Planning Inspectorate

ERRATA SHEET – Frodsham Solar Farm - Ref. EN010153

Examining Authority's Report of Findings and Conclusions and Recommendation to the Secretary of State for the Department of Energy and Net Zero, dated 16 July 2026

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

Page No.	Paragraph	Error	Correction
127	3.7.73	"...the proposed development **carry** would not weigh for or against the case for development consent."	"...the proposed development would not weigh for or against the case for development consent."
160	3.10.67	"**That** applicant updated the Design Parameters Statement..."	"**The** applicant updated the Design Parameters Statement...'
201	5.2.10	In 'Table 2: Summary of findings on main planning issues' the row with issue titled 'Major Accidents and Hazards' should be deleted as this weighting was included under the issue titled 'Health and Safety' elsewhere in the report.	Delete row with issue titled 'Major Accidents and Hazards'
201	5.2.10	In 'Table 2: Summary of findings on main planning issues' the table is missing a row with issue titled 'Glint and Glare, and Aviation'	Insert row below issue titled 'Ground Conditions, Geology and Land Use' with issue titled 'Glint and Glare, and aviation' with 'Negative' inserted under column titled 'Finding', 'Little' inserted under column titled 'Weighting' and '3.12' inserted under column titled 'Section'.

Page No.	Paragraph	Error	Correction
216	5.4.3	'The ExA has found that the proposed development would lead to less than substantial harm to the settings of designated heritage assets and to archaeological deposits, which carries **moderate** negative weight against the Order. The ExA has also found potential negative impacts on biodiversity and upon the landscape character.'	'The ExA has found that the proposed development would lead to less than substantial harm to the settings of designated heritage assets and to archaeological deposits, which carries **little** negative weight against the Order. The ExA has also found potential negative impacts on biodiversity and upon the landscape character.'

Planning Inspectorate

The Planning Act 2008

Frodsham Solar Farm

Examining Authority's Report

of Findings and Conclusions

and

Recommendation to the Secretary of State for

Energy Security and Net Zero

Examining Authority

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29 July 2026

OVERVIEW AND SUMMARY

Application Information Details	
File Ref	EN010153
Application Dated	30 May 2025
Applicant	Frodsham Solar Limited
Accepted for examination	27 June 2025
Examination Started	2 December 2025
Examination Closed	30 April 2026
Relevant Secretary of State	Energy Security and Net Zero
Recommendation Submitted	29 July 2026

The proposed development comprises the construction, operation, maintenance, and decommissioning of an energy generating facility comprising ground mounted solar photovoltaic arrays and an on-site substation, together with an associated battery energy storage system and supporting infrastructure including a connection to the national grid at Frodsham Substation. A private wire electricity connection to nearby businesses, mitigation areas for non-breeding birds and skylark, and the main site access route are included in the proposed works.

SUMMARY OF RECOMMENDATION

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

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1. INTRODUCTION

1.1. BACKGROUND TO THE EXAMINATION

1.1.1. An application for the Frodsham Solar Farm Project (the proposed development), Planning Inspectorate (the Inspectorate) reference EN010153, was submitted by Frodsham Solar Limited (the applicant) to the Inspectorate on 30 May 2025 under section (s) 37 of the Planning Act 2008 (PA2008) and accepted for examination under s55 of the PA2008 on 27 June 2025.

1.1.2. This recommendation sets out the Examining Authority's (ExA) findings, conclusions and recommendations to the Secretary of State for Energy Security and Net Zero (SoS).

1.1.3. The legislative tests for whether the proposed development is a Nationally Significant Infrastructure Project (NSIP) were considered by the Secretary of State for Levelling Up, Housing and Communities (SoSLUHC) in its decision to accept the application for examination in accordance with s55 of the PA2008.

1.1.4. The proposed development includes the construction of an onshore generating station in England with a capacity of more than 50 megawatts (MW) and therefore falls within s14(1)(a) and s15(2) of the PA2008. As such, the proposed development requires development consent in accordance with s31 of PA2008.

1.1.5. The Examination Library (EL) provides a record of all application documents and submissions to the examination, each of which is given a unique reference number e.g. [APP-001]. The reference numbers are used throughout this recommendation, and hyperlinks are included to allow the reader to access them directly.

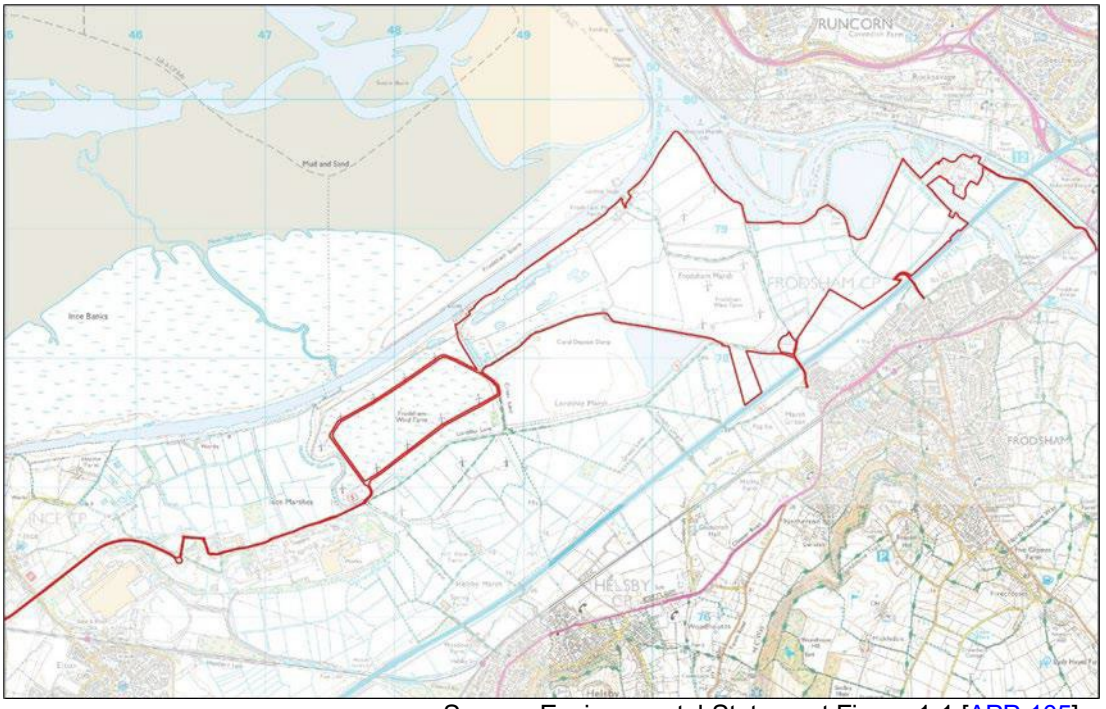
1.1.6. This recommendation does not contain extensive summaries of the documents and representations received. Readers are referred to relevant material using linked EL references. Full regard has been had to all such material and to all important and relevant matters arising from it in all conclusions drawn by the ExA and the recommendations made.

1.2. THE APPLICATION

LOCATION OF THE PROPOSED DEVELOPMENT

1.2.1. The location of the proposed development is shown in figure 1-1 of the Environmental Statement (ES) [APP-105] (extract shown in figure 1 below). The site lies to the southwest of Runcorn and to the north of Frodsham adjacent to the Mersey Estuary, wholly within the Cheshire West and Chester Council administrative area, and is wholly in England.

Figure 1: Location plan



Source: Environmental Statement Figure 1-1 [APP-105]

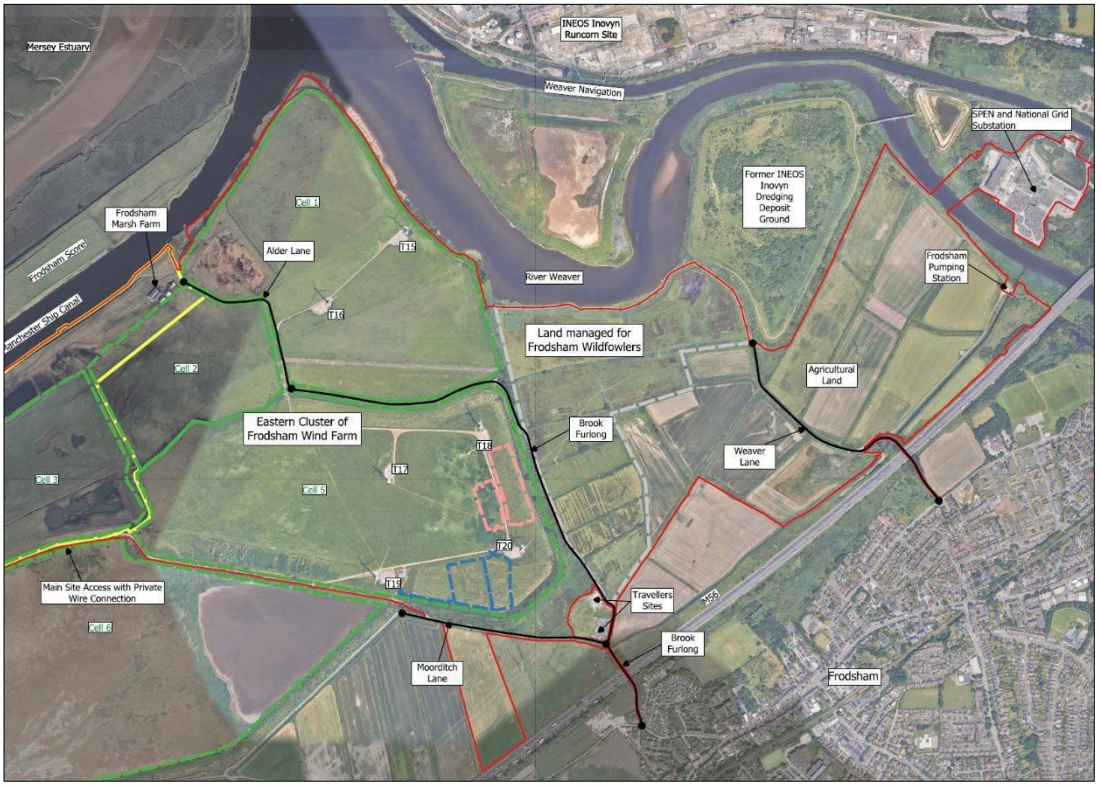
1.2.2. Chapter 1 of the ES [APP-034] provides a detailed description of the site and the surrounding area. In summary, the characteristics of the site are:

- The site lies adjacent to the southern bank of the River Mersey, separated from the river itself by the Manchester Ship Canal.
- The western half of the site comprises the dredging deposit cells arising from the early maintenance operations relating to the Manchester Ship Canal. Cells have been restored to agricultural use and habitats for birds.
- The central part of the site is former agricultural land and is crossed by a series of ditches and drainage channels for the management of water levels on the Frodsham and Helsby Marshes.
- The eastern half of the site remains open fields, though is more enclosed by hedgerows and tree belts.
- The overall site is largely flat with land levels between 5m and 12.5m above ordnance datum (AOD). Flood defences and engineered embankments associated with the dredging deposit cells have changed the topography of the land.
- To the south is the M56 motorway, beyond which is the town of Frodsham. The settlement of Runcorn is to the north-east of the site, separated from the Order limits by the River Weaver and the Weaver Navigation. A feature of ecological interest known as 'The Lum' sits on the site's side of the River Weaver.
- Within the site is the Frodsham Wind Farm (FWF), which is an active wind farm with a decommissioning date in 2042. Cells 2 and 5, and part of cell 3, of the dredging deposit cells comprise areas of grassland used for wildlife mitigation for FWF.

- The site is crossed by a series of Public Rights of Way and utilities, including above and below ground high voltage electricity transmission lines, high pressure gas lines, water distribution mains, telecommunication lines and private pipelines associated with nearby petrochemical plants.
- Central to the southern end of the Order limits, though sitting outside the Order limits, near the bridge known as Brook Furlong, there are two traveller sites with a small number of caravans. These were noted by the relevant authority as being unauthorised at both the opening and close of the examination.

1.2.3. The context of the site described above is shown in Figure 2 below:

Figure 2: Site Context



Source: Environmental Statement Figure 1-4 [APP-105]

1.2.4. ES Chapter 1 [APP-034] describes the surrounding area. By way of summary, the following points are important and relevant:

- The Mersey Estuary and Frodsham Score are designated as a Special Protection Area (SPA), Site of Special Scientific Interest (SSSI) and Ramsar site.
- A railway line lies approximately 500m to the south of the M56.
- Liverpool John Lennon Airport is located approximately 6.5km to the northwest of the Site.
- To the south-west of Frodsham lies Helsby, which is approximately 2 km from the Solar Array Development Area.

- The northern extent of the Cheshire Sandstone Ridge rises to a height of approximately 150m to the south of Frodsham and Helsby

DESCRIPTION OF THE PROPOSED DEVELOPMENT

1.2.5. The proposed development comprises the construction, operation, maintenance, and decommissioning of an energy generating facility comprising ground mounted solar photovoltaic arrays and an on-site substation. Included in the description as associated development are a battery energy storage system (BESS), supporting infrastructure including a connection to the national grid at Frodsham Substation, and ecological mitigation areas. The applicant also proposes to provide a private wire link so that local businesses and industrial areas could draw electricity direct from the solar farm.

1.2.6. The proposed development works comprise:

Principal development

- Work No. 1 – a ground mounted solar photovoltaic generating station.

Associated development

- Work No. 2 – a battery energy storage system compound.
- Work No. 3 – works in connection with an onsite substation and associated works.
- Work No. 4 – connection works from Work No.3.
- Work No. 5 – works to lay electrical cables and communication cables.
- Work No. 6 – works to create, enhance and maintain green infrastructure.
- Work No. 7 – construction, maintenance and decommissioning compounds.
- Work No. 8 – access and highway improvements and use, comprising works to create, improve, repair or maintain streets, roads, haul roads and access points.

1.2.7. Further details of the proposal for each Work No. can be found in Schedule 1 of the recommended Development Consent Order (rDCO) in appendix D. The proposed locations for each work can be seen on the Works Plans [REP6-003].

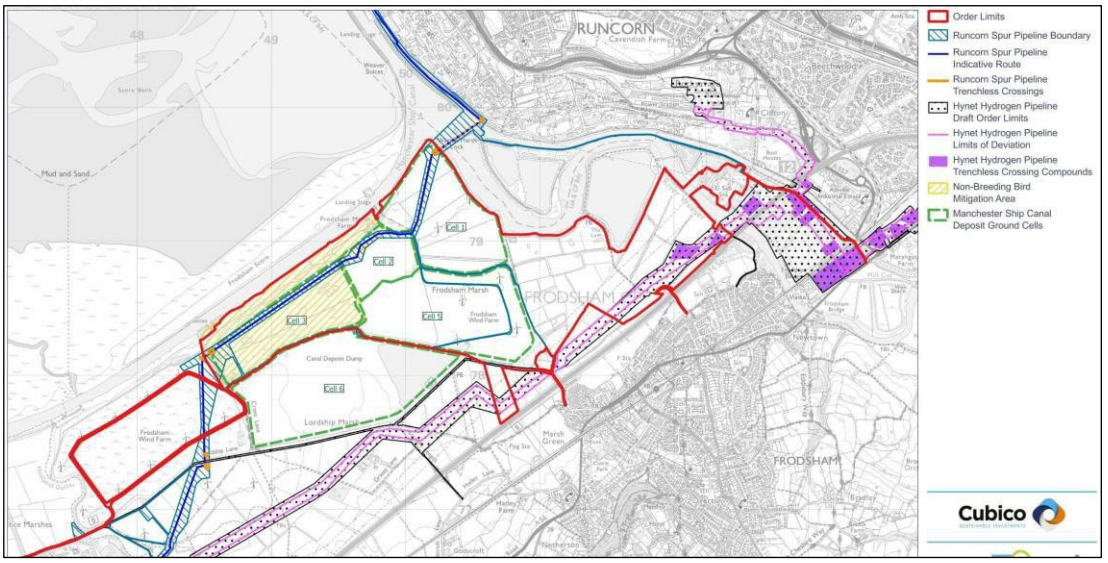
RELEVANT PLANNING HISTORY

1.2.8. Developments under s78 of the Town and Country Planning Act 1990 (as amended) (TCPA1990) and under PA2008 have a degree of interaction with the Order limits. Some are shown on Figure 3 below, but altogether comprise:

- The Hynet Carbon Dioxide Pipeline Project, which received development consent in March 2024.
- The Hynet Northwest Hydrogen Pipeline Project, which is currently in the pre-application phase of a development consent application.

- FWF, a development built and active on site until 2042, permitted under the TCPA.
- The Runcorn Carbon Dioxide Spur Pipeline development, for which an application for planning permission under TCPA 1990 is currently under consideration by Cheshire West and Chester Council (CWCC).
- The Protos Development to the west of the Order limits with planning permission for energy production, manufacturing, distribution and other operations.

Figure 3: Interaction with other developments



Source: Environmental Statement Chapter 13 [APP-046]

1.3. CHANGES TO THE APPLICATION

1.3.1. Changes to the key application documents, including the wording of the dDCO, were submitted and updated during the examination. The changes sought to address points raised by interested parties (IP) and the ExA, and to update or provide additional information resulting from changes and discussions that had occurred during the examination.

1.3.2. The applicant's changes to the application documents, together with any additional information submitted, are detailed in the Guide to the Application submitted at various deadlines [APP-003] [AS-002] [PD2-001]. This provides a guide to all documents submitted as part of the application. It provides a full record of all documentation submitted into the examination by the applicant.

1.3.3. No formal change requests were submitted by the applicant. However, as reported in chapter 4 of this recommendation and in appendix C, in respect of Habitats Regulations Assessment (HRA), the scope of land use within the proposed development did change in response to concerns regarding the extent of mitigation for non-breeding birds [REP6-003] [REP6-037]. The changes described in chapter 4, whilst not constituting a material change to the proposed development, would be critical to the overall composition of the

project and its implementation if consented. The changes would also result in a minor reduction in the overall electricity generation from the project.

1.4. INITIAL ASSESSMENT OF PRINCIPAL ISSUES (IAPI)

1.4.1. As required by s88 of the PA2008 and Rule 5 of the Infrastructure Planning (Examination Procedure) Rules 2010 (EPR), the ExA made an initial assessment of principal issues (IAPI) arising from the application in advance of the preliminary meeting (PM). This formed an initial assessment of the issues based on the application documents and the relevant representations (RR) submitted by Interested Parties (IPs) [RR-001] to [RR-051]. The list of issues relates to all phases of the proposed development. The IAPI [OD-006] was raised at the PM, and no other key topics were identified during the examination. The issues identified in the IAPI are as follows:

- Biodiversity and ecology
- Climate change
- Green belt
- Ground conditions
- Historic environment
- Landscape and visual effects
- Human health effects from noise, air, dust and nuisance
- Socioeconomics
- Decommissioning and waste disposal
- Flood risk and the water environment

1.5. THE EXAMINATION

1.5.1. The PM took place on 2 December 2025 [EV3-001]. The ExA's procedural decisions (PD) and the examination timetable took full account of matters raised at the PM. They were provided in the Rule 8 Letter [PD-008]. The principal components of and events around the examination can be seen in the examination timetable and are summarised below.

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

Written questions and requests for information	
ExA's first written questions (ExQ1)	[PD-009]
ExA's second written questions (ExQ2)	[PD-016]
Requests for further information and comments	[PD-014] [PD-017] [PD-019]
Hearings	
The following Issue Specific Hearings (ISHs) were held:	ISH1 [EV5-001] to [EV5-006] ISH2 [EV10-001] to [EV10-023]

The following Compulsory Acquisition Hearing (CAHs) was held:	CAH1 [EV9-001] to [EV9-008]
The following Open Floor Hearing (OFHs) was held:	OFH1 [EV6-001]
Site inspections	
The ExA carried out the following unaccompanied site inspections:	12 to 13 August 2025 [EV1-001] 2 to 3 February 2026 [EV8-001] [EV8-002]

PROCEDURAL DECISIONS

1.5.2. The PDs taken by the ExA are recorded in the EL referenced [PD-]. They detail the ExA's decisions relating to the procedure of the examination and did not bear on the ExA's consideration of the planning merits of the proposed development. All were broadly discharged as intended.

STATEMENTS OF COMMON GROUND

1.5.3. By the end of the examination, signed statements of common ground (SoCG) between the applicant and interested parties (IPs) were submitted and are available in the EL.

1.5.4. The SoCGs with the following bodies were signed at the end of the examination:

- Cheshire West and Chester Council [REP7-028]
- Environment Agency [REP7-029]
- National Highways [REP7-030]
- Natural England [REP7-035]

1.5.5. The SoCGs with the following bodies remained unsigned at the end of the examination:

- Liverpool Bay CCS Limited [REP7-031]

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

1.6. UNDERTAKINGS, OBLIGATIONS, AGREEMENTS AND CONSENTS

1.6.1. The Other Consents and Licences Statement [APP-127] provide information on the consents and licences required by the applicant in addition to development consent under the PA2008.

1.6.2. No other planning obligations or agreements were submitted to the examination. Matters relating to other undertakings, obligations, agreements, and consents are considered as necessary in the relevant sections of this recommendation.

2. HOW THE APPLICATION IS DETERMINED

2.1. INTRODUCTION

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

2.2. LEGISLATION AND POLICY

2.2.1. This section identifies the key legislation and policy that the ExA considers to be important and relevant to its findings and recommendations to the Secretary of State for Energy Security and Net Zero (SoS). More detail is provided in appendix A to this recommendation.

PLANNING ACT 2008 (PA2008)

2.2.2. The PA2008 provides a different basis for decision-making for Nationally Significant Infrastructure Project (NSIP) applications where a relevant national policy statement (NPS) (s104) has effect from that where no NPS has effect (s105).

2.2.3. This is an application where more than one NPS is in effect. The ExA has considered the statutory basis for examination, reporting and decision-making and has concluded that these must proceed under PA2008 s104 (decisions in cases where NPSs have effect). There are no substantial elements of the proposed development that fall outside the remit of relevant NPS policies and so PA2008 s105 (decisions in cases where no NPSs have effect) is not relevant.

2.2.4. A NPS has effect once it has been designated as such by parliament. It continues then to have effect until it is withdrawn. In the process of withdrawal, a draft replacement NPS may include transitional provisions which clarify how an application prepared under a withdrawn NPS is to be managed moving forward. Draft (including replacement) NPSs do not have effect until they in turn are designated, and then only subject to any transitional provisions that may apply. However, the content of draft NPSs is a matter that is capable of forming an important and relevant matter (PA2008 s104(2)(d)) to be considered by the SoS in its decision.

2.2.5. In this instance those NPS designated in January 2024 are the principal policy documents against which this project falls to be determined. New revised versions of the NPS were designated in January 2026, thus post-dating the acceptance of this application, and, for the purposes of this recommendation, are considered important and relevant. Unless otherwise specified in this recommendation, there are no material differences between the 2024 and 2026 versions that are of note.

2.2.6. Section 104(2) of the PA2008 sets out the matters to which the SoS must have regard when making its decision. These include:

- any relevant NPS
- any duly submitted local impact report (LIR)
- any matters prescribed in relation to the development
- any other matters the SoS thinks are both important and relevant to the decision

2.2.7. 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.
- Where any condition prescribed for deciding an application otherwise than in accordance with a NPS is met.

2.2.8. This recommendation sets out the ExA's findings, conclusions and recommendations taking these matters into account and applying s104 of the PA2008.

OTHER LEGISLATION

2.2.9. A full list of relevant primary and secondary legislation, including but not limited to duties arising under the Equality Act 2010, Human Rights Act 1998 and the Climate Change Act 2008 (as amended), can be found in table A1 of appendix A of this recommendation. All applicable legislation has been considered by the ExA as required and its findings and recommendations are framed so as to identify and enable the SoS to discharge all applicable statutory considerations or duties.

2.3. NATIONAL POLICY STATEMENTS

2.3.1. NPSs set out Government policy on different types of national infrastructure development. Having regard to the purposes of s104(2)(a) of the PA2008, the ExA considers that the following NPSs are relevant to the application:

- The Overarching National Policy Statement for Energy (NPS EN-1).
- The National Policy Statement for Renewable Energy (NPS EN-3).
- The National Policy Statement for Electricity Networks Infrastructure (NPS EN-5).

2.3.2. These NPSs formed the primary policy context for this examination. This recommendation sets out the ExA's findings, conclusions and recommendations taking these matters into account and applying the

approach set out in s104 of the PA2008. Table A1 of appendix A provides further detail on the NPSs of relevance to the proposed development.

2.3.3. The 2024 NPSs have effect for the ExA's consideration of this application and for the SoS' decision-making. On 24 April 2025, a consultation on draft revisions to NPS EN-1, EN-3 and EN-5 was launched, and the revised NPSs were laid in Parliament on 13 November 2025. On 6 January 2026, these versions of NPS EN-1, EN-3 and EN-5 came into force. Whilst these 2026 versions of the NPSs do not have effect for this application, they are capable of being important and relevant considerations in the SoS' decision-making process.

OTHER NATIONAL POLICY

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

- The National Planning Policy Framework (NPPF).
- Planning Practice Guidance (PPG).

2.3.5. Table A2 of appendix A provides further detail on these and other relevant policies to the proposed development. These policies are also discussed where necessary in section 3.2 of this recommendation.

2.4. LOCAL IMPACT REPORTS

2.4.1. One Local Impact Report (LIR) LIR was submitted into the examination at deadline (DL) 1 from Cheshire West and Chester Council [REP1-046].

2.4.2. LIR content has been considered through the examination and in this recommendation. It must be considered during the decision by the SoS pursuant to PA2008 s104(2)(b).

2.4.3. The issues raised are considered in further detail in relation to relevant planning issues in chapter 3 of this recommendation.

2.4.4. Amongst other matters, LIRs identify local policies (including those from the development plan) which are capable of being important and relevant considerations under s104(2)(d) of the PA2008. Table A3 of appendix A to this recommendation lists the individual local policy documents that are relevant to the proposed development. For an application proceeding under s104 PA2008, subsection (3) requires that the SoS must decide the application in accordance with any relevant NPS, except to the extent that one or more of the exceptions set out in subsections (4) to (8) applies. Where a relevant local policy and designated NPS policy are in conflict, the effect of this duty (subject to any applicable exception) is to establish a presumption in favour of NPS policy in the SoS's decision-making.

2.5. ENVIRONMENTAL IMPACT ASSESSMENT

2.5.1. The applicant provided a notification under Regulation 8(1)(b) of the Infrastructure Planning (Environmental Impact Assessment) Regulations

2017 (EIA Regulations) of its intention to provide an Environmental Statement (ES). Therefore, in accordance with Regulation 6(2)(a) of the EIA Regulations, the ExA determined that the proposed development was EIA development.

2.5.2. On 26 May 2023, the applicant submitted a Scoping Report to the SoS under Regulation 10 of the EIA Regulations in order to request an opinion about the scope of the ES to be prepared (a scoping opinion) [APP-048].

2.5.3. On 10 July 2023, the Planning Inspectorate provided a scoping opinion [APP-049].

2.5.4. The ExA considered that changes to the documentation, comprising the ES during the examination did not individually or cumulatively undermine the scope and assessment of the ES. Chapter 3 of this recommendation will summarise the environmental effects under each topic section.

2.5.5. Overall, the ExA considers that the ES, as supplemented with additional information during the examination, is sufficient to enable the SoS to take a decision in compliance with the EIA Regulations.

2.6. HABITATS REGULATIONS ASSESSMENT

2.6.1. The SoS is the competent authority for the purposes of the Conservation of Habitats and Species Regulations 2017 (Habitats Regulations). The Habitats Regulations were amended by the Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019.

2.6.2. The proposed development is one that has been identified as giving rise to the potential for likely significant effects (LSE) on European sites and hence is subject to a Habitats Regulations Assessment (HRA).

2.6.3. As is the convention and to inform SoS decisions prepared under the PA2008, a separate record of considerations relevant to HRA has been set out in appendix C of this recommendation, a summary of which can be found in chapter 4.

2.7. TRANSBOUNDARY EFFECTS

2.7.1. A transboundary screening under Regulation 32 of the EIA Regulations was undertaken on behalf of the SoS [OD-002] following the applicant's request for an EIA scoping opinion. No significant effects were identified on the environment in a European Economic Area (EEA) member state.

2.7.2. The Regulation 32 duty is an ongoing duty, and on that basis, the ExA has considered whether any facts have emerged to change these screening conclusions, up to the point of closure of the examination.

2.7.3. The ExA is content that there would be no transboundary LSE on the environment in an EEA state.

3. THE PLANNING ISSUES

3.1. INTRODUCTION

3.1.1. This chapter sets out the Examining Authority's (ExA) findings and conclusions on the planning issues. The chapter is structured to firstly examine the matters of principle, including need and alternatives, followed by generic 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, the ExA identifies the policy background, followed by a summary of the application as made, then reports on the main issues for each topic. Findings and conclusions are drawn for each topic. These in turn identify whether the effects carry little weight, moderate weight, great weight, or very great weight for or against the making of the Development Consent Order (DCO).

INITIAL ASSESSMENT OF PRINCIPAL ISSUES (IAPI)

3.1.3. As required by section (s) 88 of the Planning Act 2008 (PA2008) and Rule 5 of the Infrastructure Planning (Examination Procedure) Rules 2010 (EPR), the ExA made an IAPI [OD-006] arising from the application in advance of the Preliminary Meeting (PM) [PD-006]. This formed an initial assessment of the issues based on the application documents and submitted relevant representations (RR). The list of issues relates to all phases of the proposed development. The IAPI was raised at the PM and representations made were taken into account during the examination.

THE PLANNING ISSUES IN THIS RECOMMENDATION

3.1.4. The ExA considers that the issues raised by interested parties (IP) were broadly in line with the IAPI and were subject to written and oral questioning during the examination.

3.1.5. To facilitate efficient consideration of the relationships between certain issues and to avoid repetition in analysis, the ExA has varied the order of its consideration of issues arising from the IAPI. It should also be noted that the IAPI is a high-level framework. The ExA has nevertheless had regard to all important and relevant matters arising from submissions from IPs and has reported on these, if required, within each section below.

3.2. THE PRINCIPLE OF THE DEVELOPMENT, NEED AND ALTERNATIVES

3.2.1. This section considers the principle of development based upon Green Belt implications, the need for the proposed development and alternatives in terms of site selection and design. Consideration of individual planning matters begins from section 3.3 onwards.

POLICY BACKGROUND

Green Belt

3.2.2. The Overarching National Policy Statement for Energy (NPS EN-1) recognises that the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open. Paragraph 5.11.2 states the essential characteristics of Green Belts are their openness and permanence. Paragraphs 5.11.20, 5.11.36 and 5.11.37 continue that there is a general presumption against inappropriate development within the Green Belt and such development should not be approved except in very special circumstances (VSC). When located in the Green Belt, energy infrastructure projects may comprise ‘inappropriate development.'

3.2.3. The National Planning Policy Framework (NPPF) reinforces this position and makes clear that most new forms of development are inappropriate in the Green Belt and should be refused permission unless VSC can be demonstrated. This policy approach is, however, set aside where development would be on 'grey belt' land, such land meeting the definitions of such set out in the NPPF and national Planning Practice Guidance (PPG).

3.2.4. VSC, where needed to be demonstrated, are not defined in national planning policy as it is for the individual decision maker to assess each case on its merits and give relevant circumstances their due weight. However, when considering any planning application affecting Green Belt land, the Secretary of State (SoS) should ensure that substantial weight is given to any harm to the Green Belt when considering any application for such development, while taking account, in relation to renewable and linear infrastructure, of the extent to which its physical characteristics are such that it has limited or no impact on the fundamental purposes of Green Belt designation.

3.2.5. NPS EN-1, paragraph 5.11.37, goes on to consider that VSC may include the wider environmental benefits associated with increased production of energy from renewables and other low carbon sources.

3.2.6. As well as noting that there is a critical national priority (CNP) for the provision of nationally significant low carbon infrastructure (paragraph 4.2.4), it is stated that this means that the SoS will take as a starting point that VSC exist for the development of CNP infrastructure on Green Belt land (paragraphs 4.2.17 and 4.2.30). However, the applicant must, in accordance with NPS EN-1 paragraph 4.3.4, set out information on the likely significant environmental, social and economic effects of the development, and show how any likely significant negative effects would be avoided, reduced, mitigated or compensated for, following the mitigation hierarchy.

3.2.7. The NPPF explains the five purposes of Green Belt land (paragraph 143) and, at paragraphs 154 and 155, it sets out exceptions to inappropriate development, including development on grey belt land, the definition of which is at Annex 2 of the NPPF.

3.2.8. Where development is inappropriate, it is stated that VSC will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any

other harm resulting from the proposal, is clearly outweighed by other considerations (paragraph 153).

3.2.9. A draft revised NPPF was published for consultation in December 2025, and a final version had not been published by the close of the examination. The ExA considers that the December 2025 draft does not introduce any new or different considerations in terms of the Green Belt-related policy which is of relevance to the assessment of the proposed development.

3.2.10. The Planning Practice Guidance (PPG) sets out criteria to assess the contribution that land makes to the relevant Green Belt purposes (Paragraph: 005 Reference ID: 64-005-20250225). It also provides guidance on reaching a judgement as to whether proposals utilise grey belt land (Paragraph: 009 Reference ID: 64-009-20250225 and Paragraph: 010 Reference ID: 64-010-20250225).

3.2.11. Policy STRAT9 of Cheshire West and Chester Council's (CWCC) Local Plan Part One (2015) (LP1) states that restrictions will apply to development in the Green Belt in line with the NPPF.

3.2.12. During the examination it was noted that CWCC was preparing a 'Green Belt Assessment' and that this might have become available before the examination closed. However, CWCC confirmed [REP6-043] that its Green Belt Assessment was not expected to be published before the end of the examination. Therefore, this did not form part of the ExA's consideration of this topic.

Need

3.2.13. NPS EN-1 paragraphs 3.2.6 to 3.2.8 confirm that applications should be assessed on the basis that “the government has demonstrated that there is a need for those types of infrastructure covered” by the NPS and that “substantial weight should be given to this need.” Further, there is no requirement “to consider separately the specific contribution of any individual project to satisfying the need established.” The urgent need for new low carbon energy infrastructure to be brought forward as soon as possible, noting the crucial role of electricity as it decarbonises the energy sector, is set out at paragraph 3.3.58.

3.2.14. More specifically, NPS EN-1 sets out that the government is committed to increasing significantly the amount of renewable generation capacity both to improve energy security and to meet the legally binding target of reducing greenhouse gas emissions (paragraph 3.2.1). The 2050 net zero Greenhouse Gases (GHG) emissions target has been legislated through the Climate Change Act 2008 (2050 Target Amendment) Order 2019. Also, the government’s sixth carbon budget requires the United Kingdom (UK) to reduce GHG emissions by 78 per cent by 2035 compared to 1990 levels (paragraph 2.2.1). In terms of delivering net zero commitments, reference is made to the Energy White Paper (December 2020), the Net Zero Strategy (October 2021), the British Energy Security Strategy (April 2022), the Growth

Plan (September 2023) and Powering Up Britain (March 2023) (NPS EN-1, paragraph 2.1.1).

3.2.15. NPS EN-1 at paragraph 3.1.2 notes the significant amounts of new large-scale energy infrastructure needed to meet the requirements of energy and climate change policy. It is recognised that it will not be possible to develop the necessary amounts of such infrastructure without some significant residual adverse impacts.

3.2.16. Solar is identified in NPS EN-1 at paragraphs 3.3.20 and 3.3.21 as a low-cost way of generating electricity, helping reduce costs and providing a clean and secure source of electricity supply. There is an ambition for sustained growth in the capacity of solar in the next decade and a setting out that a secure, reliable, affordable, net zero consistent electricity system in 2050 is likely to be composed predominantly of wind and solar. The Solar Roadmap (June 2025) reinforces the outlook for solar energy development as part of the UK's future energy mix.

3.2.17. Paragraph 4.1.3 states that, given the level and urgency of need identified, the consideration of applications for development consent should start with a presumption in favour of granting consent, unless any more specific and relevant policies set out in the relevant NPSs clearly indicate that consent should be refused. Section 4.2 also sets out that there is a critical national priority (CNP) for the provision of nationally significant low carbon infrastructure which, for electricity generation, means all onshore and offshore generation that does not involve fossil fuel.

3.2.18. The National Policy Statement for Renewable Energy Infrastructure (NPS EN-3) sets out that the government has committed to sustained growth in solar capacity to ensure that we are on a pathway that allows meeting net zero emissions by 2050. The government expects a five-fold increase in combined ground and rooftop solar deployment by 2035 (up to 70 Gigawatts (GW)). As such, solar is a key part of the government’s strategy for low-cost decarbonisation of the energy sector (section 2.10). The consideration of need in NPS EN-3 largely reflects NPS EN-1.

3.2.19. The provisions of the National Policy Statement for Electricity Networks (NPS EN-5) relate to electricity networks infrastructure and supplements NPS EN-1 by providing technology specific information. In this case, the proposed new substations, cable connections and associated infrastructure come within the scope of NPS EN-5.

Alternatives and site selection

3.2.20. NPS EN-1 paragraph 4.3.9 explains the NPS does not contain any general requirement to consider alternatives or to establish whether the proposed project represents the best option from a policy perspective. Nonetheless, in accordance with paragraph 4.3.10 in terms of alternatives, the applicant must provide information proportionate to the scale of the project, ensuring the information is sufficient to meet the requirements of the Environmental Impact Assessment (EIA) Regulations.

3.2.21. The consideration of alternatives should be proportionate and limited to alternatives which meet the objectives of the proposed development, are realistic, and accord with relevant NPS policies (paragraphs 4.3.9 and 4.3.22 to 28). Applicants are obliged to include in their ES information about the reasonable alternatives they have studied and an indication of the main reasons for the applicant's choice, taking into account the environmental, social and economic effects and including, where relevant, technical and commercial feasibility (paragraph 4.3.15).

3.2.22. Where there is a policy or legal requirement to consider alternatives, the applicant should describe the alternatives considered in compliance with these requirements (paragraph 4.3.17). Although there are specific requirements in other legislation in relation to compulsory acquisition and habitats sites, the NPS does not change those requirements. These matters are considered in chapters 4 and 6 of this recommendation respectively.

3.2.23. The SoS should be guided in considering alternative proposals by whether there is a realistic prospect of the alternative delivering the same infrastructure capacity (including energy security, climate change, and other environmental benefits) in the same timescale as the proposed development (paragraph 4.3.23).

3.2.24. Alternatives not among the main alternatives studied by the applicant (as reflected in the ES) should only be considered to the extent that the SoS thinks they are both important and relevant to the decision. Alternative proposals which are vague, or immature, can be excluded on the grounds that they are not important and relevant to the SoS's decision (paragraphs 4.3.25 and 4.3.28).

3.2.25. 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).

3.2.26. In terms of siting, NPS EN-3 refers to the British Energy Security Strategy 2022 in setting out 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). The Powering Up Britain: Energy Security Plan's (2023) support for large scale ground-mounted solar deployment across the UK by looking for development mainly on brownfield, industrial and low and medium grade agricultural land is also noted. This sets out that solar and farming can be complementary, supporting each other financially, environmentally and through shared use of land (paragraph 2.10.11).

3.2.27. While land type should not be a predominating factor in determining the suitability of the site location, applicants should, where possible, utilise suitable previously developed land, brownfield land, contaminated land and industrial land. Where the proposed use of any agricultural land has been shown to be necessary, poorer quality land should be preferred to higher quality land avoiding the use of Best and Most Versatile agricultural land

(BMV) where possible. That is agricultural land classed at grade 1, 2 and 3a of the Agricultural Land Classification (paragraph 2.10.29). Whilst the development of ground mounted solar arrays is not prohibited on BMV land, the impacts are expected to be considered (paragraph 2.10.30).

3.2.28. Further, at this scale, it is likely that such developments will use some agricultural land. Paragraph 2.10.31 sets out that 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.

3.2.29. NPS EN-3 also sets out factors and policy provisions that are likely to influence the site selection and design processes. These include:

- network connection
- irradiance and site topography
- proximity of a site to dwellings
- agriculture land classification and land type
- accessibility
- public rights of ways
- security and lighting

Good Design

3.2.30. Section 4.7 of NPS EN-1 sets out the importance of good design for energy infrastructure, noting that high quality and inclusive design go far beyond aesthetic considerations. The functionality of an object, be it a building or other type of infrastructure, including fitness for purpose and sustainability, is equally important. It sets out that applying good design for energy projects should produce sustainable infrastructure sensitive to place, including impacts on heritage, efficient in the use of natural resources, including the land-use, and the energy used in their construction and operation, matched by an appearance that demonstrates good aesthetic as far as possible. It is acknowledged, however, 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 (paragraph 4.7.2).

3.2.31. In May 2024, the Written Ministerial Statement (WMS) on Solar and Protecting Our Food Security and Best and Most Versatile Land was issued setting out the aim of managing competing priorities for energy security and protection of BMV land, including assessing the effects of cumulative developments.

3.2.32. The NPPF sets out the need for the planning system to support the transition to a low carbon future in a changing climate, taking full account of flood risk and coastal change, including by supporting renewable and low carbon energy and associated infrastructure. Paragraph 163 sets out that when determining planning applications for renewable and low carbon development, local planning authorities should not require applicants to demonstrate the overall need for renewable or low carbon energy and should approve the application if its impacts are (or can be made) acceptable.

THE APPLICATION

Green Belt

3.2.33. The proposed development would be located entirely within the Liverpool, Manchester and West Yorkshire Green Belt (also referred to as the 'North Cheshire Green Belt').

3.2.34. In its assessment (which is at appendix A to its Planning Statement [APP-128]), the applicant noted that solar farms and battery energy storage system (BESS) facilities are not listed at paragraph 154 of the NPPF as being exceptions to inappropriate development.

3.2.35. However, with reference to paragraph 155 of the NPPF, the applicant observed that development in the Green Belt should not be considered inappropriate where it would be on 'grey belt' land and would meet the other relevant criteria at paragraph 155. The NPPF describes the grey belt as land which does not strongly contribute to a number of the Green Belt purposes at paragraph 143, specifically: (a) – to check the unrestricted sprawl of large built-up areas; (b) – to prevent neighbouring towns merging into one another; or (d) – to preserve the setting and special character of historic towns. Grey belt also excludes land where the application of policies relating to the areas or assets in footnote 7 (other than Green Belt) would provide a strong reason for refusing or restricting development.

3.2.36. In that context, the applicant argued that the proposed development would not conflict with purposes (a), (b) or (d), that there would be limited conflict with purpose (c) – to assist in safeguarding the countryside from encroachment, and that purpose (e) – to assist in urban regeneration, by encouraging the recycling of derelict and other urban land – is not relevant in this case. It also said, with reference to footnote 7 of the NPPF, that policies relating to flood risk and sites designated for their ecological value would not provide strong reasons for refusing or restricting the proposed development as, in both cases, the proposed development would not give rise to net harm, and in the case of ecology and biodiversity, it would deliver a significant net benefit.

3.2.37. With regard to the relevant criteria at paragraph 155 of the NPPF, the applicant concluded in section 1.4 of appendix A to its Planning Statement [APP-128] that the proposed development would not represent inappropriate development because:

- criterion a: the Order land is grey belt, the proposed development would affect a relatively small 'tongue' of the Green Belt, the area that would be affected is very different in context, attractiveness and openness to the adjacent areas of Green Belt, and the ability of the remaining Green Belt across the CWCC area to serve the Green Belt purposes would not be affected in a meaningful way
- criterion b: NPS EN-1 has established a demonstrable unmet need for the proposed development, which represents CNP infrastructure

- criterion c: the Order land is in a sustainable location as it would have direct access to the M56 and the north-west's motorway network without needing to travel along local roads or past sensitive receptors, and its location also presents an opportunity to provide direct electricity supply more efficiently and sustainably

3.2.38. Thus, the applicant submitted that the proposed development satisfied the criteria at paragraph 155, that the proposed development was, therefore, not inappropriate development, and consequently was excluded from the policy requirement to give substantial weight to any harm to the Green Belt including to its openness.

3.2.39. In the event that the decision-maker was to disagree with that argument, the applicant set out an alternative case from paragraph 1.5.3 of appendix A to its Planning Statement [APP-128]. It noted that the proposed development would be CNP infrastructure, albeit that CNP policy applies following consideration of need, the impacts of the project, and the application of the mitigation hierarchy (NPS EN-1 paragraph 4.2.7). It then said that it was reasonable to conclude that the requirement to demonstrate VSC to justify inappropriate development in the Green Belt had been met through the application of the mitigation hierarchy and the presumption in favour of CNP infrastructure in NPS EN-1.

3.2.40. The applicant concluded that [APP-128]:

"the Proposed Development would meet the tests of Green Belt policy irrespective of any critical national priority for the provision of nationally significant low carbon infrastructure, and irrespective of whether or not the Proposed Development can be considered to be inappropriate development or not."

Need

3.2.41. A statement of need was included in Section 2 of the Planning Statement [APP-128]. It referenced that solar energy is defined as critical national infrastructure in NPS EN-1, and identifies that solar power is strongly supported and encouraged under:

- British Energy Security Strategy (2022)
- Powering Up Britain (2023)
- Powering Up Britain: Energy Security Plan (2023)
- Powering Up Britain: Net Zero Growth Plan (2023)
- Climate Change Committee 2024 Progress Report to Parliament (2024)
- Accelerating to Net Zero: responding to the CCC progress report and delivering the Clean Energy Superpower Mission (2024)
- Clean Power 2030 Action Plan (2024)
- Clean Power 2030 Action Plan: Connections Reform Annex (2024)

3.2.42. The applicant iterated the urgent need to push for net zero emissions, on the path to meeting the requirements of the Climate Change Act 2008 (2050 Target Amendment) Order 2019. In April 2021, in line with recommendations from the Climate Change Committee's Sixth Carbon Budget, the Government

announced an additional ambitious interim target of cutting national emissions by 78% by 2035 (compared to 1990 levels). In addition to these domestic statutory requirements, the UK is a signatory to the Paris Agreement (2015), a landmark international treaty under which countries pledged to limit global warming to well below 2°C and ideally to 1.5°C.

3.2.43. The Planning Statement [APP-128] concluded that achieving net zero will depend on rapidly scaling up both solar PV generation and battery storage over the coming decade, to provide abundant low-carbon electricity and the means to flexibly manage it on the grid. The proposed development would directly contribute to closing this renewable capacity gap. With an installed solar capacity of approximately 147MW (0.147GW), it would increase the UK's solar generation base and produce enough clean electricity to power approximately 40,000 homes annually and save a minimum of approximately 900,000 tonnes of carbon dioxide (CO_2) equivalent over its lifetime.

3.2.44. Additionally, the applicant pointed to the benefits of a proposed private wire connection, which could allow nearby industries to decarbonise using energy directly from the proposed development. Furthermore, the co-located battery storage (with 100MW of capacity) would provide much-needed flexible output and grid-balancing services [APP-128], paragraph 2.3.24. Whilst the battery storage would not directly service the adjoining Frodsham Wind Farm (FWF), it would provide general resilience and support to the grid in terms of electricity storage.

3.2.45. The application concluded that these contributions are fully aligned with national net zero strategies and, importantly, the project is deliverable by 2030 with an agreed connection date during 2029, and partial commissioning and power export scheduled from mid-2029.

Site selection and alternatives

3.2.46. The applicant's position on the alternatives considered was in ES Chapter 3 [APP-036] and its accompanying appendix [APP-053]. A 'no development' scenario was not considered by the applicant [APP-036, paragraph 3.1.10] because that would not fulfil the aims and objectives of national policy.

3.2.47. The documents detailed a process whereby:

- The Frodsham SPEN Substation was chosen as the connection to the National Grid.
- The application site, described as Option A, was selected because of proximity to the Frodsham SPEN Substation and to other industrial premises that represented an economically attractive and viable proposition.
- A 5km search radius was established to see if there were any other alternate sites to construct the proposed development. This included whether there were suitable brownfield sites to accommodate a commercial scale solar farm.

- Two alternatives, Option B and Option C, were measured in terms of their environmental performance against Option A and subsequently dismissed.

3.2.48. The applicant reported considering alternative solar technologies and a summary of the conclusions drawn on these design choices is set in table 3-1 and paragraph 3.41ff [APP-036]. Onshore wind, as an alternative, was discounted due to the national policy position at the time the proposed development was first conceived.

3.2.49. The ES concluded that a reasonable assessment of alternatives has taken place. The application site offers the most realistic prospect of delivering the infrastructure and at speed.

Good Design

3.2.50. The applicant set out the rationale for design choices made in the optioneering phase within ES Chapter 3 [APP-036]. Paragraph 3.5.8 describes the early formation of a design vision, with paragraph 3.5.9 listing out eight key design principles underpinning the development.

3.2.51. Documents supporting the applicant's case that a positive and proactive approach had been taken towards design included a Design Approach Document [APP-130] and a Design Parameters Statement [APP-132], the latter of which would form a certified document within the dDCO.

ISSUES CONSIDERED DURING THE EXAMINATION

Green Belt

3.2.52. Some interested parties (IPs) [RR-003] [REP1-075] made general comments in relation to the effect of development on the Green Belt but did not set out any conclusions in the context of related planning policy. One IP [REP2-006] said that the applicant had not addressed some of the ‘golden rules’ at paragraph 156 of the NPPF (which relate to the provision of housing on the Green Belt). These matters were not pursued with substantiated evidence during the examination.

3.2.53. However, CWCC [REP1-048] strongly disagreed with the applicant’s case that the Order land should be classified as grey belt.

3.2.54. In respect of purpose (a), which seeks to check the unrestricted sprawl of large built-up areas, CWCC observed [RR-037] that whilst there has been some notable development such as the Frodsham Wind Farm (FWF), the M56 corridor and electricity pylons, the fundamental characteristic of openness remains and the Order land continues to perform a strong role in checking unrestricted sprawl. It said that the scale of the solar array development area (SADA) would cover a similar area to that occupied by the settlement of Frodsham and gives the proposed development an inherent attribute of sprawl.

3.2.55. In respect of purpose (b) (to prevent neighbouring towns merging into one another) CWCC said that, whilst the proposed development would be

relatively low-lying in the landscape, it would visually extend the built form from the industrialised edge of Runcorn and across the River Weaver to cover the fields which currently provide an important visual break in development between Runcorn and Frodsham. Furthermore, whilst it would not merge with Ellesmere Port, it would be a significant step towards a concentration of industrial, waste and energy development along the southern side of the Mersey Estuary that would undermine purpose (b).

3.2.56. Whilst acknowledging that physical merging may be prevented by features such as the River Weaver and, to a degree, the M56 Motorway, CWCC said that the thrust of PPG advice on Green Belt and assessing grey belt in relation to purpose (b) is whether the land in question forms a substantial part of a gap between towns (which CWCC said it does), and the loss of visual separation (which CWCC said there would be). Thus, it concluded that the Order land makes a strong contribution to purpose (b).

3.2.57. However, CWCC acknowledged that the Order land does not make a strong contribution to purpose (d) and the preservation of the setting and special character of Frodsham.

3.2.58. CWCC also noted [RR-037] that none of the exceptions to inappropriate development, as set out at paragraph 154 of the NPPF, would apply to the proposed development. Accordingly, it said that VSC needed to be demonstrated for the proposed development.

3.2.59. CWCC continued that, whilst the proposed BESS is not renewable energy generating development, it appears to fall within the definition of 'other energy infrastructure, fuels, pipelines and storage infrastructure, which fits within the normal definition of low carbon infrastructure' referred to in the definition of CNP in the Glossary to NPS EN-1. It also referred to The Helios Renewable Energy Project Order 2025 (Statutory Instrument 2025/1372). This included a BESS which, in the related recommendation report, was considered to be covered by the critical national priority of low carbon infrastructure as set out in paragraph 4.2.5 of NPS EN-1, a conclusion with which the applicant agreed [REP3-041].

3.2.60. In that context CWCC acknowledged, with reference to NPS EN-1, that as the proposed development included CNP infrastructure, the starting point should be that the development would be considered to have met the test of VSC.

3.2.61. Nevertheless, in light of paragraph 153 of the NPPF, the ExA sought clarification [EV10-010] from both parties as to whether there would be any other harms resulting from the proposed development and whether there would be any other considerations that might weigh in favour of the proposed development. The applicant's and CWCC's positions were set out in [REP5-042] and [REP5-047] respectively.

3.2.62. Whilst it noted that VSC exist to justify the proposed development, CWCC argued that allowing this development in the Green Belt would have far-reaching consequences in terms of the application of Green Belt policy on

the Order land and in the surrounding area for some considerable time, that the impact of the proposed development on the Green Belt and openness would be substantial, and that this needs to be considered in the Green Belt balance [REP4-074].

3.2.63. The applicant said [PD2-027] that it had given substantial weight to harm in its Green Belt balancing exercise but it disagreed with CWCC's conclusion that the harm to the Green Belt and openness is 'fundamental' because, in its opinion, the proposed development would not cause any material harm in relation to Green Belt purposes (a), (b), (d) and (e), and because there would be moderate harm to purpose (c). It also disagreed with CWCC's conclusion that the proposed development would cause substantial harm: rather, it argued that there would be limited harm to the spatial and physical openness of the Green Belt for the 40-year operational lifetime of the proposed development and, following decommissioning, the openness of the Green Belt would be restored. The applicant highlighted [REP4-057] that reversibility is an important consideration when considering harm to openness, that the dDCO includes a requirement to decommission within 40 years, and that any change would require a fresh consent process.

3.2.64. This remained a matter of dispute between the parties at the close of the examination, as recorded in the final signed Statement of Common Ground (SoCG) [REP7-028].

ExA's consideration and conclusions

3.2.65. The applicant and CWCC agreed [PD2-027] that the proposed development does not meet any of the exceptions to inappropriate development that are listed at paragraph 154 of the NPPF. The ExA also agrees with this conclusion.

3.2.66. However, and with reference to paragraph 155 of the NPPF, the applicant argued that the proposed development would be on grey belt land, that it would meet the other relevant criteria at paragraph 155 and, therefore, would not be inappropriate development.

3.2.67. To determine whether the Order land is grey belt land, consideration must be given to whether the land strongly contributes to Green Belt purposes (a), (b) or (d).

3.2.68. The PPG states that sites which contribute strongly to purpose (a) are likely to be free of existing development. In this regard, the applicant referred to the elevated M56 motorway and electricity sub-station infrastructure. However, the ExA considers that these existing features do not form part of the main parcel of Green Belt under consideration which comprises land to the north-west of the M56 and to the south-west of the Weaver Navigation which separates the sub-station from the SADA.

3.2.69. Although this parcel of land also includes development such as the FWF, overhead pylons and farm holdings, in this case the ExA does not find that the Order land is dominated by significant existing infrastructure as

suggested by the applicant [REP3-042] or that such development fundamentally undermines the parcel's contribution to purpose (a).

3.2.70. However, there are physical features in reasonable proximity to the Order land – namely the M56, the River Weaver and the Weaver Navigation – which could restrict and contain the unrestricted sprawl of Frodsham and Runcorn. Further to the south-west is a railway line which is to the north of Elton and large parts of Ellesmere Port. These features lessen the contribution that this part of the Green Belt would make to purpose (a).

3.2.71. Taking these considerations together, the ExA agrees with the applicant's conclusion that the parcel makes a moderate contribution to purpose (a) and it follows, therefore, that for the purposes of assessing whether it can be defined as grey belt, the Order land does not strongly contribute to purpose (a) as defined at paragraph 143 of the NPPF.

3.2.72. In respect of purpose (b), whilst the visibility of the proposed development would differ across the area, there would nevertheless be areas where the general extent of the SADA and other features such as the BESS and sub-station could be seen, for example at viewpoint 9 (Frodsham Hill War Memorial) [APP-113]. Nevertheless, the applicant has argued [PD2-027] that undeveloped fields would remain adjacent to the M56 and north of Frodsham, retaining a feeling of visual separation. It has also said that the former INEOS deposit lagoons and the raised landform between the river front and urban areas of Runcorn all act to retain the separation of Runcorn from Frodsham. In addition, it has argued that in other views, for example from viewpoint 26 [APP-121], the panels would be visible above rooftops but that intervening vegetation, the River Weaver and elevated topography would retain an essence of visual separation between Frodsham and Runcorn's industrial frontage to the north of the Order land.

3.2.73. The Order land forms part of a substantial gap between Frodsham and Runcorn and, as already noted, the ExA does not find that existing development on the site – including the FWF, the electricity pylons and farm holdings – fundamentally undermines the role that the site plays in preventing neighbouring towns from merging into one another. This is particularly the case in respect of the part of the site which is to the east of Brook Furlong where there are no wind turbines. Although there are electricity pylons on that land, such linear infrastructure is commonly seen outside of towns and urban areas and, in the ExA's opinion, does not fundamentally undermine the role that the Order land plays in respect of purpose (b).

3.2.74. Similarly, and whilst the applicant has argued that it is not a natural landscape, it is the ExA's opinion that other features such as flood alleviation bunding, former industrial lagoons, and drainage deposit grounds do not harm the openness of the land or conflict with the purposes of including land within the Green Belt: whilst elements of the landscape are the result of engineering operations in the past, these works have largely been assimilated to become a green open expanse, albeit with the former deposit ground forming an elevated plateau. Taking these factors into account, the

ExA considers that the Order land forms a substantial part of a gap between the Frodsham and Runcorn urban areas, both physically and visually.

3.2.75. The applicant has argued [PD2-027] that the proposed development is restricted, lacks the volume, mass and density of most physical development and consequently the design can retain open views across the Green Belt. It also said that whilst likely significant and adverse landscape and visual effects would occur, these would be experienced by a small number of receptors and would be localised in their extent, and that it had identified areas where open views could be maintained.

3.2.76. Nevertheless, the proposed development would cover a large part of this gap between Frodsham and Runcorn and, in the ExA's opinion and with reference to the CWCC's 'Landscape Sensitivity Study and Guidance on Wind and Solar Photovoltaic Developments' (2016) (referred to in the Local Impact Report [REP1-046]), the solar arrays would be incongruous.

3.2.77. Whilst the River Weaver and Weaver Navigation may have restricted the growth of, and would still separate, the towns, it is not uncommon for waterways to run through built-up areas. Similarly, open space and undeveloped land is also commonly seen in towns, as is vegetation. Development would not need to completely close the gap or cover all of the land to undermine purpose (b).

3.2.78. Thus, even though planting would take place with the intention of lessening the visual impact of the SADA and some areas would remain undeveloped, in the ExA's judgement the presence of the development as a whole would substantially undermine the existing gap and would also result in the loss, to a large degree, of the visual separation between Runcorn and Frodsham, particularly when viewed from elevated locations such as (but not limited to) Frodsham Hill War Memorial, a viewpoint from which the River Weaver and Weaver Navigation do not provide strong visual separation. As such, and with reference to the criteria in the PPG, the ExA considers that the Order land makes a strong contribution to Green Belt purpose (b).

3.2.79. Neither the applicant nor CWCC argued that the Order land strongly contributes to purpose (d) and the ExA agrees with their positions in that regard. However, given that it contributes strongly to purpose (b), the ExA concludes that on that basis alone the Order land is not grey belt and, therefore, does not benefit from the exception to inappropriate development set out at paragraph 155 of the NPPF.

3.2.80. Given that the Order land is not grey belt land and that the proposed development does not meet any of the exceptions at paragraph 154, the ExA considers that the proposed development is 'inappropriate development' and, as such, falls to be considered against NPPF paragraph 153 and the similar Policy STRAT9 of LP1, which together state that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in VSC.

3.2.81. NPS EN-1 paragraph 5.11.37 attributes substantial weight to any Green Belt harm. Nonetheless, when considering whether VSC exist, the presumption in favour of granting development consent and the CNP for this type of infrastructure, set out in section 4.2 of the NPS EN-1, are both of significance. Paragraph 4.1.3 of NPS EN-1 does however state that the presumption applies unless any more specific and relevant policies set out in the relevant NPSs clearly indicate that consent should be refused.

3.2.82. Hence, it is necessary to assess the level of need for the proposal, established in paragraph 3.3.62 of NPS EN-1, and the suitability of the site to meet any identified need, any other harm that might be caused, and the potential benefits of the scheme before reaching a conclusion as to whether or not VSC exist. To this extent, the ExA's final conclusions on the Green Belt and the VSC case are set out in chapters 5 and 8 of this recommendation.

Need

3.2.83. In general, IPs did not challenge or dispute the overriding national need for renewable energy generation nor the urgent need to decarbonise the energy sector. The principle of the development was therefore largely accepted.

3.2.84. The LIR [REP1-046], paragraph 8.1, confirmed that there is an acknowledged national priority for renewable energy as well as a pressing local need to deliver energy to energy-intensive industries and businesses in the area. The LIR [REP1-046], paragraph 8.7, encouraged the potential for 'private wire connections' direct from the project to business and business premises, as had been proposed by the applicant, because of a strong identified local need [APP-035].

3.2.85. The applicant [REP2-003], Q10.0.2, stated the private wire connection would be classed as associated development because:

- it supports the operation of the project and maximises the benefits
- such a connection could not exist without the project and is therefore subordinate
- it is not a source of revenue to cross-subsidise the project

3.2.86. By incorporating private wire connections, the applicant stated that it could continue to meet its 100MW grid connection agreement with National Grid, whilst supplying 47MW to local businesses in a major industrial location [REP2-003].

3.2.87. The progress on negotiations associated with private wire connections was questioned during issue specific hearing 2 (ISH2) [EV10-001]. The applicant confirmed that some positive moves had been made with nearby industrial premises and therefore the private wire element of the proposed development would likely be delivered.

3.2.88. No IPs contested the applicant's inclusion of the private wire connections under the allowances of 'associated development' within the scope of the Planning Act 2008 (PA2008).

3.2.89. On a wider point, the ExA queried the ability of the applicant to deliver the scheme at speed (to be operational in 2029 or 2030), which appeared an ambitious target given the construction programme [PD-016], Q2.1.2. The applicant responded [REP5-041] that the grid connection date is based on that detailed in the connection agreements between the applicant and SPEN, and between the applicant and the National Energy System Operator (NESO), as referenced in the grid connection statement [APP-145]. Whilst these agreements remain in place, the proposed development is subject to the current connections reform of the grid connections queue, as being led by NESO. In the event that the connection date is unachievable based on the wider construction programme, measures would be taken to ensure the proposed development can still connect to the distribution network. If necessary, an application to modify the connection date would be submitted.

3.2.90. The proposed generation capacity of the solar farm decreased by 13MW at DL6 [REP6-003] [REP6-037] due to an extension of an ecological mitigation area (in order to avoid an Adverse Effect on Integrity occurring - see appendix C to this recommendation). However, the applicant remained assertive as to the importance and contribution the proposed development would make to renewable energy in the region and United Kingdom (UK) as a whole.

ExA's conclusions

3.2.91. The ExA reviewed the legislative and policy context, as well as the evidence considered during the examination, with regard to need. It is very clear to the ExA that there is an imperative, unequivocal and compelling case for the delivery of renewable energy at pace established within NPS EN-1 and NPS EN-3, which weighs substantially in favour of development consent being granted. Solar generation will play an important role as part of the technology mix, noting that it can be deployed with relative speed. NPS EN-1 also sets out the evolving technological and legal context supporting wind and solar as low cost, clean and secure sources of renewable supply.

3.2.92. Having had regard to the relevant national guidance relating to determining associated development, the ExA concludes that the private wire connection, if provided, would fall within the definition of associated development and would therefore be permissible under the terms of PA2008. Although not determinative, this supports the arguments in favour of the 'need' for the project, given that the LIR identifies the presence of businesses drawing large amounts of electricity within the administrative area of Cheshire West and Chester.

3.2.93. The ExA's view is that the proposed development would fall within the parameters set out in NPS EN-3 paragraph 2.10.17 in terms of the generating capacity and scale of a scheme of this nature. In this sense, its generating capacity and scale would not, in principle, be unreasonable. Overall, the ExA gives substantial weight to the need for the proposed renewable energy generation in accordance with NPSs EN-1 and EN-3, which set out the CNP for the provision of such infrastructure.

Site selection and alternatives

3.2.94. Questions were asked about the strategic approach to alternatives assessment in ExQ2 [PD-016], Q2.2.3 to Q2.2.9, particularly given the apparent immediate choice of the application site before considering any other options. IPs also queried the rationale for siting a solar farm adjacent to a wetland nature reserve [RR-029]. The applicant responded with the following points [REP5-041]:

- A study was undertaken in 2020 to identify all feasible locations where a commercial scale solar project could connect to the electricity network. This included four different substations in the area, being Ince A, the Protos 33 kilovolts (kV) substation, the National Grid 400kV site at Frodsham, and the Frodsham SPEN 132kV substation. On the basis of the study, the Frodsham SPEN 132kV Substation was chosen because connection would involve relatively straightforward works, with limited impacts arising from those works, accessed by an existing substation access road and which is in a location a distance from local communities.
- The 5km radius was identified as a reasonable and proportionate search area having regard to a combination of a number of factors relevant to connection feasibility. These include the increasing capital cost of longer 132kV cable routes, the reduction in electrical efficiency over longer distances, the increased number of affected landowners over a greater distance, and the particular physical and environmental constraints surrounding the Frodsham SPEN 132kV Substation.
- It was both logical and reasonable for a renewable energy developer to begin its assessment from a starting point where a large proportion of the site was already under the control of, at that stage, its joint venture partner, particularly where that land also appeared capable of supporting a commercial-scale solar project on the basis of potential nearby grid availability. However, that starting point did not pre-judge the decision to take the site forward through the planning process.
- Although the opportunity at the site had been secured at an early stage, a full assessment was undertaken to test whether there were any other reasonably available sites or areas which had a realistic prospect of delivering the same infrastructure capacity within the same timescale.
- Options B and C were treated as potential alternatives and were assessed against the same framework, rather than being dismissed merely because the application site had already been secured.

3.2.95. The applicant also pointed to the benefits of co-location with the FWF and the BESS, making a unique hub of energy facilities in an industrial and manufacturing heartland [APP-036], paragraph 3.3.1.

3.2.96. The ExA did not pursue the matter further noting that, in terms of the general selection of the application site and its order limits, no IPs raised substantive or sustained objections to the applicant's approach. In fact, the LIR [REP1-046], paragraph 8.6 stated:

"the location close to the National Grid and SPEN substations to make the necessary grid connection is accepted as a key factor in finding a technically and commercially viable location."

3.2.97. There were, however, certain aspects of the proposed development where alternatives were explored, with particular regard to the environmental effects arising from the applicant's design and layout choices. These are set out below, although there is some overlap with other chapters of this recommendation.

Ecology

3.2.98. Table 2.2 [APP-053] reported that the southern fringe of the Mersey Estuary Site of Special Scientific Interest (SSSI) is located within the northern extent of the Order limits. The Order limits also sit in close proximity to the Mersey Estuary Special Protection Area (SPA), with the applicant and Natural England (NE) in agreement that all of the application site constituted functionally linked land (FLL) to the SPA [AS-038].

3.2.99. The Order limits also envelope and enclose the onshore FWF, as well as the land which serves as environmental mitigation in association with that development. A portion of that mitigation land, used to mitigate the effects of FWF on SPA birds on the FLL, would be built over by the proposed development whilst another portion would be subject to proposed environmental enhancements (discussion of this in greater depth is in section 3.3 of this recommendation).

3.2.100. These factors caused concern regarding the applicant's site selection and the judgements used in the assessment processes. In addition, the LIR [REP1-046] suggested that:

"With regard to overplanting, CWCC consider that whilst a generally accepted means of securing an operational efficiency and a means of countering the degradation of panels over time, there concern that by overplanting and seeking maximisation of the extent of solar array there will be disproportionate adverse environmental impact."

3.2.101. The applicant rebutted the LIR by stating the design maximises the opportunity to generate renewable electricity without causing unacceptable effects [REP3-042]. The applicant continued that NPS EN-1 recognises that for the government to meet its energy objectives, it would not be possible to develop the necessary amounts of such infrastructure without some significant residual adverse impacts.

3.2.102. In response to the other concerns raised above, the applicant responded [REP5-041]:

- The Order limits include a small section of the Mersey Estuary SSSI along its northern boundary. This land was retained within the Order limits boundary, in part because it was included within the lease demise for the larger landholding option. However, this part of the site was not included within the solar array development area, and this decision was made at

the start of the project design process to avoid direct impacts on the SSSI.

- The mitigation strategy for the Mersey Estuary SPA and its associated functionally linked land also supports the maintenance and enhancement of the SSSI.
- The proposed development not only avoids impacts on the SSSI but also offers a series of benefits to it. On this basis, the inclusion of the SSSI within the site boundary was not considered to represent an insurmountable constraint.
- It is feasible to mitigate the effects of the proposed development on FLL of the Mersey Estuary SPA by increasing the ecological value of Cell 3 to provide sufficient enhancement to offset impacts arising from both the wind farm and the proposed development.

3.2.103. No IPs raised any challenges to the applicant's answers to these questions with respect to alternatives or site selection. Detailed concerns relating to ecology in general are covered in section 3.4, chapter 4 and appendix C of this recommendation.

ExA's conclusions

3.2.104. The ExA considers that the applicant has demonstrated sufficient awareness and understanding regarding the ecological implications of the site selection process. The ExA acknowledges that the applicant has given a clear indication of the main reasons underpinning the choice of development site, and that an application for development consent should not be refused simply because another option potentially exists with fewer adverse impacts.

Flood risk

3.2.105. Consideration of the sequential and exception tests for flood risk was set out in section 2.5 of the alternative sites assessment [APP-053]. It highlighted that the majority of the solar array, the BESS and the proposed project substation would also be located in flood zone (FZ) 1. However, the eastern portion of the order limits would fall within FZ3 with the highest associated risk of flooding within the Order limits, albeit in an area protected by flood defences.

3.2.106. In setting the 5km search area and, having assessed options B and C, the applicant concluded that no other alternative available sites offer what option A does in terms of form, scale, apparent land availability, or meeting the required need. Therefore, overlapping the Order limits with FZ3 would be justified and substantiated.

3.2.107. The Environment Agency deferred to the lead local flood authority (CWCC) for matters regarding the sequential test but noted that the applicant had located more vulnerable infrastructure, such as the BESS and substation, within FZ1 [REP2-008].

3.2.108. The LIR [REP1-046, paragraph 9.3] stated:

"whilst it is considered that there are some shortcomings in the sequential assessment regarding identification of potentially preferable locations in terms of flood risk, CWCC acknowledge that the scale of the development limits the options, and disaggregating the scheme, e.g. to use apparently sequentially preferable land south of the M56 appear to add significant technical issues/costs (e.g. linking back to the grid connection) and whilst lower flood zone land may be available to the south side of the M56, other impacts such as landscape and visual impacts would need to be considered. CWCC's conclusion is that development in Flood Zone 3 is a matter to be considered in the planning balance, not necessarily that other locations should be pursued further."

ExA's considerations

3.2.109. The ExA finds that the applicant's approach and application of the flood risk sequential test represent a proportionate and robust assessment when considering if alternative sites were available. No objections have been raised from any IP, and the ExA has no reasons to conclude otherwise.

Optionality and the Rochdale Envelope

3.2.110. Works No.2A and No.2B, as written into the dDCO [REP7-004], allow for the provision of the BESS compound in one of two locations, both within FZ1 and in broadly the same area within the Order limits. The final location would be decided during the detailed design phase. The works plans [REP6-003] make provision that whichever site is not used for the BESS could be covered with solar panels.

3.2.111. The ExA queried whether any greater certainty could be given to the final siting of the BESS during the examination [PD-016], Q2.2.3. The applicant responded that the decision on selecting the final location is intended to be informed by detailed design work and will require advice from the Engineering and Procurement Contractor, to be appointed post-consent and pre-construction. In reaching the decision, the relationship between the BESS and the wider final scheme layout will be considered. For example, future modelling will inform the optimised layout and consider which location is preferrable for solar power generation and which is best for BESS, based on things like onsite shadowing and cable lengths. The final location would form part of the detailed design to be submitted for approval under Requirement 6 of the dDCO.

3.2.112. Apart from general concerns about access to the BESS and fire safety (considered in section 3.12 of this recommendation), no IPs challenged the proposed locations for the BESS or raised issues with the optionality sought in the dDCO.

ExA's considerations

3.2.113. The ExA is satisfied that the applicant has provided reasoned justification for retaining the optionality within the dDCO, and that the flexibility is warranted in the circumstances. There are adequate controls within the requirements listed within the dDCO to ensure appropriate notification and engagement

with the relevant authorities regarding choices made in any detailed design stage of the project.

Good design

3.2.114. Specific aspects of design that were contentious or subject to detailed negotiation are covered under the relevant planning topic sections of this recommendation (such as the tilt and surfacing of panels in the glint and glare section, 3.12).

3.2.115. The LIR [REP1-046] did not raise any particular concerns with the applicant's approach to the design of the scheme. IPs raised some queries, but these were not substantive in nature, and the applicant alleviated these concerns in writing [PD2-027] [REP1-032]. The ExA did not ask many general design-related questions [PD-009] [PD-016] during the examination.

3.2.116. Whilst the Design Parameters Statement was revised during the examination, latest version being [REP7-011], this was to address discrete points of dispute or concern.

ExA's considerations

3.2.117. The ExA is satisfied that the applicant took a reasonable approach to design, layout and landscaping in the round. The key elements of design are secured within the appropriate documentation, to be certified, as secured in both Requirement 6 and Schedule 10 the dDCO [REP7-003].

CONCLUSIONS

3.2.118. Policy provisions establish the urgent need for renewable energy generation of all types. Large scale solar generation will be part of the mix of infrastructure and technology that is anticipated will deliver this, in line with wider energy and climate objectives. Therefore, the proposed development would make a meaningful contribution to meeting this need. In this regard, the ExA's position is that the proposed development would be in general accordance with the provisions of NPS EN-1 and NPS EN-3 relating to need.

3.2.119. Further, in making a meaningful contribution to meeting the need for renewable energy generation, the proposed development could potentially do so with relative speed. It would therefore be able to support the government's ambition of a five-fold increase in combined ground and rooftop solar deployment by 2035. This is part of the mix of technologies that can support the delivery of a low-carbon, secure and affordable UK energy supply into the future. In this regard, an important and relevant consideration is the commitment set out in NPS EN-1 to the provision of low carbon infrastructure as a CNP.

3.2.120. The ExA also concludes that the proposed development is supported in principle by local policies seeking to support renewable energy provision and the transition to a low carbon future.

3.2.121. In terms of site selection and alternatives, the methodology used and reasons given for the site selection are sufficient to achieve compliance with the requirements of NPS EN-1 and NPS EN-3 and the EIA Regulations. In the ExA's opinion, the decision to co-locate the proposed development with BESS and the FWF, in close proximity to an existing national grid substation, represents substantive reasoning underpinning the choice of site to develop the solar farm. The location also offers a unique opportunity to directly 'wire-in' local industry.

3.2.122. Accordingly, and subject to consideration of the specific impacts of the proposed development in the remainder of this chapter, the ExA considers that the principle of the proposed development accords with local and national policy. The urgent need for the proposed development brings very great weight for the making of the Order.

3.3. BIODIVERSITY AND ECOLOGY

INTRODUCTION

3.3.1. This section considers the effects of the proposed development on biodiversity and ecology, including ornithological receptors. This section does not consider matters in relation to European protected sites and the Habitats Regulations Assessment (HRA), which are considered at appendix C of this recommendation, although there are some examination issues which are common between the HRA and this section.

POLICY BACKGROUND

3.3.2. The Overarching National Policy Statement for Energy EN-1 (NPS EN-1) at paragraph 4.6.6 outlines that energy Nationally Significant Infrastructure Projects (NSIP) should seek opportunities to contribute to and enhance the natural environment by providing net gains for biodiversity and the wider environment where possible.

3.3.3. NPS EN-1 paragraphs 4.6.7 and 4.6.8 state that applicants are encouraged to use the latest version of the biodiversity metric to calculate their biodiversity baseline and present planned biodiversity net gain (BNG) outcomes. Paragraph 4.6.7 goes on to say that this data should be presented in full as part of the application and should be shared, alongside a completed biodiversity metric calculation, with the local authority and Natural England (NE).

3.3.4. NPS EN-1 at paragraph 4.6.10 states that BNG should be applied after compliance with the mitigation hierarchy and does not change or replace existing environmental obligations. Paragraphs 4.6.11 and 4.6.12 provide that BNG can be delivered onsite or wholly or partially off-site. When delivering BNG off-site, developments should do this in a manner that best contributes to the achievement of relevant wider strategic outcomes.

3.3.5. In terms of decision making, NPS EN-1 paragraph 4.6.1 states that although achieving BNG is not currently an obligation on applicants, Schedule 15 of

the Environment Act 2021 contains provisions which, when commenced, mean the Secretary of State (SoS) may not grant an application for a Development Consent Order (DCO) unless satisfied that a biodiversity gain objective is met in relation to the onshore development in England to which the application relates. Paragraph 4.6.3 goes on to say that the SoS should give appropriate weight to environmental and BNG, although any weight given to gains provided to meet a legal requirement (for example under the Environment Act 2021) is likely to be limited.

3.3.6. For Sites of Special Scientific Interest (SSSIs), NPS EN-1 paragraphs 5.4.7 and 5.4.50 state that the SoS should use requirements or planning obligations to mitigate harmful aspects where possible, to ensure the conservation and enhancement of the site's biodiversity or geological interest. The SoS should give due consideration to impacts but, given the need for new NSIPs, these designations should not be used in themselves to refuse development consent.

3.3.7. NPS EN-1 paragraph 5.4.43 states that if significant harm to biodiversity resulting from a development cannot be avoided (for example through locating on an alternative site with less harmful impacts), adequately mitigated, or, as a last resort, compensated for, then the SoS will give significant weight to any residual harm.

3.3.8. The National Policy Statement for Renewable Energy Infrastructure (NPS EN-3) paragraphs 2.10.76 to 2.10.79 state that ecological assessments should identify any ecological risk from developing on the proposed site which may include assessments of habitats, ground nesting birds, wintering and migratory birds, bats, dormice, reptiles, great crested newts, water voles and badgers to ensure that adverse impacts are avoided, minimised or mitigated in line with the mitigation hierarchy, and biodiversity enhancements are maximised. The assessment may be informed by a 'desk study' of existing ecological records and suggest any further surveys required.

3.3.9. NPS EN-3 paragraph 2.10.83 provides that applicants should consider how site boundaries are managed. Surveys may be necessary if hedges or scrub are to be removed and buffer strips between perimeter fencing and hedges may be proposed. The construction and design of any fencing should account for enabling mammal, reptile and other fauna access into the site if required to do so in the ecological report.

3.3.10. NPS EN-5 sets out in section 2.5 that the linear nature of electricity networks infrastructure can allow for excellent opportunities to reconnect important habitats via green corridors, biodiversity stepping zones, and reestablishment of appropriate hedgerows. It also states that opportunities may exist to connect people to the environment via footpaths and cycleways constructed in tandem with environmental enhancements.

3.3.11. The National Planning Policy Framework (NPPF) section 15 describes how developments should conserve and enhance the natural environment. Of note, in paragraph 193, the NPPF states that if significant harm to biodiversity cannot be avoided, adequately mitigated, or, as a last resort,

compensated for, then planning permission should be refused. Development on land within or outside a SSSI, which is likely to have an adverse effect on it (either individually or in combination with other developments), should not normally be permitted. The only exception is where the benefits of the development in the location proposed clearly outweigh both its likely impact on the features of the site that make it of special scientific interest, and any broader impacts on the national network of SSSIs.

3.3.12. The Local Impact Report (LIR) submitted by Cheshire West and Chester Council (CWCC) [REP1-046] referred to various development plan policies relevant to ecology and biodiversity. Local development plan policies relevant to the proposed development are set out at appendix A of this recommendation. Of particular note to biodiversity and ecology are the following policies:

- ENV4 Biodiversity and geodiversity from the Cheshire West and Chester Local Plan Part One (2015) (LP1)
- DM44 Protecting and enhancing the natural environment from the Cheshire West and Chester Local Plan Part Two (2019) (LP2)
- DM45 Trees, woodland and hedgerows from the LP2

THE APPLICATION

3.3.13. The applicant's case in relation to effects on biodiversity and ecology was set out in the Environmental Statement (ES) chapter 7 Terrestrial Ecology [APP-040] and chapter 8 Ornithology [APP-041]. In addition, the applicant submitted the following documents:

- Biodiversity Net Gain Report [APP-143]
- Appendix 7-1 Habitats Baseline Report [APP-075]
- Appendix 7-2 Protected Ecological Species Baseline Report [APP-076]
- Appendix 7-2 Protected Ecological Species Baseline Report (Figure 4 Confidential Otter Survey Results) [APP-077]
- Appendix 7-3 Protected Ecological Species Baseline Report (Confidential Badger Annex) [APP-078]
- Appendix 7-3 Bat Activity Survey Report [APP-079]
- Appendix 7-4 Consultation and Engagement [APP-080]
- Appendix 7-5 Assessment of Frodsham Helsby Ince Local Wildlife Site [APP-081]
- Appendix 8-1 Ornithological Survey Report [APP-082]
- Appendix 8-2 Consultation and Engagement [APP-083]
- Chapter 7 Figures [APP-122]
- Hedgerow Plans [APP-011]
- Statutory and Non-Statutory Sites or Features of Nature Conservation Plans [APP-012]

BASELINE

Overview

3.3.14. Applicable wildlife and countryside legislation was considered within the applicant's assessment [APP-040] and [APP-041], along with national and local planning policy. The applicant confirmed that the assessment adhered to the Chartered Institute of Ecology and Environmental Management guidance (CIEEM) 2018 along with the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017.

3.3.15. Habitat surveys across the site of the proposed development were undertaken between February 2023 and September 2024 following UK industry standard UKHab Methodology [APP-040]. All surveys were undertaken by suitably competent and qualified ecologists in accordance with industry standard guidance. Full details of the habitat survey methodologies were provided at appendix 7-1 [APP-075]. The main development area was defined in chapter 7 as the solar array development area (SADA), the non-breeding bird mitigation area (NBBMA) and the Scottish Power Energy Network (SPEN) (National Grid) Substation and access [APP-040].

3.3.16. The following field surveys were undertaken, to establish the protected species baseline within the main development area [APP-080]:

- bat activity surveys (July to November 2023)
- invertebrate assessment (May 2023)
- water vole preliminary habitat suitability assessments (September 2023, June 2024 and January 2025)
- otter and water vole surveys (September 2024 and March 2025)
- badger walkover (March 2025)

3.3.17. Non-breeding bird surveys were undertaken over three years [APP-041]:

- year 1 (September 2022 to mid-April 2023)
- year 2 (September 2023 to March 2024)
- year 3 (October 2024 to March 2025)

Statutory designated (notified) sites

3.3.18. There are 6 statutory designated (notified) sites with qualifying terrestrial ecology interests located within 2km of the main development area (extending to 10km for internationally protected sites). These sites were summarised in table 7-8 [APP-040] and shown in figure 3 appendix 7-1 [APP-075]. The six statutory designated sites were:

- Mersey Estuary SSSI
- Flood Brook Clough SSSI
- Dunsdale Hollow SSSI
- Runcorn Hill Local Nature Reserve
- Midland Meres and Mosses Phase 1 Ramsar site
- Midland Meres and Mosses Phase 2 Ramsar site

3.3.19. The Mersey Estuary SSSI is the only statutory designated (notified) site with qualifying terrestrial ecological interests within the proposed main development area. The proposed Order limits include a small part of the Mersey Estuary SSSI. This area would be required for the construction of the proposed NBBMA.

3.3.20. There are 3 statutory protected sites with qualifying ornithological interests located within 2km of the SADA and NBBMA. These sites were summarised in table 8-8 and are shown in figure 2 of ES appendix 8-1 [APP-082]. The 3 statutory designated sites with qualifying ornithological interests were:

- Mersey Estuary SSSI
- Mersey Estuary Special Protection Area (SPA)
- Mersey Estuary Ramsar site

3.3.21. Matters in relation to the HRA for European sites are considered at chapter 4 and appendix C of this recommendation.

Non-statutory designated sites

3.3.22. The following non-statutory designated sites for nature conservation with terrestrial ecological and ornithological interests were scoped in for detailed assessment [APP-040] and [APP-041]:

- Frodsham, Helsby and Ince Marshes Local Wildlife Site (LWS) (nature conservation and ornithological interest)
- Frodsham Field Studies Centre LWS (nature conservation)
- Easton Clifton Tip LWS (nature conservation)
- Clifton Lagoon LWS (ornithological interest)
- Upper Mersey Estuary LWS (ornithological interest)

3.3.23. A further 18 LWSs were located within 2km of the main development area, as identified in table 7-9 [APP-040] but these were scoped out of the detailed assessment due to the spatial separation between the main development area and the static nature of the terrestrial qualifying features.

3.3.24. The Frodsham, Helsby and Ince Marshes LWS contains an extensive area of valuable habitats which support species at county, national and international levels. The site is also notable for its botanical significance at county and national levels. The LWS is noted to be of county, national and international ornithological importance for breeding, wintering and passage species [APP-041], many of which are also qualifying features of the Mersey Estuary SPA and Ramsar site. Schedule 1 and UK red listed species such as skylark, yellow wagtail, song thrush, linnet, yellowhammer, starling, lapwing, black-tailed godwit, dunlin and green sandpiper are recorded as being in the LWS.

3.3.25. Clifton Lagoon LWS and the Upper Mersey Estuary LWS have qualifying features of breeding, estuarine and wetland birds. For the purposes of the assessment, the non-breeding ornithology features of the LWS were considered the same as those identified for nationally and internationally designated sites [APP-041].

3.3.26. Baseline conditions for ecological receptors were summarised in section 7.6 of ES chapter 7 [APP-040] and the baseline conditions for non-breeding birds and breeding bird species were summarised in section 8.6 of ES chapter 8 [APP-041] and set out in full at appendix 8-1 [APP-082].

3.3.27. Details of the ornithological field survey results were provided at appendix 8-1 [APP-082] along with heat tables showing the usage of the SADA and the NBBMA by target species. Twenty-six target species were recorded during flight activity surveys, with survey results shown in figures 7a to 7h and 9a to 10d of ES appendix 8-1 [APP-082], and results summarised in table 8-17.

3.3.28. Twenty-one breeding target bird species were recorded within the SADA, the NBBMA, the SPEN (National Grid) Substation, pooled across two survey years, with 20 and 15 target species respectively in year 1 (2023) and year 2 (2024). The NBBMA (Cell 3 section) was included in the survey area in year 2, but not in year 1, which the applicant states may explain the increase in the indicative number of breeding pairs in year 2 compared to year 1 for some species. Species of note recorded in the SADA were hen harrier, merlin, barn owl and avocet in addition to those listed in the results table 8-18 [APP-081]. These species were seen, but either outside the breeding season or as non-nesting records during the breeding season.

EMBEDDED MITIGATION

3.3.29. Mitigation for ecological receptors was incorporated in the design process at the outset [APP-040]. Areas containing the highest value habitats were identified and excluded from potential development areas.

3.3.30. An Indicative Environmental Masterplan was provided as figure 2-3 [APP-106], which set out works associated with the retention of existing green infrastructure and the creation of new green infrastructure. A major component of this would be the creation of the NBBMA, which would cover an area of approximately 64ha and would be located in the area of Cell 3 of the former Manchester Ship Canal Dredging Deposit Grounds. Details of the NBBMA were provided in ES Chapter 8 [APP-041], the Outline Landscape and Ecology Management Plan (oLEMP) [APP-144] and the Outline Non-Breeding Bird Mitigation Strategy (oNBBMS), at appendix B of the oLEMP [APP-144]. The NBBMA would provide direct mitigation for non-breeding birds and also enhanced opportunities for invertebrates, water vole and bats [APP-040].

3.3.31. Habitat creation and enhancement measures were detailed within the oLEMP [APP-144] in section 4.6 which included:

- creation and enhancement of approximately 132 hectares (ha) of other neutral grassland
- creation of approximately 75.7ha of modified grassland
- specific habitat creation and enhancement measures within the items above including:
    - creation of a skylark mitigation area (SMA), comprising 5.58ha of other neutral grassland creation

- creation of the NBBMA comprising:
    - approximately 53.51ha of new and enhanced habitats (wetland and other neutral grassland) to benefit wetland birds
    - approximately 13.19ha of additional grassland habitat

CONSTRUCTION PHASE

Mitigation

3.3.32. Proposed mitigation measures to protect wildlife during the construction phase were outlined in ES chapter 7 [APP-040], chapter 8 [APP-041] and table 5-3 in the Outline Construction Environmental Management Plan (oCEMP) [APP-136]. Amongst these, other than standard regulatory measures, the principal mitigation measures included:

- The NBBMA would be created and functional in advance of construction of the western SADA.
- Mammal gates in perimeter security fencing.
- A requirement for species and habitat protection plans (roosting bats, otter and water vole, badger, amphibians, reptiles, other notable mammals and fish).
- A requirement for Invasive Non-Native Species (INNS) management plans.

Construction effects

Construction effects on national statutory designated (notified) sites for nature conservation and ornithology

3.3.33. The Mersey Estuary SSSI is the only statutory designated (notified) site for both nature conservation and ornithology which was scoped into the detailed assessment. The Mersey Estuary SPA and Ramsar site were also scoped in for ornithology and are considered at section 4 and appendix C of this recommendation.

3.3.34. The applicant concluded [APP-040], [APP-041] that construction of the proposed development was anticipated to result in temporary minor adverse effects upon national statutory designated sites for nature conservation, which would not be significant.

Construction effects to non-statutory designated (notified) sites for nature conservation and ornithology

3.3.35. In terms of direct impacts, the applicant concluded [APP-040] that there would be temporary and permanent land take of neutral grassland, wetland and reedbed within the Frodsham, Helsby and Ince Marshes LWS and subsequent effects on birds within the LWS [APP-041].

3.3.36. For terrestrial ecological receptors, the applicant concluded [APP-040] that the construction of the proposed development would result in:

- Temporary moderate adverse effects which would be significant for the Frodsham, Helsby and Ince Marshes LWS, which are of county sensitivity.
- Temporary minor adverse effects which would not be significant for the Frodsham Field Studies Centre LWS and Easton Clifton Tip LWS which are of county sensitivity.

3.3.37. For ornithological receptors, the applicant concluded [APP-041] that the construction of the proposed development would result in temporary minor adverse effects to the Helsby and Ince Marshes LWS, Upper Mersey Estuary LWS and Clifton Lagoon LWS, which are of medium sensitivity, which would not be significant.

Construction effects to habitats

3.3.38. The applicant concluded [APP-040] that the construction of the proposed development would result in temporary minor adverse effects on habitats of principle importance, which are of up to county sensitivity, which would not be significant. In terms of other habitats, the construction of the proposed development would result in temporary minor adverse effects on other habitats, which are of site sensitivity, which would not be significant.

Construction effects to breeding and non-breeding birds

3.3.39. In terms of breeding birds, the applicant concluded [APP-041] that the construction of the proposed development would result in minor adverse effects on skylark and lapwing, which would not be significant. The applicant further concluded that for other breeding species, habitat management measures delivered under the oNBBMS and oLEMP [APP-144] would be a moderate positive effect, which would be significant.

3.3.40. The applicant concluded [APP-041] that the construction of the proposed development would result in minor adverse effects on non-breeding birds, which are of up to high sensitivity, which would not be significant.

Construction effects to other fauna

3.3.41. The applicant concluded that the proposed development would not result in any significant impacts upon bats, otters, fish, voles, invertebrates and mammals. Through appropriate management practices, there would be minor positive effects via the removal and treatment of INNS.

Additional mitigation or enhancement for construction effects

3.3.42. The applicant considered [APP-040] that no additional measures would be necessary during construction to mitigate for any significant or non-significant impacts on ecological receptors, and that impacts had been addressed as far as reasonably practicable through avoidance and incorporated mitigation.

OPERATIONAL PHASE

Mitigation

3.3.43. Proposed environmental mitigation measures during the operational phase were listed in section 5 of the Outline Operational Environmental Management Plan (oOEMP) [APP-137] and the oLEMP [APP-144]. Operational mitigation and management measures specific to terrestrial ecology and ornithology were summarised in table 5-3 of the oOEMP [APP-137].

Operational effects

Operational effects to national statutory designated (notified) sites for nature conservation and ornithology

3.3.44. The ES concluded [APP-040], [APP-041] that the operation of the proposed development would have negligible terrestrial ecology impacts on the Mersey Estuary SSSI, which is of national sensitivity. These would not be significant.

3.3.45. The ES concluded [APP-041] that the operation of the proposed development would have minor beneficial effects in the short term, predicted to increase to moderate beneficial effects in the medium to long term on ornithological features of the Mersey Estuary SSSI, a site of high sensitivity. These would be significant.

Operational effects to non-statutory designated (notified) sites for nature conservation and ornithology

3.3.46. The ES stated [APP-040], [APP-041] that the operation of the proposed development would have medium to long term moderate positive effects for the lifetime of the proposed development on non-statutory designated (notified) sites for nature conservation, which are of up to county sensitivity (Frodsham, Helsby and Ince Marshes LWS, the Frodsham Field Studies Centre LWS and Easton Clifton Tip LWS). These would be significant.

3.3.47. The ES stated [APP-041] that the operation of the proposed development would have minor beneficial effects in the short term, predicted to increase to moderate beneficial effects in the medium to long term, on the ornithological features of the Frodsham, Helsby and Ince Marshes LWS, which are sites of medium sensitivity. These would be significant.

Operational effects to habitats

3.3.48. The applicant concluded [APP-040] that the operation of the proposed development would have medium to long term minor positive effects on HPI, which are of up to county sensitivity. These would not be significant. It also concluded there would be medium to long term minor positive effects on other habitats for the lifetime of the proposed development, which are of site sensitivity. These would not be significant.

Operational effects to breeding and non-breeding birds

3.3.49. The applicant concluded [APP-041] that the operation of the proposed development would result in negligible effects on breeding skylark and minor beneficial effects on breeding lapwing, which are of low sensitivity. These would not be significant.

3.3.50. Whilst the SADA would not be available for non-breeding birds during the operational phase of the proposed development, the applicant concluded that the enhancement measures within the NBBMA particularly, would cause a notable betterment of the habitat quality for non-breeding birds, particularly wading species and waterfowl. The applicant concluded [APP-041] that the operation of the proposed development would have minor beneficial effects upon non-breeding birds in the short term, which were predicted to increase to become moderate beneficial effects in the medium to long term, which are of up to high sensitivity. These would be significant.

Operational effects to other fauna and flora

3.3.51. The applicant concluded [APP-040] that the operation of the proposed development would not have any significant effects upon bats, otters, voles, mammals, fish or invertebrates.

3.3.52. The applicant's proposals made provision for 100% replacement of the solar panels within the SADA during the operational phase of the project, likely undertaken with up to 50% replacement in any one campaign [REP1-034].

BNG

3.3.53. The application proposed to achieve a minimum increase of 10% in habitat and hedgerow units and no net loss in watercourse units [APP-040]. The BNG calculations were presented by the applicant in the BNG report [APP-143], utilising DEFRA's statutory biodiversity metric calculator. The applicant stated that the proposed development would meet the BNG trading principles, with the exception of the loss of reedbed.

3.3.54. The BNG Report [APP-143] concluded in paragraph 6.1.1 that there would be a net change of +194.86 (11.52%) habitat units, +48.25 (88.92%) hedgerow units and +14.65 (13.35%) watercourse units. Paragraph 6.1.3 clarifies that, when taking into account the NBBMA and the remainder of the site, the proposed development would achieve at least 10% increase in biodiversity units (habitats, hedgerows and watercourses). When excluding the NBBMA (as it would be classed as mitigation) 10% would not be achieved, however a measurable increase in biodiversity units (habitats and hedgerows) were predicted.

3.3.55. The applicant noted [APP-040] (and in section 6.6 of the oLEMP [APP-144]), that, as opposed to standard retention and monitoring of BNG for 30 years, the proposed development would secure BNG for a longer period of 40 years (operational life of the proposed development).

Other Considerations

3.3.56. The applicant assessed the cumulative impacts on terrestrial and ornithological receptors in ES chapter 7 [APP-040] and chapter 8 [APP-041]. With the understanding that no construction phases would coincide between the proposed development and the Runcorn Spur Carbon Dioxide Pipeline and the Hynet pipeline which would cross the site of the proposed development, the applicant concluded that no potential significant cumulative impacts were identified.

3.3.57. At decommissioning stage, the applicant envisaged landscaping works would be left in place but ultimately the future would be in the hands of individual landowners when land was handed back to them [APP-040]. The ES stated that following decommissioning, the landowners may or may not retain the permissive footpaths created across the Order limits, with land likely to be returned to agriculture.

3.3.58. The Outline Decommissioning Environmental Management Plan (oDEMP) [APP-138] summarised mitigation measures to be implemented for terrestrial and ornithological receptors in table 5-3. The applicant concluded for both terrestrial and ornithological receptors that potential impacts from decommissioning were considered likely to be similar to those in relation to the construction phase [APP-040], [APP-041].

ISSUES CONSIDERED DURING THE EXAMINATION

3.3.59. CWCC raised a number of concerns related to biodiversity, ecology and ornithology in its relevant representation (RR) [RR-037], written representation (WR) [REP1-048] and LIR [REP1-046]. There were also representations on these topics from many individual interested parties (IPs) including several Councillors, the Environment Agency (EA) [RR-024], the Canal and River Trust (CRT) [RR-010], the Cheshire Wildlife Trust (CWT) [RR-019] [REP1-068], Natural England (NE) [RR-012] and the Royal Society for the Protection of Birds (RSPB) [AS-041].

3.3.60. Issues regarding potential effects to peat habitats are reported within section 3.7 of this recommendation.

3.3.61. The following issues were considered within the examination and are reported below:

- breeding and non-breeding birds
- statutory and non-statutory designated (notified) sites
- other ecological matters
- BNG proposals

Breeding and non-breeding birds

3.3.62. The full examination of the impacts on the species of breeding and non-breeding birds which are qualifying features of the Mersey Estuary SPA and Ramsar site are reported at chapter 4 and appendix C to this recommendation and are not repeated here.

3.3.63. At submission stage, the applicant had drawn the boundaries of the NBBMA to excluding Cell 2 of the Manchester Shipping Canal dredgings [APP-040]. However, it became clear towards the end of the examination that there were significant concerns from the RSPB, NE, CWCC and CWT about the scale and resilience of the mitigation proposals. On this basis, the applicant incorporated the whole of Cell 2 into the NBBMA at DL6 [REP6-001].

3.3.64. The RSPB confirmed [REP5-065] that on the assumption that Cell 2 was fully incorporated into the NBBMA, the overall area to be developed would be sufficient to support both current and future populations of golden plover, lapwing, and curlew. Proposed perimeter predator-exclusion fencing would further enhance the security and suitability of these habitats.

3.3.65. However, responses from CWCC [REP7-039] prior to the close of the examination at DL7 indicated that, whilst the inclusion of Cell 2 into the NBBMA was a positive step in line with the precautionary principle, more was required, namely:

- To reduce disturbance in Cell 1, solar panels should be set back from the eastern and northern boundaries and footpath A should be re-routed away from the boundaries.
- The NBBMA should only be considered as functional once grassland habitats were in place.
- Replacement for the Frodsham Wind Farm (FWF) mitigation should be included [REP4-068].

3.3.66. To avoid duplication, the reporting of the examination of these aspects is not repeated here and can be found at chapter 4 and appendix C of this recommendation, but the outcomes of these issues are included in the ExA's considerations below, from an Environmental Impact Assessment (EIA) perspective.

3.3.67. The examination of skylark is reported below as it is not a qualifying feature of the European sites. ES chapter 8 [APP-041] identified likely adverse effects on the local skylark population, largely from displacement (paragraph 8.8.40). To mitigate for these effects, the applicant proposed a 5.58ha site within the Order limits to be managed and improved to support breeding skylark, known as the skylark mitigation area (SMA). Significant concerns were raised by CWT [RR-019] and CWCC [RR-037] (and other IPs) regarding the extent of the SMA, noting that an area of 30ha was originally proposed in the preliminary environmental information report. In addition, CWCC elaborated in the LIR [REP1-046] that deficiencies in the applicant's approach included:

- an inadequate skylark baseline
- the proposed SMA location was not near to any areas where skylark were recorded during the surveys, as they favour Cells, 1, 2 and 3
- the SMA had not been surveyed to see which bird species were currently using it and to give any indication of its suitability for skylark
- the SMA would be beneath pylons and nearer to the M56 motorway

- further information was required as to how the SMA would support the number of skylark pairs recorded breeding, both in terms of quality of habitat and space

3.3.68. The applicant rebutted Q4.1.1 and Q4.4.5 [REP2-003] and [REP4-057], to state that the SMA was currently farmed arable land, so the mitigation intervention would introduce a high-quality, more natural grassland habitat. The applicant did not consider evaluation of other species with the SMA to be necessary or to have any effect on the conclusions of the impact assessment as the land would still be available for other species. In respect of proximity to urban features, the applicant opined that it was reasonable to assume skylark using this area would likely be habituated to relatively elevated background noise and disturbance levels and so being located near the M56 would not have a distracting effect [REP4-055].

3.3.69. The applicant advocated [REP4-057] that, rather than seeking a strict "pair-for-pair" outcome, the conservation status of skylark would be maintained through increasing prey availability (invertebrates) and removal of modern farming practices from a large area of land. This would support breeding productivity by providing conditions where nests would be less likely to be destroyed. The applicant also maintained that skylarks would continue to use other parts of the Order limits, such as the NBBMA, in addition to the SMA.

3.3.70. The CWT [REP4-075] disputed the applicant's assertions stating it could not be assumed that skylark would use land occupied by the SADA. The pylons and M56 motorway would likely cause disturbance to skylarks in the SMA, and the SMA would be fragmented from the other areas that they would be using, notably the NBBMA. CWT reiterated that if a qualitative approach was taken to mitigation, then a precautionary approach should be taken to the skylark mitigation. CWT also substantiated with evidence a case that the literature commonly used to determine the necessary hectarage for skylarks states that a pair of skylarks requires 3.3ha per territory [REP4-075], [REP5-051]. As there were 21 pairs of skylarks at peak count on the site of the proposed development, CWT stated this would amount to a mitigation area of approximately 70ha.

3.3.71. The applicant responded [REP5-041] that the SMA was intended to offer additional mitigation for skylarks, claiming that in the absence of the dedicated SMA, the numbers of retained breeding skylark pairs would likely be less than 50% of the current population within the Order limits. The applicant contended that marginal habitats would provide foraging habitat for skylarks breeding on nearby arable land and that gaps between solar panels of more than 50m in width would also likely be used for breeding. Such gaps would be required on Cell 1 to provide an easement width to existing pipelines. When considered together, the applicant estimated the number of breeding pairs using the SADA to be between 2 and 4 pairs. The applicant opined that as with the SMA, there would be areas within the SADA which would generally be managed favourably for foraging skylarks, with reduced chemical input and increased botanical diversity (meadow grassland), as set out in Section 6.7 of the oLEMP, and so these retained pairs could be

expected to produce higher numbers of young than birds using intensive arable land, as currently dominates the proposed eastern SADA.

3.3.72. The applicant contended [REP5-041] that the overall number of pairs of skylarks which could be reasonably expected within the Order limits (SADA, NBBMA and SMA) would be between 9 and 11 pairs. When benefited pairs (through improved foraging habitat) in adjacent land are included, that number would be estimated to increase to between 12 and 15 pairs. Overall breeding productivity of these pairs could be reasonably anticipated to increase above existing levels. Therefore, the applicant concluded that adequate and proportionate mitigation relative to the abundance of a widespread species, would be provided and the conservation status at a meaningful ecological level was highly unlikely to be affected.

3.3.73. The applicant confirmed [REP5-041] it had updated the oLEMP to commit to monitoring and adaptive management in respect of skylarks, in light of the ExA stating Q2.4.8 [PD-016] that it was not currently convinced that the difficulty and scientific uncertainty cited by the applicant were sufficient reasons to exempt the need for monitoring the success of skylark mitigation.

3.3.74. This remained a matter of dispute at the close of the examination [REP7-028] [REP7-039], with CWCC confirming that despite the inclusion of the whole of Cell 2 into the NBBMA it had ongoing outstanding concerns regarding the SMA.

ExA's considerations

3.3.75. The ExA has carefully considered all representations submitted into the examination on these issues. The ExA notes agreement from NE on the ornithological survey effort and coverage of the site [REP6-050] which is reported within appendix C of this recommendation. NE stated that although not all areas of the site were surveyed in each of the 3 years, it was satisfied that there was sufficient coverage overall to undertake a robust assessment supplemented by the additional desktop study and up to date data for the area. The ExA therefore considers this issue is resolved.

3.3.76. With regards to the NBBMA, the ExA notes the endorsement of the RSPB regarding the expanded NBBMA with Cell 2 included. Combined with NE's support, the ExA has no reason to dispute the findings on this matter. The ExA is reassured that the oCEMP [REP7-017], secured via requirement 12 of the dDCO [REP7-003], states that work on the construction of the SADA would not commence until the NBBMA was functional. The ExA is satisfied that CWCC, NE and the RSPB would have sufficient control over the decision as to whether the NBBMA had met the definition of 'functional'. The ExA is therefore satisfied that adequate mitigation for breeding and non-breeding and birds has been secured and that the mitigation hierarchy has been followed.

3.3.77. In terms of the long-term management of the NBBMA, the ExA acknowledges confirmation from the RSPB [AS-041] that it would be prepared to take on the role of the appointed nature conservation body for

long-term management of the NBBMA. The ExA is reassured that the oNBBMS [REP7-033] secures the involvement of the RSPB (or another named nature conservation body as and if the RSPB were to withdraw). The ExA therefore considers that long-term mitigation for the loss of supporting habitat for non-breeding and breeding bird population has been adequately secured for the duration of the proposed development.

3.3.78. The ExA notes CWCC's final position that land within Cells 1 and 5 was already considered mitigation for the existing FWF. The ExA considers the applicant's proposal for the NBBMA, including Cell 2, would provide adequate mitigation for both the proposed development and the existing FWF. The ExA considers the applicant has satisfied the mitigation hierarchy in this regard.

3.3.79. Regarding skylark, the ExA is unconvinced that the qualitative approach would be sufficient mitigation given the number of skylark pairs that would be lost and unsupported. The ExA considers that caution needs to be applied in this instance. The applicant has recognised a reduction in breeding skylark pairs, a negative effect, but has made assumptions that qualitative improvement of 5.58ha of land would be sufficient to support a higher degree of breeding productivity. The ExA considers the likely success of this to be highly subjective, difficult to quantify and that there could well be other factors that may limit the reproductive productivity of the species which have not been accounted for in this strategy. The extent to which skylarks would use land within the SMA whilst they were displaced from the SADA during construction is also unclear.

3.3.80. The ExA is reassured over the applicant's decision to update the oLEMP [REP7-025] to commit to monitoring and adaptive management in respect of skylarks in section 7.4. This is secured via requirement 9 of the dDCO [REP7-003] and requires the final LEMP to be approved by the relevant local authority in consultation with NE. The ExA considers there is, therefore, adequate provision for amendments to be made to both the management of the additional Cell 2 mitigation area and the SMA to enhance skylark mitigation, if required, during the construction and operational phases.

3.3.81. Overall, the ExA considers that the combination of provision of the SMA, addition of Cell 2 to the mitigation area, the long-term management and monitoring and adaptive management procedures committed to by the applicant within the oCEMP [REP7-017], oOEMP [REP7-019] and oLEMP [REP7-025], which are secured via requirement 12, requirement 13 and requirement 9 respectively [REP7-003], would provide adequate mitigation for ornithological impacts such that there would be no significant effects on breeding or non-breeding birds or on skylark.

3.3.82. The ExA is satisfied the dDCO [REP7-003] secures the delivery of mitigation in terms of the delivery of the NBBMA and the SMA and secures adequate long-term management and monitoring throughout the lifetime of the proposed development and that the mitigation hierarchy has been followed.

3.3.83. However, the ExA does not agree with the applicant's conclusion in ES chapter 8 [APP-041] that there would be minor to moderate beneficial effects to breeding and non-breeding birds. The ExA considers that, after implementation of the proposed mitigation, there would be a minor to negligible adverse effect at best arising from the proposed development.

Effects to statutory and non-statutory designated (notified) sites

Mersey Estuary SSSI (statutory site)

3.3.84. NE confirmed [RR-012] the Mersey Estuary SSSI notification has the same bird features as for the Mersey Estuary SPA and Ramsar site due to overlapping bird features of concern (curlew, golden plover, pintail, teal and wigeon) and therefore that concerns regarding bird features were the same for the SSSI as for the internationally designated sites.

3.3.85. Whilst the HRA aspects are reported in appendix C of this recommendation, and not repeated fully here, and effects on breeding and non-breeding birds from an EIA perspective has been reported above, it is worthy of note that RSPB concluded towards the close of the examination that [REP5-065]:

"…on the assumption that Cell 2 is fully incorporated into the NBBMA, the RSPB has no remaining concerns. It is our view that the area to be developed will be sufficient to support both current and future populations of golden plover, lapwing, and curlew."

3.3.86. NE [RR-012] raised several concerns regarding a series of 'canal pools' within the Order limits, principally:

- Whether the canal pools made a meaningful contribution to the Mersey Estuary SSSI.
- Whether New Zealand Pygmy Weed (NZPW) at the canal pools could be managed without causing a spread.

3.3.87. The applicant responded [REP3-006] that the canal pools would be removed as part of construction works to create the NBBMA, with a specialist contractor employed to manage the eradication of NZPW as well as any potential contamination risk. The canal pools would be partially reinstated through re-engineering works and managed within their existing footprint, specifically to restore that part of the SSSI to favourable condition, to support high-tide roosting species (SSSI interest features). The final signed SoCG [REP7-035] between the applicant and NE confirmed no residual issues on this matter.

3.3.88. NE noted [REP1-056] that the dDCO [APP-015] sought to disapply Section 28E of the Wildlife and Countryside Act 1981 regarding SSSIs. The applicant confirmed [REP3-043] that the disapplication was necessary to facilitate works to create the NBBMA in part of the SSSI. NE accepted this on the basis that the dDCO includes a requirement for consultation with NE on the NBBMS [REP4-069].

3.3.89. CWCC and CWT raised concern regarding the potential for solar panel replacement activities to have significant effects on breeding and non-breeding birds associated with the Mersey Estuary SSSI. At ISH2 [EV10-022] they stated that the amount of land available to the birds would already have been reduced from the baseline position as a result of the development, and therefore the magnitude of impact from replacement campaigns would be greater because birds would already have been displaced onto a smaller parcel of land.

3.3.90. The applicant responded [REP5-041] that the ES had considered and described the nature of the impacts arising from these works, concluding that these effects would not be significant and would be less than the impacts experienced during construction. Replacement activities would be restricted to outside the sensitive non-breeding bird period [REP3-041]. If such activities overlapped with the decommissioning of the FWF, the oOEMP [REP7-019] contains mitigation measures including that CWCC could disallow the replacement activities if there was a crossover and hold over approval of such works until FWF works had ceased.

Frodsham, Helsby and Ince Marshes LWS

3.3.91. CWCC stated [RR-037], [REP1-046] that 20% of the 1,154ha LWS would be covered by the proposed development and would potentially result in the rescinding of part of the LWS designation. CWCC disagreed with the applicant's conclusions on the magnitude and significance of the effects predicted on the LWS, questioning the methodology and approach to the assessment as well as noting that other terrestrial ecological features such as mammals that are qualifying features of the LWS were not considered in the assessment. CWCC stated [REP2-005] that it did not accept the approach by the applicant, as impacts on the LWS as a whole had not been assessed. In equal measure, in response to the ExA's written questions Q4.5.4, Q4.5.5 CWT [REP2-011] also disagreed with the applicant's assessment that there would be significant positive effects in the long-term on the LWS when there were evidential permanent adverse effects on some of its qualifying features including fragmentation and a severance of wildlife corridors and loss of habitat.

3.3.92. The applicant defended its position [PD2-027], [REP4-052] maintaining that:

- with the incorporated mitigation measures and long-term management proposals, the proposed development would provide benefits to habitats across the LWS designation through increased and enhanced habitats
- the area would be subject to secured management over a 40-year period
- linear habitats such as hedgerows, ditches, and woodland would be retained and, in many cases, improved
- significant areas of trees, hedgerows, and species-diverse grassland would be created and managed for wildlife
- removal of arable farming and intensive grazing across most of the Order limits would be considered beneficial

3.3.93. Nonetheless, as a result of representations made, the applicant confirmed it had made additions to appendix 7-5 of the ES at DL4 [REP4-020] to address concerns. Within this appendix, table 2.1 presented the criteria that the applicant considered to be met within the parts of the Frodsham, Helsby and Ince Marshes LWS that overlap with the Order limits, together with a justification. Table 2.1 also included a reference to where potential impacts to a met criterion are addressed in ES chapter 7 [APP-040]. The applicant's conclusion did not change in that incorporated mitigation outlined in the oLEMP [REP3-015] would result in medium to long-term moderate positive effects on Frodsham, Helsby and Ince Marshes LWS for the lifetime of the proposed development.

3.3.94. These matters remained in dispute at the close of the examination.

ExA's considerations

3.3.95. The ExA recognises the importance of the Mersey Estuary SSSI and its functional relationship with the Mersey Estuary SPA. The ExA acknowledges that neither NE nor the RSPB had any unresolved concerns at the close of the examination regarding effects upon the SSSI, and that NE was satisfied with the disapplication of section 28E of Wildlife and Countryside Act 1981 [REP7-035]. The ExA has no reason to dispute the findings here. The ExA considers that mitigation measures within the oCEMP [REP7-017], the oOEMP [REP7-019] and the oLEMP [REP7-025], which are secured via requirements 9, 12 and 13 in the dDCO [REP7-003] would provide adequate mitigation for the Mersey Estuary SSSI.

3.3.96. In terms of major replacement activities, the ExA concludes in section 3.12 of this recommendation that it has some residual concerns, albeit these are hypothetical and speculative. However, for the purposes of this section, the ExA considers there would not be any significant material effects that have not already been planned and mitigated for in the oOEMP [REP7-003]. CWCC would have sufficient control within the oOEMP [REP7-003] to ensure the final OEMP contains appropriate management measures to mitigate cumulative ecological effects.

3.3.97. The ExA has carefully considered the representations regarding potential impacts on LWSs. The ExA acknowledges the update the applicant made to appendix 7.5 of the ES at DL4 [REP4-020] and responses given to the representations by all parties on this matter. The ExA considers that mitigation measures within the oCEMP [REP7-017], the oOEMP [REP7-019] and the oLEMP [REP7-025], which are secured via requirements 9, 12 and 13 in the dDCO [REP7-003], would provide adequate mitigation for impacts to the Frodsham, Helsby and Ince Marshes LWS, particularly considering the inclusion of Cell 2 into the mitigation area and the commitments the applicant has made regarding reedbed habitats, as set out earlier in this recommendation. The ExA considers that on a worst-case basis, the proposed development would have a negligible effect which would not be significant on the Frodsham, Helsby and Ince Marshes LWS.

Other ecological matters

Other ecological matters include the following issues which are reported on in turn below:

- ecological effects from permitted preliminary works (PPW)
- protected and notable fauna and flora
- wildlife corridors and the risk of fragmentation
- control of INNS
- ecological impacts of major replacement, cumulative and decommissioning effects

Ecological effects from PPW

3.3.98. CWCC raised concerns regarding PPW [RR-037] which was discussed throughout the examination. At DL7, the final signed SoCG between the applicant and CWCC [REP7-028] stated that CWCC remained concerned regarding potential ecological effects from PPW. This is discussed further in chapter 7 of this recommendation.

Protected and notable fauna and flora and priority habitats

3.3.99. The applicant's position for all protected species [APP-040] was that a protected species mitigation licence would be obtained from NE if necessary and that there were adequate controls secured during construction and operation within the oCEMP [REP7-017] and the oOEMP [REP7-025].

3.3.100. At DL7, the final signed SoCG between the applicant and CWCC [REP7-028] confirmed no unresolved issues for great crested newts, bats, water voles, invertebrates, fish, badgers, otters and reptiles. CWCC provided further comments in relation to effects on badgers from predator fencing [REP7-041] stating it considered the detail could be agreed at the detailed design stage.

3.3.101. At DL7 the applicant opined [REP7-001] that the proposed development had sought through design to reduce reedbed loss as far as reasonably practicable but that some loss of reedbed was required. However, the overall design of the landscaping scheme, including the creation of the NBBMA, would deliver a net increase in reedbed area, although it would take time for this newly created habitat to mature [REP5-041]. However, CWCC's concerns regarding potential impacts to the reedbed priority habitat remained unresolved at the close of the examination [REP7-028].

Wildlife corridors and the risk of fragmentation

3.3.102. CWCC [RR-037] stated that the introduction of fencing could cause a barrier between mammals and potential food sources, leading to displacement or mortality. Concerns were also raised regarding construction disturbance to certain protected mammal species.

3.3.103. The applicant responded [PD2-027] that linear habitats such as hedgerows, ditches and areas of woodland would be retained and that the NBBMA would provide extensive ecological benefits for many species, above existing conditions. Furthermore, significant areas of trees, hedgerows, wetland and

species diverse grassland would be created and managed for the benefit of wildlife [REP5-041]. The applicant stated that the retention of connectivity was a design consideration cited in ES chapter 7 [APP-040] to largely retain important ecological features.

3.3.104. In respect of badgers and other mammals, the applicant opined [REP5-041] that the removal of arable farmland and intensive grazing across most of the Order limits would be beneficial. Installing badger and mammal gates within the boundary fence would allow movement of species.

3.3.105. Regarding bird flight paths, the ExA notes CWCC's statement [REP6-046] that if Cell 2 were to be included within the NBBMA, this would reduce the area of developed land which could assist with the potential impact on flight lines.

Control of INNS

3.3.106. NE raised concern [RR-012] regarding ongoing risks if NZPW was not eradicated from the water source proposed to be used in Cell 3. NE asked for confirmation of the anticipated time the eradication of NZPW would take before water could be safely stored and enter Cell 3.

3.3.107. The applicant stated [REP3-006] that as part of the NBBMA creation, the canal pools would be removed and subsequently partially reinstated to allow for the eradication and long-term management of NZPW. An appropriately experienced specialist contractor would determine the most effective eradication methods during the re-engineering works, including measures to manage any contamination risk.

3.3.108. At the close of the examination the final signed SoCG between the applicant and NE [REP7-035] confirmed that the requirement for an INNS Management Plan and specifically control and management of NZPW would be controlled via the oCEMP [REP7-017] and was agreed by both parties.

