Application by Fosse Green Energy Ltd for an order granting development consent for the Fosse Green Energy solar farm

Responses to Examining Authority's Third Written Questions:

ExQ GC.3.01 – matters related to the decision on the Springwell Solar Farm DCO

prepared by

North Kesteven District Council

(ID FD1E96A6C)

NKDC reference: 23/0325/NSIP

Planning Inspectorate reference: EN010154

22nd May 2026

Examining Authority's Third Written Questions Question GC.3.01 - The Secretary of State's decision with respect to the Springwell Solar Farm

Background

1. The Examining Authority's Third Written Questions (ExQ3s) included questions for which responses should or could include material related to the Springwell Solar Farm decision issued on 8th April 2026. In advance of Deadline 5A, NKDC informed the ExA that, in light of a potential legal challenge to the Springwell Solar Farm decision, the Council would not at that point be responding in full; but that the intention was to submit further responses by 22nd May 2026.
2. The aforementioned challenge to the Springwell Solar Farm decision by way of Judicial Review has been made jointly by NKDC together with Lincolnshire County Council (LCC). While the challenge remains undetermined, NKDC's ability to fully respond to the ExA's Third Written Questions - most notably question GC.3.01, as to how the Springwell decision may affect our case in respect of Fosse Green - is limited in some instances, where the topics are the subject of the legal challenge. Additionally, in light of the challenge, the weight the Springwell decision has on other planning decisions at this time may also be reduced.
3. Nevertheless, this document offers further responses where possible, in order to assist the ExA in its deliberations. The following abbreviations are used:
    - **ER** – the Report of Findings and Conclusions and Recommendation to the Secretary of State for Energy Security and Net Zero by the Examining Authority into the Springwell Solar Farm NSIP
    - **rDCO** – the form of DCO recommended in the ER
    - **SoS** – Secretary of State for Energy Security and Net Zero
    - **DL** – the decision letter of the SoS for the Springwell Solar Farm dated 8 April 2026
    - **Springwell DCO** – the made DCO dated 8 April 2026
4. This submission is accompanied by the following appendices:

Appendix A – Scoping Opinion 25/0699/EIASCO

Appendix B – Oaklands Farm Solar Park Decision Letter

Appendix C – Oaklands Farm Solar Park made DCO

Question GC.3.01

5. The ExA requested comments on the effects of the Springwell decision on the NKDC's case, particularly in respect of:

   - defining: the commencement of the proposed development; maintenance; and permitted preliminary works;
   - the imposition of requirements and the provisions of management plans and any other control documents, including the approach to decommissioning;
   - the relationship between the Springwell Solar Farm and the proposed Navenby substation;
   - the fees to be paid to the relevant local planning authority when discharging requirements imposed under the terms of the made DCO; and
   - any matters that might have been addressed through the applicant and other parties entering into an agreement under section 106 of the Town and Country Planning Act 1990 (a draft copy of which having been appended to NKDC's responses to ExQ2 [REP3-055]).

6. The Council sets out its position on each of these issues below.

Definition of 'maintain'

7. In relation to the definition of 'maintain' and hence maintenance, it is noted that the Springwell ER (paragraphs 4.4.16 – 4.4.18) concluded that the definition of this term and the controls in Article 5(3) of the rDCO were acceptable; and this definition was accepted by the SoS. NKDC does not raise any direct concerns for Fosse Green regarding the definition given to 'maintain' in the Springwell DCO. However, the Council points out that the circumstances for the Springwell decision are different from those at Fosse Green, particularly in respect of the proposed operational timescale of 60 years for Fosse Green. The Council maintains its position on this point as set out in paragraph 27.7 of its Local Impact Report (REP1-056); and as further developed in paragraphs 2.39 – 2.42 of REP4-021 responding to the ExA's Second Written Question DCO.2.01.

8. Therefore NKDC considers that when making its recommendation for Fosse Green, the ExA should:

   a) bear in mind that the definition of 'maintain' in the Springwell DCO did not address issues around the 60 year operational phase and wholesale panel replacement stage for Fosse Green; and
   b) consider whether the wording of the definition should be changed to impose a limit on replacement within any 12 month period; and
   c) consider whether, as an alternative, the parameters of the Framework Operational Environmental Management Plan should be changed to include such a limit.

Springwell ER proposed requirement 23 – restriction on commencement of development; and the relationship between the Springwell Solar Farm and the proposed Navenby substation

9. NKDC strongly disagrees with the SoS's decision (see paragraph 4.14 of the DL) not to impose requirement 23 included in the rDCO for Springwell. As such, NKDC is challenging the SoS decision not to follow the recommendation of the ExA and impose the requirement.

10. NKDC note and agree with the conclusions of the Springwell ExA in ER paragraphs 4.4.49, 4.4.51 – 54, that a requirement preventing commencement of development until such time as the National Grid Navenby Substation (NGNS) has been granted planning permission is necessary. Furthermore, a restriction on the commencement of construction was considered to meet the tests for requirements (necessary, relevant to planning, relevant to the development to be consented, enforceable, precise and reasonable in all other respects) in compliance with paragraph 4.1.16 of NPS EN-1.

11. NKDC are of the opinion that the SoS did not give adequate reasons in respect of:

    1) the removal of recommended requirement 23; and
    2) the decision not to reduce the weight to the principle of the development having removed the recommended requirement 23.

12. The Springwell ER noted the potential for adverse environmental effects to occur as a result of site preparation works and through commencement of the proposed development without the delivery of its benefits. This formed the rationale for rDCO requirement 23, which would have prohibited commencement of development, including any permitted preliminary works, until such time as the National Grid Navenby Substation (NGNS) had been granted planning permission. The ER expressly stated that this restriction met the tests for requirements (necessary, relevant to planning, relevant to the development to be consented, enforceable, precise and reasonable in all other respects) in compliance with paragraph 4.1.16 of NPS EN-1. NKDC agree with those conclusions.

13. The Council considers that the decision of the SoS not to impose rDCO requirement 23 recommended by the ExA for Springwell was ill-founded and flawed, and this forms part of the current legal challenge to the decision. Consistent with this view, NKDC maintains its position in respect of Fosse Green that a requirement similar to Springwell rDCO requirement 23 should be imposed.

14. The Council disagrees with the position reached by the SoS, who adopted the conclusions of the Springwell ExA in the Springwell decision that there were no obvious reasons why planning permission for the NGNS would be refused. The Council also disagrees with the consequent conclusion that the requirements of

paragraph 4.11.8 of NPS EN-1 have been satisfied (DL paragraph 4.14). As such NKDC is challenging the SoS' decision regarding the application of NPS EN-1 4.11.8.

15. Paragraph 4.11.8 of NPS EN-1 imposes an additional burden on an applicant when an element of the proposed project is not part of the DCO application. It requires explaining the reasons for the separate application and confirmation that there are no obvious reasons for why other elements are likely to be refused. Whilst footnote 160 recognises that a proportionate approach should be taken, in order to demonstrate policy compliance the applicant must discharge its positive burden. There must, on a rational application of the policy, be a sufficient amount of information on which to discharge that burden.

16. The Council's opinion is that it cannot be positively demonstrated that there are no obvious reasons for likely refusal if there is not sufficient information on which that separate element can be meaningfully assessed. In the absence of sufficient information, our opinion is that the only reasonable and rational application of NPS EN-1 paragraph 4.11.8 is that the applicant's positive burden cannot be discharged and therefore a policy conflict arises.

17. For ease of reference NKDC's position on the need for this requirement and more broadly on the application of NPS EN-1 paragraph 4.11.8 can be found in the following submissions to the Fosse Green examination:

- Local Impact Report (REP1-056) - suggested additional requirement in the table on page 95, and paragraphs 28.1 – 28.7
- Written Representation (REP1-057) – paragraphs 8.1 – 8.8
- NKDC Responses to Examining Authority First Written Questions (REP2-045) – responses to GC.1.14 and DCO.1.29
- Statement of Common Ground with NKDC (REP4-013) – matters 4.1.3, 4.2.2 and 4.3.1
- NKDC Comments on Submissions from Other Parties at Deadline 3 (REP4-021) – paragraph 2.44

18. The Council asks the ExA to note that its comments made at paragraphs 11 – 14 of REP5A-044 – i.e. that the merits of the Permitted Preliminary Works Environmental Management Plan (REP5-026) do not overcome the need to impose on the Fosse Green DCO a restriction equivalent to requirement 23 in the rDCO for Springwell.

19. NKDC can confirm that a planning application for the proposed Navenby substation has now been received (12th May 2026) from National Grid Electricity Transmission (NGET) as follows:

> *'Proposal: Proposed electricity substation comprising the construction of a 400kV AIS substation and associated works, new access off Heath Lane and*

access road to the substation, provision of four temporary passing places on Heath Lane, drainage, landscaping and BNG, together with overhead line works including the provision of four new towers and associated works comprising the removal of two existing overhead line towers and the termination of overhead lines using termination gantries within the substation.

Location: Land To The North Of Heath Lane Navenby LN5 0AY'

20. The planning application is currently invalid pending the submission of additional documentation, and as such is not yet in the public domain. As a result, upon validation additional environmental information will become available for consideration and to inform the assessment of both cumulative effects and compliance with paragraph 4.11.8 of EN-1. Notwithstanding the above, NKDC continues to highlight, consistent with our representations in relation to Springwell, that the NGET Scoping Opinion (25/0699/EIASCO) is in the public domain. For ease of reference, this document is attached as Appendix A.

21. NKDC recommends that the applicant and ExA continue to monitor and have regard to the status of the NGNS planning application while the Fosse Green DCO remains undetermined. Furthermore, the cumulative assessment should be updated, where necessary, to reflect this newly available information prior to any decision being made on the Fosse Green DCO.

The approach to decommissioning

22. NKDC has already set out its views on the approach to decommissioning for Fosse Green, including the aspects of timescales, funding, and dealing with premature cessation of electricity generation. These issues were first addressed in the Council's LIR REP1-056 at paragraphs 25.29 – 25.33, and have since been developed in the following submissions:

- NKDC Comments on the Draft DCO (REP1-058) - additional requirement to provide financial security for decommissioning (page 7)
- REP2-045 NKDC Responses to Examining Authority's First Written Questions - DCO.1.24 dealing with decommissioning in the event of premature cessation of generation, and the timescale for decommissioning.
- REP3-055 NKDC Responses to Examining Authority's Second Written Questions DCO.2.28 - funding for decommissioning;
- REP4-021 NKDC comments on the Applicant's response to ExQ2 Questions - DCO.2.19 (absence of provisions in the Framework Operational Environmental Management Plan to address early cessation of generation), and DCO.2.28 (funding for decommissioning)
- In REP4-013 Statement of Common Ground with NKDC - at matter 4.2.13 the Council raised concerns in relation to the absence of a decommissioning

security, and also sought additional wording to deal with potential periods of outage and early cessation of generation.

23. NKDC notes the SoS's comments and conclusions on the need or otherwise for a decommissioning fund / bond in relation to the Springwell Solar Farm. The SoS concluded that it was not necessary to impose a requirement for a bond, consistent with the views expressed by the ExA in the ER.

24. However, the Springwell ER, DL and made DCO do not appear to address the related issues of early cessation of generation and the timescale for decommissioning. This is perhaps because, for Springwell, section 2.16 of the Outline Operational Environmental Management Plan sets out procedures for the notification of extended outages of generation longer than 12 months; together with the submission and approval of a decommissioning plan if this continues for a further 24 months.

25. It is also noted that in dealing with decommissioning, the Springwell decision documents (for instance at paragraphs 4.4.60 – 4.4.61 of the Springwell ER, and at paragraph 4.12 of the Springwell DL) refer to and rely on the Oaklands Farm Solar Park decision, for which copies of the SoS's decision letter (Oaklands Farm DL) and the made DCO (Oaklands Farm DCO) are appended to this submission. For Oaklands Farm, it is highlighted that:

    a) The Oaklands Farm development is for a 40 year operating period. The Council considers that the uncertainties and risks regarding the securing of decommissioning are greater for a development such as Fosse Green which proposes a 60 year operating period.

    b) Requirement 64(8) of the Oaklands Farm DCO stipulates that decommissioning must be completed within two years of the approval of a decommissioning environmental management plan. This was specifically referred to in the Oaklands Farm DL at paragraph 4.41. No such requirement has been proposed for Fosse Green, despite being requested (see for instance pages 17 – 18 of REP2-045, where NKDC provided its response to the Examining Authority's First Written Question DCO.1.24).

    c) Requirement 64(4) of the Oaklands Farm DCO sets out a process to deal with premature cessation of electricity generation for each part of the development, involving notification followed by the submission of a decommissioning environmental management plan over a set timetable. The ExA for Oaklands Farm considered these provisions appropriate (see paragraph 4.20 of the Oaklands DL) to avoid unnecessary delay in a return to agricultural uses, and to limit adverse effects in areas that would not benefit from electricity generation or storage.

d) It was on this basis that the SoS agreed in the Oaklands Farm DL that requirement 64 for decommissioning would accord with relevant paragraphs of NPS EN-3.

e) The SoS did not agree with the ExA for the Oaklands Farm development that a requirement for a decommissioning fund was necessary. However, that decision was also made on the basis of the particular circumstances of the Oaklands Farm case, which included the factors a) – c) above (see paragraphs 4.41 – 4.45 of the Oaklands Farm DL).

26. Consequently, NKDC considers that the circumstances around the decisions not to impose a decommissioning funding requirement for Oaklands Farm and Springwell were materially different from those at Fosse Green.

27. Conversely, NKDC notes that for Oaklands Farm and Springwell there were controls in place to require the completion of decommissioning within defined time periods both following periods of extended outage / premature cessation of generation, and the end of the full operational lifespan of the development. For Fosse Green, no measures and controls are proposed by the Applicant to deal with extended outage / premature cessation of generation; or to ensure decommissioning is completed within an identified timescale (either following premature cessation, or at the end of the full operational period).

28. Therefore NKDC considers that the Springwell decision documents (ER, DL and DCO) should be treated with care when making judgements around what is required for Fosse Green in order to secure satisfactory decommissioning. NKDC maintains its position that the following are required:

- Secured funding for decommissioning – which could be in a different form to a bond
- Provisions to address decommissioning in the event of premature cessation of generation from any part of the development
- A time limit on decommissioning works

The fees to be paid to the relevant local planning authority when discharging requirements imposed under the terms of the made DCO

29. NKDC has set out its position on the requirement discharge fees on a number of occasions during the examination for Fosse Green, notably at length in REP4-022 Comments on Submissions and Information from Other Parties at Deadline 3A, paragraphs 2.35 – 2.53.

30. The Council notes that in its most recent submissions on this matter (REP5A-037 Applicant's Response to the Examining Authority's Third Written Questions

DCO.3.14) the Applicant has now agreed to revise the fee structure in line with the increases in fees charged for applications under the Town and Country Planning Act 1990. This revised fee structure is now reflected in the draft DCO for Fosse Green (REP5A-006, Schedule 15 paragraph 5(2)). This is welcomed.

31. However, the Applicant remains opposed to applying indexation to these fees. The only justification provided appears to be that for some inexplicable reason the Applicant considers that inflation does not significantly adversely impact on local authorities (please see Applicant's response to Examining Authority's Second Written Questions (REP3-045) DCO.2.31 on page 34).

32. In its submission REP5A-046 NKDC Responses to the Examining Authority's Third Written Questions DCO.3.14, the Council suggested revised wording for this part of Schedule 15 to the dDCO. This included the insertion of a replacement paragraph 5(3) to apply an annual increase to the fees in line with the provisions of the Town and Country Planning (Fees for Applications, Deemed Applications, Requests and Site Visits) (England) Regulations 2012, as amended by the Town and Country Planning (Fees for applications, Deemed Applications, Requests and Site Visits) (England) Amendment Regulations 2023. That wording was adapted from the equivalent provision in paragraph 5(3) of Schedule 16 of the made Springwell DCO. Indexation had been suggested by NKDC during the course of the Springwell examination, and included in the final draft version of the DCO. No changes were sought to those parts of the DCO by either the ExA in its ER, or by the SoS in his DL.

33. NKDC therefore requests that the Examining Authority adopts the Council's suggestion, and amends the wording of paragraph 5 of Schedule 15 to the draft DCO for Fosse Green in line with the Springwell made DCO.

34. At the request of the ExA, the Applicant has suggested on a without prejudice basis in its Deadline 5A submissions alternative wording for indexation of application fees. The Council will respond to that suggested wording at Deadline 6.

s.106 agreement - BNG monitoring and EAG funding contributions

35. NKDC has previously set out its position on the need for a contribution to fund the Council's independent verification monitoring of the biodiversity net gain elements of the Fosse Green proposed development. In turn, this is linked to NKDC's request to participate in the proposed Ecological Advisory Group (EAG), which together the Council sees as ensuring that the full benefit of the BNG claimed in the application will be delivered, so that the values in requirement 6 can be effectively enforced.

36. For Springwell, the ER concludes at paragraph 6.4.59 that the agreed Ecological Steering Group (ESG – equivalent to the EAG for Fosse Green) contribution

would be beneficial, but would not materially affect the planning weight to be afforded to biodiversity matters. Also, the ER concluded at paragraph 6.4.60 that the BNG monitoring contribution sought (but not at that point agreed via the S106 Agreement, which was still in draft) was not necessary by way of agreeing with the applicants position that the funding for monitoring of BNG delivery was not needed.

37. The Springwell DL notes at paragraph 4.21 that the ESG contribution had been secured, but does not mention monitoring specifically. NKDC notes that the SoS does not give a view the necessity or otherwise of the contribution. NKDC would also like to make it clear that the final level of contribution negotiated and agreed with the applicant for Springwell was designed to cover both the Council's BNG verification monitoring and its participation in the ESG.

