic. For the solar PV site, activities would principally be vegetation management, monitoring and maintenance alongside replacement of components. It is assumed when replacement works are undertaken, up to five pieces of equipment would be replaced per day (equating to 10 two-way HGV movements) over a period of several months every 10 years. There are no proposed AIL movements. For the GCC, activities would be focused on routine inspections and reactive maintenance. As predicted traffic levels during this phase are expected to be negligible, ES Chapter 13 identifies no significant effects.

#### *Decommissioning Phase*

- 3.5.32. As development related traffic at the decommissioning phase is anticipated to be no worse than that experienced during the construction phase, the assessment of effects for the construction phase has been applied to the decommissioning phase.

#### *Cumulative effects and effect interactions*

- 3.5.33. Section 13.10 of ES Chapter 13 [\[REP1-015\]](#) sets out the approach taken to the assessment of cumulative effects with other projects within the vicinity of the Order limit. Table 13-29 of ES Chapter 13 sets out more detail on this alongside ES Chapter 15: Cumulative Effects and Interactions [\[APP-067\]](#) and ES Figure 15-3 (Location of Short List Schemes) [\[APP-131\]](#). Chapter 13 sets out that based on the proposed routing for each project, the number of HGVs proposed per project and the limited overlap of projects and the size of the project; there would be no significant cumulative effects with the proposed development.
- 3.5.34. ES Chapter 15 also sets out an assessment of potential effect interactions between different environmental topics for each phase of the proposed development. These are detailed within Table 15-1 (Potential Effect Interactions during the Construction and Decommissioning Phases) and Table 15-2 (Potential Effect Interactions during the Operation and Maintenance Phase). No significant effect interactions are identified for transport and access on receptors.

## Issues considered during the Examination

- 3.5.35. At deadline 1, National Highways [\[REP1-034\]](#) agreed that the impact of construction traffic on the SRN could be mitigated through the fCTMP and the fDEMP. A SoCG was signed to that effect. At the close of the examination, a SoCG was also agreed between the applicant and CDC [\[REP5-011\]](#) with regards to the fCTMP, hours of construction, access design and traffic and transport impacts. The SoCG with CDC states that a 'Permit to Work' managed by the council's Streetworks team would be required for works detailed within the fCTMP. This has been inserted into the dDCO [\[REP5-004\]](#) as Article 9 in Part 3 Streets.

### *Highway Capacity, Layout and Condition*

- 3.5.36. CDC, in its LIR [\[REP1-048\]](#), noted that the road network is predominantly rural in character and is not designed for large HGVs, explaining that it has limited safe and convenient routes to access the Order limits without causing disruption to the local road network or other users. Similar comments and concerns were raised by Fenwick Solar Farm Action Group [\[RR-014\]](#), Moss and Fenwick Village Hall [\[REP1-064\]](#) and IPs in RRs, Written Representations (WRs) and at the OFH [\[EV2-002\]](#). These can be summarised as follows:

- The capacity of the local road network to accommodate the increase in traffic.
- Increase in the volume of traffic associated with the proposal leading to increased congestion on the local highway network.
- Damage to the highway from HGVs accessing the Order limits.
- The size of vehicles accessing the Order limits and ability of the local road network and junctions to accommodate them due to the unsuitability of the highway network.
- Meeting HGVs on narrow roads.

- 3.5.37. In response to our written questions (ExQ1 [\[PD-007\]](#) and ExQ2 [\[PD-010\]](#)), CDC confirmed [\[REP2-068\]](#) and [\[REP4-040\]](#) that, provided the provisions set out within the fCTMP [\[REP4-027\]](#) and [\[APP-251\]](#) were secured, it was satisfied with the ability of the local highway network to accommodate the type of vehicle proposed for the development and the number of HGVs proposed. It raised no further concerns in this respect. It did, however, note the importance of pre and post construction phase road condition surveys both of which are included in the fCTMP [\[REP4-027\]](#) and [\[APP-251\]](#) and secured by requirement 13 (CTMP).

- 3.5.38. In relation to the concerns raised regarding the ability of the road network to accommodate HGVs, the applicant confirmed that up to six daily tractor trailer movements would occur along the GCC and that these would not be articulated lorries [\[REP2-068\]](#). Furthermore, the applicant confirmed that an internal haul road would be used between Access Points 2 and 3 removing HGVs from that part of the road network. Also, that tractor trailer movements would move contemporaneously along the GCC with the construction activities [\[REP2-068\]](#).

- 3.5.39. In ExQ1 [\[PD-007\]](#) and ISH3 [\[EV6-005\]](#), we also asked the applicant to confirm that all vehicles can safely access and egress each access point, both for the solar PV site and the GCC. In response [\[REP3-032\]](#) and [\[REP4-037\]](#), the applicant referred to the swept path analysis results within fCTMP Part 2 [\[APP-251\]](#) which demonstrated the access points could safely accommodate the proposed vehicles. The fCTMP also outlines that some locations are identified for carriageway widening/ vegetation removal with associated traffic management to facilitate safe implementation.

- 3.5.40. With regard to the local road network having capacity to accommodate an increase in traffic that could otherwise lead to congestion, CDC [\[REP2-068\]](#) confirmed it was satisfied that the ATC sites 9-14 have sufficient capacity to accommodate the additional trips by construction workers given these trips would be outside of what CDC define as the traditional highway peak hours (0930 - 1530 hours).
- 3.5.41. In ExQ2 [\[PD-010\]](#), we asked CDC to comment on the approach taken to lowering the magnitude of impact by one step for some of the ATC links. CDC responded [\[REP4-040\]](#) that it was satisfied with the approach taken by the applicant. It noted that due to the baseline traffic data being so low for some of the ATC links, any proposed increase when expressed as a percentage would appear amplified above what would be experienced in reality. CDC commented further that most of the construction traffic would be out of what is classified as peak hours and that the worst case of 120 cars an hour accessing the Order limits would equate to one car every thirty seconds. The use of minibuses for construction staff would reduce this further.

#### *ExA's consideration*

- 3.5.42. Following the implementation of embedded mitigation measures, the proposal would lead to major and moderate adverse (significant) effects during the construction phase at ATC links 9 – 14 for all of the criteria set out within the IEMA guidance. This is due to these links having low baseline levels which consequentially can result in a large percentage increase and magnitude of impact. We recognise that the increase in traffic along these ATC links would have a significant effect. However, this significant effect would be limited to two one-hour windows (0600 - 0700 and 1900 - 2000), both of which are outside of the peak hours.
- 3.5.43. We are satisfied that the impact on Fenwick Common Lane, which is expected to see the highest increase in vehicle numbers, would be mitigated by all construction workers and minibuses egressing via Access Point 2 onto Moss Road.
- 3.5.44. Furthermore, this significant effect would occur only for the construction phase and decommissioning phase both of which are time limited and after which the number of vehicles accessing the Order limits would be negligible.
- 3.5.45. With regards to HGV movements, we agree with the applicant's assessment that the proposed 36 HGV movements per day during construction (six of which would access the GCC) would not result in significant effects.
- 3.5.46. With regard to accessibility of HGVs/ tractor trailers utilising the local road network to access the Order limits, we are satisfied that that it has been demonstrated there are adequate swept pathways for these vehicles to access/ egress at access points both at the solar PV site and along the GCC. These measures alongside other proposed embedded mitigation set out in the fCTMP would ensure construction traffic can be safely accommodated on the road network.
- 3.5.47. Overall, we are satisfied that with the embedded mitigation measures proposed within the fCTMP, impacts both on the highway network and on users of the highway network, can be managed and minimised. As a result, we consider no significant effects would occur.

#### *Accidents*

- 3.5.48. A risk of accidents from the increase in traffic associated with the proposal on the highway network was raised by IPs (see [\[RR-035\]](#), [\[RR-040\]](#) and [\[RR-047\]](#)). The PIC



data presented shows Doncaster Road (A19) and Moss Road having the highest number of collisions; with 12 on each road (six slight and six serious each) over the study period of 2018 – 2023. The cause of the accidents is broken down further in Tables 13-9 and 13-11 of ES Chapter 13 and shows there not being a single or consistent factor. CDC also confirmed in its response [\[REP2-068\]](#) to ExQ1 (1.10.11) [\[PD-007\]](#) that the collisions experienced on Moss Road are not in one location but are spread across a number of locations and junctions between Kirkhouse Green Road and Fenwick Common Lane.

#### *ExA's consideration*

- 3.5.49. We note that Moss Road and Doncaster Road (A19) have the highest recorded number of accidents during the study period. However, we are satisfied that given they are spread along Moss Road and are not concentrated on or around junctions in the locality of the Order limits, that there would not be a pattern of safety issues that could be aggravated by the construction of the proposed development.

### **Conclusions on Traffic and Transport**

- 3.5.50. We are satisfied that the applicant has carried out an assessment of traffic and transport matters that meets the requirements of NPS EN-1 and NPS EN-3 alongside paragraphs 109 and 118 of the NPPF.
- 3.5.51. Whilst significant effects have been identified at ATC links 9 -14 for construction worker vehicles during the morning access and evening egress to/ from the Order limits, we recognise this significant effect arises from the existing low traffic baseline at each of these ATC links. However, we do not consider that there is a significant risk to highway safety as a result of the increased traffic on these links and we are cognisant that the worker traffic is for a limited period of time during the working day and that the construction phase is temporary.
- 3.5.52. Whilst several sites have been identified within the short list of cumulative developments [\[APP-067\]](#) and [\[APP-131\]](#), we consider that most are unlikely to have an overlap with this proposal with regards to the highway network that would be utilised to gain access to those sites. Where there is potential for overlap, the overlap would be minor. We are satisfied there would be no effect interactions between transport and traffic and other environmental topics. As such, we are content that there would be no significant cumulative effects or interactions on traffic and transport.
- 3.5.53. We are therefore satisfied that, with the embedded mitigation measures identified and controlled through the fCTMP, fCEMP and fDEMP (which would be secured by requirements 11 (CEMP), 13 (CTMP) and 18 (DEMP) of the dDCO), the proposal would be adequately mitigated during its construction, operational and decommissioning phases and would meet the requirements of NPS EN-1 and NPS EN-3, the NPPF and policies contained within the DLP. However, due to the significant adverse effect at ATC links 9 -14 during the construction phase, we consider the effect of traffic and transport matters of the proposed development should be afforded a little negative weight in the planning balance.

## **3.6. BIODIVERSITY AND ECOLOGY**

### **Introduction**

- 3.6.1. This chapter considers the effect of the proposed development on ecology and biodiversity including protected habitats and species, biodiversity net gain,

hedgerows and trees. Matters relating specifically to the Habitats Regulations are considered separately in [Chapter 4](#) below.

### **Policy Context**

- 3.6.2. NPS EN-1 recognises the need for healthy functioning ecosystems and coherent ecological networks that are more resilient and adaptable to climate change effects. It requires projects to ensure that they not only avoid, mitigate and compensate for harms, and follow the mitigation hierarchy, but also consider opportunities for enhancement. Biodiversity net gain (BNG) is an essential component of this (paragraphs 4.6.1 and 4.6.2) and the latest version of the biodiversity metric should be used for the biodiversity baseline and planned BNG outcomes (paragraph 4.6.7). Paragraph 4.6.10 is clear that BNG should be applied after compliance with the mitigation hierarchy and does not change or replace existing environmental obligations.
- 3.6.3. 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 and make an important contribution to ecological networks and nature's recovery. Paragraphs 5.4.14 – 5.4.15 cover ancient woodland, ancient trees, veteran trees and other irreplaceable habitats recognising ancient woodland is a valuable biodiversity resource both for its diversity of species and for its longevity as woodland.
- 3.6.4. The protection and enhancement of habitats and species is sought by paragraph 5.4.16, including those that receive statutory protection under a range of legislative provisions, alongside other species and habitats identified as being of principal importance for the conservation of biodiversity.
- 3.6.5. Paragraph 5.4.17 requires an 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. 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 (paragraph 5.4.22). 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. Paragraphs 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. In addition, NPS EN-3 states that the applicant's ecological assessments should identify any ecological risk from developing on the proposed site (paragraph



2.10.76). Moreover, paragraphs 2.10.77 – 2.10.79 indicates that habitats alongside a range of species may require assessment. This can be informed by a ‘desk study’, an evaluation of the likely impacts and should specify mitigation to avoid or minimised impacts and any further surveys required. Paragraph 2.10.83 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.

- 3.6.9. Paragraph 2.10.89 of NPS EN-3 acknowledges that solar farms have the potential to increase the biodiversity value of a site and that, in some instances, this can result in significant benefits and enhancements beyond BNG. Proposed enhancements should aim to achieve environmental gains and BNG in line with the ambition set out in the Environmental Improvement Plan and this might include maintaining or extending existing habitats and potentially creating new important habitats. Applicants are advised to develop an ecological monitoring 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).
- 3.6.10. 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.
- 3.6.11. 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.
- 3.6.12. Similarly, DLP Policies 29 – 32 seek to protect designated and locally important habitats, sites and species including woodland and hedgerows, to avoid significant impacts from development proposals and to support the delivery of BNG.

### **The Application**

- 3.6.13. ES Chapter 8 (Ecology) [\[REP4-010\]](#) sets out the applicant’s assessment of the effect of the proposed development on ecology and biodiversity. It is supported by the following documents:
- ES Appendix 8-1 (Legislation, Policy and Guidance (Ecology)) [\[APP-145\]](#)
  - ES Appendix 8-2 (Reptile Survey Report) [\[APP-146\]](#)
  - ES Appendix 8-3 (Bat Report) [\[APP-234\]](#)
  - ES Appendix 8-4 (Badger Report) and its Annex A (confidential) [\[APP-148\]](#) and [APP-149\]](#)
  - ES Appendix 8-5 (Hedgerow Report) [\[REP3-010\]](#)
  - ES Appendix 8-6 (Aquatic Ecology Report) [\[APP-151\]](#)
  - ES Appendix 8-7 (Breeding Bird Report) and its Annex A (confidential) [\[APP-152\]](#) and [APP-153\]](#)
  - ES Appendix 8-8 (Non-Breeding Bird Report) [\[APP-154\]](#)
  - ES Appendix 8-9 (Riparian Mammal Report) [\[APP-155\]](#)
  - ES Figure 8-1: Sites Statutorily Designated for their Biodiversity Value at an International and National Level [\[APP-092\]](#)
  - ES Figure 8-2: Sites Non-Statutorily Designated for their Biodiversity Value [\[APP-093\]](#)
  - ES Figure 8-3: UK Hab Plan [\[APP-094\]](#)

- ES Figure 8-4: Waterbody Plan [\[APP-095\]](#)

### **Methodology**

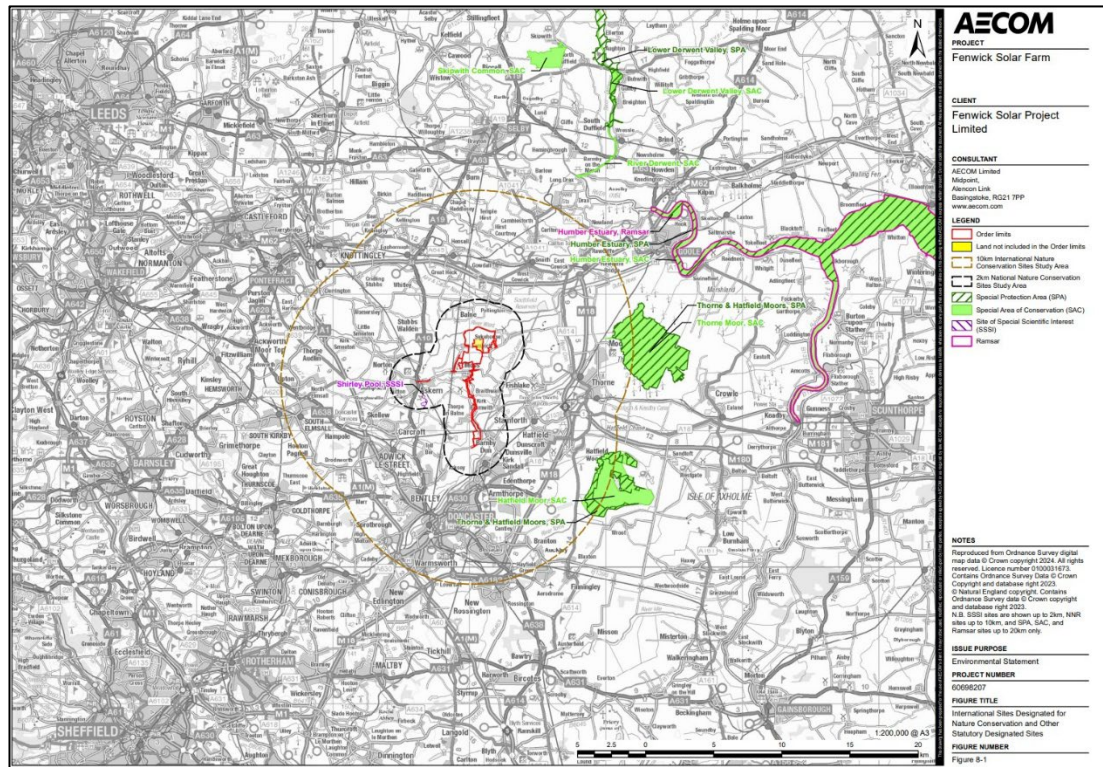
- 3.6.14. Sections 8.4 and 8.5 of ES Chapter 8 [\[REP4-010\]](#) sets out the methodology used to assess the potential effects of the proposed development being based on the Chartered Institute of Ecological and Environmental Management guidelines. This outlines that a desktop study was conducted and how the study area was defined (paragraph 8.4.7) alongside determining the zone of influence (Zoi) (paragraph 8.4.5).
- 3.6.15. The applicant used a range of information (see paragraphs 8.4.10 – 8.4.15 of ES Chapter 8) alongside the findings of a preliminary ecological appraisal to determine the ecological field surveys for certain protected or notable species and notable habitats. Aquatic habitat walkover surveys were undertaken to assess watercourse and ditch water quality, and a habitat suitability assessment was undertaken to determine the suitability for each watercourse or waterbody for riparian mammals. Details of the hedgerow, tree assessments and surveys are contained within Appendix 8-5 [\[REP3-010\]](#) and Appendix 10-7 (parts 1 and 2) [\[APP-236\]](#) and [\[APP-240\]](#).
- 3.6.16. Table 8-1 of ES Chapter 8 sets out the details of the survey areas, method, survey periods and guidance used for each survey conducted to inform the baseline and consequently the assessment of effects. Tables 8-2 to 8-4 provide the criteria used to aid the assessment of effects.
- 3.6.17. The methodology used for BNG is described in section 2 of the BNG Assessment [\[REP4-023\]](#) outlining the pre and post development biodiversity value for three habitat components: habitats, watercourses and hedgerows. Baseline habitats in the Order limits are shown in Appendix A of the BNG Assessment [\[REP4-023\]](#). Not all the area within the GCC has been mapped for baseline habitats, only points where the construction compounds, HDD activity and the access points have been surveyed. The applicant states this is to allow for focusing on areas and habitats that are to be directly impacted by the proposed development and ensure mitigation is proportionate to that impact.

### **Baseline**

- 3.6.18. Section 8.7 of ES Chapter 8 sets out the baseline. There are no international, national or regional ecological designations within the Order limits. There are 3 sites designated for international status within the 10km study area these being: Thorne Moor Special Area of Conservation (SAC), Thorne and Hatfield Moors Special Protection Area (SPA); and Hatfield Moor SAC. The Shirley Pool Site of Special Scientific Interest (SSSI) is located approximately 900m to the south of the Order limits (being the junction of the A19 and Station Road), approximately 3.2km west of the GCC and approximately 3.3km southwest of the solar PV Site. There are no SACs that list bats as a qualifying feature within 30km of the Order limits.
- 3.6.19. The River Went and minor watercourses connected to it, are linked to the Humber Estuary SAC/ Ramsar site approximately 16km downstream via the River Don and the Dutch River. The Humber Estuary is, in part, designated for two migratory fish (River Lamprey and Sea Lamprey) which have the potential for being present within the River Went and connected watercourses. Table 8-5 of ES Chapter 8 provides a detailed description of these designated sites. ES Figure 8-1 [\[APP-092\]](#) shows their location in relation to the Order limits, an extract of which can be found in Figure 5 below.

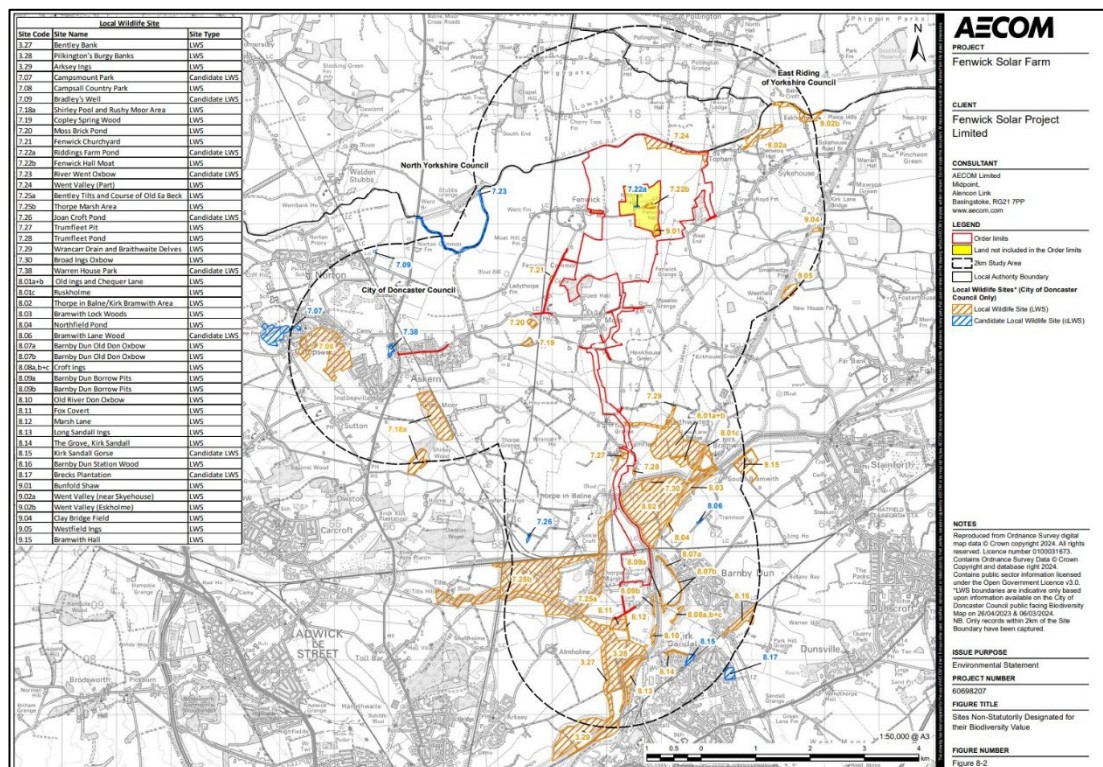


**Figure 5: Location of International and National Ecological Designations**



(Source: ES Figure 8-1 International Sites Designated for Nature Conservation and Other Statutory Designated Sites [APP-092])

**Figure 6: Location of Non-Designated Ecological Designations**



(Source: ES Figure 8-2 Sites Non Statutorily Designated for their Biodiversity Value [APP-093])

- 3.6.20. Bunfold Shaw ancient woodland (also a LWS) is located approximately 10m from the Order limits adjacent to footpaths Skyehouse 29 and Fenwick 12. Parkshaw Wood ancient woodland is located approximately 1km northwest of the solar PV site.
- 3.6.21. Habitats that are present within the Order limits can be identified on ES Figure 8-3 [\[APP-094\]](#) with Table 8-7 providing more detail.
- 3.6.22. The solar PV site supports a range of protected and priority species including aquatic macro invertebrates, aquatic macrophytes, fish, terrestrial invertebrates, reptiles, bats, badgers, riparian mammals, brown hare and hedgehogs. Full details of these can be found in Table 8-8 in ES Chapter 8 alongside ES appendices 8-2 to 8-9 [\[APP-146, APP-148, APP-149, APP-151, APP-152, APP-153, APP-154, APP-155, APP-234\]](#) and [REP3- 010](#). Full details of the number of 'Important' hedgerows alongside the quality and location of the hedgerows in the Order limits can be found in Appendix 8-5 [\[REP3-010\]](#).
- 3.6.23. Furthermore, details of the tree features, including veteran trees and ancient trees can be found at Appendix 10-7 Parts 1 and 2 [\[APP-236\]](#) and [APP-240](#). Table 8-9 provides a summary of what the applicant considers to be ecologically important features based on the desk study and survey data.

#### *Potential Impacts*

- 3.6.24. Section 8.9 of ES Chapter 8 [\[REP4-010\]](#) sets out potential negative and positive impacts from each of the phases of the proposed development prior to the implementation of mitigation measures. Paragraph 8.9.2 provides detail on potential construction phase impacts including habitat loss or tree removal, fragmentation of populations or habitats, disturbance and habitat degradation. These could result in changes in species behaviour or populations or mortality.
- 3.6.25. Paragraph 8.9.3 of ES Chapter 8 provides both positive and negative impacts on biodiversity features that may occur during the operational and maintenance phase. Negative impacts could include avoidance of the Order limits by species, fragmentation of habitats, disturbance or displacement of fauna, reducing areas for foraging by bats and shading from solar PV panels reducing the quality of grassland.
- 3.6.26. In contrast, beneficial impacts during this phase are likely to include increases in habitat with greater floristic diversity, increased connectivity through planting of trees and hedgerows, undeveloped areas providing nesting and foraging habitats, increase in abundance and distribution of species due to lack of human disturbance, and indirect beneficial impact through possible reduction of agricultural chemical use.
- 3.6.27. Regarding the decommissioning phase, the impacts on ecological features are likely to be similar to those during the construction phase. Given the passage of time, ecological surveys would be required in advance of the decommissioning phase to define the ecological baseline and identify any further mitigation measures required. The requirement for pre-decommissioning surveys is set out within the fDEMP [\[REP4-019\]](#).

#### **Mitigation**

- 3.6.28. The proposed embedded mitigation measures are set out in section 8.10 and Table 8-10 of ES Chapter 8 [\[REP4-010\]](#).

- 3.6.29. Avoidance of important ecological features and habitats has been sought as a first principle as part of the proposed development design. This includes siting construction routes and works away from designated sites and the use of HDD to avoid impacts on running water habitats. Buffer zones from key habitat features would be used from working areas and paragraph 8.10.6 of ES Chapter 8 explains these distances. These commitments are detailed in the fLEMP [\[REP3-017\]](#) and secured by requirement 6 (LEMP) of the dDCO.
- 3.6.30. Fencing would be used to avoid incursion into exclusion zones and lighting used in any phase would be appropriately controlled. These measures are included in the fCEMP [\[REP3-013\]](#), fOEMP [\[REP5-007\]](#) and fDEMP [\[REP4-019\]](#) and secured through requirements 11 (CEMP), 12 (OEMP) and 18 (DEMP) in the dDCO. Where soils are to be stripped this is to be based on good practice measures and in accordance with the Framework Soil Management Plan (fSMP) [\[REP4-021\]](#).
- 3.6.31. When using HDD, the applicant explains it would be installed to a minimum of 1.5m depth below the bed of the watercourse and for watercourses with connectivity to the River Don, a minimum installation depth of 5.0m below the riverbed. Any habitats lost when open cut techniques are used would be reinstated after installation. Furthermore, the core fish migration season of September to February and May would be avoided for HDD beneath Mill Dike, Wrancarr Drain, Engine Dike and Thorpe Marsh Drain. To reduce or eliminate adverse effect for aquatic and riparian habitats a framework Drainage Strategy [\[APP-160\]](#) would be followed.
- 3.6.32. Where avoidance is not practical, the fCEMP [\[REP3-013\]](#) and fDEMP [\[REP4-019\]](#) detail mitigation measures to protect biodiversity including the prevention of sediment runoff, vegetation clearance being undertaken at appropriate times of year, and management of noise, lighting and dust. These documents include measures for monitoring to ensure target conditions for habitats are met.
- 3.6.33. Full details of all mitigation proposed and how it is secured can be found in the Environmental Commitments and Mitigation Register [\[REP4-015\]](#).

### **Assessment of Effects**

- 3.6.34. Section 8.11 of ES Chapter 8, (including Tables 8-11 and 8-12) sets out the assessment of likely impacts and effects of the proposed development on important ecological features with embedded mitigation measures. For statutory and non-statutory designated sites, the applicant considers that no significant adverse effects are identified for any of the phases for the proposed development. Please refer to [Chapter 4](#) (Findings and Conclusions in Relation to Habitats Regulation Assessment).
- 3.6.35. No significant adverse effects are identified for all phases of the proposed development in relation to the temporary loss of neutral grassland, permanent loss of scattered trees (five individual trees and five tree groups), damage to veteran trees (two trees subject to buffer zone incursions), and temporary and permanent loss of hedgerows (approximately 3.99km of hedgerow, which includes some 'important' hedgerows). This is also the case for the temporary loss of open mosaic habitat (OMH) on previously developed land (PDL), loss and fragmentation of running water habitats, loss of habitat used by ground nesting birds (such as Skylark and Grey Partridge), disturbance to non-breeding waterbirds (for example from noise or visual stimuli), the temporary loss of arable farm habitat supporting non-breeding farmland birds and the displacement of foraging/ commuting bats.



### *Enhancement and BNG*

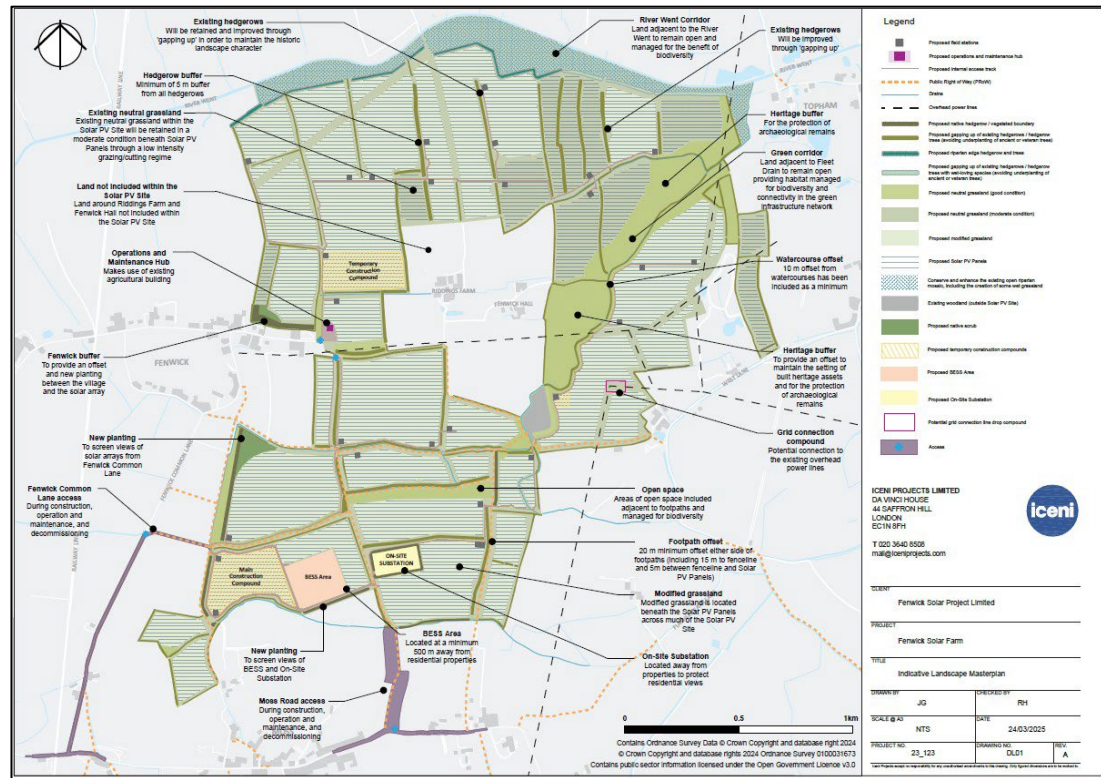
- 3.6.36. The applicant has proposed enhancement measures as part of the proposed development (ES Chapter 8, paragraphs 8.13.2 – 8.13.16). These include native hedgerow planting and enhancement, areas of native scrub and grassland creation including a green corridor of species rich neutral grassland through the centre of the solar PV site.
- 3.6.37. In addition, wide undeveloped margins along access tracks and undeveloped corners of fields for non-breeding birds free from solar panels and other infrastructure are also proposed. Furthermore, riparian corridor enhancement south of the River Went, wetland scrapes within the River Went riparian corridor, the provision of habitat boxes and the creation of habitat piles are detailed. These can be seen in [Figure 7](#) below. These enhancements are included within section 5.3 of the fLEMP [\[REP3-017\]](#) and secured by requirement 6 (LEMP) of the dDCO.
- 3.6.38. Section 3 of the BNG Assessment [\[REP4-023\]](#) details the predicted BNG across all habitat types based on the indicative layout plan. This would include 1,283.80 area habitat units, 60.52 hedgerow units and 0.02 watercourse units to be created and 440.90 area habitat units, 13.61 hedgerow units and 37.57 watercourse units being enhanced. Consequently, it is predicted that the proposed development could provide a BNG of up to +36.46% for area-based habitat units, +68.31% hedgerow units and +24.97% for watercourse units. The fLEMP [\[REP3-017\]](#), secured by requirement 6 (LEMP) in the dDCO, would deliver enhancements and commits to at least 10% BNG across all habitat types for the proposed development. The BNG calculation would be updated following the detailed design stage including updates to habitat surveys and this would be reflected in the final LEMP.
- 3.6.39. Whilst the trading rules for hedgerows and watercourse habitats would be met, for area-based habitats, in particular OMH which is of 'High' distinctiveness, the trading rules would not be satisfied due to impacts from cable laying in the GCC. The applicant states this is not significant as the temporary disturbance could be beneficial to this particular habitat.
- 3.6.40. Table 8-15 of ES Chapter 8 provides a summary of the significance of effect with enhancement measures provided. The applicant states this proposal would deliver significant enhancements for biodiversity including a moderate beneficial (significant) effect for the Went Valley (part) LWS, lowland mixed deciduous woodland and individual trees, neutral grassland, hedgerows, running water (river and streams), terrestrial invertebrates; and breeding birds (general breeding bird assemblage). Further minor beneficial (not significant) effects are also stated for aquatic macroinvertebrates, reptiles, bats (roosting and foraging/ commuting), badger; and other mammals (Brown Hare, hedgehog and harvest mouse).

### *Cumulative effects and effect interactions*

- 3.6.41. Section 8.15 of ES Chapter 8 provides an assessment of potential cumulative effects on each important ecological feature where there could be an interaction between them and from other plans or projects based on a spatial and/ or temporal basis. The likely significance of these effects relates to the number of developments affecting a particular important ecological feature.
- 3.6.42. The worst-case scenario has been based on all the shortlist developments as listed in Table 15-4 of ES Chapter 15 (Cumulative Effects and Interactions) [\[APP-067\]](#) occurring simultaneously. The assessment concludes that given there are no residual adverse effects from the proposed development, there are no likely

significant cumulative adverse effects. Instead, Table 8-16 outlines there would be a moderate beneficial cumulative significant effect or no cumulative significant effect from the proposed development on important ecological features.

**Figure 7: Indicative Landscape Masterplan**



(Source: Framework Landscape and Ecological Masterplan Appendix A Indicative Landscape Masterplan [\[REP3-017\]](#))

- 3.6.43. Likewise, in accordance with the methodology set out in ES Chapter 5 (EIA methodology) [\[APP-057\]](#) no potential for effect interactions was identified and as such, the applicant considers that no significant effect interactions would arise.

## Issues considered during the Examination

- 3.6.44. Comments were raised by CDC [\[RR-001\]](#) and [\[REP1-048\]](#), NE [\[RR-006\]](#), and the EA [\[RR-003\]](#) with regards to BNG, surveying, invasive non-native species, the requirement for a wetland habitat management plan, concern that magnetic fields emitted from cables in the GCC could have behavioural and egg development impact on fish, and further detail for the CEMP. At the close of the examination, SoCG were agreed between the applicant and each of these statutory consultees [\[REP5-011\]](#), [\[REP1-035\]](#) and [\[REP5-013\]](#) confirming all biodiversity and ecology matters were agreed.
- 3.6.45. Yorkshire Wildlife Trust (YWT) [\[RR-019\]](#) and [\[REP3-038\]](#), the Burnet Heritage Trust (BHT) [\[RR-011\]](#), [\[REP1-054\]](#), [\[REP2-075\]](#), [\[REP2-076\]](#), [\[REP2-077\]](#), [\[REP3-035\]](#), [\[REP4-043\]](#) and [\[REP5-026\]](#), Fenwick Solar Farm Action Group [\[RR-014\]](#), [\[REP1-059\]](#), Moss and Fenwick Village Hall [\[RR-017\]](#) and [\[REP1-064\]](#) together with RRs from a considerable number of local residents objected to the proposal and raised concerns with regards to loss of wildlife and a range of biodiversity issues. These matters are considered below.



#### *Adequacy of bird surveys*

- 3.6.46. The BHT [RR-011] and [REP1-054] questioned the extent of the bird surveys carried out (ES Appendices 8-7 and 8-8 [APP-152, APP-153 and APP-154]) and in particular that Eurasian curlew, Eurasian teal, marsh harrier, grasshopper warbler, marsh warbler and garganey had not been surveyed. The BHT raised concerns regarding errors within the ecological assessment and questioned the data set used.
- 3.6.47. The applicant responded [REP2-058 and REP2-059] confirming these bird species were in the scope of the surveys and survey period and, where present, were recorded. The applicant also explained that marsh harrier were assessed as part of the non-breeding assemblage and that there is no breeding habitat for garganey within the Order limits. For Eurasian teal, the applicant further explained that even though the Order limits are beyond the foraging distances for this bird species, impacts on non-SPA water birds were nevertheless assessed within ES Chapter 8. The applicant also confirmed that a wide range of data bases, including those highlighted by the BHT within their response, had been reviewed to inform the scope of the surveys.
- 3.6.48. During the examination, we questioned NE and CDC on the scope and use of data presented in the ES Chapter 8 in relation to breeding and non-breeding bird species. In response, CDC confirmed [REP4-040] that it considered the survey methodology for breeding birds and non-breeding birds within the ES appendices is in accordance with best practice. NE commented [REP4-042] that it had no concerns with the non-breeding bird survey methodology and deferred to CDC with respect to breeding bird surveys.
- 3.6.49. The BHT maintained their concerns [REP3-035] regarding the surveys, use of data and the applicant's responses throughout the examination and at its close.

#### *ExA's consideration*

- 3.6.50. We acknowledge the concerns raised by the BHT on the scope, detail and data of the surveys within the ES. However, we are satisfied with the evidence provided by the applicant that the survey effort included the species of BHT concern or, alternatively the explanation provided that the assessment took account of those species. We have not been presented with evidence to suggest that the methodology and findings of the surveys are of a condition that would render them deficient. We are satisfied with the bird surveys and consequently their application in the assessment of effects of the proposed development.

#### *Candidate SSSI*

- 3.6.51. The BHT RR [RR-011] drew our attention to the submission of a SSSI application made to NE by the BHT for an area of land that includes some of the Order limits and beyond it. Further detail on the candidate SSSI was also provided by the BHT at [REP1-054] and [REP2-075] outlining the submission around Topham Ferry Bridge is for designation of this area on the basis of both bird communities of 'Lowland Damp Grassland' and 'Lowland Open Waters and their margins'. The BHT requested further assessment of the candidate SSSI be conducted within ES Chapter 8.
- 3.6.52. We asked NE at ExQ1 [PD-007] to comment on the designation process for the candidate SSSI. NE's response [REP2-070] outlined that it had informed the BHT that it was not taking forward any investigation into the designation of the proposed

land as a SSSI. Nevertheless, NE commented that the habitats and species present on the identified land should be adequately addressed within ES Chapter 8.

3.6.53. In response, the applicant [[REP3-029](#), [REP4-038](#)] maintained that the assessment undertaken for ES Chapter 8 included all relevant habitats and species that are likely to comprise the proposed SSSI. Furthermore, it considered that appropriate consideration had been given to the relevant bird assemblages where the proposed development may have the potential to impact those species.

3.6.54. However, despite discussions continuing throughout the examination, the parties were unable to reach agreement.

*ExA's consideration*

3.6.55. We have given this matter careful consideration. However, while we note the concerns of the BHT, we accept that the applicant has conducted an assessment of the habitats and species in the location of the area put forward for SSSI status in accordance with the methodology set out in the ES. Furthermore, we are satisfied that the applicant has given appropriate consideration to the relevant bird assemblages where there is the potential for the proposed development to impact those species.

3.6.56. In addition, we are mindful that NE has confirmed that the BHT application for SSSI status is not currently being progressed and as such, there is no prospect of when, and if, such a designation may be made. Given the evidence presented, we are satisfied the application contains sufficient information to understand the effect of the proposed development on the habitats and species, including for the area that has been proposed to NE for SSSI designation.

*Biodiversity Net Gain*

3.6.57. A number of IPs raised issues around the applicant's approach to BNG. NE sought further information on the biodiversity metric data [[REP1-051](#)] used by the applicant as well as other matters of clarification. These were responded to by the applicant [[REP2-058](#)] and the relevant information provided. NE also noted the trading rules were not met for OMH on PDL habitat but acknowledged in its response to ExQ1 [[REP2-070](#)] that it did not oppose the applicant's approach. It also sought to ensure that the target increase in BNG was secured across all habitat types.

3.6.58. Both the BHT [[RR-011](#)] and YWT [[RR-019](#)] questioned the long-term provision and management of the ecological mitigation areas beyond the lifespan of the proposed development, requesting their management be in perpetuity. They were concerned that any benefits delivered should be provided for the longest possible timeframe. The applicant responded [[REP2-058](#)] that as the proposed development is temporary and, on completion of decommissioning the land would be returned to its former condition and handed back to the landowner.

3.6.59. At ISH1 [[EV3-003](#)], we asked why requirement 7 (BNG) of the dDCO did not specify the predicted BNG identified within the BNG Assessment [[REP4-023](#)]. The applicant explained that it was not seeking to rely on the predicted percentage BNG set out in the BNG Assessment in support of the application but was instead committing to a minimum of 10% BNG across the Order limits for all units as outlined in the fLEMP. The applicant went on to clarify that the exact BNG figures presented in the BNG Assessment could be subject to change at the detailed design stage as a result of minor amendments or a change in baseline habitat values which would impact net gain percentages under the trading rules. The applicant explained that should such

changes take place, that at least 10% BNG would be delivered across all habitat types.

3.6.60. At ISH3 [\[EV6-004\]](#), we queried how a commitment of 10% BNG across all unit types aligns with the SoS's decision making on recent DCOs to include specific percentages of BNG that are to be achieved. In response, the applicant drew attention to the SoS's approach in the Oaklands Farm Solar Order 2025<sup>5</sup> where lower percentages to that set out in the BNG Assessment were specified in the DCO. It sought to distinguish the approach in the present application from that taken in the decision on the East Yorkshire Solar Farm Order 2025<sup>6</sup> where specific percentages were being relied on as a benefit in the planning balance in contrast to the present application where the applicant is only committing to, and seeking to rely on, a minimum of 10%.

3.6.61. However, in recognition of the need for clarity, the applicant updated the dDCO to include minimum percentages for individual habitat types: 20% for habitat units, 20% for hedgerow units and 10% for watercourse units.

#### *ExA's consideration*

3.6.62. We understand the reasoning for the request from the BHT and YWT that the proposed enhancement measures remain in perpetuity and we note that at the close of the examination this matter remained outstanding for both IPs. However, whilst we recognise that the retention and management of the enhancement areas would provide a long-term benefit, we consider this to be unnecessary and would place an undue burden on the applicant and landowner after decommissioning. We are satisfied that, given the enhancement measures are inextricably linked with the proposed development, the applicant's approach that management of these measures are confined to its lifetime is reasonable.

3.6.63. We note that while the BNG Assessment indicates it may be possible to achieve a BNG of 36.46% for area-based habitat units, 68.31% hedgerow units and 24.97% for watercourse units, no reliance is placed on these percentages as part of the applicant's case. We accept this approach and agree that to provide a degree of flexibility to accommodate potential future changes in the baseline conditions, the metric itself and any amendments that may occur during the detailed design stage, the minimum percentages within the dDCO are acceptable.

3.6.64. Consequently, we are satisfied that the applicant has adequately justified its approach and that the levels of BNG relied upon have been adequately secured in the DCO. While we accept that the provision of BNG weighs positively in favour of the proposed development, the weight to be afforded to it is considered further in the overall planning balance in Chapter 5 below.

#### *Concern regarding effect on hedgerows*

3.6.65. Local residents [\[RR-033\]](#) and [\[RR-037\]](#) and Fenwick Solar Farm Action Group [\[RR-014\]](#) raised concerns about damage to hedgerows from the proposed development. We queried the applicant's approach to hedgerow removal and reinstatement (as shown on Figure 8-5-2 within Appendix 8-5 [\[REP3-010\]](#)) at ISH3 [\[EV6-004\]](#) where it was confirmed that the intention is to retain hedgerows across the Order limits and minimise their loss. However, some hedgerows within the Order limits would have

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<sup>5</sup> [SI 2025/739](#).

<sup>6</sup> [SI 2025/585](#).

sections removed to facilitate access around the Order limits during the construction phase and in some cases, the operational phase.

*ExA's consideration*

- 3.6.66. Whilst we note that there would be some hedgerow loss within the Order limits, we acknowledge the applicant's objective is to avoid hedgerow removal and for reinstatement where possible. We also note proposed hedgerow loss would be to facilitate access into individual fields and is the minimum necessary requirement. We are also mindful that within the fLEMP [\[REP3-017\]](#) the applicant proposes to provide 23.2km of enhanced species rich native hedgerow across the Order limits as shown on the Indicative Landscape Masterplan in Appendix A of the fLEMP. Given the commitment to the proposed planting of new hedgerow and the enhancement of retained hedgerows across the Order limits, we consider the limited loss of hedgerows is acceptable.

*General concerns about habitats and species*

- 3.6.67. YWT noted [\[RR-019\]](#) that a possible area of OMH on PDL north of the existing Thorpe Marsh substation had not been surveyed and, as such, could support notable terrestrial invertebrate assemblages and species. The applicant confirmed [\[REP4-037\]](#) that surveys would be undertaken to inform the final route, and the proposed development would seek to avoid the OMH where feasible, including the placement of storage areas. This is secured in Table 3-3 of the fCEMP [\[REP3-013\]](#).
- 3.6.68. A number of local residents [\[RR-025\]](#), [\[RR-033\]](#), [\[RR-034\]](#) and [\[RR-037\]](#), Moss and District Parish Council [\[RR-002\]](#) and the BHT [\[RR-011\]](#) raised concerns that wildlife would be discouraged from the Order limits during the construction and operational phases and not return, thereby having a long-term impact on wildlife populations. Some local residents [\[RR-025\]](#) and [\[RR-038\]](#) and the BHT [\[REP3-035\]](#) raised concerns that the placement of fencing around the Order limits would negatively impact on the transitional movements of mammals.
- 3.6.69. ES Chapter 8 [\[REP4-010\]](#) (paragraph 8.10.13) provides details that gaps or suitable gates would be designed into the security perimeter fencing to allow mammals to pass underneath at strategic locations. The applicant also clarified [\[REP4-037\]](#) that whilst deer would not be allowed into fields with solar panels, full connectivity would be provided in the Order limits so they could move freely in the landscape.
- 3.6.70. The BHT commented [\[RR-011\]](#) that the inclusion of fields SE6 and SE7 (see [Figure 2](#) above for details of field numbers) would negatively affect biodiversity, isolating an area of broadleaf woodland and wildlife. In response [\[REP2-059\]](#), the applicant clarified that given the fields are currently grassland pasture, the proposed planting of neutral grassland alongside the standoff distances of 15m from woodland would ensure grassland is retained throughout the development and would not result in the fragmentation of habitats. The BHT [\[REP1-054\]](#) also suggested additional mitigation including the creation of a permissive footpath, additional 39ha of mitigation and a new bird hide.
- 3.6.71. The applicant's response [\[REP2-059\]](#) reconfirmed the extent of the ecological area and that it would continue to engage with the BHT. The applicant provided a further response at deadline 4 [\[REP4-037\]](#) explaining that permissive footpaths are not proposed as the provision of linkages to the wider PRoW network is outside the control of the applicant and would have the potential to cause disturbance to areas of ecological enhancement. Furthermore, it considered the provision of a bird hide

overlooking the grassland or wetland would compromise the integrity of these habitats.

#### *ExA's consideration*

- 3.6.72. We recognise the concerns raised by YWT regarding the lack of surveys. However, we are satisfied that the final GCC route would determine the extent of the surveys and Table 3-3 of the fCEMP [\[REP3-013\]](#) secures the conducting of the surveys for OMH alongside reinstatement should any habitat be temporarily lost or damaged.
- 3.6.73. We also recognise the concerns raised by IPs regarding the effect of the proposal on a range of habitats and mammals including potential effects from the inclusion of fields SE6 and SE7. However, we are satisfied that the applicant has provided sufficient mitigation and enhancement measures within the fCEMP [\[REP3-013\]](#), fOEMP [\[REP5-007\]](#), fDEMP [\[REP4-019\]](#) and fLEMP [\[REP3-017\]](#) to be secured through requirements 6 (LEMP), 11 (CEMP), 12 (OEMP) and 18 (DEMP) in order to safeguard wildlife and habitats from impairment or severance.
- 3.6.74. We acknowledge the additional mitigation measures proposed by the BHT. However, we accept there may be difficulties providing a permissive footpath and bird hide. We are also satisfied with the extent of ecological mitigation secured through requirement 6 (LEMP) in the dDCO would ensure that there would be no significant residual adverse effects on ecology and biodiversity.

#### **Conclusions on Biodiversity and Ecology**

- 3.6.75. We are satisfied 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. We are further satisfied that the ES details mitigation measures to avoid or minimise impacts, including from noise and disturbance, and these would be delivered through requirements 6 (LEMP), 11 (CEMP), 12 (OEMP) and 18 (DEMP) of the dDCO [\[REP5-004\]](#).
- 3.6.76. We consider the evidence presented as part of the examination demonstrates the habitat and species forming the SSSI designation submission have been adequately assessed. Whilst we acknowledge the request for the management of the enhancement measures to be in perpetuity, we are satisfied with the applicant's approach to limit them to the lifetime of the proposed development as acceptable mitigation. Furthermore, we are 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.
- 3.6.77. For BNG, we note the approach the applicant has proposed to secure the net gain figures and we are content that requirement 7 (BNG) of the dDCO would secure acceptable levels of BNG.
- 3.6.78. Taking all the evidence into account, we are 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 DLP policies. We note the applicant's commitment to provide enhancement measures and that minimum levels of BNG are secured in the dDCO. This weighs positively in favour of the proposed development and we consider should be afforded moderate positive weight in the overall planning balance.



## 3.7. SOCIO-ECONOMICS AND RECREATION

### Introduction

- 3.7.1. This section considers the effect of the proposed development on employment, visitor accommodation, business premises, community assets, recreational use of PRoW, and mineral resources. Matters relating to agriculture and soils are covered in [section 3.8](#) below.

### Policy Context

- 3.7.2. NPS EN-1 recognises that proposals for energy development can have a national, regional or local socio-economic impact and in such circumstances, applicants should undertake and include such an assessment within the ES. Paragraph 5.13.3 strongly encourages engagement with local authorities to gain an understanding of local or regional issues and opportunities.
- 3.7.3. Furthermore, paragraph 5.13.4 requires consideration of the creation of jobs and training opportunities, the contribution the proposal would make to low carbon industries, any indirect beneficial impacts, effects on tourism and the impact of a changing influx of workers during the lifecycle of the development proposal. There is a recognition that this could alter the local population dynamics and the demand for services and facilities. Paragraph 5.13.8 of NPS EN-1 advises that consideration should also be given to whether it is necessary to mitigate any adverse socio-economic impacts of a development proposal.
- 3.7.4. In addition, paragraph 5.11.30 of NPS EN-1 recognises the importance of public PRoW and requires where revisions to an existing PRoW is proposed that consideration is given to the use, character, attractiveness and convenience of the right of way.
- 3.7.5. NPS EN-3 recognises solar development proposals may affect the provision of PRoW including temporary closures or diversions, and where PRoW cross a proposed development site, they should be kept open during the construction phase as far as is practicable and safe (paragraph 2.10.40 and 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 2.10.42).
- 3.7.6. Paragraph 2.10.44 of NPS EN-3 states that applicants should consider and maximise opportunities to facilitate enhancements to the PRoW 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).
- 3.7.7. The NPPF and DLP also contain policies which seek to increase productivity and widen access to learning and support, safeguard PRoW and ensure that safety and accessibility considerations are considered. They also contain policies which seek to ensure proposals for non-mineral development within mineral safeguarding areas (MSA) can demonstrate consideration has been given to the economic viability of that resource.



## The Application

3.7.8. ES Chapter 12 (Socio-Economics and Land Use) [\[REP1-013\]](#) provides details and an assessment with regards to employment, PRoW, gross value added (GVA), visitor accommodation, private and community assets, mineral safeguarding and other development. It is supported by:

- ES Appendix 12-1 (Legislation, Policy and Guidance (Socio-Economics and Land Use)) [\[APP-173\]](#)
- ES Appendix 12-2 (Minerals Safeguarding Report) [\[APP-174\]](#)
- ES Figure 12-1 (Study Area for Socio-Economic Receptors) [\[APP-118\]](#)
- ES Figure 12-2 (Sixty Minute Drive from Site Boundary) [\[APP-119\]](#)
- ES Figure 12-3 (Thirty Minute Drive from Site Boundary) [\[APP-120\]](#)
- ES Figure 2-2 (Public Rights of Way) [\[APP-073\]](#)

## Methodology

3.7.9. Section 12.4 of ES Chapter 12 [\[REP1-013\]](#) sets out the assessment methodology used including details of the study area. The applicant states there is no set methodology for assessing socio-economic impacts and there is no set definition of what constitutes significant or non-significant effects for socio-economics. Table 12-1 sets out the receptors and the rationale for the geographical extent of the study area. Tables 12-3 to 12-9 set out the sensitivity and magnitude criteria used for the assessment for each receptor.

3.7.10. With regards to the local economy and employment, the study area consisted of a 60-minute drive time from the Order limits, as can be seen on ES Figure 12-2 [\[APP-119\]](#), as this represents the principal labour market catchment area. This study area extends beyond the administrative boundary of CDC.

3.7.11. The applicant explains at paragraph 12.4.4 of ES Chapter 12 [\[REP1-013\]](#) that minor junction works associated with the proposed development at Askern are not included within the assessment of socio-economics as the works would be limited to the removal of street furniture and no significant socio-economic effects are expected. For employment generation the applicant has considered leakage, displacement and the multiplier effect alongside potential training and apprenticeship opportunities.

3.7.12. For potential impacts on visitor accommodation, a 30-minute drive time was added to the 60-minute drive time as a worst-case scenario in which all construction workers require visitor accommodation. This can be seen in ES Figure 12-3 [\[APP-120\]](#).

3.7.13. The study area for PRoW, local businesses, open space, development land and visitor attractions extend to some 500m from the Order limits. The exception to this is community facilities which is 2km. Further details of the study areas and how they were determined can be found in paragraphs 12.4.2 – 12.4.12 of ES Chapter 12 [\[REP1-013\]](#).

## Baseline

3.7.14. Paragraphs 12.5.7 – 12.5.23 (and Tables 12-12, 12-13 and 12-14) of ES Chapter 12 [\[REP1-013\]](#) describe the baseline conditions and include details on population, deprivation, visitor accommodation, the local labour market and the local economy (including a breakdown of employment types within the study area). Where

required, a comparison is made between the study area and Doncaster, North Yorkshire Council and the wider Yorkshire and Humber region.

- 3.7.15. Paragraph 12.5.24 of ES Chapter 12 [\[REP1-013\]](#) and Section 2 of the Framework PRoW Management Plan (fPRoWMP) [\[REP5-009\]](#) identify 34 PRoW located within the study area. Twelve of these are located within the solar PV site itself with the remaining 22 located within 500m. There are no bridleways, national trails or national cycle routes within the solar PV site. There are 9 PRoW within or which cross through the GCC comprising of eight footpaths and 1 bridleway. The Trans Pennine Trail also intersects the GCC at Thorpe Lane before following the road network north along Marsh Road and Moss Lane before heading east along Willow Bridge Lane towards the New Junction Canal.
- 3.7.16. ES Chapter 12 states that the above PRoW are used predominantly for recreational use not for commuting or accessing services. These PRoW can be identified in the Streets, Rights of Way and Access Plan [\[REP3-004\]](#) and [\[REP3-005\]](#) and ES Figure 2-2 (Public Rights of Way) [\[APP-073\]](#).
- 3.7.17. There are no residential properties, community facilities, visitor attractions, business premises, MSA or development land within the solar PV site. Details of the proximity of these to the solar PV site can be found in paragraphs 12.5.31 – 12.5.36 and 12.5.40 – 12.5.42 alongside Tables 12-15 and 12-16. There are 9 agricultural land holdings within the solar PV site, and these are described in paragraphs 12.5.37 – 12.5.39 of ES Chapter 12.
- 3.7.18. There are no residential properties, community facilities or visitor attractions within the GCC (see Tables 12-18 and 12-19 for their distance). Aside from agricultural land holdings within the GCC, the only other premises is the Thorpe Marsh substation (please see Table 12-20). Paragraph 12.5.58 provides details of farms within 500m of the GCC. The GCC would travel through a MSA and its buffer zone for sand and gravel near Trumfleet and Thorpe in Balne as identified within Appendix 12-2 [\[APP-174\]](#). Paragraphs 12.5.59 – 12.5.61 outline planning applications and permissions that have been identified within the GCC.
- 3.7.19. ES Chapter 12 [\[REP1-013\]](#) also provides an assessment against population, economy, PRoW, businesses and community facilities for a future baseline recognising there is likely to be a population increase, that PRoW would continue to be used and that no perceptible change is expected. When considering effects on the local economy and employment, the assessment therefore uses the current baseline for construction phase effects and the future baseline for operation and maintenance and decommissioning phase effects.

### **Mitigation**

- 3.7.20. Section 12.6 of ES Chapter 12 outlines the embedded mitigation measures which have been applied to reduce socio-economic impacts. These include avoiding socio-economic and sensitive environmental receptors where practical and the use of a CEMP, OEMP and DEMP alongside the CTMP for the management of traffic to mitigate effects on the local community. Framework versions of these documents have been provided as part of the application (fCEMP [\[REP3-013\]](#), fOEMP [\[REP5-007\]](#), fDEMP [\[REP4-019\]](#) and fCTMP [\[REP4-027\]](#)).
- 3.7.21. All PRoW would be retained during all phases of the proposed development. During the construction phase, 3 footpaths in the solar PV site would be temporarily diverted these being Moss 6, Fenwick 14 and Fenwick 16 (on Haggs Lane). All

diversions are to facilitate construction traffic access/ egress. The applicant states that temporary PRow diversions in the GCC would be time limited to approximately 2 weeks.

- 3.7.22. During the operation phase and until the completion of the decommissioning phase, 4 footpaths would be permanently diverted these being Sykehouse 29, a limited section of Fenwick 12, Fenwick 14 and Moss 6 (this would be on the alignment of the construction access track post construction). There are no diversions in the GCC during the operational phase. These diversions can be identified on Figure 2-2 [APP-073] with further detail shown on the Streets Rights of Way and Access Plans, Parts 1 and 2 [REP3-004 and REP3-005].
- 3.7.23. Paragraphs 12.6.6 – 12.6.8 of ES Chapter 12 [REP1-013] detail mitigation and management measures for PRow including separation distances and fencing between infrastructure and PRow. Where construction access tracks need to cross PRow, these would be managed by manned controls and signage with the default being for construction traffic to give way to PRow users. These are set out within the fPROWMP [REP5-009] and secured by requirement 17 (PRow) alongside details within the fCEMP [REP3-013] (itself secured by requirement 11(CEMP)). Such temporary measures are not anticipated during the operational phase due to the infrequency of vehicles accessing the site.

## **Assessment of effects**

### *Construction*

- 3.7.24. Section 12.7 of ES Chapter 12 [REP1-013] recognises there are potential minor adverse effects for agricultural land holdings during the construction phase as land within the solar PV site is removed from agricultural use. However, the applicant states this effect would be temporary and reversible, so it is not considered significant.
- 3.7.25. A minor adverse effect is also identified for minerals within the MSA. However, the applicant states that should the mineral resource be deemed commercially viable to extract in the future, the cables within the GCC could be moved as they would not be to such a depth to prohibit this. The effect is also considered not significant.
- 3.7.26. The applicant identifies a minor beneficial effect on employment and GVA brought about from the proposed development generating, on average, 225 total net jobs per annum during the construction period of 24 months, of which 102 of these would be within the study area. This would result in a contribution of approximately £12.6 million to the national economy, £5.7 million of which within a 60 minute drive.
- 3.7.27. For development land, the applicant identifies development proposed for Lily Hall and three planning applications located within the GCC, as described in paragraph 12.7.55 of ES Chapter 12. For the proposed development at Lily Hall, the applicant states there would be no direct land use impacts. For development projects that would overlap the GCC, the applicant states they would liaise with the other developers regarding the construction period to minimise potential for conflict. The applicant finds minor adverse effects due to the medium importance and rarity of development land assets in the study area, which is not considered significant.
- 3.7.28. For all other socio-economic, land use and PRow matters, section 12.7 outlines that with embedded mitigation measures in place, there are no significant effects identified. A summary of assessment of effects can be found in Table 12-27.

### *Operation*

- 3.7.29. As with the construction phase, section 12.7 identifies no significant effects for socio-economics, land use and PRoW given the embedded mitigation measures proposed (see paragraph 12.6.7 of ES Chapter 12 for a summary of these measures) and there being no net change in employment within the Order limits. As with the construction phase, should the grid connection cables require moving to enable mineral extraction, the applicant considers diversion of the cables is possible. For development land, due to the low levels of traffic, the applicant concludes there would be no effect. Table 12-29 provides a summary of effects on these matters for the operational phase.

### *Decommissioning*

- 3.7.30. For the decommissioning phase (as with the construction phase), the applicant expects a minor beneficial effect for employment from jobs created, leakage and the multiplier effect. For development land, the applicant finds a minor adverse effect which is not considered significant. All other socio-economic, land use and PRoW impacts would not give rise to significant effects as shown in Table 12-30.

### *Cumulative effects and effect interactions*

- 3.7.31. ES Chapter 15 [\[APP-067\]](#) assessed the potential for there to be significant cumulative effects with other development projects and for potential combined individual effects on a single receptor.
- 3.7.32. Three projects were identified as coinciding with the Order limits and a further 5 within 2km of the proposed development. These are presented in ES Chapter 15 (Cumulative Effects and Interactions) [\[APP-067\]](#) and ES Figure 15-3 (Location of Short List Schemes) [\[APP-131\]](#). For the construction and decommissioning phases, the applicant identifies a minor beneficial effect for employment and GVA in combination with the other projects and a minor adverse cumulative effect on residential properties, businesses, community facilities, development land and MSA. No effect is identified for visitor accommodation and PRoW.
- 3.7.33. For the operational phase no plans or projects are identified as having an in-combination effect on any of the socio-economic, land use and PRoW receptors aside from the MSA where a minor adverse effect is likely to remain. The applicant identifies that there would be no significant cumulative effects during the phases of the proposed development with other projects across the socio-economic matters.
- 3.7.34. For potential effect interactions, these are identified within Table 15-1 (Potential Effect Interactions during the Construction and Decommissioning Phases) and Table 15-2 (Potential Effect Interactions during the Operation and Maintenance Phase). These concluded that no significant effect interactions have been identified for socio-economic matters.

### **Issues considered during the Examination**

- 3.7.35. Within its LIR [\[REP1-048\]](#), CDC commented that Doncaster has a relatively low proportion of people employed in highly skilled occupations and whilst its economy is relatively inward facing, there are jobs in sectors such as manufacturing, engineering and finance. The LIR recognises that whilst the proposed development would not contribute to the wider economic aspirations for the borough, it would be an important opportunity to utilise an existing local workforce. Whilst the construction jobs were recognised to be temporary, CDC considered that they

represent a positive economic effect, albeit for a limited period of time. The LIR sought a more ambitious skill and employment strategy but recognised this could be maximised through details submitted as part of requirement 16 (skills, supply chain and employment).