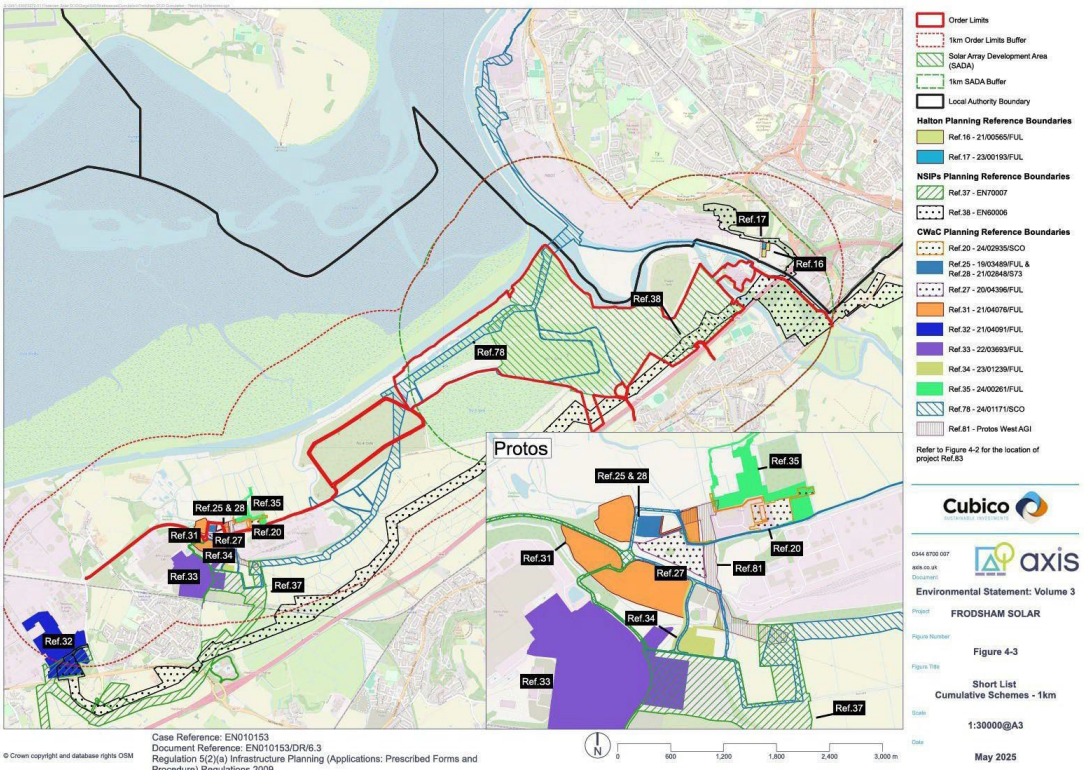
Ecological impacts of major replacement, cumulative and decommissioning effects

3.3.109. Examination of major replacement activities is reported in section 3.12 of this recommendation. The applicant confirmed in writing [REP5-041] that, on the basis of a single replacement per installed panel with a 10% contingency during the lifetime of the project, only a single major replacement campaign would occur. However, should more than one major replacement campaign be required, the applicant concluded that these effects would not be significant and would be less than the impacts experienced during construction. No additional controls or constraints were added to the oOEMP.

3.3.110. The applicant confirmed that if there was a crossover of the decommissioning or repowering of FWF and Frodsham Solar Farm replacement activities, section 2.4 of the oOEMP [REP7-019] provides that CWCC could disallow the replacement activities at that time, until it was content that appropriate management measures were in place.

3.3.111. In terms of cumulative effects, the Order limits would be crossed by the Runcorn Carbon Dioxide Pipeline and the Hynet Hydrogen Pipeline. These pipelines would be laid underneath the land allocated by the applicant for the NBBMA and the SMA, as shown in figure 4 below, taken from [APP-108].

Figure 4: Shortlist of cumulative schemes (1km)



Source: Figure 4 [APP-108]

3.3.112. A summary of the cumulative effects for the proposed development as a whole are considered in section 3.11 and chapter 7 of this recommendation. Nonetheless, it is worth noting here that CWCC maintained concerns at the close of the examination regarding the interaction of these other projects with the proposed development, particularly on ecological receptors [REP7-028].

3.3.113. In terms of general decommissioning activities, CWCC [RR-037], [REP1-046] raised concern regarding potential effects on the NBBMA and the SMA at the end of the project's lifetime. In particular, decommissioning traffic would be routed along the southern boundary of the NBBMA. To alleviate the impacts, CWCC [REP1-048] requested that decommissioning should be phased over 18 to 24 months and the western part of the SADA should be removed first, which would allow non-breeding birds to re-populate that area at the earliest opportunity.

3.3.114. However, the applicant [REP2-003] reiterated that potential effects from decommissioning could be similar to or less than those experienced during the construction phase. Decommissioning impacts on proposed mitigation areas, including the NBBMA and SMA, had therefore been taken into account on this basis. The applicant stated that due to the separation distance between the SMA and the developed parts of the Order limits,

decommissioning effects to the SMA would be negligible. The applicant added [REP3-041] that replacement activities would be restricted to outside the sensitive non-breeding bird period and that enhanced vegetation screening and barriers from the solar development would reduce impacts during any replacements.

3.3.115. At DL1 NE stated [REP1-065] it was satisfied with the information provided by the applicant regarding decommissioning and accepted that the applicant had provided sufficient detail with regards to vehicle related disturbance. This position did not change throughout the examination.

ExA's considerations on other ecological matters

3.3.116. The examination of the PPW is reported as issue 3 in section 7.3 of this recommendation and is not repeated here. The ExA considers that PPW would be undertaken in a managed timeframe and would, via other requirements in the dDCO, be subject to certain limitations and controls. Whilst there may be some legitimate concern from CWCC as to the practicalities of administering PPW, the ExA is reassured from the applicant's responses that sufficient protections are secured. The ExA therefore considers that the PPW of themselves would not have significant adverse effects on ecology, including protected species.

3.3.117. The ExA is satisfied that the applicant's approach to protected species set out within the oCEMP [REP7-017] and the oOEMP [REP7-019] is sufficient to mitigate effects on protected and notable species during construction and operation.

3.3.118. In terms of wildlife corridors, fragmentation and the movement of species, the ExA considers the applicant's commitments would increase habitats overall throughout the lifetime of the proposed development, as outlined through the habitat creation and enhancement measures detailed within the oLEMP [REP7-025]. The ExA is satisfied with the mitigation outlined in the oOEMP [REP7-019] and the oCEMP [REP7-017] and considers this would be sufficient to limit the fragmentation of wildlife corridors as much as is practicable, which has followed the mitigation hierarchy.

3.3.119. The ExA also considers that the proposed mitigation measures for protected species and subsequent commitments to monitoring are sufficient and adequately secured via commitments in the oCEMP [REP7-017] and the oOEMP [REP7-019] and by requirements 10, 12 and 13 of the dDCO [REP7-003]. The ExA considers this would adequately protect the existence and movement of protected and notable species within the site of the proposed development during construction, operation and decommissioning. The ExA considers the control of INNS, specifically NZPW is adequately secured in the oCEMP [REP7-017].

3.3.120. In terms of major replacement activities, the ExA concludes in section 3.12 of this recommendation that it has some residual concerns regarding the major replacement arrangements, albeit these are hypothetical and speculative. The oOEMP [REP7-019] suggests that a panel lifespan is 15 to 30 years.

Although it is the applicant's intention to have only one major replacement campaign during the operational life of the proposed development, the Order would provide for two replacements (year 15 and year 30) prior to decommissioning. In addition, the oOEMP allows for 50% replacement of the total solar farm within a 12-month period, and therefore 100% of the solar farm could be replaced over a two-year period.

3.3.121. The ExA notes CWCC's sustained objections in relation to effects of major replacements on ecology, as stated in the SoCG between the applicant and CWCC at the close of the examination [REP7-028]. The ExA notes the commitments made by the applicant in paragraph 2.4.7 of the oOEMP [REP7-019] that notification must be submitted to CWCC for approval, notification must be made 12 months in advance and the management measures proposed must be consistent with the principles of the CEMP, the Public Rights of Way Management Plan (PROWMP), the CTMP and the OEMP that had been approved for the construction for the proposed development. On this basis, the ExA considers that CWCC would have sufficient control over the phasing, scheduling and timing of major replacement works to ensure adequate mitigation was achieved.

3.3.122. In terms of decommissioning, the ExA's considers that effects on ecological receptors from the proposed development during decommissioning would be no worse than construction and considers that the mitigation outlined in the oDEMP [REP7-021] is sufficient at this stage. The ExA considers that decommissioning effects on both mitigation areas (NBBMA and SMA) could be adequately controlled through the final Decommissioning Environmental Management Plan (DEMP), which is secured through requirement 20 of the dDCO [REP7-003].

3.3.123. In regard to potential cumulative effects, the ExA considers the addition of Cell 2 to the NBBMA would provide a degree of offset to the potential effects upon affected species. The ExA notes that, via the oOEMP [REP7-019], CWCC would have sufficient control over matters such as timings of any cumulative works, to mitigate cumulative ecological effects. The complexities of this are examined in chapter 7 of this recommendation and in the reflection on the HRA within appendix C of this recommendation. The ExA considers that the HRA legislation provides sufficient security that any future proposed activities which could impact the NBBMA associated with the construction and operation of other projects, would be suitably controlled to a level which would also provide adequate mitigation from an EIA perspective. In addition, the ExA considers that CWCC would have sufficient control within the oOEMP [REP7-019] to ensure the final OEMP would contain appropriate management measures to mitigate cumulative ecological effects.

BNG proposals

3.3.124. Significant concerns were raised by IPs during the examination regarding the applicant's BNG proposals. CWCC [RR-037], [REP1-046], [REP2-005], [REP5-048], [REP6-044] and CWT [RR-019], [REP2-011], [REP4-075], [REP5-051] concluded that BNG according to the Statutory Biodiversity Metric would not be achieved and could not claim to be. The reason

underpinning this largely centred on the applicant's assessment and approach to reedbed habitat. In summary, the CWCC and CWT submitted that:

- The applicant had mis-classified 59 units of reedbed habitat affected by the proposal.
- 59 units of reedbed that had not been satisfactorily compensated for according to the Defra Statutory Biodiversity Metric trading rules, and therefore that the BNG values reported by the applicant were not correct.
- The applicant had misinterpreted the habitat definitions in relation to size, degrees of wetness and dryness and levels of shrub cover. CWT stated it was unclear why the reedbed areas were being assessed against the priority habitat definition, as reedbeds are priority habitat regardless of their condition stating there are no exclusions.

3.3.125. The applicant considered [PD2-027] that the reedbed classification in the Statutory Biodiversity Metric did not strictly align with the priority habitat definition, stating those under disagreement were instead isolated patches of reed associated with waterlogged areas. The applicant confirmed the proposed development had avoided higher value boundary habitats where reasonably practicable, including areas of reedbed, and that an additional area of reedbed within the Order limits to the north-east of Alder Lane was set to be enhanced as an area of wetland. The applicant stated that retained reedbed totalled over 8ha with a further 2ha of reedbed to be created.

3.3.126. The applicant maintained [REP3-041] [PD2-032] that although there is currently no mandatory requirement for BNG on NSIPs, the proposed development would result in an increase in all units exceeding the 10% mandatory BNG requirement for planning applications. In addition, the measures would be delivered for a 40-year period, which would be 10 years longer than required for mandatory BNG, which would deliver a very significant gain for biodiversity.

3.3.127. In relation to allegations that the trading rules were not met, the applicant submitted [REP3-041] that the Statutory Biodiversity Metric User Guide table 2 biodiversity metric rules 'Rule 4', states that:

"in exceptional ecological circumstances, deviation from this biodiversity metric methodology may be permitted by the relevant planning authority' and 'if you meet the requirements to use Rule 4 it can be implemented through…deviations from the biodiversity metric trading rules".

3.3.128. The applicant cited a blog post published by NE dated 7 January 2026, provided at appendix B [REP3-041], outlining a case study implementing Rule 4. The applicant opined that this case study was directly comparable to the proposed development. The applicant acknowledged that once the BNG regime for NSIPs was introduced, the SoS would ultimately have to make a decision on the application of Rule 4, but in the absence of this being the case Rule 4 could be applied to the proposed development as though BNG were a mandatory requirement and that therefore a metric-compliant BNG would be achieved.

3.3.129. Nonetheless, the applicant acknowledged that trading rules would not be met with regards to reedbeds, confirming that due to the reclassification of some reedbed areas at appendix C [PD2-027], the deficit would be reduced to -12.59 units. The applicant accepted that trading rules were an inherent rule of the Statutory Biodiversity Metric and did not claim that the proposed development would deliver BNG in full accordance with the metric process, only that an increase in units would be achieved [REP6-001].

3.3.130. Consequently, the applicant referred to any BNG being an 'uplift' in units as opposed to a 'net gain' [REP7-037]. This was because the uplift in watercourse units could only meet 10% if the works within the NBBMA were included. If they were not included, the applicant's proposals would deliver a 7.77% uplift. The applicant noted that this would still be an uplift, and above and beyond CWCC's stated desire to ensure no net loss of habitats [REP7-028]. The applicant explained that as BNG metric compliance does not allow for inclusion of the works within the NBBMA as it would be classed as mitigation, it would not be appropriate to refer to BNG of 10% being achieved as that would not be achievable onsite. If the BNG terminology was used, then the applicant's position was that requirement 9 in the dDCO would need to refer to a 7.5% increase in watercourse units, rather than 10%.

3.3.131. However, in the signed final SoCG between the applicant and CWCC at the close of the examination [REP7-028] CWCC maintained outstanding objections on aspects of BNG:

- disagreement on application of Rule 4
- the applicant's approach to classifying reedbeds being flawed
- trading rules not being met
- monitoring of proposed mitigation measures insufficient

3.3.132. At DL7 the applicant committed [REP7-001] to achieving the relevant Statutory Biodiversity Metric trading rules in respect of reedbed and scrub and amended the oLEMP accordingly [REP7-025]. The applicant confirmed it would primarily achieve this through on-site habitat creation and design refinement, including the creation of reedbed habitat within the site of the proposed development and the refinement of scrub habitat provision through the detailed LEMP. The applicant noted that to achieve 10% BNG in full compliance with the Statutory Biodiversity Metric, then off-site units or statutory credits would be required, and any residual shortfall could be addressed through the creation or purchase of off-site biodiversity units. To secure this commitment, the applicant confirmed it had updated the oLEMP [REP7-025] and removed reference to excluding reedbed in requirement 9(2)(f) of the dDCO [REP7-003].

3.3.133. In response to the ExA's Rule 17 letter of 24 April 2026 [PD-019], CWCC notified the examination [REP7-041] that regarding the purchase of off-site units, the first option should be to retain or create more reedbed habitats to satisfy trading rules, in line with the mitigation hierarchy, but if there was robust justification for not doing this, then CWCC would agree to the principle of the provision of off-site units to satisfy trading rules in terms of reedbed and scrub habitats. CWCC confirmed that it is known that these units are

currently available in the Borough. On that basis, in principle, after an outline proposal was consulted on, CWCC confirmed [REP7-041] it would be satisfied that no net loss would be achieved and that this would be in compliance with policy.

ExA's considerations

3.3.134. The ExA notes the applicant's change to the proposed BNG commitments submitted at DL7 at the very end of the examination and welcomes the offer of purchasing off-site units in order to properly secure BNG. However, this position was reached late in the examination and has not therefore been subject to full consideration by CWCC nor CWT.

3.3.135. The ExA welcomes that, despite BNG not being mandatory for NSIPs as of yet, a commitment was made on the face of dDCO [REP7-003] to provide an uplift of 20% habitat units, 75% hedgerow units and 10% watercourse units. However, the ExA does not agree with the applicant's approach to the use of the terminology 'uplift' in place of BNG units as it does not consider this approach to be within the spirit of NPS EN-1 paragraph 4.6.7, which states applicants are encouraged to use the latest version of the biodiversity metric to calculate their biodiversity baseline and present planned BNG outcomes. The ExA notes the applicant provided an alternative option [REP7-001] which would commit to BNG units rather than an 'uplift'. The ExA therefore recommends the wording is changed in requirement 9(2)(f) to secure 20% habitat units, 75% hedgerow units and 7.5% watercourse units.

3.3.136. The ExA notes the applicant's changes to section 4.5 of the oLEMP [REP7-025] at DL7 which state that the applicant is committed to achieving the relevant Statutory Biodiversity Metric trading rules in respect of reedbed and scrub. If this cannot be achieved onsite the ExA recognises the oLEMP makes provision for off-site unit purchasing. This appears to be satisfactory and a reasonable way to resolve this dispute and the ExA is content to recommend to the SoS that the project may proceed on this basis.

3.3.137. The ExA does however wish to point out to the SoS that, although wholly likely there would be agreement between CWCC and the applicant on this matter, such agreement was not explicitly reached during the examination. The SoS may wish to explore this matter further if felt necessary.

3.3.138. The ExA considers CWCC's outstanding concerns regarding monitoring of proposed mitigation measures could be satisfactorily resolved within the detailed LEMP post-consent.

3.3.139. The ExA therefore considers that its suggested wording for requirement 9(2)(f) of the recommended DCO, along with the revisions made by the applicant at DL7 to the oLEMP [REP7-025], would appropriately secure the BNG.

3.3.140. The ExA is satisfied the applicant provided adequate responses to all other raised matters.

CONCLUSIONS

3.3.141. The ExA examined all assessments submitted by the applicant and considered all the issues raised by IPs during the examination in relation to biodiversity and ecology.

3.3.142. The ExA is satisfied that the applicant's assessment considers all relevant potential environmental impacts in respect to biodiversity and ecology during the construction, operation and decommissioning phases of the proposed development alone and cumulatively with other plans and projects.

3.3.143. The ExA considers that the applicant's ecological monitoring plans are sufficiently outlined in the oCEMP [REP7-017], the oOEMP [REP7-019], the oLEMP [REP7-025] and the oNBBMS [REP7-033] which are secured via requirements 9, 12 and 13 in the dDCO [REP7-003].

3.3.144. To avoid duplication, the ExA reports on qualifying features for European sites in the HRA section (section 4 and appendix C) of this recommendation. However, any impacts on the qualifying features as receptors in their own right have been considered here alongside those set out above, when considering the planning balance.

3.3.145. In terms of residual effects to breeding and non-breeding birds from an EIA perspective, the ExA considers that by the close of the examination adequate mitigation measures had been proposed to mitigate potential effects to ornithological receptors during all phases of the proposed development. The ExA considers the proposed mitigation would be adequate and that there would be a minor to negligible adverse effect (not significant) on breeding and non-breeding birds from the construction and operation of the proposed development.

3.3.146. The ExA considers the applicant's proposed mitigation measures to be sufficient and secured via commitments in the oCEMP [REP7-017] and the oOEMP [REP7-019] and requirements 10, 12 and 13 of the dDCO [REP7-003] to adequately protect the existence and movement of protected and notable species within the site of the proposed development during construction, operation and decommissioning.

3.3.147. The ExA considers that, on a worst-case basis, the proposed development would have a negligible effect (not significant) on the Mersey Estuary SSSI and the Frodsham, Helsby and Ince Marshes LWS.

3.3.148. The ExA considers that the HRA legislation provides sufficient security that cumulative effects from other plans and projects could be suitably controlled to a level which would also provide adequate mitigation from an EIA perspective. In addition, CWCC would have sufficient control within the oOEMP [REP7-003] to ensure the final OEMP would contain appropriate management measures to mitigate cumulative ecological effects.

3.3.149. The ExA considers the applicant has followed the mitigation hierarchy in regard to issues related to biodiversity and ecology. The ExA is satisfied that

the proposed development is in accordance with NPS EN-1, NPS EN-3 and NPS EN-5, the relevant policies in LP1 and LP2, the NPPF and all other relevant legislation and there are no other important considerations.

3.3.150. The ExA considers that the commitments the applicant has made and secured regarding BNG would provide a long-term benefit to ecology and biodiversity.

3.3.151. Overall, given the conclusions above, the ExA considers that the identified beneficial effects on biodiversity and ecology carry a little positive weight for making the Order.

3.4. THE WATER ENVIRONMENT

INTRODUCTION

3.4.1. This section considers the effects of the proposed development on the water environment including flood risk, drainage and water quality.

POLICY BACKGROUND

Flood risk and drainage policy

3.4.2. Section 5.8 of the Overarching National Policy Statement for Energy EN-1 (NPS EN-1) outlines that the applicant's assessment should address flood risk and steer development to areas with the lowest risk of flooding. It requires that flood risk from all sources of flooding is considered, accounting for climate change, and that development should not increase flood risk elsewhere. NPS EN-1 requires new energy infrastructure to be made safe for its lifetime and designed to remain operational in times of flood. The sequential test and, if necessary, the exception test should be applied, which provide a method to allow necessary development to go ahead in situations where suitable sites at lower risk of flooding are not available.

3.4.3. NPS EN-1 states in paragraph 5.8.10 that the exception test is only appropriate for use where the sequential test alone cannot deliver an acceptable site. If the sequential test identifies reasonably available, lower risk sites appropriate for the proposed development, the NPS notes that it would only be appropriate to move on to the exception test when the application of relevant policies provides a clear reason for refusing development in the alternative locations identified, taking account of wider sustainable development objectives.

3.4.4. Paragraph 5.8.11 explains that for development to be consented and to pass the exception test it should be demonstrated that the project would provide wider sustainability benefits to the community that outweigh flood risk and that the project will be safe for its lifetime taking account of the vulnerability of its users. Paragraph 5.8.12 provides that there should be no net loss of floodplain storage and any deflection or constriction of flood flow routes should be safely managed within the site.

3.4.5. The National Policy Statement for Renewable Energy (NPS EN-3) paragraph 2.4.11 advises that solar photovoltaic (PV) sites may be proposed in low lying exposed sites. For these proposals, applicants should consider how plant will be resilient to increased risk of flooding.

3.4.6. NPS EN-3 paragraphs 2.10.84 to 2.10.88 set out specific requirements relating to the applicant's assessment of drainage and watercourses. Paragraphs 2.10.154 to 2.10.156 highlight aspects of the Secretary of State's (SoS) decision making regarding these considerations.

3.4.7. The National Policy Statement for Electricity Networks Infrastructure (NPS EN-5) section 2.3 reiterates that the resilience of projects to the effects of climate change, including future increased flood risk, should be considered.

3.4.8. The National Planning Policy Framework (NPPF) paragraph 163 outlines that new development should be planned for in ways that avoids increased vulnerability to the range of impacts arising from climate change. Paragraph 170 encourages that inappropriate development in areas at risk of flooding should be avoided by directing development away from areas at highest existing or future risk. It states that where development is necessary in such areas, the development should be made safe for its lifetime, without increasing flood risk elsewhere. Paragraphs 172 to 181 of the NPPF set out requirements of the sequential test and exception test in relation to flood risk, requiring that a sequential, risk-based approach to the location of development is applied, taking into account all sources of flood risk and the current and future impacts of climate. Residual risk should be managed by applying the sequential test and then, if necessary, the exception test.

3.4.9. The Flood Risk and Coastal Change section of the Planning Practice Guidance was updated on 17 September 2025. This provides detailed requirements to fulfil the overarching policies set out in the NPPF including the sequential and exception tests and the requirements for a Flood Risk Assessment (FRA).

3.4.10. The Local Impact Report (LIR) submitted by Cheshire West and Chester Council (CWCC) [REP1-046] refers to various development plan policies. Local development plan policies relevant to the proposed development are set out at appendix A. Of particular note to consideration of the water environment are the following policies:

- Policy ENV1 Flood risk and water management from the Cheshire West and Chester Local Plan Part One (2015) (LP1)
- Policy DM38 Waterways and mooring facilities and DM40 Development and flood risk from the Cheshire West and Chester Local Plan Part Two (2019) (LP2)

Water quality policy

3.4.11. NPS EN-1 section 5.16 outlines that the applicant's assessment should address potential effects on water quality including the management of surface water during construction prior to discharging, control of the risk of pollution to groundwater and the consideration of climate change and

cumulative effects. The section also sets out that the SoS should be satisfied that a proposal has regard to current River Basin Management Plans and meets the requirements of the Water Environment (Water Framework Directive) (England and Wales) Regulations 2017 (including regulation 19).

THE APPLICATION

3.4.12. The applicant's case in relation to the water environment was set out in chapter 9 of its Environmental Statement (ES) [APP-042]. In addition, the applicant submitted the following documents:

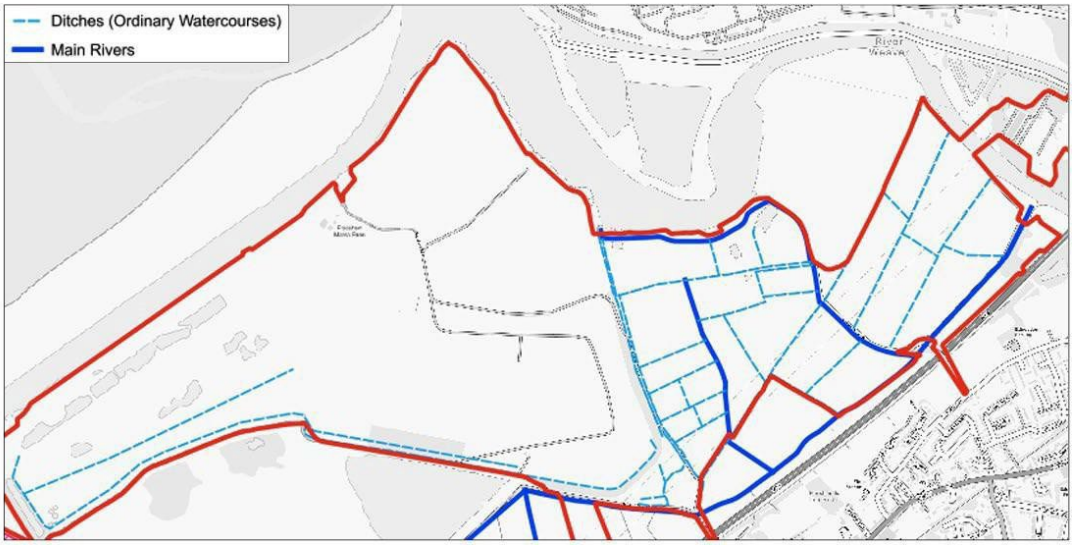
- Water Bodies in a River Basin Management Plan [APP-014]
- Appendix 2-1 Indicative Watercourse Crossing Schedule (inc. figures) [APP-050].
- Appendix 9-1 Flood Risk Assessment and Drainage Strategy [APP-084] to [APP-088].
- Appendix 9-2 Water Framework Directive Assessment [APP-089].
- Appendix 9-3 Hydraulic Modelling Report [APP-090] to [APP-093].
- Appendix 9-4 Ince and Frodsham Modelling [APP-094].

BASELINE

3.4.13. The Order limits form the study area of the assessment with the assessment impact area extending for a 1km radius from the site of the proposed development [APP-042].

3.4.14. Baseline conditions were set out in section 9.6 [APP-042]. The site of the proposed development is intersected by several ditches and designated Environment Agency (EA) main rivers, as shown in figure 5.

Figure 5: Watercourses on the site of the proposed development



Source: Image 9-1 [APP-042]

3.4.15. The River Weaver is located north-east of the site of the proposed development and flows north-west to join the Manchester Ship Canal, which is located immediately north-west of the site of the proposed development

and flows south-west. The Weaver Navigation is a canal located just beyond the River Weaver.

3.4.16. The ditches in the eastern extent of the solar array development area (SADA) flow to the easternmost extent of the site of the proposed development, where flows are then pumped into the River Weaver via an EA pumping station (Frodsham Pumping Station).

Flood risk and drainage

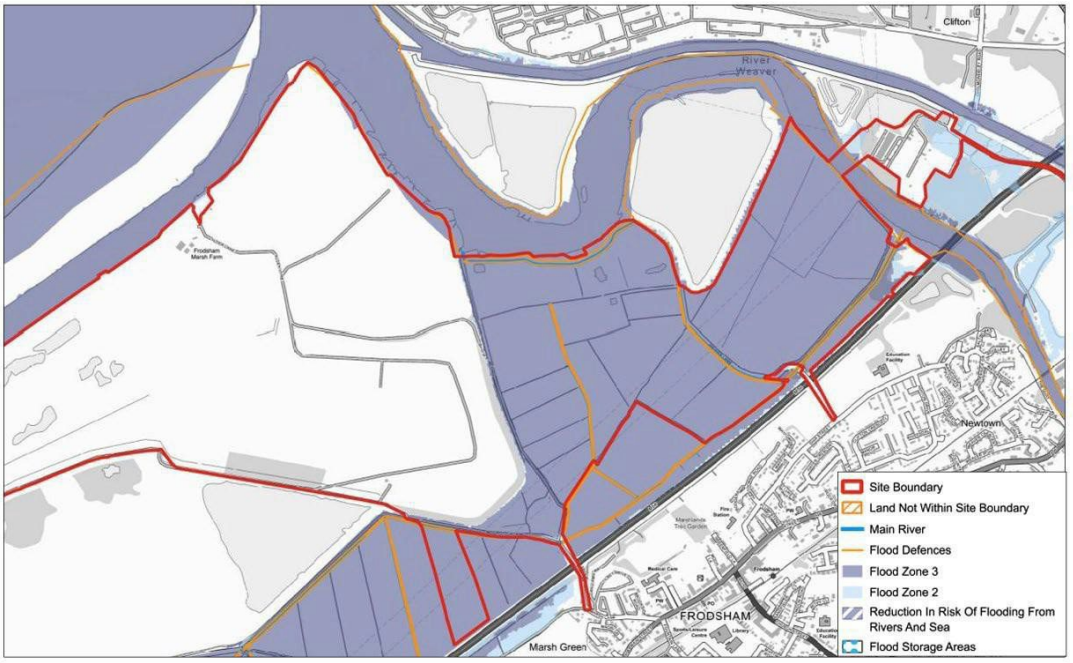
3.4.17. In terms of flood risk, all sources of flooding were considered, including fluvial, tidal, surface water, sewer, groundwater and artificial sources. Hydraulic modelling informed the assessment of fluvial and tidal flood risk. Both joint probability tidal and fluvial flood events and climate change allowance scenarios were included. Appendix 9-3 Hydraulic Modelling Report [APP-090] [APP-091] [APP-092] [APP-093] contained details of the hydraulic modelling for the River Weaver and tidal Mersey.

3.4.18. An assessment of the existing (greenfield) surface water runoff rates was undertaken using the Revitalised Flood Hydrograph method which estimated greenfield runoff volumes as well as the peak flow rate [APP-042]. Details were included in the Flood Risk Assessment and Drainage Strategy at appendix 9-1 [APP-084] [APP-085] [APP-086] [APP-087] [APP-088].

3.4.19. The site of the proposed development is located in an area which benefits from flood defences. Paragraphs 9.6.20 to 9.6.23 [APP-042] describe the flood defences in the vicinity of the proposed development. Paragraphs 9.6.24 to 9.6.61 [APP-042] describe the baseline fluvial and tidal flood risk for the site of the proposed development, which illustrated that the western extent of the SADA would be located within Flood Zone 1 and the remainder of the SADA would be located within Flood Zone 3a, as shown in figure 6 below.

3.4.20. ES chapter 9 section 9.6 [APP-042] explained that the Lower Weaver and Mersey Estuary hydraulic models were updated to consider the latest climate change allowances, breach scenarios and the interaction between the tidal and fluvial flood risk. Modelled outputs, including flood depth and water level mapping for a range of events, were included in appendix 9-1 Flood Risk Assessment and Drainage Strategy [APP-084] [APP-085] [APP-086] [APP-087] [APP-088] superseded by [AS-019] to [AS-027] with appendix M superseded by [PD2-028].

Figure 6: EA flood map for planning of the site of the proposed development



Source: Image 9-2 [APP-042]

3.4.21. Modelled scenarios included the 'do nothing' scenario, which represents the flood risk should a failure of the EA pumping stations which serve Frodsham Marshes and Ince Marsh occur. Under this scenario, the majority of the site of the proposed development would be flood free during all considered events up to and including the 1% annual exceedance probability (AEP) flood event. The flood extent would be constrained to low-lying land directly adjacent to watercourses on site.

3.4.22. ES chapter 9 [APP-042] described the flood risk for the site of the proposed development from surface water, sewers, groundwater and artificial sources. Defended and breach scenarios of flood defences were considered for the River Weaver, including flood risk from the Weaver Navigation and Mersey Estuary for a range of design events which were agreed with the EA. No overtopping of the river banks would occur during all events up to and including the 1% AEP plus 106% climate change event and the site of the proposed development would be flood free from the 1% AEP plus 30% climate change fluvial event from the Manchester Ship Canal. The applicant concluded that the risk of flooding from the watercourses on the site of the proposed development is therefore very low. When considering flood risk from the River Weaver, a joint probability scenario, combining the 1% AEP plus 67% climate change fluvial scenario with the 0.5% AEP plus upper end sea level rise (to 2075) results in a maximum water level of 6.29m above ordnance datum (AOD).

3.4.23. During both the defended and breach scenarios, no increase in flood risk elsewhere was predicted as a result of the proposed development, which was confirmed by detailed hydraulic modelling, which considered the impact of the proposed solar module supports and power conversion unit supports,

closed circuit television (CCTV) columns and fencing (all structures within the flood extent). Full details were included in appendix 9-3 [APP-090] [APP-091] [APP-092] [APP-093].

3.4.24. Flood risk scenarios from the tidal Mersey Estuary were presented in table 9-11 [APP-042] for both breach and defended simulations under various climate change scenarios to the year 2075. During the 0.5% AEP upper end climate change event, the proposed site access off Marsh Lane to the west of the site of the proposed development is estimated to flood.

3.4.25. An H++ (low-likelihood high-impact) climate scenario (1.9m sea level rise allowance) has also been considered, which causes flood depths across the site of the proposed development to reach up to 3.96m. The ES stated this scenario was necessary to understand resilience to more severe climate change and did not inform design requirements.

3.4.26. Model results showed that during the River Mersey defended tidal and breach events, there would be negligible change in flood risk offsite when the proposed development scenario (including consideration of support columns, fencing and CCTV posts) is compared with the existing scenario. Full details were included in appendix 9-3 [APP-090], [APP-091], [APP-092], [APP-093].

Water Framework Directive (WFD)

3.4.27. An assessment was undertaken [APP-042] to establish the potential impact of the proposed development on the status of WFD waterbodies, with the full WFD assessment provided in appendix 9-2 [APP-089]. The potential impact of pollutants from the surface water drainage system were assessed using the simple index approach detailed in tables 26.2 and 26.3 of the Construction Industry Research and Information Association C753 publication 'The SuDS Manual' (2015).

3.4.28. In terms of a future baseline for water quality, the ES stated it is assumed that the area would continue to remain in similar agricultural use and would remain relatively static in terms of the water quality baseline conditions. If the future predictions for increased flood risk occur, the potential effects of increased flooding could impact water quality, such as sedimentation, pollutant runoff and contamination risk.

CONSTRUCTION PHASE

3.4.29. The applicant noted [APP-042] that the design of the proposed development had been undertaken to avoid and minimise impacts prior to considering mitigation. The applicant proposed to site the vulnerable infrastructure, such as the battery energy storage system (BESS) and substation, in areas of the lowest flood risk, Flood Zone 1.

3.4.30. The applicant confirmed [APP-042] that whilst the eastern part of the solar array development area (SADA) would be located within Flood Zone 3a, the design flood level of 6.52m AOD with a 600mm allowance for freeboard would allow the site to remain operational during and after times of flood.

3.4.31. Mitigation measures related to flood risk, drainage and surface water during the construction phase were summarised in table 5-4 of the outline Construction Environmental Management Plan (oCEMP) [APP-136]. These included the preparation of a construction groundwater and surface water management plan (GSWMP) as part of the final CEMP, that would set out measures for the site-wide management of surface water, rainfall runoff, groundwater and site drainage. Other proposed mitigation measures included good practice measures to prevent pollution from chemical and fuel spillages, flood risk management measures such as receipt of flood warnings and alerts and implementation of evacuation plans.

3.4.32. The applicant's assessment of effects for the construction phase was set out in section 9.9 of ES chapter 9 [APP-042]. The potential effects on receptors during the construction phase were presented within table 9-14 [APP-042]. The applicant concluded that potential impacts for the construction phase would be negligible or minor adverse and that none would be significant. In terms of flood risk, the applicant concluded that potential changes in flood risk would be minor adverse, not significant for the construction period and there would be no overall change in flood risk.

OPERATIONAL PHASE

3.4.33. The applicant's assessment of effects for the operational phase was set out in section 9.9 of ES chapter 9 [APP-042]. The potential effects on receptors during the operational phase were presented within the table 9-15 [APP-042].

3.4.34. Table 5-4 in the Outline Operational Environmental Management Plan (oOEMP) [APP-137] summarised operational mitigation and management measures for flood risk, drainage and surface water, which included the preparation of a surface water drainage strategy with measures for the management of fire water runoff in the event of a fire at the on-site BESS.

3.4.35. Mitigation during the operational phase for flood risk would include measures such as:

- Adoption of a design level of 6.52m AOD for all infrastructure, including the solar modules which would be above the tidal breach flood levels with climate change to the year 2075.
- New and replacement access road crossings over watercourses would be in the form of open span bridge structures which would not impact on the channel capacity. The proposed bridge soffit levels would be set 600mm above the 1% AEP plus 67% climate change in-channel water level, to account for freeboard.
- Implementation of a Flood Warning and Evacuation Plan [APP-084 to APP-088] to anticipate, prepare for and respond to potential flood events through monitoring of weather forecasts, flood alerts and warnings. Where risk of flooding was high, steps would be taken to reduce the potential impacts of flooding. After any extreme flood event, any equipment inundated would be isolated and inspected before being returned to service.

3.4.36. Mitigation measures during the operational phase for firewater management, drawing reference from the outline Battery Safety Management Plan (oBSMP) [APP-139], would include:

- The base of the permeable stone surfacing in the BESS would be lined with an impermeable geotextile.
- An internal fire suppression system (sprinklers) would be built into the interior of each battery container unit.
- A designated drain (gully) on the concrete slab beneath each battery container unit would direct the fire water into a designated piped drain. The piped drain would discharge to a lined fire water lagoon within the BESS compound.
- A shut off valve would be placed on the fire water lagoon outfall and would be automated (set in the closed position when fire water sprinklers were activated), to prevent discharge of fire water to the wider water environment. An outfall from the fire water lagoon to the drainage system would be required to ensure the lagoon does not fill up with rainwater (ensuring the lagoon is empty and ready to accommodate fire water).
- Following a fire, contaminated flows would be collected from the fire water lagoon and transported by tanker to an appropriate treatment facility.

3.4.37. Following the application of mitigation, the applicant concluded that potential impacts for the operational phase would not be significant.

3.4.38. In terms of flood risk, the applicant concluded that the potential for increased flood risk from runoff would be negligible and there would be negligible impact on flood risk elsewhere from all potential sources. In terms of flood risk from rivers, sea and surface water with mitigation applied, the applicant concluded the potential impact would be minor adverse, not significant, table 9-15 [APP-042]. The FRA concluded in section 14 [APP-084] that proposed mitigation measures would ensure that the development could remain operational during and following a flood event and would not increase flood risk elsewhere.

OTHER CONSIDERATIONS

3.4.39. The applicant stated in section 9.10 that monitoring measures such as surface water sampling and analysis would be undertaken so that a water quality baseline could be established prior to the construction works commencing. Water quality data during and immediately following completion of the works would be confirmed and regular monitoring, recording and reporting of water quality at key locations would be agreed as part of the GSWMP. Additional monitoring to include groundwater quality would be undertaken prior to, during and for a period of time (up to one year) for the groundworks relating to the non-breeding bird mitigation area (NBBMA) for significant earthworks.

3.4.40. ES chapter 9 [APP-042] stated that during the decommissioning phase, the impacts on the water environment would be similar to the construction phase but were likely to be further reduced as certain elements such as the NBBMA would remain in situ.

3.4.41. Possible cumulative effects for the water environment were considered within ES chapter 9 [APP-042] and in ES chapter 13 [APP-046]. The applicant concluded that it was unlikely that significant cumulative effects would arise in relation to flood risk and water quality.

3.4.42. The ES included a WFD Assessment in appendix 9-2 [APP-089]. Measures to achieve the environmental objectives of the North West River Basin Management Plan were outlined in table 12 [APP-089]. The applicant concluded that the proposed development would be WFD compliant.

ISSUES CONSIDERED DURING THE EXAMINATION

3.4.43. A number of water-related aspects were raised by interested parties (IPs) that were satisfactorily resolved by the applicant by the close of the examination. The EA confirmed [REP6-047], [REP7-044] all the main issues raised in its relevant representation (RR) [RR-024] were resolved by the applicant by the close of the examination.

3.4.44. The principal water-related issues in the examination were:

- management of firewater from the BESS
- location of construction compounds within Flood Zone 3
- safety of operational workers during flood events including safe access and egress and flood warnings
- disapplication of the flood risk activity permit legislation
- crossing design
- the sequential and exception tests

Management of firewater from the BESS

3.4.45. The EA raised a number of concerns at deadline (DL) 1 [REP1-050], requesting detailed information and clarification on the following:

- potential re-release of contaminated water that could be trapped between the permeable and impermeable surfacing beneath the BESS
- whether a manual override system for valves would be in place in case automation fails
- whether firewater would be discharged to watercourse or taken offsite by a tanker
- whether there would be testing of contaminated firewater after a fire prior to release into the surrounding environment
- the need for a bespoke emergency response plan (ERP) and incident response plan to be prepared at the detailed design stage

3.4.46. The applicant provided a detailed response at DL3 [REP3-041] and, through subdivision of the Flood Risk and Drainage Strategy, supplied a standalone Outline Drainage Strategy [REP3-034]. The applicant confirmed that all suggestions made by the EA were taken into account and included in the relevant suite of management plans. The applicant also confirmed that shutoff valves would include a manual override and that paragraph 3.2.12 of the oBSMP [REP6-020] had been amended to confirm that a specific maintenance programme would be provided.

3.4.47. The applicant confirmed [REP3-041] that the BESS compound design would include a pipe network to a dedicated firewater collection lagoon. During a firefighting event, the valve from the lagoon would be shut and firewater held, tested and either removed via tanker to a suitable disposal or treatment facility, or treated onsite and reused as firewater provision. The lagoon and drainage system would be cleaned before the valve from the firewater lagoon was reopened. The applicant confirmed that paragraph 4.3.6 of the oBSMP [REP6-020] reflected this approach.

3.4.48. The applicant confirmed [REP3-041] that paragraph 4.5.7 of the oBSMP [REP6-020] had been revised to require water testing in accordance with EA guidance. The applicant also confirmed that paragraph 4.4.3 of the oBSMP [REP6-020] had been revised to require the ERP to include a procedure for the notification of the EA and downstream river and groundwater abstractors.

3.4.49. The applicant explained that a final BSMP, secured pursuant to requirement 7 of the dDCO [REP7-003], must provide a full and detailed description of fire water management measures, must be substantially in accordance with the oBSMP [REP6-020] and must be approved in consultation with Cheshire Fire and Rescue Service (CFRS), CWCC's Emergency Planning Team and the EA.

3.4.50. The final signed statement of common ground (SoCG) between the applicant and the EA at the close of the examination [REP7-029] indicated no outstanding concerns from the EA.

ExA's considerations

3.4.51. On the basis of the above, the ExA considers that the applicant has appropriately addressed concerns raised regarding how contaminated firewater from the BESS would be managed if a fire were to occur. The ExA is satisfied that the oBSMP [REP6-020] and the outline drainage strategy [REP4-050] contain sufficient controls to manage and mitigate the risk of contamination to surface water and groundwater from a fire at the BESS.

Location of construction compounds within Flood Zone 3

3.4.52. CWCC raised concern [RR-037] over the location of some construction compounds within Flood Zone 3. In response to questions from the ExA regarding the sequential approach to the location of the construction compounds, Q8.2.6 [PD-009], the applicant responded [REP2-003] that, as the entirety of the eastern area of the site of the proposed development is located within Flood Zone 3, there are no sequentially preferable locations for the compounds that would be required in this area.

3.4.53. The applicant confirmed the compounds would be used for temporary storage and welfare facilities with the flood risk to the eastern half of the site during the construction phase being generally very low and generally considered safe for people of all physical abilities [AS-019]. As set out in the oCEMP [REP7-017], a flood warning evacuation plan would be prepared. The applicant considered that because the construction compounds would be stoned areas which would be either flush to the existing ground or raised

marginally, and that equipment and materials stored in compounds would be moved in the event of a flood warning, it was unlikely that the compounds would impede water flow or increase flood risk elsewhere.

3.4.54. At issue specific hearing 2 (ISH2) [EV10-020], the ExA questioned whether the anticipated change in ground level within the construction compounds had been considered within the flood modelling and what management procedures would prevent materials stored in compounds from impeding flood flows.

3.4.55. The applicant responded [REP4-057] that any raising would be very minimal. The applicant confirmed that whilst specific compound raising was not modelled as a standalone scenario, land raising across the site was modelled and showed no material impact on flood risk. The applicant stated that appendix F [REP4-055] provides an assessment which demonstrated the construction compounds proposed in Flood Zone 3, would not increase flood risk offsite during a flood event.

3.4.56. In response to the ExA's second written questions Q2.8.4 [REP5-053], the ExA noted that approximately 320m^3 of flood water storage would be lost from the present-day design flood extent by virtue of the construction compounds. However, the EA noted that whilst the applicant had not modelled the effects of the construction compounds on flood risk elsewhere, they had modelled the impact of the operational phase on flood risk, which incorporated a total displacement of approximately 2,660m^3, which was larger than the construction compound displacement, with no resulting impacts outside of the proposed development area. The EA agreed with the applicant's conclusion [REP4-055] that the construction compound impacts would be less than those for the operational phase.

3.4.57. The signed SoCG between the applicant and CWCC [REP7-028] and the applicant and the EA [REP7-029] at the close of the examination, stated that there were no outstanding flood risk and drainage related issues.

ExA's considerations

3.4.58. The ExA agrees with the applicant that the construction compounds within the eastern part of the site which lies within Flood Zone 3 would be necessary for construction and that there are unlikely to be other locations with a lower flood risk within this part of the site where these could be located to suit their purpose. The ExA agrees with the applicant and the EA that as the construction compound impacts on flood risk would be less than those for the operational phase, the conclusion that the construction compounds would not increase flood risk elsewhere is reasonable and considers the matter resolved.

Safety of operational workers during flood events including safe access and egress and flood warnings

3.4.59. Concern regarding safe access and egress for operational workers was raised by several IPs including CWCC [RR-037] and the EA [RR-024]. CWCC's concerns related to several land parcels within the area of the

proposed development which would be surrounded by watercourses and would rely on vehicular crossings. The concern was that flood waters could cut off workers unaware of rising water levels or compromise emergency services' access and therefore that the site may not be safe to operate in the event of a flood. CWCC considered that further discussion was required with its Emergency Planning Team to confirm whether the applicant's flood warning and evacuation plan, appendix M to appendix 9-1 Flood Risk Assessment and Drainage Strategy [APP-088], was satisfactory.

3.4.60. The EA [REP1-050] recommended that the finished floor level of safe refuge areas should be raised to the H++ (low-likelihood high-impact) tidal scenario but stated that it deferred to CWCC and the Cheshire Joint Emergency Planning Team regarding safe access and egress to the site. The applicant confirmed [PD2-027] that a meeting between the EA and the CWCC Local Emergency Planning Team was held on 19 September 2025 where it was confirmed that the areas of safe refuge would be set 600mm above the Mersey 0.5% AEP plus upper end climate change flood level and would also be above all fluvial and tidal breach flood levels. The applicant confirmed [PD2-027] the outline Flood Warning and Evacuation Plan had been updated to reflect the outcomes of the meeting with CWCC Emergency Planning Team and the EA. The applicant also responded [REP3-041] that further raising above an H++ (low-likelihood high-impact) event is not considered necessary, as the H++ event is not a design flood event, and that this was subsequently agreed with the EA.

3.4.61. The applicant confirmed [PD2-027] that a meeting had been held with the CFRS on the 16 October 2025 to describe the approach adopted to flood warnings and evacuations. CFRS confirmed it was satisfied with the applicant's outline Flood Warning and Evacuation Plan [APP-088] appendix M and that the measures proposed within the plan were appropriate and proportionate to the risks presented by the proposed development.

3.4.62. CWCC stated in its LIR [REP1-046] that the Outline Flood Warning and Evacuation Plan updated by the applicant [PD2-029] addressed the points made by CWCC's Emergency Planning Team. Whilst CWCC stated it was not in a position to confirm that there would or would not be safe access in a flood event, it noted the absence of any objection from CWCC's Emergency Planning Team and CFRS.

3.4.63. The ExA questioned [PD-009] Q8.2.18, whether a new FRA would be required beyond the year 2075, which was the time limit for the FRA undertaken by the applicant within the ES. The applicant responded [REP2-003] that requirement 2 of the dDCO [REP7-003] states that the proposed development, if authorised, must start within five years of the date of the Order. Assuming the Order was to be granted in late 2026, construction would need to commence by 2032, and the project would be operational by 2034. The development would be limited to 40 years and therefore would be decommissioned by 2074 at the latest. To have the development extend beyond 2075, it would be necessary to extend the life of the consent, which would require a change to the DCO and the associated application and decision process, which would also involve providing a new FRA.

3.4.64. The EA confirmed [REP2-008] in response to questions from the ExA, that it was satisfied with how the applicant had considered tidal influence on the River Weaver, and the main rivers which cross the Order limits for the development. The EA confirmed that tidal ingress would be prevented by the presence of flapped outfalls which close when water levels within the River Weaver were high. During such times the pumping stations would over-pump fluvial flood waters into the River Weaver when certain level conditions were met. The EA agreed that the applicant had adopted a conservative approach within its modelling and had assumed that the Frodsham and Ince pumping stations would not be operational during times of flood.

3.4.65. The ExA questioned this issue in ISH2 agenda item 3h iv) [EV10-020]. In response to action point 49 [REP4-066] CWCC confirmed that CWCC's Lead Local Flood Authority (LLFA) had advised that the applicant's modelling to arrive at a design level for the refuge areas as 6.52m AOD was reasonable in the circumstances. CWCC also confirmed that, on the basis of no objection from either the EA or LLFA, the Joint Cheshire Emergency Planning Team accepted 6.52m AOD as the minimum design level for the refuge areas.

3.4.66. The signed SoCG between the applicant and CWCC [REP7-028] and the applicant and the EA [REP7-029] at the close of the examination, stated that they had no outstanding flood related issues.

ExA's considerations

3.4.67. The ExA considers that the responses by the applicant, CWCC and the EA provide sufficient reassurance to the ExA that the necessary parties have been adequately consulted. The ExA notes there appears to be no ongoing objection from any party to the applicant's decision to set the design level for the refuge areas at 6.52m AOD and on that basis the Joint Cheshire Emergency Planning Team had accepted 6.52m AOD as the minimum design level for the refuge areas. The ExA considers that the applicant's Flood Warning and Evacuation Plan would be adequate and proportionate to the risk. The ExA therefore considers the matter resolved.

Disapplication of the flood risk activity permit legislation

3.4.68. The EA raised in its RR [RR-024] that it could not agree to the disapplication of Flood Risk Activity Permits (FRAPs) due to insufficient information from the applicant and therefore the EA stated its protective provisions could not be included in the dDCO.

3.4.69. The EA and the applicant continued dialogue regarding this issue throughout the examination. Towards the end of the examination, at DL6, the EA stated [REP6-047] that it maintained its position that due to the associated environmental risk, the need for greater scrutiny and direct enforcement, it did not agree to disapply FRAPs activities under Section 150 of the Planning Act 2008, due to insufficient information from the applicant.

3.4.70. The EA confirmed [REP6-047] that it considered this issue resolved, subject to the removal of its protective provisions from the dDCO. To resolve this issue, the applicant agreed to remove the EA's protective provisions from the

dDCO and confirmed it had done so in its response at DL6 [REP6-040] and the dDCO schedule of changes at DL7 [REP7-027].

ExA's considerations

3.4.71. The ExA notes the EA's position on the disapplication of FRAPs activities under Section 150 of the Planning Act 2008 and acknowledges the applicant's action to remove the EA's protective provisions from the dDCO [REP7-003]. This means the applicant would need to specifically apply for any necessary FRAPs prior to construction, ensuring any necessary safeguards were put in place. On this basis the ExA considers this matter resolved.

Crossing design

Crossing design for CP22

3.4.72. The EA raised in its RR [RR-024] concern (issue EA007) surrounding the design for CP22 as it did not provide appropriate 300mm freeboard above the design flood event. The EA and the applicant continued dialogue regarding this issue throughout the examination. The EA confirmed [REP6-047] that outside of the examination, the applicant had proposed an alternative CP22 crossing design to the EA with supporting information for approval (ref.14740-WCD-XX-XX-SK-S-006 P02, dated 23 March 2026). The EA stated this design included a raised crossing providing a 300mm freeboard from the base of the bridge steels to the in-channel flood level (flood level of 4.76m AOD) and had demonstrated that the raised road levels would not increase flood risk elsewhere. The EA confirmed [REP6-047] that the alternative bridge design and supporting information provided was sufficient to resolve its concerns and was therefore content to agree this issue as resolved, subject to the submission of the alternative CP22 bridge design and supporting documentation by the applicant.

3.4.73. The applicant submitted a revised drawing [REP6-042] illustrating the indicative design proposals for CP22, accompanied by a technical note, which demonstrated that the raised approach roads to the crossing would not increase flood risk elsewhere.

3.4.74. The signed SoCG between the applicant and the EA [REP7-029] at the close of the examination, stated that they had no outstanding flood related issues and that issue EA007 was resolved.

Cables embedded in crossings

3.4.75. The EA raised in its RR [RR-024] concern (issue EA010) that the design of some proposed crossings may result in the site of the proposed development not being able to remain operational in times of flood due to the potential for debris to damage crossings and embedded cables within crossings. The EA advised the applicant to assess the structural stability of the proposed crossings and designs of cable crossings, such that cables would remain safe in the event of a flood, and to commit to the removal of embedded cables at decommissioning.

3.4.76. The EA and the applicant continued dialogue regarding this issue throughout the examination.

3.4.77. At DL4, the EA confirmed [REP4-071] it was satisfied that the update made by the applicant in section 2.4.2 of the oDEMP [REP3-024] committed the applicant to decommissioning cabling within bridges. Section 2.4.2 stated:

"cables embedded in the watercourse crossings that are to be retained after decommissioning, and cables within 8m of those crossings, will be removed as part of the decommissioning work."

3.4.78. At DL6 the EA confirmed [REP6-047] this issue was fully resolved through the inclusion of the following wording in the oCEMP [REP5-021]:

"The soffit of the main river crossings will not fall below 5.3m AOD based on current data, with designs to be refined for approval in writing by the Environment Agency at the detailed design stage. Should the detailed design work show the soffit below 5.3m AOD an updated technical note 'Integrity of New Bridges in Flood Event' must be completed at the new deck height and submitted for approval by the Environment Agency in writing".

3.4.79. The final signed statement of common ground between the applicant and the EA [REP7-029] stated this issue (issue EA010) was agreed.

Soffit levels

3.4.80. At DL6, the EA noted [REP6-047] that the applicant had updated the oCEMP [REP5-021] to include wording satisfactory to the EA regarding soffit levels which resolved its concerns.

3.4.81. The signed SoCG between the applicant and the EA [REP7-029] at the close of the examination, stated there were no outstanding water related issues.

ExA's considerations of crossing design

3.4.82. On the basis of the revised wording regarding the decommissioning of cables within the oCEMP [REP7-017] and the oDEMP [REP7-021], the revised design for CP22 submitted by the applicant at DL6 [REP6-042] and the confirmation received by the EA [REP6-047] that the design would not increase flood risk elsewhere and was acceptable to the EA, the ExA considers these matters resolved.

The sequential and exception tests

3.4.83. The applicant confirmed [APP-042] that the western extent of the SADA would be located within Flood Zone 1, but that as the remainder of the SADA would be located within Flood Zone 3a, a sequential test was required. The applicant confirmed in response to the ExA's written question Q8.2.4 [REP2-003] that approximately 35.5% of the SADA would be in Flood Zone 3a amounting to a generation capacity of approximately 50MW, and that no part of the site of the proposed development would be within Flood Zone 3b.

3.4.84. The applicant presented its sequential test in section 3.3 of the alternative site assessment appendix 3-1 [APP-053]. The applicant's position was that the alternative site assessment process confirmed that the only areas that could potentially deliver the proposed development, and which could viably utilise the capacity at the Frodsham SP Energy Networks (SPEN) Substation grid connection, were limited to an area of the Green Belt south of the M56 Frodsham corridor. The applicant stated [APP-053] that whilst there were areas of lower flood risk within this area, these did not offer a realistic prospect of delivering the same objectives as the proposed development, as required by NPS EN-1 paragraph 4.3.22, which the applicant interpreted as delivering the same infrastructure capacity within the same timescale.

3.4.85. The applicant's alternative site assessment [APP-053] identified 3 potential short-listed options, Option A (the site of the proposed development) and 2 other options, Option B and Option C. The applicant concluded that under the appraisal criteria applied to these short-listed options, in almost all criteria Option A was preferable to Option B and C. The applicant explained that the reasons Option A failed to perform as the superior option was due to the proximity to the Site of Special Scientific Interest (SSSI), the Special Protection Area (SPA) and flood risk, as it would be partly in Flood Zone 3a. The applicant contended that the scale and capacity for development were less for Options B and C, so that Options B and C could not offer a realistic prospect of delivering the same infrastructure capacity in the same timescale. This is reported on further in the alternatives section of this recommendation (section 3.2).

3.4.86. CWCC opined that a borough-wide sequential test could have been undertaken as a starting point [RR-037]. However, in both the LIR [REP1-046] and in response to ExA written questions [REP2-005], CWCC accepted the applicant's conclusions in relation to the sequential test for siting the proposed development, noting the locational benefits of Option A site (the application site). Nonetheless, CWCC maintained that the proposed development did not avoid all areas where there was a risk of surface water flooding, particularly when considering the location of the BESS.

3.4.87. The applicant responded that the vulnerable aspects of the proposed development had been sequentially sited to be in areas of the lowest flood risk [REP3-043]. The EA stated [REP2-008] that it was satisfied that the applicant had sufficiently assessed flood risk to the proposed development and had sequentially sited vulnerable aspects of the development to be in areas of the lowest flood risk, such as the BESS and substation, which were proposed within Flood Zone 1.

3.4.88. The applicant confirmed [APP-042] that the design flood level of 6.52m AOD would allow the site to remain operational during and after times of flood and the EA stated [REP2-008] that it considered the solar PV panels in the SADA would be appropriately raised above the design flood level with an appropriate 600mm allowance for freeboard.

3.4.89. The applicant presented its exception test in section 2.5 of the alternatives assessment in appendix 3-1 [APP-053] setting out how the proposed

development would provide wider sustainability benefits to the community that outweighed flood risk and that the project would be safe for its lifetime taking account of the vulnerability of its users, without increasing flood risk elsewhere.

3.4.90. The applicant's signed SoCG with the EA [REP7-029] confirmed the EA was satisfied with the applicant's FRA and that the proposed development would not increase flooding elsewhere. The signed statement of common ground with CWCC at the close of the examination [REP7-028] stated that CWCC had no outstanding water, flood or drainage related issues.

ExA's considerations

3.4.91. The ExA notes that paragraph 27a (Reference ID: 7-027a-20220825) was added to the Flood Risk and Coastal Change section of the Planning Practice Guidance on 17 September 2025 after the submission of the application. This sets out that the search area for a sequential test should be governed by local circumstances, with the catchment area being appropriate to the nature and scale of the proposal. It confirms that the sequential test should be applied proportionately, focusing on realistic alternatives in areas of lower flood risk that could meet the same development need. It also confirms that nationally or regionally important infrastructure proposals may justify a wider search area and, in some cases, consideration of whether a large-scale development could be split across number of alternative sites at lower risk of flooding, but only where those alternative sites would be capable of accommodating the development in a way which would still serve its intended market(s) as effectively. Paragraph 28 further clarifies what constitutes a 'reasonably available' site for the purpose of the sequential test. Such a site must be capable of 'meeting the same development needs' as the proposal, with a reasonable prospect of being developed at the same time as the proposal.

3.4.92. In terms of the wider sequential test, the ExA has concluded in the alternative section of this recommendation (section 3.2) that the applicant's alternatives site assessment was adequate and therefore agrees with the applicant that there are no reasonable alternative areas for the proposed development with a lower flood risk that have a realistic prospect of delivering the same infrastructure capacity in the same timescale.

3.4.93. In terms of the within-site sequential approach, the ExA agrees that the proposed development has sequentially sited vulnerable aspects of the development, considered to be the BESS and substation, in areas of the lowest flood risk. Whilst the solar PV panels would be located in Flood Zone 3a in areas of fluvial and tidal flood risk associated with the River Weaver and Mersey Estuary, the ExA notes equipment would be raised above the design flood level with an adequate allowance for freeboard, such that it remained operational at times of flood and would not increase flooding elsewhere. The ExA notes that none of the site of the proposed development would be within Flood Zone 3b.

3.4.94. In terms of the concern by CWCC regarding surface water flooding risk in the area of the BESS, the ExA notes that the updated PPG dated 17 September 2025 states in paragraph 27 (Reference ID: 7-027a-20220825), that a proportionate approach should be taken to applying paragraph 175 of the NPPF. This confirms that the Sequential Test need not be applied to surface water flood risk where a site-specific FRA demonstrates clearly that occupiers and users of a proposed development would remain safe from current and future surface water flood risk for the lifetime of the development. The ExA notes CWCC's concern that there is potential for surface water flooding overlapping with one of the proposed sites for the BESS but also notes that equipment would be raised above flood level [APP-042], that the proposed development would remain operational in times of flood and that there would be safe access and egress from the site as concluded above. The ExA therefore recommends that it is appropriate to move onto the exception test as the sequential test has not identified any reasonably available, sites with lower flood risk appropriate for the proposed development.

3.4.95. In terms of the exception test, the ExA agrees with the applicant that the proposed development would provide wider sustainability benefits to the community that outweigh flood risk. The ExA has concluded above that that the applicant's Flood Warning and Evacuation Plan is adequate and proportionate to the risk. Therefore, considering this and that there would be no increase in flood risk outside the area of the proposed development, and that the site would remain operational during and after times of flood, the ExA is satisfied that the sequential test and exception test requirements have been met.

CONCLUSIONS

3.4.96. The ExA examined all assessments submitted by the applicant and considered all the issues raised by IPs during the examination related to the water environment.

3.4.97. The ExA is satisfied that the applicant's assessment considers all relevant potential environmental impacts in respect of the water environment, water quality and flood risk during the construction, operation and decommissioning phases of the proposed development. The applicant concluded that it was unlikely that significant cumulative effects would arise in relation to flood risk and water quality. No one challenged this position and the ExA considers there no reason to come to a different conclusion.

3.4.98. The ExA finds the proposed development's potential impacts on receptors in relation to the water environment would be mitigated as far as possible and monitored through measures in ES chapter 9 [APP-042], the commitments register [REP7-013], the oCEMP [REP7-017], oOEMP [REP7-019] and oDEMP [REP7-021] which are secured through requirements 12, 13 and 20 of schedule 2 of the dDCO.

3.4.99. The ExA considers that as there would be no increase in flood risk outside the area of the proposed development, that the site of the proposed

development could remain operational for its lifetime during and after times of flood, including consideration for the effects of climate change, and that the requirements of the sequential test and exception test have been met.

3.4.100. The ExA is satisfied that the proposed development has had regard to current River Basin Management Plans and meets the requirements of the Water Environment (Water Framework Directive) (England and Wales) Regulations 2017 (including regulation 19).

3.4.101. The ExA is satisfied that the proposed development is in accordance with NPS EN-1, NPS EN-3 and where relevant NPS EN-5, the relevant policies in LP1 and LP2, and all other relevant legislation and there are no other important considerations.

3.4.102. Given the conclusions above, the ExA considers that the identified effects on the water environment would not weigh for or against the case for development consent.

3.5. CLIMATE CHANGE AND RESILIENCE

INTRODUCTION

3.5.1. This section considers the greenhouse gas (GHG) emissions from the proposed development and the resilience of the proposed development to future changes in climate.

POLICY BACKGROUND

GHG emissions

3.5.2. The Overarching National Policy Statement for Energy (NPS EN-1) paragraph 5.3.4 requires that all proposals for energy infrastructure projects include a GHG assessment as part of their Environmental Statement (ES) which should include:

- A whole life GHG assessment showing construction, operation and decommissioning GHG impacts, including impacts from change of land use.
- An explanation of the steps that have been taken to drive down the climate change impacts at each of those stages.
- Measurement of embodied GHG impact from the construction stage.
- How reduction in energy demand and consumption during operation has been prioritised in comparison with other measures.
- How operational emissions have been reduced as much as possible through the application of best available techniques for that type of technology.
- Calculation of operational energy consumption and associated carbon emissions.

3.5.3. NPS EN-1 paragraphs 5.3.5 and 5.3.7 state that the GHG assessment should be used to drive down GHG emissions at every stage of the proposed development and that steps taken to minimise and offset emissions should

be set out in a GHG reduction strategy, secured under the development consent order (DCO).

3.5.4. NPS EN-1 paragraphs 5.3.8 and 5.3.9 state that the Secretary of State (SoS) must be satisfied that the applicant has, as far as possible, assessed the GHG emissions of all stages of the development and should be content that the applicant has taken all reasonable steps to reduce the GHG emissions of the construction and decommissioning stage of the development.

3.5.5. Section 2.10 of the National Policy Statement for Electricity Networks Infrastructure (NPS EN-5) states in paragraph 2.10.14 that applicants should, as a rule, avoid the use of sulphur hexafluoride (SF_6) in new developments due to its climate-warming potential. If SF_6 containing products are used, emission monitoring and control measures compliant with the F-gas Regulation or its successors should be in place.

Resilience of the proposed development to climate change

3.5.6. Section 4.10 of NPS EN-1 sets out generic considerations that applicants and the SoS should consider so that renewable energy infrastructure is safe and resilient to climate change. It also provides that necessary action can be taken to ensure the operation of the infrastructure over its estimated lifetime. This section advises that the resilience of the proposed development to climate change should be assessed in the ES accompanying an application.

3.5.7. Paragraphs 4.10.8 to 4.10.11 of NPS EN-1 require the applicant to consider the direct and indirect impacts of climate change in the location, design, build, operation and decommissioning of new energy infrastructure. A wide range of climate change scenarios should be used when assessing the impacts on, and from, the proposed development. A high level of climate resilience should be built-in from the outset and adaption over the life of the scheme should be demonstrated. Paragraph 2.4.11 of NPS EN-3 advises that particular consideration should be given to the effects of flooding and higher temperatures.

3.5.8. NPS EN-1 paragraph 4.10.13 explains that the SoS should be satisfied that the potential impacts of climate change using the latest United Kingdom climate projections have been considered, to ensure the applicant has have identified appropriate mitigation or adaptation measures. This should cover the estimated lifetime of the new infrastructure, including any decommissioning period.

3.5.9. NPS EN-1 paragraph 4.10.13 states that the SoS should be satisfied that there are no features of the design critical to its operation, which may be seriously affected by more radical changes to the climate beyond that projected in the latest set of UK climate projections. The SoS should be satisfied that necessary action could be taken to ensure the operation of the infrastructure over its estimated lifetime.

3.5.10. NPS EN-5 states, in paragraph 2.3.2, that as climate change is likely to increase risks to the resilience from flooding, applicants should set out to

what extent the proposed development is expected to be vulnerable, and, as appropriate, how it has been designed to be resilient to:

- flooding, particularly for substations that are vital to the network and especially in light of changes to groundwater levels resulting from climate change
- effects of wind and storms on overhead lines
- higher average temperatures leading to increased transmission losses
- earth movement or subsidence caused by flooding or drought for underground cables
- coastal erosion

3.5.11. The National Planning Policy Framework (NPPF) section 14 outlines that the planning system should take full account of all climate impacts. Paragraph 164 states that new development should be planned for in ways that:

- avoids increased vulnerability to the range of impacts arising from climate change and ensures that risks can be managed through suitable adaptation measures, including through incorporating green infrastructure and sustainable drainage systems
- reduces GHG emissions, such as through location, orientation and design

3.5.12. The climate change section of the Planning Practice Guidance provides principles on how emissions from a new development can be reduced and how new developments can be built to be resilient and adapt to climate change.

3.5.13. The Local Impact Report (LIR) submitted by Cheshire West and Chester Council (CWCC) [REP1-046] refers to various development plan policies. Local development plan policies relevant to the proposed development are set out at appendix A. Those specific to GHG emissions and climate change resilience are:

- CWCC Local Plan Part 1 (2015) (LP1):
    - STRAT1 Sustainable development
    - STRAT11 Infrastructure
    - ENV6 High quality design and sustainable construction

THE APPLICATION

3.5.14. The applicant's case in relation to climate change was set out in ES chapter 5 [APP-038], which was supported by the following documents:

- Appendix 5-1 GHG Assessment [APP-060]
- Appendix 5-2 Climate Baseline Report [APP-061]
- Appendix 5-3 Climate Resilience Assessment [APP-062]
- Appendix 5-4 In-combination Climate Change Impacts Assessment [APP-063]

BASELINE

3.5.15. The applicant set out the methodology and baseline to the climate change assessment in sections 5.5. and 5.6 of ES chapter 5 [APP-038], stating they were developed in line with the relevant planning policy and the following industry guidance, particularly the Institute of Environmental Management and Assessment (IEMA) GHG Guidance and the IEMA Climate Change Resilience Guidance.

GHG emissions

3.5.16. In terms of GHG emissions, the applicant's assessment [APP-038] paragraph 5.3.3 stated that the largest single source of GHG emissions from the proposed development was likely to result from the manufacture and transport of the solar photovoltaic (PV) modules from outside the UK. The applicant explained in paragraph 5.3.4 that the emissions associated with replacement included those associated with the manufacture of the equipment, transport to the site of the proposed development, and disposal and transport of waste materials. The life expectancy of the equipment applied, as stated in table 16 of the GHG assessment [APP-060], was expected to be longer than that applied in the assessment, resulting in a conservative calculation of GHG emissions. Equipment with a life expectancy of less than 40 years (the anticipated operational lifetime) could need replacing. This would include the batteries, with a life expectancy of 10 years and the solar photo voltaic (PV) modules, the power conversion units (PCU) and the power conversion stations (PCS), which would all have a life expectancy of 20 years.

3.5.17. The applicant explained [APP-038] paragraph 5.3.5 that the embodied carbon factors used in the GHG assessment came from reputable sources such as the Institute of Circular Ecology's Embodied Carbon Database, Department for Energy Security and Net Zero GHG reporting conversion factors 2024 and recent academic papers.

3.5.18. The ES stated [APP-038] that using unabated combined cycle gas turbines (CCGT) as a baseline comparator from which to calculate the benefits could be inappropriate in light of recent SoS decisions. Consequently, the current grid mix was used to provide a range of offset emissions from which to calculate the benefits. In addition, the GHG assessment [APP-060] stated that emissions from expected diesel usage required for construction of the non-breeding bird mitigation area (NBBMA) had been included in the calculations.

3.5.19. Table 5-14 in ES chapter 5 [APP-038] listed the activities scoped in to inform the calculation of GHG emissions during the construction, operation and decommissioning phases of the proposed development.

3.5.20. Based on the generating capacity of 147 megawatts (MW), the proposed development was expected to produce 7,549,802 megawatt hours (MWh) of electricity over its lifetime, for export to the local distribution network and local businesses via the private wire connection [APP-038]. The GHG emissions offset over the lifetime of the proposed development were calculated using

each comparator as outlined in table 5-17 of ES chapter 5 [APP-038] reproduced in figure 7 below.

Figure 7: Offset emissions

Comparator	Emission factor (gCO_2e/kWh)	Offset over lifetime (tCO_2e)
Gas-fired power station (current long-run marginal generator)	375	2,831,176
Grid average – 2023/2024	171	1,291,016

Source: Table 5-17 [APP-038]

3.5.21. In terms of GHG emissions during decommissioning, the applicant assumed [APP-038] paragraph 5.3.7 that the resources and effort required for decommissioning would be equivalent to those required for construction, which was considered to be a worst-case scenario. The applicant explained that as the land would be handed back to the landowners on completion of decommissioning, the long-term retention of the landscaping improvement works could not be guaranteed, and a worst-case scenario was assessed on that basis. The scope of the GHG assessment was summarised in table 5-9 [APP-038].

Climate change resilience

3.5.22. ES chapter 5 [APP-038] table 5-6 showed that the following topics were scoped into the climate resilience assessment for operation but scoped out for the construction and decommissioning phases:

- increase in winter precipitation
- decrease in summer precipitation
- increased frequency and magnitude of wind and storms
- increase in summer temperatures
- changes in cloud cover
- sea level rise

3.5.23. The existing baseline reported in the ES [APP-038] used climate averages from the period 1991 to 2020, sourced from the nearest meteorological site to the proposed development (Hawarden) and Met Office UK regional climate summary (North West England and the Isle of Man) from the same time period. The future baseline was defined using UK Climate Projections 2018 (UKCP18). A summary of the current and future baseline climate was provided in table 5-10 [APP-038].

3.5.24. Paragraphs 5.5.9 to 5.5.21 [APP-038] explained the assessment criteria and how the assessment of significance was undertaken for each receptor in terms of susceptibility and vulnerability, leading to an assessment of the magnitude and significance of effect for each receptor.

CONSTRUCTION PHASE

GHG emissions

3.5.25. A full list of mitigation measures to manage GHG emissions during construction was outlined in paragraph 5.7.3 of ES chapter 5 [APP-038] and was presented in table 5-1 of the outline Construction Environmental Management Plan (oCEMP) [APP-136]. Post-consent, this outline plan would be developed into a full plan which must be in substantial accordance with the outline, and the proposed development must be constructed in accordance with that detailed plan. This is secured via requirement 12 in schedule 2 of the draft Development Consent Order (dDCO).

3.5.26. The mitigation measures would include designing, constructing, and operating the proposed development to minimise the creation of waste and maximise the use of alternative lower-carbon materials, selecting lower-carbon or locally sourced materials, all members of the supply chain providing a carbon reduction plan where feasible, adopting the Considerate Constructors Scheme to minimise carbon throughout the value chain, the provision of staff minibuses and regular planned maintenance of construction plant and machinery to optimise efficiency.

3.5.27. The assessment estimated construction related GHG emissions to be 167,414 tonnes of carbon dioxide equivalent (tCO_2e), presented in table 20 [APP-060] and table 5-14 [APP-038].

Climate change resilience

3.5.28. The applicant set out proposed mitigation measures for resilience of the proposed development to climate change during the construction phase in section 5.7.3 [APP-038]. These were also listed in the oCEMP [APP-136]. These would include monitoring weather conditions and use of extreme weather alert systems, training of staff in site health and safety, use of personal protective equipment, use of risk assessment method statements and selection of materials used in construction to be resilient to expected climatic extremes with British Standards applicable for most materials to ensure that extreme climatic conditions are accounted for.

3.5.29. The ES outlined in paragraph 5.5.4 [APP-038] that climate change was unlikely to impact upon the construction phase given that, if consented, construction would occur in the near future, when the climatic conditions are well understood and would be accounted for in the construction practices.

3.5.30. The applicant [APP-038] concluded that the proposed development would be resilient to the effects of climate change during the construction phase and therefore no additional mitigation was required.

OPERATIONAL PHASE

GHG emissions

3.5.31. The assessment estimated operational related GHG emissions to be 235,100tCO_2e, presented in table 20 [APP-060] and table 5-14 [APP-038] which included:

- energy consumption from provision of clean water and treatment of wastewater during operation
- leakage of GHGs
- energy consumption, replacement of equipment and material and waste generation from ongoing maintenance on-site
- travel of workers during operation

3.5.32. Proposed environmental mitigation measures during the operational phase specific to GHG emissions were listed in table 5-1 of the outline Operational Environmental Management Plan (oOEMP) [APP-137] which would include regular maintenance of the plant and machinery to optimise efficiency, decrease fuel use by maximising efficiencies and avoiding engine idling, all members of the supply chain providing a carbon reduction plan where feasible, lower-carbon or locally sourced materials selected where feasible, and the prioritisation of SF_6 free electrical components wherever feasible. For any equipment that used SF_6, only sealed-for-life components with extremely low leakage rates would be used to minimise fugitive emissions and routine inspections of electrical equipment would be conducted to detect and prevent leaks.

3.5.33. The land use change from agricultural and drained marshland to undisturbed semi-natural grassland would be an additional net carbon benefit that was not quantified.

Climate change resilience

3.5.34. The applicant set out proposed mitigation measures for resilience of the proposed development to climate change during the operational phase in ES section 5.7.4 [APP-038], in the outline Landscape and Ecology Management Plan (oOLEMP) [APP-144] and in table 5-1 oOEMP [APP-137]. These would include actions such as selecting operational equipment to withstand the range of climatic conditions predicted to occur in the future together with regular maintenance, planting and enhancement of habitats across the site including climate resilient planting and regular monitoring to identify success and failure and allow replacement planting. Impacts on on-site workers from extreme weather events would be mitigated through actively monitoring weather conditions and ensuring appropriate safety measures are in place for adverse weather conditions.

3.5.35. The Flood Risk Assessment [APP-084] to [APP-088] included various mitigation measures in respect to climate change, including raising electrical infrastructure vulnerable to flooding, locating the Frodsham Solar Farm Substation and both of the proposed battery energy storage system (BESS)

options in flood free locations and a framework flood warning and evacuation plan for evacuating on-site workers (appendix M of appendix 9-1 [APP-088]).

3.5.36. A summary of the climate resilience assessment was provided at table 5-13 [APP-038]. The applicant concluded that the overall effect of climate change is negligible to slight, which is not significant and therefore considered that the proposed development would be resilient to the effects of climate change.

OTHER CONSIDERATIONS

GHG emissions during the decommissioning phase

3.5.37. The GHG emissions for the decommissioning phase of the proposed development would total 2,377tCO_2e, with the greatest emissions associated with the transport and disposal of waste materials. This was summarised in table 5-14 [APP-038]. Mitigation measures to minimise emissions were written into table 5-1 of the Outline Decommissioning Environmental Management Plan (oDEMP) [APP-138] to be developed further at the appropriate juncture in the proposed development's lifetime.

Climate change resilience during the decommissioning phase

3.5.38. Paragraph 5.5.4 and table 5-3 of ES chapter 5 [APP-038] explained that in line with the construction phase, effects during the decommissioning phase were scoped out. Mitigation measures for climate effects during the decommissioning stage were included in table 5-1 of the oDEMP [APP-138] and would be included within the full DEMP, which would be developed in substantial accordance with the oDEMP [APP-138] at the appropriate time.

Combined climate change impacts

3.5.39. ES appendix 5-4 [APP-063] considered the extent to which climate change would exacerbate or ameliorate the potential effects of the proposed development across a variety of topic areas. The applicant concluded that the mitigation measures outlined in the technical chapters of the ES would remain effective in the context of anticipated climate change scenarios.

Cumulative effects

3.5.40. In terms of cumulative effects with other developments, the applicant concluded [APP-038] that the resilience of the proposed development to climate change would not be impacted by other projects, on the basis that climate change adaptation effects and impacts were specific to the proposed development and would not result in impacts to neighbouring development.

3.5.41. In terms of cumulative effects of GHG emissions, the applicant concluded that the proposed development would only make a very minor contribution towards the local and national carbon budgets and would provide low carbon electricity which would displace more carbon intensive forms of electricity generation.

3.5.42. The LIR from CWCC [REP1-046] stated that over the lifetime of the proposed development the predicted net direct emissions from the proposed development would not exceed 3.28% of CWCC's budget. CWCC stated that whilst there would be GHG emissions associated with the proposed development that would have some adverse impact, the move towards renewable energy was beneficial in the wider assessment.

3.5.43. The main issues related to GHG emissions considered within the examination were:

- adequacy of the GHG assessment and emissions offset calculation
- adequacy of the GHG reduction strategy
- resilience of the proposed development to climate change

Adequacy of the GHG assessment and emissions offset calculation

3.5.44. The examination of the adequacy of the GHG assessment presented in ES chapter 5 [APP-038] and appendix 5-1 [APP-060] considered GHG emissions under the 100MW export scenario, comparison of emissions with other solar developments, the grid average used, the proposed replacement activity, peat, and downstream GHG emissions from the final use of the electricity generated.

3.5.45. The applicant used a generation capacity of 147MW for the basis of the GHG emissions offset calculations presented in ES chapter 5 [APP-038], although the grid connection offer from the distribution network operator was 100MW, as stated by the applicant in the grid connection statement [APP-145] and a possible additional private wire connection.

3.5.46. While the applicant justified the use of the 147MW export as the basis for the GHG offset calculations, a comparison of GHG emissions between the 100MW and 147MW export capacities was provided [AS-001], as shown at figure 8:

Figure 8: Comparison of electrical export capacity and GHG emissions result between a 100MW and 147MW scheme

Comparator	100MW capacity	147MW capacity
Electricity generation capacity	5,130,874 MWh	7,549,802
tCO_2e offset compared to the grid average from DESNZ Fuel Mix Disclosure Table 2023/2024	877,379 tCO_2e	1,291,016 tCO_2e
GHG intensity of the electricity generated over the lifetime of the Proposed Development	78.9 gCO_2e/kWh	53.6 gCO_2e/kWh
Average operational GHG intensity	0.000437gCO_2e/kWh	to 0.0000297gCO_2e/kWh

Source: Table 1 [AS-001]

3.5.47. The applicant explained [AS-001] that the GHG intensity of the electricity generated over the lifetime of the proposed development for both scenarios remained within the range of estimates from literature for solar PV developments and significantly lower than the GHG intensity of gas with

carbon capture, which lies in a range of 90gCO_2e/kWh to 245gCO_2e/kWh. The applicant concluded that both scenarios remained well below the long-run marginal generation-based electricity emission factor.

3.5.48. In its first written questions, the ExA questioned Q2.1.2 [PD-009] why the estimated GHG intensity of the proposed development was not closer to the lower end of the range for solar PV of 20gCO_2e/kWh. The applicant responded [REP2-003] providing a table comparing the GHG intensity of several DCO solar projects, which is shown at figure 9:

Figure 9: Lifetime GHG intensity of DCO projects

DCO Solar Project	Lifetime GHG intensity (gCO_2e/kWh)
The Proposed Development	53.6
Stonestreet Green Solar	34.7
East Park Energy	41.7
East Yorkshire Solar Farm	15.1
Gate Burton Energy Park	33.4
Longfield Solar Farm	49.2
Springwell Solar Farm	84.1

Source: Table 1 [PD2-003]

3.5.49. The applicant's position [REP2-003] was that the differences in GHG intensity between projects was likely to be due to the differences in assumptions used, such as maintenance requirements, replacement rates and different assumptions for the specific equipment.

3.5.50. The ExA queried the value of the grid average used in the GHG assessment [PD-009] in Q2.1.2. The applicant explained [REP2-003] that more up-to-date information was now available which included data for the disclosure period 01 April 2024 to 31 March 2025, with an average UK grid emission factor of 154g/kWh.

3.5.51. The applicant considered [REP2-003] that the comparison of the GHG emissions against fossil fuels was appropriate for low carbon technologies projects, including solar projects. Nevertheless, the applicant provided a wider comparison in table 4 [REP2-003], which is reproduced at figure 10 below.

3.5.52. The applicant concluded [REP2-003], that although the choice of comparator affects the calculated offset emissions over the lifetime of the proposed development, in all instances there remained a positive offset.

Figure 10: Offset emissions from the proposed development using different comparators

Comparator	Emission factor (gCO_2e/kWh)	Offset over lifetime (tCO_2e)
Gas-fired power station (current long-run marginal generator)	382	2,831,176
UK average grid emission Factor 2023-2024	171	1,291,016
UK average grid emission Factor 2024-2025	154	1,162,669
DESNZ Green Book long-run marginal generation-based electricity emission factors	Significantly reduces over the lifetime of the Proposed Development to align with UK Government goal of Net Zero by 2050.	100,785

Source: Table 4 in the applicant's response to ExA first written questions [REP2-003]

3.5.53. In terms the proposed replacement activity, the applicant stated [APP-038], that both the life expectancy and failure rate of equipment was factored into the replacement calculations for the operational stage of the GHG assessment, shown in table 16 [APP-060]. For example, as the solar PV modules, PCUs and PCSs have a life expectancy of 20 years, it was assumed they would be replaced once, at year 20, and as the batteries would have a life expectancy of 10 years, it has been assumed they would be replaced three times, at year 10, 20, and 30. The applicant confirmed that equipment with a life expectancy of over 40 years would not require replacement during the operational lifetime of the proposed development.

3.5.54. In addition to replacements associated with the predicted operational lifespan, the applicant stated an allowance had been made for failure of equipment, shown within table 17 [APP-060]. On this basis, the applicant considered that a reasonable worst-case scenario was assessed [REP2-003].

3.5.55. In relation to peat, CWCC stated in its RR [RR-037], written representation (WR) [REP1-048] and LIR [REP1-046] that the assessment of peat deposits required further discussion with the applicant. Specific concerns related to implications for the natural environment including climate change and peat management issues, along with the potential for compaction and hydrological impacts to peat.

3.5.56. The applicant provided detail of investigations undertaken [PD2-027] (pages 130 and 131), and confirmed that the ground investigation data showed there was no peat present at depths which could be impacted by the proposed

development. At deadline 1 (DL1) following issue specific hearing 1 (ISH1), the applicant provided a technical note on peat resources [REP1-043].

3.5.57. Natural England (NE) confirmed [REP2-009] that it did not have any outstanding concerns in relation to peat. The Environment Agency (EA) stated [REP2-008] that the peat was at a depth where it was unlikely to be impacted by the proposed development. CWCC stated [REP2-005] that it did not have the technical expertise to confirm or contradict the applicant's conclusions but welcomed the commitment in the oCEMP [REP7-017] to a peat management plan should further pre-construction ground investigation reveal peat resources that were liable to be impacted. CWCC considered it appropriate to secure mitigation measures including the use of low-pressure piling machinery.

3.5.58. The applicant confirmed [REP3-043] that although no significant peat impacts were envisaged, further ground investigations would be carried out across the site prior to construction. If surface-level peat (or other peat) with the potential to be impacted by the proposed development were to be identified during the further investigations, a peat management plan would be prepared setting out the mitigation measures to be adopted to avoid or minimise impacts on peat. Mitigation measures as outlined in table 5-1 of the oCEMP [REP7-017] would include the use of low-pressure piling machinery should the detailed site investigation prior to construction identify any areas of peat at depths of less than 5m.

3.5.59. Regarding consideration of the downstream GHG emissions from the use of electricity, the ExA asked the applicant in its second written questions Q2.2.2 [PD-016] whether recent case law had any implications for the assessments of GHG emissions in light of the judgement in R (Finch) v Surrey County Council [2024] UKSC 20 (the Finch Judgement). The applicant stated [REP5-041] that the Finch Judgement and the South Lakeland case that followed it (Friends of the Earth Ltd and South Lakeland Action on Climate Change v the Secretary of State for Levelling Up, Housing and Communities [2024] England and Wales High Court 2349 (Admin)), emphasised the need for an ES to consider all impacts where there could be considered to be an 'inevitable causation' between a project and an effect. The applicant referenced the findings of the case as being that effects must not be 'conjecture or speculation', but that the relevant information needs to be available or an appropriate methodology able to be applied. The applicant's position [REP5-041] was that it would be conjecture or speculation to assume any particular use of the electricity generated by the proposed development, as it would not be possible to allocate 'Frodsham electricity' as arriving at any particular location.

3.5.60. For the private wire connection, the applicant acknowledged that, at this stage, no specific use for that electricity has been identified, and that the Protos site could be used for a wide range of different technologies.

ExA's considerations

3.5.61. The ExA considers that the applicant has provided adequate explanation for the estimated GHG emissions for both the 147MW and 100MW generation scenario. The ExA notes the GHG emissions intensity of the 100MW scenario, whilst greater than the 147MW scenario, would be within the established range of GHG intensities when compared to other consented solar projects. Whilst it may be towards the higher end, it would be well below the GHG intensity of gas with carbon capture.

3.5.62. The ExA welcomes the applicant's commitment to manage GHG emissions during the construction, operational and decommissioning phases of the proposed development. The ExA particularly notes the mitigation measures to design, construct and operate the proposed development to lower embodied carbon, along with the proposed use of the Considerate Constructors Scheme to employ good industry practice and the aim to minimise carbon throughout the value chain, with all members of the supply chain providing a carbon reduction plan where feasible. The ExA is satisfied that the proposed mitigation measures outlined in ES chapter 5 [APP-038] and within the oCEMP [REP7-017], the oOEMP [REP7-019] and oDEMP [REP7-021] to manage GHG emissions are adequate. These are secured via requirements 12, 13 and 20 in schedule 2 of the dDCO [REP7-003].

3.5.63. The ExA notes that the applicant recognised [APP-038] recent SoS decisions suggesting that using unabated CCGT as a baseline may be inappropriate and therefore also provided a comparison with the UK average grid emission factor 2023 to 2024 mix as an alternative comparator which illustrates a significant emissions offset over the lifetime of the proposed development. The ExA is therefore satisfied that the proposed development would result in considerable carbon savings compared to the UK grid average and would support the trajectory to net zero.

3.5.64. The ExA considers the applicant's explanation of replacement rates within the ES is adequate and is satisfied that the replacement rates within the GHG assessment are a realistic worst-case. The ExA agrees with the applicant that it is not necessary to impose a maximum limit on the extent of replacement and considers the matter resolved.

3.5.65. The ExA has considered the concerns from IPs and the responses from the applicant in terms of potential impacts on peat which could have impacts on GHG emissions from the proposed development. Potential impacts on peat from an archaeological perspective are considered within section 3.12 of this recommendation.

3.5.66. The ExA considers that any peat resources within the site would not be significantly affected as the applicant has adequately demonstrated that there are no proposed excavations that would extend to a depth at which peat may be present. In addition, the oCEMP [REP7-017] states that further ground investigation would be carried out across the site prior to construction. If peat that has the potential to be impacted by the proposed development was identified during the further investigations, a peat management plan would be

prepared setting out the mitigation measures to be adopted to avoid or minimise impacts on peat. The oCEMP [REP7-017] stated that although no significant peat impacts were envisaged, mitigation measures such as the use of low-pressure piling machinery would be used should detailed site investigation prior to construction identify any areas of peat at depths of less than 5m. The CEMP is secured via requirement 12 in the dDCO [REP7-003]. Requirement 12 states the detailed CEMP must be substantially in accordance with the oCEMP.

3.5.67. The ExA is therefore satisfied there are sufficient controls in place to manage potential hydrological and compaction impacts to peat and that there are no outstanding concerns regarding potential GHG emissions from peat deposits within the area of the proposed development.

3.5.68. The ExA concludes that the proposed development would have a beneficial effect on GHG emissions. The use of the 'lower carbon' electricity generated from Frodsham Solar Farm by either users of the grid or the users of private wire connection is considered to be an improvement on the current electricity supplied to these customers who, it is not unreasonable to assume, currently receive electricity of a higher GHG intensity than Frodsham Solar Farm would supply. The ExA is satisfied that the ES [APP-038] and [APP-060] considered the full scope of the GHG emissions from the proposed development from construction, operation and decommissioning. The ExA is satisfied that all impacts from the proposed development with an inevitable causation, with sufficient evidence to draw a link between the project and effect in terms of GHG emissions, were taken into account within the assessment.

3.5.69. The ExA concludes that the GHG assessment presented by the applicant in the ES is adequate and considers the matter resolved.

Adequacy of the GHG reduction strategy

3.5.70. The applicant set out mitigation measures to manage GHG emissions during construction, operation and decommissioning in ES chapter 5 [APP-038], which were summarised in table 5-1 of the oCEMP [APP-136], oOEMP [APP-137] and oDEMP [APP-138]. The applicant explained that requirements 12, 13 and 20 in schedule 2 of the dDCO secured that post-consent, these outline plans would be developed into full plans which must be in substantial accordance with the outline, and the proposed development must be constructed, operated and decommissioned in accordance with those detailed plans.

3.5.71. The ExA noted that the oOEMP [APP-137] and oDEMP [APP-138] contained a commitment (within table 5-1) to avoid the use of SF_6 where possible and prioritise the use of SF_6-free electrical components wherever feasible, but that this was not committed to in the oCEMP [APP-136]. This concerned the ExA who requested [PD-019] that the applicant should also include the commitment within the oCEMP. The applicant responded to the ExA's request, providing an updated oCEMP at DL7 with the requested change [REP7-017] and also revised the oCEMP [REP7-017], oOEMP [REP7-019],

and oDEMP [REP7-021], to confirm that the proposed development would comply with the F-gas Regulation or its successors.

ExA's considerations

3.5.72. The ExA considers that the mitigation measures outlined constitute reasonable steps to reduce GHG emissions from the proposed development. The ExA is satisfied that the GHG mitigation set out by the applicant in the oCEMP [REP7-017], oOEMP [REP7-019] and oDEMP [REP7-021] effectively serve as a GHG strategy in all but name. These are secured under requirements 12, 13 and 20 of the dDCO [REP7-003]. The ExA considers the proposed development is compliant with paragraphs 2.10.14 and 2.10.15 of NPS EN-5.

The resilience of the proposed development to climate change

3.5.73. Consideration of the resilience of the proposed development to climate change is principally concerned, in this particular context, with the effect of climate change on flood risk. This is reported on within the water environment section, section 3.4 of this recommendation, the conclusion of which is that the site of the proposed development could remain operational for its lifetime during and after times of flood, including consideration for the effects of climate change.

ExA's considerations

3.5.74. The ExA is satisfied that the applicant's assessment on the resilience of the proposed development to climate change considers all relevant potential effects. The ExA agrees with the applicant that the proposed development would be resilient to climate change effects from the scenarios considered throughout the lifetime of the proposed development and that the mitigation measures set out in the oCEMP [REP7-017], oOEMP [REP7-019] and oDEMP [REP7-021] are adequate.

3.5.75. The ExA is satisfied the applicant has provided adequate responses to all other raised matters.

CONCLUSIONS

3.5.76. The ExA examined all assessments submitted by the applicant and considered all the issues raised by IPs during the examination related to GHG emissions and climate change resilience.

3.5.77. The ExA is satisfied that the applicant's assessment considers all relevant potential environmental impacts in respect of GHG emissions and resilience to climate change during the construction, operation and decommissioning phases of the proposed development, alone and cumulatively with other plans and projects.

3.5.78. The ExA considers that the applicant's GHG reduction plans and resilience plans are sufficiently outlined in the oCEMP [REP7-017], oOEMP [REP7-019] and oDEMP [REP7-021] and appropriately secured in requirements 12, 13 and 20 of schedule 2 of the dDCO (appendix D of this recommendation).

3.5.79. The ExA is satisfied that the proposed development is in accordance with NPS EN-1, NPS EN-3, NPS EN-5 as well as the relevant policies in the LP1 and all other relevant legislation and there are no other important considerations.

3.5.80. In order to avoid duplication, the benefit of reduced GHG emissions over the lifetime of the proposed development is included in the planning balance under the need topic. Given the conclusions above, the ExA considers that the identified effects on GHG emissions and climate change would not weigh for or against the case for development consent.

3.6. LANDSCAPE AND VISUAL

INTRODUCTION

3.6.1. This section considers the landscape and visual effects of the proposed development, as well as whether the applicant's approach represents good design. Glint and glare are discussed in section 3.12.

POLICY BACKGROUND

3.6.2. The Overarching National Policy Statement for Energy (NPS EN-1) sets out criteria for good design for energy infrastructure. It states that applicants must demonstrate in their application documents how the design process was conducted and how the proposed design evolved. The Secretary of State (SoS) should be satisfied that the applicant has considered both functionality (including fitness for purpose and sustainability) and aesthetics (including a development's contribution to the quality of the area in which it would be located, any potential amenity benefits, and visual impacts on the landscape) as far as possible (paragraphs 4.7.7 and 4.7.11).

3.6.3. NPS EN-1 also states that projects need to be designed carefully, taking account of the potential impact on the landscape. However, it also acknowledges that virtually all nationally significant energy infrastructure will have adverse effects on the landscape (paragraphs 5.10.5 and 5.10.6).

3.6.4. In respect of landscapes that may be highly valued locally, but which are outside of nationally designated areas, NPS EN-1 states that particular attention should be paid to any local development plan policies which have been based on a landscape character assessment. However, it also notes that locally valued landscapes should not in themselves be used to refuse consent as this may unduly restrict acceptable development (paragraph 5.10.12).

3.6.5. NPS EN-1 requires applicants to prepare a landscape and visual impact assessment (LVIA) which should examine the effects on landscape components and character during construction and operation, addressing the visibility and conspicuousness of the project during construction, and the presence and operation of the project and potential impacts on views and visual amenity (paragraphs 5.10.20 and 5.10.21).

3.6.6. With regard to decision-making, NPS EN-1 states that the SoS should be satisfied that local authorities will have sufficient design content secured to ensure that future consenting will meet landscape, visual and good design objectives (paragraph 5.10.30).

3.6.7. NPS EN-1 also notes that the scale of energy projects means that they will often be visible across a very wide area. The SoS should judge whether any adverse impact on the landscape would be so damaging that it would not be offset by the benefits of (including the need for) the project. In having regard to the adverse effects, the SoS should take account of whether those effects are temporary or reversible (paragraphs 5.10.35 and 5.10.36).

3.6.8. With specific regard to solar photovoltaic (PV) generation projects, NPS EN-3 indicates that the approach to assessing cumulative effects is likely to be the same as for the assessment of other onshore energy infrastructure. It also acknowledges that solar farms may have wider zones of visual influence than other infrastructure but states that this influence could be appropriately minimised through effective screening, as well as through the use of land topography and existing landscape features (paragraph 2.10.94).

3.6.9. With reference to the Planning Act 2008, NPS EN-5 states that the SoS must have regard to the desirability of good design in determining applications for development consent but should bear in mind that electricity networks infrastructure must in the first instance be safe and secure, and that the functional design constraints of safety and security may limit an applicant's ability to influence the aesthetic appearance of that infrastructure (paragraphs 2.4.2 and 2.4.3).

3.6.10. It also states that new substations and other above-ground installations that serve as connection, switching, and voltage transformation points on the electricity network may also give rise to adverse landscape and visual impacts (paragraph 2.9.9).

3.6.11. Paragraph 135 of the National Planning Policy Framework (NPPF) states that developments should be sympathetic to local character, including landscape setting. Paragraph 187 states that planning decisions should protect valued landscapes in a manner consistent with their statutory status or identified quality in the development plan.

3.6.12. Cheshire West and Chester Council (CWCC) identify a number of important and relevant local planning policies in the Local Impact Report [REP1-046].

- CWCC Local Plan Part One (2015) (LP1)
    - STRAT9 Green Belt and countryside
    - STRAT11 Infrastructure
    - ENV2 Landscape
    - ENV6 High quality design and sustainable construction
    - ENV7 Alternative energy supplies
- CWCC Local Plan Part Two (2019) (LP2)

- GBC2 Protection of landscape
- DM3 Design, character and visual amenity
- DM52 Solar Energy

3.6.13. Policy GBC2 of LP2 continues the protection of the borough's countryside in conjunction with Policy STRAT9. Development must satisfy Policy ENV2 and: protect and, wherever possible, enhance landscape character and distinctiveness; integrate into the landscape character of the area; and be designed to take account of guidance in CWCC's 'A Landscape Strategy for Cheshire West and Chester Borough' (2016) (2016 Landscape Strategy), as mentioned in the Local Impact Report [REP1-046].

3.6.14. Policy GBC2 also identifies the borough's 8 Areas of Special County Value (ASCV), 2 of which are close to the Order land albeit the Order land is not within an ASCV.

3.6.15. LP2 Policy DM52, which relates to solar energy, was informed by CWCC's 'Landscape Sensitivity Study and Guidance on Wind and Solar Photovoltaic Developments' (2016) (2016 Landscape Sensitivity Study) which assessed the sensitivity of the borough's landscape to solar PV development. It identified locations, based on landscape character areas (LCA), which would be sensitive to this type of development to varying degrees, concluding that landscape character significantly limits the potential for medium or large-sized solar farms (6ha to 25ha and above) within the borough.

THE APPLICATION

3.6.16. The applicant's explanation of its design process and its assessment of landscape and visual effects were set out in:

- ES Chapter 3 Alternatives and Design Evolution [APP-036]
- Design Approach Document (DAD) [APP-130]
- Design Parameters Statement (DPS) [APP-132]
- ES Chapter 6 Landscape and Visual Amenity [APP-039]
- ES Appendix 6-1 LVIA Methodology [APP-064]
- ES Appendix 6-2 Visualisation Methodology [APP-065]
- ES Appendix 6-3 TN-01 Scope of LVIA - Agreement [APP-066]
- ES Appendix 6-4 Residential Properties [APP-067]
- ES Appendix 6-5 Landscape Character Baseline [APP-068]
- ES Appendix 6-6 Construction Phase Effects [APP-069]
- ES Appendix 6-7 Effects on Landscape Character [APP-070]
- ES Appendix 6-8 Effects on Viewpoints [APP-071]
- ES Appendix 6-9 Effects on M56 Users [APP-072]
- ES Appendix 6-10 Influence of Lighting Conditions [APP-073]
- ES Appendix 6-11 TN-02 Landscape and Visual Implications of Revised Layout [APP-074]

- Figure 6-1 LVIA Study Area [APP-109]
- Figure 6-2 Landform and Watercourses [APP-109]
- Figure 6-3 a-b Landscape Character and Designations [APP-109]

- Figure 6-4 a-j Zone of Theoretical Visibility [APP-109]
- Figure 6-5 a-e Viewpoint Locations [APP-109]
- Figures 6-6 to 6-35 Baseline Photography [APP-110]
- Figures 6-36 to 6-48 Photomontages [APP-111, APP-112, APP-113, APP-114, APP-115, APP-116, APP-117, APP-118, APP-119, APP-120 and APP-121]

BASELINE

Design Evolution

3.6.17. The evolution of the design of the proposed development is set out in Chapter 3 of its Environmental Statement [APP-036]. The process began with the identification of environmental and physical constraints and land ownership. Following a range of surveys, a design vision and design principles were formulated, including: delivery of a significant amount of renewable energy to support policy objectives; being sensitive to the landscape setting and reducing visual impacts; protecting and enhancing green infrastructure and biodiversity; and being sensitive to heritage assets, their settings, and the historic environment.

3.6.18. Design decisions were informed by engagement with a number of statutory consultees and other project stakeholders. A two-stage community consultation process was also conducted.

3.6.19. The main changes between the Preliminary Environmental Information Report-stage layout and the scheme for which development consent is sought are summarised in the DAD [APP-130]. These included changes to the landscape design proposals to achieve a minimum 10% biodiversity net gain and adjustments to the nature of the proposed tree planting along existing and proposed footpath corridors. The DAD also details how the mitigation hierarchy (avoid, prevent, reduce, offset/ compensate) was applied to design decisions, and how mitigation would be secured by a series of management plans (also referred to as control documents) which would be the subject of requirements in the dDCO.

The Development Assessed by the Applicant

3.6.20. The submitted scheme, as set out in Schedule 1 of the dDCO [APP-015], is described in the DPS [APP-132]. The applicant's assessment [APP-039] considered:

- the introduction of new solar PV modules and frames, the BESS, the Frodsham Solar Farm Substation, the SPEN Grid Connection, the main site access, the non-breeding bird mitigation area, the skylark mitigation area, and associated infrastructure, which would result in direct change to the physical landscape fabric
- views of these elements from the surrounding areas to demonstrate the potential effects on PRoW users, road users, and waterborne receptors
- effects on the visual amenity of local residents (including occupiers of the traveller sites), albeit a residential visual amenity assessment (RVAA) was scoped out

- the influence of these elements upon the character of the surrounding landscape, with potential changes in the characteristics of those landscape character areas where visibility is predicted
- the influence of these elements upon the identified purposes and qualities of non-statutory landscape designations, with reference to the planning policies that underpin these and any further supporting studies
- temporary activities associated with the construction and decommissioning of the proposed development

3.6.21. This assessment was based on the maximum development parameters set out in the DPS, including the maximum heights of solar panels, other equipment, buildings, pylons, fencing, and closed-circuit television (CCTV) and lighting towers. Whilst the effects of introducing a BESS and substation were also considered, the photomontages illustrated only Option 1 on the basis that this would provide a sufficiently representative view to inform an assessment of both options from the viewpoints where the BESS and substation would be visible.

3.6.22. The assessment also took account of mitigation proposals set out in the DAD including: retention and enhanced management of existing vegetation cover that defines character and provides visual screening; containment of development within established field boundaries; development-free buffers alongside existing landscape features; retention of open vistas across Frodsham Marshes and the wider estuary and towards Frodsham Hill and Helsby Hill, where feasible; new trees and hedgerows that are consistent with the landscape character and which would provide further screening; and long-term management and maintenance of the landscape on the site.

3.6.23. Mitigation would be delivered in accordance with the DPS and the relevant mitigation plans which would be secured by requirements in schedule 2 of the dDCO: the Outline Construction Environmental Management Plan (oCEMP) [APP-136]; the Outline Landscape and Ecology Management Plan (oLEMP) [APP-144]; the Outline Operational Environmental Management Plan (oOEMP) [APP-137]; the Outline Public Rights of Way Management Plan (oPRWMP) [APP-140]; and the Outline Decommissioning Environmental Management Plan (oDEMP) [APP-138].

3.6.24. The applicant listed the following as enhancements:

- measures to achieve a minimum 10% increase in habitat and hedgerow units, and no net loss in watercourse units, including through physical enhancements to the landscape fabric
- provision of wayfinding signage and information about routes and connections
- physical signage on site and published material to guide potential visitors
- interpretative material along access routes providing information regarding the social and natural history of the site and its use for generating energy
- enhancement of the condition of PRoW where feasible to enhance their appeal to users throughout the year

- access enhancements including new parking for cars and bicycles, if required

Definition of the Study Area

3.6.25. The applicant identified, using a publicly available digital surface model from the Environment Agency, the theoretical visibility across the study area of the proposed structures within the solar array development area (SADA). Given the pattern of surrounding landform and the presence of built development, including a series of major infrastructure developments, the applicant considered that more distant views of the proposed development would be very unlikely to give rise to significant landscape and visual effects. As such the study area covered approximately 5km from the SADA.

Landscape Designations in Study Area

3.6.26. Any landscape designations covering or close to the study area were identified. The closest statutory landscape designation was the Clwydian Range and Dee Valley National Landscape which, at over 26.5km to the south-west, was well outside the study area and the applicant concluded that the proposed development would not be visible from within the designated area. Accordingly, effects on statutory landscape designations were scoped out of the assessment.

3.6.27. The Cheshire Sandstone Ridge - which is located to the south of the M56 and, therefore, does not include the Order land - was identified as having been shortlisted for potential designation as an Area of Outstanding Natural Beauty (AONB, now referred to as National Landscapes (NL)). The applicant said that CWCC and Natural England had confirmed that proposals to designate this area were at an early stage, that there was no draft statement of special qualities or draft management plan available, and that it had been agreed that effects on this potential NL did not need to be included in its assessment.

3.6.28. In terms of non-statutory landscape designations, the applicant identified ASCVs, the closest being the Weaver Valley ASCV at 930m to the south-east of the SADA, and the Helsby and Frodsham Hills ASCV at approximately 1.07km to the south of the SADA. It also noted the Mersey Forest, a community forest set up in 1991, which covers the whole of the study area.

3.6.29. Most of the site is located within National Character Area (NCA) 60: Mersey Valley. The western end of the main site access is located in NCA61: Shropshire, Cheshire and Staffordshire Plain, and the study area to the south and south-west of Frodsham and Helsby is located within NCA62: Cheshire Sandstone Ridge. The applicant noted [APP-039] that the NCAs had provided background and context to more detailed landscape character assessments produced at county and district levels and that it had agreed with CWCC that the LCAs in CWCC 2016 Landscape Strategy (discussed below) were of a more suitable scale to assess the effects of the proposed development.

3.6.30. With reference to the 2016 Landscape Strategy, the applicant set out the 10 LCAs within the study area. LCA4a: Frodsham, Helsby and Lordship Marshes was identified as where direct post-construction change in the landscape would occur. The key perceptual and visual sensitivities, qualities and values for LCA4a were noted as including the flat landform, the field pattern, important views to and from Frodsham Sandstone Ridge and Helsby Hill, the remoteness of parts of the marsh, and visually prominent embankments, pylons and industrial development. It was also stated that the open character provided little opportunity for screening any large-scale elements or for mitigating visual impact without the mitigation measures in themselves being highly visible, making it a visually sensitive landscape.

3.6.31. The 2016 Landscape Strategy noted that LCA4a was in need of improved management, including to enhance and restore the conditions of habitats and features of the marshes whilst safeguarding its open character. It also set out detailed guidelines for LCA4a. The 2016 Landscape Sensitivity Study noted that even a small-scale development would be contrary to the management strategy identified in the 2016 Landscape Strategy which is to conserve the open, undeveloped character of the drained marshland. It stated that LCA4a has medium-high sensitivity to a solar farm and that whilst a medium, large or very large solar farm could potentially fit into LCA4a, because it would be south-facing it would impact on important viewpoints from Frodsham Sandstone Ridge and Helsby Hill northwards over the Mersey estuary.

3.6.32. The applicant also took account of the 5 LCAs in Halton that were in the study area as identified in the ‘Halton Landscape Character Assessment' (2009).

Viewpoints Assessed by the Applicant

3.6.33. The applicant's assessment covered 30 locations across the study area which were agreed with CWCC and the Canal and River Trust (CRT) [APP-065 and APP-066] as being the likely significant viewpoints. These included locations to represent the experience of different types of receptors in the vicinity, such as views from well-known locations, and to illustrate a particular effect or issue. Photographs were provided from viewpoints to represent summer and winter visibility. Photomontages were provided for some viewpoints, including a Year 0 image showing how the proposed development would appear at the start of operations, and a Year 10 image indicating the anticipated appearance when planting would be established [APP-111], [APP-112], [APP-113], [APP-114], [APP-115], [APP-116], [APP-117], [APP-118], [APP-119], [APP-120] and [APP-121]. The applicant also illustrated how, in general terms, lighting conditions could affect views [APP-073]. The applicant's conclusions were based on the predicted magnitude of change and the sensitivity of each receptor, taking account of any proposed mitigation measures.

CONSTRUCTION PHASE

3.6.34. During the construction phase, the assessment [APP-039] identified likely moderate to major, and therefore significant, adverse residual effects in the following locations:

Landscape Character

- LCA4a: Frodsham, Helsby and Lordship Marshes

Visual Effects

- Viewpoint 17: Public footpath within Order limits
- Viewpoint 18: Restricted byway leading to Frodsham Marsh Farm
- Viewpoint 20: Restricted byway, Cross Lane
- Viewpoint 21: Restricted byway, Straight Length
- Viewpoint 23: Public footpath, adjacent to Manchester Ship Canal
- Viewpoint 25: Public footpath, adjacent to River Weaver

3.6.35. None of the landscape and visual effects identified during the construction phase would differ depending upon which BESS and substation option was progressed.

OPERATIONAL PHASE

3.6.36. The assessment identified a number of likely significant landscape and visual residual effects during the operational phase. Adverse effects were predicted across LCA4a, with receptors at several locations (viewpoints 18, 25, users of byway RB102, FP81 and FP93) experiencing adverse effects immediately upon the proposed development's operational commencement. These adverse effects would reduce over time, but viewpoint 18 and byway RB102 are predicted to continue to experience adverse effects even at year 10.

3.6.37. The applicant pointed to positive landscape effects however [APP-039], by noting new tree belts and hedgerows being planted, a net increase in the waterbodies and wetland vegetation present on the Order land together with other biodiversity and public access enhancements.

3.6.38. The applicant also considered the effects of the proposed development on local residents and concluded that the change in view that would be experienced from any property would not be so great that the living conditions of residents would be affected to the degree that any property would become an unattractive and unsatisfactory (but not necessarily uninhabitable) place to live. It said that the traveller sites would be screened by vegetation cover at the boundary of these and the rising land to the north (the Manchester Ship Canal Deposit Ground).

3.6.39. In respect of residential properties in Frodsham, some views would be restricted by surrounding buildings and vegetation. For relatively open and unobstructed views, the proposed development would be clearly visible in a context where the influence of industry and infrastructure along the Mersey Estuary is well-established, and there would at worst be a limited increase in the influence of such development. Where visible from properties in Runcorn,

Sutton Weaver, and Helsby, the applicant concluded that the Proposed Development would at worst be a limited addition to a view where more prominent existing industrial and infrastructure development is already well-established and that any change from baseline would be relatively small in scale. Accordingly, the applicant concluded that no significant effects would be experienced at any residential property.

3.6.40. No significant landscape or visual impact effects were identified as a result of potential glint and glare. Other glint and glare-related considerations are discussed in section 3.12 of this recommendation.

DECOMMISSIONING PHASE

3.6.41. Effects during the decommissioning phase were anticipated to be similar to construction phase effects. Whilst it is not the applicant's intention to remove the landscaping works during decommissioning, it noted [APP-138] the landowner's potential requirement to return the grassland created on the eastern half of the Order land (to the east of Brook Furlong) and the skylark mitigation areas back to land suitable for arable farming. The applicant also noted that because the land would be handed back to the landowners on completion of decommissioning, the long-term retention of the landscaping cannot be guaranteed.

CUMULATIVE AND OTHER EFFECTS

3.6.42. The applicant concluded that the introduction of the proposed development would not result in any changes that would materially affect the special landscape qualities of either the Helsby and Frodsham Hills ASCV or the Weaver Valley ASCV [APP-039] paragraphs 6.8.124ff.

3.6.43. No significant cumulative landscape and visual effects were identified for the construction, operational or decommissioning stages of development.

ISSUES CONSIDERED DURING THE EXAMINATION

General Comments

3.6.44. A number of parties ([RR-007], [RR-014], [RR-016], [RR-017], [RR-023], [RR-036] and [REP1-073]) made general comments about the visual impact of the proposed development and its effect on the landscape. However, these comments neither related to specific impacts nor suggested that the applicant's assessment was flawed and, therefore, were not explored any further during the examination.

The Applicant's Assessment

3.6.45. Some representations ([RR-040], [PD1-001], [REP1-071] and REP1-075]) suggested that the applicant's LVIA was flawed, that it did not properly assess the potential effects and that its conclusions did not reflect the likely impacts of the proposed development. However, CWCC said [RR-037, REP1-046 and REP1-048] that it had no in principle concerns about the methodology and scope of the applicant's assessment of landscape and visual effects.

ExA's considerations

3.6.46. Having considered the application documentation alongside all parties' submissions, the ExA is satisfied that the assessment undertaken by the applicant adequately assesses the potential landscape and visual impact-related effects of the proposed development.

Whether Good Design would be Achieved

3.6.47. In respect of whether good design would be achieved, CWCC noted [REP2-005] that, broadly, Requirement 6(1) together with the DPS [REP7-011] were appropriate for the detailed design approval stage.

ExA's considerations

3.6.48. Taking account of the applicant's explanation of the evolution of the design of the proposed development along with CWCC's position, the ExA is satisfied that the approach taken to design development accords with NPS EN-1, NPS EN-3 and NPS EN-5, and that the dDCO would ensure that future consenting would meet landscape, visual and good design objectives.

Landscape Character - Generally

3.6.49. With regard to construction-phase effects, CWCC agreed [RR-037] that there would be a moderate to major adverse effect upon landscape character during the construction phase, for which the effects would be significant on the LCA4a area.

3.6.50. In respect of operational-phase effects, whilst it acknowledged that the Order land was not within a nationally designated area or an ASCV, CWCC said [RR-037] that the landscape of Frodsham Marshes was valued locally.

3.6.51. CWCC [RR-037] submitted that its own landscape character study identified that even a small-scale solar farm would fail to conserve the open, undeveloped character of the drained marshland within LCA4a. The proposed development, being a larger solar farm, would have a greater visual impact, on a scale that would also detract from the key characteristics of the national character areas NCA60 and NCA62, typically impacting on the expansive open views and vistas enjoyed from recreational rights of way.

3.6.52. Whilst the applicant had accepted [PD2-027] that parts of the Order land fall within an area identified as having higher landscape sensitivity, it had argued that the policy does not operate as an absolute restriction, that it requires that proposals demonstrate that impacts on key landscape characteristics would be acceptable, and that the overall structure and key characteristics of the marshland landscape would remain legible. In that context, CWCC noted [REP3-046] that it disagreed with the applicant's conclusion [PD2-027] which was that, on balance, the proposed development would be consistent with the underlying intent of LP2 Policy DM52 despite there being a limited degree of conflict with that policy.

3.6.53. CWCC also noted [RR-037] that it would not be practical to screen the proposed development from elevated positions such as from Frodsham Hill

and St Laurence's Church (viewpoints 9 and 6) and said that whilst it agreed with the applicant's conclusion that the overall sensitivity of LCA4a is medium to high, it disagreed with its conclusion that there would be a moderate to major change in the character of the area and a significant adverse effect. Rather, CWCC said that the effect would be greater and [REP1-046] that there would be a substantial residual impact on LCA4a that would be long-lasting and experienced during the construction, operational and decommissioning phases.

3.6.54. Whilst the applicant had stated [PD2-027] that the proposed development had been designed to respect the existing landscape character, that the scale and design of the proposed development was appropriate and proportionate, that it would respect the locally-valued character of Frodsham Marshes, and that the reversibility of the proposed development would not result in permanent harm to the countryside's character or long-term loss of openness, CWCC disagreed [REP1-046] that the proposed development would comply with LP1 policies STRAT9 and ENV2 and LP2 Policy GBC2 because the impacts would go beyond those which could be appropriately mitigated or accepted as a change in the landscape without undermining the landscape character.

3.6.55. Whilst it considered security features such as fencing, lighting and CCTV to be appropriate, CWCC said [REP1-046] that there may be a substantial residual impact in relation to the sense of enclosure of the currently-open landscape as a result of the security fencing which would contrast markedly with the current sense of openness to the landscape. Similarly, the timber fencing at the skylark mitigation area could result in adverse landscape and visual impacts. However, it said that whilst there would be some adverse impact from the height of the security lighting and CCTV structures, this would be less significant than the impact of the fencing, and that the use of sensors to limit duration of lighting was a positive mitigating factor.

3.6.56. Nevertheless, and acknowledging that NPS EN-1 says that locally-valued landscapes should not be used in themselves to refuse consent as this may unduly restrict acceptable development, CWCC said [RR-037] that the impact of the proposed development on landscape character is something that ought to be considered in the overall planning balance, particularly given the development plan policies that seek to protect landscape character. It added [REP1-046] that whilst the character is reflective of a landscape that has been subject to substantial change over recent decades, it has largely retained its essential open character, almost as a contrast to some of the urban influences, but that the proposed development goes beyond the landscape's capacity to accept change without a substantial adverse impact on the highly-valued quality of openness of the landscape.

ExA's Consideration

3.6.57. During its unaccompanied site inspection [EV8-002] the ExA visited a variety of locations to view the Order land, the wider landscape, and to see the relationship between the Order land and the surrounding areas. In doing so, the ExA took account of all interested parties' comments and particular

regard was paid to the locations that were noted in relevant representations, or which were the subject of disagreement between the applicant and CWCC.

3.6.58. The Order land, which includes a large area of estuarine marshland, has a longstanding physical and visual relationship with the more elevated inhabited areas nearby, such as Frodsham. The adopted strategy for this area is to maintain its open, undeveloped character. The addition of an expansive area of development would represent a substantial change in character and a change which, although time-limited, could be in place for 40 years.

3.6.59. Given the local topography it would not be practical to fully screen the proposed development, particularly from more elevated vantage points such as Frodsham Hill, Helsby Hill and around St Laurence's Church. Furthermore, a careful balance would need to be achieved when specifying any landscape screening in order to maintain some open views from within the Order land to the wider area, as has been highlighted by CWCC. Careful management of the height of landscaping would also be necessary, as acknowledged by the applicant in the oLEMP [REP7-025]. A significant uplift in the amount of landscape screening, as has been advocated by an Interested Party, could compromise that aim and represent an even greater change in the character of the landscape by further reducing its openness.

3.6.60. The ExA considers the openness of the Order land, and its role in framing the dramatic long-ranging views across the Mersey Estuary, to be a very important quality that goes to the heart of why this is a locally-valued landscape. The local topography, which means that the landscape is experienced across a wide area and in a range of different contexts, is also a key factor to which regard should be paid in ascribing value to the landscape and in assessing potential impacts.

3.6.61. Whilst the applicant has argued that the proposed development represents a further evolution of the area's established land-use mix and that it should be seen in the context of large-scale energy, transport and industrial infrastructure of the Mersey Estuary corridor, the ExA considers that the absence of expansive development on the marshland provides an important contrast to, and gap between, the heavily-industrialised areas to the east and the west.

3.6.62. The ExA also disagrees with the applicant's argument that the proposed development would represent an evolution of the existing heavily-modified landscape character. Whilst there is already some energy-related infrastructure on the Order land, the expansive nature of the proposed development would represent a substantial change which would have a substantial impact on the character of the landscape and the ability to understand it. Although this would be reversible, it would nevertheless be a long-term impact.