38. Clearly, the ER's observations and recommendations as summarised above were made at a 'point in time', with the subsequent Springwell DL (paragraph 4.20) noting that 'on 20 March 2026, the Applicant confirmed that the parties signed the Section 106 Agreement and were arranging a completion call'. The following paragraph notes that 'the Secretary of State considers that funding for the ESG is secured and also notes that the beneficial measures with regard to biodiversity are secured in the Order' and as such that 'the significant beneficial effects on biodiversity receptors accordingly attract moderate positive weight to the matter of biodiversity in the planning balance'.

39. There is nothing in either the Springwell ER or the DL which sets out that either the ExA or the SoS consider the securing of funding for BNG monitoring via the s106 Agreement (either at drafting or completion) to conflict with the statutory tests for planning obligations. The Council would have expected this to have been expressly stated in the ER and the DL if that was the case. It was not. Similarly, the applicant for Springwell, in engaging positively with the host authorities in the preparation and completion of the s106 Agreement, also did not find that the obligation failed to meet the statutory tests otherwise they would have refused to engage on this matter. They did not.

40. It is also important to note that subsequent to the Springwell decision on 8th April 2026, The Infrastructure Planning (Fees)(Amendment) Regulations 2026 (S.I. 2026/513) were laid before Parliament on 15th May, and will come into force on 8th June 2026. Among other things, regulations 3 and 4 of the Amendment Regulations insert a definition of "local authority" into regulation 2, and adds local authorities into Schedule 2 (Prescribed Public Authorities) of The Infrastructure Planning (Fees) Regulations 2010 (S.I. 2010/106). The effect of this amendment and regulation 12A will be to enable local authorities to recover the costs of the provision of relevant services in relation to nationally significant infrastructure

projects. This will bring NSIPs into line with developments under the Town and Country Planning Act 1990.

41. This amendment to the fee regulations did not exist at the time the Springwell decision was made. Its effect is consistent with the case NKDC has been making for Council BNG monitoring costs for Fosse Green to be met by the Applicant. NKDC most recently presented its case on BNG and EAG issues in REP5A-046, Appendix C, which responds to the Examining Authority's Third Written Question ENC.3.02. This includes a table of BNG monitoring costs, which has been calculated on the basis of the applicant's most recent BNG Report (REP5-015) and the published Central Lincolnshire Local Plan: Biodiversity Net Gain Guidance for Planners, Ecologists & Applicants, May 2024 (which was included as Annex 1).

42. As set out above, for Springwell, NKDC reached agreement with the Applicant over BNG issues, and a financial contribution was secured in a s.106 Agreement. The Council considers that the incoming fee regulation amendment for NSIP cost recovery supports the view that a funding contribution is justified, and will henceforth make it necessary for developers to provide this support for BNG monitoring, consistent with non-NSIP developments.

Consideration of food production and food security

43. Both the ExA and the SoS in the Springwell decision concluded that the applicant should have assessed the impacts of the development on food production and food security within its Environmental Statement (ER paragraph 8.4.14, and DL paragraph 4.51). NKDC is of the opinion that further information in respect of the impact of the development on food production should have been sought in accordance with Regulation 20 of the EIA Regs; and the ExA should have suspended consideration of the application until it was provided with further information. The failure to suspend consideration of the application amounted to a procedural irregularity and this forms part of the on-going legal challenge to the Springwell decision.

44. For Fosse Green the Scoping Opinion issued by PINS and submitted as part of the application (APP-119) provides the following comments:

3.6.8 The ES should identify the agricultural land uses that will be displaced by the Proposed Development. Potential effects on farm businesses, loss of agricultural production and implications for food security from both the Solar and Energy Storage Park and Grid Connection Corridor should be considered where there is potential for significant effects to occur. This should consider both effects alone and cumulatively with other projects. Effects such as severance to farm access or changes to the scale and long-term viability of

farm holdings affected by the Proposed Development should also be considered.

3.6.9 The ES should demonstrate how any retained agricultural land will be available for future productive use and consider the potential economic effects of any changes in land use patterns as a result of the Proposed Development.

45. NKDC raised the issue of loss of arable production from farmland, and its potential impacts on the agri-food sector and food security in its Local Impact Report (LIR, see paragraphs 14.41 – 14.42, and 23.17).

46. However, the applicant's assessment within ES Chapter 12 Socio-economics and Land Use (AS-016) does not cover the full range of issues identified in the scoping opinion referred to above. In its response to the Examining Authority's First Written Question FS.1.10 on this topic (REP2-029) the Applicant supplied further information which is noted.

47. However, NKDC reiterates the concerns raised in its LIR; and questions whether the impact of the development on food production and food security, as identified in the Scoping Opinion, has been adequately assessed within the ES. In light of the on-going challenge to the Springwell DCO decision, the Council urges the ExA to consider and address this issue, and ultimately satisfies itself that the ES does adequately address the matters set out in the adopted scoping opinion.

BMV land sealing over / permanent loss of agricultural land

48. At paragraph 8.4.4 of the Springwell ER, the question of whether land occupied by fixed solar equipment (BESS, substations, collector compounds etc) should be considered permanent loss of agricultural land, consistent with previously made DCOs that took this approach, including Heckington Fen, Mallard Pass, Gate Burton and Cottam solar farm projects.

49. In the case of Springwell, the ExA considered that soil compaction under large areas of hardstanding could result in long term effects on soil quality, raising questions on the ability to return the land back to its previous ALC classification of BMV land (paragraph 8.4.16 of the ER). Taking a precautionary approach, the ExA therefore considered that such losses should be considered permanent, which would be consistent with the aforementioned solar projects and the approach to this matter taken by the local authorities.

50. In the Springwell decision, the SoS agreed (paragraphs 4.49 and 4.50 of the DL) with the ExA's approach, stating that sealed over areas within the development should be considered permanently lost when taking a precautionary approach to land under large areas of hardstanding and infrastructure.

51. In its Local Impact Report (REP1-056) at paragraphs 14.45 – 14.39 the Council discussed the impacts of the proposed Fosse Green development on soils and agricultural land quality, including those related to areas of land which might be 'sealed over' by hardstandings, concrete and tracks (see in particular paragrahs 14.25 and 14.32). The LIR concluded in paragraph 14.42 that doubts remained around the difficulty of identifying the quantum of such areas, contributing to a finding of negative impact on BMV land. Similar points were raised in the Council's Written Representation (REP1-057) in paragraphs 3.13, 3.14 and 3.18.

52. The position of the SoS in the Springwell decision is consistent with the views expressed by NKDC during the Fosse Green examination in this regard. NKDC asks the ExA to ensure it has sufficient clarity in the applicant's submissions to address this point.

Appendix A:

Scoping Opinion

25/0699/EIASCO

Form EIA

Town and Country Planning (Environmental Impact Assessment) Regulations 2017

North Kesteven DISTRICT COUNCIL

Scoping Opinion

Opinion Requested by:

Charlie Christensen
National Grid
4th Floor CrossGates House
Cross Gates
Leeds
LS15 8DU

Name and address of agent (if any)

Part I - Particulars of request

Reference number:	**25/0699/EIASCO**
Received Date:	**13.06.2025**
Proposal:	**EIA Scoping Opinion Request for Navenby Substation (24/1080/EIASCR)**
Location:	**Land Off Heath Lane Navenby Lincoln**

Part II - Particulars of Decision

We refer to your EIA Scoping Request letter and associated Scoping Report dated June 2025 in which you formally seek the Council's Scoping Opinion under Regulation 15 of the Town and Country Planning (Environmental Impact Assessment) Regulations 2017 as to the scope and level of detail of the information to be provided in the Environmental Statement (ES) to accompany a planning application for a proposed new 400 kilovolt (kV) substation and associated development (comprising works to an existing overhead line including: re-configuration of the existing overhead line connections, removal of two existing overhead line towers and construction of four new overhead line towers). This will be a permanent development.

The works will include:

- A new 400kV Air Insulated Switchgear (AIS) substation located within an HV compound which includes five 460 Megavolt-Amperes (MVA) Super Grid Transformers (SGTs), reactive power compensation equipment (Mechanically Switched Capacitor MSC)) and High Voltage (HV) equipment to facilitate customer connections.
- 2.4m high palisade fencing around the substation HV compound backed by a 4m high electric pulse fence.
- An amenities compound accommodating a single storey control building, workshop and ancillary Structures.
- Construction of a new access of Heath Lane and an associated 6m access road to the new substation. Access roads around the site will be 5.5m wide. A new farm access track will be provided parallel to Navenby Heath Plantation.

Date: 6th August 2025

Mark Williets

Assistant Director of Planning & Climate Change

District Council Offices, Kesteven Street
Sleaford, Lincolnshire, NG34 7EF

- Provision of four temporary Heavy Good Vehicles (HGV) passing places along Heath Lane. During construction, a temporary over sail area at the A15 junction may be required. Both may require the removal of vegetation.
- Car parking for 16 vehicles including one disabled access space and five electric vehicle charging spaces.
- Approximately 40 x8m high lighting columns around the substation
- Drainage, landscape and BNG areas which will be informed by further studies including a Landscape and Visual Impact Assessment (LVIA) and BNG assessment.

Associated works include modification to the 400kV West Burton-Bicker Fen overhead line circuits including the removal of two overhead line towers and their replacement with four overhead line towers of a similar height and design to the existing towers and associated re-cabling works. Termination gantries to the existing overhead lines of 12m high will be provided within the substation compound. As the overhead line works meet the criteria for exemption under the Electricity (Overhead Lines)(Exemption)(England and Wales) Regulations 2009, the applicant has confirmed that formal Section 37 consent from the Secretary of State will not be required for these works.

It is anticipated that the construction and commissioning of the project will take around 40 months with construction commencing in 2026 through to 2028 and becoming operational by 2029.

The development is known as the National Grid Navenby Substation (NGNS) and would be sited on undeveloped agricultural land to the north of Heath Lane, approximately 1.1km east of the village of Navenby. It also includes a section of Health Lane from the A15 to the proposed substation which will be used for access. A portion of the Navenby Heath Road Verges Local Wildlife Site (LWS) which runs along both north and south of Heath Lane is within the project boundary.

The site is located in the countryside by reference to the Central Lincolnshire Local Plan (CLLP) proposals map and presently comprises an agricultural field with overhead electricity lines running through the site. It covers an area of approximately 39.6ha. The site is bounded by predominantly agricultural land with plantation woodland of Navenby Heath Plantation to the west.

The nearest residential properties include Heath Farm, Temple Heath Grange Cottages, Corner Cottage and The Grange, The Chestnuts and Green Man Farmhouse. Other residential properties are located in the settlements of Navenby, Boothby Graffoe and Wellingore.
The ES adopts a 'Rochdale Envelope' approach through a flexible approach to design parameters based on a realistic worst-case scenario.

The Scoping Report (Tables 1.2 and 19.1) sets out that the ES proposes to scope in the following environmental topics:

- Chapter 6: Landscape and Visual
- Chapter 7: Ecology and Nature Conservation
- Chapter 8: Historic Environment (except historic buildings, both designated and non-designated heritage assets)
- Chapter 9: Soils and Agricultural Land
- Chapter 10: Climate Change
- Chapter 18: Combined and Cumulative Impacts

Within those topic proposed to be scoped in, there is a further rationalisation of the specific subject matter to be considered through the ES. The Scoping Report (Tables 1.2 and 19.1) also sets out that all other environmental topics that are scoped out; namely Chapters 11-17 covering Traffic and Transport, Socio-economics and Tourism, Air Quality, Ground Conditions, Contamination and Minerals, Water Environment and Flood Risk, Noise and Vibration and Materials and Waste.

The Council is in broad agreement with the approach set out in the Scoping Report regarding the EIA methodology (Chapter 5), subject to the comments under the sub-headings below. The Council does

not consider that any of the environmental topics which are proposed to be scoped out (with the exception at this stage of Traffic and Transport - see below) will require assessment as part of the ES and can be appropriately considered via standalone technical assessments.

For the avoidance of doubt, these include the documents listed at paragraph 1.8.3 in the Scoping Request. It is noted, however, that an outline Landscape and Ecological Management Plan and Soils Management Plan are not included within the list. The Council requires that a freestanding LEMP and SMP are submitted with the planning application as these will be necessary to inform mitigation measures proposed in the ES in relation to landscape, visual, ecology and soils.

Turning to the topic areas to be scoped into the ES, the Council comments as follows:

Landscape and Visual

Chapter 6 of the Scoping Request scopes the regulatory and planning context, study area, baseline conditions, embedded and control and management measures, potential significant effects and proposed assessment methodology for landscape and visual matters.
Natural England have provided advice on potential landscape effects to be taken into account within the scope of the EIA in Annex A of their advice letter (attached).

The Council's landscape consultants, AAH, have provided general advice on the production of a Landscape and Visual chapter of the ES (attached). At this initial stage, the content and level of information provided in the Scoping Report is generally considered to be satisfactory, however, as the EIA process is an iterative one; it would be helpful for the content and approach to be discussed further with the Council prior to its completion.

The following should be considered in the evolving assessment and layout:

Viewpoints: Fifteen viewpoints have been identified in Table 6.1, with two viewpoints (VP2b and VP11) added following initial comments within AAH TM01. The viewpoints selected are reasonable and provide a range of views from identified receptors of the site and development. Should the proposals materially change from those at the pre-application stage or within the scoping report, we would expect to be consulted in regards the suitability of these viewpoints.

It is important that all viewpoint photography should provide the most advantageous views of the site and proposed development, and avoid where possible, any obstructions to a clear view such as cars, posts/columns or wayward branches and foliage.
Photomontages: to gain an understanding of the visibility of the development and how the substation would appear in the surrounding landscape, photomontages/accurate visual representations (AVRs) should be produced, which is covered in paragraph 6.4.27 of the scoping report.

The number and location of the agreed viewpoints to be developed as photomontages/AVRs should be discussed and agreed with the Council and other relevant stakeholders and produced in accordance with TGN 06/19 Visual Representation of Development Proposals. At this stage, it is deemed appropriate that these should be produced to illustrate the proposals at different phases: Existing Situation (baseline), Operational (year 1) and Residual with planting established (10-15 years). We recommend that the visualisations should be produced to align with TGN 06/19 Type 4: Level 2.

Methodology: as stated in the full comments, the LVIA should be carried out in accordance with GLVIA3 and undertaken by suitably qualified personnel. The summary of methodology provided at Section 6.7 is typical of those used for ES Chapters and standalone LVIA where potential significant effects can be considered and reflects the guidance in GLVIA3. We would request that the most up to date technical guidance be used and the detailed methodology is further interrogated at the next phases of the project.

Paragraph 5.3.28 identifies that Significant effects are identified as follows: 'Major and moderate effects are typically considered to be significant, whilst minor and negligible effects are not considered to be significant' and professional judgement will be applied to all judgements of effects. However, paragraph 6.7.31, specific to landscape and visual, state that 'effects rated as being major are considered to be significant whilst those that are moderate are typically significant but may not be significant depending on context and evidence presented in the LVIA'. This approach is acceptable and aligns with general best practice and GLVIA3, however, if a moderate effect is judged to be 'not significant', we request that full justification is provided within the LVIA.

We would also expect methodologies/processes of generating are provided within the submission:

- ZTV generation and parameters used;
- Visualisations; and
- Cumulative effects.

Scope of the Study Area: it is acknowledged in Section 6.3 that, based on desktop (ZTV mapping) and field study, an initial Study Area covering 3km from the application boundary has been allowed for the development. At this stage, a 3km study area is appropriate, however, it should be reviewed as the project develops. Once the final study area has been defined, the LVIA should provide a justification for the full extent/distance, providing a clear reasoning as to why beyond the proposed 3km study area, no significant effects are likely.

Future Baseline: the future baseline is covered in paragraphs 6.4.28 to 6.4.30. The development of solar farm projects in the area are intrinsically linked to the NGNS, being the point of connection for several projects to the National Grid. With any approval of the NGNS, this will undoubtedly be a landscape undergoing extensive change to land use, predominantly changing from agriculture to large scale solar development (such as at Springwell, Fosse Green or Leoda solar farms) and smaller scale BESS development (such as at Green Man Road and Coleby, and potentially others which have, or are expected to be subject to EIA screening/scoping processes.

The mass and scale of these projects combined has the potential to lead to adverse effects on landscape character over an extensive area across these published character areas. The landscape character of the local, and potentially regional area, may be significantly altered over the operational period through an extensive area of land use change, and introduction of energy infrastructure in an area that is predominantly agricultural. This would also be an issue when experienced sequentially for visual receptors travelling through the landscape and experiencing multiple schemes across potentially several kilometres, albeit with gaps between some of the projects. However, repeated views and presence of large scale solar would combine over time to create a greater perception of change. We judge that this should be a consideration of both the future baseline and any assessment of cumulative effects in the LVIA.

Landscape: published landscape character areas and subsequently landscape receptors have been identified in paragraph 6.4.34. To align with GLVIA3 the LVIA should include an assessment of landscape effects at a range of scales and will need to include a finer grain landscape assessment that includes the site and immediate area that considers individual landscape elements that make up the character area. Section 6.4.35 of the scoping report identifies landscape receptors to be scoped out of the LVIA, however, we request these be reviewed and if it is still judged that they are omitted full justification provided, clearly stating that they would not experience effects from the development and why. At present we cannot categorically agree that these landscape receptors are scoped out however we note that further justification explaining this will be provided in the LVIA.