- 3.7.36. With regard to PRoW, CDC in its LIR raised no concerns regarding the proposed diversions and were satisfied that effects of the proposed development would be mitigated through the final PRoW management plan secured by requirement 17 (PRoW) of the dDCO alongside the final OEMP secured by requirement 12 (OEMP). At the close of the examination a SoCG between CDC and the applicant [\[REP5-011\]](#) confirmed that there were no matters outstanding in respect of socio-economics or the fPRoWMP [\[REP5-009\]](#).
- 3.7.37. Moss and Fenwick Village Hall [\[REP1-064\]](#) raised concerns regarding the impacts of the proposed construction on the use of the village hall from disruption and hazard, alongside harm to local rural businesses. They commented that as the village hall is used for a range of services, the construction phase would affect the health and wellbeing of vulnerable community members unable to navigate the construction traffic, and the activities would disrupt sensitive activities held in the hall. In response the applicant explained that a traffic safety control officer would be appointed for Fenwick Common Lane [\[REP2-058\]](#) as detailed within the fCTMP [\[REP4-027\]](#), and that a community liaison group (as detailed within the fCEMP [\[REP3-013\]](#) and requirement 3 (community liaison group)) would be established to facilitate ongoing communication with the community.
- 3.7.38. Local residents [\[RR-029\]](#), [\[RR-040\]](#) and [\[RR-045\]](#) raised concerns that the proposed development would negatively impact on local businesses as a consequence of dissuading visitors to the area. Furthermore, specific concerns were raised [\[RR-030\]](#) and [\[RR-043\]](#) by nearby business owners who were concerned their businesses would be detrimentally affected due to increased traffic on the network.
- 3.7.39. In response, the applicant [\[REP1-031\]](#) stated that no likely significant adverse socio-economic effects were identified from the proposed development and that the Framework Skills Supply Chain and Employment Plan (fSSCEP) [\[APP-204\]](#) sets out measures to proactively expand benefits of the proposed development for the local community. The applicant further advised that the fCTMP [\[REP4-027\]](#) and [\[APP-207\]](#) contains embedded mitigation measures to prevent or reduce potential adverse effects associated with construction related traffic on the network near the businesses affected.
- 3.7.40. During the course of the examination, it became apparent that ES Chapter 12 and its accompanying documents incorrectly referred to the permanent diversion of PRoW Fenwick 10. We sought clarification on this matter within our Rule 17 letter [\[PD-013\]](#). The applicant subsequently confirmed [\[REP5-001\]](#) that it is a short section of PRoW Fenwick 12 that would be permanently diverted, not Fenwick 10, and the dDCO [\[REP5-004\]](#) and fPRoWMP [\[REP5-009\]](#) were updated accordingly.
- 3.7.41. A number of residents [\[RR-024\]](#), [\[RR-045\]](#), [\[RR-051\]](#) and Moss and Fenwick Village Hall [\[RR-017\]](#) raised concerns regarding the disruption and impact of the proposed development upon PRoW. We queried at ExQ1 [\[PD-007\]](#) the safeguarding measures for users of proposed diverted PRoW, alongside clarification on the categorisation of PRoW. In response [\[REP2-059\]](#), the applicant confirmed that management measures, such as manned controls and crossing points together with the use of fencing and gates would be utilised to safeguard PRoW users during all



phases of the proposed development with these being set out within the fPRoWMP [\[REP5-009\]](#).

#### *ExA's consideration*

- 3.7.42. We recognise the concerns raised by IPs regarding the potential impact on local businesses and the village hall use. However, we are satisfied that traffic associated with the construction phase would be adequately managed and mitigated through the use of the fCTMP. No evidence was advanced that would lead us to conclude that the proposed development would result in significant adverse effects on these businesses and community facilities.
- 3.7.43. We also note the concerns that the proposed development would have an effect on PRoW within the Order limits. However, we are satisfied that the applicant has provided adequate mitigation measures within the fPRoWMP that would safeguard PRoW users during all phases of the proposed development, maintain the rights of way network and not significantly extend routes which are diverted.

### **Conclusions on Socio-economics and Recreation**

- 3.7.44. We are satisfied that the applicant has provided details within ES Chapter 12 [\[REP1-013\]](#) and its accompanying appendices that assess all the relevant socio-economic impacts as required by section 5.13 of NPS EN-1 and that the study area and baseline are adequately described. Whilst we acknowledge that the jobs proposed to be created are within a sector that may not align with Doncaster's economy, we are satisfied that the applicant has advanced a fSSCEP [\[APP-204\]](#) that provides measures to support the use of the local workforce and seeks to work with CDC with regards to skills and training opportunities.
- 3.7.45. We agree with the applicant's assessment that during the construction and decommissioning phases there would be a minor beneficial effect on local employment and GVA following the creation of jobs, 45% of which are anticipated to be sourced from the study area, alongside providing £12.6 million to the national economy and £5.7 million to the local economy. We are satisfied that the proposed development would provide for the creation of jobs and skills within the low carbon industry at both the local and regional level (even if only short term).
- 3.7.46. We also consider the provision of a fSSCEP [\[APP-204\]](#) and a fPRoWMP [\[REP5-009\]](#) to be secured by requirements 16 (skills, supply chain and employment) and 17 (PRoW) of the dDCO alongside a fCTMP [\[REP4-027\]](#) and [\[APP-207\]](#) adequately mitigate effects from the proposed development. These meet the requirements of NPS EN-1 and NPS EN-3, the NPPF and policies within the DLP.
- 3.7.47. Whilst we acknowledge the applicant states the employment generation should be afforded moderate positive weight in the planning balance, given the minor adverse effects set out within Tables 12-27, 12-29 and 12-30 and the short term nature of the jobs, we conclude that matters relating to socio-economics and land use should attract only a little positive weight in the planning balance.

## **3.8. AGRICULTURE AND SOILS**

### **Introduction**

- 3.8.1. This section considers the effect of the proposed development on agriculture and soils including BMV agricultural land.



## Policy Context

- 3.8.2. NPS EN-1 recognises (paragraph 5.11.4) 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.
- 3.8.3. In addition, it advises that applicants should seek to minimise impacts on BMV agricultural land (defined as land in grades 1, 2 and 3a of the ALC) and to preferably use land in areas of poorer quality (grades 3b, 4 and 5) (paragraph 5.11.12). Where schemes are sited on BMV agricultural land this should be justified, and the SoS should take into account the economic and other benefits of that land (paragraph 5.11.34) when considering applications for development consent.
- 3.8.4. NPS EN-1 also requires the applicant to identify any effects and seek to minimise impacts on soil health and protect and improve soil quality taking into account any mitigation measures proposed (paragraph 5.11.13). It encourages applicants to develop and implement a soil management plan (SMP) to help in minimising potential land contamination and indicates that the sustainable reuse of soils needs to be carefully considered in line with good practice guidance where large quantities of soils are surplus to requirements or are affected by contamination (paragraph 5.11.14). Similar advice is given in NPS EN-3 in paragraphs 2.10.34 and 2.10.81.
- 3.8.5. Paragraph 2.10.29 of NPS EN-3 states that where the proposed use of 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. It goes on to state that whilst the development of solar arrays is not prohibited on BMV agricultural land, the impacts of such development should be considered (paragraph 2.10.30). Furthermore, it recognises that it is likely that developments will use some agricultural land and if so, applicants should explain their choice of site noting the preference for development to be on suitable brownfield, industrial and low and medium grade agricultural land.
- 3.8.6. NPS EN-3 recommends where proposals are placed on agricultural land that consideration may be given as to whether it allows for continued agricultural use and/ or can be co-located with other functions (paragraph 2.10.32). Mitigation measures should focus on minimising damage to soil that remains in place and minimising damage to soil being excavated and stockpiled. The SoS should ensure that appropriate mitigation measures to minimise impacts on soils or soil resources have been put forward.
- 3.8.7. The WMS 'Solar and protecting our food security and BMV land' (May 2024) reiterates the position noting that applicants for NSIP projects should avoid the use of BMV agricultural land where possible. Likewise, both paragraph 187 of the NPPF and Policy 60 of the DLP seek to conserve and protect soils and where development proposals are proposed on agricultural land, and ensure that it is situated on poorer quality land wherever possible.

## The Application

- 3.8.8. ES Chapter 12 (Socio-Economics and Land Use) [\[REP1-013\]](#) sets out the applicant's assessment of the effect of the proposed development on agricultural land (including BMV agricultural land) and soils. It is supported by:
- ES Appendix 12-3 (ALC Report) [\[APP-175\]](#)

- ES Figure 12-4 (Predicted ALC) [\[APP-121\]](#)
- ES Figure 12-5 (ALC for the Solar PV site) [\[APP-122\]](#)

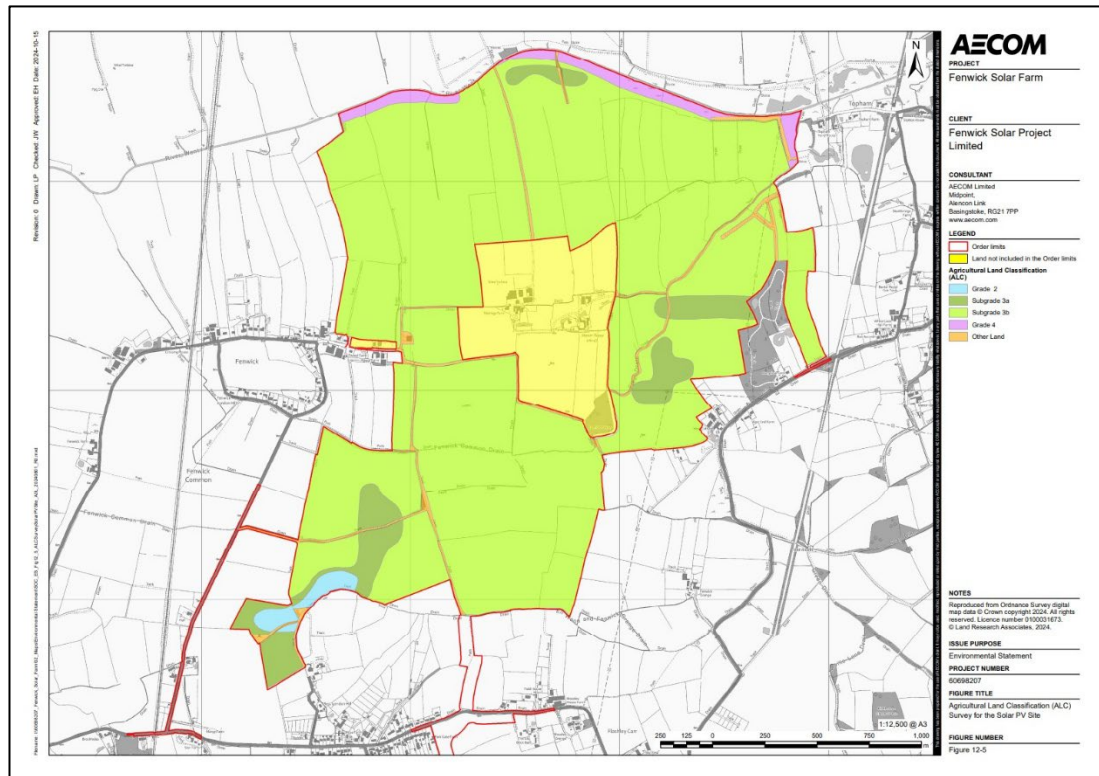
### **Methodology**

- 3.8.9. Section 12.4 of ES Chapter 12 [\[REP1-013\]](#) sets out the methodology used to assess the effect on BMV agricultural land with Table 12-10 providing information on the sensitivity criteria for BMV agricultural land, with Grades 1 and 2 having the highest sensitivity. It explains that the study area used for impacts on BMV agricultural land consisted of the Order limits, noting that this is the only area where there is a spatial overlap.
- 3.8.10. The applicant explains that to determine significance, the following thresholds were used: total permanent loss of more than 20ha of BMV agricultural land is considered significant whereas a loss of BMV agricultural land which is either temporary or reversible after construction or falls below 20ha is considered not significant. A loss of non BMV agricultural land is considered not significant (ES Chapter 12, paragraph 12.4.51).

### ***Baseline***

- 3.8.11. Baseline conditions within the solar PV site were established through an ALC study [\[APP-175\]](#) undertaken between February – May 2023 with an additional survey in June 2024 using the Ministry of Agriculture, Fisheries and Food methodology. The soil survey was based on observations of soil samples at intersects of a 100m grid. This gives a density of one sample observation per hectare. The agricultural quality of the land is primarily determined by wetness/ workability limitations and by flooding risk. The applicant also conducted trial pits across the solar PV site. The location of these were selected to provide a representative assessment of soil types and structures across the solar PV site.
- 3.8.12. ES Appendix 12-3 [\[APP-175\]](#) explains that the solar PV site is in agricultural use and identifies that much of it comprises subgrade 3b agricultural land with some small areas of better draining land with an agricultural classification of grade 2 (very good quality agricultural land) and subgrade 3a (good quality agricultural land). Information on the use of the agricultural land in the solar PV site can be found at [\[AS-006\]](#) which describes that the agricultural land is currently used for cereal cropping, grazing for cattle, horses and sheep alongside silage. The distribution of ALC grades across the solar PV site can be seen in Figure 8 below. Table 1 below also provides a breakdown of ALC grades for the surveyed land within the solar PV site.
- 3.8.13. For the GCC, the applicant used the Defra/ NE Provisions ALC dataset. The applicant states that soil surveys were not conducted for the GCC as disturbance to soils would be temporary and the cables would be buried to a sufficient depth so as not to disrupt or restrict farming operations such as ploughing. The breakdown of ALC grades for the GCC can be seen in Table 2 below.

**Figure 8: Agricultural Land Classification for the Solar PV Site**



(Source: ES Figure 12-4 Predicted ALC [APP-121])

**Table 1: Agricultural Land Classification Based Within the Solar PV Site**

Agricultural Land Class	Total Area (Ha)	Percentage of Solar PV Site Total (%)
Grade 2	4.3	1
Subgrade 3a	25.9	6
Subgrade 3b	352.9	87
Grade 4	12.8	3
Non agricultural	11.4	3
Total	407.3	100

(Source: ES Chapter 12, Table 12-17 [REP1-013]).

**Table 2: Agricultural Land Classification within the Grid Connection Corridor**

Agricultural Land Class	Total Area (Ha)	Percentage of Grid Connection Corridor Total (%)
Grade 3	17.9	18
Grade 4	82.9	82
Total	100.8	100

(Source: ES Chapter 12, Table 12-21 [REP1-013])

## Mitigation

- 3.8.14. Embedded mitigation measures to avoid and reduce impacts on soils and agriculture are set out in Section 12.6 of ES Chapter 12 [REP1-013]. This includes avoiding BMV agricultural land when positioning permanent infrastructure, good practice measures such as how soils would be handled in the most appropriate manner and avoiding the mixing of different types of soils.
- 3.8.15. The fSMP [REP4-021] explains, in summary, the main threat to soil resources during the construction phase is trafficking of vehicles/ plant/ machinery over soils and incorrect handling of soils which can cause damage to soil structure through compaction and smearing. As such, the fSMP contains details how damage to soil structure would be minimised including handling and storage of the soils, how vehicles or plant/ machinery would be managed (section 4.1) and details of the types of weather conditions that would require works in the Order limits to stop to protect soils (section 4.2). Furthermore, it includes measures for soil stripping and storage (sections 4.5 and 4.6) and seeks to ensure the correct placement of soils to prevent erosion and mixing of soils from different locations.
- 3.8.16. Excavation or ground disturbance would be required for the construction access routes, construction compounds, substation and the BESS. If machinery is required, the movement of soils would accord with the method described in the Institute of Quarrying Guide, Part 2 Sheet B<sup>7</sup>. Paragraph 2.1.2 of the fSMP [REP4-021] explains that maps would be provided at the detailed design stage including further information on where the soils are to be stripped from and where they would be stored so that they can be reinstated in the location they originated from. These measures are detailed within the fSMP [REP4-021] which explains how soils would be managed and safeguarded through the lifetime of the proposed development with a final version secured by requirement 15 (SMP) of the dDCO.
- 3.8.17. In addition, the fDEMP [REP4-019] sets out measures to mitigate the effects on agricultural land during the decommissioning phase including measures to ensure the restoration of the agricultural land and soils to their present condition.
- 3.8.18. Full details of all mitigation proposed and how it is secured can be found in the Environmental Commitments and Mitigation Register [REP4-015].

## Assessment of Effects

### *Construction*

- 3.8.19. During the construction phase, 30.2ha of BMV agricultural land would be lost. Of this, approximately 0.78ha of grade 3a BMV agricultural land would be permanently lost to structural planting proposed within the solar PV site. This represents 2.58% of BMV agricultural land within the solar PV site. The remaining 29.42ha of grade 2 and grade 3a BMV agricultural land would be lost temporarily (albeit for an extended period) as it would be covered by solar panels or access tracks. Whilst BMV agricultural land would be lost during this phase, in accordance with the applicant's assessment methodology given there is less than 20ha of permanent loss of BMV agricultural land, ES Chapter 12 identifies no significant effect for BMV agricultural land from this phase of the proposed development.

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<https://www.quarrying.org/hubfs/Soils%20Guidance/IQ%20Soil%20Guidance%20Sheet%20B.pdf>

- 3.8.20. With regards to soils, ES Chapter 12 (section 12.7 and Table 12-27) recognises there would be disturbance to soils and potential for damage or degradation to their structure during the construction phase. Permanent land take is proposed for the substation (1.99ha) and structural planting (7.54ha) resulting in a loss of grade 3b agricultural land and a requirement to remove soils from those areas. Within the GCC, soils would be temporarily disturbed whilst cables are installed, after which, they would be replaced allowing for agricultural practices in that location to continue.
- 3.8.21. Consequently, for both BMV agricultural land and soils, with mitigation measures in the form of best practice and the fSMP [\[REP4-021\]](#), ES Chapter 12 identifies no significant residual effects during the construction phase.

#### *Operation*

- 3.8.22. During the operational phase, both the BMV agricultural land and agricultural land within the solar PV site would be unavailable for farming practices. Soils across the solar PV site would be monitored and managed to protect and conserve them in accordance with the fSMP [\[REP4-021\]](#) and the fOEMP [\[REP5-007\]](#). There would be no changes from the construction phase and as such, the applicant identifies no significant effect to BMV agricultural land or soils. For the GCC, occasional visits for monitoring could be required, however there is no intention to disturb or move soils. Please see Table 12-29 of ES Chapter 12.

#### *Decommissioning*

- 3.8.23. During the decommissioning phase, all infrastructure (aside from the OSS and cabling in the GCC), grassland and other planting (aside from structural planting) associated with the proposed development would be removed. This would allow the BMV agricultural land to be restored and returned to agricultural use with no loss of soil function.
- 3.8.24. The applicant anticipates that because of an increase in soil organic matter alongside the removal of tillage during the operational phase, that soil quality and function would have improved. The fDEMP [\[REP4-019\]](#) provides details for the management of soils during this phase. Given the ability to return the land to the agricultural grades previously identified for the Order limits following the completion of the decommissioning phase, the applicant considers there would be no significant effect. Please see Table 12-30 of ES Chapter 12.

#### *Cumulative effects and effect interactions*

- 3.8.25. Paragraph 12.10.12 of ES Chapter 12 [\[REP1-013\]](#) explains that as effects on BMV agricultural land during all three phases were identified as negligible, in accordance with the methodology set out in ES Chapter 5 [\[APP-057\]](#), this was not assessed further. This is because the proposed development would not make a meaningful contribution in terms of BMV agricultural soils to any cumulative effect that may occur from other developments identified in the short list (see ES Figure 15-3 (Location of Short List Schemes) [\[APP-131\]](#)).
- 3.8.26. Likewise, in accordance with the methodology set out in ES Chapter 5 (EIA methodology) [\[APP-057\]](#), no potential for effect interactions was identified and as such, the applicant considers that no significant effect interactions would arise.

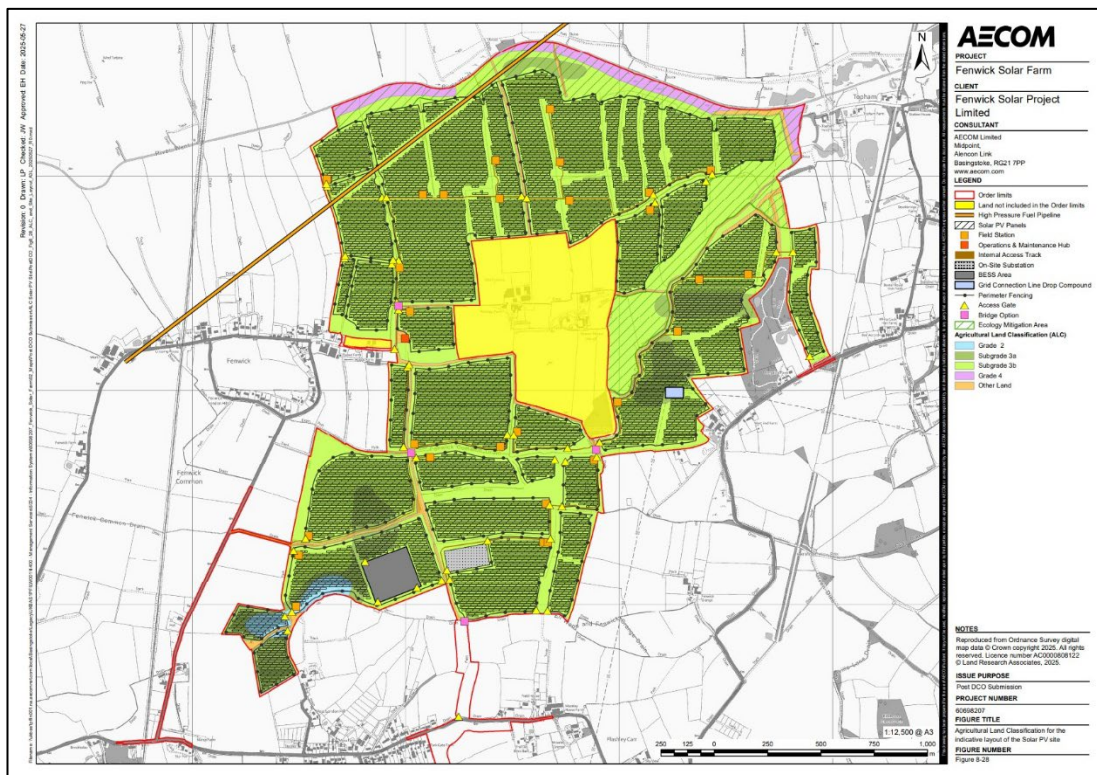


## Issues considered during the Examination

### BMV Agricultural Land

- 3.8.27. CDC's LIR [\[REP1-048\]](#) questioned the inclusion of fields SW11 and SW12 (please see [Figure 2](#) above) within the solar PV site and they requested the applicant consider removing these fields given they contain BMV agricultural land. Nevertheless, the LIR recognises that overall, the loss of BMV agricultural land is not significant and that the loss would be temporary and reversible on decommissioning.
- 3.8.28. In ExQ1 [\[PD-007\]](#) (ExQ1.8.1 and ExQ1.8.2), we asked the applicant to confirm the extent of the uses that would take place upon the BMV agricultural land in addition to the structural planting (0.78ha) and provide further details on the rationale for including fields SW11 and SW12 within the Order limits. In response, the applicant provided details [\[REP2-059\]](#) of the limited areas of infrastructure (the BESS, field stations and grid connection line drop compound) and what temporary seeding and planting would take place on BMV agricultural land. It also provided Figure 8-28 (ALC for the indicative layout of the solar PV site) [\[REP2-066\]](#), which overlaid the ALC on the indicative layout for the site. This can be seen in Figure 9 below.

**Figure 9: Agricultural Land Classification for the Indicative Layout of the Solar PV Site**



(Source: ALC for the Indicative Layout of the Solar PV Site [\[REP2-066\]](#))

- 3.8.29. Furthermore, it explained [\[REP2-059\]](#) that as part of the alternative site assessment and in identifying the Order limits, consideration was given to the avoidance of BMV agricultural land which the proposed development has achieved through its design (BMV agricultural land being 7% of total land take proposed). The applicant referred to ES Chapter 3 (Alternatives and Design Evolution) [\[APP-055\]](#) which details the assessment of alternative land suitability.



3.8.30. Regarding the inclusion of fields SW11 and SW12, the applicant explained that whilst the Order limits were chosen to avoid BMV agricultural land, not all BMV agricultural land could be avoided. Furthermore, the applicant stated that the overall approach was to minimise the impact on BMV agricultural land at the selection stage. The applicant explained that by identifying these fields for solar panels, there would be no permanent infrastructure given the panels would be removed on decommissioning allowing the fields to be returned to agriculture. The applicant stated the effect on BMV agricultural land in this location would be negligible. The applicant also provided clarification with regards to generating capacity and that whilst the inclusion of these fields would temporarily remove BMV agricultural land from production, their inclusion reflected a balanced and considered design approach.

3.8.31. We also sought clarification (ExQ1.8.11) [\[PD-007\]](#) regarding the approach to monitoring and management of BMV agricultural land beneath the solar panels during the operational phase to ensure the soil quality is retained. The applicant responded [\[REP2-059\]](#) and [\[REP4-037\]](#) that during the operational phase, soils beneath the solar panels and the surrounding infrastructure would be monitored using grassland establishment as a proxy indicator to ensure ongoing soil health and if necessary appropriate remediation measures would be implemented. The final SMP would include the monitoring frequency.

*Loss of agricultural land, food security and farming practices*

3.8.32. Concern regarding the loss of arable fields, productive farmland, food security and farming practices within the Order limits were raised by a number of IPs and Moss and District Parish Council [\[RR-002\]](#).

3.8.33. We asked at ExQ1 (question 1.8.3) [\[PD-007\]](#) whether the use of agricultural land would constitute an efficient use of the land. The applicant responded [\[REP2-059\]](#) confirming that the construction and operational phases would be carried out in accordance with the fSMP to ensure the agricultural quality of the land is preserved, with the land restored to agricultural use post decommissioning. The applicant also commented that the design of the proposed development had involved the balancing of multiple considerations including the efficient use of the land and agricultural quality.

*Soil health*

3.8.34. Safeguarding soil quality and impacts on soil health were issues raised by IPs [\[RR-025\]](#) and [\[RR-032\]](#). Through written questions [\[PD-007\]](#) we enquired as to the process, and safeguarding of, stripped and stockpiled soils (ExQ1.8.7, 1.8.8, 1.8.11). The applicant confirmed [\[REP2-059\]](#) specific areas for soil stripping would be provided within the detailed soil management plan alongside mapping of their locations. The applicant confirmed stripped topsoils would be appropriately stored to safeguard their quality and structure and that monitoring of soils would be undertaken during the operational phase. This is detailed within the fSMP [\[REP4-021\]](#).

3.8.35. At the close of the examination a SoCG was agreed between the applicant and CDC [\[REP5-011\]](#) with regards to the methodology, baseline and assessment of agricultural land including BMV agricultural land and soils with CDC maintaining that whilst the loss of BMV land is not deemed significant, it would constitute a minor loss.

### *ExA's consideration*

- 3.8.36. We note the applicant has sought to minimise the use of BMV agricultural land, optimising the use of subgrade 3b and grade 4 agricultural land where possible. Nevertheless, the proposed development would result in the loss of some BMV agricultural land, albeit a very small proportion of the overall land within the Order limits. Of the 30.2ha of BMV agricultural land (7% of the Order limits) within the solar PV site, much of this would be beneath the solar panels and would be subject to monitoring for soil quality during the operational phase. By remaining fallow beneath the solar panels and temporarily removed from agricultural practices, soil health should improve and, once the solar panels are removed, the land would be able to return to agricultural use and BMV agricultural land status would be retained.
- 3.8.37. In terms of BMV agricultural land beneath other structures, we are satisfied that the fSMP provides adequate safeguards for the stripping and storage of these soils such that they can be returned to their original location during the decommissioning phase and their agricultural grades preserved.
- 3.8.38. With regard to fields SW11 and SW12, we are content that given the measures to safeguard the BMV agricultural land beneath the solar panels during the operational phase as detailed within the fSMP [[REP4-021](#)], that their inclusion within the Order limits is acceptable.
- 3.8.39. We recognise the proposed development would impact upon farming practices albeit for a limited period of time and would be reversible in the long term. Only a small area of agricultural land would be permanently lost to the OSS and structural planting. We have been presented with no evidence that this temporary and permanent loss in agricultural land would significantly negatively affect food security.
- 3.8.40. Furthermore, we are satisfied that the applicant has provided information within ES Chapter 12 and in response to our written questions of how the proposed development would minimise impacts on soil health alongside protecting and improving soil quality. We are content that suitable mitigation measures to protect and safeguard soil health and integrity are contained in the fSMP [[REP4-021](#)], fCEMP [[REP3-013](#)], fOEMP [[REP5-007](#)] and fDEMP [[REP4-019](#)], final details of which are secured in requirements 11 (CEMP), 12 (OEMP), 15 (SMP) and 18 (DEMP) of the dDCO.

### **Conclusions on Agriculture and Soils**

- 3.8.41. We are satisfied that the applicant has undertaken a thorough assessment of soils and BMV agricultural land within the Order limits. No evidence has been presented disputing the methodology or validity of its findings.
- 3.8.42. We accept there would be a permanent loss of agricultural land beneath the substation. However, we are satisfied that the applicant has sought to minimise harm to agricultural land by siting the substation on subgrade 3b land and that this is a small fraction of the Order limits. We also note that a very limited amount of BMV agricultural land would be permanently removed as part of structural planting. However, we are satisfied that through the design of the proposed development the applicant has limited this impact. Whilst we note that there would be some reduction in the amount of land available for food production, this would be temporary and reversible on decommissioning. Overall, we are satisfied this would not be materially harmful to wider food security.

- 3.8.43. We consider that with the mitigation measures set out within the fSMP [\[REP4-021\]](#), fCEMP [\[REP3-013\]](#), fOEMP [\[REP5-007\]](#) and fDEMP [\[REP4-019\]](#) soils and BMV agricultural land would be safeguarded, managed and monitored such that on decommissioning of the proposed development the majority of the land would be able to return to an agricultural use and BMV agricultural land status would be retained. Consequently, we consider this satisfies the requirements of NPS EN-1 and EN-3 in seeking to safeguard soil quality. This is secured by requirements 11 (CEMP), 12 (OEMP), 15 (SMP) and 18 (DEMP) of the dDCO.
- 3.8.44. Given the limited extent of BMV land within the Order limits and the mitigation measures proposed, we conclude that there would be no significant adverse effects on soils and BMV agricultural land. However, during the lifetime of the proposed development, there would be a loss of around 30.2ha of BMV agricultural land. While we are mindful that the majority of this would be reversible on decommissioning, and that the land resource itself would improve over time, it would nevertheless result in the permanent loss of around 0.78ha of BMV agricultural land.
- 3.8.45. In our view, the loss of any BMV agricultural land is to be discouraged and both the temporary loss of 29.42ha and the permanent loss of 0.78ha weighs against the application. However, we accept 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.
- 3.8.46. Overall, we are satisfied that the proposal would accord with the relevant provisions of NPSs EN-1 and EN-3, the NPPF and the DLP. However, cognisant that the loss of any BMV should be discouraged, we consider that matters relating to soils and BMV agricultural land should be afforded a little negative weight in the overall planning balance.

## **3.9. NOISE AND VIBRATION**

### **Introduction**

- 3.9.1. This section considers the effects of noise and vibration from the proposed development on noise sensitive receptors and the environment.

### **Policy Context**

- 3.9.2. NPS EN-1 recognises 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 (paragraphs 5.12.1 and 5.12.4). 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.
- 3.9.3. 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).
- 3.9.4. 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.

- 3.9.5. 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 (paragraph 5.12.16). 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).
- 3.9.6. 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.
- 3.9.7. 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.
- 3.9.8. 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.
- 3.9.9. DLP Policy 54 requires development proposals to demonstrate that pollution can be avoided or that mitigation measures would minimise significantly harmful impacts to an acceptable level. The policy requires a noise assessment and consideration to be given to potential noise generated.

### **The Application**

- 3.9.10. ES Chapter 11 (Noise and Vibration) [\[REP4-012\]](#) sets out the applicant's assessment of the effect of the proposed development on noise and vibration. It is supported by:
- ES Figure 2-4 (Location of Temporary Construction Compounds and Indicative HDD Areas) [\[APP-075\]](#)
  - ES Figure 11-1 (Noise Monitoring and Receptor Locations) [\[APP-229\]](#)
  - ES Figure 11-2 (Operation and Maintenance Noise Contours with Noise Monitoring and Receptor Locations) [\[APP-117\]](#)
  - ES Appendix 11-1 (Legislation, Policy and Guidance) [\[APP-169\]](#)
  - ES Appendix 11-2 (Acoustic Terminology) [\[APP-170\]](#)

- ES Appendix 11-3 (Baseline Noise Survey) [\[APP-171\]](#)
- ES Appendix 11-4 (Construction and Operation and Maintenance Noise Modelling) [\[APP-172\]](#)

### **Methodology**

- 3.9.11. Section 11.4 of ES Chapter 11 [\[REP4-012\]](#) details the methodology used to assess the impacts of noise and vibration for all three phases of the proposed development. It explains the study area includes sensitive receptors likely to be at risk from direct and indirect effects during each phase of the proposed development.
- 3.9.12. For the solar PV site, a 500m study area was used for all three phases. For construction noise effects for the GCC, the assessment included receptors within 300m in accordance with BS 5228-1. Operational noise was scoped out of the assessment for the GCC due to the cables being buried and noise not being perceptible.
- 3.9.13. For construction traffic, a study area of 50m either side of routes to be used to the Order limits was considered in accordance with Design Manual for Roads and Bridges (DMRB). The applicant explains that the section of highway at the junction of the A19 and Station Road, which is within the Order limits, was not assessed given those works would be limited to removal of street furniture. The study areas are shown on ES Figure 11-1 (Noise Monitoring and Receptor Locations) [\[APP-229\]](#).
- 3.9.14. Noise sensitive receptors were identified through a desktop study (see ES Figure 11-1 [\[APP-229\]](#) for their location) and through discussions with CDC. These are described in Table 11-2 of ES Chapter 11. Where there are groups of properties these were considered as a single receptor, with the nearest receptor to the Order limits assessed as the worst-case scenario. Paragraphs 11.4.13 – 11.4.16 of ES Chapter 11 explains how users of PRoW have been considered as a receptor.
- 3.9.15. The applicant explains that the methodology and assessment undertaken differs between residential and non-residential receptors due to the approach adopted in the NPSE. Consequently, non-residential receptors are considered on a case-by-case basis and based upon criteria for good internal noise levels.
- 3.9.16. Software was used to calculate noise predictions at noise sensitive receptors for the construction phase, using a schedule of plant items (see ES appendix 11-4 section 1.2 [\[APP-172\]](#)). The software was also utilised for the operational phase, assuming a worst-case scenario of all equipment operating at the same time continuously, throughout the day and night, with field stations having transformers, a central inverter and switchgear enclosed in a single container.
- 3.9.17. Tables 11-4, 11-5 and 11-6 of ES Chapter 11 set out threshold noise levels during the construction and decommissioning phases (daytime, evening and night time periods), peak particle velocity for vibration, and changes in road traffic noise along the local road network respectively.
- 3.9.18. Operational noise from the field stations and BESS at the solar PV site was assessed following BS 4142 guidance (ES Chapter 11 paragraphs 11.4.42 – 11.4.49 [\[REP4-012\]](#)), with source data presented in ES Appendix 11-4 [\[APP-172\]](#) and criteria set out within Table 11-7. The applicant explains that vibration levels were scoped out for the operational phase.



### **Baseline**

- 3.9.19. Section 11.6 of ES Chapter 11 [\[REP4-012\]](#) sets out the baseline conditions and outlines that the predominant noise source is distant road traffic noise. The applicant explains that to understand the background and average noise levels for the Order limits, noise monitoring was undertaken in accordance with BS 7445-1:2003 and BS 4142:2014+A1:2019.
- 3.9.20. For the solar PV site, the applicant carried out unattended noise monitoring at nine locations (ML1 – ML9) for a period of a week between 29 November and 14 December 2023. The locations chosen were representative for baseline noise data for sensitive receptors. For the GCC, given noise would be experienced from the construction phase, and this would predominantly be restricted to daytime work hours, the applicant carried out attended short term noise measurements at 13 locations (ML10 – ML22).
- 3.9.21. Table 11-8 provides a summary of the baseline noise monitoring results for locations ML1 - ML9 (for background noise levels and ambient noise levels across the day, evening and night time periods). Details of the attended noise monitoring results for monitoring locations ML10 – ML22 can be found in Table 11-9. A future baseline scenario is provided stating that in the absence of the proposed development, noise levels are likely to increase marginally as a consequence of natural growth in road traffic flows. However, the applicant states this growth is unlikely to result in perceptible changes to baseline noise levels. Therefore, the applicant considers the measured current baseline data is representative.

### **Mitigation**

- 3.9.22. Section 11.7 of ES Chapter 11 [\[REP4-012\]](#) sets out detail of the mitigation measures which have been incorporated into the design of the proposed development to avoid and reduce impacts from noise and vibration. It explains (paragraphs 11.7.4 – 11.7.13) that during construction and decommissioning, embedded mitigation would include:
- ensuring all appropriate processes, procedures and measures are in place alongside contractors being made familiar with current legislation and guidance
  - ensuring where reasonably practicable that noise and vibration are controlled at source
  - use of modern plant complying with applicable UK noise emission requirements
  - use of hydraulic techniques rather than percussive techniques
  - regular maintenance of plant and machinery
  - all on-site vehicles to use broadband reversing warning devices
  - avoidance of unnecessary revving of engines and equipment switched off when not in use
  - minimising drop heights alongside loading and unloading of vehicles conducted in a manner to minimise noise generation
  - noise generating activities taking place near noise sensitive receptors to be limited to 0800 – 1800 Monday to Friday and 0800 – 1300 on Saturday
  - development of a construction noise monitoring scheme
  - production of communication strategy with occupiers of noise sensitive receptors
- 3.9.23. These measures are included in Table 3.7 of the fCEMP [\[REP3-013\]](#) and Table 7 of the fDEMP [\[REP4-019\]](#) with final versions being secured by requirements 11 (CEMP) and 18 (DEMP) of the dDCO. The applicant also states that prior to the



commencement of construction activities, a voluntary application for prior consent to carry out noisy works under Section 61 of the Control of Pollution Act 1974 would be submitted to CDC to demonstrate noise and vibration effects have been minimised.

- 3.9.24. Installation of cabling will use a mix of trenched and trenchless crossing techniques depending on ground conditions and environmental sensitivities. Trenchless crossings would likely be undertaken using (HDD). With regard to HDD, the potential locations are listed in Table 11-12 of ES Chapter 11 and are shown on ES Figure 2-4 (Location of Temporary Construction Compounds and Indicative HDD Areas) [APP-075]. However, as the HDD locations have yet to be finalised, Table 3.7 of the fCEMP establishes a hierarchy of mitigation measures to ensure during potential nighttime works no significant adverse effects occur. These include avoiding HDD works at night within 200m of residential receptors, the use of quieter equipment where possible, and the installation of temporary acoustic fencing. These would be set out in the final CEMP, secured by requirement 11 (CEMP) of the dDCO.
- 3.9.25. Construction traffic routes and timing were also considered to minimise noise impacts, and these would be secured through the fCTMP [REP4-027] and APP-207].
- 3.9.26. Embedded mitigation measures during the operational phase would take the form of siting field stations at a distance of greater than 250m from residential properties. Paragraph 11.7.16 of ES Chapter 11 explains that, as details of the potential plant to be used has not yet been finalised, operational noise levels would be controlled through plant selection and design layout, in accordance with the ODPS [REP2-027] and the fOEMP [REP5-007]. This would be secured by requirements 4 (detailed design) and 12 (OEMP) of the dDCO respectively. Additionally, requirement 14 (operational noise) would ensure operational noise experienced at sensitive receptors would be no higher than the levels detailed in ES Chapter 11, Table 11-7.

### **Assessment of Effects**

- 3.9.27. Section 11.8 of ES Chapter 11 [REP4-012] sets out an assessment of the noise and vibration effects for the proposed development.

#### *Construction*

- 3.9.28. Table 11-15 of ES Chapter 11 sets out a summary of the assessment of effects for noise and vibration during the construction phase upon the receptors listed in Table 11-2. The applicant explains that given the transient usage of PRow, alongside the measures taken to minimise the effects of noise on PRow users, no significant adverse effects have been identified.
- 3.9.29. The applicant recognises that during the construction phase some activities would generate higher levels of noise than others. As such, it considered three scenarios to assess high noise generating activities (NGA) being:
- construction of the BESS area, field stations, OSS and installation of the solar PV panels (NGA1)
  - cable installation (general works) at the GCC (NGA2)
  - cable installation (HDD activities) (NGA3)
- 3.9.30. Table 11-10 sets out the results of construction noise predictions for NGA1. Assessing a worst-case scenario of direct drive piling for the installation of all the solar panels, field station foundations and the BESS, it identifies an exceedance of the LOAEL at six receptors including R1, R2, R4, R29, R32 and R33.

- 3.9.31. However, while ES Chapter 11 recognises there would be some adverse noise impacts on these receptors, it considers all reasonable steps have been taken to mitigate and minimise adverse effects as part of the embedded mitigation. Furthermore, it notes that the SOAEL would not be exceeded at any of the receptors assessed and, as such, identifies no significant effects during construction.
- 3.9.32. Predicted noise levels for NGA2 are set out within Table 11-11 which identifies no exceedances of LOAEL or SOAEL from this activity.
- 3.9.33. For NGA3, ES Chapter 11 assesses a worst-case scenario of 24-hour HDD activity for the ten locations identified as requiring trenchless cable installation methods (one within the solar PV site and nine within the GCC). Drawing on the HDD noise calculations within ES Appendix 11-4 [\[APP-172\]](#), it indicates that significant effects would only occur within 200m of night time HDD activity. It identifies nine receptors where the SOAEL for nighttime construction activity would be exceeded including R12, R13, R16, R17, R18, R23, R25, R27 and R31 (see Table 11-13 of ES Chapter 11). As a result, ES Chapter 11 acknowledges that HDD activity at these receptors has the potential to result in significant noise effects if they extend into the night.
- 3.9.34. However, ES Chapter 11 also notes that the application of the mitigation measures set out in paragraph 11.7.12, including the use of acoustic fencing, would reduce the noise from HDD activities at R13, R16, R18, R23, R25 and R27 to below the night time SOAEL of 55dB LAeq, T. Nevertheless, it acknowledges that noise levels at R12, R17 and R31 would be equivalent to the nighttime SOAEL and, as such, these receptors would experience significant effects.
- 3.9.35. The applicant assessed potential changes in road traffic noise (paragraphs 11.8.34 – 11.8.38 of ES Chapter 11) and identified there would be a negligible (non-significant) effect on noise levels as a result of construction traffic.
- 3.9.36. Turning to vibration, the applicant notes that surface plant, such as cranes, compressors, and generators are not recognised as sources of high levels of ground-borne vibration. However, vibration from pile driving associated with panel installation could cause property damage and nuisance.
- 3.9.37. Driven piling vibration calculations are based on regression analysis of driven piling data from Table D.2 of BS 5228-2. For NGA1, ES Chapter 11 identifies an exceedance of the SOAEL from ground borne vibration at one receptor (R33), located approximately 40m from potential piling activities in field SE2 (see [Figure 2](#) above). However, it notes that field SE2 makes up approximately 1% of the total area of the Order limits and only 5% of the field is within 60m of R33. As a result, over the two-year construction period, the applicant considers the total time spent working within 60m of R33 would be less than a day.
- 3.9.38. Noting that BS 5228-2 recognises that vibration of this level can be tolerated if prior warning and explanation has been given, ES Chapter 11 identifies measures contained within the fCEMP [\[REP3-013\]](#) (including a communications strategy) which would ensure that residents of any affected receptors would be notified on the timing and duration of construction activity. As a result, it considers the residual effects would not be significant.
- 3.9.39. For NGA2, ES Chapter 11 identifies an exceedance of the LOAEL at receptors R12, R16, R27 and R31 due to them being within 50m of potential vibratory roller activity.

However, as the SOAEL would not be exceeded, no significant vibration effects are anticipated.

- 3.9.40. Likewise, for NGA3, ES Chapter 11 explains that vibration levels from HDD activities are similar to bored piling. The closest receptor to potential HDD activities is R17, approximately 75m at its closest point, which, at this distance, would result in predicted vibration levels below the LOAEL. Accordingly, no significant effects are identified.

#### *Operation*

- 3.9.41. As receptors could experience a distinctive continuous and steady hum from the plant within the solar PV site, which is to operate continually, the applicant has applied a +3 dB rating penalty in their assessment as per BS 4142 guidance. Furthermore, as background noise levels may be lower at night, the potential for an adverse effect may be more pronounced. Consequently, using nighttime noise levels within the assessment is considered a worst-case scenario and therefore, Table 11-16 in ES Chapter 11 has considered nighttime noise only.

- 3.9.42. The assessment identifies no receptors which would experience noise levels above the SOAEL and therefore noise effects are not considered significant. However, eleven receptors are identified where noise levels would be above or equal to LOAEL but below SOAEL, and therefore an adverse level of noise is identified. The applicant explains that reasonable measures have been taken to minimise and mitigate noise in the form of embedded mitigation measures and as such, considers the requirements of NPSE are met.

#### *Decommissioning*

- 3.9.43. The applicant considers the noise and vibration effects during the decommissioning phase would be similar to or less than noise and vibration effects during the construction phase. Therefore, the construction phase would be representative of the decommissioning phase and consequently no separate assessment of the decommissioning phase was undertaken.

#### *Additional Mitigation*

- 3.9.44. The applicant states that the embedded mitigation as set out within fCEMP [\[REP3-013\]](#), fOEMP [\[REP5-007\]](#) and fDEMP [\[REP4-019\]](#) is sufficient to avoid significant effects. The exception is the potential exceedance of SOAEL for nighttime working HDD activities. The applicant states that when finalising the locations for HDD works, the distance between the HDD activities and sensitive receptors would be kept as large as reasonably possible, with a minimum distance of 85m between HDD works and sensitive receptors, and as noted above, avoiding HDD works at night within 200m of residential receptors. This is safeguarded within the fCEMP, a final version of which is secured by requirement 11 (CEMP) of the dDCO.

- 3.9.45. Full details of all embedded mitigation and where it is secured can be found in the Environmental Commitments and Mitigation Register [\[REP4-016\]](#).

#### *Cumulative effects and effect interactions*

- 3.9.46. The applicant has considered the potential for cumulative effects of the proposed development along with those of other projects and effect interactions with other environmental topics. These are detailed in ES Chapter 15 (Cumulative Effects and Interactions [\[APP-067\]](#)) and ES Figure 15-3 (Location of Short List Schemes) [\[APP-131\]](#) and Tables 15-1 and 15-2.

- 3.9.47. The applicant states that based on professional judgement, that when considering multiple development projects, noise is attenuated at distances beyond 500m. As such, Table 11-18 contains projects from the short list proposals that are within 500m of the Order limits to assess for cumulative effects. In summary, no significant cumulative effects are identified with the other projects listed in ES Chapter 11 Table 11-18.
- 3.9.48. For potential effect interactions, Tables 15-1 and 15-2 identifies no significant effect interactions on noise and vibration receptors.

### **Issues considered during the Examination**

- 3.9.49. CDC, in its LIR [\[REP1-048\]](#), and in response to ExQ1 [\[REP2-068\]](#) raised no concerns with regard to the methodology, baseline sound levels, modelling or calculations commenting that the threshold levels presented are appropriate. CDC was satisfied that, subject to adequate mitigation measures being in place, local plan policy requirements would be met and where noise generating activities occur outside of agreed working hours, that a Section 61 application would be the appropriate course of action.
- 3.9.50. CDC also noted requirement 14 (operational noise) would ensure noise for existing residential properties would remain within acceptable levels and requested that should Fenwick Hall and Lily Hall become inhabited in the future, these buildings should be taken into consideration as part of this requirement. The applicant confirmed [\[REP2-060\]](#) these buildings would be considered as part of the operational noise assessment. At the close of the examination a SoCG [\[REP5-011\]](#) was agreed between the applicant and CDC which confirmed that there were no outstanding matters of dispute between these parties with regards to noise and vibration matters.

### *Construction Phase Noise*

- 3.9.51. Fenwick Solar Farm Action Group [\[REP1-059\]](#) together with a number of local residents raised concerns regarding construction noise including from piling operations, alongside general noise pollution concerns [\[RR-021\]](#), [\[RR-023\]](#), [\[RR-030\]](#), [\[RR-035\]](#), [\[RR-037\]](#), [\[RR-045\]](#), [\[RR-050\]](#), [\[RR-052\]](#) and [\[REP1-060\]](#). Concerns were also raised by IPs [\[RR-048\]](#) and [\[REP1-063\]](#) regarding construction traffic noise.
- 3.9.52. In ExQ1 [\[PD-007\]](#), we asked a number of questions (ExQ1.11.5, ExQ1.11.15, ExQ1.11.16 and ExQ1.11.17) regarding HDD activities including the duration of works at any individual HDD location, whether the applicant had explored further mitigation measures for receptors R12, R17 and R31, and how the minimum distance of 85m aligns with a reduced distance at some of the HDD locations (see ES Figure 2-4 (Location of Temporary Construction Compounds and Indicative HDD Areas) [\[APP-075\]](#)).
- 3.9.53. In response [\[REP2-059\]](#), the applicant confirmed that night time HDD activities would be for a short duration of up to three days, and given this limited period considered the attended noise monitoring approach reasonable. Furthermore, it explained that the most effective methods for reducing noise levels is to reduce noise at source either through barriers or quieter plant. As specific plant and locations for HDD entry and receptor sites would be determined at the detailed stage, the applicant committed to using acoustic fencing within the fCEMP and stated that additional measures would be discussed with CDC through the Section 61 process. The applicant also stated that whilst Table 11-13 of ES Chapter 11 presents a worst-case noise level scenario of 75m distance from HDD works to

some receptors, there is a commitment to a minimum distance of 85m between HDD works and sensitive receptors, alongside construction noise monitoring detailed within the fCEMP [\[REP3-013\]](#) which is secured through requirement 11 (CEMP) of the dDCO.

- 3.9.54. The applicant also responded [\[REP1-031\]](#) and [\[REP2-058\]](#) to concerns regarding noise emissions from piling in the solar PV site during the construction phase, outlining that construction works would not occur in any one location for an extended period of time. Furthermore, the driving of mounts into the ground would be carried out using a small tracked post driver (see Plate 2-11 of ES Chapter 2 [\[APP-054\]](#)) followed by attachment of solar panels by hand to minimise disturbance from noise. The applicant confirmed that the noise assessment is a worst-case scenario of activities taking place in close proximity to sensitive receptors.

*ExA's consideration*

- 3.9.55. We recognise the concerns raised by IPs with regards to construction noise including from piling and road traffic alongside general noise pollution that could alter the noise character of the locality. However, we are satisfied with the responses provided by the applicant and the mitigation measures proposed including managing noise emissions at source, the use of quieter plant and machinery and that a worst-case scenario has been adopted. As a result, we consider that this is a conservative estimate of noise emissions during this phase.
- 3.9.56. Furthermore, whilst we acknowledge that noise from construction activities would be noticeable, because they are temporary in nature and would not be concentrated to one location, we are content that with the implementation of mitigation measures, noise emissions from the construction phase would not result in significant adverse effects on noise sensitive receptors.
- 3.9.57. We acknowledge night time HDD activities could result in noise levels that are above the SOAEL and, without mitigation, significant adverse effects at some sensitive noise receptors along the GCC could occur. However, we are satisfied with the hierarchy of mitigation measures proposed to manage noise emissions from HDD activities and that these can be achieved through the measures detailed in the fCEMP and would be secured by DCO requirements. Furthermore, we are content that CDC will be involved if a section 61 application needs to be made for night time HDD, and consider this a suitable approach.

*Operational Phase Noise*

- 3.9.58. Potential for noise from the transformer, OSS and BESS during the operational phase was raised as a concern by IPs [\[RR-029\]](#) and [\[AS-004\]](#). In response to these concerns, the applicant explained [\[REP1-031\]](#) and [\[REP2-059\]](#) that the noise assessment for the operational phase assessed all plant operating at full capacity, and with proposed mitigation measures, noise from the proposed development would not be significant at sensitive receptors.

*ExA's consideration*

- 3.9.59. We acknowledge the concerns raised by IPs regarding operational noise. However, we are satisfied that the applicant has set out mitigation measures in the form of set distances to field stations and has chosen to site the BESS away from clusters of noise sensitive receptors to assist in minimising noise emissions. Whilst we recognise that operational noise levels would be above the LOAEL but below the SOAEL, we acknowledge the assessment is based on a worst-case scenario.



Furthermore, we are content that with the embedded mitigation measures detailed within the fOEMP [\[REP5-007\]](#) that adverse noise effects would not be significant.

### **Conclusions on Noise and Vibration**

- 3.9.60. We are satisfied with the noise assessment the applicant has submitted within ES Chapter 11 and its accompanying appendices and figures and consider it meets the requirements of NPS EN-1 paragraphs 5.12.6 – 5.12.12. No evidence has been advanced that challenges the methodology or findings of the noise assessment.
- 3.9.61. While we note a number of residential receptors are likely to experience noise levels which exceed the night time SOAEL during HDD night time activities, we are satisfied that with the hierarchy of mitigation measures secured by the fCEMP [\[REP3-013\]](#), noise emissions would be minimised and that at the final design stage, they could reduce further. However, while we recognise that a section 61 application may be necessary, the effects of the works would be temporary and short term.
- 3.9.62. We do note that some noise sensitive receptors may experience levels of operational noise above or equal to the LOAEL but below the SOAEL. Again, with the implementation of embedded mitigation measures we are satisfied that whilst adverse levels of noise are identified, the proposed development would remain below the significance thresholds set out in the NPSE and NPPF.
- 3.9.63. Additionally, we note an adverse effect on R33 from construction vibration within field SE2. However, we are satisfied that this adverse effect can be managed through the applicant's proposed communication strategy by informing residents in advance of works taking place. Furthermore, we are mindful that HDD activities in this location would be of limited duration. As such, we are content this would not result in any significant effects.
- 3.9.64. Consequently, we are satisfied the applicant has sought to minimise noise and vibration emissions from the construction, operation and decommissioning phases through mitigation measures and the layout of the proposed development such as setting distances to operational plant, as detailed within the ODPS [\[REP2-027\]](#). We further note the embedded mitigation measures detailed within the fCEMP [\[REP3-013\]](#), fOEMP [\[REP5-007\]](#) and fDEMP [\[REP4-019\]](#) and secured through requirements 11 (CEMP), 12 (OEMP) and 18 (DEMP) of the dDCO provide steps to mitigate and minimise potential adverse effects on noise sensitive receptors and PRow users.
- 3.9.65. In doing so, we are satisfied that the applicant has had due regard to the NPSE and NPPF and its requirements and that proposed development would accord with the relevant provisions of NPS EN-1, NPS EN-3 and NPS EN-5, the NPPF, the NPSE and the DLP. However, because of the potential HDD nighttime activities we conclude that matters relating to noise and vibration should attract a little negative weight in the planning balance.

## **3.10. THE WATER ENVIRONMENT AND FLOOD RISK**

### **Introduction**

- 3.10.1. This section examines the effects of the proposed development on the water environment and flood risk.



## Policy Context

- 3.10.2. Section 5.16 of NPS EN-1 recognises that infrastructure development can have adverse impacts on the water environment. While it acknowledges that the risks can be reduced through careful design, it makes clear that where a project is likely to have impacts on the water environment, the applicant is required to include details in its ES of, amongst other things, its impacts on water quality (paragraph 5.16.7), existing water resources, existing physical characteristics of the water environment, any impacts on water bodies or protected areas including source protection zones. It should also contain details on how climate change could impact these considerations as well as cumulative effects (paragraphs 5.16.3 to 5.16.7). Consideration should be given to whether any mitigation measures beyond those forming part of the application are needed in order to minimise impact on the water environment (paragraphs 5.16.8 to 5.16.10).
- 3.10.3. NPS EN-1 also aims to avoid inappropriate development in areas at risk of flooding, and to steer new development to areas with the lowest risk of flooding (NPS EN-1 paragraph 5.8.6). It makes clear that applicants should apply the sequential, and where relevant, the exception, test as set out in the PPG Flood Risk and Coastal Change (paragraphs 5.8.9 to 5.8.11). In addition, applicants should take a sequential approach to the layout and design of the project (paragraph 5.8.29).
- 3.10.4. A site-specific flood risk assessment (FRA) should be provided for sites on more than 1ha (paragraph 5.8.13). Paragraphs 5.8.15 to 5.8.20 set out the requirements for FRAs.
- 3.10.5. 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).
- 3.10.6. Furthermore, while NPS EN-3 advises on the need for a FRA, it notes that as solar PV panels drain to the existing ground, the impact will generally not be significant (paragraph 2.10.84). It also notes that, given the temporary nature of solar PV farms, sites should be configured to avoid impacts on existing drainage systems and watercourses. Culverting existing watercourses and drainage ditches should also be avoided. Where culverting for access is unavoidable, applicants should demonstrate that no reasonable alternatives exist and, where necessary, will only be in place for the construction period (paragraphs 2.10.85 to 2.10.88).
- 3.10.7. Similar advice on the approach to flood risk and drainage can be found in the NPPF and relevant policies of the DLP.

## The Application

- 3.10.8. ES Chapter 9 [\[APP-061\]](#) presents the applicant's findings of its assessment of the effect of the proposed development on the water environment. This includes consideration of surface water features and groundwater, flood risk and the demand for water resources. It is supported by:
- ES Appendix 9-1 (Legislation, Policy and Guidance (Water Environment)) [\[APP-156\]](#)
  - ES Appendix 9-2 (Water Framework Directive (WFD) Assessment) [\[APP-157\]](#)
  - ES Appendix 9-3 (FRA) [\[REP2-015\]](#) and [\[REP2-017\]](#)
  - ES Appendix 9-4 (Framework Drainage Strategy (fDS)) [\[APP-160\]](#)

- ES Figure 9-1 (Surface Water Features and their Attributes) [[APP-096](#)]
- ES Figure 9-2 (Groundwater Features and their Attributes) [[APP-097](#)]
- ES Figure 9-3 (Watercourses, Flood Zones and Internal Drainage Boards) [[APP-098](#)]
- ES Figure 9-4 (EA Flood Map for Planning (Rivers and Sea)) [[APP-099](#)]
- ES Figure 9-5 (Risk of Flooding from Surface Water) [[APP-100](#)]
- ES Figure 9-6 (Superficial Deposits) [[APP-101](#)]
- ES Figure 9-7 (Bedrock Deposits) [[APP-102](#)]

### **Methodology**

3.10.9. The applicant's methodology is set out in section 9.5 of ES Chapter 9. It applies a study area of 1km from the Order limits to identify water features that are hydrologically connected to the site. These can be found in ES Figure 9-1 (Surface Water Features and their attributes) [[APP-096](#)] and ES Figure 9-2 (Groundwater Features and their Attributes) [[APP-097](#)].

3.10.10. There are 4 WFD surface water bodies within the study area:

- Ea Beck from the skell to River Don
- Don from Mill Dyke to River Ouse Water Body
- Bramwith Drain from Source to River Don
- Went from Blowell Drain to the River Don

3.10.11. In addition, 1 WFD groundwater feature is identified within the study area, Aire and Don Sherwood Sandstone ground water body.

### **Baseline**

3.10.12. Section 9.7 of ES Chapter 9 [[APP-061](#)] explains that a desktop study and field surveys were used to identify the baseline water environment. It contains details of the topography, land use, surface water features, hydromorphology, WFD classification, water quality, water resources, aquatic ecology and nature conservation sites as well as the geology and hydrogeology of both the solar PV site and the GCC. It also contains details on flood risk from all sources.

3.10.13. ES Chapter 9 also explains that the applicant has adopted the 'Credible Maximum Scenario' for climate change in accordance with EA advice. An upper end peak river flow of +60% has been used based on the River Don being the main source of fluvial flooding.

3.10.14. Information on the hydromorphology of the watercourses can be found in Table 9-4 of ES Chapter 9 [[APP-061](#)]. WFD classifications of the surface water bodies underlying the solar PV site and the GCC can be found in Tables 9-5 and 9-10.

### **Mitigation**

3.10.15. Section 9.8 of ES Chapter 9 [[APP-061](#)] contains details of the mitigation measures which the applicant has incorporated into the design. These are set out in Table 3-4 of the fCEMP [[REP3-013](#)] and include measures to manage pollution, run off and sediment risks, flood risk, drainage, surface water and groundwater.

3.10.16. They are included in the application's framework control documents including the ODPS [[REP2-027](#)], the framework Battery Safety Management Plan (fBSMP) [[APP-205](#)], the fDS [[APP-160](#)], the fAMS [[REP2-054](#)], fCEMP [[REP3-013](#)], the fOEMP [[REP5-007](#)], fSMP [[REP4-021](#)] and the fDEMP [[REP4-019](#)]. Final versions of these

documents and their approval are secured through requirements 4 (detailed design), 5 (BSMP), 9 (surface and foul water drainage) 10 (archaeology), 11 (CEMP), 12 (OEMP), 15 (SMP) and 18 (DEMP) of the dDCO. Together they ensure that the proposed embedded mitigation is secured and delivered as part of the proposed development

- 3.10.17. Further details of all embedded mitigation and how it is secured can be found in the Environmental Commitments and Mitigation Register [\[REP4-015\]](#).

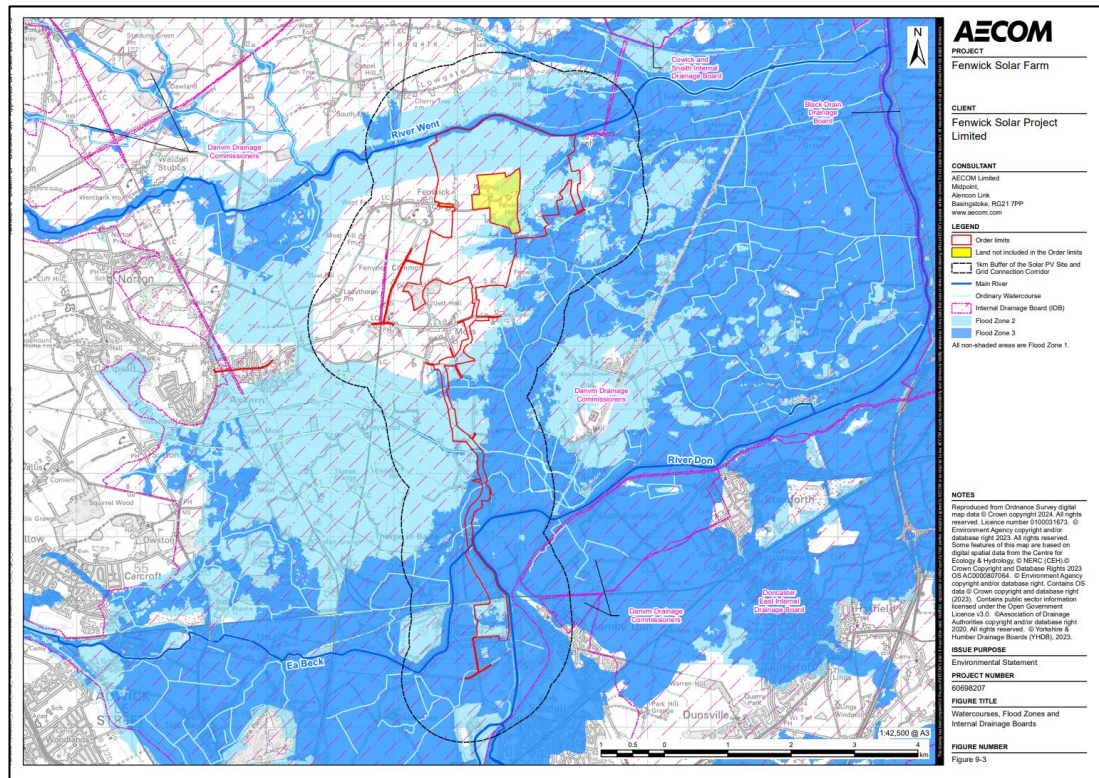
### **Flood Risk**

- 3.10.18. ES Appendix 9-3 (FRA) [\[REP2-015\]](#) and [\[REP2-017\]](#) assesses the current risk of flooding from all sources including fluvial, tidal, surface water and groundwater.
- 3.10.19. Most of the south and west areas of the solar PV site, including the BESS area and the OSS would be located in Flood Zone 1. The north and east areas are located in Flood Zones 2 and 3 and are associated with the River Wen and Fleet Drain. The GCC is mostly within areas of Flood Zone 3 with some smaller areas of Flood Zone 2 located along the central section. These areas within the GCC are associated with the River Don. [Figure 10](#) below provides an extract of flood zones within the Order limits.

### *Sequential test*

- 3.10.20. Section 9.2 explains that the sequential approach was applied in selecting the land for the solar PV site with the layout and design of the solar infrastructure being located, as far as practicable, in areas with the lowest risk of flooding.
- 3.10.21. It contains a sequential report (see Annex B of the FRA [\[REP2-017\]](#)) which explains the site selection criteria and the areas that were considered. It concludes that suitable and reasonably available alternative sites at lower risk of flooding have not been identified. Furthermore, it notes that the BESS, the OSS and the majority of the solar PV panels are in areas at lowest risk of flooding.
- 3.10.22. The FRA notes that, once constructed, cabling within the GCC would be buried and not at risk of flooding. As such, the application of the sequential test to the GCC applies only to the construction phase.
- 3.10.23. Furthermore, it confirms that the identification of the GCC considered the operational and engineering requirements of the proposed development including the need to connect to the existing Thorpe Marsh substation, as well as a number of planning, environmental and land ownership constraints. It explains that the need for a direct route that follows existing linear features, minimises the number of landowners affected and avoids sensitive receptors, interaction with utilities and environmental designations as far as practicable have affected the choice of route.
- 3.10.24. As a result, it concludes that a GCC outside Flood Zone 2 and Flood Zone 3 would not be possible and there are no reasonable alternatives in Flood Zone 1. Likewise, areas of the GCC within Flood Zone 3 could not be avoided by using Flood Zone 2 land.

**Figure 10: Flood Zones within the Order limits**



(Source: ES Figure 9-4 (EA Flood Map for Planning) [[APP-099](#)])

### Exception test

3.10.25. As some areas within the solar PV site and GCC are located within Flood Zone 3, section 9.3 of the FRA [[REP2-015](#)] goes on to consider the exception test. It demonstrates that the proposed development would be safe from flooding from all sources throughout its lifetime without increasing flood risk elsewhere. Furthermore, it identifies a number of wider sustainability benefits to the community which would outweigh the flood risk including:

- the contribution towards meeting the urgent need for low carbon energy generating infrastructure identified by NPS EN-1
- its role in helping the UK meet its climate change obligations
- the ecological enhancements embedded in the design of the proposed development and secured as part of the fLEMP [[REP3-017](#)]
- employment generation and its contribution to the local economy

3.10.26. Accordingly, the FRA concludes that both elements of the exception test are satisfied.

### Drainage

3.10.27. ES Appendix 9-4 (fDS) [[APP-160](#)] provides an initial drainage design for new impermeable areas within the solar PV site and includes both the BESS area and the OSS.



## Assessment of Effects

### *Construction*

3.10.28. Section 9.9 of ES Chapter 9 [\[APP-061\]](#) recognises there are a number of potential adverse impacts on the water environment during construction. These include the pollution of surface water, impacts on the hydromorphology of water courses, impacts on groundwater quality and resources and on flood risk as a result of surface water runoff. However, with the embedded mitigation in place, it identifies no significant residual effects on the water environment during the construction phase.