3.6.63. Security features such as fencing would also have a negative impact on landscape character, primarily by creating an increased sense of enclosure, which would contrast with the currently open landscape.

3.6.64. The ExA recognises that NPS EN-1 paragraph 5.10.35 states the scale of energy projects means that they will often be visible across a very wide area. In this instance, the ExA considers that the proposed development would be at odds with key attributes that have been identified for LCA4a and NCA60.

3.6.65. As such, the ExA consider that the proposed development would not minimise harm to the landscape, contrary to the objectives of paragraph 5.10.37 of NPS EN-1. It would also directly conflict with the 2016 Landscape Strategy which seeks to conserve the open, undeveloped character of the drained marshland. In addition, it would conflict with LP1 policies STRAT9, STRAT11, ENV2, ENV6 and ENV7, and with LP2 policies DM3, GBC2 and DM52, not least because the impacts would go beyond those which could be appropriately mitigated or accepted as a change in the landscape without undermining the landscape character. Furthermore, the proposed development would conflict with policy at paragraphs 135 and 187 of the NPPF.

Landscape Character - Tranquillity

3.6.66. The applicant said [REP6-010] that the proposed development would be located within an area that is not an unspoilt landscape and that the area was not perceived as ‘tranquil’ in the context of the NPPF.

3.6.67. Nevertheless, CWCC requested [RR-037] that consideration be given to the noise environment of the SADA in conjunction with landscape character impacts in terms of the effect of construction and operational noise on the acknowledged relative tranquillity of the area once within the site and far enough away from the influence of the M56 motorway. It said that this may require a subjective judgement as tranquillity does not equate directly to quiet areas but that the addition of noise into a tranquil area should be included as part of the overall assessment. However, CWCC did not explain whether, or how, the way that the area is currently perceived would change as a result of the proposed development.

ExA's consideration

3.6.68. A number of features - such as the M56, pylons and wind turbines, and other developments in the wider area - reduce the overall sense of tranquillity. Even so, there are parts of the Order land which can be perceived as being remote and tranquil. That said, and taking account of the applicant's Noise Impact Assessment [APP-054] (discussed in section 3.12 of this recommendation), the ExA considers it unlikely that the proposed development would materially alter the established acoustic environment. However, and whilst the SADA would be screened to some extent, the ExA is of the opinion that the presence of the proposed development would affect the perception of tranquillity, albeit to a very small degree.

3.6.69. Bearing in mind that the Order land is not within a designated landscape and that no characteristics have been identified which take the landscape out of the ordinary in the context of paragraph 187 of the NPPF, the ExA is satisfied there are no residual issues specifically arising in relation to this matter.

Visual Effects

3.6.70. In respect of its area of responsibility, the CRT [RR-010], [REP1-062], [REP1-064], [REP1-065] and [REP1-066] concurred with the applicant's conclusions that intervening planting, topography and screening would help to reduce the impact on Weaver Navigation users and the amenity of the corridor. It said that the new grid connection to the Frodsham SPEN Substation would not have an unacceptable visual impact given the context and it welcomed the proposed mitigation including the retention and protection of existing vegetation, the minimisation of adverse effects from construction lighting, and the planting of additional trees and hedgerows in the interests of safeguarding the softer landscape character and experience of the Weaver Navigation. It also welcomed the proposed longer-term management of vegetation as outlined in the oLEMP [REP7-025].

3.6.71. Some parties made specific comments about the impact on views from Frodsham Hill and the Frodsham War Memorial [RR-015], [RR-025], [RR-028], [REP1-071], [REP1-074], [REP1-075], and [REP1-076] and from Helsby Hill [RR-035], [RR-043], [REP1-074], and [REP1-076].

3.6.72. The National Trust also noted [RR-002] that its interest principally related to Helsby Hill, the summit of which includes an Iron Age hillfort which is a Scheduled Ancient Monument, and that it wished to ensure that the landscape and visual impacts of the proposal, notably when considered cumulatively with existing energy infrastructure, are fully taken into account when balancing the benefits of the proposal in terms of carbon reduction.

3.6.73. With regard to construction-phase effects, CWCC agreed [RR-037] with the applicant's assessment of visual effects, including that there would be significant adverse effects from viewpoints 17,18, 20, 21, 23 and 25.

3.6.74. In respect of the operational phase, CWCC disagreed with some of the applicant's conclusions, including that there would be a moderate adverse effect which would not be significant from viewpoint 9: Frodsham Hill War Memorial. CWCC noted [RR-037] that the War Memorial is a destination viewpoint in its own right where the public enjoy the open views from the elevated position on Frodsham Hill across Frodsham towards the Mersey Estuary and that the proposed development, including the BESS and substation options, would be situated directly in the centreline of this panoramic view. It said that the sensitivity of viewpoint 9 is high because the views will be amongst the main reasons for any visit to this location.

3.6.75. Noting the importance of the open expansive view of Frodsham Marshes adjacent to the estuary, which is primarily one of fields and agricultural grazing land, CWCC said [RR-037] that the scale of the proposed development in such a prominent position within the overall view would

represent a significant magnitude of change and an urbanising addition which could not be effectively mitigated. Given its high sensitivity, the high local value and the high magnitude of change, CWCC said [REP1-046] that there would be a moderate to significant adverse impact.

3.6.76. CWCC also disagreed [RR-037] with the applicant's conclusion that the effect would be moderate and not significant in respect of viewpoint 6 and viewpoint 26 (both of which are from a public footpath near St Laurence's Church, Frodsham), stating that this conclusion underplayed the impact.

3.6.77. The applicant explained [PD2-027] that the different conclusions drawn by it and CWCC reflected a difference in professional judgement rather than any deficiency in methodology.

3.6.78. In respect of mitigation, CWCC raised concerns [RR-037] about how planting would affect viewpoints along paths within the SADA, for example viewpoint 25 where at year 10 planting would enclose and screen any long-distance views, including towards the sandstone ridge. It also noted that panel heights would be between 3.5m and 4m and would be significantly higher than any observer at close proximity. It said [RR-037] that mitigation should preserve open views across and out of the SADA, in particular protecting intervisibility between the SADA and Frodsham and Helsby hills with appropriate gaps and open sections along field boundaries.

3.6.79. At ISH2 [REP4-057] the applicant explained that it was not proposing blanket screening across the open marsh but that it had designed mitigation belts deliberately to soften views while still allowing views through in places, maintaining the open character where appropriate and balancing retention of longer-distance views against the need to reduce the visual prominence of arrays in sensitive locations.

ExA's consideration

3.6.80. The ExA agrees that the different conclusions drawn by the applicant and CWCC reflect a difference in professional judgement rather than any deficiency in the applicant's methodology or its assessment.

3.6.81. In relation to the effect at Frodsham Hill War Memorial (viewpoint 9), the ExA agrees that this is a highly sensitive viewpoint because of its commemorative importance and because the expansive, panoramic view is the primary reason behind many people visiting this location, as is also noted in a number of relevant representations. However, the ExA disagrees with the applicant's conclusion in respect of the magnitude of change. The proposed development would result in a substantial change in the nature of the landscape in this view through the introduction of a very noticeable development across a large area. Whilst it would be reversible, it would be a long-term change. Because it would appear in the centreline of the panoramic view and could be perceived as an incongruous addition to the landscape, it could become a dominant element and detract from the overall quality and appreciation of the view. In the ExA's judgment there would be a

medium to large magnitude of change and, therefore, there would be a significant effect.

3.6.82. Whilst a number of parties, including the National Trust, highlighted that the proposed development could affect views from Helsby Hill - a similar vantage point to Frodsham Hill - the ExA agrees with the applicant's conclusion that the visual effect would be not significant on the basis of the orientation of Helsby Hill and its distance from the Order land.

3.6.83. Viewpoints 6 and 26 are less elevated than viewpoint 9 and are therefore more focused on a narrower segment of the estuary. Whilst the proposed development would be seen in the context of man-made infrastructure such as the wind farm and industry in the distance, when compared with viewpoint 9 the SADA would occupy a greater proportion of the visible mid-ground and appear to be more continuous across the marshes. The SADA would be a transformative addition, changing from what the applicant has described [PD2-027] as a mixed rural-industrial setting to one where the SADA is a dominant feature masking much of the rural character that can be seen in the existing view. As such, the ExA considers that the proposed development would result in a medium to large magnitude of change from viewpoints 6 and 26 and, given the high sensitivity of these viewpoints, the proposed development would give rise to a moderate to major adverse significant effect at both of these locations.

Adequacy of Proposed Mitigation

3.6.84. A number of submissions [RR-015], [RR-025], [REP1-071], [REP1-073], [REP1-074] and [REP1-075] said that insufficient mitigation was being proposed to address the loss of the characteristic marsh landscape, and that additional tree planting should be undertaken to lessen the visual impact of the solar array.

3.6.85. However, CWCC referred [RR-037] to footnote 88 of NPS EN-3 which gives an example of where screening can impact on the ability of users to appreciate the surrounding landscapes. It requested that regard be paid to the need for the landscaping mitigation and screening of the SADA to retain open views across and out of the SADA, particularly from the PRoW and permissive path network.

3.6.86. For its part, the applicant noted [REP1-032] that due to the difference in elevation between the Order land and the viewpoints at Helsby Hill and Frodsham War Memorial, additional planting would have limited to no benefit in further mitigating the visual impact of the proposed development. It said that visualisations had been included from viewpoint 9: Frodsham Hill War Memorial [APP-113] and from viewpoint 13: Helsby Hill [APP-114] to illustrate that additional planting around field boundaries would not provide any greater visual screening benefit. Nevertheless, during ISH2 a representative of Active Travel Frodsham requested that consideration be given to a compromise with the aim of reducing the negative impact of the view from Frodsham Hill. The applicant said [EV10-008] that there would be continued dialogue and, through the discharge of requirements, an opportunity to consider specific

species and some of the locations for planting. It also noted [REP4-057] that there was an inherent tension between the open character of the Order land and the addition of landscaping and that, in its opinion, the limited benefit which would arise from more planting in terms of softening the view from Frodsham Hill would be less of a benefit than the harm that it would cause.

3.6.87. Taking account of all parties' positions, the ExA considers that the proposed mitigation would be sufficient and would achieve a satisfactory balance between softening the visual impact of the proposed development and retaining some open views across and out of the SADA.

Reversibility of Impacts

3.6.88. In respect of decommissioning, CWCC argued [RR-037] that the long duration of the proposed time-limited consent, and the real prospect that the lifetime could be extended in light of NPS EN-1 which defines lifetime extensions as critical national priority, only minimal weight should be given to the reversibility of the impacts. However, CWCC also noted [REP4-074] that it would see the post-decommissioning retention of landscaping as a longer-term biodiversity benefit.

ExA's considerations

3.6.89. The ExA notes that this application seeks a time-limited consent and therefore any extension to the lifespan of the proposed development would need to be the subject of a separate application that would be assessed on its own merits. The fact that the project would be reversible, in accordance with the expectations of NPS EN-3, is noted by the ExA to be taken forward in the final planning balance.

Beneficial Effects

3.6.90. The applicant identified [APP-039] a number of beneficial effects which, it said, are significant. Where these relate to biodiversity enhancements any benefits are discussed in section 3.3 of this recommendation and benefits in terms of public access are discussed in section 3.8.

ExA's considerations

3.6.91. Insofar as they relate to new tree belts and hedgerow trees, the ExA considers that the addition of large amounts of trees, depending on their specification and location, could be at odds with the openness of the landscape. However, given that the final scheme of planting would only be known at a later stage per the oLEMP [REP7-025], the ExA has not re-categorised the significance of any landscape-related beneficial effects.

CONCLUSIONS

3.6.92. The ExA is satisfied that the approach taken to design development accords with NPS EN-1, NPS EN-3 and NPS EN-5, and that the dDCO would ensure that future consenting would meet landscape, visual and good design objectives. Similarly, the ExA is satisfied that the methodology for the assessment undertaken by the applicant adequately assesses the potential

landscape and visual impact-related effects of the proposed development in accordance with NPS EN-1. Whilst detailed assessment was scoped out of the ES, the ExA is satisfied that sufficient regard has been paid to residential receptors, including the occupiers of the traveller sites, and that there would not be any significant landscape or visual impacts on those receptors.

3.6.93. There would be significant landscape and visual impacts during the construction phase which would be temporary and of a nature that is typically associated with large-scale renewable energy construction projects of this kind.

3.6.94. During the operational phase the proposed development would have a significant adverse impact on a large part of a locally-valued landscape, going beyond the capacity of the landscape to accommodate change. This is an impact which would be long-lasting and not practical to mitigate. Whilst NPS EN-1 says that locally valued landscapes should not be used in themselves to refuse consent, the proposed development would nevertheless conflict with a number of development plan and NPPF policies.

3.6.95. Whilst the applicant has identified a number of significant visual impacts that would be experienced by users of the PRoW network, the ExA considers that the significant effects on visual receptors would be more wide-ranging and that the proposed development would result in significant impacts to visual receptors in the vicinity of St Laurence's church and at Frodsham Hill War Memorial, a particularly prominent and well-known location.

3.6.96. Although time-limited and reversible (save for any residual landscaping that might remain), the operational phase effects would be long-term, lasting until decommissioning takes place. No additional significant effects are expected during the decommissioning phase.

3.6.97. The applicant has also identified a number of landscape-related benefits and has proposed a suite of mitigation measures which the ExA is satisfied would be satisfactorily secured by the dDCO.

3.6.98. Taking these into account alongside the identified harms, the ExA attributes great negative weight to the landscape and visual harm that would be caused by the proposed development.

3.7. GROUND CONDITIONS, GEOLOGY AND LAND USE

INTRODUCTION

3.7.1. This section considers the effects of the proposed development on ground conditions, geology and land use.

POLICY BACKGROUND

3.7.2. The Overarching National Policy Statement for Energy EN-1 (NPS EN-1) paragraph 5.11.4 states that development of land will affect soil resources, including structural damage, physical loss, land contamination and indirect impacts from changes in the local water regime. Paragraph 5.11.5 goes on to

state that where pre-existing land contamination is being considered within a development, the objective is to ensure that the site is suitable for its intended use. Risks would require consideration in accordance with the contaminated land statutory guidance as a minimum. Paragraph 5.11.8 outlines that applicants should ensure that they have considered the risk posed by land contamination and proposals to address this.

3.7.3. Paragraphs 5.11.11 to 5.11.13 state that during any pre-application discussions with the applicant, the Local Planning Authority should identify any concerns regarding land use. Applicants should seek to minimise impacts on the best and most versatile (BMV) agricultural land defined as land in grades 1, 2 and 3a of the Agricultural Land Classification (ALC) and preferably use land in areas of poorer quality, grades 3b, 4 and 5. Applicants should also identify any effects and seek to minimise impacts on soil health and protect and improve soil quality taking into account any mitigation measures proposed.

3.7.4. Paragraph 5.11.14 of NPS EN-1 encourages applicants to develop and implement a Soil Management Plan to help minimise potential land contamination and where large quantities of soils are surplus to requirements or are affected by contamination aid the reuse of soils in line with good practice guidance.

3.7.5. When considering mitigation, NPS EN-1 paragraph 5.11.23 states that applicants should seek to minimise the effects on existing or planned uses near the site, by the application of good design principles, including the layout of the project and the protection of soils during construction.

3.7.6. The National Policy Statement for Renewable Energy Infrastructure (NPS EN-3) paragraph 2.10.29 states that while land type should not be a predominating factor in determining the suitability of the site location, applicants should, where possible, utilise suitable previously developed land, brownfield land, contaminated land and industrial land. Where the proposed use of any agricultural land has been shown to be necessary, poorer quality land should be preferred to higher quality land avoiding the use of BMV agricultural land where possible. Paragraph 2.10.31 goes on to state that it is recognised that at this scale, it is likely that applicants' developments will use some agricultural land and that 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.

3.7.7. Paragraph 2.10.34 encourages applicants to develop and implement a Soil Resources and Management Plan which could help to use and manage soils sustainably and minimise adverse impacts on soil health and potential land contamination.

3.7.8. The National Planning Policy Framework (NPPF) paragraph 197 outlines that where a site is affected by contamination or land stability issues, responsibility for securing a safe development rests with the developer and landowner. Paragraph 201 states planning decisions should be on whether the proposed development is an acceptable use of land and that planning

decisions should assume that separate pollution control regimes will operate effectively.

3.7.9. The Local Impact Report (LIR) submitted by Cheshire West and Chester Council (CWCC) [REP1-046] refers to various development plan policies. Local development plan policies relevant to the proposed development are set out at appendix A of this recommendation. Of particular relevance to ground conditions is policy DM32, land contamination and instability, and policy DM52 of the Cheshire West and Chester Local Plan Part Two (2019) (LP2).

THE APPLICATION

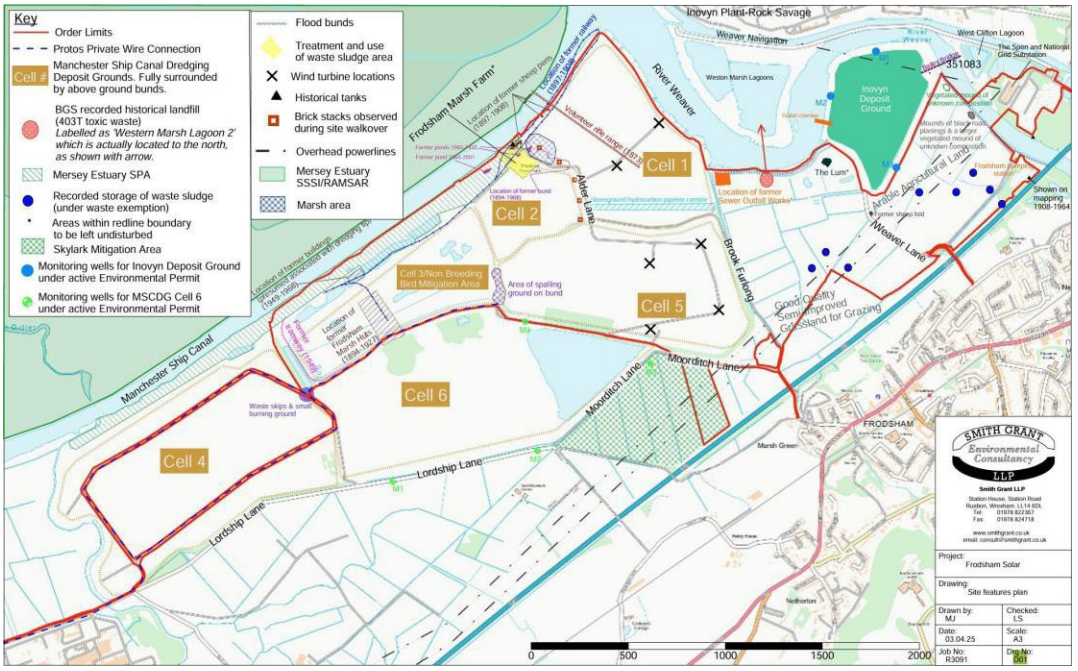
3.7.10. The applicant's case in relation to effects on ground conditions was set out in its Environmental Statement (ES) chapter 10 [APP-043]. In addition, the applicant submitted the following documents:

- Appendix 10-1 Stage 1 Geo-Environmental Assessment Part 1 of 2 [APP-096]
- Appendix 10-1 Stage 1 Geo-Environmental Assessment Part 2 of 2 [APP-097]
- Appendix 10-2 Remediation Technical Concept Note – Cell 3 [APP-098]
- Outline Soil Management Plan - P02 [APP-141]

BASELINE

3.7.11. The assessment methodology and baseline conditions for ground conditions were set out in sections 10.5 and 10.6 of the ES [APP-043]. The applicant stated in section 10.5 that the ES assessment and approach followed the methodology presented within the Construction Industry Research and Information Association C552 'Contaminated Land Risk Assessment A Guide to Good Practice' to identify the likely source-pathway-target relationships that may exist at the site of the proposed development. A site features plan was provided as drawing D01 [APP-096] as shown in figure 11 below:

Figure 11: Features plan for the site of the proposed development



Source: Drawing D01 [APP-096]

3.7.12. Information sources used to identify the baseline conditions were listed in paragraph 10.6.2 [APP-043]. ES chapter 10 [APP-043] outlined that the INEOS Inovyn Runcorn Works, located on the bank of the Weaver Navigation, has had a long industrial history and continues to operate as one of the largest manufacturers of chemicals and polymers in the country. The INEOS Inovyn deposit ground, with its surrounding earth bund, is located directly north-east of the Frodsham and Helsby Marshes and lies adjacent to, but outside, the Order limits, as shown in figure 11. The applicant stated [APP-043] that the deposit ground became active in 1961, with permitting of the facility commencing in 1977 to take dredging deposits from the Weaver Navigation. While it stopped receiving dredgings in 2002, the deposit ground is still subject to monitoring. The maintenance of the deposit ground bund is included as part of the permit and regular checks are undertaken to check for seepage of leachate.

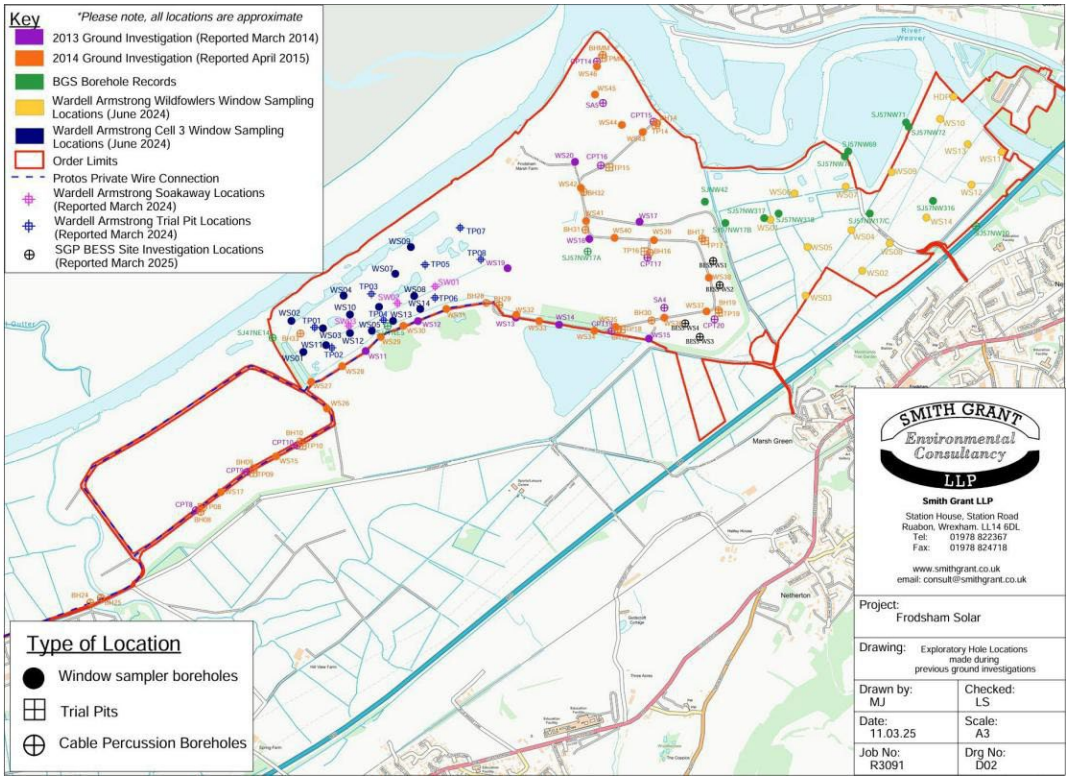
3.7.13. The applicant set out in section 10.6 [APP-043] that the proposed solar array development area (SADA) would cover an area of approximately 250ha made up of the former Manchester Ship Canal Dredging Deposit Ground (MSCDDG) cells on the western section of the SADA and agricultural land and former agricultural land, which is now managed as rough grassland. The MSCDDG comprises cells where dredgings from the Manchester Ship Canal were deposited between 1938 and the 1960s. The eastern part of the SADA to the east of Brook Furlong has been used for arable agriculture since the 1960s.

3.7.14. Directly adjacent to the south-west of the SADA is Cell 6 of the former MSCDDG dredging tip (shown in figure 11), which is an active cell where dredgings are still deposited, comprising reedbeds and ponds. The applicant

confirmed [APP-043] that the monitoring wells associated with both the INEOS Inovyn Deposit Ground and Cell 6 MSCDDG would not be disturbed during the construction, operation or decommissioning phases of the proposed development. The battery energy storage system (BESS) and Frodsham Substation are proposed to be sited within MSCDDG Cell 5 and there are two options for a specific location that have been considered. The applicant provided further detail on these options in ES chapter 2 [APP-035].

3.7.15. The applicant summarised its assessment of on-site contaminant sources within paragraphs 10.6.44 to 10.6.58 of ES chapter 10 [APP-043] using information from appendix 10-1 [APP-096]. In terms of a future baseline, the applicant stated [APP-043] it was expected that the concentrations of contamination in association with the existing contaminant pathways to groundwater and surface water on the site of the proposed development had reached equilibrium with the surrounding area as contaminant concentrations recorded within perched groundwater and surface waters exhibited a similar contaminant profile to that of the soils and the baseline conditions were not expected to significantly change over the long term. A plan showing locations of exploratory holes during previous ground investigations was provided as drawing D02 [APP-096], as shown in figure 12 below.

Figure 12: Exploratory hole locations during previous ground investigations



Source: Drawing D02 [APP-096]

Unexploded ordnance (UXO)

3.7.16. The UXO risk assessment [APP-097] stated that approximately 600 incendiary bombs, likely to have been the small 1kg type, were reported to

have been dropped on Frodsham Marsh on 28th November 1940. The risk assessment stated that such a large number of these devices over an open area of marshland was of concern as over soft marshy ground, some would have penetrated the ground, and those that failed to function are likely to have remained in situ. It suggested it would not have been a high priority for an incident such as this in this area to have been fully investigated or for specific or thorough searches to have been made given the open unpopulated nature of the marshes. A World War One prisoner of war camp may have been in the area [APP-097], but its location on the Frodsham Marshes is unknown and it is not known whether any explosives were stored there.

3.7.17. The applicant concluded in ES chapter 10 [APP-043] that for the risk of encountering UXO on the majority of the MSCDDG dredging deposit Cell 1 and most northerly section of MSCDDG Cell 5 would be high, with the remainder of the assessed areas within Cell 5 having a medium to high risk. The remainder of SADA area was assessed as having a low to medium risk for UXO. Overall, the area of the proposed development was given a precautionary medium risk from UXO. The applicant's UXO risk assessment appendix F [APP-097] concluded there would be a low to medium risk from UXO across the site of the proposed development.

CONSTRUCTION PHASE

3.7.18. The applicant presented the potential impact on receptors during the construction phase within table 10-14 in the ES [APP-043], taking account of embedded mitigation measures. Such measures, as secured in the outline Construction Environmental Management Plan (oCEMP) [APP-136] and included:

- preparation and implementation of a protocol to deal with unexpected contamination encountered during the construction phase
- preparation of an Environmental Incident Management and Pollution Prevention Plan (EIMPPP), a Groundwater and Surface Water Management Plan (GSWMP) and an UXO Management Plan prior to construction
- dust suppression and provision of silt traps
- appropriate storage of fuels and chemicals

3.7.19. The applicant concluded construction phase effects would remain significant (post embedded mitigation) for:

- Creation of migratory pathways to allow migration of leachable and otherwise mobile contaminants to groundwater within superficial deposits from soils and perched groundwater. The significance of effect was described by the applicant as:
    - Moderate, with a significant effect for groundwater residing in the tidal flat deposits comprising mainly granular materials such as sands.
    - Minor, not significant for perched groundwater residing within the more cohesive silts and clays within the tidal flat deposits, glacial till or made ground.

- Creation of migratory pathways for contaminants within soils and perched groundwater and soil dusts to impact surface water and terrestrial habitats, which is considered to be minor to moderate with an effect ranging from not significant to significant.

3.7.20. Given the conclusions above, the applicant proposed additional mitigation, enhancement and monitoring as set out in the oCEMP [APP-136], which included measures such as:

- further detailed investigation and assessment to be undertaken to inform the detailed design
- the production of a Foundation Works Risk Assessment (FWRA) and a Piling Risk Assessment
- asbestos awareness and management during the construction phase through the CEMP
- provision of a Materials Management Plan (MMP) or a Deposit for Recovery (DfR) Permit as required for the excavation and reuse of soils
- a remedial strategy with options appraisal, and verification implementation plan

3.7.21. Following application of this further mitigation, the applicant's ES table 10-15 [APP-043] predicted minor to negligible effects for the construction phase.

3.7.22. The applicant asserted that the proposed development would not introduce additional contaminants but recognised that construction works could re-mobilise existing contaminants in the absence of suitable mitigation or design measures. This risk would be largely associated with ground disturbance during construction of the non-breeding bird mitigation area (NBBMA) and foundation works across the SADA. The applicant asserted that standard mitigation techniques could be employed to reduce such risks to a low or negligible level, managed under the CEMP, MMP and DfR permit.

3.7.23. The applicant concluded that through the implementation of incorporated and additional mitigation measures no significant residual effects on human health, groundwater, surface water, ecology, land and livestock receptors, buildings or ground stability were identified. Overall, the effects were predicted to be not significant with respect to ground conditions, contamination and land instability, with no significant residual effects identified.

OPERATIONAL PHASE

3.7.24. Mitigation measures to avoid, reduce or minimise impacts related to ground conditions during the operational phase were listed in section 10.7 [APP-043]. These were outlined in ES chapter 10 [APP-043] and table 5-5 of the outline Operational Environmental Management Plan (oOEMP) [APP-137], which included measures such as:

- pollution controls at the BESS such as impermeable geotextile, a bunded lagoon, shut off value and sealed tank to contain contaminated firewater
- appropriate storage of fuels, chemicals and cleaning agents along with a spill-kit

- production of an EIMPPP prior to operation
- development of an unexpected contamination protocol
- no excavation or piling within 10m of the tow of the bund separating MSCDDG Cells 3 and 5 unless a geotechnical risk assessment was completed, as it was noted to be spalling in some areas

3.7.25. The applicant presented the potential impact on receptors during the operational phase within table 10-14 [APP-043], taking account of incorporated mitigation measures, and concluded that potential impacts for the operational phase would range from 'negligible' to 'minor to negligible' and none would be significant. The applicant confirmed [APP-043] that no additional enhanced mitigation in addition to embedded measures would be required during the operational phase.

DECOMMISSIONING PHASE

3.7.26. Mitigation measures to avoid, reduce or minimise impacts during the decommissioning phase were listed in section 10.7 [APP-043] and outlined in the outline Decommissioning Environmental Management Plan (oDEMP) [APP-138]. The applicant presented the potential impact on receptors during the decommissioning phase within table 10-14 [APP-043], taking account of incorporated mitigation measures.

3.7.27. The applicant concluded [APP-043] that potential impacts for the decommissioning phase would range from 'negligible' to 'minor' and none would be significant and confirmed that no additional enhanced mitigation in addition to embedded measures would be required.

OTHER CONSIDERATIONS

3.7.28. The applicant presented considerations for the cumulative effects with other projects in section 10.11 [APP-034] concluding that cumulative impacts in relation to ground conditions were considered unlikely and not significant.

ISSUES CONSIDERED DURING THE EXAMINATION

3.7.29. CWCC raised a number of concerns related to ground conditions and contamination in its relevant representation (RR) [RR-037], written representation (WR) [REP1-048] and LIR [REP1-046]. The Canal and River Trust (CRT) commented on the applicant's proposed mitigation to prevent potential contaminants reaching waterways in its RR [RR-010]. There were also representations made relating to ground contamination from the Environment Agency (EA) [RR-024], Natural England (NE) [RR-012], local councillors [REP1-074], [REP1-073], other IPs for example [RR-007], [REP1-075] and non-IPs for example [REP1-058], [REP1-059].

3.7.30. Ecological concerns related to the potential presence of UXO are reported in appendix C of this recommendation and concerns in relation to safety and human health from the potential presence of UXO is reported in section 3.12 of this recommendation. Concerns raised in relation to the presence of peat are reported within the climate change section (section 3.5) of this recommendation.

3.7.31. The main issues related to ground conditions considered within the examination were:

- BMV agricultural land
- ground contamination including mitigation measures for known and unexpected contamination
- contamination risk of the BESS

BMV agricultural land

3.7.32. CWCC stated in its LIR [REP1-046] that the local policy position (Policy DM52 of LP2, provides that it should be demonstrated that there were no suitable sites on previously developed land, and then to avoid BMV land. CWCC noted that the Skylark Mitigation Area (SMA), last in arable use, was not included in the survey area for the proposed development. CWCC stated that given the works to the SMA would be for habitat creation, it is unlikely that there would be a permanent loss or damage to BMV were this to be Grade 3a of above. Similarly, CWCC stated that Cell 3 was last used for grazing and as part of the habitat mitigation for Frodsham Wind Farm and was not included in the survey area either, but CWCC concluded it would be very unlikely that this area would be BMV given the history of issues with managing thistle growth to maintain the short sward grassland for the habitat mitigation.

3.7.33. NE [RR-037] stated it was satisfied with the information provided by the applicant [APP-048] regarding the ALC, which set out that the land within the site is a mixture of Grade 3b and Grade 4 land. NE confirmed it had no concerns with regards to loss of BMV agricultural land.

3.7.34. The applicant confirmed [REP2-003] that impacts on agricultural land soils were scoped out from the EIA as the agricultural land quality across the site of the proposed development is limited by soil wetness to Grade 3b and Grade 4 and that the land would not comprise BMV land.

ExA's considerations

3.7.35. The ExA has considered the representations from the applicant, CWCC and NE and concludes from the information presented it is unlikely there would be permanent loss or damage to BMV from the proposed development. The ExA considers that the proposed development is in accordance with NPS EN-1 regarding the consideration of BMV.

Ground contamination including mitigation measures for known and unexpected contamination

3.7.36. The representations from a non-IP [REP1-058], [REP1-059], an IP [RR-007], [REP1-075] and several local councillors [REP1-073], [REP1-074] raised concerns about the acceptability of the ground investigations and conclusions reached by the applicant, especially regarding risks from historic landfill deposits within the site of the proposed development.

3.7.37. In its responses [REP1-032], [REP3-041], the applicant stated that it had relied on desk-based research and site-specific investigation data which was reported at appendix 10-1 [APP-096]. This included detailed analysis of historic mapping and regulatory and environmental records as well as the review of previous site investigations and project-specific ground investigations and chemical testing to inform the ES.

3.7.38. These concerns were examined at issue specific hearing (ISH) 2 [EV10-018], where extensive further representations were made by Cllr. Sumner [REP4-078]. Concerns centred around potential risks from the historic disposal of industrial waste of unknown composition in lagoons across the site of the proposed development, coupled with poor recording of disposal practices on formal historic landfill registers. Cllr. Sumner opined that the ES assessment did not adequately characterise the baseline as the boreholes used to identify contaminants were too shallow and located at the edges of historic lagoons, rather than more centrally, and so may not have obtained representative samples. Cllr. Sumner advocated that a more thorough ground investigation should be undertaken, in more locations, to greater depths and testing should be carried out for a wider range of potential contaminants.

3.7.39. The applicant responded to questioning by the ExA on these matters at ISH2 [EV10-018], [REP4-057], explaining that as part of the ES assessment [APP-096] and [APP-097] a detailed review of historical mapping, mapped geology and environmental records had been undertaken along with consultation with CWCC. A detailed review of two previous phases of site investigation works relating to the Frodsham Wind Farm undertaken in 2014 and 2015 had been reviewed, along with more recent investigation works in 2024 within Cell 3 and in 2025 within the areas of the proposed BESS. The applicant confirmed a total of 66 site investigation entries had been reviewed across the site of the proposed development, which cumulatively provided sufficient spatial coverage to allow the detailed characterisation of ground conditions. The applicant contended that given the homogenous nature of the dredging deposits significant differences in ground conditions to those already characterised were not expected.

3.7.40. The ExA issued the applicant with action point (AP) 43 [EV10-024] to provide further information for the chemicals of concern by IPs. The information requested for each chemical was its potential toxicity, risk to human health and the environment and testing which had already been undertaken and that planned for the future.

3.7.41. The applicant responded providing a summary of this information at appendix D [REP4-055] for arsenic, vinyl chloride and carbon tetrachloride. The applicant confirmed that whilst arsenic was included as part of general test suites for the dredging deposits and natural soils within the wildfowlers area, it had not been identified as a potential contaminant of concern from the Stage I Desk Study and no specific sources of arsenic contamination had been identified. For vinyl chloride, the applicant confirmed that no potential sources of vinyl chloride had been identified on the site of the proposed development throughout the assessment undertaken to date and that concentrations of vinyl chloride within soils had been confirmed to be below

analytical detection limits and therefore below the human health generic assessment criteria (GAC). For carbon tetrachloride, the applicant confirmed that concentrations within soils were mostly below analytical detection limits and significantly below the human health GACs.

3.7.42. Cllr. Sumner stated [REP4-078] that the DCO should secure appropriate safeguards such as procedures for managing unexpected contamination, stop-work triggers, regulatory notification requirements, appropriate soil management and waste handling protocols and consideration of long-term groundwater and surface water monitoring.

3.7.43. Likewise, the EA [REP5-052] considered that a precautionary approach should be taken, stating assessments of ground conditions had established that some contamination exists that would require treatment to break the source-pathway-receptor linkages. The EA noted [REP5-052]:

- The applicant had acknowledged the need for further risk assessment at the detailed design stage in ES appendix 10-2 [APP-098], including detailed ground investigation, risk assessment, and production of a remediation strategy, to confirm the appropriate remedial methodology.
- The approach adopted by the applicant of conducting a site investigation and then following it up with additional assessments where necessary, was a typical approach to dealing with land contamination.
- The requirements within the dDCO [REP7-003] would ensure that the additional assessments committed by the applicant to be undertaken post-consent would be completed prior to development.
- Having reviewed appendix D of the applicant's responses to ISH2 [REP4-055], the EA was reassured that further testing would be undertaken across the site and that these works would be subject to approval by the EA.

3.7.44. The EA provided wording for an unexpected contamination protocol in its RR (issue EA004) [RR-024]. The applicant confirmed [REP7-029] it had included the wording proposed by the EA in table 5-5 of the (oCEMP) [REP7-017]. CWCC [REP4-074] also confirmed it would prefer to see a specific requirement in the DCO for unexpected contamination, but confirmed it was content with wording in the control documents if that would provide sufficient certainty.

3.7.45. At deadline (DL) 5, the EA [REP5-052] acknowledged that an unexpected contamination protocol would be included in the CEMP, and there was specific security for the delivery of the protocol pursuant to requirement 12(2)(c) of the dDCO [REP7-003] for which the EA is a named consultee. The EA confirmed satisfaction with this arrangement.

3.7.46. CWCC [REP4-074] confirmed that the investigation into ground conditions was satisfactory at this stage and confirmed that the types of contamination present and mitigation measured proposed were within the normal experience of CWCC's Environmental Protection Team.

3.7.47. The final signed Statement of Common Ground (SoCG) between the applicant and the EA [REP7-029] confirmed that all concerns related to ground conditions had been resolved. The final signed SoCG between the applicant and CWCC [REP7-028] confirmed that the methodology and baseline used for the assessment of ground conditions and measures proposed to mitigate impacts in relation to ground conditions and contaminated land were agreed, but remained of the opinion that that DCO should contain a separate requirement for unexpected contamination [REP7-039].

ExA's considerations

3.7.48. The ExA recognises the concerns from IPs regarding the potential for the proposed development to mobilise contaminants, some of which may be unknown at this stage.

3.7.49. The ExA notes the applicant has committed to undertake further detailed ground condition assessments, including testing for contaminants post-consent, and remediation of contamination if required. This is secured through requirements 1 and 17 of the draft Development Consent Order (dDCO) [REP7-003]. Requirement 1 sets out the definition of the ground conditions investigation and assessment strategy, including remediation and verification of contamination. Requirement 17 states that no phase of the development may start until a ground conditions and assessment strategy (including remediation and verification where required) has been submitted to and approved by the planning authority, in consultation with the EA. The response to unexpected contamination would be controlled through the unexpected contamination protocol as part of the detailed CEMP and detailed OEMP. This is secured pursuant to requirement 12(2)(c) and requirement 13(2)(d) of the dDCO [REP7-003]. This issue is reported on in detail as issue 4 within section 7.3 of this recommendation.

3.7.50. The ExA is reassured that the applicant, CWCC and the EA have all stated during the examination that dealing with contamination of this type, including unknown contamination if it were to be found, would be within the experience and expertise of their specialist teams.

3.7.51. The ExA is satisfied the oCEMP [REP7-017] and oOEMP [REP7-019] upon which the detailed CEMP and OEMP would be based, pursuant to requirements 12 and 13 of the dDCO [REP7-003], include adequate commitments for the monitoring of groundwater and surface water, with the scope to be agreed with the EA.

3.7.52. The ExA is satisfied that the commitments made by the applicant within the oCEMP [REP7-017] and the dDCO [REP7-003] would ensure risks from contamination to both human health and the environment would be adequately mitigated.

Contamination risk of the BESS

3.7.53. A particular concern raised by Cllr. Sumner [REP1-074], [REP4-078] centred around the potential for contaminants within the ground to thermally

decompose into toxic substances such as phosgene in the event of a BESS fire, followed by migration within groundwater.

3.7.54. The applicant stated [REP3-041] that following similar concerns raised by Cllr. Sumner at the pre-examination stage, the applicant offered to undertake targeted site investigation works at the BESS compound areas. The investigation briefing note included a comprehensive Volatile Organic Compounds analytical suite comprising 61 target compounds, including vinyl chloride and carbon tetrachloride. The findings were reported at appendix J of appendix 10-1 [APP-096], which concluded:

"The concentrations of contaminants recorded within the underlying soils within the BESS footprint, when compared to corresponding generic assessment criteria, have not been identified as being of a significant risk to future site users. Reported concentrations in samples are very low and do not appear to convey what could be expected from a hazardous landfill or chemicals dump. With heavy industry ongoing within the vicinity of the Manchester Ship Canal, alongside associated canal shipping traffic, the low levels of the contaminants recorded in the dredging materials from the Manchester Ship Canal Dredging Ground Cell 5 during this site investigation are to be expected."

3.7.55. The applicant confirmed [REP3-041] that the potential implications of battery fires had been discussed with an independent battery fire safety advisor. The applicant explained that modern battery unit design, combined with construction on concrete plinths and surrounding stone surfaces, would result in very limited heat transfer to underlying soils. The applicant stated that the Outline Battery Safety Management Plan (oBSMP) [APP-139] set out measures to prevent fires and manage potential impacts, should an incident occur.

3.7.56. In response to concerns that flood risk could exacerbate such interactions, the applicant confirmed [REP3-041] that the BESS compounds would be located entirely within Flood Zone 1 and would not be affected by flooding from either the River Weaver or the River Mersey.

3.7.57. In response to questions at ISH2 [EV10-018], [REP4-057], the applicant confirmed the site investigation undertaken reported at appendix J [APP-097] involved soil samples being collected from 2 boreholes within the footprint of each potential BESS site at depth intervals of 0.5m, 1m, 2m and 3m below ground level. The applicant confirmed that concentrations of any potential contaminants were below the relevant threshold values and, in most cases, were below analytical detection limits. The applicant stated that this demonstrated absence of these contaminants of concern and the absence of a 'source'.

3.7.58. In respect of fire risk being a pathway of releasing chemicals and airborne contaminants, the applicant [REP4-055] submitted that:

- Advice received from a fire safety expert stated that heat transfer would primarily be upward rather than downward [REP4-057].

- In the unlikely event of a BESS fire, external surface temperatures (doors and walls) during a full burn would be less than 200°C when internal temperatures would be greater than 1,200°C.
- In a range of recent BESS designs, full scale fire testing (2023 to 2025), external temperatures generated were typically 4 to 5 times higher at the top of the BESS unit compared to the base of the BESS unit.
- Temperatures recorded at 60mm above the ground on target surfaces at a distance of 2.5m from a BESS unit would register an average temperature of less than 70°C over an 8.5-hour burn.
- The high-level thermal insulation capacity of BESS enclosures would ensure that low level heat emissions would not compromise the structural integrity of concrete or provide any significant prolonged heating of any BESS area ground surface.
- Literature-based values in which thermal decomposition for the identified contaminants of concern may occur would not be achieved in the event of a BESS fire.

3.7.59. The applicant restated [REP4-055] that no source had been identified and even if it were present, there would be no pathway due to absence of sufficient thermal transfer to the ground to achieve thermal decomposition. The EA confirmed [REP5-052] it was satisfied with this response from the applicant and confirmed that the EA would require testing to be undertaken, following any fire that had the potential to impact controlled waters.

3.7.60. CWCC's Environmental Protection Team noted [REP5-046] that commenting on fire risk was not within its remit. However, it stated it understood that heat from a fire would dissipate rapidly with increasing depth given soil is a poor conductor and that potential risks from land contamination to the future development could be addressed through the land contamination requirements.

3.7.61. Cheshire Fire and Rescue Service (CFRS) confirmed in a letter dated 25 March 2026 in appendix 2 of the Outline Battery Safety Management Plan (oBSMP) [REP6-020], that it had no concerns relating to contamination risks and that water would be contained on site. CFRS stated it had no specific concerns at this time regarding the information contained in the applicant's response regarding chemicals that could be a risk to human health. CFRS confirmed it has a specialist Hazardous Material Environmental Protection Officer that would respond to any incident on site and would work closely with partners to control and reduce the risk of any ground or airborne contamination risk.

3.7.62. The EA raised a number of points relating to the design of the BESS and substation compound within appendix B [REP1-050]. At DL4, the EA [REP4-071] recommended the applicant should acknowledge that batteries could cause chemical pollution and present a fire risk if not managed appropriately, which could cause a decrease in water quality if any surface runoff became contaminated. The EA advised the applicant that if a battery storage area was to be provided external to the BESS unit, that it should be impermeable, covered and bunded and that it might be more appropriate to store damaged or end of life batteries within the BESS until they could be removed from site.

3.7.63. The applicant confirmed [REP7-029] that it had responded to the points raised by the EA and had made a number of revisions to the oCEMP [REP7-017], oOEMP [REP7-019] and oDEMP [REP7-021] and the oBSMP [REP6-020], and incorporated all the requests of the EA.

3.7.64. The final signed SoCG between the applicant and CWCC [REP7-028] confirmed that CWCC was in agreement with the applicant regarding the content of the oBSMP [REP6-020]. The final signed SoCG between the applicant and the EA [REP7-029] stated all relevant matters were agreed.

ExA's considerations

3.7.65. The ExA has carefully considered all the representations made within the examination on this issue.

3.7.66. The ExA considers that the detailed BMSP is adequately secured pursuant to requirement 7 of the dDCO [REP7-003] and that its approval process must be by CWCC in conjunction with CFRS, CWCC's own Emergency Planning Team and the EA. This would provide adequate opportunity for oversight by those organisations at the post-consent stage to ensure any residual risk to either human health or the environment was fully mitigated.

3.7.67. The ExA is satisfied that the applicant provided adequate responses to all other raised matters.

CONCLUSIONS

3.7.68. The ExA is satisfied that the applicant's assessment considers all relevant potential environmental impacts in respect of ground conditions during the construction, operation and decommissioning phases of the proposed development, alone and cumulatively with other plans and projects.

3.7.69. The ExA considers that the applicant's monitoring plans for known and unexpected contamination are sufficiently outlined in the oCEMP [REP7-017], oOEMP [REP7-019], oDEMP [REP7-021] and the oBSMP [REP6-020] and are appropriately secured in requirements 1, 7, 12, 13 and 17 of the dDCO [REP7-003].

3.7.70. The ExA is satisfied with the information provided in the ES regarding ALC, and the proposed development would meet the tests in NPS EN-1 regarding BMV agricultural land.

3.7.71. The ExA finds the proposed development's potential impacts on receptors in relation to ground conditions would be mitigated as far as possible and managed through measures and commitments in ES chapter 10, the oCEMP [REP7-017], oOEMP [REP7-019], oDEMP [REP7-021] and the oBSMP [REP6-020], secured by relevant requirements of the dDCO [REP7-003].

3.7.72. The ExA is satisfied that the proposed development would be in accordance with NPS EN-1 and NPS EN-3, the relevant policies in LP2 and all other relevant legislation and policy, and that there are no other important and relevant considerations.

3.7.73. Given the conclusions above, the ExA considers that the identified effects regarding ground conditions from the proposed development carry would not weigh for or against the case for development consent.

3.8. TRAFFIC AND TRANSPORT

INTRODUCTION

3.8.1. This section considers the traffic and transport effects of the proposed development.

POLICY BACKGROUND

3.8.2. The Overarching National Policy Statement for Energy (NPS EN-1) paragraphs 5.14.5 to 5.14.17 outline that the applicant's assessment should assess effects on traffic and transport and that if a project is likely to have significant transport implications, then the applicant's Environmental Statement (ES) should include a transport appraisal. It states that disturbance caused by traffic and abnormal loads during the construction phase will depend on the scale and type of the proposal and requires the applicant to prepare a travel plan including demand management and monitoring measures to mitigate transport impacts. Where a proposed development is expected to affect the strategic road network (SRN) or have an impact on the local road network, applicants should consult with National Highways (NH) and highways authorities who are statutory consultees on Nationally Significant Infrastructure Project (NSIP) applications.

3.8.3. NPS EN-1 paragraph 5.14.21 states that the Secretary of State (SoS) should only consider refusing development on highways grounds if there would be an unacceptable impact on highway safety, residual severe cumulative impacts on the road network or it does not show how consideration has been given to the provision of adequate active public or shared transport access and provision.

3.8.4. The National Policy Statement for Renewable Energy Infrastructure (NPS EN-3) paragraphs 2.10.35 to 2.10.39 provide that applicants should consider the suitability of the access routes to the proposed site for both the construction and operation of the solar farm and that applications should include an assessment of effects of the full extent of the access routes necessary for operation and maintenance.

3.8.5. NPS EN-3 paragraphs 2.10.123 to 2.10.125 provide policies regarding choice of travel route for materials to be used on site, that applicants should assess the worst-case impact of additional vehicles on the likely potential routes and should ensure all sections of roads and bridges on the proposed delivery route can accommodate the weight and volume of the loads and width of vehicles.

3.8.6. NPS EN-3 paragraphs 2.10.139 and 2.10.140 provide that the SoS may impose requirements to control the number of vehicle movements to and from the solar farm site in a specified period during its construction and,

possibly, on the routeing of such movements particularly by heavy vehicles if the local highway authority suggests it is necessary.

3.8.7. NPS EN-3 paragraph 2.10.126 states that applicants should include a cumulative transport assessment as part of the ES. In terms of mitigating impacts, paragraph 2.10.141 states that it may be appropriate for applicants for various projects to work together to ensure that the number of abnormal loads and deliveries are minimised, and the timings of deliveries are managed and coordinated to ensure that disruption to residents and other highway users is reasonably minimised.

3.8.8. The National Planning Policy Framework (NPPF) paragraph 115 requires proposals to ensure that sustainable transport modes are prioritised, that safe and suitable access can be achieved and that significant impacts can be adequately mitigated. Paragraph 116 states that development should only be refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network, following mitigation, would be severe.

3.8.9. The Local Impact Report (LIR) submitted by Cheshire West and Chester Council (CWCC) [REP1-046] referred to various development plan policies. Local development plan policies relevant to the proposed development are set out at appendix A of this recommendation. The following policies are of particular note to traffic and transport:

- Policy STRAT10 Transport and accessibility from the Cheshire West and Chester Local Plan Part One (2015) (LP1).
- Policy T5 Parking and access from the Cheshire West and Chester Local Plan Part Two (2019) (LP2).

THE APPLICATION

3.8.10. Traffic and transport matters were scoped out of the Environmental Impact Assessment (EIA) and so therefore are not reported in the Environmental Statement (ES). Instead, the applicant's case in relation to traffic and transport was set out in the following documents:

- Transport Assessment (TA) [APP-134]
- Appendix 6-9 of the ES Effects on M56 Users [APP-072]

The following document was also relevant:

- Outline Construction Traffic Management Plan [APP-135]

BASELINE

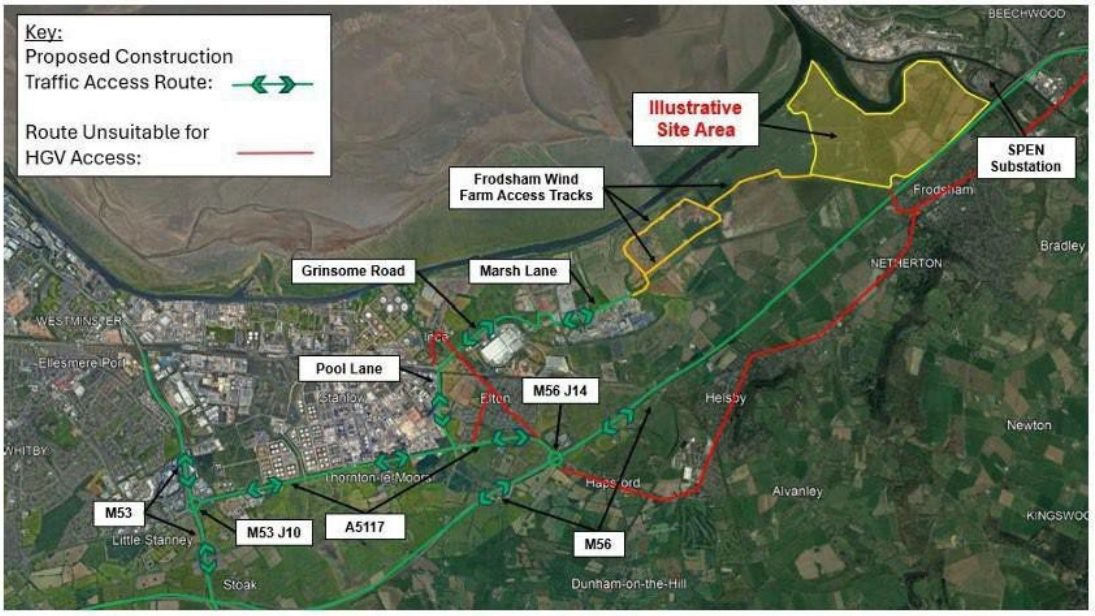
3.8.11. Baseline traffic counts were undertaken in March 2024 at key network locations. They were summarised in section 6.2 of the TA [APP-134], with the full count data provided in appendices E and F. Recorded traffic flows were summarised in figures 1, 2, 3 and 4 and table 6.1. The assessment used a future baseline year of 2028, described in section 6.4.

CONSTRUCTION PHASE

3.8.12. During construction, vehicular access to the site of the proposed development would be via Marsh Lane [APP-134], utilising the existing network of access tracks which were created as part of the Frodsham Wind Farm development. Access to Marsh Lane from the adopted highway network would be from Pool Lane via private access roads, principally Grinsome Road. Pool Lane would provide access via the A5117 to Junction 14 of the M56 and Junction 10 of the M53, as indicated in figure 13 below.

3.8.13. Access to the Frodsham SPEN Substation during construction of the grid connection would be from Junction 12 of the M56 via the A557 and A56 and then using the existing Frodsham SPEN Substation access road. The TA [APP-134] stated that these highway links were scoped out of detailed assessment due to the minimal level of traffic generation associated with the grid connection works.

Figure 13: Indicative construction traffic routing plan



Source: Image 4.1 from the oCTMP [REP7-015]

3.8.14. The construction programme would commence in early 2028 and last for 30 months, with a peak period for construction traffic of approximately 18 months [APP-134]. In total, the applicant forecast approximately 126 two-way movements per weekday on average throughout the construction period, increasing to approximately 190 two-way movements per day on average during peak activity. This was inclusive of delivery related movements and staff trips. The peak number of construction trips would be expected to occur in month 12, when there would be approximately 284 two-way trips on weekdays and 142 two-way trips on Saturdays. The anticipated heavy good vehicle (HGV) traffic generation was summarised in section 5.2 of the TA [APP-134].

3.8.15. The TA [APP-134] assumed that a significant number of staff would car share with an average occupancy of 2 people per vehicle for construction staff trips. It was stated that this could be further reduced through the provision of staff minibuses during peak periods of construction activity, but the assessment did not rely on this.

3.8.16. Section 6.8 concluded [APP-134] that across the adopted highway network, even during the peak of the construction phase, the impact of the proposed development would be low. The impact of traffic associated with the proposed development at the key junctions within the study area was also found not to be significant. On the basis of these findings, the applicant considered that it was not necessary to undertake any further detailed junction capacity modelling.

3.8.17. The TA [APP-134] concluded that the most recently available 5-year period (2018 to 2022) of road safety records for the local highway network, indicated that there were no existing highway safety issues that could be worsened by the proposed development. The proposed access route for construction traffic as far as Marsh Lane, would comprise roads with a carriageway width of at least 6m, capable of facilitating two-way movement of HGVs. The TA confirms that roads leading to the site of the proposed development could all accommodate HGVs.

3.8.18. An assessment of cumulative impacts was undertaken to take into account a number of committed developments which could potentially create additional traffic during the construction phase [APP-134], [APP-046]. These included the development of the Protos site, the expansion of the existing Encirc factory, and a number of strands of the HyNet North West scheme. The assessment indicated that the cumulative impacts of all committed schemes would be significant with regard to both environmental effects and the operation of the highway network. This was based on the assumption that traffic associated with the respective construction phases of the HyNet North West Scheme would coincide with that of the proposed development, which the applicant deemed unlikely.

3.8.19. If this occurred the applicant concluded [APP-134] that the impact of cumulative development traffic would result in large increases in the number of HGV trips on the local highway network. However, the forecast cumulative total number of HGV movements in the 2028 assessment year, including traffic associated with the proposed development, would be significantly below the agreed daily cap on HGV movements attached to the Protos site. In the worst-case concurrent scenario, the combined cumulative traffic flows would be highly unlikely to result in any queue extending back onto the M56 or M53 motorways. If cumulative effects were to occur, the applicant stated the proportion of the total cumulative impact that would be a direct result of the proposed development would be minimal.

3.8.20. The applicant concluded there would be no severe cumulative impacts on the road network from the proposed development and no unacceptable impact on highway safety.

3.8.21. The impact of construction traffic would be mitigated through measures outlined in the outline Construction Traffic Management Plan (oCTMP) [APP-135], which included measures to encourage staff car sharing and the provision of minibuses from nearby transport hubs.

OPERATIONAL PHASE

3.8.22. Proposed mitigation measures for traffic and transport impacts during the operational phase were summarised in table 5-8 of the outline Operational Environmental Management Plan (oOEMP) [APP-137]. These would include routing traffic to avoid passing through the urban residential areas of Frodsham, Ince or Elton. To mitigate impacts on users of Public Rights of Way (PRoW), a final PRoW Management Plan would be developed prior to the start of construction setting out measures to maintain safety. Requirement 15 in the dDCO [APP-015] stated that the PRoW Management Plan must be approved by the relevant planning authority, in consultation with the relevant highway authority and NH.

3.8.23. The operational phase of the proposed development would generate a low number of trips from staff vehicles, a small number of delivery and service vehicle trips, and occasional access by HGVs during replacement of items for general maintenance activities and for any periodic replacements [APP-134]. Therefore, there was not expected to be any significant effect upon the highway. Once operational, trips to the site of the proposed development would comprise a maximum of 20 two-way movements per day during periods of routine maintenance, comprising cars and light goods vehicles and vans. There would be no regular HGV movements during the operational phase, only occasional visits.

OTHER CONSIDERATIONS

3.8.24. The applicant considered that decommissioning activities would generate a level of vehicular traffic in line with or less than the construction phase [APP-134], but that it was not possible for traffic and transport baseline conditions at that future stage to be robustly understood at present.

ISSUES CONSIDERED DURING THE EXAMINATION

3.8.25. CWCC raised a number of concerns related to the applicant's TA [APP-134] in its relevant representation (RR) [RR-037], written representation (WR) [REP1-048] and its LIR [REP1-046]. CWCC stated [RR-037] that it deferred to NH for issues relating to the SRN. CWCC's main concerns regarded a lack of assessment of possible traffic impacts from major replacements during the operational phase.

3.8.26. CWCC's [RR-037] concerns regarding temporary closures of PRoW, condition surveys and effects on waterborne traffic using the River Weaver are reported on in section 3.10 of this recommendation.

3.8.27. NH's initial concerns regarding possible impacts on the SRN were presented in its RR [RR-031] and WR [REP1-055].

3.8.28. The signed statement of common ground (SoCG) between the applicant and NH at the close of the examination [REP7-030] stated that all matters were agreed including:

- approach to the TA [APP-134]
- the approach to management of cumulative construction impacts
- conclusions for impacts of the proposed development alone
- conclusions in respect of the operational and decommissioning periods
- conclusions in respect of glint and glare to users of the M56
- applicant's commitment to engage with NH on abnormal movement loads
- the content of the oCTMP [REP7-015]

3.8.29. The signed SoCG between the applicant and CWCC at the close of the examination [REP7-028] stated all matters in relation to transport and highways were agreed, with the exception of the applicant's oCTMP [REP4-024] but that resolution was likely with the applicant's deadline 7 submission.

3.8.30. The issues considered within the examination which are reported on further below are:

- access over bridges
- the Frodsham SPEN Substation
- content of the oCTMP

Access over bridges

3.8.31. There are two bridged crossings over the M56 into and towards the Order land, named the Weaver Lane Bridge and Brook Furlong Bridge respectively. The applicant proposed using these bridges as part of the recreational enhancement measures such as enabling motor vehicles to access a purpose-built car park as a way of providing access to PRoW and enabling horses to cross. There was also an intention for the bridges to be used by the emergency services, particularly fire appliances, to access the proposed development. NH raised concern [RR-031] [REP1-055] about the potential future use of these bridges in the way that the applicant proposed.

3.8.32. NH raised concern [RR-031], [REP1-055] that the bridges over the SRN which are both assets of NH might not be suitable for repurposing. NH stated that an assessment would need to be undertaken to ensure that the bridges would be safe and structurally sound to accommodate the proposed usage, in accordance with the Design Manual for Roads and Bridges (DMRB) CS 454 (Assessment of Highway Bridges and Structures) and, where necessary, follow the technical approval process in DMRB CG 300 (Technical Approval of Highway Structures). Without these assessments, NH opined that neither it nor the applicant could assume the bridges would not represent a safety risk to users of the SRN [REP3-049].

3.8.33. The applicant responded to action point (AP)12 [REP4-055] from issue specific hearing (ISH) 2 that it did not propose to carry out condition surveys during the examination, but that the protective provisions for NH on the face

of the dDCO had been amended to provide for condition surveys to be carried out in the future, if necessary.

3.8.34. NH considered [REP4-070] that in the absence of the dDCO expressly specifying the emergency routes, the fire service would use the route which gained them the quickest and easiest access to the site. If this access was via either Brook Furlong Bridge or Weaver Lane Bridge, NH needed the appropriate work to have been undertaken to ensure the safety of the travelling public on the SRN beneath the bridge.

3.8.35. Cheshire Fire and Rescue Service (CFRS) clarified in a letter dated 17 April 2026 in appendix 2 of the outline battery safety management plan (oBSMP) [REP6-020] that it was content that access could be taken via Marsh Lane, and that there was no requirement for access from the public highway network, such as the bridges over the M56.

3.8.36. The applicant updated the examination [REP5-041] to say that paragraph 2.2.3 of the oOEMP [REP7-019] had been revised to include reference to the need for NH approval for any future use of the bridges over the M56.

3.8.37. The signed SoCG between NH and the applicant at the close of the examination [REP7-030] stated that as CFRS did not consider the use of either Brook Furlong Bridge and Weaver Lane Bridge was required in the event of a fire at the proposed BESS, NH did not require condition surveys of the bridges prior to the decision on the DCO. However, to cater for any future change in CFRS's position, the protective provisions in the dDCO were sufficient and agreed between the parties.

ExA's considerations

3.8.38. The ExA considers that by the close of the examination the applicant and NH had reached a workable solution, as outlined in the SoCG between the applicant and NH [REP7-030]. The ExA therefore considers this matter resolved.

Frodsham SPEN Substation

3.8.39. The Canal and River Trust (CRT) [RR-010] sought clarification whether:

- works to the Frodsham SPEN Substation, in connection with the grid connection, would exceed the level of vehicle use outlined in the TA [APP-134]
- mitigation measures and management of construction traffic would also apply to the access track to the Frodsham SPEN Substation
- there would be an increase in use of the Frodsham SPEN Substation access track and Sutton Swing Bridge (owned and managed by the CRT)
- there would be any implications on the stability of the embankment of the Weaver Navigation
- any indivisible abnormal load vehicles might need to cross the Sutton Swing Bridge

3.8.40. The applicant confirmed [REP1-032] that it did not anticipate the predicted number of vehicles movements on the Frodsham SPEN Substation access track to exceed the level of vehicle use outlined in the TA. Section 4.2 of the oCTMP [REP7-015] set out the anticipated vehicle numbers in section 4.2 and that mitigation measures covering general construction traffic would also apply to the Frodsham SPEN Substation access track.

3.8.41. The applicant revised the oCTMP [REP7-015] to include a commitment to consult with the CRT on the final CTMP prior to it being submitted for approval to the relevant planning authority. The applicant also updated the oCEMP [REP7-017] in line with the CRT's requests [REP5-060], including a request for a minimum of 5 working days' notice of any anticipated increase in construction vehicle numbers.

3.8.42. The CRT made no further submissions to the examination post DL5.

ExA's considerations

3.8.43. The ExA notes that the CRT was added to requirements 11, 12, 14, 17 as requested [REP5-060] to ensure it would be consulted on the development of the specific documents. The ExA also notes the applicant amended the oCTMP [REP7-017] paragraph 4.2.6 in line with the CRT's request. The ExA therefore considers these issues resolved.

Content of the oCTMP

3.8.44. CWCC stated in its RR [RR-037] that a travel plan (as required under paragraph 5.14.7 of NPS EN-1) was referred to in the oCTMP [APP-135] but had not been submitted into the examination.

3.8.45. The applicant responded [PD2-027] that outline measures relating to staff sustainable travel considerations were set out in section 4.4 of the oCTMP [APP-135], which provided the basis of what would be included within a full construction staff travel plan, and covered the requirements set out in the bullet points in para 5.14.7 of EN-1.

3.8.46. CWCC raised a concern [RR-037] that parking of contractors' vehicles on accesses surrounding the site of the proposed development was liable to be a source of potential complaint, and appropriate provisions for all contractor related parking should be set out in the full CTMP. The applicant responded [PD2-027] that section 4.3 of the oCTMP [APP-135] described the construction staff parking arrangements and that no construction traffic would be parked outside of the site. The applicant explained that parking would be managed and monitored by the site manager and that CWCC would be able to consider the details of this via its approval of the final CTMP pursuant to requirement 14 of the dDCO [REP7-003].

3.8.47. CWCC [REP5-048] sought a minor amendment to the route through Frodsham requesting it should state it was unsuitable for all construction traffic not just HGVs.

3.8.48. The signed SoCG between the applicant and CWCC at the close of the examination [REP7-028] stated all matters in relation to transport and highways were agreed, with the exception of the applicant's oCTMP [REP4-024] in relation to concerns that construction related vehicles including workers' vehicles might access the site of the proposed development via the route along the A56 through Frodsham and via Brook Furlong or Weaver Lane. The applicant confirmed [REP7-028] that while HGV access would be restricted from travelling along the A56 via Frodsham, cars and minibuses had not been excluded as operatives may be living or be accommodated in premises along the A56. However, the applicant confirmed [REP7-028] that paragraph 4.1.3 of the oCTMP [REP7-015] had been updated at DL7 to confirm that no vehicles, HGVs or staff transport, would be permitted to access the site of the proposed development via Brook Furlong or Weaver Lane bridges over the M56.

ExA's considerations

3.8.49. The ExA notes that the oCTMP [REP7-015] included a commitment to prepare a full staff travel plan as part of the final CTMP once the composition of the construction workforce was known. The ExA considers that as requirement 14(2) of the dDCO [REP7-003] set out that the final detailed CTMP must include a construction travel plan, which must be substantially in accordance with section 4.4 of the oCTMP, this meets the policy requirements of NPS EN-1. The ExA is reassured by the commitments made by the applicant within the oCTMP [REP7-015] regarding contractor parking and restrictions for construction vehicles including both HGVs and staff transport via Brook Furlong or Weaver Lane. The ExA notes that as CWCC is required to approve the final CTMP, it would have sufficient oversight to ensure the commitments made were fully adopted in the final version. The ExA therefore considers these issues satisfactorily resolved.

CONCLUSIONS

3.8.50. The ExA examined all assessments submitted by the applicant and considered all the issues raised by IPs during the examination related to traffic and transport.

3.8.51. The ExA is satisfied that the applicant's assessment considers all relevant potential environmental impacts in respect of traffic and transport during the construction, operation and decommissioning phases of the proposed development alone and cumulatively with other plans and projects.

3.8.52. The ExA is satisfied that the proposed development is in accordance with NPS EN-1 and NPS EN-3 and all other relevant legislation and policy, and there are no other important considerations.

3.8.53. The ExA finds the proposed development's potential impacts on receptors in relation to traffic and transport would be mitigated as far as possible and managed through measures and commitments in the oOEMP [REP7-019] and the oCTMP [REP7-015], which are secured by requirements 13 and 14 respectively of the dDCO [REP7-003].

3.8.54. Given the conclusions above, the ExA considers that the identified effects on traffic and transport would not weigh for or against the case for development consent.

3.9. HISTORIC ENVIRONMENT

INTRODUCTION

3.9.1. This section considers the effects of the proposed development on the historic environment including designated and undesignated heritage assets, listed buildings, conservation areas and archaeology. The heritage planning balance is undertaken at chapter 5 of this recommendation.

POLICY BACKGROUND

3.9.2. Section 5.9 of the Overarching National Policy Statement for Energy (NPS EN-1) relates to the historic environment. Paragraphs of particular note in relation to this application are identified below.

3.9.3. Paragraph 5.9.9 states the applicant should undertake an assessment of any likely significant heritage impacts of the proposed development and describe these along with how the mitigation hierarchy has been applied in the ES. Paragraph 5.9.10 requires the level of detail provided by the applicant to be proportionate to the importance of the heritage assets and no more than is sufficient to understand the potential impact upon significance. Paragraph 5.9.12 states that the applicant should ensure that the extent of the impacts can be adequately understood from the application and supporting documents.

3.9.4. NPS EN-1 states that the ability to record evidence of an asset should not be a factor in deciding whether a loss should be permitted and whether consent should be given. However, where the loss of the whole or part of a heritage asset's significance is justified, the Secretary of State (SoS) will require the applicant to record and advance the understanding of the significance of the heritage asset before it is lost, whether wholly or in part (paragraphs 5.9.16 and 5.9.17).

3.9.5. Paragraph 5.9.13 states that the applicant is encouraged, where opportunities exist, to prepare proposals which can make a positive contribution to the historic environment, and to consider how its scheme takes account of the significance of heritage assets affected. Paragraph 5.9.15 states that applicants should look for opportunities for new development within the setting of heritage assets to enhance or better reveal their significance.

3.9.6. NPS EN-1 paragraph 5.9.21 states that where there is a high probability (based on an adequate assessment) that a development site may include as yet undiscovered heritage assets with archaeological interest, the SoS will consider requirements to ensure appropriate procedures are in place for the identification and treatment of such assets discovered during construction.

3.9.7. NPS EN-1 paragraph 5.9.23 states that the SoS must comply with the requirements set out in the Infrastructure Planning (Decisions) Regulations 2010. Regulation 3 requires the SoS to have regard to desirability of: preserving a listed building or its setting or any features of special architectural or historic interest which it possesses; preserving or enhancing the character or appearance of a conservation area; and preserving an affected scheduled monument or its setting.

3.9.8. The National Policy Statement for Renewable Energy Infrastructure (NPS EN-3) reflects the policies contained within EN-1. In addition, paragraph 2.10.117 states that applicants should consider what steps can be taken to ensure heritage assets are conserved in a manner appropriate to their significance, including the impact of proposals on views important to their setting. Paragraph 2.10.118 states that the significance of a heritage asset derives not only from its physical presence but also from its setting. Careful consideration should be given to the impact of large-scale solar farms which, depending on their scale, design, and prominence, may cause substantial harm to the significance of the asset.

3.9.9. NPS EN-3 also states that the SoS should consider the length of time for which consent is sought when considering the impacts of any indirect effect on the historic environment, such as effects on the setting of designated heritage assets (paragraph 2.10.160).

3.9.10. The National Planning Policy Framework (NPPF) states that when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation. Where a development proposal would lead to less than substantial harm to the significance of a designated heritage asset, the harm should be weighed against the public benefits of the proposal. In weighing applications that directly or indirectly affect non-designated heritage assets, a balanced judgement will be required having regard to the scale of any harm or loss and the significance of the heritage asset (paragraphs 214 to 216).

3.9.11. Paragraph 218 states that developers should record and advance the understanding of the significance of any heritage assets to be lost (wholly or in part) in a manner proportionate to their importance and the impact, but that the ability to record evidence of our past should not be a factor in deciding whether such loss should be permitted.

3.9.12. A draft revised NPPF (dNPPF) was published for consultation in December 2025, and a final version had not been published by the close of the examination. Whilst the dNPPF does not fundamentally alter the approach in the NPPF in respect of assessing and managing harm to heritage assets, the draft policy has been refined in a number of ways, including in respect of proposals that preserve or enhance significance of heritage assets.

3.9.13. Cheshire West and Chester Council (CWCC) identify several policies from its Local Plan Part One (2015) (LP1) and from Local Plan Part Two (2019) (LP2) in its LIR [REP1-046]. Amongst those include policies ENV5 and ENV7 from LP1, and DM46, DM48 and DM49 of LP2.

3.9.14. In respect of archaeology, LP2 Policy DM50 says that development proposals will need to take into account the significance of the heritage asset and its setting, and the scale of any loss or harm.

3.9.15. The Infrastructure Planning (Decisions) Regulations 2010 are also relevant to this topic. These state that when deciding an application which affects a listed building or its setting, the decision-maker must have regard to the desirability of preserving the listed building or its setting or any features of special architectural or historic interest which it possesses. In addition, when deciding an application relating to a conservation area, the decision-maker must have regard to the desirability of preserving or enhancing the character or appearance of that area.

THE APPLICATION

3.9.16. The applicant's assessment in respect of the historic environment is set out in the following documents:

- Environmental Statement (ES) Chapter 11 Cultural Heritage [APP-044]
- ES Chapter 11 Figures [APP-123]
- ES Appendix 11-1 Cultural Heritage Baseline [APP-099]
- ES Appendix 11-2 Gazetteer of Heritage Assets and Events [APP-100]
- ES Appendix 11-3 Historic Map Extracts and LiDAR Data [APP-101]
- ES Appendix 11-4 Photographic Plates [APP-102]
- ES Appendix 11-5 Setting Assessment [APP-103]
- ES Appendix 11-6 Policy Tables [APP-104]
- Statutory and Non-Statutory Sites or Features of the Historic Environment Plans [AS-011]
- Outline Written Scheme of Investigation (oWSI) [AS-029]

BASELINE

3.9.17. The assessment [APP-044] considered the potential for significant effects on archaeological and cultural heritage assets resulting from the proposed development. Study areas were identified as:

- the Order land, to assess potential direct and indirect effects
- a 1km radius from the Order land covering all known heritage assets, including an assessment of potential effects on the setting of upstanding non-designated assets (for example earthworks) within this area and a review of previous archaeological interventions to help predict whether unknown archaeological remains are likely to survive within the Order limits
- a 3km radius from the Order land, including an assessment of potential effects on the settings of all designated heritage assets within this area
- a 5km radius from the Order land, including an assessment of potential effects on the settings of designated heritage assets of the highest significance within that area – specifically scheduled monuments, Grade I and II* listed buildings, Grade I and II* registered parks and gardens, and Registered Battlefields

3.9.18. The applicant explained [APP-044 and APP-099] that information from Historic England (HE), the Cheshire Historic Environment Record, the Ordnance Survey, Cheshire Archives, the Chester Image Bank, the Environment Agency, and the British Geological Survey, along with aerial photography and other published and open-access data sources, had been used in its assessment. A walkover survey of the site was undertaken, site visits to designated assets were carried out, and a detailed zone of theoretical visibility was established to identify the intervisibility of the proposed development and assets.

3.9.19. With reference to NPS EN-1, NPS EN-3, the NPPF and relevant guidance, including from HE, the assessment established the importance of heritage assets and the relative sensitivity of the assets to change, taking account of matters such as the ability of setting to contribute to the understanding, appreciation, and experience of the asset. The assessment of the magnitude of the potential impacts of the proposed development and the judgement made regarding the level of effect took account of each asset's importance and sensitivity to change. Professional judgement was used to establish which effects were deemed to be significant. A cumulative assessment was also undertaken.

3.9.20. The applicant considered that only those effects identified as ‘significant’ had the potential to cause, in the terms used in the NPPF, ‘substantial’ harm. Where no significant effect was found, the harm was considered to be ‘less than substantial’, or potentially not harmful at all. The assessment of the level of harm was qualitative and largely depended upon whether the effects would result in a major impediment to the ability to understand or appreciate the heritage asset in question by reducing or removing its information content and therefore reducing its cultural significance.

3.9.21. Notwithstanding non-designated heritage assets associated with the Manchester Ship Canal (discussed below), ES Chapter 11 said that the only known heritage asset located within the footprint of the works was the site of Grinsome Farm, a non-designated asset which was excavated in advance of development of Frodsham Wind Farm and where the remains of a post-medieval farmhouse, yard and nineteenth century outbuildings were recorded.

3.9.22. The applicant considered it likely that buried peat deposits with the potential for surviving paleoenvironmental evidence could underlie parts of the site, although it said that the extent and state of preservation of the peat was unclear. It noted that the only existing records of prehistoric archaeology from within the 1km study area were several chance finds, including two Bronze Age socketed spearheads which were found on Frodsham Marsh and probably within the site. No Roman remains have been recorded from the site itself.

3.9.23. The applicant referred to attempts to construct flood defences being documented from the fourteenth century onwards but said that the location of any defences was unclear. The applicant also noted the construction of the Manchester Ship Canal in the 1880s and 1890s, together with landing

stages, small buildings, a warehouse, a series of wooden huts, a chimney, and a series of square brick structures which are thought to be drainage or ventilation shafts associated with the canal deposit dumps and which are non-designated heritage assets.

3.9.24. Whilst a number of conservation areas, listed buildings, scheduled monuments and a Grade II Registered Park and Garden were identified, the applicant noted that there were no World Heritage Sites, Grade I or II* Registered Parks and Gardens or Registered Battlefields in the study areas.

CONSTRUCTION PHASE

3.9.25. The applicant said that the proposed development would generally not directly impact upon potential sensitive receptors within its extent due to the assets being no longer extant (for example the findspots of the Bronze Age spearheads), sealed beneath thick overburden that resulted from the deposit of canal dredgings, or because they would be located outside of the works area. It also concluded that there would be no impact on any known surviving recorded remains at the site of Grinsome Farm.

3.9.26. The proposed piles for the solar arrays would have a maximum depth of 5m below ground level and, therefore, the applicant said that there would be no impact upon any potential buried peat deposits as these were at depths of greater than 5m. However, a programme of geoarchaeological investigation in the form of a purposive borehole survey would be undertaken within the southern, central and south-eastern parts of the site to ascertain the depth of preservation of any buried peat and organic deposits and allow for an enhancement of the current levels of knowledge regarding the survival and composition of the peat deposits across the Helsby Marshes. A programme of archaeological investigation would also be undertaken east of Brook Furlong to ascertain the level of preservation of the ridge and furrow across the area, allowing potential impacts to be assessed further, and to mitigate impacts on archaeological remains via their recording and addition to the archaeological record. The exact scope of the investigations and recording would be developed from the oWSI [AS-029], agreed through consultation, and secured by requirement 18 of the draft DCO [APP-015].

3.9.27. The Outline Construction Environmental Management Plan (oCEMP) [APP-136] includes measures to provide for the protection and retention of any ventilation shafts which would not need to be lost or damaged to facilitate the construction and operation of the proposed development. Where demolition would be unavoidable, mitigation would include a programme of recording.

3.9.28. Following mitigation, minor adverse or negligible effects, assessed as being none significant, were predicted from direct impacts on the ventilation shafts, to the sub-surface remains of former ridge and furrow cultivation to the east of Brook Furlong, and to the cells which store material dredged from the Manchester Ship Canal. In each case the level of harm was assessed to be low, apart from the ventilation shafts where the worst case would be total loss of these non-designated assets, albeit the effect would still be minor adverse and not significant.

3.9.29. The applicant considered the potential for temporary effects on the setting of designated heritage assets during the construction phase as a result of increased traffic, noise and visual impacts and concluded [APP-103] that there would be no, or temporary neutral, effects.

OPERATIONAL PHASE

3.9.30. Once operational, the proposed development would not require any below-ground works beyond occasional maintenance of the solar panels and other infrastructure within the previously impacted footprint and, therefore, no additional direct impacts would be expected. Historic field boundaries would be retained as part of the landscaping scheme, described in the Outline Landscape and Ecology Management Plan (oLEMP) [APP-144].

3.9.31. Minor adverse effects were predicted on the settings of the following assets during the operational phase:

- the Promontory Fort on Helsby Hill, a Scheduled Monument
- the Grade II listed Frodsham Hill War Memorial
- Frodsham Conservation Area
- Castle Park (Frodsham) Conservation Area and the Castle Park Grade II Listed Registered Park and Garden
- Overton, St Lawrence's (Frodsham) Conservation Area

3.9.32. In each case the effects were considered to be not significant and at the lower end of the scale of less than substantial harm.

3.9.33. The applicant considered that there would be no or neutral (and therefore not significant) effects upon the settings of other designated heritage assets during the operational phase and that these effects would not result in harm.

DECOMMISSIONING PHASE

3.9.34. All elements of the proposed development's infrastructure would be removed using similar methods to those used during their construction and therefore decommissioning would not result in direct impacts upon any buried archaeological remains, or on any deposits or features beyond the existing footprint of the proposed development.

3.9.35. Effects on the settings of heritage assets during the decommissioning phase would be temporary, likely to be of a shorter duration than the construction phase effects and would not result in greater effects than those predicted for the construction and operational phases.

3.9.36. Upon completion of the decommissioning, the setting of assets affected during the operational phase would be restored to the current baseline condition with the exception of any elements of the proposed green infrastructure that would be left in place.

CUMULATIVE EFFECTS

3.9.37. No significant cumulative effects or harm were identified.

3.9.38. The National Trust [RR-002] said that its interest principally related to Helsby Hill, the summit of which includes an Iron Age hillfort which is a Scheduled Monument, and that it wished to ensure that the landscape and visual impacts of the proposal, notably when considered cumulatively with existing energy infrastructure, were fully taken into account when balancing the benefits of the proposal to carbon reduction. Similarly, whilst a number of IPs made comments in relation to the impact of the proposed development on views from Frodsham Hill and Helsby Hill, they did not raise concerns in respect of any designated heritage assets. Therefore, those representations are discussed in section 3.6 of this recommendation which relates to landscape and visual effects.

3.9.39. HE said [RR-033] that the applicant's assessment of the effects of the proposed development on the historic environment had been carried out in accordance with current best practice and had fully identified the extent and nature of potential impacts, noting that the impact on the settings of designated heritage assets within the defined study area would be negligible. It said that there would be a limited impact on the settings of the scheduled Promontory Fort on Helsby Hill, the Grade II listed Frodsham Hill War Memorial, and three conservation areas.

3.9.40. HE noted that the site of the proposed development is an area of low-lying marginal land adjacent to the River Mersey which is unlikely to have attracted permanent settlement due to its marshy nature but that it is not without archaeological potential. However, it said that most of the undesignated heritage assets identified as potentially surviving within the proposed development boundary were unlikely to be affected, either due to their location or because they are buried beneath a thick layer of dredged material. HE said that the main archaeological interest lies in the deep accumulation of sediments underlying the site, including layers of peat which have the potential to include important paleoenvironmental material. Although the majority of the peats are believed to be below the level that would be impacted by the proposed development, HE said that it is possible that peats may survive at more shallow depths in some areas.

3.9.41. HE noted that photographic recording of the ventilation shafts was proposed, as were targeted programmes of investigation of the other non-designated heritage assets which might be directly impacted, carried out in accordance with written schemes of investigation and following the principles in the oWSI [AS-029]. There would also be a programme of geoarchaeological investigation in the form of a purposive borehole survey which would be undertaken in the southern, central and south-eastern parts of the site. The scope of this, which would have regard to peat depths modelled for the Runcorn Carbon Dioxide Spur Pipeline [PD2-027], would be agreed with Cheshire Archaeology Planning Advisory Service and HE and secured by way of a requirement. On that basis, HE concluded that the potential impacts of the proposed development would be appropriately mitigated.

3.9.42. In its RR [RR-037], CWCC said that it agreed with the applicant's assessment and that the level of harm to the significance of the designated heritage assets in each case would be less than substantial. It noted [REP2-007] that the potential for non-designated heritage assets of archaeological interest to be present that are demonstrably of equivalent significance to Scheduled Monuments is extremely limited. It also confirmed that in situ preservation of the ventilation shafts would not be necessary and that recording would be sufficient in terms of mitigation.

3.9.43. In respect of peat deposits and with reference to the oWSI [AS-029], CWCC confirmed [REP2-007] that the proposed approach in respect of archaeology and further geoarchaeological investigation, including analysis where appropriate, was satisfactory and that this should be secured by way of a requirement. The use of appropriate piling methods was also discussed (as reported in section 3.12) and recorded as commitment C124 [REP7-013].

3.9.44. Whilst it agreed that all effects would be less than substantial in terms of NPPF policy, CWCC's opinion on the magnitude of the effects [REP1-046] differed from the conclusions of the applicant. Specifically, it noted that a higher degree of impact should be attributed to the effect of the proposed development on the settings of the following designated heritage assets:

- the Promontory Fort on Helsby Hill, a Scheduled Monument
- the Grade II listed Frodsham Hill War Memorial
- Overton, St Lawrence's (Frodsham) Conservation Area

3.9.45. Given differences in terminology used by the applicant and CWCC, for the avoidance of doubt the ExA requested clarification from both parties, using the same terminology as the NPPF, as to any impacts that they had identified. This was provided in [REP5-043].

3.9.46. In respect of the construction phase, CWCC ascribed a greater degree of harm to the effect of the proposed development on the settings of Frodsham (Town) Conservation Area and the Frodsham Hill War Memorial. Whilst the applicant had said, in both cases, that there would be a temporary neutral effect with no harm, CWCC said that there would be minor adverse (temporary and negligible) effects which would be classified as less than substantial harm.

3.9.47. For the operational phase, CWCC explained [REP5-043] that its conclusions differed from those of the applicant in respect of the effect of the proposed development on the settings of a number of designated heritage assets, specifically: the Promontory Fort on Helsby Hill; Frodsham Hill War Memorial; Frodsham (Town) Conservation Area; Castle Park Registered Park and Garden; Castle Park Conservation Area; and Overton, St Lawrence's (Frodsham) Conservation Area. For each of these assets, however, CWCC concluded that the effect would be 'minor adverse' and that the proposed development would result in less than substantial harm.

3.9.48. In relation to non-designated heritage assets, CWCC said that the various parcels of ridge and furrow and the ventilation shafts were of minor local

significance and ascribed the same degree of harm to these assets as the applicant.

3.9.49. The ExA also invited comments as to whether the dNPPF included any changes which, if adopted, would affect the assessment of or conclusions in relation to the historic environment-related effects of the proposed development. The applicant said [REP5-043] that its ES set out a categorisation of harm relevant to both the current NPPF and the dNPPF. As such, it said that where harm to a heritage asset has been identified then the assessment provided in the ES would enable the policy tests of both the NPPF and the dNPPF to be applied.

3.9.50. The applicant also noted that Policy HE5 of the dNPPF provides support for development that results in a positive effect on heritage assets. In that context, it said that there would be a relatively limited positive effect as a result of:

- the proposed geoarchaeological investigation
- archaeological investigation of the ridge and furrow
- the proposed heritage interpretation (commitment C12 [REP7-013])

ExA's considerations

3.9.51. The ExA notes that the applicant has not identified any significant effects in relation to any designated or non-designated heritage assets and that neither CWCC nor HE have suggested that any significant effects would arise. Indeed, CWCC confirmed the methodology and approach of the applicant were both satisfactory in the final Statement of Common Ground [REP7-028]. The ExA is content therefore that no substantial harm, as defined in the NPPF, would arise.

3.9.52. Any harms arising from the proposed development would, therefore, be described as being 'less than substantial'. However, within that class of potential harm, CWCC's and the applicant's conclusions differ in respect of the degree of harm that would be caused to a small number of heritage assets within the study areas.

3.9.53. The ExA agrees with CWCC that there would be temporary harm, albeit to a very limited degree, to the settings of Frodsham (Town) Conservation Area and the Frodsham Hill War Memorial during the construction phase and that this would be classified as less than substantial harm.

3.9.54. The ExA also agrees with CWCC that during the operational phase the proposed development would result in harm to the settings of: Frodsham (Town) Conservation Area; the Castle Park Registered Park and Garden; the Castle Park Conservation Area; and Overton, St Lawrence's (Frodsham) Conservation Area. This harm would generally arise from the presence of the proposed development in glimpsed views from within the aforementioned areas and experienced within a wider context that has evolved over time by the addition of a variety of residential, commercial and industrial development. As such, the ExA considers that the proposed development

would result in a very small degree of harm to the settings of these assets and that the harm would be classified as less than substantial in each case.

3.9.55. The ExA considers that there would be a greater degree of harm to the setting of the Frodsham Hill War Memorial, particularly when taking account of CWCC's argument that its positioning was deliberate in relation to the wider setting. Although the setting has changed over time as a result of other development and landscaping is proposed as a form of visual mitigation, the extent of the solar array development area and its visibility from Frodsham Hill will strongly contrast with, and in the ExA's opinion introduce a large and incongruous feature into, the prevailing landscape. On that basis, the ExA considers the proposed development would result in a moderate degree of harm to the setting of the Frodsham Hill War Memorial. Whilst this differs from the applicant's overall determination of the level of harm arising for the individual asset, the ExA concurs that, when this harm is considered in the context of the relevant NPS and NPPF, this only amounts to less than substantial harm overall.

3.9.56. CWCC also ascribed a higher degree of harm to the effect on the setting of the Promontory Fort On Helsby Hill; whilst it said that there would be less impact than on views than from Frodsham Hill, it also noted that views towards the Fort from land within the Order limits are currently possible, and that these would be limited by the proposed development. Whilst the layout of the proposed development could include gaps between the solar arrays to enable some views, the ExA considers that this wider effect on the public's ability to appreciate the Fort, taken together with the impact on views, would result in a moderate degree of harm to its setting. Whilst this differs from the findings of the applicant's ES, the ExA concur that, when this harm is considered in the context of the relevant NPS and NPPF, this only amounts to less than substantial harm overall.

3.9.57. The ExA agrees with the applicant's and CWCC's conclusions in respect of non-designated heritage assets. It also considers that the applicant has satisfactorily applied the mitigation hierarchy in respect of the effects that it has identified.

CONCLUSIONS

3.9.58. The ExA considers the applicant's assessment of the significance of heritage assets and of the historic environment-related effects of the proposed development to be satisfactory. Whilst the ExA disagrees with the applicant's conclusions in respect of the degree of less than substantial harm that would occur to the settings of a number of designated heritage assets, there would nevertheless be no significant (in environmental impact assessment terms) residual historic environment effects during any phase of the development, including when considered cumulatively with other developments.

3.9.59. The ExA is satisfied that the proposed mitigation measures as set out in the oLEMP, the oCEMP and the oWSI could be effectively implemented through requirements 9, 12 and 18 of the dDCO [REP7-003].

3.9.60. Thus, the approach taken by the applicant accords with NPS EN-1, NPS EN-3 and the NPPF. The ExA also agrees with the applicant's conclusion that, if adopted as currently drafted, its assessment would satisfactorily address the relevant historic environment-related policies in the dNPPF.

3.9.61. However, the proposed development would conflict with LP1 Policy ENV 5 which states that development will be required to respect and respond positively to designated heritage assets and their settings, avoiding loss or harm to their significance as well as with the similar provision of LP2 Policy DM 47, which states that development proposals or works will only be supported which would conserve the significance of a listed building and its setting.

3.9.62. In conclusion, the ExA considers the issue of cultural heritage carries little negative weight against the case of the Development Consent Order. This conclusion is to be weighed against the public benefits of the proposed development, which is set out in chapter 5 of this recommendation.

3.10. SOCIOECONOMICS

INTRODUCTION

3.10.1. This section considers the socio-economic effects of the proposed development, including recreation and tourism.

3.10.2. Consideration of potential impacts on agricultural land is presented in section 3.7 of this report. Protective provisions for organisations that could be affected by the proposed development are presented in chapter 6 of this recommendation.

POLICY BACKGROUND

3.10.3. The Overarching National Policy Statement for Energy (NPS EN-1), paragraphs 5.13.2 to 5.13.7, outlines that applicants should assess all relevant socio-economic impacts at local or regional levels, including the contribution to development of low-carbon industries at local, regional and national levels. Other considerations include the provision of educational and visitor facilities and indirect beneficial impacts for the region hosting the infrastructure. The creation of jobs, training opportunities and use of local supply chains along with potential effects, either positive or negative, on tourism and other users of the area, should be assessed.

3.10.4. NPS EN-1 paragraphs 5.13.5 and 5.13.16 provide that applicants should refer to how the development’s socio-economic impacts correlate with local planning policies and to demonstrate that local suppliers have been considered in any supply chain.

3.10.5. Paragraphs 5.13.8 to 5.13.12 of NPS EN-1 relate to mitigation and decision making with regards to socio-economic impacts, stating that the Secretary of State (SoS) should consider whether mitigation measures are necessary to mitigate any adverse socio-economic impacts of the development.

3.10.6. NPS EN-1 paragraph 5.11.30 states that public rights of way (PRoW), national trails, and other rights of access to land are important recreational facilities for walkers, cyclists and horse riders. Applicants should take appropriate mitigation measures to address adverse effects on national trails, other rights of way and open access land and, where appropriate, to consider what opportunities there may be to improve or create new access. In considering revisions to an existing right of way, consideration should be given to use, character, attractiveness and convenience.

3.10.7. The National Policy Statement for Renewable Energy Infrastructure (NPS EN-3) provides in paragraphs 2.10.41 to 2.10.45 that applicants should keep open, as far as practicable and safe, all PRoW that cross the proposed development site, whilst recognising that PRoW may need to be temporarily closed or diverted to enable construction. Applicants are encouraged to minimise visual impacts of the development for those using existing PRoW. Furthermore, applicants should consider opportunities to facilitate enhancements to PRoW through site layout and design and consider new opportunities for the public to access and cross proposed solar development sites.

3.10.8. NPS EN-3 paragraph 2.10.69 states that applicants should consider whether there may be socio-economic benefits in retaining site infrastructure after the operational life, such as retaining pathways through the site or a site substation.

3.10.9. The National Planning Policy Framework (NPPF) outlines that significant weight should be placed on the need to support economic growth and productivity, taking into account both local business needs and wider opportunities for development. Paragraph 87 states that decisions should recognise provision for the expansion or modernisation of other industries of local, regional or national importance to support economic growth and resilience. Paragraph 88(c) provides that planning decisions should enable sustainable rural tourism and leisure developments which respect the character of the countryside. Paragraph 103 adds that access to a network of high-quality open spaces and opportunities for sport and physical activity is important for the health and well-being of communities. Paragraphs 104 and 109(e) go on to provide that decisions should protect and enhance PRoW and access, including identifying early opportunities to provide better facilities for users, for example by adding links to existing rights of way networks including national trails to promote walking, cycling and public transport use.

3.10.10. The Local Impact Report (LIR) submitted by Cheshire West and Chester Council (CWCC) [REP1-046] referred to various development plan policies. Local development plan policies relevant to the proposed development were set out at appendix A. Of particular note are policies from:

- The Cheshire West and Chester Local Plan Part One (2015) (LP1),
    - ECON1 economic growth, employment and enterprise
    - SOC6 Open space, sport and recreation
    - STRAT10 Transport and accessibility

- STRAT11 Infrastructure

- The Cheshire West and Chester Local Plan Part Two (2019) (LP2):
  - DM3 Design
  - DM37 Recreational routeways
  - DM38 Waterways and mooring facilities

THE APPLICATION

3.10.11. The applicant's case in relation to tourism and recreation was set out in chapter 12 of the environmental statement (ES) [APP-045]. In addition, the applicant submitted the following documents:

- Street Works, Public Rights of Way, Vehicular Usage and Access Plans [APP-010]
- Outline Public Rights of Way Management Plan (oPROWMP) [APP-140]
- Outline Skills, Supply Chain and Employment Plan (oSSCEP) [APP-142]

BASELINE

3.10.12. The assessment methodology and baseline conditions for tourism and recreation were set out in sections 12.5 and 12.6 of ES chapter 12 [APP-045].

3.10.13. The scoping opinion from the Planning Inspectorate [APP-049] noted an expectation for the assessment to consider wider tourism impacts, such as users of the Weaver Navigation, other watercourses, PRoW and the National Cycle Network (NCN) around the site of the proposed development.

3.10.14. The applicant set out in ES chapter 12 [APP-045] that the site of the proposed development is located to the north of Frodsham town centre, separated by the M56 with limited access points from Frodsham. Despite the NCN passing through the site, the applicant's assessment indicated that this area of Frodsham is not currently seen as a tourism asset in its own right, with existing leisure users of the site of the proposed development being mainly local people for undertaking recreational pursuits such as cycling, walking, exercising dogs, horse riding, and birdwatching. The applicant identified 3 established organisations which operate from within the site of the proposed development or within close proximity. These are Hoverforce, Runcorn Model Flying Club and the Frodsham and District Wildfowlers. The applicant stated that tourism to Frodsham is focused on the town centre's retail and leisure assets including the market and is driven, largely, by day visitors. Other tourism assets include the Castle Park Museum and the Sandstone Ridge Trail, a popular walking route beginning in Frodsham, and recreation uses of the nearby watercourses such as the River Weaver, the Weaver Navigation and the Manchester Ship Canal.

3.10.15. The study area for the tourism assessment included tourism and recreational organisations within 200m of the site of the proposed development, the site itself, the surrounding PRoW including restricted byways, footpaths and the NCN, and the nearby watercourses. Relevant receptors were identified

through a desk-based mapping exercise to understand the tourism, leisure and recreational businesses and facilities operating within the study area.

3.10.16. ES chapter 12 [APP-045] reports that large-scale industrial operations and facilities exist within much of the surrounding area. These include Ince Park Biomass Energy Plant, Stanlow Oil Refinery, Protos (an allocated industrial site), Encirc Glass and the former CF Fertilisers UK plant and the INEOS Inovyn Runcorn plant. The M56 is located on the southern boundary of the site of the proposed development. The applicant contended that the area of the proposed development is unlikely to attract visitors seeking an outdoor experience where beauty and tranquillity are a priority.

3.10.17. The applicant presented a summary of baseline activity in table 12-10 [APP-045] and future baseline activity in table 12-11 for organisational receptors in relation to socioeconomics and tourism. The applicant's assessment of footfall using mobile phone data indicated that Frodsham town centre has an average of 16,311 people visiting per day, whereas the applicant stated that current levels of activity on the marshes around the area of the proposed development, are too low to register.

3.10.18. The baseline for the assessment of employment, skills and supply chain was set out in the outline Skills, Supply Chain and Employment Plan (oSSCEP) [APP-142]. This stated that the north-west region hosts a high concentration of energy-intensive industries, including advanced manufacturing and chemical production. The assessment continued that the proposed development would be located within a nationally significant industrial corridor, stretching from Ellesmere Port towards Runcorn, where over 5% of the UK's energy is consumed. Within the industrial town of Runcorn, notable developments include the INEOS Inovyn Runcorn site which produces industrial chemicals and an 800 megawatt (MW) gas-fired power station. The applicant explained that the proposed development would be located in an area of industry looking to lead the way in the deployment of low carbon infrastructure.

3.10.19. The oSSCEP [APP-142] set out that the proposed development would provide employment across a variety of sectors and skills levels, potentially including engineering, design, welding, mechanical trades and managerial roles. The applicant expects that the proposed development could contribute to the local green skills sector through providing employment, education and training opportunities to surrounding communities related to solar energy, battery storage and environmental conservation. Furthermore, the hospitality and retail sectors in surrounding towns could benefit from increased customers, owing to the influx of workers during the construction period and once operational, the proposed development may result in modest benefits to these sectors.

CONSTRUCTION PHASE

3.10.20. The applicant stated in the oPROWMP [APP-140] that proposed mitigation measures follow the hierarchy of actions to reduce impacts on PRoW as much as practicable. The hierarchy commences with keeping PRoW routes

open where it would be considered safe to do so, with appropriate signage to warn of the presence of construction vehicles, and to warn drivers of the presence of walkers, cyclists or other non-motorised users. After this, where construction activities might affect the safety of PRoW users during construction hours, but the PRoW can otherwise remain open outside of these hours, there would be managed, short duration, temporary closures. Following this, when it is not considered safe to keep PRoW open during construction works, temporary full closures would be implemented, with appropriate PRoW diversion routes provided. This would be supported by commitment C49 [APP-133].

3.10.21. Specific mitigation measures proposed for each of the PRoW routes that would be affected during the construction phase were set out by the applicant in the oPROWMP [APP-140] in sections 4.2 to 4.9.

3.10.22. Various relevant commitments were made by the applicant in the Commitments Register [APP-133] in relation to PRoW during the construction phase such as commitment C48, which stated a final PROWMP would be prepared in substantial accordance with the oPROWMP [APP-140] to ensure that existing footpaths, bridleways and the NCN through the site would remain open and safe during construction. This final plan must be approved by CWCC and would be secured via requirement 15 in the dDCO. Commitment C50 [APP-133] ensures that all temporary PRoW diversion routes would be signposted to a standard agreed with the local authority's Rights of Way Officer, and advance notice signs would be erected to inform the public of upcoming closures or works on a path. An information board would be maintained at key entry points to the PRoW network displaying the Community Liaison Officer's contact details so that the public could report any issues or get updates on PRoW matters. Other relevant commitments include C51 regarding segregation of the public from the works and C52 regarding staff training.

3.10.23. The applicant explained in paragraphs 2.5.43 to 2.5.45 of ES chapter 2 [APP-035] that there would be a need to prevent the use of a section of the River Weaver during weekday construction working hours for up to 2 weeks, affecting craft, swimmers, fishermen, and other recreational and navigational activities. The river would remain open over weekends. The applicant stated it is possible that the closure could be over a much shorter period of time.

3.10.24. The applicant reported that enquiries found no rights for any commercial transport use of the river, with users limited to recreational activities such as Frodsham Kayaking and the Weaver Sailing and Ski Club. The applicant explained that the Outline Construction Environmental Management Plan (oCEMP) [APP-136] includes a commitment to provide at least 3 months' advance notice to the recreational clubs on the River Weaver of any closure to navigation. This is supported by commitment C53 [APP-133] and secured by requirement 13 in the dDCO [APP-015].

3.10.25. Table 5-7 of the oCEMP [APP-136] includes a commitment to provide at least 3 months' advance notice to the recreational clubs on the River Weaver of any closure and for notices to be published in local newspapers and online

community resources, for example Frodsham Town Council newsletters. These commitments are reiterated in the Outline Environmental Management Plam (oOEMP) [APP-137] and the Outline Decommissioning Environmental Management Plan (oDEMP) [APP-138] to address temporary impacts that may arise during these phases. This is also documented as commitment C53 within the Commitments Register [APP-133].

3.10.26. The applicant set out in the planning statement [APP-128] and the oSSCEP [APP-142] that approximately 109 full time equivalent jobs would be created over the construction period. The applicant stated it would aim to prioritise procuring the services of local businesses and contractors and the use of local employees, where possible. It is anticipated that the average number of workers on site across the construction phase would be 109 per day, with a peak workforce of approximately 243 staff per weekday in the twelfth month. The applicant stated the temporary jobs created during the construction phase would support the career growth of employees by providing them with relevant work experience in the green skills sector. Commitments in relation to local jobs and supply chains were set out in the oSSCEP [APP-142].

3.10.27. Mitigation during the construction phase would include measures such as:

- All heavy goods vehicle construction traffic would avoid Frodsham town centre. The routing strategy is set out in the Outline Construction Traffic Management Plan (oCTMP) [APP-135].
- A Community Liaison Group (CLG) would be formed prior to construction, continuing through until the end of the decommissioning phase, as set out in the oCEMP [APP-136] and oOEMP [APP-137].
- Construction or operational traffic would be excluded from using Brook Furlong via measures set out in the oCEMP [APP-136] to protect road access to businesses and recreational clubs located within very close proximity to the site of the proposed development.
- Measures to avoid or reduce impacts on PRoW during construction in the oPROWMP [APP-140] include provision of segregated construction access routes, use of traffic marshals or traffic light systems if construction vehicles were required to cross a PRoW and provision of short-term temporary diversions.
- Outside construction hours, the NCN would be open for free use.
- At all points where PRoW routes intersect with the proposed development, appropriate signage and information would be provided to inform PRoW users of the management procedures in place.

3.10.28. The applicant's assessment of effects for the construction phase was set out in section 12.8 of ES chapter 12 [APP-045] and summarised in table 12-13. The applicant concluded that potential impacts for the construction phase would be either negligible, negligible to minor adverse or minor adverse and that none would be significant, and therefore no further mitigation, enhancement or compensation was proposed.

OPERATIONAL PHASE

3.10.29. The applicant outlined 6 potential impacts on tourism and recreational receptors at the operational stage in section 12.8 [APP-045]. These related to disturbance to tourism, leisure and recreation, disturbance to the recreational usage of PRoW, enhancements leading to an increase in recreational usage, disturbance to recreational businesses using the nearby watercourses and disturbance to Frodsham town centre's visitor economy.

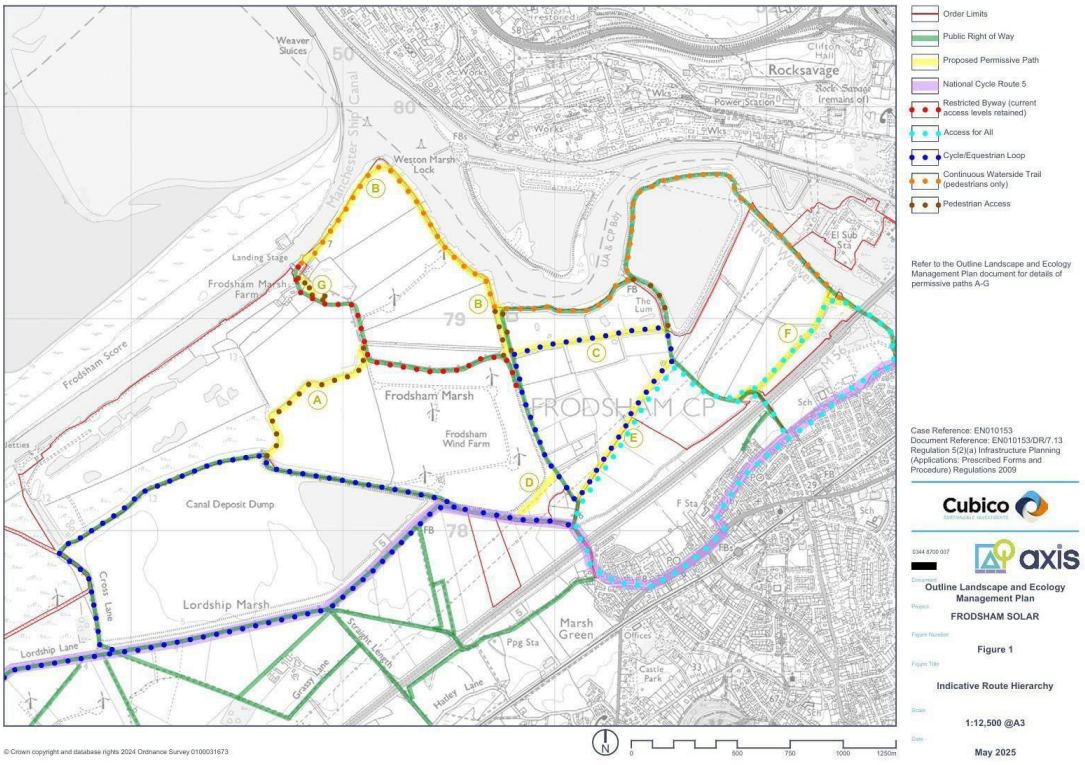
3.10.30. Mitigation measures proposed during the operational phase were set out by the applicant in section 5 of the oPROWMP [APP-140].

3.10.31. The applicant explained in ES chapter 12 [APP-045] that mitigation measures would include provision of 4.7km of additional permissive paths, better maintenance of existing footpaths, a potential new car park on Moorditch Lane, a 10m PRoW buffer and landscape treatment, improved surfacing, landscape screening, educational displays and improved bird viewing opportunities. These were illustrated in figure 2-3 (a to e) [APP-106].

3.10.32. The oOEMP [APP-137] summarised operational mitigation and management measures for tourism and recreation in table 5-7. All existing PRoW within the site would be maintained and kept open unless temporary closures were necessary for maintenance work. Wayfinding and interpretative signage would be installed to guide visitors and provide information on site history and biodiversity. The oLEMP [APP-144] would ensure that newly planted screening vegetation was maintained to provide long-term mitigation.

3.10.33. Similar commitments were made by the applicant in the Commitments Register [APP-133] relevant to the operational phase such as C11 for the provision of approximately 4.7km of new permissive footpaths, C12 regarding the provision of educational information boards and bird viewing screens and hides and C60 in relation to the maintenance of PRoW, which are secured in the various managements plans and requirements in the dDCO.

Figure 14: Indicative route hierarchy



Source: Figure 1 from the oLEMP [APP-144]

3.10.34. The applicant's assessment of effects for the operational phase was set out in section 12.8 of ES chapter 12 [APP-045] and summarised in table 12-13.

3.10.35. The applicant generally concluded that potential impacts from the operational phase would be either negligible to minor adverse in the worst-case and that none would be significant. Hence the applicant did not propose further mitigation, enhancement or compensation. In relation to general enhancements to the PRoW and NCN, leading to a potential increase in recreational activity, the applicant predicted either a negligible or minor beneficial effect.

3.10.36. The applicant concluded that, overall, the proposed development was not anticipated to adversely affect the local tourism economy or recreational use of the study area. The applicant stated that the enhanced PRoW network and additional recreational facilities may have minor beneficial positive effects on local tourism and recreation, providing opportunities for enhancing local recreational infrastructure and visitor experiences.

DECOMISSIONING PHASE

3.10.37. The oDEMP [APP-138] includes consideration of how aspects related to tourism and recreation, including the PRoW network within the Order limits, would be managed during the decommissioning phase. These are summarised in table 5-7 [APP-138].

3.10.38. Commitment C61 in the Commitments Register [APP-133] states that at the time of decommissioning, all permissive paths introduced by the proposed development would be closed and their signage and any interpretive boards would be removed, unless the landowner and local authority agree to retain certain routes as permanent legacy rights of way. This is secured through the oOEMP [APP-137] and oPRWMP [APP-140] and in requirements 13 and 15 of the draft Development Consent Order (dDCO) [APP-015].

3.10.39. The applicant considered [APP-045] that, as set out in the scoping report, impacts during decommissioning would be comparable, most likely less impactful, than during the construction phase. As such, a specific assessment relating to decommissioning was not provided.

OTHER CONSIDERATIONS

3.10.40. Potential cumulative effects on tourism and recreation were considered in section 12.11 of ES chapter 12 [APP-140].

3.10.41. The applicant concluded that the only two projects that are situated within the study area and could have a potential cumulative effect on tourism and recreation are the HyNet Hydrogen pipeline and the Runcorn Spur Carbon Dioxide Pipeline. However, on the basis that there would be no permanent above ground infrastructure, any impacts on tourism and recreation would likely be short term during construction. Furthermore, it is likely that if the HyNet Hydrogen pipeline were to be constructed at the same time as the proposed development, the same mitigation measures in respect of the PRoW during the construction period would apply and could run concurrently. As such, the applicant concluded it is unlikely that the two pipeline projects would give rise to significant cumulative effects with the proposed development.

3.10.42. The applicant set out commitment C42 in the Commitments Register [APP-133], which states that a final SSCEP would be prepared in substantial accordance with the oSSCEP which outlines measures to maximise local employment opportunities, develop workforce skills relevant to the project, and encourage participation of local and regional businesses in the project's supply chain. The SSCEP would be agreed with the local planning authority before commencement of construction and would be adhered to throughout construction, operation and decommissioning. This is secured in requirement 19 of the dDCO [APP-015].

ISSUES CONSIDERED DURING THE EXAMINATION

3.10.43. A number of positive and negative representations were received from interested parties (IPs) with comments primarily regarding access to the PRoW during the construction phase and changes to the user experience of the PRoW during the operational phase of the proposed development. These included representations from individual IPs [RR-007], Councillors [RR-005], [RR-035], [REP1-073] and [REP1-074] and a number of organisations including The Peak and Northern Footpaths Society (PNFS) [RR-046], Cycle North Cheshire (CNC) [RR-026], Frodsham Town Council Active Travel

Team [RR-009] [REP1-071], the Mersey Estuary Conservation Group [RR-044], CWCC [RR-037], Helsby Parish Council [RR-043], and the Canal and River Trust (CRT) [REP1-062] to [REP1-066].

3.10.44. IPs' concerns regarding potential impacts of public access on ecology and biodiversity, including concerns around baseline data for the assessment of tourism and recreation impacts on ecological receptors, are reported on in section 3.3 of this recommendation.

3.10.45. This section reports on impacts on PRoW including the user experience of PRoW. Wider visual and landscape effects are reported on in section 3.6 of this recommendation. Issues relating to the proposed car park are reported on within section 3.8 of this recommendation.

3.10.46. The following main issues were considered within the examination:

- potential impacts on users of the River Weaver from temporary closure
- planned closures of PRoW, including communication plans and maintenance
- the experience of those using PRoW
- long-term status of new PRoW post decommissioning
- potential impacts on local businesses

Potential impacts on users of the River Weaver from temporary closure

3.10.47. Section 51 advice from the Planning Inspectorate [PD-003] stated that the applicant should clarify the purposes for the broad powers set out in article 20 of the dDCO [APP-015] regarding the temporary closure or restriction of the passage of vessels in any way, in any part of the River Weaver within the Order limits regardless of any other enactment or in any rule of law. The section 51 advice stated that the ES and mitigation plans should be updated to set out the related impacts and any mitigation measures.

3.10.48. The applicant confirmed [AS-001] it had amended the Explanatory Memorandum [AS-015] to clarify why the inclusion of article 20 in the dDCO would be necessary. The applicant stated that the impact of temporarily closing or restricting vessels on the River Weaver had been assessed within the ES and other application documents and considered that sufficient information had been provided to evaluate the likely significant effects on users of the River Weaver. The applicant confirmed that the entities referred to in article 20 of the dDCO, Weaver Sailing and Ski Club and Frodsham Kayaking, were the only organisations that the applicant had identified as using the stretch of the river that could potentially be subject to the powers in this article. The applicant considered that adequate control measures had been proposed to minimise or avoid effects. Paragraphs 12.8.19 to 12.8.25 of ES chapter 12 [APP-045] assessed the effects of temporary impacts on users of the River Weaver and concluded, with the adoption of the committed mitigation, that the overall level of effect for construction would be negligible and not significant.

3.10.49. CWCC's LIR [REP1-046] at paragraph 6.13, expressed concern about the closure of the River Weaver and the impact upon visitor numbers as a result. However, CWCC noted that the adverse construction impacts would only be of a relatively short duration. At paragraph 24.16, CWCC acknowledged the construction effects would not be significant.

3.10.50. The ExA asked during issue specific hearing (ISH) 2 whether the Weaver Navigation canal could be a suitable alternative to mitigate the closure of the River Weaver. The applicant responded [REP4-055] that the reach of the River Weaver extending from the confluence with the Weaver Navigation (east of Frodsham) to the Manchester Ship Canal (west of Frodsham) is effectively isolated for navigation purposes from the upstream sections of the River Weaver. This is due to the presence of the Sutton Sluices and the non-navigable Frodsham Cut, which prevent through navigation. Access into the Weaver Navigation from the River Weaver and Manchester Ship Canal is available via Marsh Lock.

3.10.51. The applicant confirmed [REP4-055] that during the cable stringing operations, users of the River Weaver upstream of the proposed crossing location would be able to access over 2km of the River Weaver. The applicant provided a figure within its responses to illustrate its explanation, which is reproduced in figure 15 below. The applicant stated that impacts on users of the River Weaver would be minimal.

Figure 15: River Weaver and Weaver Navigation Access



Source: Figure 1 [REP4-055]

3.10.52. The ExA asked the applicant through action point 8 at ISH2 [EV10-024] to consider the terminology 'as long as reasonably necessary' in article 20. The applicant confirmed [REP4-055] that amendments had been made to the dDCO at deadline (DL) 4.

ExA's considerations

3.10.53. The ExA considers that the applicant has made a reasonable effort to identify and consult with all known users of the River Weaver that would be impacted by a temporary closure. The ExA considers the mitigation committed to in the oCEMP [REP7-017] is sufficient, and agrees with the applicant that it is unlikely there would be a significant effect on users of the River Weaver, or more generally on tourism or recreation, as a result of the temporary closure required during the installation of cables to the Frodsham SPEN Substation across the river, particularly as the closure of the River Weaver would only be for a 2-week period in the worst-case. The ExA considers the wording of article 20 within the dDCO [REP7-003] to be reasonable.

Planned closures of PRoW, including communication plans and maintenance

Planned closures of PRoW

3.10.54. Concerns were raised by IPs regarding the extent of temporary closures and diversions of PRoW during the construction phase. CWCC stated in its LIR [REP1-046] that both the local population and visitors to Frodsham greatly value the green spaces in Frodsham and the easy access to the surrounding countryside. CWCC opined [RR-037] that the closure of PRoW RB40 to pedestrians and equestrian users for approximately 30 to 34 months represented a long diversion in duration and distance for users of this route, which could include employees walking from Helsby to some of the large industrial sites around the Protos site. CWCC added that the closure of other PRoW routes such as RB98 and RB103 for long durations would impact on the availability of circular routes, especially for non-pedestrians using Frodsham Marshes.

3.10.55. In response to questioning during ISH2 [REP4-057], the applicant responded [PD2-027] that the proposed development planned to keep open as many PRoW as possible where it would be safe to do so, confirming that access along PRoW RB40 and the NCN5 would be maintained for all users outside the construction working hours, and although closed to pedestrians and equestrian users during construction hours, access would be permitted for cyclists during construction hours through the use of banksmen.

3.10.56. Whilst the applicant recognised that the temporary closure of RB103 and RB98 would limit the availability of circular routes for the duration of the construction phase, the applicant confirmed that alternative PRoW routes would ensure that access would be maintained overall.

3.10.57. The ExA asked the applicant [EV10-007] to explain the proposed permanent stopping up and rerouting powers within the dDCO [APP-015], including why permanent stopping up of PRoW would be necessary and what temporary

and permanent arrangements would be put in place. The applicant explained [REP4-057] that article 13(1) of the dDCO must be read together with article 13(2) and, on that basis, the undertaker could not permanently stop up a PRoW until a suitable substitute PRoW was provided. The rationale for the proposed stopping up and rerouting provisions was that the definitive map alignment did not reflect the route on the ground. The applicant characterised this as a correction exercise, intended to ensure the legally recorded route would align with the route that people could walk along. The applicant confirmed that all other permanent closures and re-provision in the dDCO were to provide for an upgrade in the type of PRoW and that legally this could only be done through a stopping up and reprovision. The applicant emphasised that in the dDCO there are no proposals to permanently stop up a PRoW without a replacement being in place, and that replacement would be in place before the existing PRoW was closed, as can be seen when article 13(1) to 13(6) are read together. The applicant confirmed [REP4-057] the same applied for RB102 and that public access would be maintained along RB102 throughout the construction phase.