Visual: several visual receptors are identified within paragraph 6.4.36. These appear reasonable, and to be aligned with the most recent LI guidance (LITGN-2-24-01) we would expect that the visual assessment would clearly identify the visual receptors, which would subsequently be the focus of the visual assessment. The LVIA should not just contain an assessment of any agreed viewpoints, it must focus on visual receptors. The viewpoints are to illustrate the visual effects, and the visual

assessment should clearly reference receptors to representative viewpoints to aid this. The visual assessment should also clearly identify sequential visual effects experienced by receptors on linear routes such as PROW or roads. This may include frequency of views, extent along route etc.

The visual assessment should take account of the 'worst case scenario' in terms of winter views, and effects associated with landscape mitigation at the Operational Phase (year 1) and Residual Phase with planting having established (10-15 years).
The LVIA should ensure all elements associated with the development are considered and assessed, such as CCTV poles and boundary, acoustic and temporary fencing, which may be more visible due to being located to the periphery of the site.

Cumulative Impacts: cumulative landscape and visual effects should be assessed in regards to other major developments, and in particular adjacent and nearby BESS and NSIP solar developments, as appropriate in regard to proximity and scale. Paragraph 6.4.41 identifies schemes that would be included, and due to proximity the Council would anticipate likely cumulative effects associated with the Springwell Solar Farm and Green Man Road BESS.

Also, as identified in the comments on the Future Baseline, the mass and scale of several energy infrastructure projects across the region, including NSIP scale solar and BESS, substations and National Grid upgrades (pylons, cables, substations and converter stations), these projects combined has the potential to lead to adverse effects on landscape character of the local, and potentially regional area, may be significantly altered over the operational period through an extensive area of land use change, and introduction of energy infrastructure in an area that is predominantly agricultural. This would also be an issue when experienced sequentially for visual receptors travelling through the landscape and experiencing multiple schemes across potentially several kilometres, albeit with gaps between some of the projects. However, repeated views and presence of large scale solar would combine over time to create a greater perception of change.

Residential Visual Amenity Assessment: residential receptors are identified as key visual receptors which may be significantly affected by the development. There are no properties identified adjacent to the site, or in very close proximity. However, we recommend the applicant clearly identify the nearest residential receptors on a plan and carry out an initial survey of their baseline view to understand their visual amenity in relation to the site and development.

At this stage as it is currently unclear if there are residential properties with receptors likely to experience significant effects to their visual amenity. If there are potential significant effects, due to the scale of the scheme in an agricultural landscape, there should be consideration of whether a Residential Visual Amenity Assessment (RVAA) would be required based on the Landscape Institute TGN 2/19. The scale of the scheme has the potential to give rise to effects to local residents, including effects on resident's private amenity. Whilst is it not yet clear whether these may ultimately meet the visual amenity threshold given in TGN 2/19, this should be considered on a proportionate basis as part of the wider LVIA.

The occupiers of Heath Farm and Vine House Farm/the Chestnuts are the nearest neighbours and therefore residential receptors. Heath Farm is the closest to the site at around 420m to the site access. The property itself is partly screened from the site by foreground agricultural buildings at close proximity. The Chestnuts is also partly screened by foreground roadside planting, is oblique to the site and where the adjacent commercial premises (AA Secure Self Storage) provides some further intervening screening through buildings and containers.

The Council's view is that the location, orientation and separation distance of these properties to the application site, allied with the design and scale of the proposed substation means the substation would not be overbearing or dominant insofar as to create an overwhelming adverse effect in terms of residential visual amenity and we note that mitigation planting is also proposed.

The closest properties in Navenby village are the easternmost areas of developed footprint along High Dyke - including a proposed southern residential extension of Jubilee Way recently granted planning permission but not yet commenced at the time of this report. These properties are at least 1.3km from the site and for the same reasons as above the substation would unlikely be so overbearing or dominant insofar as to create an overwhelming adverse effect in terms of residential visual amenity.

Nevertheless, a proportionate RVAA should accompany the LVIA chapter of the ES (this can be as an appendix if required) to demonstrate that no significant adverse effects will occur, and it is recommended that the following properties/addresses are incorporated into the assessment:

- Green Man Farmhouse, A15/Sleaford Road, Navenby, LN5 0AT
- Heath Farm and Heath Farm Bungalow, Heath Lane, Navenby, LN5 0AY
- Vine House Farm and The Chestnuts, Heath Lane, Navenby, LN5 0AY
- Boothby Heath Farm Cottage, Heath Lane, Boothby Graffoe, LN5 0AS
- No. 25 Twenty Row, Green Man Lane, Navenby, LN5 0JY
- A sample property between 9-33 Jubilee Way (i.e. eastern edge of the residential estate), Navenby, LN5 0BF
- A sample plot (17-26) on the eastern edge of the 34-dwelling residential estate granted planning permission referenced 24/0583/FUL (Land To The East Of High Dyke And To The East And South Of Jubilee Way, Navenby).
- Highfields, High Dyke, Navenby LN5 0AY

The layout should also respond to potential views and proximity to any properties to mitigate any potential adverse effects.
Mitigation and Layout: as this is an iterative process, at this stage it is not relevant to comment on any potential mitigation or layout of the development. However, best practice guidance, relevant published landscape character assessments and District and County Council policy and guidance must be referred to and implemented as appropriate. The mitigation planting itself has the potential to cause adverse visual effects through blocking or foreshortening currently open views, appearing out of character or creating a perception of enclosure in an open landscape - the planting should be well considered and appropriate for the local landscape setting, not just put in place to simply screen the development with no regard for context. The submission should be accompanied with a landscape layout to demonstrate the proposed planting which should be reflected in the LVIA.

The Council would also expect the landscape and planting scheme is coordinated with other relevant disciplines, such as ecology, heritage or civils (eg SuDS features) to improve the value of the landscape and reflect appropriate local and regional aims and objectives. Any Landscape Scheme and associated outline Landscape and Ecological Management Plan (LEMP) should accompany the ES which should cover the establishment period, which is assumed would be up to 15 years to cover the period up to the residual assessment. The management plan should provide for both new planting and existing retained vegetation and how it will be managed and protected through all phases of development.

The Council's Tree Officer has set out some concerns regarding any potential mitigation and new planting (for both screening and biodiversity gain) that there may be insufficient room for sufficient numbers and room for full development within the confines of the site boundaries.

Additionally, although hedgerows have been assessed for species mix to ascertain if they are 'important', there does not appear to have been any assessment under the historical/age criteria which would obviously raise the status of any hedgerows that may be lost/adversely impacted by the proposals.

Ecology and Nature Conservation

Chapter 7 of the Scoping Request scopes the regulatory and planning context, study area, baseline conditions, embedded and control and management measures, potential significant effects and proposed assessment methodology for ecology and nature conservation matters.

Natural England have provided advice on biodiversity and geodiversity to be taken into account within the scope of the EIA in Annex A of their advice letter (attached). They advise that the proposal is unlikely to adversely impact any European or internationally designated nature conservation sites (including 'habitats sites' under the NPPF) or nationally designated sites (Sites of Special Scientific Interest, National Nature Reserves or Marine Conservation Zones).

The Council raises no concerns in respect of the proposed study areas, nor in respect of the proposed surveys and methodologies. The ongoing surveys during 2025 will help to inform further updates to the LEMP to offer enhancements for protected species and allow for a Construction and Environmental Management Plan (CEMP) to include adequate precautionary methodology.

Ground Nesting Birds: there is a decline in the population of ground nesting birds within the District. The ES Scoping Report, at Table 7.2, notes that breeding bird surveys were carried out in 2024. This concluded that 17 species were recording, breeding territories of 11 species were confirmed within the survey area, with 5 species probably or possibly holding breeding territories within the survey area, resulting in a breeding bird assemblage of 16 species. The Scoping Report concludes that given the small extent of the project boundary, lack of diversity of habitats (grassland cut for hay) and low potential impacts of the project (including retention of the majority of boundary features), these surveys have provided sufficient information on the presence / absence of breeding birds using representative habitats within the project and no further survey is required.

Central Lincolnshire Local Plan policies S60 and S61reflect the policies in the NPPF in requiring the enhancement as well as the protection of habitats and species. The Council recommends that the creation of a new nesting plot on suitable adjacent site e.g. through agreement with the local farmer and via a s106 planning obligation would be an appropriate way of creating an enhancement of breeding bird habitat to replace the on-site loss caused by the development.

Local Wildlife Sites: the Council notes that the Navenby Heath Road Verges LWS will be impacted during the construction phase for 40 months. The construction phase includes the provision of 4 HGV passing places. The Council recommends that the National Grid liaise with the Springwell Solar Farm developer to enable the sharing of passing places along Heath Lane to minimise the loss of verge habitat. The Navenby Heath Road Verges LWS is designated as calcareous grassland. National Grid are advised to liaise with the Council's Principal Ecology and Wildlife Officer over the provision of replacement calcareous grassland for BNG purposes as the duration of the construction period means that the habitat (if impacted through the provision of HGV passing places) will be deemed to have been lost and will be required to be recreated with enhancement, replaced via off-site credits or new habitat created elsewhere.

Ancient woodland, ancient and veteran trees: the Council notes at paragraph 7.4.3, that one veteran tree has been identified within the application boundary on Heath Lane, not identified in the Ancient Tree Inventory (Natural England, 2023). The Council recommends that the location of the tree is identified and assessed within the ES as to whether it will require to be felled to accommodate the development or the provision of HGV passing places during construction. If this is the case, the applicant's attention is drawn to paragraph 193(c) of the NPPF which refers to the loss or deterioration of irreplaceable habitats. Bespoke compensation will be needed and the likely bat risk will need to be assessment via a bat roost assessment.

Biodiversity Net Gain: the Council notes that a minimum 10% BNG is to be achieved. The comments above regarding the replacement of any lost calcareous grassland should be considered carefully as part of the BNG calculation. The monitoring of BNG will be subject to a BNG monitoring fee as

adopted by the Council. Further details can be found via the link: Biodiversity Net Gain (BNG) supporting documents | North Kesteven District Council. Without prejudice a s106 Agreement would be required to secure payment of BNG monitoring fee and the applicant is encouraged to provide an estimate of this fee, applying the adopted fee schedule, and set against the post-development BNG proposals, so that this can be verified through the determination of the planning application.

Historic Environment

Chapter 8 of the Scoping Request scopes the regulatory and planning context, study area, baseline conditions, embedded and control and management measures, potential significant effects and proposed assessment methodology for historic environment matters.
Above Ground Heritage Assets: the Council considers that due to the scale of the proposals, the proposed study areas for designated above ground heritage assets (2km) and non-designated heritage assets (1km) are insufficient. We advise that these should be a minimum of 3km, potentially up to 5km, and should include consideration of higher designated assets outside the study area. The extent of the study areas would align with those used in recent solar farm projects located within the District such as Heckington Fen Solar Farm, Springwell Solar Farm and Beacon Fen Energy Park.

Furthermore the proposed sources of information fail to consider the North Kesteven Local List of Non-Designated Heritage Assets, or the adopted Navenby Conservation Area Appraisal and Management Plan, both of which should be considered as part of the ES.
In addition, paragraph 8.7.16 of the Scoping Report mixes up the proposed scoping distances between designate and non-designated heritage assets.

Despite the above, the Council agrees, in principle, that there will be likely limited direct impacts on the historic built environment however at present insufficient rationale and evidence has been provided to accept both a reduced study area for the assessment of Above Ground Heritage Assets and ergo that historic buildings (designated and non-designated heritage assets) can categorically be scoped out of the EIA. The applicant's proposed study area is therefore not accepted at this stage, nor is it agreed that impacts on Above Ground Heritage Assets can be scoped out, unless further justification is submitted to and agreed in writing with the District Planning Authority.

With regard to the historic landscape setting (paragraph 8.4.16), the Council considers that this has not been given sufficient weight in the ES including the historic routes between Navenby and the A15. The east-west routes between Ermine Street and the A15, together with the associated field boundaries contain their own historic significance that should be considered in greater detail within the cultural heritage chapter as it has a direct bearing on the appreciation and experience of the historic environment.

Below Ground Heritage Assets: in terms of undesignated remains, Historic England advise that given the proximity of the Roman Road (paragraph 8.4.10 of the Scoping Request), there is a strong likelihood of known and unknown undesignated Roman remains within a closer vicinity which may not appear on the HER (see attached for Historic England's full comments). It will be important that the completed historic environment desk-based assessment (paragraph 8.4.19) incorporates the full range of resources available.

In terms of geotechnical ground investigations, Historic England advise a degree of caution in interpreting the negative results found in paragraphs 8.4.23 and 24 as the security of these rests on the geotechnical ground investigations having been monitored by an appropriately experienced geoarchaeologist. If the monitoring was undertaken by an archaeologist without this experience (i.e. as more traditional archaeological monitoring and recording exercise) then it may not necessarily have recorded the correct information.
It should also be noted that unless a geoarchaeologist was allowed a degree of input into the design of the geotechnical programme then the boreholes and other investigations will have predominantly been located according to the needs of the developer rather than those of the archaeologist.

Consequently, they may not have been in positions that enabled the effective assessment of the archaeological resource.

The input of a geoarchaeologist in designing of a geotechnical scheme is recommended in Historic England's guidance on Geoarchaeology (2015). Further information can be found via this link: Geoarchaeology | Historic England. Historic England's full comments are attached.

The comments of the Heritage Trust for Lincolnshire who advise the Council on archaeological matters are also attached. Their comments state that the Scoping Report summarises heritage assets recorded at the site and in the vicinity and outlines the assessment methodology. The chapter references assessments and surveys in progress or undertaken with the results to be presented in the ES including a desk-based assessment, geophysical survey and archaeological monitoring during geo-technical investigations.
The report does not include provision for a programme of archaeological trial trench evaluation as part of the ES; rather it notes that trial trenching, if required, would inform the mitigation measures (paragraph 8.5.5). However, archaeological trial trench evaluation is required in order to establish the baseline conditions, provide an appropriate assessment of potential and the significance of likely effects and inform the mitigation strategy to be presented in the ES.

The proposals for construction will necessarily have an impact on any buried archaeological remains, including foundations, infrastructure, cable trenching, access roads, compounds, landscaping and associated works. Both a desk-based assessment and archaeological evaluation are required in order to identify and assess the impact on known and potential heritage assets and inform the development of an appropriate mitigation strategy.

The archaeological evaluation is required in order to provide an adequate assessment of the potential for, and significance of any archaeological deposits which may be impacted by the proposed development. Therefore, site-specific evaluation, including trial-trenching, is required to determine the presence, significance, depth and character of any archaeological deposits present. This must be undertaken ahead of the submission of the planning application and the results presented with it, and the significance of any archaeological resource encountered during trial trenching set out and discussed within the ES chapter.

The archaeological evaluation should include the full extent of the proposed development area, including the access routes and any temporary and ancillary works, and consider all impacts on potential archaeological remains including paleoenvironmental deposits.
Any programme of fieldwork should be set out in a written scheme of investigation to be agreed with the archaeological consultee prior to commencement of the field investigation(s).

The ES should contain sufficient information on archaeological potential and must include evidential information on the depth, extent and significance of the archaeological deposits which will be impacted by the development. The results will inform a fit for purpose mitigation strategy which will identify what measures are to be taken to minimise or adequately record the impact of the proposal on archaeological remains.

Soils and Agricultural Land

Chapter 9 of the Scoping Request scopes the regulatory and planning context, study area, baseline conditions, embedded and control and management measures, potential significant effects and proposed assessment methodology for soils and agricultural matters.
Natural England have provided advice on soils and agricultural land quality effects to be taken into account within the scope of the EIA in Annex A of their advice letter (attached).

The Council's agricultural consultants, Landscope, have provided detailed comments on soils and agriculture (full details are attached).
In summary, Landscope conclude:

- The provisional Agricultural Land Classification (ALC) grade of the land is Grade 2 and the area is identified as having a high likelihood of Best Most Versatile (BMV) quality land. It is likely that much of the site will be BMV quality and the loss will be permanent, with sealing over any soil resource.
- The site area extends to around 37ha which is above the 20ha threshold for significance, whereby Natural England are consulted. However, it is proposed to use only 11.5ha for the built development.
- A detailed baseline ALC report is expected, subject to Natural England consultation, it is likely to cover the area affected and be in details at a standard density of 1 auger bore per hectare.
- An ALC report should be undertaken by a specialist firm using conventional auger techniques and the density of soil sampling in line with the standard recommended approach as per the Ministry of Agriculture, Fisheries and Food Guidelines (1988) and TIN049. The British Society of Soil Science set out a methodology for undertaking ALC as per Appendix 6 of the full Landscope comments.
- Planning policy (eg Written Ministerial Statement, 2024) affects how BMV land should be considered and with NPPF paragraph 187, seeking to protect BMV land from development.
- Although not mentioned specifically, there may be justification for a soil health assessment and where farm and rural land-based businesses are impacted by a scheme, there may need to be consideration of the impact, together with any assessment of food security issues, especially as part of any cumulative effect.
- A Soil Management Plan should accompany the application (see also above), which is sufficiently detailed to ensure that stripped and excavated soil is not damaged during construction and operation if the project were to proceed.

In conclusion we agree with the proposed scope of this chapter of the ES subject to the above and the methodological recommendations contained in Chapter 9 of the Scoping Report being adopted, and subject to the comments below in relation to cumulative effects.

Climate Change

Chapter 10 of the Scoping Request scopes the regulatory and planning context, study area, baseline conditions, embedded and control and management measures, potential significant effects and proposed assessment methodology for climate change matters.
Natural England have provided advice on climate change effects to be taken into account within the scope of the EIA in Annex A of their advice letter (attached).