3.10.29. A summary of the significance of effects on surface water, groundwater and hydromorphology during construction can be found in Tables 9-19 and 9-21 of ES Chapter 9.

### *Operation*

3.10.30. ES Chapter 9 explains that the GCC has not been assessed during the operational stage as the whole cable will be installed beneath ground level with no impact on the water environment following completion of construction and reinstatement.

3.10.31. It does, however, recognise that there could be a number of potential adverse impacts on the water environment resulting from the operation of the solar PV site. This includes the potential for physical impacts to watercourses, impacts on groundwater resources, surface water runoff rates, and foul drainage and water supply. Nevertheless, as with the construction phase effects discussed above, with the embedded mitigation in place, it identifies no significant residual effects on the water environment during the operational phase.

3.10.32. A summary of the significance of effects on surface water, groundwater and hydromorphology during operation can be found in Table 9-23 of ES Chapter 9.

### *Decommissioning*

3.10.33. ES Chapter 9 explains that the potential impacts from the decommissioning of the solar PV Site are similar in nature to those during construction, as some ground works would be required to remove infrastructure installed. It notes that a fDEMP is included with the application which sets out the general principles to be followed in the decommissioning phase. Furthermore, a final DEMP will be prepared prior to decommissioning to identify required measures to prevent pollution and flooding during this phase of the development. This must be substantially in accordance with the fDEMP [\[REP4-019\]](#) and is secured by requirement 18 (DEMP) of the dDCO.

3.10.34. As a result, the applicant considers the decommissioning impacts and effects would be no greater than those of the construction phase.

### *Cumulative effects and effect interactions*

3.10.35. Section 9.12 of ES Chapter 9 assesses the potential effects of the proposed development with those of the developments identified in the short list (see ES Figure 15-3 (Location of Short List Schemes) [\[APP-131\]](#)). It follows the methodology set out in ES Chapter 5 [\[APP-057\]](#).

3.10.36. In summary, while it recognises there is potential for overlap between construction of the proposed development and the impact from adjacent cumulative

developments, it identifies no changes to the water environment to those already assessed in relation to the proposed development itself during construction, operation or decommissioning. As such, no significant effects are identified.

- 3.10.37. Likewise, in accordance with the methodology set out in ES Chapter 5 (EIA methodology) [\[APP-057\]](#) no potential for effect interactions was identified and as such, the applicant considers that no significant effect interactions would arise in respect of the water environment.

#### *Water Framework Directive*

- 3.10.38. Details on how the proposed development would impact on the WFD objectives for the relevant watercourses can be found in ES Appendix 9-2 (WFD Assessment) [\[APP-157\]](#). In summary, while it recognises that there would be some local impacts to aquatic habitat networks, it considers these impacts would be temporary and would not prevent self-recovery of these habitats following construction.
- 3.10.39. Overall, it concludes that with the embedded mitigation secured as part of the DCO, the proposed development would not cause a deterioration in the existing conditions of any surface or groundwater bodies and would not jeopardise any such bodies attaining good ecological status or potential in the future.

#### **Issues Considered during the Examination**

- 3.10.40. CDC, as Lead Local Flood Authority for the area, raised no issues in relation to flood risk. It noted in its SoCG with the applicant [\[REP5-011\]](#) that it would normally defer to the EA on other matters relating to the water environment as the authority responsible for delivering the WFD. It also noted that it had provided the applicant with detailed comments on drainage matters that it would expect to come forward through requirement 9 (surface and foul water drainage) of the dDCO.

#### *Flood modelling, FRA scope, bunding and updated data sets*

- 3.10.41. In its RR [\[RR-003\]](#), the EA raised concerns that the modelling underpinning the FRA was unsound. As a result, it considered that there was a risk that the FRA was inaccurate and the mitigation proposed was not appropriate. It also noted that the River Don was a tidally influenced watercourse and is therefore likely to be impacted by rising sea levels and sought updated modelling to ensure that the assessment included changes in sea level due to climate change. It also considered the scope of the FRA for the GCC was insufficient, noting that the Thorpe Marsh storage area was an EA asset which it considered had not been adequately assessed.
- 3.10.42. In addition, the EA raised concerns with the applicant's proposed disapplication of flood risk activity permits and sought protective provisions (PPs) to ensure its assets were protected. It also sought various updates to the proposed management plans including the fCEMP [\[REP3-013\]](#), the fBSMP [\[APP-205\]](#) and the fDEMP [\[REP4-019\]](#) and requested it be added as a named consultee in the discharge of requirements 11 (CEMP) and 18 (DEMP) of the dDCO. However, it noted that it was continuing to work with the applicant to address these issues and was content that they could be resolved through further discussions during the examination.
- 3.10.43. In ExQ1 [\[PD-007\]](#), we asked a number of questions around the modelled scenarios and sought updates to the FRA. We also requested additional detail on the methods that would be used to raise the panels and field stations to the appropriate height



(ExQ1.7.6), details of the proposed bunding to be provided for the OSS and BESS (ExQ1.7.8) and details of the sources of the proposed water supply for all activities using water (ExQ1.7.11). In addition, we drew the applicant's attention to the EAs new flood and coastal erosion risk datasets issued in March 2025 and asked the applicant to consider whether these had any implications for the assessments undertaken by the applicant (ExQ1.7.12).

- 3.10.44. In response [\[REP2-059\]](#), the applicant provided further information and updated its modelled scenarios to include the 3.33% annual exceedance probability (AEP), 1% AEP plus 38% climate change and the Credible Maximum Scenario. Furthermore, following further discussions with the EA, it agreed for all panels to be raised 400mm above the level associated with the Credible Maximum Scenario. The FRA was subsequently updated to reflect this.
- 3.10.45. The applicant also provided further information on water supply noting that the use and management of water supplies for construction activities would be addressed through the Water Management Plan which would be included in the final CEMP. It also updated the FRA to take account of the EA's new flood and coastal erosion datasets of March 2025 and confirmed that they had no implications for the modelling undertaken.
- 3.10.46. Discussions between the EA and the applicant continued throughout the examination and we were kept informed of progress. At the close of the examination, the EA confirmed that it had resolved all matters with the applicant and had no outstanding concerns.

#### *Drainage*

- 3.10.47. The Danvm drainage commissioners (as internal drainage board), noted in its RR [\[RR-013\]](#) that it had agreed drainage principles with the applicant and had no objection to the plans provided, or the methodology relating to watercourse crossings, access strips and discharge rates/attenuation. It did, however, seek PPs to ensure its interests were protected in view of the disapplication of its byelaws and the usual land drainage consent process. These were agreed after deadline 5 but before the close of the examination and make provision for, amongst other things, the protection of drainage assets which may be affected by the carrying out of the proposed development.
- 3.10.48. We are content that, subject to their inclusion in the recommended DCO (rDCO), they provide sufficient protection for the Danvm Drainage Commissioners and that there are no outstanding matters of dispute between the parties.

#### *General concerns regarding flood risk.*

- 3.10.49. A number of local residents raised concerns around increased flood risk and drainage [\[AS-004\]](#), [\[REP1-063\]](#), [\[REP1-064\]](#), [\[REP3-036\]](#) and [\[REP3-037\]](#). Particular concerns centred around the location of the BESS, whether it had been sited in areas at lowest risk of flooding and would be safe throughout its operational life.
- 3.10.50. In response [\[REP4-038\]](#), the applicant pointed out that the BESS was located in Flood Zone 1, which is defined by the EA as having a less than 0.1% probability of river or sea flooding. Furthermore, it noted that for the areas of the proposed development located within Flood Zones 2 and 3, hydraulic modelling has been undertaken and mitigation measures agreed with the EA to ensure that these areas remain safe for the lifetime of the development.

- 3.10.51. The applicant also explained that its use of the Credible Maximum Scenario has resulted in a very conservative approach. It also noted that the fDS had been discussed and agreed with the EA with full details being secured by the submission of a final drainage strategy under requirement 9 (surface and foul water drainage) of the dDCO.

*ExA's consideration*

- 3.10.52. Overall, we are satisfied that the application contains sufficient information to understand the effect of the proposed development on the water environment, including flood risk.
- 3.10.53. Particularly, in relation to flood risk, the BESS would be located Flood Zone 1, in areas at lowest risk of flooding. While we note that parts of the proposed development would be located within areas of higher risk (Flood Zones 2 and 3), we accept that appropriate hydraulic modelling has been undertaken and that the FRA demonstrates that with the embedded mitigation, the proposed development would be safe throughout its lifetime.

**Conclusions on the Water Environment**

- 3.10.54. We are satisfied that the applicant has undertaken a thorough assessment of flood risk and other water-related potential impacts of the proposal. There is little substantive evidence to dispute the validity of its findings, and we note that they were agreed by the EA.
- 3.10.55. While the site includes areas at higher risk of flooding, they are limited in extent. We accept that the proposed development has been designed to make it resilient to, and to avoid worsening, flood risk in those areas. Effective mitigation is also contained in the ODPS [REP2-027], fBSMP [APP-205], the fDS [APP-160], the fAMS [REP2-054], fCEMP [REP3-013], the fOEMP [REP5-007], fSMP [REP4-021] and the fDEMP [REP4-019]. This is secured by requirements 4 (detailed design), 5 (BSMP), 9 (surface and foul water drainage), 10 (archaeology), 11 (CEMP), 12 (OEMP), 15 (SMP) and 18 (DEMP) of the dDCO.
- 3.10.56. Likewise, we are satisfied that the FRA demonstrates that both the sequential and exception tests have been satisfied.
- 3.10.57. 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. With the mitigation measures in the CEMP in place, we are content that the proposed development would not have significant adverse effects on the water environment.
- 3.10.58. Overall, we conclude that there would be no significant adverse effects on the water environment, and the proposal would accord with the relevant provisions of NPSs EN-1 and EN-3, the NPPF, the PPG on Flood Risk and Coastal Change and the DLP. However, an absence of harm does not weigh positively in favour of the proposal and as such, we conclude that matters relating to the water environment attract neutral weight in the planning balance.

## **3.11. OTHER PLANNING MATTERS**

### **Introduction**

- 3.11.1. This section considers the effect of the proposed development on air quality, glint and glare, ground conditions, major accidents and disasters, telecommunications and utilities, electric and electromagnetic fields (EMFs), and materials and waste.

### **Policy Context**

- 3.11.2. NPS EN-1 recognises that energy infrastructure development can have adverse effects on air quality and lead to adverse impacts on health and the environment (paragraph 5.2.1). Consideration should be given to measures to mitigate all emissions from a development proposal to minimise human exposure to air pollution (paragraph 5.2.3).
- 3.11.3. Paragraph 5.2.8 requires an assessment of impacts on air quality where a proposed development is likely to have an adverse effect with paragraphs 5.2.9 and 5.2.11 outlining what should be described within the ES. Consideration should also be given to the Environment Targets (Fine Particulate Matter) (England) Regulations 2022 (paragraph 5.2.10).
- 3.11.4. Where a project could lead to a deterioration in air quality or is proposed near a sensitive receptor site including healthcare, residential, education or a sensitive habitat the SoS should give air quality considerations substantial weight (paragraphs 5.2.16 and 5.2.17). Paragraph 5.2.19 states that in all cases, the relevant statutory air quality limits, objectives and targets should be taken account of.
- 3.11.5. Paragraph 5.11.17 of NPS EN-1 states that applicants should ensure that the site is suitable for the proposed use, taking account of ground conditions and any risks arising from land instability and contamination. Regarding waste management from development proposals, paragraph 5.15.2 requires sustainable waste management is implemented in accordance with the waste hierarchy with disposal of waste considered as a last resort. Paragraphs 5.15.8 and 5.15.9 require applicants to outline how waste would be managed including recycling, reuse and disposal alongside the capacity of waste management facilities to deal with waste arisings.
- 3.11.6. In terms of decision making, consideration should be given by the SoS to whether the applicant has proposed an effective system for managing waste. The SoS should be satisfied that waste would be properly managed, that the arisings would not have an adverse effect on the capacity of existing waste management facilities; and that adequate steps have been taken to minimise the volume of waste arisings (paragraphs 5.15.14 – 5.15.15).
- 3.11.7. Paragraphs 2.10.102 – 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.
- 3.11.8. Paragraph 2.10.135 recognises that screening between potentially affected receptors and the reflecting panels may be required to mitigate effects. Paragraph 2.10.136 states that applicants may have to consider adjusting the alignment or

elevation tilt angle of a panel to alter the angle of incidence. Paragraph 2.10.159 states that whilst there is some evidence that glint and glare from solar farms can be experienced by pilots and air traffic controllers in certain conditions, there is no evidence that glint and glare from solar farms results in significant impairment.

- 3.11.9. In terms of decision making, paragraph 5.5.49 of NPS EN-1 requires the SoS to be satisfied that the effects on civil aerodromes have been addressed by the applicant and that an assessment has been carried out. Paragraph 5.5.50 goes on to state that the proposal should have been designed to minimise adverse impacts on the operation and safety of aerodromes where possible.
- 3.11.10. NPS EN-5 recognises that electric and EMFs occur around power lines or electric cables alongside domestic, office and industrial equipment where electricity is being used. Both electric and magnetic fields diminish with distance from the source (paragraph 2.9.45). Paragraph 2.9.46 states that although placing a cable underneath the ground eliminates the electric field, they still produce magnetic fields which are highest directly above them which is reiterated in paragraph 2.11.13. EMFs can have direct and indirect impacts on human health, aquatic and terrestrial organisms. Paragraph 2.9.50 provides guidance as to how to safeguard against indirect effects.
- 3.11.11. For substations, paragraph 2.9.51 outlines that levels of EMF are dictated by the cables entering the installation not the equipment on site. Paragraph 2.10.11 requires the applicant to consider height, position, insulation and protection measures.
- 3.11.12. Similar advice can be found in the NPPF and the DLP which recognise that risks can arise from historic activities, and that decisions should take into account ground conditions and contamination; and that proposals should include mitigation measures. They also seek to ensure that development proposals do not adversely affect, amongst other things, air quality, health or the environment.

### **The Application**

- 3.11.13. ES Chapter 14 (Other Matters) [\[APP-066\]](#) sets out the applicant's assessment of the effect of the proposed development on air quality, glint and glare, ground conditions, major accidents and disasters including the BESS, telecommunications and utilities, electric and EMF, and materials and waste. It is supported by:
- ES Appendix 14-1 (Legislation, Policy and Guidance) [\[APP-180\]](#)
  - ES Appendix 14-2 (Glint and Glare Assessment Part 1 and Part 2 [\[REP2-023\]](#) and [\[REP2-025\]](#))
  - ES Appendix 14-3 (Phase 1 Preliminary Risk Assessment (PRA) – solar PV) [\[APP-183\]](#)
  - ES Appendix 14-4 (Phase 1 PRA – grid connection corridor (Part 1) and (Part 2)) [\[APP-184\]](#) and [\[APP-185\]](#)
  - ES Appendix 14-5 (Pre Desk Study for UXO) [\[APP-186\]](#)
  - ES Figure 14-1 (Dust Risk Assessment) [\[REP2-014\]](#)

### **Methodology**

- 3.11.14. The methodology used for the topics covered in ES Chapter 14 [\[APP-066\]](#) does not strictly follow the approach and methodology outlined in ES Chapter 5 [\[APP-057\]](#). Where an alternative methodology is used, this is described and a worst-case scenario assessed. The reasons for this are provided in paragraph 14.1.5 of ES Chapter 14 [\[APP-066\]](#).

- 3.11.15. The methodology for the assessment of air quality, dust generation, traffic emissions and emissions from non-road mobile machinery is set out within ES Chapter 14 paragraphs 14.2.11 – 14.2.40. The study area and impact methodology used is based upon the Institute of Air Quality Management guidance. A qualitative assessment for fugitive emissions of particulate matter was conducted. The operational phase was scoped out of the assessment due to the low numbers of vehicle movements and activity that would take place at the site.
- 3.11.16. The glint and glare assessment methodology is set out within ES Chapter 14 (paragraphs 14.3.12 – 14.3.19) and section 4 of ES Appendix 14-2 Part 1 [\[REP2-023\]](#). This details how ground borne and aviation receptors were identified and how the magnitude of impact was identified given there are no specific guidelines.
- 3.11.17. The methodology for ground conditions including potential for land contamination within the Order limits is contained within the PRAs (the solar PV site [\[APP-183\]](#) and the GCC [\[APP-184\]](#) and [\[APP-185\]](#)). This includes the use of an initial conceptual site model to identify risks with section 9 and the methodology to conduct the assessment of risk associated with potential contaminant linkages. Table 9-4 within both PRAs outlines the linkages between the sources, pathways and receptors.
- 3.11.18. Paragraphs 14.5.15 – 14.5.21 of ES Chapter 14 [\[APP-066\]](#) present the methodology used to assess major accidents and disasters for the proposed development. The methodology includes an initial exercise to identify all possible major accidents or disasters that could be relevant to the proposed development. A short list was identified from this as detailed in ES Chapter 15 (Cumulative Effects and Interactions) [\[APP-067\]](#) and ES Figure 15-3 [\[APP-131\]](#). The study area was 5km from the Order limits based on the largest Zol shown on ES Figure 15-1 [\[APP-129\]](#).
- 3.11.19. The assessment methodology for telecommunications and utilities is detailed in paragraphs 14.6.9 – 14.6.13 of ES Chapter 14 [\[APP-066\]](#) including consultation and a desk-based study.
- 3.11.20. For electric and EMFs, only EMFs were subsequently included as the sheath surrounding the buried cables eliminates the electric field. Paragraphs 14.7.16 – 14.7.20 detail the applicant's methodology for the assessment of EMFs including two options for connecting to the Thorpe Marsh substation in their methodology. One being the GCC and the other being the GCLD to existing overhead power lines at the base of an existing 400kV overhead line tower within the solar PV site. The methodology explains what aspects have been scoped out of the assessment. Paragraph 14.7.23 explains the study area for EMFs is the Order limits as this is where it is considered EMFs could be potentially significant.
- 3.11.21. For materials and waste, the IEMA's guide to 'Materials and Waste in EIA, Guidance for a Proportionate Approach' was followed with paragraphs 14.8.29 – 14.8.37 of ES Chapter 14 setting out the methodology used. Table 14-15 details which matters were scoped into the assessment, and which were not. The study area included the Order limits alongside a more expansive study area of the Yorkshire and Humber region and England depending on the waste stream.

#### *Baseline*

- 3.11.22. Each topic has a different baseline as established in ES Chapter 14. Paragraphs 14.2.42 and 14.2.43 provide details of what air quality monitoring takes place at both Doncaster Council and the adjoining North Yorkshire Council. Paragraphs



14.2.46 – 14.2.47 and Table 14-1 provide the background pollutant concentrations for the study area with projected future baseline levels detailed in Table 14-2. The Order limits are not covered by an Air Quality Management Area with the nearest one being 5km distant.

- 3.11.23. For glint and glare, paragraphs 14.3.20 – 14.3.28 of ES Chapter 14 and ES Appendix 14-2 [\[REP2-023\]](#) set out the baseline conditions including the types of receptors that may experience views of the solar PV panels. The location of these can be seen in Figures 1 – 4 of Appendix 14-2 Part 1 [\[REP2-023\]](#).
- 3.11.24. The baseline for ground conditions is detailed within the PRAs [\[APP-183\]](#), [APP-184](#) and [APP-185](#) providing details of hydrogeology, historic development, unexploded ordnance risk, and current industrial land use.
- 3.11.25. For major hazards and accidents, the Order limits are not located within a safeguarding zone of an explosive site or within the Health and Safety Executive's land use planning consultation zone for major accident hazard pipelines and hazardous substances consent. There are, however, sensitive receptors within the vicinity of the Order limits that could be vulnerable to major accidents or disasters.
- 3.11.26. Paragraphs 14.6.14 – 14.6.18 detail the baseline conditions of existing telecommunication, television and utility infrastructure constraints within and adjacent to, the Order limits (with paragraphs 14.7.24 – 14.7.25 detailing the baseline for EMF).
- 3.11.27. For materials and waste, paragraphs 14.8.38 – 14.8.40 of ES Chapter 14 [\[APP-066\]](#) detail the existing baseline for national and regional materials and waste availability, non-hazardous and inert landfill void capacity in the region, hazardous landfill void capacity in England and national non-hazardous construction and demolition waste recovery rate with further details within Tables 14-16 and 14-17. A future baseline is detailed in paragraphs 14.8.41 - 14.8.45.

### **Mitigation**

- 3.11.28. Mitigation measures for the different topics can be found in Table 14-3 and Table 14-13 alongside paragraphs 14.3.35 – 36 (air quality), paragraphs 14.6.19 – 14.6.23 (telecommunications) and paragraphs 14.8.46 – 14.8.61 (waste management) in ES Chapter 14. For ground conditions, mitigation measures are detailed in sections 9.3 and 9.4 within the respective PRAs [\[APP-183\]](#), [APP-184](#) and [APP-185](#).
- 3.11.29. These paragraphs describe that the mitigation measures are based upon good practice measures for each individual topic and would be secured through the framework Site Waste Management Plan (fSWMP) [\[APP-208\]](#) delivered as part of the fCEMP [\[REP3-013\]](#), fOEMP [\[REP5-007\]](#) and fDEMP [\[REP4-019\]](#) alongside the fBSMP [\[APP-205\]](#), secured by requirements 5 (battery safety management), 11 (CEMP), 12 (OEMP) and 18 (DEMP) of the dDCO.
- 3.11.30. In summary, these would include development of a dust management plan, recording exceptional incidents of dust emissions, monitoring for dust emissions, ensuring adequate separation distances between battery containers with fire detection systems, the implementation of a framework battery management plan, using ground penetrating radar before excavation, embedding the aims of the waste hierarchy and the production of a materials management plan under the Contaminated Land: Applications in Real Environments code of practice if required.

## Assessment of Effects

- 3.11.31. For all topic areas across all three phases of the proposed development, no significant effects are identified within ES Chapter 14. Assessment of effect on each topic is detailed within Tables 14-5 to 14-9 (air quality), 14-13 (major accidents and disasters), 14-18 to 14-24 (materials and waste) and paragraphs 14.3.29 – 14.3.35 (glint and glare), paragraphs 14.4.17 – 14.4.22 (ground conditions), paragraphs 14.6.25 – 14.6.30 (telecommunications and utilities), paragraphs 14.7.26 – 14.7.33 (electric and EMF), and paragraphs 14.8.65 – 14.8.93 (materials and waste) of ES Chapter 14. The conclusions reached are based upon the implementation of embedded mitigation measures outlined above alongside the delivery of recommendations within section 12 of the PRA [\[APP-183\]](#) for ground conditions.

### *Additional Mitigation*

- 3.11.32. For glint and glare effects, as a low impact (not significant) was identified for residential receptors 74 (South Fork), 79 (Sunrise Cottage) and 88 (Jett Hall) within ES Appendix 14-2 Part 1 [\[REP2-023\]](#), additional mitigation measures are proposed. This would be in the form of native hedgerow to be planted/ infilled and maintained at a height of 3.5m along the southern boundary of field SE2 (receptor 74) and a southwest section and a southern section of fields SW10, SW11 and SW12 (receptors 79 and 88) to be delivered through the fLEMP [\[REP3-017\]](#). This additional mitigation reduces the low impact to no impact.

### *Cumulative effects and effect interactions*

- 3.11.33. Each topic within ES Chapter 14 considers potential for cumulative effects to occur with the projects identified within ES Chapter 15 [\[APP-067\]](#) and shown on ES Figure 15-3 [\[APP-131\]](#) based on receptors, area and potential for interactions.
- 3.11.34. No significant cumulative effects were identified for the topics. For construction dust and traffic movements, the cumulative assessment recognises that there could be a cumulative effect should construction phases overlap, however, with best practice measures and due to limited traffic numbers and overlap of the study area, no significant cumulative effects are anticipated.
- 3.11.35. For major accidents and disasters, the projects identified in ES Chapter 15 are not expected to increase the risk or severity of those events identified in Table 14-13 of ES Chapter 14 [\[APP-066\]](#).
- 3.11.36. ES Chapter 15 also assessed potential effect interactions between the other planning matters within Chapter ES Chapter 14 and other environmental topics. In accordance with the methodology set out in ES Chapter 5 (EIA methodology) [\[APP-057\]](#), no potential for effect interactions was identified and as such, the applicant considers that no significant effect interactions would arise.

## Issues considered during the examination

- 3.11.37. The SoCGs with CDC [\[REP5-011\]](#) and the EA [\[REP5-013\]](#) confirm that both IPs raised no concerns with regard to the methodology, baseline information, assessment and mitigation measures proposed for all the topics covered within ES Chapter 14. However, the issue of BESS safety was raised by multiple IPs and this was explored further during the examination.

### *BESS safety*

- 3.11.38. Moss and District Parish Council [RR-002], Fenwick Solar Farm Action Group [RR-014 and REP1-059], and local residents [RR-025, RR-029, RR-037, RR-033, RR-036, RR-040, REP1-061 and REP1-067] expressed concerns regarding safety of the BESS and the risk of fire. Written questions to the applicant [PD-007] (ExQ1.13.14 and ExQ1.13.23) and South Yorkshire Fire and Rescue Service (SYFRS) (ExQ1.13.15, ExQ1.13.16, and ExQ1.13.17) enquired as to the safety measures proposed within the fBSMP [APP-205] and how these align with the Draft Guidance on Grid Scale BESSs by the National Fire Chiefs Council (NFCC) 2024 publication.
- 3.11.39. The applicant's responses [REP2-059] confirmed that the final detailed design of the BESS area would accord with the NFCC guidelines and would ensure the final configuration meets relevant safety standards.
- 3.11.40. Furthermore, the applicant confirmed the BESS design parameters had been discussed with the SYFRS and that control measures are proposed in the form of requirements 5 (battery safety management) and 9 (surface and foul water drainage) of the dDCO to safeguard the public and the environment.
- 3.11.41. We enquired at ISH3 [EV6-004] as to the absence of a plume assessment given other NSIP solar schemes accompanied by BESS included such an assessment. The applicant explained a plume assessment would be conducted at the detailed design stage, this being the most appropriate time to do so as this would include the make and model of the BESS selected.
- 3.11.42. Discussions between the applicant and SYFRS took place during the examination and SYFRS confirmed in their response [AS-008] that the SoCG addresses matters such as design features, water volume and access to the BESS. However, the SoCG [REP3-023] remained unsigned at the close of the examination. The SoCG with the EA [REP5-013] confirms it is content in relation to the applicant's response on firewater and fire suppression controls for the BESS alongside matters relating to geological and hydrogeological features.

### *ExA's consideration*

- 3.11.43. Whilst we acknowledge the concerns raised by IPs regarding the safety of the BESS, there is no substantive evidence which would lead us to disagree with the details provided by the applicant. We are satisfied with the mitigation and control measures within the fBSMP [APP-205] and that the final version of this document, secured by requirement 5 (battery safety management), would contain the detail on spacing and a plume assessment alongside the applicant's commitment to continue to engage with the SYFRS. Overall, we are satisfied the application contains sufficient information to understand the effect of BESS safety, management and mitigation.

### **Conclusions on Other Planning Matters**

- 3.11.44. We are satisfied that the applicant has provided relevant assessments pertaining to each topic identified as part of ES Chapter 14 as required by NPS EN-1, NPS EN-3 and NPS EN-5 and that they satisfactorily address the potential impacts of the proposal. No substantive evidence has been provided that would lead us to disagree with the findings of these assessments.

- 3.11.45. We are satisfied with the range of mitigation measures proposed within the fCEMP [REP3-013], fOEMP [REP5-007], fDEMP [REP4-019], fBSMP [APP-205] and the fSWMP [APP-208] that seek to address potential effects. This includes the submission of further information at the detailed design stage for battery safety and the provision of further planting as shown on the fLEMP [REP3-017] for receptors 74, 79 and 88 identified within ES Appendix 14-2 Part 1 [REP2-023]. We are content these measures would be secured by requirements in the dDCO.
- 3.11.46. For each individual topic, there is nothing to suggest that for this development proposal a cumulative effect with other projects would occur and lead to a significant effect.
- 3.11.47. Overall, we conclude there would be no significant adverse effects on air quality, glint and glare, ground conditions, major accidents and disasters, telecommunications and utilities, electric and EMFs, or materials and waste. Consequently, we consider the proposal would accord with the relevant provisions of NPSs EN-1, EN-3 and EN-5, the NPFF and the DLP. As such, we afford these matters neutral weight in the overall planning balance.

## 4. FINDINGS AND CONCLUSIONS ON HABITATS REGULATIONS ASSESSMENT

### 4.1. INTRODUCTION

- 4.1.1. This chapter sets out our analysis and conclusions relevant to the Habitats Regulations Assessment (HRA). This will assist the SoS, as the competent authority, in performing their duties under the Conservation of Habitats and Species Regulations 2017 ('the Habitats Regulations').
- 4.1.2. In accordance with the precautionary principle embedded in the Habitats Regulations, consent for the proposed development may be granted only after having ascertained that it will not adversely affect the integrity of European site(s) and no reasonable scientific doubt remains (CJEU Case C-127/02 Waddenzee 7 September 2004).
- 4.1.3. For the purpose of this report, in line with the Habitats Regulations and relevant Government policy, the term 'European sites' includes SACs, candidate SACs, proposed SACs, SPAs, potential SPAs, listed and proposed Ramsar sites and sites identified or required as compensatory measures for adverse effects on any of these sites.
- 4.1.4. Policy considerations and the legal obligations under the Habitats Regulations are described in [Chapter 2](#) of this report.
- 4.1.5. We have been mindful throughout the examination of the need to ensure that the SoS has such information as may reasonably be required to carry out their duties as the competent authority. We have sought evidence from the applicant and the relevant IPs, including NE as the Appropriate Nature Conservation Body (ANCB), through written questions and ISHs.

#### **Report on the Implications for European Sites (RIES) and Consultation**

- 4.1.6. The applicant set out its assessment in the NSER [\[APP-201\]](#). NE's WR [\[REP1-052\]](#) stated agreement with the applicant's conclusions with regard to the European sites assessed and their qualifying features.
- 4.1.7. Evidence and comments on the conclusions of the NSER were submitted by the BHT throughout the examination [\[RR-011, REP1-054, REP2-075, REP3-035\]](#). The additional evidence was considered by the applicant, and it was agreed with NE that the evidence presented by the BHT would not alter the conclusions of the NSER.
- 4.1.8. No other evidence or comment against the conclusions of the NSER was submitted by any other party, and we therefore decided that a RIES compiling HRA-relevant information would not be required.

#### **HRA Implications**

- 4.1.9. The proposed development is described in [Chapter 1](#) of this report.
- 4.1.10. The proposed development is not directly connected with, or necessary to, the management of a European site. Nonetheless, the implications of the project with respect to adverse effects on potentially affected sites must still be assessed by the SoS.



- 4.1.11. The applicant's assessment of effects is presented in the NSER [APP-201]. The NSER was updated [APP-248] to incorporate advice received once the submission was accepted for examination. The changes to the NSER included removing a low-resolution plate and updating the contents page.
- 4.1.12. The NSER was updated at deadline 1 [REP1-025] in response to NE's comments within their RR [RR-006]. The updated NSER [REP1-025] provided additional information regarding in-combination effects and results from relevant bird surveys.
- 4.1.13. Another updated NSER was provided at deadline 2 [REP2-038] as part of the applicant's response to ExQ1.6.20 and 1.6.21 [PD-007]. The updates included adding Thorne Moor SAC, Thorne and Hatfield Moors SPA and Hatfield Moor SAC to Table 6 of the NSER and removing any references to Skipwith Common SAC. Skipwith Common SAC was included in the original NSER in error.
- 4.1.14. The spatial relationship between the Order limits of the proposed development and European sites is illustrated in Figure 5 above. No additional UK European sites were identified by IPs during the examination for inclusion within the assessment.
- 4.1.15. The applicant did not identify any LSE on non-UK European sites in European Economic Area (EEA) States in its NSER [REP2-038]. Only UK European sites are addressed in this report. No such impacts were raised for discussion by any IPs during the examination.

### **Summary of HRA Matters Considered During the Examination**

- 4.1.16. The main HRA matters raised by the ExA, NE and other IPs and discussed during the examination include:
- The adequacy of the applicant's baseline data in relation to pink-footed goose.
  - The conclusions on LSE regarding pink-footed goose.
- 4.1.17. These matters are discussed in the sections below, as appropriate.

## **4.2. FINDINGS IN RELATION TO LIKELY SIGNIFICANT EFFECTS**

- 4.2.1. Under regulation 63 of the Habitats Regulations, the competent authority must consider whether a development will have LSE on a European site, either alone or in combination with other plans or projects. The purpose of the LSE test is to identify the need for an 'appropriate assessment' (AA) and the activities, sites or plans and projects to be included for further consideration in the AA.
- 4.2.2. The European sites and qualifying features that were considered in the applicant's assessment of LSE are presented in Table 4 of the NSER [REP2-038]. The NSER identified 10 European sites within the UK National Site Network for inclusion within the assessment:
- Thorne Moor SAC
  - Thorne and Hatfield Moors SPA
  - Hatfield Moor SPA
  - River Derwent SAC
  - Humber Estuary SAC
  - Humber Estuary SPA
  - Humber Estuary Ramsar site
  - Lower Derwent Valley SAC

- Lower Derwent Valley SPA
- Lower Derwent Valley Ramsar site

- 4.2.3. Section 3 of the NSER sets out the methodology applied to determining what would constitute a 'significant effect' [\[REP2-038\]](#).
- 4.2.4. The NSER [\[REP2-038\]](#) assessed the potential impacts during the construction, operation and decommissioning phases of the proposed development.
- 4.2.5. No additional European sites, impact pathways or qualifying features were identified by NE or other IPs for inclusion within the assessment.

### **LSE from the Proposed Development Alone**

- 4.2.6. The applicant identified potential impacts of the proposed development considered to have the potential to result in LSE alone in sections 5 and 6 of the NSER [\[REP2-038\]](#).
- 4.2.7. The impact pathways relevant to each of the European sites' qualifying features are set out in Table 6 of the NSER and are reflected in the screening matrices contained in appendix B of the NSER [\[REP2-038\]](#).
- 4.2.8. The applicant's NSER concluded no LSE from the proposed development alone on any of the qualifying features of the European sites included in the assessment.
- 4.2.9. A number of matters were raised in the examination in relation to the applicant's screening of LSE alone. These matters were resolved during the course of the examination and have been summarised below.

### **Various pathways relevant to SPA qualifying features**

- 4.2.10. NE [\[RR-006\]](#) recommended that the NSER should provide further information in regard to the potential loss of functionally linked land (FLL) and noise and visual disturbance to FLL during construction for the Humber Estuary SPA and Ramsar site. NE [\[RR-006\]](#) also requested further information regarding nightjar foraging distances for the Thorne & Hatfield Moors SPA. However, NE [\[RR-006\]](#) noted that the additional information was unlikely to make a material difference to the conclusions in the NSER.
- 4.2.11. The applicant updated the NSER at deadline 1 [\[REP1-025\]](#) to include the relevant additional information requested and NE [\[REP1-052\]](#) were content with the additional information provided.

### **Breeding and non-breeding bird surveys**

- 4.2.12. Throughout the examination, the BHT [\[RR-011\]](#), [\[REP1-054\]](#), [\[REP2-075\]](#), [\[REP3-035\]](#) and [\[REP4-043\]](#) questioned the thoroughness of the breeding and non-breeding bird surveys conducted for the proposed development. We requested (ExQ2 1.6.10 [\[PD-010\]](#)) that NE provide comment on the bird survey methodology and approach undertaken by the applicant.
- 4.2.13. NE [\[REP4-042\]](#) noted that it had no outstanding concerns regarding the non-breeding bird survey methodology and agreed that it is appropriate to inform an assessment of whether the site provides FLL for the Humber Estuary SPA and Ramsar site.

- 4.2.14. NE [REP4-042] has not commented on the approach to breeding bird surveys as they fall outside of their remit and referred the matter to CDC for its advice. CDC [REP4-040] noted that the breeding bird surveys undertaken by the applicant are in accordance with current best practice.

#### **Functionally linked land to the Humber Estuary SPA and Ramsar site**

- 4.2.15. The BHT [RR-011, REP1-054, REP2-075, REP3-035 and REP4-043] commented that the number of pink-footed goose, golden plover, curlew and marsh harrier within the Order limits make them functionally linked to the Humber Estuary SPA and Ramsar site. The SoCG between the applicant and NE [REP1-035] noted that all matters regarding FLL for qualifying bird features of the Humber Estuary SPA and Ramsar site have been agreed.
- 4.2.16. We requested (ExQ2 1.6.23 [PD-010]) that NE consider the points raised by the BHT regarding the number of qualifying bird species in the area and advise whether there would be any implications on the conclusions of the NSER [REP2-038]. These matters are discussed further below.

#### *Functionally linked land – pink-footed goose*

- 4.2.17. For pink-footed goose, NE [REP4-042] requested that the applicant assess the additional data provided by the BHT in more detail to determine whether significant counts of pink-footed goose have been recorded feeding within the Order limits.
- 4.2.18. NE [REP4-042] acknowledged that this is a change in position as it had previously agreed with the conclusions in the NSER that were based on the results of the applicant's non-breeding bird survey.
- 4.2.19. NE [REP4-042] recommended that the applicant should review all relevant data to determine the number and regularity of pink-footed goose recorded within the Order limits. This included consideration of the methodology used to collect the data and whether the birds were recorded feeding within the Order limits. NE [REP4-042] also recommended that the applicant consider the spatial distribution of the birds and the habitat/ crop type at the time of different surveys to understand patterns of usage and potential impacts on the conclusions of the NSER [REP2-038].
- 4.2.20. The applicant prepared a Pink-Footed Goose Technical Note [REP5-022] to provide further commentary on the pink-footed goose observations raised by the BHT. The Pink-Footed Goose Technical Note [REP5-022] assesses whether there is any robust evidence that important numbers of pink-footed goose are regularly using and relying on the Order limits for a feeding resource taking into account the nature of the observations, including the method of recording, location of individual birds and what the birds were doing.
- 4.2.21. The Pink-Footed Goose Technical Note [REP5-022] concludes that, although the flock of 300 individuals presented in the data provided by the BHT would equate to 1.1% of the current Humber Estuary population, there is no evidence of regular or sustained usage of the order limits by pink-footed goose and the individuals observed were only dropping briefly into the Order limits as part of a wider movement along the River Went corridor by the species.
- 4.2.22. The applicant [REP5-022] concluded that there is no robust evidence that important numbers of pink-footed goose use or rely upon the Order limits and the observations noted by the BHT support the conclusions of the NSER [REP2-038]

that pink-footed goose use the wider arable landscape and that the Order limits are not functionally linked to the Humber Estuary SPA or Ramsar site. The applicant stated that conclusions presented within the NSER [REP2-038] remain unchanged and no updates to the NSER are required.

- 4.2.23. NE [REP5-025] has reviewed the Pink-Footed Goose Technical Note [REP5-022] and is satisfied with the assessment presented and agreed that the conclusions of the NSER remain unchanged.

*Functionally linked land – golden plover*

- 4.2.24. In response to ExQ2 1.6.23 [PD-010], NE [REP4-042] commented that the current NSER [REP2-038] sufficiently assesses impacts on golden plover and that the additional information presented by the BHT does not directly relate to this site and is not anticipated to affect the conclusions of the NSER.

*Functionally linked land – curlew*

- 4.2.25. NE [REP4-042] stated that due to the timing of the recordings and location of the nesting sites, the curlew recorded by the BHT within the Order limits should not be considered functionally linked to the non-breeding waterbird assemblage of the Humber Estuary SPA and Ramsar site.

*Functionally linked land – marsh harrier*

- 4.2.26. NE [REP4-042] confirmed that marsh harrier is not a designated feature of the Humber Estuary SPA and Ramsar site during the non-breeding period and is not considered part of the non-breeding waterbird assemblage. Whilst NE confirmed that marsh harrier is a designated breeding feature of the Humber Estuary SPA, the birds were recorded in the non-breeding season and therefore are not considered to be breeding birds.

**Functionally linked land on Thorne & Hatfield Moors SPA**

- 4.2.27. We requested (ExQ2 1.6.23 [PD-010]) that NE consider the points raised by the BHT [RR-011, REP1-054, REP2-075 and REP3-035] regarding the potential link between birds observed feeding within the Order limits and breeding populations within Thorne & Hatfield Moors SPA.
- 4.2.28. NE [REP4-042] noted that Thorne & Hatfield Moors SPA is designated for breeding nightjar only and it is not a requirement of the NSER to assess impacts to other bird species within the Thorne & Hatfield Moors SPA. Moreover, NE [REP4-042] agreed with the applicant's justification for ruling out LSE on nightjar and noted that there would be no impact on the conclusions of the NSER [REP2-038].

**LSE from the Proposed Development In-combination**

- 4.2.29. The applicant addressed potential in-combination effects arising from the proposed development within section 7 of the NSER [REP2-038]. The methodology applied to the in-combination assessment is set out in section 3.3 [REP2-038].
- 4.2.30. The other plans and projects included in the in-combination assessment are set out in Table 11 of the NSER [REP2-038].
- 4.2.31. No additional plans or projects have been highlighted by IPs in the examination to date. However, in their RR, NE [RR-006] advised that further detail was required to

ascertain whether there are any “*small effects*” which are not significant alone but could act in-combination with other projects and result in LSE on the European sites.

- 4.2.32. The applicant updated the NSER at deadline 1 [\[REP1-025\]](#) to provide further detail, including results from relevant bird surveys and assessment of effects which were not considered significant alone. A draft of the NSER prepared for deadline 1 was shared with NE.
- 4.2.33. NE [\[REP1-052\]](#) confirmed it was content that the information provided in the updated NSER [\[REP1-025\]](#) addresses their previous concerns and are satisfied with the scope of the in-combination assessment.

### **4.3. HRA CONCLUSIONS**

- 4.3.1. We are satisfied that the correct European sites and qualifying features have been identified for the purposes of assessment, and that all potential impacts which could give rise to significant effects have been identified.
- 4.3.2. We have considered the applicant's assessment as well as comments submitted by IPs throughout the examination. This has included the evidence presented by the BHT and the advice provided by NE stating that the additional information would not impact the conclusions of the applicant's assessment.
- 4.3.3. The applicant concluded in section 8 of the NSER [\[REP2-038\]](#) that the proposed development would not be likely to give rise to significant effects, either alone or in combination with other projects or plans. We agree with that assessment and are satisfied that no LSE exist either alone or in-combination with other plans and projects.
- 4.3.4. We therefore consider that there is sufficient information before the SoS to enable them 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 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 CDC's LIR, all RRs, 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**

#### **The Principle of Development**

5.2.1. We consider the urgent need for the proposed development is made out by NPS EN-1 and NPS EN-3. Furthermore, we consider the proposed development would contribute towards meeting this need and would help in the transition to a low carbon electricity system.

5.2.2. While we acknowledge that during the construction phase there would be some adverse effects in relation to GHG emissions, we consider the applicant has taken reasonable steps to reduce them. Moreover, we accept that over the whole life of the proposed development there would be a significant beneficial effect due to displacement of GHG emissions from other sources of fossil fuel generation. This is sufficient to outweigh the negative effects from construction and decommissioning to the effect that, over the lifetime of the project, it would result in negative GHG emissions.

5.2.3. Likewise, we are satisfied that the application contains sufficient details of the alternatives, including the approach to site selection, different technology and alternatives routes for key components and how these were considered as part of the overall project design, to meet the requirements of NPSs and the EIA Regulations.

5.2.4. Furthermore, we are satisfied that the proposed development would represent an efficient use of land and that the applicant has demonstrated its approach to overplanting is reasonable.

5.2.5. Accordingly, we consider the proposed development would meet the requirements of NPS EN-1, NPS EN-3 and NPS EN-5, the NPPF and DLP policies. It would also contribute towards meeting the UK's obligations under the CCA2008 and the Paris Agreement 2015.

5.2.6. The contribution to meeting the urgent need for low carbon generating infrastructure, its contribution to security of supply and the prospect of reduced GHG emissions from the proposed development are benefits that weigh heavily in favour of making the Order and carry very great/ substantial weight in the planning balance.



## **The Environmental Statement**

- 5.2.7. We are satisfied that the applicant has provided sufficient information to enable the SoS to understand the environmental effects of the proposed development remaining operational for up to 40 years.
- 5.2.8. Consideration has been given to the adequacy of the ES more generally and matters arising from it, including the measures proposed to mitigate the significant effects identified by the applicant. While we are mindful that various updates were made to the ES during the examination, we do not consider these individually or cumulatively undermine the scope and assessment of the ES.
- 5.2.9. Overall, we consider 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.

## **HRA Considerations**

- 5.2.10. We are satisfied that the correct European sites and qualifying features have been identified for the purposes of assessment, and that all potential impacts which could give rise to significant effects have been identified.
- 5.2.11. The applicant concluded in section 8 of the NSER [\[REP2-038\]](#) that the proposed development would not be likely to give rise to significant effects, either alone or in combination with other projects or plans. We agree with that assessment and are satisfied that no LSE exist either alone or in-combination with other plans and projects.
- 5.2.12. We therefore consider that there is sufficient information before the SoS to enable them to fulfil their duty under the requirements of the Habitats Regulations.

## **Landscape and Visual Impact**

- 5.2.13. We are satisfied that the information provided by the applicant in its ES is sufficient to understand the significant effects of the proposed development on the surrounding landscape and on sensitive visual receptors within the study area.
- 5.2.14. Likewise, we are satisfied that the applicant has sought to minimise and mitigate the landscape and visual effects of the proposal and has given sufficient consideration to good design to meet the requirements of NPSs.
- 5.2.15. As NPS EN-1 makes clear, all proposed energy infrastructure is likely to have landscape and visual effects. However, while we 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. While some of these are short term and others are reversible on decommissioning, a number of residual significant effects would be experienced for many years to come. These are matters which weigh against the proposed development.
- 5.2.16. Nevertheless, we acknowledge that in the present case the landscape is not a protected one and that while not eliminated, we agree with CDC that the landscape and visual effects have been minimised. While the level of harm identified weighs against the proposal, we consider it should be afforded moderate negative weight in the overall planning balance.

## Historic Environment

- 5.2.17. We are satisfied the applicant has provided an assessment of the significant effects on heritage assets informed by information from the HER or CDC as required by NPS EN-1, NPS EN-3, the NPPF and DLP policies.
- 5.2.18. We are also satisfied the applicant has described the significance of the heritage assets affected, including the contribution made by their setting in accordance with NPS EN-1.
- 5.2.19. As we have made clear in [paragraph 3.4.57](#) above, we consider the proposal would affect the rural agricultural landscape in which designated heritage assets and NDHAs are positioned. In doing so, it would affect the settings of those assets and negatively impact on their significance. In particular, we note that significant effects have been identified for the following designated and non-designated heritage assets:
- Thorpe in Balne moated site scheduled monument, chapel and fishpond, including grade II\* listed remain of chapel
  - Fenwick Hall moated site scheduled monument
  - archaeological assets across the Order limits.
- 5.2.20. This would result in less than substantial harm to these assets, albeit at the lower end of the scale.
- 5.2.21. In addition, while we have found that there would not be any significant effects in EIA terms on the following designated heritage assets, in heritage policy terms, less than substantial harm would be experienced:
- the Moat Hill moated site scheduled monument
  - Parkshaw moated site scheduled monument
  - grade II listed Lily Hall, grade II dovecote and attached outbuilding and grade II barn and granary all at Riddings Farm
  - grade II shelter shed and attached loose box and grade II barn and attached outbuildings at Fenwick Hall
  - grade II Glebe Farmhouse and barn.
- 5.2.22. Paragraph 5.9.28 of NPS EN-1 states that the SoS should give considerable importance and weight to the desirability of preserving all 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.
- 5.2.23. Similarly, paragraph 5.9.32 of NPS EN-1 makes clear that any harmful impact on the significance of a designated heritage asset should be weighed against the public benefit of development. In addition, paragraph 5.9.33 advises that in weighing applications that directly or indirectly affect NDHAs, a balanced judgement will be required having regard to the scale of any harm or loss and the significance of the heritage asset. We consider these matters further in the heritage balance below.

## Traffic and Transport

- 5.2.24. We are satisfied that the applicant has carried out an assessment of traffic and transport matters that it meets the requirements of NPS EN-1 and NPS EN-3.

- 5.2.25. Whilst significant effects have been identified at ATC links 9 -14 for construction worker vehicles during the morning access and evening egress to/ from the Order limits, we recognise this arises from the existing low traffic baseline at each of these ATC links. However, we do not consider that there is a significant risk to highway safety as a result of the increased traffic on these links and we are cognisant that the worker traffic is for a limited period of time during the working day and that the construction phase is temporary.
- 5.2.26. We are therefore satisfied that, with the embedded mitigation measures identified and controlled through the fCEMP, fCTMP and fDEMP which would be secured by requirements 11 (CEMP), 13 (CTMP) and 18 (DEMP) of the dDCO, the proposal would be adequately mitigated during its construction, operational and decommissioning phases and would meet the requirements of NPS EN-1 and NPS EN-3, the NPPF and policies within the DLP.
- 5.2.27. However, due to the significant adverse effect at ATC links 9 -14 during the construction phase, we consider the effect of traffic and transport matters of the proposed development should be afforded a little negative weight in the planning balance.

### **Biodiversity and Ecology**

- 5.2.28. We are satisfied 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. We are further satisfied that the fLEMP, fCEMP, fOEMP and fDEMP contain sufficient mitigation measures to avoid or minimise impacts, including from noise and disturbance. These would be secured through requirements 6 (LEMP), 11 (CEMP), 12 (OEMP) and 18 (DEMP) of the dDCO.
- 5.2.29. Furthermore, we are satisfied that the evidence presented demonstrates that with the embedded mitigation and enhancement measures proposed, the proposed development would conserve and enhance biodiversity within the Order limits.
- 5.2.30. For BNG we are content with the applicant's approach and that requirement 7 (BNG) of the dDCO would deliver acceptable levels of BNG.
- 5.2.31. Taking all the evidence into account, we are satisfied that ecology and biodiversity matters have been adequately assessed in accordance with the requirements in NPS EN-1 and NPS EN-3, the NPPF and relevant DLP policies. We note the applicant's commitment to provide enhancement measures that would result in a beneficial effect for certain habitats and species. We consider this weighs positively in favour of the proposed development and consider it should be afforded moderate positive weight.

### **Socio-economics and Recreation**

- 5.2.32. We are satisfied that the applicant has assessed all the relevant socio-economic impacts as required by section 5.13 of NPS EN-1 and that the study area and baseline are adequately described.
- 5.2.33. Furthermore, we accept that during the construction and decommissioning phases there would be a minor beneficial effect on local employment. We also note the estimated contribution to the national economy and the local economy.

- 5.2.34. Likewise, we are satisfied that the dDCO makes provision to ensure that the socioeconomic and recreation effects from the proposed development are adequately mitigated. These meet the requirements of NPS EN-1 and NPS EN-3, the NPPF and policies within the DLP.
- 5.2.35. However, whilst we note the applicant considers estimated levels of employment generation should be afforded moderate positive weight in the planning balance, given the minor adverse effects set out within Tables 12-27, 12-29 and 12-30 of ES Chapter 12 and the short-term nature of the jobs created, we conclude that matters relating to socio-economics and recreation should be afforded only a little positive weight in the planning balance.

### **Agriculture and Soils**

- 5.2.36. We are satisfied that the applicant has undertaken a thorough assessment of soils and BMV agricultural land within the Order limits. No evidence has been presented disputing the methodology or validity of its findings.
- 5.2.37. We accept there would be a permanent loss of agricultural land beneath the substation. However, we are satisfied that the applicant has sought to minimise harm to agricultural land by siting the substation on subgrade 3b land and that this is a small fraction of the Order limits.
- 5.2.38. We also note that a very limited amount of BMV agricultural land would be permanently removed as part of structural planting. However, we are satisfied that through the design of the proposed development the applicant has limited this impact. Whilst we note that there would be some reduction in the amount of land available for food production, this would be temporary and reversible on decommissioning. Overall, we are satisfied this would not be materially harmful to wider food security.
- 5.2.39. We consider that with the mitigation measures set out within the fSMP [\[REP4-021\]](#), fCEMP [\[REP3-013\]](#), fOEMP [\[REP5-007\]](#) and fDEMP [\[REP4-019\]](#), soils and BMV agricultural land would be safeguarded, managed and monitored such that on decommissioning of the proposed development the majority of the land would be able to return to an agricultural use and BMV agricultural land status would be retained. Consequently, we consider this satisfies the requirements of NPS EN-1 and EN-3 in seeking to safeguard soil quality. This is secured by requirements 11 (CEMP), 12 (OEMP), 15 (SMP) and 18 (DEMP) in the dDCO.
- 5.2.40. Given the limited extent of BMV land within the Order limits and the mitigation measures proposed, we conclude that there would be no significant adverse effects on soils and BMV agricultural land. However, during the lifetime of the proposed development, there would be a loss of around 30.2ha of BMV agricultural land. While we are mindful that the majority of this would be reversible on decommissioning, and that the land resource itself would improve over time, it would nevertheless result in the permanent loss of around 0.78ha of BMV agricultural land.
- 5.2.41. In our view, the loss of any BMV agricultural land is to be discouraged and both the temporary loss of 29.42ha and the permanent loss of 0.78ha weighs against the application. However, we accept 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.

- 5.2.42. Overall, we are satisfied that the proposal would accord with the relevant provisions of NPSs EN-1 and EN-3, the NPPF and policies within the DLP. However, cognisant that the loss of any BMV should be discouraged, we consider that matters relating to soils and BMV agricultural land should be afforded a little negative weight in the overall planning balance.

### **Noise and Vibration**

- 5.2.43. We are satisfied with the noise assessment the applicant has submitted within ES Chapter 11 and consider it meets the requirements of NPS EN-1 paragraphs 5.12.6 – 5.12.12.
- 5.2.44. While we note a number of residential receptors are likely to experience noise levels which exceed the night time SOAEL during HDD night time activities, we are satisfied that with the hierarchy of mitigation measures secured by the fCEMP [\[REP3-013\]](#), noise emissions would be minimised and that at the final design stage, they could reduce further. However, while we recognise that a section 61 application may be necessary to carry out noisy works, the effects of the works would be temporary and short term.
- 5.2.45. We do note that some noise sensitive receptors may experience levels of operational noise above or equal to the LOAEL but below the SOAEL. Again, with the implementation of embedded mitigation measures we are satisfied that whilst adverse levels of noise are identified, the proposed development would remain below the significance thresholds set out in the NPSE and NPPF.
- 5.2.46. Additionally, we note an adverse effect on R33 from construction vibration within field SE2. However, we are satisfied that this adverse effect can be managed through the applicant's proposed communication strategy informing residents in advance of works taking place allowing for forward planning alongside the limited duration the activity would take place in that location. As such, we are content this would not amount to a significant effect.
- 5.2.47. Consequently, we are satisfied the applicant has sought to minimise noise and vibration effects from the construction, operation and decommissioning phases on sensitive receptors through mitigation measures and the layout of the proposed development as detailed in the fCEMP, fOEMP, fDEMP and the ODPS. These are secured through requirements 4 (detailed design), 11 (CEMP), 12 (OEMP) and 18 (DEMP) of the dDCO respectively.
- 5.2.48. Overall, we consider the proposed development would accord with the relevant provisions of NPS EN-1, NPS EN-3 and NPS EN-5, the NPPF, the NPSE and policies within the DLP. However, because of the potential HDD nighttime activities, we conclude that matters relating to noise and vibration should attract a little negative weight in the planning balance.

### **Water Environment and Flooding**

- 5.2.49. We are satisfied that the applicant has undertaken a thorough assessment of flood risk and other water-related potential impacts of the proposal. There is little substantive evidence to dispute the validity of its findings, and we note that they were agreed by the EA.
- 5.2.50. While the site includes areas at higher risk of flooding, they are limited in extent. We accept that the proposed development has been designed to make it resilient to, and to avoid worsening, flood risk in those areas. Effective mitigation is also

contained in the ODPS [REP2-027], fBSMP [APP-205], the fDS [APP-160], the fAMS [REP2-054], fCEMP [REP3-013], the fOEMP [REP5-007], fSMP [REP4-021] and the fDEMP [REP4-019]. This would be secured by requirements 4 (detailed design), 5 (battery safety management), 9 (surface and foul water drainage), 10 (archaeology), 11 (CEMP), 12 (OEMP), 15 (SMP) and 18 (DEMP) of the dDCO.

- 5.2.51. Likewise, we are satisfied that the FRA demonstrates that both the sequential and exception tests have been satisfied.
- 5.2.52. 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. With the mitigation measures in the CEMP in place, we are content that the proposed development would not have significant adverse effects on the water environment.
- 5.2.53. Overall, we conclude that there would be no significant adverse effects on the water environment, and the proposal would accord with the relevant provisions of NPSs EN-1 and EN-3, the NPPF, the PPG on Flood Risk and Coastal Change and policies within the DLP. However, an absence of harm does not weigh positively in favour of the proposal and as such, we conclude that matters relating to the water environment attract neutral weight in the planning balance.

### **Other Planning Matters**

- 5.2.54. We are satisfied that the applicant has provided relevant assessments pertaining to each topic identified as part of ES Chapter 14 as required by NPS EN-1, NPS EN-3 and NPS EN-5 and that they satisfactorily address the potential impacts of the proposal. No substantive evidence has been provided that would lead us to disagree with the findings of these assessments.
- 5.2.55. We are satisfied with the range of mitigation measures proposed within the fCEMP [REP3-013], fOEMP [REP5-007], fDEMP [REP4-019], fBSMP [APP-205] and the fSWMP [APP-208] that seek to address potential effects. This includes the submission of further information at the detailed design stage for battery safety and the provision of further planting as shown on the fLEMP [REP3-017] for receptors 74, 79 and 88 identified within ES Appendix 14-2 Part 1 [REP2-023]. We are content these measures would be secured by requirements in the dDCO.
- 5.2.56. Overall, we conclude there would be no significant adverse effects on air quality, glint and glare, ground conditions, major accidents and disasters, telecommunications and utilities, electric and EMFs, or materials and waste. Consequently, we consider the proposal would accord with the relevant provisions of NPSs EN-1, EN-3 and EN-5, the NPPF and policies within the DLP and afford them neutral weight in the planning balance.

### **Cumulative and Combined Effects**

- 5.2.57. We are satisfied that the applicant has adequately assessed the significant effects of the proposed development cumulatively with other planned development and that the ES includes sufficient information on how the effects of the proposal would combine and interact with the effects of other development during construction, operation and decommissioning. Accordingly, we are satisfied that the requirements of the EIA Regulations and NPS EN-1 are met.
- 5.2.58. Furthermore, we consider the ES contains sufficient information to enable the SoS to understand these effects and consider them as part of the planning balance.



## The Heritage Balance

- 5.2.59. In [section 3.4](#), and as summarised above, we have not identified any substantial harm to, or loss of, any designated heritage assets. We have, however, found that the proposed development would result in less than substantial harm to the setting of the following assets:
- Thorpe in Balne moated site, chapel and fishpond including grade II\* listed remain of chapel
  - Fenwick Hall moated site scheduled monument
  - the Moat Hill moated site scheduled monument
  - Parkshaw moated site scheduled monument
  - grade II listed Lily Hall, grade II dovecote and attached outbuilding and grade II barn and granary all at Riddings Farm
  - grade II shelter shed and attached loose box and grade II barn and attached outbuildings at Fenwick Hall
  - grade II Glebe Farmhouse and barn
- 5.2.60. Paragraph 5.9.36 of NPS EN-1 requires that any harmful impact on the significance of a designated heritage asset should be weighed against the public benefit of the development, recognising that the greater the harm to the significance of the heritage asset, the greater the justification will be needed for any loss. The same is true for development affecting the setting of a designated heritage asset.
- 5.2.61. Taking into account the significant public benefits of the proposed development, including its contribution to meeting the urgent need for low carbon generating infrastructure and that it would result in negative GHG emissions, we are satisfied that there is a clear and convincing justification for the harm that would arise to the designated heritage assets identified above, both individually and collectively. Furthermore, we recognise that all the adverse effects identified would be temporary and reversible following decommissioning.
- 5.2.62. We have also found that there is the potential for less than substantial harm to occur to a number of non-designated archaeological assets. However, we acknowledge the applicant's proposed mitigation measures and consider that, having regard to the scale of harm and the likely significance of such assets, on balance this harm is outweighed by the very great/ substantial public benefits that would arise.
- 5.2.63. In coming to a view on these matters, we have had regard to the duties under Regulation 3 of the Infrastructure Planning (Decisions) Regulations 2010. However, we consider that the need for, and very great/ substantial benefits of, the proposed development would outweigh, in each case, the harm that we have identified in relation to the significance of both designated and non-designated heritage assets. While we afford great weight to the desirability of preserving these assets, we are mindful that the effects would be both temporary and reversible, albeit long term. We therefore consider that the overall harm should be afforded moderate negative weight in the planning balance.

## 5.3. THE OVERALL PLANNING BALANCE

- 5.3.1. In accordance with paragraph 4.1.5 of NPS EN-1, we have considered the benefits and adverse effects of the proposed development. In doing so we have taken into account the mitigation hierarchy. We have also established the weight to be afforded to the effects which would arise, as set out in Table 3 below:

**Table 3: ExA's Application of Weight to Issues**

Issue	Finding	Weighting	Section of this report
The principle of development, need and climate change	Positive	Very great/ substantial	3.2
Landscape and visual impact	Negative	Moderate	3.3
Historic Environment	Negative	Moderate	3.4
Traffic and Transport	Negative	A little	3.5
Biodiversity and ecology	Positive	Moderate	3.6
Socio-economic and recreation	Positive	A little	3.7
Agriculture and Soils	Negative	A little	3.8
Noise and Vibration	Negative	A little	3.9
Water Environment	Neutral	Does not affect the balance	3.10
Other Planning matters	Neutral	Does not affect the balance	3.11

5.3.2. In circumstances where we have identified negative weight, it is because there are residual adverse effects after the application of the mitigation hierarchy. In such, instances, NPS EN-1 paragraph 4.1.7 explains that the SoS should weigh these effects against the benefits of the proposed development.

5.3.3. Consequently, taking the above factors into account and having had regard to all important and relevant matters, we conclude that there are no adverse impacts of sufficient weight, either on their own or collectively, that would mean that the DCO should not be made. We conclude that the harm identified above is clearly outweighed by the very great/ substantial public benefits that would arise from the provision of low carbon energy to meet the need identified in the NPSs.

## 5.4. CONCLUSION

5.4.1. On the basis of all of the above considerations, we conclude that there is a convincing case for development consent to be granted. We go on to consider land rights matters in [Chapter 6](#) of this report and matters relating to the drafting of the DCO in [Chapter 7](#).

## **6. LAND RIGHTS AND RELATED MATTERS**

### **6.1. INTRODUCTION**

- 6.1.1. The application includes proposals for the compulsory acquisition (CA) and temporary possession (TP) of land and rights over land. This section records the key information on those proposals and related issues.

### **6.2. THE REQUEST FOR CA AND TP POWERS**

- 6.2.1. The application dDCO [[APP-014](#)] and all subsequent versions ([[REP5-004](#)] 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.
- 6.2.2. The Order limits of the dDCO establish the extent of the land that would be affected by the CA and TP powers sought. None of the land included in the CA request is National Trust land, Crown land, open space or common land.
- 6.2.3. The application is accompanied by:
- a Statement of Reasons (SoR) [[APP-018](#)]
  - a Funding Statement [[APP-019](#)]
  - a Book of Reference (BoR) [[REP1-009](#)]
  - Land Plan [[APP-006](#)].
- 6.2.4. Taken together, these documents set out the land and rights sought by the applicant together with the reasons for its requirement and the basis under which compensation would be funded. They form the basis for the analysis for this section.

### **6.3. THE PURPOSES FOR WHICH LAND IS REQUIRED**

- 6.3.1. The application is for development consent for the construction, operation, and maintenance of a ground mounted solar PV electricity generating facility, with a total capacity exceeding 50MW together with battery storage, grid connection and other associated development. The purposes for which the CA and TP powers are required are set out in the BoR [[REP1-009](#)] and SoR [[APP-018](#)].
- 6.3.2. In summary, the applicant states that it requires powers of CA to ensure that the proposed development can be built, maintained and operated, and so that the Government's policy in relation to the timely provision of new generating capacity is met within a reasonable timescale. It goes on to say that in the absence of these powers, the Order land may not be assembled, uncertainty would continue to prevail, and its objectives (and Government policy objectives) would not be achieved.
- 6.3.3. It should be noted that the applicant has entered into voluntary agreements with landowners which cover the majority of the land required and has been seeking to acquire the new rights and temporary use of land by private agreement. However, at the close of the examination this had not been possible with all affected persons (APs). Further information can be found in the applicant's Land Rights Tracker [[REP5-017](#)].

- 6.3.4. The applicant also requires certain rights to be suspended, overridden or extinguished within the Order land to ensure there are no impediments for the construction, operation and maintenance of the proposed development.
- 6.3.5. The applicant's principal justification for the use of powers of CA arises from the fact that the proposed development:
- would help meet the urgent need for new, low carbon energy infrastructure and provide enhanced energy security
  - would help support Government priorities in relation to economic development and security of supply
  - would deliver additional renewable energy capacity, helping achieve the UK's climate change obligations.

## **6.4. THE CA AND TP POWERS SOUGHT**

- 6.4.1. The powers sought are for the acquisition of:
- all interests in land, including freehold (Article 21 in the dDCO) - shown edged red and shaded pink on the Land Plan
  - all interests in subsoil or rights in subsoil, over land which is subject to CA of freehold or CA of rights as may be required (instead of acquiring the whole of the land or rights)
  - permanent acquisition of new rights (Article 23 in the dDCO) - shown edged red and shaded blue on the Land Plan
  - temporary use of the land identified in Schedule 11 of the dDCO and any other Order land in respect of which no notice to treat has been served or no vesting declaration has been made (Articles 30 and 31 in the dDCO) – the land identified in Schedule 11 is shown edged red and shaded green on the Land Plan
  - extinguishment and/or suspension of rights (Article 24 in the DCO) and overriding of easements and other rights (Article 27 in the DCO).