Communication plans

3.10.58. In response to concerns about the communication of PRoW closures and diversions from IPs and CWCC [RR-037], the applicant responded [PD2-027] that the oPROWMP [APP-140] described which PRoW would be affected by the construction works with reference to the Street Works, Public Rights of Way, Vehicular Usage and Access Plans [AS-008], updated at deadline 4 [REP4-003], which set out the hierarchy used for management of the PRoW to ensure the safety of the public. The applicant contended it had sought to keep the vast majority of PRoW within the site of the proposed development open during the construction phase and that the oPROWMP also outlined the proposed approach to providing signage and information during the construction works. The applicant explained the full PROWMP would include details of how temporary closures and diversions of any PRoW would be advertised to the local community. The applicant added that appendix 2-2 [APP-051] provided a high-level indicative programme and that at this stage it was not possible to provide a precise phasing programme, noting that requirement 3 of the dDCO [PD2-005] required phasing plans to be submitted to and approved by the planning authority. The applicant added [REP3-042] that it was not practical to secure a commitment for the maximum timescale the permissive paths might be closed during the operational phase, as this would depend on the nature of the maintenance required. However, it confirmed that the oPROWMP had been revised to ensure that any temporary closures to PRoW or permissive routes for longer than one week would be agreed in advance with CWCC.

3.10.59. CWCC's response to the ExA's first written question Q9.5.2 [REP2-005] stated it would be beneficial for the applicant to include specific reference to publicity of an overarching programme of works and that the CLG should be consulted on the programme at an early stage in the process and kept informed of subsequent changes. CWCC recommended that the oPROWMP should include online advertising of closures and that the applicant should provide clear and legible plans for the final detailed PROWMP. CWCC's

PRoW team advised that if the construction hours were modified, for example for abnormal loads, that the change be advertised to notify the public in advance, recommending the applicant should establish a particular channel to notify CWCC Highways and PRoW teams of such information. The applicant responded [REP3-043] confirming it had revised the oPROWMP [REP3-028] to include the measures proposed by CWCC.

3.10.60. The applicant provided simpler, clearer plans in figures 2-1 to 2-5 [REP4-055] to illustrate the proposed temporary closures and management measures showing existing paths to be closed or stopped up during construction and operation and how and where the alternatives and diversions would be delivered.

3.10.61. Whilst PNFS accepted, at ISH2 [EV10-004], the applicant's outline proposed changes to the PRoW network, discussion took place as to whether PNFS should be added as a consultee to the PROWMP on the face of the dDCO [REP4-077] and, in the same vein, Frodsham Town Council and Frodsham Festival of Walks [REP5-050] requested approval rights for the PROWMP.

3.10.62. In response, the applicant updated requirement 12 of the dDCO [REP4-005] to include the provision of a stakeholder communication plan, which must be approved by CWCC. The applicant responded [REP6-040] that it did not consider it necessary to consult with any other bodies before submitting the detailed PROWMP, but that CWCC could consult with other non-statutory organisations as part of its approval process for submitted schemes.

Repair and maintenance of PRoW

3.10.63. CWCC [RR-037], CNC [RR-026] and [REP2-004], PNFS [REP4-077] and some individual IPs [RR-007], [REP1-073] raised concerns over the applicant's maintenance and repair commitments for PRoW for any damage during the construction or operational phases. There was also a desire to see all potential projects that could cumulatively cause deterioration to the condition of PRoW to work in together with a coordinated approach to repair and maintenance.

3.10.64. The applicant explained [PD2-027] that a commitment had been made to ensure the section of NCN5 that runs through the site of the proposed development, would be improved at the end of the construction period to repair damage and potholes. This was outlined in table 5-7 of the oCEMP [REP7-017] and secured via requirement 12 of the dDCO [REP7-003]. In addition, the oPROWMP [REP5-029] set out a commitment to improve the condition of the PRoW network within the Order limits, and that the full PROWMP must be approved by CWCC, and would include the approach taken to monitor the condition of the PRoW network and identify areas where improvement works were required. The applicant confirmed that where there was the potential for cumulative impacts on the condition of PRoW, the Outline Construction Traffic Management Plan (oCTMP) [REP7-015] confirmed that the Construction Traffic Management Working Group would agree a mechanism for identifying and apportioning shared responsibilities

for maintenance and remedial works for any damage during the course of construction works.

3.10.65. The applicant responded to questioning at ISH2 [EV10-006] and [REP4-057], explaining that a number of commitments were set out across the outline management documentation, including:

- an obligation that damage to PRoW surfacing resulting from construction would be repaired prior to commissioning within the oPROWMP [REP5-029]
- measures set out in table 5-7 of the oCEMP [REP7-017] addressing damage to PRoW, including improving PRoW within the Order limits at the end of construction to repair damage and potholes and undertaking improvements where routes are periodically flooded or become impassable due to mud
- the full PROWMP would set out the approach to be adopted to monitor and review the status of PRoW within the Order limits and the maintenance schedule for improvements or upgrades
- the oOEMP [REP7-019] identified that regular inspections of PRoW routes within the site and monitoring of public feedback regarding accessibility and signage quality would be undertaken
- a commitment to agree permissive path details and a maintenance regime for PRoW and permissive paths through the final LEMP with CWCC [REP7-025]

3.10.66. The ExA questioned in action point 19 [EV10-024] whether an initial baseline condition survey was explicitly included. The applicant responded [REP4-055] that the oPROWMP [REP5-029] had been revised to require a condition survey to be undertaken prior to commencement of development or commencement of permitted preliminary works.

3.10.67. That applicant updated the Design Parameters Statement [REP7-011] table 8 to state that access tracks would be constructed from permeable compacted stone over an appropriate geotextile unless an alternative specification was agreed pursuant to requirement 6 of the DCO. Table 9 was also updated so that internal access tracks would be compacted stone over an appropriate geotextile and that internal access tracks would have a maximum width of 6.3m.

3.10.68. The signed statement of common ground (SoCG) between the applicant and CWCC [REP7-028] stated that CWCC broadly supported the approach to improving public access around the site of the proposed development, but cited ongoing concerns that the assessment of tourism and recreation impacts and effects did not adequately address the visual impact on users of PRoW, and enjoyment of the footpath network. It stated that CWCC maintained its position that the assessment undervalued the sensitivity of local PRoW and underplayed the magnitude of impact.

ExA's considerations of planned closures of PRoW, communication plans and maintenance

3.10.69. The ExA is satisfied that the applicant has provided adequate evidence within the oPROWMP [REP5-029], the Street Works, Public Rights of Way, Vehicular Usage and Access Plans [REP4-003] and ES chapter 12 [APP-045] that PRoW would be kept open as far as possible and impacts on accessibility to PRoW would be kept to a minimum. The ExA accepts the applicant's reasoning for closing some routes to pedestrians and equestrian users during construction hours on safety grounds, whilst maintaining access for cyclists using banksmen. The ExA considers that alternative routes have been planned as far as is reasonably practicable and there are adequate controls on the stopping up and temporary closure of PRoW within the dDCO [REP7-003].

3.10.70. The ExA considers there would be some short-term adverse effects to users of the PRoW during construction and decommissioning phases of the proposed development through temporary PRoW closures but agrees with the applicant that the mitigation hierarchy has been followed to keep these effects to a minimum.

3.10.71. In terms of communication of closures and diversions, the ExA considers that the applicant ultimately provided clear plans which are sufficient for the ExA to understand the implications on users of the PRoW during construction and operation. The ExA notes that requirement 12 of the dDCO [REP7-003] requires a final CEMP along with a stakeholder communication plan and requirement 15 requires a final PROWMP, all of which must be approved by the relevant planning authority. The ExA considers this sufficiently robust to allow CWCC to consult with IPs who have an interest in PRoW to ensure the undertaker provides clear communication plans in light of more detailed planning post-consent and in advance of and during construction, operation and decommissioning, in the various forms as suggested by IPs.

3.10.72. The ExA is satisfied there is sufficient control within the management document and dDCO to ensure that the repair and maintenance of PRoW affected by the construction and operation of the proposed development would be adequately monitored and controlled via requirement 12 of the dDCO [REP7-003]

3.10.73. In addition, the ExA considers the commitments made by the applicant within the oCTMP [REP7-015] for the Construction Traffic Management Working Group to agree a mechanism for identifying and apportioning shared responsibilities for maintenance and remedial works for any PRoW damaged during the course of construction works is a satisfactory approach to manage cumulative effects on PRoW from other projects.

3.10.74. The ExA therefore considers these matters resolved.

Experience of those using the PRoW

Landscaping and character effects to users of the PRoW

3.10.75. Concerns were raised by IPs that views of the proposed development, particularly the SADA, would have a detrimental impact on the experience of users of PRoW within the Order limits. Concerns included the possibility that landscaping to screen the solar farm, might result in an oppressive 'tunnelling' effect as it matured. CWCC stated [RR-037] that:

- The assessment of the impact of the proposed development on PRoW routes in terms of the visual experience of users should not rely just on the viewpoint representations.
- It considered the proposed development would have a greater adverse impact on the enjoyment of the footpath network than the ES assessment indicated.
- It was not clear on what basis the quantitative conclusion in the ES that there would be little impact on the number of visitors or users was reached.
- Consideration should have been given by the applicant to the qualitative impact in terms of the experience of the PRoW users.

3.10.76. CWCC submitted [RR-037] detailed commentary on the applicant's assessment in ES chapter 12 [APP-045], giving reasons why it considered the applicant's assessment to underplay the impact on the experience of PRoW users, including the NCN. CWCC considered the overall level of effect during the operational phase would result in at least a minor to moderate adverse effect, rather than a negligible to minor beneficial effect concluded by the applicant and considered the effect would be potentially significant. CWCC added that Policy DM37 Recreational routeways of LP2 seeks to protect and enhance PRoW and other routeways.

3.10.77. Overall, CWCC [RR-037] [REP1-046] considered there could be residual negative impact on recreational users of the existing PRoW, due to the change in character of the SADA post development, from a largely open agricultural expanse, albeit with some built features including the Frodsham Wind Farm turbines, into a solar farm environment on an industrial scale. CWCC added that the proposed mitigation with additional landscaping to filter views of the solar arrays from the PRoW would be appropriate and welcome, but the visual amenity and experience from within the SADA would be subject to significant change and likely residual adverse impact for recreational users of the PRoW. CWCC added that tracks would require maintenance for local residents to walk, wheel or cycle on and that provision should be made for greater connectivity in the surrounding area particularly with NCN5 and cycle routes to connect with existing infrastructure to encourage active travel.

3.10.78. There were further representations regarding this matter from IPs during the examination [REP2-014], [REP2-006], [REP2-007] including CNC [REP2-004], FTC [REP1-075], [REP2-021] and the CRT [REP1-065], [REP1-066]. In general, these representations welcomed the additional lengths of PRoW

proposed which would provide additional accessibility to the area but maintained concerns about the adverse visual effects of the SADA to users of PRoW. The CRT [REP1-066] raised the potential impact on views and visual amenity enjoyed by walkers, cyclists and recreational waterborne users of the Weaver Navigation, stating that the proposed development and associated fencing was likely to be visible from sections of canal banks where these are open and elevated. However, views from boats using the canal itself would be from a lower elevation and well screened.

3.10.79. In response to concerns on this matter, the applicant opined [REP3-042] that CWCC's conclusion was unduly pessimistic. The applicant contended that the proposed planting would, over time, cause general long-term visual effects not to be significant and that significant effects would be localised and experienced only by a small number of receptors. The applicant stated the proposed development included enhancements to make the area more attractive for recreational users, such as improvements to the existing PRoW network, approximately 5.34km of new permissive paths, new signage and interpretation material, benches, bins, cycle parking and if needed, a visitor car park, with details to be secured through the final LEMP. The access strategy would be supported by design buffers, including a 10m buffer between fencing around solar PV modules and PRoW routes. The applicant added that the approach adopted sought to respond to the requirements of NPS EN-1 in relation to good design. Whilst the applicant recognised that the character of some on-site routes would change, its conclusion was that the effects would be localised and reduce over time on key routes, and the new and enhanced route network and visitor infrastructure and information would improve the recreational offer rather than diminish it. The applicant confirmed [REP3-043] it had revised the oPROWMP [REP3-028] to include the specific suggested measures proposed by CWCC.

3.10.80. During ISH2, PNFS raised concerns [EV10-004], [REP4-077] regarding visual impacts on path users within the site of the proposed development and beyond. Apart from areas where lower vegetation height would be maintained to preserve estuary views, PNFS stated it wishes to see enhanced screening to provide an improved buffer and less obtrusive impact for path users on the marshes.

3.10.81. During questioning on this topic by the ExA at ISH2 [EV10-004], the applicant explained [REP4-057] that the design would intentionally provide wide corridors through and alongside the array, and that the experience would be varied, in some places users would be alongside tall existing hedgerows and elsewhere they would experience more open landscapes. The applicant emphasised that its intent was not a single uniform condition across the solar array development area (SADA) but a range of experiences along the PRoW network.

3.10.82. At DL6, the applicant revised its proposals by removing planned solar panels on Cell 2, which removed Cell 2 from the SADA in its entirety, with this area being incorporated into the NBBMA. This change was made to address ecological concerns. A revised illustrative masterplan (appendix A) with this change incorporated was available in the oLEMP [REP7-025]. CWCC

confirmed [REP7-041] this means that the PRoW would run along more of the expanded NBBMA which would allow views between vegetation from PRoW for a greater length across the NBBMA rather than across the SADA.

3.10.83. The signed SoCG between the applicant and CWCC at the close of the examination [REP7-028] stated that CWCC had ongoing concerns that the assessment of tourism and recreation impacts and effects did not adequately address the visual impact on users of PRoW, and enjoyment of the footpath network. It stated that CWCC maintained its position that the assessment undervalued the sensitivity of local PRoW and underplayed the magnitude of impact.

Glint and glare effects to users of PRoW

3.10.84. Regarding possible effects of glint and glare to users of the PRoW, the applicant responded to the ExA's written question Q9.1.2 [REP2-003] that significant glint and glare effects from solar developments on pedestrians along PRoW would be unlikely for the following reasons:

- Effects are typically experienced just after sunrise and just before sunset when the sun would be low in the sky.
- The typical density of pedestrians on a PRoW is low in a rural environment such as the location of the proposed development, particularly at the times of day when effects are likely to be experienced therefore the exposure to observers would be generally low.
- Glint and glare effects towards receptors on a PRoW would be transient, whereby a pedestrian could move beyond the solar reflection zone with ease with little impact upon safety or amenity.
- New tree and hedgerow planting has been proposed along existing and public access routes, to partially screen views of the SADA infrastructure. As such, there would be few locations where direct and unfiltered views towards panels would be experienced.

ExA's considerations regarding the experience of those using the PRoW

3.10.85. The ExA considers there would be a significant change to the visual experience of PRoW users from one with predominantly open characteristics to one with more restricted views from both the solar panels themselves and from the establishment of vegetation. The ExA considers that the removal of Cell 2 from the SADA would reduce the adverse effects of this change to some degree, as views from the proposed PRoW alongside Cell 2 through the vegetation in the direction of the Mersey Estuary would look over the NBBMA area to a greater extent.

3.10.86. The ExA recognises the benefits of the additional lengths of PRoW that would be available for recreational opportunities in the area, especially along the waterways with vistas over the Mersey Estuary and the River Weaver Estuary, and that there would be more circular routes available which would enhance users' experience. The majority of these additional lengths of PRoW would have a least one aspect free from views of solar panels but the SADA would remain visible for significant lengths of the PRoW within the site of the proposed development. The ExA considers there would be negative impacts

on the visual amenity of users of the PRoW during construction and during a considerable duration of the operational phase as vegetation establishes. The ExA considers that any glint and glare effects on PRoW users would likely be short in duration.

3.10.87. The ExA acknowledges there is a fine balance between the adverse effects of a change to a less open vista, to one with additional lengths of PRoW, albeit with some views of the SADA but also some additional positive viewing opportunities across the Mersey and Weaver estuaries. The ExA considers that over time, as the vegetation became fully established, there could be the potential for a minor positive effect, but this would take a substantial time to develop and would likely be considerably subjective as to whether it would become a positive effect, highly dependent on the perception of each individual user. On balance, given the time needed for the vegetation to become fully effective in its screening potential, the ExA considers that the worst-case scenario for the effect on users' experience of the PRoW would be minor adverse and therefore disagrees with the applicant's assessment of negligible to minor beneficial effects for this impact in the ES. However, the ExA considers the applicant has followed the mitigation hierarchy to reduce the visual impacts of the development for those using PRoW.

3.10.88. The ExA considers there would likely be a conflict with LP2, particularly policy DM38, as the ExA does not consider the proposed development would make a positive contribution to visual appearance of the area.

Long-term status of new PRoW post decommissioning

3.10.89. CWCC raised [RR-037] that further clarity and commitment on permissive paths remaining open after decommissioning would be welcome. CCWC advocated a mechanism to secure longer term retention of the permissive paths and proposed car park on Moorditch Lane if that was to be provided, beyond the life of the DCO. CWCC encouraged the applicant to carry out further negotiation on retention of access to the new permissive paths with the relevant landowners. CWCC's position was that the removal of the additional PRoWs at the end of the life of the DCO would cut short the value of the permissive paths as being genuine mitigation for such a long-term impact on the wide extent of the SADA.

3.10.90. CWCC added in response to ExA's written question Q9.5.2 [REP2-005] that the applicant had not proposed to secure an extension of the life of the permissive paths beyond the decommissioning period and that this was considered by CWCC to be a missed opportunity and requested confirmation as to what negotiations were undertaken by the applicant with the relevant landowners in relation to the permissive paths.

3.10.91. The applicant explained [REP3-043] that permissive paths cannot be secured beyond the decommissioning period in accordance with the landowner agreements. This issue was examined at ISH2 [EV10-004]. The applicant explained [REP4-056] that the landowners may or may not retain the permissive paths created across the site of the proposed development following decommissioning. CWCC confirmed at ISH2 that its position had

not changed and it desired clarity how this would be considered during decommissioning. The applicant confirmed [REP4-055] the oDEMP had been updated to include a requirement for the final DEMP to set out the status of permissive paths once the land was returned to landowners. The signed SoCG between the applicant and CWCC at the close of the examination [REP7-028] cited CWCC's ongoing position that it would like the permissive paths retained following decommissioning.

ExA's considerations

3.10.92. The ExA acknowledges that CWCC's sustained position at the close of the examination is that it would like to see the permissive paths retained post-decommissioning. The ExA acknowledges the applicant has considered this request, as required by NPS EN-1 paragraph 2.10.69, but has stated that this is not something that the dDCO would be able to secure beyond the lifetime of the proposed development. Nevertheless, the ExA considers there is sufficient control within the oDEMP [REP7-021] for the applicant to update CWCC with the status of the permissive paths at the time of decommissioning, which would provide CWCC with an opportunity to consider how to pursue agreements with relevant parties at that stage. On that basis the ExA considers the issue resolved.

Potential impacts on local businesses

3.10.93. CWCC commented [RR-037], [REP1-046] that the proposed private wire connection had the potential to benefit local business to meet the local renewable energy requirements of energy intensive businesses. CWCC stated it considered there would be a positive impact on skills, supply chain and local employment. The applicant responded to CWCC's representations [REP3-042] that it made provision for a private wire connection to Protos as this was one of CWCC's strategic development allocations. The applicant explained that it is typical for there to be no firm commitments from local businesses to connect to a proposed generating station at this stage of a project, as prospective customers require certainty that the generating asset would be delivered, which cannot be provided at this stage. The applicant's position was that the possibility of a private wire connection should be considered a benefit of the proposed development.

3.10.94. CWCC raised in its LIR [REP1-046] that there may be a potential loss of access to the River Weaver for those seeking new sustainable leisure activities during the operational phase. In policy terms, CWCC stated that policy EDVE2 from the FNP seeks to promote the River Weaver and Policy GSRL4 encourages development of sustainable leisure facilities and activities along the water courses of the River Weaver, Weaver Navigation, Frodsham Quayside and the marshes. CWCC claimed that the proposed development may serve to inhibit such further development. The CRT [REP1-066] stated it welcomed that users of the Weaver Navigation had been included in the assessment regarding potential disturbance to tourism and leisure as the Weaver Navigation is a recognised corridor for recreational pursuits, adding that any development should not compromise the safe navigation of the Weaver Navigation.

3.10.95. The applicant refuted CWCC's assertion that there may be a potential loss of access to the River Weaver for those seeking new sustainable leisure activities during the operational phase [REP3-042] claiming that the new and enhanced route network plus interpretation and visitor infrastructure, meant the recreational offer would likely be materially improved, rather than diminished. The applicant explained that access to the Weaver Navigation would not be affected by the proposed development [REP4-055] as that the reach of the River Weaver extending from the confluence with the Weaver Navigation (east of Frodsham) to the Manchester Ship Canal (west of Frodsham) is effectively isolated for navigation purposes from the River Weaver.

3.10.96. CWCC also raised in its LIR [REP1-046] concern that the proposed development would displace the activities of the Frodsham Wildfowlers. The applicant confirmed [REP3-042] that the Frodsham Wildfowlers had voluntarily entered into an agreement to lease their land to the applicant. The applicant understood that the club would continue to function elsewhere in the local area outside the Order limits.

ExA's considerations

3.10.97. The ExA's consideration of the proposed direct wire connection is reported on at section 3.2 of this recommendation. Nonetheless, for the purposes of this section, the ExA recognises there could be potential socio-economic benefits arising from its provision, although these have not been recognised in the planning balance for this section given the uncertain nature of the private wire connection.

3.10.98. The ExA has carefully considered representations from all IPs and concludes that, overall, the improved PRoW network, with associated increased access and learning opportunities, would not diminish or cause harm to recreational businesses in the area. The ExA determines that there is likely be to a minor positive impact on employment, skills and supply chain opportunities within the local area from the construction, operation and decommissioning of the proposed development and considers there is no substantive evidence before the ExA for an adverse impact on tourism, on recreational activities provided by local businesses, on new water-based activities or on overall visitor numbers to the area.

3.10.99. The ExA is satisfied the applicant provided adequate responses to all other raised matters in relation to potential impacts on local businesses. The ExA therefore regards these issues as resolved.

CONCLUSIONS

3.10.100. The ExA is satisfied that the applicant's assessment considers all relevant potential environmental impacts in respect of socioeconomics, tourism and recreation during the construction, operation and decommissioning phases of the proposed development, alone and cumulatively with other plans and projects.

3.10.101. The ExA is satisfied that the proposed development is in accordance with NPS EN-1 and NPS EN-3 regarding socio-economic effects, including minimising temporary closures to PRoW, ensuring continued recreational use of PRoW during construction and operation and minimising the visual impacts of the development for those using PRoW. The ExA is satisfied that the proposed development is in accordance with the Frodsham Neighbourhood Plan and the Ince Neighbourhood Plan. However, the ExA considers there would be a conflict with LP2, particularly policy DM38, as the ExA does not consider the proposed development would make a positive contribution to the visual appearance of the area.

3.10.102. Overall, the ExA finds the proposed development's potential impacts on receptors in relation to socioeconomics, recreation and tourism would be appropriately mitigated. The mitigation and management measures set out in ES chapter 12, the oPROWMP and the oSSCEP, would be secured by the requirements within the dDCO.

3.10.103. Nevertheless, the ExA disagrees with the applicant's conclusions on the effects on users of the PRoW. The ExA considers there would likely be a residual negative significant effect on users' experience of PRoW for a considerable length of time during the operational phase. The ExA considers that the identified residual socio-economic effects carry a little negative weight against making the Order.

3.11. CUMULATIVE EFFECTS AND INTER-RELATIONSHIPS

INTRODUCTION

3.11.1. The applicant considered cumulative and in-combination effects on a topic-by-topic basis and, therefore, these are discussed under each of the related planning issues in this recommendation. This section of the recommendation provides a summary of the applicant's overall approach to cumulative effects assessment and the issues arising therefrom.

3.11.2. The applicant's methodology in relation to cumulative and in-combination effects is set out in Chapter 13 of its Environmental Statement (ES) [APP-036] along with a summary of its conclusions.

POLICY BACKGROUND

3.11.3. The Overarching National Policy Statement for Energy (NPS EN-1) states that, in considering any proposed development, the Secretary of State for Energy Security and Net Zero (SoS) should take into account cumulative adverse impacts and that applicants should consider the cumulative impacts of multiple developments with residual impacts (paragraphs 4.1.5 and 4.2.12).

3.11.4. The National Policy Statement for Renewable Energy Infrastructure (NPS EN-3) states that applicants may choose to site development based on nearby available grid export capacity and that where this is the case, applicants should consider the cumulative impacts of situating a solar farm in

proximity to other energy generating stations and infrastructure (paragraphs 2.10.25 and 2.10.26).

3.11.5. NPS EN-3 states that the approach to assessing cumulative landscape and visual impact of large-scale solar farms is likely to be the same as assessing other onshore energy infrastructure (paragraph 2.10.94).

3.11.6. The National Planning Policy Framework (NPPF) also notes that cumulative impacts should be considered in relation to various environmental impacts of development.

THE APPLICATION

METHODOLOGY

3.11.7. The applicant assessed cumulative inter-project effects. These would arise from residual (post-mitigation) environmental effects of the proposed development combining and interacting with the residual environmental effects of one or more other committed developments. It considered other developments within the zones of influence for the various technical topics assessed in the ES. For this part of the assessment a long list of other 'reasonably foreseeable' developments [APP-057] and then a short list of other 'reasonably foreseeable' developments [APP-058] were prepared, the locations of which were illustrated on [APP-108].

3.11.8. The applicant also considered potential in-combination intra-project effects arising from the interaction and combination of different residual environmental effects of the proposed development on a single receptor. This is because, individually, the effects may not be significant, but the accumulation of effects may, collectively, give rise to a significant overall effect and if so, consideration would need to be given to whether additional mitigation measures should be provided to avoid or reduce those effects. The conclusions of this exercise were based on qualitative judgements.

THE APPLICANT'S ASSESSMENT

3.11.9. On the basis of ES chapters 5 to 12 along with other supporting assessments such as in relation to noise, construction dust and transport, the applicant identified the following as having the potential to experience more than one residual environmental effect:

- residential properties, business premises, community facilities
- users of public rights of way and permissive paths and recreational users of the River Weaver
- construction operatives or maintenance workers
- ecological receptors
- heritage assets

3.11.10. The applicant did not identify any significant intra-project in-combination effects during the construction, operational or decommissioning phases.

3.11.11. In respect of inter-project effects, the applicant noted that in most instances the distance of the other schemes from the main focus of development (the solar array development area) coupled in many cases with the mitigation plans would avoid the likelihood of significant cumulative effects occurring. However, two of the projects, the HyNet Hydrogen Pipeline and the Runcorn Carbon Dioxide Spur Pipeline, would cross the Order land and therefore were considered to have a higher likelihood of resulting in cumulative effects. However, subject to a co-ordinated approach being taken to construction works, the applicant concluded that neither of those projects would result in significant cumulative effects when considered alongside the proposed development.

ISSUES CONSIDERED DURING THE EXAMINATION

3.11.12. No interested party (IP) raised issue with the applicant's methodology or its conclusions in respect of cumulative and in-combination effects as set out in the ES.

3.11.13. Liverpool Bay CCS Ltd, the promoter of the Runcorn Carbon Dioxide Spur Pipeline, confirmed [REP6-053] the applicant's conclusion in respect of its proposals. It stated that, subject to agreed safeguards, the two projects were capable of proceeding without giving rise to unacceptable in-combination effects. It said that any construction-related in-combination impacts could be appropriately managed by a joint working group and by way of a planning condition requiring a construction environmental management plan that explicitly addresses these effects as part of any consent for the Runcorn Carbon Dioxide Spur Pipeline. The consideration of controls for overlapping construction periods is discussed further in chapter 7 of this recommendation.

3.11.14. In respect of the HyNet Hydrogen Pipeline the applicant noted [REP2-003] that the progression of that project had been paused and that it is now almost certain that the hydrogen pipeline would be brought forward after the proposed development. Therefore, there is no current scheme to be taken into account, and the promoter of the HyNet Hydrogen Pipeline would need to take account of the proposed development in its construction planning and approach to mitigation measures.

3.11.15. However, Cheshire West and Chester Council (CWCC) maintained concerns at the close of the examination regarding the interaction of the Hynet Hydrogen Pipeline and the Runcorn Carbon Dioxide Pipeline with the proposed development, particularly on ecological receptors [REP7-028].

3.11.16. CWCC also referred to an additional potential effect [REP1-046], noting that whilst the noise, dust, glint and glare assessment raised no significant impacts, together and in such close proximity, there would be some residual adverse impact on the traveller sites adjacent the Order limits. However, CWCC confirmed [EV10-008] that any such combined effects would not be significant.

3.11.17. In addition, CWCC noted [REP6-043] that Natural England had said that the site of another solar farm application (Hob Lane Solar Farm at land North of Rake Lane, Dunham-on-the-Hill (25/01339/FUL)) was functionally linked to the Order land. It said that the appropriate assessment for Hobs Lane would need to consider cumulative effects including Frodsham Solar Farm, and therefore the ExA and SoS should also consider the potential for such effects in respect of the Frodsham Farm Solar DCO application. Given that this matter relates to the Habitats Regulation Assessment, it is discussed in appendix C of this recommendation.

ExA's considerations

3.11.18. In respect of the concerns that CWCC maintained at the close of the examination regarding the interaction of the proposed development and the Hynet Hydrogen Pipeline and the Runcorn Carbon Dioxide Pipeline with ecological receptors, as presented in section 3.3 of this recommendation, the ExA considers the addition of Cell 2 to the Non-Breeding Bird Mitigation Area (NBBMA) would provide a degree of offset to the potential effects upon affected species. The ExA considers that, via the oOEMP [REP7-019], CWCC would have sufficient control over matters such as timings of any cumulative works, to mitigate cumulative ecological effects. The complexities of this are examined in chapter 7 of this recommendation and in the reflections on the HRA within appendix C of this recommendation. The ExA considers that the HRA legislation provides sufficient security that activities associated with the construction and operation of other projects which could impact the ornithological receptors in the NBBMA would either be suitably controlled to a level which would also ensure adequate mitigation from an EIA perspective or compensation would be provided under the HRA legislation. In addition, the ExA considers that CWCC would have sufficient control within the oOEMP to ensure the final OEMP would include appropriate management measures to mitigate reasonably foreseeable cumulative ecological effects.

3.11.19. In respect of other matters, the ExA has concluded that some impacts would be greater than as noted by the applicant and, in some cases, this would mean that some impacts would be significant. However, the ExA does not find that its different conclusions would give rise to any additional significant cumulative or in-combination effects.

CONCLUSIONS

3.11.20. The ExA considers the applicant's methodology for the assessment of cumulative and in-combination effects to be acceptable and that it complies with the relevant policies of NPS EN-1, NPS EN-3 and the NPPF. Given that there would not be any significant cumulative and in-combination effects, the ExA considers this to be a neutral matter in the overall balance.

3.12. OTHER PLANNING MATTERS

INTRODUCTION

3.12.1. Other planning matters are discussed in this section including effects on human health from air quality and noise sources, major hazards including security and safety, decommissioning and waste. These were matters that attracted some examination time and remain important and relevant considerations for the Secretary of State's (SoS) decision.

AIR QUALITY

3.12.2. This part of the recommendation addresses air quality effects on human receptors. Air quality effects on biodiversity are considered as necessary in section 3.3.

POLICY BACKGROUND

3.12.3. The Overarching National Policy Statement for Energy (NPS EN-1) recognises that energy infrastructure development can have adverse effects on air quality which could impact on health and biodiversity. Reference is made to legal limits for pollutants in the Air Quality Standards Regulations 2010 and national objectives set out in the Air Quality (England) Regulations 2000 (paragraphs 5.2.1 and 5.2.2).

3.12.4. Paragraph 5.2.9 sets out the requirements for an applicant's environment statement, including descriptions of existing air quality concentrations, significant air quality effects and predicted absolute emissions. It is also stated that air quality considerations should be given substantial weight where a project would lead to a deterioration in air quality or where the project is near a sensitive receptor site (paragraphs 5.2.16 and 5.2.17).

3.12.5. Paragraph 199 of the National Planning Policy Framework (NPPF) advises that decisions should sustain and contribute towards compliance with relevant limit values or national objectives for pollutants, taking into account Air Quality Management Areas (AQMA), Clean Air Zones and cumulative impacts. Opportunities to improve air quality or to mitigate impacts should be identified.

3.12.6. Policy SOC5 of Cheshire West and Chester Council's (CWCC) Local Plan Part One (2015) (LP1), says that development which gives rise to significant adverse impacts on health and quality of life, including on residential amenity, will not be allowed. Policy DM31 of CWCC's Local Plan Part Two (2019) (LP2), requires appropriate mitigation where development would result in unacceptable impacts on or from air quality.

THE APPLICATION

3.12.7. The scoping opinion [APP-049] concluded that with the implementation of standard construction management processes, significant effects on air quality during construction, operation and decommissioning would be unlikely. Accordingly, the assessment of on-road vehicle, non-road mobile

machinery and plant exhaust emissions was scoped out of the Environmental Statement (ES) due to the nature and location of the proposed development and the predicted number of on-road vehicle movements.

3.12.8. Whilst no AQMA have been declared due to dust and suspended particulate matter in CWCC's or neighbouring Halton Borough Council's administrative areas, a Construction Dust Assessment (CDA) [APP-055] was prepared to consider the potential effects of dust deposition and suspended particulate matter ($PM_{2.5}$ and PM_{10}) during construction activities. It took account of applicable air quality standards and guidance for $PM_{2.5}$ and PM_{10}, including those in the 2023 Air Quality Strategy for England, standards for $PM_{2.5}$ under the Environment Act 2021 and the Environmental Targets (Fine Particulate Matter) (England) Regulations 2023, and in Department for the Environment, Food and Rural Affairs (DEFRA) guidance. The assessment also took account of the Institute of Air Quality Management's 'Guidance on the Assessment of Dust from Demolition and Construction' (2024).

3.12.9. The CDA included a review of baseline air quality and local weather conditions, a review of background site sensitivity data, a qualitative assessment of potential dust and airborne particulate matter impacts, recommendations for mitigation measures, and an assessment of residual impacts and the significance of effects. Whilst it did not consider any demolition works, the assessment took account of the principal sources of airborne dust associated with earthworks and construction across the Order land. It also considered dust emission magnitudes, wind direction, and the sensitivity of receptors, including for leisure, school and residential uses. Human receptors, including occupants of the nearby traveller sites, were considered within 250m of the Order limits and within 50m of routes used by construction vehicles on public highways.

3.12.10. Whilst monitoring did not take place within 250m of the Order limits, the applicant referred to CWCC's ambient air quality monitoring data for PM_{10} to provide background information on the wider local ambient air quality. The data indicated no exceedances of PM_{10} air quality objectives. Similarly, DEFRA's predicted background pollutant concentration maps indicated that levels were well below the relevant objectives.

3.12.11. The CDA indicated a high risk of dust soiling impacts during the earthworks and construction works, and a low risk of human health (PM_{10}) impacts associated with earthworks and construction works. Risks were greatest for soil stripping and for foundation and trench excavation works near the traveller sites.

3.12.12. Mitigation measures would comprise communications, site management and monitoring, taking account of dust associated with site preparation and maintenance, vehicles and machinery, operations, and waste management. There would also be specific measures relating to earthworks, construction, traffic movements and track-out. These would be secured by way of the outline Construction Environmental Management Plan per requirement 12 of the draft Development Consent Order (dDCO) [APP-015]. In light of such

measures, the applicant concluded that no unacceptable impacts or effects on human health or amenity are likely to arise.

3.12.13. Dust assessments were not provided in relation to the operational or decommissioning phases, in respect of any replacement campaigns, or to assess cumulative effects because these considerations were 'scoped out' [APP-049] of the environmental impact assessment.

EXAMINATION AND CONCLUSIONS

3.12.14. It was established during the examination [REP1-046], [REP2-003] and [REP2-005] that the Thornton-le-Moors AQMA is the nearest and only AQMA with the potential for the proposed development to impact on air quality. The AQMA was declared in respect of sulphur dioxide (SO_2) and industrial processes rather than in relation to traffic-based emissions. The CDA states that vehicle movements from the proposed development would not have a material impact on the objectives of the AQMA, as traffic emissions are not a significant contributing factor to the pollutant of concern (SO_2) due to the low sulphur content in road vehicle fuel. Accordingly, the proposed development would be unlikely to lead to a breach of any relevant statutory air quality limits, objectives or targets in respect of the AQMA.

3.12.15. In its Technical Note on Major Replacement Works [REP1-034] the applicant identified that there would be potential for fugitive dust and emissions from vehicles during replacement works but that vehicle movements would be significantly less than for construction (assessed as causing non-significant effects) and no major earthworks or aggregate handling would be required. The outline Operational Environmental Management Plan (oOEMP) [REP7-019] sets out best practice air quality controls for operational maintenance and periodic replacements to mitigate the impact of dust arising within and outside of the Order limits, including dust suppression, internal speed limits, highway cleanliness and load securing. The outline Decommissioning Environmental Management Plan [REP7-021] also requires a dust management plan to be provided for the decommissioning phase. Both of these documents would be secured by the dDCO.

3.12.16. Following a suggestion by the ExA, and with reference to the suite of mitigation measures proposed in the CDA, the applicant updated requirement 12 of the dDCO [REP7-003] to explicitly provide for a stakeholder communication plan. This would set out details of the community engagement that would take place, including in respect of potential dust-related considerations, before work commences on the proposed development.

3.12.17. CWCC confirmed [EV10-020] that it considered the proposed mitigation measures to be sufficient, including in respect of the traveller sites, and that there would not be any significant residual adverse impacts. CWCC also accepted that the proposed development would not give rise to any issues in respect of any AQMAs.

3.12.18. The ExA is satisfied that the applicant has adequately assessed the potential air quality effects associated with the proposed development, that due regard has been paid to the effects of the proposed development on the occupants of the traveller sites, that satisfactory mitigation has been secured in the dDCO and, on that basis, that no significant effects from air quality on human receptors are likely to arise. Accordingly, the proposed development would be consistent with NPS EN-1, with the relevant policies of the NPPF, and would accord with relevant local plan policies. Furthermore, there would not be any negative impacts on air quality or any exceedance of air quality objectives in any AQMA as a result of the proposed development.

3.12.19. Overall, the ExA considers the air quality effects of the proposed development to be neutral and, therefore, that they do not weigh for or against the making of the Order.

GLINT AND GLARE, AVIATION AND DEFENCE

3.12.20. This part of the recommendation considers effects in relation to glint and glare on non-ecological receptors, and on aviation and defence. Any glint and glare effects on ecological receptors are discussed in section 3.3 of this recommendation and effects on users of public rights of way are discussed in section 3.10.

POLICY BACKGROUND

3.12.21. The Overarching National Policy Statement for Energy (NPS EN-1) seeks to avoid adverse effects from new energy infrastructure on civilian and military aviation interests, communications, navigation and surveillance (CNS) infrastructure and on other defence interests (section 5.2).

3.12.22. In terms of glint and glare effects, National Policy Statement (NPS) EN-3 states that, unless a significant impairment can be demonstrated, the SoS is unlikely to give any more than limited weight to claims of aviation interference because of glint and glare from solar farms (paragraph 2.10.159).

3.12.23. In respect of safeguarded areas around aerodromes, Policy DM11 LP2 states that new development which does not adversely affect the operational integrity or safety of an airport or aircraft operations, radar and navigation systems will be supported.

APPLICATION

3.12.24. In ES Chapter 6 [APP-039], and with reference to its Glint and Glare Assessment (GGA) [APP-056], the applicant noted that potential glint and glare effects would typically only affect receptors located in the direction that the solar photovoltaic modules (SPVM) would face. Receptors located to the north of the solar array development area (SADA) would not have views of the faces of the SPVM and, therefore, these receptors, including users of the Weaver Navigation, were not considered in the assessment. Potential effects from glint and glare to the south would be mitigated by the planting of new woodland along the south-eastern perimeter of the SADA at the boundary with the M56 motorway, secured in the Outline Landscape and Ecology

Management Plan (oLEMP) [APP-144]. In addition, anti-reflective coating would be applied to the surfaces of the SPVM.

3.12.25. The GGA stated that 16 dwellings would experience effects for less than three months per year and for less than 60 minutes on any given day. A total of 15 dwellings would experience glint and glare effects for more than three months per year, but for less than 60 minutes on any given day. The GGA concluded the level of impact would be low due to a combination of:

- Effects being above the ground floor and not in the main living space.
- Effects mostly coinciding with direct sunlight, with the sun being a far more significant source of light.
- Most of the reflecting panels being further than 1km, the maximum distance out to which glint and glare effects for ground-based receptors were assessed.

3.12.26. Accordingly, the GGA did not recommend any additional mitigation in respect of any of the affected residential receptors.

3.12.27. The GGA concluded that impacts on users of the M56 would be low, noting that in addition to planting, the tilt of some of the proposed panels had been altered to reduce effects on users. It also concluded that no solar reflections would be geometrically possible towards the Frodsham Hill War Memorial receptor. Overall, the applicant concluded that potential visual effects resulting from glint and glare would be very limited, would not be significant, and would not give rise to any landscape effects of note.

3.12.28. The GGA considered potential impacts on aviation activity associated with Liverpool John Lennon Airport (LJLA), including in relation to the air traffic control tower, runway approaches, visual circuits and visual reference points. A low impact was predicted, and it was noted that the Design Parameters Statement [APP-132] included a design objective to ensure that the difference in the tilt of the two areas of SPVM would be at least five degrees to ensure that solar reflections from two areas would not be experienced by pilots at the same time at any location. The applicant also noted [APP-128] that the nature of the proposed development would be such that it would not present an unacceptable risk to local or UK defence.

3.12.29. The GGA concluded that no mitigation other than that proposed in the application would be needed to address glint and glare-related effects.

EXAMINATION AND CONCLUSIONS

3.12.30. Whilst National Highways [RR-031] raised concern that glare could dazzle motorists on the M56, it later confirmed [REP1-055] that it was content with the GGA and did not object to Work No. 1 (i.e. the ground-mounted solar photovoltaic generating station) in the dDCO [REP7-003]. In respect of users of the Weaver Navigation, the Canal and River Trust did not raise any issues in respect of glint and glare in its relevant representations [RR-010] or its subsequent submissions. Liverpool Airport Limited, the operator of LJLA, confirmed [RR-042] that aircraft would not be detrimentally impacted by glint and glare.

3.12.31. The applicant also confirmed [REP2-003] that its methodology, which has been used on other solar DCO applications, was to assess glint and glare effects towards licensed aerodromes out to a maximum of 15km, and unlicensed airfields out to a maximum 6km, unless specific concerns had been raised. In this case, only LJLA was within that assessment area, and no concerns were raised by any other aerodromes, civil aviation assets or UK defence sites. The applicant added that CNS equipment and meteorological radar can only be impacted by solar developments when in close proximity, for example on-airfield solar sites, and given the separation distance between any CNS equipment or meteorological radar, no impacts were predicted in this case.

3.12.32. CWCC agreed [REP1-048] with the applicant's position (summarised in [REP1-033]) that consideration of glint and glare in a residential visual amenity assessment was not necessary. Whilst noting that the traveller sites are a residential use to the north of the M56, it said that the closest residential properties are to the south of the M56, and a combination of distance and intervening landscaping generally provide filtering of the views of the development. Therefore, CWCC concurred with the applicant's broad conclusion that visual change would not occur to such a degree that, in terms of the living conditions of residents, would result in any property becoming an unattractive and unsatisfactory (albeit not necessarily uninhabitable) place to live.

3.12.33. Although CWCC confirmed [REP2-005] that it had no concerns overall, it sought clarity in respect of potential effects on residential amenity, including clarification about the residential properties that could be affected, and requested that approval of the anti-reflective coating be secured by way of an amendment to requirement 6 of the dDCO. The ExA also requested a written summary of the consideration that had been given to the potential effects on the traveller sites. These matters were clarified by way of updates to the dDCO [REP7-003] and the GGA [REP4-016]. Following its review of this information CWCC confirmed [REP5-045] that it had no further concerns.

3.12.34. Although a local councillor also raised issue [REP4-078] in respect of potential effects on residential amenity, the applicant said [REP6-001] that no substantive points were raised which had not already been dealt with in its submissions.

3.12.35. With respect to cumulative considerations and with reference to the long list of cumulative projects [APP-057], the applicant confirmed [REP2-003] that only two solar projects had been identified: 24/03807/FUL (near Dutton, to the south of Runcorn) and 24/02269/SCR (near Picton, close to the M53/ M56 interchange). However, both were further than 2km from the Order limits meaning that the 1km ground-based receptor assessment areas for those schemes would not overlap with the 1km assessment area for the proposed development. Therefore, no ground-based receptors would be shared between projects. The applicant also noted that when considering the glare intensity with reference to aviation receptors, panel areas are typically combined when they are within 50m of each other. In this case, given the

separation of the sites, the panel areas would not be combined, and the effects would be considered independently.

3.12.36. The ExA is satisfied that the assessment undertaken by the applicant adequately assesses the potential glint and glare-related effects of the proposed development and that the dDCO includes satisfactory controls and mitigation mechanisms. Thus, the ExA concludes that the policy in NPS EN-1 and NPS EN-3 has been satisfactorily addressed, as has relevant development plan policy. However, given that there would be some minor residual effects on a number of residential receptors, the ExA considers that this is a matter to which a little negative weight ought to be given in the overall balance.

HUMAN HEALTH, FIRE RISK, SAFETY AND SECURITY

3.12.37. This part of the recommendation considers effects in relation to human health, fire risk, safety, and security. The implications in respect of ground conditions, including contamination, are dealt with in section 3.7. Landscape and visual impacts relating to security measures (such as fences) are discussed in section 3.6. Flooding and water quality are addressed in section 3.4. Highway safety, air quality, aviation, defence, noise and vibration, nuisance, public rights of way (PRoW), recreation, and socioeconomics are set out elsewhere in this section.

POLICY BACKGROUND

3.12.38. The Overarching National Policy Statement for Energy (NPS EN-1) paragraph 4.4.1 states that whilst access to energy is clearly beneficial to society and to our health as a whole, the construction of energy infrastructure and the production, distribution and use of energy may have negative impacts on some people's health. Whilst it acknowledges that some impacts are the subject of separate regulation, the SoS may want to take account of health concerns when setting requirements relating to a range of impacts (paragraphs 4.7 and 4.8).

3.12.39. At paragraph 4.13.5, NPS EN-1 says that applicants should consult with the Health and Safety Executive (HSE) on matters relating to safety.

3.12.40. NPS EN-3 states that applicants should assess the impacts of security measures on local residents including, for example, issues relating to intrusion from closed-circuit television and light pollution in the vicinity of the site (paragraph 3.10.32).

3.12.41. Regulation 5(4) of The Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 requires the identification, description and assessment of the expected significant effects arising from the vulnerability of the proposed development to major accidents or disasters that are relevant to that development.

3.12.42. Policy DM29 of LP2 notes that development that would give rise to significant adverse effects on health and wellbeing will not be supported. Policy DM34 states that development in the vicinity of hazardous installations will be

supported providing it would not result in a significant increase in the number of people being subjected to threshold levels of risk. This is consistent with Policy SOC5 of LP1, which states that development that gives rise to significant adverse impacts on health and quality of life will not be allowed.

3.12.43. LP2 Policy DM52 states that proposals for ground-mounted solar energy developments will be supported where they meet a number of criteria. It says that features such as access roads, security fencing, lighting and any buildings must be designed so as to minimise their visual impact whilst also ensuring that the development causes no risk to public safety.

APPLICATION

3.12.44. The scoping opinion [APP-049] stated that matters related to human health and major accidents and disasters could be identified in relevant chapters of the applicant's environmental statement (ES). It said that the assessment of human health should be informed by relevant guidance, that consideration should be given to the existing 400kV overhead line crossing the Order land (which does not form part of the proposed development), that the risk of fire associated with battery storage facilities should be assessed, and that an outline battery safety management plan (oBSMP) should be provided.

3.12.45. The applicant said [APP-128] that it addressed human health and major accident and disasters in the relevant chapters of the ES and that it followed the mitigation hierarchy to prevent human health impacts as far as possible. Mitigation measures for human health are set out in the Outline Construction Environmental Management Plan (oCEMP) [APP-136], the Outline Operational Environmental Management Plan (oOEMP) [APP-137], the Outline Decommissioning Environmental Management Plan (oDEMP) [APP-138], the Outline Construction Traffic Management Plan (oCTMP) [APP-135], the oBSMP [APP-139], the Outline Public Rights of Way Management Plan (oPRWMP) [APP-140], and the Outline Soil Management Plan (oSMP) [APP-141].

3.12.46. The applicant identified [APP-096], [APP-097] the potential for unexploded ordnance (UXO) on the Order land. The risk of encountering UXO on most of Manchester Ship Canal Dredging Deposit Ground Cell 1 and the most northerly section of Cell 5 was classified as high risk with the remainder of the Order land classified as having a medium risk. The oCEMP provides for the preparation of a UXO Management Plan prior to construction commencing, and that it would include measures in relation to availability of a UXO specialist, site-specific UXO awareness briefings, intrusive magnetometer surveys, monitoring and an emergency response plan.

3.12.47. In relation to the 400kv overhead lines, and with reference to NPS EN-5 and the relevant code of practice, the applicant concluded [APP-035] that the electric and magnetic fields produced are likely to be below the relevant public exposure limits.

3.12.48. The oBSMP, which has taken account of key sensitive receptors nearby, including the traveller sites, provides for the development of a comprehensive

fire risk management strategy prior to construction of the battery energy storage system (BESS) in liaison with Cheshire Fire and Rescue Service (CFRS) and in line with the most recent guidance from the National Fire Chiefs Council (NFCC).

3.12.49. The applicant said [APP-128] that it was in dialogue with the developers of the HyNet Carbon Dioxide Pipeline and the proposed Runcorn Carbon Dioxide Spur Pipeline, and that the proposed development was being designed to take account of these projects. The applicant also stated that it had consulted with the Health and Safety Executive, which raised the matter of existing utilities including pipelines which cross the Order land, as illustrated in ES Figure 1-6 [APP-105]. The applicant noted [APP-035] that it had incorporated easements into the indicative operational site layout to protect the utilities, and included relevant protective provisions in the dDCO [AS-013].

3.12.50. In ES Chapter 2, the applicant set out [APP-035] the type of lighting that would be necessary to satisfy health and safety requirements, and to ensure the welfare of those on site during the construction phase. It said that fencing, gates and signage would prevent unauthorised public access to construction areas, and that specific safety signage would be installed as necessary and appropriate to ensure that members of the public using PRoW on or near the Order land would be informed of any associated risks. The applicant also set out its approach to the design of site security measures during the operational phase, noting that operational areas of the solar array development area would be enclosed by a 2.0m-high wire-mesh deer fence. A weldmesh or palisade fence, up to 2.4m in height, would surround the Frodsham Solar Farm Substation and BESS compounds which would also have inward-facing security lighting installed. Other security measures would include fixed closed-circuit television and dome security cameras as outlined in the Design Parameters Statement [APP-132].

3.12.51. Site and public security measures are provided for in the oCEMP, the oOEMP, and the oDEMP.

3.12.52. No significant cumulative or in-combination effects were identified in respect of human health, fire risk, safety and security.

EXAMINATION AND CONCLUSIONS

3.12.53. Whilst [RR-016] suggested that the proposed development could pose a danger to local people, it did not set out any details in relation to risks that the interested party was concerned about. [RR-036 and RR-048] expressed concern relating to the effect of storms on the proposed development and consequential risks to their property. The applicant noted [REP1-032] that the proposed development has been and would be designed to withstand the weather experienced in the UK in accordance with best practice and relevant British Standards and that, as provided for in the oOEMP, there would be regular maintenance throughout the operational phase to reduce the risk of damage in storm events.

3.12.54. Following CWCC's request [RR-037], the applicant [PD2-027] met with the Lead Emergency Planning Officer of the Joint Cheshire Emergency Planning Team in September 2025 to discuss flood risk, proximity to hazardous installations and pipelines, and fire safety associated with the BESS. The Emergency Planning Team was satisfied that the applicant had considered the relevant matters at this stage in the development process and CWCC confirmed [REP2-005] that it had no further comments on this topic.

3.12.55. The Applicant [PD2-027] also held a meeting with CFRS in October 2025 in relation to flooding and the BESS. Following this, the oOEMP was revised to provide for a review of safety procedures and emergency action plans with CFRS should the Runcorn Carbon Dioxide Spur Pipeline be constructed. CFRS confirmed [REP6-020] that it had no concerns regarding the proposed development, that it has specific operational plans to respond to incidents involving BESS sites and that prior to the BESS being commissioned and fully operational CFRS would complete a site-specific risk Information visit to enable accurate operational risk information to be recorded.

3.12.56. National Highways (NH) expressed caution [RR-031] regarding the proposed BESS due to the lack of UK-specific safety and design standards, noting that it could not verify the safety of BESS installations near the strategic road network. It said that any BESS should be assessed against the NFCC guidance, especially regarding access for emergency services and fire suppression capabilities, and that it would expect to be involved in the approval of the battery safety management plan.

3.12.57. The applicant noted [REP2-003] that the oBSMP [REP6-020] identified the M56 as a sensitive receptor in relation to the proposed BESS locations and included a plume study to assess the battery fire emission impact in worst-case fire locations. It found that there would be no impact to M56 users in respect of any toxic gases or visibility impairment under any wind condition. The applicant also said [PD2-027] that the Battery Safety Management Plan would be prepared with reference to NFCC guidance, that CFRS would be consulted, and it amended requirement 7 of the dDCO [REP7-003] to include NH as a consultee.

3.12.58. If an issue resulted in a BESS fire, this would be dealt with by the fire suppression measures included as part of the proposed development and that a risk assessment would be carried out at the detailed design stage to ensure the sufficiency of fire suppression provision [REP4-057].

3.12.59. Regarding the risk of ice fall from Frodsham Wind Farm as raised in [REP1-046], CWCC noted [EV10-002] that the wind farm included safety measures approved by CWCC to address ice build-up [REP4-055], including automatic stopping in cases of ice build-up and the ability to park turbines so that blades are not directly above sensitive areas.

3.12.60. CWCC said [REP1-046] that the proximity of the proposed development to hazardous installations (pipelines crossing the Order land) did not appear to raise safety concerns subject to any representations from the Health and

Safety Executive (HSE). It also said that pipeline operators' comments would need to be taken into account.

3.12.61. At the pre-application stage, the HSE had said [REP4-055] that as the location of control rooms, construction compounds and the like had not been fixed, it was not in a position to provide an indication of its statutory land use planning advice. However, it noted that, generally, it would not advise against a proposed development providing that it does not introduce populations, either permanent or temporary, into any of the HSE's public safety consultation zones which are assigned to individual major accident hazard installations or major accident hazard pipelines. No further representations were received from the HSE.

3.12.62. The ExA is satisfied that the assessment undertaken by the applicant adequately assesses the potential human health, fire risk and safety and security-related effects of the proposed development and that the dDCO includes satisfactory controls and mitigation mechanisms. Thus, the ExA concludes that the policy in NPS EN-1 and NPS EN-3 has been satisfactorily addressed, as has relevant development plan policy. The ExA is also satisfied that Regulation 5(4) of The Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 has been satisfactorily addressed.

3.12.63. Given the absence of adverse impacts, the ExA considers that human health, fire risk and safety and security should be a neutral consideration in the overall balance and, therefore, that this does not weigh for or against the making of the Order.

NOISE, VIBRATION AND NUISANCE

3.12.64. This part of the recommendation addresses noise and vibration effects on human receptors and the defence in any civil or criminal proceedings for nuisance. The effect of noise on the landscape is considered in section 3.6. Dust is addressed earlier in this section of the recommendation (in relation to air quality). Noise and vibration effects on biodiversity are considered in section 3.3 and the effects on public right of way users in section 3.10.

POLICY BACKGROUND

3.12.65. The Overarching National Policy Statement for Energy (NPS EN-1) notes that excessive noise can have wide-ranging impacts on the quality of human life and health, for example by causing annoyance, sleep disturbance, cardiovascular disease and mental ill-health. It refers to the government's policy on noise, set out in the Noise Policy Statement for England, which promotes good health and good quality of life through effective noise management (paragraphs 5.12.1 and 5.12.2).

3.12.66. It also sets out how applicants should assess noise impacts in a noise assessment and possible mitigation measures that the Secretary of State (SoS) may require in order to control operational and construction noise (paragraphs 5.12.6 to 5.12.16).

3.12.67. Paragraph 5.12.17 states that the SoS should not grant development consent unless they are satisfied that the proposals would avoid significant adverse impacts on health and quality of life from noise, mitigate and minimise other adverse impacts on health and quality of life from noise and, where possible, contribute to improvements to health and quality of life through the effective management and control of noise.

3.12.68. NPS EN-1 also states that possible sources of nuisance under section 79(1) of the Environmental Protection Act 1990 (EPA) and how they may be mitigated or limited should be identified by the applicant so that appropriate requirements can be included in any subsequent order granting development consent (paragraph 4.15.5).

3.12.69. NPS EN-3 states that the SoS is unlikely to give any more than limited weight to traffic and transport noise and vibration impacts from the operational phase of a project (paragraph 2.10.162).

3.12.70. Section 2.9 of NPS EN-5 notes that audible noise effects can also arise from substation equipment such as transformers, quadrature boosters and mechanically switched capacitors.

3.12.71. The National Planning Policy Framework (NPPF) states that the natural and local environment should be enhanced by preventing new development from contributing to, or being adversely affected by, unacceptable levels of noise pollution and that planning decisions should mitigate and minimise potential adverse noise impacts and avoid significant adverse impacts on health and the quality of life (paragraphs 187 and 198).

3.12.72. Policy SOC5 of LP1 and Policies DM2 and DM30 of LP2 say that development which gives rise to significant adverse impacts on health and quality of life, including on residential amenity, will not be allowed.

APPLICATION

Noise and vibration

3.12.73. The scoping opinion [APP-049] stated that, subject to embedded mitigation being secured and agreed with relevant consultation bodies, noise and vibration effects during all phases of the proposed development associated with plant and machinery and increased traffic movements would be unlikely to give rise to significant effects and on that basis could be scoped out of the environmental assessment.

3.12.74. The applicant's Noise Impact Assessment (NIA) [APP-054] was based on a survey of background sound levels in the vicinity of the nearest residential sensitive receptors, including the traveller sites, and the nearest sensitive ecological receptors (as discussed in section 3.3).

3.12.75. The NIA considered potential noise and vibration impacts during the construction phase, based on the assumption that non-percussive mini piling would be used for the solar photovoltaic modules and non-percussive continuous flight augur (CFA) piling for the battery energy storage system

(BESS). It also noted that the assessment of construction phase effects provides a worst-case representation of effects for any significant replacement campaigns and for the decommissioning phase. In addition, the NIA considered effects during the operational phase.

3.12.76. The NIA identified mitigation measures, including:

- Embedded design measures such as siting the noisier elements of the inverters, the BESS compound, and the on-site substation as far as practicable from sensitive receptors.
- Measures for the construction phase secured in the Outline Construction Environmental Management Plan (oCEMP) [APP-136], including the use of established best practice measures to control noise and vibration, maintenance of plant in good working order to prevent excessive noise and the preparation of and adherence to a construction noise management plan, secured by requirement 12 of the draft development consent order (dDCO).
- Management of construction traffic, as noted in the Outline Construction Traffic Management Plan [APP-135], to prevent heavy or other vehicles from passing directly through sensitive areas such as the residential areas of Frodsham, Ince or Elton, secured by R14 of the dDCO.
- Measures to mitigate noise impacts during the operational phase as set out in the Outline Operational Environmental Management Plan (oOEMP) [APP-137], secured by requirement 13 of the dDCO.

3.12.77. With the above mitigation measures in place, the NIA concluded that during construction, residual noise levels at all receptors (including at the traveller sites) were expected to remain at most minor – well below the 'significant observed adverse effect' level – and temporary. The final operational noise levels were predicted to be very low at receptors, so the residual operational impact was considered, in effect, to be neutral. Overall, the applicant considered that noise and vibration effects would not be significant.

Nuisance

3.12.78. The Statutory Nuisance Statement [APP-126] considered matters potentially engaged under s79(1) of the EPA.

3.12.79. The proposed development was identified as having the potential to cause impacts prejudicial to health or a nuisance in relation to the condition of the Order land, emissions and air quality, artificial light, and noise emissions. However, it was concluded that the proposed mitigation, including in the oCEMP, the oOEMP, and the Outline Decommissioning Environmental Management Plan [APP-138], would prevent, reduce, or avoid impacts that would have the potential to result in a statutory nuisance and therefore that the proposed development was not expected to cause a statutory nuisance during its construction, operation or decommissioning.

3.12.80. Article 8 (Defence to proceedings in respect of statutory nuisance) of the dDCO [APP-015] included a provision to create a defence against proceedings for a nuisance described in paragraph (g) of section 79(1) of the

EPA (noise emitted from premises so as to be prejudicial to health or a nuisance), according to the criteria outlined in article 8.

EXAMINATION AND CONCLUSIONS

Noise and vibration

3.12.81. CWCC said [RR-037] and [REP1-046] that it agreed with the methodology and conclusions of the NIA. Whilst it noted, based on local knowledge, that CFA piling may not be possible within this area, it said that isolated periods of piling, both temporally and geographically are unlikely to present an issue for residents and that such matters can be addressed through the full Construction Environmental Management Plan (CEMP). It also said that the CEMP was the most appropriate means to control the hours of construction. However, in its response to ExQ1 [REP2-005], CWCC said that whilst the applicant's assessment may have been precautionary, the dDCO ought to secure the use of appropriate piling techniques, to restrict percussive piling or at least to establish a hierarchy of methods, and to ensure a careful choice of piling rigs to minimise noise and vibration at ecological receptors.

3.12.82. Natural England [REP2-009] also advised that the piling methodology be secured on the basis that the assessment had been undertaken to account for non-percussive piling, that any changes to this would invalidate the assessment's conclusions, and that if percussive methods were required during construction then these should be assessed.

3.12.83. The proposed methods of piling were explored at ISH2 [EV10-020] where the applicant confirmed the locations where percussive piling was proposed and that these had been assessed with reference to the relevant British Standards. The applicant also noted [REP2-003] that construction works, including percussive piling, would be well below threshold levels and existing residual noise levels as set out in [APP-054] and that, as such, it did not consider it necessary to restrict piling methods in the dDCO.

3.12.84. Although CWCC noted [REP1-046] that there would be some residual adverse impacts on the traveller sites as a result of noise, it confirmed [EV10-008] that the effects would not be significant and that the proposed mitigation measures would be satisfactory in respect of these receptors.

3.12.85. With regard to the operational phase, CWCC noted that noise would be consistently well below background levels at all receptors, including at the traveller sites, and is not likely to be audible or discernible. Therefore, it did not seek any requirements in respect of operational noise.

3.12.86. In its Technical Note on Major Replacement Works [REP1-034] the applicant said that noise impacts would be less than those from construction, mainly because activities with the highest noise levels, such as excavation and piling, would not be necessary. The high background noise levels of the M56 motorway would continue to dominate, so significant noise impacts would not be expected, particularly since the works would be carried out during the daytime.

3.12.87. With regard to the potential cumulative effects of replacement alongside operational noise, the applicant stated [REP2-003] that the NIA [APP-054] shows that operational noise levels would be between -15 and -21 dB(A) below representative background levels and that at these levels, operational noise would have a negligible cumulative impact on noise from replacement works. Furthermore, it would be likely that the closest source of operational noise within a phase of replacement works - the power conversion unit related to that phase - would be switched off.

Nuisance

3.12.88. Article 8 of the application version of the dDCO [APP-015] included a provision that offered a defence against proceedings for nuisance in relation to noise emitted from premises so as to be prejudicial to health or a nuisance. Given that the noise assessment [APP-054] concluded that during construction residual noise levels at all receptors were expected to be well below the Significant Observed Adverse Effect Level (SOAEL) and operational noise levels were predicted to be very low at receptors, the ExA asked whether the proposed dDCO provision was necessary and appropriate. As well as noting that nuisance claims are not limited to noise matters and that noise levels at all receptors are expected to be well below the SOAEL, the applicant said that it is standard practice to include the provision in article 8 in an order to prevent nuisance claims in a worst-case scenario, for example in the situation of a claim being raised by an occupier of an unauthorised development which the undertaker has no control over.

3.12.89. CWCC expressed concern [REP1-048] that article 8 went further than the model DCO provisions in that it sought to extend the defence to a statutory nuisance claim to not just the construction and maintenance of the authorised development but also to its 'operation, use or decommissioning'. CWCC also noted that there was no justification in the Explanatory Memorandum for the additional defence, that it did not consider it necessary and that it took the defence too far. However, during ISH2 CWCC acknowledged that provisions in respect of replacement and decommissioning would be appropriate, and it confirmed [REP5-045] that it was satisfied with the subsequent amendments that the applicant had made to article 8 of the dDCO.

ExA's consideration and conclusions

3.12.90. The ExA is satisfied that the assessment undertaken by the applicant adequately assesses the potential noise and vibration-related effects of the proposed development, including in terms of any cumulative effects. It is also satisfied that the dDCO includes satisfactory controls and mitigation mechanisms. Accordingly, the ExA concludes that the proposed development would accord with the noise and vibration policy requirements of NPS EN-1, NPS EN-3 and NPS EN-5. The ExA also concludes that the proposed development is consistent with relevant NPPF and local plan policies in respect of this topic.

3.12.91. Having considered all parties' submissions, the ExA agrees with the applicant that no specific controls in respect of piling need to be included in the dDCO:

the oCEMP includes provisions relating to the preparation of a piling risk assessment and the choice of piling method that is most appropriate to the circumstances, taking account of ground conditions and potential contamination as well as noise and vibration.

3.12.92. The application was also accompanied by a statement as to whether the proposed development would engage one or more of the matters set out in section 79(1) (statutory nuisances and inspections therefor) of the EPA, and it explained how such matters would be mitigated or limited. There are no outstanding objections to the defence to proceedings in respect of statutory nuisance at article 8 of the dDCO and the ExA considers the article, as drafted, to be proportionate and acceptable.

3.12.93. Taking into account that necessary mitigation is adequately secured in the dDCO, the ExA concludes that the noise and vibration effects of the proposed development are a neutral consideration in the overall balance.

DECOMMISSIONING AND WASTE

POLICY BACKGROUND

3.12.94. The Overarching National Policy Statement for Energy (NPS EN-1) sets out the importance of the waste hierarchy in sustainable waste management, and that disposal of waste should only be considered where other options are not available (paragraphs 5.15.2 and 5.15.3).

3.12.95. NPS EN-1 continues the applicant must consider the circular economy and how to ensure that their project aligns with the government's circular economy ambitions.

3.12.96. In making a decision on nationally significant infrastructure projects, the Secretary of State (SoS) should be satisfied that:

- Any such waste will be properly managed, both on-site and off-site.
- The waste from the proposed facility can be dealt with appropriately by the waste infrastructure which is, or is likely to be, available. Such waste arisings should not have an adverse effect on the capacity of existing waste management facilities to deal with other waste arisings in the area.
- Adequate steps have been taken to give consideration to the circular economy, minimise the volume of waste arisings, and of the volume of waste arisings sent for recovery or disposal, except where that is the best overall environmental outcome.

APPLICATION

3.12.97. The Environmental Statement (ES) does not contain any specific chapter assessing waste, waste management or the use of resources. Section 2.8 of ES Chapter 2 [APP-035] details that significant quantities of waste are not anticipated.

3.12.98. The ES detailed that, for the construction phase, many of the infrastructure elements would be prefabricated offsite. Waste streams would include metals

(iron and steel), plastic, cardboard, wood, chemicals and wastewater, all of which subject to the waste hierarchy. All waste transported off-site would be delivered to the appropriately licensed receivers of such materials. Operators receiving any waste materials resulting from the proposed development (which is not envisaged at this stage) would be subject to their own permitting and regulatory procedures.

3.12.99. Toxic and hazardous waste must be treated by an authorised operator. Transportation of hazardous waste would also require an authorised carrier [APP-035, paragraph 2.8.13].

3.12.100. Paragraph 2.8.16 of ES Chapter 2 [APP-035] states that:

"During the operational phase of the Scheme, waste arisings are expected to be minimal and are not anticipated to result in a significant effect."

3.12.101. In terms of decommissioning, an Outline Decommissioning and Environmental Management Plan (oDEMP) was submitted with the application [APP-138]. The document sets out, with regards to requirement 20 (R20) within the dDCO, that decommissioning is secured and would take place 40 years after first commissioning of the proposed development. All works and infrastructure would be removed from the surface, with underground cabling also likely to be taken away and recycled. Landscaping planted would remain on site, but the land would be handed back to the landowner for future maintenance and upkeep [APP-138] paragraph 2.4.3.

3.12.102. Decommissioning is expected to take between 12 and 24 months and would be undertaken in phases.

3.12.103. During the operational life of the proposed development, the applicant anticipated at least one cycle of major replacement works whereby the whole solar array would be replaced [APP-035]. No significant effects are predicted as a result of these works across any topic, with waste managed through the waste hierarchy.

3.12.104. The applicant did not make any assessment of cumulative effects within the ES or supporting documentation. The ES, however, suggested that the availability of solar waste handling facilities is likely to increase in future years to reflect demand.

EXAMINATION AND CONCLUSIONS

3.12.105. There were three main issues arising during the examination which attracted a number of representations, submissions and concerns:

- The applicant's assessment and mitigation provisions for waste management.
- Major replacement works during the operational period.
- Whether there was a need for a decommissioning fund.

Waste management

3.12.106. The scoping opinion from the Planning Inspectorate noted that the applicant wished to scope out waste as an ES Chapter. However, the Inspectorate did not agree, requesting instead that the ES should include estimates, by type and quantity, of expected residues and emissions and quantities and types of waste produced during the construction and operation phases in line with Schedule 4 of the EIA Regulations [APP-049].

3.12.107. Consequently, the ES was deficient in its submission version as it lacked any chapter on waste and failed to provide the information requested in the scoping opinion.

3.12.108. The advice given by the Inspectorate upon acceptance of the application (under section 51 of the Planning Act 2008 (PA2008)) was to provide the necessary information prior to the commencement of the examination [PD-003]. This was duly provided [AS-001], with tables 2, 3, 4 and 5 setting out the likely quantities of waste to be generated in construction, operation and decommissioning stages.

3.12.109. Rather than provide an independent assessment of the impact of the proposed development on existing waste-handling facilities, the applicant relied upon details in Cheshire West & Chester Waste Need Assessment 2023 (WNA), a supporting document in the preparation of the next Cheshire West and Chester Local Plan. The WNA identified the future need for additional waste management capacity in the authority up to 2045. On the basis of the WNA, the applicant concluded there would be planned capacity for the appropriate waste streams in the future [AS-001, page 15 of 16].

3.12.110. The LIR [REP1-046] noted that:

"The description of waste arisings during the operational phase as being very limited (para. 2.8.14) seems to underplay the potential for generation of waste. Reference is made to equipment needing replacement, but the magnitude of carrying out major replacement activities during the operational phase for the solar arrays and BESS in particular is not apparent from the description."

3.12.111. Cheshire West and Chester Council (CWCC) followed this up in response to ExA questions [REP2-005] by stating:

- Appendix 5 to the WNA comments on hazardous waste capacity, assuming that waste solar panels would be classed as hazardous. However, this may not always be the case depending on chemical composition of the panels.
- All panels and components are likely to be classed as waste electrical equipment and therefore are required to be separately collected for onward management at a suitably authorised treatment facility (ATF). It is understood that at present, very few UK ATFs actually process panels.
- The waste management plan should not be confined to decommissioning alone.

- Table 5-11 [REP1-024] states compliance with the waste hierarchy but doesn't state what that will mean in practice.
- Table 5-11 refers to the panels being dismantled and being sent to specialist recycling facilities, but it is not clear what such facilities exist.

3.12.112. The applicant responded [REP3-043] stating that none of the above points would alter the position that there would be sufficient recovery and disposal capacity available to accommodate the volumes of waste anticipated, taking into account other waste arising in the area. A waste management plan would be produced for the operational phase of the project by way of table 5.11 in the oOEMP [REP3-022] and that plan would ensure that the undertaker complies with all waste regulations, including adherence to the waste hierarchy.

3.12.113. At ISH2 [EV10-001], the applicant clarified that major replacement works would only take place once during the course of the project and that, by that time, the country would have developed sufficient solar panel recycling and processing facilities to accord with the Solar Roadmap.

3.12.114. CWCC wrote at Deadline (DL) 4 [REP4-066] to confirm that it is not anticipated that waste arisings from the development would have a significant adverse effect on the capacity of existing waste management facilities to deal with other waste arisings in the area. Reliance on the WNA was acceptable, although CWCC wished a future waste management plan to incorporate certain provisions including, though not limited to, a commitment to review the audits not just for compliance, but with an adaptive management philosophy to improve on existing arrangements.

3.12.115. The applicant responded at DL5 [REP5-044] to state the majority of the Council's points had been responded to in previous submissions and reiterated [REP5-041] that waste would be handled appropriately at the time it was encountered.

3.12.116. The draft Statement of Common Ground (SoCG) with CWCC at DL5 [REP5-036], though brief, described the topic of waste as being 'agreed' with no outstanding issues. This was ratified in the final signed SoCG at the close of the examination [REP7-028]. No other IPs raised or sustained substantiated objections to the applicant's approach for waste management.

ExA's conclusions

3.12.117. The ExA is content that the applicant has adequately assessed the likely waste arisings from the proposed development and, through use of available sources of information, has identified sufficient capacity in the local system to handle project-based waste. The ExA is satisfied that the suite of management plans that exist in the examination, together with those to be produced at the detailed design phase, contain appropriate provisions for effective adherence to the waste hierarchy.

Major replacement works

3.12.118. ES Chapter 2 [APP-035] details that comprehensive replacements of infrastructure would take place during the operational phase of the proposed development. Below is an extract from the ES, showing the anticipated lifespan of components.

Figure 16: Replication of Table 2-13 from ES Chapter 2 [APP-035]

Table 2-13: Indicative Operational Lifespan of Proposed Development Components

Scheme Component	Indicative Operational Lifespan
Solar Modules	15 – 30 years (a single replacement per installed panel and 10% contingency is assumed)
Mounting Structures	40 years
DC Cable	40 years (20% replacement anticipated due to defects)
AC Cables	40 years
Trident Poles	40 years
Solar Balance of Plant (Transformers/Inverters/Switchgear)	20 years (Replacement only for performance or health and safety reasons)
Battery Storage Unit and associated PCU	10 - 20 years (50% replacement anticipated due to defects)
Substation Equipment	40 years
Fencing	10 years

3.12.119. In relation to this, the oOEMP provided that the applicant need only notify CWCC of replacement activities if more than 50% of the proposed development would be replaced at any one time [REP1-022], paragraph 2.4.7.

3.12.120. At ISH1, the applicant justified that the dDCO did not contain any restriction on the amount of replacement activities that could be undertaken because the applicant wanted the ability to fully replace the solar and battery infrastructure of the proposed development [REP1-033] page 9. The applicant contested that the replacement works would be no greater in magnitude than the construction phase, so no new or different environmental effects would arise. Replacing 50% of the panels would generate only around five to ten percent of the HGV movements assessed at construction [REP1-033] page 35.

3.12.121. In response to continued concern from the ExA and CWCC, the applicant amended the oOEMP [REP3-022] to set out that if the replacement activities involved replacement of more than 50% of the solar panels within a 12-month period, then notification would be submitted to CWCC. An accompanying technical note on major replacement works [REP1-034] was submitted stating that:

- Upgrading components allows the proposed development to benefit from technological advances, including higher panel efficiencies, improved inverter performance, and better monitoring and control systems.
- This approach maximises the renewable energy generated by ensuring that the most amount of electricity is able to be generated for the most amount of time within the 40 years authorised by the DCO.

- The first major replacement work campaign would take place after 15 years have passed, thus allowing all landscape mitigation to have grown and established.
- Replacement campaigns of this scale would take place once every 10-15 years [REP2-003, Q9.6.3] [REP3-042].

3.12.122. The applicant rejected CWCC's request to drop the notification threshold from 50% to 25% on the basis that this would capture more routine and materially smaller replacement campaigns and would potentially create repetitive approval cycles for activities that are, by design, smaller and more localised [REP3-044].

3.12.123. At minutes 10:59 to 21:58 of ISH2 [EV10-022], the applicant withdrew from the position that replacement campaigns would be every 10-15 years, stating instead that only one major replacement work would take place in the operational lifetime. In response to further written questions on this, the applicant confirmed in writing [REP5-041], Q2.9.12, that, on the basis of a single replacement per installed panel with a 10% contingency during the lifetime of the project, only a single major replacement campaign would occur. However, should more than one major replacement campaign be required the applicant has described the nature of the impacts arising from these works, concluding that these effects would not be significant and would be less than the impacts experienced during construction. No additional controls or constraints were added to the oOEMP.

3.12.124. The applicant continued in response to Q2.9.12 [REP5-041] to state that, in relation to BESS units and associated power conversion units, it is anticipated there would be replacement of units every 10 to 20 years, with a 50% replacement contingency due to potential defects.

3.12.125. In response to ExA questions, the applicant assessed the approach to major replacement works in light of NPS EN-1 and NPS EN-3 expectations for waste management. The applicant's position [REP5-041] is that the oOEMP [REP7-019, paragraphs 4.1.56 to 4.1.57 and Table 5-11] requires a Waste Management Plan (WMP) to be prepared to ensure compliance with the Waste Hierarchy. As set out in the oOEMP, the waste hierarchy must be applied by any person who produces, keeps or manages waste per the duty of care set out in Section 34 of the Environmental Protection Act 1990 and Regulation 12 of the Waste (England and Wales) Regulations 2011. In respect of future capacity, the applicant recognised that the solar PV recycling market will need to expand over time to respond to increased volumes of end-of-life panels. However, there is a clear and credible basis to conclude that such capacity will be delivered as part of the government's solar roadmap.

3.12.126. The ExA raised concerns regarding the timing of major replacement works and the end of the operational life of the project, which potentially would give rise to a case to re-power the project, hence making the project more 'permanent' than the 'temporary' banner the applicant relied upon for its assessments [PD-016], Q2.2.10. The applicant iterated [REP5-041] that in fact the proposed development would be prevented from re-powering

because the dDCO explicitly states that the proposed development must be decommissioned within 40 years. As such, the impacts of the proposed development can be considered temporary.

3.12.127. At the close of the examination, CWCC retained its position that [REP6-044] [REP7-040]:

- The scale of replacement works should be restricted to no more than 25% replacement in any 2-year period.
- The timing of such replacements should be controlled to avoid ecologically sensitive seasons, with particular concern for disturbing qualifying bird species of the Mersey Estuary SPA.
- To increase clarity and transparency over replacement activities, there needs to be a mechanism for ensuring that notification is provided before the commencement of works comprised in a major replacements campaign, whether this be set at 50% or a lower figure.
- Concern over interaction of major replacement activities coinciding with the Frodsham Wind Farm (FWF) being decommissioned in 2042.

3.12.128. In response to concerns regarding cumulative effects of the FWF being decommissioned simultaneously with major replacement works for the proposed development, the applicant pointed out that there is a side agreement with FWF which requires both parties to coordinate activities associated with construction, operation and decommissioning. Irrespective of this, in respect of wind farm decommissioning, the timing and approach to the works would be controlled by virtue of the planning conditions and the requirements of the two consents [REP1-034], paragraphs 16.1.1ff.

3.12.129. The applicant made no changes to the documents at the close of the examination, recording this as a matter of dispute in the final signed SoCG [REP7-028] on this matter.

3.12.130. No other IPs raised or sustained substantiated objections to the applicant's approach for undertaking major replacement works.

ExA's conclusions

3.12.131. The ExA notes that the applicant's submissions indicate:

- A major replacement campaign constitutes replacement of 50% or more panels in a single managed activity.
- If more than 50% is to be replaced in a 12-month period, notification needs to be given to the local authority as per the oOEMP.
- Only one major replacement campaign is predicted during the lifetime of the project. Should more campaigns be required, the applicant has assessed the impacts on the surrounding area would be less than that of original construction, thus of much lesser magnitude.
- No cumulative effects occurring due to co-ordination and controls in place between the proposed development and FWF.

3.12.132. The ExA has some residual concerns regarding the major replacement arrangements, albeit these are hypothetical and speculative. The oOEMP

suggests that panel lifespan is 15-30 years. Although it is the applicant's intention to have only one major replacement campaign during the operational life of the proposed development, the legislative power would exist for two replacements (year 15 and year 30) prior to decommissioning. In addition, the oOEMP allows for 50% replacement of the total solar farm within a 12-month period, and therefore 100% of the solar farm is capable of being replaced over a two-year period.

3.12.133. Whilst it is appreciated that waste management facilities are likely to increase to meet demand within the solar sector, the ExA considers that a significant amount of waste could be generated from the proposed development. This would appear at odds with the overall waste hierarchy and national objectives to minimise the amount of waste generated.

3.12.134. Nonetheless, the ExA notes that CWCC has not sustained any objections on waste management grounds. The applicant has assessed the effects of the major replacement campaigns within the ES, and the ExA is satisfied that the effects could be managed through the suite of finalised management plans submitted under the various dDCO requirements. On this basis, despite the ExA's unease at the potential permutations in panel management in the future, it is considered that the impacts would be controlled as far as practicable.

3.12.135. In other respects, the ExA notes that the 50% replacement mark is the threshold at which CWCC would be notified of replacement works. Therefore a 49% replacement rate would not need to be reported. Reducing to 25%, as suggested by CWCC, appears unsubstantiated in evidence or policy terms. The ExA regards the applicant's assessment of potential impacts being substantially less than the construction period, even at 50% replacement, as being accurate and reassuring that no adverse effects would be endured by the local area or community.

3.12.136. The ability to replace the whole solar array, potentially more than once during its lifetime, gives the applicant the legislative ability to, in effect, re-power 100% of the project during its lifetime more than once. The prospect of a re-powered solar farm, with an increased yield, to then be decommissioned is therefore much less likely. However, there is no energy cap sought by the proposed development and such a cap would not be supported or encouraged under the suite of NPS. The prospect of decommissioning is discussed in the section below.

3.12.137. In conclusion, whilst the ExA has some operational concerns about the arrangements, none are substantive to suggest there is a significant residual issue arising on this matter.

Decommissioning fund

3.12.138. The applicant [APP-019] [PD2-027] explained that costs during the decommissioning phase would be covered by revenue generated by the proposed development, through its operations, and that it would have sufficient funds for decommissioning.

3.12.139. CWCC [RR-037] said that the original undertaker will often transfer a development once operational to another undertaker or undertakers and considered that there should be a robust mechanism for ensuring the funding for decommissioning is available in relation to potential future undertakers. It would welcome clarification on the funding needed to carry out decommissioning and how this would be secured from revenue generated by the proposed development. CWCC preferred that a decommissioning fund would be in place to avoid the need to resort to enforcement of decommissioning.

3.12.140. This matter was raised by the ExA in written questions, and the applicant responded [REP2-003] to emphasise that there is no NPS requirement for a decommissioning fund, and there is nothing different about this proposed development compared to the large number of energy DCOs that have been granted. The applicant noted R20 in the dDCO is a robust and secure mechanism for securing decommissioning and that the breach of a DCO requirement, including any requirement relating to decommissioning, would be an offence under s.161 of the PA2008.

3.12.141. Notwithstanding, the applicant provided text, on a without prejudice basis, for the provision of a new requirement in the dDCO for securing a decommissioning fund [REP1-033]. CWCC welcomed the potential provision of the requirement [REP3-047], stating it would be in the public interest to include such a requirement in the dDCO.

3.12.142. CWCC raised concern, however, that the applicant's main position on, at and immediately after decommissioning revolved around agreements with landowners [REP3-047], page 18, for which there was little detail in the examination. In response to ExA questions, the applicant elaborated [REP5-041], Q2.9.12, that the detailed Decommissioning Environmental Management Plan (DEMP) could only be prepared by the applicant on the basis of discussions with landowners as to how they are expecting the land to be returned to them. CWCC would have the opportunity to see and approve that plan as part of the detailed DEMP. Ultimately, however, when the land is returned, it would be in the control of the landowners, just as it is now, and should be managed in accordance with the usual planning system.

3.12.143. At the close of the examination, CWCC retained its position that a decommissioning fund would be preferred and essential [REP6-045] [REP7-040].

ExA conclusions

3.12.144. The ExA recognises that there is a legal obligation to decommission the project under R20 of the dDCO and that suitable strategies would be developed in accordance with the ODEMP [REP7-021]. This lends weight to the applicant's position that no additional requirement is needed.

3.12.145. On the other hand, the ExA has residual concerns regarding the major replacement works (detailed above) and the case for re-powering being strengthened, thus reducing the 'temporary' nature of the project. Bearing in

mind the ES is underpinned by the proposed development being temporary, it is important to strengthen the case for decommissioning and ensuring the land is suitably restored. The ExA is of the opinion that securing a decommissioning fund on the face of the dDCO would:

- Be in the public interest.
- Provide certainty as to the end state following decommissioning being reached in a suitable timeframe to a suitable standard.
- Ensure that decommissioning could fully take place with adequate finances to deliver it.
- Allow contingency for matters to be appropriately dealt with should there be dispute or inconsistency of approach when returning land to landowners at the decommissioning stage.

3.12.146. This position is supported by CWCC [REP6-045] [REP7-028].

3.12.147. Notwithstanding the applicant's arguments, it is the ExA's recommendation that a requirement is added to the dDCO to secure provision of a decommissioning fund to avoid any ambiguity or uncertainty as to the future of the project. The exact nature of the requirement is discussed further in chapter 7 of this recommendation.

ExA's conclusion on decommissioning and waste

3.12.148. The ExA considers that the applicant has demonstrated compliance with the requirements of section 5.15 in NPS EN-1, setting out provisions for the reduction and management of residual waste arisings. It is clear to the ExA that an emphasis on recycling and reuse of panels underpins the waste management strategy for the project, and this accords with the expectations of NPS EN-1 and NPS EN-3.

3.12.149. There would of course be some impact on existing and future waste management facilities in the locality, but this would not be significant. There could be a cumulative impact on existing facilities were they not augmented, but the prospective future laid out in the Solar Roadmap indicates waste facilities developing proportionate to the demand and, as such, there are no residual concerns.

3.12.150. The ExA considers the matter of decommissioning and waste, subject to the additional procedural requirement for a decommissioning bond to be secured, would not weigh for or against the case for development consent.

4. HRA SUMMARY

4.1. INTRODUCTION

4.1.1. This chapter sets out the Examining Authority's (ExA's) summary conclusions relevant to the Habitats Regulations Assessment (HRA). This will assist the Secretary of State for Energy Security and Net Zero (SoS), as the competent authority, in performing their duties under the Conservation of Habitats and Species Regulations 2017 (the Habitats Regulations). Records of examination procedure, evidence and reasoning to support the conclusions reported upon here are set out in appendix C of this recommendation.

4.1.2. For the purposes of this recommendation, in line with the Habitats Regulations and relevant government policy, the term 'European sites', includes:

- Special Areas of Conservation (SACs), candidate, and proposed SACs
- Special Protection Areas (SPAs) and potential SPAs
- listed and proposed Ramsar sites in line with the Habitats Regulations, other legislation and relevant government policy
- any sites identified or required as compensatory measures for adverse effects on any of these sites

4.1.3. The proposed development was identified as giving rise to the potential for likely significant effects (LSE) on European sites and is therefore subject to an HRA.

4.1.4. The ExA has been mindful throughout the examination of the need to ensure that the Secretary of State (SoS) has the information reasonably required to carry out their duties as the competent authority. It has sought evidence from the applicant and relevant interested parties (IPs), including from Natural England (NE) as the appropriate nature conservation body (ANCB), through written questions and issue-specific hearings (ISH).

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

4.1.6. In accordance with the precautionary principle embedded in the Habitats Regulations, consent for this proposed development may be granted only after having ascertained that it would not adversely affect the integrity of European sites and no reasonable scientific doubt remains[1].

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

4.1.7. The applicant's assessment of effects is presented in the following application documents:

- Information to inform Habitats Regulations Assessment (the HRA Report) [APP-125] and updated as [AS-017], [PD2-009], [REP3-006], [REP4-012] and [REP7-007].
- Outline Non-Breeding Bird Mitigation Strategy (oNBBMS) provided within the outline Landscape and Ecological Management Plan (oLEMP) [APP-144] and updated [PD2-023], [REP1-028] and provided as a standalone document [REP3-032], [REP4-048], [REP5-039], [REP6-037] and [REP7-033].

4.1.8. The main HRA matters raised by the ExA, NE and other IPs and discussed during the examination included:

- the adequacy of the applicant's baseline data
- the applicant's definition and assessment of functionally linked land (FLL)
- the applicant's approach to assessing noise and visual disturbance impacts
- the applicant's conclusions of adverse effects on integrity (AEoI) on the Mersey Estuary SPA and Ramsar site
- the applicant's approach and conclusions on the assessment of in-combination effects on the Mersey Estuary SPA and Ramsar site
- whether the proposed mitigation areas should be considered compensation areas
- hydrological aspects and water management of the mitigation area and potential impacts on FLL
- control of invasive non-native species

4.1.9. Further information can be found within appendix C of this recommendation.

4.2. SUMMARY OF FINDINGS IN RELATION TO LSE

4.2.1. The ExA is satisfied that the correct European sites and qualifying features were identified, and that the assessment of alone and in-combination LSE considered all the relevant potential impact pathways.

4.2.2. The ExA has concluded that LSEs exist for two European sites (the Mersey Estuary SPA and Ramsar site) from the proposed development alone and in combination with other plans or projects; these are identified in appendix C of this recommendation.

4.3. SUMMARY OF FINDINGS IN RELATION TO AEOI

4.3.1. The HRA Report concluded that AEoI could be excluded on all of the assessed European sites from the proposed development alone, and in combination with other plans and projects. Some of the conclusions in the HRA Report were subject to examination through written questions, hearings and submissions from NE and IPs. Following numerous submissions during the examination, NE confirmed it agreed with the HRA Report's conclusions.

4.3.2. Based on the findings of the examination, the ExA is satisfied that AEoI on all qualifying features of European sites can be excluded from the proposed development alone and in combination with other plans and projects.

4.4. HRA CONCLUSIONS

4.4.1. On the basis of the information set out in appendix C and taking into account the position of NE and other IPs, the ExA is 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 likely significant effects have been identified. The ExA is also satisfied that all relevant projects for the in-combination assessment that could give rise to likely significant effects were identified and assessed.

4.4.2. The ExA's findings are that, subject to the mitigation measures to be secured in any dDCO, AEoI on the assessed European sites from the proposed development when considered alone or in combination with other plans or projects can be excluded from the impact-effect pathways assessed.

4.4.3. The ExA considers that there is sufficient information before the SoS to enable them to undertake an Appropriate Assessment (AA) in order to fulfil their duty under the requirements of the Habitats Regulations.

5. CONCLUSION ON THE CASE FOR DEVELOPMENT CONSENT

5.1. INTRODUCTION

5.1.1. The Overarching National Policy Statement for Energy (NPS EN-1) states that the government has concluded that there is a critical national priority (CNP) for the provision of nationally significant low carbon infrastructure. The proposed development is CNP infrastructure as defined in NPS EN-1. The National Policy Statement for Renewable Energy Infrastructure (NPS EN-3), and the National Policy Statement for Electricity Networks Infrastructure (NPS EN-5) are also applicable, and all three provide the primary basis for determining whether development consent should be granted.

5.1.2. Within this context, this section considers the overall case for development consent, taking into consideration the conclusions reached in relation to the main planning issues.

5.2. SUMMARY OF THE MAIN PLANNING ISSUES

ENVIRONMENTAL STATEMENT

5.2.1. Overall, the Examining Authority (ExA) considers that the Environmental Statement (ES), as supplemented with additional information during the examination, is technically compliant with the Infrastructure Planning (Environmental Impact Regulations) 2017 (EIA Regulations).

5.2.2. The ExA has taken full account of all environmental information in its consideration of this application, including the ES as supplemented with additional information during the examination. The ExA considers there is sufficient material to enable the Secretary of State for Energy Security and Net Zero (SoS) to take a decision in compliance with the EIA Regulations.

HABITATS REGULATION ASSESSMENT (HRA) CONSIDERATIONS

5.2.3. The proposed development is development for which an HRA report has been provided. In reaching the overall conclusion and recommendations in this recommendation, the ExA has considered all documentation relevant to HRA.

5.2.4. The SoS is the competent authority under the Habitats and Species Regulations 2017 (as amended) (Habitats Regulations) and will make the definitive assessment. The ExA considers that there is sufficient information before the SoS to enable them to undertake an appropriate assessment in order to fulfil their duty under the requirements of the Habitats Regulations.

THE PRINCIPLE OF DEVELOPMENT

5.2.5. Current policy provisions establish the urgent need for renewable energy generation of all types. Large scale solar generation, such as the proposed

development, will be part of the mix of infrastructure and technology that it is anticipated will deliver this, in line with wider energy and climate objectives. Solar generation is part of the mix of technologies that can support the delivery of a low-carbon, secure and affordable UK energy supply into the future. In this regard, an important and relevant consideration is the commitment set out in NPS EN-1 to the provision of low carbon infrastructure as a CNP.

5.2.6. The ExA considers that the proposed development would make a meaningful contribution to meeting this need in general accordance with NPS EN-1 and NPS EN-3.

5.2.7. The ExA also concludes that the proposed development would gain support in principle from local policies seeking to support renewable energy provision and the transition to a low carbon future.

5.2.8. In terms of site selection and alternatives, the methodology used and reasons given for the site selection are sufficient to achieve compliance with the requirements of NPS EN-1 and NPS EN-3 and the EIA Regulations in this regard.

5.2.9. Accordingly, the ExA considers that the principle of the proposed development accords with local and national policy. The combination of the urgent need for the proposed development and beneficial impacts on climate change bring very great weight for the making of the Order.

PRINCIPAL ISSUES

5.2.10. The table below summarises the ExA's findings across all those planning matters that are important and relevant to the determination of this application. A more detailed summary of the conclusions for each topic is set out thereafter.

Table 2: Summary of findings on main planning issues

Issue	Finding	Weighting	Section
Air Quality	Neutral	Neutral	3.12
Biodiversity and Ecology	Positive	Little	3.3
Climate Change	Neutral	Neutral	3.5
Cumulative Effects	Neutral	Neutral	3.11
Decommissioning and Waste	Neutral	Neutral	3.12
Ground Conditions, Geology and Land Use	Neutral	Neutral	3.7
Health and Safety	Neutral	Neutral	3.12

Historic Environment	Negative	Little	3.9
Landscape and Visual	Negative	Great	3.6
Major Accidents and Hazards	Neutral	Neutral	3.12
Need and Principle of Development	Positive	Very great	3.2
Noise and Vibration	Neutral	Neutral	3.12
Socioeconomics	Negative	Little	3.10
Traffic and Transport	Neutral	Neutral	3.8
Water Environment	Neutral	Neutral	3.4

AIR QUALITY

5.2.11. The ExA is satisfied that the applicant has adequately assessed the potential air quality effects associated with the proposed development, that due regard has been paid to the effects of the proposed development on the occupants of the traveller sites, that satisfactory mitigation has been secured in the draft Development Consent Order (dDCO) and, on that basis, that no significant effects from air quality on human receptors are likely to arise. Accordingly, the proposed development would be consistent with NPS EN-1, with the relevant policies of the National Planning Policy Framework (NPPF) and would accord with relevant local plan policies. Furthermore, there would not be any negative impacts on air quality or any exceedance of air quality objectives in any Air Quality Management Area as a result of the proposed development.

5.2.12. Overall, the ExA considers the air quality effects of the proposed development to be neutral and, therefore, that they do not weigh for or against the making of the Order.

BIODIVERSITY AND ECOLOGY

5.2.13. The ExA examined all assessments submitted by the applicants and considered all the issues raised by Interested Parties (IPs) during the examination related to biodiversity and ecology.

5.2.14. The ExA is satisfied that the applicant's assessment considers all relevant potential environmental impacts in respect of biodiversity and ecology during the construction, operation and decommissioning phases of the proposed development alone and cumulatively with other plans and projects.

5.2.15. The ExA considers that the applicant's ecological monitoring plans are sufficiently outlined in the Outline Construction Environmental Management Plan (oCEMP) [REP7-017], Outline Operational Environmental Management Plan (oOEMP) [REP7-019], Outline Landscape and Ecological Management Plan (oLEMP) [REP7-025] and Outline Non-Breeding Bird Mitigation Strategy (oNBBMS) [REP7-033], which are secured via requirements 9, 12 and 13 in the dDCO [REP7-003].

5.2.16. To avoid duplication, the ExA reports on the necessary HRA tests for qualifying features for European sites in section 4 and appendix C of this recommendation. However, any impacts on the qualifying features as receptors in their own right have been considered here alongside those set out above, when considering the planning balance.

5.2.17. In terms of residual effects on breeding and non-breeding birds from an EIA perspective, the ExA considers that by the close of the examination adequate mitigation measures had been proposed to mitigate potential effects on ornithological receptors during all phases of the proposed development. The ExA considers the proposed mitigation would be adequate and that there would be a minor to negligible adverse effect (not significant) on breeding and non-breeding birds from the construction and operation of the proposed development.

5.2.18. The ExA considers the applicant's proposed mitigation measures to be sufficient and secured via commitments in the oCEMP [REP7-017] and the oOEMP [REP7-019] and requirements 10, 12 and 13 of the dDCO [REP7-003]. These would adequately protect the existence and movement of protected and notable species within the site of the proposed development during construction, operation and decommissioning.

5.2.19. The ExA considers that, on a worst-case basis, the proposed development would have a negligible effect (not significant) on the Mersey Estuary Site of Special Scientific Interest (SSSI) and the Frodsham, Helsby and Ince Marshes Local Wildlife Site (LWS).

5.2.20. The ExA considers that the HRA legislation provides sufficient security that any cumulative effects with other plans and projects could be suitably controlled to a level which would also provide adequate mitigation from an EIA perspective. In addition, Cheshire West and Chester Council (CWCC) would have sufficient control within the oOEMP [REP7-003] to ensure the final OEMP would contain appropriate management measures to mitigate cumulative ecological effects.

5.2.21. The ExA considers the applicant has followed the mitigation hierarchy with regard to issues related to biodiversity and ecology. The ExA is satisfied that the proposed development is in accordance with NPS EN-1, NPS EN-3 and NPS EN-5, the relevant policies in the Cheshire West and Chester Local Plan and all other relevant legislation and policy, and there are no other important considerations.

5.2.22. The ExA considers that the commitments the applicant has made and secured regarding BNG would provide a long-term benefit to ecology and biodiversity.

5.2.23. Overall, given the conclusions above, the ExA considers that the identified beneficial effects on biodiversity and ecology carry a little positive weight for making the Order.

CLIMATE CHANGE

5.2.24. The ExA examined all assessments submitted by the applicant and considered all the issues raised by IPs during the examination related to Greenhouse Gas (GHG) emissions and climate change resilience.

5.2.25. The ExA is satisfied that the applicant's assessment considers all relevant potential environmental impacts in respect of GHG emissions and resilience to climate change during the construction, operation and decommissioning phases of the proposed development, alone and cumulatively with other plans and projects.

5.2.26. The ExA considers that the applicant's GHG reduction plans and resilience plans are sufficiently outlined in the oCEMP [REP7-017], oOEMP [REP7-019] and Outline Decommissioning Environmental Management Plan (oDEMP) [REP7-021] and appropriately secured in requirements 12, 13 and 20 of schedule 2 of the rDCO (appendix D of this recommendation).

5.2.27. The ExA is satisfied that the proposed development is in accordance with NPS EN-1, NPS EN-3, NPS EN-5 and all other relevant legislation and policy, and there are no other important considerations.

5.2.28. In order to avoid duplication, the benefit of reduced GHG emissions over the lifetime of the proposed development is included in the planning balance under the need topic. Given the conclusions above, the ExA considers that the identified effects on climate change resilience carry neutral weight in the planning balance.

CUMULATIVE AND INTER-RELATED EFFECTS

5.2.29. The ExA considers the applicant’s methodology for the assessment of cumulative and in-combination effects to be acceptable and that it complies with the relevant policies of NPS EN-1, NPS EN-3 and the NPPF. Given that there would not be any significant cumulative and in-combination effects, the ExA considers this to be a neutral matter in the overall balance.

DECOMMISSIONING AND WASTE

5.2.30. The ExA considers that the applicant has demonstrated compliance with the requirements of section 5.15 in NPS EN-1, setting out provisions for the reduction and management of residual waste arisings. It is clear to the ExA that an emphasis on recycling and reuse of panels underpins the waste management strategy for the project, and this accords with the expectations of NPS EN-1 and NPS EN-3.

5.2.31. There would of course be some impact on existing and future waste management facilities in the locality, but this would not be significant. There could be a cumulative impact on existing facilities were they not augmented, but the prospective future laid out in the Solar Roadmap indicates waste facilities developing proportionate to the demand and, as such, there are no residual concerns.

5.2.32. The ExA considers the matter of decommissioning and waste, subject to the additional procedural requirement for a decommissioning bond to be secured, would not weigh for or against the case for development consent.

GLINT AND GLARE, AND AVIATION

5.2.33. The ExA is satisfied that the assessment undertaken by the applicant adequately assesses the potential glint and glare-related effects of the proposed development and that the dDCO includes satisfactory controls and mitigation mechanisms. Thus, the ExA concludes that the policy in NPS EN-1 and NPS EN-3 has been satisfactorily addressed, as has relevant development plan policy. However, given that there would be some minor residual effects on a number of residential receptors, the ExA considers that this is a matter to which a little negative weight ought to be given in the overall balance.

GROUND CONDITIONS, GEOLOGY AND LAND USE

5.2.34. The ExA is satisfied that the applicant's assessment considers all relevant potential environmental impacts in respect of ground conditions during the construction, operation and decommissioning phases of the proposed development, alone and cumulatively with other plans and projects.

5.2.35. The ExA considers that the applicant's monitoring plans for known and unexpected contamination are sufficiently outlined in the oCEMP [REP7-017], oOEMP [REP7-019], oDEMP [REP7-021] and the Outline Battery Safety Management Plan (oBSMP) [REP6-020] and are appropriately secured in requirements 7, 12, 13, 17 and 20 of the dDCO [REP7-003].

5.2.36. The ExA is satisfied with the information provided in the ES regarding Agricultural Land Classification, and the proposed development would meet the tests in NPS EN-1 regarding Best and Most Versatile agricultural land.

5.2.37. The ExA finds the proposed development's potential impacts on receptors in relation to ground conditions would be mitigated as far as possible and managed through measures and commitments in ES chapter 10, the oCEMP [REP7-017], oOEMP [REP7-019], oDEMP [REP7-021] and the oBSMP [REP6-020], secured by relevant requirements of the dDCO [REP7-003].

5.2.38. The ExA is satisfied that the proposed development is in accordance with NPS EN-1 and NPS EN-3 and all other relevant legislation and policy, and that there are no other important and relevant considerations.

5.2.39. Given the conclusions above, the ExA considers that the identified effects regarding ground conditions from the proposed development would not weigh for or against the case for development consent.

HISTORIC ENVIRONMENT

5.2.40. The ExA considers the applicant's assessment of the significance of heritage assets and of the historic environment-related effects of the proposed development to be satisfactory. Whilst the ExA disagrees with the applicant's conclusions in respect of the degree of less than substantial harm that would occur to the settings of a number of designated heritage assets, there would nevertheless be no significant (in environmental impact assessment terms) residual historic environment effects during any phase of the development, including when considered cumulatively with other developments.

5.2.41. The ExA is satisfied that the proposed mitigation measures as set out in the oLEMP, the oCEMP and the outline Written Scheme of Investigation (oWSI) could be effectively implemented through requirements 9, 12 and 18 of the dDCO [REP7-003].

5.2.42. Thus, the approach taken by the applicant accords with NPS EN-1, NPS EN-3 and the NPPF. The ExA also agrees with the applicant's conclusion that, if adopted as currently drafted, its assessment would satisfactorily address the relevant historic environment-related policies in the NPPF.

5.2.43. However, the proposed development would conflict with policy ENV5 of the Cheshire West and Chester Council Local Plan Part 1 (2015) (LP1), which states that development will be required to respect and respond positively to designated heritage assets and their settings, avoiding loss or harm to their significance as well as with the similar provision of the Cheshire West and Chester Council Local Plan Part 2 (2019) (LP2) Policy DM47, which states that development proposals or works will only be supported when they would conserve the significance of a listed building and its setting.

5.2.44. In conclusion, the ExA considers the issue of cultural heritage carries little negative weight against the case for making the Development Consent Order. This conclusion is to be weighed against the public benefits of the proposed development in section 5.3 below.

LANDSCAPE AND VISUAL

5.2.45. The ExA is satisfied that the approach taken to design development accords with NPS EN-1, NPS EN-3 and NPS EN-5, and that the dDCO would ensure that future consenting would meet landscape, visual and good design objectives. Similarly, the ExA is satisfied that the methodology for the assessment undertaken by the applicant adequately assesses the potential landscape and visual impact-related effects of the proposed development in accordance with NPS EN-1. Whilst detailed assessment was scoped out of the ES, the ExA is satisfied that sufficient regard has been paid to residential receptors, including the occupiers of the traveller sites, and that there would not be any significant landscape or visual impacts on those receptors.

5.2.46. There would be significant landscape and visual impacts during the construction phase which would be temporary and of a nature that is typically associated with large-scale renewable energy construction projects of this kind.

5.2.47. During the operational phase, the proposed development would have a significant adverse impact on a large part of a locally valued landscape, going beyond the capacity of the landscape to accommodate change. This is an impact which would be long-lasting and not practical to mitigate. Whilst NPS EN-1 says that locally valued landscapes should not be used in themselves to refuse consent, the proposed development would nevertheless conflict with a number of development plan and NPPF policies.

5.2.48. Whilst the applicant has identified a number of significant visual impacts that would be experienced by users of the PRoW network, the ExA considers that the significant effects on visual receptors would be more wide-ranging and that the proposed development would result in significant impacts on visual receptors in the vicinity of St Laurence's Church and at Frodsham Hill War Memorial, a particularly prominent and well-known location.

5.2.49. Although time-limited and reversible (save for any residual landscaping that might remain), the operational phase effects would be long-term, lasting until decommissioning takes place. No additional significant effects are expected during the decommissioning phase.

5.2.50. The applicant has also identified a number of landscape-related benefits and has proposed a suite of mitigation measures which the ExA is satisfied would be satisfactorily secured by the dDCO.

5.2.51. Taking these into account alongside the identified harms, the ExA attributes great negative weight to the landscape and visual harm that would be caused by the proposed development.

HUMAN HEALTH, FIRE RISK, SAFETY AND SECURITY

5.2.52. The ExA is satisfied that the assessment undertaken by the applicant adequately assesses the potential human health, fire risk and safety and security-related effects of the proposed development and that the dDCO includes satisfactory controls and mitigation mechanisms. Thus, the ExA concludes that the policy in NPS EN-1 and NPS EN-3 has been satisfactorily addressed, as has relevant development plan policy. The ExA is also satisfied that Regulation 5(4) of The Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 has been managed.

5.2.53. Given the absence of adverse impacts, the ExA considers that human health, fire risk and safety and security should be a neutral consideration in the overall balance and, therefore, that this does not weigh for or against the making of the Order.

NOISE AND VIBRATION

5.2.54. The ExA is satisfied that the assessment undertaken by the applicant adequately assesses the potential noise and vibration-related effects of the proposed development, including in terms of any cumulative effects. It is also satisfied that the dDCO includes satisfactory controls and mitigation mechanisms. Accordingly, the ExA concludes that the proposed development would accord with the noise and vibration policy requirements of NPS EN-1, NPS EN-3 and NPS EN-5. The ExA also concludes that the proposed development is consistent with relevant NPPF and local plan policies in respect of this topic.

5.2.55. Having considered all parties' submissions, the ExA agrees with the applicant that no specific controls in respect of piling need to be included in the dDCO: the oCEMP includes provisions relating to the preparation of a piling risk assessment and the choice of piling method that is most appropriate to the circumstances, taking account of ground conditions and potential contamination as well as noise and vibration.

5.2.56. The application was also accompanied by a statement as to whether the proposed development would engage one or more of the matters set out in section 79(1) (statutory nuisances and inspections therefor) of the Environmental Protection Act 1990, and it explained how such matters would be mitigated or limited. There are no outstanding objections to the defence to proceedings in respect of statutory nuisance at article 8 of the dDCO and the ExA considers the article, as drafted, to be proportionate and acceptable.

5.2.57. Taking into account that necessary mitigation is adequately secured in the dDCO, the ExA concludes that the noise and vibration effects of the proposed development are a neutral consideration in the overall balance.

SOCIOECONOMICS

5.2.58. The ExA is satisfied that the applicant's assessment considers all relevant potential environmental impacts in respect of socioeconomics, tourism and recreation during the construction, operation and decommissioning phases of the proposed development, alone and cumulatively with other plans and projects.

5.2.59. The ExA is satisfied that the proposed development is in accordance with NPS EN-1 and NPS EN-3 regarding socioeconomic effects, including minimising temporary closures to Public Rights of Way (PRoW), ensuring continued recreational use of PRoW during construction and operation and minimising the visual impacts of the development for those using PRoW. The ExA is satisfied that the proposed development is in accordance with relevant policies in the Frodsham Neighbourhood Plan and the Ince Neighbourhood Plan. However, the ExA considers there would be a conflict with the Cheshire LP2, particularly policy DM38, as the ExA does not consider the proposed development would make a positive contribution to the visual appearance of the area.

5.2.60. Overall, the ExA finds the proposed development's potential impacts on receptors in relation to socioeconomics, recreation and tourism would be mitigated as far as possible. The mitigation and management measures set out in ES chapter 12, the Outline Public Rights of Way Management Plan and the Outline Skills Supply Chain Management Plan, would be appropriately secured by the requirements within the dDCO.

5.2.61. Nevertheless, the ExA disagrees with the applicant's conclusions on the effects on users of the PRoW. The ExA considers there would likely be a residual negative significant effect on users' experience of PRoW for a considerable length of time during the operational phase. The ExA considers that the identified residual socio-economic effects carry a little negative weight against making the Order.

TRAFFIC AND TRANSPORT

5.2.62. The ExA examined all assessments submitted by the applicant and considered all the issues raised by IPs during the examination related to traffic and transport.

5.2.63. The ExA is satisfied that the applicant's assessment considers all relevant potential environmental impacts in respect of traffic and transport during the construction, operation and decommissioning phases of the proposed development alone and cumulatively with other plans and projects.

5.2.64. The ExA is satisfied that the proposed development is in accordance with NPS EN-1 and NPS EN-3 and all other relevant legislation and policy, and there are no other important considerations.

5.2.65. The ExA finds the proposed development's potential impacts on receptors in relation to traffic and transport would be mitigated as far as possible and managed through measures and commitments in the oOEMP [REP7-019] and the Outline Construction Traffic Management Plan [REP7-015], which are secured by requirements 13 and 14 respectively of the dDCO [REP7-003].

5.2.66. Given the conclusions above, the ExA considers that the identified effects on traffic and transport carry neutral weight in the planning balance.

WATER ENVIRONMENT

5.2.67. The ExA examined all assessments submitted by the applicant and considered all the issues raised by IPs during the examination related to the water environment.

5.2.68. The ExA is satisfied that the applicant's assessment considers all relevant potential environmental impacts in respect of the water environment, water quality and flood risk during the construction, operation and decommissioning phases of the proposed development. The applicant concluded that it was unlikely that significant cumulative effects would arise in relation to flood risk and water quality. This position was not challenged and the ExA finds no reason to come to a different conclusion.

5.2.69. The ExA finds the proposed development's potential impacts on receptors in relation to the water environment would be mitigated as far as possible and monitored through measures in ES chapter 9 [APP-042], the commitments register [REP7-013], the oCEMP [REP7-017], oOEMP [REP7-019] and oDEMP [REP7-021], which are secured through requirements 12, 13 and 20 of schedule 2 of the dDCO.

5.2.70. The ExA considers that as there would be no increase in flood risk outside the area of the proposed development, that the site of the proposed development could remain operational for its lifetime during and after times of flood, including consideration for the effects of climate change, and that the requirements of the sequential test and exception test have been met.

5.2.71. The ExA is satisfied that the proposed development has had regard to current River Basin Management Plans and meets the requirements of the Water Environment (Water Framework Directive) (England and Wales) Regulations 2017 (including regulation 19).

5.2.72. The ExA is satisfied that the proposed development is in accordance with NPS EN-1, NPS EN-3 and where relevant NPS EN-5, and all other relevant legislation and policy, and that there are no other important considerations.

5.2.73. Given the conclusions above, the ExA considers that the identified effects on the water environment do not weigh for or against the making of the Order.

5.3. PLANNING BALANCE

HERITAGE BALANCE

POLICY AND LEGISLATIVE BACKGROUND

5.3.1. National Policy Statement (NPS) EN-1 states that the Secretary of State (SoS) must comply with the requirements set out in the Infrastructure Planning (Decisions) Regulations 2010 (paragraph 5.9.23). Regulation 3 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; preserving or enhancing the character or appearance of a conservation area; and preserving an affected scheduled monument or its setting.

5.3.2. When considering the impact of a proposed development on the significance of a designated heritage asset, the SoS should give great weight to the asset's conservation. The more important the asset, the greater the weight should be. This is irrespective of whether any potential harm amounts to substantial harm, total loss, or less than substantial harm to its significance (paragraph 5.9.27). The SoS should give considerable importance and weight to the desirability of preserving all heritage assets, with any harm or loss requiring clear and convincing justification (paragraph 5.9.28).

5.3.3. Paragraph 5.9.32 of NPS EN-1 states that where the proposed development will lead to less than substantial harm to the significance of a designated

heritage asset, this harm should be weighed against the public benefits of a proposal.

5.3.4. Paragraph 5.9.36 of NPS EN-1 states that, when considering applications for development affecting the setting of a designated heritage asset, the SoS should give appropriate weight to the desirability of preserving the setting of such assets and treat favourably applications that preserve those elements of the setting that make a positive contribution to, or better reveal the significance of, the asset. When considering applications that do not do this, the SoS should give great weight to any negative effects, when weighing them against the wider benefits of the application. The greater the negative impact on the significance of the designated heritage asset, the greater the benefits that will be needed to justify approval.

5.3.5. NPS EN-3, the NPPF and the relevant development plan policies generally reflect the requirements in NPS EN-1 with regard to designated and non-designated heritage assets.

ASSESSMENT OF HARM

5.3.6. The ExA's conclusions in respect of the historic environment are set out in section 3.9. In summary, the ExA considers that there would be temporary harm, albeit to a very limited degree, to the settings of Frodsham (Town) Conservation Area and the Frodsham Hill War Memorial during the construction phase and that this would be classified as less than substantial harm in both cases.

5.3.7. During the operational phase, the proposed development would result in less than substantial harm to the settings of the following designated heritage assets:

- Frodsham (Town) Conservation Area
- Castle Park Conservation Area
- Castle Park Registered Park and Garden
- Overton, St Lawrence's (Frodsham) Conservation Area
- Frodsham Hill War Memorial
- The Promontory Fort On Helsby Hill

5.3.8. There would also be some harm to non-designated heritage assets, specifically the various parcels of ridge and furrow and the ventilation shafts on the Order land, and this needs to be weighed in the balance having regard to the scale of the harm or loss and the significance of the heritage asset.

5.3.9. The ExA affords great weight to each asset's conservation in accordance with NPS EN-1 and the NPPF. NPS EN-1 and the NPPF explain that this harm should be weighed against the public benefits of the proposal.

BALANCE

5.3.10. The proposed development would make a significant contribution to secure reliable energy provision, whilst also resulting in modest climate change benefits. The ExA affords very great positive weight to these benefits.

5.3.11. Whilst the ExA has concluded that the matters of landscape and socioeconomics would, overall, weigh against the Order being made, the ExA does recognise there would be some minor benefits arising from these topics, such as temporary construction employment as well as BNG landscape legacy. These are all public, as opposed to private, benefits.

5.3.12. Whilst giving 'great weight' to the conservation of the heritage assets that would be affected by the proposed development, the ExA concludes that a little negative weight should be afforded to the harm which would be caused to the historic environment. Given the significance and importance of the public benefits, as emphasised in NPS EN-1, the ExA considers that they would clearly outweigh the less than substantial harm which would arise. The ExA also notes that the harm would be time limited.

5.3.13. Therefore, the proposed development would accord with NPS EN-1, NPS EN-3, the NPPF and the relevant development plan policies in relation to historic environment effects.

5.3.14. The applicant also noted that the draft NPPF (dNPPF) provides support for development that results in a positive effect on heritage assets. In that context, it said that there would be relatively limited positive effects as a result of the proposed geoarchaeological investigation, the archaeological investigation of the ridge and furrow, and the proposed heritage interpretation. The ExA acknowledges these to be benefits of the proposed development. However, had the dNPPF been adopted before this recommendation was prepared, the ExA considers that the very limited positive weight that it attaches to these benefits would not have altered its overall conclusion in respect of the heritage balance.

GREEN BELT, OTHER HARMS AND VERY SPECIAL CIRCUMSTANCES (VSC)

Harm to the Green Belt

5.3.15. Section 3.2 of this recommendation found that the proposed development would:

- be in the Green Belt
- not be, or constitute a proposal, on grey belt land
- be inappropriate development in the Green Belt

5.3.16. In assessing the extent of harm to the Green Belt, at paragraph 1.7.2 of appendix A of its Planning Statement [APP-128] the applicant has set out four considerations: the need for a Green Belt Location; the effects on the openness of the Green Belt; the effects on the purposes of including land in the Green Belt; and the enhancement of the beneficial use of the Green Belt.

5.3.17. The applicant's assessment of alternative locations is considered in section 3.2 of this recommendation. However, even if Green Belt land was the only realistically available location for a proposed development, the lack of potential alternatives does not affect any harm that a proposed development would cause to the Green Belt, whether in terms of openness or to the

purposes of including land in the Green Belt. Rather, consideration of alternatives is a matter to be considered in the wider balance.

5.3.18. Similarly, the applicant's argument in respect of the beneficial use of the Green Belt – which is made with reference to paragraph 151 of the NPPF – does not pertain to harm but sets out matters which the applicant says are benefits of the proposed development. Again, these are other considerations to be weighed in the wider balance.

5.3.19. The ExA considers that the proposed development would cause harm to the openness of the Green Belt in both spatial and visual terms. Although the solar panels might not have the mass or density of buildings, might be set lower than other forms of built structures, and might differ from the volume or extent of development on nearby land, they also clearly differ from other forms of built structures in terms of their overall footprint. Whilst the applicant has also argued that the proposed development would not materially change the perceived openness of the Green Belt, as noted in section 3.2 the ExA disagrees with the applicant's conclusions and considers that it would result in a significant visual impact, even when account is taken of gaps and the proposed landscaping between the solar arrays.

5.3.20. As noted above, the ExA also disagrees with the applicant's conclusion in respect of the effect of the proposed development on Green Belt purpose (b). In addition, the ExA disagrees with the applicant's conclusion relating to purpose (c) (safeguarding the countryside from encroachment) in respect of which the applicant has said that there would be moderate harm; the proposed development would represent a large encroachment of development with urban characteristics and the ExA considers that the proposed development would result in a large degree of harm. However, it agrees with the applicant's conclusions in respect of the other purposes.