The Council welcomes the use of IEMA guidance to inform the climate change assessment. The Council is unsure of the relevance of the City of Lincoln Climate Emergency referred to at paragraph 9.2.19 but welcomes the inclusion of the North Kesteven District Council Climate Emergency Action Plan (2024).

Traffic and Transport

The proposal is to scope out Traffic and Transport from the ES. As previously advised to the applicant, the use of Heath Lane is seen as acceptable from a highway safety and capacity perspective and the Highway Authority have previously agreed that Heath Lane is likely to require passing places/localised widening and it is noted that the proposals include provision of up to four temporary Heavy Goods Vehicle passing places along Heath Lane. As previously advised, to inform the need and extent of highway improvements, the planning application will require a Transport Statement and this has been confirmed by the applicant at paragraph 11.5.1 along with confirmation that an Outline Construction Environmental Management Plan (CEMP) will accompany the planning application (paragraph 11.5.3). The OCEMP will outline measures for managing construction impacts, including operational hours, site management, noise control, dust mitigation, and pollution prevention.

As previously noted, the Highways Authority advise that construction traffic should not enter the site through Navenby and that all construction traffic should enter the site from the A15. The scoping report confirms at paragraph 11.3.2 that construction and operational traffic will use Health Lane, connecting to the A15 to the east, ensuring that traffic avoids the village of Navenby. The planning application should therefore demonstrate how this will be achieved and enforced in practice, noting the possible requirement for a routing agreement.

Paragraph 11.7.7 of the scoping report sets out that TA will consider the potential for any significant cumulative effects that may occur in combination with other consented, and/or in planning, traffic-generating developments that exist within the study area. It confirms that consultation will be undertaken with relevant authorities to establish where significant cumulative effects may occur, and with which developments.

At present the Council considers that the scoping report has not yet comprehensively ruled out the potential for significant traffic and transport effects cumulatively with Springwell solar farm (DCO) and potentially the proposed Green Man Road BESS and the RAF Digby office/training building proposals (planning application reference 24/0959/FUL) during the construction phase. The latter proposes construction of a new haul road and bellmouth junction served from the A15 around 2.2km south of Heath Lane.
The scoping report only sets out baseline traffic flow data for the A15 and Heath Lane and relies upon the comment at paragraph 11.4.1 that this data indicates that key local roads (A15) experience significant daily volumes of traffic, and therefore that small increases in construction traffic volumes are unlikely to result in a high percentage increase in traffic.

Whilst this might well be accepted, paragraph 11.6.6 of the scoping report notes that 'the exact volume of construction traffic is not yet known and will be determined in consultation with the Local Highway Authority once further details, including likely construction routes, become available'.

The applicant should review the construction phase traffic generation data publicly available within the Springwell solar farm (DCO), Green Man Road BESS and RAF Digby applications, as a minimum (given their proposed use of the A15 for construction traffic purposes) cumulatively with predicated construction traffic flows for the proposed NGNS, including (in particular in the case of the Springwell solar and Green Man Road BESS projects) the probability of construction period overlaps or partial overlaps.
Unless this information is provided and agreed in writing with the District Planning Authority in advance of the planning application submission (and the proposed mitigation measures, comprising at this stage up to four passing places on Heath Lane, are evidenced as being acceptable from a highway safety and capacity perspective) we cannot yet agree that cumulative construction phase traffic and transport impacts can be scoped out.

Combined and Cumulative Impacts

Chapter 18 of the Scoping Request scopes the regulatory and planning context, study area, baseline conditions, embedded and control and management measures, potential significant effects and proposed assessment methodology for combined and cumulative effects.
The ES will consider both combined effects (intra-project effects) and cumulative effects (inter-project effects).

In respect of intra-project effects, the ES will consider the potential effects on historic environment, landscape and visual, soils and agriculture, ecology and nature conservation and climate change. An initial pre-screening assessment has been carried out (Table 18.1). The Council is in agreement with the approach proposed (with the above exception, at this stage, of Traffic and Transport construction effects), noting that the applicant has included topics highlighted by the Council in its Screening Response.

In respect of inter-project effects, the ES will consider a range of other projects via four-stage methodology. This includes establishing a 'long list' and a 'short list' of other developments the latter of which will be graded according to a tiering system as to their stage of advancement through the planning process.

In order to provide a robust environmental assessment, the Council would bring to the applicant's attention the updated 'long list' of developments that was submitted to the Springwell Solar Farm examination on 17 June 2025 which will serve as a useful comparison given the proximity and timescales for development to the NGNS (noting that the cumulative impact chapter and appendix will continue to be updated throughout the period of the Examination which is not due to close until November 2025): EN010149-000645-6.3.3 Environmental Statement Appendix 16.1 Long List of other Developments (Tracked) Revision 3.pdf and the updated Cumulative Impacts chapter of the Springwell Solar Farm ES: EN010149-000643-6.1.3 Environmental Statement Volume 1 Chapter 16 Cumulative Effects (Tracked) Revision 3.pdf.

However, the applicant is advised that the proposed development at RAF Digby, Cuckoo Lane, Scopwick is subject to a live planning application (referenced 24/0959/FUL) and as such this has been mis-classified as a Tier 3 project (p263 of the Scoping Report). This should be re-classified as a Tier 1 project i.e. a 'submitted application, where the proposed development is classified as 'major development,' whether under the Town and Country Planning Act 1990 or other consent regimes, but not yet determined'.

Paragraph 18.6.3 of the Scoping Report sets out that the developments included on the long list in Table 18.4 were screened as to the nature and scale of development as part of the scoping exercise, the purpose being to identify whether they would be likely to have potential to generate a significant cumulative effect with the Project. The RAF Digby scheme is located within the ZOI (3km) for LVIA purposes (table 18.3 of the Scoping Report) and mindful that this is a Tier 1 and not a Tier 3 project the Council advises that it should be included within the shortlist. This is also consistent with the approach adopted by the Springwell solar NSIP scheme.

As above we would refer the applicant to the Springwell solar cumulative effects ES Chapter, including any subsequent versions introduced into later examination deadlines. The Springwell document contains a number of assumptions/assessment of cumulative effects with the proposed NGNS however has been prepared in advance of any significant environmental information being made available. As such whilst the Springwell DCO application will be considered independently and on its merits, the NGNS ES should, where applicable to an individual topic area, update/correct/respond to any assumptions contained in the Springwell DCO insofar as it relates to the NGNS.

We also note the comment at paragraph 18.4.4 of the Scoping Report and the reference to NKDC's Screening Opinion, in which we identified a number of specific projects that should be initially included in the long list for the cumulative effects assessment. We advised in particular in relation to the need to consider potential impacts arising from other energy infrastructure developments in the vicinity.
Since the issue of our Screening Opinion, the Council has received two further planning applications (currently 'live') for TCPA scale solar farms - 25/0521/FUL Land North Of Ferry Lane, Skellingthorpe and 24/1470/FUL Land To The North Of Whitecross Lane Burton Pedwardine. As such these are both Tier 1 projects. A further application for the Mareham Lane, Sleaford, Solar Farm (23/1419/FUL) was refused and is in appeal at present.

The ES, Table 18.3, suggests that the study area for Soils and Agriculture is <250m, however this is inconsistent with the study areas applied elsewhere (including the solar DCO projects) where much larger ZOIs have been specified. Paragraph 9.7.15 of the Scoping Report states that the cumulative effects of other developments on soils and agricultural land will be addressed, and for the avoidance of doubt this should include all projects currently listed at paragraph 18.6.4 (with the addition of RAF Digby) along with the above Tier 1 solar projects at Skellingthorpe and Burton Pedwardine. The

Mareham Lane Sleaford project does not need to be considered on the basis that there is no BMV land within the site.

The cumulative assessment should be prepared setting out a breakdown of both the temporary/reversible and permanent ('sealing over') hectarage of BMV land across those projects, alongside the proposed breakdown for the NGNS.

We reserve the right to identify other schemes in due course depending on planning/EIA submissions received and would recommend that you keep both the long and short lists under review with us ahead of the planning application submission. Natural England have provided advice on cumulative and in-combination effects to be taken into account within the scope of the EIA in Annex A of their advice letter (attached).

Other Matters

The Council has received comments from internal and external consultees which are summarised below and attached to this response:

- Environment Agency - as the site is predominantly undeveloped greenfield (agricultural land), consider that the development poses a low risk to controlled waters. Agree that ground conditions can be scoped out of the ES. The EA recommend that a Phase 2 Ground Condition Report is submitted in support of any future full planning application. The EA recommend that suitable provisions are made in the drainage strategy to contain water in the event of fire.

- Lincolnshire Fire and Rescue Service - comments are provided that access to buildings for fire appliances and fire fighters must meet the requirements specified in the Building Regulations 2010 (as amended) Part B5 and the installation of at least one fire hydrant is required at the developer's expense.

- Lincolnshire Police - no comments.

- NKDC Environmental Services - the Council's Environmental Services team concur with the proposed scope of the technical assessments relating to air quality, noise and vibration.

- Anglian Water - comments are provided on assets affected, the used water network and surface water disposal. There are no public sewers or surface water sewers in the area therefore Anglian Water are unable to comment on either the proposed foul drainage strategy or surface water strategy.

- Natural England - in addition to the matters outlined under specific topic headings above, advice has been provided on general principles, the availability of environmental data, air quality, water quality and the contribution the development would make to local environmental initiatives and priorities.

- Witham and Humber Drainage Boards - no comments, however, if any proposed temporary or permanent works or structures are within any watercourse, Land Drainage Consent may be required.

- Local Highway Authority - no comments other than to reiterate advice given previously to the applicant and the need to consider cumulative construction effects including in justification of the proposed mitigation measures (provision of passing places on Heath Lane).

Minerals and Waste Planning Authority - the Council has not sought specific comments but notes that given the size of the Limestone Mineral Safeguarding Area (MSA) upon which the Project is situated, Minerals effects are not anticipated to be significant in the context of an EIA. We agree with the proposed submission of a standalone Minerals Assessment, as this is consistent with Policy M11

'Safeguarding of Mineral Resources' as set out in the LCC Minerals and Waste Local Plan (June 2016).

Finally, the FRA/surface water drainage strategy will need to be developed in line with the recently released National standards for sustainable drainage systems (SuDS) - see https://www.gov.uk/government/publications/national-standards-for-sustainable-drainage-systems/national-standards-for-sustainable-drainage-systems-suds. Paragraph 1.2 of the guidance sets out the runoff hierarchy which should be followed, and the guidance also contains design recommendations and requirements for adoption and maintenance of SuDS.

Finch v Surrey County Council 2024

As previously highlighted in pre-application advice to the National Grid, the Finch v Surrey County Council 2024 case is relevant with regard to the wider scope of indirect likely significant effects which it concluded were relevant to be considered. For example, whether the downstream climate emissions (greenhouse gases) from a development should be considered within the EIA process and its relevance to your proposals. We suggest that you seek legal advice on how to approach this matter within your ES given the recent nature of the decision. The implications of the Finch case, however, are not limited to climate/greenhouse gases; they may cover any topic area and can include beneficial effects. We note from paragraphs 10.7.18 and 10.7.19 of the Scoping Report that the applicant acknowledges and confirms the need to apply the Finch case in the preparation of the ES.

As the implications of the Finch judgement are interpreted through the Courts, further cases will become relevant. A recent example is Caffyn vs Shropshire EWHC 1497 (a summary can be found at: Caffyn, R (On the Application Of) v L J Cooke & Son | [2025] EWHC 1497 (Admin) | England and Wales High Court (Administrative Court) | Judgment | Law | CaseMine)
The NGNS will attract a number of new customers to the National Grid. These are likely to be renewable energy power stations (solar farms) and battery storage projects as evidenced by National Grid's TEC register. There are likely to be indirect downstream causal connections between the proposed NGNS and future PA2008 and TCPA projects which have a point of connection into the grid via the NGNS.

The Council recommends that the Finch principle is applied across all the specific topic areas scoped into the ES and across the combined and cumulative impacts chapter; including to those additional projects which we highlight above. The Council recognises that some projects are known (e.g. Springwell Solar Farm, and a number of proposed battery storage projects) and the likely indirect downstream impacts should therefore be taken into account utilising information that is publicly available in planning documents (whether TCPA or DCO). These can be both positive and negative effects.

The Council is mindful that other schemes, including those on the TEC register, are at different stages and in some cases, are unknown. It recommends that a proportionate approach is taken to assessing their indirect effects; which is consistent with the approach set out in Schedule 4 of The Town and Country Planning (Environmental Impact Assessment) Regulations 2017 and which should take account of the Tiered approach to assessment.

The Council's view is that a freestanding chapter within the ES dealing with indirect effects (focussing on the Finch v Surrey County Council 2024 judgement principles) would be a suitable way of presenting the information, both in relation to individual schemes and collectively. As above we note that these can be both positive and negative effects and the chapter should clearly specify these under all the specific topic areas scoped into the ES and across the combined and cumulative impacts chapter.
The full comments of statutory and non-statutory consultees which have contributed to this EIA Scoping Opinion are attached. Finally, we noted that paragraph 2.2.7 of the Scoping Report cross references to Schedule 4 of the EIA Regulations 2017, which sets out the information for inclusion in

the ES and note that the applicant has confirmed that the ES will be prepared in accordance with this requirement.

Conclusion

The District Planning Authority agrees that the following topics must form part of (and are scoped into) the ES:

- Landscape and Visual
- Ecology and Nature Conservation
- Historic Environment
- Soils and Agricultural Land
- Climate Change
- Combined and Cumulative Impacts

The District Planning Authority agrees therefore that all other environmental topics can be scoped out; namely socio-economics and tourism, Air Quality, Ground Conditions, Contamination, Water Environment and Flood Risk, Noise and Vibration and Materials and Waste.

However, we do not consider that Traffic and Transport effects (specifically; cumulative construction effects with the three projects referred to) can yet be scoped out as there is insufficient information presented to justify this.
The Council is in broad agreement with the approach set out in the Scoping Report regarding the EIA methodology (Chapter 5), subject to the above comments, and does not consider that any of the environmental topics which are proposed to be scoped out (with the exception of Traffic and Transport at this stage) will require assessment as part of the ES and can be appropriately considered via standalone technical assessments.

Appendix B:

Oaklands Farm Solar Park

Decision Letter

Department for Energy Security & Net Zero

3-8 Whitehall Place
London
SW1A 2AW
+44 020 7215 5000
energyinfrastructureplanning@energysecurity.gov.uk
www.gov.uk/desnz

Ref: EN010122

Mr David Harvey
DHA Planning Ltd
Eclipse House, Eclipse Park
Sittingbourne Road
Maidstone
Kent
ME14 3EN

19 June 2025

Dear Mr Harvey,

PLANNING ACT 2008

APPLICATION FOR DEVELOPMENT CONSENT FOR THE OAKLANDS FARM SOLAR PARK

1. Introduction

1.1. I am directed by the Secretary of State for Energy Security and Net Zero ("the Secretary of State") to advise you that consideration has been given to the Examining Authority's ("ExA") report dated 19 March 2025. The ExA consisted of one examining inspector, Stuart Cowperthwaite. The ExA conducted an examination ("the Examination") into the application submitted on 8 February 2024 ("the Application") by Oaklands Farm Solar Ltd ("the Applicant") for a Development Consent Order ("the Order") under section 37 of the Planning Act 2008 ("the 2008 Act") for the Oaklands Farm Solar Park Project ("the Proposed Development"). The Application was accepted for Examination on 5 March 2024. The Examination began on 10 July 2024 and closed on 19 December 2024. The Secretary of State received the Report of Findings and Conclusions and Recommendation to the Secretary of State ("the ExA's Report") on 19 March 2025.

1.2. On 10 April 2025 the Secretary of State issued a consultation letter seeking information on several matters ("the first consultation letter") from the Applicant[1]. Following the publication of new data from the updated National Flood Risk Assessment ("NaFRA") by the Environment Agency ("EA") the Applicant was requested to provide an explanation of the implication of this data to the Environment Statement ("ES"). In addition, the Applicant was requested to provide an updated Outline Landscape and Ecological Management Plan (OLEMP) that included Appendix A that was missing from the document submitted at Deadline 4 of the Examination and to confirm if this was identical to the previous iteration of the document provided during the Examination.

1.3. In a written representation ("WR"), the Applicant referred to agreements it had with landowners that included controls that would ensure decommissioning of the solar park

[1] https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/EN010122/EN010122-000887-Consultation%20Letter%20-%20Oaklands%20Solar%20Farm%2010.04.25.pdf

would be implemented. The Secretary of State asked for evidence of this, and the Applicant responded on 25 April 2025[2].

1.4. On 01 May 2025[3] a further consultation letter requested the Applicant to provide clarification on the term "balance of solar plant" in sub-paragraph 2 (b) of Part 1 of Schedule 1 to the Draft Development Consent Order("dDCO"), [REP8-003]. A response was received from the Applicant on 8 May 2025[4].

1.5. The Order, as applied for, would grant development consent for the construction, operation 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 ("BESS") facility and supporting infrastructure including a below ground electrical connection to the National Grid substation at the former Drakelow Power Station.

1.6. The Proposed Development comprises the following [ER 1.3.8]:

Principal development

- Work No. 1 - a ground mounted solar photovoltaic ("PV") generating station.