## **6.5. LEGISLATIVE REQUIREMENTS**

### **PA2008**

- 6.5.1. Section 122(2) of the PA2008 provides that a DCO may include provision authorising CA only if the SoS is satisfied that certain conditions are met. These include that the land subject to CA is required for the development to which the development consent relates or is required to facilitate or is incidental to it.
- 6.5.2. In addition, s122(3) requires that there must be a compelling case in the public interest for the land to be acquired compulsorily. For this to be met, DCLG's guidance on CA ("the CA Guidance")<sup>8</sup> indicates the SoS will need to be persuaded that there is compelling evidence that the public benefits that would be derived from the CA will outweigh the private loss that would be suffered by those whose land is to be acquired.
- 6.5.3. Section 123 requires the SoS to be satisfied that one of the three procedural conditions set out in subsections (2) to (4) are met, namely:

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<sup>8</sup> PA2008: Guidance related to procedures for the compulsory acquisition of land (Department for Communities and Local Government (September 2013)).

- a. that the application for the order included a request for CA of the land to be authorised - s123(2); or
- b. that all persons with an interest in the land consent to the inclusion of the provision – s123(3); or
- c. that the prescribed procedure has been followed in relation to the land - s123(4).

6.5.4. The application included a request for CA of the land to be authorised. As such, we are satisfied that the condition set out in s123(2) of the PA2008 is met.

6.5.5. Section 127 of the PA2008 applies to Statutory Undertaker's (SU) land. It provides that an order granting development consent may include provisions authorising the CA of SU land only to the extent that the SoS is satisfied that it can be purchased and not replaced without serious detriment to the carrying on of the undertaking, or if purchased it can be replaced by other land belonging to, or available for acquisition by, the undertakers without serious detriment to the undertaking.

6.5.6. Similarly, s127(5) and (6) of the PA2008 provide that an order granting development consent may only include provision authorising the CA of rights belonging to SUs to the extent that the SoS is satisfied that the right can be purchased without serious detriment to the carrying out of the undertaking, or that any detriment can be made good. A number of SUs have land interests within the Order limits. These are set out in the BoR [\[REP1-009\]](#).

6.5.7. Section 138 of the PA2008 relates to the extinguishment of rights on SU land. It states that an order may include a provision for the extinguishment of the relevant rights, or the removal of the relevant apparatus only if the SoS is satisfied that the extinguishment or removal is necessary for the purposes of carrying out the development to which it relates. For the proposed development, this section of the PA2008 is relevant to SUs with land and equipment interests within the Order limits.

6.5.8. TP powers are also capable of being within the scope of a DCO by virtue of Paragraph 2, Part 1 of Schedule 5 to the PA2008. This allows for, amongst other things, the suspension of interests in or rights over land compulsorily or by agreement. The PA2008 and the associated CA Guidance do not contain the same level of specification and tests to be met in relation to the granting of TP powers, as by definition such powers do not seek to permanently deprive or amend a person's interests in land. Further, such powers tend to be ancillary and contingent to the application proposal as a whole: only capable of proceeding if the primary development is justified.

### **Neighbourhood Planning Act 2017**

6.5.9. The Neighbourhood Planning Act 2017 (NPA 2017) includes a number of provisions related to the TP of land including notice requirements, the service of counter notices and compensation. However, these provisions have not been brought into force and are described as technical changes in the explanatory notes that accompany the Act. Article 6 of the dDCO disapplies the provisions of the Act insofar as they relate to TP of land under Articles 30 (Temporary use of land for constructing the authorised development) and 31 (Temporary use of land for maintaining the authorised development).

## **The CA Guidance**

- 6.5.10. In addition to the legislative requirements set out above, the CA Guidance sets out a number of general considerations which also need to be addressed including whether:
- a. all reasonable alternatives to CA have been explored
  - b. the applicant has a clear idea of how it intends to use the land subject to CA powers
  - c. the applicant can demonstrate that funds are available to meet the compensation liabilities that might flow from the exercise of CA powers
  - d. the SoS is satisfied that the purposes stated for the CA and TP are legitimate and sufficiently justify the inevitable interference with the human rights of those affected.
- 6.5.11. We have taken all relevant legislation and guidance into account in our reasoning below and relevant conclusions are drawn at the end of this section.

## **6.6. EXAMINATION OF THE CA AND TP CASE**

### **The examination process**

- 6.6.1. In examining the application, we considered all written material in respect of CA and TP. We asked written questions of the applicant and APs in ExQ1 [\[PD-007\]](#) and ExQ2 [\[PD-010\]](#). In addition, we held a CA hearing [\[EV5-002\]](#).
- 6.6.2. To enable the efficient examination of the CA and TP case, we requested the submission of a Land Rights Tracker with a final version submitted at deadline 5 [\[REP5-017\]](#). This contains details of the final position reached between the applicant with APs at the close of the examination.

### **The applicant's case**

- 6.6.3. The applicant's case for the CA and TP powers sought is set out in sections 5 - 7 of the SoR [\[APP-018\]](#). It also contains the applicant's explanation of how it considers its proposals meet the tests set out in s122 of PA2008. In addition, it describes how the applicant considers it has demonstrated the general considerations of the CA Guidance.
- 6.6.4. In summary, the applicant considers that the land over which CA powers are sought is required for the purposes of, to facilitate, or is incidental to, the proposed development. Taken together, the Land Plan [\[APP-006\]](#) and the Works Plan [\[APP-214\]](#) indicate that each area of land affected by CA or TP is required for the carrying out of one or more of the works identified in Schedule 1 of the dDCO.
- 6.6.5. Furthermore, the applicant considers there is a compelling case in the public interest for the land, or rights over the land, to be compulsorily acquired given the meaningful and timely contributions offered by the proposed development to UK decarbonisation and security of supply objectives. It also points to other benefits including the provision of BNG, employment generation (particularly during construction) and measures to promote employment locally.
- 6.6.6. It also considers there is a compelling case in the public interest for the power to extinguish, suspend or interfere with private rights to the extent necessary to deliver the proposed development and that the proposed interference with private rights is



both proportionate and necessary. It also notes that compensation would be payable to anyone whose rights are extinguished, suspended or interfered with.

#### *Alternatives*

- 6.6.7. 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.
- 6.6.8. The applicant's approach to the consideration of alternatives in relation to CA is set out in sections 7.5 to 7.7 of the SoR [\[APP-018\]](#). It explains that the applicant has considered all reasonable alternatives to CA including negotiated agreements, alternative sites and modification to the proposed development.
- 6.6.9. It explains that the 'no development' scenario as an alternative has not been considered. This is because 'no development' is not considered to be a reasonable alternative as it would not deliver the proposed additional electricity generation capacity which is essential to meet the urgent national need for secure and affordable low carbon energy infrastructure.
- 6.6.10. Specifically in relation to CA, the applicant's main consideration of alternatives has been to actively pursue the acquisition of the land and rights needed by voluntary agreement and to minimise the need for CA powers wherever possible. As noted in [paragraph 6.3.3](#) above, the applicant has entered into voluntary agreements with landowners which cover the majority of the land required.
- 6.6.11. Furthermore, notwithstanding the request for CA and TP powers, the applicant has conducted negotiations with APs in parallel with the examination with the aim of acquiring the remainder of the land and/ or rights sought by agreement.
- 6.6.12. In terms of alternative sites and modifications to the proposed development, section 3.5 to 3.7 of ES Chapter 3 (Alternatives and Design Evolution) [\[APP-055\]](#) set out the applicant's rationale for site selection and explains how the grid connection point was chosen. Key factors include availability of capacity, irradiation levels and topography as well as proximity to lower grade agricultural land.
- 6.6.13. In addition, considerations such as proximity to internationally and nationally designated sites, heritage assets and landscape designations, flood risk, as well as land use, land availability, proximity to residential dwellings and PRoW were considered and informed site selection, and the land rights required.

#### *Grid Connection Optionality*

- 6.6.14. The applicant's grid connection offer from National Grid is for an import/ export capacity for 237.5MW to the point of connection at the Thorpe Marsh substation in April 2032. Full optioneering of the design and technical work will only be carried out closer to the connection date. As a result, the application seeks CA powers for the creation of rights and the imposition of restrictive covenants over the land which makes up the GCC.
- 6.6.15. However, the application also includes an alternative grid connection to the NETS via a GCLD. This would connect at the base of an existing on-site 400kV overhead line tower within Field SE2. The viability of the GCLD is yet to be determined by National Grid and although it considers the GCLD option is possible from an engineering and technical perspective, it considers the connection at the Thorpe

Marsh substation is the most economic solution at this time. Nevertheless, until the GCLD is confirmed or no longer pursued, both grid connection methods have been included in the dDCO and were considered as part of the applicant's assessments.

- 6.6.16. Article 3 of the dDCO [\[REP5-004\]](#) includes provisions to ensure that the development consent granted would authorise the carrying out of only one of the two grid connection options (but not both), with the details to be confirmed at detailed design stage as part of requirement 4 (detailed design).

*Availability and Adequacy of Funds*

- 6.6.17. The applicant's Funding Statement [\[APP-019\]](#) explains that the applicant is funded by Pelion New Energy GmbH (Pelion). It indicates the current costs estimate for the proposed development is approximately £316 million - £325 million and includes construction costs, land acquisition costs (including compensation payable in respect of any CA), equipment purchase, installation, commissioning and power export. The estimate also includes an allowance for inflation and project contingencies. Compensation as a result of the exercise of CA powers is estimated at around £16 million. Although the applicant has not identified any interests which it considers would be eligible to serve a blight notice, should any such claims arise the applicant confirms that it has sufficient funds to meet the associated costs.
- 6.6.18. The Funding Statement also notes that a final decision on the type of finance that would be used has yet to be made. However, it includes a letter of support in which Pelion confirms that it is of sufficient financial capacity and liquidity to fund the proposed development, including the costs of CA. Furthermore, it notes that it has already committed a considerable amount of capital (£7 million) in land acquisition costs and other costs associated with the application.
- 6.6.19. The adequacy of funding (for CA or the wider development) was not raised by any AP during the course of the examination. On the evidence available, we are satisfied that the applicant has the ability to procure the funds required to carry out the proposed development. Furthermore, Article 47 of the dDCO requires a guarantee or alternative form of security for compensation that may be payable pursuant to the DCO before the provisions for CA can be exercised. This provides a clear mechanism whereby the necessary funding for CA can be guaranteed.

**Conclusion on the generality of the applicant's case for CA and TP.**

- 6.6.20. We accept that none of the alternatives or modifications considered for the proposed development would obviate the need for CA and TP powers over the Order land. Likewise, we are satisfied that the applicant has demonstrated that it has explored all reasonable alternatives to CA (including modifications to the proposed development) and has met the requirements of the CA guidance in this respect
- 6.6.21. Furthermore, we are satisfied that the CA powers over the land for both the GCLD and the GCC are justified and that the CA powers authorised over the land is limited to land/ rights which are required for the authorised development, to facilitate it or are incidental to it.
- 6.6.22. In addition, we consider the dDCO contains sufficient provision to ensure that only one of the grid connection options is pursued. In the event that it is the GCLD, the operation of Article 3 and requirement 4 (detailed design) would ensure that the

powers contained in Article 21 would no longer be exercisable over the land forming part of the GCC.

- 6.6.23. Overall, we agree with the applicant's conclusions on the generality of the case, and subject to our further consideration of plots affected by outstanding objections/representations below, we consider the tests set out in s122(2) and s122(3) of the PA2008 are met.

## **6.7. MATTERS RAISED IN THE EXAMINATION/ OBJECTIONS TO CA AND TP**

- 6.7.1. At the close of the examination, the applicant had either acquired, or had reached agreement with the relevant APs to acquire, most of the land required to construct and operate the proposed development. Formal objections to the inclusion of CA powers in respect of land and interests were received from the following APs:

- Elba Securities Limited (through its UK Asset manager Able UK Limited (hereinafter referred to as "ESL") (in respect of plot numbers 9/09 (subsoil), 9/15, 10/03, 10/05, 10/06, 10/07, 10/08, 10/09, 10/10 and 10/13) [[AS-003](#), [REP1-057](#) and [REP2-073](#)]

- 6.7.2. In addition, representations were received, and not withdrawn, from the following SUs:

- The EA (in respect of plot numbers 9/11 and 9/13) [[RR-003](#)]
- Network Rail Infrastructure Limited (in respect of plot numbers 5/03, 9/09 (subsoil), 10/01, 10/02, 10/04, 8/14, 9/02, 9/04, 9/07, 9/10, 10/03 and 10/09) [[RR-007](#), [REP1-053](#), [AS-009](#) and [AS-012](#)]
- The Danvm Drainage Commissioners (in respect of plots numbers 1/02, 2/03, 2/04, 3/01, 3/05, 3/06, 3/07, 3/08, 4/03, 4/04, 4/05, 4/06, 4/07, 5/01, 5/03, 6/01, 6/03, 6/04, 6/05, 7/01, 7/02, 7/06, 7/07, 7/08, 7/09, 7/10, 8/01, 8/04, 8/05, 8/06, 8/08, 8/09, 8/11, 8/13, 8/15, 9/01, 9/02, 9/09, 9/13, 9/14, 10/01, 10/05, 10/06, 10/07, 10/08, 10/10, 10/12 and 10/14) [[RR-013](#)]

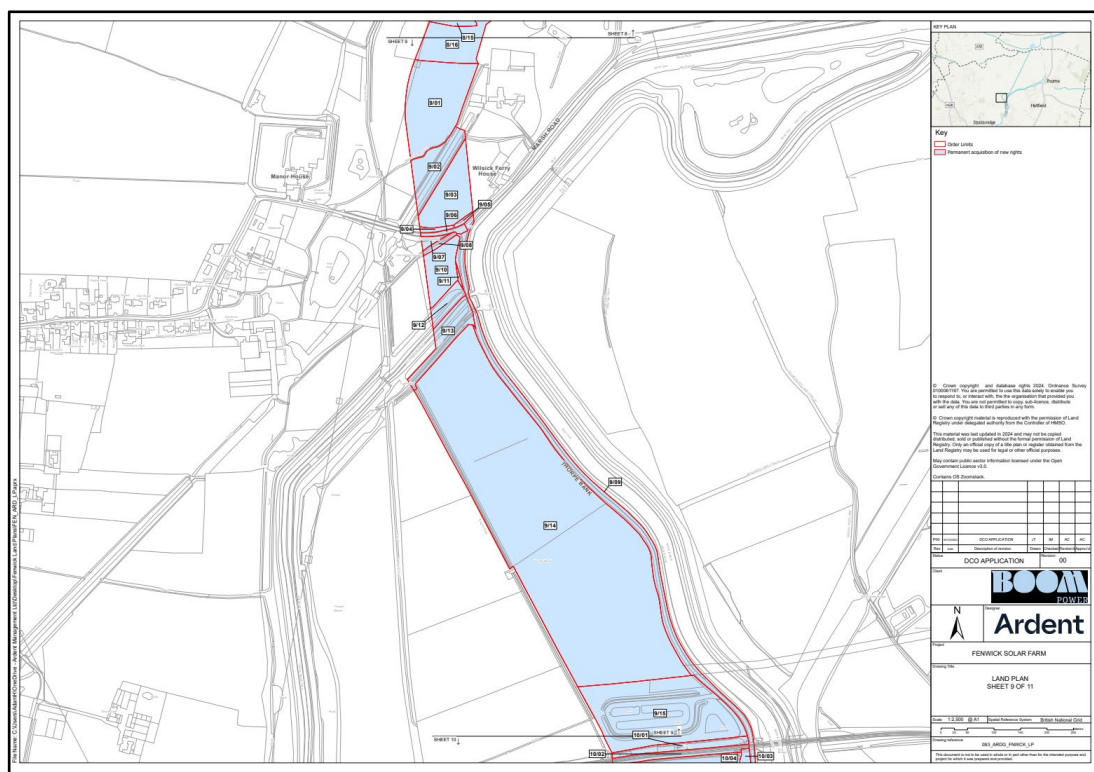
- 6.7.3. We consider these representations and objections further below. In addition, there are a number of plots where no objection was made but where the Land Rights Tracker indicates agreement has not been reached between the applicant and the owner. We have also considered whether these plots meet the s.122 PA2008 tests.

### **ESL (Plots 9/09 (subsoil), 9/15, 10/03, 10/05, 10/06, 10/07, 10/08, 10/09, 10/10 and 10/13 - permanent acquisition of rights)**

- 6.7.4. ESL objects to the inclusion of CA provisions in respect of the above plots [[AS-003](#)]. It explains that it has undertaken works on the site since its acquisition to enable the construction of a new 1500MW electricity generating power station, albeit that consent has now lapsed. Nevertheless, it draws attention to the site's location immediately adjacent to the existing Thorpe Marsh substation which it considers makes it a prime location for other development requiring grid access. It draws particular attention to plot 10/05 which it considered is of strategic importance to its operations, forming part of what was previously the Thorpe Marsh Power Station site.

- 6.7.5. It considers the inclusion of CA powers in relation to plot 10/05 would be in conflict with the significant work it has undertaken and would undermine its long-term strategic development objectives for the site. Furthermore, it contends the impact would be highly disruptive and unnecessary and its own plans for development would be constrained by the presence of cables underground. It raises concerns that the applicant has failed to provide sufficient justification as to why its land specifically is required and does not consider it has demonstrated that there are no reasonable alternative locations for the development generally and the cable route in particular.

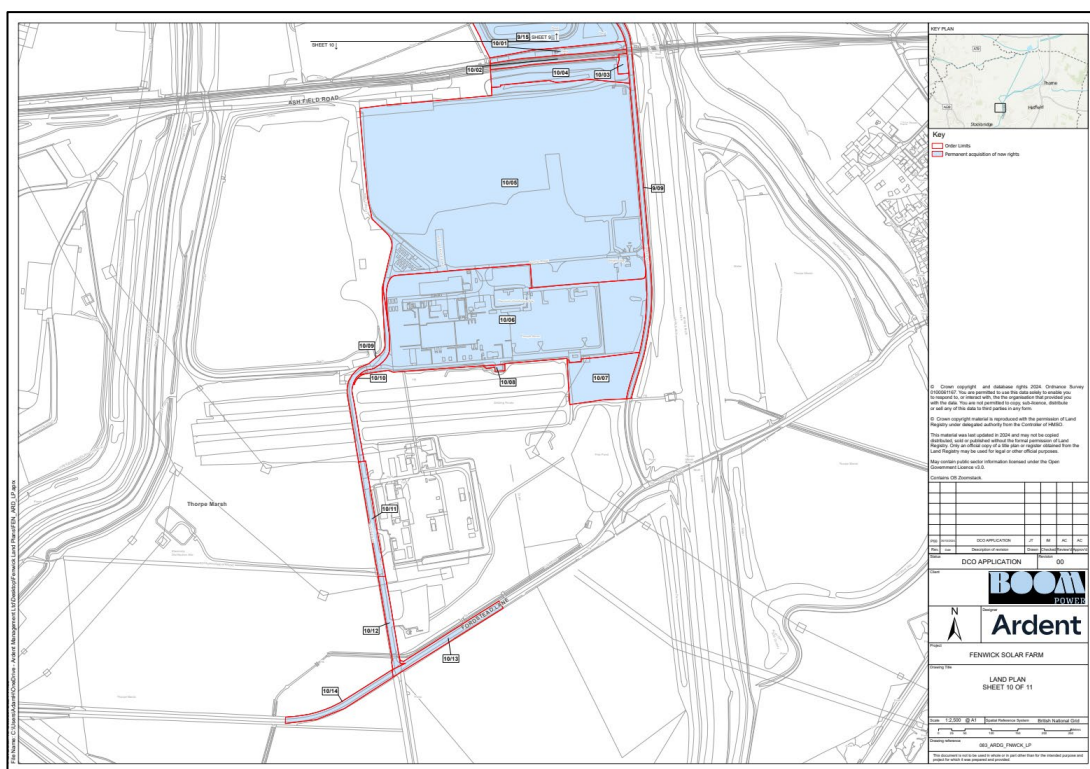
**Figure 11: Land Plan extract showing Plot Nos 9/09 (part) and 9/15**



(Source: Land Plan Sheet 9 of 11 [APP-006])

- 6.7.6. At ISH1, ESL requested a CAH to explain its case orally. It subsequently withdrew that request at deadline 1, noting amongst other things that it had commenced discussions with the applicant on a separate agreement while reserving the right to make further oral representations [REP1-057].
- 6.7.7. In response to ExQ1, ESL confirmed that it was continuing discussions with the applicant to secure the use of its land by agreement [REP2-073]. We sought an update as part of ExQ2 [PD-010] but no further information was provided, and no further representations were made by ESL, during the remainder of the examination.

**Figure 12: Extract of Land Plan showing Plot Nos 9/09 (part), 10/03, 10/05, 10/06, 10/07, 10/08, 10/09, 10/10 and 10/13**



(Source: Land Plan Sheet 9 of 11 [[APP-006](#)])

### *ExA's consideration*

- 6.7.8. The applicant requires access through ESL's land in the final section of the GCC in order to connect to the Thorpe Marsh substation in plot 10/06. The works plans indicate that these areas of land are required to carry out Work No. 4.
- 6.7.9. As noted elsewhere in this report, we consider the applicant has provided a reasonable explanation for its selection of the GCC route. Furthermore, while we note that the exact routing of the cable corridor has yet to be fully determined, we accept that in order to access plot 10/06 and the Thorpe Marsh substation, it is likely that the applicant will need to acquire some rights over land owned by ESL, whether by agreement or compulsorily.
- 6.7.10. Furthermore, we note that no evidence has been provided by ESL which would indicate that it had any firm or particularly advanced plans for the redevelopment of plot 10/05 or that the rights being sought would have a material impact on that plot, its wider land interests, business operations or future plans. We also note that the applicant has confirmed that any disturbance to land caused during construction would be restored [[REP1-031](#)].
- 6.7.11. Consequently, we are satisfied that the above-mentioned plots are required for the construction and operation of the authorised development and that the tests in section 122(2) are met. In view of the urgent need for low carbon energy generating infrastructure such as that proposed, we also consider there is a compelling case in the public interest for the DCO to make provision to acquire these rights compulsorily. In the absence of any agreement, a lack of CA powers would present a real risk that the project may not come to fruition.



**Plots 6/06, 6/07, 6/08 and 8/06 (permanent acquisition of rights)**

- 6.7.12. Plot numbers 6/07, 6/08 and 8/06 are required as part of the GCC (Work No. 4) while plot 6/06 is required to enable access from the public highway (Work No.8).
- 6.7.13. No objection or representation was made in respect of these plots. The land rights tracker indicates that while the applicant has been engaged in negotiations with the owners, at the close of the examination, despite good progress, discussions were ongoing, and agreement had not been reached. However, there is nothing which would indicate that the CA of rights over these plots would be materially harmful to private interests.
- 6.7.14. As such, we are satisfied that the plots are required to facilitate the proposed development. In view of the established need, we are also satisfied that there is a compelling case in the public interest for the CA of rights over the land. We do, however, note that in the event that the GCLD option is ultimately pursued, CA powers would not be exercisable over these plots.

**Plot 9/02, 09/04 (permanent acquisition of rights)**

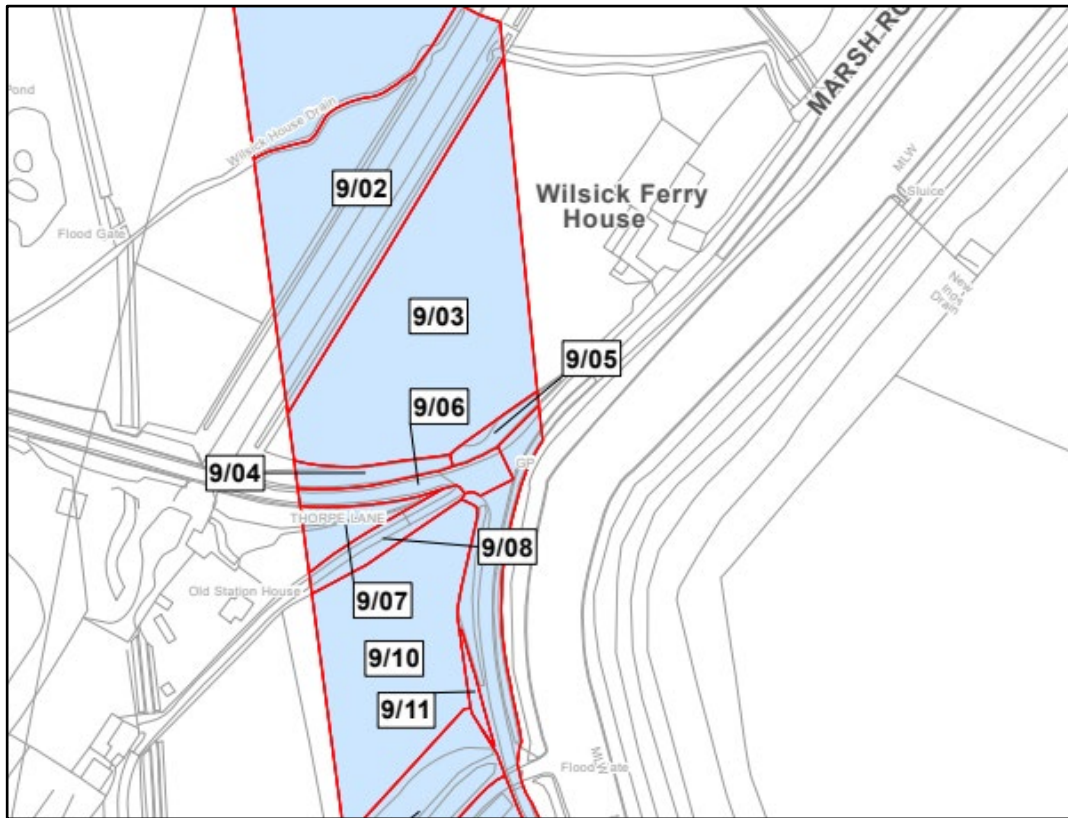
- 6.7.15. These plots are required for the GCC (Work No. 4) and consist of a combination of hedgerow, grassland, drain, PRow, pylon and overhead cables.
- 6.7.16. No objection or representation was made in respect of these plots. The Land Rights Tracker [\[REP5-017\]](#) indicates that while the applicant has been engaged in negotiations with the owners of these plots, at the close of the examination, despite good progress, discussions were ongoing, and agreement had not been reached.
- 6.7.17. We are satisfied that the plots are required to facilitate the proposed development. In view of the established need, we are also satisfied that there is a compelling case in the public interest for the CA of rights over the land. We do, however, note that in the event that the GCLD option is ultimately pursued, CA powers would not be exercisable over these plots.

**Plot 9/03 – Abhilasha Alias Ashu Chohan (permanent acquisition of rights)**

- 6.7.18. No objection or representation was made in respect of this plot. It forms part of the proposed GCC and comprises land in the same ownership as the neighbouring residential property known as Wilsick Ferry House, Thorpe in Balne. The applicant is seeking powers of CA over this plot for the permanent acquisition of new cable rights over 9,087 square metres of grassland and unnamed drains.
- 6.7.19. The Land Rights Tracker [\[REP5-017\]](#) indicates that despite numerous attempts by the applicant to make contact with the landowner and make them aware of its proposals to acquire rights over the land compulsorily, no responses have been received. We sought assurances from the applicant that attempts to make contact would continue and received a witness statement at deadline 3 from its land agent detailing the attempts made to contact the landowner [\[REP3-030\]](#).
- 6.7.20. We are satisfied that the applicant has undertaken all reasonable steps to make contact with the landowner and to make them aware of its proposals for the CA of rights over this land.



**Figure 13: Extract of Sheet 9 of the Land Plan showing Plot No 9/03**



(Source: Land Plan Sheet 9 of 11 [[APP-006](#)])

- 6.7.21. We are also satisfied that plot 9/03 is required as part of the GCC. As such, it meets the test set out in section 122(2) of the PA2008.
- 6.7.22. In view of the established need, we are also satisfied that there is a compelling case in the public interest for the CA of rights over the land. We do, however, note that in the event that the GCLD option is ultimately pursued, CA powers would not be exercisable over this plot.

### **Statutory Undertakers**

#### **The EA (Plots 1/02, 2/01, 2/03, 9/09, 9/11, 9/13, 10/09).**

- 6.7.23. The EA did not formally object to the use of CA powers over these plots. The EA has been in discussions with the applicant throughout the examination on the inclusion of suitable PPs to ensure its interests were protected. As a result, the applicant has included PPs in Schedule 14, Part 5 of the dDCO, which, amongst other things, include provisions for the EA's approval of certain specified works.
- 6.7.24. The SoCG between the applicant and the EA [[REP5-013](#)] confirms that these PPs are now agreed and that there are no matters outstanding between the parties. The applicant explains that it is unlikely that a land agreement will be required and that it will continue discussions with the EA regarding any agreements during detailed design.
- 6.7.25. We are 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, we are 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.

- 6.7.26. Furthermore, we are satisfied that the inclusion of CA powers in respect of the EAs interests are necessary and would not result in serious detriment to the carrying on of its undertaking. As such, it be in accordance with s127 and s138 of the PA2008.

**Network Rail (Plots 5/03, 9/09 (subsoil), 10/01 10/02, 10/04 – permanent acquisition of rights; Plots 8/14, 9/02, 9/04, 9/07, 9/10, 10/03 and 10/09 – extinguishment of rights)**

- 6.7.27. Network Rail Infrastructure Limited (NR), in its RR, objected to the inclusion of CA powers in respect of all the plots listed above on the basis that the powers sought would interfere with the safe and efficient operation of the railway and would result in serious detriment to its undertaking [\[RR-007\]](#). It sought PPs as well as a side agreement to ensure the new rights sought are exercised in a manner which would prevent adverse impacts of the railway.

- 6.7.28. NR's position at the close of the examination is set out in [\[AS-012\]](#). In summary, it confirmed that it had reached agreement with the applicant on the form of PPs to be included in the dDCO, subject to the completion of a confidential side agreement documenting the same. However, at the close of the examination, this confidential side agreement had not been entered into, and NR maintained its objection to the inclusion of CA and TP powers in respect of its land and interests.

- 6.7.29. We note that the PPs included in the dDCO contain a range of protections including a restriction on the use of CA powers without NR's consent (in the form sought by NR at deadline 5). This would provide NR with suitable assurances over the exercise of such powers.

- 6.7.30. We are therefore satisfied that the inclusion of CA powers in respect of NR's land would be in accordance with s127 of the PA2008. Furthermore, we are also satisfied that the inclusion of powers in respect of the extinguishment of rights are necessary for the purpose of carrying out the development. As such, we consider the tests set out s138 of the PA2008 are also met.

- 6.7.31. NRs late deadline 5 submission also confirmed that the parties would endeavour to enter into the confidential side agreement as soon as practicable following which, NR would formally withdraw its objection [\[AS-012\]](#). The SoS may therefore receive correspondence on this point from NR during the decision stage. However, even if no further correspondence is received, or no agreements are entered into, we consider the PPs included in the rDCO are sufficient to ensure that there would be no serious detriment to the carrying on of NR's undertaking, and that the tests set out in s127 and s138 of the PA2008 have been met.

**Danvm Drainage Commissioners (Plots 1/02, 2/03, 3/07, 3/08, 4/05, 6/01 - Permanent Freehold Acquisition; Plots 2/04, 3/01, 3/05, 3/06, 3/07, 4/03, 4/04, 4/06, 4/07, 5/01, 5/03, 6/03, 6/04, 6/05, 7/01, 7/02, 7/06, 7/07, 7/08, 7/09, 7/10, 8/01, 8/04, 8/05, 8/06, 8/08, 8/09, 8/11, 8/13, 8/15, 9/01, 9/02, 9/09, 9/13, 9/14, 10/01, 10/05, 10/06, 10/07, 10/08, 10/10, 10/12, 10/14 - permanent acquisition of rights)**

- 6.7.32. The Danvm Drainage Commissioners did not object to the inclusion of CA powers in respect of its land interests [\[RR-013\]](#). Its main concern was to ensure that any made DCO contained suitable protections to ensure that its apparatus was protected where works were carried out in close proximity.

- 6.7.33. The applicant confirmed at the close of the examination that PPs had been agreed and that it expected Danvm would shortly formally withdraw its representation in writing. It also provided an updated set of PPs which it requested was substituted for those contained in Schedule 14, part 3 of the final dDCO submitted at deadline 5 [\[AS-011\]](#). These contain a range of protections for drainage authorities, including the submission and approval of specified works in close proximity to drainage assets and the ability to require reasonable measures to ensure the protection of its drainage assets or to prevent flooding or pollution.
- 6.7.34. We are satisfied that the CA powers in respect of the above plots are required for, or to facilitate, the proposed development. Furthermore, we consider there is a compelling case in the public interest for the land to be acquired compulsorily.
- 6.7.35. Moreover, we are satisfied that the protections included in the agreed PPs submitted at the close of the examination [\[AS-011\]](#) are sufficient to ensure that there would be no serious detriment to the carrying on of Danvm's undertaking. We are also satisfied that the inclusion of powers in respect of the extinguishment of rights is necessary for the purpose of carrying out the development. As such, we consider the tests set out in s127 and s138 of the PA2008 are met

### **Human Rights Act 1998 and Equality Act 2010 Considerations**

- 6.7.36. The Human Rights Act 1998 (HRA 1998) incorporates the European Convention on Human Rights into UK law. Article 6 (right to a fair trial) and Article 1 of the First Protocol (protection of property) are engaged. There are no residential properties to be acquired for the proposed development. While we note that plot 9/03 is in the same ownership as the property known as Wilsick Ferry House, there is no evidence which would indicate that this land forms a part of the curtilage of that adjacent residential dwelling. We do not therefore consider Article 8 is engaged.
- 6.7.37. In relation to Article 6, we accept that appropriate consultation took place before and during the process and that there has been opportunity to make representations during the preparation of the application and owners of land had been consulted. There has also been the opportunity to make representations during the course of the examination. At the CAH, we provided all APs who wished to be heard, an opportunity to be heard fully, fairly and in public. We also note that, should an Order be made, there are further opportunities for APs to challenge the Order in the High Court. We consider this is sufficient to meet the obligations set out in Article 6.
- 6.7.38. Turning then to Article 1, the applicant acknowledges in section 9 of the SoR [\[APP-018\]](#) that the Order has the potential to infringe the rights of affected parties and acknowledges the need to strike a balance between the rights of the individual and the interests of the public. Furthermore, we note it has sought to minimise the amount of land affected and included suitable provisions for the payment of compensation in the dDCO.
- 6.7.39. The Equality Act 2010 establishes a duty to eliminate discrimination, advance equality of opportunity and foster good relations between persons who share a protected characteristic and persons who do not. We have had regard to this duty throughout the Examination and in our consideration of the issues raised in this Recommendation.
- 6.7.40. We have found above that there is a compelling case in the public interest for all of the land identified to be acquired compulsorily. Furthermore, we consider that the proposed interference with individuals' rights would be lawful, necessary,

proportionate and justified in the public interest. We therefore consider the CA and TP powers sought are compatible with the HRA 1998.

## **6.8. CONCLUSIONS**

6.8.1. Having considered all of the material submitted to the examination, we have reached the following conclusions:

- 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 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 PPs in favour of those affected.
- That in all cases relating to individual objections and issues CA and TP is justified to enable implementation of the proposed development.
- The powers sought satisfy the conditions set out in s122 and s123 of the PA2008 as well as the CA Guidance.
- The powers sought in relation to SUs meet the conditions set out in s127 and s138 of the PA2008 and the CA Guidance.

6.8.2. Considering all of the above, we consider there is a compelling case in the public interest for the CA and TP powers sought.

## 7. DRAFT DEVELOPMENT CONSENT ORDER AND RELATED MATTERS

### 7.1. INTRODUCTION

- 7.1.1. The application dDCO [\[APP-014\]](#) and the Explanatory Memorandum (EM) [\[APP-016\]](#) were submitted by the applicant as part of the application for development consent. Both the dDCO and EM were updated throughout the examination with the latest version of the dDCO being [\[REP5-004\]](#) and the EM being [\[REP4-007\]](#). The EM explains the purpose and effect of each article of, and Schedules to, the dDCO and why they are required.
- 7.1.2. The EM also identifies and explains departures from the (now withdrawn) Infrastructure Planning (Model Provisions) (England and Wales) Order 2009. It also makes reference to where the drafting has been taken from other orders made under the PA2008. The original application dDCO and all subsequent revisions are in the form of a statutory instrument as required by s117(4) of the PA2008.
- 7.1.3. This section provides an overview of the examination of the dDCO and considers changes to the final dDCO in order to arrive at the rDCO in [Appendix C](#) of this report. Changes as a result of typographical or grammatical errors are not reported.

### 7.2. THE STRUCTURE OF THE dDCO

- 7.2.1. The content of the dDCO is listed on its face. It follows the general structure of other made solar DCOs. We are content that the structure is fit for purpose, and we do not recommend any changes to it.

#### **Parameters of the Order and the ‘consent envelope’**

- 7.2.2. The applicant has not included a maximum limit on generating capacity in the dDCO in order to allow it to take advantage of technological improvements and innovation that may emerge before construction. This would enable it to still construct the proposed development within the assessed parameters but increase capacity beyond that which is currently anticipated.
- 7.2.3. This follows the approach adopted in the most made solar DCOs and accords with NPS EN-3 which advises that installed export capacity should not be seen as an appropriate tool to constrain the impacts of a solar farm. Instead, it indicates that applicants should use other measurements, such as panel size, total area and percentage of ground cover to set the maximum extent of development when determining the planning impacts of an application.
- 7.2.4. A ‘Rochdale Envelope’ approach has been used which assesses the maximum (and where relevant, the minimum) parameters of the proposed development. This is a common approach adopted in energy generation projects where a degree of flexibility is required. The principles and justification for this approach are set out in ES Chapter 5 (EIA Process and Methodology) [\[APP-057\]](#).
- 7.2.5. A set of outline design parameters have been established which allow for flexibility in the design and form the limits within which the proposed development can be built and operated. These outline design parameters are set out in the ODPS [\[REP2-027\]](#) and are secured by requirement 4 (detailed design) of the dDCO [\[REP5-004\]](#). The ODPS sets out the basis on which the assessments in the ES

have been undertaken. It captures the important parameters that are necessary to ensure the proposed development would be constructed and operated in such a way that the impacts and effects would not exceed the maximum scenario assessed in the ES.

7.2.6. In addition to the outline design parameters, other DCO requirements, certified documents and plans would operate to control and manage the detailed design of the proposed development, as well as its construction, operation (including maintenance) and decommissioning. The way in which those mechanisms work together as an envelope within which the proposed development would be undertaken is explained in more detail in section 2 of the EM [\[REP4-007\]](#).

7.2.7. In summary, it explains that:

- Article 3 (Development consent etc. granted by this Order) and Schedule 2 (Requirements) operate to create a consent envelope within which the proposed development would be brought forward.
- The proposed development is described in Schedule 1 of the Order, where it is referred to as the *authorised development* and divided into a series of component parts, referred to as *numbered works*.
- The authorised development is granted consent pursuant to article 3(1). Article 3(2) requires that the numbered works authorised by the Order are situated in the areas and within the limits of deviation shown on the Works Plan. Article 3(3) ensures that only one of the grid connection options is taken forward, with details to be submitted at detailed design stage in accordance with requirement 4 (detailed design).
- The design of the proposed development would also be controlled via requirement 4 (detailed design) which requires approval of details of the final design, and requires that the details submitted must accord with the ODPS [\[REP2-027\]](#).
- In addition to the ODPS and the Works Plan, the design of the proposed development would also be controlled by the:
  - approval and implementation of the BSMP (requirement 5)
  - approval and implementation of the LEMP (requirement 6)
  - approval and implementation of a BNG strategy and the delivery of minimum levels of BNG (requirement 7)
  - approval and implementation of temporary and permanent fencing and other means of enclosure (requirement 8)
  - approval and implementation of a surface and foul water drainage scheme or system (requirement 9)
  - the implementation of the WSI for archaeological mitigation, in accordance with the fAMS (requirement 10)
  - approval and implementation of the CEMP (requirement 11)
  - approval and implementation of the OEMP (requirement 12)
  - approval and implementation of the CTMP (requirement 13)
  - approval and implementation of the operational noise assessment (requirement 14)
  - approval and implementation of a SMP (requirement 15)
  - the Skills, Supply Chain and Employment Plan (requirement 16)
  - approval and implementation of the PRow management plan (requirement 17)
  - the approval and implementation of a DEMP (requirement 18)

7.2.8. The application seeks flexibility to undertake the proposed development within the above envelope, in particular within the maximum areas and parameters secured



via the Works Plans and ODPS. As set out in ES Chapter 5 (EIA Methodology) [APP-057] and the individual technical chapters, the environmental impact assessment has assessed the upper extent of the areas and sizes allowed by the Works Plans and ODPS. As a result, the ES has assessed a worst case, and has considered and confirmed that any scheme built within the maximum areas and parameters would have effects no worse than those assessed.

## 7.3. EXAMINATION OF THE DDCO

- 7.3.1. Discussions on the provisions contained in the dDCO were undertaken throughout the examination and resulted in a number of changes. These were generally confined to resolving inconsistencies, providing clarification and certainty in drafting and updates resulting from agreement reached between the applicant and IPs in ongoing discussions throughout the examination.
- 7.3.2. We received regular updates throughout the examination on the ongoing discussions between the applicant and IPs on proposed amendments. An updated dDCO was submitted by the applicant at each deadline along with a tracked changes version and a schedule of changes made. At deadline 5, the applicant provided a consolidated, tracked change version of the dDCO which identifies all of the changes made [REP5-005].
- 7.3.3. The key documentation relating to the examination of the dDCO is set out in Table 4 below.

**Table 4: Key dDCO Documentation**

dDCO Version	Deadline	Examination Library Reference/ link
Revision 00	-	[APP-014] Application dDCO [APP-016] EM
Revision 01	-	[APP-220] dDCO [APP-221] dDCO (tracked against Rev 00) [APP-224] EM Rev 1 [APP-225] EM Rev 1 (tracked changes)
Revision 02	1	[REP1-005] dDCO [REP1-006] dDCO (tracked against Rev 01) [REP1-007] EM Rev 2 [REP1-008] EM Rev 2 (tracked changes) [REP1-046] Schedule of changes

dDCO Version	Deadline	Examination Library Reference/ link
Revision 03	2	<a href="#">[REP2-005]</a> dDCO <a href="#">[REP2-006]</a> dDCO (tracked against Rev 02) <a href="#">[REP2-056]</a> Schedule of changes
Revision 04	3	<a href="#">[REP3-006]</a> dDCO <a href="#">[REP3-007]</a> dDCO (tracked against Rev 03) <a href="#">[REP3-008]</a> EM Rev 3 <a href="#">[REP3-009]</a> EM (tracked changes) <a href="#">[REP3-027]</a> Schedule of changes
Revision 05	4	<a href="#">[REP4-004]</a> dDCO <a href="#">[REP4-005]</a> dDCO (tracked against Rev 04) <a href="#">[REP4-007]</a> EM Rev 4 <a href="#">[REP4-008]</a> EM Rev 4 (tracked against Rev 0) <a href="#">[REP4-009]</a> EM Rev 4 (tracked against Rev 3) <a href="#">[REP4-035]</a> Schedule of changes
Revision 06	5	<a href="#">[REP5-004]</a> dDCO <a href="#">[REP5-005]</a> dDCO (tracked against Rev 0) <a href="#">[REP5-006]</a> dDCO (tracked against Rev 05) <a href="#">[REP5-019]</a> Schedule of changes

7.3.4. Particular matters of note include:

- Various amendments to align the dDCO with other recently made Orders for other solar NSIPs (including the East Yorkshire Solar Farm Order 2025<sup>9</sup>, the Oaklands Solar Farm Order 2025<sup>10</sup> and the Byers Gill Solar Farm Order 2025<sup>11</sup>) including the definition of ‘commence’, ‘Order land’, ‘authorised development’, and amendments to Schedule 13 to ensure that any arbitration hearings and documentation will be open and accessible by the public

<sup>9</sup> [SI 2025/585](#).

<sup>10</sup> [SI 2025/739](#).

<sup>11</sup> [SI 2025/934](#).

- The addition of article 3(3) and requirement 4(3) to ensure that only one of the two GCC options can be taken forward (but not both)
- Amendments to article 6 (Application and modification of statutory provisions) to reflect the agreed position with the EA regarding the disapplication of only some of the flood risk permitting requirements
- The addition of a new article (article 9) detailing the interaction between CDC's permit scheme for street works and the management of street works under the Order
- Various amendments to article 13 (Permanent closure of PRoW) to remove the general power for closure of PRoW beyond those specified in Schedule 6. Further amendments to tidy up drafting and ensure consistent and correct use of terms.
- Amendments to Schedule 2, requirement 7 (BNG) to specify exact BNG percentages to be achieved
- Various updates to Schedule 2, requirement 10 (Archaeology)
- Amendments to ensure the consultation of the EA on relevant requirements within Schedule 2 that relate to their expertise and statutory role

7.3.5. Full details of all of the amendments to the dDCO made during the examination can be found in the Schedule of Changes to the dDCO submitted at Deadline 5 [\[REP5-019\]](#).

7.3.6. At the close of the examination there were few outstanding matters of substance between the applicant and IPs in respect of the drafting of the dDCO. The remainder of this section considers those parts of the dDCO where objections remained outstanding at the close of the examination, our recommendations in respect of them and the alterations, if any, we consider are necessary to form the rDCO.

## 7.4. DCO PROVISIONS WITH OBJECTIONS OUTSTANDING

### Article 22(3)(b).

7.4.1. Article 22(3) (formerly article 21(3) in revisions 00-04 of the dDCO) states:

*“(3) - The authority conferred by article 30 (temporary use of land for constructing the authorised development) must not be used after the end of the applicable period referred to in paragraph (1), save that if an application is made under section 118 of the 2008 Act (legal challenges relating to applications for orders granting development consent) the applicable period is to be extended by—*

*(a) a period equivalent to the period beginning on the day the application is made and ending on the day it is withdrawn or finally determined; or*

*(b) if shorter, 1 year.”*

7.4.2. Article 22 is a common provision which imposes a time limit of 5 years for the exercise of powers of CA from the date on which the Order is made, via the issuing of notices to treat or the executing of general vesting declarations. This aligns with the commencement requirement under Schedule 1 of the dDCO.

7.4.3. Articles 25 and 28 apply section 5B(1) of the Compulsory Purchase (Vesting Declarations) Act 1981 and section 4A(1) of the Compulsory Purchase Act 1965, the effect of which is to allow for extensions of time for the exercise of CA powers in the event of a legal challenge. These are common provisions that feature in many made DCOs including for solar schemes.

- 7.4.4. Article 22(3) applies the extension of time limits in the event of a legal challenge to the exercise of TP powers under Article 30, bringing it into line with the provisions in Art 25 and 28 in respect of CA. Sub-paragraph (b) covers a situation where a challenge is made but subsequently withdrawn or determined in a period shorter than one year. In such circumstances, the time for the exercise of powers is automatically extended by a year.
- 7.4.5. CDC raised concerns with article 22(3)(b) at ISH1 noting that most made DCOs do not contain a similar provision. While it did not object to the principle of the extension set out in sub-paragraph (a), it considered the automatic 1-year extension provided for by sub-paragraph (b) was neither necessary nor justified. Full details of CDC's concerns can be found in [\[REP1-047\]](#) and [\[REP3-033\]](#)
- 7.4.6. In response [\[REP3-031\]](#), the applicant noted that the wording of Article 22(3) aligns with recent updates to the Compulsory Purchase (Vesting Declarations Act) 1981 and the Compulsory Purchase Act 1965. While it recognised that this approach introduces some uncertainty to the final timeframes for the exercise of CA and TP powers, it considers that it ensures consistency with other compulsory purchase regimes. It also noted that allowing time for legal challenges to be resolved before the exercise of CA or TP powers provides greater certainty.

*ExA's consideration*

- 7.4.7. We note CDC's concerns and acknowledge that the inclusion of Article 22(3) is somewhat novel. Nevertheless, its purpose is clear – to align the time limit for the exercise of TP powers with those of CA. Furthermore, we note that the wording proposed would align with the wording inserted by the section 5B(1) of the Compulsory Purchase (Vesting Declarations) Act 1981 and section 4A(1) of the Compulsory Purchase Act 1965, both of which are applied to the order by virtue of articles 25 and 28 (and as noted above feature in many made DCOs).
- 7.4.8. Parliament has decided that in circumstances where a challenge is made to an order authorising compulsory purchase, the time limit for the exercise of compulsory purchase powers can be extended. In circumstances where a challenge is withdrawn or determined in less than 1 year, an extension of a year is granted. This is a clear acknowledgement of how such challenges can impact on project delivery.
- 7.4.9. It seems to us that the same considerations apply to the exercise of the powers of CA and TP contained in the dDCO. Indeed, we consider Articles 22, 25, 28 and 30 are inextricably linked. Where a challenge is made and subsequently determined in less than a year, it would be preferable, for all parties, if the relevant time limits for the exercise of powers are the same. This is likely to result in less ambiguity and confusion and would be less likely to impact on project delivery. It is also in the interests of good administration. Furthermore, we are mindful that the use of TP powers in such circumstances would be less onerous on those affected than the exercise of CA powers and in many cases would result in fewer impacts on APs. Indeed, it would be illogical for a situation to arise whereby TP powers were no longer exercisable in circumstances where the powers of CA had been extended.
- 7.4.10. Accordingly, we consider the time limit for the exercise of TP powers under article 30 should align with those for the exercise of other CA powers in Part 5 of the dDCO. We therefore recommend the retention of this article and its inclusion in the rDCO. In the event that the SoS does not agree (and decides to remove Art 22(3) from the Order), we consider Articles 25 and 28 should also be amended to remove

the application of 5B(1) of the Compulsory Purchase (Vesting Declarations) Act 1981 and section 4A(1) of the Compulsory Purchase Act 1965. This would not however, accord with the position under most of the recently made solar DCOs.

#### **Article 14 (private streets)**

- 7.4.11. At ISH1 [\[EV3-003\]](#) and [\[EV3-005\]](#), ESL raised concerns that the powers contained in article 14 (previously 13) were excessive and would grant the undertaker sweeping and unjustified access to all private roads within the Order limits.
- 7.4.12. In response [\[REP2-058\]](#), the applicant updated this article so that it specifically referred to the closure only of the private roads specified in the Streets, Rights of Way and Access Plans [\[REP3-004\]](#) and [\[REP3-005\]](#). Following discussions with ESL, further amendments were made to limit the use of these powers to the eastern extent of Ash Road and the roads which provide access to the National Grid Thorpe Marsh substation. The applicant considers that the restrictions on the use of these powers is now proportionate to the construction works committed to in this area.
- 7.4.13. A deadline 2 [\[REP2-073\]](#), ESL confirmed that it agreed with the applicant's proposed amendments but that there were still more roads subject to this power than necessary. It did not, however, identify which roads it still considered should be removed and no further representations were received on this matter.

#### *ExA's consideration*

- 7.4.14. We welcome to narrowing down of this power so that it is restricted to private roads identified on the Streets, Rights of Way and Access Plans [\[REP3-004\]](#) and [\[REP3-005\]](#). We also welcome the updates made to these plans which limit the inclusion of roads within ESL's ownership (see Sheet 10 of 11 [\[REP3-005\]](#)). Overall, we are content that the powers contained within article 14 are now justified and recommend no further changes to this article.

#### **Schedule 9(1) – Definition of cable rights sub paragraph (g)**

- 7.4.15. At ISH1 [\[EV3-003\]](#) and [\[EV3-005\]](#), ESL raised concerns with the definition of cable rights included in Schedule 9(1)(g) of the dDCO - which it considers would impose excessive restrictions on its ability to use the land.
- 7.4.16. Sub paragraph (g) provides rights to:
- “...restrict and remove the erection of buildings or structures, restrict the altering of ground levels, restrict and remove vegetation and restrict the planting of trees or carrying out operations or actions (including but not limited to blasting and piling) which may obstruct, interrupt or interfere with the exercise of the rights or damage the authorised development.”*
- 7.4.17. In particular, ESL noted that were this wording to remain it would seek PPs in order to be able to control how these rights are exercised. Following ISH1, it sought an amendment to allow such activities with the permission of the applicant (or owner of the cable at the time).
- 7.4.18. In response, the applicant noted that the wording used is similar to that included in several made DCOs [\[REP2-058\]](#). It argued that sub-paragraph (g) reflects the broad scope of the powers that the undertaker may require in order to install the cable connection but which will ultimately be applied proportionally to each parcel within the Order limits in respect of the particular features of the parcel and the particular

requirements of the authorised development in that area. It explained that its ultimate use of these powers over ESL's land will reflect the particular requirements and location of the cabling, once installed.

*ExA's consideration*

- 7.4.19. We acknowledge the definition of cable rights in Schedule 9(1)(g) is somewhat broad. However, we accept that this is to ensure that it provides sufficient flexibility when finalising the grid connection route and the particular circumstances of the cabling between different plots.
- 7.4.20. While we are mindful that there is potential for the exercise of these powers to affect ESL's ability to carry out future development of its land, no robust evidence has been provided which would indicate that ESL's existing business operations or its future plans would be materially affected by these provisions. Furthermore, we note that the wording is similar to that used in other made DCOs.
- 7.4.21. On balance, we accept the applicant's position that the broad scope of these powers is necessary to ensure that it has sufficient flexibility to carry out the proposed development. As such, we recommend that Schedule 9(1)(g) remains unchanged.

**Article 30 (formerly Article 29)**

- 7.4.22. At ISH1 [\[EV3-003\]](#) and [\[EV3-005\]](#), ESL raised concerns with the time periods for the giving of notice under article 30(3) (formerly article 29(3)) for the taking of TP of land under that article.
- 7.4.23. It explained that it considered the 14 days to be inadequate and failed to consider the regulatory reforms currently under consideration. For example, it drew attention to the Planning and Infrastructure Bill which contains provisions to amend the NPA 2017 in order to bring its provisions in respect to TP into force. ESL contends that this would extend the period for notice to three months [see [REP1-057](#)].
- 7.4.24. In response, the applicant noted that the 14-day period was consistent with any other made orders [\[REP1-041\]](#) and is reasonable, given that parties within the Order limits are already on notice about future acquisitions from the making of any DCO. However, the applicant noted that it intends to engage directly with affected parties and does not intend to use these powers unless absolutely necessary.

*ExA's consideration*

- 7.4.25. It has been accepted practice for some time for the provisions relating to TP in the NPA 2017 to be excluded from DCOs made under the PA2008. In December 2024, the government published its 'consultation on Compulsory Purchase Process and Compensation reforms' and sought views on whether the TP powers available under the NPA 2017 should not apply to the PA2008 as there were sufficient provisions already made under that consenting regime.
- 7.4.26. The government published the outcome of that consultation on 19 September 2025, after the close of the examination. However, we note that paragraph 59 makes clear that the government now intends to proceed with changes to the NPA 2017 to ensure that the TP of land under the PA2008 is not affected when the power to take TP under the NPA 2017 is commenced. While this revision has not yet been enacted, we consider that the government's intentions are clear. We do not,



therefore, consider it is necessary to extend the period in article 30(3) to three months in order to align it with the provisions of the NPA 2017.

7.4.27. However, we do accept that 14 days may be insufficient for some APs to mitigate operational disruptions and ensure the proper coordination with ongoing site activities. As such, we consider a period of 28 days would be more reasonable and would accord with similar notice periods in other made solar DCOs including the Longfield Solar Farm Order 2023<sup>12</sup>, the Gate Burton Energy Park Order 2024<sup>13</sup>, the Mallard Pass Solar Farm Order 2024<sup>14</sup>, the Heckington Fen Solar Park Order 2025<sup>15</sup> and the Byers Gill Solar Order 2025<sup>16</sup>.

7.4.28. Taking all of the above into account, we consider the 14-day period set out in article 30(3) should be extended to 28 days.

### **Schedule 1**

7.4.29. At ISH1 [[EV3-003](#) and [EV3-005](#)], ESL noted that the applicant had set out an extensive list of 'further associated development' at the end of Schedule 1, including 'works to lay electrical cables and compounds for the electrical cables'. It objected to the inclusion of these powers noting that they were insufficiently precise and failed to balance the powers sought by the applicant with the interests of APs. It sought a specific carve out for Work No. 4 to ensure that only works that are necessary are permitted. It also raised concerns that this 'further associated development' had not undergone sufficient environmental assessment (see [[REP1-057](#)]).

#### *ExA's consideration*

7.4.30. At ISH1, we drew attention to the fact that the drafting of this part of schedule 1 was typical of many made DCOs, particularly those authorising large scale, ground mounted solar projects. As the applicant explained ([[REP1-041](#) and [REP2-058](#)] (see page 88)), this wording has been adopted from other made solar DCOs and is a generally accepted approach to capture ancillary works or associated development needed to facilitate the main works.

7.4.31. Furthermore, we accept that only works which are necessary or expedient for the purposes of, or in connection with, the carrying out of the proposed development would be covered. In addition, we note that any works covered by these provisions would not include works which would be likely to give rise to any materially new or materially different environmental effects to those considered in the ES. This would ensure that the scope of works permitted by these clauses would remain within the limits of what has been assessed.

7.4.32. On balance, we consider the applicant has justified the need for including these provisions and that they would not result in effects over and above those already assessed by the applicant in its ES.

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<sup>12</sup> [SI 2023/734](#).

<sup>13</sup> [SI 2024/807](#).

<sup>14</sup> [SI 2024/796](#).

<sup>15</sup> [SI 2025/85](#).

<sup>16</sup> [SI 2025/934](#).

## Schedule 14, Part 3 – For the Protection of Drainage Authorities

- 7.4.33. The Danvm Drainage Commissioners sought suitable protections to ensure that its apparatus was protected where works were carried out in close proximity to its assets [\[RR-013\]](#).
- 7.4.34. The applicant confirmed at the close of the examination that PPs had been agreed and indicated it expected Danvm would shortly formally withdraw its representation in writing. It also provided an updated set of PPs [\[AS-011\]](#) which it requested was substituted for those contained in Schedule 14, Part 3 of the final dDCO submitted at deadline 5. These contain a range of protections for drainage authorities, including the submission and approval of specified works in close proximity to drainage assets and the ability to require reasonable measures to ensure the protection of its drainage assets or to prevent flooding or pollution.
- 7.4.35. As we have made clear in Chapter 6 of this report, these would ensure that there would be no serious detriment to the carrying on of Danvm's undertaking. As such, we recommend that the updated PPs are included in the rDCO.

## 7.5. EXA'S PROPOSED CHANGES

- 7.5.1. In light of our conclusions above, we consider the following changes should be made to the applicant's dDCO submitted at deadline 5 in order to form the rDCO included at Appendix C.

**Table 5: ExA's Proposed Changes to Revision 06 of the dDCO**

DCO Provision	Recommendation	ExA's reasons
Article 30(3)	Extend notice period for TP from 14 days to 28 days	To ensure all APs have sufficient time to mitigate operational disruptions and ensure the proper coordination with ongoing site activities. To accord with similar notice periods in other made solar DCOs.
Schedule 14, Part 3	Replace the whole of Schedule 14, Part 3 with the PPs submitted by the applicant at the close of the Examination <a href="#">[AS-011]</a>	To reflect the agreed position between the applicant and the Danvm drainage commissioners.

## 7.6. STATUTORY NUISANCE

- 7.6.1. The application is accompanied by a Statutory Nuisance Statement (SNS) in accordance with regulation 5(2)(f) of the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009 [\[APP-195\]](#).

- 7.6.2. Having reviewed the SNS, we are content that the applicant has appropriately identified the scope of potential nuisance sources from the construction and operation of the proposed development. It did not identify any effects that are likely to result in nuisance and concludes that no additional mitigation is necessary. We agree with this conclusion.
- 7.6.3. Article 7 of the dDCO contains a defence to proceedings in respect of statutory nuisance. This article is of a type commonly provided for in NSIPs and its drafting is based on other made DCOs. We agree 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.

## **7.7. CONCLUSIONS**

- 7.7.1. We have considered all versions of the dDCO as set out in [Table 4](#) above and considered the degree to which the final dDCO has addressed matters arising during the examination. We are satisfied that the requirements set out in revision 06 of the dDCO (together with the updated Part 3 of Schedule 14) provide mitigation for potential adverse effects identified in the ES and sufficiently address the issues raised during the course of the examination.
- 7.7.2. Subject to our recommended changes set out in [Table 5](#) above (and some minor changes to punctuation and/ or formatting which do not affect meaning), the rDCO at [Appendix C](#) is identical to revision 06 submitted by the applicant at deadline 5.
- 7.7.3. Taking all matters raised in this chapter and all matters relevant to the DCO raised in the examination fully into account, if the SoS is minded to make the Order, we recommend it should be made in the form set out in [Appendix C](#).

## **8. SUMMARY OF FINDINGS AND CONCLUSIONS**

### **8.1. INTRODUCTION**

- 8.1.1. This section summarises our conclusions and sets out our recommendation to the SoS.

### **8.2. CONSIDERATION OF FINDINGS AND CONCLUSIONS**

- 8.2.1. As we have noted in [Chapter 5](#) above, the urgent need for low carbon energy generation of all types is established through NPSs. We consider the proposed development would make a meaningful contribution to meeting this need, would help in the transition to a low carbon system and would help increase security of supply. In reaching our conclusions, we have had regard to the NPSs, CDC's LIR and other important and relevant matters.
- 8.2.2. Regarding designated heritage assets and in consideration of Regulation 3 of the Infrastructure Planning (Decisions) Regulations 2010 (Decisions Regulations), we have found the proposed development would result in less than substantial harm to a number of designated heritage assets. However, those harms are outweighed by the very great/ substantial 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 3.
- 8.2.3. In terms of biodiversity and bearing in mind Regulation 7 of the Decisions Regulations, we are satisfied that biodiversity, ecological and nature conservation issues have been adequately assessed and that the requirements of NPS EN-1 are met.
- 8.2.4. As such, in relation to s104 of the PA2008, we conclude:
- that making the rDCO would be in accordance with NPS EN-1, NPS EN-3 and NPS EN-5
  - the proposal would be generally in accordance with the NPPF and the local development plan as a whole, and with other relevant policy, all of which has been considered in this report
  - the proposed development would not result in any significant adverse effects that would outweigh its benefits and there is nothing to indicate that the application should be decided other than in accordance with the relevant NPSs
  - with regard to all other matters and representations received, we have found no relevant matters that would individually or collectively lead to a different recommendation to that below
- 8.2.5. Furthermore, we are satisfied that there would be no LSE on protected sites and that there is sufficient information before the SoS to enable them to conclude that an AA is not required.
- 8.2.6. In relation to the application for CA and TP powers, we conclude:
- 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 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 PPs in favour of those affected
- that in all cases relating to individual objections and issues, the 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 and that there is a compelling case in the public interest for the CA and TP powers sought
- the powers sought in relation to SUs meet the conditions set out in s127 and s138 of the PA2008 and the CA Guidance
- that the case for CA and TP powers has been made out and that the proposed interference with the human rights of individuals would be for legitimate purposes that would justify such interference in the public interest and to a proportionate degree

8.2.7. We have had regard to the provisions of the Human Rights Act 1998, in particular Article 6 (Acts of public authorities), Article 8 (Judicial remedies) and Article 1 of the First Protocol (Protection of property). We are satisfied that the Examination has ensured a fair and public hearing, that any interference with human rights arising from implementation of the proposed development is proportionate and strikes a fair balance between the rights of the individual and the public interest. Furthermore, we are satisfied that compensation would be available in respect of any quantifiable loss. There is no disproportionate or unjustified interference with human rights so as to conflict with the provisions of the Human Rights Act 1998.

8.2.8. We have also had regard to the Public Sector Equality Duty (PSED) throughout the examination, including the method by which hearings and site inspections were undertaken, and in producing this report and making our recommendation. The proposed development does not harm the interests of persons who share a protected characteristic or have any adverse effect on the relationships between such persons and persons who do not share a protected characteristic. On that basis, we consider there is no breach of the PSED.

8.2.9. In reaching our conclusions, we have considered the cumulative effects of the proposed development with other committed and planned development.

8.2.10. We are satisfied that the mitigation hierarchy has been fully explored and the mitigation proposed has been secured by the requirements and other controls included in the rDCO. However, as our recommendation is already in favour of the proposed development, we do not consider it is necessary to apply the further tests set out in NPS EN-1 in relation to Critical National Priority.

## 8.3. RECOMMENDATION

8.3.1. For all of the above reasons, and having had regard to the NPSs, CDC's LIR, as well as our findings and conclusions on important and relevant matters set out in this report, we conclude that the case for the development has been made and that development consent should be granted through a DCO in the form recommended in [Appendix C](#) of this report.