5.3.21. In response to the applicant's argument that openness would be restored following the 40-year operational lifetime of the proposed development, CWCC argued [RR-037] that the presumption must be that development will continue existing on the site for longer than the initial 40-year consent period. However, any continuation would require a further consent for which there is no application at this time. Therefore, the ExA considers that the time-limited nature of the proposed development and the prospect that the openness of the Green Belt would be restored is a matter to be weighed in the balance, albeit acknowledging CWCC's argument regarding the length of time that the proposed development would be in place.

5.3.22. Although CWCC has said that the proposed development would have long-lasting effects on how Green Belt policy is applied to this site and the surrounding area, any other proposals would be assessed on their own merits and against prevailing planning policy at the time that they are determined. Therefore, this is not a matter that should weigh against the proposed development.

5.3.23. Taking all of the relevant considerations into account, the ExA considers that the proposed development would not preserve the openness of the Green

Belt. Rather, it would result in substantial harm to the Green Belt, including to its openness, and to the purposes of including land in the Green Belt. Therefore, in accordance with paragraph 153 of the NPPF this is a matter to which substantial weight must be given.

Any other harms and other considerations

5.3.24. The NPPF states that very special circumstances will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm resulting from the proposal, is clearly outweighed by other considerations. Thus, the Green Belt balancing exercise necessitates enumeration of non-Green Belt harms as well as any other relevant considerations, including any benefits associated with a proposal.

5.3.25. Other harms which may arise from the proposed development have been considered in other sections of this recommendation and are summarised above and captured in table 2 above.

5.3.26. In a number of cases the ExA's conclusions in respect of harm differ from those of the applicant, particularly in respect of landscape and visual impact where the ExA has concluded that the impact would be greater than that assessed by the applicant.

5.3.27. The applicant has also identified [REP6-039] a number of matters which it says should weigh positively in the balance, specifically:

- need for energy security
- contribution to climate change
- need for energy storage
- efficiency of land use
- ecology and biodiversity
- tourism and rights of way

5.3.28. As is set out in section 3.2 of this recommendation, the ExA accepts that the need for the scheme is established by national policy and that the proposed development, including the proposed energy storage, would contribute to the nation's energy security. That alone attracts very great positive weight in the balance.

5.3.29. The ExA also finds, as in section 3.2 of this recommendation, that the efficiency of land use, specifically the co-location of the proposed development with the Frodsham Wind Farm, to be a positive factor in the balance.

5.3.30. In respect of climate change, the ExA considers that there are benefits to be had in terms of reducing greenhouse gas emissions. Whilst the ExA has found some harms in respect of ecological matters, the ExA is cognisant of the biodiversity enhancements incorporated into the proposed development and positive weight should be given to these. Some socioeconomic benefits may also arise through the applicant's programme of PRoW enhancements.

5.3.31. Whilst acknowledging that there are positive and negative matters to weigh in the balance, both the applicant and CWCC have also said that the proposed development would be critical national infrastructure. Policy relating to CNP infrastructure applies following the normal consideration of the need case, the impacts of the project, and the application of the mitigation hierarchy. Whilst it does not create an additional or cumulative need case or weighting to that which is already outlined for each type of energy infrastructure, as set out in NPS EN-1 the policy influences how the SoS considers whether a number of tests, including whether VSC have been demonstrated, have been met.

5.3.32. In this respect, the ExA is satisfied that the applicant has applied the mitigation hierarchy across all topic areas and that any residual impacts are those that cannot be avoided, reduced or mitigated. It is also satisfied that, where relevant, residual impacts would be compensated for as far as possible. Furthermore, the proposed development would not present an unacceptable risk to, or unacceptable interference with, human health and public safety, defence, irreplaceable habitats, or flood and coastal erosion risk.

5.3.33. Overall, whilst there would be a number of residual impacts, the ExA concludes that these do not outweigh the urgent need for the type of infrastructure proposed in this application and that the policy in NPS-EN1 and the NPPF in respect of development in the Green Belt has been satisfactorily addressed. Therefore, the SoS should take as the starting point that there are, in this instance, VSC to justify the proposed CNP infrastructure and that the VSC outweigh the harm that the proposed development would cause to the Green Belt and its openness.

CONCLUSIONS IN RELATION TO THE HABITATS REGULATIONS

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

5.3.35. The following four European sites and their qualifying features were considered in the applicant's assessment of Likely Significant Effects (LSE):

- Mersey Estuary Special Protection Area (SPA)
- Mersey Estuary Ramsar site
- Midland Meres and Mosses Phase 1 Ramsar site
- Midland Meres and Mosses Phase 2 Ramsar site

5.3.36. LSE were identified for the sites listed in Table C.1 of appendix C to this recommendation, both from the proposed development alone and in combination with other plans or projects.

5.3.37. The methodology and outcomes of the applicant's screening for LSE on European sites was subject to some discussion and scrutiny, however, the

sites and features for which LSE were identified were not disputed by any IP. The ExA is 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.

5.3.38. The ExA's findings are that, subject to the mitigation measures to be secured in the dDCO, Adverse Effects on Integrity (AEoI) on the European sites listed above from the proposed development when considered alone or in combination with other plans or projects can be excluded from the impact-effect pathways assessed.

5.3.39. The ExA considers that there is sufficient information before the SoS to enable them to undertake an appropriate assessment in order to fulfil their duty under the requirements of the Habitats Regulations.

5.4. FINDINGS AND CONCLUSIONS

5.4.1. The proposed development would make a significant contribution to the urgent need for low carbon energy established in NPS EN-1, which has become more urgent following the legally binding target of Net Zero by 2050. It would increase the UK's solar generation base and produce enough clean electricity to power approximately 40,000 homes annually, facilitate connections to local industrial businesses, and save a minimum of approximately 900,000 tonnes of carbon dioxide (CO_2) equivalent over its lifetime. The ExA affords these significant public benefits very great weight.

5.4.2. In addition, the proposed development would result in some temporary and limited socio-economic benefits to local employment and the local economy. Landscape improvements represent a more permanent, albeit minor, impact in favour of the proposed development.

5.4.3. On the other hand, a range of negative impacts have been identified. The ExA has found that the proposed development would lead to less than substantial harm to the settings of designated heritage assets and to archaeological deposits, which carries moderate negative weight against the Order. The ExA has also found potential negative impacts on biodiversity and upon the landscape character.

5.4.4. Taking the above factors into account and having had regard to all important and relevant matters, the ExA concludes that there are no adverse impacts of sufficient weight, either on their own or collectively, that would suggest the DCO should not be made.

5.4.5. The harm to heritage assets, the transport network, biodiversity and the landscape are clearly outweighed by the substantial benefit of solar energy that would contribute to meeting the need identified in NPS EN-1.

5.4.6. The ExA has concluded that that the proposed development is clearly justified on the basis of the versions of the NPSs that were before it during the examination and all other important and relevant matters, including relevant Government policy such as the British Energy Security Strategy.

5.4.7. The ExA does not consider there is anything contained within NPS EN-1, NPS EN-3 or NPS EN-5 that would lead it to alter its overall conclusions on the proposed development. There are no important and relevant matters in the revised suite of NPS, nor the NPPF, that would lead the ExA to a different conclusion.

5.4.8. Regard has been paid to the Local Impact Report, to prescribed matters and all other important and relevant policy, and to other important and relevant matters in this recommendation, and the ExA does not consider that there are any other matters that are both important and relevant to the decision that would lead to a different conclusion being reached.

5.4.9. For the reasons set out in the preceding chapters and summarised above, the ExA finds that the proposed development is acceptable in principle in planning terms and that the case for Development Consent has been made.

6. LAND POWERS AND RELATED MATTERS

6.1. INTRODUCTION

6.1.1. The application included 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, and the Examining Authority's (ExA) conclusions and recommendations.

6.2. THE REQUEST FOR CA AND TP POWERS

6.2.1. The application version of the draft Development Consent Order (dDCO) [APP-015] and all subsequent versions (the latest version being [REP7-003]) include provisions for the CA of freehold interests and private rights, the extinguishment of existing rights and the creation of new rights over land. They also include provisions for the TP of land to enable the construction and maintenance of the authorised development.

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.

6.2.3. The land proposed for compulsory acquisition or temporary possession does not include any National Trust land, open space or common land. The dDCO seeks rights over Crown Land, however, and the Applicant has engaged in discussions with The Crown Estate seeking to obtain consent for the inclusion of provisions applying in relation to Crown land.

6.2.4. A number of documents were submitted with the application which set out the land and rights sought by the applicant, some of which were updated during the course of the examination. At the close of the examination the most up-to-date versions of these documents were:

- Statement of Reasons (SoR) [APP-018]
- Funding Statement [APP-019]
- Book of Reference (BoR) [REP6-008]
- Land and Crown Land Plans (LCLP) [REP4-002]

6.2.5. The applicant updated the examination on the progress of negotiations with affected persons (AP) and statutory undertakers (SU) by way of its Land and Rights Negotiations Tracker [REP4-010] and its Statutory Undertaker Negotiations Tracker [REP4-047].

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 farm with a capacity of over 50 megawatts (MW) together with a battery energy storage system (BESS) and other associated works to construct and operate the development. The purposes for which the CA and TP powers are required are set out in the BoR and the SoR.

6.3.2. The proposed development would enable the generation of approximately 147 MW of electricity, as well as the storage of approximately 100 MW of electricity in the BESS. The grid connection offer from the District Network Operator is for 100 MW export and 50 MW import. A private wire electricity connection would provide the opportunity to supply renewable energy generated by the proposed development directly to nearby industrial businesses.

6.3.3. The Order land extends to approximately 365 hectares (ha) and encompasses the areas required for all associated infrastructure, the BESS, access, cabling, the grid connection to the Frodsham SP Energy Networks (SPEN) Substation, the private wire connections to local businesses and areas for mitigation including the Skylark Mitigation Area and the Non-Breeding Bird Mitigation Area (NBBMA). The solar array development area (SADA) would cover an area of approximately 246ha and would be located at the eastern extent of Frodsham and Helsby Marsh on an area of land between the Mersey Estuary and the M56 motorway.

6.3.4. In its SoR [APP-018], the applicant states that it requires powers of CA to give certainty that the proposed development can be built, maintained and operated, and that the development would contribute to the resilience, security and affordability of supplies due to its large scale and the proposed integration of energy storage. It notes that such development enjoys support in government policy. The applicant further considers that, in the absence of these powers, there would remain a risk that the Order land would not be fully assembled and the proposed development would not be delivered, meaning that Government policy objectives would not be achieved.

6.3.5. The applicant has attempted to enter into voluntary agreements with landowners and has reached agreement in relation to the majority of the land required. However, at the close of examination, agreements were not in place with all affected persons (AP). The applicant also requires certain rights to be suspended, overridden or extinguished within the Order limits to ensure that there are no impediments for the construction, operation and maintenance of the proposed development. Therefore, the applicant is seeking powers for:

- the acquisition of all interests in land, including freehold (article 21 in the dDCO [REP7-003]), shown edged red and shaded pink on the LCLP [REP4-002]
- the acquisition of all interests in land, including freehold in respect of subsoil only (article 26)
- the permanent acquisition of new rights (article 23), shown edged red and shaded blue on the LCLP
- the extinguishment and/ or suspension of rights (article 24) and the power to override easements and other rights (article 27)
- the temporary use of land to permit construction or maintenance where the applicant has not yet exercised powers of CA (articles 30 and 31)

6.4. LEGISLATIVE REQUIREMENTS

Planning Act 2008

6.4.1. Section (s) 122(2) of the Planning Act 2008 (PA2008) provides that a DCO may include provision authorising CA only if the Secretary of State (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. The land to be taken should be no more than is reasonably required.

6.4.2. S122(3) requires there to be a compelling case in the public interest for land to be acquired compulsorily. For this to be met, the Department for Communities and Local Government's guidance 'Planning Act 2008 Guidance related to procedures for the compulsory acquisition of land' (the CA Guidance) 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. In balancing public interest against private loss, CA must be justified in its own right.

6.4.3. S123 requires the SoS to be satisfied that one of the three procedural conditions set out in subsections (2) to (4) are met, specifically:

- That the application for the order included a request for CA of the land to be authorised.
- That all persons with an interest in the land consent to the inclusion of the provision.
- The prescribed procedure has been followed in relation to the land.

6.4.4. A number of Statutory Undertakers (SU) have land interests within the Order limits. These are set out in the BoR [REP6-008]. S127(2) and (3) state that an order granting development consent may include provisions authorising 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.

6.4.5. Similarly, s127(5) and (6) provide that an order granting development consent may only include provision authorising the CA of rights belonging to SU to the extent that the SoS is satisfied that the right can be taken without serious detriment to the carrying out of the undertaking, or that any detriment can be made good.

6.4.6. S138 states that an order may include a provision for the extinguishment of the relevant rights on SU land 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 SU with land and equipment interests within the order limits.

6.4.7. Plot 5-16 on the Land and Crown Land Plans [REP4-002] is Crown land. This relates to Work No. 4A which seeks to create an electrical connection to the Frodsham SPEN Substation.

6.4.8. S135 provides that an order granting development consent may include provision authorising the CA of an interest in Crown land only if it is an interest which is for the time being held otherwise than by or on behalf of the Crown, and the appropriate Crown authority consents to the acquisition. Furthermore, it makes clear that an order granting development consent may include any other provision applying in relation to Crown land, or rights benefiting the Crown, only if the appropriate Crown authority consents to the inclusion of the provision.

6.4.9. 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, whether compulsorily or by agreement. Given that such powers do not seek to permanently deprive or amend a person's interests in land, the PA2008 and the CA Guidance do not require the extent of justification for TP as is required for CA. Furthermore, such powers tend to be ancillary and contingent to the application proposal as a whole and only capable of being exercised if the primary development has been fully justified.

The Neighbourhood Planning Act 2017

6.4.10. The Neighbourhood Planning Act 2017 includes a number of provisions related to the TP of land including notice requirements, the service of counter notices and compensation. These provisions will not be brought into force. Nevertheless, article 7 of the dDCO disapplies the provisions of the Act insofar as they relate to TP of land by way of article 30 (temporary use of land for constructing the authorised development) and article 31 (temporary use of land for maintaining the authorised development).

The CA Guidance

6.4.11. In addition to the legislative requirements set out above, the CA Guidance sets out a number of general considerations which need to be addressed, including whether:

- all reasonable alternatives to CA have been explored
- the applicant has a clear idea of how it intends to use the land subject to CA powers
- the applicant can demonstrate that funds are available to meet the compensation liabilities that might flow from the exercise of CA powers
- 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. EXAMINATION OF THE CA AND TP CASE

THE EXAMINATION PROCESS

6.5.1. The ExA's approach to the question of whether CA powers should be granted, and if so what it should recommend to the SoS to grant, has been to seek to apply the relevant sections of the PA2008 (notably s122 and s123), the CA Guidance, and the Public Sector Equality Duty (PSED) established by the Equality Act 2010. In addition, in light of the representations received and the evidence submitted, to consider whether a compelling case has been made in the public interest, balancing the public interest against private loss.

6.5.2. In examining the application, the ExA has considered all written material in respect of CA and TP and asked written questions of the applicant in ExQ1 [PD-009] and ExQ2 [PD-016]. Affected persons (AP) were notified that the ExA would be holding a Compulsory Acquisition Hearing (CAH1) to hear their views and any issues that they wished to raise. This took place on 24 February 2026 [EV9-002] and [EV9-004].

6.5.3. The applicant's general case for CA and TP is set out in sections 5 to 10 of the SoR [APP-018].

6.5.4. The applicant considers that it is necessary, proportionate and justifiable to seek powers to acquire land compulsorily, to create and compulsorily acquire new rights over land and impose restrictions, and to extinguish or override existing rights over land, as well as to seek powers to take TP of land to construct and maintain the proposed development.

6.5.5. By the end of the examination the applicant had reached agreement with the some of the freehold owners of the land within the Order limits and was in advanced negotiations with the few remaining freehold owners. Whilst the applicant was continuing to seek to acquire the land and rights by voluntary agreement, it required the powers of compulsory acquisition sought in the application in order to provide certainty that all the land required for the proposed development could be acquired in order to realise what it said were the proposal's significant public benefits.

6.5.6. Taken together, the Land and Crown Land Plans [REP4-002] and the Works Plans [REP6-003] indicate that each area of land affected by CA or TP would be used for the carrying out of one or more of the works identified in Schedule 1 of the dDCO [REP7-003].

ALTERNATIVES

6.5.7. 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 proposed development) have been explored. The applicant outlined in Chapter 3 of the Environmental Statement [APP-036] how it had considered alternative locations for and arrangements of the proposed development and Order limits.

6.5.8. As outlined in section 3.2, questions were asked about the strategic approach to the alternatives assessment in ExQ2 [PD-016], particularly given the apparent immediate choice of the application site before considering any other options.

6.5.9. The applicant explained that a study had been undertaken in 2020 to identify all feasible locations where a commercial-scale project could connect to the electricity network. Frodsham was chosen because connection to the 132kV substation would involve relatively straightforward works, with limited impacts arising from those works, accessed by an existing substation access road that has a junction with the A56. It also argued that the area of search was reasonable and proportionate having regard to increased capital cost of longer 132kV cable routes, the reduction in electrical efficiency over longer distances, the increased number of affected landowners over a greater distance, and the particular physical and environmental constraints surrounding the Frodsham Substation. It also noted that it was both logical and reasonable for a renewable energy developer to begin its assessment from a starting point where a large proportion of the site was already under the control of, at that stage, its joint venture partner, particularly where that land also appeared capable of supporting a commercial-scale solar project on the basis of potential nearby grid availability. However, it noted that the starting point did not pre-judge the decision to take the site forward through the planning process.

6.5.10. In addition, the applicant also pointed to the benefits of co-location with the Frodsham Wind Farm and the BESS, making a unique hub of energy facilities in an industrial and manufacturing heartland [APP-036].

6.5.11. The ExA did not pursue this matter further noting that, in terms of the general selection of the application site and its Order limits, no IPs raised substantive or sustained objections to the applicant's approach and given that CWCC's Local Impact Report [REP1-046] accepted that proximity to the National Grid and SPEN substations was a key factor in finding a technically- and commercially-viable location.

6.5.12. Accordingly, the ExA considers that in terms of site selection and alternatives, the methodology used, and the reasons given for the site selection, are sufficient to achieve compliance with the requirements of National Policy Statement (NPS) EN-1 and NPS EN-3 and the CA Guidance.

AVAILABILITY AND ADEQUACY OF FUNDS

6.5.13. The applicant’s Funding Statement [APP-019] indicates that the applicant, Frodsham Solar Ltd, has the ability, through its parent company Cubico Sustainable Investments Limited, to procure the financial resources required for the proposed development, including the cost of acquiring any rights and the payment of compensation, as applicable.

6.5.14. The adequacy of funding for CA was not raised by any AP or IP during the course of the examination.

6.5.15. Article 47 of the dDCO states that the developer has to put in place a guarantee or alternative form of security for compensation that may be payable pursuant to the DCO before the CA and TP powers can be exercised. This provides a clear mechanism whereby the necessary funding for CA can be guaranteed.

MATTERS RAISED IN THE EXAMINATION/ OBJECTIONS TO CA AND TP

6.5.16. At the close of the examination the applicant had reached agreement with a number of APs in relation to CA and TP as follows.

STATUTORY UNDERTAKERS

Environment Agency (EA)

6.5.17. During the examination the EA objected [RR-024], [REP1-049], [REP1-050], [REP2-008], [REP4-071], [REP5-053] to the inclusion of protective provisions (PPs) in the dDCO in respect of the disapplication of Flood Risk Activity Permits. The EA confirmed [REP6-047] that it and the applicant had been unable to agree on this matter during the examination and that it would be progressed during the detailed design phase. Accordingly, the applicant had agreed to remove PPs to the benefit of the EA from the dDCO. The dDCO was amended at deadline 6 [REP6-005].

National Gas Transmission PLC

6.5.18. Whilst this party initially objected [RR-032] to the proposed development, it later confirmed [REP2-020] that agreement had been reached on PPs for its assets (Schedule 16 of the dDCO [REP7-003]) and therefore it withdrew its objection.

National Grid Electricity Transmission PLC

6.5.19. National Grid Electricity Transmission PLC sought [RR-021], [REP1-061], [REP2-018], [REP3-048], [REP5-057] PPs in respect of its assets. It confirmed [REP7-047] that it had reached agreement with the applicant on the terms of a side agreement and PPs (Schedule 21 of the dDCO [REP7-003]) and that it wished to withdraw its objection.

SP Manweb PLC

6.5.20. Some of this party's representations were made in the name of SP Energy Networks but it was confirmed [REP2-019] that those representations related to the interests of SP Manweb PLC. SP Manweb PLC sought [RR-018], [REP1-072], [REP3A-003] PPs which it confirmed [REP5-064] had been added to its satisfaction (Schedule 18 of the dDCO [REP7-003]).

United Utilities Water Limited (UUWL)

6.5.21. In its relevant representation [RR-006], UUWL sought PPs. Whilst no further submissions were received from UUWL, the applicant stated [REP6-001] that it had agreed to the proposed PPs at Schedule 22 of the dDCO [REP7-003].

HIGHWAYS

Cheshire West and Cheshire Council (CWCC)

6.5.22. CWCC is the local highways authority as well as the drainage authority. It noted [RR-037] that it had no objection in principle in respect of land ownership matters and agreed [REP3-045] PPs which are at Schedule 24 (drainage) and Schedule 25 (highways) of the dDCO [REP7-003].

National Highways Limited (NH)

6.5.23. In [RR-031] NH said that there would be no compelling case in the public interest for the compulsory powers over its plots without the inclusion of NH's PPs, noting that the grant of the DCO without such provisions would result in serious detriment to the strategic road network. It further noted its position in respect of the PPs as proposed by the applicant in [REP1-054], [REP1-055], [REP2-010], [REP3-049], [REP4-063] and [REP4-070]. NH confirmed in later submissions [REP5-059] and [REP7-048] that it had reached agreement with the applicant in respect of PPs (Schedule 26 of the dDCO [REP7-003]).

OBJECTIONS/ REPRESENTATIONS OUTSTANDING

6.5.24. This section specifically considers objections and representations raised in relation to CA and TP which were unresolved at the close of the examination. In addition, even though a specific objection or representation may not have been raised in relation to a particular plot of land, the ExA has nevertheless applied the relevant tests to the whole of the land that would be the subject to the powers of CA or TP in reaching its overall conclusions.

Cheshire Green Property Limited

Acquisition of Land, Plot No: 3-36; Acquisition of Rights, Plot No: 13-41

6.5.25. No representations were received from Cheshire Green Property Limited during the examination. Following questions from the ExA at CAH1, the applicant provided detailed justification [REP4-056] for the proposed acquisition of land and rights from this AP. The applicant subsequently noted that discussions were progressing with this party and it provided a copy of an email to demonstrate that progress was being made to agree an option and a lease in respect of this party's land [REP7-001].

6.5.26. In light of the above, the ExA assumes that the applicant will continue to progress negotiations to a satisfactory conclusion with the AP. However, in the event that they do not the ExA considers that the applicant has demonstrated the need for the powers and rights over this AP's land and that there is a compelling case in the public interest for the land to be acquired compulsorily. The ExA is therefore satisfied that it meets the test in s122(3) of the PA2008.

Inovyn Chlorovinyls Limited (ICL)

Acquisition of Land, Plot Nos: 5-3 and 5-4

6.5.27. During the examination, ICL objected to the proposed acquisition of its land, including at the CAH, and it proposed changes to the dDCO [RR-004], [REP1-070], [REP2-015], [REP2-016], [REP4-072], [REP4-073], [REP5-062], [REP5-063], [REP6-052], [REP7-042] and [REP7-043].

6.5.28. In the Land and Rights Negotiations Tracker [REP4-010] the applicant said that it confirmed to ICL that its land was needed as part of the flexibility required for delivery of the SPEN Cable Connection (overhead line) and associated landscaping, and that engagement would continue as the design for this connection continued and the exact nature of the required rights was confirmed. The Works Plans [REP6-003] show part of ICL's land to be in a corridor of land within which Work No. 4A (works to create an electrical connection from Work No. 3 to Frodsham SPEN Substation) would be delivered. The remainder of ICL's land is indicated as being part of Work No. 6A (green infrastructure works).

6.5.29. However, ICL highlighted [REP7-042] that the Indicative Operational Site Layout Plan [APP-106] shows no works (whether an overhead line or cable connection) being carried out and retained on the ICL land and that Figure A1.5 (Illustrative Environmental Masterplan Sheet 4) of the Outline Landscape and Ecology Management Plan [REP7-025] shows only existing vegetation and no new landscaping on the ICL land.

6.5.30. Nevertheless, ICL said [REP1-070] that, in principle, it would be amenable to the grant of rights to facilitate the delivery of the connection between the on-site substation and the Frodsham SPEN Substation. However, it said that any such grant must be limited to rights of ‘over sail’ for overhead lines and cannot extend to rights permitting the installation and retention of permanent project infrastructure.

6.5.31. Whilst the applicant said that it expected to reach an agreement with ICL after the end of the examination, it disputed [REP6-040] that the case for permanent acquisition had not been made for Plots 5-3 and 5-4, referring to the Land and Rights Negotiations Tracker [REP4-010]. It also said [REP6-040] that the land "may" be required to enable the connection of the proposed development to the grid.

6.5.32. The applicant disagreed with the two alternatives to the CA of land that were advanced by ICL [REP5-063], specifically:

- Option 1 - amendments to the dDCO which would apply in circumstances where the power of compulsory acquisition conferred under article 21 of the dDCO was not granted over the land within ICL’s freehold ownership on the basis that the applicant had failed to make out a compelling case for the compulsory and permanent acquisition of the ICL land.

- Option 2 - alternative amendments to the dDCO which would apply where the applicant was granted the power of compulsory acquisition over the

ICL land but limited to the creation and acquisition of new rights and restrictions under article 23 of the dDCO.

6.5.33. Despite the applicant's disagreement, ICL said [REP7-042] that negotiations were ongoing with the applicant in relation to the grant of an option for the purpose of taking an easement, thereby securing the grant of rights in connection with the installation of an overhead line. It added that the 'rights package' in ICL's Option 2 was aligned with the aforementioned grant of rights.

6.5.34. The ExA has considered the argument put forward by the applicant in respect of the permanent acquisition of ICL's land alongside the description and illustration of the scheme in the application documents. The ExA considers that these documents, which do not show the grid connection crossing this land or any other changes to this land, for example landscaping, do not provide sufficient justification to support the permanent acquisition of ICL's land, whether to facilitate the proposed development or for purposes that are incidental to it.

6.5.35. However, and bearing in mind the 'Rochdale envelope' approach which has been adopted by the applicant, there is still a possibility that an overhead line within the corridor for Work No. 4A could cross the ICL land. In that regard, the ExA also notes that negotiations are ongoing between ICL and the applicant in relation to the acquisition by agreement of rights (as opposed to land) by the applicant which would address such an eventuality.

6.5.36. Taking all of these considerations into account, the ExA considers that full compulsory acquisition of ICL's land would be disproportionate and would exceed what is reasonably required to deliver the proposed development. As such the ExA considers that there is not a compelling case in the public interest for the land to be acquired compulsorily and, therefore, that the tests at section 122 of the PA2008 have not been met in respect of plots 5-3 and 5-4.

6.5.37. Rather, the ExA considers that any compulsory acquisition should be limited to the acquisition of permanent rights across plots 5-3 and 5-4 per ICL's 'Option 2' (set out in [REP5-063] and [REP7-042]). This would require changes to the dDCO; ICL's proposed changes to the dDCO [REP7-043] are considered in chapter 7 of this recommendation.

6.5.38. ICL also noted [REP7-042] that its changes may necessitate the SoS requesting amendments to the Land and Crown Land Plans, although the applicant did not agree [REP6-040] with that suggestion on the basis that it is the DCO which sets the ambit of the powers that are granted as opposed to the coloured shading on the Land and Crown Land Plans.

Joan Margaret Nicholas

Acquisition of Land, Plot No: 4-4

6.5.39. This plot is a verge adjoining a restricted byway (Moorditch Lane) and includes a bridge structure over an unnamed drain and overhead electricity

cables. No objection was received in respect of this party's landholding but the applicant said [REP6-001] that discussions would continue with the executors of this party's estate. Whilst there is no indication that agreement will not be reached, the ExA considers that the applicant has demonstrated the need for the powers over this AP's land and that there is a compelling case in the public interest for the land to be acquired compulsorily. The ExA is therefore satisfied that it meets the test in s122(3) of the PA2008.

The representatives or executor of John Ainsworth

Acquisition of Land, Plot No: 4-5; Acquisition of Rights, Plot No: 4-9

6.5.40. These plots include a bridge structure over unnamed drain, grassland, shrubbery, overhead electricity cables and part of a restricted byway and verge. No objection was received in respect of this party's landholding but the applicant said [REP6-001] that discussions would continue with the executors of this party's estate. Whilst there is no indication that agreement will not be reached, the ExA considers that the applicant has demonstrated the need for the powers and rights over this AP's land and that there is a compelling case in the public interest for the land and rights to be acquired compulsorily. The ExA is therefore satisfied that it meets the test in s122(3) of the PA2008.

STATUTORY UNDERTAKERS

British Pipelines Agency Limited (BPAL)

Acquisition of Land, Plot Nos: 3-1, 3-8, 3-11, 3-17, 3-32, 4-2, 4-10, 4-13, 5-5, 5-14

Acquisition of Rights, Plot Nos: 3-20, 4-12, 4-8

6.5.41. Whilst the applicant said [PD4-056] that it had approached known contacts, no representations were received from BPAL. The applicant noted [PD4-056] that the PPs at Schedule 23 of the dDCO [REP7-003] had been based on those given to Esso in other DCOs.

6.5.42. The ExA considers that these adequately protect the interests BPAL, that the applicant has demonstrated the need for the powers and rights over this AP's land, that there is a compelling case in the public interest for the land and rights to be acquired compulsorily and, therefore, that the test in s122(3) of the PA2008 has been satisfied.

Cadent Gas Limited

Acquisition of Rights, Plot No: 5-20

6.5.43. In its relevant representation [RR-020], Cadent Gas Limited sought PPs. The applicant noted at the final deadline [REP7-001] that a side agreement between the parties had been agreed and was in the process of being executed which would enable Cadent to remove its objection shortly.

6.5.44. The proposed PPs are at Schedule 15 of the dDCO [REP7-003]. The ExA considers that these adequately protect the interests of Cadent Gas Limited, that the applicant has demonstrated the need for the rights over this AP's

land and that there is a compelling case in the public interest for the rights to be acquired compulsorily. Therefore, the proposed CA would meet the test in s122(3) of the PA2008.

Essar Oil (UK) Limited (Essar)

Acquisition of Land, Plot Nos: 3-1, 3-8, 3-11, 3-17, 3-32, 3-36, 3-43, 5-1, 5-3, 5-5, 5-13, 5-14

6.5.45. Essar sought PPs in respect of its interests [REP1-069] and [REP5-055].

6.5.46. The applicant noted [REP6-001] that in the event that agreement was not reached by the close of the examination, an update would be provided to the SoS once matters had been completed. Essar confirmed [REP7-045] that discussions would continue following the close of the examination and provided the wording of its preferred PPs, noting that these remained under discussion. The PPs as proposed by the applicant are at Schedule 20 of the dDCO [REP7-003] and Essar's preferred PPs are at [REP7-045].

6.5.47. Essar has proposed amendments to article 9 (Damage to property and other losses/ indemnity) which, in general, the ExA considers to be reasonable. However, its proposed paragraphs (7) and (8) of article 9 would require the developer to demonstrate that it has professional indemnity insurance, public liability insurance and "acceptable security" which is defined as a parent company guarantee. Given that the dDCO already includes legally-enforceable provisions to indemnify Essar (articles 8 and 9), the ExA does not find proposed paragraphs (7) and (8) to be necessary; it would be a matter for the developer to ensure that it could meet its obligations in article 9 and it is not necessary to define or restrict the way by which it would do so. Therefore, the ExA has not included paragraphs (7) and (8) of article 9, or the associated definition of "acceptable security", in its rDCO.

6.5.48. Essar's version also includes changes to the description of its apparatus, and it seeks to expand the area within which the approval of Essar must be sought. It also adds to the works for which approval must be sought and a provision to ensure that the AP can continue to access its apparatus. On the basis that the AP is best-placed to know the extent of and potential risks to its apparatus, the ExA is minded to accept all of the textual adjustments to the PPs as requested by Essar (other than as discussed in the preceding paragraph) to ensure that there is no prejudice to Essar's capabilities or functions, having regard to s127 of PA2008. However, the ExA notes that the term 'RAMs' is not defined in the PPs that have been proposed by Essar or in any version provided by the applicant. Whilst it may be a term that is understood by Essar and the applicant, the SoS may consider requesting this abbreviation be set out in full as part of any made DCO.

Frodsham Wind Farm Limited (FWFL)

Acquisition of Land, Plot Nos: 3-1, 3-14, 3-4, 3-5, 2-21, 3-14, 3-9, 3-11, 3-17, 3-19, 3-20, 3-21, 3-23, 3-24, 3-26, 3-27, 3-28, 3-30, 3-33, 3-40, 3-48, 3-49

Acquisition of Rights, Plot Nos: 1-2, 1-4, 2-1, 2-2, 2-3, 2-4, 2-5, 2-6, 2-8, 2-9, 2-10, 2-11, 2-12, 2-13, 2-14, 2-15, 2-16, 2-17, 2-20, 2-21, 2-23, 2-24, 2-25, 2-26, 3-1, 3-2, 3-3, 3-4, 3-5, 3-9, 3-10, 3-11, 3-14, 3-17, 3-18, 3-19, 3-20, 3-21, 3-22, 3-23, 3-24, 3-26, 3-27, 3-28, 3-30, 3-33, 3-40, 3-48, 3-49, 4-1, 4-3, 4-6, 4-8, 4-9

6.5.49. FWFL sought bespoke PPs within the dDCO [RR-047] and [REP5-061]. The applicant reported [REP7-001] that it had agreed the wording of a commercial agreement and associated PPs but that these were subject to final checks and board approvals. It said that once the agreement was completed, the parties would update the SoS to confirm the agreed wording of the PPs and to withdraw FWFL's objection.

6.5.50. The proposed PPs are at Schedule 17 of the dDCO [REP7-003] and, in the event that agreed wording is not provided, the ExA considers that these adequately protect the interests of FWFL.

6.5.51. The ExA also considers that the applicant has demonstrated the need for the powers and rights over this AP's land and that there is a compelling case in the public interest for the land and rights to be acquired compulsorily. As such the test in s122(3) of the PA2008 has been addressed and there is no reason not to permit the acquisition of land and rights from FWFL.

Shell UK Limited

Acquisition of Land, Plot Nos: 3-1, 3-4, 3-8 3-11, 3-17, 3-32, 3-36, 3-43, 3-48, 3-49, 4-2, 5-1, 5-3, 5-5, 5-13, 5-14

Acquisition of Rights, Plot Nos: 1-2, 1-4, 3-2, 3-7, 3-15, 3-18, 3-20, 3-22, 5-2, 5-17, 5-18, 5-19, 5-20, 5-23

6.5.52. Whilst the applicant said [PD4-056] that it had approached known contacts, no representations were received from Shell UK Limited. The applicant noted [PD4-056] that the PPs at Schedule 19 of the dDCO had been based on those given to Esso in other DCOs.

6.5.53. The ExA considers that these adequately protect the interests of Shell UK Limited, that the applicant has demonstrated the need for the powers and rights over this AP's land and that there is a compelling case in the public interest for the land and rights to be acquired compulsorily. Therefore, the ExA is satisfied that it meets the test in s122(3) of the PA2008.

CROWN LAND

The King's Most Excellent Majesty in Right of His Crown

Acquisition of Rights, Plot No: 5-16

6.5.54. The Crown has an interest in the riverbed of the River Weaver. Powers are required to facilitate an overhead crossing to connect the proposed development with the Frodsham SPEN Substation.

6.5.55. The dDCO includes the standard article providing that the DCO does not prejudicially affect any estate of the Crown, and that the undertaker may not enter on or take any Crown land other than with the consent of the appropriate authority (article 44). Article 21, which permits powers of compulsory acquisition of rights, specifically provides that it is subject to article 44.

6.5.56. At D6 the applicant said [REP6-001] that in respect of the Crown Estate discussions were continuing, including in respect of obtaining s135 consent, and that an update would be provided to the SoS following the examination. No further updates were provided before the examination closed.

OTHER PARTIES

6.5.57. Liverpool Bay CCS Limited sought [RR-011], [REP5-066] and [REP7-046] PPs in respect of its proposals for the Runcorn Spur Carbon Dioxide Pipeline, part of which would interact with the Order land and the proposed development. The applicant explained [REP7-031] that it did not consider it appropriate for such provisions to be on the face of the DCO.

6.5.58. As of the end of the examination, the planning applications for the Runcorn Spur Carbon Dioxide Pipeline were pending determination by CWCC and Halton Borough Council. For the reasons discussed in section 7.4 the ExA has not included in the rDCO the PPs which have been sought by Liverpool Bay CCS Limited.

HUMAN RIGHTS ACT 1998 CONSIDERATIONS

6.5.59. The Human Rights Act 1998 (HRA 1998) incorporates the European Convention on Human Rights (the Convention) into UK law. The Convention includes provisions in the form of articles, the aim of which is to protect the rights of the individual. Schedule 1 of the HRA 1998 sets out the articles.

6.5.60. The ExA considers that the following articles are relevant to the SoS's decision as to whether the Frodsham Solar Farm DCO should be made to include powers of CA.

Article 6 (Right to a fair trial)

6.5.61. This entitles those affected by the powers sought in the dDCO to a fair and public hearing of any relevant objections they may have to the grant of those powers. This includes property rights and can include opportunities to be heard in the decision-making process.

6.5.62. In relation to article 6, the ExA notes that appropriate consultation took place before and during the process, that there has been opportunity to make representations during the preparation of the application, and that owners of land had been consulted. There has also been the opportunity to make representations during the course of the examination. A CAH was held and all APs were invited and offered an opportunity to be heard fully, fairly and in public. The ExA also notes that, should an Order be made, there are further opportunities for APs to challenge the Order in the High Court pursuant to s118 of the PA2008. The ExA considers this to be sufficient to meet the obligations set out in article 6.

Article 8 (Right to respect for private and family life)

6.5.63. This protects private and family life, home and correspondence. No public authority can interfere with these rights except in accordance with the law, and so far as is necessary in the interest of national security, public safety or the economic well-being of the country.

6.5.64. The Order limits do not include, and the proposed development does not require the acquisition of, residential dwellings. Therefore, the ExA is of the opinion that article 8 is not infringed.

Article 1 of the First Protocol (Protection of property)

6.5.65. This provides the right of everyone to the peaceful enjoyment of possessions and provides that no one can be deprived of their possessions except in the public interest and subject to the relevant national and international laws and principles.

6.5.66. With regards to article 1 of the First Protocol, the applicant acknowledges in its SoR 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, the ExA notes that the applicant has sought to minimise the amount of land affected and included in the dDCO suitable provisions for the payment of compensation.

EQUALITY ACT 2010 CONSIDERATIONS

6.5.67. The Equality Act 2010 (EA 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. The ExA has had regard to this duty throughout the examination and in its consideration of the issues raised in this recommendation.

6.5.68. The ExA has found above that there is a compelling case in the public interest for land and rights to be acquired compulsorily. Furthermore, the ExA considers that the proposed interference with individuals' rights would be lawful, necessary, proportionate and justified in the public interest. Therefore, the ExA considers the CA and TP powers, as recommended in this recommendation, to be compatible with the HRA 1998 and the EA 2010.

6.6. CONCLUSIONS

6.6.1. The ExA has considered all of the material submitted and presented during the examination relating to the CA and TP of land and rights within the order limits. It considers that the application site has been appropriately selected and that all reasonable alternatives to CA have been explored. The applicant would also have access to the necessary funds and the dDCO provides a clear mechanism whereby the necessary funding can be guaranteed.

6.6.2. Save for plots 5-3 and 5-4, there is a clear need to secure the land and rights sought by the applicant to construct, operate and maintain the proposed development within a reasonable timeframe. In respect of plots 5-3 and 5-4 the ExA has concluded that clear justification has not been provided in respect of the CA of that land but that there is justification for the CA of rights over that land.

6.6.3. Overall, the ExA considers that the proposed development represents a significant public benefit to weigh in the balance and that 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.

6.6.4. Thus, and subject to its recommendation in respect of 5-3 and 5-4, the ExA concludes that the powers sought satisfy the conditions set out in s122 and s123 of the PA2008 as well as the CA Guidance.

7. DRAFT DEVELOPMENT CONSENT ORDER AND RELATED MATTERS

7.1. INTRODUCTION

7.1.1. This chapter describes the draft Development Consent Order (dDCO) [APP-015] as applied for and the changes made to it during the examination. It also describes matters that were not resolved at the close of the examination, the Examining Authority's (ExA) recommendations on those matters and the corresponding changes that would result, as proposed in the ExA's Recommended Development Consent Order (rDCO) at appendix D to this recommendation.

7.1.2. This chapter is without prejudice to the ExA's findings and conclusions on the case for development consent in chapter 5 of this recommendation. This chapter informs the Secretary of State for Energy Security and Net Zero (SoS) of key DCO-related matters should a decision be taken to grant development consent.

7.2. THE ORDER AS APPLIED FOR

7.2.1. This section records the structure of the dDCO, which takes the form of a statutory instrument. It is based on the applicant's final dDCO [REP7-003] and is as follows:

7.2.2. Part 1: Article 1 sets out what the Order may be cited as and when it comes into force. Article 2 sets out the meaning of various terms used in the Order. Article 3 sets out the functioning of electronic communications.

7.2.3. Part 2: Articles 4 to 8 provide development consent for the proposed development, the operations and maintenance of the proposed development, the disapplication of statutory provisions and a defence to statutory nuisance proceedings.

7.2.4. Part 3: Articles 9 to 16 provide for the undertaker to be able to carry out works to and within streets, to alter the layout of streets, to create or improve accesses; to temporarily close public rights of way; and to coordinate traffic regulation measures.

7.2.5. Part 4: Articles 17 to 20 set out supplemental powers relating to discharge of water, authority to survey and investigate land, and to allow for the temporary suspension of waterway navigation.

7.2.6. Part 5: Articles 21 to 34 provide for the undertaker to be able to compulsorily acquire land and rights over the Order land. These articles also allow temporarily use of parts of the Order land for the construction or maintenance of the proposed development. The provisions also provide for the undertaker to suspend or extinguish certain private rights. The provisions provide for compensation to be payable to affected persons (AP) in respect of these powers, where that is not already secured elsewhere. These articles also provide for powers in relation to the equipment of statutory undertakers.

7.2.7. Part 6: Articles 35 to 48 include various provisions in relation to the Order including:

- Article 38 relates to the interaction of the order with the Town and Country Planning Act 1990 (as amended).
- Article 39 allows for the felling or lopping of trees and removal of hedgerows.
- Article 44 provides for crown rights where they are found in the order limits.

7.2.8. There are 26 Schedules to the Order as follows:

- Schedule 1 fleshes out the description of the authorised and ancillary development.
- Schedule 2 sets out the requirements (R).
- Schedule 3 streets subject street works.
- Schedules 4 to 6 relate to matters in relation to streets, accesses, traffic regulation measures and rights of way.
- Schedules 7 and 8 set out matters relating to land rights, temporary possession and compensation.
- Schedule 9 details the hedgerows to be removed.
- Schedule 10 lists the documents and plans to be certified.
- Schedule 11 sets out the arbitration rules.
- Schedule 12 sets out the procedure for the discharge of requirements.
- Schedules 14 to 27 provide protective provisions (PPs) for Statutory Undertakers (SU) and their apparatus.

7.2.9. The structure of the dDCO is set out in the contents and is listed on its face. The ExA is content that the structure is fit for purpose and does not recommend any changes to it.

7.3. EXAMINATION OF THE DEVELOPMENT CONSENT ORDER

7.3.1. The applicant updated the dDCO and Explanatory Memorandum (EM) at all Deadlines (DL) with the final versions at DL7, responding to issues raised in questions, to written representations (WR) and as a consequence of the hearing process. The applicant submitted both clean and tracked change versions of the dDCO.

7.3.2. The changes made to the dDCO and the reasons for these changes can be found in the Schedule of Changes to Development Consent Order, the final summary version of which was submitted at DL7 [REP7-027]. The table below sets out the key dDCO documentation submitted into the examination. All EL references are to the clean versions of the documents.

Table 3: Document History

dDCO Version	Deadline	Examination Library Reference
Revision 1	Submission Version	dDCO [APP-015] Explanatory Memorandum (EM) [APP-016]
Revision 2	Pre-Examination	dDCO [AS-013] EM [AS-015]
Revision 3	Procedural Deadline B	dDCO [PD2-005] Schedule of Changes [PD2-031]
Revision 4	Deadline 1	dDCO [REP1-004] EM [REP1-005] Schedule of Changes [REP1-030]
Revision 5	Deadline 3	dDCO [REP3-002] EM [REP3-004] Schedule of Changes [REP3-037]
Revision 6	Deadline 4	dDCO [REP4-004] EM [REP4-006] Schedule of Changes [REP4-044]
Revision 7	Deadline 5	dDCO [REP5-002] EM [REP5-004] Schedule of Changes [REP5-034]
Revision 8	Deadline 6	dDCO [REP6-004] EM [REP6-006] Schedule of Changes [REP6-029]
Revision 9	Deadline 7	dDCO [REP7-003] EM [REP7-005]

dDCO Version	Deadline	Examination Library Reference
		Schedule of Changes [REP7-027]

7.3.3. As referred to above, all changes made to the iterations of the dDCO were accompanied by a schedule of changes detailing all amendments. A summary of the most notable changes made throughout the examination is shown in the table below.

Table 4: Notable changes to the dDCO during examination

Version of dDCO	Notable Changes Made
Revision 3	Article 7 sub paragraph (5) added to tie-in monitoring and management works to the Wildlife and Countryside Act 1981.
Revision 3	Article 13 revised following National Highways representation to ensure the use of motor vehicles on certain footpaths would not constitute an offence.
Revision 4	Insertion of the definition of 'Canal and River Trust.'
Revision 4	Article 12 amended to ensure that access to Marsh Lock by the Canal and River Trust is available at all times.
Revision 4	Amendment of Article 2 regarding the definition of commence, aligning it with PA2008.
Revision 4	Amendment of Article 2 to clarify the definition of 'permitted preliminary works'.
Revision 4	Definition of 'emergency' added to subparagraph 12 of Article 18.
Revision 4	Article 36(3)(c) amended to secure the future of ecological works allowed for under Requirement 9.
Revision 4	Schedule 2 (Requirements) amended to include references to 'decommissioning timing provisions' in the Operational Environmental Management Plan.
Revision 5	Article 8 adjusted to include decommissioning of the authorised development to reflect s158 of PA2008.
Revision 6	Amendments to Article 8 to remove reference to the operation and use of the proposed development.
Revision 6	Article 13 adjusted to name footpath FP81 as being permanently stopped up. Additional wording and

Version of dDCO	Notable Changes Made
	consequential amendments relating restricted byways.
Revision 6	Article 20 amended to ensure any closure or interruption of navigation on the River Weaver is for a short a timeframe as practicable.
Revision 6	Requirement 6 augmented to include detailed design approval for anti-reflective coating to be applied to solar modules.
Revision 6	Requirement 18 changed to define commencement activities with regards to archaeological works and investigations.
Revision 6	Schedule 27 for National Highways significantly updated, with particular regard for requiring condition surveys of Weaver Lane and Brook Furlong bridges prior to any use of them for the uses proposed by the applicant.
Revision 7	Requirement 9 updated to include binding commitments to deliver biodiversity net gain.
Revision 7	Requirements 12 and 18 amended to include definition of 'phase' in respect of any permitted preliminary works.
Revision 8	Removal of the provision to disapply the regulation 12 of the Environmental Permitting Regulations, as a result of no section 150 consent being provided by the Environment Agency. Consequential removal of the Environment Agency Protective Provisions from the Order.
Revision 8	Incorporation of biodiversity targets into requirement 9(2).
Revision 8	Amendment to Requirement 12(4) to allow limits of deviation for Work No.6C.
Revision 9	Updated protective provisions for National Grid Electricity Transmission Plc.

7.3.4. The main issues arising in or outstanding at the end the examination were:

1) Issue 1: Decommissioning Fund
2) Issue 2: Biodiversity Net Gain and ecological mitigation
3) Issue 3: Permitted Preliminary Works
4) Issue 4: Unexpected contamination
5) Issue 5: Cumulative effects
6) Issue 6: Other DCO-related requests

Issue 1: Decommissioning Fund

7.3.5. Section 3.12 of this recommendation considers the planning merits underpinning the need for a requirement securing a decommissioning fund. These matters are not repeated here.

7.3.6. The ExA included text for the requirement, based on the applicant's own suggested draft [REP1-033] in its proposed schedule of changes [PD-018, PC001]. The applicant responded to restate the belief that the requirement was unnecessary and that requirement 20, dealing with the process of decommissioning, was more than sufficient and enforceable [REP6-001]. The applicant notes that this point was considered in the recent decision of the SoS on the Springwell Solar Farm DCO, where it was concluded that a decommissioning bond requirement was not needed on that case.

7.3.7. The ExA notes that Cheshire West and Chester Council (CWCC) has maintained throughout the examination [REP4-068] that provision of a financial security guarantee would be in the public interest, particularly given the intended end state of the land being at the apparent whim of private landowners [REP5-041].

7.3.8. The ExA considers that, given the exact determination of what would and would not remain at decommissioning stage depends on negotiations with landowners [REP5-041], combined with the environmental concerns at the site in respect of land contamination (as reported in section 3.7 of this recommendation) and the costs of any clean-up operations, the ExA is strongly in favour of a precautionary approach.

7.3.9. The ExA notes that CWCC raised technical concerns regarding the actual stage at which the funding security becomes available and the calculation of the sum of money to be secured [REP4-068]. However, the drafting of the requirement as proposed by the ExA [PD-018] PC001 follows the format as seen on other recently made DCOs.

7.3.10. It is therefore, in the ExA's view, wholly appropriate and necessary to impose a requirement securing a decommissioning bond for the project.

7.3.11. The ExA has no substantive reasons to depart from established wording specifically for the project and its effects.

7.3.12. Consequently, this proposed new requirement is included within the rDCO at Appendix D to this recommendation, as captured in table 5 below.

Issue 2: Biodiversity Net Gain (BNG) and ecological mitigation

7.3.13. Section 3.3 of this recommendation considers the provision of BNG, as well as the arguments regarding the trading rules and use of the metric. These are not repeated here.

7.3.14. In recognition of the complexity of the issue, the applicant amended requirement 9 of the dDCO at DL5 [REP5-002] to include percentage delivery figures for BNG. The ExA, however, considered that greater emphasis

needed to be placed on this matter and it was worthy, as is the case in other recently consented DCOs, for a new purpose-related requirement to be drafted instead, separating BNG from the oLEMP.

7.3.15. To that extent, the ExA proposed a new requirement [PD-018, PC002], drawing upon recent examples where such a requirement had been imposed previously.

7.3.16. The applicant rejected the need for a new requirement but strengthened the coverage of Requirement 9 [REP6-001] [REP6-029]. As reported in section 3.3 of this recommendation, the commitments in requirement 9 were caveated by the applicant stating that BNG would not strictly be delivered due to the trading rules.

7.3.17. CWCC [REP6-044] welcomed the ExA's suggestion of BNG as an individual requirement but commented that the requirement should be amended to stipulate submission of a BNG strategy rather than a BNG plan, and that the wording "and satisfies the trading rules" should be inserted alongside referring to the statutory metric, rather than referring to Metric 4.0 [REP6-045].

7.3.18. The applicant, as reported in section 3.3 of this recommendation, made alternate arrangements in the approach to BNG [REP6-024]. The applicant maintained that Requirement 9 was sufficient as drafted, and to maintain reference to biodiversity 'uplift' as opposed to BNG within the requirement.

7.3.19. Whilst provision of BNG, even at a 10% level, is not yet mandatory for nationally significant infrastructure projects, the ExA considers that the weight to be given to the BNG benefits of the proposed development would be dependent upon its security and certainty of delivery. To this extent, the ExA recognises the applicant's amendments to requirement 9 throughout the examination, particularly at DL7 [REP7-003] and considers that this adequately secures the parameters and biodiversity delivery.

7.3.20. Notwithstanding that there are examples of DCOs where a separate requirement exists, the ExA considers the approach from the applicant to be appropriate and proportionate in this instance.

7.3.21. However, as covered in chapter 3.3 of this recommendation, for the purposes of the DCO reflecting accurately the position regarding BNG and how the project measures up against the statutory metric, consistent terminology is required rather than relying on the word 'uplift.' Correctly applying the metric results in watercourse units being delivered at 7.5% as opposed to 10% claimed. The ExA recommends modifying Requirement 9 to represent the actual watercourse delivery by the project.

7.3.22. As amended, the requirement is sufficiently precise, enforceable and reasonable in all aspects such that a bespoke separate requirement would serve no better purpose.

Issue 3: Permitted preliminary works

7.3.23. The meaning of 'commence' is defined in the dDCO as:

"beginning to carry out a material operation, as defined in section 155 of the 2008 Act (which explains when development begins), comprised in, 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."

7.3.24. A number of works, described as permitted preliminary works (PPW) as defined within Article 2 of the dDCO [REP7-003], are exempted from the definition of commence and would essentially allow the applicant to undertake certain site preparation activities within the Order limits without triggering the official commencement of the development.

7.3.25. Over the course of the examination, modifications to the wording, scope and extent of PPW were made by the applicant in response to ongoing concerns from CWCC [REP7-027]. However, there remained two specific points of dispute regarding item (k) within the list of PPW at the close of the examination. Item (k) would allow for:

"site clearance (comprising vegetation removal and demolition of existing buildings and structures)"

7.3.26. CWCC [REP4-066] considered that if site clearance and remedial works were included in permitted preliminary works, these would fall outside of the definition of commencement and so would not be controlled by the construction phasing plan. There could be a situation where the site is cleared of vegetation, with no mitigation area available for non-breeding birds, leading to significant negative impacts on the non-breeding bird population.

7.3.27. CWCC [REP4-066] also maintained concern regarding historical brick ventilation shafts within the Order limits that could be demolished outside the controls of any outline Written Scheme of Investigation. CWCC states to have had experience of situations where various types of preliminary works have affected identified archaeological features requiring mitigation.

7.3.28. The applicant [REP4-052] stated that the brick ventilation shafts could not be demolished until an Archaeological Mitigation Strategy for that relevant phase has been approved by the relevant planning authority pursuant to Requirement 18 of Schedule 2 to the dDCO, as that Requirement states that the definition of commence includes 'the demolition of buildings and structures'.

7.3.29. When prompted to respond to potential conflicts with the natural environment, the applicant reported [REP5-041, Q2.11.3] all PPW are subject to Requirement 12 (Construction Environmental Management Plan). No site clearance may take place unless a CEMP has been approved, which would secure appropriate mitigation measures for effects on wildlife. Any

potential disturbance is therefore appropriately controlled through the requirements framework. The applicant also advised that the drafting of the requirement aligned closely with a number of DCOs that were consented throughout 2025.

7.3.30. CWCC requested [REP6-044] that the list of PPW in the dDCO be re-ordered to clarify that works under (d), (g), (h) and (i) are only to be carried out after site clearance. The applicant responded that it was not necessary to move 'site clearance' to the top of the list [REP6-040].

7.3.31. The ExA considers that PPW would be undertaken in a managed timeframe and would, via other requirements in the dDCO, be subject to certain limitations and controls. Whilst there may be some legitimate concern from CWCC as to the practicalities of administering PPW, the ExA is reassured from the applicant's responses that sufficient protections are secured. The PPW of themselves would not, therefore, have any significant adverse effects on any natural or built asset.

7.3.32. The ExA does not therefore propose any changes or alterations to the definition of PPW, nor the articles and requirements where PPW are implicated.

Issue 4: Unexpected contamination

7.3.33. Section 3.7 considers the extent of contamination risk and concern within the Order limits and the potential for the proposed development to interact with contaminants during construction, major replacement works and decommissioning activities.

7.3.34. CWCC advocated for a specific unexpected contamination requirement at an early deadline [REP2-005]. The applicant rejected calls for a bespoke requirement on the basis that Requirement 12 (2)(e) required an unexpected contamination protocol to be provided as part of any Construction Environmental Management Plan (CEMP) submitted for any phase of the authorised development [REP4-052].

7.3.35. The oCEMP was revised [REP5-021] to be clearer that, if the applicant came across unexpected contamination and yet still decided to develop in that area, then it would need to come to CWCC to have a remediation scheme approved. The applicant accepts that it would be for the CWCC, in consultation with the Environment Agency (EA), to decide if the remediation scheme is necessary or sufficient if development was sought to be taken forward in such areas [REP4-052].

7.3.36. CWCC maintained a preference for a separate DCO requirement but acknowledged that unexpected contamination could potentially be dealt with via an Unexpected Contamination Protocol in the oCEMP, as provided by the applicant [REP4-068].

7.3.37. The ExA noted that contaminated land was a topic of some depth in the examination and, given the industrial legacy of the locality, represented a very real concern. On this basis, the ExA proposed a new bespoke

requirement [PD-018, PC003] and sought views on the practicalities regarding it.

7.3.38. The EA [REP6-048] approved of the full wording of the requirement as drafted by the ExA, subject to the addition of 'groundwater' within clause (2). The EA noted that the proposed requirement included measures that accurately reflected the approach advised to the applicant to adopt during non-statutory advice given in March 2025.

7.3.39. The applicant's rebuttals to the proposed requirement [REP6-001] include:

- The applicant's DCO already requires an unexpected contamination protocol to be submitted for approval at construction stage. Requirement 12(2) and paragraphs 4.1.26 and Table 5-5 of the oCEMP [REP6-016] sets out what it should include. The wording in Table 5-5 reflects the EA's standard, and preferred formulation for such protocols.
- The applicant has also required this for operation and decommissioning phases (Requirements 13 and 20), which the ExA's proposed Requirement does not.
- The ExA's proposed Requirement would duplicate what is already contained within the DCO.
- If the ExA or SoS were minded imposing a new requirement, paragraphs (2) and (3) are superfluous as the requirement for ground investigations taking place before commencement is already secured via Requirement 17.
- Paragraph (4) is not required or appropriate because other management plans would come forward tackling the matters directly. Similarly, paragraph (5) is not needed because the detailed requirements for a Foundation Works Risks Assessment and Piling Risk Assessment are already contained within the Outline CEMP [REP6-016, Table 5.5] and this does not need to be duplicated within the DCO.

7.3.40. The applicant made some incidental modifications to Requirements 1 and 16 in response to the ExA, to specifically identify commitments in respect of soil sampling and ground investigations [REP6-004].

7.3.41. CWCC [REP6-045] suggested that each paragraph of the ExA's proposed requirement should be a separate requirement in its own right. However, like the applicant, CWCC suggested a degree of duplication with detail in existing Requirements 16 and 17 and that some elements may be too onerous.

7.3.42. The ExA notes Requirement 16 requires submission of a soil management plan for each phase of the authorised development, taking into account the findings of a ground conditions investigations and assessments strategy. Also, requirement 17 states no phase of the authorised development may commence under a ground conditions investigations and assessments strategy has been submitted and approved. Whilst neither particularly or explicitly provide for unexpected contamination per se, the ExA does note that Requirement 12 requires a CEMP to be submitted to and approved by the relevant planning authority in consultation with the EA, and that any such CEMP should incorporate an unexpected contamination protocol.

7.3.43. The ExA proposed the requirement [PD-018] as it is considered necessary in the public interest to ensure that risks surrounding the identification and control of unexpected contamination are fully secured. The response from the applicant [REP6-001], as verified by the response of CWCC [REP6-045] (the original requester of the requirement [REP2-005]), is that largely, if not wholly, appropriate measures are already secured across various existing requirements in the dDCO.

7.3.44. For this reason, the ExA does not recommend a new additional requirement be imposed, since it would only serve to duplicate controls. However, in recognition of the EA's position that groundwater needs to be taken into account in any surveys and investigations, the ExA proposes adding the words "including groundwater resources" within Requirement 17. This is captured in the table 5 below, and in the rDCO at Appendix D.

Issue 5: Cumulative effects

7.3.45. Section 3.11 of this recommendation considers the matter of cumulative effects as a whole, with a principal focus being on the interaction between the proposed development, the Non-Breeding Bird Mitigation Area (NBBMA) acting as mitigation for the proposed development and the potential construction of the Runcorn Spur Carbon Dioxide Pipeline. There is a secondary, though similar issue, with the proposed Skylark Mitigation Area (SMA) within the proposed development and the laying of the Hynet Northwest Hydrogen Pipeline Project.

7.3.46. On the assumption that both the Runcorn Spur Carbon Dioxide Pipeline and the Hynet Pipeline are approved as well as development consent granted for the Frodsham Solar Farm project, there are three basic scenarios as to how the future may unfold:

i. The pipeline is constructed first, with the mitigation areas for the proposed development laid out and established afterwards.
ii. The pipeline and the mitigation areas are constructed concurrently with co-ordinated works.
iii. The mitigation areas are laid, with the pipeline subsequently constructed afterwards thus digging up or disturbing the mitigation areas.

7.3.47. CWCC raised concern that in the event of scenario (iii), there could be increased disturbance to the birds that would be relying upon the newly established mitigation areas; these birds would have already been disturbed by the proposed development, and this further disturbance meant an adverse effect on integrity (AEoI) could not be ruled out. To plan for this occurrence, CWCC requested controls in the DCO to ensure the timing of all various works and developments would not cause an AEoI [REP1-048]. The DCO could be used to ensure that scenario (iii) would not occur, particularly given that the applicant, as landowner, could legislate for and manage the AEoI risk [REP4-066].

7.3.48. The applicant countered to suggest for the scenario in which the NBBMA is laid first, with the Runcorn Spur Carbon Dioxide Pipeline constructed

afterwards, the power of control rests with CWCC. The applicant would expect conditions attached to any planning permission requiring a revised Habitats Regulations Assessment (HRA) for the Runcorn Spur Carbon Dioxide Pipeline to be submitted to ensure an AEoI would not occur [REP4-052] [REP4-057], taking the NBBMA into account as a new baseline.

7.3.49. During Issue Specific Hearing 2 [EV10-015] the matter was discussed at length, and several options were discussed and tabled, including the possibility of a Grampian-style requirement preventing the NBBMA from being delivered unless and until the Runcorn Spur Carbon Dioxide Pipeline (if approved) was laid. This was outright rejected by the applicant because it would prevent implementation of the proposed development (or delay establishment of the NBBMA) [REP4-057]. The applicant stated that if a condition was imposed by CWCC, mandating that the Runcorn Spur Carbon Dioxide Pipeline was laid using trenchless crossing techniques (such as horizontal directional drilling) across the NBBMA land, there would not be any cumulative effects [REP4-053].

7.3.50. The ExA requested a joint position statement to be produced as well as several other questions regarding a potential navigation on this issue [PD-016]. The applicant submitted a draft of tripartite memorandum of understanding (between itself, the promoters of the Runcorn Spur Carbon Dioxide Pipeline and CWCC) [REP5-041, Appendix D] and also briefly summarised that:

- In the applicant's view that, without prejudice to the CWCC's decision on the Runcorn Spur Carbon Dioxide Pipeline, there are conditions that could be applied which are legally sound and meet the tests set out in paragraph 57 of the NPPF, and which would ensure that the in-combination effects of the two developments that have been assessed are managed in line with the terms of the two applications.
- The applicant has unilaterally drafted these conditions [REP5-041, Q2.9.15] and considers that these draft conditions demonstrate that it is possible to apply policy and legally compliant controls to the planning permission for the Runcorn Spur Carbon Dioxide Pipeline application (should it be granted permission) such that an Adverse Effect on the Integrity of the Mersey Estuary Special Protection Area, including its functionally linked land, could be ruled out in respect of in-combination effects with Frodsham Solar Farm.
- The applicant does not consider it appropriate for either the DCO or the TCPA planning permission to include requirements or conditions which would limit or restrict other development not authorised by that consent and therefore does not support this suggestion.

7.3.51. CWCC maintained its position that the best place for planning controls to avoid scenario 3 from occurring was within the DCO for Frodsham Solar Farm [REP5-048] [REP6-043].

7.3.52. Liverpool Bay CCS Limited, promoters of the Runcorn Spur Carbon Dioxide Pipeline, retained a position that the Runcorn Spur Carbon Dioxide Pipeline would be fully constructed and laid prior to any work commencing on the

proposed development, and there was no other alternative likely to occur [REP6-053] [REP7-046]. Indeed, that was the only scenario the promoter had factored into its own HRA.

7.3.53. No conclusive remedy or consensus on the approach to be taken was reached at the close of the examination [REP7-028] [REP7-031]. However, Natural England's response [REP5-056] endorsed the applicant's position and states:

"We consider in this circumstance that Frodsham Solar have provided sufficient information for their development to enable us to agree with their overall conclusions and as stated in our deadline 4 response, it then remains for the applicant of the pipeline development to demonstrate that the pipeline will not impact upon either the existing mitigation in Cell 3 or the proposed NBBMA."

7.3.54. The ExA, at the time of writing this recommendation, acknowledges that CWCC is in an unenviable position. It has, in effect, two live applications affecting the same piece of land and neither has been determined (nor will decisions upon them be immediately forthcoming to inform the other). It would appear that CWCC, in good conscience, could not discharge its duty as the competent authority by granting the Runcorn Spur Carbon Dioxide Pipeline application on the basis of the HRA information available at this time, but then apply a condition requiring an additional HRA be undertaken further down the line if certain circumstances occur. If the promoter for the Runcorn Spur Carbon Dioxide Pipeline was then unable to discharge that additional HRA condition, there would be a planning permission that could not be implemented.

7.3.55. The applicant maintains however that once the NBBMA (or SMA) is laid, these areas become part of a new baseline that future proposals have to take into account. The ExA believes this is a salient point. The ExA also recognises the position of the Runcorn Spur Carbon Dioxide Pipeline promoters that the pipeline, if approved, would be built before the proposed development even commences. The ExA has reviewed the planning conditions volunteered by the applicant and considers, on the basis of these, there is a compelling case for appropriate controls to be imposed on the any planning permission (if granted) for the Runcorn Spur Carbon Dioxide Pipeline. That Natural England has supported the applicant's position reaffirms to the ExA that no further action for the proposed development is required.

7.3.56. The ExA also considers that, given the national urgency for the renewable energy and energy security, it would be contrary to the objectives of the Overarching National Policy Statement for Energy (NPS EN-1) to impose any delays or impediments upon the proposed development to manage a project that, at the time of writing this recommendation, is not even consented.

7.3.57. On this basis, the ExA does not consider it necessary or reasonable to add any requirements on the face of the dDCO in respect of these identified cumulative effects. The ExA agrees with the applicant on this matter.

7.3.58. There are related matters regarding Liverpool Bay CCS Limited requesting protective provisions, but these are considered separately in the next section of this recommendation.

Other DCO-related requests

7.3.59. CWCC requested a number of incidental changes and additional amendments to the dDCO either for clarity and transparency purposes, certainty purposes or to insert detail contained in management plans onto the face of the dDCO [REP6-044], table 1. Some of these were resolved at close of the examination [REP7-028], table 1, either through amendments to the dDCO or through CWCC accepting the applicant's position. The ExA's commentary below focuses on those matters showing as 'red' in CWCC's table and makes recommendations accordingly, if not already dealt with in the preceding section.

7.3.60. CWCC requested that Work No.6 should be more transparent to specifically name various biodiversity enhancement areas and packages, separating these out from general ecological works. The ExA sees no need for these amendments. The appropriate controls are within the suite of management plans, most notably the outline Landscape and Ecology Management Plan (oLEMP), and there is no obvious need to either duplicate or move certain provisions around.

7.3.61. CWCC alleged that [REP5-048]:

"Requirement 12 (3) only refers to the 'construction of any phase of the authorised development' and CWCC is concerned that control over site clearance would not be triggered even though the carrying out of PPW would constitute 'commencement', and it would be covered by the CEMP, it would not fall within control without some amendments to 12(3)."

7.3.62. The applicant responded [REP6-040] to state there was no need to amend the wording of the requirement because:

"clearance of the site that is necessary in locations where PPWs are to take place, will be controlled to enable the clearance, and then the PPWs to take place. The Council's suggestion could have the effect of, for example, the filling of potholes on the Main Access Route not being able to be possible until site clearance at the other end of the Site has taken place. This is not necessary in environmental terms."

7.3.63. The ExA considers that the wording of Requirement 12 (as a whole) together with other Requirements within the dDCO, appropriately and sufficiently control the timing of works and the functioning of PPW. The ExA notes the applicant's suggestion of unintended consequences and effects of adjusting the requirement and therefore proposes no alterations in this instance.

7.3.64. CWCC requested an additional requirement for a community liaison group, as has been provided on some other made DCOs, rather than leaving provision for such a group to the 'lower tier' management plans. The ExA considers there is no need to duplicate controls within the oCEMP and

oOEMP on the face of the dDCO; cherry-picking which items to promote from the management plans to the dDCO serves perhaps only to downplay other matters that are not promoted, or cause confusion. No changes are therefore proposed.

7.3.65. Considerations regarding permissive paths are set out in section 3.8 of this recommendation, following CWCC's preference for a bespoke requirement to legislate for their provision [REP5-048]. The ExA considers there is no need for a requirement here, since the outline Public Rights of Way Management Plan would provide adequate coverage, and would be developed further in consultation with stakeholders post-consent. Whilst CWCC has expressed a preference, that does not constitute one of the reasons underpinning the imposition of requirements (or planning conditions) set out in NPS EN-1 or the National Planning Policy Framework.

7.3.66. With regards requirement 19 on skills and supply chains, CWCC wanted changes to raise the profile of proactive engagement [REP6-044]. This matter is omitted from CWCC's DL7 submission [REP7-039] [REP7-040]. Nonetheless, the applicant provided a reasoned rebuttal to this [REP6-040] and noted that the Outline Skills, Supply Chain and Employment Plan was updated at DL6 [REP6-022] to make clear that the detailed plan submitted for approval must include a description of how it has developed its proposals in consultation with the organisations identified in the plan.

7.3.67. The ExA is satisfied with the applicant's response and, as such, no further changes are needed.

7.4. PROTECTIVE PROVISIONS

7.4.1. Schedules 13 to 26 of the dDCO provide protective provisions (PPs) for statutory undertakers (SUs) and their apparatus. The status of any PPs with SUs can be found in the final Land Rights and Negotiations Tracker.

7.4.2. At the conclusion of the examination, there were outstanding matters from SUs where agreement had not been reached, with requests for further detailed changes to be made. Chapter 6 of this recommendation considers PPs in greater detail where objections were raised and draws conclusions therein. Table 5 below captures the necessary textual revisions that the ExA has included in the rDCO that were deemed necessary and appropriate to prevent serious detriment occurring to that SU's operations or apparatus.

7.4.3. Although not qualifying as a SU, the promoters of the Runcorn Spur Carbon Dioxide Pipeline (Liverpool Bay CCS Limited) made representations to the examination requesting that PPs be inserted into the dDCO [RR-011] [REP5-056]. The applicant responded [REP1-032] to state that in the absence of a DCO or any other form of consent or safeguarding for the Runcorn Spur Carbon Dioxide Pipeline, the applicant does not agree in principle to PPs for the benefit of Liverpool Bay CCS, leaving it to an out-of-examination agreement or co-operation agreement.

7.4.4. Liverpool Bay CCS Limited submitted its preferred PPs at the final deadline in the examination [REP7-046] despite having had notice of the examination timetable for a number of months. The applicant rightly complained that it had not been provided ample time nor opportunity to fully discuss commercial agreements, legal arrangements or other form of PPs with Liverpool Bay CCS Limited [REP7-001]. The applicant reaffirmed its position that it was not appropriate to include PPs for Liverpool Bay CCS Limited in the Order [REP7-001]. However, if the ExA or SoS considered otherwise, the applicant provided its own set of PPs on a without prejudice basis.

7.4.5. The ExA notes that, during the examination, Liverpool Bay CCS Limited did not advance any case regarding any existing apparatus or land interests within the Order limits. As at the end of the examination, there is no approved or otherwise consented scheme for the Runcorn Spur Carbon Dioxide Pipeline. The ExA does not have any compelling evidence to suggest that Liverpool Bay CCS Limited are entitled to specific PPs in the dDCO and consider that it is more likely another form of co-existence agreement would be the ideal vehicle for both projects to pursue.

7.4.6. Consequently, notwithstanding the late submissions of PPs from both the applicant and Liverpool Bay CCS Limited, the ExA does not recommend any PPs are inserted into the dDCO. Should the SoS disagree, the ExA advises that the parties should be encouraged to reach agreement on acceptable wording for appropriate PPs prior to any DCO being made.

7.4.7. In summary, subject to the imposition of the PPs identified in the preceding paragraphs and those in table 5 below, the ExA is satisfied with the wording of all PPs and that adequate protection is provided to SUs with the consequence that there would be no serious detriment to the carrying out of their respective roles and functions and recommends no amendments in the rDCO.

7.5. EXAMINING AUTHORITY'S PROPOSED CHANGES

7.5.1. Table 5 below sets out the substantive proposed changes included in the ExA's rDCO, which can be found at appendix D of this recommendation. The majority of suggested changes are reported on above or elsewhere in this recommendation. The original wording is drawn from the applicant's preferred dDCO [REP7-003] as a base.

7.5.2. Recommended insertions are shown in bold, with deletions shown with a strike through. Underlining denotes the name or number of a provision to which the amendment relates.

7.5.3. It should be noted that table 5 does not show minor typographic or formatting errors in the dDCO and corrected by the ExA in the rDCO.

Table 5: ExA recommended changes incorporated into the rDCO

Provision	Recommendation	ExA Reasoning
New Requirement	**Decommissioning Fund** **In this paragraph: "decommissioning security" means a form of security that secures the costs of undertaking decommissioning works and meeting all obligations under a decommissioning environmental** **management plan approved under Requirement 20 for the phase to which the security will relate; and** **"valuer" means a suitably independent professional jointly appointed by the undertaker and the relevant planning authority prior to the first discharge of this Requirement but where an individual cannot be agreed, then this inability to agree should be considered to be a refusal of an application to discharge a Requirement for the purposes of article 46 and Schedule 12.** **21- (1) No phase of the authorised development may commence until the form and value of a decommissioning security for that phase has been submitted to and approved by the local planning authority.** **(2) Any decommissioning security approved under this paragraph shall be maintained until the date of completion of the decommissioning works to which that decommissioning security relates.**	Given the complexities and uncertainties of the future and given the environmental circumstances of the project site, it is considered necessary in the public interest to ensure adequate funds are secured for the decommissioning phase of the project.

Provision	Recommendation	ExA Reasoning
	(3) The value of the decommissioning security shall be reviewed by the valuer no less than every five years from the date of approval given under sub-paragraph (1) and the undertaker must increase or decrease the value of the security to reflect the results of the valuer's review, such review to take account of any variation, since the approval of the decommissioning security, or the previous review (as appropriate), in the estimated or actual costs of carrying out the decommissioning works, meeting all obligations under a decommissioning environmental management plan approved under Requirement 20 for the phase to which the decommissioning security relates, and complying with best practice prevailing at the time of each review. **(4) The undertaker may launch an appeal under paragraph 4 of Schedule 12 in respect of the relevant planning authority's consideration of a submitted decommissioning security under paragraphs (1) and (2) and where such an appeal is launched the Secretary of State must appoint the valuer as the appointed person under paragraph 4(2)(c)** **(5) The undertaker may dispute the results of any review carried out under paragraph (3) and article 46**	

Provision	Recommendation	ExA Reasoning
	and Schedule 12 shall apply to such dispute.	
Modification of Requirement 9(2)(f)	(f) how the plan proposals will contribute to the achievement of a quantified uplift of a minimum of 20% in habitat units, ~~10%~~ **7.5%** in watercourse units and 75% in hedgerow units for the authorised development	To properly apply and reflect the statutory biodiversity metric terminology.
Modification of Requirement 17	17.—(1) No phase of the authorised development may commence, and no part of the permitted preliminary works for that phase comprising demolition or decommissioning of existing structures, intrusive environmental surveys, geotechnical surveys and other investigations for the purpose of assessing ground conditions, diversion and laying of apparatus, and remedial work in respect of any contamination or other adverse ground conditions, may start until a ground conditions investigations and assessments strategy **including groundwater resources** for that phase has been submitted to and approved by the relevant planning authority, such approval to be in consultation with the Environment Agency and, in respect of Work No. 4A only, the Canal and River Trust.	In recognising that an unexpected contamination protocol does not need to be subject to a bespoke requirement, the ExA are conscious that the EA raised groundwater in its response [REP6-048]. The ExA wish to ensure such does form part of future considerations and therefore the wording change proposed would secure this.
Schedule 20	Article 2 Amend definition of apparatus: "apparatus" means the pipeline and storage system owned **and/or operated** by Essar within or adjacent to the Order limits and includes any structure in which apparatus is or is to be lodged or which gives or will	For the benefit of Essar (Oil) UK Limited [REP7-045], as the ExA considers that, without such changes, there could be prejudice to the operational activities of a statutory undertaker.

Provision	Recommendation	ExA Reasoning
	give access to apparatus and includes any ancillary works and apparatus all protective wrappings, valves, **valve pits, above ground installations (AGIs)**, sleeves and slabs, cathodic protection units, **equipment and associated anode beds**, together with ancillary cables and markers and such legal interest and benefit of property rights and covenants as are vested in Essar in respect of those items and, where the context allows, includes alternative apparatus; Amend definition of plan “plan” includes all designs, drawings, specifications, method statements **(including RAMs)**, soil reports, **ground surveys**, programmes, calculations, risk assessments, **pre and post interaction surveys (including in relation to any interactions which may affect the cathodic protection system)** and other documents that are reasonably necessary to describe the works to be executed; Amend definition of "specified work", insofar as (a) and (d) refer to a distance of **50** metres. <u>Article 4</u> Amend sub-paragraph (5) in the following way: (5) Essar must, after the alternative apparatus to be provided or constructed has been agreed or settled in	

Provision	Recommendation	ExA Reasoning
	accordance with article 39 (arbitration), and after the grant to Essar of any such facilities and rights as are referred to in sub-paragraph (2), 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 allow the undertaker to remove) any redundant apparatus required by the undertaker to be removed under the provisions of this Schedule **(provided that, to the extent that such redundant apparatus is not above ground, such redundant apparatus may, at the absolute discretion of Essar, be capped and left safe)** Article 6 Amend sub-paragraph (2) in the following way: (a) the exact position of the works and **any associated crossing points to access 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 **and reinstatement of backfill during excavations**, positioning of plant etc.; (d) the position of all apparatus **and the approach to the protection of the apparatus (including the protection of**	

Provision	Recommendation	ExA Reasoning
	cathodic protection units, equipment and associated anode beds); (e) by way of detailed drawings, every alteration proposed to be made to or close to any such apparatus; <u>Article 7</u> Amend ending paragraph in the following way: Essar and the undertaker must co-operate in undertaking the tests which ~~the undertaker~~ **they consider** reasonably necessary for ascertaining the nature and extent of such interference and measures for providing or preserving cathodic protection **and Essar and the undertaker must carry out the works and enter into such agreements as are reasonably necessary to implement the measures for providing or preserving cathodic protection.** <u>Article 8</u> Amend sub-paragraph (5) in the following way: (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	

Provision	Recommendation	ExA Reasoning
	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 ~~settled~~, **is not determined** by arbitration in accordance with article 39 (arbitration) to be necessary, then, if such placing involves cost in the construction of works under this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to Essar by virtue of sub-paragraph (1) must be reduced by the amount of that excess save ~~where~~ **to the extent that** it is not possible in the circumstances to obtain the existing type of ~~operations~~, **apparatus at the same** capacity, **and** dimensions or place at the existing depth in which case full costs must be borne by the undertaker. <u>Article 9</u> Amend sub-paragraph (1) in the following way: 9. —(1) Subject to the following provisions of this paragraph, the undertaker ~~must compensation to Essar make reasonable~~ (a) **will indemnify Essar** for all loss, damage, liability, costs and expenses reasonably suffered	

Provision	Recommendation	ExA Reasoning
	or incurred by Essar for which Essar is legally liable as a result of legally sustainable claims brought against Essar by any third party solely arising out of the carrying out of any relevant works **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**; (b) must make compensation to Essar in full for the cost reasonably incurred by Essar in making good any damage to any apparatus **or alternative apparatus** (other than apparatus the repair of which is not reasonably necessary in view of its intended removal or abandonment) **or property of Essar** arising from or caused by the carrying out of any relevant works and the authorised development; ~~and~~ **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**; (c) **must make compensation to Essar in full** for the cost reasonably incurred by Essar in stopping, suspending and/or restoring the supply through its pipe-line; ~~and make reasonable compensation to~~ (d) **will indemnify** Essar for any other expenses, losses, damages, penalty or costs incurred by Essar by reason or in consequence of any such damage or interruption provided that the same arises in consequence of the carrying out	

Provision	Recommendation	ExA Reasoning
	of any relevant works and the authorised development **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**. Article 9 Amend sub-paragraph (6) in the following way: (a) does, will or is likely to affect any apparatus **or alternative apparatus (including without limitation the relocation, diversion, decommissioning, construction and maintenance of apparatus or alternative apparatus)**; or (b) involves a physical connection or attachment to any apparatus Add New Article 12 **Access** **12. If in consequence of the agreement reached in accordance with paragraph 3(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 Essar to maintain or use the apparatus no less effectively than was possible before such obstruction.**	
Various, as listed	Article 19	For the benefit of INOVYN Chlorvinyls Limited [REP7-042]

Provision	Recommendation	ExA Reasoning
	Insertion of a new sub-paragraph (7): **The power to enter land conferred under paragraph (1) shall apply in respect of land plots 5-3 and 5-4 but the undertaker, in the exercise of the authority conferred by this article, may not make trial holes, bore holes or trenches on the said land, nor place or leave on the land apparatus for use in connection with the same.** <u>Article 21</u> Insertion of a new sub-paragraph (3): **The undertaker's power of compulsory acquisition which is conferred under paragraph (1) does not apply in respect of land plots 5-3 and 5-4.** <u>Article 24</u> Insertion of a new sub-paragraph (5A): **Furthermore, this article does not apply in relation to any right or to the benefit of any restrictive covenant subject to compulsory acquisition under this Order which is vested in or belonging to INOVYN Chlorvinyls Limited or INEOS Fluor Limited, and this provision is to have effect for the benefit of any person deriving title from or under INOVYN Chlorvinyls Limited or INEOS Fluor Limited.**	[REP7-043] as the ExA considers, as set out in chapter 6 of this recommendation, that the case for full compulsory acquisition powers by the applicant has not been made out.

Provision	Recommendation	ExA Reasoning
	Article 27 Insertion of a new sub-paragraph (7): **The authorisation conferred under paragraph (1) in respect of any authorised activity which takes place on land within the Order limits shall not apply to any interest, right or restriction which is vested in or belonging to INOVYN Chlorvinyls Limited or INEOS Fluor Limited (and any person deriving title therefrom). Accordingly, paragraph (1) shall not operate to override any such interest, right or restriction.** Schedule 7 Amend paragraph 1 (Interpretation) of Schedule 7 by the insertion of an additional 'rights package', the details of which are as follows: **"SPEN connection (above ground) cable rights" means rights over land to, for the purposes of the authorised development and in connection with the authorised development:** **(a) install, use, support, protect, inspect, alter, remove, replace, retain, renew, improve and maintain above ground electrical cables, together with telephone signalling and fibre optic cables, conducting lines and cables and ancillary equipment associated works and other conducting media, provided that the above**	

Provision	Recommendation	ExA Reasoning
	ground electrical cables and associated infrastructure must be installed and retained at all times at a [minimum height of 7 (seven) metres from ground level] (or any greater minimum distance as may be specified by statute from time to time) when the same are at maximum temperature and/or sag at any point in the span; **(b) remain, pass and repass on foot, with or without vehicles, plant and machinery in connection with the exercise of the rights referred to in (a); and** **(c) (with the prior consent of INOVYN Chlorvinyls Limited acting reasonably) fell, lop or cut all trees, coppice wood and other vegetation which may obstruct, interrupt or interfere with the exercise of the rights or the working of or damage to the above ground electrical cables and associated infrastructure referred to in (a).** <u>Schedule 7</u> Insert new row into table reflecting the above changes.	

7.6. CONCLUSIONS

7.6.1. The ExA has considered all iterations of the dDCO as set out in table 5 above and the degree to which the applicant's final version has addressed matters arising during the examination. The rDCO in appendix D to this recommendation largely reflects the final dDCO submitted by the applicant, but with the addition of the changes listed in table 5 above as well as minor typographical changes.

7.6.2. The ExA has sought to make informed recommendations with regard to changes to the protective provisions within the rDCO.

7.6.3. Taking all matters raised in this chapter and all matters relevant to the DCO raised in the remainder of this recommendation, the ExA recommends that the Secretary of State should make the Order in the form laid out in appendix D.

8. SUMMARY OF FINDINGS AND CONCLUSIONS

8.1. INTRODUCTION

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

8.2. CONSIDERATION OF FINDINGS AND CONCLUSIONS

8.2.1. The ExA has considered the proposed development against s104 of the Planning Act 2008 (PA2008) as it is within the scope of the Overarching National Policy Statement for Energy (NPS EN-1), the National Policy Statement for Renewable Energy Infrastructure (NPS EN-3) and the National Policy Statement for Electricity Networks Infrastructure (NPS EN-5). The ExA finds that these are relevant National Policy Statements and have effect. The ExA finds no evidence that s104(4) to (8) of the PA2008 apply and, as required by s104(3), the ExA concludes that the application must be decided in accordance with the relevant National Policy Statements.

8.2.2. The ExA has had regard to matters arising from the Local Impact Report (LIR) from Cheshire West and Chester Council, and to all matters that the ExA considers to be both important and relevant in reaching our conclusions. The ExA has considered the relevant legislation, policy and guidance.

8.2.3. The proposed development would constitute inappropriate development in the Green Belt, with no concession made in respect of grey belt land. However, the ExA considers that very special circumstances do exist in this instance to justify and substantiate the impacts upon the Green Belt.

8.2.4. As required by Regulation 3 of The Infrastructure Planning (Decisions) Regulations 2010, the ExA has had regard to the desirability of preserving listed buildings, their settings and any features of special architectural or historic interest which they possess, preserving or enhancing the character or appearance of conservation areas, and preserving scheduled monuments and their settings. Given the significance and importance of the public benefits of the proposed development, the ExA considers that they would clearly outweigh the less than substantial harm which would arise to designated and non-designated heritage assets.

8.2.5. As required by Regulation 7 of the Infrastructure Planning (Decisions) Regulations 2010, the ExA has had regard to the United Nations Environmental Programme Convention on Biological Diversity of 1992 and are content that those aims are accorded with. The ExA has due regard to conserving and enhancing biodiversity and fulfil our biodiversity duty in accordance with the Natural Environment and Rural Communities Act 2006.

8.2.6. The ExA's conclusions are subject to the provisions of the rDCO in Appendix D. The ExA has concluded 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.

8.2.7. With respect to matters of compulsory acquisition and temporary possession, the ExA finds that there is insufficient justification for the extent of powers sought by the applicant over plots 5-3 and 5-4 belonging to INOVYN Chlorvinyls Limited and that lesser powers would achieve the applicant's objectives. This is reflected in text contained within the rDCO. In all other respects regarding the land rights required to implement the proposed development the ExA finds that:

- the application site is selected appropriately, all reasonable alternatives are explored, and the applicant has a clear idea of how it intends to use the land
- the powers sought are for a legitimate purpose, necessary to facilitate the proposed development, and no more than is reasonably required
- adequate funding would be likely to be available for the delivery of the proposed development and for the payment of compensation, which is secured appropriately

8.2.8. The ExA does however draw attention to the outstanding matter of consent from the Crown Estate, which will need to be resolved. In the absence of any response from the Crown Estate, the ExA has nothing further to report on likely progress or timescales for this resolution.

8.2.9. The ExA has had regard to the provisions of the Human Rights Act 1998. The ExA concludes that any interference with human rights arising from implementation of the proposed development would be proportionate and strike a fair balance between the rights of the individual and the public interest. The ExA finds that there is a compelling case in the public interest for the powers sought and conclude that the powers should be granted.

8.2.10. The ExA has had regard to the Public Sector Equality Duty. The ExA finds no harm to the interests of persons who share a protected characteristic, or any adverse effect on the relationships between such persons and persons who do not share a protected characteristic. The ExA finds no breach of the Public Sector Equality Duty.

8.2.11. The ExA finds that the proposed development is critical national priority (CNP) infrastructure in accordance with the relevant National Policy Statements. Our conclusions are the same both with and without CNP infrastructure considerations.

8.2.12. The ExA has regard to the applicant’s Information to Inform Habitats Regulations Assessment and Natural England’s comments. Whilst the SoS is the Competent Authority under the Conservation of Habitats and Species Regulations 2017 (the Habitat Regulations) and will make the definitive assessment, the ExA concludes that the proposed development would not be likely to give rise to adverse effects on the integrity of European Sites. The ExA finds that there is sufficient information for the SoS to undertake an appropriate assessment and to fulfil the duty under the Habitat Regulations. The ExA sees no reason why Habitats Regulations Assessment matters should prevent the making of the DCO.

8.2.13. In relation to s104(2) and s104(3) of the PA2008, the ExA concludes that making the recommended Development Consent Order (rDCO) at appendix D to this recommendation would be in accordance with the relevant National Policy Statements.

8.3. RECOMMENDATION

8.3.1. The ExA's findings and conclusions are set out in this report, and the ExA considers important and relevant matters and all submissions. The ExA has complied with all applicable legal duties and does not take account of any matters that are not relevant to its recommendations. The ExA finds no important and relevant matters that would individually or collectively lead to a different recommendation. The conclusions are the same both with and without CNP infrastructure considerations.

8.3.2. The ExA finds that the proposed development meets the tests in s104 of the PA2008, and the ExA recommends that the SoS makes the Frodsham Solar Farm Development Consent Order in the form attached at appendix D.

APPENDIX A: REFERENCE TABLES

Frodsham Solar - EN010153

Table A1 – National Policy and Guidance

Key national policy and guidance
Overarching National Policy Statement for Energy (NPS EN-1) (dated November 2023, designated on 17 January 2024) 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.
National Policy Statement for Renewable Energy (NPS EN-3) (dated November 2023, designated on 17 January 2024) 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.
National Policy Statement for Electricity Networks Infrastructure (NPS EN-5) (dated November 2023, designated on 17 January 2024) Amongst other things, this NPS provides policy for underground electricity distribution systems that constitute Associated Development to a solar photovoltaic NSIP.
**Revised versions of the above National Policy Statements were designated in January 2025. The Examining Authority has treated these as important and relevant in this recommendation.*
Other National Policies
The National Planning Policy Framework (2025)
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)
Industrial Decarbonisation Strategy (HM Government, 2021)
Net Zero Strategy: Build Back Greener (2021)
British Energy Security Strategy (2022)
Mission Zero: Independent Review of Net Zero (2022)
Powering up Britain (DESNZ, 2023)
Carbon capture, usage and storage net zero investment roadmap, 2023
Clean Power 2030 Action Plan (2024)
Solar Roadmap: United Kingdom Powered by Solar (DESNZ, June 2025)

Table A2 – Relevant Local Plan Documents

Plan	Identified documents and/or relevant policies
Cheshire West and Chester Council	• Local Plan (Part one) Strategic Policies (January 2015) • Local Plan (Part two) Land Allocations and Detailed Policies (July 2019) • Update to the Local Plan
Frodsham	• Neighbourhood Plan (November 2024)
Ince	• Neighbourhood Plan (October 2023)

Table A3 – Summary of Relevant Legislation and Conventions for the Proposed Development

Relevant Legislation
• Acquisition of Land Act 1981 • Air Quality (England) Regulations 2000 • Air Quality Standards Regulations 2010 (as amended) • The Air Quality (Amendment of Domestic Regulations) (EU Exit) Regulations 2019 • Ancient Monuments and Archaeological Areas Act 1979 • Building Act 1984 and the Building Regulations 2010 • Carbon Budget Order 2021 • Climate Change Act 2008 (Credit Limit) Order 2021 • Climate change Act 2008 • Commons Registration Act 1965 • Conservation of Habitats and Species Regulations 2017 (the Habitat Regulations 2017') (as amended) • Contaminated Land (England) (Amendment) Regulations 2012 ('Contaminated Land Regulations') • Control of Pollution Act 1974 • Compulsory Purchase Act 1965 • Compulsory Purchase (Vesting Declarations) Act 1981 • Countryside and Rights of Way Act 2000 • Equality Act 2010 • Electricity Act 1989 • Energy Act 2023 • The Environment Act 1995 • Environment Act 2021 • Environment (Amendment etc.) (EU Exit) Regulations 2019 • Environmental Damage (Prevention and Remediation) (England) Regulations 2015 • Environment (Miscellaneous Amendments) (EU Exit) Regulations 2020 • Environmental Permitting (England and Wales) Regulations 2016 • Environmental Protection Act 1990 • Environmental Noise (England) Regulations 2006 (as amended) • Environmental Permitting (England and Wales) Regulations 2016 • Environmental Permitting (England and Wales) (Amendment) (EU Exit) Regulations 2019 • European Commission Circular Economy Package • Environmental Protection Act 1990

- European Landscape Convention (ELC) (Council of Europe, 2016)
  Hedgerow Regulations 1997
- Flood Risk Regulations 2009
- Flood and Water Management Act 2010
- Groundwater (Water Framework Directive) (England) Direction 2016
- Hazardous Waste (England and Wales) Regulations 2005
- Health and Safety at Work etc. Act 1974
- Health and Social Care Act 2012
- The Hedgerows Regulations 1997
- Highways Act 1980
- Human Rights Act 1998
- The Infrastructure Planning (Decisions) Regulations 2010
- The Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 (as amended)
- Land Drainage Act 1991
- Levelling Up and Regeneration Act 2023
- Localism Act 2011
- Marine and Costal Access Act 2009
- National Parks and Access to the Countryside Act 1949
- Natural Environment and Rural Communities Act 2006
- Neighbourhood Planning Act 2017
- Noise Insulation Regulations 1975
- The Planning Act 2008
- The Planning and Infrastructure Act 2025
- Planning (Hazardous Substances) Act 1990
- Planning (Listed Buildings and Conservation Areas) Act 1990
- Pollution Prevention and Control Act 1999
- Protection of Badgers Act 1992
- Town and Country Planning Act 1990
- Waste (England and Wales) Regulations 2011
- Waste Electrical and Electronic Equipment Regulations 2013
- Water Abstraction and Impounding (Exemptions) Regulations 2017
- Water Act 2003
- Water Act 2014
- Water Framework Directive (2000/60/EC)
- Water Framework Directive (Standards and Classification) Directions (England and Wales) 2015
- Water Environment (Water Framework Directive) (England and Wales) Regulations 2017
- Water Industry Act 1991
- Water Resources (Abstraction and Impounding) Regulations 2006
- Water Resources Act 1991
- Water Supply (Water Quality) Regulations 2018
- Wild Mammals (Protection) Act 1996
- Wildlife and Countryside Act 1981

Table A4 – Made Development Consent Orders

Made DCOs identified by the applicant
The applicant has identified the following made Orders to support the Proposed Development: • A14 Cambridge to Huntingdon Improvement Scheme Order 2016 • Wrexham Gas Fired Generating Station Order 2017 • M20 Junction 10a Order 2017 • A19/A184 Testo's Junction Alteration Order 2018 • Drax Power (Generating Stations) Order 2019 • Great Yarmouth Third River Crossing Order 2020 • Lake Lothing Third Crossing Order 2020 • Cleve Hill Solar Park Order 2020 • A30 Chiverton to Carland Cross Order 2020 • Immingham Open Cycle Gas Turbine Order 2020 • Little Crow Solar Park Order 2022 • The Longfield Solar Farm Order 2023 • Hornsea Four Offshore Wind Farm Order 2023 • Mallard Pass Solar Farm Order 2024 • Gate Burton Energy Park Order 2024 • Cottam Solar Project Order 2024 • Sunnica Energy Farm Order 2024 • A66 Northern Trans-Pennine Order 2024 • National Grid (Yorkshire Green Energy Enablement Project) Order 2024 • Hynet Carbon Dioxide Pipeline Order 2024 • Fenwick Solar Farm Order 2025 • Cory Decarbonisation Project Order 2025 • Stone Street Green Solar Order 2025 • The Lower Thames Crossing Order 2025 • West Burton Solar Project Order 2025 • East Yorkshire Solar Farm Order 2025 • Heckington Fen Solar Park Order 2025 • Oaklands Farm Solar Park Order 2025 • Tillbridge Solar Order 2025 • Byers Gill Solar Order 2025 • Springwell Solar Farm Order 2025

APPENDIX B: ABBREVIATIONS

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Abbreviation or acronym	Reference
AA	Appropriate assessment
AADT	Average annual daily traffic flow
AEoI	Adverse Effect on Integrity
AEP	Annual exceedance probability
AIL	Abnormal indivisible load
ALA 1981	Acquisition of Land Act 1981
ALC	Agricultural land classification
AMP	Adaptive management plan
ANCB	Appropriate Nature Conservation Body
AOD	Above ordnance datum
AONB	Area of Outstanding Natural Beauty (now referred to as National Landscapes)
AP	Affected Person
APFP Regs	The Infrastructure Planning (Applications: Prescribed Forms and Procedures) Regulations 2009 (as amended)
AQA	Air quality assessment
AQMA	Air quality management area
AQS	Air Quality Strategy for England, Scotland, Wales and Northern Ireland 2007
ASCV	Area of special county value
ASI	Accompanied site inspection
ATF	Authorised treatment facility
BESS	Battery energy storage system
bgl	Below ground level
BMV	Best and most versatile
BNG	Biodiversity net gain
BoR	Book of Reference
BPAL	British Pipelines Agency Limited
CA	Compulsory acquisition
CAH	Compulsory acquisition hearing
CA Regs	Infrastructure Planning (Compulsory Acquisition) Regulations 2010 (as amended)
CCA 2008	Climate Change Act 2008
CCTV	Closed-circuit television
CDA	Construction dust assessment
CDS	Conceptual drainage strategy
CEMP	Construction environmental management plan
CFA	Continuous flight augur (piling)
CFRS	Cheshire Fire and Rescue Service
CIEEM	Chartered Institute of Ecology and Environmental Management
CIRIA	Construction Industry Research and Information Association
CL	Common land
CLG	Community liaison group
CNC	Cycle North Cheshire
CNP	Critical National Priority
CNS	Communications, Navigation, and Surveillance
CoCP	Code of Construction Practice
CO_2	Carbon Dioxide

Abbreviation or acronym	Reference
COMAH	Control of Major Accident Hazard Regulations 2015
CPRE	Campaign to Protect Rural England
CRoW	Countryside and Rights of Way Act 2000
CRT	The Canal and Rivers Trust
CS	Core Strategy
CTMP	Construction Traffic Management Plan
CWCC	Cheshire West and Chester Council
CWT	Cheshire Wildlife Trust
DAD	Design Approach Document
dB(A)	A-weighted decibels
DBA	Desk-Based Assessment
DCO	Development Consent Order
dDCO	Draft Development Consent Order
DEFRA	Department for Environment, Food and Rural Affairs
DESNZ	Department for Energy Security and Net Zero
DfR	Deposit for Recovery
DfT	Department for Transport
DL	Deadline
DM	Do-Minimum
DMRB	Design Manual for Roads and Bridges
dNPPF	Draft National Planning Policy Framework (published December 2025)
DPS	Design Parameters Statement
DS	Do-Something
EA	Environment Agency
EA 2010	The Equality Act 2010
ECHR	European Convention on Human Rights
EEC	European Economic Area
EIA	Environmental Impact Assessment
EIA Regs	The Infrastructure Planning (Environmental Impact Assessment) Regulations 2009 (as amended)
EIMPPP	Environmental Incident Management and Pollution Prevention Plan
EL	Examination Library
EM	Explanatory Memorandum
EMF	Electro-Magnetic Field
EPA	Environmental Protection Act 1990
EPR	The Infrastructure Planning (Examination Procedure) Rules 2010 (as amended)
ERP	Emergency Response Plan
ES	Environmental Statement
EqA2010	Equality Act 2010
ExA	Examining Authority
ExQ1 or 2	The ExA's first and second rounds of written questions
FLL	Functionally-linked land
FRA	Flood Risk Assessment
FRAP	Flood Risk Activity Permit
FS	Funding Statement
FTE	Full Time Equivalent

Abbreviation or acronym	Reference
FWF	Frodsham Wind Farm
FWFL	Frodsham Wind Farm Limited
FWRA	Foundation Works Risk Assessment
FZ	Flood Zone
GAC	Generic assessment criteria
gCO_{2e}/kWh	Grams of carbon dioxide equivalent per kilowatt hour
GGA	Glint and Glare Assessment
GHG	Greenhouse Gas
GIA	Growth and Infrastructure Act 2013
GSWMP	Groundwater and Surface Water Management Plan
GVA	Gross Value Added
GW	Giga Watt
ha	Hectare(s)
HGV	Heavy goods vehicle
HE	Historic England
HoTs	Heads of Terms
HPI(s)	Habitat(s) of Principal Importance
HRA	Habitats Regulations Assessment
HRA 1998	Human Rights Act 1998
HSE	Health and Safety Executive
IAPI	Initial Assessment of Principal Issues
ICL	INOVYN Chlorovinyls Limited
IEMA	Institute of Environmental Management and Assessment
INNS	Invasive Non-Native Species
IP	Interested Party
IP Regs	The Infrastructure Planning (Interested Parties and Miscellaneous Prescribed Provisions) Regulations 2015
IROPI	Imperative Reasons of Overriding Public Interest
ISH	Issue Specific Hearing
Km	Kilometres
kV	kilovolts
LA	Local Authority
LCLP	Land and Crown Land Plans
LEMP	Landscape and Ecology Management Plan
LEP	Local Enterprise Partnership
LGV	Light Goods Vehicles
LHA	Local Highway Authority
LJLA	Liverpool John Lennon Airport
LIR	Local Impact Report
LLFA	Lead Local Flood Authority
LNR	Local Nature Reserve
LNRS	Local nature recovery strategy
LOAEL	Lowest observed adverse effect level
LoNI	Letter of No Impediment
LP1	Local Plan Part 1
LP2	Local Plan Part 2
LRN	Local Road Network

Abbreviation or acronym	Reference
LSE	Likely Significant Effects
LTP	Local Transport Plan
LVIA	Landscape and Visual Impacts Assessment
LWS	Local Wildlife Site
MHCLG	Ministry of Housing, Communities and Local Government
MMP	Materials Management Plan
MoD	Ministry of Defence
MSCDDG	Manchester Ship Canal Dredging Deposit Ground
MU(s)	Motorised User(s)
MW	Megawatt
MWh	Megawatt hours
NBBMA	Non-Breeding Bird Mitigation Area
NBBMS	Non-Breeding Bird Mitigation Strategy
NCA	National Character Area
NCN	National Cycle Network
NE	Natural England
NESO	National Energy Systems Operator
NFCC	National Fire Chiefs Council
NH	National Highways
NL	National Landscape (Area of Outstanding Natural Beauty)
NIA	Noise Impact Assessment
NIPA	National Infrastructure Planning Association
NMU(s)	Non-Motorised User(s)
NO_2	Nitrogen Dioxide
NPA 2017	The Neighbourhood Planning Act 2017
NPPF	National Planning Policy Framework
NPS	National Policy Statement
NPSE	Noise Policy Statement for England (DEFRA 2010)
NPS EN-1	Overarching National Policy Statement for Energy
NPS EN-3	National Policy Statement for Renewable Energy Infrastructure
NPS EN-5	National Policy Statement for Electricity Networks Infrastructure
NSIP	Nationally Significant Infrastructure Project
NZPW	New Zealand Pygmy Weed
oBSMP	Outline Battery Safety Management Plan
oCEMP	Outline Construction Environmental Management Plan
oCTMP	Outline Construction Traffic Management Plan
oDEMP	Outline Decommissioning Environmental Management Plan
OFH	Open Floor Hearing
oLEMP	Outline Landscape and Ecology Management Plan
oOEMP	Outline Operational Environmental Management Plan
oPROWMP	Outline Public Rights of Way Management Plan
oSMP	Outline Soil Management Plan
oSSCEP	Outline Skills, Supply Chain and Employment Plan
oWSI	Outline Written Scheme of Investigation
PA2008	Planning Act 2008 (as amended)
PCS	Power Conversion Station
PCU	Power Conversion Unit

Abbreviation or acronym	Reference
PEIR	Preliminary Environmental Impact Report
PLC	Public Limited Company
PM	Preliminary Meeting
PMA	Private means of access
$PM_{2.5}$	Particulate Matter with a diameter of 2.5 micrometres or less
PM_{10}	Particulate Matter with a diameter of 10 micrometres or less
PNFS	The Peak and Northern Footpaths Society
PP	Protective Provision
PPA	Planning Performance Agreement
PPG	Flood Risk and Coastal Change Planning Practice Guidance
PPW	Permitted Preliminary Works
PRA	Piling Risk Assessment
PRoW	Public Right of Way
PSED	Public Sector Equality Duty
PV	Photovoltaic
R	Requirement
R17	Rule 17 Letter
rDCO	The ExA's recommended Development Consent Order
RIES	Report on the Implications for European Sites
RPG	Registered Park and Garden
RQ	RIES question
RR	Relevant Representations
RSPB	Royal Society for the Protection of Birds
RVAA	Residential Visual Amenity Assessment
s106	Section 106 agreement under the Town and Country Planning Act 1990 (as amended)
SAC	Special Area of Conservation
SADA	Solar Array Development Area
SCL	Special Category Land
SF_6	Sulphur Hexafluoride
SMA	Skylark Mitigation Area
SNCB	Statutory Nature Conservation Body
SNCI	Site of Nature Conservation Interest
SO_2	Sulphur Dioxide
SoCG	Statement of Common Ground
SoN	Statement of Need
SOAEL	Significant observed adverse effect level
SoR	Statement of Reasons
SoS	Secretary of State
SP	Statutory Party
SPA	Special Protection Area
SPEN	Scottish Power Energy Networks
SPV	Special Purpose Vehicle
SPVM	Solar Photovoltaic Modules
SRN	Strategic Road Network
SSSI	Site of Special Scientific Interest
SU(s)	Statutory Undertakers

Abbreviation or acronym	Reference
SUDS	Sustainable Drainage Systems
TA	Transport Assessment
TCPA1990	The Town and Country Planning Act 1990 (as amended)
tCO_{2e}	Tonnes of carbon dioxide equivalent
TP	Temporary Possession
TPO	Tree Preservation Order
UK	United Kingdom
UKCP18	United Kingdom Climate Projections 2018
USI	Unaccompanied Site Inspection
UU	Unilateral Undertaking
UUWL	United Utilities Water Limited
UXO	Unexploded Ordnance
VSC	Very Special Circumstances
VOC	Volatile Organic Compounds
WeBS	Wetland Bird Survey
WebTAG	Web-based Transport Analysis Guidance
WFD	Water Framework Directive
WMS	Written Ministerial Statement
WNA	Waste Needs Assessment
WR	Written Representation
ZoI	Zone of Influence
ZTV	Zone of Theoretical Visibility

APPENDIX C: HABITATS REGULATIONS ASSESSMENT

Frodsham Solar – EN010153

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C.1 INTRODUCTION

1.1.1 This appendix sets out the Examining Authority's (ExA's) analysis and conclusions relevant to the Habitats Regulations Assessment (HRA) from the application and examination. A summary is provided in section 4 of this recommendation. This will assist the Secretary of State for Energy Security and Net Zero (SoSDESNZ), as the competent authority, in performing their duties under The Conservation of Habitats and Species Regulations 2017 ('The Habitats Regulations').

1.1.2 This section is structured as follows:

- section C.2: Report on the Implications for European Sites (RIES) and consultation
- section C.3: Proposed development description and HRA implications
- section C.4: Summary of HRA matters considered during the examination
- section C.5: Findings in relation to Likely Significant Effects (LSE)
- section C.6 LSE from the proposed development alone
- section C.7 LSE from the proposed development in combination
- section C.8 LSE assessment outcomes
- section C.9: Conservation Objectives for sites and features
- section C.10: Findings in relation to Adverse Effects on Integrity (AEoI) from the proposed development alone
- section C.11: Findings in relation to AEoI from the proposed development in combination
- section C.12: Mitigation
- section C.13: Sites for which the applicant concluded AEoI can be excluded
- section C.14: AEoI assessment outcomes - summary
- section C.15: HRA conclusions

1.1.3 In accordance with the precautionary principle embedded in the Habitats Regulations, consent for the proposed development may be granted only after having ascertained that it would not adversely affect the integrity of European site(s) and no reasonable scientific doubt remained (CJEU Case C-127/02 Waddenzee 7 September 2004).

1.1.4 For the purpose of this recommendation, in line with the Habitats Regulations and relevant government policy, the term 'European sites' includes Special Areas of Conservation (SAC), candidate SACs, proposed SACs, Special Protection Areas (SPA), potential SPAs, listed and proposed Ramsar sites and sites identified or required as compensatory measures for adverse effects on any of these sites.

1.1.5 Policy considerations and the legal obligations under the Habitats Regulations are described in section 2.6 and section 4 of this recommendation.

1.1.6 The ExA has been mindful throughout the examination of the need to ensure that the Secretary of State (SoS) has such information as may reasonably be

required to carry out their duties as the competent authority. The ExA has sought evidence from the applicant and the relevant Interested Parties (IPs), including Natural England (NE) as the Appropriate Nature Conservation Body (ANCB), through written questions and issue specific hearings (ISH).

C.2 RIES AND CONSULTATION

2.1.1 The ExA produced a RIES [PD-021] which compiled, documented, and signposted HRA-relevant information provided in the Development Consent Order application and examination representations up to deadline (DL) 4 (5 March 2026). The RIES was issued to set out ExA understanding on HRA-relevant information and the position of the IPs in relation to the effects of the proposed development on European sites at that point in time. Consultation on the RIES took place between March 2026 and 22 April 2026. Comments were received from the applicant [REP6-003] NE [REP6-050], Cheshire West and Chester Council (CWCC) [REP6-046] and Cheshire Wildlife Trust (CWT) [REP6-051] at DL6 (22 April 2026). These comments have been taken into account in the drafting of this section.

2.1.2 The ExA's recommendation is that the RIES, and consultation on it, may be relied upon as an appropriate body of information to enable the SoS to fulfil their duties of consultation under regulation 63(3) of the Habitats Regulations should the SoS wish to do so.

C.3 PROPOSED DEVELOPMENT DESCRIPTION AND HRA IMPLICATIONS

3.1.1 The proposed development is described in section 1.2 of this recommendation.

3.1.2 The spatial relationship between the Order limits of the proposed development and European sites is shown in figures 2a and 2c of the HRA Report [APP-125].

3.1.3 The proposed development is not directly connected with, or necessary to, the management of a European site. Therefore, the SoS must make an 'appropriate assessment' of the implications of the proposed development on potentially affected European sites in light of their Conservation Objectives.

3.1.4 The applicant's assessment of effects is presented in the following application document(s):

- Information to inform Habitats Regulations Assessment (the HRA Report) [APP-125] and updated as [AS-017, PD2-009, REP3-006, REP4-012 and REP7-007]
- Outline Non-Breeding Bird Mitigation Strategy (oNBBMS) provided within the Outline Landscape and Ecological Management Plan (oLEMP) [APP 144] and updated [PD2-023, REP1-028] and provided as a standalone document [REP3-032, REP4-048, REP5-039, REP6-037 and REP7-033]

3.1.5 During pre-examination, the ExA issued a section 89(3) letter to NE [PD-002] seeking whether it agreed with the applicant's HRA conclusions. NE's response [AS-030] outlined its concerns with the HRA. NE considered the mitigation proposals inadequate due to insufficient evidence that the proposed habitats could support displaced SPA birds or be managed sustainably in the long term. NE noted that although the HRA identified the correct sites and pathways, further information and corrections were required regarding qualifying features, and NE stated that it remained unsatisfied with the HRA's methodology and data, as outlined in its relevant representation (RR) [RR-012].

3.1.6 The ExA issued an additional section 89(3) letter to the applicant [PD-005] requesting that it provided the information requested by NE along with a schedule outlining when each item of information would be addressed. This led to a series of updated documents being submitted by the applicant during pre-examination to address the matters raised by NE. During examination, the HRA Report [APP-125] was updated at various deadlines throughout the examination in response to representations and written questions. This appendix refers to all iterations of the HRA Report and supporting documentation, and signposts where relevant updates have been undertaken.

3.1.7 The applicant did not identify any likely significant effects (LSE) on non-UK European sites in the European Economic Area (EEA) in its HRA Report [APP-125]. No such impacts were raised for discussion by any IPs during the examination. Only UK European sites are addressed in this recommendation.

C.4 SUMMARY OF HRA MATTERS CONSIDERED DURING THE EXAMINATION

4.1.1 The main HRA matters raised by the ExA, NE, CWCC, CWT and the Royal Society for the Protection of Birds (RSPB) and discussed during the examination include:

- the adequacy of the applicant's baseline data
- the applicant's definition and assessment of functionally linked land (FLL)
- the applicant's approach to assessing noise and visual disturbance impacts
- the applicant's conclusions of AEoI of the Mersey Estuary SPA and Ramsar site
- the applicant's approach and conclusions on the assessment of in-combination effects on the Mersey Estuary SPA and Ramsar site
- whether the proposed mitigation areas should be considered compensation areas
- hydrological aspects and water management of the mitigation area and potential impacts on FLL
- control of invasive non-native species

4.1.2 These matters are discussed in the sections below, as appropriate.

C.5 FINDINGS IN RELATION TO LSE

5.1.1 Under regulation 63 of the Habitats Regulations, the competent authority must consider whether a development would have LSEs 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.

5.1.2 The HRA Report [APP-125] sets out the methodology applied to determine what would constitute a 'significant effect'. The European sites and qualifying features that were considered in the applicant's assessment of LSE are presented in table 5-1 of the HRA Report [APP-125]. The sites considered in the applicant's screening exercise were:

- Mersey Estuary SPA
- Mersey Estuary Ramsar site
- Midland Meres and Mosses Phase 1 Ramsar site
- Midland Meres and Mosses Phase 2 Ramsar site

5.1.3 Section 5.6 of the HRA Report [APP-125] detailed the potential impacts from the proposed development, along with the potential geographical extent of effects. Table 5-2 of the HRA Report [APP-125] listed the sites and qualifying features and the impact pathways which could affect them.

C.6 LSE FROM THE PROPOSED DEVELOPMENT ALONE

6.1.1 The applicant identified potential impacts of the proposed development considered to have the potential to result in LSE alone in section 5.6 of the HRA Report [APP-125].

6.1.2 The impacts considered by the applicant to have the potential to result in LSE were:

- habitat degradation due to changes in air quality
- habitat degradation due to changes in water quality
- loss of FLL used by qualifying bird species
- disturbance or displacement of qualifying bird species from FLL
- disruption to bird flight paths due to glint and glare effects

6.1.3 The applicant's HRA Report concluded no LSE from the proposed development alone on any of the qualifying features of:

- Midland Meres and Mosses Phase 1 Ramsar site
- Midland Meres and Mosses Phase 2 Ramsar site

6.1.4 NE confirmed [RR-012] that it agreed with the LSE conclusions in the HRA Report [APP-125].

6.1.5 The ExA queried [PD-009] whether the applicant's screening of LSE on the Mersey Estuary SPA and Mersey Estuary Ramsar site had considered

disturbance and displacement impacts to qualifying bird species from UXO detonations during construction and the hydrological impacts on FLL from hydrological connections during construction and operation and requested an assessment where there is potential for an AEoI on European site qualifying features. The applicant updated the HRA Report at DL3 [REP3-006] to make reference to UXO as part of the disturbance or displacement impact pathway and to provide consideration of UXO within the appropriate assessment.

6.1.6 The ExA additionally requested [PD-009] that hydrological impacts on FLL from hydrological connections should be considered as an impact pathway in the HRA Report. The applicant signposted how hydrological impacts on FLL [REP2-003] had been considered within the HRA and Environmental Statement (ES) and referenced the updated water balance modelling provided in appendix B to the oLEMP [PD2-023] which demonstrated that groundwater exchange or abstraction of water from surrounding ditches was not required to maintain water level. The ExA was satisfied with the applicant's response, and no further information was requested in relation to this matter.

6.1.7 No further matters were raised in the examination in relation to the applicant's approach to identification of European sites and the qualifying features on which LSE could occur as a result of the proposed development. NE confirmed [RR-012] that it agreed with the LSE conclusions in the HRA Report [APP-125].

C.7 LSE FROM THE PROPOSED DEVELOPMENT IN COMBINATION

7.1.1 The applicant addressed potential in-combination effects arising from the proposed development within the HRA Report [APP-125], which set out the methodology applied. The other plans and projects included in the in-combination assessment were set out in section 6.8 of the HRA Report [APP-125].

7.1.2 Where the applicant's screening exercise established the potential for LSE to arise from the proposed development alone, the potential for in-combination effects was also considered and discussed in the HRA Report [APP-125]. This approach as far as it has a bearing on the screening for LSE was not a matter for discussion in the examination.

7.1.3 In-combination LSE were identified for all impact pathways for all qualifying features of the Mersey Estuary SPA and Ramsar site as displayed in table A1.1, Annex 1 of the RIES.

7.1.4 NE [RR-012] noted in relation to in-combination effects that the DCO for Hynet Hydrogen Pipeline was due to be submitted in 2025 and recommended that the in-combination assessment considered this development. Additionally, NE [RR-012] noted that the Runcorn Spur Pipeline had now been submitted to CWCC and Halton Borough Council and had concerns regarding the overlap of the footprint of the pipeline route and

the non-breeding bird mitigation area (NBBMA). NE [RR-012] and CWCC [RR-037] queried the potential overlap of the projects and how this could be considered in the in-combination assessment. The applicant updated the assessment [AS-017] to include the Hynet Hydrogen Pipeline. The assessment and potential overlap of the proposed development and the Runcorn Spur Pipeline was discussed throughout the examination. Further detail is provided in section C.13 below.

7.1.5 In relation to Hobb Lane Solar, the HRA concluded no in-combination LSEs, however, the HRA Report [REP7-007] stated that NE advised that FLL should be assessed further (taken to AA).

7.1.6 No additional plans or projects have been highlighted by IPs in the examination to date.

7.1.7 No in-combination LSE were identified for the sites and qualifying features where LSE were excluded from the proposed development alone. In-combination effects have been excluded for the Midland Meres and Mosses Phase 1 and 2 Ramsar sites due to the separation distance from the proposed development and the absence of any hydrological connectivity (with all local watercourses draining away from the Ramsar sites toward the Mersey Estuary and Manchester Ship Canal). On the basis of this rationale there are no plausible pathways through which these pressures could affect the designated features of those Ramsar sites.

7.1.8 No additional plans or projects have been highlighted by IPs in the examination to date.

C.8 LSE ASSESSMENT OUTCOMES

8.1.1 The sites for which the applicant concluded no LSE would occur from either the project alone or in combination with other projects and plans are presented in table 5-2 of the HRA Report [APP-125].

8.1.2 A number of matters were raised in the examination for which the ExA sought clarity in relation to LSEs screened out or not considered by the applicant. These are addressed in section C.6 and C.7 above and reported in table 2.2 of the RIES.

8.1.3 The following sites were assessed by the applicant to determine if they could be subject to AEoI, as a result of the proposed development alone or in combination with other plans and projects, in view of their conservation objectives:

- Mersey Estuary SPA
- Mersey Estuary Ramsar site

ExA's considerations

8.1.4 The ExA is satisfied, on the basis of the information provided, that the correct impact-effect pathways on each site have been assessed and is satisfied with the approach to the assessment of alone and in-combination LSEs.