Associated Development

- Work No. 2 - a BESS compound;
- Work No. 3 - works in connection with a new on-site substation;
- Work No. 4 - 132kV electrical cables connecting Work No. 3 to Work No. 5;
- Work No. 4A - crossing Rosliston Road with electrical cabling;
- Work No. 4B - temporary stopping up of water courses to trench and lay cables, installation of culverts, drainage and other features to cross watercourses;
- Work No. 4C - crossing Walton Road with electrical cabling;
- Work No. 4D - crossing Coton Road with electrical cabling;
- Work No. 5 - connection and installation works to the existing substation;
- Work No. 5A - access for Work No. 5;
- Work No. 5B - access to National Grid operational land for Work No.5;
- Work No. 6 - construction and decommissioning of access tracks and compounds;
- Work No. 7 - general works;
- Work No. 8 - works to facilitate access for all works excluding Work No. 5;
- Work No. 9 - works for areas of habitat management;
- Work No. 10 - works to implement a new permissive path; and

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[2] https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/EN010122/EN010122-000891-EN010122%20D4%206.1%20ES%20Appx%205.6%20OLEMP%20Clean.pdf, https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/EN010122/EN010122-000888-EN010122%20SoS%20RfI%20Applicant%20Response%20Letter%20Redacted.pdf, https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/EN010122/EN010122-000890-EN010122%20SoS%20RfI%204.5%20Schedule%20of%20Progress%20-%20Affected%20Persons.pdf

[3] https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/EN010122/EN010122-000893-Consultation%20Letter%20-%20Oaklands%20Solar%20Farm%20-01.05.2025.pdf

[4] https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/EN010122/EN010122-000894-EN010122%20SoS%20RfI%2019.1%20Applicant%20Response%20Letter.pdf

- other works as may be necessary or expedient for the purpose of or in connection with the relevant part of the authorised development, as described in Schedule 1 of the Order.

1.7. The Proposed Development would have a generating capacity of over 50 megawatts ("MW"), an export capacity of 162.3MW (alternating current) and an import capacity of 37.5MW (alternating current) to the National Grid. The Proposed Development would be situated on 191 hectares (ha) of land within the administrative boundaries of South Derbyshire District Council ("SDDC") and Derbyshire County Council ("DCC") and would be in proximity to Staffordshire County Council ("SCC"), East Staffordshire Borough Council ("ESBC"), and Lichfield District Council ("LDC").

1.8. The Applicant also seeks compulsory acquisition ("CA") and temporary possession ("TP") powers, as set out in the draft Order submitted with the Application.

1.9. Published alongside this letter on the Planning Inspectorate's National Infrastructure Planning website[5] is a copy of the ExA's Report. The ExA's findings and conclusions are set out in Chapters 3-7 of the ExA's Report, and the ExA's summary of conclusions and recommendation is at Chapter 8. All numbered references, unless otherwise stated, are to paragraphs of the ExA's Report "[ER *.*.*]".

2. Summary of the ExA's Report and Recommendation

2.1. The principal issues considered during the Examination on which the ExA has reached conclusions on the case for development consent are set out in the ExA's Report under the following broad headings:

- Need, alternatives, electricity generation, and decommissioning
- Agriculture and soils
- Biodiversity
- Historic environment
- Landscape and visual
- Noise and vibration
- Traffic and transport
- Water quality, resources, drainage, and flooding.
- Other planning topics
- Habitats Regulations Assessment
- Land rights and related matters

2.2. The ExA recommended that the Secretary of State should grant development consent and make the Order in the form attached to Annex C of its report [ER 8.3.2].

2.3. This letter is intended to be read alongside the ExA's Report and, except as indicated otherwise in the paragraphs below, the Secretary of State agrees with the findings, conclusions and recommendations of the ExA as set out in the ExA's Report, and the reasons for the Secretary of State's decision are those given by the ExA in support of the Secretary of State's conclusions and recommendations.

[5] https://national-infrastructure-consenting.planninginspectorate.gov.uk/projects/EN010122

3. Summary of the Secretary of State's Decision

3.1. The Secretary of State has considered the ExA's Report and all other material considerations, including written representations ("WR"), relevant representations ("RRs"), responses to questions and oral submissions made during the Examination and representations received after the close of the Examination, all of which are dealt with as appropriate below. 330 RRs were made by businesses, charities, government agencies, local councils, parish councils, and individuals.

3.2. The Secretary of State has considered the overall planning balance and, for the reasons set out in this letter, has concluded that the Proposed Development's public benefits outweigh the harm identified, and that development consent should therefore be granted.

3.3. The Secretary of State has decided under section 114 of the 2008 Act to make, with modifications, an Order granting consent for the proposals in the Application. This letter is a statement of the reasons for the Secretary of State's decision for the purposes of section 116 of the 2008 Act and the notice and statement required by regulations 31(2)(c) and (d) of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 ("the EIA Regulations").

3.4. In making the decision, the Secretary of State has complied with all applicable legal duties and has not taken account of any matters which are not relevant to the decision.

4. The Secretary of State's Consideration of the Application

4.1. Section 104(2) of the 2008 Act requires that in deciding the application the Secretary of State must have regard to:

- any national policy statement ("NPS") which has effect in relation to development of the description to which the application relates (a "relevant national policy statement"),
- the appropriate marine policy documents (if any), determined in accordance with section 59 of the Marine and Coastal Access Act 2009,
- any local impact report ("LIR") (within the meaning given by section 60(3), submitted to the Secretary of State before the deadline specified in a notice under section 60(2),
- any matters prescribed in relation to development of the description to which the application relates, and
- any other matters which the Secretary of State thinks are both important and relevant to the Secretary of State's decision.

4.2. On 22 November 2023 the revised NPSs were published, and designated by Parliament on 17 January 2024 ("the 2024 NPSs"). The ExA considered the Proposed Application against s104 of the 2008 Act which required consideration of the Application against the 2024 NPSs. The Secretary of State has also had regard to the 2024 NPSs in deciding this Application. NPS EN-1 sets out the general policies for the submission and assessment of applications relating to energy infrastructure. Paragraph 4.1.3 of NPS EN-1 stipulates the Secretary of State will start with a presumption in favour of granting consent to applications for energy Nationally Significant Infrastructure Projects ("NSIPs").

4.3. The ExA has had regard to the National Planning Policy Framework ("NPPF") that was published on 12 December 2024 and the accompanying Planning Practice Guidance ("PPG") as important and relevant matters whereby it considered it relevant to the Proposed

Development [ER 2.2.16 et seq.]. An updated NPPF was released on 7 February 2025 after the close of the Examination (to correct cross-references from footnotes 7 and 8, and amend the end of the first sentence of paragraph 155 of the NPPF to make its intent clear). The Clean Power 2030 Action Plan ("CP2030") was published on 13 December 2024 which sets out the Government's pathway to a clean power system. The Secretary of State had regard to these publications and finds that there is nothing contained within them which would lead him to reach a different decision on the Application.

4.4. The Secretary of State also recognises the 15 May 2024 written ministerial statement ("WMS") on the use of BMV land as a relevant consideration in deciding this Application.

4.5. As well as the NPSs, NPPF, PPG, and 2024 WMSs, the Secretary of State has had regard to the Joint LIR of SDDC and DCC and the LIR submitted by Leicestershire County Council ("LCC"), Local Development Plans ("LDPs") environmental information as defined in regulation 3(1) of the EIA Regulations and to all other matters considered to be important and relevant to the Secretary of State's decision as required by section 104 of the 2008 Act.

4.6. The Secretary of State agrees with the ExA's conclusions except where stated otherwise and the weight it has ascribed in the overall planning balance in respect of the following issues:

- Need (very great positive weight) [ER 3.2.88].
- Agriculture and soils (little negative weight) [ER 3.3.153].
- Biodiversity (little positive weight) [ER 3.4.146].
- Landscape and visual impacts (great negative weight) [ER 5.3.68].
- Noise and vibration (little negative weight) [ER 3.7.58].
- Historic environment (moderate negative weight) [ER 3.5.61].
- Traffic and transportation (little negative weight) [ER 3.8.77].
- Water quality, resources, drainage, and flooding (neutral weight) [ER3.9.91].
- Air Quality (neutral weight) [ER 3.10.24].
- Aviation and defence (neutral weight) [ER 3.10.34].
- Climate change adaptation and resilience (little negative weight) [ER 3.10.50].
- Nuisance (neutral weight) [ER 3.10.95].
- Human health, fire risk, safety, and security (little negative weight) [ER 5.3.119].
- Socio-economics and NMU (little positive weight) [ER 3.10.160].
- Waste (neutral weight) [ER 3.10.175].
- Good design (neutral weight) [ER 3.10.209].

4.7. The paragraphs below set out the matters where the Secretary of State has further commentary and analysis to add beyond that set out in the ExA report. This includes matters where the Secretary of State considers it is necessary to provide further detail on the rationale for the Secretary of State's conclusions.

Need, alternatives, and decommissioning

Need case, including effects on climate change

4.8. The Applicant stated that the Proposed Development would make a significant contribution towards the UK's national energy policy aims of decarbonisation and reducing carbon emissions, energy security, and affordability. It suggested the Proposed Development would do this by providing: a large scale, low carbon, renewable energy generating asset that would contribute to the legally binding target of net zero by 2050; a secure supply of energy with direct connection to the National Grid network; a BESS, and provide affordable, large scale, generation, and value for money for end-use consumers [ER 3.2.12].

4.9. The Applicant's assessment of the need case in relation to the cumulative effects on climate change concluded that Greenhouse Gas ("GHG") emissions would be negligible to minor adverse from construction, moderate to major beneficial during operation, and negligible to minor adverse effect during decommissioning [ER 3.2.22 et seq.]. DCC and SDDC agreed with this in their Statement of Common Ground ("SoCG") with the Applicant, with an overall moderate to major significant beneficial effect on GHG and climate change [ER 3.2.41].

4.10. Several interested parties ("IPs") expressed opposition to the need in combination with the location of the Proposed Development [ER 3.2.35]. A smaller number of IPs supported the need for the Proposed Development [ER 3.2.36].

4.11. The Applicant responded that NPS EN-1 states that nationally significant low carbon infrastructure including solar generation are "critical national priority" infrastructure ("CNP") which is key for the Government achieving its energy objectives and net zero. The Proposed Development would make an important but proportionate contribution to solar generation in the UK and reduce dependency on imported energy supplies [ER 3.2.37 et seq.]. The Proposed Development would provide energy storage to manage electricity flows to and from the grid, reduce network reinforcement costs, and contribute to the resilience and flexibility of the wider electricity network in line with the increased need for grid-scale battery storage set out by the Government [ER 3.2.38].

4.12. DCC and SDDC submitted a LIR including agreement that the carbon savings from energy generation would offset the construction and decommissioning emissions of the Proposed Development. The LIR included agreement that the energy generated from the Proposed Development would not directly be used by local residents and businesses; it would be directed into the national grid and the operation stage of the Proposed Development would contribute to a national reduction of emissions. Furthermore, the LIR set out that due to the nature and size of the Proposed Development a specific Carbon Management Plan should ideally be developed as part of the Construction Environmental Management Plan ("CEMP") [ER 3.2.39]. The Applicant did not consider this necessary as the Outline CEMP, Outline Operational Environment Management Plan ("OEMP"), and Outline Decommissioning Environmental Management Plan ("DEMP") included measures to minimise adverse effects on climate change effects, embodied carbon and emissions [ER 3.2.40].

4.13. The ExA concluded that the NPSs do not require a Carbon Management Plan and since Requirement 9 of the dDCO stipulates a CEMP must be submitted and approved by the Local Planning Authority ("LPA"). DCC and SDDC would have the opportunity to raise concerns when a CEMP is submitted [ER 3.2.73].

4.14. The ExA noted that the Applicant, DCC and SDDC agreed on the urgent need for this type of development [ER 3.2.41].

4.15. The ExA concluded that the Applicant's GHG assessment accorded with paragraph 5.3.4 of NPS EN-1, reasonable steps had been taken to reduce GHG emissions as required by paragraph 5.3.9 and GHG emissions were identified in line with paragraphs 5.3.3 and 5.3.10 [ER 3.2.72].

Alternatives

4.16. A number of IPs suggested alternative locations for solar panels such as building roofs, previously developed or brownfield land, sites away from villages and towns, or spread over smaller sites on a much wider area. An IP argued that there are better ways to harvest the sun's energy [ER 3.2.43]. One IP raised concerns over the adequacy of site selection, the survey area's limited search radius, the insufficiency of the justification to use BMV land because there were more suitable sites nearby, and the view that the site was actually selected due to the developers finding landowners near Drakelow Substation willing to support the project [ER 3.2.45]. The Applicant stated the Environmental Statement ("ES") sets out the site selection and design approach, including assessment of available brownfield sites [ER 3.2.46]. The ExA concluded that the Applicant's approach was satisfactory and in line with paragraph 4.3.9 of NPS EN-1 [ER 3.2.78].

4.17. The ExA concluded that the Applicant had considered reasonable alternatives in the vicinity of available grid export capacity at Drakelow Substation, and that the sifting process provided sufficient indication of the reasons for the choice. The ExA concluded that the Applicant complied with paragraphs 4.3.15 of NPS EN-1, 2.10.23 of NPS EN-3, and Regulation 14(2)(d) of the EIA Regulations [ER 3.2.79]. The Secretary of State agrees with this conclusion.

Decommissioning timing

4.18. DCC, SDDC and the EA, suggested that the Proposed Development's decommissioning should be completed within a specified timescale [ER 3.2.52]. DCC considered the commencement and completion of decommissioning should be linked to the cessation of energy generation if earlier than 40 years following the date of final commissioning of the first phase of Work No. 1. SDDC considered timescales should be identified in case a unit fails or is left dormant or derelict some time before the 40-year operation period of the project expired. The EA suggested that decommissioning should be completed within two years of energy generation ceasing or two years after the 40-year expiry date, whichever is sooner [ER 3.2.53].

4.19. The Applicant amended Requirement 22 to require completion of decommissioning within two years unless otherwise agreed with the LPA [ER 3.2.55]. The ExA changed this requirement to take into account delays to decommissioning due to maintenance delays [ER 3.2.56].

4.20. Updates to Requirement 22 included provisions that secured the timescales for the submission of relevant management plans, decommissioning of any part of the authorised development that stopped generating electricity for specified periods before the 40th anniversary of final commissioning, and decommissioning of any part to be completed within 2 years of approval of the decommissioning plan (or otherwise agreed with the LPA). The

ExA considered these updates appropriate to avoid unnecessary delay in a return to agricultural uses, and to limit adverse effects in areas that would not benefit from electricity generation or storage [ER 3.2.82]. The Secretary of State agrees with the ExA.

Decommissioning funding

4.21. Some IPs raised concerns regarding costs, commitment to decommissioning, risks of a failure to fund decommissioning, and requested a fund or bond to be set up [ER 3.2.58]. DCC and SDDC agreed to the inclusion of decommissioning fund requirement as this provided certainty that adequate arrangements would be in place to reinstate the land [ER 3.2.60]. SDCC approved of the inclusion of decommissioning fund during the operation stage [ER 3.2.63].

4.22. The Applicant stated a fund was not necessary since Requirement 22 of the dDCO secured decommissioning of the site, was legally enforceable, and was consistent with recent precedent. The Applicant considered its funding statement as part of the application demonstrated it had sufficient funds to construct, operate and decommission the Proposed Development [ER 3.2.61].

4.23. At Issue Specific Hearing 1 (ISH1) the Applicant stated that securing decommissioning funding had not arisen for renewable DCOs [ER 3.2.62]. The Applicant stated the controls between it and the landowner included obligations to return the land to the beneficial use of the landowner that would be strongly enforced [ER 3.2.84]. The ExA was not privy to these agreements and had not seen any evidence of how these agreements would secure decommissioning and any related penalties if it is not decommissioned [ER 3.2.85].

4.24. The ExA noted the lack of precedent but stated each project must be considered on its own merits [ER 3.2.85]. The ExA considered the Proposed Development could only be considered temporary if decommissioning was secured robustly. The ExA noted there was uncertainty over the commercial and financial considerations of the undertaker (who may not be the applicant) during the decommissioning stage which would have an impact on securing decommissioning appropriately and would be at the stage when the undertaker is not expected to have further income from providing electricity to the grid. The ExA noted the Applicant did not provide evidence that a decommissioning fund or other financial guarantee would cause it significant difficulty [ER 3.2.86].

4.25. The ExA considered a decommissioning fund requirement (Requirement 27) in the recommended DCO ("rDCO") was necessary to ensure financial resources would be available for decommissioning and to ensure the Proposed Development is temporary despite Requirement 22 covering decommissioning, which the ExA acknowledged would be legally enforceable [ER 3.2.87]. The ExA concluded the requirement was precise, enforceable, necessary, relevant to the development, relevant to planning and reasonable in all other circumstances, and addressed the concerns raised by many IPs, including DCC and SDDC [ER 5.3.22].

Relevant Policy Considerations

4.26. Paragraph 3.2.3 of NPS EN-1 states it is not the planning system's role to limit any form of infrastructure or deliver specific amounts of infrastructure covered by NPS EN-1. Paragraphs 3.2.6 - 3.2.8 of NPS EN-1 sets out that the Secretary of State should assess applications for development consent for the types of infrastructure covered by NPS EN-1 on the basis that

the Government has demonstrated there is a need for those types of infrastructure which is urgent, as described for each of them in Part 3 of NPS EN-1. In addition, the Secretary of State has determined that substantial weight should be given to this need when considering applications for development consent under the Planning Act 2008, and the Secretary of State is not required to consider separately the specific contribution of any individual project to satisfying the need established in NPS EN-1.

4.27. Paragraph 3.3.4 of NPS EN-1 sets out that electricity storage is needed in the delivery of the energy objectives. Paragraph 3.3.25 of NPS EN-1 reiterates storage has a key role to play in achieving net zero and providing flexibility to the energy system, so that high volumes of low carbon power, heat and transport can be integrated. Paragraph 3.3.26 of NPS EN-1 sets out that storage is needed to reduce the costs of the electricity system and increase reliability by storing surplus electricity in times of low demand to provide electricity when demand is higher.