## APPENDIX A: REFERENCE TABLES



## Appendix A: Relevant Legislation and Policies

**Table A1 – Summary of relevant legislation**

Relevant Legislation
<p><b>Climate Change Act 2008</b></p> <p>The Climate Change Act 2008 establishes statutory climate change projections and carbon budgets.</p> <p><b>The Climate Change Act 2008 (2050 Target Amendment) Order 2019</b></p> <p>This came into force 27 June 2019 and changed the Government’s target for reducing greenhouse gas emissions by 2050 from at least 80% to 100% compared to 1990 levels.</p> <p><b>Equality Act 2010</b></p> <p>The Equality Act 2010 establishes a duty (the Public Sector Equality Duty) to eliminate discrimination, advance equality of opportunity and foster good relations between persons who share a protected characteristic and persons who do not.</p> <p><b>Human Rights Act 1998</b></p> <p>The consideration of the land rights powers requested by the Applicant can engage various relevant articles under the Human Rights Act 1998.</p>
<ul style="list-style-type: none"> <li>• Acquisition of Land Act 1981</li> <li>• The Air Quality Directive</li> <li>• Air Quality (England) Regulations 2000</li> <li>• Air Quality Standards Regulations 2010 (as amended)</li> <li>• The Air Quality (Amendment of Domestic Regulations) (EU Exit) Regulations 2019</li> <li>• Ancient Monuments and Archaeological Areas Act 1979</li> <li>• Building Act 1984 and the Building Regulations 2010</li> <li>• Carbon Budget Order 2021</li> <li>• Climate Change Act 2008 (Credit Limit) Order 2021</li> <li>• Compulsory Purchase Act 1965</li> <li>• Compulsory Purchase (Vesting Declarations) Act 1981</li> <li>• Conservation of Habitats and Species Regulations 2017 as amended by the Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019</li> <li>• Contaminated Land (England) (Amendment) Regulations 2012 (‘Contaminated Land Regulations’)</li> <li>• Control of Major Accidents Hazard (COMAH) Regulations 2015</li> <li>• Control of Pollution Act 1974</li> <li>• Control of Pollution (Oil Storage) (England) Regulations 2001</li> <li>• Control of Substances Hazardous to Health (Amendment) Regulations 2004</li> <li>• The Control of Electromagnetic Fields at Work Regulations 2016</li> <li>• Countryside and Rights of Way Act 2000</li> <li>• Eels (England and Wales) Regulations 2009</li> <li>• Electricity Act 1989</li> <li>• Electricity Safety, Quality and Continuity Regulations 2002</li> <li>• Environment Act 1995</li> <li>• Environment Act 2021</li> </ul>

- Environment (Amendment etc.) (EU Exit) Regulations 2019
- Environment (Miscellaneous Amendments) (EU Exit) Regulations 2020
- Environmental Damage (Prevention and Remediation) (England) Regulations 2015
- Environmental Impact Assessment Directive 1995
- Environmental Noise (England) Regulations 2006 (as amended)
- Environmental Permitting (England and Wales) Regulations 2016
- Environmental Permitting (England and Wales) (Amendment) (EU Exit) Regulations 2019
- Environmental Protection Act 1990
- Environmental Targets (Fine Particulate Matter) (England) Regulations 2023
- European Commission Circular Economy Package Environmental Protection Act 1990
- European Landscape Convention (ELC) (Council of Europe, 2016)
- 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
- Hedgerow Regulations 1997
- Highways Act 1980
- Human Rights Act 1998
- The Infrastructure Planning (Decisions) Regulations 2010
- Infrastructure Planning (Environmental Impact Assessment) Regulations 2017
- Invasive Alien Species (Enforcement and Permitting) Order 2019
- Land Compensation Act 1961
- 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
- Salmon and Freshwater Fisheries Act 1975
- Town and Country Planning Act 1990
- The Town and Country Planning (Tree Preservation) (England) Regulations 2012
- Waste Framework Directive (2008/98/EC)
- 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 (as amended)

**Table A2 – National Policy and Guidance**

<b>National Policy and Guidance</b>
<p><b>Overarching National Policy Statement for Energy (NPS EN-1) (dated November 2023, designated on 17 January 2024)</b></p> <p>This 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.</p>
<p><b>National Policy Statement for Renewable Energy (NPS EN-3) (dated November 2023, designated on 17 January 2024)</b></p> <p>It 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.</p>
<p><b>National Policy Statement for Electricity Networks Infrastructure (NPS EN-5) (dated November 2023, designated on 17 January 2024)</b></p> <p>Amongst other things, this NPS provides policy for underground electricity distribution systems that constitute Associated Development to a solar photovoltaic NSIP.</p>
<p>Air Quality Strategy (2023)  British Energy Security Strategy (2022)  Carbon capture, usage and storage net zero investment roadmap (2023)  Clean Air Strategy (2019)  Clean Growth Strategy (2018)  Clean Power 2030 Action Plan (2024)  Clean Power 2030: Advice on Achieving Clean Power for Great Britain by 2030 (2024)  Energy White Paper: Powering our Net Zero Future (2020)  Environment Improvement Plan (2023)  The Glasgow Pact (2021)  A Green Future: Our 25 Year Plan to Improve the Environment 2018  Industrial Decarbonisation Strategy (HM Government, 2021)  National Infrastructure Strategy (2020)  The National Planning Policy Framework (December 2024) (NPPF)</p>

Natural England and Department of Environment, Food and Rural Affairs (Defra) Standing Advice (protected species) 2014  
 Net Zero Strategy: Build Back Greener (2021)  
 Net Zero: The UK's Contribution to Stopping Global Warming Emissions (2019)  
 Noise Policy Statement for England (2010)  
 Non-Statutory Technical Standards for SuDS (2015)  
 The Paris Agreement (2015)  
 Powering up Britain (DESNZ, 2023)  
 Solar roadmap: UK Powered by solar (2025)  
 Ten Point Plan for a Green Industrial Revolution (2020)  
 The Waste Management Plan for England 2021  
 Written Ministerial Statement (WMS) by the former SoS for Communities and Local Government (March 2015)  
 WMS 'Solar and protecting our Food Security and Best and Most Versatile (BMV) Land (May 2024)

**Table A3 – Summary of Regional Policy**

**Humber River Basin Management Plan**

The Environment Agency prepares water management plans at regional level setting out how organisations, stakeholders and communities will work together to improve the water environment alongside legally binding, locally specific, environmental objectives. It contains the Water Framework Directive status of the water bodies in the area and are updated on a six year cycle. Water bodies within the Order limits fall within the Humber River Basin Management Plan. This was updated in October 2022 and will remain in place until 2027.

**Table A4 - List of Development Plan Policies**

Plan	Relevant policies
City of Doncaster 2015-2035 (adopted September 2021)	<ul style="list-style-type: none"> <li>• Policy 2 Level of Growth</li> <li>• Policy 3 Employment Allocations</li> <li>• Policy 13 Promoting Sustainable Transport in New Development</li> <li>• Policy 18 Development Affecting Public Rights of Way</li> <li>• Policy 19 Access, Design and Layout of Public Rights of Way</li> <li>• Policy 20 Public Rights of Way Crossing Roads, Railways, Canals and Rivers</li> <li>• Policy 25 Development in the Countryside Area</li> <li>• Policy 26 Green Infrastructure</li> <li>• Policy 29 Ecological Networks</li> <li>• Policy 30 Valuing Biodiversity and Geodiversity</li> <li>• Policy 31 Local Wildlife and Geological Sites</li> <li>• Policy 32 Woodlands, Trees and Hedgerows</li> <li>• Policy 33 Landscape</li> <li>• Policy 34 Valuing our Historic Environment</li> <li>• Policy 35 Understanding and Recording the Historic Environment</li> <li>• Policy 36 Listed Buildings</li> <li>• Policy 37 Conservation Areas</li> <li>• Policy 39 Development Affecting Archaeology</li> <li>• Policy 40 Buildings or Structures of Local Historic Interest</li> </ul>

	<ul style="list-style-type: none"> <li>• Policy 41 Character and Local Distinctiveness</li> <li>• Policy 48 Landscaping of New Developments</li> <li>• Policy 50 Health</li> <li>• Policy 54 Pollution</li> <li>• Policy 55 Contamination and Unstable Land</li> <li>• Policy 56 Drainage</li> <li>• Policy 57 Flood Risk Management</li> <li>• Policy 58 Low Carbon and Renewable Energy</li> <li>• Policy 60 Protecting and Enhancing Doncaster's Soil and Water Resources</li> <li>• Policy 61 Providing for and Safeguarding Mineral Resources</li> </ul>
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## **APPENDIX B: LIST OF ABBREVIATIONS**



## Appendix B: List of Abbreviations

AA	Appropriate Assessment
AC	Alternating Current
AEP	Annual Exceedance Probability
AIL	Abnormal Indivisible Load
ALC	Agricultural Land Classification
APs	Affected Person
ATC	Automatic Traffic Counts
BESS	Battery Energy Storage System
BHT	The Burnet Heritage Trust
BMV	Best and Most Versatile
BNG	Biodiversity Net Gain
BoR	Book of Reference
BS	British Standard
CA	Compulsory Acquisition
CAH	Compulsory Acquisition Hearing
CCA2008	Climate Change Act 2008
CDC	City of Doncaster Council
CEMP	Construction Environmental Management Plan
CTMP	Construction Traffic Management Plan
DCO	Development Consent Order
dDCO	Draft Development Consent Order
Defra	Department for Environment, Food and Rural Affairs
DEMP	Decommissioning Environmental Management Plan
DESNZ	Department for Energy Security and Net Zero
DLP	Doncaster Local Plan
DMRB	Design Manual for Roads and Bridges
DTMP	Decommissioning Traffic Management Plan
EA	Environment Agency
EEA	European Economic Area
EIA	Environmental Impact Assessment
EM	Explanatory Memorandum
EMF	Electromagnetic Fields
ES	Environmental Statement
ESL	Elba Securities Limited
ExA	Examining Authority
ExQ	Examination Written Questions
fAMS	Framework Archaeological Mitigation Strategy
fBSMP	Framework Battery Safety Management Plan
fCEMP	Framework Construction Environmental Management Plan
fCTMP	Framework Construction Traffic Management Plan
fDEMP	Framework Decommissioning Environmental Management Plan
fDS	Framework Drainage Strategy
fLEMP	Framework Landscape and Ecological Management Plan
FLL	Functionally Linked Land
fOEMP	Framework Operational Environmental Management Plan
fPRoWMP	Framework Public Rights of Way Management Plan

FRA	Flood Risk Assessment
fSMP	Framework Soil Management Plan
fSSCEP	Framework Skills, Supply Chain and Employment Plan
fSWMP	Framework Site Waste Management Plan
GCC	Grid Connection Corridor
GCLD	Grid Connection Line Drop
GCN	Great Crested Newts
GHG	Greenhouse Gas
GVA	Gross Value Added
Ha	Hectares
HDD	Horizontal Directional Drilling
HER	Historic Environment Record
HGV	Heavy Goods Vehicle
HRA	Habitats Regulations Assessment
HRA 1998	Human Rights Act 1998
IAP1	Initial Assessment of Principal Issues
ICCI	In-combination Climate Change Impact Assessment
IEMA	Institute of Environmental Management and Assessment (NB now Institute of Sustainability and Environmental Professionals (ISEP))
IP	Interested Party
ISH	Issue Specific Hearing
Km	Kilometres
kV	Kilovolt
LCA	Landscape Character Area
LEMP	Landscape and Ecological Management Plan
LIR	Local Impact Report
LLCA	Local Landscape Character Area
LOAEL	Lowest Observed Adverse Effect Level
LSE	Likely Significant Effects
LVIA	Landscape and Visual Impact Assessment
LWS	Local Wildlife Sites
m	metre
MSA	Minerals Safeguarding Area
MW	Megawatts
MWh	Megawatt Hour
NDHA	Non-designated Heritage Assets
NE	Natural England
NETS	National Electricity Transmission System
NFCC	National Fire Chief Council
NGA	Noise Generating Activity
NPA 2017	Neighbourhood Planning Act 2017
NPPF	National Planning Policy Framework
NPS	National Policy Statement
NPSE	Noise Policy Statement for England
NR	Network Rail
NRMM	Non Road Mobile Machinery
NSER	No Significant Effects Report
NSIP	Nationally Significant Infrastructure Project
ODPS	Outline Design Parameters Statement

OEMP	Operational Environment Management Plan
OFH	Open Floor Hearing
OSS	On-site Substation
PA2008	Planning Act 2008
PDL	Previously Developed Land
Pelion	Pelion New Energy GmbH
PIC	Personal Injury Collision
PM	Preliminary Meeting
PP	Protective Provisions
PPG	Planning Practice Guidance
PRA	Preliminary Risk Assessment
PRoW	Public Right of Way
PSED	Public Sector Equality Duty
PV	Photovoltaic
rDCO	Recommended Development Consent Order
RIES	Report on the Implications for European Sites
RR	Relevant Representation
s	section
SAC	Special Area of Conservation
SMP	Soil Management Plan
SOAEL	Significant Observed Adverse Effect Level
SoR	Statement of Reasons
SoS	Secretary of State
SPA	Special Protection Area
SNS	Statutory Nuisance Statement
SRN	Strategic Road Network
SSSI	Site of Special Scientific Interest
SU	Statutory Undertaker
SuDS	Sustainable Drainage Systems
SYAS	South Yorkshire Archaeological Service
SYFRS	South Yorkshire Fire and Rescue Service
tCO <sub>2</sub> e	Tonnes Carbon Dioxide Equivalent
TP	Temporary Possession
USI	Unaccompanied Site Inspection
WFD	Water Framework Directive
WMS	Written Ministerial Statement
WR	Written Representation
ZoI	Zone of Influence

## **APPENDIX C: THE RECOMMENDED DCO**

**2021 No.**

**INFRASTRUCTURE PLANNING**

**The Fenwick Solar Farm Order 2021[]**

*Made* - - - - - \*\*\*

*Laid before Parliament* \*\*\*

*Coming into force* \*\*\*

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- 28. Modification of Part 1 of the Compulsory Purchase Act 1965
- 29. Rights under or over streets
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## SCHEDULE 15 — PROCEDURE FOR DISCHARGE OF REQUIREMENTS

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

The application has been examined by the Examining Authority appointed by the Secretary of State pursuant to chapter 2 of Part 6 of the 2008 Act and carried out in accordance with chapter 4 of Part 6 of the Infrastructure Planning (Examination Procedure) Rules 2010(c).

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

The Secretary of State has considered the report and recommendation of the Examining Authority, has taken into account the environmental information in accordance with regulation 4 of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017(e) and has had regard to the documents and matters referred to in section 104(2) of the 2008 Act.

The Secretary of State, having decided the application, has determined to make an Order giving effect to the proposals comprised in the application on the terms that in the opinion of the Secretary of State are not materially different from those proposed in the application.

The Secretary of State, in exercise of the powers conferred by sections 114(f), 115(g), 120(h), 122(i) 123(j) and 140 of the 2008 Act, makes the following Order—

### PART 1 PRELIMINARY

#### Citation and commencement

1. This Order may be cited as the Fenwick Solar Farm Order and comes into force on [\*] 202[\*].

#### Interpretation

- 2.—(1) In this Order—

“the 1961 Act” means the Land Compensation Act 1961(k);

“the 1965 Act” means the Compulsory Purchase Act 1965(l);

“the 1980 Act” means the Highways Act 1980(m);

- 
- (a) 2008 c. 29. Section 37 was amended by section 137(5) of, and paragraph 5 of Schedule 13 to the Localism Act 2011 (c. 20).  
(b) S.I. 2009/2264, amended by S.I. 2010/439, S.I. 2010/602, S.I. 2012/635, S.I. 2012/2654, S.I. 2012/2732, S.I. 2013/522, S.I. 2013/755, S.I. 2014/469, S.I. 2014/2381, S.I. 2015/377, S.I. 2015/1682, S.I. 2017/524, 2017/572 and S.I. 2018/378.  
(c) S.I. 2010/103.  
(d) As amended by paragraph 29(1) and (3) of Part 1 of Schedule 13 to the Localism Act 2011 (c. 20).  
(e) S.I. 2017/572.  
(f) As amended by paragraph 55 of Part 1 of Schedule 13 to the Localism Act 2011 (c. 20).  
(g) As amended by section 160 of the Housing and Planning Act 2016 (c. 22) and section 43 of the Wales Act 2017 (c. 4).  
(h) As amended by section 140 and paragraph 60 of Part 1 of Schedule 13 to the Localism Act 2011 (c. 20).  
(i) As amended by paragraph 62 of Part 1 of Schedule 13 to the Localism Act 2011 (c. 20).  
(j) Ibid.  
(k) 1961 c. 33.  
(l) 1965 c. 56.  
(m) 1980 c. 66.

“the 1981 Act” means the Compulsory Purchase (Vesting Declarations) Act 1981(a);

“the 1984 Act” means the Road Traffic Regulation Act 1984(b);

“the 1989 Act” means the Electricity Act 1989(c);

“the 1990 Act” means the Town and Country Planning Act 1990(d);

“the 1991 Act” means the New Roads and Street Works Act 1991(e);

“the 2008 Act” means the Planning Act 2008(f);

“address” includes any number or address used for the purposes of electronic transmission;

“apparatus” has the same meaning as in Part 3 (street works in England and Wales) of the 1991 Act except that, unless otherwise provided, it further includes pipelines (and parts of them), aerial markers, cathodic protection test posts, field boundary markers, transformer rectifier kiosks, electricity cables, telecommunications equipment and electricity cabinets;

“authorised development” means the development and associated development, which is development within the meaning of section 32 (meaning of “development”) of the 2008 Act, authorised by this Order and as described in Schedule 1 (authorised development);

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

“building” includes any structure or erection or any part of a building, structure or erection;

“carriageway” has the same meaning as in the 1980 Act;

“commence” means beginning to carry out a material operation, as defined in section 155 of the 2008 Act (when development begins), comprised in or carried out or for the purposes of the authorised development other than the permitted preliminary works (except where stated to the contrary) and “commencement”, “commenced” and cognate expressions are to be construed accordingly;

“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 and which is certified by the Secretary of State as the environmental statement for the purposes of this Order;

“footpath” and “footway” have the same meaning as in the 1980 Act;

“framework archaeological mitigation strategy” means the document of that name identified in the table at Schedule 12 and which is certified by the Secretary of State as the framework archaeological mitigation strategy for the purposes of the Order;

“framework construction environmental management plan” means the document of that name identified in the table at Schedule 12 and which is certified by the Secretary of State as the framework construction environmental management plan for the purposes of this Order;

“framework construction traffic management plan” means the document of that name identified in the table at Schedule 12 and which is certified by the Secretary of State as the framework construction traffic management plan for the purposes of this Order;

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- (a) 1981 c. 66.
  - (b) 1984 c. 27.
  - (c) 1989 c. 29.
  - (d) 1990 c. 8.
  - (e) 1991 c. 22. Section 48(3A) was inserted by section 124 of the Local Transport Act 2008 (c. 26). Sections 78(4), 80(4) and 83(4) were amended by section 40 of, and Schedule 1 to, the Traffic Management Act 2004 (c. 18).
  - (f) 2008 c. 29.

“framework decommissioning environmental management plan” means the document of that name identified in the table at Schedule 12 and which is certified by the Secretary of State as the framework decommissioning environmental management plan for the purposes of this Order;

“framework drainage strategy” means the document of that name identified in the table at Schedule 12 and which is certified by the Secretary of State as the framework drainage strategy for the purposes of this Order;

“framework landscape and ecological management plan” means the document of that name identified in the table at Schedule 12 and which is certified by the Secretary of State as the framework landscape and ecological management plan for the purposes of this Order;

“framework operational environmental management plan” means the document of that name identified in the table at Schedule 12 and which is certified by the Secretary of State as the framework operational environmental management plan for the purposes of this Order;

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

“framework skills, supply chain and employment plan” means the plan of that name identified in the table at Schedule 12 and which is certified by the Secretary of State as the framework skills, supply chain and employment plan for the purposes of this Order;

“framework soil management plan” means the document of that name identified in the table at Schedule 12 and which is certified by the Secretary of State as the framework soil management plan for the purposes of this Order;

“highway” and “highway authority” have the same meaning as in the 1980 Act<sup>(a)</sup>;

“holding company” has the same meaning as in section 1159 of the Companies Act 2006<sup>(b)</sup>;

“land plans” means the plans of that name identified in the table at Schedule 12 and which are certified by the Secretary of State as the land plans for the purposes of this Order;

“maintain” includes inspect, repair, adjust, alter, remove, refurbish, reconstruct, replace and improve any part of, but not remove, reconstruct or replace the whole of, the authorised development and “maintenance” and “maintaining” are to be construed accordingly;

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

“Order land” means the land which is required for, or is required to facilitate, or is incidental to, or is affected by the authorised development shown coloured pink, blue, yellow or green on the land plans and described in the book of reference;

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

“outline design parameters statement” means the document of that name identified in the table of Schedule 12 and which is certified by the Secretary of State as the outline design principles for the purposes of this Order;

“owner”, in relation to land, has the same meaning as in section 7 (interpretation) of the Acquisition of Land Act 1981<sup>(c)</sup>;

“permit scheme” means The Traffic Management (Doncaster Borough Council) Permit Scheme Order 2019, or any subsequent Permit Scheme Order made by the City of Doncaster Council to vary or replace that Order as may be relevant and which is made under Part 3 of the Traffic Management Act 2004, as applicable for the location of the relevant works;

“permitted preliminary works” means all or any of—

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(a) “highway” is defined in section 328(1). For “highway authority” see section 1.

(b) 2006 c. 46.

(c) 1981 c. 67.

- (c) environmental surveys, geotechnical surveys, intrusive archaeological surveys and other investigations for the purpose of assessing ground conditions;
- (d) removal of plant and machinery;
- (e) above ground site preparation for temporary facilities for the use of contractors during construction;
- (f) remedial work in respect of any contamination or other adverse ground conditions;
- (g) diversion and laying of apparatus;
- (h) the provision of temporary means of enclosure and site security for construction;
- (i) the temporary display of site notices or advertisements;
- (j) site clearance (including vegetation removal, demolition of existing structures); or
- (k) advanced planting to allow for an early establishment of protective screening;

“plot” means any plot as may be identified by reference to a number and which is listed in the book of reference and shown on the land plans;

“relevant planning authority” means the City of Doncaster Council or any successor to it as local planning authority for the land to which the provisions of this Order apply;

“requirements” means those matters set out in Schedule 2 and “requirement” means any one of the requirements and any reference to a numbered requirement is to be construed accordingly;

“statutory undertaker” means any person falling within section 127(8) (statutory undertakers’ land) of the 2008 Act and includes a public communications provider defined by section 151(1) (interpretation of chapter 1) of the Communications Act 2003(a);

“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(b);

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

“street works” means the works listed in article 8(1) (street works);

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

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

“traffic regulation measures plan” means the document of that name identified in the table at Schedule 12 and which is certified by the Secretary of State as the traffic regulation measures plan for the purposes of this Order;

“undertaker” means Fenwick Solar Project Limited (company number 13705886) and any other person who for the time being has the benefit of this Order in accordance with article 35 (benefit of the Order) or article 36 (consent to transfer the benefit of the Order);

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

“watercourse” includes every river, stream, creek, ditch, drain, canal, cut, culvert, dyke, sluice, sewer and passage through which water flows except a public sewer or drain;

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(a) 2003 c. 21.

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

(c) 2006 c. 46.

(d) 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.

“working day” means any day apart from Saturday, Sunday or any statutory bank or public holiday;

“works plans” means the plans of that name identified in the table at Schedule 12 and which are certified by the Secretary of State as the works plans for the purposes of this Order.

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

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

(4) References in this Order to numbered works are references to the works comprising the authorised development as numbered in Schedule 1 and shown on the works plans and a reference in this Order to a work designated by a number is a reference to the work so designated in that Schedule.

(5) In this Order, the expression “includes” is to be construed without limitation.

(6) In this Order, references to any statutory body include that body’s successor bodies.

(7) In this Order, all references to the singular is a reference to the plural, and vice versa, except where explicitly stated.

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

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

## PART 2

### PRINCIPAL POWERS

#### **Development consent etc. granted by this Order**

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

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

(3) The development consent granted under sub-paragraph (1) authorises the carrying out within the Order limits of either Work No.4 or Work No.5(b) (but not both).

#### **Operation of generating station**

4.—(1) The undertaker is authorised to use and operate the generating station comprised in the authorised development.

(2) This article does not relieve the undertaker of any requirement to obtain any permit or licence under any other legislation that may be required from time to time to authorise the operation of an electricity generating station.



## Power to maintain the authorised development

- 5.—(1) The undertaker may at any time maintain the authorised development.
- (2) This article only authorises the carrying out of maintenance works within the Order limits.
- (3) This article does not authorise the carrying out of any works which are likely to give rise to any materially new or materially different effects that have not been assessed in the environmental statement.

## Application and modification of statutory provisions

6.—(1) The following provisions do not apply in relation to the construction of any work or the carrying out of any operation required for the purposes of, or in connection with, the construction, operation or maintenance of any part of the authorised development—

- (a) section 23 (prohibition of obstructions, etc. in watercourses) of the Land Drainage Act 1991(a);
- (b) section 32 (variation of awards)(b) of the Land Drainage Act 1991;
- (c) the provisions of any byelaws made under section 66 (powers to make byelaws)(c) of the Land Drainage Act 1991;
- (d) the provisions of any byelaws made under, or having effect as if made under, paragraphs 5, 6 or 6A of Schedule 25 (byelaw making powers of the appropriate agency) to the Water Resources Act 1991(d);
- (e) section 118 (consent request for discharge of trade effluent into public sewer) of the Water Industry Act 1991(e);
- (f) regulation 12 (requirement for environmental permit) of the Environmental Permitting (England and Wales) Regulations 2016(f) in respect of a flood risk activity only except in respect of the construction of any work or the carrying out of any operation required for the purposes of, or in connection with, the construction, operation or maintenance of any part of the authorised development undertaken within Plots 9/09, 9/12, 9/13, 9/14, 9/15, 10/01, 10/02, 10/03, 10/04, 10/05, 10/06, 10/07, 10/08, 10/09, 10/10, 10/11, 10/12, 10/13, 10/14 and 10/14 as marked within the land plans;
- (g) the legislation listed in Schedule 3 (legislation to be disapplied) in so far as the provisions still in force are incompatible with the powers contained within this Order; and
- (h) the provisions of the Neighbourhood Planning Act 2017(g) insofar as they relate to the temporary possession of land under articles 30 (temporary use of land for constructing the authorised development) and 31 (temporary use of land for maintaining the authorised development) of this Order.

(2) For the purposes of section 9 (requirement of licence for felling) of the Forestry Act 1967(h) any felling comprised in the carrying out of any work or operation required for the purposes of, or in connection with, the construction of the authorised development is deemed to be immediately

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- (a) 1991 c. 59. Section 23 was amended by paragraph 192(2) of Schedule 22 to the Environment Act 1995 (c. 25), paragraphs 25 and 32 of Schedule 2 to the Flood and Water Management Act 2010 (c. 29) and S.I. 2013/755.
  - (b) Section 32 was amended by S.I. 2013/755.
  - (c) Section 66 was amended by paragraphs 25 and 38 of Schedule 2 to the Flood and Water Management Act 2010 and section 86 of the Water Act 2014 (c. 21).
  - (d) Paragraph 5 was amended by section 100 of the Natural Environment and Rural Communities Act 2006 (c. 16), section 84 of, and paragraph 3 of Schedule 11 to the 2009 Act and S.I. 2013/755. Paragraph 6 was amended by section 105 of, and paragraph 26 of Schedule 15 to, the Environment Act 1995, sections 224, 233 and 321 of and paragraphs 20 and 24 of Schedule 16 and Part 5(B) of Schedule 22 to the 2009 Act and S.I. 2013/755. Paragraph 6A was inserted by section 103(3) of the Environment Act 1995.
  - (e) 1991 c. 56. Section 118 was amended by sections 2(2)(b) and 5(5)(f) of the Environment Act 1995 (c. 25) and sections 66(2)(a) and (b) of the Environment (Wales) Act 2016 (anaw 3).
  - (f) S.I. 2016/1154. Regulation 12 was amended by S.I. 2018/110.
  - (g) 2017 c. 20.
  - (h) Section 9 was amended by section 4 of, and paragraph 141 of, Schedule 2 to the Planning (Consequential Provisions) Act 1990 (c. 11) and S.I. 2013/755. There are other amendments to section 9 that are not relevant to this Order.

required for the purpose of carrying out development authorised by planning permission granted under the 1990 Act.

(3) Notwithstanding the provisions of section 208 (liability) of the 2008 Act, for the purposes of regulation 6 (meaning of “development”) of the Community Infrastructure Levy Regulations 2010<sup>(a)</sup> any building comprised in the authorised development is deemed to be—

- (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.

### **Defence to proceedings in respect of statutory nuisance**

7.—(1) Where proceedings are brought under section 82(1) (summary proceedings by a person aggrieved by statutory nuisance) of the Environmental Protection Act 1990<sup>(b)</sup> in relation to a nuisance falling within paragraph (g) of section 79(1) (noise emitted from premises so as to be prejudicial to health or a nuisance) of that Act no order may be made, and no fine may be imposed, under section 82(2) of that Act if—

- (a) the defendant shows that the nuisance—
  - (i) relates to premises used by the undertaker for the purposes of or in connection with the construction, maintenance or decommissioning of the authorised development and that the nuisance is attributable to the construction, maintenance or decommissioning of the authorised development in accordance with a notice served under section 60 (control of noise on construction site) of the Control of Pollution Act 1974<sup>(c)</sup>, or a consent given under section 61 (prior consent for work on construction sites) of that Act;
  - (ii) is a consequence of the construction or maintenance of the authorised development and that it cannot reasonably be avoided; or
- (b) the nuisance is a consequence of the use of the authorised development and that it cannot be reasonably avoided.

(2) Section 61(9) (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 the premises by the undertaker for the purposes of, or in connection with, the construction or maintenance of the authorised development.

## **PART 3**

### **STREETS**

#### **Street works**

8.—(1) The undertaker may, for the purposes of the authorised development, enter on so much of any of the streets specified in Schedule 4 (streets subject to street works) and may—

- (a) break up or open the street, or any sewer, drain or tunnel under it;
- (b) drill, tunnel or bore under the street;
- (c) place and keep apparatus in the street;
- (d) maintain apparatus in the street, change its position or remove it;
- (e) repair, replace or otherwise alter the surface or structure of the street or any culvert under the street; and

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<sup>(a)</sup> S.I. 2010/948, amended by S.I. 2011/987. There are other amending instruments but none are relevant to this Order.

<sup>(b)</sup> 1990 c. 43.

<sup>(c)</sup> 1974 c. 40.

- (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 permit scheme**

9.—(1) The permit scheme applies with the modifications set out in this article to street works carried out under the power conferred by article 8 (street works), article 10 (power to alter layout, etc., of streets) article 11 (construction and maintenance of altered streets) and article 15 (access to 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;
- (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 through the exercise of the powers conferred by this Order;
- (c) a permit may not be refused where the proposed reason for refusal is the inability to impose a condition which will not comply with paragraph (b); and
- (d) where a provisional advance authorisation has been granted to the undertaker in advance of the grant of a permit in relation to the construction of the authorised development, the highway authority may not grant a permit for any other works in the location during the time period to which that provisional advance authorisation relates save that nothing will restrict the ability of the highway authority to grant a permit for immediate works.

(3) Irrespective of anything which is stated to the contrary within the permit scheme, where the undertaker submits an application for a permit in relation to streetworks carried out under article 8 (street works) of this Order subject to proposed conditions and the highway authority wishes for different conditions to be imposed on the permit, the highway authority must seek to reach agreement with the undertaker on the conditions subject to which the permit is to be granted and provide alternative permit conditions, as appropriate, to the undertaker within 10 working days following the date on which the application for the permit is made by the undertaker and must not refuse an application for a permit before the end of the period which is 5 working days following the date on which the alternative permit conditions are provided to the undertaker.

(4) Where the undertaker confirms its agreement to the alternative permit conditions provided by the relevant highway authority pursuant to paragraph (3) before the expiry of 5 working days following the date on which any such alternative permit conditions are provided to the undertaker, the relevant highway authority must grant the permit subject to those conditions.

(5) Any alternative permit conditions provided by the highway authority in accordance with paragraph (3) must comply with paragraph (2).

(6) References to moratoria in paragraph (2) mean restrictions imposed under section 58 (restrictions on works following substantial road works) or section 58A (restrictions on works following substantial street works) of the 1991 Act.

(7) Reference to immediate works in paragraph (2)(d) means emergency works as that term is defined in section 52 of the 1991 Act and urgent works as that term is defined in regulation 3(1) of the Street Works (Registers, Notices, Directions and Designations) (England) Regulations 2007.

(8) 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 Schedule 15 (Discharge of Requirements) of this Order.

### **Power to alter layout, etc., of streets**

**10.—**(1) The undertaker may for the purposes of the authorised development alter the layout of or carry out any works in the street—

- (a) in the case of the streets specified in column 2 of the table in Part 1 (permanent alteration of layout) of Schedule 5 (alteration of streets) permanently in the manner specified in relation to that street in column 3; and
- (b) in the case of the streets as specified in column 2 of the table in Part 2 (temporary alteration of layout) of Schedule 5 temporarily in the manner specified in relation to that street in column 3.

(2) Without prejudice to the specific powers conferred by paragraph (1), but subject to paragraphs (3) and (4), the undertaker may, for the purposes of constructing, operating or maintaining the authorised development, alter the layout of any street and, without limitation on the scope of this paragraph, the undertaker may—

- (a) alter the level or increase the width of any kerb, footway, cycle track or verge;
- (b) make and maintain passing places; and
- (c) alter, remove, replace and relocate any street furniture, including bollards, lighting columns, road signs and chevron signs.

(3) The undertaker must restore any street that has been temporarily altered under this Order to the reasonable satisfaction of the street authority.

(4) The powers conferred by paragraph (2) may not be exercised without the consent of the street authority, such consent to be in a form reasonably required by the street authority who may attach reasonable conditions to any such consent.

(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**

**11.—**(1) The permanent alterations to each of the streets specified in Part 1 (permanent alteration of layout) of Schedule 5 (alteration of streets) to this Order must be completed to the reasonable satisfaction of the highway or street authority (as relevant) and, unless otherwise agreed by the highway or street authority, the alterations must be maintained by and at the expense of the undertaker for a period of 12 months from their completion and from the expiry of that period by and at the expense of the highway or street authority (as relevant).

(2) Subject to paragraph (3), the temporary alterations to each of the streets specified in Part 2 (temporary alteration of layout) of Schedule 5 must be completed to the reasonable satisfaction of the street authority and the temporary alterations must be maintained by and at the expense of the undertaker.

(3) Those restoration works carried out pursuant to article 10(3) (power to alter layout, etc., of streets) must be completed to the reasonable satisfaction of the street authority and must be maintained by the undertaker for a period of 12 months from their completion and from the expiry of that period by and at the expense of the street authority.

(4) In any action against the undertaker in respect of loss or damage resulting from any failure by it to maintain a street under this article, it is a defence (without prejudice to any other defence or the application of the law relating to contributory negligence) to prove that the undertaker had taken such care as in all the circumstances was reasonably required to secure that the part of the street to which the action relates was not dangerous to traffic.

(5) For the purposes of a defence under paragraph (4), a court must in particular have regard to the following matters—

- (a) the character of the street including the traffic which was reasonably to be expected to use it;
- (b) the standard of maintenance appropriate for a street of that character and used by such traffic;
- (c) the state of repair in which a reasonable person would have expected to find the street;
- (d) whether the undertaker knew, or could reasonably have been expected to know, that the condition of the part of the street to which the action relates was likely to cause danger to users of the street; and
- (e) where the undertaker could not reasonably have been expected to repair that part of the street before the cause of action arose, what warning notices of its condition had been displayed,

but for the purposes of such a defence it is not relevant that the undertaker had arranged for a competent person to carry out or supervise the maintenance of that part of the street to which the action relates unless it is also proved that the undertaker had given that person proper instructions with regard to the maintenance of the street and that those instructions had been carried out.

(6) Paragraphs (2) to (5) do not apply where the undertaker is the street authority for a street in which the works are being carried out.

### **Temporary closure of streets and public rights of way**

**12.—**(1) The undertaker, during and for the purposes of constructing or maintaining the authorised development, may temporarily close, prohibit the use of, restrict the use of, authorise the use of, alter or divert any street or public right of way and may for any reasonable time—

- (a) divert the traffic or a class of traffic from the street or public right of way;
- (b) authorise the use of motor vehicles on classes of public rights of way where, notwithstanding the provisions of this article, there is otherwise no public right to use motor vehicles; and
- (c) subject to paragraph (2), prevent all persons from passing along the street or public right of way.

(2) The undertaker must provide reasonable access for pedestrians going to or from premises abutting a street or public right of way affected by the temporary closure, prohibition, restriction, alteration or diversion of a street or public right of way under this article if there would otherwise be no such access.

(3) Without prejudice to the generality of paragraph (1), the undertaker may temporarily close, prohibit the use of, authorise the use of, restrict the use of, alter or divert—

- (a) the streets specified in column 2 of the table in Part 1 (streets to be temporarily closed) of Schedule 6 (streets and public rights of way) to the extent specified in column 3 of that table;
- (b) the public rights of way specified in column 2 of the table in Part 2 (public rights of way to be temporarily closed and diverted) of Schedule 6 to the extent specified in column 3 of that table;
- (c) the public rights of way specified in column 2 of the table in Part 3 (permanent use of motor vehicles on public rights of way) of Schedule 6 to the extent specified in column 3 of that table;
- (d) the public rights of way specified in column 2 of the table in Part 4 (temporary management of public rights of way) of Schedule 6 to the extent specified in column 3 of that table; and
- (e) the public rights of way specified in column 2 of the table in Part 5 (temporary use of motor vehicles on public rights of way) of Schedule 6 to the extent specified in column 3 of that table.

(4) The undertaker must not temporarily close, prohibit the use of, authorise the use of, restrict the use of, alter or divert—

- (a) any street or public right of way specified in paragraph (3) without first consulting the street authority; and
- (b) any other street or public right of way without the consent of the street authority, and the street authority may attach reasonable conditions to any such consent.

(5) Any person who suffers loss by the suspension of any private right of way under this article is entitled to compensation to be determined, in case of dispute, under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

(6) Without prejudice to the scope of paragraph (1), the undertaker may use any street or public right of way which has been temporarily closed under the powers conferred by this article and within the Order limits as a temporary working site.

(7) In this article expressions used in this article and in the 1984 Act have the same meaning.

(8) Nothing in this article prevents the undertaker from temporarily closing, prohibiting the use of, authorising the use of, restricting the use of, altering or diverting a street or public right of way under this article more than once.

(9) The undertaker, during and for the purposes of carrying out the authorised development, may close, prohibit the use of, restrict the use of, alter or divert any public right of way within the Order limits which is added to the definitive map and statement (within the meaning of the Wildlife and Countryside Act 1981) on or after 31 October 2024.

### **Permanent closure of public rights of way**

**13.—**(1) Subject to the provisions of this article, the undertaker may close the public rights of way shown on the rights of way and access plans and specified in Part 6 (permanent closure and diversion of public rights of way of Schedule 6 (streets and public rights of way) to the extent specified and described in column (3) of that Part of that Schedule.

(2) No public right of way specified in Part 6 of Schedule 6 is to be wholly or partly closed under this article unless

- (a) the new public right of way to be constructed and substituted for it, which is specified in column (4) of that Part of that Schedule, has been completed to the reasonable satisfaction of the street authority and is open for use; or
- (b) a temporary alternative route for the passage of such traffic as could have used the public right of way is first provided and subsequently maintained by the undertaker, to the reasonable satisfaction of the street authority, between the commencement and termination points for the public right of way until the completion and opening of the new public right of way in accordance with sub-paragraph (a).

(3) Where a public right of way has been permanently closed and the new permanent route completed under sub-paragraph (2)—

- (a) all rights of way over or along the public right of way so closed are extinguished; and
- (b) the undertaker may appropriate and use for the purposes of the authorised development the site of the public right of way only where that public right of way is bounded on both sides by land owned by the undertaker.

(4) Following the opening for public use of the new route of a public right of way once the previous route has been permanently closed and diverted under the powers conferred by this article, the undertaker must supply the surveying authority with plans of the new route of the public right of way together with a statement of the modifications required to the definitive statement.

(5) The plans and statement of modifications to the definitive statement referred to in paragraph (4) are deemed to be an order modifying the definitive map and statement made under section 53(3)(a) (duty to keep definitive map and statement under continuous review) of the Wildlife and Countryside Act 1981.

(6) This article is subject to article 33 (apparatus and rights of statutory undertakers in closed streets).



(7) In this article “surveying authority” has the meaning given to it by section 66(1) (interpretation of Part III) of the Wildlife and Countryside Act 1981.

### **Use of private roads**

**14.—**(1) The undertaker may use the private roads within the Order limits as specified on the streets, rights of way and access plans for the passage of persons or vehicles (with or without materials, plant and machinery) for the purposes of, or in connection with, the construction or maintenance of the authorised development.

(2) The undertaker must compensate the person liable for the repair of a road to which paragraph (1) applies for any loss or damage which that person may suffer by reason of the exercise of the power conferred by paragraph (1).

(3) Any dispute as to a person’s entitlement to compensation under paragraph (2), or as to the amount of such compensation, is to be determined under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

### **Access to works**

**15.** 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 of Schedule 7 (means of access to works);
- (b) form and lay out the temporary means of access, or improve existing means of access, in the locations specified in Part 2 of Schedule 7; 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.

### **Agreements with street authorities**

**16.—**(1) A street authority and the undertaker may enter into agreements with respect to—

- (a) the strengthening, improvement, repair or reconstruction of any street under the powers conferred by this Order;
- (b) any closure, prohibition, restriction, alteration or diversion of a street authorised by this Order;
- (c) the undertaking in the street of any of the works referred to in article 8 (street works), article 10 (power to alter layout, etc., of streets), article 11 (construction and maintenance of altered streets) and article 15 (access to works); or
- (d) the adoption by a street authority which is the highway authority of works—
  - (i) undertaken on a street which is existing public maintainable highway; or
  - (ii) which the undertaker and highway authority agree to be adopted as public maintainable highway.

(2) If such agreement provides that the street authority must undertake works on behalf of the undertaker the agreement may, without prejudice to the generality of paragraph (1)—

- (a) make provision for the street authority to carry out any function under this Order which relates to the street in question;
- (b) specify a reasonable time for the completion of the works; and
- (c) contain such terms as to payment and otherwise as the parties consider appropriate.

(3) Prior to the commencement of any works under Part 3 of this Order, the undertaker must enter into an agreement which is substantially in accordance with the framework highways works agreement between the City of Doncaster Council and the undertaker dated 20 August 2025, or any subsequent replacement agreement as to highways works.

## Traffic regulation measures

17.—(1) Subject to the provisions of this article the undertaker may at any time, in the interests of safety and for the purposes of, or in connection with, the construction of the authorised development, temporarily place traffic signs and signals in the extents of the road specified in column 2 of the table in Schedule 8 (traffic regulation measures) and the placing of those traffic signs and signals is deemed to have been permitted by the traffic authority for the purposes of section 65 of the 1984 Act and the Traffic Signs Regulations and General Directions 2016(a).

(2) Subject to the provisions of this article and without limitation to the exercise of the powers conferred by paragraph (1), the undertaker may make temporary provision for the purposes of the construction of the authorised development—

- (a) as to the speed at which vehicles may proceed along any road;
- (b) permitting, prohibiting or restricting the stopping, waiting, loading or unloading of vehicles on any road;
- (c) as to the prescribed routes for vehicular traffic or the direction or priority of vehicular traffic on any road;
- (d) permitting, prohibiting or restricting the use by vehicular traffic or non-vehicular traffic of any road; and
- (e) suspending or amending in whole or in part any order made, or having effect as if made, under the 1984 Act.

(3) No speed limit imposed by or under this Order applies to vehicles falling within regulation 3(4) of the Road Traffic Exemptions (Special Forces) (Variation and Amendment) Regulations 2011(b) when in accordance with regulation 3(5) of those regulations.

(4) Before exercising the power conferred by paragraph (2) the undertaker must—

- (a) consult with the chief officer of police in whose area the road is situated; and
- (b) obtain the written consent of the traffic authority and the street authority may attach reasonable conditions to any such consent.

(5) The undertaker must not exercise the powers in paragraph (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;
- (b) not less than 5 working 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; and
- (c) not less than 5 working days before the provision is to take effect, displayed a site notice containing the same information as in the newspaper notices specified at sub-paragraph (b) at each end of the length of road affected.

(6) Any provision made under the powers conferred by paragraph (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 paragraph (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).

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(a) S.I. 2016/362.

(b) S.I. 2011/935.

(c) 2004 c. 18.

(8) A copy of the instrument referred to in paragraph 16(7)(a) must be served on the traffic authority as soon as reasonably practicable after being made.

## PART 4

### SUPPLEMENTAL POWERS

#### **Discharge of water**

**18.**—(1) Subject to paragraphs (3), (4) and (8) the undertaker may use any watercourse or any public sewer or drain for the drainage of water in connection with the construction or maintenance of the authorised development and for that purpose may lay down, take up and alter pipes and may, on any land within the Order limits, make openings into, and connections with, the watercourse, public sewer or drain.

(2) Any dispute arising from the making of connections to or the use of a public sewer or drain by the undertaker under paragraph (1) is to be determined as if it were a dispute under section 106 (right to communicate with public sewers) of the Water Industry Act 1991(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 whose consent may be given subject to terms and conditions as that person may reasonably impose.

(4) The undertaker must not make any opening into any public sewer or drain except—

- (a) in accordance with plans approved by the person to whom the sewer or drain belongs; and
- (b) where that person has been given the opportunity to supervise the making of the opening.

(5) Where the undertaker discharges water into, or makes any opening into, a watercourse, public sewer or drain belonging to or under the control of a drainage authority (as defined in Part 3 of Schedule 14 (protective provisions)), the provisions of Part 3 of Schedule 14 apply in substitution for the provisions of paragraphs (3) and (4).

(6) The undertaker must take such steps as are reasonably practicable to secure that any water discharged into a watercourse or public sewer or drain pursuant to this article is as free as may be practicable from gravel, soil or other solid substance, oil or matter in suspension.

(7) This article does not authorise the entry into controlled waters (within the meaning given by section 104 of the Water Resources Act 1991(b)) of any matter whose entry or discharge into controlled waters requires a licence pursuant to the Environmental Permitting (England and Wales) Regulations 2016(c).

(8) In this article—

- (a) “public sewer or drain” means a sewer or drain which belongs to Homes England, the Environment Agency, an internal drainage board, a joint planning board, a local authority, a National Park Authority, a sewerage undertaker or an urban development corporation; and
- (b) other expressions, excluding watercourse, used both in this article and in the Water Resources Act 1991(d) have the same meaning as in that Act.

#### **Protective works to buildings**

**19.**—(1) Subject to the following provisions of this article, the undertaker may at its own expense carry out such protective works to any building lying within the Order land as the undertaker considers necessary or expedient.

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(a) 1991 c. 56.  
(b) 1991 c. 57.  
(c) S.I. 2016/1154.  
(d) 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 5 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, 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 43 (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 5 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**

**20.**—(1) The undertaker may for the purposes of this Order enter on any land shown within the Order limits or enter on any land which may be affected by the authorised development or enter on any land upon which entry is required in order to carry out monitoring or surveys in respect of the authorised development and—

- (a) survey or investigate the land;
- (b) without prejudice to the generality of sub-paragraph (a), make trial holes or bore holes in such positions on the land as the undertaker thinks fit to investigate the nature of the surface layer and subsoil and groundwater and remove soil and groundwater samples;
- (c) without prejudice to the generality of sub-paragraph (a), carry out ecological or archaeological investigations on such land, including the digging of trenches; and
- (d) place on, leave on and remove from the land apparatus for use in connection with the survey and investigation of land and making of trial holes, bore holes or trenches.

(2) No land may be entered or equipment placed or left on or removed from the land under paragraph (1) unless at least 14 days' notice has been served on every owner and occupier of the land.

(3) Any person entering land under this article on behalf of the undertaker—

- (a) must, if so required before entering the land, produce written evidence of their authority to do so; and
- (b) may take with them such vehicles and equipment as are necessary to carry out the survey or investigation or to make the trial holes.

(4) No trial holes are to be made under this article—

- (a) in land located within the highway boundary without the consent of the highway authority; or
- (b) in a private street without the consent of the street authority.

(5) The undertaker must compensate the owners and occupiers of the land for any loss or damage arising by reason of the exercise of the authority conferred by this article, such compensation to be determined, in case of dispute, under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

(6) Section 13 (refusal to give possession to acquiring authority) of the 1965 Act applies to the entry onto, or possession of, land under this article to the same extent as it applies to the compulsory acquisition of land under this Order by virtue of section 125 (application of compulsory acquisition provisions) of the 2008 Act.

## **PART 5**

### **POWERS OF ACQUISITION**

#### **Compulsory acquisition of land**

**21.**—(1) The undertaker may—

- (a) acquire compulsorily so much of the Order land as is required for the authorised development or to facilitate, or as is incidental, to it; and

- (b) use any land so acquired for the purpose authorised by this Order or for any other purposes in connection with or ancillary to the authorised development.

(2) This article is subject to article 22 (time limit for exercise of authority to acquire land compulsorily), article 23 (compulsory acquisition of rights), article 24 (private rights), article 26 (acquisition of subsoil only), article 27 (power to override easements and other rights), article 30 (temporary use of land for constructing the authorised development), and article 32 (statutory undertakers).

### **Time limit for exercise of authority to acquire land compulsorily**

**22.—**(1) The applicable period for the purposes of section 4 of the 1965 Act (time limit for giving notice to treat) and section 5A of the 1981 Act (time limit for general vesting declaration) is 5 years beginning on the day on which this Order is made.

(2) No notice to treat is to be served under Part 1 (compulsory purchase under Acquisition of Land Act 1946) of the 1965 Act and no declaration is to be executed under section 4 (execution of declaration) of the 1981 Act as applied by article 25 (application of the 1981 Act) after the end of the applicable period, including any extension to the applicable period pursuant to those Acts.

(3) The authority conferred by article 30 (temporary use of land for constructing the authorised development) must not be used after the end of the applicable period referred to in paragraph (1), save that if an application is made under section 118 of the 2008 Act (legal challenges relating to applications for orders granting development consent) the applicable period is to be extended by—

- (a) a period equivalent to the period beginning on the day the application is made and ending on the day it is withdrawn or finally determined; or
- (b) if shorter, 1 year.

(4) An application is not finally determined for the purposes of paragraph (3)(a) if an appeal in respect of the application—

- (a) could be brought (ignoring any possibility of an appeal out of time with permission); or
- (b) has been made and not withdrawn or finally determined.

(5) Nothing in paragraph (3) prevents the undertaker remaining in possession of land after the end of that period, if the land was entered and possession was taken before the end of that period.

### **Compulsory acquisition of rights**

**23.—**(1) Subject to paragraph (2) and article 30 (temporary use of land for constructing the authorised development), the undertaker may acquire compulsorily such rights over the Order land or impose such restrictive covenants over the Order land as may be required for any purpose for which that land may be acquired under article 21 (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 24 (private rights) and article 32 (statutory undertakers), in the case of the Order land specified in column 1 of Schedule 9 (land in which only new rights etc. may be acquired) the undertaker's powers of compulsory acquisition are limited to the acquisition of existing rights and benefit of restrictive covenants over that land and the creation and acquisition of such new rights and the imposition of restrictive covenants for the purpose specified in relation to that land in column 2 of that Schedule.

(3) Subject to section 8 (other provisions as to divided land) and Schedule 2A (counter-notice requiring purchase of land) of the 1965 Act (as substituted by paragraph 5(8) of Schedule 10 (modification of compensation and compulsory purchase enactments for the creation of new rights and imposition of new restrictive covenants)), where the undertaker creates or acquires an existing right over land or the benefit of a restrictive covenant under paragraph (1) or (2), the undertaker is not required to acquire a greater interest in that land.

(4) Schedule 10 has effect for the purpose of modifying the enactments relating to compensation and the provisions of the 1965 Act in their application in relation to the compulsory acquisition



under this article of a right over land by the creation of a new right or the imposition of restrictive covenants.

(5) In any case where the acquisition of new rights or imposition of a restriction under paragraph (1) or (2) is required for the purpose of diverting, replacing or protecting apparatus of a statutory undertaker, the undertaker may, with the consent of the Secretary of State, transfer the power to acquire such rights to the statutory undertaker in question.

(6) The exercise by a statutory undertaker of any power in accordance with a transfer under paragraph (5) is subject to the same restrictions, liabilities and obligations as would apply under this Order if that power were exercised by the undertaker.

### **Private rights**

**24.—**(1) Subject to the provisions of this article, all private rights and restrictive covenants over land subject to compulsory acquisition under this Order are extinguished—

- (a) from the date of acquisition of the land by the undertaker, whether compulsorily or by agreement; or
- (b) on the date of entry on the land by the undertaker under section 11(1) (power of entry) of the 1965 Act,

whichever is the earliest.

(2) Subject to the provisions of this article, all private rights or restrictive covenants over land subject to the compulsory acquisition of rights or the imposition of restrictive covenants under article 23 (compulsory acquisition of rights) cease to have effect in so far as their continuance would be inconsistent with the exercise of the right or compliance with the restrictive covenant—

- (a) as from the date of the acquisition of the right or imposition of the restrictive covenant by the undertaker (whether the right is acquired compulsorily, by agreement or through the grant of a lease of the land by agreement); or
- (b) on the date of entry on the land by the undertaker under section 11(1) (power of entry) of the 1965 Act in pursuance of the right,

whichever is the earliest.

(3) Subject to the provisions of this article, all private rights or restrictive covenants over land of which the undertaker takes temporary possession under this Order are suspended and unenforceable, in so far as their continuance would be inconsistent with the purpose for which temporary possession is taken, for as long as the undertaker remains in lawful possession of the land.

(4) Any person who suffers loss by the extinguishment or suspension of any private right or restrictive covenant under this article is entitled to compensation in accordance with the terms of section 152 (compensation in case where no right to claim in nuisance) of the 2008 Act to be determined, in case of dispute, under Part 1 of the 1961 Act.

(5) This article does not apply in relation to any right to which section 138 (extinguishment of rights, and removal of apparatus, of statutory undertakers etc.) of the 2008 Act or article 32 (statutory undertakers) applies.

(6) Paragraphs (1) to (3) have effect subject to—

- (a) any notice given by the undertaker before—
  - (i) the completion of the acquisition of the land or the acquisition of rights or the imposition of restrictive covenants over or affecting the land;
  - (ii) the undertaker's appropriation of the land;
  - (iii) the undertaker's entry onto the land; or
  - (iv) the undertaker's taking temporary possession of the land,that any or all of those paragraphs do not apply to any right specified in the notice; or
- (b) any agreement made at any time between the undertaker and the person in or to whom the right in question is vested or belongs.

(7) If an agreement referred to in paragraph (6)(b)—

- (a) is made with a person in or to whom the right is vested or belongs; and
- (b) is expressed to have effect also for the benefit of those deriving title from or under that person,

the agreement is effective in respect of the persons so deriving title, whether that title was derived before or after the making of the agreement.

(8) References in this article to private rights over land include any right of way, trust, incident, restrictive covenant, easement, liberty, privilege, right or advantage annexed to land and adversely affecting other land, including any natural right to support; and include restrictions as to the user of land arising by virtue of a contract, agreement or undertaking having that effect.

### **Application of the 1981 Act**

**25.**—(1) The 1981 Act applies as if this Order were a compulsory purchase order.

(2) The 1981 Act, as applied by paragraph (1), has effect with the following modifications.

(3) In section 1 (application of the Act), for subsection 2 substitute—

“(2) This section applies to any Minister, any local or other public authority or any other body or person authorised to acquire land by means of a compulsory purchase order.”.

(4) In section 5(2) (earliest date for execution of declaration) omit the words from “and this subsection” to the end.

(5) In section 5B(1) (extension of time limit during challenge) for “section 23 of the Acquisition of Land Act 1981 (application to High Court in respect of compulsory purchase order), the 3 year period mentioned in 5A” substitute “section 118 (legal challenges relating to applications for orders granting development consent) of the 2008 Act.”.

(6) In section 6 (notices after extension of declaration), in subsection (1)(b) for “section 15 of, or paragraph 6 of Schedule 1 to, the Acquisition of Land Act 1981” substitute “section 134 (notice of authorisation of compulsory acquisition) of the Planning Act 2008”.

(7) In section 7 (constructive notice to treat), in subsection (1)(a) omit the words “(as modified by section 4 of the Acquisition of Land Act 1981)”.

(8) In Schedule A1 (counter-notice requiring purchase of land not in general vesting declaration), for paragraph 1(2) substitute—

“(2) But see article 26(3) (acquisition of subsoil only) of the Fenwick Solar Farm Order 202[\*], which excludes the acquisition of subsoil only from this Schedule.”.

(9) References to the 1965 Act in the 1981 Act must be construed as references to the 1965 Act as applied by section 125 (application of compulsory acquisition provisions) of the 2008 Act (and as modified by article 28 (modification of Part 1 of the Compulsory Purchase Act 1965)) to the compulsory acquisition of land under this Order.

### **Acquisition of subsoil only**

**26.**—(1) The undertaker may acquire compulsorily so much of, or such rights in, the subsoil of the land referred to in paragraph (1) of article 21 (compulsory acquisition of land) or article 23 (compulsory acquisition of rights) as may be required for any purpose for which that land may be acquired under that provision instead of acquiring the whole of the land.

(2) Where the undertaker acquires any part of, or rights in, the subsoil of land, the undertaker is not required to acquire an interest in any other part of the land.

(3) The following do not apply in connection with the exercise of the power under paragraph (1) in relation to subsoil only—

- (a) Schedule 2A (counter-notice requiring purchase of land not in notice to treat) to the 1965 Act;

- (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.
- (4) Paragraphs (2) and (3) are to be disregarded where the undertaker acquires a cellar, vault, arch or other construction forming part of a house, building or manufactory.

### **Power to override easements and other rights**

**27.**—(1) Any authorised activity which takes place on land within the Order land (whether the activity is undertaken by the undertaker or by any person deriving title from the undertaker or by any contractors, servants or agents of the undertaker) is authorised by this Order if it is done in accordance with the terms of this Order, notwithstanding that it involves—

- (a) an interference with an interest or right to which this article applies; or
- (b) a breach of a restriction as to the user of land arising by virtue of a contract.

(2) In this article “authorised activity” means—

- (a) the erection, construction or maintenance of any part of the authorised development;
- (b) the exercise of any power authorised by the Order; or
- (c) the use of any land within the Order land (including the temporary use of land).

(3) The interests and rights to which this article applies include any easement, liberty, privilege, right or advantage annexed to land and adversely affecting other land, including any natural right to support and include restrictions as to the user of land arising by virtue of a contract.

(4) Where an interest, right or restriction is overridden by paragraph (1), compensation—

- (a) is payable under section 7 (measure of compensation in case of severance) or 10 (further provision as to compensation for injurious affection) of the 1965 Act; and
- (b) is to be assessed in the same manner and subject to the same rules as in the case of other compensation under those sections where—
  - (i) the compensation is to be estimated in connection with a purchase under that Act; or
  - (ii) the injury arises from the execution of works on or use of land acquired under that Act.

(5) Where a person deriving title under the undertaker by whom the land in question was acquired—

- (a) is liable to pay compensation by virtue of paragraph (4); and
- (b) fails to discharge that liability,

the liability is enforceable against the undertaker.

(6) Nothing in this article is to be construed as authorising any act or omission on the part of any person which is actionable at the suit of any person on any grounds other than such an interference or breach as is mentioned in paragraph (1).

### **Modification of Part 1 of the Compulsory Purchase Act 1965**

**28.**—(1) Part 1 of the 1965 Act (compulsory acquisition under Acquisition of Land Act 1981), as applied to this Order by section 125 (application of compulsory acquisition provisions) of the 2008 Act, is modified as follows.

(2) In section 4A(1) (extension of time limit during challenge) for “section 23 of the Acquisition of Land Act 1981 (application to the High Court in respect of compulsory purchase order)” substitute “section 118 (legal challenges relating to applications for orders granting development consent) of the 2008 Act”.

(3) In section 11A (powers of entry: further notice of entry)—

- (a) in subsection (1)(a), after “land” insert “under that provision”; and

- (b) in subsection (2), after “land” insert “under that provision”.
- (4) In 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 26(3) (acquisition of subsoil only) of the Fenwick Solar Farm Order 202[\*], which excludes the acquisition of subsoil only from this Schedule.”; and
  - (b) after paragraph 29 insert—

## “PART 4 INTERPRETATION

**30.** In this Schedule, references to entering on and taking possession of land do not include doing so under article 19 (protective works to buildings), article 30 (temporary use of land for constructing the authorised development) or article 31 (temporary use of land for maintaining the authorised development) of the Fenwick Solar Farm Order 202[\*].”.

### **Rights under or over streets**

**29.—**(1) The undertaker may enter on, appropriate and use so much of the subsoil of or airspace over any street within the Order limits as may be required for the purposes of the authorised development and may use the subsoil or airspace for those purposes or any other purpose ancillary to the authorised development.

(2) Subject to paragraph (3), the undertaker may exercise any power conferred by paragraph (1) in relation to a street without being required to acquire any part of the street or any easement or right in the street.

(3) Paragraph (2) does not apply in relation to—

- (a) any subway or underground building; or
- (b) any cellar, vault, arch or other construction in, on or under a street which forms part of a building fronting onto the street.

(4) Subject to paragraph (5), any person who is an owner or occupier of land appropriated under paragraph (1) without the undertaker acquiring any part of that person’s interest in the land, and who suffers loss as a result, is entitled to compensation to be determined, in case of dispute, under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

(5) Compensation is not payable under paragraph (4) to any person who is an undertaker to whom section 85 (sharing cost of necessary measures) of the 1991 Act applies in respect of measures of which the allowable costs are to be borne in accordance with that section.

### **Temporary use of land for constructing the authorised development**

**30.—**(1) The undertaker may, in connection with the construction of the authorised development—

- (a) enter on and take temporary possession of—
  - (i) so much of the land specified in column (1) of the table in Schedule 11 (land of which temporary possession may be taken) for the purpose specified in relation to the land in column (2) of that table; and
  - (ii) any other Order land in respect of which no notice of entry has been served under section 11 (powers of entry) of the 1965 Act and no declaration has been made under section 4 (execution of declaration) of the 1981 Act;
- (b) remove any agricultural plant and apparatus, drainage, fences, debris and vegetation from that land;
- (c) construct temporary works (including means of access), haul roads, security fencing, bridges, structures and buildings on that land;

- (d) use the land for the purposes of a temporary working site with access to the working site in connection with the authorised development;
  - (e) construct any works on that land as are mentioned in Schedule 1 (authorised development); and
  - (f) carry out mitigation works required under the requirements in Schedule 2 (requirements).
- (2) Paragraph (1) does not authorise the undertaker to take temporary possession of—
- (a) any house or garden belonging to a house; or
  - (b) any building (other than a house) if it is for the time being occupied.
- (3) Not less than 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 must not, without the agreement of the owners of the land, remain in possession of any land under this article—
- (a) in the case of the land referred to in paragraph (1)(a)(i) after the end of the period of 1 year beginning with the date of final commissioning of the part of the authorised development for which temporary possession of the land was taken; or
  - (b) in the case of land referred to in paragraph (1)(a)(ii) after the end of the period of 1 year beginning with the date of final commissioning of the part of the authorised development for which temporary possession of the land was taken unless the undertaker has, before the end of that period, served a notice of entry under section 11 of the 1965 Act or made a declaration under section 4 of the 1981 Act in relation to that land.
- (5) Unless the undertaker has served notice of entry under section 11 of the 1965 Act or made a declaration under section 4 of the 1981 Act or otherwise acquired the land or rights over land subject to temporary possession, the undertaker must before giving up possession of land of which temporary possession has been taken under this article, remove all works and restore the land to the reasonable satisfaction of the owners of the land; but the undertaker is not required to—
- (a) replace any building, structure, debris, drain or electric line removed under this article;
  - (b) remove any drainage works installed by the undertaker under this article;
  - (c) remove any new road surface or other improvements carried out under this article to any street specified in Schedule 4 (streets subject to street works), Schedule 5 (alteration of streets) or Schedule 7 (means of access to works);
  - (d) remove any fencing or boundary treatments installed by the undertaker under this article to replace or enhance existing fencing or boundary treatments; or
  - (e) restore the land on which any works have been carried out under paragraph (1)(f) insofar as the works relate to mitigation works identified in the environmental statement or required pursuant to the requirements in Schedule 2.
- (6) The undertaker must pay compensation to the owners and occupiers of land of which temporary possession is taken under this article for any loss or damage arising from the exercise in relation to the land of the provisions of any power conferred by this article.
- (7) Any dispute as to a person's entitlement to compensation under paragraph (6), or as to the amount of compensation, must be determined under Part 1 (determination of questions of disputed compensation) of the 1961 Act.
- (8) Nothing in this article affects any liability to pay compensation under section 152 (compensation in case where no right to claim in nuisance) of the 2008 Act or under any other enactment in respect of loss or damage arising from the carrying out of the authorised development, other than loss or damage for which compensation is payable under paragraph (6).
- (9) Where the undertaker takes possession of land under this article, the undertaker is not required to acquire the land or any interest in it.
- (10) The undertaker must not compulsorily acquire, acquire new rights over or impose restrictive covenants over, the land referred to in paragraph (1)(a)(i) under this Order.

(11) Nothing in this article precludes the undertaker from—

- (a) creating and acquiring new rights or imposing restrictions over any part of the Order land identified in Schedule 9 (land in which only new rights etc. may be acquired); or
- (b) acquiring any part of the subsoil of (or rights in the subsoil of) that land under article 26 (acquisition of subsoil only) or any part of the subsoil of or airspace over that land under article 29 (rights under or over streets).

(12) Section 13 (refusal to give possession to acquiring authority) of the 1965 Act applies to the temporary use of land under this article to the same extent as it applies to the compulsory acquisition of land under this Order by virtue of section 125 (application of compulsory acquisition provisions) of the 2008 Act.

(13) Nothing in this article prevents the taking of temporary possession more than once in relation to any land that the undertaker takes temporary possession of under this article.

### **Temporary use of land for maintaining the authorised development**

**31.**—(1) Subject to paragraph (2), at any time during the maintenance period relating to any part of the authorised development, the undertaker may—

- (a) enter on and take temporary possession of any land within the Order land if such possession is reasonably required for the purpose of maintaining the authorised development;
- (b) enter on any land within the Order land for the purpose of gaining such access as is reasonably required for the purpose of maintaining the authorised development; and
- (c) construct such temporary works (including the provision of means of access) and buildings on the land as may be reasonably necessary for that purpose.

(2) Paragraph (1) does not authorise the undertaker to take temporary possession of—

- (a) any house or garden belonging to a house; or
- (b) any building (other than a house) if it is for the time being occupied.

(3) Not less than 28 days before entering on and taking temporary possession of land under this article the undertaker must serve notice of the intended entry on the owners and occupiers of the land.

(4) The undertaker may only remain in possession of land under this article for so long as may be reasonably necessary to carry out the maintenance of the part of the authorised development for which possession of the land was taken.