8.1.5 Taking into account the reasoning set out above, the ExA considers that the proposed development is likely to have a significant effect from the impacts identified in table 7-1 of the HRA Report [REP7-007] on the qualifying features of the European sites identified in table 7-1 of the HRA Report [REP7-007] when considered alone, or in combination with other plans or projects. This was not disputed by NE or IPs during the examination.

Table C. 1: European sites and features for which LSE could not be excluded and were identified by the applicant

European sites and qualifying features	LSE alone or in combination from:
Mersey Estuary SPA: Teal (non-breeding) Pintail (non-breeding) Golden plover (non-breeding) Dunlin (non-breeding) Black-tailed godwit (non-breeding) Redshank (non-breeding) Waterbird assemblage (non-breeding)	Loss of FLL during construction and operation
	Disturbance/ displacement during all phases
	Water quality degradation during all phases
	Air quality during all phases
Mersey Estuary Ramsar site: Dunlin (wintering) Pintail (wintering) Black-tailed godwit (passage) Redshank (wintering and passage) Shelduck (wintering and passage) Teal (wintering) Waterbird assemblage (wintering)	Glint and glare during operation

C.9 CONSERVATION OBJECTIVES

9.1.1 The conservation objectives for the sites and features identified above are set out in section 5.4 of the of the applicant's HRA Report [APP-125].

C.10 FINDINGS IN RELATION TO AEOI FROM THE PROPOSED DEVELOPMENT ALONE

10.1.1 The Mersey Estuary SPA and Mersey Estuary Ramsar site and qualifying features identified in table C. 1 above were further assessed by the applicant to determine if they could be subject to AEoI from the proposed development, either alone or in combination. The assessment of AEoI was made in light of the conservation objectives for the European sites [APP-125].

10.1.2 As detailed above in section C.6, the applicant in response to a request from the ExA [PD-009] updated the HRA Report at DL3 [REP3-006] to make reference to UXO as part of the disturbance or displacement impact pathway and to provide consideration of UXO within the appropriate assessment.

10.1.3 In its first written questions, the ExA (Q5.1.7 [PD-009]) requested NE, CWCC and the applicant to confirm if passage redshank was a qualifying feature of the Mersey Estuary SPA and whether the assessment of possible AEoI should clearly address the wintering flock and passage flock separately.

10.1.4 The applicant stated [REP2-003] that redshank was a qualifying feature of the Mersey Estuary SPA and Mersey Estuary Ramsar site and detailed that the species was considered as part of the assessments. The applicant further stated that it was not possible to distinguish between passage birds and wintering birds and so separate consideration was not possible.

10.1.5 NE [REP2-009] stated that it was satisfied with the assessment of redshank within the HRA Report [PD2-009] and that there was no requirement for separate assessment of passage and wintering birds. CWCC [REP2-005] requested that redshank on passage should appear within the HRA Report and that addressing the passage and wintering redshank separately would enable full consideration to take place. The applicant responded [AS-038] detailing how redshank has been considered in the assessment.

10.1.6 The ExA's RIES question (RQ) 2 [PD-021] requested an update from CWCC on this matter considering NE's [REP2-009] and the applicant's [AS-038] submissions. CWCC's response [REP6-046] detailed that the construction sequencing did not consider the passage seasons and so it was not certain how redshank on passage would be considered.

10.1.7 CWCC's concerns remained outstanding at the close of examination [REP7-028].

ExA's considerations

10.1.8 The ExA has considered the position of IPs and the applicant in relation to this matter. Given the applicant's submissions and NE's agreement with the approach to assessing redshank, the ExA is satisfied with the assessment of redshank provided in the HRA Report [REP7-007].

10.1.9 The ExA is satisfied, based on the information provided that the correct impacts have been assessed.

C.11 FINDINGS IN RELATION TO AEOI FROM THE PROPOSED DEVELOPMENT IN COMBINATION

11.1.1 The applicant's approach to the in-combination assessment was set out in section 6.8 of the HRA Report [APP-125].

11.1.2 In relation to the in-combination assessment, at the request of NE [RR-012] the Hynet Hydrogen Pipeline and Hobb Lane Solar Farm were considered within the assessment of AEoI. Additionally, NE [RR-012] and CWCC [RR-037] raised concerns regarding the overlap of the footprint of the Runcorn Spur Pipeline and the NBBMA and queried how this could be considered in the in-combination assessment. The assessment and potential overlap of the proposed development and the Runcorn Spur Pipeline was discussed throughout the examination, further detail is provided in section C.13 below.

ExA's considerations

11.1.3 Based on the findings of the examination, the ExA is satisfied that an assessment of AEoI from the proposed development in combination with other plans or projects can be based on this information and that no other plans or projects are required to be taken into account.

C.12 MITIGATION

12.1.1 Section 2.1 of the HRA Report [APP-125] refers to the 'People over Wind' ruling which concludes that mitigation measures that are intended to avoid and reduce harmful effects of the proposed development on European sites cannot be taken into consideration at the screening stage.

12.1.2 Section 3.2 of the HRA Report [APP-125] sets out the mitigation measures considered, with the detail presented in the oNBBMS [APP-144]. As stated in paragraph 8.1.7 of the HRA Report [REP7-007], the oNBBMS would be developed into a full plan (the NBBMS) which must be in substantial accordance with the outline and would require approval by CWCC in consultation with NE and the RSPB. The proposed development must be undertaken in accordance with the approved plan. Further mitigation was provided for in the Outline Construction Environmental Management Plan (oCEMP) [APP-136], Outline Operational Environmental Management Plan (oOEMP) [APP-137], and Outline Decommissioning Environmental Management Plan (oDEMP) [APP-138]. These are secured via a

requirement in Schedule 2 of the draft Development Consent Order (dDCO) [REP7-003].

12.1.3 Where mitigation measures have been relied upon by the applicant in reaching its conclusions on AEoI, these measures are described in the following sections.

C.13 SITES FOR WHICH THE APPLICANT CONCLUDED AEOI CAN BE EXCLUDED

13.1.1 The applicant's HRA Report [APP-125] concluded that the proposed development would not result in AEoI of the European sites listed in table C. 1.

13.1.2 The applicant concluded no AEoI of the relevant qualifying features for the Mersey Estuary SPA and Mersey Estuary Ramsar site for the following impact pathways:

- habitat degradation due to changes in water quality (all phases)
- habitat degradation due to changes in air quality (all phases)
- loss of FLL (construction and operation)
- disturbance or displacement (all phases)
- disruption to bird flight paths due to glint and glare effects (operation)

13.1.3 The applicant's conclusions of no AEoI on the qualifying features of the Mersey Estuary SPA and Ramsar site for following impact pathways were not disputed by NE or IPs:

- habitat degradation due to changes in water quality (all phases)
- habitat degradation due to changes in air quality (all phases)

13.1.4 The ExA is satisfied on this basis that AEoI of these sites and their qualifying features can be excluded for these impact pathways.

13.1.5 A number of the applicant's conclusions of no AEoI in relation to these European sites and their qualifying features were questioned by NE, IPs and in the ExA's written questions, and were discussed throughout the examination. The account of the examination of these matters is set out in the following sections.

SITES FOR WHICH THE APPLICANT CONCLUDED AEOI CAN BE EXCLUDED: MERSEY ESTUARY SPA AND RAMSAR SITE

13.1.6 A description of the Mersey Estuary SPA and Ramsar site, their qualifying features, and the potential effects resulting from the proposed development, were provided in section 5.6, 5.7 and 5.8 of the applicant's HRA Report [APP-125].

13.1.7 The HRA Report [APP-125] considered the Mersey Estuary SPA and Ramsar site collectively and as such, considered the conclusions presented

in the HRA Report [APP-125] applied to both sites. No concerns were raised during the course of the examination in relation to this approach.

HABITAT LOSS (LOSS OF FLL) DURING CONSTRUCTION AND OPERATION – AEOI FROM PROPOSED DEVELOPMENT ALONE

13.1.8 Section 6.2 of the applicant's HRA Report [APP-125] contained an assessment of the loss of FLL for qualifying bird species during construction and operation.

13.1.9 The applicant's assessment identified that construction of the solar array development area (SADA) would result in the long-term loss of FLL used by qualifying non-breeding waterbirds and the wider waterbird assemblage.

13.1.10 Mitigation was described in section 3.2 and 6.2 of the applicant's HRA Report [APP-125] and would comprise a NBBMA which would be delivered in advance of the SADA construction. The NBBMA would comprise 70.81ha of actively managed wetland and grassland habitat to meet the ecological requirements of the designated sites, qualifying features. The applicant's HRA Report [APP-125] concluded that the design, timing of delivery, and long-term management would offset the loss of lower-value habitat within the SADA and ensure no net loss of functional capacity for the bird populations concerned. The NBBMA would also extend the ecological mitigation secured under the existing Frodsham Wind Farm (FWF). Success criteria for the NBBMA to achieve the aims set out in the oNBBMS [REP7-033] would be agreed with the CWCC in consultation with NE as secured via DCO requirement 9 [REP7-003]. The NBBMA would be managed by a suitably experienced nature conservation organisation, who would control management of the NBBMA.

13.1.11 The HRA Report [APP-125] concluded that on the basis of the phased delivery of the NBBMA in advance of any loss of FLL, the availability of alternative habitats during construction, and the creation of a hydrologically controlled wetland system that would provide habitat of demonstrably higher quality and reliability than the existing baseline, that habitat loss arising from the proposed development would not undermine the conservation objectives of the Mersey Estuary SPA and Ramsar site. With the NBBMA secured and functioning, the loss of FLL would not result in an AEoI of the Mersey Estuary SPA and Ramsar site.

13.1.12 A range of issues related to the potential loss of FLL were considered in the examination which are discussed in detail below and include:

- functionality of the NBBMA
- definition of FLL
- assessment methodology, data presentation and survey coverage
- reliance on land outside the Order limits
- species coverage in assessment and basis for mitigation
- potential loss of FLL through disturbance and displacement of qualifying bird species

- potential loss of FLL through impacts to SSSI and overlapping features
- assessment of canal pools and their suitability as a water source for Cell 3
- suitability of the NBBMA
- vehicular recreational disturbance and displacement impacts on the functionality of the NBBMA
- impact of footpaths on the functionality of the NBBMA and disturbance to qualifying bird features
- management of the NBBMA
- whether the proposed mitigation areas should be considered compensation areas and the need for a without prejudice derogations case

Potential loss of FLL - functionality of the NBBMA – construction and operation

13.1.13 NE [RR-012] and CWCC [RR-037] stated that the NBBMA must be fully constructed and functional before any further construction works occurred in the SADA. NE [RR-012] provided its definition of "functionality" and confirmed it would work with the applicant to establish success criteria to determine when habitat creation would be capable of supporting the required SPA bird populations.

13.1.14 The HRA Report [APP-125] originally stated that construction of the NBBMA would take place outside the peak sensitive period for non-breeding birds (March to September). NE [RR-012] highlighted that significant numbers of most SPA species are present in both March and October and requested further assessment of impacts from any NBBMA works during these months. The applicant updated the oCEMP [REP1-021] and HRA Report [PD2-009] to reflect NE's recommendations, including consideration of bird use in the months adjacent to the core non-breeding period. NE [REP3-036] subsequently confirmed this matter was resolved.

13.1.15 CWCC requested that functionality should also reflect the FWF mitigation requirements and requested that these requirements should be provided prior to any works starting on the SADA. The applicant responded [REP4-052] that the point at which the NBBMA would be considered functional was agreed with NE and that birds would use the area once disturbance sources were removed. The ExA in RQ1 [PD-021] queried whether CWCC considered there to be potential for an AEoI on the Mersey Estuary SPA and Ramsar site if its requested requirements regarding the definition of functionality of the NBBMA were not addressed by the applicant.

13.1.16 CWCC [REP6-046] stated that it would not consider the NBBMA fully functional until the grassland and associated invertebrate resource was fully established. CWCC further stated that the NBBMA should not be considered fully functional immediately after construction, as time would be needed for grassland and invertebrate populations to recover and support all SPA bird species, particularly golden plover and lapwing. As a result, commencing works on the SADA before the NBBMA was fully functional could leave a gap

in mitigation for SPA birds. CWCC detailed that including Cell 2 within the NBBMA could help reduce this impact by maintaining a smaller, continuous invertebrate resource.

13.1.17 In response to the ExA's written question Q2.2.9 [REP5-065], the RSPB highlighted the importance of Cell 2 grassland for SPA species and stated that including the full extent of Cell 2 into the NBBMA would ensure continuity of food availability which Cell 3 alone could not guarantee in the short term.

13.1.18 Noting a difference in positions, the ExA's Rule 17 request for further information [PD-017] sought clarification on NE's and the RSPB's positions on conclusions of AEoI, the NBBMA and inclusion of Cell 2 within the NBBMA. The ExA requested a unified response from the parties and referenced the applicant's proposed options for resolving the difference in positions through the inclusion of Cell 2 into the NBBMA presented in response to the ExA's written question Q2.2.9 [PD-016].

13.1.19 In response, the applicant provided a position paper on conclusions of AEoI between the applicant, NE and the RSPB [REP6-041]. NE [REP6-050] altered its position after discussion with the RSPB and stated that it would be necessary to include Cell 2 in the NBBMA to avoid an AEoI, aligning with the RSPB's position [AS-041] on this matter. Within its position paper [REP6-041] the applicant detailed that it had opted to remove Cell 2 from the SADA and integrate it into the NBBMA.

13.1.20 The applicant [REP7-037] reiterated that it considered that the NBBMA would be functional upon completion of the works and removal of the construction equipment from the site and referenced agreement with NE [REP7-035] on the definition of functionality.

13.1.21 The applicant [REP7-037] further detailed that with the inclusion of Cell 2 within the NBBMA, NE [REP6-050] and the RSPB [AS-041] considered that sufficient habitat would be available to enable construction of the SADA to commence following completion of the NBBMA creation works.

13.1.22 CWCC [REP7-028] maintained its concerns over the definition of functionality of the NBBMA and reiterated that it did not agree that the NBBMA could be agreed to be functional immediately after works finished, as some of the invertebrate resource required by certain species would take time to reestablish.

ExA's considerations for this examination matter

13.1.23 The ExA has carefully considered the various positions of the applicant and IPs. The ExA acknowledges the applicant's commitment to include the whole of Cell 2 within the NBBMA and is satisfied that this would provide a continuous invertebrate source for birds throughout the construction and operational phases. The ExA is reassured that the oCEMP [REP7-017], secured via requirement 12 of the dDCO [REP7-003], states that work on the construction of the SADA would not commence until the NBBMA was

functional. The ExA notes the agreement from NE on the definition of functionality of the NBBMA within the oNBBMS [REP7-033] (which is a certified document within the dDCO [REP7-003]) which would be when all physical works within the NBBMA were completed, when the entire NBBMA was available to support SPA bird species for which it is designed, and when the entire NBBMA was free from construction-related disturbance. The ExA is reassured that the oNBBMS states that the full NBBMS must be in substantial accordance with the outline and would require approval by CWCC in consultation with NE and the RSPB. The ExA is satisfied that CWCC, NE and the RSPB would have sufficient control over the decision as to whether the NBBMA had met the definition of 'functional'. The ExA is therefore satisfied that this matter relating to the loss of FLL LSE pathway would not result in AEoI to the European site from the proposed development alone.

Potential loss of FLL - definition of FLL – all phases

13.1.24 NE [RR-012] disagreed with the definition of FLL used in the HRA Report [APP-125]. NE [RR-012] advised that determining the importance of land to the SPA population would require calculating the proportion of the SPA population supported by the site. For example, if the site supports more than 1% of the SPA population, it would be significant and would require further assessment.

13.1.25 NE [RR-012] also advised that impacts must be assessed across the whole of the proposed development area and that the HRA should treat the entire SADA as FLL. The applicant updated the HRA Report [PD2-009] to include additional data analysis and to identify areas where usage would exceed 1% of the SPA population for further assessment. In its response to RR's [PD2-027], the applicant stated it had adopted a precautionary approach by assuming the entire Order limits area was, or could be, FLL for the purposes of the HRA.

13.1.26 NE [REP3-036] confirmed the issue was resolved. CWCC [REP3-046] agreed with the updated approach.

ExA's considerations for this examination matter

13.1.27 On the basis of the above information, and noting the agreement from NE and CWCC, the ExA is satisfied that FLL has been appropriately defined, and the approach is sufficient in supporting the conclusions of AEoI relating to the loss of FLL LSE pathway to the European site from the proposed development alone.

Potential loss of FLL - assessment methodology, data presentation and survey coverage – construction and operation

13.1.28 NE [RR-012] noted that table 4.2 of the HRA Report [APP-125] incorrectly compared peak numbers to national and international thresholds and advised that the assessment must assess the impact on the integrity of the SPA population, not the national population. NE [RR-012] also requested clearer presentation of survey data to identify species requiring further

assessment and potential mitigation. The HRA Report [PD2-009] was updated to address NE's comments and include additional analysis.

13.1.29 CWCC [REP1-048] and CWT [REP1-068] raised that the non-breeding bird survey data was not suitably robust due to gaps in site coverage, missing months, and methodological flaws. CWCC [REP1-048] stated that, as a result, impacts were underestimated and the NBBMS was inadequate. The ExA (Q5.0.1 [PD-009]) requested the applicant to justify why the surveys were considered robust and sufficient for the purposes of HRA. The applicant [REP2-003] stated that survey coverage was adjusted between years to ensure all relevant areas were surveyed within the programme, and that the core non-breeding period (October to March) was consistently surveyed over three years, exceeding NE guidance.

13.1.30 CWCC [REP3-046] maintained that early autumn and late spring were not covered each year, meaning full passage seasons were not surveyed. The applicant's DL4 submission [REP4-052] further justified the survey effort and provided a revised HRA Report [REP4-012] with additional bird data analysis, including the latest Wetland Bird Survey (WeBS) counts and coverage of the autumn passage season. NE's DL4 [REP4-069] submission confirmed the issue was resolved.

13.1.31 The ExA's RIES RQ2 [PD-021] requested an update and NE's and CWCC's positions in light of the applicant's DL4 submissions [REP4-012, REP4-052]. RQ3 queried whether CWCC maintained that the assessment of impacts to non-breeding birds was not supported by adequate survey effort and potential effects on passage qualifying species were not sufficiently assessed and asked CWCC to outline the further information it would expect to see from the applicant within the examination.

13.1.32 In response to RQ2, NE [REP6-050] stated that it was satisfied with the level of survey effort and coverage of the site. NE detailed that although not all areas of the site were surveyed in each of the three years, it was satisfied that there was sufficient coverage overall to undertake a robust assessment supplemented by the additional desktop study and up to date WeBS data for the area.

13.1.33 CWCC in response to RQ2 [REP6-046] highlighted that it was unclear what the applicant's response meant in relation to the adjustment of survey coverage between years and noted that all areas of the site should have been covered in each year, for a consistent and robust dataset. In response to RQ3 [REP6-046], CWCC maintained that the field survey effort was not adequate.

13.1.34 CWCC's concerns remained outstanding at the close of examination [REP7-028].

ExA's considerations for this examination matter

13.1.35 The ExA has considered the various positions of the applicant and IPs. Notwithstanding the remaining concerns of CWCC, given the agreement

from NE on the survey effort and coverage of the site, the ExA is satisfied that the survey and assessment was sufficient to support the applicant's analysis of AEoI.

Potential loss of FLL - reliance on land outside the Order limits – all phases

13.1.36 CWCC [RR-037] raised concerns that the western solar array would extend across the existing FWF area, the existing FWF mitigation Cells 1, 2 and 5 and up to the boundary of the existing non-breeding bird mitigation area in Cell 3. CWCC [RR-037] stated that would risk reducing available FLL for qualifying species, disrupting connectivity across the remaining FLL, and increasing reliance on a smaller mitigation area.

13.1.37 In response [PD2-027], the applicant stated that connectivity would be maintained between the NBBMA, the Mersey estuary, and supporting parcels such as Cell 6. The applicant [PD2-027] stated that the Mersey Estuary SPA and Ramsar site bird species operate at the estuary scale, routinely moving between multiple supporting areas, and that there was no evidence that the solar arrays would prevent birds from flying over them. The applicant [PD2-027] added that mitigation would cover the full loss of SPA species habitat across the Order limits.

13.1.38 CWCC [REP3-046] accepted that qualifying species operate at the estuary scale but rejected reliance on areas outside the Order limits to justify reduced functionality within the site. CWCC [REP3-046] reiterated its position in its comments on the DL1 and DL2 submissions.

13.1.39 The applicant [REP4-052] stated that it did not rely on off-site habitats for mitigation, and references to external areas were only to explain how SPA birds use the wider estuary system. The applicant [REP4-052] stated that excluding wider estuary habitat use would misrepresent impacts on the River Mersey estuary population.

13.1.40 The ExA's RQ4 [PD-021] requested comments from NE on the applicant's approach of considering land outside of the Order limits, to inform its conclusions of functionality within the site. In response to RQ4, NE [REP6-050] stated that it was satisfied that there would be sufficient suitable habitat available close by to accommodate any displaced of birds on a temporary basis during the construction of the NBBMA and were therefore satisfied with the applicant's conclusions within the HRA.

13.1.41 NE altered its position [REP6-050] after discussion with the RSPB and stated that it was necessary to include Cell 2 in the NBBMA to avoid an AEoI, aligning with the RSPB's position on this matter.

13.1.42 Within its position paper [REP6-041], the applicant provided confirmation that it had decided to remove Cell 2 from the SADA and integrate it into the NBBMA.

13.1.43 The applicant [REP7-037] further detailed that with the inclusion of Cell 2 within the NBBMA, NE [REP6-050] and the RSPB [AS-041] considered that sufficient habitat would be available to enable construction of the SADA to commence following completion of the NBBMA creation works.

13.1.44 CWCC's concerns in relation to this matter remained outstanding at the close of examination [REP7-028].

ExA's considerations for this examination matter

13.1.45 The ExA has considered the various positions of the applicant and IPs. Notwithstanding the remaining concerns of CWCC, given the agreement from NE and the RSPB and the inclusion of Cell 2 within the NBBMA, the ExA is satisfied that sufficient habitat would be available to the relevant non-breeding birds to enable construction and decommissioning of the SADA without reliance on land outside the Order limits.

Potential loss of FLL - species coverage in assessment and basis for mitigation – construction and operation

13.1.46 NE [RR-012] requested that the HRA Report and mitigation plans considered all relevant SPA bird species, not just lapwing, curlew, and golden plover.

13.1.47 The applicant's response [PD2-027] stated that the NBBMA would follow the FWF precedent which focused on these species, but that the proposed habitat mosaic would also provide suitable foraging and roosting opportunities for all SPA qualifying assemblage species recorded within the SADA. Table 8.2 of the HRA Report [PD2-009] was updated with further detail on how mitigation would benefit all affected SPA species.

13.1.48 The applicant also stated [PD2-027] that habitat creation within the NBBMA would represent an expansion of suitable habitat for most SPA species, and that formal mitigation would only be required for a small subset of species, with the remainder benefiting from the scheme.

13.1.49 CWCC [REP3-046] disagreed that mitigation was considered only necessary for a small number of SPA species as the Cleeve Hill calculation methodology that was used to inform the area of NBBMA did not include all SPA species. In response to the ExA's written question Q4.4.2 [PD-009], CWCC [REP2-005] rejected the applicant's approach and stated that to progress the issue, the applicant should amend the proposed layout, releasing back the existing mitigation areas to enable a less risky approach. Mr Smith's DL2 submission [REP2-014], the RSPB's DL4 submission [REP4-067] and CWT's DL5 submission [REP5-051] also proposed that the NBBMA should incorporate the entirety of Cell 2.

13.1.50 Within its position paper [REP6-041], the applicant provided confirmation that it had decided to remove Cell 2 from the SADA and integrate it into the NBBMA.

13.1.51 The applicant [REP7-037] further detailed that with the inclusion of Cell 2 within the NBBMA, NE [REP6-050] and the RSPB [AS-041] considered that

sufficient habitat would be available to enable construction of the SADA to commence following completion of the NBBMA creation works.

ExA's considerations for this examination matter

13.1.52 The ExA has considered the various positions of the applicant and IPs. It notes the agreement of NE and the RSPB that the addition of Cell 2 to the NBBMA would provide adequate mitigation during construction and operation for all relevant SPA bird species, and has no reason to conclude otherwise.

Potential loss of FLL through disturbance and displacement of qualifying bird species – decommissioning

13.1.53 CWCC [RR-037] raised concerns that because the land would return to landowners after decommissioning, long-term retention of landscaping improvements could not be assumed. CWCC [RR-037] stated that qualifying bird species may become dependent on the NBBMA and that the adverse impacts at decommissioning had not been fully assessed as impacts could be greater than during construction. CWCC [RR-037] suggested that long-term retention of the NBBMA could address this.

13.1.54 The applicant's response [PD2-027] stated that the SADA would be restored to its current condition after decommissioning. While long-term management of the NBBMA could not be guaranteed, the applicant [PD2-027] considered it likely that the site would remain in an improved condition for non-breeding birds compared with the current baseline.

13.1.55 The applicant also updated the dDCO [REP1-004] so that management of the NBBMA within the Site of Special Scientific Interest (SSSI) boundary would form part of the SSSI management scheme under the Wildlife and Countryside Act 1981, ensuring long-term application of management prescriptions unless NE agreed to vary them.

13.1.56 An updated oDEMP [PD2-019] was provided to address some of CWCC's concerns. In response to the ExA's written question Q1.0.7 [PD-009], CWCC [REP2-005] set out its remaining concerns and suggested solutions. The applicant responded to these at DL4 [REP4-052]. CWCC reiterated its outstanding concerns on the above matters at DL3a [REP3-046].

13.1.57 The ExA's RQ5 [PD-021] requested an update from CWCC on its position on this matter. CWCC reiterated [REP6-046] that decommissioning impacts would be different to construction and would likely have a higher magnitude of impact. CWCC further stated that phasing and timing of works could reduce the impact and suggested that decommissioning works on Cells 1, 2 and 5 should place in June to August, at least 2 years prior to hand back of the NBBMA to the landowner to give birds the chance to recolonise the previously developed areas. CWCC [REP5-025] further stated that as a minimum measure, the removal of solar development from the western array should be programmed to be well in advance (for example 24 months) before the hand back of the NBBMA to the landowner and requested clarity that clarity that ecological surveys would be programmed to capture all seasons

required and would be carried out no later than 12 months before decommissioning and no earlier than 24 months of decommissioning.

13.1.58 In response, the applicant updated table 5-3 of the oDEMP [REP7-021]. This update required that, where mitigation areas are lost during decommissioning as a result of reverting the land to its pre-development use, the programme of works must be agreed with CWCC at least 12 months before those works begin. The applicant [REP7-037] further stated that the applicant considered the oDEMP contained appropriate mechanisms to ensure that proposals for restoration and aftercare would be provided in sufficient time and to provide such details 40 years in advance of the works being undertaken would be unnecessary.

13.1.59 CWCC's concerns in relation to this matter remained outstanding at the close of examination [REP7-028].

ExA's considerations for this examination matter

13.1.60 Notwithstanding the outstanding concerns of CWCC, the ExA notes that the ultimate return of the NBBMA to its original use would be a legitimate outcome, and it is content that the arrangements reached by the end of the examination for the scheduling of decommissioning activities, as secured through the oDEMP [REP7-021], would provide a reasonable basis for minimising any additional disturbance of Mersey Estuary SPA and Ramsar site qualifying features in the lead-up to decommissioning.

Potential loss of FLL through impacts to SSSI and overlapping features – construction and operation

13.1.61 NE [RR-012] requested clarification in the HRA Report [APP-125] that works within the Mersey Estuary SSSI were not part of the project's mitigation proposals but were obligations on the SSSI owner or occupier. NE [RR-012] and CWCC [RR-037] also sought clarity on the extent of SSSI land within the red line boundary and how it could be affected by the oNBBMS, given the overlapping bird features. NE [RR-012] further queried whether the water storage area in appendix B of the oLEMP [APP-144] included SSSI land and stated that SSSI area should not be counted within mitigation calculations, as their management was already required under SSSI duties.

13.1.62 The applicant updated the oNBBMS [REP3-033] to clarify the nature of works within the SSSI, to confirm that SSSI features would be retained, and to explain how SSSI management would contribute (or would not contribute) to the project's mitigation. The applicant's SoCG with NE [REP7-035] showed this matter as agreed and stated that the applicant had confirmed how Article 7(5) of the dDCO [REP7-003] would protect the conservation status of the SSSI in relation to impacts from the proposed development and provide longer term security on the management of the SSSI following decommissioning of the proposed development.

ExA's considerations for this examination matter

13.1.63 On the basis of the above information, the ExA is satisfied that features of the SSSI would be retained and that suitable clarification has been provided regarding how SSSI management would contribute (or would not contribute) to the proposed developments mitigation. The ExA considers that the management of the SSSI would not result in any loss of FLL of the European site.

Potential loss of FLL – assessment of canal pools and their suitability as a water source for Cell 3 – construction and operation

13.1.64 NE [RR-012] noted that table 6.1 of the HRA Report [APP-125] presented peak bird counts for the canal pools but did not draw any assessment from these results. NE [RR-012] requested further assessment of SPA bird use of the canal pools and effective management of New Zealand Pigmy Weed (NZPW). NE noted the optionality to utilise the existing canal pools as a water source to manage water levels on Cell 3 and queried the ongoing risks if NZPW was not eradicated and the suitability of this water source being used in Cell 3. CWCC [RR-037] also raised concerns over the optionality for the canal pools and how NZPW would be managed if removal did not occur.

13.1.65 NE [RR-012] stated it expected to provide further advice on potential management options for the canal pools, noting that an assent application would be submitted by the applicant.

13.1.66 At DL1, NE stated [REP1-056] that it welcomed the updated information on the approach to NZPW eradication provided in the oNBBMS [PD2-023] and would expect that detailed information with regard to these works would be provided within the detailed NBBMS. The oNBBMS [PD2-023] provided detail on the inclusion of a sluice system which would enable water management between the restored canal pools for use as a back up water course for Cell 3.

13.1.67 The applicant updated the HRA Report [PD2-009] to include additional assessment of SPA bird use of the canal pools. The draft SoCG at DL3 with NE [REP3-036] also outlined the agreed approach to retaining the pools within the SSSI and managing NZPW.

13.1.68 The HRA Report [REP3-006] was updated at DL3 to capture these discussions. The dDCO [REP4-003] included the need for an invasive non-native species management plan in the CEMP R12(2)(a), OEMP R13(2)(a) and DEMP R20(3)(d). NE [REP4-069] confirmed this matter was resolved.

13.1.69 The ExA's RQ6 [PD-021] requested that CWCC provided an update on its position on this matter in light of the applicant's DCO update at DL4.

13.1.70 CWCC's response [REP6-046] stated that on the basis of the removal, infilling and partial reinstatement, and with the controls set out in the dDCO, CWCC considered that the initial concerns about the ability to eradicate and

subsequently manage NZPW within the pools potentially being retained could be overcome and CWCC's concern was resolved.

13.1.71 The applicant's SoCG with NE [REP7-035] showed this matter as agreed.

ExA's considerations for this examination matter

13.1.72 On the basis of the above information, and noting the agreement from NE and CWCC, the ExA is satisfied that SPA bird use of the canal pools has been appropriately assessed and that with the controls set out in the dDCO [REP7-003] regarding the management of NZPW, the canal pools would be a suitable back-up water source for Cell 3.

Potential loss of FLL – suitability of NBBMA - construction and operation

13.1.73 NE [RR-012], CWCC [RR-037], and CWT [REP1-068] stated that insufficient detail had been provided to demonstrate that the proposed reengineering and conservation management of Cell 3 as habitat loss mitigation for SPA species was adequate.

13.1.74 CWCC's written representation [REP1-048] stated that replacing larger mitigation areas already associated with the existing FWF with a smaller, higher-quality area for both FWF and the proposed development was flawed, because it would reduce space for displaced birds, would increase vulnerability to disease, and would diminish the extent and resilience of FLL. NE [RR-012] and CWCC [RR-037] also stated that there was inadequate evidence that Cell 3 could support both existing birds and those displaced from the SADA. NE requested clarity on the proportion of the NBBMA currently unsuitable for birds to better understand the enhancement potential.

13.1.75 NE further noted limited opportunities to reliably increase wetness across the site and requested that the oNBBMS [APP-144] explain how water would be managed, including how sufficient water levels and water-storage capacity would be maintained. The applicant's updated oNBBMS (within the oLEMP [PD2-023]) included a Water Balance Report (Annex 4) and additional analysis on SPA species' use of the site and the suitability of proposed mitigation. The oNBBMS was updated with more detail on how the NBBMA would be created and managed.

13.1.76 CWCC [RR-037] and CWT [REP1-068] questioned the use of the Cleve Hill method to calculate the area of land required for the NBBMA, arguing that if habitat quality was not accounted for, adequacy of mitigation could not be demonstrated. CWCC stated [REP2-005] that the applicant should amend the proposed layout releasing back the existing mitigation areas to enable a less risky approach. Mr Smith [REP2-014] and the RSPB [REP4-067] proposed that the NBBMA should incorporate the entirety of Cell 2.

13.1.77 In its response [REP4-052], the applicant stated that the Cleve Hill calculations were used only for the grassland-wader guild (lapwing, golden plover, curlew) and were not relied upon as the sole measure of mitigation

adequacy. The applicant [REP4-052] explained that other SPA species were addressed through broader habitat design and management within the mitigation package. Further justification was also provided for why the NBBMA was considered sufficient. NE [REP4-069] reviewed the additional information and confirmed that its main concerns had been addressed, agreeing with the HRA conclusion [REP3-006] that FLL loss would not result in AEoI, subject to mitigation being secured in the DCO.

13.1.78 CWCC maintained its position [REP6-050] that the NBBMA would not be adequate and the methodology used to calculate the area of mitigation was not robust. CWCC reiterated that releasing windfarm mitigation land currently proposed for solar panels to expand the NBBMA, would follow the precautionary principle and allay some of CWCC's concerns. CWT [REP6-051] maintained that the methodology used to calculate the area of mitigation required for the proposed development and FWF was flawed and provided justification for its position. The response further stated that it was imperative that Cell 2 was not developed and was instead brought into the NBBMA to be improved and maintained under the specific conditions set out by the RSPB.

13.1.79 NE altered its position [REP6-050] after discussion with the RSPB and stated that it would be necessary to include Cell 2 in the NBBMA to avoid an AEoI, aligning with the RSPB's position on this matter.

13.1.80 Within its position paper [REP6-041], the applicant provided confirmation that it had decided to remove Cell 2 from the SADA and integrate it into the NBBMA.

13.1.81 Reference 23 of the applicant's SoCG with NE [REP7-035] detailed that NE agreed with the applicant's conclusions of no AEoI on the Mersey Estuary SPA and Ramsar site with the conclusion being reliant on Cell 2 being integrated into the NBBMA. Reference 5 [REP7-035] showed the matter of mitigation area design and suitability was agreed.

13.1.82 The applicant's SoCG with CWCC [REP7-028] stated that CWCC considered the NBBMA to be too small, due to a lack of robust methodology and removal of existing mitigation areas. CWCC further stated that the addition of Cell 2 was a positive step and would start to enact the precautionary principle required in the absence of an agreed methodology.

ExA's considerations for this examination matter

13.1.83 The ExA has considered the various positions of the applicant and IPs. Given the agreement from NE and the RSPB and the inclusion of Cell 2 within the NBBMA, the ExA is satisfied that the mitigation measures proposed by the applicant to mitigate the loss of FLL were sufficient by the close of examination and would avoid an AEoI of the European site from the proposed development alone.

Potential loss of FLL – vehicular recreational disturbance and displacement impacts on the functionality of the NBBMA – operation and decommissioning

13.1.84 NE [RR-012] stated that intermittent human disturbance during operation should also account for vehicles. NE agreed that the proposed measures to manage recreational pressure were sufficient but requested that recreational disturbance incidents be recorded during monitoring, with any additional measures delivered through the Adaptive Management Plan (AMP) to ensure long-term effectiveness.

13.1.85 CWCC [RR-037] stated that part-decommissioning would occur when the solar panels require replacement part way through the operational phase of the proposed development. CWCC raised that the NBBMA would be vulnerable to disturbance and the impact of the construction traffic routed along the southern boundary of Cell 3 (for replacement activities) has not been taken into consideration in the HRA.

13.1.86 The applicant updated the HRA Report [PD2-009] to include vehicle presence and added requirements for monitoring recreational disturbance and adaptive management to the oOEMP [PD2-017].

13.1.87 The applicant's response [PD2-027] to CWCC stated part decommissioning and replacement works were anticipated in the assessment and detailed that the updated HRA Report [PD2-009] treated these activities as short construction phases. The response further stated that disturbance and displacement effects near the NBBMA had therefore been considered and detailed embedded mitigation measures to avoid impacts to qualifying bird species.

13.1.88 NE [REP4-069] recorded this matter as resolved. CWCC [REP3-046] stated that extensive discussions on major replacement and decommissioning had taken place as a result of conservations during ISH1 and that these should be assessed and updated within the HRA. CWCC stated that it does not agree with the current assessment and conclusions on this matter. CWCC's submission at DL4 [REP4-068] captured further discussions on major replacements during the operation phase and CWCC requested further assessment in relation to impacts of major replacement on the NBBMA.

13.1.89 The ExA's RQ10 [PD-021] requested an update from the applicant and CWCC on this matter.

13.1.90 CWCC responded [REP6-050] that the inclusion of Cell 2 in the NBBMA was a welcome addition with regard to providing additional areas for displaced birds and requested more detail on the elevational differences between the accesses used for construction and the cells and part of the NBBMA likely to be impacted. CWCC further requested that the inclusion of Cell 2 in the NBBMA should be addressed in the assessment. The applicant maintained its position [REP6-001], and referenced evidence provided in previous submissions. The applicant further stated that the expansion of the NBBMA to include Cell 2 would provide a greater area of habitat for any birds

disturbed by vehicular and recreational activity to relocate in the event of disturbance, further reducing the impact of such effects on the SPA.

13.1.91 The applicant's SoCG with NE [REP7-035] showed this matter as agreed.

ExA's considerations for this examination matter

13.1.92 The ExA has considered the various positions of the applicant and IPs. Given the agreement from NE and the inclusion of Cell 2 within the NBBMA, the ExA is content that the proposed measures would avoid an AEoI of the European site due to vehicle movements during operation, maintenance and decommissioning.

Potential loss of FLL – impact of footpaths on the functionality of the NBBMA and disturbance to qualifying bird features – operation

13.1.93 CWCC [RR-037] raised concerns that the expanded path network, particularly new routes near sensitive areas such as the NBBMA and River Weaver margins, could cause unacceptable disturbance and considered the applicant's proposed mitigation insufficient.

13.1.94 CWCC [RR-037] stated that new and upgraded footpaths would increase human disturbance to non-breeding bird species and that proposed buffers did not align with distances recommended in the guidance, Goodship, N.M. and Furness, R.W. (MacArthur Green) Disturbance Distances Review: An updated literature review of disturbance distances of selected bird species. NatureScot Research Report 1283.

13.1.95 CWCC [RR-037] suggested removing footpaths A and B or rerouting them further from the NBBMA, Cell 1, and the Mersey Estuary. CWCC also stated that if long stretches of bird screens were required, this would indicate significant impacts and that wider buffers, not screens, should be used as avoidance measures. CWCC further noted that screens would only mitigate visual disturbance for birds already on the Estuary side, not those within the site.

13.1.96 The applicant's response [PD2-027] stated that disturbance from increased access had been fully recognised, assessed, and mitigated within the HRA and ES. It explained that the alignment of footpaths A and B avoided the most sensitive margins and highlighted mitigation measures within its control. The applicant [PD2-027] acknowledged the Goodship and Furness guidance but stated that it is not universally applicable and that its approach focuses mitigation on the most disturbance-sensitive species. The applicant provided further explanation of how disturbance risks would be managed without needing to remove or realign the footpaths.

13.1.97 Regarding bird screens, the applicant [PD2-027] stated these would form part of a wider embedded mitigation package and would not be used in isolation. It also noted that screens do not affect birds in flight and that assessment therefore focused on settled usage, which is most relevant to SPA and Ramsar site conservation objectives.

13.1.98 CWCC [REP3-046] disagreed with the applicant's position, stating that applying Goodship and Furness guidance distance standards would help identify impacted areas. CWCC provided additional rationale for realigning the paths and expressed concern over the applicant's lack of engagement with its suggestions. CWCC requested a detailed assessment of Public Rights of Way (PRoW) changes within an updated HRA Report.

13.1.99 The applicant [REP4-052] maintained that disturbance from paths had been properly assessed and that bird screens were precautionary measures designed to reduce disturbance to acceptable levels while still delivering community access benefits. CWCC's concerns remained unresolved at DL4 [REP4-068]. The ExA's RQ11 [PD-021] requested an update on CWCC's position in light of the applicant's DL4 submission.

13.1.100 CWCC [REP6-046] maintained its objection to the proposed footpath B along Cell 1's north-eastern and north-western boundaries stating that the area is currently free of footpaths and is important for bird activity, particularly near turbine T15 and the northern tip by the River Weaver. CWCC stated that mitigation measures such as screening would be inappropriate without evidence of impact, as no baseline footpath usage data exists. Applying the precautionary principle, CWCC recommended shortening the footpath to end at T15 and rerouting it away from sensitive ecological areas, such as between the planned solar arrays. CWCC further stated that if Cell 2 were to be included within the NBBMA, there would be less concerns regarding footpath A adjacent to Cell 3, as this is adjacent to Cell 2, giving an area for birds to flush to nearby if disturbed by footpath users and enacting the precautionary principle for this particular element.

13.1.101 Within its position paper [REP6-041], the applicant provided confirmation that it had decided to remove Cell 2 from the SADA and integrate it into the NBBMA.

13.1.102 The final signed SoCG between the applicant and CWCC [REP7-028] highlighted its ongoing concerns over the impacts of the permissive footpaths on the NBBMA and noted that concerns regarding footpath A had reduced significantly with the inclusion of Cell 2 in the NBBMA. The applicant considered that the measures proposed in relation to screening and signage, along with the adaptive management approach described in the oLEMP [REP7-025] at paragraph 6.5.25 would be sufficient.

13.1.103 The applicant noted [REP7-037] that neither NE nor the RSPB raised any objection to the permissive paths. The applicant further detailed that it did not consider that baseline surveys would influence either the routing of the paths or the mitigation provided, which was considered to be in line with the approach taken on other nature reserve sites. Furthermore, the applicant included adaptive mitigation within the oLEMP [REP7-025] should public access cause unacceptable disturbance to wildlife on and adjacent to the site.

13.1.104 Reference 8 of the applicant's final signed SoCG with NE [REP7-035] showed this matter as agreed.

ExA's considerations for this examination matter

13.1.105 On the basis of the above information, and given the agreement from NE, the ExA is satisfied that the design, monitoring and management of the permissive paths would avoid any AEoI of the European site through disturbance by pedestrian users during the operation of the proposed development.

Potential loss of FLL – management of the NBBMA – all phases

13.1.106 During the course of the examination, NE [RR-012], CWCC [RR-037] and the RSPB [REP4-067] each set out requirements for the long-term management of the NBBMA.

13.1.107 The HRA Report [APP-125] proposed a dynamic AMP for the NBBMA but did not specify who would manage the area in the long term.

13.1.108 NE [RR-012] stated that a suitably qualified conservation management body was essential to deliver habitat modification, screening, and access controls. Without confirmation of such a body, NE could not agree with the HRA's conclusions. NE requested that the HRA define the mitigation criteria and monitoring requirements.

13.1.109 CWCC [RR-037] agreed that long-term specialist management was essential to protect the integrity of the designated site but noted that no commitment had yet been secured.

13.1.110 The applicant stated it was in discussion with the RSPB to manage the NBBMA and provided a letter [PD2-027] confirming the RSPB's intent. NE [REP1-056] welcomed this progress but restated that it could not support the mitigation package without a firm commitment from a suitable organisation. NE also welcomed the AMP and recommended that the detailed AMP form part of the detailed NBBMS.

13.1.111 The applicant updated the oNBBMS [PD2-023] to specify that a nature conservation organisation would manage the NBBMA, secured via Requirement 9(j) of the dDCO, with the AMP to be prepared in consultation with NE, CWCC and the RSPB.

13.1.112 CWCC [REP3-046] and CWT [REP4-075] stated that an agreement with a conservation body must be evidenced now, given the NBBMA's importance. They recommended measurable functionality targets and stated that monitoring bird surveys should underpin assessments of NBBMA success.

13.1.113 The applicant [REP4-052] stated that the updated NBBMS now included regular monitoring of bird use, including SPA species.

13.1.114 At DL4, NE [REP4-069] welcomed updates to the HRA Report and oNBBMS and was satisfied that they provided sufficient certainty of securing an appropriate conservation body, even if discussions with the RSPB did not progress. NE recorded this issue as resolved.

13.1.115 The ExA issued a Rule 17 request to RSPB [PD-014] seeking clarity on negotiations, the RSPB's position on the NBBMA and oNBBMS, and evidence of suitability.

13.1.116 The RSPB [REP4-067] confirmed willingness to take on the management role subject to an appropriate agreement and funding package. It stated that formal agreement could not be reached until final proposals were secured. RSPB [REP4-067] broadly supported the NBBMA as a significant enhancement, however set out additional requirements, including:

- AMP agreed with RSPB, fully funded and enforceable
- clear habitat objectives, water-level management, disturbance-reduction measures
- permanent predator exclusion fencing
- increased wet features in line with best practice, assurance of sufficient freshwater availability
- incorporation of all of Cell 2 into an expanded NBBMA

13.1.117 The RSPB [REP4-067] stated that, subject to these requirements, an enlarged NBBMA could support the applicant's conclusion of no AEoI on the SPA and provided examples of successful RSPB managed mitigation sites.

13.1.118 The applicant's response to the ExA's written question Q2.5.11 [REP5-041] provided an explanation of how the applicant would fulfil the RSPB's additional requirements.

13.1.119 Noting a difference in positions between NE and the RSPB, the ExA's Rule 17 request for further information [PD-017] sought clarification on NE's and the RSPB's positions on conclusions of AEoI, the NBBMA and inclusion of Cell 2 within the NBBMA. The ExA requested a unified response from the parties and referenced the applicant's proposed options for resolving the difference in positions through the inclusion of Cell 2 into the NBBMA presented in response to the ExA's written question Q2.2.9 [REP5-041].

13.1.120 In NE's response to the Rule 17 request for further information [REP6-050], NE altered its position after discussion with the RSPB and stated that it would be necessary to include Cell 2 in the NBBMA to avoid an AEoI, aligning with the RSPB's position on this matter. The response stated that, *"NE consider that based on RSPB's position that the required level of management of the NBBMA cannot be achieved with the NBBMA alone, as originally proposed by the applicant. To achieve operational success the RSPB (and therefore we consider any conservation management body) will require the addition of Cell 2 to meet the requirements set out within the outline NBBMS. We are therefore in agreement with RSPB's advice with regards to AEoI."*

13.1.121 The RSPB's response to the Rule 17 request for further information [AS-041] stated that as the applicant would deliver the NBBMA in accordance with the oNBBMS [REP7-033], including deleting Work 1 from Cell 2 and retaining the Cell 2 grassland, the RSPB was content to be considered the managing conservation body for the NBBMA. It noted that this grassland would be

managed for the lifetime of the wind farm in a condition favourable for wintering wader species, including golden plover, lapwing and curlew.

13.1.122 Within its position paper [REP6-041], the applicant detailed that it had decided to remove Cell 2 from the SADA and integrate it into the NBBMA and noted that all parties accepted that adaptive long-term management by an appropriately experienced conservation body, funded by the applicant, would be critical to the effectiveness of the NBBMA and all parties recognised that the RSPB would be the preferred managing organisation, subject to final agreement and internal approvals.

13.1.123 CWCC's DL7 submission [REP7-040] recommends that the RSPB's management role be confirmed prior to determination of the DCO.

13.1.124 Reference 9 of the applicant's SoCG with NE [REP7-035] showed this matter as agreed.

ExA's considerations for this examination matter

13.1.125 The ExA has carefully considered the various positions of the applicant and IPs. The ExA acknowledges confirmation from the RSPB [AS-041] that, in light of the changes the applicant made to the proposed development, it would be prepared to take on the role of the appointed nature conservation body for long-term management of the NBBMA. The ExA notes the oNBBMS [REP7-033] states the appointed nature conservation body must be named in the final NBBMS and that the RSPB is named as the likely nature conservation body for management of the NBBMA in the oNBBMS. The ExA is reassured that the oNBBMS [REP7-033] (which is a certified document within the dDCO [REP7-003]) states that full NBBMS must be in substantial accordance with the outline and would require approval by CWCC in consultation with NE and the RSPB. The ExA is satisfied that CWCC, NE and the RSPB would have sufficient control over the content of the final NBBMA to ensure the appropriate appointment of a nature conservation body for the long-term management of the NBBMA. On the basis of the above information, and given the agreement from NE and the RSPB, the ExA is satisfied that the arrangements for the appointment of a suitable body to manage the NBBMA are suitable and secured, and that the stewardship of the proposed mitigation measures would be sufficient to support their effectiveness in avoiding any in AEoI of the European site from the proposed development alone.

Potential loss of FLL - whether the proposed mitigation areas should be considered compensation areas and the need for a without prejudice derogations case – all phases

13.1.126 Due to a lack of agreement between the applicant, NE, CWCC and CWT in respect of conclusions about the AEoI of the Mersey Estuary SPA and Ramsar site, at DL3 the ExA invited the applicant to submit a without prejudice derogations case.

13.1.127 The applicant [REP3-031] referenced agreement with NE of no AEoI on the Mersey Estuary SPA and Ramsar site as rationale for not providing a derogations case. CWCC [REP3A-001] provided comments on the need for a without prejudice derogations case and stated that not all the matters raised by NE, which were contingent on the conclusions of no AEoI, had been resolved. CWCC [REP3-046 and REP3A-001] considered that the NBBMS represented a strategy of compensation rather than mitigation. CWCC stated that it has not been demonstrated that the NBBMA in its current form would be adequate to compensate for the loss of FLL and the qualifying bird species associated with it, and therefore, it could not be demonstrated that there would be no AEoI. In respect of the oNBBMS comprising compensation rather than mitigation, CWCC stated, *"this is demonstrated by the proposal for the wholesale loss and reinstatement of the existing NBBMA, as well as loss of FLL in Cells 1, 2 and 5 (including existing FWF "mitigation" cells). Where AEoI of one or more of the internationally important sites cannot be avoided or mitigated, a successful derogation case will be necessary for the development to proceed."*

13.1.128 CWT [REP3A-002] also considered the applicant should submit a without prejudice derogations case on the basis of a lack of evidence to support the conclusions of no AEoI on the Mersey Estuary SPA and Ramsar site. CWT further stated that as the NBBMA would be fully reengineered and Cells 1, 2, and 5 would be lost, it considered the works would be compensation rather than mitigation and a without prejudice derogations case should therefore have been provided.

13.1.129 The issue of whether the NBBMA proposal should be classified as mitigation or compensation was discussed at ISH2 and the applicant subsequently provided case law examples at DL4 [REP4-055], outlining the applicant's rationale for the NBBMA to comprise mitigation, rather than compensation. In light of the further information provided at DL4 [REP4-055], the ExA sought responses from NE, CWCC, CWT and RSPB on this matter within its written questions Q.2.5.7 and Q.2.5.8 [PD-016].

13.1.130 The applicant [REP5-041] maintained its position and stated that the NBBMA was appropriately characterised as mitigation, and opined that CWCC's interpretation was not consistent with the Habitats Regulations framework, nor was it supported by NE.

13.1.131 NE [REP5-056] and the RSPB [REP5-065] stated that they agreed with the applicant's position that the NBBMA proposals were mitigation.

13.1.132 CWT [REP5-051] maintained its position and CWCC [REP5-045] noted the complexity of the situation and stated that it may be that in HRA terms the proposed NBBMA is mitigation not compensation, but in policy hierarchy terms CWCC considered it would be compensation.

13.1.133 The final signed SoCG between the applicant and CWCC [REP7-028] stated that the NBBMA needed to be at least in part considered as compensation as opposed to just mitigation, given that it would be compensating in part for the development on Cell 1 and Cell 5 which are mitigation areas associated

with the FWF (noting that the turbines were relocated to leave the northern part of Cell 1 free of turbines).

13.1.134 In its response to the Rule 17 request for further information [REP6-050] NE noted that the applicant now proposed to take forward the inclusion of Cell 2 in the NBBMA, and that a conclusion of no AEoI could be reached. As such, there would be no requirement for a without prejudice derogation case to be submitted.

ExA's considerations for this examination matter

13.1.135 The ExA has carefully considered the various positions of the applicant and IPs. The ExA has reviewed the case law evidence submitted into the examination by the applicants. The ExA considers that in light of this evidence the applicant's proposals would be mitigation in the context of the Habitats Regulations, as the impacts would involve FLL rather than land within the European site itself. The ExA is satisfied that the mitigation would be delivered as it forms part of the works in the DCO and lies within the Order limits. The ExA notes CWCC's outstanding position that land of Cells 1 and 5 was already considered mitigation for the existing FWF. The ExA considers the applicant's proposal for the NBBMA (including Cell 2) would provide adequate mitigation for both the proposed development and the existing FWF. The ExA considers the applicant has satisfied the mitigation hierarchy.

ExA's overall conclusion in relation to the loss of FLL during construction and operation - AEoI from proposed development alone

13.1.136 Considering all of the topics examined in relation to the loss of FLL, as summarised above, the ExA is satisfied that this LSE pathway would not result in an AEoI of the European site from the proposed development alone.

HABITAT LOSS (LOSS OF FLL) DURING CONSTRUCTION AND OPERATION – AEOI FROM PROPOSED DEVELOPMENT IN-COMBINATION

13.1.137 Section 6.8 of the HRA Report [APP-125] set out the assessment of in-combination effects of the proposed development on the qualifying features of the Mersey Estuary SPA and Ramsar site.

13.1.138 The applicant [APP-125] concluded that following implementation of the relevant mitigation measures for the proposed development there would be no adverse in-combination effects on the integrity of the European site, including from the loss of FLL for qualifying bird species.

Potential loss of FLL of qualifying features from in-combination effects – construction and operation

13.1.139 NE [RR-012] noted that it was unclear how the proposed development and Runcorn Spur Pipeline project would be sequenced. NE stated that if pipeline works occurred while the NBBMA was required to support SPA birds, noise and visual disturbance could prevent use of the mitigation area.

13.1.140 NE [RR-012] requested that the applicant provide an assessment of how pipeline works could hinder NBBMA effectiveness. NE advised that the pipeline should be constructed before the NBBMA and sought consideration of operational impacts and potential effects on the NBBMA construction programme.

13.1.141 The applicant updated the HRA Report [PD2-009] with additional data for the Runcorn Spur Pipeline and in response to RRs [REP2-027] set out three sequencing scenarios for consideration:

- scenario 1: pipeline constructed before the NBBMA
- scenario 2: pipeline constructed concurrently with the NBBMA
- scenario 3: pipeline constructed after the NBBMA (not assessed in the Runcorn Spur Pipeline HRA, which assumes works in Cells 1 to 3 occur before NBBMA creation)

13.1.142 The applicant [PD2-027] stated that CWCC would need to impose planning controls such that if scenarios 1 to 3 occurred, the pipeline developer must provide mitigation to ensure no AEoI on the SPA, secured through its own planning permission.

13.1.143 At DL1, the applicant submitted a Technical Note on Pipeline Interactions [REP1-041] to outline likely effects under different phasing scenarios and the mechanisms available to control cumulative impacts.

13.1.144 CWCC [REP3-046] noted expected passage-season disturbance impacts and remained concerned that cumulative effects, particularly if the pipeline was built after NBBMA establishment, had not been fully assessed. CWCC stated that relying on planning conditions or on the pipeline developer to provide adequate mitigation was not appropriate or sufficiently secure.

13.1.145 At DL4, the applicant [REP4-053] provided a cumulative assessment for construction of the pipeline following the proposed development and concluded that pipeline construction after NBBMA establishment could proceed without likely significant cumulative effects if appropriate mitigation were required of the pipeline developer.

13.1.146 NE [REP4-069] stated that based on information provided within the current HRA for the Runcorn Spur Pipeline application, which set out that the pipeline development would take place ahead of any works within the NBBMA, any construction related in-combination impacts could be appropriately managed. NE advised that if the pipeline works could not be completed ahead of the NBBMA construction, then this would need to be assessed further under a revised HRA for the Runcorn Spur Pipeline planning application at that time.

13.1.147 NE [REP4-069] noted that the HRA for the pipeline application would consider the operational impacts once the pipeline construction was

completed and would need to ensure that there would not be any long-term impacts on the NBBMA as a result. NE was therefore satisfied with the information provided in the applicant's in-combination assessment regarding the proposed development and was content that the NBBMS would include an AMP to provide further certainty regarding any issues that could arise as a result of the pipeline development.

13.1.148 The ExA [PD-016] requested that the applicant, CWCC and Liverpool Bay CCS Limited set out a clear pathway to resolving the approach to the assessment that, without prejudice to any party, accorded with the Habitats Regulations and would ensure no AEoI on the European sites. The ExA also sought further information from NE on this matter and clarification from the applicant regarding potential in-combination effects on the NBBMA.

13.1.149 NE [REP5-056] confirmed that the applicant had provided sufficient information to enable NE to agree with its overall conclusions and that it remained for the applicant of the pipeline development to demonstrate that the pipeline would not impact upon either the existing mitigation for the proposed development or the proposed NBBMA.

13.1.150 The applicant provided a draft Memorandum of Understanding (MoU) between the applicant, Liverpool Bay CCS Ltd and CWCC [REP5-041] to resolve the approach to the in-combination effects assessment. The draft MoU was agreed between the applicant and Liverpool Bay CCS Ltd but no comments were received from CWCC.

13.1.151 The applicant, Liverpool Bay CCS Ltd and CWCC [REP5-041] agreed that the Runcorn Spur Pipeline application was submitted on the basis that the pipeline would be constructed in advance of the proposed development and the NBBMA. Liverpool Bay CCS Ltd confirmed that it accepted that planning conditions could be imposed to ensure that the pipeline would be carried out in accordance with the submitted details and that due process would need to be followed if the pipeline could not be installed prior to the NBBMA works.

13.1.152 The applicant and Liverpool Bay CCS Ltd [REP5-041] did not consider it appropriate for either the dDCO or the Town and Country Planning Act 1990 (TCPA 1990) planning permission for the Runcorn Spur Pipeline to include requirements or conditions which would limit or restrict other development not authorised by that consent, as had been proposed by CWCC at DL4 [REP4-068].

13.1.153 CWCC [REP6-043] maintained its position on the determination of the Runcorn Spur Pipeline application. CWCC [REP7-041] noted that this matter was unresolved at the end of examination and considered there to be potential in-combination AEoI of the Mersey Estuary SPA and Ramsar site.

ExA's overall conclusion in relation to the loss of FLL during construction and operation - AEoI from proposed development in-combination

13.1.154 The ExA considers that the HRA legislation provides sufficient security that future proposed activities associated with the construction and operation of the Runcorn Spur Pipeline would be suitably controlled to prevent AEoI of the Mersey Estuary SPA and Ramsar site from the proposed development in combination with the Runcorn Spur Pipeline.

DISTURBANCE AND DISPLACEMENT OF QUALIFYING FEATURES DURING CONSTRUCTION, OPERATION AND DECOMMISSIONING - AEOI PROPOSED DEVELOPMENT ALONE

13.1.155 Section 6.3 of the HRA Report [APP-125] provided an assessment of the disturbance and displacement of qualifying features during the construction of the proposed development.

13.1.156 The assessment of the disturbance and displacement of qualifying features during the operation and decommissioning of the proposed development was set out in section 6.4 of the HRA Report [APP-125].

13.1.157 The applicant's assessment [APP-125] concluded that due to the regular presence of qualifying species and the proximity of FLL to the proposed development, the potential for AEoI of the European sites could not be ruled out and mitigation would be required.

13.1.158 The relevant mitigation measures for disturbance during construction were described throughout section 8.2 of the HRA Report [APP-125] and comprised a sensitive lighting strategy, acoustic and topographical screening as well as sequencing construction to avoid peak non-breeding bird season and to ensure areas of FLL would remain available to support qualifying species. Mitigation for disturbance during construction was set out in the oCEMP [REP7-017] and secured in R12 of the dDCO [REP7-003].

13.1.159 Section 6.4 of the HRA Report [APP-125] described the relevant measures to mitigate disturbance during operation and decommissioning, including vegetation screening at key locations and managing access through route restrictions and signage. Mitigation was set out in the oOEMP [REP7-019], oLEMP [REP7-025] and the oDEMP [REP7-022] and secured under R13, R9 and R20 of the dDCO [REP7-003], respectively.

13.1.160 The HRA Report [APP-125] concluded that with mitigation in place there would be no AEoI (alone) on the qualifying bird species or assemblage populations associated with the Mersey Estuary SPA and Ramsar site in relation to disturbance and displacement of qualifying bird species during all phases of the proposed development.

Noise disturbance impacts on designated sites and FLL – construction and operation

13.1.161 NE [RR-012] requested that the applicant provide appropriate noise data to support the conclusion in the HRA Report [APP-125] that no noise disturbance was anticipated within the SPA and Ramsar site boundary.

13.1.162 NE [RR-012] also advised that it does not prescribe specific noise thresholds for determining a significant effect, and detailed that a change in noise of more than 3 decibels (dB) does not necessarily require mitigation, however, potential noise disturbance should be considered further within an appropriate assessment. NE stated that bird's reaction to noise is site and species specific and recommended that the HRA Report should be updated to reflect this. NE additionally requested mapping of predicted noise contours in 5dB increments from 55dB upwards for both LAeq and LAmax levels to clearly display how much of an SPA (or area of FLL) would be affected by different noise levels compared to the baseline. Further to this, NE requested protocols for monitoring bird responses and adaptive management.

13.1.163 The applicant updated the HRA Report [PD2-009] to respond to the queries raised by NE in its RR. At DL4, NE [REP4-069] confirmed it was content with the updated information and agreed that this matter was resolved.

13.1.164 CWCC [RR-037] raised several concerns over the assessment of noise impacts during construction and argued that the impact of flight path disruption and the phasing of the scheme in relation to the functional level of the NBBMA had not been appropriately considered in the assessment. CWCC requested that the applicant provide further assessment and clarification on the impacts of construction noise. CWCC also noted that information on elevational differences between the cells and the resulting impacts on the NBBMA in terms of noise did not appear to have been fully assessed to conclude whether impacts would be positive or negative.

13.1.165 In response to CWCC, the applicant [REP3-041] stated that it disagreed with CWCC and in line with agreement from NE [REP1-056] considered that construction impacts on non-breeding birds had been fully assessed and were addressed through the proposed mitigation.

13.1.166 The ExA [PD-021] requested CWCC to provide an update on this matter. CWCC [REP6-046] reiterated its position and stated that there was no evidence to indicate that construction activity would not affect flight activity for commuting wetland birds and recommended that a precautionary principle is followed. CWCC noted that while there would be uninterrupted flight lines from the NBBMA to Cell 6, there would be a reduced area of uninterrupted flight lines than are present currently. CWCC also referred to applicant's bird survey data to advise that general flight patterns indicate flight lines are present. CWCC noted that if Cell 2 were to be included within the NBBMA, as had been discussed with the applicant, this would reduce the area of land subject to construction from Cell 6 and potential impact on flight activity.

13.1.167 Within its position paper [REP6-041], the applicant provided confirmation that it had decided to remove Cell 2 from the SADA and integrate it into the NBBMA.

13.1.168 This matter remained unresolved between the applicant and CWCC at the close of examination.

ExA's considerations for this examination matter

13.1.169 Notwithstanding the position of CWCC, on the basis of the above information and given the agreement from NE, the ExA is satisfied that mitigated construction and operational noise would not lead to such disturbance or displacement of the qualifying features using the European site and FLL as to cause an AEoI of the European site from the proposed development alone.

Potential lighting and visual disturbance impacts on designated sites and FLL – all phases

13.1.170 NE [RR-012] welcomed the principles set out in the proposed sensitive lighting strategy, and that construction lighting would be directed away from the NBBMA and FLL but stated that the lighting strategy should be applied across the entire development area, not just the NBBMA.

13.1.171 The applicant updated the HRA Report [PD2-009] to confirm site-wide adoption of the sensitive lighting strategy and added this requirement to the oCEMP [PD2-015], oOEMP [PD2-017], and oDEMP [PD2-019]. NE [REP4-069] considered this matter resolved.

13.1.172 CWCC [RR-037] raised concerns about visual impacts on qualifying bird species during construction, including potential flight path disruption, the relationship between scheme phasing and NBBMA functionality, and insufficient assessment of elevation differences between cells and their visual effects on the NBBMA.

13.1.173 The applicant's response [REP3-041] provided a rationale as to how elevation has been considered and assessed within the HRA Report and referenced NE's agreement [REP1-056] with the approach. The applicant concluded that there is no evidence that birds flying over Cells 1, 2 and 5 would be disturbed during construction.

13.1.174 This matter remained unresolved between the applicant and CWCC at the close of examination [REP7-028].

ExA's considerations for this examination matter

13.1.175 The ExA acknowledges CWCC's position and the agreement between the applicant and NE on this matter. In relation to the disturbance and displacement LSE pathway, the ExA is content that the mitigation proposed for lighting and visual disturbance effects through all phases would be sufficient to avoid any AEoI of the European site from the proposed development alone.

Potential disturbance of overflying birds and access to other habitats (scale, glint and glare, openness) – operation

13.1.176 CWCC [RR-037] and CWT [REP1-068] stated that the applicant had not sufficiently assessed behavioural impacts on birds, including access to habitats, potential glint and glare effects, narrowing of development-free corridors, and the overall scale of the solar development's influence on bird movements.

13.1.177 CWCC [RR-037] raised concerns that the solar panels could disrupt flight paths due to glint and glare or birds mistaking panels for water. CWCC noted that the Glint and Glare Assessment [APP-056] excluded ecological receptors and that the HRA Report [APP-125] did not assess the landscape-scale implications of a large solar array. CWCC considered that due to the scale of the proposed development, even intermittent exposure to glint and glare effects may be significant.

13.1.178 CWCC [RR-037] also stated that development could disrupt connectivity between the cells, fragmenting FLL through visual disturbance and reducing available landing areas.

13.1.179 The applicant's response [PD2-027] stated that NE agreed with its conclusions and maintains that glint and glare would not cause significant effects. NE's position on glint and glare within its RR [RR-012] was marked as agreed due to embedded mitigation measures such as low-profile panels with non-reflective coatings.

13.1.180 CWCC [REP3-046] reiterated that the applicant had not addressed landscape-scale effects and referenced the FWF ES, which retained undeveloped corridors to protect flight paths. CWCC stated that the proposed development would reduce FLL without adequate compensation, limit access to favoured habitats inside and outside the Order limits and significantly alter current bird movement patterns.

13.1.181 The dDCO was updated at DL4 [REP4-004] to include requirement 6(1)(h), which requires the detailed design of the anti-reflective coating to be used on the solar modules in Work No. 1 to be submitted and approved in writing by the local planning authority and NE. Matters raised by CWCC [REP4-068] and CWT [REP1-068] remained unresolved at DL4.

13.1.182 The ExA [PD-021] requested that CWCC and CWT confirmed whether the wording of requirement 6(1)(h) of the dDCO [REP4-004] was satisfactory in terms of the anti-reflective coating to be used on solar modules.

13.1.183 CWCC [REP6-046] agreed that anti-reflective coating would assist in lessening any potential impacts on birds landing on panels and visual glint and glare impact on flight lines. However, CWCC noted that the wider issue remained that the presence of solar panels could change flight lines and displace birds, due to the fact that they could not utilise this land in conjunction with their target land and that the area as a whole was not as usable for birds as it was previously, with less contiguous habitat present.

CWCC's response stated that if Cell 2 were to be included within the NBBMA, this would reduce the area of developed land which could assist with the potential impact.

13.1.184 Within the position paper [REP6-041], the applicant confirmed it would remove Cell 2 from the SADA and integrate it into the NBBMA.

13.1.185 CWT [REP6-051] agreed with CWCC that the reduction in available land and disturbance or reduction in functionality of corridors could significantly alter current movement patterns.

ExA's considerations for this examination matter

13.1.186 The ExA is satisfied that the proposed and secured mitigation would be sufficient to avoid any operational disturbance of overflying birds or their access to other habitats. It is therefore content that, in the context of the disturbance and displacement LSE pathway, there would be no AEoI of the European site from the proposed development alone.

Disturbance and displacement impacts on qualifying bird species from unexploded ordnance (UXO) detonations – construction

13.1.187 ES appendix 10-1 [APP-096] identified the potential for UXO to be present at the site. The ExA [PD-009] requested the applicant to confirm whether the HRA Report [APP-125] had considered the potential impact pathways from UXO detonations on European site qualifying features.

13.1.188 The applicant confirmed [REP2-003] that the HRA had not taken into account impacts from possible UXO detonations and explained that, pursuant to the UXO Management Plan which would be developed alongside the CEMP, standard measures would be put in place to manage impacts arising from unplanned detonations.

13.1.189 The oCEMP [REP1-020] was updated at DL1 to ensure that the management plan would demonstrate how it had taken into account ornithological receptors from UXO detonations.

13.1.190 The HRA Report was updated at DL3 [REP3-006] to provide consideration of UXO within the appropriate assessment. The updated assessment concluded that potential UXO risks during construction of the proposed development would not result in significant disturbance of SPA and Ramsar site qualifying features and would not result in AEoI.

13.1.191 The applicant [REP5-041] noted that delaying planned UXO detonation for the benefit of ecological receptors is unlikely to be practicable or deliver meaningful ecological benefit. The applicant explained that where it was safe and practicable to do so, the timing of a planned detonation could be adjusted to reduce potential disturbance (for example during low tide). However, this flexibility would be limited and secondary to safety requirements.

13.1.192 NE [REP5-056] confirmed it agreed with the applicant's conclusion of no AEoI, that it was satisfied with the applicant's approach and that adequate mitigation had been included within the HRA Report regarding UXO detonation.

ExA's considerations for this examination matter

13.1.193 On the basis of the above information and in respect of the disturbance and displacement LSE pathway, the ExA is satisfied that the management of unexploded ordnance during construction would not result in an AEoI of the European site from the proposed development alone.

ExA's overall conclusion in relation to the disturbance and displacement of qualifying features during construction, operation and decommissioning – AEoI proposed development alone

13.1.194 Considering the topics examined in relation to disturbance and displacement, as summarised above, the ExA is satisfied that this LSE pathway would not result in an AEoI of the European site from the proposed development alone.

DISTURBANCE AND DISPLACEMENT OF QUALIFYING FEATURES DURING CONSTRUCTION, OPERATION AND DECOMMISSIONING - AEOI PROPOSED DEVELOPMENT IN-COMBINATION

13.1.195 Section 6.8 of the HRA Report [APP-125] set out the assessment of in-combination effects of the proposed development on the qualifying features of the Mersey Estuary SPA and Ramsar site.

13.1.196 The applicant [APP-125] concluded that following implementation of the relevant mitigation measures for the proposed development there would be no adverse in-combination effects on the integrity of the European site, including from the disturbance and displacement of qualifying features.

Disturbance and displacement and potential loss of FLL from in-combination effects – construction and operation

13.1.197 The discussions and conclusions provided above in relation to the Runcorn Spur Pipeline under the 'Potential loss of FLL of qualifying features from in-combination effects – construction and operation' impact pathway equally apply to this impact pathway and are not repeated here.

ExA's considerations for disturbance and displacement of qualifying features during construction, operation and decommissioning – AEoI proposed development in-combination

13.1.198 The ExA considers that the HRA legislation provides sufficient security that future proposed activities associated with the construction and operation of the Runcorn Spur Pipeline would be suitably controlled to prevent AEoI of the Mersey Estuary SPA and Ramsar site from the proposed development in combination with the Runcorn Spur Pipeline.

DISRUPTION TO BIRD FLIGHT PATHS DUE TO GLINT AND GLARE EFFECTS DURING OPERATION – AEOI PROPOSED DEVELOPMENT ALONE

13.1.199 Section 6.7 of the applicant's HRA Report [APP-125] contained an assessment of glint and glare for qualifying bird species during operation.

13.1.200 The applicant's assessment [APP-125] concluded that with the embedded mitigation including the adjustment of panel orientation and vegetative screening, low reflectivity of panels and anti-reflective coating, absence of overlap between predicted reflection zones and areas regularly used by SPA qualifying species, and the behavioural ecology of estuarine waterbirds, the potential for visual disturbance or displacement arising from glint and glare is assessed as negligible.

13.1.201 The HRA Report [APP-125] concluded that with mitigation in place there would be no AEoI (alone) on the qualifying bird species or assemblage populations associated with the Mersey Estuary SPA and Ramsar site in relation to glint and glare during operation.

Potential disturbance to overflying birds and access to other habitats (scale, glint and glare, openness) – operation

13.1.202 The discussions and conclusions provided within paragraphs 13.1.177 to 13.1.187 above in relation to glint and glare under the 'disturbance and displacement of qualifying features during construction, operation and decommissioning – AEoI from proposed development alone' impact pathway equally apply to this impact pathway and are not repeated here.

ExA's considerations for disruption to bird flight paths due to glint and glare effects during operation – AEoI proposed development alone

13.1.203 On the basis of the above information, the ExA is satisfied that this LSE pathway would not result in AEoI to the European site from the proposed development alone.

DISRUPTION TO BIRD FLIGHT PATHS DUE TO GLINT AND GLARE EFFECTS DURING OPERATION – AEOI PROPOSED DEVELOPMENT IN-COMBINATION

13.1.204 Section 6.8 of the HRA Report [APP-125] set out the assessment of in-combination effects of the proposed development on the qualifying features of the Mersey Estuary SPA and Ramsar site.

13.1.205 The applicant [APP-125] concluded that following implementation of the relevant mitigation measures for the proposed development there would be no adverse in-combination effects on the integrity of the European site, including from disruption to flight paths due to glint and glare during operation of qualifying features.

13.1.206 The applicant's conclusions of no AEoI from the proposed development in combination with other plans and projects on the qualifying features of the Mersey Estuary SPA and Ramsar site for the disruption to bird flight paths

due to glint and glare effects during operation were not disputed by NE or IPs.

Summary of the ExA's considerations in relation to the disturbance and displacement of qualifying features during all phases - AEoI proposed development in combination

13.1.207 The ExA is satisfied that there would be no opportunity for in-combination glint and glare effects, and that any in-combination disturbance effects with the Runcorn Spur Pipeline could be dealt with through the correct application of the HRA Regulations at that time so as to avoid any AEoI of the European site.

C.14 AEOI ASSESSMENT OUTCOMES - SUMMARY

PROPOSED DEVELOPMENT ALONE AND IN COMBINATION

14.1.1 The HRA Report [APP-125] concluded that AEoI can be excluded for the Mersey Estuary SPA and Ramsar site from the proposed development alone, and in combination with other plans and projects. Some of the conclusions in the HRA Report [APP-125] were subject to examination through written questions, requests for further information, submissions from NE and IPs and discussion at ISHs. The applicant's conclusions were agreed with NE [REP7-035] at the end of the examination.

14.1.2 Based on the findings of the examination, the ExA is satisfied that AEoI on all qualifying features of European sites can be excluded from the proposed development alone and in combination.

Table C. 2: ExA's conclusions in relation to AEoI at the end of the examination

Site name and qualifying features	LSE pathways	AEoI?	Agreement with ANCB
Mersey Estuary SPA and Ramsar site			
Mersey Estuary SPA: Teal (non-breeding) Pintail (non-breeding) Golden plover (non-breeding) Dunlin (non-breeding) Black-tailed godwit (no breeding) Redshank (non-breeding) Waterbird assemblage (non-breeding) **Mersey Estuary Ramsar site:** Dunlin (wintering) Pintail (wintering) Black-tailed godwit (passage) Redshank (wintering and passage)	Loss of FLL during construction and operation	No	Yes [REP7-035]
	Disturbance/ displacement during all phases	No	Yes [REP7-035]
	Water quality degradation during all phases	No	Yes [REP7-035]
	Air quality during all phases	No	Yes [REP7-035]
	Glint and glare during operation	No	Yes [REP7-035]

Shelduck (wintering and passage) Teal (wintering) Waterbird assemblage (wintering)			

C.15 HRA CONCLUSIONS

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

15.1.2 The following four European sites and their qualifying features were considered in the applicant's assessment of LSE:

- Mersey Estuary SPA
- Mersey Estuary Ramsar site
- Midland Meres and Mosses Phase 1 Ramsar site
- Midland Meres and Mosses Phase 2 Ramsar site

15.1.3 LSE were identified for the sites and qualifying features listed in table C. 1 above, both from the proposed development alone and in combination with other plans or projects.

15.1.4 The methodology and outcomes of the applicant's screening for LSE on European sites was subject to some discussion and scrutiny, however, the sites and features for which LSE were identified were not disputed by any IP. The ExA is 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.

15.1.5 The ExA's findings are that, subject to the mitigation measures that are secured in the rDCO, AEoIs of the European sites listed above from the proposed development when considered alone or in combination with other plans or projects can be excluded from the impact-effect pathways assessed.

15.1.6 The ExA considers that there is sufficient information before the SoS to enable them to undertake an appropriate assessment in order to fulfil their duty under the requirements of the Habitats Regulations.

C.16 EXAMPLE HEADING HIERARCHY

16.1.1 The heading hierarchy for the HRA appendix B is provided below. DO NOT ADD ANY HEADINGS.

C.17 O2 REPORT SECTION HEAD (APPENDIX B) (APPENDIX HEADING – DO NOT USE FOR ANY SUBHEADINGS)

B.17.1 O2 REPORT NUMBERED (APPENDIX B)

O2 REPORT HEADING STYLE 3

O2 REPORT HEADING STYLE 4

O2 Report heading style 5

O2 Report heading style 6

APPENDIX D: RECOMMENDED DEVELOPMENT CONSENT ORDER

Frodsham Solar – EN010153

STATUTORY INSTRUMENTS

202* No. ****

INFRASTRUCTURE PLANNING

The Frodsham Solar Farm Order 202*

Made - - - - ***

Coming into force - - ***

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SCHEDULE 26 — PROTECTIVE PROVISIONS FOR THE PROTECTION OF NATIONAL HIGHWAYS LIMITED

An application has been made to the Secretary of State for an order granting development consent under section 37 of the Planning Act 2008(**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 3 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(**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 had regard to the documents and matters referred to in section 105(2)(**f**) 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(**g**), 115(**h**), 120(**i**), 122(**j**) and 123(**k**) of the 2008 Act, makes the following Order—

PART 1

PRELIMINARY

Citation and commencement

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

Interpretation

2.—(1) In this Order—

"the 1961 Act" means the Land Compensation Act 1961(**l**);

(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, S.I. 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) Section 105(2) was amended by paragraph 50 of Schedule 13 to the Localism Act 2011.
(g) As amended by paragraph 55 of Part 1 of Schedule 13 to the Localism Act 2011
(h) As amended by section 160 of the Housing and Planning Act 2016 (c. 22) and section 43 of the Wales Act 2017 (c. 4).
(i) As amended by section 140 and paragraph 60 of Part 1 of Schedule 13 to the Localism Act 2011.
(j) As amended by paragraph 62 of Part 1 of Schedule 13 to the Localism Act 2011.
(k) Ibid.
(l) 1961 c. 33.

"the 1965 Act" means the Compulsory Purchase Act 1965(**a**);

"the 1980 Act" means the Highways Act 1980(**b**);

"the 1981 Act" means the Compulsory Purchase (Vesting Declarations) Act 1981(**c**);

"the 1984 Act" means the Road Traffic Regulation Act 1984(**d**);

"the 1988 Act" means the Road Traffic Act 1988(**e**);

"the 1989 Act" means the Electricity Act 1989(**f**);

"the 1990 Act" means the Town and Country Planning Act 1990(**g**);

"the 1991 Act" means the New Roads and Street Works Act 1991(**h**);

"the 2000 Act" means the Countryside and Rights of Way Act 2000(**i**);

"the 2008 Act" means the Planning Act 2008(**j**);

"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;

"application document tracker" means the document of that name identified in the table at Schedule 10 and which is certified by the Secretary of State as the application document tracker for the purposes of this Order;

"authorised development" means the development and associated development described in Schedule 1 (authorised development), which is development within the meaning of section 32 (meaning of "development") of the 2008 Act;

"book of reference" means the document of that name identified in the table at Schedule 10 and which is certified by the Secretary of State as the book of reference for the purposes of this Order;

"bridleway" has the same meaning as in section 329(1) (further provisions as to interpretation) of the 1980 Act and, in the relation to the authorised development, includes the right provided by section 30 (riding of pedal bicycles on bridleways) of the Countryside Act 1968(**k**);

"building" includes any structure or erection or any part of a building, structure or erection;

"Canal and River Trust" means Canal & River Trust (company number 07807276), whose registered address is National Waterways Museum Ellesmere Port, South Pier Road, Ellesmere Port, Cheshire, England, CH65 4FW or a related or subsidiary company of the Canal & River Trust;

"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 (which explains when development begins), comprised in, 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;

(a) 1965 c. 56.
(b) 1980 c. 66.
(c) 1981 c. 66.
(d) 1984 c. 27.
(e) 1988 c. 52.
(f) 1989 c. 29.
(g) 1990 c. 8.
(h) 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).
(i) 2000 c. 37.
(j) 2008 c. 29.
(k) 1968 c.41. Section 30 was amended by paragraph 2 of Schedule 7 to the Countryside and Rights of Way Act 2000.

"cycle track" has the same meaning as in section 329(1) (further provisions as to interpretation) of the 1980 Act;

"date of final commissioning" means in respect of each phase of the authorised development as approved under requirement 3 of Schedule 2 (requirements) the date on which each phase of the authorised development commences operation by generating electricity on a commercial basis but excluding the generation of electricity during commissioning and testing;

"design parameters statement" means the document of that name identified in the table at Schedule 10 and which is certified by the Secretary of State as the design parameters statement for the purposes of this Order;

"design principles" means the document of that name identified in the table at Schedule 10 and which is certified by the Secretary of State as the design principles for the purposes of this Order;

"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, data cables and optical fibre cables; and

(b) works associated with cable laying including jointing pits, 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;

"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 in Schedule 10 and which is certified by the Secretary of State as the environmental statement for the purposes of this Order;

"flood risk assessment and drainage strategy" means the document of that name identified in the table at Schedule 10 and which is certified by the Secretary of State as the flood risk assessment and drainage strategy for the purposes of this Order;

"flood warning and evacuation plan" means the document of that name identified in the table at Schedule 10 and which is certified by the Secretary of State as the flood warning and evacuation plan for the purposes of this Order;

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

"group company" means any (i) direct or indirect subsidiary company of the undertaker (ii) direct or indirect parent company of the undertaker or (iii) undertaking which shares the same ultimate parent company as the undertaker;

"hedgerows plans" means the document of that name identified in the table at Schedule 10 and which is certified by the Secretary of State as the hedgerows plans for the purposes of this Order;

"highway" and "highway authority" have the same meaning as in the 1980 Act(**a**);

"land and crown land plans" means the plans of that name identified in the table in Schedule 10 and which are certified by the Secretary of State as the land and crown land plans for the purposes of this Order;

"limits of deviation" means the limits of deviation shown for each numbered work on the works plans;

(**a**) "highway" is defined in section 328(1). For "highway authority" see section 1.

“maintain” includes inspect, repair, adjust, alter, remove, refurbish, reconstruct, replace and improve any part of the authorised development, to the extent that such works do not give rise to any materially new or materially different environmental effects to those identified in the environmental statement for the operation of the authorised development and “maintenance” and “maintaining” are to be construed accordingly;

“non-breeding bird mitigation strategy” means the document of that name identified in the table at Schedule 10 and which is certified by the Secretary of State as the non-breeding bird mitigation strategy for the purposes of this Order;

“Order land” means the land shown coloured pink and the land shown coloured blue on the land and crown land plans, which is described in the book of reference;

“Order limits” means the limits as shown on the works plans, within which the authorised development may be carried out;

“outline battery safety management plan” means the document of that name identified in the table at Schedule 10 and which is certified by the Secretary of State as the outline construction environmental management plan for the purposes of this Order;

“outline construction environmental management plan” means the document of that name identified in the table at Schedule 10 and which is certified by the Secretary of State as the outline construction environmental management plan for the purposes of this Order;

“outline construction traffic management plan” means the document of that name identified in the table at Schedule 10 and which is certified by the Secretary of State as the outline construction traffic management plan for the purposes of this Order;

“outline decommissioning environmental management plan” means the document of that name identified in the table at Schedule 10 and which is certified by the Secretary of State as the outline decommissioning environmental management plan for the purposes of this Order;

“outline drainage strategy” means the document of that name identified in the table at Schedule 10 and which is certified by the Secretary of State as the outline drainage strategy for the purposes of this Order;

“outline flood warning and evacuation plan” means the document of that name identified in the table at Schedule 10 and which is certified by the Secretary of State as the outline flood warning and evacuation plan for the purposes of this Order;

“outline landscape and ecology management plan” means the document of that name identified in the table at Schedule 10 and which is certified by the Secretary of State as the outline landscape and ecology management plan for the purposes of this Order;

“outline operational environmental management plan” means the document of that name identified in the table at Schedule 10 and which is certified by the Secretary of State as the outline operational environmental management plan for the purposes of this Order;

“outline public rights of way management plan” means the document of that name identified in the table at Schedule 10 and which is certified by the Secretary of State as the outline public rights of way management plan;

“outline skills, supply chain and employment plan” means the document of that name identified in the table at Schedule 10 and which is certified by the Secretary of State as the outline skills, supply chain and employment plan for the purposes of this Oder;

“outline soil management plan” means the document of that name identified in the table at Schedule 10 and which is certified by the Secretary of State as the outline soil management plan for the purposes of this Order;

“outline written scheme of archaeological investigation” means the document of that name identified in the table at Schedule 10 and which is certified by the Secretary of State as the outline written scheme of archaeological investigation 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(**a**);

"parent company" has the same meaning as in section 1173 of the Companies Act 2006(**b**);

"permissive paths" means new paths providing restricted public access within the Order limits;

"permitted preliminary works" means all or any of—

(a) environmental surveys to be carried out pursuant to the construction environmental management plan approved under requirement 12 (construction environmental management plan);

(b) geotechnical surveys, and other investigations for the purpose of assessing ground conditions to be carried out pursuant to the ground conditions investigations and assessments strategy approved under requirement 17 (ground conditions);

(c) intrusive archaeological surveys to be carried out pursuant to the written scheme of archaeological investigation (or multiple written schemes of archaeological investigation) approved under requirement 18 (archaeological mitigation strategy);

(d) receipt and erection of construction plant and equipment;

(e) removal of plant and machinery;

(f) above ground site preparation for temporary facilities for the use of contractors;

(g) remedial work in respect of any contamination or other adverse ground conditions to be carried out pursuant to the ground conditions investigations and assessments strategy approved under requirement 17 (ground conditions);

(h) diversion and laying of apparatus;

(i) the provision of temporary means of enclosure and site security for construction;

(j) the temporary display of site notices or advertisements;

(k) site clearance (comprising vegetation removal and demolition of existing buildings and structures); or

(l) access and highway improvements and use, comprising works to create, improve, repair or maintain streets, roads, haul roads and access points within the limits of deviation for Work No. 8 shown on the Works Plans.

"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 and crown land plans;

"relevant highway authority" means Cheshire West and Chester Council;

"relevant planning authority" means the local planning authority for the area in which the Order limits are situated;

"requirements" means those matters set out in Schedule 2 and "requirement" means any one of the requirements;

"restricted byway" has the same meaning as in section 329(1) (further provisions as to interpretation) of the 1980 Act;

"SP Manweb" means SP Manweb PLC (Company No. 02366937) whose registered office is at 3 Prenton Way, Prenton, CH43 3ET or any successor company;

"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(**c**);

(a) 1981 c. 67.
(b) 2006 c. 46.
(c) 2003 c. 21.

"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(**a**);

"street works, public rights of way, vehicular usage and access plans" means the plans of that name identified in the table at Schedule 10 and which are certified by the Secretary of State as the street works, public rights of way, vehicular usage and access plans for the purposes of this Order;

"subsidiary" has the same meaning as in section 1159 of the Companies Act 2006(**b**);

"traffic authority" has the same meaning as in section 121A (traffic authorities) of the 1984 Act(**c**);

"undertaker" means Frodsham Solar Limited (company number 14432433) or any person who has the benefit of this Order in accordance with articles 35 (benefit of the Order) and 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;

"working day" means any day apart from Saturday, Sunday or any statutory bank or public holiday; and

"works plans" means the plans of that name identified in the table at Schedule 10 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) In this Order, references to the purposes of the authorised development includes the construction, maintenance, operation, use and decommissioning of the authorised development.

(4) 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, access and rights of way plans, are to be taken to be measured along that work.

(5) 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 number.

(6) In this Order, the expression "includes" is to be construed without limitation.

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

(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 to those identified 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.

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

(b) 2006 c. 46.

(c) 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; S.I. 1999/1920 and S.I. 2001/1400.

Electronic communications

3.—(1) In this Order—

(a) references to documents, maps, plans, drawings, certificates or other documents, or to copies, include references to them in electronic form; and

(b) references to a form of communication being "in writing" include references to an electronic communication that satisfies the conditions in paragraph (2) and "written" and other cognate expressions are to be construed accordingly.

(2) The conditions are that—

(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; and

(b) the communication is—

(i) capable of being assessed by the recipient;

(ii) legible in all material respects; and

(iii) sufficiently permanent to be used for subsequent reference.

(3) Where the recipient of a notice or other document served or sent by electronic transmission notifies the sender within seven days of receipt that the recipient requires a paper copy of all or part of that notice or other document the sender must provide such a copy as soon as reasonably practicable.

(4) Any consent to the use of electronic communication given by a person may be revoked by that person in accordance with paragraph (5).

(5) 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 may not be less than seven days after the date on which the notice is given.

PART 2

PRINCIPAL POWERS

Development consent etc. granted by this Order

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

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

Operation of generating station

5.—(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

6.—(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 environmental effects to those identified in the environmental statement for the operation of the authorised development.

Application and modification of statutory provisions

7.—(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 the authorised development, 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(**c**) (powers to make byelaws) of the Land Drainage Act 1991;

(d) section 28E (duties to sites of scientific interest) of the Wildlife and Countryside Act 1981(**d**); and

(e) the provisions of the Neighbourhood Planning Act 2017(**e**) 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, any felling comprised in the carrying out of any work or operation required for the purposes of the authorised development, or in connection with, the construction of the authorised development is deemed to be felling immediately required for the purposes of carrying out development authorised by planning permission granted under the 1990 Act under sub-paragraph (4) of that section.

(3) Regulation 6 of the Hedgerows Regulations 1997(**f**) is modified so as to read for the purposes of this Order only as if there were inserted after paragraph (1)(j) the following—

"or

(k) for carrying out development which has been authorised by an order granting development consent pursuant to the Planning Act 2008.".

(4) 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(**g**) 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.

(5) Any details of the establishment, maintenance, management and monitoring regime for Work No. 6C that are approved under requirement 9(2)(j) which relate to land within the boundary of the

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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 1 to the Flood and Water Management Act 2010 and section 86 of the Water Act 2014 (c. 21).
(d) 1981 c. 69. Section 28E was inserted by section 75(1) of, and paragraph 1 of Schedule 9 to, the Countryside and Rights of Way Act 2000 (c. 37). It was amended by section 105(1) of, and paragraph 79 of Schedule 11 to, the Natural Environment and Rural Communities Act 2006 (c. 16).
(e) 2017 c. 20.
(f) S.I. 1997/1160.
(g) S.I. 2010/948, amended by S.I. 2011/987; there are other amending instruments but none are relevant to this Order.

Mersey Estuary SSSI shall, on the date of approval, form part of the management scheme of the Mersey Estuary SSSI for the purposes of section 28J of the Wildlife and Countryside Act 1981(**a**).

Defence to proceedings in respect of statutory nuisance

8.—(1) Where proceedings are brought under section 82(1) (summary proceedings by a person aggrieved by statutory nuisance) of the Environmental Protection Act 1990(**b**) in relation to a nuisance falling within paragraph (g) of section 79(1) (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 the defendant shows that the nuisance—

(a) relates to premises used by the undertaker for the purposes of the authorised development 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, or a consent given under section 61 (prior consent for work on construction site) of that Act, or any document approved under the provisions of Schedule 2 (requirements) of the Order; or

(b) is a consequence of the construction, maintenance or decommissioning of the authorised development and that it cannot reasonably be avoided; or

(c) 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 the authorised development, or in connection with the construction, maintenance or decommissioning of the authorised development.

PART 3

STREETS

Street works

9.—(1) The undertaker may, for the purposes of the authorised development, enter on so much of any of the streets specified in Schedule 3 (streets subject to street works) and may—

(a) break up or open the street, or any sewer, drain or tunnel under it;

(b) drill, tunnel or bore under the street;

(c) place and keep apparatus and electrical cables under the street;

(d) maintain, change the position or remove apparatus and electrical cables under the street;

(e) repair, replace or otherwise alter the surface or structure of the street or any culvert under the street; and

(f) execute any works required for or incidental to any works referred to in sub-paragraphs (a) to (e).

(2) The authority given by paragraph (1) is a statutory right or licence for the purposes of sections 48(3) (streets, street works and undertakers) and 51(1) (prohibition of unauthorised street works) of the 1991 Act.

(3) In this article "apparatus" has the same meaning as in Part 3 of the 1991 Act.

(a) 1981 c. 69 Section 28J was inserted by section 75(1) of, and paragraph 1 of Schedule 9 to, the Countryside and Rights of Way Act 2000 (c.37). It was amended by paragraph 79 of Schedule 11 to, the Natural Environment and Rural Communities Act 2006 (c.16).

(b) 1990 c. 43.

(4) 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).

Power to alter layout, etc. of streets

10. —(1) The undertaker may for the purposes of the authorised development, or in connection with the authorised development, alter the layout of or carry out any works in the streets specified in column 2 of the table in Schedule 4 (permanent alteration of streets) permanently 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 paragraph (3), the undertaker may, for the purposes of the authorised development, or in connection with the authorised development, alter the layout of any street, including, notwithstanding article 4 (development consent etc. granted by this Order) any street outside of the Order limits 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; and

(b) make and maintain passing places.

(3) 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.

(4) The undertaker must restore any street that has been temporarily altered under paragraph (2) to the reasonable satisfaction of the street authority.

(5) Paragraph (3) does not apply where the undertaker is the street authority for a street in which the works are being carried out.

(6) Paragraph (3) does not apply if the street authority has already provided detailed design approval pursuant to requirement 6(1) (detailed design approval) in relation to a street in which the undertaker seeks to use the powers given by paragraph (2).

Construction and maintenance of altered streets

11. —(1) The permanent alterations to each of the streets specified in Schedule 4 (permanent alteration of streets) to this Order must be completed to the reasonable satisfaction of the street authority, in a form reasonably required by the street authority, and, unless otherwise agreed by the street authority, the alterations must be maintained to the same condition by and at the expense of the undertaker for a period of 12 months from their completion and from the expiry of that period by and at the expense of the street authority.

(2) 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.

(3) For the purposes of a defence under paragraph (2), 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.

(4) Paragraphs (2) and (3) do not apply where the undertaker is the street authority for a street in which the works are being carried out.

Temporary prohibition or restriction of use of streets and public rights of way, and authorising vehicular use on public rights of way

12. —(1) Subject to paragraph (4) and (7), the undertaker may, for the purposes of the authorised development temporarily alter, divert, prohibit the use of or restrict the use of, 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; and

(b) subject to paragraph (3), prevent all persons from passing along the street or public right of way.

(2) Without prejudice to the scope of paragraph (1), the undertaker may use any street or public right of way where the use has been prohibited or restricted under the powers conferred by this article and within the Order limits as a temporary working site.

(3) The undertaker must provide reasonable access for non-motorised users (including pedestrians) and vehicles going to or from premises abutting a street or public right of way affected by the temporary alteration, diversion, prohibition or restriction, of a street or public right of way under this article if there would otherwise be no such access.

(4) The undertaker must ensure vehicular access to Marsh Lock is available to the Canal & River Trust at all times.

(5) Without prejudice to the generality of paragraph (1), the undertaker may, subject to paragraph (7)—

(a) temporarily close the streets or public rights of way specified in column (2) in the table in Part 1 (streets and public rights of way subject to temporary closure) of Schedule 5 (temporary prohibition or restriction of use of streets and public rights of way, and authorising vehicular use on public rights of way) to the extent specified in column (3) of that table;

(b) temporarily alter, divert, prohibit the use of or restrict the use of the streets or public rights of way specified in column (2) of the table in Part 2 (temporary alteration, prohibition, diversion or restriction of use of streets and public rights of way) of Schedule 5 (temporary prohibition or restriction of use of streets and public rights of way, and authorising vehicular use on public rights of way) to the extent specified in column (3) of that table; and

(c) authorise the temporary use of motor vehicles on the public rights of way specified in column (2) of the table in Part 3 (temporary use of motor vehicles on public rights of way) of Schedule 5 (temporary prohibition or restriction of use of streets and public rights of way, and authorising vehicular use on public rights of way) to the extent specified in column (3) of that table.

(6) Paragraph (5)(c), and any authorisation given by the undertaker under it constitutes lawful authority for the purposes of section 34 (prohibition on driving mechanically propelled vehicles elsewhere than on roads) of the 1988 Act(**a**).

(7) The undertaker must not temporarily close, alter, divert, prohibit the use of or restrict the use of any street or public right of way or authorise the temporary use of motor vehicles on public rights of way pursuant to paragraphs (1) or (5) in part of the authorised development, without first

(a) 1988 c. 52.

having the public rights of way management plan for that part of the authorised development approved under requirement 15 (public rights of way).

(8) 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.

(9) In this article expressions used in this article and in the 1984 Act have the same meaning.

Permanent stopping up of, and creation of new public right of way and authorising vehicular use on public rights of way

13.—(1) Subject to paragraph (2) the undertaker may, for the purposes of the authorised development, permanently stop up Frodsham RB102 within the administrative borough of Cheshire West and Chester Council, shown as a dark brown line between the points M and N on the street works, public rights of way, vehicular usage and access plans.

(2) The undertaker must not permanently stop up the public right of way referred to in paragraph (1) until—

(a) the relevant highway authority has agreed the route for a substitute restricted byway shown as a light brown line between points M1 and N1 on the street works, public rights of way, vehicular usage and access plans; and

(b) the undertaker has provided a substitute restricted byway along the route agreed by the relevant highway authority under sub-paragraph (a).

(3) Subject to paragraph (4) the undertaker may, for the purposes of the authorised development, permanently stop up Frodsham FP81 within the administrative borough of Cheshire West and Chester Council, shown as a dark brown line between points P and T on the street works, public rights of way, vehicular usage and access plans.

(4) The undertaker must not permanently stop up the public right of way referred to in paragraph (3) until the undertaker has provided a bridleway along the route shown as a light brown line between points P1 and T1 on the street works, public rights of way, vehicular usage and access plans.

(5) Subject to paragraph (6) the undertaker may, for the purposes of the authorised development, permanently stop up Frodsham FP81 within the administrative borough of Cheshire West and Chester Council, shown as a dark brown line between points T and Q on the street works, public rights of way, vehicular usage and access plans.

(6) The undertaker must not permanently stop up the public right of way referred to in paragraph (5) until the undertaker has provided a cycle track along the route shown as a light brown line between points T1 and Q1 on the street works, public rights of way, vehicular usage and access plans.

(7) Subject to paragraph (8) the undertaker may, for the purposes of the authorised development, permanently stop up Frodsham FP93 within the administrative borough of Cheshire West and Chester Council, shown as a dark brown line between points R and S on the street works, public rights of way, vehicular usage and access plans.

(8) The undertaker must not permanently stop up the public right of way referred to in paragraph (7) until the undertaker has provided a bridleway along the route shown as a light brown line between points R1 and S1 on the street works, public rights of way, vehicular usage and access plans.

(9) The undertaker may authorise the use of motor vehicles on—

(a) Ellesmere Port and Neston RB40 / Frodsham RB106 and National Cycle Network Route 5 shown shaded light green between points PMV-1 and PMV-2 on the street works, public rights of way, vehicular usage and access plans;

(b) Frodsham RB103 / Frodsham RB98 shown shaded light green between points PMV-3 and PMV-4 on the street works, public rights of way, vehicular usage and access plans;

(c) Frodsham RB108 (Alder Lane) shown shaded light green between points PMV-5 and PMV-6 on the street works, public rights of way, vehicular usage and access plans; and

(d) Frodsham RB108 (Brook Furlong) shown shaded light green between points PMV-7 and PMV-8 on the street works, public rights of way, vehicular usage and access plans.

(10) Paragraph (7), and any authorisation given by the undertaker under it constitutes lawful authority for the purposes of section 34 (prohibition on driving mechanically propelled vehicles elsewhere than on roads) of the 1988 Act.

(11) If a car park is to be provided pursuant to a landscape and ecology management plan approved by the relevant planning authority under requirement 9 (landscape and ecology management plan), then from the date that such car park is constructed until the date that such car park is no longer available for public use—

(a) notwithstanding section 48 (restricted byways rights) of the 2000 Act, the use of motor and mechanically propelled vehicles by the public is authorised on Frodsham RB98 (Brook Furlong) and Frodsham RB98 (Moorditch Lane) to enable public access to and from the car park only; and

(b) the use of motor vehicles authorised pursuant to sub-paragraph (a) will not be an offence for the purposes of section 34 of the 1988 Act.

(12) Following the opening for public use of a public right of way that has been constructed, permanently altered or permanently diverted under the powers conferred by this Order, the undertaker must supply the surveying authority with plans showing that public right of way as constructed, permanently altered or permanently diverted together with a statement of the modifications required to the definitive map and statement.

(13) The plans and statement of modifications to the definitive statement referred to in paragraph (10) are deemed to be an order modifying the definitive map and statement made under section 53(3)(a)(a) (duty to keep definitive map and statement under continuous review) of the Wildlife and Countryside Act 1981.

(14) In this article—

(a) "definitive map and statement" has the meaning given to it by section 53(1) (duty to keep definitive map and statement under continuous review) of the Wildlife and Countryside Act 1981; and

(b) "surveying authority" has the meaning given to it by section 66(1) (interpretation of Part III)(b) of the Wildlife and Countryside Act 1981.

Access to works

14. —(1) The undertaker may, for the purposes of the authorised development and in connection with the authorised development—

(a) form and lay out the permanent means of access, or improve existing means of access, in the locations specified in Schedule 6 (access to works); and

(b) with the approval of the relevant planning authority after consultation with the highway authority in such a form as reasonably required by the highway authority, form and lay out such other means of access or improve existing means of access, at such locations within the Order limits as the undertaker reasonably requires for the purposes of the authorised development.

(2) Paragraph (1)(b) does not apply if the relevant planning authority has already provided detailed design approval pursuant to requirement 6(1) (detailed design approval) for the access sought to be formed and laid out pursuant to paragraph (1)(b).

Agreements with street authorities

15. —(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 temporary 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 9 (street works), article 11(1) (construction and maintenance of altered streets) and article 14 (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 an agreement provides that the street authority must undertake works on behalf of the undertaker the agreement may, without prejudice to the generality of paragraph (1)—

(a) make provision for the street authority to carry out any function under this Order which relates to the street in question;

(b) specify a reasonable time for the completion of the works; and

(c) contain such terms as to payment and otherwise as the parties consider appropriate.

Traffic regulation measures

16. —(1) Subject to the provisions of this article, 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.

(2) In relation to any such temporary provision made under paragraph (1) the undertaker may temporarily place traffic signs and signals in any road, including roads outside of the Order limits, 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**).

(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 (1) 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.

(5) The undertaker must not exercise the powers in paragraph (1) 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 7 days before the provision is to take effect, published the undertaker's intention to make the provision in one or more newspaper circulating in the area in which any road to which the provision relates is situated;

(a) S.I. 2016/362
(b) S.I. 2011/935.

(c) displayed a site notice containing the same information at each end of the length of road affected; and

(d) either—

(i) in relation to the construction of the authorised development only, have first obtained approval under requirement 14 (construction traffic management plan) for a construction traffic management plan for the phase of the authorised development in relation to which the power conferred by paragraph (1) is sought to be utilised; or

(ii) in relation to the decommissioning of the authorised development only, have first obtained approval under requirement 20 (decommissioning) for a decommissioning environmental management plan for the part of the authorised development in relation to which the power conferred by paragraph (1) is sought to be utilised.

(6) Any provision made under the powers conferred by paragraph (1) 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).

(7) Any provision made by the undertaker under paragraph (1)—

(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(**a**) (road traffic contraventions subject to civil enforcement).

PART 4

SUPPLEMENTAL POWERS

Discharge of water

17. —(1) Subject to paragraphs (3), (4) and (9) the undertaker may use any watercourse or any public sewer or drain for the drainage of water for the purposes of the authorised development, or in connection with the authorised development, and for that purpose may lay down, take up and alter pipes and may, on any land within the Order limits, make openings into, and connections with, the watercourse, public sewer or drain.

(2) Any dispute arising from the making of connections to or the use of a public sewer or drain by the undertaker under paragraph (1) is to be determined as if it were a dispute under section 106 (right to communicate with public sewers) of the Water Industry Act 1991(**b**).

(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) 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.

(6) The undertaker must take such steps as are reasonably practicable to ensure that water discharged into a watercourse or public sewer or drain pursuant to this article does not enter the public highway.

(a) 2004 c. 18
(b) 1991 c. 56.

(7) This article does not authorise the entry into controlled waters of any matter whose entry or discharge into controlled waters requires a licence pursuant to the Environmental Permitting (England and Wales) Regulations 2016(**a**).

(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(**b**) have the same meaning as in that Act.

Protective works to buildings

18. —(1) Subject to the following provisions of this article, the undertaker may at its own expense carry out such protective works to any building lying within the Order limits as the undertaker considers necessary or expedient.

(2) Protective works may be carried out—

(a) at any time before or during the construction of any part of the authorised development, in the vicinity of the building; or

(b) after the completion of that part of the authorised development in the vicinity of the building at any time up to the end of the period of five years beginning with the date of final commissioning; and

(c) to facilitate or during decommissioning of any part of the authorised development in the vicinity of the building.

(3) For the purpose of determining how the powers under this article are to be exercised, the undertaker may enter and survey any building falling within paragraph (1) and any land within its curtilage.

(4) For the purpose of carrying out protective works under this article to a building, the undertaker may (subject to paragraphs (5) and (6))—

(a) enter the building and any land within its curtilage; and

(b) where the works cannot be carried out reasonably conveniently without entering land which is adjacent to the building but outside its curtilage, enter the adjacent land (but not any building erected on it).

(5) Before exercising—

(a) a right under paragraph (1) to carry out protective works to a building;

(b) a right under paragraph (3) to enter a building and land within its curtilage;

(c) a right under paragraph (4)(a) to enter a building and land within its curtilage; or

(d) a right under paragraph (4)(b) to enter land,

the undertaker must, except in the case of emergency, serve on the owners and occupiers of the building or land not less than 14 days' notice of its intention to exercise that right and, in a case falling within sub-paragraph (a), (c) or (d), specifying the protective works proposed to be carried out.

(6) Where a notice is served under paragraph (5)(a), (5)(c) or (5)(d), the owner or occupier of the building or land concerned may, by serving a counter-notice within the period of 10 days beginning with the day on which the notice was served, require the question whether it is necessary or expedient to carry out the protective works or to enter the building or land to be referred to arbitration under article 42 (arbitration).

(a) S.I. 2016/1154.
(b) 1991 c. 57.

(7) The undertaker must compensate the owners and occupiers of any building or land in relation to which rights under this article have been exercised for any loss or damage arising to them by reason of the exercise of those rights.

(8) Where—

(a) protective works are carried out under this article to a building; and

(b) within the period of five years beginning with the date of final commissioning it appears protective works are inadequate to protect the building against damage caused by the construction or use of that part of the authorised development,

the undertaker must compensate the owners and occupiers of the building for any loss or damage sustained by them.

(9) Nothing in this article relieves the undertaker from any liability to pay compensation under section 10(2) (compensation for injurious affection) of the 1965 Act.

(10) Any compensation payable under paragraph (7) or (8) must be determined, in the 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—

(a) "emergency" means a situation where, if the relevant action is not taken, there will be adverse health, safety, security or environmental consequences that in the reasonable opinion of the undertaker would outweigh the adverse effects to the public (whether individual classes or generally as the case may be of taking that action).

(b) "protective works" in relation to a building means—

(i) 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, decommissioning or use of the authorised development; and

(ii) any works the purpose of which is to remedy any damage which has been caused to the building by the construction, maintenance, decommissioning or use of the authorised development.

Authority to survey and investigate the land

19. —(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 for the purposes 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 and archaeological investigations on such land; and

(d) place on, leave on and remove from the land apparatus for use in connection with the survey and investigation of land and making of trial holes, 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.

(7) The power to enter land conferred under paragraph (1) shall apply in respect of land plots 5-3 and 5-4 but the undertaker, in the exercise of the authority conferred by this article, may not make trial holes, bore holes or trenches on the said land, nor place or leave on the land apparatus for use in connection with the same.

Temporary suspension of navigation

20. —(1) Regardless of any other enactment or in any rule of law, the undertaker may—

(a) temporarily close; or

(b) temporarily restrict the passage of vessels in any way, in any part of the river Weaver within the Order limits that the undertaker deems necessary or expedient for the purposes of constructing, inspecting, maintaining, operating or decommissioning the authorised development.

(2) In exercise of the powers conferred by paragraph (1)—

(a) the undertaker must execute such works or do such things as may be required to ensure—

(i) that at any time no more of that part of the river Weaver which is within the Order limits is closed than is reasonably necessary in all the circumstances; and

(ii) that the works do not close any part of the river Weaver for longer than is reasonably necessary to complete those works.

(b) should it be necessary to close that part of the river Weaver that is within the Order limits to navigation, the undertaker must use its best endeavours to ensure that the minimum obstruction delay or interference is caused to vessels which may be using or intending to use the remaining part of the river Weaver that remains open for navigation.

(3) No later than three months before the date when a closure or restriction is due to commence the undertaker must—

(a) notify the Weaver Sailing and Ski Club and Frodsham Kayaking of when the closure or restriction is intended to take effect and their anticipated duration; and

(b) take such steps as it considers appropriate in the circumstances, to publicise the nature of the proposals including when they are intended to take effect and their anticipated duration.

(4) Paragraph (3) does not apply in the case of an emergency, or in any case where a proposed closure or restriction is intended to last for 48 hours or less, in which case the undertaker must take such steps as it considers practicable in the circumstances to inform persons of, and to publicise, the nature and anticipated duration of the proposed closure or restriction.

(5) Except in an emergency, a master of a vessel must not allow a vessel to enter into any part of the river Weaver within the Order limits that has been temporarily closed or subject to temporary

restrictions under this article without first obtaining the consent of the undertaker which may attach reasonable conditions to any consent.

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 undertaking.

(2) This article is subject to article 23 (compulsory acquisition of rights), article 26 (acquisition of subsoil or airspace only), and article 44 (crown rights).

(3) The undertaker's power of compulsory acquisition which is conferred under paragraph (1) does not apply in respect of land plots 5-3 and 5-4.

Time limit for exercise of authority to acquire land compulsorily

22. —(1) After the end of the period of five years beginning on the day on which this Order is made—

(a) no notice to treat is to be served under Part 1 (compulsory purchase under Acquisition of Land Act 1946) of the 1965 Act; and

(b) 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).

(2) The authority conferred by article 30 (temporary use of land for constructing the authorised development) ceases at the end of the period referred to in paragraph (1), except that nothing in this paragraph 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 7 (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) The powers in paragraph (1) and (2) may also be exercised by a statutory undertaker in any case where the exercise of those powers is required for the purpose of diverting, replacing or protecting apparatus of a statutory undertaker and where the undertaker, with the consent of the Secretary of State, transfers the power to a statutory undertaker pursuant to article 36 (consent to transfer the benefit of this Order).

(4) The powers in paragraph (1) and (2) may also be exercised by a party who has the benefit of the protective provisions in Schedules 13 to 26 in any case where the exercise of those powers is required for the purpose of diverting, replacing or protecting apparatus of the party with the benefit

of the protective provisions in Schedule 13 to 26 and where the undertaker transfers the power to a party with the benefit of the protective provisions and the consent of the Secretary of State is not required pursuant to article 36(3) and the undertaker has notified the Secretary of State.

(5) Where, in consequence of paragraph (3) or (4) a statutory undertaker or a party with the benefit of the protective provisions in Schedules 13 to 26 exercises the powers in paragraph (1) and (2) in place of the undertaker, except in relation to the payment of compensation the liability for which must remain with the undertaker, the statutory undertaker or party with the benefit of the protective provisions in Schedules 13 to 26 is to be treated for the purposes of this Order, and by any person with an interest in the land affected, as being the undertaker in relation to the acquisition of the rights in question.

(6) 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 8 (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.

(7) Schedule 8 (modification of compensation and compulsory purchase enactments for the creation of new rights and imposition of new restrictive covenants) has effect for the purpose of modifying the enactments relating to compensation and the provisions of the 1965 Act in their application in relation to the compulsory acquisition under this article of a right over land by the creation of a new right or the imposition of restrictive covenants.

(8) 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.

(9) The exercise by a statutory undertaker of any power in accordance with a transfer under paragraph (2) is subject to the same restrictions, liabilities and obligations as would apply under this Order if that power were exercised by the undertaker.

(10) This article is subject to article 44 (crown rights).

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, or of the right, or of the benefit of the restrictive covenant by the undertaker, whether compulsorily or by agreement; or

(b) on the date of entry on the land by the undertaker under section 11(1) (power of entry) of the 1965 Act; or

(c) on commencement of any activity authorised by this Order which interferes with or breaches those rights,

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.

(a) Furthermore, this article does not apply in relation to any right or to the benefit of any restrictive covenant subject to compulsory acquisition under this Order which is vested in or belonging to INOVYN Chlorvinyls Limited or INEOS Fluor Limited, and this provision is to have effect for the benefit of any person deriving title from or under INOVYN Chlorvinyls Limited or INEOS Fluor Limited.

(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) Section 5A (time limit for general vesting declaration) is omitted(**a**).

(6) 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 three year period mentioned in 5A" substitute "section 118 (legal challenges relating to applications for orders granting development consent) of the 2008 Act, the five year period mentioned in article 22 (time limit for exercise of authority to acquire land compulsorily) of the Frodsham Solar Farm Order [20***].".

(7) 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".

(8) 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)".

(9) 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 or airspace only) of the Frodsham Solar Farm Order [20**], which excludes the acquisition of subsoil only from this Schedule.".

(10) 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 or airspace only

26.—(1) The undertaker may acquire compulsorily so much of, or such rights, and impose such restrictions, 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 or for which rights over or under the land may be acquired under those provisions instead of acquiring the rights or imposing restrictions over the whole of the land.

(2) Where the undertaker acquires any part of, or rights in, or imposes any restrictions in the subsoil of, or airspace over, land under paragraph (1), the undertaker is not required to acquire an interest in any other part of the land.

(3) The following do not apply in connection with the exercise of the power under paragraph (1) in relation to subsoil or airspace only—

(a) Schedule 2A (counter-notice requiring purchase of land not in notice to treat) to the 1965 Act; and

(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 limits (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

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(**a**) Section 5A to the 1981 Act was inserted by section 182(2) of the Housing and Planning Act 2016 (c. 22).

(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) activities carried out for the purposes of the authorised development or in connection with the authorised development;

(b) the exercise of any power authorised by the Order; or

(c) the use of any land within the Order limits (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).

(7) The authorisation conferred under paragraph (1) in respect of any authorised activity which takes place on land within the Order limits shall not apply to any interest, right or restriction which is vested in or belonging to INOVYN Chlorvinyls Limited or INEOS Fluor Limited (and any person deriving title therefrom). Accordingly, paragraph (1) shall not operate to override any such interest, right or restriction.

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 1946), 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 High Court in respect of compulsory purchase order), the three year period mentioned in section 4" substitute "section 118 (legal challenges relating to applications for orders granting development consent) of the 2008 Act, the five year period mentioned in article 22 (time limit for exercise of authority to acquire land compulsorily) of the Frodsham Solar Farm Order 202*.".

(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 section 22(2) (expiry of time limit for exercise of compulsory purchase power not to affect acquisition of interests omitted from purchase), for "section 4 of this Act" substitute "article 22 (time limit for exercise of authority to acquire land compulsorily) of the Frodsham Solar Farm Order [20**]".

(5) 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 or airspace only) of the Frodsham 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 18 (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 Frodsham 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 any of the land within the Order limits in respect of which no notice of entry has been served under section 11 of the 1965 Act (powers of entry) and no declaration has been made under section 4 of the 1981 Act (execution of declaration);

(b) remove any buildings, 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 14 days before entering on and taking temporary possession of land under this article, the undertaker must serve notice of the intended entry on the owners and occupiers of the land.

(4) The undertaker must not, remain in possession of any land under this article for longer than reasonably necessary, and in any event must not, without the agreement of the owners of the land, remain in possession of any land under this article after the end of the period of one 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 3 (streets subject to street works); or

(d) remove any fencing or boundary treatment installed by the undertaker under this article to replace or enhance 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, compensation or enhancement 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 the 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) 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 7 (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 or airspace only) or any part of the subsoil of or airspace over that land under article 29 (rights under or over streets).

(11) 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.

(12) 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 limits if such possession is reasonably required for the purpose of maintaining the authorised development;

(b) enter on any land within the Order limits 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 the 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 five years beginning with the date of final commissioning of the part of the authorised development for which temporary possession is required under this article except in relation to landscaping or ecological works where "the maintenance period" means such period as set out in the landscape and ecology management plan which is approved by the relevant planning authority pursuant to requirement 9 (landscape and ecology management plan) beginning with the date on which that part of the landscaping is completed.

Statutory undertakers

32. Subject to the provisions of Schedule 13 to Schedule 26 (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 and crown 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 streets

33. Where a street is altered or diverted or its use is temporarily prohibited or restricted under article 9 (street works), article 10 (power to alter layout, etc. of streets), article 11 (construction and maintenance of altered streets) or article 12 (temporary prohibition or restriction of use of streets and public rights of way, and authorising vehicular use on 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 13 – Schedule 26 (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 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.

PART 6

MISCELLANEOUS AND GENERAL

Benefit of the Order

35. 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 save for Work No. 4A(iii) in relation to which the provisions of this Order have effect for the benefit of the undertaker and SP Manweb.

(a) 2003 c. 21.

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 (8), 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;

(b) the transferee or lessee is the beneficiary of the protective provisions in Schedules 13 to 26 (protective provisions) where the transfer or lease of the provisions of this Order relates to the undertaking of works that are required as a result of the operation of the protective provisions in Schedules 13 to 26 for that transferee or lessee;

(c) the transferee or lessee is an entity (whether that entity is a group company of the undertaker or any other entity) that is responsible for the on-going management of any part of Work No. 6, the identity of which has been agreed by the local planning authority in consultation with Natural England, following approvals given under requirement 9 (landscape and ecology management plan); or

(d) 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 and the relevant planning authority in writing before transferring or granting a benefit referred to in paragraph (1).

(5) The notification referred to in paragraph (4) must state—

(a) the name and contact details of the person to whom the benefit of the powers will be transferred or granted;

(b) subject to paragraph (6), the date on which the transfer will take effect;

(c) the powers to be transferred or granted;

(d) pursuant to paragraph (8), the restrictions, liabilities and obligations that will apply to the person exercising the powers transferred or granted;

(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 fourteen (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) 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.

Planning permission, etc.

38. —(1) If planning permission is granted under the powers conferred by the 1990 Act for development any part of which is within the Order limits following the coming into force of this Order that is—

(a) not itself a development for which development consent is required under the 2008 Act or part of such a development; or

(b) required to complete or enable the maintenance, use or operation of any part of the development authorised by this Order,

then the construction, maintenance, use or operation of that development under the terms of the planning permission does not constitute a breach of the terms of this order.