4.28. Paragraph 3.3.19 of NPS EN-1 states the need for a diverse mix of electricity infrastructure to come forward to secure, reliable, affordable, and net zero consistent system. Paragraphs 3.2.1 - 3.2.2 state that a range of different types of energy infrastructure is required to deliver the Government's objectives of a secure, reliable, affordable, and consistent energy supply with net zero emissions in 2050. Paragraph 3.3.58 of NPS EN-1 describes the urgent need for new electricity infrastructure, particularly low carbon generating technologies including solar PV [paragraph 3.3.60 of NPS EN-1]. Paragraph 3.3.59 of NPS EN-1 specifies that these technologies are needed to meet the Government's energy objectives by providing security of supply, providing an affordable, reliable system and ensuring the system is net zero consistent.

4.29. Paragraph 4.10.8 of NPS EN-1 stipulates that applicants must consider the direct and indirect impacts of climate change when planning the location, design, build, operation and, where appropriate, decommissioning of a project, and the Secretary of State should be satisfied that the potential impacts of climate change have been taken into account. This includes the latest UK Climate Projections and associated research and expert guidance available at the time the ES was prepared, identification of appropriate mitigation or adaptation measures, and covering the estimated lifetime of the project including the decommissioning stage.

4.30. Paragraph 5.3.8 of NPS EN-1 states the Secretary of State must be satisfied the applicant has assessed the GHG emissions of all stages of the development as far as possible. Paragraph 5.3.9 of NPS EN-1 states the Secretary of State 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.

4.31. Paragraph 2.10.69 of NPS EN-3 stipulates that applicants should set out what would be decommissioned and removed from the site at the end of the operational life of the generating station, but there are instances where it may be less harmful for the ecology of the site to keep or retain certain types of infrastructure.

4.32. Paragraph 2.10.146 of NPS EN-3 states the Secretary of State should ensure the applicant has put forward outline plans for decommissioning and restoring the land to a suitable use. Paragraph 2.10.147 of NPS EN-3 states that consent for solar farms is time-limited and a requirement should set the time-limit from the start of electricity generation. Paragraph 2.10.148 stipulates such a requirement should secure the decommissioning of the

generating station to ensure that inoperative plant is removed after its permitted operational life.

4.33. Paragraph 2.10.151 of NPS EN-3 stipulates the Secretary of State should consider the time period the applicant seeks to operate the generating station, as well as the extent to which the site will return to its original state, when assessing impacts such as landscape and visual effects and potential effects on the settings of heritage assets and nationally designated landscapes.

4.34. Paragraph 4.1.16 of NPS EN-1 stipulates that the Secretary of State should only impose requirements that are necessary, relevant to planning, relevant to the development to be consented, enforceable, precise, and reasonable in all other respects.

4.35. Paragraph 4.1.22 of NPS EN-1 states that where the Secretary of State considers the financial viability and technical feasibility of the proposal have been properly assessed by the applicant, it is unlikely to be relevant to the Secretary of State's decision making unless exceptions arise in the NPSs, and the reasons why financial viability or technical feasibility is likely to be relevant are explained.

The Secretary of State's conclusions

4.36. The Secretary of State notes the ExA's, Applicant's, DCC's and SDDC's agreement on the urgent need for this type of development. The Secretary of State agrees and considers the principle of the Proposed Development in terms of urgent need and substantial weight is established and accords with paragraphs 3.2.6 and 3.2.7 of NPS EN-1. The Secretary of State considers the Proposed Development would make an important contribution to Government's objectives for energy supply and net zero emissions as set out in paragraph 3.2.1-3.2.2 of NPS EN-1. The Secretary of State notes that the Proposed Development is nationally significant low carbon infrastructure, but does not consider it necessary to consider further the policy in EN-1 for CNP in this case.

4.37. The Secretary of State considers the Applicant has adequately demonstrated it has assessed the GHG emissions of the Proposed Development in all stages of the development. The Secretary of State agrees with the ExA, that the Applicant has taken all reasonable steps to reduce GHG emissions required by paragraph 5.3.9 and notes that some residual GHG emissions will remain, in line with paragraphs 5.3.3 and 5.3.10 of NPS EN-1.

4.38. With regards to Requirement 27 of the rDCO, the Secretary of State notes that the ExA was not privy to agreements between the Applicant and landowners and had not seen any evidence of how these agreements would secure decommissioning and any related penalties if it is not decommissioned.

4.39. In consideration of this, the Secretary of State's first consultation letter requested, amongst other matters, that the Applicant provided evidence of the controls in the agreements with landowners that demonstrated that the application site land would be returned to the beneficial use of the landowners. The Applicant responded on 25 April 2025, providing an extract from its commercial agreements with relevant landowners. The Applicant provided redacted and unredacted versions of its response and requested that the details of the commercial agreements in the unredacted version are kept confidential and not published in the Examination library or elsewhere.

4.40. The Secretary of State has noted the response, and considers that the nature of the information provided in the response gave limited, if any, information to inform his decision. In the circumstances, the Secretary of State does not consider it appropriate to make a decision based on information that cannot be made publicly available and consulted upon. The Secretary of State has consequently not taken this information into account in determining this application.

4.41. Nonetheless, the Secretary of State considers that sufficient information has been provided elsewhere to demonstrate how decommissioning would be secured and how the application site land would be returned to the beneficial use of the landowners. In particular, Requirement 22 covers decommissioning and restoration of the application land and requires the decommissioning stage to be completed within two years unless otherwise agreed with the LPA. The Requirement also stipulates that decommissioning must be implemented in accordance with the DEMP approved by the LPA and that it is substantially in accordance with the Outline DEMP. This would provide DCC and SDDC the opportunity to participate at the decommissioning stage to ensure that their decommissioning concerns are addressed. Furthermore, if the Applicant is not the undertaker at the time of the decommissioning stage, the new undertaker would be obligated to implement Requirement 22 as stipulated in the DCO.

4.42. The Secretary of State also considers that Requirement 22 accords with paragraphs 2.10.146 to 2.10.148 of NPS EN-3 in project lifetime and decommissioning.

4.43. In terms of financing the decommissioning stage, the Secretary of State notes the Applicant's funding statement, which it stated was a demonstration that it had sufficient funds to construct, operate and decommission the Proposed Development, and also notes paragraph 2.10.68 of NPS EN-3 which states that solar panels can be decommissioned relatively easily and cheaply.

4.44. Furthermore, the Secretary of State notes there is no policy requirement for a decommissioning fund to be imposed as paragraphs 2.10.146 to 2.10.151 of NPS EN-3 set out the considerations for the Secretary of State in relation to project lifetime and decommissioning of solar developments.

4.45. In light of all of these considerations the Secretary of State does not consider that imposing a decommissioning fund requirement is necessary. This is consistent with paragraph 4.1.16 of NPS EN-1 which stipulates that the Secretary of State should only impose requirements that are, amongst other things, necessary, and the requirement in paragraph 4.1.16 of NPS EN-1 that only relevant requirements should be imposed.

<u>Agriculture and soils</u>

The Applicant's Assessment of Land Use and Quality

4.46. In the Applicant's assessment of land use and quality the study area for the potential effects on agricultural land quality and soils included Oaklands Farm, and the parts of Fairfield Farm and Park Farm within the application site [ER 3.3.7].

4.47. Land quality was determined using the Agricultural Land Classification ("ALC") which is described as the only approved system for grading agricultural quality in England and Wales in paragraph 2.10.33 of NPS EN-3. Best and Most Versatile agricultural land is defined as

land in grades 1, 2 and 3a of the Agricultural Land Classification in paragraph 2.10.29 of NPS EN-3.

4.48. The table below provides a breakdown of the Applicant's ALC results for the Order as set out in updated chapter 15 of the ES submitted in Deadline 6 of the Examination [REP6-033]. A SoCG was made between DCC, SDDC and the Applicant in which it was agreed that the findings provided an accurate assessment of the agricultural land across the site [ER 3.3.71].

Table 1: Applicant's ALC results for the Order limits [Table 15.5 of REP6-033]

ALC Grade	Area in hectares		
	Site	PV Arrays	Cable Route
2 very good	36	35	<1
3a good	87	79	8
3b moderate	62	46	16
Non-agricultural	1	0	1
Urban	5	0	5
Total	**191**	**160**	**31**

4.49. As shown from Table 1 above, the Proposed Development would be situated on 191ha of land. Of this land, the ExA described Oakland Farm (which comprises most of the Proposed Development) as a mixed arable and livestock farm extending to 185 ha which is mostly in agricultural use, with a few small woodland/copse areas, and an area of farm buildings [ER 3.3.9]. The solar farm, central electricity substation, BESS, access, landscaping, and other works would be situated on 135 ha of agricultural land that is currently in use for arable production and grazing [ER 1.3.6].

4.50. Although the proposed BESS and on-site substation would be largely situated on BMV land; namely grade 3a agricultural land and the very southern part on grade 3b land [ER 3.3.12], the Applicant stated that this land would be returned to the original ALC grade with no permanent loss or downgrading [ER 3.3.124]. The Applicant also stated it would not be possible to locate the BESS and on-site substation on grade 3b land due to the need to minimise visual and noise effects on neighbouring residential properties [ER 3.1.12].

4.51. The Applicant identified the following effects from construction activities on land quality [ER 3.3.15, ER 3.3.18]:

- The installation of the solar PV arrays, and related localised cabling would be temporary and would not affect land quality or soils adversely. The impact would be negligible magnitude on land of very high (grade 2), high (grade 3a) and medium (grade 3b) sensitivity, which would result in a negligible effect that would not be significant;
- The fixed equipment would include tracks, transformers, substation and BESS, would cover 6.5 ha, and would amount to a low magnitude impact on resources of very high or high sensitivity, equating to moderate or minor adverse effects which would not be significant. There would be a low magnitude effect on soils of medium sensitivity, resulting in a minor adverse effect that would not be significant;
- The cable between the on-site substation and the Drakelow Substation would be on land quality of medium sensitivity (grade 3b), would cover 31 ha, and the magnitude of impact

would be negligible. The effect on land quality and soils would be negligible and not significant;

- The effects on soils from construction traffic and works and trenching would generally be temporary, the soils are of medium sensitivity, with medium resilience to structural damage. The magnitude of effects would be low or negligible, resulting in minor or negligible effects, which would not be significant; and
- The significant changes to the day-to-day operation of the business would amount to a medium magnitude of change on a resource of medium sensitivity, which would be a minor adverse effect and not significant.

4.52. The Applicant stated no additional mitigation would be required during the operation stage and identified the following effects [ER 3.2.26 – ER 3.327]:

- An impact of negligible magnitude on land quality, on land of very high, high or medium sensitivity, partially reversible on decommissioning, which would be a negligible effect and not significant.
- A negligible adverse effect on soils from operational work from an impact of negligible magnitude, on soil resources of medium or low sensitivity that would not be significant.
- A benefit to the soils of high magnitude, from being rested from intensive arable use. Soil biodiversity is a resource of low sensitivity, and the overall effect would be minor beneficial and not significant.
- An impact of medium magnitude on the farm business, which is a resource of medium sensitivity, resulting in a minor adverse effect on the farm business, which would not be significant; and
- Minor or negligible adverse economic and food production effects at national and local level, which would not be significant.

4.53. The Applicant stated that the land where the ground mounted solar PV panels would be installed would be returned to its original use after the decommissioning stage [ER 3.3.37]. The panels would be removed by hand and the steel legs would be pulled out by machinery: the Applicant considers this would not damage the soils or alter the land quality [ER 3.3.29]. Deeply buried cables would be left in situ or removed; shallow buried cables would be removed by digging a narrow trench, placing topsoil and subsoil in separate piles, removing the cable and reinstating the soils. The Applicant considers this would not result in long-term loss or downgrading of the land [ER 3.3.30].

4.54. The Applicant concludes decommissioning would have negligible magnitude effects on resources of high and medium sensitivity, resulting in a negligible significance of effect, which would not be significant. The Applicant states the permanent loss of the area of the BESS and on-site substation would be a low magnitude effect on resources of high or medium sensitivity, which would be minor adverse effect and not significant [ER 3.3.34].

4.55. In relation to cumulative effects with other developments, the Applicant considered a solar farm at Haunton and residential schemes. The Applicant considered there would be no significant cumulative effects, and no additional mitigation would be required and it identified no combined effects of relevance to agriculture and soils [ER 3.3.35].

The ExA's Considerations and Issues Raised during Examination

Mineral Safeguarding

4.56. DCC advised that the site initially included a small area identified for inclusion as a Sand and Gravel Safeguarding Area in the Draft Derbyshire and Derby Minerals Local Plan [ER 3.3.46]. The Applicant stated that the site is largely excluded from a safeguarding area other than a short section of cable routing that is unlikely to impact resource availability [ER 3.3.57]. The ExA concluded that it had no concerns regarding mineral safeguarding and considered the site complied with NPS EN-1 [ER 3.3.152].

ALC

4.57. Natural England ("NE") raised concerns regarding ALC including: the details and provision of surveys on different land classifications, the absence of a detailed survey for most of the cable corridor, whether professionals undertaking the surveys had adequate experience (including the provision of the professional credentials of those undertaking the surveys), and that the ALC survey needed to inform the Soil Management Plan ("SMP") [ER 3.3.64].

4.58. SDDC considered the Applicant's ALC and surveys met the minimum criteria of the Ministry of Agriculture, Fisheries and Food's 1988 Agricultural Land Classification of England and Wales: Revised criteria for grading the quality of agricultural land – ALC011, but stated that the soil survey work was not supervised/observed [ER 3.3.65].

4.59. The Applicant stated that: the ALC of Oaklands Farm was carried out and supervised by qualified persons, one with 13 years of experience and another with 25 years; the ALC of Park Farm was carried out by a person with MSc, FI Soil Sci, CSci qualifications and 35 years' experience; all fieldwork and ALC analysis were carried out by experienced professionals, and it is not normal practice for survey work to be supervised or observed where the professionals undertaking the work are experienced and professionally qualified [ER 3.3.66]. The Applicant stated that the approach and methodology for the ALC and surveys was robust and appropriate; the results of further survey work would be provided for the cable route; they would provide further survey work on the cable route; the ALC plan was revised to address the matters raised by NE, and the ALC of Park Farm was extended to cover the whole of the cable route corridor [ER 3.3.66].

4.60. The Applicant submitted an Additional Land Classification Survey for Park Farm focussing on the cable route and the ES was updated [ER 3.3.68]. A SoCG between DCC, SDDC and the Applicant agreed that the additional ALC studies confirm that of the 191ha comprising the site and cable route, 36ha are grade 2 (very good), 87ha are grade 3a (good), 62ha are grade 3b (moderate), 1ha is non-agricultural, and 5ha are urban. The SoCG stated it was an accurate assessment of the agricultural land across the site and that the area of BMV agricultural land impacted by the proposals significantly increases from the original assessment [ER 3.3.71].

4.61. The ExA stated it had no reason to disagree with the ALC surveys and noted NE and SDDC were content. The ExA concluded the agricultural land was graded in accordance with paragraph 2.10.33 of NPS EN-3 [ER 3.3.132].

Use of agricultural land

4.62. A number of IPs considered the use of agricultural land inappropriate and/or that food security should be prioritised. An IP commented that the application site is prime agricultural

land, it would be poor use of greenfield land, and that national guidance is that using good quality agricultural land for large scale solar farms should be avoided. SDDC considered that the development should be directed to areas of lower soil quality [ER 3.3.72].

4.63. The Applicant responded that NPS EN-3 does not prohibit use of BMV land, and the location was limited due to a number of factors and technical considerations including there were no other preferable sites within 10km of Drakelow Substation which would be able to deliver the Proposed Development. The Applicant stated that there is no food security concern in the UK and there is no mandate to farmers requiring land to be used for food production, and the Proposed Development forms part of a wider diversification plan [ER 3.3.73].

4.64. The Applicant stated that the 115ha of BMV land within the Oaklands Farm Area represents 0.003% of the BMV land in England and therefore its temporary loss is insignificant in the national context [ER 3.3.73].

4.65. The ExA was satisfied with the Applicant's consideration of alternative sites and its site choice: although land type was not a predominating factor in determining the site's suitability, this was acceptable and in accordance with paragraph 2.10.29 of NPS EN-3. The ExA noted the site choice was consistent with solar arrays not being prohibited on BMV agricultural land (paragraph 2.10.30 of NPS EN-3) and the expectation that it is likely that developments would use some agricultural land (paragraph 2.10.31 of NPS EN-3).The ExA was satisfied the use of agricultural land is necessary, and appropriate consideration was given to land quality in the selection of the site in accordance with paragraph 2.10.29 of NPS EN-3 [ER 3.3.133]. The ExA considered the impacts of use of BMV agricultural land was in accordance with paragraph 5.11.34 of NPS EN-1 and paragraph 2.10.31 of NPS EN-3. The ExA found the choice of site was explained and siting on BMV agricultural land is justified in accordance with NPS EN-3 [ER 3.3.134].

Outline SMP

4.66. NE commented on the SMP, including: compliance with paragraph 5.1 of the Department for the Environment, Food and Rural Affairs (DEFRA) Construction Code of Practice for the Sustainable Use of Soils on Construction Sites (2009) and the Institute of Quarrying's Good Practice Guide for Handling Soils in Mineral Working, the professional qualification and experience of the site foreman, as well as a number of other matters [ER 3.3.75]. SDCC concurred, adding that the site foreman should be a suitably qualified soil scientist and commented on the months in which soil handling should be avoided [ER 3.3.76].