(5) Before giving up possession of land of which temporary possession has been taken under this article, the undertaker must remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land.

(6) The undertaker must pay compensation to the owners and occupiers of land of which temporary possession is taken under this article for any loss or damage arising from the exercise in relation to the land of the provisions of this article.

(7) Any dispute as to a person's entitlement to compensation under paragraph (6), or as to the amount of compensation, must be determined under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

(8) Nothing in this article affects any liability to pay compensation under section 152 (compensation in case where no right to claim in nuisance) of the 2008 Act or under any other enactment in respect of loss or damage arising from the maintenance of the authorised development, other than loss or damage for which compensation is payable under paragraph (6).

(9) Where the undertaker takes possession of land under this article, the undertaker is not required to acquire the land or any interest in it.

(10) Section 13 (refusal to give possession to acquiring authority) of the 1965 Act applies to the temporary use of land under this article to the same extent as it applies to the compulsory



acquisition of land under this Order by virtue of section 125 (application of compulsory acquisition provisions) of the 2008 Act.

(11) In this article “the maintenance period” means the period of 5 years beginning with the date of final commissioning of the part of the authorised development for which temporary possession is required under this article except in relation to landscaping where “the maintenance period” means such period as set out in the landscape and ecological management plan which is approved by the relevant planning authority pursuant to requirement 6 beginning with the date on which that part of the landscaping is completed.

### **Statutory undertakers**

**32.** Subject to the provisions of Schedule 14 (protective provisions) the undertaker may—

- (a) acquire compulsorily, or acquire new rights or impose restrictive covenants over, the land belonging to statutory undertakers shown on the land plans within the Order land; and
- (b) extinguish the rights of, remove, relocate the rights of or reposition the apparatus belonging to statutory undertakers over or within the Order land.

### **Apparatus and rights of statutory undertakers in closed streets**

**33.** Where a street is altered or diverted, its use is temporarily prohibited or restricted, or it is permanently closed and diverted, under article 8 (street works), article 10 (power to alter layout, etc., of streets), article 11 (construction and maintenance of altered streets), article 12 (temporary closure of streets and public rights of way) or article 13 (permanent closure of public rights of way) any statutory undertaker whose apparatus is under, in, on, along or across the street has the same powers and rights in respect of that apparatus, subject to Schedule 14 (protective provisions), as if this Order had not been made.

### **Recovery of costs of new connections**

**34.—(1)** Where any apparatus of a public utility undertaker or of a public communications provider is removed under article 32 (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 32, any person who is—

- (a) the owner or occupier of premises the drains of which communicated with that sewer; or
- (b) the owner of a private sewer which communicated with that sewer,

is entitled to recover from the undertaker compensation in respect of expenditure reasonably incurred by that person, in consequence of the removal, for the purpose of making the drain or sewer belonging to that person communicate with any other public sewer or with a private sewerage disposal plant.

(3) This article does not have effect in relation to apparatus to which Part 3 (street works in England and Wales) of the 1991 Act applies.

(4) In this article—

“public communications provider” has the same meaning as in section 151(1) (interpretation of Chapter 1) of the Communications Act 2003(a); and

“public utility undertaker” has the same meaning as in the 1980 Act.

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(a) 2003 c. 21.

## PART 6

### MISCELLANEOUS AND GENERAL

#### **Benefit of the Order**

**35.**—(1) Subject to article 36 (consent to transfer the benefit of the Order), the provisions of this Order have effect solely for the benefit of the undertaker.

(2) Paragraph (1) does not apply to Work No. 4(b) in respect of which the provisions of this Order are for the benefit of the undertaker and National Grid.

#### **Consent to transfer the benefit of the Order**

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

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

(2) Where a transfer or grant has been made references in this Order to the undertaker, except in paragraph (9), are to include references to the transferee or lessee.

(3) The consent of the Secretary of State is required for the exercise of the powers of paragraph (1) except where—

- (a) the transferee or lessee is the holder of a licence under section 6 (licences authorising supply etc.) of the 1989 Act; or
- (b) the time limits for claims for compensation in respect of the acquisition of land or effects upon land under this Order have elapsed and—
  - (i) no such claims have been made;
  - (ii) any such claim has been made and has been compromised or withdrawn;
  - (iii) compensation has been paid in full and final settlement of any such claim;
  - (iv) payment of compensation into court has taken place in lieu of settlement of any such claim; or
  - (v) it has been determined by a tribunal or court of competent jurisdiction in respect of any such claim that no compensation is payable.

(4) Where the 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 (9), the restrictions, liabilities and obligations that will apply to the person exercising the powers transferred or granted;
- (e) where relevant, a plan showing the works or areas to which the transfer or grant relates; and
- (f) a copy of the document effecting the transfer or grant.

(6) The date specified under paragraph (5)(b) must not be earlier than the expiry of 14 working 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) A copy of any decision by the Secretary of State to approve a transfer or grant under paragraph (3) or the notification of a transfer or grant issues under paragraph (4) shall be provided by the undertaker to the relevant planning authority as soon as reasonably practicable following issuance;

(9) Where the undertaker has transferred any benefit, or for the duration of any period during which the undertaker has granted any benefit—

- (a) the benefit transferred or granted (“the transferred benefit”) must include any rights that are conferred, and any obligations that are imposed, by virtue of the provisions to which the benefit relates;
- (b) the transferred benefit will reside exclusively with the transferee or, as the case may be, the lessee and the transferred benefit will not be enforceable against the undertaker; and
- (c) the exercise by a person of any benefits or rights conferred in accordance with any transfer or grant is subject to the same restrictions, liabilities and obligations as would apply under this Order if those benefits or rights were exercised by the undertaker.

### **Application of landlord and tenant law**

**37.—**(1) This article applies to—

- (a) any agreement for leasing to any person the whole or any part of the authorised development or the right to operate the same; and
- (b) any agreement entered into by the undertaker with any person for the construction, maintenance, use or operation of the authorised development, or any part of it,

so far as any such agreement relates to the terms on which any land which is the subject of a lease granted by or under that agreement is to be provided for that person’s use.

(2) No enactment or rule of law regulating the rights and obligations of landlords and tenants prejudices the operation of any agreement to which this article applies.

(3) Accordingly, no such enactment or rule of law applies in relation to the rights and obligations of the parties to any lease granted by or under any such agreement, so as to—

- (a) exclude or in any respect modify any of the rights and obligations of those parties under the terms of the lease, whether with respect to the termination of the tenancy or any other matter;
- (b) confer or impose on any such party any right or obligation arising out of or connected with anything done or omitted on or in relation to land which is the subject of the lease, in addition to any such right or obligation provided for by the terms of the lease; or
- (c) restrict the enforcement (whether by action for damages or otherwise) by any party to the lease of any obligation of any other party under the lease.

### **Operational land for the purposes of the 1990 Act**

**38.** Development consent granted by this Order is to be treated as specific planning permission for the purposes of section 264(3) (cases in which land is to be treated as operational land) of the 1990 Act.

### **Felling or lopping of trees and removal of hedgerows**

**39.—**(1) Subject to paragraph (2) and article 40 (trees subject to tree preservation orders) the undertaker may fell or lop any tree or shrub within or overhanging the Order limits or cut back its roots, if it reasonably believes it to be necessary to do so to prevent the tree or shrub from—

- (a) obstructing or interfering with the construction, maintenance or operation of the authorised development or any apparatus used in connection with the authorised development;

- (b) constituting a danger to persons using the authorised development; or
- (c) obstructing or interfering with the passage of construction vehicles to the extent necessary for the purposes of construction of the authorised development.

(2) In carrying out any activity authorised by paragraph (1) the undertaker must do no unnecessary damage to any tree or shrub and must pay compensation to any person for any loss or damage arising from such activity.

(3) Any dispute as to a person's entitlement to compensation under paragraph (2), or as to the amount of compensation, is to be determined under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

(4) The undertaker may, for the purposes of the authorised development, or in connection with the authorised development, subject to paragraph (2), undertake works to or remove any hedgerows within the Order limits that may be required.

(5) The undertaker may not pursuant to paragraphs (1) and (4) fell or lop a tree or remove hedgerows within the extent of the publicly maintainable highway without the prior consent of the highway authority, and the highway authority may attach reasonable conditions to any such consent.

(6) In this article "hedgerow" has the same meaning as in the Hedgerows Regulations 1997(a).

### **Trees subject to tree preservation orders**

**40.**—(1) Subject to paragraph (2), the undertaker must not under the powers of this article fell, lop, prune, or cut back the roots of any tree which is the subject of a tree preservation order.

(2) The undertaker may fell or lop any tree which is within or overhanging land within the Order limits that is subject to a tree preservation order which was made after 31 October 2024, or cut back its roots, if it reasonably believes it to be necessary to do so in order to prevent the tree from obstructing or interfering with the construction, maintenance or operation of the authorised development or any apparatus used in connection with the authorised development.

(3) In carrying out any activity authorised by paragraph (2)—

- (a) the undertaker must do no unnecessary damage to any tree and must pay compensation to any person for any loss or damage arising from such activity; and
- (b) the duty contained in section 206(1) (replacement of trees) of the 1990 Act does not apply.

(4) The authority given by paragraph (2) constitutes a deemed consent under the relevant tree preservation order.

(5) Any dispute as to a person's entitlement to compensation under paragraph (3), or as to the amount of compensation, must be determined under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

### **Certification of plans and documents, etc.**

**41.**—(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.

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(a) S.I. 1997/1160.

## **No double recovery**

42. Compensation is not payable in respect of the same matter both under this Order and under any enactment, any contract or any rule of law.

## **Arbitration**

43.—(1) Any difference under any provision of this Order, unless otherwise provided for, is to be referred to and settled in arbitration in accordance with the rules set out in Schedule 13 (arbitration rules) of this Order, by a single arbitrator to be agreed upon by the parties, within 10 working days of receipt of the notice of arbitration, or if the parties fail to agree within the time period stipulated, to be appointed on application of either party (after giving written notice to the other) by the Secretary of State.

(2) Any matter for which the consent or approval of the Secretary of State is required under any provision of this Order is not subject to arbitration.

## **Protective provisions**

44. Schedule 14 (protective provisions) has effect.

## **Service of notices**

45.—(1) A notice or other document required or authorised to be served for the purposes of this Order may be served—

- (a) by post;
- (b) by delivering it to the person on whom it is to be served or to whom it is to be given or supplied; or
- (c) with the consent of the recipient and subject to paragraphs (6) to (8), by electronic transmission.

(2) Where the person on whom a notice or other document to be served for the purposes of this Order is a body corporate, the notice or document is duly served if it is served on the secretary or clerk of that body.

(3) For the purposes of section 7 (references to service by post) of the Interpretation Act 1978<sup>(a)</sup> as it applies for the purposes of this article, the proper address of any person in relation to the service on that person of a notice or document under paragraph (1) is, if that person has given an address for service, that address and otherwise—

- (a) in the case of the secretary or clerk of a body corporate, the registered or principal office of that body; and
- (b) in any other case, the last known address of that person at that time of service.

(4) Where for the purpose of this Order a notice or other document is required or authorised to be served on a person as having an interest in, or as the occupier of, land and the name or address of that person cannot be ascertained after reasonable enquiry, the notice may be served by—

- (a) addressing it to that person by the description of “owner”, or as the case may be “occupier” of the land (describing it); and
- (b) either leaving it in the hands of the person who is or appears to be resident or employed on the land or leaving it conspicuously affixed to some building or object on or near the land.

(5) Where a notice or other document required to be served or sent for the purposes of this Order is served or sent by electronic transmission the requirement is to be taken to be fulfilled only where—

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(a) 1978 c. 30.

- (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 any part of that notice or other document the sender must provide such a copy as soon as reasonably practicable.

(7) Any consent to the use of an electronic transmission by a person may be revoked by that person in accordance with paragraph (8).

(8) Where a person is no longer willing to accept the use of electronic transmission for any of the purposes of this Order—

- (a) 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.

#### **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.

(3) Schedule 15 (procedure for discharge of requirements) has effect in relation to all consents, agreements or approvals required, granted, refused or withheld in relation to the requirements.

(4) Save for applications made pursuant to Schedule 15 and where stated to the contrary if, within 8 weeks (or such longer period as may be agreed between the undertaker and the relevant consenting authority in writing) after the application or request has been submitted to a consenting authority it has not notified the undertaker of its disapproval and the grounds of disapproval, it is deemed to have approved the application or request.

(5) Where any application is made as described in paragraph (1), the undertaker must include a statement in such application that refers to the timeframe for consideration of the application and the consequences of failure to meet that timeframe as prescribed by paragraph (4).

(6) Schedule 15 does not apply in respect of any consents, agreements or approvals contemplated by the provisions of Schedule 14 (protective provisions) or any dispute under article 19(6) (protective work to buildings) to which paragraph (4) applies.

(7) In this article “consenting authority” means the relevant planning authority, highway authority, traffic authority, street authority, the owner of a watercourse, sewer or drain or the beneficiary of any of the protective provisions contained in Schedule 14.

#### **Guarantees in respect of payment of compensation**

**47.—**(1) The undertaker must not exercise the powers conferred by the provisions referred to in paragraph (2) in relation to any part of the Order land unless it has first put in place either—

- (a) a guarantee, the form and amount of which has been approved by the Secretary of State in respect of the liabilities of the undertaker to pay compensation pursuant to the provisions

referred to in paragraph (2) in respect of the exercise of the relevant provision in relation to that part of the Order land; or

- (b) an alternative form of security, the form and amount of which has been approved by the Secretary of State in respect of the liabilities of the undertaker to pay compensation pursuant to the provisions referred to in paragraph (2) in respect of the exercise of the relevant provision in relation to that part of the Order land.

(2) The provisions are—

- (a) article 21 (compulsory acquisition of land);
- (b) article 23 (compulsory acquisition of rights);
- (c) article 24 (private rights);
- (d) article 29 (rights under or over streets);
- (e) article 30 (temporary use of land for constructing the authorised development);
- (f) article 31 (temporary use of land for maintaining the authorised development); and
- (g) article 32 (statutory undertakers).

(3) A guarantee or alternative form of security given in respect of any liability of the undertaker to pay compensation under this Order is to be treated as enforceable against the guarantor or person providing the alternative form of security by any person to whom such compensation is payable and must be in such a form as to be capable of enforcement by such a person.

(4) Nothing in this article requires a guarantee or alternative form of security to be in place for more than 15 years after the date on which the relevant power is exercised.

#### **Compulsory acquisition of land – incorporation of the mineral code**

48. Parts 2 and 3 of Schedule 2 (minerals) to the Acquisition of Land Act 1981<sup>(a)</sup> are incorporated into this Order subject to the modifications that—

- (a) for “the acquiring authority” substitute “the undertaker”;
- (b) for the “undertaking” substitute “authorised development”; and
- (c) paragraph 8(3) is not incorporated.

Signed by authority of the Secretary of State for Energy Security and Net Zero

Address  
Date

*Signature*  
Title

Department for Energy Security and Net Zero

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<sup>(a)</sup> 1981 c. 67.



# SCHEDULES

## SCHEDULE 1

Article 3

### AUTHORISED DEVELOPMENT

#### Interpretation

1. In this Schedule—

“electrical cables” means—

- (a) cables of differing types and voltages installed for the purposes of conducting electricity, auxiliary cables, cables connecting to direct current (DC) boxes, earthing cables and optical fibre cables; and
- (b) works associated with cable laying including jointing bays, hardstanding adjoining the jointing pits, combiner boxes, fibre bays, cable ducts, cable protection, joint protection, manholes, kiosks, marker posts, underground cable marker, tiles and tape, send and receive pits for horizontal directional drilling, trenching, lighting, and a pit or container to capture fluids associated with drilling;

“field stations” means inverters, transformers and switchgear comprising either—

- (c) a configuration where transformers, inverters and switchgear will be housed in a single container located on a concrete beam or block foundation; or screw piles, rammed piles or compacted hardcore foundation. There will be a perimeter of stone or gravel around the container; or
- (d) a configuration where transformers and switchgear will be housed in a single container and inverters provided in either a separate single container or inverters provided separately and mounted on a ground mounted frame which is parallel to the mounting structure. Each container will be located on a concrete beam or block foundation; or screw piles, rammed piles or compacted hardcore foundation. There will be a perimeter of stone or gravel around each container; or
- (e) a configuration where transformers, switchgear and inverters will be provided separately, which may be in one or more containers. Inverters may also be provided separately and mounted on a ground mounted frame which is parallel to the mounting structure. Any container will be located on a concrete beam or block foundation; or screw piles, rammed piles or compacted hardcore foundation. There will be a perimeter of stone or gravel around any container; and inverters provided separately and mounted on a ground mounted frame which is parallel to the mounting structure;

“inverter” means electrical equipment required to convert direct current power to alternating current;

“mounting structure” means a frame or rack made of galvanised steel or other material designed to support the solar panels and mounted on piles driven into the ground, piles rammed into bare ground, a pillar attaching to a steel ground screw, pillars fixed to a concrete foundation or feet, or pillars set in concrete in a pre-made hole in the ground;

“National Grid Thorpe Marsh Substation” means the existing 400kV substation at Thorpe Marsh, owned and operated by National Grid;

“solar panel” means a solar photovoltaic panel or module designed to convert solar irradiance to electrical energy;

“substation” means a compound containing electrical equipment required to switch, transform and convert electricity;

“switchgear” means a combination of electrical disconnect switches, fuses or circuit breakers used to control, protect and isolate electrical equipment; and

“transformer” means a structure containing an electrical device to transform electricity to a different voltage.

### **Authorised development**

**2.** In the Unitary authority of Doncaster 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 up to one generating station with a gross electrical output capacity of over 50 megawatts (alternating current) 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 (alternating current) including—

- (a) solar panels fitted to mounting structures; and
- (b) field stations;

and associated development within the meaning of section 115(2) of the 2008 Act including—

**Work No. 2** – battery energy storage systems including—

- (c) 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 one or more of reinforced concrete foundation slab, concrete piles, ground screws, metal piles or compacted stone/gravel;
- (d) transformers and associated bunding;
- (e) inverters, switch gear, power conversion systems (PCS) and ancillary equipment;
- (f) containers or enclosures housing all or any of Work Nos. 2(b) and (c) and ancillary equipment;
- (g) 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;
- (h) 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;
- (i) electrical cables including electrical cables connecting to Work No. 3;
- (j) bunded impermeable surface to manage surface water drainage;
- (k) fire safety infrastructure including water storage tanks, impermeable water capture basins and a shut-off valve for containment of fire water and hard standing to accommodate emergency vehicles; and
- (l) containers or similar structures to house spare parts and materials required for the day to day operation of the BESS facility.

**Work No. 3** – development of onsite substation and associated works including—

- (m) substation, switch room buildings and ancillary equipment including reactive power units and harmonic filters; and
- (n) monitoring and control systems housed within a control building or located separately in their own containers or control rooms, with welfare facilities.

**Work No. 4** – works to lay electrical cables and compounds for the electrical cables including—

- (o) works to lay 400kV electrical cables connecting Work No. 3 to the National Grid Thorpe Marsh Substation, including link boxes and tunnelling, boring and drilling works for trenchless crossings;
- (p) electrical engineering works within or around the National Grid Thorpe Marsh Substation including the laying and terminating of the electrical cables and ancillary equipment; and
- (q) construction and decommissioning compounds, including site and welfare offices and areas to store materials and equipment.

**Work No. 5** – works including—

- (r) electrical cables, including but not limited to electrical cables connecting Works No. 1, 2, 3 and 4 to one another and connecting solar panels to one another and the field stations including tunnelling, boring and drilling works for trenchless crossings;
- (s) works to lay electrical cables connecting Work No. 3 to an existing on site 400kV overhead line tower including the laying and terminating of the electrical cables and ancillary equipment;
- (t) landscaping, biodiversity and heritage mitigation and enhancement measures including planting;
- (u) earthworks;
- (v) laying down of temporary footpath diversions, permissive paths, signage and information boards;
- (w) hardstanding and parking areas;
- (x) sustainable drainage systems including ponds, runoff outfalls, general drainage and irrigation infrastructure, systems and improvements or extensions to existing drainage and irrigation systems;
- (y) fencing, gates, boundary treatment and other means of enclosure;
- (z) works for the provision of security and monitoring measures such as CCTV columns, cameras, lighting columns and lighting, weather stations, perimeter fencing and communication infrastructure;
- (aa) improvement, maintenance and use of existing private tracks;
- (bb) laying down of internal access tracks, ramps, means of access, footpaths, crossing of watercourses and roads, including the laying and construction of drainage infrastructure, signage and information boards;
- (cc) construction and decommissioning compounds, including site and welfare offices and areas to store materials and equipment; and
- (dd) works to divert and underground existing electrical overhead lines.

**Work No. 6** – construction and decommissioning compounds including—

- (ee) areas of hardstanding;
- (ff) parking areas;
- (gg) site and welfare offices, canteens and workshops;
- (hh) security infrastructure, including cameras, perimeter fencing and lighting;
- (ii) areas to store materials and equipment and waste skips;
- (jj) site drainage and waste management infrastructure (including sewerage); and
- (kk) electricity, water, waste water and telecommunications connections.

**Work No. 7** – works to develop operations and maintenance buildings including—

- (ll) alteration and maintenance of existing structures;
- (mm) offices, security and welfare facilities;
- (nn) storage facilities; and
- (oo) parking areas.

**Work No. 8** – works to facilitate access to Work Nos. 1 to 9 including—

- (pp) creation of accesses from the public highway;
- (qq) creation of visibility splays;
- (rr) works to widen and surface the public highway and private means of access; and
- (ss) works adjacent to highways and accesses including those to structures, boundary features, drainage features on private land required for the facilitation of movement of abnormal indivisible loads associated with the authorised development.

**Work No. 9** – areas of habitat management including—

- (tt) landscape and biodiversity enhancement measures;
- (uu) habitat creation and management including earthworks and landscaping, signage and information boards;
- (vv) construction of drainage infrastructure and means of access;
- (ww) laying down of internal access tracks, means of access and crossing of watercourses, permissive paths; and
- (xx) fencing, gates, boundary treatment and other means of enclosure.

In connection with and in addition to Work Nos. 1 to 9 further associated development within the Order limits, including—

- (yy) works for the provision of fencing and security measures such as CCTV, columns, lighting and communication boxes;
- (zz) laying down of internal access tracks, ramps and span bridges, means of access, non-motorised links, footpaths and footways, laying and surfacing of permissive paths;
- (aaa) laying down of temporary footpath diversions, permissive paths and construction of drainage infrastructure, signage and information boards;
- (bbb) bunds, embankments, trenching and swales;
- (ccc) boundary treatments, including means of enclosure;
- (ddd) habitat creation and management including earthworks, landscaping, means of enclosure and the laying and construction of drainage infrastructure;
- (eee) landscaping and other works to mitigate any adverse effects of construction, maintenance or operation of the authorised development;
- (fff) electrical, gas, water, foul water drainage and telecommunications infrastructure connections, diversions and works to alter the position of, such services and utilities connections;
- (ggg) works to alter the course of, or otherwise interfere with, non-navigable rivers, streams or watercourses;
- (hhh) works to the existing irrigation system and works to alter the position and extent of such irrigation system;
- (iii) surface water drainage systems, storm water attenuation systems including storage basins, oil water separators, including channelling and culverting and works to existing drainage systems;
- (jjj) 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;
- (kkk) tunnelling, boring and drilling works;
- (lll) working sites in connection with the construction and decommissioning of the authorised development and its restoration; and
- (mmm) other works to mitigate any adverse effects of the construction, maintenance, operation or decommissioning of the authorised development,

and further associated development comprising such other works or operations as may be necessary or expedient for the purposes of or in connection with the construction, operation and maintenance or decommissioning of the authorised development but only within the Order limits and insofar as they are unlikely to give rise to any materially new or materially different environmental effects from those assessed in the environmental statement.

## SCHEDULE 2

### REQUIREMENTS

Article 2

#### **Commencement of the authorised development**

1. The authorised development must not commence after the expiration of 5 years from the date this Order comes into force.

#### **Approved details and amendments to them**

2.—(1) With respect to the documents certified under article 41 (certification of plans and documents, etc.) and any plans, details or schemes which have been approved pursuant to any requirement (together the “Approved Documents, Plans, Details or Schemes”), the undertaker may submit to the relevant planning authority for approval of any amendments to any of the Approved Documents, Plans, Details or Schemes and, following approval by the relevant planning authority, 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 that the subject matter of the approval sought is unlikely to give rise to any materially new or materially different environmental effects from those assessed in the environmental statement.

(3) Where under any of the requirements the approval, agreement or confirmation of the relevant planning authority is required, that approval, agreement or confirmation must be provided in writing.

(4) Within 10 working days of the date of final commissioning the undertaker must serve written notice of the date of final commissioning on the relevant planning authority.

#### **Community liaison group**

3.—(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**

4.—(1) No part of the authorised development may commence until details of—

- (a) layout;
- (b) scale;
- (c) proposed finished ground levels;
- (d) external appearance;
- (e) hard surfacing materials;

- (f) vehicular and pedestrian access, parking, fencing and circulation areas; and
- (g) refuse or other storage units, signs and lighting,

relating to that part have been submitted and approved by the relevant planning authority.

(2) The details submitted must accord with the outline design parameters statement.

(3) The details submitted must confirm if the authorised development will include the construction and operation of either Work No. 4 or Work No. 5(b).

(4) The authorised development must be carried out in accordance with the approved details.

### **Battery safety management**

5.—(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 be substantially in accordance with the framework battery safety management plan.

(3) The relevant planning authority must consult with the South Yorkshire Fire Service and the Environment Agency before determining an application for approval of the battery safety management plan.

(4) The battery safety management plan must be implemented as approved and maintained throughout the construction, operation and decommissioning of Work No. 2.

### **Landscape and Ecological management plan**

6.—(1) No part of the authorised development may commence until a written landscape and ecological management plan for that part has been submitted to and approved by the relevant planning authority.

(2) The landscape and ecological management plan must be substantially in accordance with the framework landscape and ecological management plan and must be implemented as approved and maintained throughout the operation of the relevant part of the authorised development to which the plan relates.

(3) For the purposes of sub-paragraph (1), “commence” includes part (h) (site clearance (including vegetation removal, demolition of existing buildings and structures)) and part (i) (advanced planting to allow for an early establishment of protective screening) of permitted preliminary works.

### **Biodiversity net gain**

7.—(1) No part of the authorised development may commence until a biodiversity net gain strategy has been submitted to and approved by the relevant planning authority for that part, in consultation with the relevant statutory nature conservation body.

(2) The biodiversity net gain strategy must include details of how the strategy will secure a minimum of 20% biodiversity net gain for habitat units, a minimum of 20% biodiversity net gain for hedgerow units and a minimum of 10% biodiversity net gain for watercourse units as substantially in accordance with the methodology outlined in the framework landscape and ecological management plan and must be implemented as approved.

(3) The biodiversity net gain strategy must be maintained throughout the operation of the relevant part of the authorised development to which the plan relates.

### **Fencing and other means of enclosure**

8.—(1) No part of the authorised development may commence until details of all proposed temporary fences, walls or other means of enclosure, including those set out in the construction environmental management plan, for that part have been submitted to and approved by the relevant planning authority.



(2) No part of the authorised development may commence until details of all permanent fences, walls or other means of enclosure for that part have been submitted to and approved by the relevant planning authority.

(3) For the purposes of requirement 8(1), “commence” includes any permitted preliminary works.

(4) Any construction site must remain securely fenced in accordance with the approved details under requirement 11(1) at all times during construction of the authorised development.

(5) Any temporary fencing must be removed on completion of the part of construction of the authorised development for which it was used.

### **Surface and foul water drainage**

9.—(1) No part of the authorised development may commence until details of the surface water drainage strategy and (if any) foul water drainage system (including means of pollution control) for that part have been submitted to and approved by the relevant planning authority.

(2) The drainage strategy must be substantially in accordance with the framework drainage strategy.

(3) Any strategy approved pursuant to sub-paragraph (1) must be implemented as approved and maintained throughout the construction and operation of the authorised development.

### **Archaeology**

10.—(1) No part of the authorised development may commence, and no part of the permitted preliminary works for that part may commence, until the final Archaeological Mitigation Strategy and site-specific written scheme of investigation for that part have been submitted to and approved by the relevant planning authority.

(2) The Final Archaeological Mitigation Strategy and site-specific written scheme of investigation must be substantially in accordance with the Framework Archaeological Mitigation Strategy and must be implemented as approved.

### **Construction environmental management plan**

11.—(1) No part of the authorised development may commence until a construction environmental management plan for that part has been submitted to and approved by the relevant planning authority. Such approval to be in consultation with the Environment Agency.

(2) The construction environmental management plan must be substantially in accordance with the framework construction environmental management plan and must be implemented as approved.

(3) The plan submitted and approved pursuant to sub-paragraph (1) must include a site waste management plan that must be substantially in accordance with the framework site waste management plan and must be implemented as approved.

### **Operational environmental management plan**

12.—(1) Prior to the date of final commissioning for any part, an operational environmental management plan for that part must be submitted to and approved by the relevant planning authority.

(2) The operational environmental management plan must be substantially in accordance with the framework operational environmental 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.

### **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 Network Rail Infrastructure Limited, the relevant highway authority and National Highways Limited.

(2) The construction traffic management plan must be substantially in accordance with the framework construction traffic management plan and must be implemented as approved.

### **Operational noise**

**14.—**(1) No part of Work No. 1, Work No. 2 or Work No. 3 may commence until an operational noise assessment containing details of how the design of the authorised development has incorporated mitigation to ensure the operational noise rating levels as set out in the environmental statement are to be complied with for that part has been submitted to and approved by the relevant planning authority for that part.

(2) The mitigation measures described in the operational noise assessment for each part of the authorised development must be implemented as approved and maintained throughout the operation of the relevant part of the authorised development to which the plan relates.

### **Soil management plan**

**15.—**(1) No part of the authorised development may commence until a soil management plan for that part has been submitted to and approved by the relevant planning authority.

(2) The soils management plan must be substantially in accordance with the framework soil management plan and must be implemented as approved.

### **Skills, supply chain and employment**

**16.—**(1) No part of the authorised development may commence until a skills, supply chain and employment plan in relation to that part has been submitted to and approved by the relevant planning authority.

(2) The skills, supply chain and employment plan must be substantially in accordance with the framework skills, supply chain and employment 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.

(3) The skills, supply chain and employment plan must identify opportunities for individuals and businesses to access employment, skills and supply chain opportunities associated with that part of the authorised development, and the means for publicising such opportunities.

### **Public rights of way**

**17.—**(1) No part of the authorised development may commence until a public rights of way management plan for any sections of public rights of way shown to be closed within Schedule 6 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 public rights of way management plan must be substantially in accordance with the framework public rights of way management plan and must be implemented as approved.

(3) The public rights of way management plan must be implemented as approved unless otherwise agreed with the relevant planning authority in consultation with the relevant highway authority.

## **Decommissioning and restoration**

**18.**—(1) Unless otherwise agreed with the relevant planning authority, no later than 12 months prior to the date that the undertaker intends to decommission any part of the authorised development, the undertaker must submit to the relevant planning authority for approval a decommissioning environmental management plan for that part. Such approval to be in consultation with the Environment Agency.

(2) Decommissioning must commence no later than 40 years following the date of final commissioning.

(3) The plan submitted and approved pursuant to sub-paragraph (1) must be substantially in accordance with the framework decommissioning environmental management plan and must be implemented as approved.

(4) The plan submitted and approved pursuant to sub-paragraph (1) must include a resource management plan that includes details of proposals to minimise the use of natural resources and unnecessary materials.

## SCHEDULE 3

Article 6

### LEGISLATION TO BE DISAPPLIED

1. The following provisions do not apply in so far as they relate to the construction of any numbered work or the carrying out of any operation required for the purpose of, or in connection with, the construction, operation, maintenance or decommissioning of the authorised development—

- (a) River Dun Navigation Act 1821 **(a)**;
- (b) River Dun Navigation Act 1826 **(b)**;
- (c) River Dun Drainage Act 1827 **(c)**;
- (d) West Yorkshire Drainage Act 1831 **(d)**;
- (e) Road from Doncaster to Selby Act 1832 **(e)**;
- (f) Great Northern Railway Amendment and Isle of Axholme Extension Act 1848 **(f)**;
- (g) Doncaster Corporation Waterworks Act 1873 **(g)**;
- (h) Dun Drainage Act 1873 **(h)**;
- (i) Doncaster Corporation Waterworks Act 1880 **(i)**;
- (j) Aire and Calder and River Dun Navigation Junction Canal Act 1891 **(j)**;
- (k) Aire and Calder Navigation Act 1899 **(k)**;
- (l) Land Drainage (Braithwaite Moss) Provisional Order Confirmation Act 1912 **(l)**;
- (m) Aire and Calder Navigation Act 1914 **(m)**;
- (n) Doncaster Area Drainage Act 1929 **(n)**;
- (o) Doncaster Area Drainage Act 1933 **(o)**; and
- (p) Aire and Calder Navigation Act 1992 **(p)**.

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- (a)** 1821 c. xlvi
  - (b)** 1826 c. xcvii
  - (c)** 1827 c. xciv
  - (d)** 1831 c. xxxvi
  - (e)** 1832 c. lxxxvi
  - (f)** 1848 c. cxiv
  - (g)** 1873 c. cxxix
  - (h)** 1873 c. cxev
  - (i)** 1880 c. xxix
  - (j)** 1891 c. clxx
  - (k)** 1899 c. cvi
  - (l)** 1912 c. clxviii
  - (m)** 1914 c. xxxiii
  - (n)** 1929 c. xvii
  - (o)** 1933 c. x
  - (p)** 1992 c. iv

## SCHEDULE 4

Article 8

### STREETS SUBJECT TO STREET WORKS

#### Interpretation

1. In this Schedule—

“cable works” means works to place, retain and maintain underground electrical and communications apparatus.

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Street</i>	<i>(3)</i> <i>Description of the street works</i>
City of Doncaster Council	Lawn Lane	Street works to facilitate cable works and carriageway surface repairs for the length shown in green patterned hatching within proximity of access 3/08 on Sheet 3 of the streets, rights of way and access plans
City of Doncaster Council	Fenwick Common Lane	Street works to facilitate carriageway surface repairs for the length shown in green patterned hatching within proximity of access 3/14 and 5/15 on Sheets 3 and 5 of the streets, rights of way and access plans
City of Doncaster Council	West Lane	Street works to facilitate carriageway surface repairs for the length shown in green patterned hatching within proximity of access 4/03 on Sheet 4 of the streets, rights of way and access plans
City of Doncaster Council	Moss Road	Street works to facilitate carriageway surface repairs for the length shown in green patterned hatching within proximity of access 5/25 on Sheet 5 of the streets, rights of way and access plans
City of Doncaster Council	Moss Road	Street works to facilitate cable works and carriageway surface repairs for the length shown in green patterned hatching within proximity of access 6/14 on Sheet 6 of the streets, rights of way and access plans
City of Doncaster Council	Brick Kiln Lane	Street works to facilitate cable works and carriageway surface repairs for the length shown in green patterned hatching within proximity of access 7/04 on Sheet 7 of the streets,

		rights of way and access plans
City of Doncaster Council	Trumfleet Lane	Street works to facilitate cable works and carriageway surface repairs for the length shown in green patterned hatching within proximity of access 7/07 on Sheet 7 of the streets, rights of way and access plans
City of Doncaster Council	Trumfleet Lane	Street works to facilitate cable works and carriageway surface repairs for the length shown in green patterned hatching within proximity of access 8/03 on Sheet 8 of the streets, rights of way and access plans
City of Doncaster Council	Marsh Road	Street works to facilitate cable works and carriageway surface repairs for the length shown in green patterned hatching within proximity of access 8/08 on Sheet 8 of the streets, rights of way and access plans
City of Doncaster Council	Thorpe Lane	Street works to facilitate cable works for the length shown in green patterned hatching within proximity of access 9/01 on Sheet 9 of the streets, rights of way and access plans
City of Doncaster Council	Thorpe Bank	Street works to facilitate cable works and carriageway surface repairs for the length shown in green patterned hatching within proximity of access 9/02 and 10/06 on Sheets 9 and 10 of the streets, rights of way and access plans
City of Doncaster Council	Fordstead Lane	Street works to facilitate carriageway surface repairs for the length shown in green patterned hatching within proximity of access 10/15 on Sheet 10 of the streets, rights of way and access plans
City of Doncaster Council	Marsh Lane	Street works to facilitate carriageway surface repairs for the length shown in green patterned hatching within proximity of access 10/13 on Sheet 10 of the streets, rights of way and access plans
City of Doncaster Council	South Road	Street works to facilitate carriageway surface repairs for the length shown in green patterned hatching within proximity of access 10/10 on Sheet 10 of the streets, rights

		of way and access plans
City of Doncaster Council	High Street	Street works to facilitate carriageway surface repairs for the length shown in green patterned hatching within proximity of access 11/01 on Sheet 11 of the streets, rights of way and access plans
City of Doncaster Council	Station Road	Street works to facilitate carriageway surface repairs for the length shown in green patterned hatching within proximity of access 11/04 on Sheet 11 of the streets, rights of way and access plans
City of Doncaster Council	Moss Road	Street works to facilitate carriageway surface repairs for the length shown in green patterned hatching within proximity of access 11/15 on Sheet 11 of the streets, rights of way and access plans



**SCHEDULE 5**  
**ALTERATION OF STREETS**

Articles 10 and 11

**PART 1**  
**PERMANENT ALTERATION OF LAYOUT**

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Street</i>	<i>(3)</i> <i>Description of the Alteration</i>
City of Doncaster Council	Lawn Lane	Alteration of layout of Lawn Lane in the area depicted in solid green hatching at the points marked 3/07 and 3/08 as shown on Sheet 3 of the streets, rights of way and access plans subsequent to improvements to adjoining field access.
City of Doncaster Council	Moss Road	Alteration of layout of Moss Road in the area depicted in solid green hatching at the point marked 6/14 as shown on Sheet 6 of the streets, rights of way and access plans subsequent to improvements to adjoining field access.

**PART 2**  
**TEMPORARY ALTERATION OF LAYOUT**

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Street</i>	<i>(3)</i> <i>Description of the Alteration</i>
City of Doncaster Council	Moss Road	Alteration of layout to Moss Road in the area depicted in solid green hatching adjacent to the point marked 6/17 as shown on Sheet 6 of the streets, rights of way and access plans subsequent to improvements to adjoining field access.
City of Doncaster Council	Brick Kiln Lane	Alteration of layout to Brick Kiln Lane in the area depicted in solid green hatching adjacent to the point marked 7/04 as shown on Sheet 7 of the streets, rights of way and access plans subsequent to improvements to adjoining field access.

City of Doncaster Council	Trumfleet Lane	Alteration of layout to Trumfleet Lane in the area depicted in solid green hatching adjacent to the point marked 7/07 as shown on Sheet 7 of the streets, rights of way and access plans subsequent to improvements to adjoining field access.
City of Doncaster Council	Trumfleet Lane	Alteration of layout to Trumfleet Lane in the area depicted in solid green hatching adjacent to the point marked 8/02 as shown on Sheet 8 of the streets, rights of way and access plans subsequent to construction of adjoining new access.
City of Doncaster Council	Marsh Road	Alteration of layout to Marsh Road in the area depicted in solid green hatching adjacent to the point marked 8/08 and 8/11 as shown on Sheet 8 of the streets, rights of way and access plans subsequent to improvements to adjoining field access.
City of Doncaster Council	Thorpe Bank	Alteration of layout to Marsh Road in the area depicted in solid green hatching adjacent to the point marked 9/02 as shown on Sheet 9 of the streets, rights of way and access plans subsequent to improvements to adjoining private access.
City of Doncaster Council	Thorpe Bank	Alteration of layout to Thorpe Bank in the area depicted in solid green hatching adjacent to the point marked 10/05 as shown on Sheet 10 of the streets, rights of way and access plans subsequent to improvements to adjoining private access.
City of Doncaster Council	Fordstead Lane	Alteration of layout to Fordstead Lane in the area depicted in solid green hatching adjacent to the point marked 10/15 as shown on Sheet 10 of the streets, rights of way and access plans subsequent to improvement to Fordstead Lane and Marsh Lane.
City of Doncaster Council	High Street	Alteration of layout to High

		Street in the area depicted in solid green hatching adjacent to the point marked 11/01 as shown on Sheet 11 of the streets, rights of way and access plans subsequent to alteration to accommodate abnormal load manoeuvre.
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## SCHEDULE 6

Article 12 and 13

### STREETS AND PUBLIC RIGHTS OF WAY

#### PART 1

#### STREETS TO BE TEMPORARILY CLOSED (SINGLE LANE CLOSURES / STREET CLOSURE)

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Street</i>	<i>(3)</i> <i>Measures</i>
City of Doncaster Council	Lawn Lane	Temporary street closure to all traffic save for traffic under the direction of the undertaker for the width of the street to facilitate the alteration of layout and street works for the lengths shown in green solid and patterned hatching on Sheet 3 of the streets, rights of way and access plans.
City of Doncaster Council	Fenwick Common Lane	Temporary single lane closure to all traffic save for traffic under the direction of the undertaker for the width of the street to facilitate the street works for the lengths shown in green patterned hatching on Sheets 3 and 5 of the streets, rights of way and access plans.
City of Doncaster Council	West Lane	Temporary single lane closure to all traffic save for traffic under the direction of the undertaker for the width of the street to facilitate the street works for the length shown in green patterned hatching on Sheet 4 of the streets, rights of way and access plans.
City of Doncaster Council	Moss Road	Temporary single lane closure to all traffic save for traffic under the direction of the undertaker for the width of the street to facilitate the street works for the length shown in green patterned hatching on Sheet 5 of the streets, rights of way and access plans.
City of Doncaster Council	Moss Road	Temporary single lane closure to all traffic save for traffic under the direction of the undertaker for the width of the street to facilitate the alteration

		of layout and street works for the lengths shown in green solid and patterned hatching on Sheet 6 of the streets, rights of way and access plans.
City of Doncaster Council	Brick Kiln Lane	Temporary street closure to all traffic save for traffic under the direction of the undertaker for the width of the street to facilitate the alteration of layout and street works for the lengths shown in green solid and patterned hatching on Sheet 7 of the streets, rights of way and access plans.
City of Doncaster Council	Trumfleet Lane	Temporary single lane closure to all traffic save for traffic under the direction of the undertaker for the width of the street to facilitate the alteration of layout and street works for the lengths shown in green solid and patterned hatching on Sheet 7 of the streets, rights of way and access plans.
City of Doncaster Council	Trumfleet Lane	Temporary single lane closure to all traffic save for traffic under the direction of the undertaker for the width of the street to facilitate the alteration of layout and street works for the lengths shown in green solid and patterned hatching on Sheet 8 of the streets, rights of way and access plans.
City of Doncaster Council	Marsh Road	Temporary single lane closure to all traffic save for traffic under the direction of the undertaker for the width of the street to facilitate the alteration of layout and street works for the lengths shown in green solid and patterned hatching on Sheet 8 of the streets, rights of way and access plans.
City of Doncaster Council	Thorpe Bank	Temporary single lane closure to all traffic save for traffic under the direction of the undertaker for the width of the street to facilitate the alteration of layout and street works for the lengths shown in green solid and patterned hatching on Sheets 9 and 10 of the streets, rights of way and access plans.

City of Doncaster Council	Thorpe Lane	Temporary single lane closure to all traffic save for traffic under the direction of the undertaker for the width of the street to facilitate the street works for the length shown in green patterned hatching on Sheet 9 of the streets, rights of way and access plans.
City of Doncaster Council	Fordstead Lane	Temporary single lane closure to all traffic save for traffic under the direction of the undertaker for the width of the street to facilitate the alteration of layout and street works for the length shown in green solid and patterned hatching on Sheet 10 of the streets, rights of way and access plans.
City of Doncaster Council	Marsh Lane	Temporary single lane closure to all traffic save for traffic under the direction of the undertaker for the width of the street to facilitate the street works for the length shown in green patterned hatching on Sheet 10 of the streets, rights of way and access plans.
City of Doncaster Council	South Lane	Temporary single lane closure to all traffic save for traffic under the direction of the undertaker for the width of the street to facilitate the street works for the length shown in green patterned hatching on Sheet 10 of the streets, rights of way and access plans.
City of Doncaster Council	High Street	Temporary single lane closure to all traffic save for traffic under the direction of the undertaker for the width of the street to facilitate the alteration of layout and street works for the lengths shown in green solid and patterned hatching on Sheet 11 of the streets, rights of way and access plans.
City of Doncaster Council	Station Road	Temporary single lane closure to all traffic save for traffic under the direction of the undertaker for the width of the street to facilitate the street works for the length shown in green patterned hatching on Sheet 11 of the streets, rights of way and access plans.

City of Doncaster Council	Moss Road	Temporary single lane closure to all traffic save for traffic under the direction of the undertaker for the width of the street to facilitate the street works for the length shown in green patterned hatching on Sheet 11 of the streets, rights of way and access plans.
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## PART 2

### PUBLIC RIGHTS OF WAY TO BE TEMPORARILY CLOSED AND DIVERTED

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Public right of way</i>	<i>(3)</i> <i>Measures</i>
City of Doncaster Council	Fenwick-16	Public Right of Way to be temporarily closed and diverted between PRoW 03/06 and PRoW 03/10 as shown on Sheet 3 of the streets, access and rights of way plans, to facilitate the construction of the authorised development.
City of Doncaster Council	Moss-6	Public Right of Way to be temporarily closed and diverted between PRoW 06/05 and PRoW 06/06 as shown on Sheet 6 of the streets, access and rights of way plans, to facilitate the construction of the authorised development.
City of Doncaster Council	Fenwick-14	Public Right of Way to be temporarily closed and diverted between PRoW 06/02 and PRoW 06/05 as shown on Sheet 6 of the streets, access and rights of way plans, to facilitate the construction of the authorised development.



## PART 3

### PERMANENT USE OF MOTOR VEHICLES ON PUBLIC RIGHT OF WAY

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Public right of way</i>	<i>(3)</i> <i>Measures</i>
City of Doncaster Council	Fenwick-10 between PRoW 03/02 and PRoW 04/05	Permanent use of motor vehicles under the direction of the undertaker at location PRoW 03/02 and PRoW 04/05 as shown on Sheets 3 and 4 of the streets, access and rights of way plans to facilitate the construction and operation of the Scheme.
City of Doncaster Council	Fenwick-14 between PRoW 03/03 and PRoW 06/02	Permanent use of motor vehicles under the direction of the undertaker at location PRoW 03/03 and PRoW 06/02 as shown on Sheets 3 and 6 of the streets, access and rights of way plans to facilitate the construction and operation of the Scheme.
City of Doncaster Council	Fenwick-15 between PRoW 03/04 and PRoW 04/07	Permanent use of motor vehicles under the direction of the undertaker at location PRoW 03/04 and PRoW 04/07 as shown on Sheets 3 and 4 of the streets, access and rights of way plans to facilitate the construction and operation of the Scheme.
City of Doncaster Council	Fenwick-16 between PRoW 03/06 and PRoW 03/10	Permanent use of motor vehicles under the direction of the undertaker at location PRoW 03/06 and PRoW 03/10 as shown on Sheet 3 of the streets, access and rights of way plans to facilitate the construction and operation of the Scheme.
City of Doncaster Council	Fenwick-11 between PRoW 03/07 and PRoW 03/08	Permanent use of motor vehicles under the direction of the undertaker at location PRoW 03/07 and PRoW 03/08 as shown on Sheet 3 of the streets, access and rights of way plans to facilitate the construction and operation of the Scheme.
City of Doncaster Council	Fenwick-11 between PRoW 03/09 and PRoW 05/01	Permanent use of motor vehicles under the direction of the undertaker at location

		PRoW 03/09 and PRoW 05/01 as shown on Sheets 3 and 5 of the streets, access and rights of way plans to facilitate the construction and operation of the Scheme.
City of Doncaster Council	Fenwick-13 between PRoW 04/06 and PRoW 06/03	Permanent use of motor vehicles under the direction of the undertaker at location PRoW 04/06 and PRoW 06/03 as shown on Sheets 4 and 6 of the streets, access and rights of way plans to facilitate the construction and operation of the Scheme.
City of Doncaster Council	Fenwick-11 between PRoW 05/02 and PRoW 05/03	Permanent use of motor vehicles under the direction of the undertaker at location PRoW 05/02 and PRoW 05/03 as shown on Sheet 5 of the streets, access and rights of way plans to facilitate the construction and operation of the Scheme.
City of Doncaster Council	Moss-5 between PRoW 05/03 and PRoW 05/04	Permanent use of motor vehicles under the direction of the undertaker at location PRoW 05/03 and PRoW 05/04 as shown on Sheet 5 of the streets, access and rights of way plans to facilitate the construction and operation of the Scheme.
City of Doncaster Council	Moss-6 between PRoW 06/01 and PRoW 06/02	Permanent use of motor vehicles under the direction of the undertaker at location PRoW 06/01 and PRoW 06/02 as shown on Sheet 6 of the streets, access and rights of way plans to facilitate the construction and operation of the Scheme.

## PART 4

### TEMPORARY MANAGEMENT OF PUBLIC RIGHTS OF WAY

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Public right of way</i>	<i>(3)</i> <i>Measure</i>
City of Doncaster Council	Fenwick-12 between PRoW 03/01 and PRoW 04/01	Public Right of Way between PRoW 03/01 and PRoW 04/01 as shown on Sheets 3 and 4 of the streets, access and rights of way plans to be managed during construction of the

		authorised development
City of Doncaster Council	Fenwick-10 between PRow 03/02 and PRow 04/05	Public Right of Way between PRow 03/02 and PRow 04/05 as shown on Sheets 3 and 4 of the streets, access and rights of way plans to be managed during construction of the authorised development
City of Doncaster Council	Fenwick-14 between PRow 03/03 and PRow 06/02	Public Right of Way between PRow 03/03 and PRow 06/02 as shown on Sheets 3 and 6 of the streets, access and rights of way plans to be managed during construction of the authorised development
City of Doncaster Council	Fenwick-15 between PRow 03/04 and PRow 04/07	Public Right of Way between PRow 03/04 and PRow 04/07 as shown on Sheets 3 and 4 of the streets, access and rights of way plans to be managed during construction of the authorised development
City of Doncaster Council	Fenwick-16 between 03/05 and 03/10	Public Right of Way between PRow 03/05 and PRow 03/10 as shown on Sheet 3 of the streets, access and rights of way plans to be managed during construction of the authorised development
City of Doncaster Council	Fenwick-11 between PRow 03/07 and PRow 03/08	Public Right of Way between PRow 03/07 and PRow 03/08 as shown on Sheet 3 of the streets, access and rights of way plans to be managed during construction of the authorised development
City of Doncaster Council	Fenwick-11 between PRow 03/09 and PRow 05/01	Public Right of Way between PRow 03/09 and PRow 05/01 as shown on Sheets 3 and 5 of the streets, access and rights of way plans to be managed during construction of the authorised development
City of Doncaster Council	Fenwick-12 between PRow 04/02 and PRow 04/03	Public Right of Way between PRow 04/02 and PRow 04/03 as shown on Sheet 4 of the streets, access and rights of way plans to be managed during construction of the authorised development
City of Doncaster Council	Fenwick-13 between PRow 04/06 and PRow 06/03	Public Right of Way between PRow 04/06 and PRow 06/03 as shown on Sheets 4 and 6 of the streets, access and rights of way plans to be managed during construction of the

		authorised development
City of Doncaster Council	Fenwick-11 between PRow 05/02 and PRow 05/03	Public Right of Way between PRow 05/02 and PRow 05/03 as shown on Sheet 5 of the streets, access and rights of way plans to be managed during construction of the authorised development
City of Doncaster Council	Moss-5 between PRow 05/03 and PRow 05/04	Public Right of Way between PRow 05/03 and PRow 05/04 as shown on Sheet 5 of the streets, access and rights of way plans to be managed during construction of the authorised development
City of Doncaster Council	Moss-6 between PRow 06/01 and PRow 06/02	Public Right of Way between PRow 06/01 and PRow 06/02 as shown on Sheet 6 of the streets, access and rights of way plans to be managed during construction of the authorised development
City of Doncaster Council	Moss-20 between PRow 07/01 and PRow 07/02	Public Right of Way between PRow 07/01 and PRow 07/02 as shown on Sheet 7 of the streets, access and rights of way plans to be managed during construction of the authorised development
City of Doncaster Council	Thorpe in Balne-6 between PRow 08/01 and PRow 08/02	Public Right of Way between PRow 08/01 and PRow 08/02 as shown on Sheet 8 of the streets, access and rights of way plans to be managed during construction of the authorised development
City of Doncaster Council	Thorpe in Balne-7 between PRow 08/03 and PRow 08/04	Public Right of Way between PRow 08/03 and PRow 08/04 as shown on Sheet 8 of the streets, access and rights of way plans to be managed during construction of the authorised development
City of Doncaster Council	Thorpe in Balne-8 between PRow 09/01 and PRow 09/02	Public Right of Way between PRow 09/01 and PRow 09/02 as shown on Sheet 9 of the streets, access and rights of way plans to be managed during construction of the authorised development
City of Doncaster Council	Thorpe in Balne-13 between PRow 09/03 and PRow 09/04	Public Right of Way between PRow 09/03 and PRow 09/04 as shown on Sheet 9 of the streets, access and rights of way plans to be managed during construction of the

		authorised development
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## PART 5

### TEMPORARY USE OF MOTOR VEHICLES ON PUBLIC RIGHTS OF WAY

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Public right of way</i>	<i>(3)</i> <i>Measures</i>
City of Doncaster Council	Thorpe in Balne-7 between PRow 08/03 and PRow 08/04	Temporary use of motor vehicles under the direction of the undertaker at location PRow 08/03 and PRow 08/04 as shown on Sheet 8 of the streets, access and rights of way plans to facilitate the construction of the Scheme.
City of Doncaster Council	Thorpe in Balne-8 between PRow 09/01 and PRow 09/02	Temporary use of motor vehicles under the direction of the undertaker at location PRow 09/01 and PRow 09/02 as shown on Sheet 9 of the streets, access and rights of way plans to facilitate the construction of the Scheme.
City of Doncaster Council	Thorpe in Balne-13 between PRow 09/03 and PRow 09/04	Temporary use of motor vehicles under the direction of the undertaker at location PRow 09/03 and PRow 09/04 as shown on Sheet 9 of the streets, access and rights of way plans to facilitate the construction of the Scheme.

## PART 6

### PERMANENT CLOSURE AND DIVERSION OF PUBLIC RIGHTS OF WAY

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Public right of way to be closed</i>	<i>(3)</i> <i>Extent of closure</i>	<i>(4)</i> <i>New public right of way to be substituted/provided</i>
City of Doncaster Council	Sykehouse-29	The Public Right of Way between PRow 04/04 and PRow 04/08 on sheet 4 of the streets, rights of way and access plans.	The Public Right of Way between PRow 04/05 and PRow 04/08 on sheet 4 of the streets, rights of way and access plans.
City of Doncaster Council	Moss-6	The Public Right of Way between PRow 06/01 and	The Public Right of Way between PRow 06/01 and PRow 06/07 on sheet 6 of the streets, rights of way and access plans.

		PRoW 06/02 on sheet 6 of the streets, rights of way and access plans.	
City of Doncaster Council	Fenwick-14	The Public Right of Way between PRoW 06/02 and PRoW 06/04 on sheet 6 of the streets, rights of way and access plans.	The Public Right of Way between PRoW 06/04 and PRoW 06/07 on sheet 6 of the streets, rights of way and access plans.
City of Doncaster Council	Fenwick-12	The Public Right of Way between PRoW 04/04 and PRoW 04/05 on sheet 4 of the streets, rights of way and access plans.	The Public Right of Way between PRoW 04/05 and PRoW 04/08 on sheet 4 of the streets, rights of way and access plans.

## SCHEDULE 7

Article 15

### MEANS OF ACCESS TO WORKS

#### PART 1

##### PERMANENT MEANS OF ACCESS TO WORKS

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Public right of way</i>	<i>(3)</i> <i>Description of Means of Access</i>
City of Doncaster Council	Existing Field Access off Lawn Lane Eastbound	Existing field access to be improved at the point marked 3/07 on Sheet 3 of the streets, rights of way and access plans.
City of Doncaster Council	Existing Field Access off West Lane Eastbound	Existing field access at the point marked 4/01 on Sheet 3 of the streets, rights of way and access plans.
City of Doncaster Council	Existing Field Access off Lawn Lane Westbound	Existing field access to be improved at the point marked 3/08 on Sheet 3 of the streets, rights of way and access plans.
City of Doncaster Council	Existing Field Access off Moss Road Eastbound	Existing field access to be improved at the point marked 6/14 on Sheet 6 of the streets, rights of way and access plans.

#### PART 2

##### TEMPORARY MEANS OF ACCESS TO WORKS

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Public right of way</i>	<i>(3)</i> <i>Description of Means of Access</i>
City of Doncaster Council	Existing Field Access off Moss Road Westbound	Existing field access to be improved at the point marked 6/17 on Sheet 6 of the streets, rights of way and access plans.
City of Doncaster Council	Existing Field Access off Brick Kiln Lane Westbound	Existing field access to be improved at the point marked 7/04 on Sheet 7 of the streets, rights of way and access plans
City of Doncaster Council	Existing Field Access off Trumfleet Lane Southbound	Existing field access to be improved at the point marked 7/07 on Sheet 7 of the streets, rights of way and access plans
City of Doncaster Council	Proposed Access off Trumfleet Lane Eastbound	Proposed new access to be constructed at the point marked 08/02 on Sheet 8 of the streets, rights of way and



		access plans
City of Doncaster Council	Existing Field Access off Marsh Road Eastbound	Existing field access to be improved at the point marked 8/08 on Sheet 8 of the streets, rights of way and access plans
City of Doncaster Council	Existing Field Access off Marsh Road Westbound	Existing field access to be improved at the point marked 8/11 on Sheet 8 of the streets, rights of way and access plans
City of Doncaster Council	Existing Access off Thorpe Bank Northbound	Existing access to be improved at the point marked 9/02 on Sheet 9 of the streets, rights of way and access plans
City of Doncaster Council	Existing Access off Thorpe Bank Northbound	Existing access to be improved at the point marked 10/05 on Sheet 10 of the streets, rights of way and access plans
City of Doncaster Council	Existing Access off Fordstead Lane to Marsh Lane	Existing access to be improved at the point marked 10/15 on Sheet 10 of the streets, rights of way and access plans

## SCHEDULE 8

Article 17

### TRAFFIC REGULATION MEASURES

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Extent of temporary traffic signal and banksman control area</i>
Lawn Lane Eastbound and Westbound Carriageway to facilitate the construction of the authorised development.	Extents of traffic signals and banksperson control presented on Sheet 3 of the traffic regulation measures plans.
Haggs Lane Eastbound and Westbound Carriageway to facilitate the construction of the authorised development.	Extents of traffic signals and banksperson control presented on Sheet 3 of the traffic regulation measures plans.
Fenwick Common Lane Northbound and Southbound Carriageway to facilitate the construction of the authorised development.	Extents of traffic signals and banksperson control presented on Sheets 3 and 5 of the traffic regulation measures plans.
West Lane Eastbound and Westbound Carriageway to facilitate the construction of the authorised development.	Extents of traffic signals and banksperson control presented on Sheet 4 of the traffic regulation measures plans.
Moss Road Eastbound and Westbound Carriageway to facilitate the construction of the authorised development.	Extents of traffic signals and banksperson control presented on Sheet 5 of the traffic regulation measures plans.
Moss Road Eastbound and Westbound Carriageway to facilitate the construction of the authorised development.	Extents of traffic signals and banksperson control presented on Sheet 6 of the traffic regulation measures plans.
Trumfleet Lane Northbound and Southbound Carriageway to facilitate the construction of the authorised development.	Extents of traffic signals and banksperson control presented on Sheet 7 of the traffic regulation measures plans.
Brick Kiln Lane Eastbound and Westbound Carriageway to facilitate the construction of the authorised development.	Extents of traffic signals and banksperson control presented on Sheet 7 of the traffic regulation measures plans.
Trumfleet Lane Eastbound and Westbound Carriageway to facilitate the construction of the authorised development.	Extents of traffic signals and banksperson control presented on Sheet 8 of the traffic regulation measures plans.
Marsh Road Eastbound and Westbound Carriageway to facilitate the construction of the authorised development.	Extents of traffic signals and banksperson control presented on Sheet 8 of the traffic regulation measures plans.
Thorpe Bank Northbound and Southbound Carriageway to facilitate the construction of the authorised development.	Extents of traffic signals and banksperson control presented on Sheets 9 and 10 of the traffic regulation measures plans.
Thorpe Lane Eastbound and Westbound Carriageway to facilitate the construction of the authorised development.	Extents of traffic signals and banksperson control presented on Sheet 9 of the traffic regulation measures plans.
Ash Road Eastbound and Westbound Carriageway to facilitate the construction of the authorised development.	Extents of traffic signals and banksperson control presented on Sheet 10 of the traffic regulation measures plans.
Fordstead Lane Eastbound and Westbound Carriageway to facilitate the construction of the authorised development.	Extents of traffic signals and banksperson control presented on Sheet 10 of the traffic regulation measures plans.
South Road Northbound and Southbound Carriageway to facilitate the construction of the authorised development.	Extents of traffic signals and banksperson control presented on Sheet 10 of the traffic regulation measures plans.

Marsh Lane Northbound and Southbound Carriageway to facilitate the construction of the authorised development.	Extents of traffic signals and banksperson control presented on Sheet 10 of the traffic regulation measures plans.
High Street Northbound and Southbound Carriageway to facilitate the construction of the authorised development.	Extents of traffic signals and banksperson control presented on Sheet 11 of the traffic regulation measures plans.
Station Road Eastbound and Westbound Carriageway to facilitate the construction of the authorised development.	Extents of traffic signals and banksperson control presented on Sheet 11 of the traffic regulation measures plans.
Moss Road Eastbound and Westbound Carriageway to facilitate the construction of the authorised development.	Extents of traffic signals and banksperson control presented on Sheet 11 of the traffic regulation measures plans.

## LAND IN WHICH ONLY NEW RIGHTS ETC. MAY BE ACQUIRED

**Interpretation****1. In this Schedule—**

“access rights” means rights over land to—

- (a) alter, improve, form, maintain, retain, use (with or without vehicles, plant and machinery), remove, reinstate means of access to the authorised development including visibility splays, bridges and road widening and to remove impediments (including vegetation) to such access;
- (b) remain, pass and repass on foot, with or without vehicles, plant and machinery (including rights to lay and use any temporary surface) for all purposes in connection with the authorised development;
- (c) install, use, support, protect, inspect, alter, remove, replace, refurbish, reconstruct, retain, renew, improve and maintain security fencing, gates, boundary treatment, public rights of way and any other ancillary apparatus and any other works as necessary;
- (d) install, execute, implement, retain, repair, improve, renew, remove, relocate and plant trees, woodlands, shrubs, hedgerows, seeding, landscaping and other ecological measures together with the right to maintain, inspect and replant such trees, shrubs, hedgerows, landscaping and other ecological measures the right to pass and repass on foot, with or without vehicles, plant and machinery for all purposes in connection with the implementation and maintenance of landscaping and ecological mitigation or enhancement works;
- (e) restrict and remove the erection of buildings or structures, restrict the altering of ground levels, restrict and remove the planting of trees or carrying out operations or actions (including but not limited to blasting and piling) which may obstruct, interrupt or interfere with the exercise of the rights or damage the authorised development; and
- (f) install, use, support, protect, inspect, alter, remove, replace, refurbish, reconstruct, retain, renew, improve and maintain sewers, drains, pipes, ducts, mains, conduits, services, flues and to drain into and manage waterflows in any drains, watercourses and culverts; and

“cable rights” means rights over land to—

- (g) install, use, support, protect, inspect, alter, remove, replace, refurbish, reconstruct, retain, renew, improve and maintain electrical underground cables, earthing cables, optical fibre cables, data cables, telecommunications cables and other services, works associated with such cables including bays, ducts, protection and safety measures and equipment, and other ancillary apparatus and structures (including but not limited to access chambers, manholes and marker posts) and any other works necessary together with the right to fell, trim or lop trees and bushes which may obstruct or interfere with the said cables, telecommunications and other ancillary apparatus;
- (h) remain, pass and repass on foot, with or without vehicles, plant and machinery (including rights to lay and use any temporary surface or form a temporary compound) for all purposes in connection with the authorised development;
- (i) continuous vertical and lateral support for the authorised development;
- (j) install, use, support, protect, inspect, alter, remove, replace, refurbish, reconstruct, retain, renew, improve and maintain sewers, drains, pipes, ducts, mains, conduits, services, flues and to drain into and manage waterflows in any drains, watercourses and culverts;
- (k) install, execute, implement, retain, repair, improve, renew, remove, relocate and plant trees, woodlands, shrubs, hedgerows, seeding, landscaping and other ecological measures together with the right to maintain, inspect and replant such trees, shrubs, hedgerows,

landscaping and other ecological measures the right to pass and repass on foot, with or without vehicles, plant and machinery for all purposes in connection with the implementation and maintenance of landscaping and ecological mitigation or enhancement works;

- (l) install, use, support, protect, inspect, alter, remove, replace, refurbish, reconstruct, retain, renew, improve and maintain security fencing, gates, boundary treatment, public rights of way and any other ancillary apparatus and any other works as necessary; and
- (m) restrict and remove the erection of buildings or structures, restrict the altering of ground levels, restrict and remove vegetation and restrict the planting of trees or carrying out operations or actions (including but not limited to blasting and piling) which may obstruct, interrupt or interfere with the exercise of the rights or damage the authorised development.