(2) Development consent granted by this Order is to be deemed as specific planning permission for the purposes of section 264(3) (cases in which land is not to be treated as operational land for the purposes of that Act) of the 1990 Act.

(3) To the extent that any development carried out or used—

(a) pursuant to a planning permission granted under section 57 (requirement of planning permission) or section 73 (determination of applications to develop land without compliance with conditions previously attached) of the 1990 Act, including if changed by a determination by the local planning authority under section 96A (power to make non-

material changes to planning permission or permission in principles) of the 1990 Act, or compliance with any conditions of that permission; or

(b) pursuant to any development consent order granted under section 114 (grant or refusal of development consent) of the 2008 Act, including any corrections or amendments to that development consent order made under section 119 (correction of errors in development consent decisions) or section 153 (changes to, and revocation of, orders granting development consent) of the 2008 act, or compliance with the terms of that development consent order,

is inconsistent with the exercise of any power, right or obligation under this order or the authorised development—

(c) that inconsistency is to be disregarded for the purposes of establishing whether any development which is the subject matter of that planning permission or development consent order is capable of physical implementation; and

(d) in respect of that inconsistency, no enforcement action under the 1990 Act or the 2008 Act may be taken, whether that inconsistency relates to land inside or outside the Order limits.

(4) Any development or any part of a development within the Order limits which is constructed or used under the authority of any permission falling under paragraphs (1) or (3) is deemed not to be a breach of, or inconsistent with, this Order and does not prevent the authorised development being carried out or used or any other power or right under this Order being exercised.

(5) In paragraph (3) "enforcement action" means any enforcing action under Part 7 (enforcement) of the 1990 Act or Part 8 of the 2008 Act, as relevant.

Felling or lopping of trees and removal of hedgerows

39. —(1) The undertaker may fell or lop any tree or shrub within or overhanging land within 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 or decommissioning 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) remove any hedgerow within the Order limits that is required to be removed.

(5) Notwithstanding paragraph (4), the undertaker may, for the purposes of the authorised development or in connection with the authorised development, remove the hedgerows specified in Schedule 9 (hedgerows to be removed) and shown on the hedgerows plan.

(6) 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.

(7) In this article "hedgerow" has the same meaning as in the Hedgerows Regulations 1997(**a**).

Certification of plans and documents, etc.

40. —(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 10 (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.

No double recovery

41. 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

42. —(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 11 (arbitration rules) of this Order, by a single arbitrator to be agreed upon by the parties, within 14 days of receipt of the notice of arbitration, or if the parties fail to agree within the time period stipulated, to be appointed on application of either party (after giving written notice to the other) by the Secretary of State.

(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

43. Schedules 13 to 26 (protective provisions) have effect.

Crown rights

44. —(1) Nothing in this Order affects prejudicially any estate, right, power, privilege, authority or exemption of the Crown and in particular, nothing in this Order authorises the undertaker or any licensee to take, use, enter upon or in any manner interfere with any land or rights of any description (including any portion of the shore or bed of the sea or any river, channel, creek, bay or estuary)—

(a) belonging to His Majesty in right of the Crown and forming part of The Crown Estate without the consent in writing of the Crown Estate Commissioners;

(b) belonging to His Majesty in right of the Crown and not forming part of The Crown Estate without the consent in writing of the government department having the management of that land; or

(c) belonging to a government department or held in trust for His Majesty for the purposes of a government department without the consent in writing of that government department.

(2) Paragraph (1) does not apply to the exercise of any right under this Order for the compulsory acquisition of an interest in any Crown land (as defined in the 2008 Act) which is for the time being held otherwise than by or on behalf of the Crown.

(3) A consent under paragraph (1) may be given unconditionally or subject to terms and conditions and is deemed to have been given in writing where it is sent electronically.

(**a**) S.I. 1997/1160.

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(**a**) as it applies for the purposes of this article, the proper address of any person in relation to the service on that person of a notice or document under paragraph (1) is, if that person has given an address for service, that address and otherwise—

(a) in the case of the secretary or clerk of a body corporate, the registered or principal office of that body; and

(b) in any other case, the last known address of that person at 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—

(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 seven 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 seven days after the date on which the notice is given.

(**a**) 1978 c. 30.

(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 or delayed.

(3) Schedule 12 (procedure for the 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 12 and where stated to the contrary if, within eight 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 12 does not apply in respect of any consents, agreements or approvals contemplated by the provisions of Schedule 13 to 26 (protective provisions) or any dispute under article 18(6) (protective work to buildings) to which sub-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 13 to 26.

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 limits 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 limit; 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 limit.

(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(**a**) 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.

Signatory text

Name
Address
Parliamentary Under Secretary of State
Date
Department

(a) 1981 c. 67.

SCHEDULE 1

Article 4

AUTHORISED DEVELOPMENT

1. In this Schedule—

"inverter" means electrical equipment required to convert direct current power to alternating current which will either be a string inverter attached to a mounting structure or a central container inverter;

"mounting structure" means a frame or rack made of galvanised steel, anodised aluminium or other material designed to support the solar modules and will provide for a fixed south facing orientation and mounted on piles driven into the ground or pillars fixed to a concrete foundation;

"PV module" means a solar photovoltaic panel or module designed to convert solar irradiance to electrical energy;

"substation" means a substation containing electrical equipment required to switch, transform, convert electricity and provide reactive power compensation;

"switch gear" means a combination of electrical disconnect switches, fuses or circuit breakers used to control, protect and isolate electrical equipment; and

"transformer" means a structure serving to transform electricity to a higher voltage which will either be a string transformer or a central container transformer.

2. In the administrative borough of Cheshire West and Chester Council 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 the following works—

Work No. 1— a ground mounted solar photovoltaic generating station with a gross electrical output capacity of over 50 megawatts including—

(a) solar PV modules fitted to mounting structures and associated foundations;

(b) inverters;

(c) transformers;

(d) switchgear; and

(e) electrical and communication cables.

And the associated development within the meaning of section 115(2) of the 2008 Act includes—

Work No. 2— a battery energy storage system compound comprising—

(a) **Work No. 2A—** BESS A: works in connection with a battery energy storage system including—

(i) battery storage units (BSU);

(ii) transformer / power conversion system (PCS) units and ancillary equipment;

(iii) switchgear and control room;

(iv) reinforced concrete foundation slab;

(v) concrete piling;

(vi) car parking and access roads;

(vii) works for the provision of security and monitoring measures such as CCTV columns, cameras, lighting columns and lighting, weather stations, communication infrastructure, perimeter fencing; and

(viii) drainage infrastructure including bunds and firewater storage and suppression systems.

(b) **Work No. 2B—** BESS B: works in connection with a battery energy storage system including—

(i) battery storage units (BSU);

(ii) transformer / power conversion system (PCS) units and ancillary equipment;

(iii) switchgear and control room;

(iv) reinforced concrete foundation slab;

(v) concrete piling;

(vi) car parking and access roads;

(vii) works for the provision of security and monitoring measures such as CCTV columns, cameras, lighting columns and lighting, weather stations, communication infrastructure, perimeter fencing; and

(viii) drainage infrastructure including bunds and firewater storage and suppression systems.

Work No. 3— works in connection with an onsite substation and associated works including—

(a) Work No. 3A—Substation A: an onsite substation compound including—

(i) substation;

(ii) switch room buildings;

(iii) electrical control equipment;

(iv) control building;

(v) storage areas;

(vi) welfare facilities;

(vii) offices;

(viii) workshop;

(ix) store;

(x) car parking and access roads;

(xi) works for the provision of security and monitoring measures such as CCTV columns, cameras, lighting columns and lighting, weather stations, communication infrastructure, perimeter fencing; and

(xii) drainage infrastructure including bunds.

(b) **Work No. 3B—** Substation B: an onsite substation compound including—

(i) substation;

(ii) switch room buildings;

(iii) electrical control equipment;

(iv) control building;

(v) storage areas;

(vi) welfare facilities;

(vii) offices;

(viii) workshop;

(ix) store;

(x) car parking and access roads;

(xi) works for the provision of security and monitoring measures such as CCTV columns, cameras, lighting columns and lighting, weather stations, communication infrastructure, perimeter fencing; and

(xii) drainage infrastructure including bunds.

Work No. 4— connection works from Work No.3 comprising—

(a) **Work No. 4A—** works to create an electrical connection from Work No. 3 to Frodsham SPEN Substation including—

(i) above ground and below ground 132kV electrical and communication cables connecting Work No. 3 to the Frodsham SPEN Substation;

(ii) pylons; and

(iii) works to the Frodsham SPEN Substation to facilitate connection of the authorised development to the Frodsham SPEN Substation; and

(b) **Work No. 4B—** works to lay underground 132kV electrical and communication cables from Frodsham Solar Substation (Work No.3) to nearby businesses.

Work No. 5— works to lay electrical cables and communication cables including—

(a) electrical and communication cables connecting Work No. 1 to Work No.3;

(b) electrical and communication cables connecting Work No. 2 to Work No.3; and

(c) electrical and communication cables connecting Work No. 1 to Work No.2.

Work No. 6—works to create, enhance and maintain green infrastructure, comprising—

(a) **Work No. 6A—** green infrastructure works including—

(i) native species hedgerows, individual trees and grassland;

(ii) open water habitats and reedbeds;

(iii) improvements to existing public rights of way;

(iv) skylark habitat;

(v) permissive paths;

(vi) fencing, gates, boundary treatment and other means of enclosure;

(vii) laying down of internal access tracks;

(viii) improvement, maintenance repair and use of existing streets and private tracks;

(ix) car park;

(x) signage and information boards;

(xi) bird hides and screens;

(xii) benches;

(xiii) viewing areas; and

(xiv) bike stands.

(b) **Work No. 6B—** works to create and maintain skylark habitat; and

(c) **Work No. 6C—** works to create and maintain a Non-Breeding Bird Mitigation Area including—

(i) earthworks including bunds, embankments, ground reprofiling, infilling of voids;

(ii) scrapes and waterbodies;

(iii) water level management systems including sluices, pipework, pumps and associated control equipment;

(iv) use of geotextiles or clay liners water retention; and

(v) installation of predator control fencing.

Work No. 7— construction, maintenance and decommissioning compounds including—

(a) areas of hardstanding;

(b) car park;

(c) site and welfare offices, canteens and workshops;

(d) area to store materials and equipment;

(e) storage and waste skips;

(f) area for download and turning;

(g) security infrastructure, including camera, perimeter fencing and lighting;

(h) site drainage and waste management infrastructure (including sewerage); and

(i) electricity, water, waste water and telecommunications connections.

Work No. 8— access and highway improvements and use, comprising works to create, improve, repair or maintain streets, roads, haul roads and access points.

Ancillary Works

In connection with and in addition to Work Nos. 1 to 8, further ancillary or related development comprising such other works or operations for the purposes of or in connection with the construction, operation, maintenance and decommissioning of the authorised development but only insofar as they are unlikely to give rise to any materially new or materially different environmental effects to those identified in the environmental statement, including—

(a) laying down of internal access tracks;

(b) temporary footpath diversions;

(c) ramps, means of access, carparks;

(d) crossings of watercourses and roads;

(e) improvement, maintenance, repair and use of existing streets, private tracks, public rights of way and access roads;

(f) sustainable drainage systems including runoff outfalls, attenuation areas, general drainage and irrigation infrastructure, systems and improvements or extensions to existing drainage and irrigation systems;

(g) works for the provision of security and monitoring measures such as CCTV columns, cameras, lighting columns and lighting, weather stations, communication infrastructure, perimeter fencing;

(h) construction and decommissioning compounds, including site and welfare offices and areas to store materials and equipment;

(i) joint bays, link boxes, cable ducts, cable protection, joint protection, manholes, marker posts, underground cable markers, tiles and tape, communications chambers, fibre optic cables and other works associated with cable laying;

(j) foundations for structures, buildings, plant and machinery;

(k) works to alter the course of, or otherwise interfere with, non-navigable rivers, streams or watercourses;

(l) electrical, gas, water, foul water drainage and telecommunications infrastructure connections, diversions and works to, and works to alter the position of, such services and utilities connections; and

(m) earthworks, 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;

and further ancillary or related development comprising such other works or operations as may be necessary or expedient for the purposes of or in connection with the construction, operation, maintenance and 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 to those identified in the environmental statement.

SCHEDULE 2

Article 4

REQUIREMENTS

Interpretation

1. In this Schedule—

"ground conditions investigations and assessments strategy" means a strategy setting out the undertaker's proposals for investigating, assessing, monitoring, and where necessary, remediating ground conditions, contamination and ground stability matters as they pertain to the phase of the authorised development to which the strategy relates, including in respect of—

(a) unexploded ordnance assessment;

(b) ground investigations;

(c) remediation strategies and verification reports;

(d) materials management;

(e) piling risk assessment;

(f) approach to be taken for dealing with ground conditions in respect of Work No. 6C;

(g) earthworks specifications;

(h) peat investigations; and

(i) soil sampling and investigations.

"required decommissioning timing provisions" means the provisions set out in section 2.5 of the outline operational environmental management plan; and

"decommissioning timing provisions" means the provisions relating to the timing for decommissioning works to take place as included in the operational environmental management plan approved under requirement 13 (operational environmental management plan).

Commencement of the authorised development

2. The authorised development must not begin after the expiration of five years from the date this Order comes into force.

Phasing of the authorised development and date of final commissioning

3.—(1) No phase of the authorised development may commence until a written scheme setting out the phase or phases of construction of the authorised development has been submitted to and approved by the relevant planning authority.

(2) The scheme submitted pursuant to sub-paragraph (1) must include a timetable for the construction of the phase or phases of the authorised development and a plan identifying the phasing areas.

(3) The scheme submitted and approved pursuant to sub-paragraph (1) must be implemented as approved.

(4) Notice of the date of final commissioning with respect to each phase of Work No. 1 must be given to the relevant planning authority within 15 working days of the date of final commissioning for that phase.

Requirement for written approval

4. Where under any of the requirements the approval, agreement or confirmation of the relevant planning authority or another person is required, that approval, agreement or confirmation must be provided in writing.

Approved details and amendments to them

5.—(1) Subject to sub-paragraph (3) with respect to the documents certified under article 40 (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 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 to those identified in the environmental statement.

(3) Sub-paragraph (1) does not apply to the book of reference and the land and crown land plans.

Detailed design approval

6.—(1) No phase of the authorised development may commence until details of—

(a) the layout;

(b) scale;

(c) proposed finished ground levels;

(d) external appearance;

(e) hard surfacing materials;

(f) vehicular and pedestrian access, parking and circulation areas;

(g) refuse or other storage units, signs and lighting; and

(h) the anti-reflective coating to be used on the solar modules in Work No. 1,

relating to that phase have been submitted and approved in writing by the relevant planning authority and, in relation to the anti-reflective coating to be used on the solar modules in Work No. 1 only, Natural England.

(2) The authorised development must be designed and constructed in accordance with the design parameters statement.

(3) The authorised development must be designed and constructed in accordance with the design principles and the details submitted under sub-paragraph (1) must include a statement to confirm how the design principles have been complied with in the details that have been submitted.

(4) Any part of the authorised development may be designed and constructed to deviate from the design parameters set out in the design parameters statement if the undertaker has first sought and obtained approval for such deviations from the relevant planning authority (who must be satisfied that the deviations will not lead to materially new or materially different environmental effects to those identified in the environmental statement) prior to the commencement of that part of the authorised development.

(5) The authorised development must be carried out in accordance with the approved details.

Battery safety management

7.—(1) Work No. 2 must not commence until a battery safety management plan has been submitted to and approved by the relevant planning authority, such approval to be in consultation

with Cheshire Fire and Rescue Service, Cheshire West and Chester Council's Emergency Planning Team, National Highways and the Environment Agency.

(2) The battery safety management plan submitted under sub-paragraph (1) must—

(a) prescribe measures to facilitate safety during the construction, operation and decommissioning of Work No. 2 including the transportation of new, used and replacement battery cells both to and from the authorised development;

(b) be accompanied by an emergency response plan; and

(c) be substantially in accordance with the outline battery safety management plan.

(3) The battery safety management plan must be implemented as approved and maintained throughout the construction, operation and decommissioning of the authorised development.

Permitted preliminary works

8. The permitted preliminary works must be carried out in accordance with the measures set out in appendix 2-3 of the environmental statement.

Landscape and ecology management plan

9.—(1) No phase of the authorised development may commence, and no part of the permitted preliminary works for that phase comprising vegetation removal may start, until a landscape and ecology management plan (which must be substantially in accordance with the outline landscape and ecology management plan) for that phase has been submitted to and approved by the relevant planning authority in consultation with Natural England and National Highways.

(2) The landscape and ecology management plan submitted under sub-paragraph (1) must include details of all proposed hard and soft landscaping works and ecological mitigation and enhancement measures (as applicable for the relevant numbered work) for that phase and where applicable include for that phase—

(a) the location, number, species, size and planting density of any proposed planting including details of any proposed tree and hedgerow planting and the proposed times of such planting;

(b) any hedgerows proposed for removal (and confirmation of hedgerows to be retained);

(c) cultivation, importing of materials and other operations to ensure plant establishment;

(d) existing trees to be retained and trees to be removed;

(e) an implementation timetable, including details of the phasing of delivery of landscaping measures;

(f) how the plan proposals will contribute to the achievement of a quantified uplift of a minimum of 20% in habitat units, 7.5% in watercourse units and 75% in hedgerow units for the authorised development as a whole during the operation of the authorised development, to be quantified using the statutory biodiversity metric calculation tool published by DEFRA;

(g) how the landscaping and ecological measures proposed in the plan will be managed, monitored and maintained during the operational life of the authorised development to the date on which the decommissioning environmental management plan is implemented pursuant to requirement 20 (decommissioning);

(h) the ecological surveys required to be carried out prior to commencement of a numbered work within that phase, or following completion of a numbered work within that phase, in order to monitor the effect of, or inform, the ecological mitigation, net gain in biodiversity measures and associated monitoring regime to be taken forward within that phase, following those initial surveys;

(i) the final routing, specification and maintenance regime for each permissive path;

(j) details of the establishment and management regime (including a programme) for Work No.6B; and

(k) details of the design, establishment, maintenance, management and monitoring regime (including a programme) for Work No. 6C (which must be substantially in accordance with the outline non-breeding bird mitigation strategy) which must include a New Zealand pygmyweed control and management strategy, which must be prepared following consultation by the undertaker with Natural England and the Royal Society for the Protection of Birds.

(3) Any hedgerow, shrub or tree planted as part of the approved plan that, within a period of five years after planting, is removed, dies or becomes, in the opinion of the relevant planning authority, seriously damaged or diseased, must be replaced in the first available planting season with a specimen of a species and size agreed with the relevant planning authority.

(4) Each phase of the authorised development must be carried out in accordance with the landscape and ecology management plan approved under sub-paragraph (1) for that phase.

(5) The permission for the public to make use of any permissive path listed within the landscape and ecology management plan ceases on the date of decommissioning for that phase of the authorised development.

Fencing and other means of enclosure

10. —(1) No phase of the authorised development may commence, and no part of the permitted preliminary works for that phase comprising the provision of temporary means of enclosure may start, until written details of all proposed temporary fences, walls or other means of enclosure, including those set out in the construction environmental management plan, for that phase have been submitted to and approved by the relevant planning authority in consultation with the Environment Agency.

(2) No phase of the authorised development may commence until written details of all permanent fences, walls or other means of enclosure for that phase have been submitted to and approved by the relevant planning authority in consultation with the Environment Agency.

(3) The details submitted under sub-paragraph (2) must be in accordance with the design parameters statement and the design principles.

(4) Any construction site must remain securely fenced in accordance with the approved details under sub-paragraph (1) at all times during the construction of the authorised development.

(5) Any temporary fencing must be removed on completion of the phase of construction of the authorised development for which it was used.

(6) Any permanent fencing, walls or other means of enclosure for that phase approved under sub-paragraph (2) must be completed prior to the date of final commissioning in respect of such phase.

(7) Any permanent fencing, walls or other means of enclosure must be carried out in accordance with the details approved under sub-paragraph (2) and properly maintained for the operational lifetime of the phase of the authorised development.

Surface and ground water management

11. —(1) No phase of the authorised development may commence until details of the surface water drainage strategy (which must be substantially in accordance with section 11 of the flood risk assessment and drainage strategy) for that phase has been submitted to and approved by the relevant planning authority such approval, to be in consultation with the lead local flood authority and the Environment Agency and, in respect of a phase that involves Work No. 4A only, the Canal and River Trust.

(2) The design and operation of any phase of the authorised development must be carried out and maintained in accordance with the outline drainage strategy approved under sub-paragraph (1) for that phase.

(3) No phase of the authorised development may commence until a construction ground water and surface water management plan (which must include measures in relation to ground and surface water monitoring during construction and one year after construction) for that phase has

been submitted to and approved by the relevant planning authority, such approval to be in consultation with the lead local flood authority, the Environment Agency, and in respect of Work No. 4A only, the Canal and River Trust.

(4) The construction of any phase of the authorised development must be carried out in accordance with the approved construction ground water and surface water management plan for that phase.

Construction environmental management plan

12.—(1) No phase of the authorised development may commence until a construction environmental management plan for that phase has been submitted to and approved by the relevant planning authority, such approval to be in consultation with the Environment Agency, National Highways and—

(a) in respect of any construction environmental management plan which relates to Work No. 6C only, Natural England; and

(b) in respect of any construction environmental management plan which relates to Work No. 4A only, the Canal and River Trust.

(2) The construction environmental management plan submitted for approval under sub-paragraph (1) must be substantially in accordance with the outline construction environmental management plan to the extent that it is applicable to that phase and must be accompanied by, or include, the following, where applicable to that phase—

(a) an invasive non-native species management plan;

(b) an environmental incident management and pollution prevention plan;

(c) an unexpected contamination protocol;

(d) a flood warning and evacuation plan (which must be substantially in accordance with the outline flood warning and evacuation plan);

(e) an unexploded ordnance management plan;

(f) a construction noise management plan;

(g) fish rescue plan;

(h) a construction dust management plan;

(i) a construction waste management plan; and

(j) a stakeholder communication plan.

(3) The construction of any phase of the authorised development must be carried out in accordance with the approved construction environmental management plan for that phase.

(4) For the purposes of this paragraph only—

(a) "commence" includes—

(i) any permitted preliminary works comprising above ground site preparation for temporary facilities for the use of contractors;

(ii) site clearance (including vegetation removal and demolition of existing buildings and structures);

(iii) receipt and erection of construction plant and equipment to be utilised for Work No. 6C, or where such receipt and erection is to take place within 110 metres of the limits of deviation of Work No. 6C in the period November to February inclusive; and

(iv) remedial work in respect of any contamination or other adverse ground conditions where this relates to Work No. 6C.

(b) "phase" includes—

(i) any permitted preliminary works comprising above ground site preparation for temporary facilities for the use of contractors;

(ii) site clearance (including vegetation removal and demolition of existing buildings and structures);

(iii) receipt and erection of construction plant and equipment to be utilised for Work No. 6C, or where such receipt and erection is to take place within 110 metres of the limits of deviation of Work No. 6C in the period November to February inclusive; and

(iv) remedial work in respect of any contamination or other adverse ground conditions where this relates to Work No. 6C within a phase.

Operational environmental management plan

13. —(1) Prior to the date of final commissioning for any phase of the authorised development, an operational environmental management plan (including, or accompanied by, the plans listed in sub-paragraph (2)) for that phase must be submitted to and approved by the relevant planning authority, such approval to be in consultation with the Environment Agency and National Highways.

(2) The operational environmental management plan submitted for approval under sub-paragraph (1) must include decommissioning timing provisions that are consistent with the required decommissioning timing provisions and be otherwise substantially in accordance with the outline operational environmental management plan to the extent that it is applicable to that phase and must be accompanied by, or include the following—

(a) an invasive non-native species management plan;

(b) a flood warning and evacuation plan (which must be substantially in accordance with the outline flood warning and evacuation plan);

(c) an environmental incident management and pollution prevention plan;

(d) an unexpected contamination protocol;

(e) measures in relation to environmental and traffic management to be undertaken during replacement activities; and

(f) waste management plan.

(3) The operation of any phase of the authorised development must be carried out and maintained in accordance with the approved operational environmental management plan for that phase.

Construction traffic management plan

14. —(1) No phase of the authorised development may commence until a construction traffic management plan (which must be substantially in accordance with the outline construction traffic management plan) for that phase has been submitted to and approved by the relevant planning authority, such approval to be in consultation with National Highways and the relevant highways authority and, in respect of any construction traffic management plan which relates to Work No. 4A only, the Canal and River Trust.

(2) Any construction traffic management plan submitted under sub-paragraph (1) must include a construction travel plan (which must be substantially in accordance with section 4.4 of the outline construction traffic management plan).

(3) The construction of any phase of the authorised development must be carried out in accordance with the approved construction traffic management plan for that phase.

Public rights of way

15. —(1) No phase of the authorised development may commence until a public rights of way management plan (which must be substantially in accordance with the outline public rights of way management plan) for that phase has been submitted to and approved by the relevant planning authority, in consultation with the relevant highway authority and National Highways.

(2) The public rights of way management plan must be implemented as approved.

Soil management plan

16.—(1) No phase of the authorised development may commence until a soil management plan for that phase has been submitted to and approved by the relevant planning authority for that phase in consultation with Natural England and the Environment Agency.

(2) The soil management plan must be substantially in accordance with the outline soil management plan and consistent with, and, where they are available, taking account of the results of, the ground conditions investigations and assessments strategy.

(3) The construction of any phase of the authorised development must be carried out in accordance with the approved soil management plan for that phase.

Ground conditions

17.—(1) No phase of the authorised development may commence, and no part of the permitted preliminary works for that phase comprising demolition or decommissioning of existing structures, intrusive environmental surveys, geotechnical surveys and other investigations for the purpose of assessing ground conditions, diversion and laying of apparatus, and remedial work in respect of any contamination or other adverse ground conditions, may start until a ground conditions investigations and assessments strategy, including groundwater resources, for that phase has been submitted to and approved by the relevant planning authority, such approval to be in consultation with the Environment Agency and, in respect of Work No. 4A only, the Canal and River Trust.

(2) The carrying out of any phase of the authorised development must be undertaken in accordance with the ground conditions investigations and assessments strategy approved pursuant to sub-paragraph (1) for that phase.

Archaeological mitigation strategy

18.—(1) No phase of the authorised development may commence until an archaeological mitigation strategy, including any required written scheme of archaeological investigation (or multiple written schemes of archaeological investigation) which must be in substantial accordance with the outline written scheme of archaeological investigation, for that phase has been submitted to and approved by the relevant planning authority, in consultation with Cheshire Archaeology Planning Advisory Service and Historic England.

(2) Any archaeological mitigation strategy submitted under sub-paragraph (1), to the extent that it is applicable to that phase of the authorised development, must include details of the measures set out in section 11.9 of chapter 11 of the environmental statement.

(3) The authorised development must be implemented in accordance with the archaeological mitigation strategy approved pursuant to paragraph (1).

(4) For the purposes of this paragraph only—

(a) "commence" includes archaeological surveys and investigations, geotechnical surveys and other investigations for the purposes of assessing ground condition, remedial work in respect of any contamination or other adverse ground conditions, diversion and laying of apparatus and demolition of existing buildings and structures; and

(b) "phase" includes any permitted preliminary works comprising archaeological surveys and investigations, geotechnical surveys and other investigations for the purposes of assessing ground condition, remedial work in respect of any contamination or other adverse ground conditions, diversion and laying of apparatus and demolition of existing buildings and structures.

Skills, supply chain and employment

19.—(1) No phase of the authorised development may commence until a skills, supply chain and employment plan for construction (which must be substantially in accordance with the outline

skills, supply chain and employment plan) in relation to that phase has been submitted to and approved by the relevant planning authority for that phase.

(2) The skills, supply chain and employment plan must identify opportunities for individuals and businesses to access employment and supply chain opportunities associated with the construction of the authorised development, and the means for publicising such opportunities.

(3) Prior to the date of final commissioning of any phase of the authorised development, a skills, supply chain and employment plan for operation (which must be substantially in accordance with the outline skills, supply chain and employment plan) in relation to that phase has been submitted to and approved by the relevant planning authority for that phase.

(4) The skills, supply chain and employment plan must identify opportunities for individuals and businesses to access employment and supply chain opportunities associated with the operation and maintenance of the authorised development, and the means for publicising such opportunities.

(5) Any skills, supply chain and employment plan approved under sub-paragraph (1) or sub-paragraph (3) must be implemented as approved.

Decommissioning

20. —(1) Decommissioning works must commence no later than the earlier of—

(a) in respect of all of the authorised development, 40 years following the date of the final commissioning of Work No. 1 that is the subject of the last notice given by the undertaker pursuant to requirement 3(4) (phasing of the authorised development and date of final commissioning); or

(b) in respect of any phase of the authorised development, prior to the end of the timeframes set out in the decommissioning timing provisions where those provisions are engaged in respect of that phase.

(2) Prior to the commencement of any part of any decommissioning works the undertaker must submit to the relevant planning authority for approval, in consultation with the Environment Agency, National Highways and the relevant highway authority, a decommissioning environmental management plan (including, or accompanied by, the plans listed in sub-paragraph (3) for that part).

(3) The plan submitted and approved under sub-paragraph (2) must be substantially in accordance with the relevant part of the outline decommissioning environmental management plan, include a programme for the decommissioning works that are the subject of the plan and must be accompanied by, or include the following, where applicable to that phase—

(a) measures to manage impacts to public rights of way;

(b) a decommissioning traffic management plan;

(c) a decommissioning groundwater and surface water management plan;

(d) an invasive non-native species management plan;

(e) an environmental incident management and pollution prevention plan;

(f) an unexpected contamination protocol;

(g) a flood warning and evacuation plan;

(h) a skills, supply chain and employment plan for the decommissioning works;

(i) a decommissioning noise management plan;

(j) a decommissioning dust management plan; and

(k) a decommissioning waste management plan.

(4) The plan submitted to and approved pursuant to sub-paragraph (2) must be implemented as approved for the decommissioning works to which it relates.

(5) This requirement is without prejudice to any other consents or permissions which may be required to decommission any part of the authorised development.

Decommissioning Fund

In this requirement:

"decommissioning security" means a form of security that secures the costs of undertaking decommissioning works and meeting all obligations under a decommissioning environmental management plan approved under Requirement 20 for the phase to which the security will relate; and

"valuer" means a suitably independent professional jointly appointed by the undertaker and the relevant planning authority prior to the first discharge of this Requirement but where an individual cannot be agreed, then this inability to agree should be considered to be a refusal of an application to discharge a Requirement for the purposes of article 46 and Schedule 12.

21.—(1) No phase of the authorised development may commence until the form and value of a decommissioning security for that phase has been submitted to and approved by the local planning authority.

(2) Any decommissioning security approved under this paragraph shall be maintained until the date of completion of the decommissioning works to which that decommissioning security relates.

(3) The value of the decommissioning security shall be reviewed by the valuer no less than every five years from the date of approval given under sub-paragraph (1) and the undertaker must increase or decrease the value of the security to reflect the results of the valuer's review, such review to take account of any variation, since the approval of the decommissioning security, or the previous review (as appropriate), in the estimated or actual costs of carrying out the decommissioning works, meeting all obligations under a decommissioning environmental management plan approved under Requirement 20 for the phase to which the decommissioning security relates, and complying with best practice prevailing at the time of each review.

(4) The undertaker may launch an appeal under paragraph 4 of Schedule 12 in respect of the relevant planning authority's consideration of a submitted decommissioning security under paragraphs (1) and (2) and where such an appeal is launched the Secretary of State must appoint the valuer as the appointed person under paragraph 4(2)(c)

(5) The undertaker may dispute the results of any review carried out under paragraph (3) and article 46 and Schedule 12 shall apply to such dispute.

SCHEDULE 3

Article 9

STREETS SUBJECT TO STREET WORKS

Interpretation

1. In this Schedule—

"cable works" means works to place, retain and maintain underground apparatus.

(1) *Area*	*(2)* *Street*	*(3)* *Description of the street works*
Cheshire West and Chester Council	Public Right of Way – Frodsham RB106 and National Cycling Network Route 5	Cable works beneath the width of the highway for the length shown shaded in hatched light blue between point SW1-1 and point SW1-2 on sheet 2 of the street works, public rights of way, vehicular usage and access plans
Cheshire West and Chester Council	Unnamed track	Cable works beneath the width of the highway for the length shown shaded in hatched light blue between point SW2-1 and point SW2-2 on sheet 2 of the street works, public rights of way, vehicular usage and access plans
Cheshire West and Chester Council	Public Right of Way – Frodsham RB103	Cable works beneath the width of the highway for the length shown shaded in hatched light blue between point SW3-1 and point SW3-2 on sheet 2 of the street works, public rights of way, vehicular usage and access plans
Cheshire West and Chester Council	Public Right of Way - Frodsham RB98	Cable works beneath the width of the highway for the length shown shaded in hatched light blue between point SW4-1 on sheet 2 and point SW4-2 on sheet 3 of the street works, public rights of way, vehicular usage and access plans
Cheshire West and Chester Council	Unnamed track	Cable works beneath the width of the highway for the length shown shaded in hatched light blue between point SW5-1 and point SW5-2 on sheet 3 of the street works, public rights of way, vehicular usage and access plans
Cheshire West and Chester Council	Alder Lane – Public Right of Way Frodsham RB108	Cable works beneath the width of the highway for the length shown shaded in hatched light

		blue with reference SW6 on sheets 3 and 4 of the street works, public rights of way, vehicular usage and access plans
Cheshire West and Chester Council	Alder Lane – Public Right of Way Frodsham RB108	Cable works beneath the width of the highway for the length shown in hatched light blue with reference SW7 on sheets 3 and 4 of the street works, public rights of way, vehicular usage and access plans
Cheshire West and Chester Council	Alder Lane – Public Right of Way Frodsham RB108	Cable works beneath the width of the highway for the length shown shaded in hatched light blue between point SW8-1 and point SW8-2 on sheets 3 and 4 of the street works, public rights of way, vehicular usage and access plans
Cheshire West and Chester Council	Public Right of Way Frodsham FP81	Cable works beneath the width of the highway for the length shown in hatched light blue with reference SW9 on sheets 4 and 5 of the street works, public rights of way, vehicular usage and access plans

SCHEDULE 4

Articles 10 and 11

PERMANENT ALTERATION OF STREETS

(1) *Area*	*(2)* *Street*	*(3)* *Description of alteration*
Cheshire West and Chester Council	Alder Lane – Public Right of Way Frodsham RB108	Works for the provision of a permanent means of access shown shaded orange with reference AS-1 on sheets 3 and 4 of the street works, public rights of way, vehicular usage and access plans
Cheshire West and Chester Council	Alder Lane – Public Right of Way Frodsham RB108 and Public Right of Way Frodsham FP91	Works for the provision of a permanent means of access shown shaded orange with reference AS-2 on sheets 3 and 4 of the street works, public rights of way, vehicular usage and access plans
Cheshire West and Chester Council	Public Right of Way Frodsham FP81	Works for the provision of a permanent means of access shown shaded orange with reference AS-3 on sheets 4 and 5 of the street works, public rights of way, vehicular usage and access plans

SCHEDULE 5

Article 12

TEMPORARY PROHIBITION OR RESTRICTION OF USE OF STREETS AND PUBLIC RIGHTS OF WAY, AND AUTHORISING VEHICULAR USE ON PUBLIC RIGHTS OF WAY

PART 1

STREETS AND PUBLIC RIGHTS OF WAY SUBJECT TO TEMPORARY CLOSURE

(1) *Area*	*(2)* *Public right of way*	*(3)* *Measure*
Cheshire West and Chester Council	Public Right of Way - Frodsham RB103 north from Lordship Lane (RB40) Shown as purple line from a start point shown as reference C1 on sheet 2 of the street works, public rights of way, vehicular usage and access plans for a distance of 250 m in a generally northerly direction to the point shown as reference D1 on sheet 2 of the street works, public rights of way, vehicular usage and access plans.	Closed to all traffic save for traffic under the direction of the undertaker
Cheshire West and Chester Council	Public Right of Way - Frodsham RB98 Shown as purple line from a start point shown as reference D1 on sheet 2 of the street works, public rights of way, vehicular usage and access plans for a distance of 1120 m in a generally north-easterly direction to the point shown as reference D2 on sheets 2 and 3 of the street works, public rights of way, vehicular usage and access plans	Closed to all traffic save for traffic under the direction of the undertaker
Cheshire West and Chester Council	Public Right of Way - Frodsham RB98 Shown as purple line from a start point shown as reference E1 on sheets 3 and 4 of the street works, public rights of way, vehicular usage and access plans for a distance of 890 m in a generally westerly direction to the point shown as	Closed to all traffic save for traffic under the direction of the undertaker

	reference E2 on sheets 2 and 3 of the street works, public rights of way, vehicular usage and access plans	
Cheshire West and Chester Council	Public Right of Way – Frodsham FP93 Shown as purple line from a start point shown as reference K on sheet 5 of the street works, public rights of way, vehicular usage and access plans for a distance of 350 m in a generally south-easterly direction to the point shown as reference L on sheet 5 of the street works, public rights of way, vehicular usage and access plans	Closed to all traffic save for traffic under the direction of the undertaker
Cheshire West and Chester Council	Public Right of Way – Frodsham RB99 Shown as purple line from a start point shown as reference I on sheets 3 and 4 of the street works, public rights of way, vehicular usage and access plans for a distance of 410 m in a generally south-easterly direction to the point shown as reference O on sheets 3 and 4 of the street works, public rights of way, vehicular usage and access plans	Closed to all traffic save for traffic under the direction of the undertaker

PART 2

TEMPORARY ALTERATION, PROHIBITION, DIVERSION OR RESTRICTION OF THE USE OF STREETS AND PUBLIC RIGHTS OF WAY

(1) *Area*	*(2)* *Street or public right of way subject to temporary prohibition or restriction of use*	*(3)* *Extent of temporary alteration, prohibition, diversion or restriction of use of street or public right of way*
Cheshire West and Chester Council	Public Right of Way – Ellesmere Port and Neston RB40 / Frodsham RB106 and National Cycle Network Route 5	Public right of way to be temporarily altered, restricted, diverted or use prohibited (but with cyclists able to use the right of way at all times) shown shaded hatched pink between the point marked A on sheet 1 and the point marked B on sheet 2 of the street works, public rights of way, vehicular usage and access plans

Cheshire West and Chester Council	Public Right of Way – Frodsham RB102 (Alder Lane)	Public right of way to be temporarily altered, restricted, diverted or use prohibited shown shaded hatched pink between the points marked F and G on sheets 3 and 4 of the street works, public rights of way, vehicular usage and access plans
Cheshire West and Chester Council	Public Right of Way – Frodsham RB108 (Brook Furlong) and Frodsham RB99 (Brook Furlong)	Public right of way to be temporarily altered, restricted, diverted or use prohibited shown shaded hatched pink between the points marked H and I on sheets 3 and 4 of the street works, public rights of way, vehicular usage and access plans
Cheshire West and Chester Council	Public Right of Way – Frodsham FP81	Public right of way to be temporarily altered, restricted, diverted or use prohibited at the proposed managed crossing point shown in bright green and marked as point J on sheets 4 and 5 of the street works, public rights of way, vehicular usage and access plans

PART 3

TEMPORARY USE OF MOTOR VEHICLES ON PUBLIC RIGHTS OF WAY

(1) *Area*	*(2)* *Public right of way*	*(3)* *Measures*
Cheshire West and Chester Council	Public Right of Way – Frodsham RB99 (Brook Furlong)	Motor vehicles authorised by the undertaker may pass along, or cross, the length of the public right of way shown shaded dark green between the points marked TMV-1 and TMV-2 on sheets 3 and 4 of the street works, public rights of way, vehicular usage and access plans
Cheshire West and Chester Council	Public Right of Way – Frodsham FP81 (Weaver Lane)	Motor vehicles authorised by the undertaker may pass along, or cross, the length of the public right of way shown shaded dark green between the points marked TMV-3 and TMV-4 on sheets 4 and 5 of the street works, public rights of way, vehicular usage and access plans

Cheshire West and Chester Council	Public Right of Way – Frodsham FP93	Motor vehicles authorised by the undertaker may pass along, or cross, the length of the public right of way shown shaded dark green between the points marked TMV-5 and TMV-6 on sheet 5 of the street works, public rights of way, vehicular usage and access plans
Cheshire West and Chester Council	Public Right of Way – Frodsham RB98	Motor vehicles authorised by the undertaker may pass along, or cross, the length of public right of way shown shaded dark green between the points marked TMV-2 and TMV-7 on sheets 3 and 4 of the street works, public rights of way, vehicular usage and access plans

SCHEDULE 6

Article 14

ACCESS TO WORKS

(1) *Area*	*(2)* *Street*	*(3)* *Description of means of access*
Cheshire West and Chester Council	Alder Lane – Public Right of Way Frodsham RB108	Provision of a permanent means of access to the authorised development between points marked A3-1 and A3-2 on sheets 3 and 4 of the street works, public rights of way, vehicular usage and access plans
Cheshire West and Chester Council	Alder Lane – Public Right of Way Frodsham RB108	Provision of a permanent means of access to the authorised development between points A5-1 and A5-2 on sheets 3 and 4 of the street works, public rights of way, vehicular usage and access plans
Cheshire West and Chester Council	Alder Lane – Public Right of Way Frodsham RB108	Provision of a permanent means of access to the authorised development between points A6-1 and A6-2 on sheets 3 and 4 of the street works, public rights of way, vehicular usage and access plans
Cheshire West and Chester Council	Alder Lane – Public Right of Way Frodsham RB108	Provision of a permanent means of access to the authorised development between points marked A7-1 and A7-2 on sheets 3 and 4 of the street works, public rights of way, vehicular usage and access plans
Cheshire West and Chester Council	Alder Lane – Public Right of Way Frodsham RB108 and Public Right of Way Frodsham FP91	Provision of a permanent means of access to the authorised development between points A8-1 and A8-2 on sheets 3 and 4 of the street works, public rights of way, vehicular usage and access plans
Cheshire West and Chester Council	Alder Lane – Public Right of Way Frodsham RB108 and Public Right of Way Frodsham FP91	Provision of a permanent means of access to the authorised development between points marked between points A9-1 and A9-2 on sheets 3 and 4 of the street works, public rights of way, vehicular usage and access

		plans
Cheshire West and Chester Council	Public Right of Way Frodsham FP81	Provision of a permanent means of access to the authorised development between points A10-1 and A10-2 on sheet 4 of the street works, public rights of way, vehicular usage and access plans
Cheshire West and Chester Council	Public Right of Way Frodsham FP81	Provision of a permanent means of access to the authorised development between points marked between points A11-1 and A11-2 on sheet 4 of the street works, public rights of way, vehicular usage and access plans

SCHEDULE 7

Article 23

LAND IN WHICH ONLY NEW RIGHTS ETC. MAY BE ACQUIRED

Interpretation

1. In this Schedule—

"private wire connection cable rights" means rights over land to, for the purposes of the authorised development and in connection with the authorised development to:

(a) Install, use, support, protect, inspect, alter, remove, replace, retain, renew, improve and maintain underground electrical cable, earthing cable, optical fibre cable, data cable, telecommunications cable and other apparatus, works associated with such cable including bats, ducts, protection and safety measures and equipment, and other apparatus and structures;

(b) 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; and

(c) Restrict and remove the erection of buildings or structures, restrict the altering of ground levels, restrict and remove the planting oof 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.

"SPEN connection cable rights" means rights over land to, for the purposes of the authorised development and in connection with the authorised development:

(a) install, use, support, protect, inspect, alter, remove, replace, retain, renew, improve and maintain above ground electrical cables, earthing cable, optical fibre cable, data cable, telecommunications cable and other apparatus, pylons and works associated with such cables and pylons including bays, ducts, protection and safety measures and equipment, and other apparatus and structures;

(b) 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; and

(c) 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.

"SPEN connection (above ground) cable rights" means rights over land to, for the purposes of the authorised development and in connection with the authorised development:

(a) install, use, support, protect, inspect, alter, remove, replace, retain, renew, improve and maintain above ground electrical cables, together with telephone signalling and fibre optic cables, conducting lines and cables and ancillary equipment associated works and other conducting media, provided that the above ground electrical cables and associated infrastructure must be installed and retained at all times at a [minimum height of 7 (seven) metres from ground level]2 (or any greater minimum distance as may be specified by statute from time to time) when the same are at maximum temperature and/or sag at any point in the span;

(b) remain, pass and repass on foot, with or without vehicles, plant and machinery in connection with the exercise of the rights referred to in (a); and

(c) (with the prior consent of INOVYN Chlorvinyls Limited acting reasonably) fell, lop or cut all trees, coppice wood and other vegetation which may obstruct, interrupt or interfere with the exercise of the rights or the working of or damage to the above ground electrical cables and associated infrastructure referred to in (a).

"SPEN substation connection rights" means rights over land to, for the purposes of the authorised development and in connection with the authorised development:

(a) install, use, support, protect, inspect, alter, remove, replace, retain, renew, improve and maintain electrical cable, earthing cable, optical fibre cable, data cable, telecommunications cable and other services, works associated with such cable including bays, ducts, protection and safety measures and equipment, and other apparatus and structures and to connect such cable and services to the SPEN Frodsham substation;

(b) install, use, support, protect, inspect, alter, remove, replace retain, renew, improve and maintain public sewers and drains and drainage apparatus and equipment;

(c) 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 Work No. 4A;

(d) 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

(e) install, use, support, protect, inspect, alter, remove, replace, retain, renew, improve and maintain soft landscaping and biodiversity measures.

"access, use and improvement rights" means rights over land to, for the purposes of the authorised development and in connection with the authorised development—

(a) alter, improve, form, maintain, retain, use (with or without vehicles, plant and machinery) access roads, access tracks, and means of access to and within the authorised development including visibility splays and to remove and traverse impediments to such access;

(b) pass and repass on foot, with or without vehicles, plant and machinery (including rights to lay and use any temporary surface).

"access, use, improvement and creation rights" means rights over land to, for the purposes of the authorised development and in connection with the authorised development—

(a) alter, improve, form, maintain, retain, use (with or without vehicles, plant and machinery) access roads, access tracks, and means of access to and within the authorised development including visibility splays and to remove and traverse impediments to such access;

(b) remove, reinstate, modify and create means of access to the authorised development including visibility splays and to remove impediments to such access; and

(c) pass and repass on foot, with or without vehicles, plant and machinery (including rights to lay and use any temporary surface); and

"access use rights" means rights over land to, for the purposes of the authorised development and in connection with the authorised development, pass and repass on foot, with or without vehicles, plant and machinery (including rights to lay and use any surface) and to temporarily remove impediments to such passage.

(1) *Plot reference number shown on the Land and Crown Land Plans*	*(2)* *Purposes for which rights over land may be required and restrictive covenants imposed*
1-1, 1-2, 1-3	access use rights.
1-4, 1-5, 2-1, 2-2	access, use and improvement rights.
2-3	access, use and improvement rights and private wire connection cable rights.
2-4, 2-5, 2-6, 2-7	access, use and improvement rights.
2-8, 2-9	access, use and improvement rights and private wire connection cable rights.
2-10, 2-12, 2-14, 2-15, 2-17	access, use and improvement rights.

2-11, 2-13, 2-16, 2-20, 2-23, 2-24, 2-25, 2-26, 3-3	access, use and improvement rights and private wire connection cable rights.
3-2, 3-7, 3-15, 3-18, 3-19, 3-20, 3-22, 3-35, 3-38, 3-41, 3-44, 4-8	access, use, improvement and creation rights.
3-10	access, use, improvement and creation rights and private wire connection cable rights.
4-1	access, use and improvement rights and private wire connection cable rights.
4-3, 4-6, 4-9, 4-11, 4-12, 4-14	access, use and improvement rights.
5-2, 5-6	access, use, improvement and creation rights.
5-3, 5-4	SPEN connection (above ground) cable rights.
5-8b	access use rights.
5-15, 5-16	SPEN connection cable rights.
5-17, 5-18	SPEN connection cable rights and SPEN substation connection rights.
5-19, 5-20, 5-21, 5-22, 5-23	access use rights.

SCHEDULE 8

Article 23

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(**a**) has effect subject to the modifications set out in sub-paragraph (2).

(2) In section 44(1) (compensation for injurious affection), as it applies to compensation for injurious affection under section 7 (measure of compensation in case of severance) of the 1965 Act as substituted by paragraph 5—

(a) for 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) of the 1961 Act omit the words after "if-" and substitute—

"(5A) If—

(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 8 to the Frodsham Solar Farm Order [20**];

(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(8) of Schedule 8 to the Frodsham Solar Farm Order [20**]) 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

(**a**) 1973 c. 26.

(b) with such other modifications as may be necessary.

5.—(1) The modifications referred to in paragraph 4(a) are as follows.

(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);

(c) paragraph 2(3) of Schedule 2 (absent and untraced owners); and

(d) paragraphs 2(3) and 7(2) of Schedule 4 (common land),

are modified to secure that, as against persons with interests in the land which are expressed to be overridden by the deed, the right which is to be compulsorily acquired or the restrictive covenant which is to be imposed is vested absolutely in the acquiring authority.

(5) Section 11(**a**) (powers of entry) of the 1965 Act is modified to secure that, as from the date on which the acquiring authority has served notice to treat in respect of any right or 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(**b**) (powers of entry: further notices of entry), 11B(**c**) (counter-notice requiring possession to be taken on specified date), 12(**d**) (penalty for unauthorised entry) and 13(**e**) (refusal to give possession to acquiring authority) 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

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(a) Section 11 was amended by section 34(1) of, and Schedule 4 to, the Acquisition of Land Act 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 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 Courts 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

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 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 Frodsham Solar Farm Order [20**] in respect of the land to which the notice to treat relates.

(2) But see article 26(3) (acquisition of subsoil or airspace only) of the Frodsham Solar Farm Order [20**] 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 three 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 six 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 cause by the giving and withdrawal of the notice.

(3) Any dispute as to the compensation is to be determined by the Upper Tribunal.".

SCHEDULE 9

Article 39

HEDGEROWS TO BE REMOVED

(1) *Area*	*(2)* *Number of hedgerow and extent of removal*
Cheshire West and Chester Council	Removal of part of the hedgerow shown approximately within the area identified by orange line on the hedgerows plans (Sheet 3 and Sheet 4 of 5), reference H1
Cheshire West and Chester Council	Removal of part of the hedgerow shown approximately within the area identified by orange line on the hedgerows plans (Sheet 3 and Sheet 4 of 5), reference H2
Cheshire West and Chester Council	Removal of part of the hedgerow shown approximately within the area identified by orange line on the hedgerows plans (Sheet 3 and Sheet 4 of 5), reference H3
Cheshire West and Chester Council	Removal of part of the hedgerow shown approximately within the area identified by orange line on the hedgerows plans (Sheet 3 and Sheet 4 of 5), reference H4
Cheshire West and Chester Council	Removal of part of the hedgerow shown approximately within the area identified by orange line on the hedgerows plans (Sheet 3 and Sheet 4 of 5), reference H5
Cheshire West and Chester Council	Removal of part of the hedgerow shown approximately within the area identified by orange line on the hedgerows plans (Sheet 3 and Sheet 4 of 5), reference H6
Cheshire West and Chester Council	Removal of part of the hedgerow shown approximately within the area identified by orange line on the hedgerows plans (Sheet 3, Sheet 4 and Sheet 5 of 5), reference H7
Cheshire West and Chester Council	Removal of part of the hedgerow shown approximately within the area identified by orange line on the hedgerows plans (Sheet 3, Sheet 4 and Sheet 5 of 5), reference H8
Cheshire West and Chester Council	Removal of part of the hedgerow shown approximately within the area identified by orange line on the hedgerows plans (Sheet 3, Sheet 4 and Sheet 5 of 5), reference H9
Cheshire West and Chester Council	Removal of part of the hedgerow shown approximately within the area identified by orange line on the hedgerows plans (Sheet 3, Sheet 4 and Sheet 5 of 5), reference H10
Cheshire West and Chester Council	Removal of part of the hedgerow shown approximately within the area identified by orange line on the hedgerows plans (Sheet 3, Sheet 4 and Sheet 5 of 5), reference H11
Cheshire West and Chester Council	Removal of part of the hedgerow shown approximately within the area identified by orange line on the hedgerows plans (Sheet 3, Sheet 4 and Sheet 5 of 5), reference H12

Cheshire West and Chester Council	Removal of part of the hedgerow shown approximately within the area identified by orange line on the hedgerows plans (Sheet 3, Sheet 4 and Sheet 5 of 5), reference H13
Cheshire West and Chester Council	Removal of part of the hedgerow shown approximately within the area identified by orange line on the hedgerows plans (Sheet 3, Sheet 4 and Sheet 5 of 5), reference H14
Cheshire West and Chester Council	Removal of part of the hedgerow shown approximately within the area identified by orange line on the hedgerows plans (Sheet 4 and Sheet 5 of 5), reference H15
Cheshire West and Chester Council	Removal of part of the hedgerow shown approximately within the area identified by orange line on the hedgerows plans (Sheet 4 and Sheet 5 of 5), reference H16
Cheshire West and Chester Council	Removal of part of the hedgerow shown approximately within the area identified by orange line on the hedgerows plans (Sheet 3, Sheet 4 and Sheet 5 of 5), reference H17
Cheshire West and Chester Council	Removal of part of the hedgerow shown approximately within the area identified by orange line on the hedgerows plans (Sheet 3, Sheet 4 and Sheet 5 of 5), reference H18
Cheshire West and Chester Council	Removal of part of the hedgerow shown approximately within the area identified by orange line on the hedgerows plans (Sheet 4 and Sheet 5 of 5), reference H19
Cheshire West and Chester Council	Removal of part of the hedgerow shown approximately within the area identified by orange line on the hedgerows plans (Sheet 4 and Sheet 5 of 5), reference H20
Cheshire West and Chester Council	Removal of part of the hedgerow shown approximately within the area identified by orange line on the hedgerows plans (Sheet 4 and Sheet 5 of 5), reference H21
Cheshire West and Chester Council	Removal of part of the hedgerow shown approximately within the area identified by orange line on the hedgerows plans (Sheet 4 and Sheet 5 of 5), reference H22
Cheshire West and Chester Council	Removal of part of the hedgerow shown approximately within the area identified by orange line on the hedgerows plans (Sheet 4 and Sheet 5 of 5), reference H23
Cheshire West and Chester Council	Removal of part of the hedgerow shown approximately within the area identified by orange line on the hedgerows plans (Sheet 4 and Sheet 5 of 5), reference H24
Cheshire West and Chester Council	Removal of part of the hedgerow shown approximately within the area identified by orange line on the hedgerows plans (Sheet 4 and Sheet 5), reference H25
Cheshire West and Chester Council	Removal of part of the hedgerow shown approximately within the area identified by orange line on the hedgerows plans (Sheet 4 and Sheet 5 of 5), reference H26

Cheshire West and Chester Council	Removal of part of the hedgerow shown approximately within the area identified by orange line on the hedgerows plans (Sheet 4 and Sheet 5 of 5), reference H27
Cheshire West and Chester Council	Removal of part of the hedgerow shown approximately within the area identified by orange line on the hedgerows plans (Sheet 5 of 5), reference H28
Cheshire West and Chester Council	Removal of part of the hedgerow shown approximately within the area identified by orange line on the hedgerows plans (Sheet 5 of 5), reference H29
Cheshire West and Chester Council	Removal of part of the hedgerow shown approximately within the area identified by orange line on the hedgerows plans (Sheet 5 of 5), reference H30
Cheshire West and Chester Council	Removal of part of the hedgerow shown approximately within the area identified by orange line on the hedgerows plans (Sheet 5 of 5), reference H31
Cheshire West and Chester Council	Removal of part of the hedgerow shown approximately within the area identified by orange line on the hedgerows plans (Sheet 5 of 5), reference H32
Cheshire West and Chester Council	Removal of part of the hedgerow shown approximately within the area identified by orange line on the hedgerows plans (Sheet 5 of 5), reference H33
Cheshire West and Chester Council	Removal of part of the hedgerow shown approximately within the area identified by orange line on the hedgerows plans (Sheet 5 of 5), reference H34
Cheshire West and Chester Council	Removal of part of the hedgerow shown approximately within the area identified by orange line on the hedgerows plans (Sheet 5 of 5), reference H35
Cheshire West and Chester Council	Removal of part of the hedgerow shown approximately within the area identified by orange line on the hedgerows plans (Sheet 5 of 5), reference H36
Cheshire West and Chester Council	Removal of part of the hedgerow shown approximately within the area identified by orange line on the hedgerows plans (Sheet 4 and Sheet 5 of 5), reference H37
Cheshire West and Chester Council	Removal of part of the hedgerow shown approximately within the area identified by orange line on the hedgerows plans (Sheet 4 and Sheet 5 of 5), reference H38
Cheshire West and Chester Council	Removal of part of the hedgerow shown approximately within the area identified by orange line on the hedgerows plans (Sheet 4 and Sheet 5 of 5), reference H39

SCHEDULE 10

Article 40

DOCUMENTS AND PLANS TO BE CERTIFIED

(1) *Document name*	*(2)* *Document reference*	*(3)* *Revision number*	*(4)* *Date*
book of reference	4.3	P06	March 2026
design parameters statement	7.1	P05	March 2026
design principles	8.34	P02	January 2026
environmental statement	Volume 1 Volume 2 Volume 3 Volume 4 Non-Technical Summary Technical Note on Replacements Note on updated Construction Resourcing Schedule	- - - - - P01 P01	As listed in the application document tracker December 2025 December 2025
flood risk assessment and drainage strategy	6.2	P02	July 2025
application document tracker	1.5	P010	April 2026
hedgerows plans	2.7	P02	July 2025
land and crown land plans	2.2	P04	March 2026
outline battery safety management plan	7.8	P05	April 2026
outline construction environmental management plan	7.5	P07	April2026
outline construction traffic management plan	7.5	P06	April 2026
outline decommissioning environmental management plan	7.7	P06	March 2026
outline drainage strategy	8.35	P02	January 2026
outline flood warning and evacuation plan	8.8	P03	March 2026
outline non-breeding bird mitigation strategy	8.32	P06	April 2026
outline skills, supply chain and employment plan	7.11	P02	April 2026
outline landscape and ecology management plan	7.13	P07	April 2026

outline operational environmental management plan	7.6	P07	April 2026
outline public rights of way management plan	7.9	P05	March 2026
outline soil management plan	7.10	P03	March 2026
outline written scheme of archaeological investigation	7.18	P01	July 2025
street works, public rights of way, vehicular usage and access plans	2.4	P02	March 2026
works plans	2.3	P03	March 2026

SCHEDULE 11

Article 42

ARBITRATION RULES

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 seven 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 two days of delivery of the last submission, request a hearing giving specific reasons why it considers a hearing is required.

(4) Within seven 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 ten 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 seven 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 four 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) Hearings in this arbitration are to take place in private.

(2) Materials, documents, awards, expert reports and any matters relating to the arbitration are confidential and must not be disclosed to any third party without prior written consent of the other party, save for any application to the courts or where disclosure is required under any legislative or regulatory requirement.

SCHEDULE 12

Article 46

PROCEDURE FOR THE DISCHARGE OF REQUIREMENTS

Interpretation

1. In this Schedule—

"discharge" means any consent, agreement or approval required by—

(a) a requirement;

(b) a document referred to by a requirement; or

(c) a document that has been approved pursuant to a requirement;

"requirement consultee" means any body or authority named in a requirement as a body to be consulted by the relevant planning authority in discharging that requirement; and

"start date" means the date of the notification given by the Secretary of State under paragraph 4(2)(c).

Applications made under requirement

2.—(1) Where an application has been made to the relevant planning authority for any discharge, the relevant planning authority must give notice to the undertaker of its decision on the application within a period of eight 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.

(2) 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 (1) the relevant planning authority is to be taken to have granted all parts of the application (without any condition or qualification) at the end of that period.

(3) Any application made to the relevant planning authority pursuant to sub-paragraph (1) must 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 to those identified in the environmental statement and if it will then it must be accompanied by information setting out what those effects are.

(4) 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 (1) and is accompanied by a report pursuant to sub-paragraph (3) which states that the subject matter of such application is likely to give rise to any materially new or materially different environmental effects to those identified in the environmental statement then the application is to be taken to have been refused by the relevant planning authority at the end of that period.

(5) Where an application has been made to the relevant planning authority for any discharge, the undertaker will also submit a copy of that application to any requirement consultee.

Further information and consultation

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 discharge or grants it subject to conditions;

(b) the relevant planning authority is deemed to have refused an application pursuant to paragraph 2(4);

(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 42 days of the date of the notice of the decision or the determination, or (where no determination has been made) the expiry of the time period set out in paragraph 2(1), giving rise to the appeal referred to in sub-paragraph (1);

(b) the undertaker must submit the appeal documentation to the Secretary of State and must on the same day provide copies of the appeal documentation to the relevant planning authority and any requirement consultee;

(c) the Secretary of State must appoint a person to determine the appeal as soon as reasonably practicable and must forthwith notify the appeal parties of the identity of the appointed person and the address to which all correspondence for the appointed person's attention should be sent;

(d) the relevant planning authority and any requirement consultee must submit written representations to the appointed person in respect of the appeal within 10 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 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 paragraph (e); and

(g) the appointment of the person pursuant to paragraph (c) may be undertaken by a person appointed by the Secretary of State for this purpose instead of by the Secretary of State.

(3) In the event that the appointed person considers that further information is necessary to enable the appointed person to consider the appeal they must, within five working days of the appointed person's appointment, notify the appeal parties in writing specifying the further information required, the appeal party from whom the information is sought, and the date by which the information is to be submitted.

(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 paragraphs (2)(d) to (2)(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.

(12) In considering whether to make any such direction pursuant to sub-paragraph (11) 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 in respect of any discharge, the fee prescribed under regulation 16(1)(b) of the Town and Country Planning (Fees

for Applications, Deemed Applications, Requests and Site Visits) (England) Regulations 2012(**a**) (as may be amended or replaced from time to time) is to apply for the discharge of each requirement (whether dealt with in separate applications or combined with a single application) and must be paid to the relevant planning authority for each application.

(2) Any fee paid under this Schedule must be refunded to the undertaker within four weeks of—

(a) the application being rejected as invalidly made; or

(b) the relevant planning authority failing to determine the application within the relevant period as determined under paragraph 2(1) unless—

(i) within that period the undertaker agrees, in writing, that the fee is to be retained by the relevant planning authority and credited in respect of a future application; or

(ii) a longer period for determining the application has been agreed pursuant to paragraph 2(1) of this Schedule.

(a) S.I. 2012/2920 as amended by Town and Country Planning (Fees for Applications, Deemed Applications, Requests and Site Visits) (England) (Amendment) Regulations 2025/342.

SCHEDULE 13

Article 43

PROTECTIVE PROVISIONS FOR THE PROTECTION OF ELECTRICITY, GAS, WATER AND SEWERAGE UNDERTAKERS

1. For the protection of the utility undertakers referred to in this Schedule, the following provisions have effect, unless otherwise agreed in writing between the undertaker and the utility undertakers concerned, or unless any other provisions in Schedules 14 to 26 of this Order apply to the utility undertaker concerned.

2. In 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; and

(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.

"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—

(a) any licence holder within the meaning of Part 1 of the Electricity Act 1989;

(b) a gas transporter within the meaning of Part 1 of the Gas Act 1986(**c**);

(c) water undertaker within the meaning of the Water Industry Act 1991; and

(d) a sewerage undertaker within the meaning of Part 1 of the Water Industry Act 1991,

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.

(a) 1989 c. 29.
(b) 1991 c. 56.
(c) 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).

3. 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 prohibition or restriction of use of streets and public rights of way, and authorising vehicular use on 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 and crown 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 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 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 42 (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 42 (arbitration), and after the grant to the utility undertaker of any such facilities and rights as are referred to in sub-paragraph (2) or (3), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by the undertaker to be removed under the provisions of this 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 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 42 (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 Schedule, that value being calculated after removal.

(3) If in accordance with the provisions of this Schedule—

(a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions; or

(b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which 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 42 (arbitration) to be necessary, then, if such placing involves cost in the construction of works under this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this 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 direct 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 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.

SCHEDULE 14

Article 43

PROTECTIVE PROVISIONS FOR THE PROTECTION OF OPERATORS OF ELECTRONIC COMMUNICATIONS CODE NETWORKS

1.—(1) For the protection of any operator, the following provisions have effect, unless otherwise agreed in writing between the undertaker and the operator, or unless any other provisions of Schedules 13 to 26 of this Order apply to the operator.

(2) In 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.

2. 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.

3.—(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 direct 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.

(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.

(**a**) 2003 c. 21.

(4) Any difference arising between the undertaker and the operator under this Schedule must be referred to and settled by arbitration under article 42 (arbitration).

4. 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.

5. Nothing in 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.

SCHEDULE 15

Article 43

PROTECTIVE PROVISIONS FOR THE PROTECTION OF CADENT GAS LIMITED

Application

1. For the protection of Cadent the following provisions will, unless otherwise agreed in writing between the undertaker and Cadent, have effect.

Interpretation

2. In this Schedule—

"alternative apparatus" means appropriate alternative apparatus to the reasonable satisfaction of Cadent to enable Cadent to fulfil its statutory functions in a manner no less efficient than previously;

"apparatus" means any gas mains, pipelines, pipes, pressure governors, ventilators, cathodic protection (including transformed rectifiers and any associated groundbeds or cables), cables, marker posts, black valves or other apparatus belonging to, or maintained by, Cadent for the purposes of Cadent's undertaking together with any replacement apparatus and such other apparatus constructed pursuant to this Order that becomes operational apparatus of Cadent for the purposes of Cadent's undertaking and includes any structure in which apparatus is or will be lodged or which gives or will give access to apparatus;

"authorised works" has the same meaning as is given to the term "authorised development" in article 2 (interpretation) and includes any associated development authorised by the Order and for the purposes of this Schedule includes the use and maintenance of the authorised works and construction of any works authorised by this Schedule;

"Cadent" means Cadent Gas Limited and includes its successors in title or any successor as a gas transporter within the meaning of Part 1 of the Gas Act 1986(**a**);

"Cadent's undertaking" means the rights, duties and obligations of Cadent Gas Limited as a public gas transporter within the meaning of Section 7 of the Gas Act 1986 (as amended by the Gas Act 1995);

"commence" and "commencement" includes any below ground surveys, monitoring, work operations, remedial work in respect of any contamination or other adverse ground condition, the receipt and erection of construction plant and equipment, and non-intrusive investigations for the purposes of assessing ground conditions, but does not include erection of fencing to site boundaries or marking out of site boundaries, installation of environmental mitigation measures, and "commencement", "commenced" and cognate expressions are to be construed accordingly;

"deed of consent" means a deed of consent, crossing agreement, deed of variation or new deed of grant agreed between the parties acting reasonably in order to vary or replace existing easements, agreements, enactments and other such interests so as to secure land rights and interests as are necessary to carry out, maintain, operate and use the apparatus in a manner consistent with the terms of this Schedule;

"facilities and rights" for construction and for maintenance include any appropriate working areas required to reasonably and safely undertake that construction or maintenance, and any necessary rights of access;

"functions" includes powers and duties;

(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).

"ground mitigation scheme" means a scheme approved by Cadent (such approval not to be unreasonably withheld or delayed) setting out the necessary measures (if any) for a ground subsidence event;

"ground monitoring scheme" means a scheme for monitoring ground subsidence which sets out the apparatus which is to be subject to such monitoring, the extent of land to be monitored, the manner in which ground levels are to be monitored, the timescales of any monitoring activities and the extent of ground subsidence which, if exceeded, must require the undertaker to submit for Cadent's approval a ground mitigation scheme;

"ground subsidence event" means any ground subsidence identified by the monitoring activities set out in the ground monitoring scheme that has exceeded the level described in the ground monitoring scheme as requiring a ground mitigation scheme;

"in" in a context referring to apparatus or alternative apparatus in land includes a reference to apparatus or alternative apparatus under, over, across, along or upon such land;

"maintain" and "maintenance" have effect as if Cadent's existing apparatus was authorised development and as if the term maintain includes protect and use;

"parent company" means a parent company of the undertaker acceptable to Cadent;

"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;

"protective works" means the underpinning, strengthening and any other works the purpose of which is to prevent damage to or interference with Cadent's apparatus that may be caused by the carrying out, maintenance or use of the authorised works;

"rights" includes rights and restrictive covenants and, in relation to decommissioned apparatus, the surrender of rights, release of liabilities and transfer of decommissioned apparatus; and

"specified works" means any of the authorised works or activities (including maintenance) undertaken in association with the authorised works which—

(a) will or may be situated over, or within 15 metres measured in any direction of any apparatus the removal of which has not been required by the undertaker under sub-paragraph 7(2) or otherwise;

(b) may in any way adversely affect any apparatus the removal of which has not been required by the undertaker under sub-paragraph 7(2) or otherwise; or

(c) include any of the activities that are referred to in CD/SP/SSW/22 Cadent's policies for safe working in proximity to gas apparatus Specification for safe working in the vicinity of Cadent Assets.

On Street apparatus

3.—(1) This Schedule does not apply to apparatus in respect of which the relations between the undertaker and Cadent are regulated by the provisions of Part 3 of the 1991 Act, except for—

(a) paragraphs 4, 9, and 12; and

(b) where sub-paragraph (2) applies, paragraphs 7 and 8.

(2) This sub-paragraph applies where any apparatus is diverted from an alignment within the existing adopted public highway but not wholly replaced within the existing public highway, notwithstanding that any diversion may be carried out under the provisions of Part 3 of the 1991 Act.

(3) Notwithstanding article 9 (street works) or any other powers in the Order generally, s85 of the 1991 Act in relation to cost sharing and the regulations made thereunder will not apply in relation to any diversion of apparatus of Cadent under the 1991 Act.

(4) The protective provisions in this Schedule apply and take precedence over article 32 (statutory undertakers) and 34 (recovery of costs of new connections) of the Order which do not apply to Cadent.

Apparatus of Cadent in temporarily closed streets

4.—(1) Where any street is closed under article 12 (temporary prohibition or restriction of use of streets and public rights of way, and authorising vehicular use on public rights of way), or Part 1 (streets and public rights of way subject to temporary closure) of Schedule 5 (temporary prohibition or restriction of use of streets and public rights of way, and authorising vehicular use on public rights of way), if Cadent has any apparatus in the street or accessed via that street Cadent is entitled to the same rights in respect of such apparatus as it enjoyed immediately before the closure and the undertaker must grant to Cadent, or procure the granting to Cadent of, legal easements reasonably satisfactory to Cadent in respect of such apparatus and access to it prior to the closure of any such street or highway, but nothing in this paragraph affects any right of the undertaker or of Cadent to require the removal of that apparatus under paragraph 7.

(2) Subject to sub-paragraph (3) below, and notwithstanding the temporary alteration, diversion or restriction of use of any street under the powers of article 12 (temporary prohibition or restriction of use of streets and public rights of way, and authorising vehicular use on public rights of way), or Part 1 (streets and public rights of way subject to temporary closure) of Schedule 5 (temporary prohibition or restriction of use of streets and public rights of way, and authorising vehicular use on public rights of way), Cadent will be at liberty at all times and at Cadent's own risk to take all reasonable access across any such street and to execute and do all such works and things in, upon or under any such street as it would have been entitled to do immediately before such temporary alteration, diversion or restriction in respect of any apparatus which at the time of the closure or diversion was in that street.

(3) In taking access pursuant to sub-paragraph (2) above, Cadent must—

(a) comply with any plans produced by the undertaker pursuant to its obligations under the Construction (Design and Management) Regulations 2015; and

(b) comply with all relevant health and safety legislation, guidance, protocols and procedures.

Protective works to buildings

5.—(1) The undertaker, in the case of the powers conferred by article 18 (protective work to buildings) so as not to obstruct or render less convenient the access to any apparatus without the written consent of Cadent (such consent not to be unreasonably withheld or delayed) and if by reason of the exercise of those powers any damage to any apparatus (other than apparatus the repair of which is not reasonably necessary in the view of its intended removal or abandonment) or property of Cadent or any interruption in the supply of gas by Cadent, as the case may be, is caused, the undertaker must bear and pay on demand the cost reasonably incurred by Cadent in making good such damage or restoring the supply; and, subject to sub-paragraph (2), must—

(a) pay compensation to Cadent for any reasonable loss sustained by it; and

(b) indemnify Cadent against all claims, demands, proceedings, reasonable costs, damages and expenses which may be made or taken against or recovered from or incurred by Cadent, by reason of any such damage or interruption provided that at all times Cadent will be under an obligation to take all reasonable steps to mitigate its loss

(2) Nothing in this paragraph imposes any liability on the undertaker with respect to any damage or interruption to the extent that such damage or interruption is attributable to the act, neglect or default of Cadent or its contractors or workmen; and Cadent will give to the undertaker reasonable notice of any claim or demand as aforesaid and no settlement, admission of liability or compromise thereof shall be made by Cadent, save in respect of any payment required under a statutory compensation scheme, without first consulting the undertaker and giving the undertaker an opportunity to make representations as to the claim or demand.

Acquisition of land

6.—(1) Regardless of any provision in this Order or anything shown on the land and crown land plans or contained in the book of reference to the Order, the undertaker may not appropriate or

acquire from Cadent any interest in land or appropriate, acquire, extinguish, interfere with or override any easement or other interest in land of Cadent otherwise than by agreement.

(2) As a condition of agreement between the parties in sub-paragraph (1), prior to the carrying out or maintenance of any phase of the authorised works (or in such other timeframe as may be agreed between Cadent and the undertaker) that are subject to the requirements of this Schedule that will cause any conflict with or breach the terms of any easement or other legal or land interest of Cadent or affect the provisions of any enactment or agreement regulating the relations between Cadent and the undertaker in respect of any apparatus laid or erected in land belonging to or secured by the undertaker, the undertaker must as Cadent reasonably requires enter into such deeds of consent and variations upon such terms and conditions as may be agreed between Cadent and the undertaker acting reasonably and which must be no less favourable on the whole to Cadent unless otherwise agreed by Cadent, and it will be the responsibility of the undertaker to procure and/or secure the consent to 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 or maintenance thereof.

(3) The undertaker and Cadent agree that where there is any inconsistency or duplication between the provisions set out in this Schedule relating to the relocation or removal of apparatus, including but not limited to the payment of costs and expenses relating to such relocation and/or removal of apparatus and the provisions of any existing easement, rights, agreements and licences granted, used, enjoyed or exercised by Cadent and other enactments relied upon by Cadent as of right or other use in relation to the apparatus, then the provisions in this Schedule will prevail.

(4) Any agreement or consent granted by Cadent under paragraph 9 or any other paragraph of this Schedule, will be taken to constitute agreement under sub-paragraph (1).

(5) As a condition of an agreement under sub-paragraph (1) that involves de-commissioned apparatus being left in situ Cadent must use reasonable endeavours to surrender (and the undertaker must accept any surrender) of its existing easement or other interest in land in respect of such decommissioned apparatus to the reversionary landowner. If Cadent is not released by the reversionary landowner from all liabilities in respect of such de-commissioned apparatus the undertaker shall take on such liabilities in respect of such de-commissioned apparatus from the date of such surrender.

(6) Where an undertaker acquires land which is subject to any Cadent right or interest (including, without limitation, easements and agreements relating to rights or other interests) and the provisions of paragraph 7 do not apply, the undertaker must, unless Cadent agrees otherwise—

(a) retain any notice of Cadent's easement, right or other interest on the title to the relevant land when registering the undertaker's title to such acquired land; and

(b) (where no such notice of Cadent's easement, right or other interest exists in relation to such acquired land or any such notice is registered only on the Land Charges Register) include (with its application to register title to the undertaker's interest in such acquired land at the Land Registry) a notice of Cadent's easement, right or other interest in relation to such acquired land.

Removal of apparatus

7.—(1) If, in the exercise of the powers conferred by this Order, including pursuant to any agreement reached in accordance with paragraph 6, the undertaker acquires any interest in any land in which any apparatus is placed, that apparatus must not be decommissioned or removed and any right of Cadent to maintain that apparatus in that land must not be extinguished or interfered with until alternative apparatus has been constructed, is in operation, and the facilities and rights referred to in sub-paragraph (2) have been provided, to the reasonable satisfaction of Cadent and in accordance with sub-paragraphs (2) to (5) inclusive.

(2) If, for the purpose of executing any works in, on, under or over any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, it must give to Cadent advance written notice of that requirement, together with a plan and section of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers

conferred by this Order Cadent reasonably needs to move or remove any of its apparatus) the undertaker must afford to Cadent to its reasonable satisfaction (taking into account paragraph 8(1)) the necessary facilities and rights—

(a) for the construction of alternative apparatus (including appropriate working areas required to reasonably and safely undertake necessary works by Cadent in respect of the apparatus);

(b) subsequently for the maintenance of that apparatus (including appropriate working areas required to reasonably and safely undertake necessary works by Cadent in respect of the apparatus); and

(c) to allow access to that apparatus (including appropriate working areas required to reasonably and safely undertake necessary works by Cadent in respect of the apparatus).

(3) If the undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraph (2), in the land in which the alternative apparatus or part of such apparatus is to be constructed, Cadent must, on receipt of a written notice to that effect from the undertaker, take such steps as are reasonable in the circumstances in an endeavour to assist the undertaker in obtaining the necessary facilities and rights in the land in which the alternative apparatus is to be constructed save that this obligation shall not extend to the requirement for Cadent to use its compulsory purchase powers to this end unless it (in its absolute discretion) elects to so do.

(4) Any alternative apparatus to be constructed in land of or land secured by the undertaker under this Schedule must be constructed in such manner and in such line or position as may be agreed between Cadent and the undertaker or settled by arbitration pursuant to article 42 (arbitration).

(5) Cadent must, after the alternative apparatus to be provided or constructed has been agreed or settled, and subject to the prior grant to Cadent of such facilities and rights as are referred to in sub-paragraph (2) or (3) have been afforded to Cadent to its satisfaction, then proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to decommission or remove any apparatus required by the undertaker to be decommissioned or removed under the provisions of this Schedule.

Facilities and rights for alternative apparatus

8.—(1) Where, in accordance with the provisions of this Schedule, the undertaker affords to or secures for Cadent facilities and rights in land for the access to, construction and maintenance of alternative apparatus in substitution for apparatus to be decommissioned or removed, those facilities and rights must be granted upon such terms and conditions as may be agreed between the undertaker and Cadent and must be no less favourable on the whole to Cadent (in Cadent's reasonable opinion) than the facilities and rights enjoyed by it in respect of the apparatus to be decommissioned or removed unless otherwise agreed by Cadent.

(2) If the facilities and rights to be afforded by the undertaker and agreed with Cadent under sub-paragraph (1) in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are less favourable on the whole to Cadent (in Cadent's reasonable opinion) than the facilities and rights enjoyed by it in respect of the apparatus to be decommissioned or removed (in Cadent's reasonable opinion), then the terms and conditions to which those facilities and rights are subject in the matter will be referred to arbitration in accordance with paragraph 15 of this Schedule and the arbitrator must make such provision for the payment of compensation by the undertaker to Cadent as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

Retained apparatus: protection of Cadent

9.—(1) Not less than 56 days before the commencement of any specified works the undertaker must submit to Cadent a plan and, if reasonably required by Cadent, a ground monitoring scheme in respect of those works.

(2) The plan to be submitted to Cadent under sub-paragraph (1) must include a method statement and describe—

(a) the exact position of the works;

(b) the level at which these are proposed to be constructed or renewed;

(c) the manner of their construction or renewal including details of excavation, positioning of plant etc.;

(d) the position of all apparatus;

(e) by way of detailed drawings, every alteration proposed to be made to or close to any such apparatus; and

(f) any intended maintenance regimes.

(3) The undertaker must not commence any specified works until Cadent has given written approval of the plan so submitted (and the ground monitoring scheme if required).

(4) Any approval of Cadent given under sub-paragraph (3)—

(a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraph (5); and

(b) must not be unreasonably withheld or delayed.

(5) For the purposes of sub-paragraph (4)(b) it will be deemed reasonable for any approval to be refused if Cadent considers that the specified works would:

(a) cause interference with or risk of damage to its apparatus; or

(b) prevent access to its apparatus at any time unless the undertaker makes provision to notify Cadent that such access is to be prevented for any time, but that Cadent will be able to access apparatus during any such period in relation to any emergency relating to, or failure of, its apparatus.

(6) In relation to any work which sub-paragraphs (1) and/or (2) apply, Cadent may require such modifications to be made to the plan as may be reasonably necessary for the purpose of securing its apparatus against interference or risk of damage or for the purpose of providing or securing proper and convenient means of access to any apparatus.

(7) Works to which this paragraph applies must only be executed in accordance with—

(a) the plan submitted under sub-paragraph (1) (and ground monitoring scheme if required), as approved or as amended from time to time by agreement between the undertaker and Cadent; and

(b) all conditions imposed under sub-paragraph (4)(a), and Cadent will be entitled to watch and inspect the execution of those works where reasonably practicable to do so and in accordance with any relevant health and safety legislation.

(8) Where Cadent reasonably requires any protective works to be carried out by itself or by the undertaker (whether of a temporary or permanent nature) such protective works, inclusive of any measures or schemes required and approved as part of the plan approved pursuant to this paragraph, must be carried out to Cadent's reasonable satisfaction prior to the commencement of any specified works (or any relevant part thereof) for which protective works are required prior to commencement.

(9) If Cadent, in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraphs 1 to 3 and 6 to 8 apply as if the removal of the apparatus had been required by the undertaker under paragraph 7(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 the specified works, a new plan, instead of the plan previously submitted, and having done so the provisions of this paragraph will apply to and in respect of the new plan.

(11) As soon as reasonably practicable after any ground subsidence event attributable to the authorised works (including such an event attributable to its maintenance)—

(a) the undertaker must implement an appropriate ground mitigation scheme; and

(b) Cadent retains the right to carry out any further necessary protective works (in Cadent's reasonable opinion) for the safeguarding of its apparatus and can recover any such costs associated with the further protective works in line with paragraph 10.

(12) The undertaker is not required to comply with sub-paragraph (1) where it needs to carry out emergency works but in that case it must give to Cadent notice as soon as is reasonably practicable and a plan of those works and must comply with:

(a) the conditions imposed under sub-paragraph (4)(a) insofar as is reasonably practicable in the circumstances; and

(b) sub-paragraph (14) at all times.

(13) In this paragraph, "emergency works" means works whose execution at the time when they are executed is required in order to put an end to, or to prevent the occurrence of, circumstances then existing or imminent (or which the person responsible for the works believes on reasonable grounds to be existing or imminent) which are likely to cause danger to persons or property.

(14) At all times when carrying out any works authorised under the Order the undertaker must comply with Cadent's policies for safe working in proximity to gas apparatus "Specification for safe working in the vicinity of Cadent Assets CAD/SP/SSW/22" and HSE's "HS(~G)47 Avoiding Danger from underground services."

Expenses

10. —(1) Subject to the following provisions of this paragraph, the undertaker must pay to Cadent on demand, all documented charges, costs and expenses reasonably anticipated or reasonably and properly incurred by Cadent in, or in connection with, the inspection, removal, relaying or replacing, alteration or protection of any apparatus or the construction of any new or alternative apparatus which may be required in consequence of the execution of any authorised works as are referred to in this Schedule including without limitation—

(a) any costs reasonably and properly incurred by or compensation properly paid by Cadent in connection with the acquisition of rights or the exercise of statutory powers for such apparatus including without limitation all costs (including professional fees) incurred by Cadent as a consequence of Cadent;

(i) using its own compulsory purchase powers to acquire any necessary rights under paragraph 7(3) if it elects to do so; and/or

(ii) exercising any compulsory purchase powers under this Order transferred to or benefitting Cadent;

(b) in connection with the cost of the carrying out of any diversion work or the provision of any alternative apparatus;

(c) the cutting off of any apparatus from any other apparatus or the making safe of redundant apparatus;

(d) the approval of plans;

(e) the carrying out of protective works, plus a capitalised sum to cover the cost of maintaining and renewing permanent protective works;

(f) the survey of any land, apparatus or works, the inspection and monitoring of works or the installation or removal of any temporary works reasonably necessary in consequence of the execution of any such works referred to in this Schedule;

(g) any watching brief pursuant to sub-paragraph 9(7).

Indemnity

11. —(1) Subject to sub-paragraph (2) and (3), if by reason or in consequence of the construction of any such works authorised by this Schedule (including without limitation relocation, diversion, decommissioning, construction and maintenance of apparatus or alternative apparatus) or in consequence of the construction, use, maintenance or failure of any of the authorised works by or on behalf of the undertaker or in consequence of any act or default of the undertaker (or any

person employed or authorised by the undertaker) in the course of carrying out such works, including without limitation works carried out by the undertaker under this Schedule or any subsidence resulting from any of these works, any damage is caused to any apparatus or alternative apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of the authorised development) or property of Cadent, or there is an interruption in any service provided, or in the supply of any goods by Cadent, or Cadent becomes liable to pay any amount to any third party and provided that all times Cadent will be under an obligation to take reasonable steps to mitigate its loss, the undertaker will—

(a) bear and pay on demand the cost reasonably incurred by Cadent in making good such damage or restoring the supply; and

(b) indemnify Cadent for any other expenses, loss, demands, proceedings, damages, claims, penalty, compensation or cost incurred by, paid by or recovered from Cadent, by reason or in consequence of any such damage or interruption or Cadent becoming liable to any third party as aforesaid other than arising from any default of Cadent.

(2) The fact that any act or thing may have been done by Cadent on behalf of the undertaker or in accordance with a plan approved by Cadent or in accordance with any requirement of Cadent or under its supervision including under any watching brief will not (unless sub-paragraph (3) applies) excuse the undertaker from liability under the provisions of this sub-paragraph (1) unless Cadent fails to carry out and execute the works properly with due care and attention and in a skilful and workman like manner or in a manner that does not accord with the approved plan.

(3) Nothing in sub-paragraph (1) imposes any liability on the undertaker in respect of—

(a) any damage or interruption to the extent that it is attributable to the neglect or default of Cadent, its officers, servants, contractors or agents; and

(b) any part of the authorised works carried out by Cadent in the exercise of any functions conferred by this Order pursuant to a grant to transfer under article 36 (consent to transfer benefit of the Order) of the Order.

(4) Cadent must:

(a) 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) Cadent 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) Cadent 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 Cadent's reasonable ability and control to do so and which expressly excludes and obligation to mitigate liability arising from third parties which is outside of Cadent's control and if reasonably requested to do so by the undertaker Cadent must provide and explanation of how the claim has been minimised, where relevant.

Enactments and agreements

12. Except where this Schedule provides otherwise, nothing in this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and Cadent in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

Co-operation

13. —(1) Where in consequence of the proposed construction of any phase of the authorised works, the undertaker or Cadent requires the removal of apparatus under paragraph 7(2) or Cadent makes requirements for the protection or alteration of apparatus under paragraph 9, the undertaker must use its reasonable endeavours to co-ordinate the execution of the works in the interests of

safety and the efficient and economic execution of the authorised works and taking into account the need to ensure the safe and efficient operation of Cadent's undertaking and Cadent must use its best endeavours to co-operate with the undertaker for that purpose.

(2) For the avoidance of doubt whenever Cadent's consent, agreement or approval is required in relation to plans, documents or other information submitted by the undertaker or the taking of action by the undertaker, it must not be unreasonably withheld or delayed.

Access

14. If in consequence of any agreement reached in accordance with paragraph 6(1) or the powers conferred by this Order the access to any apparatus is materially obstructed, the undertaker must provide such alternative rights and means of access to such apparatus as will enable Cadent to maintain or use the apparatus no less effectively than was possible before such obstruction (in Cadent's reasonable opinion). For the avoidance of doubt, where the undertaker cannot grant such alternative rights and means of access to such apparatus by virtue of not being in possession of the requisite land rights, the undertaker shall use reasonable endeavours to assist in the securing of the requisite rights and means of access.

Arbitration

15. Save for differences or disputes arising under sub-paragraphs 7(2) and 7(4) any difference or dispute arising between the undertaker and Cadent under this Schedule must, unless otherwise agreed in writing between the undertaker and Cadent, be determined by arbitration in accordance with article 42 (arbitration).

Notices

16. Notwithstanding article 45 (service of notices) any plans submitted to Cadent by the undertaker pursuant to sub-paragraph 9(1) must be sent via email to Cadent Gas Limited Plant Protection at plantprotection@cadentgas.com copied by e-mail to [redacted] and sent to the General Counsel Department at Cadent's registered office or such other address as Cadent may from time to time appoint instead for that purpose and notify to the undertaker in writing.

SCHEDULE 16

Article 43

PROTECTIVE PROVISIONS FOR THE PROTECTION OF NATIONAL GAS TRANSMISSION PLC AS GAS UNDERTAKER

Application

1.—(1) For the protection of National Gas as referred to in this Schedule the following provisions have effect, unless otherwise agreed in writing between the undertaker and National Gas.

(2) Subject to sub-paragraph (3) or to the extent otherwise agreed in writing between the undertaker and National Gas, where the benefit of this Order is transferred or granted to another person under article 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 Gas and the transferee or grantee (as the case may be); and

(b) written notice of the transfer or grant must be given to National Gas on or before the date of that transfer or grant.

(3) Sub-paragraph (2) does not apply where the benefit of the Order is transferred or granted to National Gas (but without prejudice to paragraph 11(3)(b) of this Schedule).

Interpretation

2.—(1) In this Schedule—

"1991 Act" means the New Roads and Street Works Act 1991(**a**);

"acceptable credit provider" means a bank or financial institution with a credit rating that is not lower than "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 development by or on behalf of the undertaker which constitute specified works and arranged with an insurer whose security/ credit rating meets the same requirements as an "acceptable credit provider", such insurance shall include (without limitation)—

(a) a waiver of subrogation and an indemnity to principal clause in favour of National Gas;

(b) pollution liability for third party property damage and third party bodily damage arising from any pollution/contamination event with a (sub)limit of indemnity of not less than £10,000,000.00 (ten million pounds) per occurrence or series of occurrences arising out of one event or £20,000,000.00 (twenty million pounds) in aggregate;

"acceptable security" means either—

(a) a parent company guarantee from a parent company in favour of National Gas to cover the undertaker's liability to National Gas to a total liability cap of £50,000,000.00 (fifty million pounds) (in a form reasonably satisfactory to National Gas and where required by National Gas, accompanied with a legal opinion confirming the due capacity and

(a) 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).

authorisation of the parent company to enter into and be bound by the terms of such guarantee); or

(b) a bank bond or letter of credit from an acceptable credit provider in favour of National Gas to cover the undertaker's liability to National Gas for an amount of not less than £10,000,000.00 (ten million pounds) per asset per event up to a total liability cap of £50,000,000.00 (fifty million pounds) (in a form reasonably satisfactory to National Gas);

"alternative apparatus" means appropriate alternative apparatus to the satisfaction of National Gas to enable National Gas to fulfil its statutory functions in a manner no less efficient than previously;

"apparatus" means any mains, pipes or other apparatus belonging to or maintained by National Gas for the purposes of gas supply together with any replacement apparatus and such other apparatus constructed pursuant to the Order that becomes operational apparatus of National Gas for the purposes of transmission, distribution and/or supply and includes any structure in which apparatus is or will be lodged or which gives or will give access to apparatus;

"authorised works" has the same meaning as is given to the term "authorised development" in article 2 (interpretation) of this Order and includes any associated development authorised by the Order and for the purposes of this Schedule includes the use and maintenance of the authorised development and construction of any works authorised by this Schedule;

"commence" and "commencement" has the same meaning as in article 2 (interpretation) of this Order save that for the purposes 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 Schedule;

"functions" includes powers and duties;

"ground mitigation scheme" means a scheme approved by National Gas (such approval not to be unreasonably withheld or delayed) setting out the necessary measures (if any) for a ground subsidence event;

"ground monitoring scheme" means a scheme for monitoring ground subsidence which sets out the apparatus which is to be subject to such monitoring, the extent of land to be monitored, the manner in which ground levels are to be monitored, the timescales of any monitoring activities and the extent of ground subsidence which , if exceeded, shall require the undertaker to submit for National Gas's approval a ground mitigation scheme;

"ground subsidence event" means any ground subsidence identified by the monitoring activities set out in the ground monitoring scheme that has exceeded the level described in the ground monitoring scheme as requiring a ground mitigation scheme;

"in" in a context referring to apparatus or alternative apparatus in land includes a reference to apparatus or alternative apparatus under, over, across, along or upon such land;

"maintain" and "maintenance" shall include the ability and right to do any of the following in relation to any apparatus or alternative apparatus of National Gas, including to construct, use, repair , alter , inspect, renew or remove the apparatus;

"National Gas" means National Gas Transmission plc (Company Number 02006000) whose registered office is at National Grid House Warwick Technology Park, Gallows Hill, Warwick, CV34 6DA or any successor as a gas transporter within the meaning of Part 1 of the Gas Act 1986;

"Network Code" means the network code prepared by National Gas pursuant to Standard Special Condition A11(3) of its Gas Transporter's Licence, which incorporates the Uniform Network Code, as defined in Standard Special Condition A11(6) of National Gas's Gas Transporters Licence, as both documents are amended from time to time;

"Network Code Claims" means any claim made against National Gas by any person or loss suffered by National Gas under the Network Code arising out of or in connection with any failure by National Gas to make gas available for off take at, or a failure to accept gas tendered for delivery from, any entry point to or exit point from the gas national transmission system as a result of the authorised works or any costs and/or expenses incurred by National Gas as a result of or in connection with, it taking action (including purchase or buy back of capacity) for the purpose of managing constraint or potential constraint on the gas national transmission system which may arise as a result of the authorised works;

"plan" or "plans" include all designs, drawings, specifications, method statements, soil reports, programmes, calculations, risk assessments and other documents that are reasonably necessary properly and sufficiently to describe and assess the works to be executed;

"parent company" means a parent company of the undertaker acceptable to and which shall have been approved by National Gas acting reasonably;

"specified works" means any of the authorised works or activities undertaken in association with the authorised works which—

(a) will or may be situated over, or within 15 metres measured in any direction of any apparatus the removal of which has not been required by the undertaker under paragraph 7(2) or otherwise; and/or

(b) may in any way adversely affect any apparatus the removal of which has not been required by the undertaker under paragraph 7(2) or otherwise; and/or

(c) includes any of the activities that are referred to in paragraph 8 of T/SP/SSW/22 (National Gas's policies for safe working in proximity to gas apparatus, "Specification for safe working in the vicinity of National Gas, High pressure Gas pipelines and associated installation requirements for third parties"; and

"undertaker" means the undertaker as defined in article 2 (interpretation) of this Order.

On Street Apparatus

3. Except for paragraphs 4 (apparatus of National Gas in temporarily restricted streets), 9 (retained apparatus: protection of gas undertaker), 10 (expenses) and 11 (indemnity) of this Schedule which will apply in respect of the exercise of all or any powers under the Order affecting the rights and apparatus of National Gas, the other provisions of this Schedule do not apply to apparatus in respect of which the relations between the undertaker and National Gas are regulated by the provisions of Part 3 of the 1991 Act.

Apparatus of National Gas in temporarily restricted streets

4. Notwithstanding the temporary stopping up or diversion of any highway under the powers of article 12 (temporary prohibition or restriction of use of streets and public rights of way, and authorising vehicular use on public rights of way), National Gas is at liberty at all times to take all necessary access across any such stopped up highway and to execute and do all such works and things in, upon or under any such highway as may be reasonably necessary or desirable to enable it to maintain any apparatus which at the time of the stopping up or diversion was in that highway.

Protective works to buildings

5. The undertaker, in the case of the powers conferred by article 18 (protective work to buildings), must exercise those powers so as not to obstruct or render less convenient the access to any apparatus without the written consent of National Gas.

Acquisition of land

6.—(1) Regardless of any provision in this Order or anything shown on the land and crown land plans or contained in the book of reference to the Order, the undertaker may not (a) appropriate or acquire or take temporary possession of any land or apparatus or (b) appropriate, acquire,

extinguish, interfere with or override any easement, other interest or right and/or apparatus of National Gas otherwise than by agreement.

(2) As a condition of an agreement between the parties in sub-paragraph (1), prior to the carrying out of any part of the authorised works (or in such other timeframe as may be agreed between National Gas and the undertaker) that is subject to the requirements of this Schedule that will cause any conflict with or breach the terms of any easement or other legal or land interest of National Gas or affect the provisions of any enactment or agreement regulating the relations between National Gas and the undertaker in respect of any apparatus laid or erected in land belonging to or secured by the undertaker, the undertaker must as National Gas reasonably requires enter into such deeds of consent upon such terms and conditions as may be agreed between National Gas and the undertaker acting reasonably and which must be no less favourable on the whole to National Gas unless otherwise agreed by National Gas, and it will be the responsibility of the undertaker to procure and/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 Gas and the undertaker, the undertaker and National Gas agree that where there is any inconsistency or duplication between the provisions set out in this 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 Gas and/or other enactments relied upon by National Gas 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 Gas under paragraph 9 or any other paragraph of this Schedule, shall not be taken to constitute agreement under sub-paragraph (1).

Removal of apparatus

7.—(1) If, in the exercise of the powers conferred by this Order, the undertaker acquires any interest in or possesses temporarily any land in which any apparatus is placed, that apparatus must not be removed under this Schedule and any right of National Gas to maintain that apparatus in that land must not be extinguished until alternative apparatus has been constructed, and is in operation to the reasonable satisfaction of National Gas in accordance with sub-paragraph (2) to (5).

(2) If, for the purpose of executing any works in , on, under or over any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, it must give to National Gas advance written notice of that requirement, together with a plan of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case(or if in consequence of the exercise of any of the powers conferred by this Order National Gas reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph (3), secure any necessary consents for the alternative apparatus and afford to National Gas to its satisfaction (taking into account paragraph 8(1) below) the necessary facilities and rights—

(a) for the construction of alternative apparatus in other land of or land secured by the undertaker; and

(b) subsequently for the maintenance of that apparatus.

(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of or land secured by the undertaker, or the undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraph (2) in the land in which the alternative apparatus or part of such apparatus is to be constructed, National Gas may, in its sole discretion, on receipt of a written notice to that effect from the undertaker, take such steps as are reasonable in the circumstances to assist the undertaker to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed save that this obligation shall not extend to the requirement for National Gas 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 Schedule must be constructed in such manner and in such line or situation as may be agreed between National Gas and the undertaker.

(5) National Gas must, after the alternative apparatus to be provided or constructed has been agreed, and subject to a written diversion agreement having been entered into between the parties and the grant to National Gas of any such facilities and rights as are referred to in sub-paragraph (2) or (3), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by the undertaker to be removed under the provisions of this Schedule.

Facilities and rights for alternative apparatus

8.—(1) Where, in accordance with the provisions of this Schedule, the undertaker affords to or secures for National Gas facilities and rights in land for the construction, use, maintenance and protection of alternative apparatus in substitution for apparatus to be removed, those facilities and rights must be granted upon such terms and conditions as may be agreed between the undertaker and National Gas and must be no less favourable on the whole to National Gas than the facilities and rights enjoyed by it in respect of the apparatus to be removed unless otherwise agreed by National Gas.

(2) If the facilities and rights to be afforded by the undertaker in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are less favourable on the whole to National Gas than the facilities and rights enjoyed by it in respect of the apparatus to be removed and the terms and conditions to which those facilities and rights are subject the matter may be referred to arbitration in accordance with paragraph 15 (arbitration) of this Schedule and the arbitrator must make such provision for the payment of compensation by the undertaker to National Gas as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

Retained apparatus: protection of gas undertaker

9.—(1) Not less than 56 days before the commencement of any specified works the undertaker must submit to National Gas a plan and, if reasonably required by National Gas, a ground monitoring scheme in respect of those works.

(2) In relation to specified works the plan to be submitted to National Gas under sub-paragraph (1) must include a method statement and describe—

(a) the exact position of the works;

(b) the level at which these are proposed to be constructed or renewed;

(c) the manner of their construction or renewal including details of excavation, positioning of plant etc;

(d) the position of all apparatus;

(e) by way of detailed drawings, every alteration proposed to be made to or close to any such apparatus; and

(f) any intended maintenance regimes.

(3) The undertaker must not commence any works to which sub-paragraph (1) and (2) apply until National Gas has given written approval of the plan so submitted.

(4) Any approval of National Gas required under sub-paragraph (3)—

(a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraph (5) or (6); and,

(b) must not be unreasonably withheld.

(5) In relation to any work to which sub-paragraphs (1) and/or (2) apply, National Gas may require such modifications to be made to the plans as may be reasonably necessary for the purpose of securing its apparatus against interference or risk of damage for the provision of protective

works or for the purpose of providing or securing proper and convenient means of access to any apparatus.

(6) Works executed under sub-paragraph (1) or (2) must be executed in accordance with the plan, submitted under sub-paragraph (1) or as relevant sub-paragraph (5), as approved or as amended from time to time by agreement between the undertaker and National Gas and in accordance with such reasonable requirements as may be made in accordance with sub-paragraphs
(5) or (7) by National Gas for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and National Gas will be entitled to watch and inspect the execution of those works.

(7) Where National Gas requires any protective works to be carried out by itself or by the undertaker (whether of a temporary or permanent nature) such protective works, inclusive of any measures or schemes required and approved as part of the plan approved pursuant to this paragraph, must be carried out to National Gas' satisfaction prior to the commencement of any specified works for which protective works are required and National Gas must give notice of its requirement for such works within 42 days of the date of submission of a plan pursuant to this paragraph (except in an emergency).

(8) If National Gas in accordance with sub-paragraph (5) or (7) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraphs 1 to 3 and 6 to 8 apply as if the removal of the apparatus had been required by the undertaker under paragraph 7(2).

(9) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 56 days before commencing the execution of the specified works, a new plan, instead of the plan previously submitted, and having done so the provisions of this paragraph will apply to and in respect of the new plan.

(10) The undertaker will not be required to comply with sub-paragraph (1) where it needs to carry out emergency works as defined in the 1991 Act but in that case it must give to National Gas notice as soon as is reasonably practicable and a plan of those works and must comply with sub-paragraphs (6), (7) and (8) insofar as is reasonably practicable in the circumstances and comply with sub-paragraph (11) at all times.

(11) At all times when carrying out any works authorised under the Order the undertaker must comply with National Gas's policies for safe working in proximity to gas apparatus "Specification for safe working in the vicinity of National Gas, High pressure Gas pipelines and associated installation requirements for third parties T/SP/SSW22" and HSE's "HS(~G)47 Avoiding Danger from underground services".

(12) As soon as reasonably practicable after any ground subsidence event attributable to the authorised development the undertaker shall implement an appropriate ground mitigation scheme save that National Gas retains the right to carry out any further necessary protective works for the safeguarding of its apparatus and can recover any such costs in line with paragraph 10.

Expenses

10. —(1) Save where otherwise agreed in writing between National Gas and the undertaker and subject to the following provisions of this paragraph, the undertaker must pay to National Gas within 30 days of receipt of an itemised invoice or claim from National Gas all charges, costs and expenses reasonably anticipated within the following three months or reasonably and properly incurred by National Gas in, or in connection with the inspection, removal , relaying or replacing , alteration or protection of any apparatus or the construction of any new or alternative apparatus which may be required in consequence of the execution of any authorised works including without limitation—

(a) any costs reasonably incurred by or compensation properly paid by National Gas in connection with the acquisition of rights or the exercise of statutory powers for such apparatus including without limitation all costs incurred by National Gas as a consequence of National Gas;

(i) using its own compulsory purchase powers to acquire any necessary rights under paragraph 7(3); or

(ii) exercising any compulsory purchase powers in the Order transferred to or benefitting National Gas;

(b) in connection with the cost of the carrying out of any diversion work or the provision of any alternative apparatus, where no written diversion agreement is otherwise in place;

(c) the cutting off of any apparatus from any other apparatus or the making safe of redundant apparatus;

(d) the approval of plans;

(e) the carrying out of protective works, plus a capitalised sum to cover the cost of maintaining and renewing permanent protective works; and

(f) the survey of any land, apparatus or works, the inspection and monitoring of works or the installation or removal of any temporary works reasonably necessary in consequence of the execution of any such works referred to in this Schedule.

(2) There will be deducted from any sum payable under sub-paragraph (1) the value of any apparatus removed under the provisions of this Schedule and which is not re-used as part of the alternative apparatus, that value being calculated after removal.

(3) If in accordance with the provisions of this Schedule—

(a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions; or

(b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which 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 15 (arbitration) to be necessary, then, if such placing involves cost in the construction of works under this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to National Gas 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 Gas in respect of works by virtue of sub-paragraph (1) will, if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on National Gas any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, be reduced by the amount which represents that benefit.

Indemnity

11. —(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any works authorised by this Schedule or in consequence of the construction, use maintenance or failure of any of the authorised works by or on behalf of the undertaker or in consequence of any act or default of the undertaker (or any person employed or authorised by

him) in the course of carrying out such works, including without limitation works carried out by the undertaker under this Schedule or any subsidence resulting from any of these works, any damage is caused to any apparatus or alternative apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of the authorised works) or property of National Gas, or there is any interruption in any service provided, or in the supply of any goods or energy, by National Gas, or National Gas becomes liable to pay any amount to any third party, the undertaker will—

(a) bear and pay on demand accompanied by an invoice or claim from National Gas the cost reasonably and properly incurred by National Gas in making good such damage or restoring the supply; and

(b) indemnify National Gas for any other expenses, loss, demands, proceedings, damages, claims, penalty or costs incurred by or recovered from National Gas, by reason or in consequence of any such damage or interruption or National Gas becoming liable to any third party and including Network Code Claims other than arising from any default of National Gas.

(2) The fact that any act or thing may have been done by National Gas on behalf of the undertaker or in accordance with a plan approved by National Gas or in accordance with any requirement of National Gas or under its supervision will not (unless sub-paragraph (3) applies), excuse the undertaker from liability under the provisions of this sub-paragraph (1) unless National Gas fails to carry out and execute the works properly with due care and attention and in a skilful and workman like manner or in a manner that does not accord with the approved plan.

(3) Nothing in sub-paragraph (1) 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 Gas, its officers, servants, contractors or agents;

(b) any authorised works and/or any other works authorised by this Schedule carried out by National Gas as an assignee, transferee or lessee of the undertaker with the benefit of the Order pursuant to section 156 of the Planning Act 2008 or article 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-section (b) will be subject to the full terms of this Schedule including this paragraph 11; 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 Gas must give the undertaker reasonable notice of any such third party claim or demand and no settlement, admission of liability or compromise must, unless payment is required in connection with a statutory compensation scheme, be made without first consulting the undertaker and considering their representations.

(5) National Gas must, in respect of any matter covered by the indemnity given by the undertaker in this paragraph, at all times act reasonably and in the same manner as it would as if settling third party claims on its own behalf from its own funds.

(6) National Gas must use its reasonable endeavours to mitigate and to minimise any costs, expenses, loss, demands, and penalties to which the indemnity under this paragraph applies where it is within National Gas's reasonable ability and control to do so and which expressly excludes any obligation to mitigate liability arising from third parties which is outside of National Gas's control and if reasonably requested to do so by the undertaker National Gas must provide an explanation of how the claim has been minimised, where relevant.

(7) Not to commence construction (and not to permit the commencement of such construction) of the authorised works on any land owned by National Gas or in respect of which National Gas has an easement or wayleave for its apparatus or any other interest or to carry out any works within 15 metres of National Gas's apparatus until the following conditions are satisfied—

(a) unless and until National Gas is satisfied acting reasonably (but subject to all necessary regulatory constraints) that the undertaker has first provided the acceptable security (and provided evidence that it shall maintain such acceptable security for the construction period of the authorised works from the proposed date of commencement of construction of the authorised works) and National Gas has confirmed the same to the undertaker in writing; and

(b) unless and until National Gas is satisfied acting reasonably (but subject to all necessary regulatory constraints) that the undertaker has procured acceptable insurance (and provided evidence to National Gas that it shall maintain such acceptable insurance for the construction period of the authorised works from the proposed date of commencement of construction of the authorised works) and National Gas has confirmed the same in writing to the undertaker.

(8) In the event that the undertaker fails to comply with sub-paragraph (7) of this Schedule, nothing in this Schedule shall prevent National Gas from seeking injunctive relief (or any other equitable remedy) in any court of competent jurisdiction.

Enactments and agreements

12. Save to the extent provided for to the contrary elsewhere in this Schedule or by agreement in writing between National Gas and the undertaker, nothing in this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and National Gas in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

Co-operation

13. —(1) Where in consequence of the proposed construction of any part of the authorised works, the undertaker or National Gas requires the removal of apparatus under paragraph 7(2) or National Gas makes requirements for the protection or alteration of apparatus under paragraph 9, 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 Gas's undertaking and National Gas shall use its best endeavours to co-operate with the undertaker for that purpose.

(2) For the avoidance of doubt whenever National Gas's consent, agreement or approval is required in relation to plans, documents or other information submitted by the undertaker or the taking of action by the undertaker, it must not be unreasonably withheld or delayed.

Access

14. If in consequence of the agreement reached in accordance with paragraph 6(1) or the powers granted under this Order the access to any apparatus is materially obstructed, the undertaker must provide such alternative means of access to such apparatus as will enable National Gas to maintain or use the apparatus no less effectively than was possible before such obstruction.

Arbitration

15. Save for differences or disputes arising under paragraph 7(2), 7(4), 8(1) and 9 any difference or dispute arising between the undertaker and National Gas under this Schedule must, unless otherwise agreed in writing between the undertaker and National Gas, be determined by arbitration in accordance with article 42 (arbitration).

Notices

16. Notwithstanding article 45 (service of notices), any plans submitted to National Gas by the undertaker pursuant to paragraph 9 must be submitted using the LSBUD system

(https://lsbud.co.uk/) or such other address as National Gas may from time to time appoint instead for that purpose and notify to the undertaker in writing.

SCHEDULE 17

Article 43

PROTECTIVE PROVISIONS FOR THE PROTECTION OF FRODSHAM WIND FARM LIMITED

1. For the protection of Frodsham Wind, the following provisions have effect, unless otherwise agreed in writing between the undertaker and Frodsham Wind.

2. In this Schedule—

"apparatus" means any cables, structures or other infrastructure belonging to or maintained by Frodsham Wind;

"Frodsham Wind" means Frodsham Wind Farm Limited (company number 07075301), whose registered office is at c/o Foresight Group LLP, The Shard, 32 London Bridge Street, London, SE1 9SG and any successor in title to the Frodsham Wind Farm site;

"Frodsham Wind Operations" means the assets and operations within the Order limits vested in Frodsham Wind;

"Frodsham Wind Farm site" means any of the Order land in which Frodsham Wind owns the freehold interest;

"in", in a context referring to apparatus in land, includes a reference to apparatus under, over or upon land;

"specified works" means any works forming any part of the authorised development that will or may affect the apparatus or access to them including all works within 15 metres of the apparatus, whether carried out by the undertaker or any third party in connection with the authorised development; and

"works details" means—

(a) plans and sections;

(b) details of the proposed method of working and timing of execution of works;

(c) details of the vehicle access routes for construction and operational traffic; and

(d) any further particulars provided in response to a request under paragraph 5(1).

Streets

3. This Schedule does not apply to apparatus in respect of which the relations between the undertaker and Frodsham Wind are regulated by the provisions of Part 3 (Streets) of the 1991 Act.

4. Regardless of the temporary prohibition or restriction of use of streets under the powers conferred by article 12 (temporary prohibition or restriction of use of streets and public rights of way, and authorising vehicular use on public rights of way), Frodsham Wind 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 including any apparatus which at the time of the prohibition or restriction was in that street.

Consent of specified works under this Schedule

5.—(1) Not less than 28 days before starting the execution of any specified works, the undertaker must submit to Frodsham Wind the works details for the specified works and such further particulars as Frodsham Wind may, within 28 days from the day on which the works details are submitted under this paragraph, reasonably require.

(2) No restricted works are to be commenced until the works details in respect of those works submitted under sub-paragraph (1) have been approved by Frodsham Wind.

(3) Any approval of Frodsham Wind required under sub-paragraph (1) must not be unreasonably withheld or delay but may be given subject to such reasonable requirements Frodsham Wind may require to be made for the protection of the apparatus, or for securing access to it, and Frodsham Wind is entitled to watch and inspect the execution of those works.

(4) The works referred to in sub-paragraph (1) must be carried out in accordance with the works details approved under sub-paragraph (2) and any requirements imposed on the approval under sub-paragraph (3).

(5) Where there has been a reference to an arbitrator in accordance with paragraph 8 and the arbitrator give approval for the works details, the works referred to in sub-paragraph (1) must be carried out in accordance with the approval and conditions contained in the decision of the arbitrator under paragraph 8.

(6) Nothing in this paragraph precludes the undertaker from submitting at any time, but in no case less than 28 days before commencing the execution of any specified 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.

(7) The undertaker is not required to comply with sub-paragraph (1) in a case of emergency but in that case, it must give to Frodsham Wind 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) insofar as is reasonably practicable in the circumstances.

Expenses

6. The undertaker must pay to Frodsham Wind the reasonable expenses incurred by Frodsham Wind in connection with the approval of plans and the inspection of any specified works.

Indemnity

7.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any works referred to in paragraph 5 to this Schedule any damage is caused to Frodsham Wind Operations, or there is any interruption in any service provided, or in the supply of any goods, by Frodsham Wind, the undertaker must—

(a) bear and pay the cost reasonably incurred by Frodsham Wind in making good such damage or restoring the supply; and

(b) make reasonable compensation to Frodsham Wind for any other expenses, loss, damages, penalty or costs incurred by Frodsham Wind, 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—

(a) any damage or interruption to the extent that it is attributable to the act, neglect or default of Frodsham Wind, its officers, employees, servants, contractors or agents; and/or

(b) any indirect or consequential loss of Frodsham Wind or 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.

(3) Frodsham Wind 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) Frodsham Wind 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 7 applies.

(5) If requested to do so by the undertaker, Frodsham Wind 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).

(6) The undertaker shall only be liable under this paragraph 7 for claims reasonably incurred by Frodsham Wind.

Arbitration

8. Any difference or dispute arising between the undertaker and Frodsham Wind under this Schedule must, unless otherwise agreed in writing between the undertaker and Frodsham Wind, be referred to and settled by arbitration in accordance with article 42 (arbitration).

SCHEDULE 18

Article 43

PROTECTIVE PROVISIONS FOR THE PROTECTION OF SP MANWEB AS ELECTRICITY UNDERTAKER

Application

1. The following provisions have effect for the protection of SP Manweb unless otherwise agreed in writing between the undertaker and SP Manweb.

Interpretation

2. In this Schedule—

"alternative apparatus" means appropriate alternative apparatus to enable SP Manweb to fulfil its statutory functions in a manner no less efficient than previously (to the reasonable satisfaction of SP Manweb);

"apparatus" means electric lines or electrical plant as defined in the 1989 Act, belonging to or maintained by SP Manweb together with any replacement apparatus and such other apparatus constructed pursuant to the Order that becomes operational apparatus of SP Manweb 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 development" has the same meaning as is given to the term "authorised development" in article 2 (interpretation) of this Order and includes any associated development authorised by the Order and for the purposes of this Schedule includes the use and maintenance of the authorised development and construction of any works authorised by this Schedule;

"commence" has the same meaning as in article 2 (interpretation) of this Order and commencement must be construed to have the same meaning;

"deed of consent" means a deed of consent, crossing agreement, deed of variation or new deed of grant agreed between the parties acting reasonably in order to vary and/or replace existing easements, agreements, enactments and other such interests so as to secure land rights and interests as are necessary to carry out, maintain, operate and use the apparatus in a manner consistent with the terms of this 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, across, along or upon such land;

"maintain" and "maintenance" includes the ability and right to do any of the following in relation to any apparatus or alternative apparatus of SP Manweb including construct, use, repair, alter, inspect, renew or remove the apparatus;

"plan" or "plans" include all designs, drawings, specifications, method statements, soil reports, programmes, calculations, risk assessments and other documents that are reasonably necessary properly and sufficiently to describe and assess the works to be executed; and

"specified works" means any of the authorised development or activities undertaken in association with the authorised development which—

(a) will or may be situated under, 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 5(2) or otherwise;

(b) is reasonably likely to adversely affect any apparatus the removal of which has not been required by the undertaker under paragraph 5(2) or otherwise; and/or

(c) include any of the works that are referred to in SP Manweb's polices or directions specific to these works either during construction or as built near overhead lines and set out in EN43-8 Electrical Networks Association Technical Standards and HSE's guidance note GS6 "Avoidance of Danger from Overhead Lines" and guidance note HSG47 "Avoiding Danger from Underground Services".

On Street Apparatus

3. Except for paragraphs 7, 8 and 9 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 SP Manweb, the other provisions of this Schedule do not apply to apparatus in respect of which the relations between the undertaker and SP Manweb are regulated by the provisions of Part 3 of the 1991 Act.

Acquisition of land

4.—(1) Regardless of any provision in this Order or anything shown on the land and crown land plans or contained in the book of reference to the Order, the undertaker may not appropriate or acquire or take temporary possession of any land interest of SP Manweb or appropriate, acquire, extinguish, interfere with or override any easement or other interest or right and/or apparatus of SP Manweb otherwise than by agreement including that from SP Manweb's grantors (such agreement not to be unreasonably withheld or delayed).

(2) As a condition of agreement between the parties in sub-paragraph (1), prior to the carrying out of any phase of the authorised development (or in such other timeframe as may be agreed between SP Manweb and the undertaker) that are subject to the requirements of this Schedule that will cause any conflict with or breach the terms of any easement and/or other legal or land interest of SP Manweb and/or affects the provisions of any enactment or agreement regulating the relations between SP Manweb and the undertaker in respect of any apparatus laid or erected in land belonging to or secured by the undertaker, the undertaker must as SP Manweb reasonably requires enter into such deeds of consent upon such terms and conditions as may be agreed between SP Manweb and the undertaker acting reasonably and which must be no less favourable on the whole to SP Manweb unless otherwise agreed by SP Manweb, 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 development.

(3) Where there is any inconsistency or duplication between the provisions set out in 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 SP Manweb and/or other enactments relied upon by SP Manweb as of right or other use in relation to the apparatus, then the provisions in this Schedule must prevail.

(4) No agreement or consent granted by SP Manweb under any other paragraph of this Schedule constitutes agreement under sub-paragraph (1).

Removal of apparatus

5.—(1) If, in the exercise of the agreement reached in accordance with paragraph 4 or in any other authorised manner, the undertaker acquires any interest in any land in which any apparatus is placed, that apparatus must not be removed under this Schedule and any right of SP Manweb 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 SP Manweb in accordance with sub-paragraphs (2) to (5) inclusive.

(2) If, for the purpose of executing any specified 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 SP Manweb at least 56 days' 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 SP Manweb 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 SP Manweb to its satisfaction (taking into account paragraph 6(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 use and 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, SP Manweb must, on receipt of a written notice to that effect from the undertaker, as soon as reasonably possible use its best endeavours to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed.

(4) Any alternative apparatus to be constructed in land of or land secured by the undertaker under this Schedule must be constructed in such manner and in such line or situation as may be agreed between SP Manweb and the undertaker.

(5) SP Manweb must, after the alternative apparatus to be provided or constructed has been agreed, and subject to the prior grant to SP Manweb of any such facilities and rights as are referred to in sub-paragraph (2) or (3), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by the undertaker to be removed under the provisions of this Schedule.

(6) Where there is any inconsistency or duplication between the provisions set out in 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 SP Manweb and/or other enactments relied upon by SP Manweb as of right or other use in relation to the apparatus, then the provisions in this Schedule must prevail.

Facilities and rights for alternative apparatus

6.—(1) Where, in accordance with the provisions of this Schedule, the undertaker affords to or secures for SP Manweb 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 SP Manweb and must be no less favourable on the whole to SP Manweb than the facilities and rights enjoyed by it in respect of the apparatus to be removed unless otherwise agreed by SP Manweb.