4.67. The Applicant updated the outline SMP; NE stated this and the additional ALC surveys that inform the outline CEMP addressed their concerns. The ExA stated that SDDC did not respond to the invitation to set out any remaining concerns [ER 3.3.78].

Decommissioning end state

4.68. SDDC and IPs expressed concern in relation to decommissioning and whether the land would be returned to farmland [ER 3.3.97]. SDDC considered it necessary, reasonable, and appropriate for the definition of the end state after decommissioning to be secured by the DCO [ER 3.3.99]. SDDC recommended periodic reviews during operation stage to ensure the end state aligned with environmental and agricultural restoration objectives [ER 3.3.110]. DCC considered it necessary to understand the end state of the land following the decommissioning and this must be addressed in the DEMP whilst further details such as the means of remediation can be approved at the decommissioning stage and be based on the

actual ground conditions prevailing and techniques available at that time [ER 3.3.100]. The EA had no issues with the end state principles being identified in the DCO and requested the Applicant takes the ecological enhancements achieved during the development's lifetime into account [ER 3.3.101].

4.69. SDDC was concerned the outline DEMP did not adequately address potential conflicts between restoring land to agricultural use and maintaining biodiversity gains established during the operation stage. SDDC considered there was a lack of clarity regarding the specific methods, timescales, and costs for restoring agricultural land, raising concerns about the enforceability of commitments in the outline DEMP [ER 3.3.110].

4.70. The Applicant did not consider a requirement was necessary to secure the end state, referring to the requirement for a DEMP to be submitted for approval and the end state definitions in the outline DEMP. It referred to Requirement 22 of the DCO which requires a DEMP to be submitted for approval by the LPA, ensuring the LPA has the opportunity to determine the acceptability of the end state after the decommissioning stage. Decommissioning would also be carried out in accordance with the relevant legislation and policy in force at the time of the decommissioning stage. With regards to the potential loss of BMV land, the Applicant explained it took a precautionary approach in stating it could not be certain restoration of the BESS and on-site substation land (which are proposed to be sited within a relatively small field) would be to the same ALC grade [ER 3.3.103].

4.71. The ExA was satisfied the provisions in the outline DEMP would be better considered at the decommissioning stage when the site environment and relevant policy or legislation at that time are better understood. The ExA was satisfied consideration was given to decommissioning and restoration in relation to agriculture and soils, and with the related mitigation measures complies with paragraph 4.3.5 of NPS EN-1 and paragraphs 2.10.68-69 and 2.10.146 of NPS EN-3.

4.72. The ExA considered the dDCO provisions for the decommissioning plan and the Outline DEMP appropriately secured the application land to be reinstated to its original ALC grade and to be suitable for agricultural uses after decommissioning. The ExA was content that no further definition of the end state is necessary [ER 3.3.144].

Underground cables, piling and land drainage

4.73. DCC had concerns about leaving underground cables in situ and the impact of this on reinstatement of land drains [ER 3.3.79]. SDDC commented on the removal of the cables, impact on soil quality and drainage [ER 3.3.96].

4.74. IPs commented on aspects of drainage and cables: leaving cables in place would prevent the land from being returned to agricultural use as it would no longer be drained; the depth of the cables and their impact on drains, including the 0.7m depth for cables as a mole drain would operate at 0.6m deep, would run into the drains and the land would cease to be BMV if it cannot be drained; concern over the impact of the piling on the soil structure and land drainage; and due to manure not being added to the soil to increase organic matter content [ER 3.3.81, ER 3.3.88].

4.75. NE was satisfied that should the cables be left in situ after decommissioning they would not impact the future agricultural use of the land provided they were buried at a minimum 0.9m depth [ER 3.3.92]. The EA had no remaining concerns as the cables would be unlikely to be considered as waste if left in the ground, it would be consulted on the DEMP, and at the

decommissioning stage the Applicant would need to demonstrate that leaving cables in situ would not result in pollution to ground or surface water [ER 3.3.93]. DCC had no outstanding issues about damage to existing land drainage [ER 3.3.94].

4.76. The SoCG between DCC, SDDC and the Applicant included agreement that there was a low chance that trenching for underground electrical cabling would cut across existing land drains, the Applicant committed to maintain the existing land drain network across the site, and cables would be installed at a minimum depth of 0.9m, ensuring that agricultural activities, including ploughing, can continue during the operation stage. The Applicant also committed to removing buried cables and associated infrastructure at the decommissioning stage unless specific circumstances at that time suggest it would be better to leave them in situ [ER 3.3.95].

4.77. The ExA concluded that cable depths were secured appropriately following an update to the depth design parameters to reflect this change [ER 3.3.136]. The ExA acknowledged the potential for damage to existing land drains, including from piling and buried cable installation, and the potential to harm soil health. The outline CEMP and outline SMP secured measures to ensure drainage remains operational throughout the lifetime of the Proposed Development and following decommissioning. The outline OEMP secures measures to monitor, investigate, and address damage to drainage caused by piling or buried cables. The ExA concluded the potential for harm to soil health from damage to existing land drainage is mitigated and secured appropriately [ER 3.3.137].

4.78. The ExA concluded removing buried cables would likely result in adverse effects from disturbance, whereas leaving them in place could potentially limit future land uses and result in contamination from buried waste [ER 3.3.138]. The ExA concluded appropriate measures are secured to allow an assessment of the pros and cons of the removal of cables during decommissioning [ER 3.3.141].

Water runoff and farming businesses and food production

4.79. DCC and SDDC raised concerns about erosion of soil due to increased surface water run off rates from solar panel edges and SDDC considered the impact on soils (both short and long term) was not fully considered [ER 3.3.112]. The Applicant stated mitigation of surface water impacts on soil in both the construction and decommissioning stages is addressed in the outline CEMP [ER 3.3.113]. The ExA considered water runoff is mitigated and had no concerns [ER 3.3.147].

4.80. DCC and SDDC considered the Proposed Development would result in the permanent loss of BMV land that is a valuable source of sustainable locally produced food and that most of the site comprises of grade 2 and 3a quality soil [ER 3.3.114]: the application site is important for potato farming as it contains soil that is potato cyst nematode free with local farms providing potatoes for national food production businesses [ER 3.3.120].

4.81. An IP commented that staff at Oaklands Farm stated the Proposed Development would end farm operations that include dairy farming and sheep grazing. Another IP argued there would be no benefit to the tenant farmers and the loss of productive acreage could threaten the viability of some tenanted farms who may be under pressure not to object [ER 3.3.116].

4.82. The Applicant referred to NPS EN-1 which identifies the urgent need for CNP Infrastructure to achieving energy objectives [ER 3.3.114]. The Applicant stated the Oaklands landowner

indicated ongoing dairy farming would be possible on land not covered by solar panels, and sheep grazing may be able to take place within the Proposed Development. The Applicant stated it cannot compel the landowner/farmer to use the land in a particular way and it is not within the gift of the DCO regime or the Secretary of State's powers to do so [ER 3.3.118]. The Applicant stated the predictable rental payments solar parks provide offer diversification of income to support ongoing agricultural businesses: the intention is to graze sheep and promote the continued operation of the existing dairy business [ER 3.3.119].

4.83. Following the Applicant's clarifications on the potential impacts on Park Farm and Fairfield Farm, the ExA was satisfied adequate consideration was given to the continued agricultural use and the benefits of BMV agricultural land in accordance with NPS EN-3]. The ExA was satisfied the reduced availability of land for dairy farming, grazing and fodder on Oaklands Farm would be mitigated by rental income from the Proposed Development and the availability of the land around the solar panels for sheep grazing [ER 3.3.148]. The ExA concluded the short-term temporary loss of agricultural land in areas of construction, the long-term temporary loss of agricultural land in areas of fixed equipment during the operation stage, and related adverse impacts on farming businesses and food production brought little weight against the making of the Order [ER 3.3.153].

The Secretary of State's Conclusions

4.84. The Secretary of State is aware of concerns about the amount of agricultural land used for solar farms and the concern that this could have implications for food production. The Secretary of State agrees with the ExA's consideration of this topic, but has considered this issue in some detail due to these concerns.

4.85. Paragraph 5.11.12 of NPS EN-1 states applicants should seek to minimise impacts on the BMV land (defined as land in grades 1, 2 and 3a of the Agricultural Land Classification) and preferably use land in areas of poorer quality (grades 3b, 4 and 5). Paragraph 5.11.13 of NPS EN-1 states applicants should identify any effects and seek to minimise impacts on soil health and protect and improve soil quality taking into account any mitigation measures proposed.

4.86. Paragraph 5.11.34 of NPS EN-1 stipulates that the Secretary of State should ensure applicants do not site schemes on BMV agricultural land without justification. Where ---- schemes are to be so sited the Secretary of State should take into account the economic and other benefits of that land. Where development of agricultural land is demonstrated to be necessary, areas of poorer quality land should be preferred to those of a higher quality.

4.87. Paragraph 2.10.29 of NPS EN-3 sets out that whilst land type should not be a predominant factor in determining the suitability of the site, where the use of agricultural land is shown to be necessary, poorer quality land should be preferred to higher quality land, avoiding the use of "Best and Most Versatile" agricultural land where possible. Paragraph 2.10.31 of NPS EN-3 details that developments at this scale are likely to use some agricultural land and applicants should explain their choice of site. Paragraph 2.10.145 of NPS EN-3 stipulates that the Secretary of State should take into account the economic and other benefits of the BMV land and should ensure the applicant has put forward appropriate mitigation measures to minimise impacts on soils or soil resources.

4.88. The Secretary of State notes the Applicant updated the ES, stating that the BMV land that the BESS and onsite substation would be situated on would be returned to its original ALC

grade with no permanent loss or downgrading [ER 3.3.124]. The Secretary of State notes the outline DEMP would secure the reinstatement of soils to the pre-construction ALC grade, without exception [ER 3.3.140], that NE considered the outline SMP and DEMP would enable reinstatement of land to its original use [ER 3.3.107] and that, on balance, the ExA concluded that it is appropriately secured that the land would be reinstated to its original ALC grade [ER 3.3.144].

4.89. The Secretary of State notes objections from IPs, DCC and SDDC in relation to the use of BMV land and views that the Proposed Development should use an (unspecified) alternative site. The Secretary of State agrees with the ExA that the ALC surveys are satisfactory and that the agricultural land has been adequately graded in compliance with paragraph 2.10.33 of NPS EN-3. The Secretary of State agrees with the ExA that the Applicant's consideration of alternative sites and choice of site is adequate, and acceptable and in accordance with paragraph 2.10.29 of NPS EN-3.

4.90. The Secretary of State notes comments raised by IPs in relation to the Proposed Development's impact on food production and the farm operations at the application site from the use of agricultural land. The Secretary of States notes that the use of BMV land for this project represents approximately 0.003% of the BMV land in England, 0.066% of the BMV land in Derbyshire and 0.5% of the BMV land in South Derbyshire district [REP6-033]. The Secretary of State considers that the use of BMV land by the Proposed Development would be minimal taking into account the proportion this represents locally and nationally, and notes furthermore the use of this BMV land would be temporary. The Secretary of State considers the use of BMV land is acceptable.

4.91. The Secretary of State notes that the Applicant considered cumulative effects with other developments including solar farm at Haunton and residential schemes. The Secretary of State notes that the Applicant provided a cumulative effects update to the ES [REP6-044] which stated that the cumulative assessment in the ES of January 2024 concluded the solar farm at Haunton involved the largest amount of BMV, but the cumulative effect was likely to be minor adverse. The Secretary of State notes this update identified other BESS and found that these collectively comprise of 42ha of BMV land and noted the cumulative impact of these schemes could potentially be from negligible or minor to major adverse if restoration is not possible. The Secretary of State notes the conclusion that the contribution of the Proposed Development to the cumulative effect is negligible.

4.92. The Secretary of State considers the Proposed Development would have a very minor impact on cumulative BMV land and considers that the Proposed Development's cumulative impact on BMV land is acceptable.

4.93. The Secretary of State notes that IPs raised comments on matters relating to food and the agricultural land being utilised by the Proposed Development. Based on the percentage of use of BMV land that would be utilised by the Proposed Development, and the continued potential use as agricultural land, the Secretary of State considers that the impact on food production from the Proposed Development is acceptable.

4.94. Paragraph 2.10.32 of NPS EN-3 states consideration may be given for continued agricultural use and/or be co-located with other functions such as onshore wind generation, storage, hydrogen electrolysers to maximise land use efficiency. The Secretary of State notes the Proposed Development would enable the application site to continue to be utilised as

agricultural land as well as co-located storage, and would be in proximity to substation for grid connection, as outlined in paragraph 2.10.32 of NPS EN-3.

4.95. Paragraph 2.10.25 of NPS EN-3 states that to maximise existing grid infrastructure, minimise disruption to existing local community infrastructure or biodiversity and reduce overall costs, applicants may choose a site based on nearby available grid export capacity.

4.96. The Secretary of State notes the Applicant demonstrated there were no other preferable sites within 10km of Drakelow Substation which would be able to deliver the Proposed Development. The Secretary of State notes that the Applicant stated the BESS and onsite substation would be sited on grade 3b land in order to balance the visual and noise effects on neighbouring residential properties. The Secretary of State considers this is appropriate in order to protect the amenity of residents in the neighbouring properties to the Proposed Development. In accordance with paragraph 5.11.34 of NPS EN-1 and paragraph 2.10.25 of NPS EN-3 the Secretary of State considers the Applicant has provided adequate justification for use of BMV land.

4.97. The Secretary of State notes issues related to decommissioning such as the depth of the underground cables, impact on drainage and water runoff and the SoCG agreed between DCC, SDDC and the Applicant in relation to the underground cables, depth and the removal of the cables. The Secretary of State notes NE was satisfied that cable depth would not impact future agricultural use. The Secretary of State concludes the measures in the outline CEMP, outline SMP and DEMP would adequately mitigate any potential significant adverse effects on soil, including at the point of decommissioning. The Secretary of State agrees with the ExA that water runoff is mitigated.

4.98. The Secretary of State notes that the Proposed Development would lead to temporary loss of agricultural land utilised but notes measures will be in place to reinstate the land to its previous ALC classification. The Secretary of State agrees with the ExA's weighting of little negative weight on this matter.

Flood risk

4.99. After the close of the Examination, the EA published new data following an updated NaFRA. The data, which includes the Flood Map for Planning and flood zones was published on 25 March 2025.

4.100. The Secretary of State invited the Applicant to explain whether the updates have any implications for Environmental Statement Chapter 8, the Flood Risk Assessment ("FRA") and the Sequential Assessment for the Proposed Development in the Secretary of State's first consultation letter dated 10 April 2025.

4.101. The Applicant responded on 17 April 2025, stating it was aware of the new data published by the EA and had queried its implications for Oaklands Farm Solar Park directly with the EA in March 2025. The EA replied that since the modelling carried out by the Applicant is more detailed and reflects the impacts of the Proposed Development accurately Oaklands will not need to undertake a new assessment based on the new dataset. To confirm that the EA's position remained unchanged at the time of the Secretary of State's information request, the Applicant contacted the EA again on 10 April 2025.

4.102. On 17 April 2025, the EA confirmed its position by stating[6]:

> *"detailed hydraulic modelling has been undertaken for the watercourses which run through the development site. The EA have reviewed this modelling and are satisfied that it provides a good representation of baseline and future baseline flood risk and also accurately quantifies the impact of the development on flood risk. This detailed hydraulic modelling provides a more accurate assessment of flood risk to the development site than the recent updates to the Risk of Flooding from River and Sea and Flood Map for Planning products as part of NaFRA2. The Environment Agency have no concerns with regards to the recent update to NaFRA2 with respect to this development."*

The Secretary of State's Conclusions

4.103. Having considered the response from the EA to the information request, the Secretary of State is content that the new data does not alter the conclusions of the Environmental Statement, FRA and Sequential Assessment and no further information is required regarding flood risk. The Secretary of State considers the negligible and non-significant effects on water resources bring neutral weight and does not affect the balance of the Order being made. He does not consider it necessary to make any amendments to the Order as a result.

5. Habitats Regulation Assessment

5.1. The Secretary of State has undertaken a Habitats Regulations Assessment ("HRA") and has carefully considered the information presented during the Examination, including the HRA Report [APP-122] as submitted by the Applicant, the Report on the Implications for European Sites ("RIES") [PD-013] as produced by the ExA, the ES, representations made by IPs, and the ExA's Report.

5.2. The Secretary of State considers that the Proposed Development could cause Likely Significant Effects ("LSE") from four effect pathways on The River Mease SAC when considered alone and in-combination with other plans or projects.

5.3. The Secretary of State has undertaken an Appropriate Assessment in respect of the Conservation Objectives of the protected site to determine whether the Proposed Development, either alone or in-combination with other plans or projects, will result in an Adverse Effect on Integrity of the identified protected site. Based on the information available to him and subject to the mitigation measures as secured in the final Order, the Secretary of State is satisfied that the Proposed Development, either alone or in-combination with other plans or projects, will not adversely affect the qualifying features of the protected site. The full reasoning is set out in the HRA which has been published alongside this decision letter.

6. Consideration of Land Rights and Related Matters

6.1. The Secretary of State notes that to support the delivery of the Proposed Development, the Applicant is seeking powers of Compulsory Acquisition ("CA") and Temporary Possession

[6] https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/EN010122/EN010122-000888-EN010122%20SoS%20RfI%20Applicant%20Response%20Letter%20Redacted.pdf

("TP") of land and rights which it had not been able to acquire by voluntary agreement. The Applicant is seeking these powers to:

- acquire land permanently within the Order limits;
- temporarily occupy land within the Order limits;
- acquire rights over some land within the Order limits;
- extinguish rights over some of the land within the Order limits; and
- impose restrictive covenants [ER 6.1.1].