<i>(1)</i> <i>Plot reference number shown on the Land Plans</i>	<i>(2)</i> <i>Purposes for which rights over land may be required and restrictive covenants imposed</i>
2/04	Access rights
3/01	Cable rights and access rights
3/05	Cable rights and access rights
3/06	Cable rights
4/03	Access rights
4/04	Access rights
4/06	Access rights
4/07	Access rights
5/01	Access rights
5/03	Access rights
6/03	Access rights
6/04	Cable rights and access rights
6/05	Access rights
6/06	Access rights
6/07	Cable rights
6/08	Cable rights
7/01	Access rights
7/02	Cable rights and access rights
7/03	Cable rights
7/05	Cable rights
7/06	Access rights
7/07	Access rights
7/08	Cable rights and access rights
7/09	Access rights
7/10	Cable rights and access rights
8/01	Cable rights
8/02	Cable rights
8/03	Access rights
8/04	Cable rights and access rights
8/05	Access rights
8/06	Cable rights
8/07	Cable rights
8/08	Cable rights
8/09	Cable rights
8/10	Cable rights
8/11	Access rights

8/12	Access rights
8/13	Cable rights and access rights
8/14	Access rights
8/15	Cable rights
8/16	Cable rights
9/01	Cable rights
9/02	Cable rights
9/03	Cable rights
9/04	Cable rights
9/05	Access rights
9/06	Cable rights
9/07	Cable rights
9/08	Cable rights
9/09	Cable rights and access rights
9/10	Cable rights
9/11	Cable rights
9/12	Cable rights
9/13	Cable rights
9/14	Cable rights
9/15	Cable rights
10/01	Cable rights
10/02	Cable rights
10/03	Cable rights and access rights
10/04	Cable rights and access rights
10/05	Cable rights
10/06	Cable rights
10/07	Cable rights
10/08	Cable rights
10/09	Cable rights and access rights
10/10	Access rights
10/11	Access rights
10/12	Access rights
10/13	Access rights
10/14	Access rights
11/01	Access rights
11/02	Access rights
11/03	Access rights
11/04	Access rights
11/05	Access rights
11/06	Access rights
11/07	Access rights

## MODIFICATION OF COMPENSATION AND COMPULSORY PURCHASE ENACTMENTS FOR THE CREATION OF NEW RIGHTS AND IMPOSITION OF NEW RESTRICTIVE COVENANTS

### Compensation enactments

**1.** The enactments for the time being in force with respect to compensation for the compulsory purchase of land are to apply, with the necessary modifications as respects compensation, in the case of a compulsory acquisition under this Order of a right by the creation of a new right or the imposition of a restrictive covenant as they apply as respects compensation on the compulsory purchase of land and interests in land.

**2.—**(1) Without limitation on the scope of paragraph 1, the Land Compensation Act 1973<sup>(a)</sup> has effect subject to the modifications set out in sub-paragraph (2).

(2) In section 44(1) (compensation for injurious affection), as it applies to compensation for injurious affection under section 7 (measure of compensation in case of severance) of the 1965 Act as substituted by paragraph 5—

- (a) for the words “land is acquired or taken from” substitute “a right or restrictive covenant over land is purchased from or imposed on”, and
- (b) for the words “acquired or taken from him” substitute “over which the right is exercisable or the restrictive covenant enforceable”.

**3.—**(1) Without limitation on the scope of paragraph 1, the 1961 Act has effect subject to the modifications set out in sub-paragraph (2).

(2) In section 5A(5A) (relevant valuation date), omit the words after “if—” and substitute—

- (a) the acquiring authority enters on land for the purpose of exercising a right in pursuant of a notice of entry under section 11(1) of the 1965 Act (as modified by paragraph 5(5) of Schedule 10 to the Fenwick Solar Farm Order 202[\*];
- (b) the acquiring authority is subsequently required by a determination under paragraph 12 of Schedule 2A to the 1965 Act (as substituted by paragraph 5(7) of Schedule 10 to the Fenwick Solar Farm Order 202[\*]) to acquire an interest in the land; and
- (c) the acquiring authority enters on and takes possession of that land,

the authority is deemed for the purposes of subsection (3)(a) to have entered on that land where it entered on that land for the purpose of exercising that right.

### Application of Part 1 of the 1965 Act

**4.** Part 1 (compulsory purchase under Acquisition of Land Act 1946) of the 1965 Act, as applied by section 125 (application of compulsory acquisition provisions) of the 2008 Act to the acquisition of land under article 21 (compulsory acquisition of land) and as modified by article 28 (modification of Part 1 of the Compulsory Purchase Act 1965), applies to the compulsory acquisition of a right by the creation of a new right under article 23 (compulsory acquisition of rights)—

- (a) with the modifications specified in paragraph 5; and
- (b) with such other modifications as may be necessary.

**5.—**(1) The modifications referred to in paragraph 4(a) are as follows—

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(a) 1973 c. 26.



(2) References in the 1965 Act to land are, in the appropriate contexts, to be read (according to the requirements of the particular context) as referring to, or as including references to—

- (a) the right acquired or to be acquired, or the restriction imposed or to be imposed; or
- (b) the land over which the right is or is to be exercisable, or the restriction is to be enforceable.

(3) For section 7 of the 1965 Act (measure of compensation in case of severance) substitute—

“7. In assessing the compensation to be paid by the acquiring authority under this Act, regard must be had not only to the extent (if any) to which the value of the land over which the right is to be acquired or the restrictive covenant is to be imposed is depreciated by the acquisition of the right or the imposition of the covenant but also to the damage (if any) to be sustained by the owner of the land by reason of its severance from other land of the owner, or injuriously affecting that other land by the exercise of the powers conferred by this or the special Act.”.

(4) The following provisions of the 1965 Act (which state the effect of a deed poll executed in various circumstances where there is no conveyance by persons with interests in the land), that is to say—

- (a) section 9(4) (failure by owners to convey);
- (b) paragraph 10(3) of Schedule 1 (owners under incapacity); paragraph 2(3) of Schedule 2 (absent and untraced owners); and
- (c) paragraphs 2(3) and 7(2) of Schedule 4 (common land),

are modified to secure that, as against persons with interests in the land which are expressed to be overridden by the deed, the right which is to be compulsorily acquired or the restrictive covenant which is to be imposed is vested absolutely in the acquiring authority.

(5) Section 11 (powers of entry)(a) of the 1965 Act is modified to secure that, as from the date on which the acquiring authority has served notice to treat in respect of any right or restrictive covenant, as well as the notice of entry required by subsection (1) of that section (as it applies to compulsory acquisition under article 21 (compulsory acquisition of land)), it has power, exercisable in equivalent circumstances and subject to equivalent conditions, to enter for the purpose of exercising that right or enforcing that restrictive covenant (which is deemed for this purpose to have been created on the date of service of the notice); and sections 11A (powers of entry: further notices of entry)(b), 11B (counter-notice requiring possession to be taken on specified date)(c), 12 (penalty for unauthorised entry)(d) and 13 (refusal to give possession to acquiring authority)(e) of the 1965 Act are modified correspondingly.

(6) Section 20(f) (tenants at will, etc.) of the 1965 Act applies with the modifications necessary to secure that persons with such interests in land as are mentioned in that section are compensated in a manner corresponding to that in which they would be compensated on a compulsory acquisition under this Order of that land, but taking into account only the extent (if any) of such interference with such an interest as is actually caused, or likely to be caused, by the exercise of the right or enforcement of the restrictive covenant in question.

(7) Section 22 (interests omitted from purchase) of the 1965 Act as modified by article 28(4) (modification of Part 1 of the Compulsory Purchase Act 1965) is so modified as to enable the

- 
- (a) Section 11 was amended by section 34(1) of, and Schedule 4 to, the Acquisition of Land 1981 (c. 67), section 3 of, and Part 1 of Schedule 1 to, the Housing (Consequential Provisions) Act 1985 (c. 71), section 14 of, and paragraph 12(1) of Schedule 5 to, the Church of England (Miscellaneous Provisions) Measure 2006 (No. 1), sections 186(2), 187(2) and 188 of, and paragraph 6 of Schedule 14 and paragraph 3 of Schedule 16 to, the Housing and Planning Act 2016 (c. 22) and S.I. 2009/1307.
  - (b) Section 11A was inserted by section 186(3) of the Housing and Planning Act 2016.
  - (c) Section 11B was inserted by section 187(3) of the Housing and Planning Act 2016.
  - (d) Section 12 was amended by section 56(2) of, and Part 1 of Schedule 9 to, the Court Act 1971 (c. 23) and paragraphs (2) and (4) of Schedule 16 to the Housing and Planning Act 2016.
  - (e) Section 13 was amended by sections 62(3), 139(4) to (9) and 146 of, and paragraphs 27 and 28 of Schedule 13 and Part 3 of Schedule 23 to the Tribunals, Courts and Enforcement Act 2007 (c. 15).
  - (f) Section 20 was amended by paragraph 4 of Schedule 15 to the Planning and Compensation Act 1991 (c. 34) and S.I. 2009/1307.

acquiring authority, in circumstances corresponding to those referred to in that section, to continue to be entitled to exercise the right acquired or restrictive covenant imposed, subject to compliance with that section as respects compensation.

(8) For Schedule 2A to the 1965 Act (counter notice requiring purchase of land not in notice to treat) substitute—

## **“SCHEDULE 2A**

### **COUNTER-NOTICE REQUIRING PURCHASE OF LAND**

**1.**—(1) This Schedule applies where an acquiring authority serves a notice to treat in respect of a right over, or restrictive covenant affecting, the whole or part of a house, building or factory and have not executed a general vesting declaration under section 4 of the 1981 Act as applied by article 25 (application of the 1981 Act) of the Fenwick Solar Farm Order 202[\*] in respect of the land to which the notice to treat relates.

(2) But see article 26(3) (acquisition of subsoil only) of the Fenwick Solar Farm Order 202[\*] which excludes the acquisition of subsoil only from this Schedule

**2.** In this Schedule, “house” includes any park or garden belonging to a house.

#### **Counter-notice requiring purchase of land**

**3.** A person who is able to sell the house, building or factory (“the owner”) may serve a counter-notice requiring the authority to purchase the owner’s interest in the house, building or factory.

**4.** A counter-notice under paragraph 3 must be served within the period of 28 days beginning with the day on which the notice to treat was served.

#### **Response to counter-notice**

**5.** On receiving a counter-notice, the acquiring authority must decide whether to—

- (a) withdraw the notice to treat,
- (b) accept the counter-notice, or
- (c) refer the counter notice to the Upper Tribunal.

**6.** The authority must serve notice of their decision on the owner within the period of 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 the Upper Tribunal**

**10.** On a referral under paragraph 7, the Upper Tribunal must determine whether the acquisition of the right or the imposition of the restrictive covenant would—

- (a) in the case of a house, building or factory; cause material detriment to the house, building or factory, or
- (b) in the case of a park or garden, seriously affect the amenity or convenience of the house to which the park or garden belongs.

**11.** In making its determination, the Upper Tribunal must take into account—

- (a) the effect of the acquisition of the right or the imposition of the covenant,
- (b) the use to be made of the right or covenant proposed to be acquired or imposed, and
- (c) if the right or covenant is proposed to be acquired or imposed for works or other purposes extending to other land, the effect of the whole of the works and the use of the other land.

**12.** If the Upper Tribunal determines that the acquisition of the right or the imposition of the covenant would have either of the consequences described in paragraph 10, it must determine how much of the house, building or factory the authority ought to be required to take.

**13.** If the Upper Tribunal determines that the authority ought to be required to take some or all of the house, building or factory, the compulsory purchase order and the notice to treat are to have effect as if they included the owner's interest in that land.

**14.—(1)** If the Upper Tribunal determines that the authority ought to be required to take some or all of the house, building or factory, the authority may at any time within the period of 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 11

Article 30

## LAND OF WHICH TEMPORARY POSSESSION MAY BE TAKEN

<i>(1)</i> <i>Plot reference number shown on the Land Plans</i>	<i>(2)</i> <i>Purpose for which temporary possession may be taken</i>
7/04	Temporary use to facilitate the construction of Work No. 6

## SCHEDULE 12

Article 41

### DOCUMENTS AND PLANS TO BE CERTIFIED

#### PART 1

#### DOCUMENTS FORMING THE ENVIRONMENTAL STATEMENT TO BE CERTIFIED

<i>(1)</i> <i>Document name</i>	<i>(2)</i> <i>Document reference</i>	<i>(3)</i> <i>Revision number</i>	<i>(4)</i> <i>Date</i>	<i>(5)</i> <i>Examination Library Reference</i>
Environmental Statement	EN010152/APP/6.1	0	31 October 2024	APP-052 to APP-068
Figures	EN010152/APP/6.2	0	31 October 2024	APP-069 to APP-131
Technical Appendices	EN010152/APP/6.3	0	31 October 2024	APP-132 to APP-187

#### PART 2

#### EXAMINATION DOCUMENTS FORMING PART OF THE ENVIRONMENTAL STATEMENT TO BE CERTIFIED

<i>(1)</i> <i>Document name</i>	<i>(2)</i> <i>Document reference</i>	<i>(3)</i> <i>Revision number</i>	<i>(4)</i> <i>Date</i>	<i>(5)</i> <i>Examination Library Reference</i>
Chapter 6 – Climate Change	EN010152/APP/6.1	1	12 December 2024	APP-224
Chapter 7 – Cultural Heritage	EN010152/APP/6.1	1	30 April 2025	REP1-011
Chapter 8 – Ecology and Nature Conservation	EN010152/APP/6.1	1	23 July 2025	REP4-010
Chapter 10 – Landscape and Visual Amenity	EN010152/APP/6.1	1	28 May 2025	REP2-007
Chapter 11 – Noise and Vibration	EN010152/APP/6.1	1	23 July 2025	REP4-012
Chapter 12 – Socio-Economics and Land Use	EN010152/APP/6.1	2	30 April 2025	REP1-013
Chapter 13 – Transport and Access	EN010152/APP/6.1	1	30 April 2025	REP1-015
Figure 1-3 Elements of the	EN010152/APP/6.2	1	12 December 2024	APP-228

Scheme				
Figure 10-6 Screened Zone of Theoretical Visibility Solar PV Site	EN010152/APP/6.2	1	28 May 2025	REP2-009
Figure 10-7 Screen ZTV On Site Substation and BESS	EN010152/APP/6.2	1	28 May 2025	REP2-010
Figure 10-8 Screened ZTV All Features	EN010152/APP/6.2	1	28 May 2025	REP2-011
Figure 10-9 Representative Viewpoint Locations	EN010152/APP/6.2	1	28 May 2025	REP2-012
Figure 10-10 Viewpoint Photography	EN010152/APP/6.2	1	28 May 2025	REP2-013
Figure 10-14: Bare Earth ZTV All Features	EN01152/APP/8.24	0	28 May 2025	REP2-062
Figure 11-1 Noise Monitoring and Receptor Locations	EN010152/APP/6.2	1	12 December 2024	APP-229
Figure 13-3 Indicative HGV Routing	EN010152/APP/6.2	1	12 December 2024	APP-230
Figure 14-1 Dust Risk Assessment	EN010152/APP/6.2	1	28 May 2025	REP2-014
Appendix 1-3 EIA Scoping Opinion Responses	EN010152/APP/6.3	1	12 December 2024	APP-231
Appendix 7-2: Desk Based Assessment	EN010152/APP/6.3	1	30 April 2025	REP1-017
Appendix 8-3 Bat Report	EN010152/APP/6.3	1	12 December 2024	APP-235
Appendix 8-5 Hedgerow Report	EN010152/APP/6.3	1	2 July 2025	REP3-010
Appendix 9-3: Flood Risk Assessment	EN010152/APP/6.3	1	28 May 2025	REP2-015
Appendix 10-2 Landscape and Visual Impact Assessment Methodology	EN010152/APP/6.3	1	28 May 2025	REP2-019
Appendix 10-5 Landscape Assessment Tables	EN010152/APP/6.3	2	28 May 2025	REP2-021
Appendix 10-7	EN010152/APP/6.3	1	12 December	APP-236

Arboricultural Impact Assessment (Part 1 of 2)			2024	
Appendix 10-7 Arboricultural Impact Assessment (Part 2 of 2)	EN010152/APP/6.3	1	12 December 2024	APP-240
Appendix 13-2 Traffic Flow Diagrams	EN010152/APP/6.3	1	23 July 2025	REP4-014
Appendix 14-2 Glint and Glare Assessment (Part 1 of 2)	EN010152/APP/6.3	2	28 May 2025	REP2-023
Appendix 14-2 Glint and Glare Assessment (Part 2 of 2)	EN010152/APP/6.3	2	28 May 2025	REP2-025

### PART 3

#### OTHER DOCUMENTS TO BE CERTIFIED

<i>(1)</i> <i>Document name</i>	<i>(2)</i> <i>Document reference</i>	<i>(3)</i> <i>Revision number</i>	<i>(4)</i> <i>Date</i>	<i>(5)</i> <i>Examination Library Reference</i>
Land Plan	EN010152/APP/2.1	0	31 October 2024	APP-006
Works Plan	EN010152/APP/2.2	1	12 December 2024	APP-214
Streets, Rights of Way and Access Plan	EN010152/APP/2.3	4	2 July 2025	REP3-004 and REP3-005
Traffic Regulation Measures Plan	EN010152/APP/2.4	0	31 October 2024	APP-009
Book of Reference	EN010152/APP/4.3	2	30 April 2025	REP1-009
Outline Design Parameters Statement	EN010152/APP/7.4	1	28 May 2025	REP2-027
Framework Construction Environmental Management Plan	EN010152/APP/7.7	3	2 July 2025	REP3-013
Framework Operational Environmental Management Plan	EN010152/APP/7.8	3	21 August 2025	
Framework Decommissioning Environmental Management Plan	EN010152/APP/7.9	3	23 July 2025	REP4-019
Framework Soil	EN010152/APP/7.1	2	23 July 2025	REP4-021

Management Plan	0			
Framework Public Rights of Way Management Plan	EN010152/APP/7.1 3	4	21 August 2025	
Framework Landscape and Ecological Management Plan	EN010152/APP/7.1 4	3	2 July 2025	REP3-017
Framework skills, supply chain and employment plan	EN010152/APP/7.1 5	0	31 October 2024	APP-204
Framework Battery Safety Management Plan	EN010152/APP/7.1 6	0	31 October 2024	APP-205
Framework Construction Traffic Management Plan	EN010152/APP/7.1 7	2	23 July 2025	REP4-027
Framework Site Waste Management Plan	EN010152/APP/7.1 8	0	31 October 2024	APP-208
Framework Archaeological Mitigation Strategy	EN010152/APP/8.1 6	1	28 May 2025	REP2-054



## SCHEDULE 13

### ARBITRATION RULES

Article 43

#### **Commencing an arbitration**

1. The arbitration is deemed to have commenced when a party (“the claimant”) serves a written notice of arbitration on the other party (“the respondent”).

#### **Time periods**

2.—(1) All time periods in these arbitration rules are measured in days and include weekends, but not bank or public holidays.

(2) Time periods are calculated from the day after the arbitrator is appointed which is either—

- (a) the date the arbitrator notifies the parties in writing of his/her acceptance of an appointment by agreement of the parties; or
- (b) the date the arbitrator is appointed by the Secretary of State.

#### **Timetable**

3.—(1) The timetable for the arbitration is that which is set out in sub-paragraphs (2) to (4) below unless amended in accordance with paragraph 5(3).

(2) Within 14 days of the arbitrator being appointed, the claimant must provide both the respondent and the arbitrator with—

- (a) a written statement of claim which describes the nature of the difference between the parties, the legal and factual issues, the claimant’s contentions as to those issues, the amount of its claim or the remedy it is seeking;
- (b) all statements of evidence and copies of all documents on which it relies, including contractual documentation, correspondence (including electronic documents), legal precedents and expert witness reports.

(3) Within 14 days of receipt of the claimant’s statements under sub-paragraph (2) by the arbitrator and respondent, the respondent must provide the claimant and the arbitrator with—

- (a) a written statement of defence consisting of a response to the claimant’s statement of claim, its statement in respect of the nature of the difference, the legal and factual issues in the claimant’s claim, its acceptance of any elements of the claimant’s claim and its contentions as to those elements of the claimant’s claim it does not accept;
- (b) all statements of evidence and copies of all documents on which it relies, including contractual documentation, correspondence (including electronic documents), legal precedents and expert witness reports;
- (c) any objection it wishes to make to the claimant’s statements, comments on the claimant’s expert reports (if submitted by the claimant) and explanations of the objections.

(4) Within 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) its written submissions in response to the legal and factual issues involved.

## **Procedure**

4.—(1) The parties' pleadings, witness statements and expert reports (if any) must be concise. A single pleading must not exceed 30 single-sided A4 pages using 10pt Arial font.

(2) The arbitrator will make an award on the substantive differences based solely on the written material submitted by the parties unless the arbitrator decides that a hearing is necessary to explain or resolve any matters.

(3) Either party may, within 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 a hearing is to be held, the date and venue for the hearing are to be fixed by agreement with the parties, save that if there is no agreement the arbitrator must direct a date and venue which the arbitrator considers is fair and reasonable in all the circumstances. The date for the hearing must not be less than 35 days from the date of the arbitrator's direction confirming the date and venue of the hearing.

(6) A decision must be made by the arbitrator on whether there is any need for expert evidence to be submitted orally at the hearing. If oral expert evidence is required by the arbitrator, then any experts attending the hearing may be asked questions by the arbitrator.

(7) There is to be no examination or cross examination of experts, but the arbitrator must invite the parties to ask questions of the experts by way of clarification of any answers given by the experts in response to the arbitrator's questions. Prior to the hearing in relation to the experts—

- (a) at least 28 days before a hearing, the arbitrator must provide a list of issues to be addressed by the experts;
- (b) if more than one expert is called, they will jointly confer and produce a joint report or reports within 14 days of the issues being provided; and
- (c) the form and content of a joint report must be as directed by the arbitrator and must be provided at least 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 must take these submissions into account in the award.

(9) The arbitrator may make other directions or rulings as considered appropriate in order to ensure that the parties comply with the timetable and procedures to achieve an award on the substantive difference within 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 information before the arbitrator attaching the appropriate weight to any evidence submitted beyond any timetable or in breach of any procedure or direction.

(11) The arbitrator's award must include reasons. The parties must accept that the extent to which reasons are given must be proportionate to the issues in dispute and the time available to the arbitrator to deliver the award.

## **Arbitrator's powers**

5.—(1) The arbitrator has all the powers of the Arbitration Act 1996, save where modified in this Schedule.

(2) There must be no discovery or disclosure, except that the arbitrator is to have the power to order the parties to produce such documents as are reasonably requested by another party no later than the statement of reply, or by the arbitrator, where the documents are manifestly relevant, specifically identified and the burden of production is not excessive. Any application and orders should be made by way of a Redfern Schedule without any hearing.

(3) Any time limits fixed in accordance with this procedure or by the arbitrator may be varied by agreement between the parties, subject to any such variation being acceptable to and approved by the arbitrator. In the absence of agreement, the arbitrator may vary the timescales or procedure—

- (a) if the arbitrator is satisfied that a variation of any fixed time limit is reasonably necessary to avoid a breach of the rules of natural justice and then;
- (b) only for such a period that is necessary to achieve fairness between the parties.

(4) On the date the award is made, the arbitrator will notify the parties that the award is completed, signed and dated, and that it will be issued to the parties on receipt of cleared funds for the arbitrator's fees and expenses.

### **Costs**

**6.—**(1) The costs of the arbitration must include the fees and expenses of the arbitrator, the reasonable fees and expenses of any experts and the reasonable legal and other costs incurred by the parties for the arbitration.

(2) Where the difference involves connected or interrelated issues, the arbitrator must consider the relevant costs collectively.

(3) The final award must fix the costs of the arbitration and decide which of the parties are to bear them or in what proportion they are to be borne by the parties.

(4) The arbitrator must award recoverable costs on the general principle that each party should bear its own costs, having regard to all material circumstances, including such matters as exaggerated claims or defences, the degree of success for different elements of the claims, claims that have incurred substantial costs, the conduct of the parties and the degree of success of a party.

### **Confidentiality**

**7.—**(1) Subject to sub-paragraphs (2) and (3), any arbitration hearing and documentation will be open to and accessible by the public.

(2) The arbitrator may direct that the whole or part of a hearing is to be private or any documentation to be confidential where it is necessary in order to protect commercially sensitive information.

(3) Nothing in this paragraph will prevent any disclosure of a document by a party pursuant to an order of a court in England and Wales or where disclosure is required under any enactment.

## SCHEDULE 14

### PROTECTIVE PROVISIONS

Article 44

#### PART 1

#### FOR THE PROTECTION OF ELECTRICITY, GAS, WATER AND SEWERAGE UNDERTAKERS

1. For the protection of the utility undertakers referred to in this Part of this Schedule (save for any utility undertakers which are specifically protected by any other Part of this Schedule, which will take precedence), the following provisions have effect, unless otherwise agreed in writing between the undertaker and the utility undertakers concerned.

2. In this Part of this Schedule—

“alternative apparatus” means alternative apparatus adequate to enable the utility undertaker in question to fulfil its statutory functions in a manner not less efficient than previously;

“apparatus” means—

- (a) in the case of an electricity undertaker, electric lines or electrical plant (as defined in the Electricity Act 1989(a)), belonging to or maintained by that utility undertaker;
- (b) in the case of a gas undertaker, any mains, pipes or other apparatus belonging to or maintained by a gas transporter for the purposes of gas supply;
- (c) in the case of a water undertaker—
  - (i) mains, pipes or other apparatus belonging to or maintained by that utility undertaker for the purposes of water supply; and
  - (ii) any water mains or service pipes (or part of a water main or service pipe) that is the subject of an agreement to adopt made under section 51A of the Water Industry Act 1991;
- (d) in the case of a sewerage undertaker—
  - (i) any drain or works vested in the utility undertaker under the Water Industry Act 1991(b); and
  - (ii) any sewer which is so vested or is the subject of a notice of intention to adopt given under section 102(4) of that Act or an agreement to adopt made under section 104 of that Act,

and includes a sludge main, disposal main (within the meaning of section 219 of that Act) or sewer outfall and any manholes, ventilating shafts, pumps or other accessories forming part of any such sewer, drain or works, and includes any structure in which apparatus is or is to be lodged or which gives or will give access to apparatus; and

- (e) any other mains, pipelines or cables that are not the subject of the protective provisions in Parts 2 to 6 of this Schedule;

“functions” includes powers and duties;

“in”, in a context referring to apparatus or alternative apparatus in land, includes a reference to apparatus or alternative apparatus under, over or upon land; and

“utility undertaker” means—

- (f) any licence holder within the meaning of Part 1 of the Electricity Act 1989;

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(a) 1989 c. 29.

(b) 1991 c. 56.

- (g) a gas transporter within the meaning of Part 1 of the Gas Act 1986(a);
  - (h) water undertaker within the meaning of the Water Industry Act 1991;
  - (i) a sewerage undertaker within the meaning of Part 1 of the Water Industry Act 1991; and
  - (j) an owner or operator of apparatus within paragraph (e) of the definition of that term,
- for the area of the authorised development, and in relation to any apparatus, means the utility undertaker to whom it belongs or by whom it is maintained.

3. This Part of this Schedule does not apply to apparatus in respect of which the relations between the undertaker and the utility undertaker are regulated by the provisions of Part 3 of the 1991 Act.

4. Regardless of the temporary prohibition or restriction of use of streets under the powers conferred by article 12 (temporary closure of streets and public rights of way), a utility undertaker is at liberty at all times to take all necessary access across any such street and to execute and do all such works and things in, upon or under any such street as may be reasonably necessary or desirable to enable it to maintain any apparatus which at the time of the prohibition or restriction was in that street.

5. Regardless of any provision in this Order or anything shown on the land plans, the undertaker must not acquire any apparatus otherwise than by agreement.

6.—(1) If, in the exercise of the powers conferred by this Order, the undertaker acquires any interest in any land in which any apparatus is placed or over which access to any apparatus is enjoyed or requires that the utility undertaker's apparatus is relocated or diverted, that apparatus must not be removed under this Part of this Schedule, and any right of a utility undertaker to maintain that apparatus in that land and to gain access to it must not be extinguished, until alternative apparatus has been constructed and is in operation, and access to it has been provided, to the reasonable satisfaction of the utility undertaker in question in accordance with sub-paragraphs (2) to (7).

(2) If, for the purpose of executing any works in, on or under any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, the undertaker must give to the utility undertaker in question written notice of that requirement, together with a plan and section of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order a utility undertaker reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph (3), afford to the utility undertaker the necessary facilities and rights for the construction of alternative apparatus in other land of the undertaker and subsequently for the maintenance of that apparatus.

(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of the undertaker, or the undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraph (2), in the land in which the alternative apparatus or part of such apparatus is to be constructed, the utility undertaker in question must, on receipt of a written notice to that effect from the undertaker, as soon as reasonably possible use reasonable endeavours to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed.

(4) Any alternative apparatus to be constructed in land of the undertaker under this Part of this Schedule must be constructed in such manner and in such line or situation as may be agreed between the utility undertaker in question and the undertaker or in default of agreement settled by arbitration in accordance with article 43 (arbitration).

(5) The utility undertaker in question must, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with article 43, and after the grant to the utility undertaker of any such facilities and rights as are referred to in sub-paragraph

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(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)

(2) or (3), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by the undertaker to be removed under the provisions of this Part of this Schedule.

(6) Regardless of anything in sub-paragraph (5), if the undertaker gives notice in writing to the utility undertaker in question that it desires itself to execute any work, or part of any work, in connection with the construction or removal of apparatus in any land controlled by the undertaker, that work, instead of being executed by the utility undertaker, must be executed by the undertaker without unnecessary delay under the superintendence, if given, and to the reasonable satisfaction of the utility undertaker.

(7) Nothing in sub-paragraph (6) authorises the undertaker to execute the placing, installation, bedding, packing, removal, connection or disconnection of any apparatus, or execute any filling around the apparatus (where the apparatus is laid in a trench) within 300 millimetres of the apparatus.

7.—(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to a utility undertaker facilities and rights for the construction and maintenance in land of the undertaker of alternative apparatus in substitution for apparatus to be removed, those facilities and rights must be granted upon such terms and conditions as may be agreed between the undertaker and the utility undertaker in question or in default of agreement settled by arbitration in accordance with article 43 (arbitration).

(2) If the facilities and rights to be afforded by the undertaker in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are in the opinion of the arbitrator less favourable on the whole to the utility undertaker in question than the facilities and rights enjoyed by it in respect of the apparatus to be removed and the terms and conditions to which those facilities and rights are subject, the arbitrator must make such provision for the payment of compensation by the undertaker to that utility undertaker as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

8.—(1) Not less than 28 days before starting the execution of any works in, on or under any land purchased, held, appropriated or used under this Order that are near to, or will or may affect, any apparatus the removal of which has not been required by the undertaker under paragraph 6(2), the undertaker must submit to the utility undertaker in question a plan, section and description of the works to be executed.

(2) Those works must be executed only in accordance with the plan, section and description submitted under sub-paragraph (1) and in accordance with such reasonable requirements as may be made in accordance with sub-paragraph (3) by the utility undertaker for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and the utility undertaker is entitled to watch and inspect the execution of those works.

(3) Any requirements made by a utility undertaker under sub-paragraph (2) must be made within a period of 21 days beginning with the date on which a plan, section and description under sub-paragraph (1) are submitted to it.

(4) If a utility undertaker in accordance with sub-paragraph (3) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraphs 1 to 7 apply as if the removal of the apparatus had been required by the undertaker under paragraph 6(2).

(5) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 28 days before commencing the execution of any works, a new plan, section and description instead of the plan, section and description previously submitted, and having done so the provisions of this paragraph apply to and in respect of the new plan, section and description.

(6) The undertaker is not required to comply with sub-paragraph (1) in a case of emergency but in that case it must give to the utility undertaker in question notice as soon as is reasonably practicable and a plan, section and description of those works as soon as reasonably practicable

subsequently and must comply with sub-paragraph (2) in so far as is reasonably practicable in the circumstances.

**9.**—(1) Subject to the following provisions of this paragraph, the undertaker must repay to a utility undertaker the reasonable expenses incurred by that utility undertaker in, or in connection with, the inspection, removal, alteration or protection of any apparatus or the construction of any new apparatus which may be required in consequence of the execution of any such works as are referred to in paragraph 6(2).

(2) There is to be deducted from any sum payable under sub-paragraph (1) the value of any apparatus removed under the provisions of this Part of this Schedule, that value being calculated after removal.

(3) If in accordance with the provisions of this Part of this Schedule—

- (a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions; or
- (b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was,

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or, in default of agreement, is not determined by arbitration in accordance with article 43 (arbitration) to be necessary, then, if such placing involves cost in the construction of works under this Part of this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to the utility undertaker in question by virtue of sub-paragraph (1) is to be reduced by the amount of that excess.

(4) For the purposes of sub-paragraph (3)—

- (a) an extension of apparatus to a length greater than the length of existing apparatus is not to be treated as a placing of apparatus of greater dimensions than those of the existing apparatus where such extension is required in consequence of the execution of any such works as are referred to in paragraph 6(2); and
- (b) where the provision of a joint in a cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole is to be treated as if it also had been agreed or had been so determined.

(5) An amount which apart from this sub-paragraph would be payable to a utility undertaker in respect of works by virtue of sub-paragraph (1), if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on the utility undertaker any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course is to be reduced by the amount which represents that benefit.

**10.**—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any of the works referred to in paragraph 6(2), any damage is caused to any apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works) or property of a utility undertaker, or there is any interruption in any service provided, or in the supply of any goods, by any utility undertaker, the undertaker must—

- (a) bear and pay the cost reasonably incurred by that utility undertaker in making good such damage or restoring the supply; and
- (b) make reasonable compensation to that utility undertaker for any other expenses, loss, damages, penalty or costs incurred by the utility undertaker,

by reason or in consequence of any such damage or interruption.

(2) Nothing in sub-paragraph (1) imposes any liability on the undertaker with respect to any damage or interruption to the extent that it is attributable to the act, neglect or default of a utility undertaker, its officers, servants, contractors or agents.

(3) A utility undertaker must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise is to be made without the consent of the undertaker which, if it withholds such consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

11. Nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and a utility undertaking in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

## PART 2

### FOR THE PROTECTION OF OPERATORS OF ELECTRONIC COMMUNICATIONS CODE NETWORKS

1. For the protection of any operator, the following provisions have effect, unless otherwise agreed in writing between the undertaker and the operator.

2. In this Part of this Schedule—

“the 2003 Act” means the Communications Act 2003(a);

“electronic communications apparatus” has the same meaning as in the electronic communications code;

“the electronic communications code” has the same meaning as in section 106 (application of the electronic communications code) of the 2003 Act;

“electronic communications code network” means—

(a) so much of an electronic communications network or conduit system provided by an electronic communications code operator as is not excluded from the application of the electronic communications code by a direction under section 106 of the 2003 Act; and

(b) an electronic communications network which the Secretary of State is providing or proposing to provide;

“electronic communications code operator” means a person in whose case the electronic communications code is applied by a direction under section 106 of the 2003 Act; and

“operator” means the operator of an electronic communications code network.

3. The exercise of the powers of article 32 (statutory undertakers) is subject to Part 10 (undertakers’ works affecting electronic communications apparatus) of the electronic communications code.

4.—(1) Subject to sub-paragraphs (2) to (4), if as the result of the authorised development or its construction, or of any subsidence resulting from any of those works—

(a) any damage is caused to any electronic communications apparatus belonging to an operator (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works), or other property of an operator; or

(b) there is any interruption in the supply of the service provided by an operator,

the undertaker must bear and pay the cost reasonably incurred by the operator in making good such damage or restoring the supply and make reasonable compensation to that operator for any other expenses, loss, damages, penalty or costs incurred by it, by reason, or in consequence of, any such damage or interruption.

(2) Nothing in sub-paragraph (1) imposes any liability on the undertaker with respect to any damage or interruption to the extent that it is attributable to the act, neglect or default of an operator, its officers, servants, contractors or agents.

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(a) 2003 c. 21.



(3) The operator must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise of the claim or demand is to be made without the consent of the undertaker which, if it withholds such consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

(4) Any difference arising between the undertaker and the operator under this Part of this Schedule must be referred to and settled by arbitration under article 43 (arbitration).

5. 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.

6. Nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and an operator in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

## PART 3

### FOR THE PROTECTION OF DRAINAGE AUTHORITIES

7. The provisions of this Part of this Schedule have effect for the protection of the drainage authority unless otherwise agreed in writing between the undertaker and the drainage authority.

8. In this Part of this Schedule—

“authorised development” has the same meaning as in article 2(1) (interpretation) of this Order and (unless otherwise specified) for the purposes of this Part of this Schedule includes the operation and maintenance of the authorised development and the construction of any works authorised by this Part of this Schedule;

“construction” includes execution, placing, altering, replacing, relaying and removal, and “construct” and “constructed” must be construed accordingly;

“drainage authority” means in relation to an ordinary watercourse—

- (a) the drainage board concerned within the meaning of section 23 (prohibition on obstructions etc. in watercourses) of the Land Drainage Act 1991; or
- (b) in the case of any area for which there is no such drainage board, the lead local flood authority within the meaning of section 6 (other definitions) of the Flood and Water Management Act 2010;

“drainage work” means any ordinary watercourse and includes any bank, wall, embankment or other structure, or any appliance constructed for land drainage or flood defence which is the responsibility of the drainage authority;

“ordinary watercourse” has the meaning given by section 72 (interpretation) of the Land Drainage Act 1991;

“plans” includes sections, drawings, specifications and method statements; and

“specified work” means so much of the authorised development as is in, on, under, over or within 9 metres of a drainage work or is otherwise likely to affect the flow of water in any watercourse.

9.—(1) Before commencing construction of a specified work, the undertaker must submit to the drainage authority plans of the specified work and such further particulars available to it as the drainage authority may reasonably require within 28 days of the submission of the plans.

(2) A specified work must not be constructed except in accordance with such plans as may be approved in writing by the drainage authority or determined under paragraph 27.

(3) Any approval of the drainage authority required under this paragraph—

- (a) must not be unreasonably withheld or delayed;
- (b) is deemed to have been given if it is neither given nor refused within 56 days of the submission of the plans for approval, or submission of further particulars (where required by the drainage authority under sub-paragraph (1)) whichever is the later; and
- (c) may be given subject to such reasonable requirements as the drainage authority may make for the protection of any drainage work or for the prevention of flooding or pollution or discharge of its environmental function.

(4) Any refusal under this paragraph must be accompanied by a statement of the reasons for refusal.

**10.** Without limiting the scope of paragraph 20, the requirements which the drainage authority may make under that paragraph include conditions requiring the undertaker at its own expense to construct such protective works, whether temporary or permanent, during the construction of the specified work (including the provision of flood banks, walls or embankments or other new works and the strengthening, repair or renewal of existing banks, walls or embankments) as are reasonably necessary taking account of the terms of this Order—

- (a) to safeguard any drainage work against damage by reason of any specified work; or
- (b) to secure that the efficiency of any drainage work for flood defence and land drainage purposes is not impaired, and that the risk of flooding is not otherwise increased beyond the level of flood risk that was assessed in the environmental statement, by reason of any specified work.

**11.—(1)** Subject to sub-paragraph (2), any specified work, and all protective works required by the drainage authority under paragraph 21, must be constructed—

- (a) without unreasonable delay in accordance with the plans approved or deemed to have been approved or settled under this Part of this Schedule; and
- (b) to the reasonable satisfaction of the drainage authority,

and an officer of the drainage authority is entitled to watch and inspect the construction of such works.

(2) The undertaker must give to the drainage authority—

- (a) not less than 14 days' notice in writing of its intention to commence construction of any specified work; and
- (b) notice in writing of its completion not later than 7 days after the date on which it is brought into use.

(3) If the drainage authority reasonably requires, the undertaker must construct all or part of the protective works so that they are in place prior to the construction of the specified work to which the protective works relate.

(4) If any part of a specified work or any protective work required by the drainage authority is constructed other than in accordance with the requirements of this Part of this Schedule, the drainage authority may by notice in writing require the undertaker at the undertaker's expense to comply with the requirements of this Part of this Schedule or (if the undertaker so elects and the drainage authority in writing consents, such consent not to be unreasonably withheld or delayed) to remove, alter or pull down the work and, where removal is required, to restore the site to its former condition to the reasonable satisfaction of the drainage authority.

(5) Subject to sub-paragraph (6) and paragraph 27 if, within a reasonable period, being not less than 56 days beginning with the date when a notice under sub-paragraph (4) is served on the undertaker, the undertaker has failed to begin taking steps to comply with the requirements of the notice and has not subsequently made reasonably expeditious progress towards their implementation, the drainage authority may execute the works specified in the notice and any expenditure reasonably incurred by the drainage authority in so doing is recoverable from the undertaker.

(6) In the event of any dispute as to whether sub-paragraph (4) is properly applicable to any work in respect of which notice has been served under that sub-paragraph, or as to the reasonableness of any requirement of such a notice, the drainage authority must not except in the case of an emergency exercise the powers conferred by sub-paragraph (5) until the dispute has been finally determined in accordance with paragraph 27.

**12.—**(1) Subject to sub-paragraph (5) from the completion of the construction of any: (a) specified work as constructed in accordance with paragraph 22; or (b) protective work as constructed in accordance with paragraph 21;

(2) If any such specified work or protective work which the undertaker is liable to maintain is not maintained to the reasonable satisfaction of the drainage authority, the drainage authority may by notice in writing require the undertaker to repair and restore the work, or any part of such work, or (if the undertaker so elects and the drainage authority in writing consents, such consent not to be unreasonably withheld or delayed), to remove the specified work and any protective work and restore the site to its former condition, to such extent and within such limits as the drainage authority reasonably requires.

(3) Subject to sub-paragraph (4), if, within a reasonable period, being not less than 28 days beginning with the date on which a notice in respect of any specified work or protective work is served under sub-paragraph (2) on the undertaker, the undertaker has failed to begin taking steps to comply with the reasonable requirements of the notice and has not subsequently made reasonably expeditious progress towards their implementation, the drainage authority may do what is reasonably necessary for such compliance and any reasonable expenditure incurred by the drainage authority in so doing is recoverable from the undertaker.

(4) In the event of any dispute as to the reasonableness of any requirement of a notice served under sub-paragraph (2), the drainage authority must not, except in the case of an emergency, exercise the powers conferred by sub-paragraph (3) until the dispute has been finally determined in accordance with paragraph 28.

(5) This paragraph does not apply to specified works or protective works where no permanent works or assets constructed by the undertaker remain within or cross above the drainage work.

**13.** If by reason of the construction of a specified work or of the failure of any specified work the efficiency of any drainage work for flood defence purposes or land drainage is impaired, or that drainage work is otherwise damaged, the impairment or damage must be made good by the undertaker as soon as reasonably practicable to the reasonable satisfaction of the drainage authority and, if the undertaker fails to do so, the drainage authority may make good the impairment or damage and recover from the undertaker the expense reasonably incurred by it in doing so.

**14.** If by reason of the construction of the specified work the drainage authority's access to land drainage infrastructure, flood defences or equipment maintained for flood defence purposes is materially obstructed, the undertaker must provide such alternative means of access that will allow the drainage authority to maintain the land drainage infrastructure, flood defence or use the equipment no less effectively than was possible before the obstruction within 24 hours of or as soon as reasonably practicable after the undertaker becoming aware of such obstruction.

**15.** The undertaker must make reasonable compensation for costs, charges and expenses which the drainage authority may reasonably incur—

- (a) in the examination or approval of plans under this Part of this Schedule;
- (b) in inspecting the construction of the specified work or any protective works required by the drainage authority under this Part of this Schedule; and
- (c) in carrying out any surveys or tests by the drainage authority which are reasonably required in connection with the construction of the specified work or protective work.

**16.—**(1) The undertaker must make reasonable compensation for liabilities, costs and losses which may be reasonably incurred or suffered by reason of—

- (a) the construction of any specified works or protective works comprised within the authorised development; or
  - (b) any act or omission of the undertaker, its employees, contractors or agents or others while engaged upon the construction of the authorised development.
- (2) The drainage authority must give to the undertaker reasonable notice of any such claim or demand.
- (3) The undertaker may at its own expense conduct all negotiations for the settlement of the same and any litigation that may arise therefrom.
- (4) The drainage authority must not compromise or settle any such claim or make any admission which might be prejudicial to the claim without the agreement of the undertaker which agreement must not be unreasonably withheld or delayed.
- (5) The drainage authority will, having regard to its statutory functions, at all times take reasonable steps to prevent and mitigate any such claims, demands, proceedings, costs, damages, expenses or loss.
- (6) The drainage authority will, at the request of the undertaker and having regard to its statutory functions, afford all reasonable assistance for the purpose of contesting any such claim or action, and is entitled to be repaid its reasonable expenses reasonably incurred in so doing.
- (7) The fact that any work or thing has been executed or done by the undertaker in accordance with a plan approved or deemed to be approved by the drainage authority, or to its satisfaction, or in accordance with any directions or award of an arbitrator, does not relieve the undertaker from any liability under this Part of this Schedule.
- (8) Nothing in sub-paragraph (1) imposes any liability on the undertaker with respect to any damage to the extent that it is attributable to the act, neglect or default of the drainage authority or the breach of a statutory duty of the drainage authority, its officers, servants, contractors or agents.
- 17.** Any dispute arising between the undertaker and the drainage authority under this Part of this Schedule, if the parties agree, is to be determined by arbitration under article 43 (arbitration).

## PART 4

### FOR THE PROTECTION OF RAILWAY INTERESTS

**18.** 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 3 of this Part of this Schedule, any other person on whom rights or obligations are conferred by that paragraph.

**19.** 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—

- (c) the Railways Act 1993;
- (d) the network licence; and/or
- (e) any other relevant statutory or regulatory provisions,

by either the Office of Rail and Road or the Secretary of State for Transport or any other competent body including change procedures and any other consents, approvals of any access or beneficiary that may be required in relation to the authorised development;

“specified work” means so much of any of the authorised development as is situated upon, across, under, over or within 15 metres of, or may in any way adversely affect, railway property and, for the avoidance of doubt, includes the maintenance of such works under the powers conferred by article 5 (power to maintain the authorised development) in respect of such works.

**20.—**(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.

**21.—**(1) The undertaker must not exercise the powers conferred by—

- (a) article 3 (development consent etc granted by this Order);
- (b) article 5 (power to maintain the authorised development);
- (c) article 18 (discharge of water);
- (d) article 20 (authority to survey and investigate the land);
- (e) article 21 (compulsory acquisition of land);
- (f) article 23 (compulsory acquisition of rights);
- (g) article 24 (private rights)
- (h) article 26 (acquisition of subsoil only);
- (i) article 27 (power to override easements and other rights);
- (j) article 30 (temporary use of land for constructing the authorised development);
- (k) article 31 (temporary use of land for maintaining the authorised development);

- (l) article 32 (statutory undertakers);
- (m) article 39 (felling or lopping of trees and removal of hedgerows);
- (n) article 40 (trees subject to tree preservation orders);
- (o) section 11(3) (power of entry) of the Compulsory Purchase Act 1965;
- (p) section 203 (power to override easements and rights) of the Housing and Planning Act 2016;
- (q) section 172 (right to enter and survey land) of the Housing and Planning Act 2016;
- (r) any powers 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 32 (statutory undertakers), article 27 (power to override easements and other rights) or article 24 (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.

**22.—**(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.

**23.—**(1) Any specified work and any protective works to be constructed by virtue of paragraph 116(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 116;
- (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.

**24.** 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.

**25.** 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.

**26.—**(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 116(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 121(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.

**27.** 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 116(3) or in constructing any protective works under the provisions of paragraph 116(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.

**28.—**(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 116(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 116(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 116(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 117.
- (9) To the extent that it would not otherwise do so, the indemnity in paragraph 126(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 121(a) any modifications to Network Rail's apparatus under this paragraph shall be deemed to be protective works referred to in that paragraph.

**29.** 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.

**30.** 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.

**31.** 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.

**32.—(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 42 (no double recovery) which may be occasioned to or reasonably incurred by Network Rail—

- (a) by reason of the construction, maintenance or operation of a specified work or the failure thereof; or
- (b) by reason of any act or omission of the undertaker or of any person in its employ or of its contractors or others whilst engaged upon a specified work;
- (c) by reason of any act or omission of the undertaker or any person in its employ or of its contractors or others whilst accessing to or egressing from the authorised development;
- (d) in respect of any damage caused to or additional maintenance required to, railway property or any such interference or obstruction or delay to the operation of the railway as a result of access to or egress from the authorised development by the undertaker or any person in its employ or of its contractors or others;
- (e) in respect of costs incurred by Network Rail in complying with any railway operational procedures or obtaining any regulatory consents which procedures are required to be followed or consents obtained to facilitate the carrying out or operation of the authorised development,

and the undertaker must indemnify and keep indemnified Network Rail from and against all claims and demands arising out of or in connection with a specified work or any such failure, act or omission: and the fact that any act or thing may have been done by Network Rail on behalf of the undertaker or in accordance with plans approved by the engineer or in accordance with any requirement of the engineer or under the engineer's supervision shall not (if it was done without negligence on the part of Network Rail or of any person in its employ or of its contractors or agents) excuse the undertaker from any liability under the provisions of this sub-paragraph.

(2) Network Rail must—

- (a) give the undertaker reasonable written notice of any such claims or demands;
- (b) not make any settlement or compromise of such a claim or demand without the prior consent of the undertaker; and
- (c) take such steps as are within its control and are reasonable in the circumstances to mitigate any liabilities relating to such claims or demands.

(3) The sums payable by the undertaker under sub-paragraph (1) shall if relevant include a sum equivalent to the relevant costs.

(4) Subject to the terms of any agreement between Network Rail and a train operator regarding the timing or method of payment of the relevant costs in respect of that train operator, Network

Rail must promptly pay to each train operator the amount of any sums which Network Rail receives under sub-paragraph (3) which relates to the relevant costs of that train operator.

(5) The obligation under sub-paragraph (3) to pay Network Rail the relevant costs shall, in the event of default, be enforceable directly by any train operator concerned to the extent that such sums would be payable to that operator pursuant to sub-paragraph (4).

(6) In this paragraph—

“the relevant costs” means the costs, losses and expenses (including loss of revenue) reasonably incurred by each train operator as a consequence of any specified work including but not limited to any restriction of the use of Network Rail’s railway network as a result of the construction, maintenance or failure of a specified work or any such act or omission as mentioned in sub-paragraph (1); and

“train operator” means any person who is authorised to act as the operator of a train by a licence under section 8 of the Railways Act 1993.

**33.** 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 41) 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).

**34.** 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.

**35.** 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.

**36.** 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.

**37.** 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 36 (consent to transfer the benefit of the Order) of this Order and any such notice must be given no later than 28 days before any such application is made and must describe or give (as appropriate)—

- (a) the nature of the application to be made;
- (b) the extent of the geographical area to which the application relates; and
- (c) the name and address of the person acting for the Secretary of State to whom the application is to be made.

**38.** 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 41 (certification of plans and documents, etc.) are certified by the Secretary of State, provide a set of those plans to Network Rail in a format specified by Network Rail.

39. 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 43 (arbitration) and the Rules at Schedule 13 (Arbitration Rules).

## PART 5

### FOR THE PROTECTION OF THE ENVIRONMENT AGENCY

40.—(1) The following provisions apply for the protection of the Agency unless otherwise agreed in writing between the undertaker and the Agency.

(2) In this Part of this Schedule—

“Agency” means the Environment Agency;

“construction” includes execution, placing, altering, replacing, relaying and removal and excavation and “construct” and “constructed” is construed accordingly;

“drainage work” means any main river and includes any land which provides or is expected to provide flood storage capacity for any main river and any bank, wall, embankment or other structure, or any appliance, constructed or used for land drainage, flood defence or tidal monitoring;

“emergency” means an occurrence which presents a risk of—

- (a) serious flooding;
- (b) serious detrimental impact on drainage; or
- (c) serious harm to the environment.

“fishery” means any waters containing fish and fish in, or migrating to or from, such waters and the spawn, spawning ground, habitat or food of such fish;

“main river” has the same meaning given in section 113 of the Water Resources Act 1991;

“non-tidal main river” has the meaning given in paragraph 2(1) of Part 1 of Schedule 25 to the Environmental Permitting (England and Wales) Regulations 2016;

“plans” includes plans, sections, elevations, drawings, specifications, programmes, proposals, calculations, method statements and descriptions;

“remote defence” means any berm, wall or embankment that is constructed for the purposes of preventing or alleviating flooding from, or in connection with, any main river;

“sea defence” means any bank, wall, embankment (any berm, counterwall or cross-wall connected to any such bank, wall or embankment), barrier, tidal sluice and other defence, whether natural or artificial, against the inundation of land by sea water or tidal water, including natural or artificial high ground which forms part of or makes a contribution to the efficiency of the defences of the Agency’s area against flooding, but excludes any sea defence works which are for the time being maintained by a coast protection authority under the provisions of the Coast Protection Act 1949 or by any local authority or any navigation, harbour or conservancy authority;

“specified work” means so much of any work or operation authorised by this Order as is in, on, under, over or within—

- (d) 16 metres of the base of a sea defence which is likely to—
  - (i) endanger the stability of, cause damage or reduce the effectiveness of that sea defence, or
  - (ii) interfere with the Agency’s access to or along that sea defence or the Agency’s ability to undertake works to ensure the efficacy of that sea defence;
- (e) 8 metres of the base of a remote defence which is likely to—
  - (i) endanger the stability of, cause damage or reduce the effectiveness of that remote defence, or
  - (ii) interfere with the Agency’s access to or along that remote defence;

- (f) 16 metres of a drainage work involving a tidal main river;
  - (g) 8 metres of a drainage work involving a non-tidal main river;
  - (h) any distance of a drainage work and is otherwise likely to—
    - (i) affect any drainage work or the volumetric rate of flow of water in or flowing to or from any drainage work;
    - (ii) affect the flow, purity or quality of water in any main river or other surface waters;
    - (iii) cause obstruction to the free passage of fish or damage to any fishery;
    - (iv) affect the conservation, distribution or use of water resources; or
    - (v) affect the conservation value of the main river and habitats in its immediate vicinity;
 or which involves—
    - (i) an activity that includes dredging, raising or taking of any sand, silt, ballast, clay, gravel or other materials from or off the bed or banks of a drainage work (or causing such materials to be dredged, raised or taken), including hydrodynamic dredging or desilting; and
    - (j) any quarrying or excavation within 16 metres of a drainage work which is likely to cause damage to or endanger the stability of the banks or structure of that drainage work;
- “tidal main river” has the meaning given in paragraph 2(1) of Part 1 of Schedule 25 to the Environmental Permitting (England and Wales) Regulations 2016.

### **Submission and approval of plans**

41.—(1) Before beginning to construct any specified work, the undertaker must submit to the Agency plans of the specified work and such further particulars available to it as the Agency may within 28 days of the receipt of the plans reasonably request.

(2) Any such specified work must not be constructed except in accordance with such plans as may be approved in writing by the Agency, or determined under paragraph 145.

(3) Any approval of the Agency required under this paragraph—

- (a) must not be unreasonably withheld or delayed;
- (b) subject to sub-paragraph (5), is deemed to have been refused if it is neither given nor refused within 2 months of the submission of the plans or such later date as is agreed between the Agency and the undertaker and if further particulars have been requested pursuant to sub-paragraph (1) the period between the making of this request and the provision of further particulars in response to it shall not be taken into account in the calculation of the 2 months for the purposes of this sub-paragraph; and
- (c) may be given subject to such reasonable requirements as the Agency may have for the protection of any drainage work or the fishery or for the protection of water resources, or for the prevention of flooding or pollution or for nature conservation or the prevention of environmental harm in the discharge of its environmental duties.

(4) The Agency must use its reasonable endeavours to respond to the submission of any plans before the expiration of the period mentioned in sub-paragraph (3)(b).

(5) In the case of a refusal, the Agency must provide reasons for the grounds of that refusal.

### **Construction of protective works**

42. Without limiting paragraph 135 the requirements which the Agency may have under that paragraph include conditions requiring the undertaker, at its own expense, to construct such protective works, whether temporary or permanent, before or during the construction of the specified works (including the provision of flood banks, walls or embankments or other new works and the strengthening, repair or renewal of existing banks, walls or embankments) as are reasonably necessary—

- (a) to safeguard any drainage work against damage; or

- (b) to secure that its efficiency for flood defence purposes is not impaired and that the risk of flooding is not otherwise increased,
- by reason of any specified work.

### **Timing of works and service of notices**

**43.**—(1) Subject to sub-paragraph (2), any specified work, and all protective works required by the Agency under paragraph 136, must be constructed—

- (a) without unreasonable delay in accordance with the plans approved under this Part of this Schedule; and
- (b) to the reasonable satisfaction of the Agency,

and the Agency is entitled by its officer to watch and inspect the construction of such works.

(2) The undertaker must give to the Agency not less than 14 days' notice in writing of its intention to commence construction of any specified work and notice in writing of its completion not later than 7 days after the date on which it is completed.

(3) If the Agency reasonably requires, the undertaker must construct all or part of the protective works so that they are in place prior to the construction of any specified work to which the protective works relate.

### **Works not in accordance with this Schedule**

**44.**—(1) If there is any failure by the undertaker to obtain consent or comply with conditions imposed by the Agency in accordance with these protective provisions and where the Agency acting reasonably considers it necessary to avoid any of the risks specified in sub-paragraph (2), the Agency may serve written notice requiring the undertaker to cease all or part of the specified works as may be specified within the notice within the period specified in the notice, and the undertaker must cease constructing the specified works or part thereof until such time as it has obtained the consent or complied with the condition specified within the notice served.

(2) The risks specified in sub-paragraph (1) are—

- (a) risk of flooding;
- (b) risk of harm to the environment;
- (c) risk of detrimental impact on drainage; and
- (d) damage to the fishery.

(3) If any part of a specified work or any protective work required by the Agency is constructed otherwise than in accordance with the requirements of this Part of this Schedule, the Agency may by notice in writing require the undertaker at the undertaker's own expense to comply with the requirements of this Part of this Schedule or (if the undertaker so elects and the Agency in writing consents, such consent not to be unreasonably withheld or delayed) to remove, alter or pull down the work and, where removal is required, to restore the site to its former condition to such extent and within such limits as the Agency reasonably requires.

(4) Subject to sub-paragraph (5) if, within a reasonable period, being not less than 28 days beginning with the date when a notice under sub-paragraph (3) is served upon the undertaker, the undertaker has failed to begin taking steps to comply with the requirements of the notice and has not subsequently made reasonably expeditious progress towards their implementation, the Agency may execute the works specified in the notice and any reasonable expenditure incurred by the Agency in so doing is recoverable from the undertaker.

(5) In the event of any dispute as to whether sub-paragraph (3) is properly applicable to any work in respect of which notice has been served under that sub-paragraph, or as to the reasonableness of any requirement of such a notice, the Agency must not, except in the case of an emergency, exercise the powers conferred by sub-paragraph (4) until the dispute has been finally determined in accordance with paragraph 145.

## **Maintenance of works**

**45.**—(1) Subject to sub-paragraph (5) the undertaker must from the commencement of the construction of the specified works maintain in good repair and condition and free from obstruction any drainage work which is situated within the Order limits and on land held by the undertaker for the purposes of or in connection with the specified works, whether or not the drainage work is constructed under the powers conferred by this Order or is already in existence.

(2) If any such drainage work which the undertaker is liable to maintain is not maintained to the reasonable satisfaction of the Agency, the Agency may by notice in writing require the undertaker to repair and restore the work, or any part of such work, or (if the undertaker so elects and the Agency in writing consents, such consent not to be unreasonably withheld or delayed), to remove the work and restore the site to its former condition, to such extent and within such limits as the Agency reasonably requires.

(3) Subject to sub-paragraph (4) if, within a reasonable period, being not less than 28 days beginning with the date on which a notice in respect of any drainage work is served under sub-paragraph (2) on the undertaker, the undertaker has failed to begin taking steps to comply with the requirements of the notice and has not subsequently made reasonably expeditious progress towards their implementation, the Agency may do what is necessary for such compliance and any reasonable expenditure incurred by the Agency in so doing is recoverable from the undertaker.

(4) In the event of any dispute as to the reasonableness of any requirement of a notice served under sub-paragraph (2), the Agency must not, except in the case of an emergency, exercise the powers conferred by sub-paragraph (3) until the dispute has been finally determined in accordance with paragraph 145.

(5) This paragraph does not apply to—

- (a) drainage works which are vested in the Agency, or which the Agency or another person is liable to maintain and is not proscribed by the powers of the Order from doing so; and
- (b) any obstruction of a drainage work expressly authorised in the approval of specified works plans and carried out in accordance with the provisions of this Part of this Schedule provided that any obstruction is removed as soon as reasonably practicable.

## **Remediating impaired drainage work**

**46.** If by reason of the construction of any specified work or of the failure of any such work, the efficiency of any drainage work for flood defence purposes is impaired, or that drainage work is otherwise damaged, such impairment or damage must be made good by the undertaker to the reasonable satisfaction of the Agency and if the undertaker fails to do so, the Agency may make good the impairment or damage and recover any expenditure incurred by the Agency in so doing from the undertaker.

## **Agency access**

**47.** If by reason of the construction of any specified work or the failure of any such work, the Agency's access to flood defences or equipment maintained for flood defence purposes is materially obstructed, the undertaker must notify the Agency immediately and provide suitable alternative means of access that will allow the Agency to maintain the flood defence or use the equipment no less effectively than was possible before the obstruction occurred and such alternative access must be made available as soon as reasonably practicable after the undertaker becomes aware of such obstruction, except in the case of an emergency in which case the undertaker must provide such alternative means of access on demand.

## **Free passage of fish**

**48.**—(1) The undertaker must take all such measures as may be reasonably practicable to prevent any interruption of the free passage of fish in the fishery during the construction of any specified work.

(2) If by reason of—

- (a) the construction of any specified work; or
- (b) the failure of any such work,

damage to the fishery is caused, or the Agency has reason to expect that such damage may be caused, the Agency may serve notice on the undertaker requiring it to take such steps as may be reasonably practicable to make good the damage, or, as the case may be, to protect the fishery against such damage within the period specified in the notice.

(3) If the undertaker fails to take such steps as are described in the notice served under sub-paragraph (2), the Agency may take those steps and any expenditure incurred by the Agency in so doing is recoverable from the undertaker.

(4) In any case where immediate action by the Agency is reasonably required in order to secure that the risk of damage to the fishery is avoided or reduced, the Agency may take such steps as are reasonable for the purpose, and may recover from the undertaker any expenditure incurred in so doing provided that notice specifying those steps is served on the undertaker as soon as reasonably practicable after the Agency has taken, or commenced to take, the steps specified in the notice.

### **Indemnity**

**49.** The undertaker indemnifies the Agency in respect of all costs, charges and expenses which the Agency may reasonably incur—

- (a) in the examination or approval of plans under this Part of this Schedule;
- (b) in the inspection of the construction of the specified works or any protective works required by the Agency under this Part of this Schedule; and
- (c) in the carrying out of any surveys or tests by the Agency which are reasonably required in connection with the construction of the specified works.

**50.—(1)** The undertaker is responsible for and indemnifies the Agency against all costs and losses, liabilities, claims and demands not otherwise provided for in this Schedule which may be reasonably incurred or suffered by the Agency by reason of, or arising out of—

- (a) the construction, operation or maintenance of any specified works comprised within the authorised development or the failure of any such works comprised within them; or
- (b) any act or omission of the undertaker, its employees, contractors or agents or others whilst engaged upon the construction, operation, or maintenance of the authorised development or dealing with any failure of the authorised development.

(2) For the avoidance of doubt, in sub-paragraph (1)—

“costs” includes—

- (a) expenses and charges;
- (b) staff costs and overheads; and
- (c) legal costs.

“losses” includes physical damage.

“claims” and “demands” include as applicable—

- (d) costs (within the meaning of sub-paragraph (2)) incurred in connection with any claim or demand; and
- (e) any interest element of sums claimed or demanded;

“liabilities” includes—

- (f) contractual liabilities;
- (g) tortious liabilities (including liabilities for negligence or nuisance);
- (h) liabilities to pay statutory compensation or for breach of statutory duty;
- (i) liabilities to pay statutory penalties imposed on the basis of strict liability (but does not include liabilities to pay other statutory penalties).



(3) The Agency must give to the undertaker reasonable notice of any such claim or demand and must not settle or compromise a claim without the agreement of the undertaker and that agreement must not be unreasonably withheld or delayed.

(4) The Agency must, at all times, take reasonable steps to prevent and mitigate any such claims, demands, proceedings, costs, damages, expenses or loss.

(5) The fact that any work or thing has been executed or done by the undertaker in accordance with a plan approved by the Agency, or to its satisfaction, or in accordance with any directions or award of an arbitrator, must not relieve the undertaker from any liability under the provisions of this Part of this Schedule.

(6) Nothing in this paragraph imposes any liability on the undertaker with respect to any costs, charges, expenses, damages, claims, demands or losses to the extent that they are attributable to the neglect or default of the Agency, its officers, servants, contractors or agents.

## **Disputes**

51. Any dispute arising between the undertaker and the Agency under this Part of this Schedule must, if the parties agree, be determined by arbitration under article 43 (arbitration), but failing agreement be determined by the Secretary of State for Environment, Food and Rural Affairs or its successor and the Secretary of State for Energy Security and Net Zero or its successor acting jointly on a reference to them by the undertaker or the Agency, after notice in writing by one to the other.

## **PART 6**

### **FOR THE PROTECTION OF EXOLUM PIPELINE SYSTEM LTD**

## **Application**

52. For the protection of Exolum the following provisions, unless otherwise agreed in writing at any time between the undertaker and Exolum, have effect.