(2) If the facilities and rights to be afforded by the undertaker and agreed with SP Manweb under sub-paragraph (1) above in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are less favourable on the whole to SP Manweb 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 in the matter will be referred to arbitration in accordance with paragraph 13 of this Schedule and the arbitrator must make such provision for the payment of compensation by the undertaker to SP Manweb as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case. In respect of the appointment of an arbitrator under this sub-paragraph, article 42 (arbitration) applies.

Retained apparatus: Protection of SP Manweb as Electricity Undertaker

7.—(1) Not less than 56 days before the commencement of any specified works the removal of which has not been required by the undertaker under paragraph 5(2), the undertaker must submit to SP Manweb a plan of the works to be executed and seek from SP Manweb details of the underground extent of their electricity tower foundations.

(2) In relation to specified works which will or may be situated on, over, under or within (i) 15 metres measured in any direction of any apparatus, or (ii) involve embankment works within 15m of any apparatus, the plan to be submitted to SP Manweb under sub-paragraph (1) must include a method statement which, as far as is relevant, is consistent with the outline construction method statement together with the outline code of construction practice or, in both cases, as subsequently updated and approved and provided by the undertaker to SP Manweb in accordance with EN43-8 Electrical Networks Association Technical Standards and HSE's guidance note GS6 "Avoidance of Danger from Overhead Lines" and guidance note HSG47 "Avoiding Danger from Underground Services" and show and describe—

(a) the exact position of the specified works;

(b) the level at which the specified works are proposed to be constructed or renewed;

(c) the manner of their construction or renewal;

(d) the position of all apparatus;

(e) by way of detailed drawings, every alteration proposed to be made to or close to any such apparatus; and

(f) any intended maintenance regimes.

(3) In relation to any specified works which will or may be situated on, over, under or within 10 metres of any part of the foundations of an electricity supports or 15 metres for 132kV apparatus or between any two or more adjacent electricity supports which are within the Order limits or within 10 metres of the Order limits, the plan to be submitted under sub-paragraph (1) must include a method statement which, in addition to the matters set out in sub-paragraph (2), must—

(a) describe details of any cable trench design including route, dimensions, clearance to support foundations;

(b) demonstrate that support foundations will not be affected prior to, during and post construction;

(c) describe load bearing capacities of trench supporting structures;

(d) describe details of cable installation methodology including access arrangements, jointing bays and backfill methodology;

(e) provide a written management plan for high voltage hazard during construction and ongoing maintenance of the cable route;

(f) provide written details of the operations and maintenance regime for the cable, including frequency and method of access;

(g) provide an assessment of earth rise potential if reasonably required by SP Manweb's engineers; and

(h) provide evidence that trench collapse resistance and supporting structures bearing capacity are to be designed to 26 tonnes to take the weight of overhead line construction traffic.

(4) The undertaker must not commence any works to which sub-paragraph (2) or (3) applies until SP Manweb has given written approval of the plan so submitted provided that SP Manweb must not unreasonably delay notification of its approval or disapproval.

(5) Any approval of SP Manweb required under sub-paragraph (4)—

(a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraphs (7) or (9); and

(b) must not be unreasonably withheld or delayed.

(6) If after the expiry of 56 days SP Manweb has not communicated approval or disapproval, SP Manweb is deemed to have approved the plans as supplied.

(7) In relation to any work requiring the submission of a plan under sub-paragraph (1), SP Manweb 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 or for the purpose of providing or securing proper and convenient means of access to any apparatus and SP Manweb

must notify the undertaker of such modifications within a period of 56 days beginning with the date on which the plan required under sub-paragraph (1) has been submitted to SP Manweb.

(8) Works requiring the submission of a plan under sub-paragraph (1) must only be executed in accordance with the plan as approved or as amended from time to time by agreement between the undertaker and SP Manweb and in accordance with such reasonable requirements as may be made in accordance with sub-paragraphs (5), (7) or (9) by SP Manweb for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and SP Manweb will be entitled to watch and inspect the execution of those works.

(9) Where SP Manweb reasonably 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 SP Manweb's reasonable satisfaction prior to the commencement of any authorised development (or any relevant part thereof) for which protective works are required and SP Manweb must give 56 days' notice of such works from the date of submission of a plan pursuant to sub-paragraph (1) (except in an emergency).

(10) If SP Manweb in accordance with sub-paragraphs (7) or (9) 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 (7) to (9) apply as if the removal of the apparatus had been required by the undertaker under paragraph 5(2).

(11) 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 the specified works, a new plan, instead of the plan previously submitted, and having done so the provisions of this paragraph must apply to and in respect of the new plan.

(12) The undertaker must 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 the SP Manweb notice as soon as is reasonably practicable and a plan of those works and must—

(a) comply with sub-paragraphs (7), (8) and (9) insofar as is reasonably practicable in the circumstances; and

(b) comply with sub-paragraph (13) at all times.

(13) At all times when carrying out any works authorised under the Order, the undertaker must comply with statutory requirements and guidelines for development near overhead lines EN43-8 and HSE's guidance note 6 "Avoidance of Danger from Overhead Lines" in relation to any apparatus and aligning with SP Manweb guidelines.

Expenses

8.—(1) Subject to the following provisions of this paragraph, the undertaker must pay to SP Manweb on demand all reasonable charges, costs and expenses reasonably incurred by SP Manweb in direct consequence of the execution of any authorised development including without limitation in respect of—

(a) any costs reasonably incurred by or compensation properly paid by SP Manweb in connection with the acquisition of rights or the exercise of statutory powers for such apparatus including without limitation all costs incurred by SP Manweb as a consequence of SP Manweb—

(i) using its own compulsory purchase powers to acquire any necessary rights under paragraph 5(3); and/or

(ii) exercising any compulsory purchase powers in the Order transferred to or benefitting SP Manweb;

(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 (including any temporary protective works and their removal); and

(f) the survey of any land, apparatus or works, the inspection and monitoring of works or the installation or removal of any temporary works reasonably necessary in consequence of the execution of any such works referred to in this Schedule.

(2) There will be deducted from any sum payable under sub-paragraph (1) the value of any apparatus removed under the provisions of this Schedule and which is not re-used as part of the alternative apparatus, that value being calculated after removal.

(3) If in accordance with the provisions of this Schedule—

(a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions; or

(b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was situated,

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or, in default of agreement, is not determined by arbitration in accordance with article 42 (arbitration) to be necessary, then, if such placing involves cost in the construction of works under this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to SP Manweb by virtue of sub-paragraph (1) will 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 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 cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole will be treated as if it also had been agreed or had been so determined.

(5) An amount which apart from this sub-paragraph would be payable to SP Manweb in respect of works by virtue of sub-paragraph (1) must, if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on SP Manweb 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

9.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any such works authorised by this Schedule or in consequence of the construction, use, maintenance or failure of any of the authorised development by or on behalf of the undertaker or in consequence of any act or default of the undertaker (or any person employed or authorised by it) in the course of carrying out such works, including without limitation works carried out by the undertaker under this Schedule or any subsidence resulting from any of these works, any damage is caused to any apparatus or alternative apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of the authorised development) or property of SP Manweb, or if there is any interruption in any service provided, or in the supply of any goods by SP Manweb, or SP Manweb becomes liable to pay any amount to any third party, the undertaker must—

(a) bear and pay on demand accompanied by an invoice or claim from SP Manweb the cost reasonably and properly incurred by SP Manweb in making good such damage or restoring the supply; and

(b) indemnify SP Manweb for any other expenses, loss, demands, proceedings, damages, claims, penalties or costs incurred by or recovered from SP Manweb, by reason or in

consequence of any such damage or interruption or SP Manweb becoming liable to any third party as aforesaid other than arising from any default of SP Manweb,

provided that at all times SP Manweb will be under an obligation to take reasonable steps to mitigate its loss.

(2) The fact that any act or thing may have been done by SP Manweb on behalf of the undertaker or in accordance with a plan approved by SP Manweb or in accordance with any requirement of SP Manweb as a consequence of the authorised development or under its supervision does not (unless sub-paragraph (3) applies), excuse the undertaker from liability under the provisions of this paragraph where the undertaker fails to carry out and execute the works properly with due care and attention and in a skilful and workmanlike manner or in a manner that does not materially accord with the approved plan (or as otherwise agreed between the undertaker and SP Manweb pursuant to paragraph 8).

(3) Nothing in sub-paragraph (1) will impose any liability on the undertaker in respect of—

(a) any damage or interruption to the extent that it is attributable to the neglect or default of SP Manweb, its officers, employees, contractors or agents;

(b) any authorised development and/or any other works authorised by this Schedule carried out by SP Manweb as an assignee, transferee or lessee of the undertaker with the benefit of the Order pursuant to section 156 of the 2008 Act or article 35 (benefit of the Order) subject to the proviso that once such works become apparatus ("new apparatus"), any authorised development yet to be executed and not falling within this sub-paragraph (b) will be subject to the full terms of this Schedule including this paragraph in respect of such new apparatus; and/or

(c) any indirect or consequential loss of SP Manweb or 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) SP Manweb must give the undertaker reasonable notice of any claim or demand and no settlement, admission of liability or compromise or demand, unless payment is required in connection with a statutory compensation scheme, is to be made without first consulting the undertaker and considering its representations.

Enactments and agreements

10. Save to the extent provided for to the contrary elsewhere in this Schedule or by agreement in writing between SP Manweb and the undertaker, nothing in this Schedule will affect the provisions of any enactment or agreement regulating the relations between the undertaker and SP Manweb 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

11.—(1) Where in consequence of the proposed construction of any of the authorised development, the undertaker or SP Manweb requires the removal of apparatus under paragraph 5(2) or SP Manweb makes requirements for the protection or alteration of apparatus under paragraph 7, the undertaker must use its best endeavours to co-ordinate the execution of the works in the interests of safety and the efficient and economic execution of the authorised development and taking into account the need to ensure the safe and efficient operation of SP Manweb's undertaking and SP Manweb must use its best endeavours to co-operate with the undertaker for that purpose.

(2) For the avoidance of doubt whenever SP Manweb'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 SP Manweb is required, it must not be unreasonably withheld or delayed.

Access

12. If in consequence of the agreement reached in accordance with paragraph 4(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 SP Manweb to maintain or use the apparatus no less effectively than was possible before such obstruction.

Arbitration

13. Save for differences or disputes arising under paragraphs 5(1), 5(2), 5(4), 6(1) and 7 any difference or dispute arising between the undertaker and SP Manweb under this Schedule must, unless otherwise agreed in writing between the undertaker and SP Manweb, determined by arbitration in accordance with article 42 (arbitration).

SCHEDULE 19

Article 43

PROTECTIVE PROVISIONS FOR THE PROTECTION OF SHELL U.K. LIMITED

1. The provisions of this Schedule have effect for the protection of Shell unless otherwise agreed in writing between the undertaker and Shell.

Interpretation

2. In this Schedule—

"alternative apparatus" means alternative apparatus adequate to enable Shell to fulfil its functions as a pipe-line operator in a manner no less efficient than previously and having regard to Shell's standards for the construction and operation of a pipeline;

"alternative rights" means new rights for the construction and for access to and for the use, protection, inspection, maintenance, repair and renewal of apparatus or alternative apparatus including any restrictions on the landowner and occupiers for the protection of the apparatus or alternative apparatus and to allow Shell to perform its functions in a manner not less efficient than under the existing rights and having regard to Shell's standards for the construction and operation of a pipeline;

"apparatus" means the pipeline and storage system owned by Shell within or adjacent to the Order limits and includes any structure in which apparatus is or is to be lodged or which gives or will give access to apparatus and includes any ancillary works and apparatus all protective wrappings, valves, sleeves and slabs, cathodic protection units, together with ancillary cables and markers and such legal interest and benefit of property rights and covenants as are vested in Shell in respect of those items and, where the context allows, includes alternative apparatus;

"Shell" means Shell U.K. Limited (company number 00140141), whose registered address is Shell Centre, London, SE1 7NA and any successor in title;

"existing rights" means the rights and benefits of covenants enjoyed by Shell in land 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;

"plan" includes all designs, drawings, specifications, method statements, soil reports, programmes, calculations, risk assessments and other documents that are reasonably necessary to describe the works to be executed; and

"specified work" means any works that are near to, or will or are likely to affect any apparatus or power supply to any apparatus including—

(a) all intrusive or non-intrusive works within 15 metres of any apparatus;

(b) the crossing of apparatus by other utilities;

(c) the use of explosives within 400 metres of any apparatus; and

(d) piling, undertaking of a 3D seismic survey or the sinking boreholes within 30 metres of any apparatus,

whether carried out by the undertaker or any third party in connection with the authorised development.

Acquisition of apparatus

3.—(1) Despite any provision in this Order or anything shown on the land and crown land plans or if the Order covers any interest in any land in which any apparatus is placed or over which

existing rights are enjoyed by Shell, the undertaker must not acquire any apparatus or acquire, suspend, extinguish or affect any of the existing rights, otherwise than in accordance with this Schedule or by agreement with Shell.

(2) Where the undertaker acquires land which is subject to any existing rights and the provisions of paragraph 4 do not apply, the undertaker must retain any notice of the existing rights on the title to the relevant land when registering the undertaker's title to such acquired land.

Removal of apparatus and rights for alternative apparatus

4.—(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 any apparatus is relocated or diverted, that apparatus must not be removed by the undertaker and any right of Shell to maintain and use 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 Shell.

(2) If, for the purpose of executing any works in, on or under any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, it must give Shell 56 days' written notice of that requirement, together with a plan of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order Shell reasonably needs to remove any apparatus) the undertaker must, subject to sub-paragraph (3), afford to Shell the necessary facilities and rights for the construction of alternative apparatus in other land of the undertaker and subsequently grant alternative rights for the maintenance of that apparatus in accordance with paragraph 5.

(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 undertaker must afford to and, if necessary, acquire for the benefit of Shell the necessary facilities and rights for the construction, maintenance and use of the alternative apparatus and access to it.

(4) Any alternative apparatus to be constructed in land of the undertaker under this Schedule must be constructed in such manner and in such line or situation as may be agreed between Shell and the undertaker or in default of agreement settled by arbitration in accordance with article 42 (arbitration).

(5) Shell must, after the alternative apparatus to be provided or constructed has been agreed or settled in accordance with article 42 (arbitration), and after the grant to Shell of any such facilities and rights as are referred to in sub-paragraph (2), 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 allow the undertaker to remove) any redundant apparatus required by the undertaker to be removed under the provisions of this Schedule.

(6) Irrespective of sub-paragraph (5), if the undertaker gives notice in writing to Shell that it desires itself to execute any work, or part of any work in connection with the construction, removal or decommissioning of apparatus in the land of the undertaker or the construction of alternative apparatus, that work, instead of being executed by Shell, must be executed by the undertaker without unnecessary delay under the superintendence, if required, and to the reasonable satisfaction of Shell.

(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 3000 millimetres of the apparatus without Shell's consent unless that apparatus is redundant and disconnected from Shell's remaining system and is more than 3000 millimetres from any live apparatus.

Facilities and rights for alternative apparatus

5.—(1) Where, in accordance with the provisions of this Schedule, the undertaker affords to Shell facilities and rights for the construction and maintenance in land of the undertaker of alternative apparatus in substitution for apparatus to be removed, those facilities and rights are to be granted upon such terms and conditions as may be agreed between the undertaker and Shell in accordance with this paragraph or in default of agreement settled by arbitration in accordance with article 42 (arbitration).

(2) Alternative rights must be granted before any alternative apparatus is brought into use or any existing rights extinguished.

(3) The undertaker must grant Shell alternative rights by way of a deed of grant of easement, substantially in the form of Shell's precedent from time to time. If any third party is required to be involved for the grant of alternative rights, the undertaker must secure their agreement at its own cost.

(4) Nothing in this Schedule or contained in the alternative rights requires Shell to divert or remove any alternative apparatus installed in accordance with the provisions of this Schedule and any other agreement between Shell and the undertaker.

(5) In settling those terms and conditions for the alternative rights in respect of alternative apparatus the arbitrator must give effect to all reasonable requirements of the undertaker and Shell for ensuring the safety and efficient operation of the authorised development and the apparatus respectively.

(6) 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 Shell 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 Shell as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

Retained apparatus: protection

6.—(1) Unless a shorter period is otherwise agreed in writing between the undertaker and Shell, not less than 35 days before commencing any specified work in relation to apparatus the removal of which has not been required by the undertaker under sub-paragraph 4(2) the undertaker must submit to Shell a plan of the works to be executed.

(2) The plan to be submitted to Shell under sub-paragraph (1) must include a method statement and describe—

(a) the exact position of the works;

(b) the level at which these are proposed to be constructed or renewed;

(c) the manner of their construction or renewal including details of excavation, positioning of plant etc.;

(d) the position of all apparatus;

(e) by way of detailed drawings, every alteration proposed to be made to or close to any such apparatus;

(f) any intended maintenance regime; and

(g) and any other information reasonably required by Shell to assess the works.

(3) The specified work must be executed only in accordance with the plan submitted under sub-paragraph (1) and approved by Shell, and in accordance with such reasonable requirements as may be made in accordance with sub-paragraph (4) by Shell for the alteration or otherwise for the protection of the apparatus, or for securing access to it; and Shell is entitled to watch and inspect the execution of the specified work and the undertaker must follow any reasonable instructions from Shell for the safety of the apparatus and those working nearby.

(4) Any reasonable requirements made by Shell under sub-paragraph (2) must be made within a period of 21 days (unless a shorter period is otherwise agreed in writing between the undertaker and Shell) beginning with the date on which a plan under sub-paragraph (1) is submitted to it.

(5) If Shell 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, this paragraph applies as if the removal of the apparatus had been required by the undertaker under paragraph 4(2) but the undertaker is not required to serve Shell with a new notice under paragraph 4.

(6) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time but (unless otherwise agreed in writing between the undertaker and Shell) in no case less than 28 days before commencing any specified work, a new plan, instead of the plan previously submitted, and having done so the provisions of this paragraph apply to and in respect of the new plan.

(7) The undertaker is not required to comply with sub-paragraph (1) where it needs to carry out emergency works as defined in the 1991 Act but in that case it must give to Shell notice of the works it intends to carry out to remedy the emergency together with a plan as soon as is reasonably practicable and must comply with sub-paragraph (2) in so far as is reasonably practicable in the circumstances.

(8) In relation to any works which will or may be situated on, over, under or within 15 metres measured in any direction of apparatus, or (wherever situated) impose any load directly upon the apparatus or involve embankment works within 15 metres of the apparatus, the plan to be submitted to Shell under sub-paragraph (1) must include a material statement describing—

(a) the exact position of the work;

(b) the level at which the work is to be constructed or renewed;

(c) the manner of its construction or renewal;

(d) the position of the apparatus; and

(e) by way of detailed drawings, every alteration proposed to be made to the apparatus.

Cathodic protection testing

7. Where in the reasonable opinion of the undertaker—

(a) the authorised development might interfere with the existing cathodic protection forming part of any apparatus; or

(b) any apparatus might interfere with the proposed or existing cathodic protection forming part of the authorised development,

Shell and the undertaker must co-operate in undertaking the tests which the undertaker considers reasonably necessary for ascertaining the nature and extent of such interference and measures for providing or preserving cathodic protection.

Expenses

8.—(1) Subject to the following provisions of this paragraph, the undertaker must pay to Shell the reasonable costs and expenses incurred by Shell in, or in connection with—

(a) the inspection, removal, alteration or protection of any apparatus;

(b) the execution of any works required by this Schedule including the purchase, installation and commission of alternative apparatus;

(c) the review and assessment of plans;

(d) the watching and inspecting the execution of any specified work, any associated works and any works undertaken by third parties as a result of any specified work (including the assessment of plans); or

(e) imposing reasonable requirements for the protection or alteration of apparatus affected by the authorised development or works as a consequence of the authorised development,

which may reasonably be required in consequence of the execution of any such works as are required under this Schedule or are authorised by the Order.

(2) The scrap value of any apparatus removed under the provisions of this Schedule is to be deducted from any sum payable under sub-paragraph (1), that value being calculated after removal by the undertaker.

(3) Upon the submission of proper and reasonable estimates of costs and expenses to be incurred by Shell, the undertaker must pay Shell sufficiently in advance to enable Shell to undertake its obligations under this Schedule in a manner that is neutral to its cashflow provided that in the event that the costs incurred by Shell are less than the amount paid by the undertaker pursuant to this sub-paragraph (3) then Shell must promptly repay any overpayment to the undertaker.

(4) If in accordance with the provisions of this Schedule—

(a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions; or

(b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which 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 settled by arbitration in accordance with article 42 (arbitration) to be necessary, then, if such placing involves cost in the construction of works under this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to Shell by virtue of sub-paragraph (1) must be reduced by the amount of that excess save where it is not possible in the circumstances to obtain the existing type of operations, capacity, dimensions or place at the existing depth in which case full costs must be borne by the undertaker.

(5) For the purposes of sub-paragraph (4)—

(a) an extension of apparatus to a length greater than the length of existing apparatus must not be treated as a placing of apparatus of greater dimensions than those of the existing apparatus;

(b) the placing of apparatus that is to Shell's current specification and standards for diversions and protective works must not be treated as a placing of apparatus of better type, greater capacity, greater dimensions or greater depth than those of the existing apparatus; and

(c) 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 must be treated as if it also had been agreed or had been so determined.

Damage to property and other losses

9.—(1) Subject to the following provisions of this paragraph, the undertaker must make reasonable compensation to Shell—

(a) for all loss, damage, liability, costs and expenses reasonably suffered or incurred by Shell for which Shell is legally liable as a result of legally sustainable claims brought against Shell by any third party solely arising out of the carrying out of any relevant works;

(b) for the cost reasonably incurred by Shell in making good any damage to any apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal or abandonment) arising from or caused by the carrying out of any relevant works and the authorised development; and

(c) for the cost reasonably incurred by Shell in stopping, suspending and restoring the supply through its pipe-line and make reasonable compensation to Shell for any other expenses, losses, damages, penalty or costs incurred by Shell by reason or in consequence of any

such damage or interruption provided that the same arises in consequence of the carrying out of any relevant works and the authorised development.

(2) The fact that any act or thing may have been done by Shell on behalf of the undertaker or in accordance with a plan approved by Shell or in accordance with any requirement of Shell or under its supervision does not, subject to sub-paragraph (3), excuse the undertaker from liability under the provisions of sub-paragraph (1).

(3) Irrespective of anything to the contrary elsewhere in this Schedule—

(a) the undertaker and Shell must at all times take reasonable steps to prevent and mitigate any loss, damage, liability, claim, cost or expense recoverable from the other under this Schedule; and

(b) neither the undertaker nor Shell are liable for any loss, damage, liability, claim, cost or expense suffered or incurred by the other to the extent that the same are incurred as a result of or in connection with the sole, partial or complete breach of this Schedule or negligence arising out of an act, omission, default or works of the other, its officers, servants, contractors or agents.

(4) Nothing in sub-paragraph (1) will impose any liability on the undertaker in respect of—

(a) any damage or interruption to the extent that it is attributable to the neglect or default of Shell, its officers, employees, contractors or agents;

(b) any authorised development and/or any other works authorised by this Schedule carried out by Shell as an assignee, transferee or lessee of the undertaker with the benefit of the Order pursuant to section 156 of the 2008 Act or article 35 (benefit of the Order) subject to the proviso that once such works become apparatus ("new apparatus"), any authorised development yet to be executed and not falling within this sub-paragraph (b) will be subject to the full terms of this Schedule including this paragraph in respect of such new apparatus; and/or

(c) any indirect or consequential loss of Shell or 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.

(5) Shell must give to the undertaker reasonable notice of any claim or demand to which this paragraph 9 applies. If Shell agrees (such agreement not to be unreasonably withheld or delayed), the undertaker may at its own expense conduct all negotiations for the settlement of the same and any litigation that may arise therefrom. Shell must not compromise or settle any claim or demand or make any admission which might be prejudicial to the claim or demand without the undertaker's consent (such consent not to be unreasonably withheld). Shell must, at the request of the undertaker, afford all reasonable assistance for the purpose of contesting any such claim or action, and is entitled to be repaid all reasonable expenses incurred in so doing.

(6) Nothing in this Schedule excludes or limits the liability of the undertaker for death or personal injury resulting from the negligence of the undertaker or any of its officers, employees or agents.

(7) In this paragraph "relevant works" means such of the authorised development as—

(a) does, will or is likely to affect any apparatus; or

(b) involves a physical connection or attachment to any apparatus.

Co-operation and reasonableness

10.—(1) Where in consequence of the proposed construction of any of the authorised development, the undertaker requires the removal of apparatus under this Schedule or Shell makes requirements for the protection or alteration of apparatus under this Schedule, the undertaker must use reasonable endeavours to co-ordinate the execution of the works in the interests of safety and the efficient and economic execution of the authorised development and taking into account the need to ensure the safe and efficient operation of Shell's undertaking and Shell must use its reasonable endeavours to co-operate with the undertaker for that purpose.

(2) The undertaker and Shell must act reasonably in respect of any given term of this Schedule and, in particular, (without prejudice to generality) where any consent or expression of satisfaction is required by of this Schedule it must not be unreasonably withheld or delayed.

Miscellaneous

11. Nothing in this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and Shell in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made provided that the terms of the relevant enactment or agreement are not inconsistent with the provisions of this Order, including this Schedule. In the case of any inconsistency, the provisions of this Order, including this Schedule, prevail.

SCHEDULE 20

Article 43

PROTECTIVE PROVISIONS FOR THE PROTECTION OF ESSAR OIL (UK) LTD

1. The provisions of this Schedule have effect for the protection of Essar unless otherwise agreed in writing between the undertaker and Essar.

Interpretation

2. In this Schedule—

"alternative apparatus" means alternative apparatus adequate to enable Essar to fulfil its functions as a pipe-line operator in a manner no less efficient than previously and having regard to Essar's standards for the construction and operation of a pipeline;

"alternative rights" means new rights for the construction and for access to and for the use, protection, inspection, maintenance, repair and renewal of apparatus or alternative apparatus including any restrictions on the landowner and occupiers for the protection of the apparatus or alternative apparatus and to allow Essar to perform its functions in a manner not less efficient than under the existing rights and having regard to Essar's standards for the construction and operation of a pipeline;

"apparatus" means the pipeline and storage system owned and/or operated by Essar within or adjacent to the Order limits and includes any structure in which apparatus is or is to be lodged or which gives or will give access to apparatus and includes any ancillary works and apparatus all protective wrappings, valves, valve pits, above ground installations (AGI), sleeves and slabs, cathodic protection units, equipment and associated note beds, together with ancillary cables and markers and such legal interest and benefit of property rights and covenants as are vested in Essar in respect of those items and, where the context allows, includes alternative apparatus;

"Essar" means Essar Oil (UK) Limited and any successor in title;

"existing rights" means the rights and benefits of covenants enjoyed by Essar;

"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;

"plan" includes all designs, drawings, specifications, method statements (including RAMS), soil reports, ground surveys, programmes, calculations, risk assessments, pre and post interaction surveys (including in relation to any interactions which may affect the cathodic protection system) and other documents that are reasonably necessary to describe the works to be executed; and

"specified work" means any works that are near to, or will or are likely to affect any apparatus or power supply to any apparatus including—

(a) all intrusive or non-intrusive works within 50 metres of any apparatus;

(b) the crossing of apparatus by other utilities;

(c) the use of explosives within 400 metres of any apparatus; and

(d) piling, undertaking of a 3D seismic survey or the sinking boreholes within 50 metres of any apparatus,

whether carried out by the undertaker or any third party in connection with the authorised development.

Acquisition of apparatus

3.—(1) Despite any provision in this Order or anything shown on the land and crown land plans or if the Order covers any interest in any land in which any apparatus is placed or over which existing rights are enjoyed by Essar, the undertaker must not acquire any apparatus or acquire, suspend, extinguish or affect any of the existing rights, otherwise than in accordance with this Schedule or by agreement with Essar.

(2) Where the undertaker acquires land which is subject to any existing rights and the provisions of paragraph 4 do not apply, the undertaker must retain any notice of the existing rights on the title to the relevant land when registering the undertaker's title to such acquired land.

Removal of apparatus and rights for alternative apparatus

4.—(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 any apparatus is relocated or diverted, that apparatus must not be removed by the undertaker and any right of Essar to maintain and use 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 Essar.

(2) If, for the purpose of executing any works in, on or under any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, it must give Essar 56 days' written notice of that requirement, together with a plan of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order Essar reasonably needs to remove any apparatus) the undertaker must, subject to sub-paragraph (3), afford to Essar the necessary facilities and rights for the construction of alternative apparatus in other land of the undertaker and subsequently grant alternative rights for the maintenance of that apparatus in accordance with paragraph 6.

(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 undertaker must afford to and, if necessary, acquire for the benefit of Essar the necessary facilities and rights for the construction, maintenance and use of the alternative apparatus and access to it.

(4) Any alternative apparatus to be constructed in land of the undertaker under this Schedule must be constructed in such manner and in such line or situation as may be agreed between Essar and the undertaker or in default of agreement settled by arbitration in accordance with article 42 (arbitration).

(5) Essar must, after the alternative apparatus to be provided or constructed has been agreed or settled in accordance with article 42 (arbitration), and after the grant to Essar of any such facilities and rights as are referred to in sub-paragraph (2), 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 allow the undertaker to remove) any redundant apparatus required by the undertaker to be removed under the provisions of this Schedule (provided that, to the extent that such redundant apparatus is not above ground, such redundant apparatus may, at the absolute discretion of Essar, be capped and left safe).

(6) Irrespective of sub-paragraph (5), if the undertaker gives notice in writing to Essar that it desires itself to execute any work, or part of any work in connection with the construction, removal or decommissioning of apparatus in the land of the undertaker or the construction of alternative apparatus, that work, instead of being executed by Essar, must be executed by the undertaker without unnecessary delay under the superintendence, if required, and to the reasonable satisfaction of Essar.

(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 3000 millimetres of the

apparatus without Essar's consent unless that apparatus is redundant and disconnected from Essar's remaining system and is more than 3000 millimetres from any live apparatus.

Facilities and rights for alternative apparatus

5.—(1) Where, in accordance with the provisions of this Schedule, the undertaker affords to Essar facilities and rights for the construction and maintenance in land of the undertaker of alternative apparatus in substitution for apparatus to be removed, those facilities and rights are to be granted upon such terms and conditions as may be agreed between the undertaker and Essar in accordance with this paragraph or in default of agreement settled by arbitration in accordance with article 42 (arbitration).

(2) Alternative rights must be granted before any alternative apparatus is brought into use or any existing rights extinguished.

(3) The undertaker must grant Essar alternative rights by way of a deed of grant of easement, substantially in the form of Essar's precedent from time to time. If any third party is required to be involved for the grant of alternative rights, the undertaker must secure their agreement at its own cost.

(4) Nothing in this Schedule or contained in the alternative rights requires Essar to divert or remove any alternative apparatus installed in accordance with the provisions of this Schedule and any other agreement between Essar and the undertaker.

(5) In settling those terms and conditions for the alternative rights in respect of alternative apparatus the arbitrator must give effect to all reasonable requirements of the undertaker and Essar for ensuring the safety and efficient operation of the authorised development and the apparatus respectively.

(6) 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 Essar 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 Essar as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

Retained apparatus: protection

6.—(1) Unless a shorter period is otherwise agreed in writing between the undertaker and Essar, not less than 35 days before commencing any specified work in relation to apparatus the removal of which has not been required by the undertaker under sub-paragraph 4(2) the undertaker must submit to Essar a plan of the works to be executed.

(2) The plan to be submitted to Essar under sub-paragraph (1) must include a method statement and describe—

(a) the exact position of the works and any associated crossing points to access 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 and reinstatement of backfill during excavations, positioning of plant etc.;

(d) the position of all apparatus and the approach to the protection of the apparatus (including the protection of cathodic protection units, equipment and associated node beds);

(e) by way of detailed drawings, every alteration proposed to be made to or close to any such apparatus;

(f) any intended maintenance regime; and

(g) and any other information reasonably required by Essar to assess the works.

(3) The specified work must be executed only in accordance with the plan submitted under sub-paragraph (1) and approved by Essar, and in accordance with such reasonable requirements as may be made in accordance with sub-paragraph (4) by Essar for the alteration or otherwise for the

protection of the apparatus, or for securing access to it; and Essar is entitled to watch and inspect the execution of the specified work and the undertaker must follow any reasonable instructions from Essar for the safety of the apparatus and those working nearby.

(4) Any reasonable requirements made by Essar under sub-paragraph (2) must be made within a period of 21 days (unless a shorter period is otherwise agreed in writing between the undertaker and Essar) beginning with the date on which a plan under sub-paragraph (1) is submitted to it.

(5) If Essar 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, this paragraph applies as if the removal of the apparatus had been required by the undertaker under paragraph 4(2) but the undertaker is not required to serve Essar with a new notice under paragraph 4.

(6) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time but (unless otherwise agreed in writing between the undertaker and Essar) in no case less than 28 days before commencing any specified work, a new plan, instead of the plan previously submitted, and having done so the provisions of this paragraph apply to and in respect of the new plan.

(7) The undertaker is not required to comply with sub-paragraph (1) where it needs to carry out emergency works as defined in the 1991 Act but in that case it must give to Essar notice of the works it intends to carry out to remedy the emergency together with a plan as soon as is reasonably practicable and must comply with sub-paragraph (2) in so far as is reasonably practicable in the circumstances.

(8) In relation to any works which will or may be situated on, over, under or within 15 metres measured in any direction of apparatus, or (wherever situated) impose any load, directly or indirectly, upon the apparatus or involve embankment works within 15 metres of the apparatus, the plan to be submitted to Essar under sub-paragraph (1) must include a material statement describing—

(a) the exact position of the work;

(b) the level at which the work is to be constructed or renewed;

(c) the manner of its construction or renewal;

(d) the position of the apparatus; and

(e) by way of detailed drawings, every alteration proposed to be made to the apparatus.

Cathodic protection testing

7. Where in the reasonable opinion of Essar or the undertaker—

(a) the authorised development might interfere with the cathodic protection forming part of any apparatus; or

(b) any apparatus might interfere with the proposed or existing cathodic protection forming part of the authorised development,

Essar 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 and Essar and the undertaker must carry out the works and enter into such agreements as are reasonably necessary to implement the measures for providing or preserving cathodic protection.

Expenses

8.—(1) Subject to the following provisions of this paragraph, the undertaker must pay to Essar the reasonable costs and expenses incurred by Essar in, or in connection with—

(a) the inspection, removal, alteration or protection of any apparatus;

(b) the execution of any works required by this Schedule including the purchase, installation and commission of alternative apparatus;

(c) the review and assessment of plans;

(d) the watching and inspecting the execution of any specified work, any associated works and any works undertaken by third parties as a result of any specified work (including the assessment of plans); or

(e) imposing reasonable requirements for the protection or alteration of apparatus affected by the authorised development or works as a consequence of the authorised development, which may reasonably be required in consequence of the execution of any such works as are required under this Schedule or are authorised by the Order.

(2) The scrap value of any apparatus removed under the provisions of this Schedule is to be deducted from any sum payable under sub-paragraph (1), that value being calculated after removal by the undertaker.

(3) Upon the submission of proper and reasonable estimates of costs and expenses to be incurred by Essar, the undertaker must pay Essar sufficiently in advance to enable Essar to undertake its obligations under this Schedule in a manner that is neutral to its cashflow provided that in the event that the costs incurred by Essar are less than the amount paid by the undertaker pursuant to this sub-paragraph (3) then Essar must promptly repay any overpayment to the undertaker.

(4) If in accordance with the provisions of this Schedule—

(a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions; or

(b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was situated,

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or in default of agreement is not determined by arbitration in accordance with article 42 (arbitration) to be necessary, then, if such placing involves cost in the construction of works under this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to Essar by virtue of sub-paragraph (1) must 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 must be borne by the undertaker.

(5) For the purposes of sub-paragraph (4)—

(a) an extension of apparatus to a length greater than the length of existing apparatus must not be treated as a placing of apparatus of greater dimensions than those of the existing apparatus;

(b) the placing of apparatus that is to Essar's current specification and standards for diversions and protective works must not be treated as a placing of apparatus of better type, greater capacity, greater dimensions or greater depth than those of the existing apparatus; and

(c) 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 must be treated as if it also had been agreed or had been so determined.

Damage to property and other losses / indemnity

9.—(1) Subject to the following provisions of this paragraph, the undertaker —

(a) will indemnify Essar for all loss, damage, liability, costs and expenses reasonably suffered or incurred by Essar for which Essar is legally liable as a result of legally sustainable claims brought against Essar by any third party solely arising out of the carrying out of any relevant works 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;

(b) must make compensation to Essar in full for the cost reasonably incurred by Essar in making good any damage to any apparatus or alternative apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal or abandonment) or property of Essar arising from or caused by the carrying out of any relevant works and the authorised development 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;

(c) must make compensation to Essar in full for the cost reasonably incurred by Essar in stopping, suspending and restoring the supply through its pipe-line;

(d) will indemnify Essar for any other expenses, losses, damages, penalty or costs incurred by Essar by reason or in consequence of any such damage or interruption provided that the same arises in consequence of the carrying out of any relevant works and the authorised development 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.

(2) The fact that any act or thing may have been done by Essar on behalf of the undertaker or in accordance with a plan approved by Essar or in accordance with any requirement of Essar or under its supervision does not, subject to sub-paragraph (3), excuse the undertaker from liability under the provisions of sub-paragraph (1).

(3) Irrespective of anything to the contrary elsewhere in this Schedule—

(a) the undertaker and Essar must at all times take reasonable steps to prevent and mitigate any loss, damage, liability, claim, cost or expense recoverable from the other under this Schedule; and

(b) neither the undertaker nor Essar are liable for any loss, damage, liability, claim, cost or expense suffered or incurred by the other to the extent that the same are incurred as a result of or in connection with the sole, partial or complete breach of this Schedule or negligence arising out of an act, omission, default or works of the other, its officers, servants, contractors or agents.

(4) Nothing in sub-paragraph (1) will impose any liability on the undertaker in respect of—

(a) any damage or interruption to the extent that it is attributable to the neglect or default of Essar, its officers, employees, contractors or agents;

(b) any authorised development and/or any other works authorised by this Schedule carried out by Essar as an assignee, transferee or lessee of the undertaker with the benefit of the Order pursuant to section 156 of the 2008 Act or article 35 (benefit of the Order) subject to the proviso that once such works become apparatus ("new apparatus"), any authorised development yet to be executed and not falling within this sub-paragraph (b) will be subject to the full terms of this Schedule including this paragraph in respect of such new apparatus; and/or

(c) any indirect or consequential loss of Essar or 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.

(5) Essar must give to the undertaker reasonable notice of any claim or demand to which this paragraph 9 applies. If Essar agrees (such agreement not to be unreasonably withheld or delayed), the undertaker may at its own expense conduct all negotiations for the settlement of the same and any litigation that may arise therefrom. Essar must not compromise or settle any claim or demand or make any admission which might be prejudicial to the claim or demand without the undertaker's consent (such consent not to be unreasonably withheld). Essar must, at the request of the undertaker, afford all reasonable assistance for the purpose of contesting any such claim or action, and is entitled to be repaid all reasonable expenses incurred in so doing.

(6) Nothing in this Schedule excludes or limits the liability of the undertaker for death or personal injury resulting from the negligence of the undertaker or any of its officers, employees or agents.

(7) In this paragraph "relevant works" means such of the authorised development as—

(a) does, will or is likely to affect any apparatus or alternative apparatus (including without limitation the relocation, diversion, decommissioning, construction and maintenance of apparatus or alternative apparatus); or

(b) involves a physical connection or attachment to any apparatus.

Co-operation and reasonableness

10.—(1) Where in consequence of the proposed construction of any of the authorised development, the undertaker requires the removal of apparatus under this Schedule or Essar makes requirements for the protection or alteration of apparatus under this Schedule, the undertaker must use reasonable endeavours to co-ordinate the execution of the works in the interests of safety and the efficient and economic execution of the authorised development and taking into account the need to ensure the safe and efficient operation of Essar's undertaking and Essar must use its reasonable endeavours to co-operate with the undertaker for that purpose.

(2) The undertaker and Essar must act reasonably in respect of any given term of this Schedule and, in particular, (without prejudice to generality) where any consent or expression of satisfaction is required by this Schedule it must not be unreasonably withheld or delayed.

Miscellaneous

11. Nothing in this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and Essar in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made provided that the terms of the relevant enactment or agreement are not inconsistent with the provisions of this Order, including this Schedule. In the case of any inconsistency, the provisions of this Order, including this Schedule, prevail.

Access

12. If in consequence of the agreement reached in accordance with paragraph 3(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 well enable Essar to maintain or use the apparatus no less effectively than was possible before such obstruction.

SCHEDULE 21

Article 43

PROTECTIVE PROVISIONS NATIONAL GRID ELECTRICITY TRANSMISSION PLC AS ELECTRICITY UNDERTAKER

Application

1.—(1) For the protection of National Grid as referred to in this Schedule the following provisions have effect, unless otherwise agreed in writing between the undertaker and National Grid.

(2) Subject to sub-paragraph (3) or to the extent otherwise agreed in writing between the undertaker and National Grid, where the benefit of this Order is transferred or granted to another person under article 35 (benefit of Order)—

(a) any agreement of the type mentioned in sub-paragraph (1) has effect as if it had been made between National Grid and the transferee or grantee (as the case may be); and

(b) written notice of the transfer or grant must be given to National Grid on or before the date of that transfer or grant.

(3) Sub-paragraph (2) does not apply where the benefit of the Order is transferred or granted to National Grid (but without prejudice to paragraph 11(3)(b) of this Schedule).

Interpretation

2. In 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) for the duration of the construction period of the authorised works; and (b) after the construction period of the authorised works in respect of any use and maintenance of the authorised development by or on behalf of the undertaker which constitute specified works and arranged with an insurer whose security/credit rating meets the same requirements as an "acceptable credit provider", such insurance shall include (without limitation)—

(a) a waiver of subrogation and an indemnity to principal clause in favour of National Grid; 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 £50,000,000.00 (fifty million pounds) in annual aggregate;

"acceptable security" means either—

(a) a parent company guarantee from a parent company in favour of National Grid to cover the undertaker's liability to National Grid to a total liability cap of £50,000,000.00 (fifty million pounds) (in a form reasonably satisfactory to National Grid and where required by National Grid, accompanied with a legal opinion confirming the due capacity and authorisation of the parent company to enter into and be bound by the terms of such guarantee); or

(b) a bank bond or letter of credit from an acceptable credit provider in favour of National Grid to cover the undertaker's liability to National Grid for an amount of a total liability

of not less than £50,000,000.00 (fifty million pounds) (in a form reasonably satisfactory to National Grid);

"alternative apparatus" means appropriate alternative apparatus to the satisfaction of National Grid to enable National Grid to fulfil its statutory functions in a manner no less efficient than previously;

"apparatus" means any electric lines or electrical plant as defined in the Electricity Act 1989(a), belonging to or maintained by National Grid, together with any replacement apparatus and such other apparatus constructed pursuant to the Order that becomes operational apparatus of National Grid for the purposes of transmission, distribution and/or supply and includes any structure in which apparatus is or will be lodged or which gives or will give access to apparatus;

"authorised works" has the same meaning as is given to the term "authorised development" in article 2 (interpretation) of this Order and includes any associated development authorised by the Order and for the purposes of this Schedule includes the use and maintenance of the authorised works and construction of any works authorised by this Schedule;

"commence" and "commencement" in 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 Schedule;

"functions" includes powers and duties;

"ground mitigation scheme" means a scheme approved by National Grid (such approval not to be unreasonably withheld or delayed) setting out the necessary measures (if any) for a ground subsidence event;

"ground monitoring scheme" means a scheme for monitoring ground subsidence which sets out the apparatus which is to be subject to such monitoring, the extent of land to be monitored, the manner in which ground levels are to be monitored, the timescales of any monitoring activities and the extent of ground subsidence which, if exceeded, shall require the undertaker to submit for National Grid's approval a ground mitigation scheme;

"ground subsidence event" means any ground subsidence identified by the monitoring activities set out in the ground monitoring scheme that has exceeded the level described in the ground monitoring scheme as requiring a ground mitigation scheme;

"in" in a context referring to apparatus or alternative apparatus in land includes a reference to apparatus or alternative apparatus under, over, across, along or upon such land;

"Incentive Deduction" means any incentive deduction National Grid Electricity Transmission plc receives under its electricity transmission licence which is caused by an event on its transmission system that causes electricity not to be supplied to a demand customer and which arises as a result of the authorised works;

"maintain" and "maintenance" shall include the ability and right to do any of the following in relation to any apparatus or alternative apparatus of National Grid: construct, use, repair, alter, inspect, renew or remove the apparatus;

"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;

"NESO" means as defined in the STC;

"parent company" means a parent company of the undertaker acceptable to and which shall have been approved by National Grid acting reasonably;

"plan" or "plans" include all designs, drawings, specifications, method statements, soil reports, programmes, calculations, risk assessments and other documents that are reasonably necessary properly and sufficiently to describe and assess the works to be executed;

"specified works" means any of the authorised works or activities undertaken in association with the authorised works which—

(a) will or may be situated over, or within 15 metres measured in any direction of any apparatus the removal of which has not been required by the undertaker under paragraph 7(2) or otherwise; and/or

(b) may in any way adversely affect any apparatus the removal of which has not been required by the undertaker under paragraph 7(2) or otherwise; and/or

(c) includes any of the activities that are referred to in National Grid's document "Development near overhead lines" EN43-8 and the Health and Safety Executive's (HSE) Guidance Note GS6 "Avoiding Danger from Overhead Power Lines";

"STC" means the System Operator Transmission Owner Code prepared by the electricity Transmission Owners and NESO as modified from time to time;

"STC Claims" means any claim made under the STC against National Grid Electricity Transmission plc arising out of or in connection with the de-energisation (whereby no electricity can flow to or from the relevant system through the generator or interconnector' s equipment) of a generator or interconnector party solely as a result of the de-energisation of plant and apparatus forming part of National Grid Electricity Transmission plc's transmission system which arises as a result of the authorised works;

"Transmission Owner" means as defined in the STC; and

"undertaker" means the undertaker as defined in article 2 (interpretation) of this Order.

On Street Apparatus

3. Except for paragraphs 4 (apparatus of National Grid in stopped up and temporarily restricted streets), 9 (retained apparatus: protection of electricity undertaker), 10 (expenses) and 11 (indemnity) 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, the other provisions of this Schedule do not apply to apparatus in respect of which the relations between the undertaker and National Grid are regulated by the provisions of Part 3 of the 1991 Act.

Apparatus of National Grid in stopped up and temporarily restricted streets

4.—(1) Where any street is stopped up under article 13 (permanent stopping up of, and creation of new public rights of way and authorising vehicular use of public rights of way), if National Grid has any apparatus in the street or accessed via that street National Grid has the same rights in respect of that apparatus as it enjoyed immediately before the stopping up and the undertaker must grant to National Grid, or procure the granting to National Grid of, legal easements reasonably satisfactory to National Grid in respect of such apparatus and access to it prior to the stopping up of any such street or highway but nothing in this paragraph affects any right of the undertaker or National Grid to require the removal of that apparatus under paragraph 7 or the power of the undertaker, subject to compliance with this sub-paragraph, to carry out works under paragraph 9.

(2) Despite the temporary closure of any highway under article 12 (temporary prohibition or restriction of use of streets and public rights of way, and authorising vehicular use on public rights of way), National Grid may at all times take all necessary access across any such highway and execute and do all such works and things in, on or under any such highway as may be reasonably necessary or desirable to enable it to maintain any apparatus which at the time of the restriction or diversion was in that highway.

Protective works to buildings

5. The undertaker, in the case of the powers conferred by article 18 (protective work to buildings), must exercise those powers so as not to obstruct or render less convenient the access to any apparatus without the written consent of National Grid.

Acquisition of land

6.—(1) Regardless of any provision in this Order or anything shown on the land and crown 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 unless agreed by National Grid.

(2) As a condition of an agreement between the parties in sub-paragraph (1), prior to the carrying out of any part of the authorised works (or in such other timeframe as may be agreed between National Grid and the undertaker) that is subject to the requirements of this Schedule that will cause any conflict with or breach the terms of any easement or other legal or land interest of National Grid or affect the provisions of any enactment or agreement regulating the relations between National Grid and the undertaker in respect of any apparatus laid or erected in land belonging to or secured by the undertaker, the undertaker must as National Grid reasonably requires enter into such deeds of consent upon such terms and conditions as may be agreed between National Grid and the undertaker acting reasonably and which must be no less favourable on the whole to National Grid unless otherwise agreed by National Grid, and it will be the responsibility of the undertaker to procure and/or secure the consent and entering into of such deeds and variations by all other third parties with an interest in the land at that time who are affected by such authorised works.

(3) Save where otherwise agreed in writing between National Grid and the undertaker, the undertaker and National Grid agree that where there is any inconsistency or duplication between the provisions set out in this Schedule relating to the relocation and/or removal of apparatus/including but not limited to the payment of costs and expenses relating to such relocation and/or removal of apparatus) and the provisions of any existing easement, rights, agreements and licences granted, used, enjoyed or exercised by National Grid and/or other enactments relied upon by National Grid as of right or other use in relation to the apparatus, then the provisions in this Schedule shall prevail.

(4) Any agreement or consent granted by National Grid under paragraph 9 (Retained apparatus: protection of electricity undertaker) or any other paragraph of this Schedule, shall not be taken to constitute agreement under sub-paragraph (1).

Removal of apparatus

7.—(1) If, in the exercise of the powers conferred by this Order , the undertaker acquires any interest in or possesses temporarily any land in which any apparatus is placed, that apparatus must not be removed under this Schedule and any right of National Grid to maintain that apparatus in that land must not be extinguished until alternative apparatus has been constructed, and is in operation to the reasonable satisfaction of National Grid in accordance with sub-paragraph (2) to (5).

(2) If, for the purpose of executing any works in, on, under or over any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, it must give to National Grid advance written notice of that requirement, together with a plan of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order National Grid reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph (3), secure any necessary consents for the alternative apparatus and afford to National Grid to its satisfaction (taking into account paragraph 8(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 may in its sole discretion, on receipt of a written notice to that effect from the undertaker, take such steps as are reasonable in the circumstances to assist the undertaker to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed save that this obligation shall not extend to the requirement for National Grid to use its compulsory purchase powers to this end unless it elects to so do.

(4) Any alternative apparatus to be constructed in land of or land secured by the undertaker under this Schedule must be constructed in such manner and in such line or situation as may be agreed between National Grid and the undertaker.

(5) National Grid must, after the alternative apparatus to be provided or constructed has been agreed, and subject to a written diversion agreement having been entered into between the parties and the grant to National Grid of any such facilities and rights as are referred to in sub-paragraph (2) or (3), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by the undertaker to be removed under the provisions of this Schedule.

Facilities and rights for alternative apparatus

8.—(1) Where, in accordance with the provisions of this Schedule, the undertaker affords to or secures for National Grid facilities and rights in land for the construction, use, maintenance and protection of alternative apparatus in substitution for apparatus to be removed, those facilities and rights must be granted upon such terms and conditions as may be agreed between the undertaker and National Grid and must be no less favourable on the whole to National Grid than the facilities and rights enjoyed by it in respect of the apparatus to be removed unless otherwise agreed by National Grid.

(2) If the facilities and rights to be afforded by the undertaker in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are less favourable on the whole to National Grid than the facilities and rights enjoyed by it in respect of the apparatus to be removed and the terms and conditions to which those facilities and rights are subject the matter may be referred to arbitration in accordance with paragraph 15 (arbitration) of this Schedule and the arbitrator must make such provision for the payment of compensation by the undertaker to National Grid as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

Retained apparatus: protection of electricity undertaker

9.—(1) Not less than 56 days before the commencement of any specified works the undertaker must submit to National Grid a plan of the works to be executed and seek from National Grid details of the underground extent of their electricity assets.

(2) In relation to specified works, the plan to be submitted to National Grid 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's engineers; and

(h) evidence that trench bearing capacity is to be designed to support overhead line construction traffic of at least 26 tonnes in weight.

(4) The undertaker must not commence any works to which sub-paragraphs (2) or (3) apply until National Grid has given written approval of the plan so submitted.

(5) Any approval of National Grid required under sub-paragraph (4)—

(a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraphs (6) or (8); and,

(b) must not be unreasonably withheld.

(6) In relation to any work to which sub-paragraphs (2) or (3) apply, National Grid may require such modifications to be made to the plans as may be reasonably necessary for the purpose of securing its apparatus against interference or risk of damage, for the provision of protective works or for the purpose of providing or securing proper and convenient means of access to any apparatus.

(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 and in accordance with such reasonable requirements as may be made in accordance with sub-paragraphs
(6) or (8) by National Grid for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and National Grid will be entitled to watch and inspect the execution of those works.

(8) Where National Grid requires any protective works to be carried out by itself or by the undertaker (whether of a temporary or permanent nature) such protective works, inclusive of any measures or schemes required and approved as part of the plan approved pursuant to this paragraph, must be carried out to National Grid's satisfaction, prior to the commencement of any specified works (or any relevant part thereof) for which protective works are required and National Grid must give notice of its requirement for such works within 42 days of the date of submission of a plan pursuant to this paragraph (except in an emergency).

(9) If National Grid in accordance with sub-paragraphs (6) or (8) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, 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 7(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 the specified 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 notice as soon as is reasonably practicable and a plan of those works and must comply with sub-paragraphs (6), (7) and (8) insofar as is reasonably practicable in the circumstances and comply with sub-paragraph (12) at all times.

(12) At all times when carrying out any works authorised under the Order, the undertaker must comply with National Grid's policies for development near overhead lines EN43-8 and HSE's guidance note 6 "Avoidance of Danger from Overhead Lines".

Expenses

10. —(1) Save where otherwise agreed in writing between National Grid and the undertaker and subject to the following provisions of this paragraph, the undertaker must pay to National Grid within 30 days of receipt of an itemised invoice or claim from National Grid all charges, costs and expenses reasonably anticipated within the following three months or reasonably and properly incurred by National Grid in, or in connection with, the inspection, removal, relaying or replacing, alteration or protection of any apparatus or the construction of any new or alternative apparatus which may be required in consequence of the execution of any authorised works including without limitation—

(a) any costs reasonably incurred by or compensation properly paid by National Grid in connection with the acquisition of rights or the exercise of statutory powers for such apparatus including without limitation all costs incurred by National Grid as a consequence of National Grid;

(i) using its own compulsory purchase powers to acquire any necessary rights under paragraph 7(3); or

(ii) exercising any compulsory purchase powers in the Order transferred to or benefitting National Grid;

(b) in connection with the cost of the carrying out of any diversion work or the provision of any alternative apparatus, where no written diversion agreement is otherwise in place;

(c) the cutting off of any apparatus from any other apparatus or the making safe of redundant apparatus;

(d) the approval of plans;

(e) the carrying out of protective works, plus a capitalised sum to cover the cost of maintaining and renewing permanent protective works;

(f) the survey of any land, apparatus or works, the inspection and monitoring of works or the installation or removal of any temporary works reasonably necessary in consequence of the execution of any such works referred to in this Schedule.

(2) There will be deducted from any sum payable under sub-paragraph (1) the value of any apparatus removed under the provisions of this Schedule and which is not re-used as part of the alternative apparatus, that value being calculated after removal.

(3) If in accordance with the provisions of this Schedule—

(a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions; or

(b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which 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 15 (arbitration) to be necessary, then, if such placing involves cost in the construction of works under this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to National Grid by virtue of sub-paragraph (1) will be reduced by the amount of that excess save to the extent that it is not possible in the circumstances to obtain the existing type of apparatus at the same capacity and dimensions or place at the existing depth in which case full costs will be borne by the undertaker.

(4) For the purposes of sub-paragraph (3)—

(a) an extension of apparatus to a length greater than the length of existing apparatus will not be treated as a placing of apparatus of greater dimensions than those of the existing apparatus; and

(b) where the provision of a joint in a pipe or cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole will be treated as if it also had been agreed or had been so determined.

(5) Any amount which apart from this sub-paragraph would be payable to National Grid in respect of works by virtue of sub-paragraph (1) will, if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on National Grid any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, be reduced by the amount which represents that benefit.

(6) Where in accordance with sub-paragraph (1) the undertaker pays National Grid in respect of an itemised invoice or claim for charges, costs and expenses reasonably anticipated within the following three months, should there be any unspent funds after the expiry of such three month period, National Grid shall repay such unspent funds within 60 days of the total charges, costs and expenses actually reasonably and properly incurred being known by National Grid.

Indemnity

11. —(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any works authorised by this Schedule or in consequence of the construction, use maintenance or failure of any of the authorised works by or on behalf of the undertaker or in consequence of any act or default of the undertaker (or any person employed or authorised by him) in the course of carrying out such works, including without limitation works carried out by the undertaker under this Schedule or any subsidence resulting from any of these works, any damage is caused to any apparatus or alternative apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of the authorised works) or property of National Grid, or there is any interruption in any service provided, or in the supply of any goods, by National Grid, or National Grid becomes liable to pay any amount to any third party, the undertaker will—

(a) bear and pay on demand accompanied by an invoice or claim from National Grid the cost reasonably and properly incurred by National Grid in making good such damage or restoring the supply; and

(b) indemnify National Grid for any other expenses, loss, demands, proceedings, damages, claims, penalty or costs incurred by or recovered from National Grid, by reason or in consequence of any such damage or interruption or National Grid becoming liable to any third party and including STC Claims or an Incentive Deduction other than arising from any default of National Grid.

(2) The fact that any act or thing may have been done by National Grid on behalf of the undertaker or in accordance with a plan approved by National Grid or in accordance with any requirement of National Grid or under its supervision will not (unless sub-paragraph (3) applies), excuse the undertaker from liability under the provisions of this sub-paragraph (1) unless National Grid fails to carry out and execute the works properly with due care and attention and in a skilful and 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, its officers, servants, contractors or agents;

(b) any authorised works and/or any other works authorised by this Schedule carried out by National Grid as an assignee, transferee or lessee of the undertaker with the benefit of the Order pursuant to section 156 of the Planning Act 2008 or article 35 (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-section (b) will be subject to the full terms of this Schedule including this paragraph 11; 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 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 must, in respect of any matter covered by the indemnity given by the undertaker in this paragraph, at all times act reasonably and in the same manner as it would as if settling third party claims on its own behalf from its own funds.

(6) National Grid must use its reasonable endeavours to mitigate and to minimise any costs, expenses, loss, demands, and penalties to which the indemnity under this paragraph applies where it is within National Grid's reasonable ability and control to do so and which expressly excludes any obligation to mitigate liability arising from third parties which is outside of National Grid's control and if reasonably requested to do so by the undertaker National Grid must provide an explanation of how the claim has been minimised, where relevant.

(7) Not to commence construction (and not to permit the commencement of such construction) of the authorised works on any land owned by National Grid or in respect of which National Grid has an easement or wayleave for its apparatus or any other interest or to carry out any works within 15 metres of National Grid's apparatus until the following conditions are satisfied—

(a) unless and until National Grid is satisfied acting reasonably (but subject to all necessary regulatory constraints) that the undertaker has first provided the acceptable security (and provided evidence that it shall maintain such acceptable security for the construction period of the authorised works from the proposed date of commencement of construction of the authorised works) and National Grid has confirmed the same to the undertaker in writing; and

(b) unless and until National Grid is satisfied acting reasonably (but subject to all necessary regulatory constraints) that the undertaker has procured acceptable insurance (and provided evidence to National Grid that it shall maintain such acceptable insurance for the construction period of the authorised works from the proposed date of commencement of construction of the authorised works) and National Grid has confirmed the same in writing to the undertaker.

(8) In the event that the undertaker fails to comply with sub-paragraph 11(7) of this Schedule, nothing in this Schedule shall prevent National Grid from seeking injunctive relief (or any other equitable remedy) in any court of competent jurisdiction.

Enactments and agreements

12. Save to the extent provided for to the contrary elsewhere in this Schedule or by agreement in writing between National Grid and the undertaker, nothing in this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and National Grid in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

Co-operation

13. —(1) Where in consequence of the proposed construction of any part of the authorised works, the undertaker or National Grid requires the removal of apparatus under paragraph 7(2) or National Grid makes requirements for the protection or alteration of apparatus under paragraph 9, the undertaker must use its best endeavours to co-ordinate the execution of the works in the interests of safety and the efficient and economic execution of the authorised works and taking into account the need to ensure the safe and efficient operation of National Grid's undertaking and National Grid must use its best endeavours to co-operate with the undertaker for that purpose.

(2) For the avoidance of doubt whenever National Grid's consent, agreement or approval is required in relation to plans, documents or other information submitted by the undertaker or the taking of action by the undertaker, it must not be unreasonably withheld or delayed.

Access

14. If in consequence of the agreement reached in accordance with paragraph 6(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 to maintain or use the apparatus no less effectively than was possible before such obstruction.

Arbitration

15. Save for differences or disputes arising under paragraph 7(2), 7(4), 8(1) and 9 any difference or dispute arising between the undertaker and National Grid under this Schedule must, unless otherwise agreed in writing between the undertaker and National Grid, be determined by arbitration in accordance with article 42 (arbitration).

Notices

16. Notwithstanding article 45 (service of notices), any plans submitted to National Grid by the undertaker pursuant to this Schedule must be submitted using the LSBUD system (https://lsbud.co.uk/) or to such other address as National Grid may from time to time appoint instead for that purpose and notify to the undertaker in writing.

SCHEDULE 22

Article 43

PROTECTIVE PROVISIONS FOR THE PROTECTION OF UNITED UTILITIES WATER LIMITED

Application

1. For the protection of UU Water the following provisions, unless otherwise agreed in writing between the undertaker and UU Water, have effect.

Interpretation

2. In this Schedule—

"alternative apparatus" means suitable alternative apparatus to enable UU Water to fulfil its statutory functions in a manner no less efficient than previously;

"apparatus" means any treatment works, reservoirs, pumping stations, water mains, sewers, drains, sludge mains, disposal mains, pipes or any accessories (including those within the meaning of section 219 of the Water Industry Act 1991) vested in UU Water under the Water Industry Act 1991 and any preceding legislation or other apparatus belonging to or maintained by UU Water for the purposes of UU Water's undertaking together with any replacement apparatus and such other apparatus constructed pursuant to this Order that becomes operational apparatus of UU Water for the purposes of UU Water's undertaking and includes any structure in which apparatus is or will be lodged or which gives or will give access to apparatus;

"authorised works" has the same meaning as is given to the term "authorised development" in article 2 (interpretation) of the Order and for the purposes of this Schedule includes the use and maintenance of the authorised works and construction of any works authorised by this Schedule;

"deed of consent" means a deed of consent, crossing agreement, deed of variation or new deed of grant agreed between the parties acting reasonably in order to vary or replace existing easements, agreements, enactments and other such interests so as to secure land rights and interests as are necessary to carry out, maintain, operate and use the apparatus in a manner consistent with the terms of this Schedule;

"Estimate" means a reasonable estimate of the total reasonable and proper costs that UU Water expects to incur in respect of staff and orders or instructions that need to be given to UU Water's vendors in its supply chain or to third party organisations to obtain their consent in respect of the specified works;

"facilities and rights" for construction and for maintenance include any appropriate working areas required to reasonably and safely undertake that construction or maintenance activity, and any necessary rights of access;

"functions" includes powers and duties;

"ground mitigation scheme" means a scheme approved by UU Water (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 conditions and vibration 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 and water supplies are to be monitored (including turbidity), the timescales of any monitoring activities and the extent of ground subsidence, dewatering and / or vibration which, if exceeded, shall require the undertaker to submit for UU Water's approval a ground mitigation scheme;

"ground subsidence event" means any ground subsidence, ground dewatering or vibration identified by the monitoring activities set out in the ground monitoring scheme that has exceeded or reasonably has the potential to exceed the level described in the ground monitoring scheme as requiring a ground mitigation scheme;

"in" (in a context referring to apparatus or alternative apparatus in land) includes a reference to apparatus or alternative apparatus under, over, across, along or upon such land;

"maintain" and "maintenance" have effect as if the term maintain includes protect and use;

"plan" or "plans" include all designs, drawings, specifications, method statements, soil reports, programmes, calculations, risk assessments and other documents that are reasonably necessary to properly and sufficiently describe and assess the works to be executed;

"protective works" means any works that are reasonably necessary to protect UU Water's services to its customers and its apparatus from damage that may be caused by the carrying out, maintenance or use of the authorised development;

"rights" includes restrictive covenants and, in relation to decommissioned apparatus, the surrender of rights, release of liabilities and transfer of decommissioned apparatus;

"specified works" means any of the authorised works or activities (including maintenance) undertaken in association with the authorised development (including maintenance and notwithstanding the definition of "commence" in article 2 (interpretation) of this Order) including but not limited to any intrusive site preparation works, intrusive remediation works, intrusive surveys and investigations (including archaeological, utility or soil surveys), erection of temporary fencing requiring intrusive supports, intrusive marking out of site boundaries, diversion or laying of services or intrusive environmental mitigation measures and any such temporary access by HGVs or LGVs that may be required in association with these, and which—

(a) when involving a pipe up to and including 300mm in diameter, will or may be situated over, or within 3000mm measured in any direction of any apparatus, the removal of which has not been required by the undertaker under sub-paragraph 6(2) or otherwise;

(b) when involving a pipe exceeding 300mm in diameter, will or may be situated over, or within 5000mm measured in any direction of any apparatus the removal of which has not been required by the undertaker under sub-paragraph 6(2) or otherwise; or

(c) may in any way adversely affect any apparatus the removal of which has not been required by the undertaker under sub-paragraph 6(2) or otherwise;

"UU Water" means United Utilities Water Limited (company number 02366678), registered office at Haweswater House, Lingley Mere Business Park, Lingley Green Avenue, Great Sankey, Warrington, WA5 3LP and includes its successors in title or any successor as a water and sewerage undertaker within the meaning of the Water Industry Act 1991; and

"UU Water's undertaking" means the rights, duties and obligations of United Utilities Water Limited as a water and sewerage undertaker under the Water Industry Act 1991.

Apparatus of UU Water stopped up in street

3. Notwithstanding the temporary closure of any street under the powers of article 12 (temporary prohibition or restriction of use of streets and public rights of way, and authorising vehicular use on public rights of way) UU Water will be 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 it would have been entitled to do immediately before such temporary alteration, diversion or restriction in respect of any apparatus which at the time of the stopping up or diversion was in that street.

Discharge of Water, foul and surface water

4.—(1) If the undertaker proposes to connect foul water to a public sewer operated by UU Water, the undertaker shall give to UU Water notice of the proposal, and within 42 days of the receipt by them of the notice, UU Water may refuse permission for the connection but only if it

has reasonable grounds for doing so, or it may grant permission for the connection or alteration, subject to such reasonable conditions as it thinks fit acting reasonably. Any such permission may in particular specify the mode and point of connection.

(2) If the undertaker proposes to connect surface water to a public sewer operated by UU Water or divert surface water into another surface water sewer operated by UU Water, the undertaker shall give to UU Water notice of the proposal, and within 42 days of the receipt by them of the notice, UU Water may refuse permission for the connection, but only if it has reasonable grounds for doing so, or it may grant permission for the connection or alteration, subject to such reasonable conditions as it thinks fit acting reasonably. Any such permission may in particular specify the mode, the point of connection, the rate of discharge and the size of any attenuation necessary. UU Water shall be entitled to refuse any connection where the sustainable drainage system hierarchy for managing surface water has not been reasonably investigated and / or sustainable drainage has not been incorporated within the proposed surface water drainage to the satisfaction of UU Water.

(3) UU Water may prohibit the discharge of foul water into the public sewer reserved for surface water, and prohibit the discharge of surface water into the public sewer reserved for foul water.

(4) Where UU Water has not granted or refused permission under this paragraph within 42 days from the receipt of notice of a proposal the permission shall be deemed to be granted.

(5) Nothing in this section entitles the undertaker to—

(a) discharge into a public sewer (directly or indirectly), any highway drainage, culvert, watercourse, groundwater, trade effluent or any liquid or other matter, the discharge of which into a public sewer is prohibited by or under any enactment; or

(b) have drains or sewers that communicate directly or indirectly with a surface water sewer or storm water overflow.

Protective works to buildings

5. The undertaker must exercise the powers conferred by article 18 (protective work to buildings) so as not to obstruct or render less convenient the access to any apparatus without the written consent of UU Water (such consent not to be unreasonably withheld or delayed) and if by reason of the exercise of those powers any damage to any apparatus (other than apparatus the repair of which is not reasonably necessary in the view of its intended removal or abandonment) or property of UU Water or any interruption in the supply of water and the provision of sewerage services by UU Water, as the case may be, is caused, the undertaker must bear and pay on demand the cost reasonably incurred and documented by UU Water in making good such damage or restoring the supply; and, shall pay compensation to UU Water for any loss sustained by reason of any such damage or interruption.

Removal of apparatus

6.—(1) If, in the exercise of the powers conferred by this Order, including pursuant to any agreement reached in accordance with paragraph 5, the undertaker acquires any interest in any land in which any apparatus is placed, that apparatus must not be decommissioned or removed and any right of UU Water to maintain that apparatus in that land must not be extinguished or interfered with until alternative apparatus has been constructed, is in operation, and the facilities and rights referred to in sub-paragraph (2) have been provided, to the reasonable satisfaction of UU Water and in accordance with sub-paragraphs (2) to (5) inclusive.

(2) If, for the purpose of executing any works in, on, under or over any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, it must give to UU Water advance written notice of not less than 70 days 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 UU Water reasonably needs to move or remove any of its apparatus) the undertaker must afford to UU Water to its reasonable satisfaction the necessary facilities and rights—

(a) for the construction of alternative apparatus (including appropriate working areas required to reasonably and safely undertake necessary works by UU Water in respect of the apparatus);

(b) subsequently for the maintenance of that apparatus (including appropriate working areas required to reasonably and safely undertake necessary works by UU Water in respect of the apparatus); and

(c) to allow unhindered access to that apparatus (including appropriate working areas required to reasonably and safely undertake necessary works by UU Water in respect of the apparatus).

(3) If the undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraph (2), in the land in which the alternative apparatus or part of such apparatus is to be constructed, UU Water must, on receipt of a written notice to that effect from the undertaker, take such steps as are reasonable in the circumstances in an endeavour to assist the undertaker in obtaining the necessary facilities and rights in the land in which the alternative apparatus is to be constructed save that this obligation will not extend to the requirement for UU Water to use its compulsory purchase powers to this end unless it (in its absolute discretion) elects to so do.

(4) Any alternative apparatus to be constructed in land of or land secured by the undertaker under this Schedule must be constructed in such manner and in such position as may be agreed between UU Water and the undertaker, each acting reasonably.

(5) UU Water must, after the alternative apparatus to be provided or constructed has been agreed, and subject to the prior grant to UU Water of such facilities and rights as are referred to in sub-paragraph (2) or (3), then proceed without unnecessary delay to construct and bring in to operation the alternative apparatus and subsequently to decommission or remove any apparatus required by the undertaker to be decommissioned or removed under the provisions of this Schedule.

Facilities and rights for alternative apparatus

7.—(1) Where, in accordance with the provisions of this Schedule, the undertaker affords to or secures for UU Water facilities and rights in land for the access to, construction and maintenance of alternative apparatus in substitution for apparatus to be decommissioned or removed, those facilities and rights must be granted upon such terms and conditions as may be agreed between the undertaker and UU Water, each acting reasonably, and must be no less favourable on the whole to UU Water than the facilities and rights enjoyed by it in respect of the apparatus to be decommissioned or removed unless otherwise agreed by UU Water.

(2) If the facilities and rights to be afforded by the undertaker and agreed with UU Water under sub-paragraph (1) 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 UU Water than the facilities and rights enjoyed by it in respect of the apparatus to be decommissioned or removed, then the terms and conditions to which those facilities and rights are subject may be referred to arbitration in accordance with paragraph 14 of this Schedule and the arbitrator must make such provision for the payment of reasonable compensation by the undertaker to UU Water as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

Retained apparatus: protection of UU Water

8.—(1) Not less than 56 days before the commencement of any specified works the undertaker must submit to UU Water a plan and, if reasonably required by UU Water, a ground monitoring scheme in respect of those works.

(2) The plan to be submitted to UU Water under sub-paragraph (1) must include a method statement and describe—

(a) the exact position of the works;

(b) the level at which these are proposed to be constructed or renewed;

(c) the manner of their construction or renewal including details of excavation, positioning of plant etc.;

(d) the position of all apparatus, identified if necessary by survey or investigation works carried out with the prior agreement and to the reasonable satisfaction of UU Water;

(e) by way of detailed drawings, every alteration proposed to be made to or close to any such apparatus; and

(f) any intended maintenance regimes.

(3) The undertaker must not commence any specified works until UU Water has given written approval of the plan so submitted (and the ground monitoring scheme if required).

(4) Any approval of UU Water given under sub-paragraph (3)—

(a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraph (5);

(b) must not be unreasonably withheld or delayed and UU Water and any approval or refusal must be provided to the undertaker within 56 days of the date of submission of the plan under sub-paragraph (1); and

(c) must include the payment of the reasonable and proper costs and expenses incurred by UU Water in approving any application submitted in accordance with paragraph 8.

(5) UU Water may require protective works or such modifications to be made to the plan as may be reasonably necessary for the purpose of maintaining services to its customers, or securing its apparatus against interference or risk of damage, or for the purpose of providing or securing proper and convenient means of access to any apparatus.

(6) Specified works must only be executed in accordance with—

(a) the plan submitted under sub-paragraph (1) (and ground monitoring scheme if required), as approved or as amended from time to time by agreement between the undertaker and UU Water; and

(b) all conditions imposed under sub-paragraph (4)(a), and UU Water will be entitled to watch and inspect the execution of those works.

(7) Where UU Water reasonably requires any protective works or such modifications to be carried out by itself or by the undertaker (whether of a temporary or permanent nature) such protective works or modifications, inclusive of any measures or schemes required and approved as part of the plan approved pursuant to this paragraph, must be carried out to UU Water's reasonable satisfaction prior to the commencement of any specified works (or any relevant part thereof) for which such protective works or modifications are required prior to commencement.

(8) If UU Water, 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 3 and 5 to 7 apply as if the removal of the apparatus had been required by the undertaker under paragraph 6(2).

(9) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 56 days before commencing the execution of the specified works, a new plan, instead of the plan previously submitted, and having done so the provisions of this paragraph will apply to and in respect of the new plan.

(10) As soon as is reasonably practicable after any ground subsidence event attributable to the authorised works (including such an event attributable to its maintenance)—

(a) the undertaker must implement an appropriate ground mitigation scheme; and

(b) UU Water retains the right to carry out any further necessary protective works for the safeguarding of its apparatus and can recover any such reasonable and documented costs in line with paragraph 9.

(11) The undertaker is not required to comply with sub-paragraph (1) where it needs to carry out emergency works but in that case it must give to UU Water notice as soon as is reasonably practicable and a plan of those works and must comply with the conditions imposed under sub-paragraph (4)(a) insofar as is reasonably practicable in the circumstances.

(12) In this paragraph, "emergency works" means works whose execution at the time when they are executed is required in order to put an end to, or to prevent the occurrence of, circumstances then existing or imminent (or which the person responsible for the works believes on reasonable grounds to be existing or imminent) which are likely to cause danger to life or property or the environment, and to any interruption of a supply of water provided to any premises and to any interruption of the provision of sewerage services to any premises.

Expenses

9.—(1) At the same time as any written notice is provided in accordance with paragraph 6(2) or paragraph 8(8), UU Water shall also submit an Estimate to the undertaker.

(2) If the undertaker elects that it will proceed with the specified works it shall make an advance payment of the Estimate to UU Water no later than 28 days prior to the planned commencement of the specified works. The undertaker shall not commence the specified works until a minimum of 28 days of receipt by UU Water of the advance payment.

(3) If at any point UU Water's Estimate is forecast to be exceeded, UU Water shall submit an early warning notification and then a change request documenting all costs already incurred and forecast to be reasonably incurred and submit an updated Estimate to the undertaker no less than 28 days prior to the Estimate being reasonably expected to be exceeded. The undertaker shall make such additional payment required by the updated Estimate as soon as reasonably possible and in any event no later than 56 days after receipt of the updated Estimate.

(4) Where the undertaker fails to make such additional payment required under sub-paragraph (3) within 56 days of receipt of the updated Estimate, UU Water will be entitled to require the undertaker to suspend works from the point at which the charges, costs and expenses reach or exceed the Estimate. In addition any reasonable abortive/demobilisation costs resulting from this would be recoverable by UU Water from the undertaker.

(5) In the event of any dispute as to the reasonableness of costs included in an updated Estimate submitted under sub-paragraph (3), UU Water must not exercise the powers of sub-paragraph (4) until the dispute has been finally determined.

(6) Subject to the following provisions of this paragraph, UU Water' will retain an account of all its direct charges, costs and expenses reasonably incurred and documented by UU Water in the design, planning, inspection, removal, relaying or replacing, alteration or protection of any apparatus or the construction of any new or alternative apparatus required as a direct result of the execution of any authorised works including without limitation—

(a) any costs reasonably incurred by or compensation properly paid by UU Water in connection with the acquisition of rights or the exercise of statutory powers for such apparatus including reasonable costs (including professional fees) incurred by UU Water as a consequence of UU Water—

(i) using its own compulsory purchase powers to acquire any necessary rights under paragraph 6(3) if it elects to do so; or

(ii) exercising any compulsory purchase powers under this Order transferred to or benefitting UU Water;

(b) in connection with the cost of the carrying out of any necessary 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;

(f) the survey of any land, apparatus or works, the inspection and monitoring of works, the provision of network contingency measures or the installation or removal of any temporary works reasonably necessary in consequence of the execution of any such works referred to in this Schedule;

(g) any watching brief pursuant to sub-paragraph 8(6);

(h) in connection with an assessment of flood risk from UU Water apparatus (note above comment about whether this apparatus includes a reservoir);

(i) in connection with an assessment of the impact on a UU Water outfall; and

(j) any relevant charges in accordance with the charges scheme under the Water Industry Act 1991.

(7) UU Water shall give the undertaker regular actual and forecast cost updates at intervals to be agreed between UU Water and the undertaker, each acting reasonably.

(8) Within 90 days of completion of the specified works, UU Water shall reconcile its accounts with its supply chain and collate its internal costs and advise the undertaker of the final account position. Within 28 days of this final account, UU shall reimburse the undertaker of all remaining monies that were received as part of any advance payment arrangements. If the final account is above the Estimate, the undertaker will be required to pay UU Water within 28 days of submission of the final account.

(9) UU Water may in carrying out works, elect to place—

(a) alternative apparatus of a better type, or greater capacity or of greater dimensions in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions save where this has been solely due to using the nearest currently available type (or where it is more economical overall or there is no practical alternative to the relevant course of action, including where the same is mandated by UU Water's Standards); or

(b) existing or alternative apparatus at a depth greater than the depth at which the existing apparatus was situated save for where the requirement for a greater depth cannot reasonably be avoided, (a "Betterment").

(10) The twinning of assets crossing the authorised works or similar initiatives to provide resilience to UU Water's network in accordance with the prevailing business and engineering requirements may be necessary, in circumstances in which the proposed authorised works will compromise the future access or present an unacceptable operational or business risk to the relevant asset (without interference with the authorised work), and such twinning or similar arrangement is not Betterment. Where UU Water can demonstrate on a case by case basis that the particular asset is critical (for example, it is critical to the provision of water or wastewater services, or the authorised works cannot accommodate a like for like asset replacement, or there is no alternative means of maintaining services to customers by bypassing the asset under the authorised works), the twinning of assets crossing the authorised works or similar arrangement is not Betterment.

(11) Where UU Water has elected to place apparatus which is assessed and agreed by UU Water as Betterment, the undertaker shall not be required to cover any additional cost associated with that Betterment. Any such assessment and decision by UU Water on whether such apparatus is Betterment or not shall always be made by UU Water acting reasonably.

Indemnity

10. —(1) If by reason of the authorised 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 UU Water, or there is any material interruption in any service provided, or in the supply of any goods by UU Water, or UU Water has to take action to protect the services to its customers, or UU Water elects to use its statutory powers, the undertaker must—

(a) bear and pay the cost reasonably incurred by UU in making good such damage or restoring the supply or use of the UU Water's statutory powers; and

(b) make reasonable compensation to UU Water for any other expenses, loss, damages, penalty or costs suffered or incurred and documented by UU Water, by reason of any such damage or interruption or use of UU Water's statutory powers, provided always that UU Water makes all reasonable endeavours to mitigate any such expenses, losses, damages, penalties or costs.

(2) The fact that any act or thing may have been done by UU Water on behalf of the undertaker or in accordance with a plan approved by UU Water or in accordance with any requirement of UU Water or under its supervision does not, excuse the undertaker from liability under the provisions.

(3) Nothing in sub-paragraph (1) imposes any liability on the undertaker with respect to any damage or interruption to the extent that it is attributable to the act, neglect or default of UU Water, its officers, servants, contractors or agents.

(4) Notwithstanding any paragraph or sub-paragraph of this Schedule, the undertaker shall under no circumstances be liable for any consequential loss or indirect loss suffered by UU Water.

(5) UU Water must give the undertaker reasonable notice of any 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.

Enactments and agreements

11. Except where this Schedule provides otherwise, nothing in this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and UU Water 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

12. —(1) Where in consequence of the proposed construction of any part of the authorised works, the undertaker or UU Water requires the removal of apparatus under paragraph 6(2) or UU Water makes requirements for the protection or alteration of apparatus under paragraph 8, the undertaker must use all reasonable endeavours to co-ordinate the execution of the works in the interests of safety and the efficient and economic execution of the authorised works and taking into account the need to ensure the safe and efficient operation of UU Water's undertaking, using existing processes where requested by UU Water, provided it is appropriate to do so, and UU Water must use its reasonable endeavours to co-operate with the undertaker for that purpose.

(2) For the avoidance of doubt whenever UU Water's consent, agreement or approval is required in relation to plans, documents or other information submitted by UU Water or the taking of action by UU Water, it must not be unreasonably withheld or delayed.

(3) Where the undertaker identifies any apparatus which may belong to or be maintainable by UU Water but which does not appear on any statutory map kept for the purpose by UU Water, it shall inform UU Water of the existence and location of the apparatus as soon as is reasonably practicable.

(4) Where UU Water identifies any apparatus which may belong to others but which does not appear on any statutory map kept for the purpose by UU Water, it shall inform the undertaker of the existence and location of the apparatus as soon as is reasonably practicable.

(5) The undertaker shall notify UU Water of any hazardous material/contamination encountered in land involving UU apparatus or where sub-paragraphs 2(a), 2(b), and/or 2(c) of the definition of Specified Works applies. UU Water shall likewise notify the undertaker where it believes there is a risk that the undertaker may encounter hazardous material/contamination in such land.

Access

13. If in consequence of any agreement reached in accordance with paragraph 1 or the powers conferred by this Order the access to any apparatus is materially obstructed, the undertaker shall seek to provide such alternative rights and means of access to such apparatus, to the extent that provision of such rights and means of access is within the ability of the undertaker to grant, as will enable UU Water to maintain or use the apparatus no less effectively than was possible before such obstruction.

Arbitration

14. Save for differences or disputes arising under paragraph 9(4) any difference or dispute arising between the undertaker and UU Water under this Schedule must, unless otherwise agreed in writing between the undertaker and UU Water, be determined by arbitration in accordance with article 42 (arbitration).

Notices

15. Notwithstanding article 45 (service of notices) any plans submitted to UU Water by the undertaker must be sent via email to UU Water s and sent to the General Counsel Department at UU Water's registered office or such other address as UU Water may from time to time appoint instead for that purpose and notify to the undertaker in writing.

SCHEDULE 23

Article 43

PROTECTIVE PROVISIONS FOR THE PROTECTION OF BRITISH PIPELINES AGENCY

Application

1. The provisions of this Schedule have effect for the protection of British Pipelines Agency unless otherwise agreed in writing between the undertaker and British Pipelines Agency.

Interpretation

2. In this Schedule—

"alternative apparatus" means alternative apparatus adequate to enable British Pipelines Agency to fulfil its functions as a pipe-line operator in a manner no less efficient than previously and having regard to British Pipelines Agency's standards for the construction and operation of a pipeline;

"alternative rights" means new rights for the construction and for access to and for the use, protection, inspection, maintenance, repair and renewal of apparatus or alternative apparatus including any restrictions on the landowner and occupiers for the protection of the apparatus or alternative apparatus and to allow British Pipelines Agency to perform its functions in a manner not less efficient than under the existing rights and having regard to British Pipelines Agency's standards for the construction and operation of a pipeline;

"apparatus" means the pipeline and storage system owned by British Pipelines Agency within or adjacent to the Order limits and includes any structure in which apparatus is or is to be lodged or which gives or will give access to apparatus and includes any ancillary works and apparatus all protective wrappings, valves, sleeves and slabs, cathodic protection units, together with ancillary cables and markers and such legal interest and benefit of property rights and covenants as are vested in British Pipelines Agency in respect of those items and, where the context allows, includes alternative apparatus;

"British Pipelines Agency" means British Pipelines Agency and any successor in title;

"existing rights" means the rights and benefits of covenants enjoyed by British Pipelines Agency in land 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;

"plan" includes all designs, drawings, specifications, method statements, soil reports, programmes, calculations, risk assessments and other documents that are reasonably necessary to describe the works to be executed; and

"specified work" means any works that are near to, or will or are likely to affect any apparatus or power supply to any apparatus including—

(a) all intrusive or non-intrusive works within 15 metres of any apparatus;

(b) the crossing of apparatus by other utilities;

(c) the use of explosives within 400 metres of any apparatus; and

(d) piling, undertaking of a 3D seismic survey or the sinking boreholes within 30 metres of any apparatus,

whether carried out by the undertaker or any third party in connection with the authorised development.

Acquisition of apparatus

3.—(1) Despite any provision in this Order or anything shown on the land and crown land plans or if the Order covers any interest in any land in which any apparatus is placed or over which existing rights are enjoyed by British Pipelines Agency, the undertaker must not acquire any apparatus or acquire, suspend, extinguish or affect any of the existing rights, otherwise than in accordance with this Schedule or by agreement with British Pipelines Agency.

(2) Where the undertaker acquires land which is subject to any existing rights and the provisions of paragraph 4 do not apply, the undertaker must retain any notice of the existing rights on the title to the relevant land when registering the undertaker's title to such acquired land.

Removal of apparatus and rights for alternative apparatus

4.—(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 any apparatus is relocated or diverted, that apparatus must not be removed by the undertaker and any right of British Pipelines Agency to maintain and use 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 British Pipelines Agency.

(2) If, for the purpose of executing any works in, on or under any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, it must give British Pipelines Agency 56 days' written notice of that requirement, together with a plan of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order British Pipelines Agency reasonably needs to remove any apparatus) the undertaker must, subject to sub-paragraph (3), afford to British Pipelines Agency the necessary facilities and rights for the construction of alternative apparatus in other land of the undertaker and subsequently grant alternative rights for the maintenance of that apparatus in accordance with paragraph (6).

(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 undertaker must afford to and, if necessary, acquire for the benefit of British Pipelines Agency the necessary facilities and rights for the construction, maintenance and use of the alternative apparatus and access to it.

(4) Any alternative apparatus to be constructed in land of the undertaker under this Schedule must be constructed in such manner and in such line or situation as may be agreed between British Pipelines Agency and the undertaker or in default of agreement settled by arbitration in accordance with article 42 (arbitration).

(5) British Pipelines Agency must, after the alternative apparatus to be provided or constructed has been agreed or settled in accordance with article 42 (arbitration), and after the grant to British Pipelines Agency of any such facilities and rights as are referred to in sub-paragraph (2), 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 allow the undertaker to remove) any redundant apparatus required by the undertaker to be removed under the provisions of this Schedule.

(6) Irrespective of sub-paragraph (5), if the undertaker gives notice in writing to British Pipelines Agency that it desires itself to execute any work, or part of any work in connection with the construction, removal or decommissioning of apparatus in the land of the undertaker or the construction of alternative apparatus, that work, instead of being executed by British Pipelines Agency, must be executed by the undertaker without unnecessary delay under the superintendence, if required, and to the reasonable satisfaction of British Pipelines Agency.

(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 3000 millimetres of the apparatus without British Pipelines Agency's consent unless that apparatus is redundant and disconnected from British Pipelines Agency's remaining system and is more than 3000 millimetres from any live apparatus.

Facilities and rights for alternative apparatus

5.—(1) Where, in accordance with the provisions of this Schedule, the undertaker affords to British Pipelines Agency facilities and rights for the construction and maintenance in land of the undertaker of alternative apparatus in substitution for apparatus to be removed, those facilities and rights are to be granted upon such terms and conditions as may be agreed between the undertaker and British Pipelines Agency in accordance with this paragraph or in default of agreement settled by arbitration in accordance with article 42 (arbitration).

(2) Alternative rights must be granted before any alternative apparatus is brought into use or any existing rights extinguished.

(3) The undertaker must grant British Pipelines Agency alternative rights by way of a deed of grant of easement, substantially in the form of British Pipelines Agency's precedent from time to time. If any third party is required to be involved for the grant of alternative rights, the undertaker must secure their agreement at its own cost.

(4) Nothing in this Schedule or contained in the alternative rights requires British Pipelines Agency to divert or remove any alternative apparatus installed in accordance with the provisions of this Schedule and any other agreement between British Pipelines Agency and the undertaker.

(5) In settling those terms and conditions for the alternative rights in respect of alternative apparatus the arbitrator must give effect to all reasonable requirements of the undertaker and British Pipelines Agency for ensuring the safety and efficient operation of the authorised development and the apparatus respectively.

(6) 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 British Pipelines Agency 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 British Pipelines Agency as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

Retained apparatus: protection

6.—(1) Unless a shorter period is otherwise agreed in writing between the undertaker and British Pipelines Agency, not less than 35 days before commencing any specified work in relation to apparatus the removal of which has not been required by the undertaker under sub-paragraph 4(2) the undertaker must submit to British Pipelines Agency a plan of the works to be executed.

(2) The plan to be submitted to British Pipelines Agency under sub-paragraph (1) must include a method statement and describe—

(a) the exact position of the works;

(b) the level at which these are proposed to be constructed or renewed;

(c) the manner of their construction or renewal including details of excavation, positioning of plant etc.;

(d) the position of all apparatus;

(e) by way of detailed drawings, every alteration proposed to be made to or close to any such apparatus;

(f) any intended maintenance regime; and

(g) and any other information reasonably required by British Pipelines Agency to assess the works.

(3) The specified work must be executed only in accordance with the plan submitted under sub-paragraph (1) and approved by British Pipelines Agency, and in accordance with such reasonable requirements as may be made in accordance with sub-paragraph (4) by British Pipelines Agency for the alteration or otherwise for the protection of the apparatus, or for securing access to it; and British Pipelines Agency is entitled to watch and inspect the execution of the specified work and the undertaker must follow any reasonable instructions from British Pipelines Agency for the safety of the apparatus and those working nearby.

(4) Any reasonable requirements made by British Pipelines Agency under sub-paragraph (2) must be made within a period of 21 days (unless a shorter period is otherwise agreed in writing between the undertaker and British Pipelines Agency) beginning with the date on which a plan under sub-paragraph (1) is submitted to it.

(5) If British Pipelines Agency 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, this paragraph applies as if the removal of the apparatus had been required by the undertaker under paragraph 4(2) but the undertaker is not required to serve British Pipelines Agency with a new notice under paragraph 4.

(6) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time but (unless otherwise agreed in writing between the undertaker and British Pipelines Agency) in no case less than 28 days before commencing any specified work, a new plan, instead of the plan previously submitted, and having done so the provisions of this paragraph apply to and in respect of the new plan.

(7) The undertaker is not required to comply with sub-paragraph (1) where it needs to carry out emergency works as defined in the 1991 Act but in that case it must give to British Pipelines Agency notice of the works it intends to carry out to remedy the emergency together with a plan as soon as is reasonably practicable and must comply with sub-paragraph (2) in so far as is reasonably practicable in the circumstances.

(8) In relation to any works which will or may be situated on, over, under or within 15 metres measured in any direction of apparatus, or (wherever situated) impose any load directly upon the apparatus or involve embankment works within 15 metres of the apparatus, the plan to be submitted to British Pipelines Agency under sub-paragraph (1) must include a material statement describing—

(a) the exact position of the work;

(b) the level at which the work is to be constructed or renewed;

(c) the manner of its construction or renewal;

(d) the position of the apparatus; and

(e) by way of detailed drawings, every alteration proposed to be made to the apparatus.

Cathodic protection testing

7. Where in the reasonable opinion of the undertaker—

(a) the authorised development might interfere with the existing cathodic protection forming part of any apparatus; or

(b) any apparatus might interfere with the proposed or existing cathodic protection forming part of the authorised development,

British Pipelines Agency and the undertaker must co-operate in undertaking the tests which the undertaker considers reasonably necessary for ascertaining the nature and extent of such interference and measures for providing or preserving cathodic protection.

Expenses

8.—(1) Subject to the following provisions of this paragraph, the undertaker must pay to British Pipelines Agency the reasonable costs and expenses incurred by British Pipelines Agency in, or in connection with—

(a) the inspection, removal, alteration or protection of any apparatus;

(b) the execution of any works required by this Schedule including the purchase, installation and commission of alternative apparatus;

(c) the review and assessment of plans;

(d) the watching and inspecting the execution of any specified work, any associated works and any works undertaken by third parties as a result of any specified work (including the assessment of plans); or

(e) imposing reasonable requirements for the protection or alteration of apparatus affected by the authorised development or works as a consequence of the authorised development, which may reasonably be required in consequence of the execution of any such works as are required under this Schedule or are authorised by the Order.

(2) The scrap value of any apparatus removed under the provisions of this Schedule is to be deducted from any sum payable under sub-paragraph (1), that value being calculated after removal.

(3) Upon the submission of proper and reasonable estimates of costs and expenses to be incurred by British Pipelines Agency, the undertaker must pay British Pipelines Agency sufficiently in advance to enable British Pipelines Agency to undertake its obligations under this Schedule in a manner that is neutral to its cashflow provided that in the event that the costs incurred by British Pipelines Agency are less than the amount paid by the undertaker pursuant to this sub-paragraph (3) then British Pipelines Agency must promptly repay any overpayment to the undertaker.

(4) If in accordance with the provisions of this Schedule—

(a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions; or

(b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which 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 settled by arbitration in accordance with article 42 (arbitration) to be necessary, then, if such placing involves cost in the construction of works under this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to British Pipelines Agency by virtue of sub-paragraph (1) must be reduced by the amount of that excess save where it is not possible in the circumstances to obtain the existing type of operations, capacity, dimensions or place at the existing depth in which case full costs must be borne by the undertaker.

(5) For the purposes of sub-paragraph (4)—

(a) an extension of apparatus to a length greater than the length of existing apparatus must not be treated as a placing of apparatus of greater dimensions than those of the existing apparatus;

(b) the placing of apparatus that is to British Pipelines Agency's current specification and standards for diversions and protective works must not be treated as a placing of apparatus of better type, greater capacity, greater dimensions or greater depth than those of the existing apparatus; and

(c) 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 must be treated as if it also had been agreed or had been so determined.

Damage to property and other losses

9.—(1) Subject to the following provisions of this paragraph, the undertaker must make reasonable compensation to British Pipelines Agency—

(a) for all loss, damage, liability, costs and expenses reasonably suffered or incurred by British Pipelines Agency for which British Pipelines Agency is legally liable as a result of legally sustainable claims brought against British Pipelines Agency by any third party solely arising out of the carrying out of any relevant works;

(b) for the cost reasonably incurred by British Pipelines Agency in making good any damage to any apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal or abandonment) arising from or caused by the carrying out of any relevant works and the authorised development; and

(c) for the cost reasonably incurred by British Pipelines Agency in stopping, suspending and restoring the supply through its pipe-line and make reasonable compensation to British Pipelines Agency for any other expenses, losses, damages, penalty or costs incurred by British Pipelines Agency by reason or in consequence of any such damage or interruption provided that the same arises in consequence of the carrying out of any relevant works and the authorised development.

(2) The fact that any act or thing may have been done by British Pipelines Agency on behalf of the undertaker or in accordance with a plan approved by British Pipelines Agency or in accordance with any requirement of British Pipelines Agency or under its supervision does not, subject to sub-paragraph (3), excuse the undertaker from liability under the provisions of sub-paragraph (1).

(3) Irrespective of anything to the contrary elsewhere in this Schedule—

(a) the undertaker and British Pipelines Agency must at all times take reasonable steps to prevent and mitigate any loss, damage, liability, claim, cost or expense recoverable from the other under this Schedule; and

(b) neither the undertaker nor British Pipelines Agency are liable for any loss, damage, liability, claim, cost or expense suffered or incurred by the other to the extent that the same are incurred as a result of or in connection with the sole, partial or complete breach of this Schedule or negligence arising out of an act, omission, default or works of the other, its officers, servants, contractors or agents.

(4) Nothing in sub-paragraph (1) will impose any liability on the undertaker in respect of—

(a) any damage or interruption to the extent that it is attributable to the neglect or default of British Pipelines Agency, its officers, employees, contractors or agents;

(b) any authorised development and/or any other works authorised by this Schedule carried out by British Pipelines Agency as an assignee, transferee or lessee of the undertaker with the benefit of the Order pursuant to section 156 of the 2008 Act or article 35 (benefit of the Order) subject to the proviso that once such works become apparatus ("new apparatus"), any authorised development yet to be executed and not falling within this sub-paragraph (b) will be subject to the full terms of this Schedule including this paragraph in respect of such new apparatus; and/or

(c) any indirect or consequential loss of British Pipelines Agency or 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.

(5) British Pipelines Agency must give to the undertaker reasonable notice of any claim or demand to which this paragraph 9 applies. If British Pipelines Agency agrees (such agreement not to be unreasonably withheld or delayed), the undertaker may at its own expense conduct all negotiations for the settlement of the same and any litigation that may arise therefrom. British Pipelines Agency must not compromise or settle any claim or demand or make any admission which might be prejudicial to the claim or demand without the undertaker's consent (such consent not to be unreasonably withheld). British Pipelines Agency must, at the request of the undertaker, afford all reasonable assistance for the purpose of contesting any such claim or action, and is entitled to be repaid all reasonable expenses incurred in so doing.

(6) Nothing in this Schedule excludes or limits the liability of the undertaker for death or personal injury resulting from the negligence of the undertaker or any of its officers, employees or agents.

(7) In this paragraph "relevant works" means such of the authorised development as—

(a) does, will or is likely to affect any apparatus; or

(b) involves a physical connection or attachment to any apparatus.

Co-operation and reasonableness

10.—(1) Where in consequence of the proposed construction of any of the authorised development, the undertaker requires the removal of apparatus under this Schedule or British Pipelines Agency makes requirements for the protection or alteration of apparatus under this Schedule, the undertaker must use reasonable endeavours to co-ordinate the execution of the works in the interests of safety and the efficient and economic execution of the authorised development and taking into account the need to ensure the safe and efficient operation of British Pipelines Agency's undertaking and British Pipelines Agency must use its reasonable endeavours to co-operate with the undertaker for that purpose.

(2) The undertaker and British Pipelines Agency must act reasonably in respect of any given term of this Schedule and, in particular, (without prejudice to generality) where any consent or expression of satisfaction is required by this Schedule it must not be unreasonably withheld or delayed.

Miscellaneous

11. Nothing in this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and British Pipelines Agency in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made provided that the terms of the relevant enactment or agreement are not inconsistent with the provisions of this Order, including this Schedule. In the case of any inconsistency, the provisions of this Order, including this Schedule, prevail.

SCHEDULE 24

Article 43

PROTECTIVE PROVISIONS FOR THE PROTECTION OF THE DRAINAGE AUTHORITY

1. The provisions of this Schedule apply for the protection of the drainage authority unless otherwise agreed between the undertaker and the drainage authority.

2. In this Schedule—

"construction" includes execution, placing, altering, laying, replacing, relaying, connection, building, installing, removal and excavation and "construct" and "constructed" are to be construed accordingly;

"the drainage authority" means the lead local flood authority within the meaning of section 6 (other definitions) of the Flood and Water Management Act 2010(b);

"drainage work" means any ordinary watercourse and includes any bank, wall, embankment or other structure, or any appliance, constructed or used for land drainage or flood defence in connection with an ordinary watercourse which is the responsibility of the drainage authority;

"ordinary watercourse" has the same meaning as given in section 72 (interpretation) of the Land Drainage Act 1991(a);

"plans" includes sections, drawings, specifications and method statements; and

"specified work" means works carried out in relation to or which may alter or obstruct any ordinary watercourse including by—

(a) erecting any mill dam, weir or other similar obstruction to the flow of the watercourse, or raising or otherwise altering any such obstruction;

(b) construction or installation of a bridge or other crossing structure;

(c) installing a culvert in the watercourse; or

(d) altering a watercourse or a culvert or other form of drainage infrastructure in a manner that would be likely to affect the flow of the watercourse.

3.—(1) Before beginning to construct any specified work, the undertaker must submit to the drainage authority plans of the work, and such further particulars as the drainage authority may within 28 days of the first submission of the plans reasonably require.

(2) Any such 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 9.

(3) The drainage authority must approve or refuse approval of the plans for a specified work within 56 days of receipt of the later of—

(a) the plans under sub-paragraph (1); or

(b) such further particulars as the drainage authority may reasonably require under sub-paragraph (1).

(4) Any approval of the drainage authority required under this paragraph—

(a) must not be unreasonably withheld or delayed;

(b) is to be deemed to have been given if it is neither given nor refused within the period specified in sub-paragraph (2); and

(c) may be given subject to such reasonable requirements or conditions as the drainage authority may make for the protection of any ordinary watercourse or for the prevention of flooding.

4. The requirements or conditions which the drainage authority may make under paragraph 3 include conditions requiring the undertaker at its own expense to construct such protective works (including any new works as well as alterations to existing works) as are reasonably necessary—

(a) to safeguard any ordinary watercourse against damage; or

(b) to secure that the efficiency of any ordinary watercourse for flood defence or land drainage purposes is not impaired and that the risk of flooding is not otherwise increased, by reason of the specified work in relation to the ordinary watercourse.

5.—(1) Any specified work in relation to an ordinary watercourse, and all protective works required by the drainage authority under paragraph 3, must be constructed to the reasonable satisfaction of the drainage authority and an officer of the drainage authority is entitled, on giving such notice as may be reasonable in the circumstances, to inspect and watch the construction of such works.

(2) The undertaker must give to the drainage authority not less than 28 days' notice of its intention to commence construction of any specified work and the undertaker must give to the drainage authority notice of completion of a specified work not later than 7 days after the date on which it is brought into use.

(3) If any part of a specified work in, over or under any ordinary watercourse is constructed otherwise than in accordance with the requirements of this Schedule or as agreed between the undertaker and the drainage authority, the drainage authority may by notice require the undertaker at its own expense to comply with the requirements of this Schedule or (if the undertaker so elects and the drainage authority in writing consents, such consent not to be unreasonably withheld) at the undertaker's expense to remove, alter or pull down the work and, where removal is agreed, to restore the site to its former condition to such extent and within such limits as the drainage authority reasonably requires.

(4) Subject to sub-paragraph (5), if within a reasonable period, being not less than 28 days from the date when a notice under sub-paragraph (3) is served, the undertaker has failed to begin taking steps to comply with the requirements of the notice and subsequently to make reasonably expeditious progress toward their implementation, the drainage authority may execute the works specified in the notice, subject to the undertaker having the right to supervise the planning and execution of such works to the extent they may affect the authorised development.

(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 drainage authority must not, except in an emergency, exercise the powers conferred by sub-paragraph (4) until the dispute has been finally determined.

6.—(1) From the commencement of the construction of any specified work until the date falling 12 months from the date of completion of the specified work ("the maintenance period"), the undertaker must at its expense, maintain in at least as good repair and condition immediately prior to commencement of the construction of the specified work and keep free from obstruction any part of a drainage work which is situated within land held or occupied by the undertaker in respect of the specified work, whether the drainage work is constructed under this Order or is already in existence.

(2) If any such drainage work which the undertaker is liable to maintain during the maintenance period is not maintained to the reasonable satisfaction of the drainage authority, it may by notice require the undertaker to maintain the drainage work at the undertaker's expense, or any part of it, to such extent as the drainage authority reasonably requires.

(3) 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 reasonable requirements of the notice and has not subsequently made reasonably expeditious progress towards their implementation, the drainage authority may do what is necessary for such compliance, subject to the undertaker having the right to supervise the planning and execution of such works to the extent they may affect the authorised development and may recover any expenditure reasonably incurred by it in doing so 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 a case of emergency, exercise the powers of sub-paragraph (3) until the dispute has been finally determined.

(5) This paragraph does not apply to—

(a) drainage works which are vested in the drainage authority, or which the drainage authority or another person is liable to maintain and is not prevented by this Order from so doing; and

(b) any obstruction of a drainage work for the purpose of a work or operation authorised by this Order and carried out in accordance with the provisions of this Schedule provided that any obstruction is removed as soon as reasonably practicable.

7. Subject to paragraph 6(5)(b), if by reason of the construction of any specified work or of the failure of any such work the efficiency of any ordinary watercourse for flood defence or land drainage purposes is impaired, or that watercourse is otherwise damaged, so as to require remedial action, such impairment or damage must be made good by the undertaker at its own expense to the reasonable satisfaction of the drainage authority and if the undertaker fails to do so, the drainage authority may make good the same and recover the expense reasonably incurred by it in so doing from the undertaker.

8.—(1) The undertaker must make reasonable compensation to the drainage authority for costs, charges and expenses which it may reasonably incur or which it may sustain—

(a) in the examination or approval of plans under this Schedule; and

(b) in the inspection and supervision of the construction of a specified work in respect of an ordinary watercourse or any protective works required by the drainage authority under this Schedule.

9. Any dispute arising between the undertaker and the drainage authority under this Schedule is to be determined by arbitration in accordance with article 42 (arbitration) of the Order.

SCHEDULE 25

Article 43

PROTECTIVE PROVISIONS FOR THE PROTECTION OF HIGHWAY AUTHORITIES

1. The provisions of this Schedule have effect unless otherwise agreed in writing between the undertaker and the relevant highway authority.

2. In this Schedule—

"highway" means a highway vested in or maintainable by the relevant local highway authority as highway authority under the 1980 Act and this definition shall include any bridge or structure carrying a highway;

"specified work" means the works under the Order to create permanent vehicular access to the authorised development or make improvements to existing highways.

Specified works

3.—(1) The undertaker will allow and facilitate an appropriately qualified officer of the relevant highway authority to participate in the design process for any specified work and will have reasonable regard to any views of that officer in finalising the detailed design of that Work, provided always that any such view shared by the officer will not be an instruction, requirement or authorisation under this Order.

(2) Any officer of the relevant highway authority duly appointed for the purpose may at all reasonable times, on giving to the undertaker such notice as may in the circumstances be reasonable, enter upon and inspect any part of the authorised development which—

(a) is in, on, over or under any highway; or

(b) which may affect any highway,

during the carrying out of the specified work, and the undertaker will give to such officer all reasonable facilities for such inspection (subject to any reasonable adjustments necessary for the safety of such officer) and, if the officer is of the opinion that the construction of the specified work poses danger to any highway or to any property of the relevant local highway authority or danger to persons or vehicles or other property in relation to which the relevant local highway authority might be liable on, in, over or under any highway, the undertaker will adopt such measures and precautions as may be reasonably practicable for the purpose of preventing any damage or injury to the highway or persons or vehicles or other property aforesaid required by the officer.

(3) Any officer of the relevant highway authority exercising the right to inspect works under sub-paragraph (1) must comply with all reasonable health and safety requirements and instructions of the undertaker in doing so.

Street works

4.—(1) Where, under this Order, any street works require to be undertaken to the reasonable satisfaction of the highway authority, this paragraph will apply.

(2) The relevant highway authority will, as soon as reasonably practicable following the receipt of notice from the undertaker that it considers any street works to which this paragraph applies to be complete, carry out an inspection of such street works.

(3) The relevant highway authority will confirm when any street works have been completed to their reasonable satisfaction in writing and will set out in such confirmation the date on which the works were last inspected to establish such reasonable satisfaction. For the period of 24 months from the date of last inspection as stated in the confirmation of reasonable satisfaction, the undertaker will be liable to pay to the relevant highway authority the reasonable costs of repairing

or rectifying any defect in the highway which, in the opinion of the relevant local highway authority (acting reasonably) was caused by or is attributable to the carrying out of street works by the undertaker.

(4) The reasonable costs set out in sub-paragraph (3) may include the costs of the time of the relevant highway authority's officers and employees incurred in the remediation or rectification of a defect as well as the cost of the remediation or repair, whether carried out by the relevant highway authority or on their instruction. The costs payable under sub-paragraph (3) must be paid by the undertaker in full within 30 days of receipt of an invoice for such costs provided that such invoice includes a breakdown of the charges incurred and is accompanied by copies of any invoices received by the relevant local highway authority for works undertaken to remedy or repair the defect.

Arbitration

5. Any difference arising between the undertaker and the relevant highway authority under this Schedule (other than in difference as to the meaning or construction of this Schedule) will be resolved by arbitration under article 42 (arbitration).

SCHEDULE 26

Article 43

PROTECTIVE PROVISIONS FOR THE PROTECTION OF NATIONAL HIGHWAYS LIMITED

Application etc.

1. The provisions of this Schedule apply for the protection of National Highways and have effect unless otherwise agreed in writing between the undertaker and National Highways.

(1) Except where expressly amended by the Order the operation of the powers and duties of National Highways or the Secretary of State under the 1980 Act, the 1984 Act, the 1991 Act, the Transport Act 2000, or the Town and Country Planning (General Permitted Development) (England) Order 2015 shall continue to apply in respect of the exercise of all National Highways' statutory functions.

Interpretation

2.—(1) Where the terms defined in article 2 (interpretation) of this Order are inconsistent with sub-paragraph (2) the latter prevail.

(2) In this Schedule—

"National Highways" means National Highways Limited (company number 09346363) whose registered office is at Three Snowhill, Snow Hill Queensway, Birmingham, B4 6GA;

"DBFO contract" means the design build finance operate contract between National Highways and the highway operations and maintenance contractor for the maintenance and operation of parts of the strategic road network which are within the Order Limits or any successor or replacement contract that may be current at the relevant time;

"DMRB" means the Design Manual for Roads and Bridges or any replacement or modification of it;

"road space booking" means road space bookings in accordance with National Highways' Asset Management Operational Requirements (AMOR) including Network Occupancy Management System (NOMS) used to manage road space bookings and network occupancy and "road space bookings shall be construed accordingly";

"strategic road network" means any part of the road network including trunk roads, special roads or streets for which National Highways is the highway authority including structures, drainage infrastructure, street furniture, verges and vegetation and all other highways assets together with all land, apparatus and rights located in, on, over or under the highway for which National Highways is the highway authority.

"structural assessment" means the process of evaluating the structural capacity and performance of an existing highway structure to determine its ability to safely sustain the current or proposed loads and actions proposed by the undertaker pursuant to paragraph 7 of this Schedule, in accordance with the requirements of the DMRB, including but not limited to CS 451 to CS 454 and the technical approval procedures set out in CG 300. This process may include structural analysis, review of inspection and condition data, verification of material properties, and consideration of applicable load models and safety factors to determine whether the structure is adequate for the intended use or whether mitigation or protective measures are required. Where required under CG 300, the assessment methodology, assumptions and outcomes shall be subject to the relevant technical approval procedures; and

"structural review" means a formal engineering appraisal of an existing highway structure undertaken in accordance with DMRB CS 451 to determine whether a structural assessment is required and, where such assessment is required, to evaluate the adequacy of the structure for current and reasonably foreseeable future loading proposed by the undertaker pursuant to

paragraph 7 of this Schedule and to confirm whether the structure can safely remain in service for its intended use, thereby to support decisions on future maintenance interventions.

General

3. In respect of any part of the strategic road network that is managed under a DBFO contract both National Highways and the highway operations and maintenance contractor shall have the benefit of this Schedule but for the purposes of any approvals required under this Schedule the undertaker shall liaise directly with National Highways.

(1) Notwithstanding the limits of deviation permitted pursuant to article 4(2) of this Order, no works in carrying out, maintaining or diverting the authorised development may be carried out in under or over the strategic road network unless such works are agreed in writing with National Highways at the absolute discretion of National Highways.

(2) References to any standards, manuals, contracts, regulations and directives including to specific standards forming part of the DMRB are, for the purposes of this Part of this Schedule, to be construed as a reference to the same as amended, substituted or replaced, and with such modifications as are required in those circumstances.

Works outside the Order limits

4. If the undertaker proposes to carry out works to the strategic road network that are outside of the Order Limits in connection with the authorised development, the undertaker must enter into an agreement with National Highways in respect of the carrying out of those works prior to the commencement of those works.

Works

5.—(1) The undertaker must not exercise the powers conferred by—

(a) article 4 (development consent etc. authorised by this Order);

(b) article 6 (power to maintain the authorised development);

(c) article 9 (street works);

(d) article 10 (power to alter layout, etc. of streets);

(e) article 11 (construction and maintenance of altered streets);

(f) article 12 (temporary prohibition or restriction of use of streets and public rights of way, and authorising vehicular use on public rights of way);

(g) article 14 (access to works);

(h) article 16 (traffic regulation measures); and

(i) article 17 (discharge of water);

over any part of the strategic road network without the written consent of National Highways and National Highways may in connection with any such consent require the undertaker to provide details of any proposed road space bookings and submit a scheme of traffic management for National Highways' approval.

(2) The undertaker must not construct a car park pursuant to a landscape and ecology management plan approved under requirement 9 or put in place arrangements that would permit or promote emergency vehicles (including without limitation providing for such use in a battery safety management plan put forward under requirement 7) to utilise the bridge which carries Brooks Furlong over the M56 motorway unless and until—

(a) a structural review of the bridge which carries Brooks Furlong over the M56 motorway has been carried out at the undertaker's expense to ascertain whether the proposals under article 13(11), or the use by emergency vehicles of the bridge (as appropriate), can be taken forward safely and the results of the structural review have been shared with and approved by National Highways;

(b) if a structural review carried out pursuant to sub-paragraph (a) identifies that a structural assessment and/or other surveys are required, the structural assessment and/or other surveys have been carried out at the undertaker's expense and the results of the structural assessment and/or other documents shared with and approved by National Highways; and

(c) if a structural assessment and/or other surveys carried out pursuant to sub-paragraph (b) identifies that works are required to that bridge prior to the power under article 13(11) being able to be utilised, or emergency vehicles usage of the bridge can be proposed (as appropriate), and the undertaker still determines that it wishes to use the powers in article 13(11) or propose emergency vehicle usage of the bridge, those works are carried out at the undertakers expense and to the satisfaction of National Highways.

(3) The undertaker must not exercise the powers conferred by article 13(3), (4), (5) or (6) (permanent stopping up of, and creation of new public right of way and authorising vehicular use on public rights of way) or put in place arrangements that would permit or promote emergency vehicles (including without limitation providing for such use in a battery safety management plan put forward under requirement 7) to utilise the bridge that carries Weaver Lane over the M56 motorway unless and until—

(a) a structural review of the bridge which carries Weaver Lane over the M56 motorway has been carried out at the undertakers expense to ascertain whether the proposals under article 13(3), (4), (5) or (6) , or the use by emergency vehicles of the bridge, can be taken forward safely and the results of the structural review have been shared with and approved by National Highways;

(b) the structural review carried our pursuant to sub-paragraph (a) identifies that a structural assessment and/or other surveys are required, the structural assessment and/or other surveys have been carried out at the undertaker's expense and the results of the structural assessment and/or other documents shared with and approved by National Highways; and

(c) if a structural assessment and/or other surveys carried out pursuant to sub-paragraph (b) identifies that works are required to that bridge prior to the power under article 13(3), (4), (5) or (6) being able to be utilised, or emergency vehicle usage of the bridge can be proposed, and the undertaker still determines that it wishes to use the powers in article 13(3), (4), (5) and (6) or proposed emergency vehicle usage of the bridge, those works are carried out at the undertakers expense and to the satisfaction of National Highways.

(4) Any works that are determined to be required by the structural assessment and/or other surveys carried out under sub-paragraph (2)(b) or (3)(b) must not take place until the undertaker has entered into a bridge agreement with National Highways.

(5) Where a bridge agreement has been entered into, this shall be considered to constitute National Highways' consent, for the purposes of sub-paragraph (1), in respect of the use of the powers listed in that sub-paragraph in relation to the works that are the subject of the bridge agreement.

(6) In this paragraph "bridge agreement" means an agreement setting out how any works that are determined to be required by the structural assessment and/or other surveys carried out under sub-paragraph (2)(b) or sub-paragraph (3)(b) are to be carried out, maintained and paid for, such agreement to be entered into at the undertakers expense and subject to terms and conditions imposed at National Highways' absolute discretion but which must be relevant to the works to be undertaken.

Land

6.—(1) The undertaker must not exercise the powers conferred by—

(a) article 18 (protective works to buildings);

(b) article 19 (authority to survey and investigate the land);

(c) article 21 (compulsory acquisition of land);

(d) article 23 (compulsory acquisition of rights);

(e) article 26 (acquisition of subsoil or airspace only);

(f) article 29 (rights under or over streets);

(g) article 30 (temporary use of land for constructing the authorised development);

(h) article 31 (temporary use of land for maintaining the authorised development); and

(i) article 39 (felling and lopping of trees and removal of hedgerows);

over any part of the strategic road network or in respect of any other land owned by National Highways or extinguish any existing rights or interfere with apparatus of National Highways in respect of any third party property, except with the consent of National Highways by written request to legalservicesinbox@nationalhighways.co.uk.

(2) Article 24 (private rights) and article 27 (power to override easements and other rights) do not apply to the strategic road network, unless requested to and approved in writing by National Highways.

(3) Article 46(4), (5) and (6) (procedure in relation to certain approvals etc.) do not apply to any application for consent, agreement or approval required or contemplated by any of the provisions under this Schedule.

Indemnity

7. The undertaker fully indemnifies National Highways from and against all costs, claims, expenses, damages, losses, and liabilities suffered by National Highways arising from or in connection with the exercise of or failure to exercise any power under this Order and any such costs shall be paid to National Highways within 14 days of demand save for any loss arising out of or in consequence of any negligent act or default of National Highways.

Expert Determination

8.—(1) Article 42 (arbitration) of the Order does not apply to this Schedule.

(2) Any difference under this Schedule may be referred to and settled by a single independent and suitable person who holds appropriate professional qualifications and is a member of a professional body relevant to the matter in dispute acting as an expert, such person to be agreed by the differing parties or, in the absence of agreement, identified by the President of the Institution of Civil Engineers.

(3) On notification by either party of a dispute, the parties must jointly instruct an expert within 14 days of notification of the dispute.

(4) All parties involved in settling any difference must use all reasonable but commercially prudent endeavours to do so within 21 days from the date that an expert is appointed.

(5) The expert must—

(a) invite the parties to make submission to the expert in writing and copied to the other party to be received by the expert within 7 days of the expert's appointment;

(b) permit a party to comment on the submissions made by the other party within 7 days of receipt of the submission;

(c) issue a decision within 7 days of receipt of the submissions under sub-paragraph (b); and

(d) give reasons for the decision.

(6) Any determination by the expert is final and binding, except in the case of manifest error in which case the difference that has been subject to expert determination may be referred to and settled by arbitration under article 42 (arbitration).

(7) The fees of the expert are payable by the parties in such proportions as the expert may determine or, in the absence of such determination, equally.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order authorises Frodsham Solar Farm Limited (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 40 (certification of plans and documents, etc) of this Order may be inspected free of charge during working hours at Cheshire West and Chester Council, 58 Nicholas Street, Chester, CH1 2NP.