## **Interpretation**

53. In this Part of this Schedule, the following terms shall have the following meanings—

“Additional Rights” means rights for the construction and for access to and for the use, protection, inspection, maintenance, repair and renewal of retained Apparatus including any restrictions on the landowner and occupiers for the protection of the retained Apparatus and to allow Exolum to perform its functions;

“Alternative Apparatus” means alternative apparatus adequate to enable Exolum to fulfil its functions as a pipeline operator in a manner not less efficient than previously;

“Alternative Rights” means rights for the construction and for access to and for the use, protection, inspection, maintenance, repair and renewal of Alternative Apparatus including any restrictions on the landowner and occupiers for the protection of the Alternative Apparatus and to allow Exolum to perform its functions;

“Apparatus” means the pipeline and storage system and any ancillary apparatus owned or operated by Exolum and includes—

- (a) any structure in which apparatus is or is to be lodged or which gives or will give access to apparatus;
- (b) any ancillary works, all protective wrappings, valves, sleeves and slabs, cathodic protection units, together with ancillary cables and markers;
- (c) such legal interest, and benefit of property rights and covenants as are vested in respect of these items,

and, where the context requires, includes Alternative Apparatus;

“Exolum” means Exolum Pipeline System Ltd and for the purpose of enforcing the benefit of any provisions in this Part of this Schedule, any group company of Exolum Pipeline System Ltd and in all cases any successor in title;

“functions” includes powers, duties and commercial undertaking;

“in” in a context referring to Apparatus in land includes a reference to Apparatus under, over or upon land;

“Plan” includes all designs, drawings, sections, specifications, method statements, soil reports, programmes, calculations, risk assessments and other documents that are reasonably necessary to allow Exolum to assess the Restricted Works to be executed properly and sufficiently and in particular must describe—

- (d) the position of the works as proposed to be constructed or renewed;
- (e) the level at which the works are proposed to be constructed or renewed;
- (f) the manner of the works’ construction or renewal including details of excavation, positioning of plant etc.;
- (g) the position of the affected Apparatus and/or Premises and any other apparatus belonging to another undertaker that may also be affected by the Restricted Works;
- (h) by way of detailed drawings, every alteration proposed to be made to or close to any such Apparatus;
- (i) any intended maintenance regime;
- (j) details of the proposed method of working and timing of execution of works; and
- (k) details of vehicle access routes for construction and operational traffic;

“Premises” means land that Exolum owns, occupies or otherwise has rights to use including but not limited to storage facilities, administrative buildings and jetties;

“Protective Works” means any works for the inspection and protection of Apparatus; and

“Restricted Works” means works that or will or may affect any Apparatus or Premises including—

- (l) all works within 15 metres measured in any direction of any Apparatus including embankment works and those that involve a physical connection or attachment to any Apparatus;
- (m) the crossing of Apparatus by other utilities;
- (n) the use of explosives within 400 metres of any Apparatus or Premises;
- (o) piling, undertaking of a 3D seismic survey or the sinking boreholes within 30 metres of any Apparatus or Premises;
- (p) all works that impose a load directly upon the Apparatus, wherever situated, whether carried out by the undertaker or any third party in connection with the Authorised Development.

### **Acquisition of Apparatus**

**54.** Regardless of any other provision in the Order or anything shown on the land plans—

- (a) the undertaker must not, otherwise than by agreement with Exolum, acquire any Apparatus, Exolum’s rights in respect of Apparatus or any of Exolum’s interests in the Order land;
- (b) where the undertaker acquires the freehold of any land in which Exolum holds an interest, the undertaker must afford to or secure for Exolum such rights in land in substitution for any right which would be extinguished by that acquisition (the replacement rights). These replacement rights must be no less favourable than the rights to be extinguished and must be granted upon substantially the same terms and conditions as the rights to be extinguished, unless otherwise agreed between the undertaker and Exolum, and must be

granted or put in place contemporaneously with the extinguishment of the right which they replace;

- (c) the undertaker must not, otherwise than in accordance with this Part of this Schedule—
  - (i) obstruct or render less convenient the access to any Apparatus;
  - (ii) interfere with or affect Exolum's ability to carry out its functions as an oil pipeline operator;
  - (iii) require that Apparatus is relocated or diverted; or
  - (iv) remove or required to be removed any Apparatus;
- (d) any right of Exolum to maintain, repair, renew, adjust, alter or inspect Apparatus must not be extinguished under this Order until any necessary Alternative Apparatus has been constructed and it is in operation and the Alternative Rights have been granted, all to the reasonable satisfaction of Exolum; and
- (e) any right of Exolum to access the Exolum operations must not be extinguished until necessary alternative access has been provided to Exolum's reasonable satisfaction.

**55.** Prior to the carrying out of any Restricted Works or any works authorised by this Order that will affect the Apparatus of Exolum, the parties must use their reasonable endeavours to negotiate and enter into such deeds of consent (crossing consent) and (if necessary) variations to the existing rights upon such terms and conditions as may be agreed between Exolum and the undertaker acting reasonably and which must be no less favourable on the whole to Exolum than this Part of this Schedule, and it will be the responsibility of the undertaker to use all reasonable endeavours 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 works.

**56.—(1)** Where the undertaker acquires land which is subject to any existing rights and the provisions of paragraph 151(1) do not apply, the undertaker must—

- (a) retain any notice of the existing rights of Exolum on the title to the relevant land when registering the undertaker's title to such acquired land; and
- (b) (where no such notice of the existing rights 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 the existing rights or other interest in relation to such acquired land; and
- (c) provide up to date official entry copies to Exolum within 20 working days of receipt of such up to date official entry copies.

**(2)** Where the undertaker takes temporary possession of any land or carries out survey works on land in respect of which Exolum has Apparatus or Premises—

- (a) where reasonably necessary, Exolum may exercise its rights to access such land—
  - (i) in an emergency, without notice; and
  - (ii) in non-emergency circumstances, having first given not less than 14 days' written notice to the undertaker in order to allow the parties to agree the timing of their respective works during the period of temporary possession; and
- (b) the undertaker must not remove or in any way alter Exolum's rights in such land, unless in accordance with the provisions of this Order.

### **Removal of Apparatus and Rights for Alternative Apparatus**

**57.—(1)** If having used all reasonable endeavours to implement the Authorised Development without the removal of any Apparatus—

- (a) the undertaker reasonably requires the removal of any Apparatus; or
- (b) Exolum reasonably requires the removal of any Apparatus,

then the relevant party must give written notice of that requirement to the other.

(2) The parties must use their reasonable endeavours to produce a plan of the work proposed and a plan of the proposed position of the Alternative Apparatus to be provided or constructed.

(3) The undertaker must afford to Exolum the necessary facilities and rights for the construction of Alternative Apparatus and subsequently the grant of Alternative Rights in accordance with paragraphs 65 to 69.

(4) Any Alternative Apparatus is to be constructed in land owned by the undertaker or in land in respect of which Alternative Rights have been or are guaranteed to be granted to Exolum. The Alternative Apparatus must be constructed in such manner and in such line or situation as may be agreed between Exolum and the undertaker or in default of agreement settled by arbitration in accordance with article 43 (arbitration).

(5) After the details for the works for Alternative Apparatus to be provided or constructed have been agreed or settled in accordance with article 43 (arbitration), and after the grant to Exolum of any such facilities and rights as are referred to in sub-paragraph (3), Exolum must proceed as soon as reasonably practicable using reasonable endeavours to construct and bring into operation the Alternative Apparatus and subsequently to remove (or if agreed between the parties to allow the undertaker to remove) any redundant Apparatus required by the undertaker to be removed under the provisions of this Part of this Schedule.

(6) The following sub-paragraphs (7) and (8) shall only apply if—

- (a) Exolum fails to comply with its obligations under sub-paragraph (5) to remove any redundant Apparatus; and
- (b) the undertaker has served notice on Exolum specifying the default; and
- (c) Exolum has failed to remedy the default within 28 days.

(7) In the circumstances set out in sub-paragraph (6), if the undertaker then gives notice in writing to Exolum that it desires itself to remove the redundant Apparatus, that work, instead of being executed by Exolum, must be executed by the undertaker without unnecessary delay under the superintendence, if given, and to the reasonable satisfaction of Exolum.

(8) Nothing in sub-paragraph (7) shall authorise 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 3000 millimetres of the Apparatus unless that Apparatus is redundant and disconnected from Exolum's remaining system.

### **Facilities and Rights for Alternative Apparatus**

**58.**—(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to Exolum facilities and rights for the construction of Alternative Apparatus and the grant of Alternative Rights, 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 Exolum in accordance with this Part of this Schedule or in default of agreement settled by arbitration in accordance with article 43 (arbitration).

(2) Alternative Rights must be granted before any Alternative Apparatus is brought into use.

(3) The parties agree that the undertaker must use reasonable endeavours to procure the grant of Alternative Rights by way of a 999 year sub-soil lease, substantially in the form of Exolum's precedent from time to time, as amended by written agreement between the parties acting reasonably, or such other form of agreement as the parties otherwise agree acting reasonably.

(4) Nothing in this Part of this Schedule or contained in the Alternative Rights shall require Exolum to divert or remove any Alternative Apparatus.

(5) 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 Exolum less favourable on the whole to Exolum 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 Exolum may refer the matter to arbitration in accordance with article 43 (arbitration).

## **Retained Apparatus and Alternative Apparatus: protection**

**59.**—(1) Before commencing the execution of any Restricted Works, the undertaker must submit to Exolum a Plan of the works to be executed and any other information that Exolum may reasonably require to allow Exolum to assess the works.

(2) No Restricted Works are to be commenced until the Plan to be submitted to Exolum under sub-paragraph (1) has been approved by Exolum (acting reasonably) in writing and are to be carried out only in accordance with the details submitted under sub-paragraph (1) and in accordance with such reasonable requirements as may be notified to the undertaker in writing in accordance with sub-paragraph (3) by Exolum.

(3) Any approval of Exolum in respect of Restricted Works may be given subject to such reasonable requirements as Exolum may require to be made for—

- (a) the continuing safety and operational viability of any Apparatus and/or Premises; and
- (b) the requirement for Exolum to have reasonable access with or without vehicles to inspect, repair, replace, maintain and ensure the continuing safety and operation or viability of any Apparatus; and
- (c) the requirement for Exolum to be entitled to watch and inspect the execution of Restricted Works at any time,

providing such reasonable requirements shall be notified to the undertaker in writing.

(4) Where reasonably required by either party, in view of the complexity of any proposed works, timescales, phasing or costs, the parties must with due diligence and good faith negotiate a works agreement for the carrying out of Protective Works or the installation of Alternative Apparatus.

(5) If in consequence of the works notified to Exolum by the undertaker under sub-paragraph (1), the circumstances in paragraph 151(1) apply, then the parties must follow the procedure in paragraph 151(1) onwards.

(6) Nothing in sub-paragraphs (1) to (6) precludes the undertaker from submitting prior to the commencement of works to protect retained Apparatus or to construct Alternative Apparatus (unless otherwise agreed in writing between the undertaker and Exolum) a new Plan, instead of the Plan previously submitted, in which case the parties must re-run the procedure from sub-paragraph (1) onwards.

(7) Where Exolum reasonably requires Protective Works, the parties must use their reasonable endeavours to produce a plan of the work proposed and a plan of the proposed position of any physical features to be provided or constructed.

(8) The undertaker must afford to Exolum the necessary facilities and rights for the construction of Protective Works and subsequently the grant of Additional Rights in accordance with paragraph 152.

(9) Any Protective Works are to be constructed in land owned by the undertaker or in land in respect of which Additional Rights have been or are guaranteed to be granted to Exolum. The Protective Works must be constructed in such manner and in such line or situation as may be agreed between Exolum and the undertaker or in default of agreement settled by expert determination in accordance with article 43 (arbitration).

(10) After the details for the Protective Works to be provided or constructed have been agreed or settled in accordance with article 43 (arbitration), and after the grant to Exolum of any such facilities and rights as are referred to in paragraph 151(3), Exolum must proceed as soon as reasonably practicable using reasonable endeavours to construct and bring into operation the Protective Works.

## **Cathodic protection testing**

**60.**—(1) Where in the reasonable opinion of Exolum or the undertaker—

- (a) the Authorised Development might interfere with the cathodic protection forming part of the Apparatus; or

- (b) any Apparatus might interfere with the proposed or existing cathodic protection forming part of the Authorised Development,

Exolum and the undertaker must co-operate in undertaking the tests which they consider reasonably necessary for ascertaining the nature and extent of such interference and measures for providing or preserving cathodic protection.

(2) The parties must carry out the works and enter into such agreements as are necessary to implement the measures for providing or preserving cathodic protection.

### **Expenses**

**61.**—(1) Subject to the following provisions of this paragraph, the undertaker must pay to Exolum the reasonable and properly incurred costs and expenses (including reasonable staffing costs if work is carried out in-house) incurred by Exolum in, or in connection with—

- (a) undertaking its obligations under this Schedule including—
  - (i) the installation, inspection, removal, alteration, testing, or protection of any Apparatus, Alternative Apparatus, and/or Protective Works;
  - (ii) the execution of any other works under this Part of this Schedule; and
  - (iii) the review and assessment of Plans;
- (b) the watching of and inspecting the execution of the Authorised Development, any Restricted Works and any works undertaken by third parties as a result of Authorised Development (including the assessment of Plans); and
- (c) imposing reasonable requirements for the protection or alteration of Apparatus affected by the Authorised Development or works as a consequence of the Authorised Development in accordance with paragraph 153(3),

together with any administrative costs properly and reasonably incurred by Exolum.

(2) There will be no deduction from any sum payable under sub-paragraph (1) as a result of—

- (a) the placing of apparatus of a better type, greater capacity or of greater dimensions, or at a greater depth than the existing Apparatus, to the extent Exolum has acted reasonably in procuring such Apparatus;
- (b) the placing of apparatus in substitution of the existing Apparatus that may defer the time for renewal of the existing Apparatus in the ordinary course; or
- (c) the scrap value (if any) of any Apparatus removed.

(3) Upon the submission of proper and reasonable estimates of costs and expenses to be incurred by Exolum, the undertaker must pay Exolum sufficiently in advance to enable Exolum to undertake its obligations under this Schedule in a manner that is neutral to its cash flow provided that in the event that the costs incurred by Exolum are less than the amount paid by the undertaker pursuant to this sub-paragraph then Exolum must, within 35 days of payment being made by Exolum for the costs anticipated in the costs and expenses estimates, repay any overpayment to the undertaker.

### **Damage to property and other losses**

**62.** Subject to paragraph 157 the undertaker must—

- (a) indemnify Exolum for all loss, damage, liability, costs and expenses suffered or reasonably incurred by Exolum arising out of—
  - (i) the carrying out of works under this Part of this Schedule;
  - (ii) the carrying out of the Authorised Development;
  - (iii) the use or occupation of land over or in the vicinity of any Apparatus or in the vicinity of any Premises in connection with the carrying out of the Authorised Development;

- (iv) any injury or damage whatsoever to any property, real or personal, including the property of Exolum; and
- (v) any matters arising out of or in connection with this Order,
- (b) indemnify Exolum against any claim made against, or loss suffered by, Exolum as a result of any act or omission committed by the undertaker's officers, employees, contractors or agents whilst on or in the vicinity of any Apparatus or Premises for the purposes of carrying out any activity authorised by this Order;
- (c) pay to Exolum in accordance with the provisions of this Part of this Schedule, the cost reasonably incurred by Exolum in making good any damage to the Apparatus (other than Apparatus the repair of which is not reasonably necessary in view of its intended removal or abandonment) arising out of the carrying out of works under this Part of this Schedule and arising out of the carrying out of the Authorised Development; and
- (d) pay to Exolum the cost reasonably incurred by Exolum in stopping, suspending and restoring the supply through its Apparatus in consequence of the carrying out of works under this Schedule or the carrying out of the Authorised Development,

and make reasonable compensation to Exolum for any other expenses, losses, damages, penalty or costs incurred by Exolum by reason or in consequence of any such damage or interruption including all claims by third parties.

**63.—**(1) Nothing in paragraph 156, imposes any liability on the undertaker with respect to 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.

(2) The fact that any act or thing may have been done by Exolum on behalf of the undertaker or in accordance with a Plan approved by Exolum or in accordance with any requirement of Exolum or under its supervision shall not, subject to sub-paragraph (4), excuse the undertaker from liability under the provisions of paragraph 156.

(3) Nothing in paragraph 156 imposes any liability on the undertaker with respect to any damage or interruption to the extent that it is attributable to the negligent act, neglect or default of Exolum, its officers, servants, contractors or agents.

(4) The undertaker and Exolum must at all times take reasonable steps to prevent and mitigate any loss, damage, liability, claim, cost or expense (whether indemnified or not) which either suffers in connection with this Part of this Schedule.

(5) The undertaker warrants that it will use reasonable endeavours to ensure—

- (a) the information it or any of its employees, agents or contractors provide to Exolum about the Plans or the Authorised Development and on which Exolum relies in the design of and carrying out of any works is accurate; and
- (b) the undertaker or any of its employees, agents or contractors have exercised all the reasonable skill, care and diligence to be expected of a qualified and experienced member of their respective profession.

(6) Exolum must give to the undertaker reasonable notice of any claim or demand to which paragraph 156 applies.

## **Insurance**

**64.—**(1) The undertaker must not carry out any Restricted Works unless and until Exolum has confirmed to the undertaker in writing that it is satisfied acting reasonably (but subject to all necessary regulatory constraints) that the undertaker or its contractor) has procured acceptable professional indemnity insurance and public liability insurance with minimum cover of £25 million per event, with respect to the carrying out of the works.

(2) The undertaker must maintain such insurance for the construction period of the Authorised Development from the proposed date of Commencement of the Authorised Development.

### **Co-operation and reasonableness**

**65.**—(1) Where Apparatus is required to be protected, altered, diverted or removed under this Schedule, the undertaker must use its all reasonable endeavours to co-ordinate the execution of any works under this Part of this Schedule—

- (a) in the interests of safety;
- (b) in the interest of the efficient and economic execution of both Exolum's works and the Authorised Development; and
- (c) taking into account the need to ensure the safe and efficient operation of Apparatus and carrying out of Exolum's functions.

(2) Exolum must use its reasonable endeavours to co-operate with the undertaker for the purposes outlined in sub-paragraph (1).

(3) The undertaker and Exolum must act reasonably in respect of any given term of this Part of this Schedule and, in particular, (without prejudice to generality) where any approval, consent or expression of satisfaction is required by this Part of this Schedule it must not be unreasonably withheld or delayed.

### **Emergency circumstances**

**66.**—(1) The undertaker acknowledges that Exolum provides services to His Majesty's Government, using the Apparatus, which may affect any works to be carried under this Part of this Schedule and the Authorised Development.

(2) In the following circumstances, Exolum may on written notice to the undertaker immediately suspend all works that necessitate the stopping or suspending of the supply of product through any Apparatus under this Schedule and Exolum shall not be in breach of its obligations under this Schedule—

- (a) circumstances in which in the determination of the Government, there subsists a material threat to national security, or a threat or state of hostility or war or other crisis or national emergency (whether or not involving hostility or war); or
- (b) circumstances in which a request has been received, and a decision to act upon such request has been taken, by the Government for assistance in relation to the occurrence or anticipated occurrence of a major accident, crisis or natural disaster; or
- (c) circumstances in which a request has been received from or on behalf of NATO, the EU, the UN, the International Energy Agency (or any successor agency thereof) or the government of any other state for support or assistance pursuant to the United Kingdom's international obligations and a decision to act upon such request has been taken by the Government; or
- (d) any circumstances identified as such by the COBRA committee of the Government (or any successor committee thereof) or
- (e) any situation in connection with which the Government requires fuel capacity, including where the United Kingdom is engaged in any planned or unplanned military operations within the United Kingdom or overseas.

(3) The parties agree to act in good faith and in all reasonableness to agree any revisions to any schedule, programme or costs estimate (which shall include costs of demobilising and remobilising of any workforce, and any costs to protect the Apparatus "mid-works") to account for the suspension.

(4) Exolum shall not be liable for any costs, expenses, losses or liabilities the undertaker incurs as a result of the suspension of any activities under sub-paragraphs (1) to (3) or delays caused by it.



## **Dispute resolution**

**67.**—(1) The undertaker and Exolum must use their reasonable endeavours to secure the amicable resolution of any dispute or difference arising between them out of or in connection with this Part of this Schedule in accordance with the following provisions.

(2) The undertaker and Exolum must each nominate a representative who must meet to try to resolve the matter. If the matter is not resolved at that level within 10 working days of either the undertaker or Exolum requesting such a meeting (or such longer period as may be agreed between the undertaker and Exolum) the matter may at the request of either the undertaker or Exolum be referred for discussion at a meeting to be attended by a senior executive from each party.

(3) If the meeting between senior executives fails to result in a settlement within 20 working days of the date of the request for such a meeting (or if it is not possible to convene a meeting within this period) then, unless otherwise agreed in writing between the undertaker and Exolum, the dispute or difference will be determined by arbitration in accordance with article 43 (arbitration).

## **Miscellaneous**

**68.** No failure or delay by a party to exercise any right or remedy provided under this Part of this Schedule or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

# **PART 7**

## **FOR THE PROTECTION OF NATIONAL GRID ELECTRICITY TRANSMISSION PLC AS ELECTRICITY UNDERTAKER**

### **Application**

**69.**—(1) For the protection of National Grid Electricity Transmission Plc as referred to in this Part of this Schedule the following provisions have effect, unless otherwise agreed in writing between the undertaker and National Grid Electricity Transmission Plc.

(2) Subject to sub-paragraph (3) or to the extent otherwise agreed in writing between the undertaker and National Grid Electricity Transmission Plc, where the benefit of this Order is transferred or granted to another person under article 36 (consent to transfer the benefit of the Order)—

- (a) any agreement of the type mentioned in sub-paragraph (1) has effect as if it had been made between National Grid Electricity Transmission Plc 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 Electricity Transmission Plc 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 Electricity Transmission Plc (but without prejudice to paragraph 177(3)(b)).

### **Interpretation**

**70.** In this Part of this Schedule—

“1991 Act” means the New Roads and Street Works Act 1991;

“acceptable credit provider” means a bank or financial institution with a credit rating that is not lower than: (i) “A-” if the rating is assigned by Standard & Poor’s Ratings Group or Fitch Ratings; and “A3” if the rating is assigned by Moody’s Investors Services Inc.;

“acceptable insurance” means general third party liability insurance effected and maintained by the undertaker with a combined property damage and bodily injury limit of indemnity of not less than £50,000,000.00 (fifty million pounds) per occurrence or series of occurrences arising out of one event. Such insurance shall be maintained (a) during the construction period of the authorised works; and (b) after the construction period of the authorised works in respect of any use and maintenance of the authorised works 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 Electricity Transmission Plc; and
- (b) pollution liability for third party property damage and third party bodily damage arising from any pollution/contamination event with a (sub)limit of indemnity of not less than £10,000,000.00 (ten million pounds) per occurrence or a series of occurrences arising out of one event or £20,000,000.00 (twenty million pounds) in aggregate;

“acceptable security” means either—

- (c) a parent company guarantee from a parent company in favour of National Grid Electricity Transmission Plc to cover the undertaker’s liability to National Grid Electricity Transmission Plc to a total liability cap of £50,000,000.00 (fifty million pounds) (in a form reasonably satisfactory to National Grid Electricity Transmission Plc and where required by National Grid Electricity Transmission Plc, 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
- (d) a bank bond or letter of credit from an acceptable credit provider in favour of National Grid Electricity Transmission Plc to cover the undertaker’s liability to National Grid Electricity Transmission Plc 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 Electricity Transmission Plc);

“alternative apparatus” means appropriate alternative apparatus to the satisfaction of National Grid Electricity Transmission Plc to enable National Grid Electricity Transmission Plc to fulfil its statutory functions in a manner no less efficient than previously;

“apparatus” means any electric lines or electrical plant as defined in the Electricity Act 1989(a), belonging to or maintained by National Grid Electricity Transmission Plc together with any replacement apparatus and such other apparatus constructed pursuant to the Order that becomes operational apparatus of National Grid Electricity Transmission Plc for the purposes of transmission, distribution and/or supply and includes any structure in which apparatus is or will be lodged or which gives or will give access to apparatus;

“authorised works” has the same meaning as is given to the term “authorised development” in article 2(1) of this Order and includes any associated development authorised by the Order and for the purposes of this Part of this Schedule includes the use and maintenance of the authorised works and construction of any works authorised by this Schedule;

“commence” and “commencement” in this Part of this Schedule shall include any below ground surveys, monitoring, ground work operations or the receipt and erection of construction plant and equipment;

“deed of consent” means a deed of consent, crossing agreement, deed of variation or new deed of grant agreed between the parties acting reasonably in order to vary or replace existing easements, agreements, enactments and other such interests so as to secure land rights and interests as are necessary to carry out, maintain, operate and use the apparatus in a manner consistent with the terms of this Part of this Schedule;

“functions” includes powers and duties;

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(a) 1989 c.29.

“ground mitigation scheme” means a scheme approved by National Grid Electricity Transmission Plc (such approval not to be unreasonably withheld or delayed) setting out the necessary measures (if any) for a ground subsidence event;

“ground monitoring scheme” means a scheme for monitoring ground subsidence which sets out the apparatus which is to be subject to such monitoring, the extent of land to be monitored, the manner in which ground levels are to be monitored, the timescales of any monitoring activities and the extent of ground subsidence which, if exceeded, shall require the undertaker to submit for National Grid Electricity Transmission Plc’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 Electricity Transmission Plc: construct, use, repair, alter, inspect, renew or remove the apparatus;

“National Grid Electricity Transmission Plc” means National Grid Electricity Transmission Plc (Company Number 2366977) whose registered office is at 1-3 Strand, London, WC2N 5EH or any successor as a licence holder within the meaning of Part 1 of the Electricity Act 1989;

“National Grid Connection Works” means any part of Work No 4 as described in Schedule 1 of this Order (authorised development) and shown on sheets 3, 6, 7, 8, 9 and 10 of the works plans;

“NGESO” means as defined in the STC;

“plan or plans” include all designs, drawings, specifications, method statements, soil reports, programmes, calculations, risk assessments and other documents that are reasonably necessary properly and sufficiently to describe and assess the works to be executed;

“parent company” means a parent company of the undertaker acceptable to and which shall have been approved by National Grid Electricity Transmission Plc 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 173(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 173(2) or otherwise; and/or
- (g) includes any of the activities that are referred to in development near overhead lines EN43-8 and HSE’s guidance note 6 “Avoidance of Danger from Overhead Lines”.

“STC” means the System Operator Transmission Owner Code prepared by the electricity Transmission Owners and NGESO as modified from time to time;

“STC Claims” means any claim made under the STC against National Grid Electricity Transmission Plc arising out of or in connection with the de-energisation (whereby no electricity can flow to or from the relevant system through the generator or interconnector’s equipment) of a generator or interconnector party solely as a result of the de-energisation of plant and apparatus forming part of National Grid Electricity Transmission Plc’s transmission system which arises as a result of the authorised works;

“Transmission Owner” means as defined in the STC; and

“undertaker” means the undertaker as defined in article 2(1) of this Order.

### **National Grid Connection Works**

**71.** The undertaker must not carry out the National Grid Connection Works, or any part of it except with the approval of National Grid Electricity Transmission Plc in accordance with paragraph 174.

**72.—**(1) Before beginning to construct any National Grid Connection Works, or any part of it, the undertaker must submit to National Grid Electricity Transmission Plc plans of the relevant National Grid Connection Works (or part of it) and such further particulars available to it as National Grid Electricity Transmission Plc may reasonably request within 21 days of receipt of the plans.

(2) The undertaker must not commence any works to which sub-paragraph (1) applies until National Grid Electricity Transmission Plc has given written approval of the plan so submitted.

(3) Any approval of National Grid Electricity Transmission Plc requested under paragraph 173 or sub-paragraph (2)—

- (a) may be given subject to reasonable conditions; and
- (b) must not be unreasonably withheld or delayed.

(4) Any National Grid Connection Works must not be constructed except in accordance with such plans as may be approved in writing by National Grid Electricity Transmission Plc or as amended from time to time by agreement between the undertaker and National Grid Electricity Transmission Plc.

(5) The undertaker will not be required to comply with sub-paragraph (1) where it needs to carry out emergency works as defined in the 1991 Act but in that case it must give to National Grid Electricity Transmission Plc notice as soon as is reasonably practicable and a plan of those works and must comply with sub-paragraphs (2) and (3) insofar as is reasonably practicable in the circumstances.

**73.** The undertaker must give to National Grid Electricity Transmission Plc not less than 14 days’ notice in writing of its intention to commence construction of any National Grid Connection Works and notice in writing of its completion not later than 7 days after the date on which it is completed and National Grid Electricity Transmission Plc will be entitled by its officer to watch and inspect the construction of such works.

**74.—**(1) If any part of the National Grid Connection Works is constructed otherwise than in accordance with paragraph 166(4) above National Grid Electricity Transmission Plc may by notice in writing identify the extent to which the National Grid Connection Works do not comply with the approved details and request the undertaker at the undertaker’s own expense carry out remedial works so as to comply with the requirements of paragraph 166(4) of this Part of this Schedule or such alternative works as may be agreed with National Grid Electricity Transmission Plc or as otherwise may be agreed between the parties.

(2) Subject to sub-paragraph (3), if within a reasonable period, being not less than 28 days beginning with the date when a notice under sub-paragraph (1) is served upon the undertaker, the undertaker has failed to begin taking steps to comply with the requirements of the notice and has not subsequently made reasonably expeditious progress towards their implementation, National Grid Electricity Transmission Plc may execute the works specified in the notice and any reasonable expenditure incurred by National Grid Electricity Transmission Plc in so doing will be recoverable from the undertaker.

(3) In the event of any dispute as to whether sub-paragraph (1) is properly applicable to any work in respect of which notice has been served under that sub-paragraph, or as to the reasonableness of any requirement of such a notice, National Grid Electricity Transmission Plc will not, except in the case of an emergency, exercise the powers conferred by sub-paragraph (2) until the dispute has been finally determined in accordance with paragraph 181.

## **On Street Apparatus**

75. Except for paragraphs 170, 175, 176 and 177 of this Schedule which will apply in respect of the exercise of all or any powers under the Order affecting the rights and apparatus of National Grid Electricity Transmission Plc, the other provisions of this Schedule do not apply to apparatus in respect of which the relations between the undertaker and National Grid Electricity Transmission Plc are regulated by the provisions of Part 3 of the 1991 Act.

### **Apparatus of National Grid Electricity Transmission Plc in stopped up streets**

76.—(1) Where any street is stopped up under article 12 (temporary closure of streets and public rights of way) or article 13 (permanent closure of public rights of way), if National Grid Electricity Transmission Plc has any apparatus in the street or accessed via that street National Grid Electricity Transmission Plc 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 Electricity Transmission Plc, or procure the granting to National Grid Electricity Transmission Plc of, legal easements reasonably satisfactory to National Grid Electricity Transmission Plc in respect of such apparatus and access to it prior to the stopping up of any such street but nothing in this paragraph affects any right of the undertaker or National Grid Electricity Transmission Plc to require the removal of that apparatus under paragraph 173 or the power of the undertaker, subject to compliance with this sub-paragraph, to carry out works under paragraph 175.

(2) Notwithstanding the temporary stopping up or diversion of any street under the powers of article 12 (temporary closure of streets and public rights of way), National Grid Electricity Transmission Plc 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**

77. The undertaker, in the case of the powers conferred by article 19 (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 Electricity Transmission Plc which must not unreasonably be withheld.

### **Acquisition of land**

78.—(1) Regardless of any provision in this Order or anything shown on the land plans or contained in the book of reference to the Order, the undertaker may not—

- (a) appropriate or acquire or take temporary possession of any land or apparatus; or
- (b) appropriate, acquire, extinguish, interfere with or override any easement, other interest or right and/or apparatus of National Grid Electricity Transmission Plc 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 Electricity Transmission Plc 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 Electricity Transmission Plc or affect the provisions of any enactment or agreement regulating the relations between National Grid Electricity Transmission Plc 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 Electricity Transmission Plc reasonably requires enter into such deeds of consent upon such terms and conditions as may be agreed between National Grid Electricity Transmission Plc and the undertaker acting reasonably and which must be no less favourable on the whole to National Grid Electricity Transmission Plc unless otherwise agreed by National Grid Electricity Transmission Plc, 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 Electricity Transmission Plc and the undertaker, the undertaker and National Grid Electricity Transmission Plc 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 Electricity Transmission Plc and/or other enactments relied upon by National Grid Electricity Transmission Plc as of right or other use in relation to the apparatus, then the provisions in this Schedule shall prevail.

(4) Any agreement or consent granted by National Grid Electricity Transmission Plc under paragraph 174 or any other paragraph of this Part of this Schedule, shall not be taken to constitute agreement under sub-paragraph (1).

### **Removal of apparatus**

79.—(1) If, in the exercise of the powers conferred by this Order, the undertaker acquires any interest in or possesses temporarily any land in which any apparatus is placed, that apparatus must not be removed under this Part of this Schedule and any right of National Grid Electricity Transmission Plc 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 Electricity Transmission Plc in accordance with sub-paragraphs (2) to (5).

(2) If, for the purpose of executing any works in, on, under or over any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, it must give to National Grid Electricity Transmission Plc 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 Electricity Transmission Plc 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 Electricity Transmission Plc to its satisfaction (taking into account paragraph 174(1) below) the necessary facilities and rights—

- (a) for the construction of alternative apparatus in other land of or land secured by the undertaker; and
- (b) subsequently for the maintenance of that apparatus.

(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of or land secured by the undertaker, or the undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraph (2) in the land in which the alternative apparatus or part of such apparatus is to be constructed, National Grid Electricity Transmission Plc 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 Electricity Transmission Plc to use its compulsory purchase powers to this end unless it elects to so do.

(4) Any alternative apparatus to be constructed in land of or land secured by the undertaker under this Part of this Schedule must be constructed in such manner and in such line or situation as may be agreed between National Grid Electricity Transmission Plc and the undertaker.

(5) National Grid Electricity Transmission Plc 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 Electricity Transmission Plc 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**

**80.**—(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to or secures for National Grid Electricity Transmission Plc 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 Electricity Transmission Plc and must be no less favourable on the whole to National Grid Electricity Transmission Plc than the facilities and rights enjoyed by it in respect of the apparatus to be removed unless otherwise agreed by National Grid Electricity Transmission Plc.

(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 Electricity Transmission Plc 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 181 of this Part of this Schedule and the arbitrator must make such provision for the payment of compensation by the undertaker to National Grid Electricity Transmission Plc as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

## **Retained apparatus: protection**

**81.**—(1) Not less than 56 days before the commencement of any specified works the undertaker must submit to National Grid Electricity Transmission Plc a plan of the works to be executed and seek from National Grid Electricity Transmission Plc details of the underground extent of their electricity assets.

(2) In relation to the specified works the plan to be submitted to National Grid Electricity Transmission Plc under sub-paragraph (1) must include a method statement and describe—

- (a) the exact position of the works;
- (b) the level at which these are proposed to be constructed or renewed;
- (c) the manner of their construction or renewal including details of excavation, positioning of plant;
- (d) the position of all apparatus;
- (e) by way of detailed drawings, every alteration proposed to be made to or close to any such apparatus;
- (f) any intended maintenance regimes;
- (g) an assessment of risks of rise of earth issues; and
- (h) a ground monitoring scheme, where required.

(3) In relation to any works which will or may be situated on, over, under or within 10 metres of any part of the foundations of an electricity tower or between any two or more electricity towers, the plan to be submitted under sub-paragraph (1) must, in addition to the matters set out in sub-paragraph (2), include a method statement describing—

- (a) details of any cable trench design including route, dimensions, clearance to pylon foundations;
- (b) demonstration that pylon foundations will not be affected prior to, during and post construction;
- (c) details of load bearing capacities of trenches;
- (d) details of any cable installation methodology including access arrangements, jointing bays and backfill methodology;
- (e) a written management plan for high voltage hazard during construction and ongoing maintenance of any cable route;

- (f) written details of the operations and maintenance regime for any cable, including frequency and method of access;
  - (g) assessment of earth rise potential if reasonably required by National Grid Electricity Transmission Plc'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 Electricity Transmission Plc has given written approval of the plan so submitted.
- (5) Any approval of National Grid Electricity Transmission Plc required under sub-paragraph (4)—
- (a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraphs (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 Electricity Transmission Plc may require such modifications to be made to the plans as may be reasonably necessary for the purpose of securing its apparatus against interference or risk of damage, for the provision of protective works or for the purpose of providing or securing proper and convenient means of access to any apparatus.
- (7) Works executed under sub-paragraphs (2) or (3) must be executed in accordance with the plan, submitted under sub-paragraph (1) or as relevant sub-paragraph (6), as approved or as amended from time to time by agreement between the undertaker and National Grid Electricity Transmission Plc and in accordance with such reasonable requirements as may be made in accordance with sub-paragraphs (6) or (8) by National Grid Electricity Transmission Plc for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and National Grid Electricity Transmission Plc will be entitled to watch and inspect the execution of those works.
- (8) Where National Grid Electricity Transmission Plc 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 Electricity Transmission Plc's satisfaction prior to the commencement of any authorised works for which protective works are required and National Grid Electricity Transmission Plc shall give notice 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 Electricity Transmission Plc in accordance with sub-paragraphs (6) or (8) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, sub-paragraphs (1) to (3) and (6) to (8) apply as if the removal of the apparatus had been required by the undertaker under paragraph 173(2).
- (10) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 56 days before commencing the execution of any authorised works, a new plan, instead of the plan previously submitted, and having done so the provisions of this paragraph shall apply to and in respect of the new plan.
- (11) The undertaker will not be required to comply with sub-paragraph (1) where it needs to carry out emergency works as defined in the 1991 Act but in that case it must give to National Grid Electricity Transmission Plc notice as soon as is reasonably practicable and a plan of those works and must comply with sub-paragraphs (6), (7) and (8) insofar as is reasonably practicable in the circumstances and comply with sub-paragraph (11) at all times.
- (12) At all times when carrying out any works authorised under the Order, the undertaker must comply with National Grid Electricity Transmission Plc's policies for development near overhead lines EN43-8 and HSE's guidance note 6 "Avoidance of Danger from Overhead Lines".



## Expenses

82.—(1) Save where otherwise agreed in writing between National Grid Electricity Transmission Plc and the undertaker and subject to the following provisions of this paragraph, the undertaker must pay to National Grid Electricity Transmission Plc within 30 days of receipt of an itemised invoice or claim from National Grid Electricity Transmission Plc all charges, costs and expenses reasonably anticipated within the following 3 months or reasonably and properly incurred by National Grid Electricity Transmission Plc 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 Electricity Transmission Plc 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 Electricity Transmission Plc as a consequence of National Grid Electricity Transmission Plc—
  - (i) using its own compulsory purchase powers to acquire any necessary rights under paragraph 173(3); or
  - (ii) exercising any compulsory purchase powers in the Order transferred to or benefitting National Grid Electricity Transmission Plc;
- (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 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 181 to be necessary, then, if such placing involves cost in the construction of works under this Part of this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to National Grid Electricity Transmission Plc 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 Electricity Transmission Plc 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 Electricity Transmission Plc 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**

**83.**—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any works authorised by this Part of this Schedule or in consequence of the construction, use, maintenance or failure of any of the authorised works by or on behalf of the undertaker or in consequence of any act or default of the undertaker (or any person employed or authorised by him) in the course of carrying out such works, including without limitation works carried out by the undertaker under this Part of this Schedule or any subsidence resulting from any of these works, any damage is caused to any apparatus or alternative apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of the authorised works) or property of National Grid Electricity Transmission Plc, or there is any interruption in any service provided, or in the supply of any goods, by National Grid Electricity Transmission Plc, or National Grid Electricity Transmission Plc becomes liable to pay any amount to any third party, the undertaker will—

- (a) bear and pay on demand accompanied by an invoice or claim from National Grid Electricity Transmission Plc the cost reasonably and properly incurred by National Grid Electricity Transmission Plc in making good such damage or restoring the supply; and
- (b) indemnify National Grid Electricity Transmission Plc for any other expenses, loss, demands, proceedings, damages, claims, penalty or costs incurred by or recovered from National Grid Electricity Transmission Plc, by reason or in consequence of any such damage or interruption or National Grid Electricity Transmission Plc becoming liable to any third party and including STC Claims or an Incentive Deduction other than arising from any default of National Grid Electricity Transmission Plc.

(2) The fact that any act or thing may have been done by National Grid Electricity Transmission Plc on behalf of the undertaker or in accordance with a plan approved by National Grid Electricity Transmission Plc or in accordance with any requirement of National Grid Electricity Transmission Plc 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 Grid Electricity Transmission Plc fails to carry out and execute the works properly with due care and attention and in a skilful and workman like manner or in a manner that does not accord with the approved plan.

(3) Nothing in sub-paragraph (1) shall impose any liability on the undertaker in respect of—

- (a) any damage or interruption to the extent that it is attributable to the neglect or default of National Grid Electricity Transmission Plc, its officers, servants, contractors or agents;
- (b) any authorised works and/or any other works authorised by this Part of this Schedule carried out by National Grid Electricity Transmission Plc 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 36 (consent to transfer the benefit of the Order) subject to the proviso that once such works become apparatus (“new apparatus”), any authorised works yet to be executed and not falling within this sub-paragraph 3(b) will be subject to the full terms of this Part of this Schedule including this paragraph 177; and/or
- (c) any indirect or consequential loss of any third party (including but not limited to loss of use, revenue, profit, contract, production, increased cost of working or business interruption) arising from any such damage or interruption, which is not reasonably foreseeable;

(4) National Grid Electricity Transmission Plc must give the undertaker reasonable notice of any such third party claim or demand and no settlement, admission of liability or compromise must, unless payment is required in connection with a statutory compensation scheme, be made without first consulting the undertaker and considering their representations.

(5) National Grid Electricity Transmission Plc 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 Electricity Transmission Plc 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 Electricity Transmission Plc'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 Electricity Transmission Plc's control and if reasonably requested to do so by the undertaker National Grid Electricity Transmission Plc must provide an explanation of how the claim has been minimised, where relevant.

(7) Not to commence construction (and not to permit the commencement of such construction) of the authorised works on any land owned by National Grid Electricity Transmission Plc or in respect of which National Grid Electricity Transmission Plc has an easement or wayleave for its apparatus or any other interest or to carry out any works within 15 metres of National Grid Electricity Transmission Plc's apparatus until the following conditions are satisfied—

- (a) unless and until National Grid Electricity Transmission Plc is satisfied acting reasonably (but subject to all necessary regulatory constraints) that the undertaker has first provided the acceptable security (and provided evidence that it shall maintain such acceptable security for the construction period of the authorised works referred to in sub-paragraph (7) from the proposed date of commencement of construction of those works) and National Grid Electricity Transmission Plc has confirmed the same to the undertaker in writing; and
- (b) unless and until National Grid Electricity Transmission Plc is satisfied acting reasonably (but subject to all necessary regulatory constraints) that the undertaker has procured acceptable insurance (and provided evidence to National Grid Electricity Transmission Plc that it shall maintain such acceptable insurance for the construction period of the authorised works referred to in sub-paragraph (7) from the proposed date of commencement of construction of those works) and National Grid Electricity Transmission Plc 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 Part of this Schedule, nothing in this Part of this Schedule shall prevent National Grid Electricity Transmission Plc from seeking injunctive relief (or any other equitable remedy) in any court of competent jurisdiction.

### **Enactments and agreements**

**84.** Save to the extent provided for to the contrary elsewhere in this Part of this Schedule or by agreement in writing between National Grid Electricity Transmission Plc and the undertaker nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and National Grid Electricity Transmission Plc 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**

**85.—**(1) Where in consequence of the proposed construction of any part of the authorised works, the undertaker or National Grid Electricity Transmission Plc requires the removal of apparatus under paragraph 173(2) or National Grid Electricity Transmission Plc makes requirements for the protection or alteration of apparatus under paragraph 175, the undertaker shall use its best endeavours to co-ordinate the execution of the works in the interests of safety and the efficient and economic execution of the authorised works and taking into account the need to

ensure the safe and efficient operation of National Grid Electricity Transmission Plc's undertaking and National Grid Electricity Transmission Plc shall use its best endeavours to co-operate with the undertaker for that purpose.

(2) For the avoidance of doubt whenever National Grid Electricity Transmission Plc'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**

**86.** If in consequence of the agreement reached in accordance with paragraph 172(1) or the powers granted under this Order the access to any apparatus is materially obstructed, the undertaker must provide such alternative means of access to such apparatus as will enable National Grid Electricity Transmission Plc to maintain or use the apparatus no less effectively than was possible before such obstruction.

### **Arbitration**

**87.** Save for differences or disputes arising under paragraphs 173(2), 173(4), 174(1) and 175 any difference or dispute arising between the undertaker and National Grid Electricity Transmission under this Part of this Schedule must, unless otherwise agreed in writing between the undertaker and National Grid Electricity Transmission Plc, be determined by arbitration in accordance with article 43 (arbitration).

### **Notices**

**88.** Notwithstanding article 45 (service of notices), any plans submitted to National Grid Electricity Transmission Plc by the undertaker pursuant to paragraph 175 must be submitted using the LSBUD system (<https://lsbud.co.uk/>) or to such other address as National Grid Electricity Transmission Plc may from time to time appoint instead for that purpose and notify to the undertaker in writing.

## **PART 8**

### **FOR THE PROTECTION OF NORTHERN POWERGRID (YORKSHIRE) PLC**

**89.** For the protection of Northern Powergrid (Yorkshire) Plc the following provisions have effect, unless otherwise agreed in writing between the undertaker and Northern Powergrid.

**90.** In this Part of this Schedule—

“1991 Act” means the New Roads and Street Works Act 1991;

“alternative apparatus” means alternative apparatus adequate to enable Northern Powergrid to fulfil its statutory functions in a manner not less efficient than previously;

“apparatus” means apparatus (as defined in article 2(1) (interpretation) of the Order) belonging to or maintained by Northern Powergrid and includes any structure in which apparatus is or is to be lodged or which gives or will give access to apparatus;

“authorised works” means so much of the works authorised by this Order which affect existing Northern Powergrid's apparatus within the Order limits;

“functions” includes powers and duties;

“in”, in a context referring to apparatus or alternative apparatus in land, includes a reference to apparatus or alternative apparatus under, over or upon land;

“Order” means the Fenwick Solar Farm Order 202\*;

“Order limits” means as defined in article 2(1) of the Order;

“Northern Powergrid” means Northern Powergrid (Yorkshire) Plc (Company Number 04112320) whose registered office is at Lloyds Court, 78 Grey Street, Newcastle upon Tyne, NE1 6AF; and

“plan” includes all designs, drawings, specifications, method statements, soil reports, programmes, calculations, risk assessments and other documents that are reasonably necessary properly and sufficiently to describe the works to be executed and must include any measures proposed by the undertaker to ensure the grant of sufficient land or rights in land necessary to mitigate the impacts of the works on the apparatus or Northern Powergrid’s undertaking within the Order limits.

**91.** This Part of this Schedule does not apply to apparatus in respect of which the relations between the undertaker and Northern Powergrid are regulated by the provisions of Part 3 (street works in England and Wales) of the 1991 Act.

**92.** Regardless of the temporary prohibition or restriction of use of streets under the powers conferred by article 12 (temporary closure of streets and public rights of way), the undertaker must not prevent Northern Powergrid from taking all necessary access across any such street and to execute and do all such works and things in, upon or under any such street as may be reasonably necessary or desirable to enable it to maintain any apparatus which at the time of the prohibition or restriction was in that street.

**93.** Regardless of any provision in the Order or anything shown on the land plans, or contained in the book of reference, the undertaker must not acquire any apparatus, or override any easement or other interest of Northern Powergrid otherwise than by agreement with Northern Powergrid, such agreement not to be unreasonably withheld or delayed.

**94.** Regardless of any provision in the Order or anything shown on the land plans or contained in the book of reference, the undertaker must not interfere with any communications cables or equipment used by Northern Powergrid in relation to its apparatus or acquire or interfere with rights or interests supporting the use, maintenance or renewal of such equipment including any easements other than by agreement of Northern Powergrid (such agreement not to be unreasonably withheld or delayed) and having regard to Northern Powergrid’s existing and known future requirements for such land or interests.

**95.—(1)** If, in the exercise of the powers conferred by this Order, the undertaker acquires any interest in any land in which any apparatus is placed or over which access to any apparatus is enjoyed or requires that Northern Powergrid’s apparatus is relocated or diverted, that apparatus must not be removed under this Part of this Schedule, and any right of Northern Powergrid to maintain that apparatus in that land and to gain access to it must not be extinguished, until alternative apparatus has been constructed and is in operation, and access to it has been provided pursuant to a completed easement, or other form of written agreement in a form reasonably acceptable to Northern Powergrid which shall include rights to retain and subsequently maintain the apparatus being replaced or diverted for the lifetime of that alternative apparatus, all to the reasonable satisfaction of Northern Powergrid in accordance with sub-paragraphs (2) to (5).

(2) If, for the purpose of executing any works in, on or under any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, the undertaker must give to Northern Powergrid 42 days’ advance written notice of that requirement, together with a plan and section of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order Northern Powergrid reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph (3), afford to Northern Powergrid the necessary facilities and rights for the construction of alternative apparatus in other land of the undertaker and subsequently for the maintenance of that apparatus.

(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of the undertaker, or the undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraph (2), in the land in which the alternative apparatus or part of such apparatus is to be constructed—

- (a) the undertaker must in the first instance use reasonable endeavours to acquire through voluntary negotiations all necessary land interests or rights as Northern Powergrid may reasonably require for the relocation and construction of alternative apparatus and must use reasonable endeavours to procure through voluntary negotiations all necessary rights to access and maintain Northern Powergrid's apparatus and alternative apparatus thereafter the terms of such access and maintenance to be agreed by Northern Powergrid (acting reasonably).
- (b) in the event that the undertaker is not able to procure the necessary land interest or rights referred to in the sub-paragraph 189(3)(a) Northern Powergrid must, on receipt of a written notice to that effect from the undertaker and subject to paragraph 192, as soon as reasonably practicable use reasonable endeavours to procure the necessary facilities and rights in the land in which the alternative apparatus is to be constructed save that this obligation shall not extend to the requirement for Northern Powergrid to use its compulsory purchase powers to this end; and
- (c) in the event that neither the undertaker nor Northern Powergrid can acquire all necessary land interest or rights which Northern Powergrid may reasonably require for the relocation and construction of alternative apparatus pursuant to paragraph 189(3)(a) and/or (b), the undertaker shall use its compulsory purchase powers under the Order (where available) unless otherwise agreed by arbitration.

(4) Any alternative apparatus to be constructed in land of the undertaker under this Part of this Schedule must be constructed in such manner and in such line or situation as may be agreed between Northern Powergrid and the undertaker or in default of agreement settled by arbitration in accordance with article 43 (arbitration) of the Order.

(5) Northern Powergrid must, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with article 43 (arbitration) of the Order, and after the grant to Northern Powergrid 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.

**96.—**(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to Northern Powergrid facilities and rights for the construction and maintenance in land of the undertaker of alternative apparatus in substitution for apparatus to be removed, those facilities and rights must be granted upon such terms and conditions as may be agreed between the undertaker and Northern Powergrid or in default of agreement settled by arbitration in accordance with article 43 (arbitration) of the Order.

(2) If the facilities and rights to be afforded by the undertaker in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are in the opinion of the arbitrator less favourable on the whole to Northern Powergrid than the facilities and rights enjoyed by it in respect of the apparatus to be removed and the terms and conditions to which those facilities and rights are subject, the arbitrator must make such provision for the payment of compensation by the undertaker to Northern Powergrid as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

**97.—**(1) Not less than 56 days before starting the execution of any works in, on or under any land purchased, held, appropriated or used under the Order that are near to (including conducting any activities whether intentionally or unintentionally, through for example ground or machinery collapse, which may affect Northern Powergrid's apparatus or encroach on safety distances to live equipment) or will or may affect, any apparatus the removal of which has not been required by the undertaker under paragraph 189(2), the undertaker must submit to Northern Powergrid a plan, section and description of the works to be executed and any such information as Northern Powergrid reasonably requires relating to those works.

(2) Those works must be executed only in accordance with the plan, section and description submitted under sub-paragraph (1) and in accordance with such reasonable requirements as may be made in accordance with sub-paragraph (3) by Northern Powergrid for the alteration or

otherwise for the protection of the apparatus, or for securing access to it, and Northern Powergrid is entitled to watch and inspect the execution of those works.

(3) Any requirements made by Northern Powergrid under sub-paragraph (2) must be made within a period of 35 days beginning with the date on which a plan, section and description under sub-paragraph (1) are submitted to it.

(4) If Northern Powergrid in accordance with sub-paragraph (2) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, sub-paragraphs (1) to (3) apply as if the removal of the apparatus had been required by the undertaker under paragraph 189.

(5) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 35 days before commencing the execution of any works, a new plan, section and description instead of the plan, section and description previously submitted, and having done so the provisions of this paragraph apply to and in respect of the new plan, section and description.

(6) The undertaker is not required to comply with sub-paragraph (1) in a case of emergency but in that case it must give to Northern Powergrid notice as soon as is reasonably practicable and a plan, section and description of those works as soon as reasonably practicable subsequently and must comply with sub-paragraph (2) in so far as is reasonably practicable in the circumstances.

**98.—**(1) Subject to the following provisions of this paragraph, the undertaker must repay to Northern Powergrid within 51 days of receipt of an itemised invoice or claim the reasonable and proper expenses, costs or charges incurred by Northern Powergrid in, or in connection with, the inspection, removal, alteration or protection of any apparatus or the construction of any new apparatus which may be required in consequence of the execution of any such works as are referred to in paragraphs 189(2) and 189(3) including within limitation—

- (a) any costs reasonably incurred or compensation properly paid in connection with the acquisition of rights or the exercise of statutory powers for such apparatus including without limitation in the event that it is agreed Northern Powergrid elects to use compulsory purchase powers to acquire any necessary rights under paragraph 189(3) all costs reasonably incurred as a result of such action;
- (b) in connection with the cost of the carrying out of any diversion work or the provision of any alternative apparatus;
- (c) the cutting off of any apparatus from any other apparatus or the making safe of redundant apparatus;
- (d) the approval of plans;
- (e) the carrying out of protective works, plus a capitalised sum to cover the reasonable cost of adequately maintaining and renewing permanent protective works; and
- (f) the survey of any land, apparatus or works, the inspection and monitoring of works or the installation or removal of any temporary works reasonably necessary in consequence of the execution of any such works referred to in this Part of this Schedule.

(2) Where any payment falls due pursuant to paragraph 192(1), Northern Powergrid must—

- (a) provide an itemised invoice or reasonable expenses claim to the undertaker;
- (b) provide “reminder letters” to the undertaker for payment to be made within the 50 days on the following days after the invoice or reasonable expenses claim to the undertaker—
  - (i) 15 days (“reminder letter 1”)
  - (ii) 29 days (“reminder letter 2”)
  - (iii) 43 days (“reminder letter 3”)
- (c) be entitled to commence debt proceedings to recover any unpaid itemised invoice or reasonable expenses claim after 51 days of receipt of the same where payment has not been made.

(3) There is to be deducted from any sum payable under sub-paragraph (1) the value of any apparatus removed under the provisions of this Part of this Schedule, that value being calculated

after removal and for the avoidance of doubt, if the apparatus removed under the provisions of this Part of this Schedule has nil value, no sum will be deducted from the amount payable under sub-paragraph (1) if in accordance with the provisions of this Part of this Schedule—

- (a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions; or
- (b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was,

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or, in default of agreement, is not determined by arbitration in accordance with article 43 (arbitration) of the Order to be necessary, then, if such placing involves cost in the construction of works under this Part of this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to Northern Powergrid by virtue of sub-paragraph (1) is to be reduced by the amount of that excess, save where it is not possible on account of reasonable project time limits communicated in a reasonable timeframe to the undertaker and/or supply issues to obtain the existing type of operations, capacity, dimensions or place at the existing depth in which case full costs shall be borne by the undertaker.

(4) For the purposes of sub-paragraph (3)—

- (a) an extension of apparatus to a length greater than the length of existing apparatus is not to be treated as a placing of apparatus of greater dimensions than those of the existing apparatus where such extension is required in consequence of the execution of any such works as are referred to in paragraph 189(2); and
- (b) where the provision of a joint in a cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole is to be treated as if it also had been agreed or had been so determined.

**99.—**(1) Subject to sub-paragraph (2) and (3), if by reason or in consequence of the construction of any of the works referred to in paragraph 189(2), or in consequence of the maintenance or failure of any of the authorised works by or on behalf of the undertaker or in consequence of any act or default of the undertaker (or any person employed or authorised by it) in the course of carrying out such works, including without limitation works carried out by the undertaker under this 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 those works) or property of Northern Powergrid, or there is any interruption in any service provided by Northern Powergrid, or Northern Powergrid becomes liable to pay any amount to a third party as a consequence of any default, negligence or omission by the undertaker in carrying out the authorised works, the undertaker must—

- (a) bear and pay the cost reasonably incurred by Northern Powergrid in making good such damage or restoring the supply; and
- (b) indemnify Northern Powergrid for other reasonable expenses, loss, damages, penalty, proceedings, claims or costs incurred by or recovered from Northern Powergrid,

by reason or in consequence of any such damage or interruption or Northern Powergrid becoming liable to any third party.

(2) Nothing in sub-paragraph (1) imposes any liability on the undertaker with respect to any damage or interruption to the extent that it is attributable to the act, neglect or default of Northern Powergrid, its officers, employees, servants, contractors or agents.

(3) Northern Powergrid must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise is to be made without the consent of the undertaker which, if it withholds such consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.



(4) Northern Powergrid must use its reasonable endeavours to mitigate in whole or in part and to minimise any costs, expenses, loss, demands, and penalties to which the indemnity under this paragraph 193 applies. If requested to do so by the undertaker, Northern Powergrid must provide an explanation of how the claim has been minimised or details to substantiate any cost or compensation claimed pursuant to sub-paragraph (1). The undertaker shall only be liable under this paragraph 193 for claims reasonably incurred by Northern Powergrid.

(5) Subject to sub-paragraphs (3) and (4), the fact that any act or thing may have been done by Northern Powergrid on behalf of the undertaker or in accordance with a plan approved by Northern Powergrid or in accordance with any requirement of Northern Powergrid as a consequence of the authorised development or under its supervision will not (unless sub-paragraph (2) applies), excuse the undertaker from liability under the provisions of this sub-paragraph (5) where the undertaker fails to carry out and execute the works properly with due care and attention and in a skilful and workman like manner or in a manner that does not materially accord with the approved plan or as otherwise agreed between the undertaker and Northern Powergrid.

**100.** Nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and Northern Powergrid in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which the Order is made.

**101.** Any difference under the provisions of this Part of this Schedule, unless otherwise agreed is to be referred to and settled by arbitration in accordance with article 43 (arbitration) of the Order.

**102.** Where in consequence of the proposed construction of any of the authorised development, the undertaker or Northern Powergrid requires the removal of apparatus under paragraph 189 or otherwise or Northern Powergrid makes requirements for the protection or alteration of apparatus under paragraph 191, the undertaker shall use reasonable endeavours to co-ordinate the execution of the works in the interests of safety and the need to ensure the safe and efficient operation of Northern Powergrid's apparatus taking into account the undertaker's desire for the efficient and economic execution of the authorised development and the undertaker and Northern Powergrid shall use reasonable endeavours to co-operate with each other for those purposes.

**103.** If in consequence of an agreement reached in accordance with paragraph 186 or the powers granted under this Order the access to any apparatus or alternative apparatus is materially obstructed, the undertaker shall provide such alternative means of access to such apparatus or alternative apparatus as will enable Northern Powergrid to maintain or use the said apparatus no less effectively than was possible before such obstruction.

**104.** The plans submitted to Northern Powergrid by the undertaker pursuant to this Part of this Schedule must be sent to Northern Powergrid at [property@northernpowergrid.com](mailto:property@northernpowergrid.com) or such other address as Northern Powergrid may from time to time appoint instead for that purpose and notify to the undertaker in writing.

**105.** Prior to carrying out any works within the Order limits, Northern Powergrid must give written notice of the proposed works to the undertaker, such notice to include full details of the location of the proposed works, their anticipated duration, access arrangements, depths of the works, and any other information that may impact upon the works consented by the Order.

**106.** Where practicable, the Undertaker and Northern Powergrid will make reasonable efforts to liaise and co-operate in respect of information that is relevant to the safe and efficient construction, operation and maintenance of the authorised development. Such liaison shall be carried out where any works are—

- (a) within 15m of any above ground apparatus; or
- (b) within 15m of any apparatus and are to a depth of between 0-4m below ground level.

**PROCEDURE FOR DISCHARGE OF REQUIREMENTS****Interpretation****1. In this Schedule—**

“requirement consultee” means any body or authority named in a requirement as a body to be consulted by the relevant planning authority in discharging that requirement;

“start date” means the date of the notification given by the Secretary of State under paragraph 4(2)(c); and

“working day” means any day other than a Saturday, Sunday or English bank or public holiday.

**Applications made under requirement**

**2.—**(1) Where an application has been made to the relevant planning authority for any consent, agreement or approval required by a requirement, the undertaker must also simultaneously submit a copy of that application to any requirement consultee.

(2) Where an application has been made to the relevant planning authority for any consent, agreement or approval required by a requirement the relevant planning authority must give notice to the undertaker of its decision on the application within a period of 8 weeks beginning with the later of—

- (a) the day immediately following that on which the application is received by the authority;
- (b) the day immediately following that on which further information has been supplied by the undertaker under paragraph 3; or
- (c) such longer period that is agreed in writing by the undertaker and the relevant planning authority.

(3) Subject to paragraph 4, in the event that the relevant planning authority does not determine an application within the period set out in sub-paragraph (2), the relevant planning authority is to be taken to have granted all parts of the application (without any condition or qualification) at the end of that period.

(4) Any application made to the relevant planning authority pursuant to sub-paragraph (2) must include a statement to confirm whether it is likely that the subject matter of the application will give rise to any materially new or materially different environmental effects compared to those in the environmental statement and if it will then it must be accompanied by information setting out what those effects are.

(5) Where an application has been made to the relevant planning authority for any consent, agreement or approval required by a requirement included in this Order and the relevant planning authority does not determine the application within the period set out in sub-paragraph (2) and is accompanied by a report pursuant to sub-paragraph (4) which states that the subject matter of such application is likely to give rise to any materially new or materially different environmental effects compared to those in the environmental statement then the application is to be taken to have been refused by the relevant planning authority at the end of that period.

**Further information and consultation**

**3.—**(1) In relation to any application to which this Schedule applies, the relevant planning authority may request such reasonable further information from the undertaker as is necessary to enable it to consider the application.

(2) In the event that the relevant planning authority considers such further information to be necessary and the provision governing or requiring the application does not specify that consultation with a requirement consultee is required, the relevant planning authority must, within 20 working days of receipt of the application, notify the undertaker in writing specifying the further information required.

(3) If the provision governing or requiring the application specifies that consultation with a requirement consultee is required, the relevant planning authority must issue the consultation to the requirement consultee within 10 working days of receipt of the application, and must notify the undertaker in writing specifying any further information the relevant planning authority considers necessary or that is requested by the requirement consultee within 10 working days of receipt of such a request and in any event within 20 working days of receipt of the application (or such other period as is agreed in writing between the undertaker and the relevant planning authority).

(4) In the event that the relevant planning authority does not give notification as specified in sub-paragraph (2) or (3) it is deemed to have sufficient information to consider the application and is not thereafter entitled to request further information without the prior agreement of the undertaker.

(5) Where further information is requested under this paragraph in relation to part only of an application, that part is to be treated as separate from the remainder of the application for the purposes of calculating time periods in paragraph 2 and paragraph 3.

## **Appeals**

4.—(1) The undertaker may appeal in the event that—

- (a) the relevant planning authority refuses an application for any consent, agreement or approval required by a requirement included in this Order or grants it subject to conditions;
- (b) the relevant planning authority is deemed to have refused an application pursuant to paragraph 2(5);
- (c) on receipt of a request for further information pursuant to paragraph 3 the undertaker considers that either the whole or part of the specified information requested by the relevant planning authority is not necessary for consideration of the application; or
- (d) on receipt of any further information requested, the relevant planning authority notifies the undertaker that the information provided is inadequate and requests additional information which the undertaker considers is not necessary for consideration of the application.

(2) The steps to be followed in the appeal process are as follows—

- (a) any appeal by the undertaker must be made within 30 working days of the date of the notice of the decision or determination, or (where no determination has been made) the expiry of the time period set out in paragraph (2), 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 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 working days of the start date and must ensure that copies of their written representations are sent to each other and to the undertaker on the day on which they are submitted to the appointed person;

- (e) the undertaker may make any counter-submissions to the appointed person within 10 working days of receipt of written representations pursuant to sub-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 in any event within 30 working days of the deadline for the receipt of counter-submissions pursuant to sub-paragraph (e); and
- (g) the appointment of the person pursuant to sub-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, within 5 working days of the appointed person's appointment, notify the appeal parties in writing specifying the further information required.

(4) Any further information required pursuant to sub-paragraph (3) must be provided by the relevant party to the appointed person and the other appeal parties on the date specified by the appointed person (the "specified date"), and the appointed person must notify the appeal parties of the revised timetable for the appeal on or before that day. The revised timetable for the appeal must require submission of written representations to the appointed person within 10 working days of the specified date, but otherwise the process and time limits set out in sub-paragraphs (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 Schedule 2 (requirements) as if it had been given by the relevant planning authority. The relevant planning authority may confirm any determination given by the appointed person in identical form in writing but a failure to give such confirmation (or a failure to give it in identical form) is not to be taken to affect or invalidate the effect of the appointed person's determination.

(10) Save where a direction is given pursuant to sub-paragraph (11) requiring the costs of the appointed person to be paid by the relevant planning authority, the reasonable costs of the appointed person must be met by the undertaker.

(11) On application by the relevant planning authority or the undertaker, the appointed person may give directions as to the costs of the appeal parties and as to the parties by whom the costs of the appeal are to be paid. In considering whether to make any such direction and the terms on which it is to be made, the appointed person must have regard to advice on planning appeals and award costs published in Planning Practice Guidance: Appeals (March 2014) or any circular or guidance which may from time to time replace it.

## **Fees**

**5.—**(1) Where an application is made to the relevant planning authority for written consent, agreement or approval in respect of a requirement, or any other consent or approval under the articles of the Order, the Applicant shall pay the costs in accordance with the agreement entered

into by the undertaker and City of Doncaster Council on 20 August 2025, or any subsequent replacement agreement as to costs.

## **EXPLANATORY NOTE**

*(This note is not part of the Order)*

This Order authorises Fenwick Solar Project Limited (company number 13705886) (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 41 (certification of plans and documents, etc) of this Order may be inspected free of charge during working hours at City of Doncaster Council at Civic Building, Waterdale, Doncaster, DN1 3BU.