6.2. The Applicant is not seeking to acquire National Trust land, Crown land, open space, or allotments [ER 6.2.9].

6.3. The land and rights being sought are set out in the Explanatory Memorandum ("EM") [REP8-005], the Book of Reference ("BoR") [REP8-012], a Statement of Reasons ("SoR") [EP8-010], a Funding Statement [APP-020], and a Land Plan [REP6-003] [ER 6.3.3].

6.4. The ExA considered the relevant land right powers for the affected persons with Category 1 interests who had not provided an objection or any other representation on a precautionary basis: Elisabeth Albinia Dolben [ER 6.6.4 et seq.], and Peter Avery [ER 6.6.9]. The ExA concluded that the requested CA powers are for a legitimate purpose, are necessary and proportionate, there are suitable provisions for compensation, and there is a compelling case in the public interest for the powers to be granted [ER 6.6.10].

6.5. NGET had Category 1 interests as lessee/ tenant and occupier and objected to the CA of its assets land or rights over its land in the absence of an agreed form of protective provisions. NGET requested its definition of "acceptable insurance" to be included in the protective provisions and its definition of "acceptable security" of either a parent company guarantee or a bank bond or letter of credit. NGET requested that an acceptable security should be provided before the construction stage commences and submitted suggested protective provisions [ER 6.6.13].

6.6. The Applicant stated it sought voluntary discussions with E.ON UK plc ("E.ON") which has Category 1 interests as an owner or reputed owner but that E.ON directed it to NGET as the appropriate person to grant the voluntary rights [ER 6.6.22]. The ExA had not received an objection, or any other submission, from E.ON, but considered the relevant request for land rights powers on a precautionary basis [ER 6.6.23]. The ExA concluded that protective provisions in the rDCO did not indicate evidence of any serious detriment to E.ON undertaking and concluded it was satisfied in relation to s127 of the 2008 Act [ER 6.6.26].

6.7. The Applicant stated the protective provisions with NGET remained under discussion [ER 6.6.14]. The ExA considered no reason that NGET's provisions were unacceptable and included them in the rDCO [ER 6.6.17]. After the Examination had closed on 27 January 2025 NGET withdrew its objection on the basis that the agreed protective provisions with the Applicant were included in the Order.

6.8. National Grid Electricity Distribution (East Midlands) plc (NGED) and Cadent Gas Limited withdrew their objections [ER 6.6.30, ER 6.6.34]. The ExA noted that it did not receive any other objection, or any other submission from other Statutory Undertakers ("SUs"), including those identified by the Applicant [ER 6.6.39].

6.9. The ExA was satisfied that [ER 6.7.5]:

- There is a clear need for all the land included in the BoR to be subject to CA and TP, the land sought for the Proposed Development and subject to CA would be required for the purposes of s122(2)(a) and (b) of the 2008 Act and that it meets the tests set out in that section;
- The application site is selected appropriately, all reasonable alternatives to CA have been explored, and that there are no alternatives which ought to be preferred;
- There is a need to secure the land and rights required to construct, operate and maintain the Proposed Development within a reasonable timeframe, and the extent of land over which powers are sought would be no more than is reasonably required and it is proportionate to the needs of the Proposed Development;
- The private loss to those affected is in part mitigated through the selection of the land, minimisation of the extent of the rights and interests to be acquired and the inclusion, where relevant, of protective provisions in favour of those affected;
- The Proposed Development represents a significant public benefit and in all cases relating to individual objections and issues, CA and TP are justified to enable its implementation;
- s127 of the 2008 Act is engaged in relation to E.ON as powers would be granted over land owned by E.ON the protective provisions in the rDCO are unlikely to be any serious detriment to E.ON's undertaking;
- The powers sought by the Applicant in relation to SUs are necessary for the Proposed Development and consistent with s138 of the 2008 Act;
- Adequate and secure funding would be likely to be available for CA;
- The Examination has ensured a fair and public hearing and any interference with human rights arising from implementation of the Proposed Development would be for a legitimate purpose that would justify such interference in the public interest and to a proportionate extent; and
- Compensation would be available for quantifiable loss.

6.10. The ExA was satisfied with the application for TP powers because the rights sought are for identified legitimate purposes and are compatible with human rights tests [ER 6.7.8].

6.11. The ExA concluded that the Secretary of State can be satisfied that there is a compelling case in the public interest for CA and that the Proposed Development would comply with the 2008 Act in this regard [ER 6.7.7 et seq.].

6.12. As part of its response to the first consultation letter by the Secretary of State, the Applicant provided an update on outstanding land agreements and negotiations for easements and confirmed that: the Options agreement have been signed by the relevant landowners for Oaklands Farm and Park Farm; a draft option and deed of easement are with lawyers for final approval, and an Occupier's Consent is under negotiation with the final commercial points being discussed ahead of exchange of final signed documents.

The Secretary of State's Conclusion

6.13. The Secretary of State agrees with the ExA that a compelling case in the public interest for the requested CA and TP powers has been made, and that these powers should therefore be granted.

6.14. The Secretary of State is satisfied that the inclusion of land rights powers within the DCO meets the requirements of s122 of the 2008 Act and relevant guidance that it would be appropriate and proportionate to include them in the DCO.

6.15. The Secretary of State has no reason to believe that the grant of the Order would give rise to any unjustified interference with human rights so as to conflict with the provisions of the Human Rights Act 1998.

7. Secretary of State's Consideration of the Planning Balance, Conclusion and Decision

7.1. The ExA recommended that the Secretary of State should grant development consent and make the Order in the form attached to Annex C of its report [ER 8.3.2].

7.2. The Secretary of State notes the presumption in favour of granting consent to applications for energy NSIPs, and notes that that presumption applies unless any more specific and relevant policies set out in the NPSs clearly indicate that consent should be refused [paragraph 4.1.3 of EN-1].

7.3. The Secretary of State agrees with the ExA's conclusions and the weight it has ascribed in the overall planning balance in respect of the following issues:

- Need (very great positive weight) [ER 3.2.88].
- Agriculture and soils (little negative weight) [ER 3.3.153].
- Biodiversity (little positive weight) [ER 3.4.146].
- Landscape and visual impacts (great negative weight) [ER 5.3.68].
- Noise and vibration (little negative weight) [ER 3.7.58].
- Historic environment (moderate negative weight) [ER 3.5.61].
- Traffic and transportation (little negative weight) [ER 3.8.77].
- Water quality, resources, drainage, and flooding (neutral weight) [ER3.9.91].
- Air Quality (neutral weight) [ER 3.10.24].
- Aviation and defence (neutral weight) [ER 3.10.34].
- Climate change adaptation and resilience (little negative weight) [ER 3.10.50].
- Nuisance (neutral weight) [ER 3.10.95].
- Human health, fire risk, safety, and security (little negative weight) [ER 5.3.119].
- Socio-economics and NMU (little positive weight) [ER 3.10.160].
- Waste (neutral weight) [ER 3.10.175].
- Good design (neutral weight) [ER 3.10.209].

7.4. The Secretary of State considers the Proposed Development would make an important contribution to the Government's objectives for energy supply and net zero emissions and thereby ascribes the need very great positive weight in the planning balance. The Secretary of State considers that the BESS would contribute to providing a reliable and flexible energy supply and would have beneficial impacts on climate change. The Secretary of State notes the Proposed Development's additional benefits such as Biodiversity Net Gain and socio-economic benefits.

7.5. The Secretary of State considers the temporary loss of agricultural land including BMV land during construction and operation of the Proposed Development has little negative weight in

the planning balance. However, the Secretary of State considers this impact acceptable as the loss of BMV land has been avoided as far as possible, its use is justified and the use of BMV land by the Proposed Development would be minimal taking into account the proportion this represents locally and nationally.

7.6. The Secretary of State considers the imposition of a requirement for a decommissioning fund is not necessary. The Secretary of State considers the decommissioning and restoration of the application land will be adequately secured and does not consider a decommissioning fund requirement is necessary or relevant.

7.7. The Secretary of State acknowledges that all NSIPs will have some potential adverse impacts. In the case of the Proposed Development, most of the potential impacts have been assessed as being in accordance with NPS policy, subject in some cases to suitable mitigation measures being put in place to minimise or avoid them completely as required by NPS policy. The Secretary of State considers that these mitigation measures have been appropriately secured.

7.8. For the reasons given in this letter, the Secretary of State concludes that there is an urgent need for development of this type and attributes very great positive weight to this urgent need. The Secretary of State does not consider that the national need for the Proposed Development as set out in the relevant NPSs is outweighed by the Proposed Development's potential adverse impacts, as mitigated by the proposed terms of the Order. For the reasons given above, the Secretary of State concludes that development consent should be granted.

7.9. In reaching this decision, the Secretary of State confirms that regard has been given to the ExA's Report, the relevant Development Plans, the LIRs submitted by LCC, the joint LIR by SDDC and DCC, the NPSs, and to all other matters which are considered important and relevant to the Secretary of State's decision as required by section 104 of the Planning Act 2008. The Secretary of State confirms for the purposes of Regulation 4(2) of the EIA Regulations that the environmental information as defined in Regulation 3(1) of those Regulations has been taken into consideration.

8. Other Matters

Equality Act 2010

8.1. The Equality Act 2010 includes a public sector "*general equality duty*" ("PSED"). This requires public authorities to have due regard in the exercise of their functions to the need to eliminate unlawful discrimination, harassment and victimisation and any other conduct prohibited under the Equality Act 2010; advance equality of opportunity between people who share a protected characteristic and those who do not; and foster good relations between people who share a protected characteristic and those who do not in respect of the following *"protected characteristics*": age; gender; gender reassignment; disability; marriage and civil partnerships[7]; pregnancy and maternity; religion and belief; race; sex and sexual orientation.

8.2. In considering this matter, the Secretary of State (as decision-maker) must pay due regard to the aims of the PSED. This must include consideration of all potential equality impacts

[7] In respect of the first statutory objective (eliminating unlawful discrimination etc.) only.

highlighted during the Examination. There can be detriment to affected parties but, if there is, it must be acknowledged and the impacts on equality must be considered.

8.3. The Secretary of State has had due regard to this duty and has not identified any parties with a protected characteristic that might be discriminated against as a result of the decision to grant consent to the Proposed Development.

8.4. The Secretary of State is confident that, in taking the recommended decision, he has paid due regard to the above aims when considering the potential impacts of granting or refusing consent and can conclude that the Proposed Development will not result in any differential impacts on people sharing any of the protected characteristics. The Secretary of State concludes, therefore, that granting consent is not likely to result in a substantial impact on equality of opportunity or relations between those who share a protected characteristic and others or unlawfully discriminate against any particular protected characteristics.

Natural Environment and Rural Communities Act 2006

8.5. The Secretary of State notes the "general biodiversity objective" to conserve and enhance biodiversity in England, section 40(A1) of the Natural Environment and Rural Communities Act 2006 and considers the Application consistent with furthering that objective, having also had regard to the United Nations Environmental Programme Convention on Biological Diversity of 1992, when making this decision.

8.6. The Secretary of State is of the view that the ExA's Report, together with the Environmental Statement considers biodiversity sufficiently to inform him in this respect. In reaching the decision to give consent to the Proposed Development, the Secretary of State has had due regard to conserving biodiversity.

Environmental Principles Policy Statement

8.7. From 1 November 2023, Ministers are under a legal duty to give due regard to the Environmental Principles Policy Statement when making policy decisions. This requirement does not apply to planning case decisions, and consequently the Secretary of State has not taken it into consideration in reaching his decision on this application.

9. Modifications to the draft Order

9.1. Following consideration of the draft Order provided by the ExA, the Secretary of State has made the following modifications to the draft Order:

a. Amendment to the preamble of the draft Order to include section 140 of the Planning Act 2008 as part of the Secretary of State's powers to authorise the development.

b. Amendments to the definitions in Article 2(1) (Interpretation):

i. Inclusion of definition for "balance of solar plant" and "Road Traffic Regulation Act 1984".

ii. Inclusion of definition of ""footpath" and "footway" to have the same meaning as in the Highways Act 1980.

iii. Amendment to the definition of “maintain” to replace “materially more adverse” with “materially different”.

iv. Amendment of the definition of “Order Land” such that it is required for, or is required to facilitate, or is incidental to, the authorised development.

v. Inclusion of definition of “outline skills, supply chain and employment plan” referred to in Schedule 1.

c. Amendments to Part 2 (Principal Powers)

i. Amendment to Article 3(3) to make clear that the development consent granted does not authorise works which are likely to give rise to any materially new or materially different environmental effects. Similar amendments are made to Article 4(3), paragraph 20(2) of Schedule 1 (construction hours), and paragraph 25(2) of Schedule 1 (amendment to approved details).

ii. Amendment to Article 5(3)(a) to substitute the word ‘and’ after the semi colon with ‘”or”. This is consistent with the position taken in previous Development Consent Orders and notwithstanding the view of the ExA [7.3.14], the Secretary of State sees no reason to depart from the usual practice in this area where his consent is not required if the transferee or lessees is a licence holder or of the relevant time limits have elapsed.

iii. Amendment to Article 5(6) to replace the word “five” with “ten”.

iv. Amendment to Article 7 for drafting clarity.

d. Amendment to Part 3 (Streets)

i. Amendment to Article 11 to refer to temporary closure rather than temporary stopping up of public rights of way as is preferred by the Secretary of State (and consequential amendments to other provisions as required). Subparagraph 9 is added for consistency with previous DCOs.

e. Amendments to Part 4 (Supplemental Powers)

i. Removal of Article 14(9) for consistency with previous DCOs.

ii. Removal from Articles 14 and 16 of references to not unreasonably withholding consent, as this is covered by article 39.

f. Amendments to Part 5 (Powers of Acquisition)

i. Amendment to Article 17 to clarify the power to acquire compulsory Order land is subject to the provisions in Part 5.

ii. Insertion of Article 18(3) to reflect changes made by section 185 of the Levelling-up and Regeneration Act 2023 to the Compulsory Purchase Act 1965 and the Compulsory Purchase (Vesting Declarations) Act 1981. The Levelling-up and Regeneration Act 2023 provides that the applicable period of the time limit for giving notice to treat and for a general vesting declaration will be that specified in the Order

which on this case is five years from the day the Order is made. Consequential changes are made to Articles 21 and 24 as a result.

iii. Amendment to Article 24 to clarify the drafting.

iv. Amendment to Article 26 to clarify the drafting.

v. Amendment to Article 27(11) to provide that the maintenance period is to begin with the date of final commissioning of the part of the authorised development for which temporary possession is required, in keeping with other recent DCOs.

g. Amendments to Part 7 (Miscellaneous and General)

i. Amendment to Article 36 to make the power to fell or lop trees or shrubs subject to the provisions of Article 37 (trees subject to tree preservation orders).

ii. Deletion of (previously) Article 43 (Inconsistent planning permissions) because it is not considered necessary and creates potential ambiguity.

Schedule 1

d. Omission of Requirement 27 in Part 2 (Requirements) in relation to the decommissioning fund for the reasons given in this decision letter.

e. Amendment to paragraph 31 in Part 3 (Procedure for Discharge of Requirements) to substitute the word "ten" with "eight" to align it with the timescales in paragraph 28.

Schedule 11 (Arbitration Rules)

f. Amendment to paragraph 7 to reflect the Secretary of State's preference that the default position should be that any arbitration hearing and documentation is publicly accessible, rather than private as previously provided, subject to confidentiality or disclosure exceptions in sub-paragraphs (2) and (3).

Schedule 12 (Documents to be certified)

g. Updates made to the Document Reference, Examination Library Reference and Date for REP4-040 following the Applicant's response to the first consultation letter.

9.2. In addition to the above, the Secretary of State has made various changes to the draft Order which do not materially alter its effect, including changes to conform with the current practice for statutory instruments, changes in the interests of clarity and consistency, changes made for the purposes of standardised grammar and spelling, and changes to ensure that the Order has its intended effect. The Order, including the modifications referred to above is being published with this letter.

10. Challenge to decision

10.1. The circumstances in which the Secretary of State's decision may be challenged are set out in Annex A to this letter.

11. Publicity for decision

11.1. The Secretary of State's decision on this Application is being publicised as required by section 116 of the 2008 Act and Regulation 31 of the EIA Regulations.

11.2. Section 134(6A) of the 2008 Act provides that a compulsory acquisition notice shall be a local land charge. Section 134(6A) also requires the compulsory acquisition notice to be sent to the Chief Land Registrar, and this will be the case where the Order is situated in an area for which the Chief Land Registrar has given notice that they now keep the local land charges register following changes made by Schedule 5 to the Infrastructure Act 2015. However, where land in the Order is situated in an area for which the local authority remains the registering authority for local land charges (because the changes made by the Infrastructure Act 2015 have not yet taken effect), the prospective purchaser should comply with the steps required by section 5 of the Local Land Charges Act 1975 (prior to it being amended by the Infrastructure Act 2015) to ensure that the charge is registered by the local authority.

Yours sincerely,

David Wagstaff OBE

Head of Energy Infrastructure Development

ANNEX A: LEGAL CHALLENGES RELATING TO APPLICATIONS FOR DEVELOPMENT CONSENT ORDERS

Under section 118 of the Planning Act 2008, an Order granting development consent, or anything done, or omitted to be done, by the Secretary of State in relation to an application for such an Order, can be challenged only by means of a claim for judicial review. A claim for judicial review must be made to the Planning Court during the period of 6 weeks beginning with the day after the day on which the Order or decision is published. The decision documents are being published on the date of this letter on the Planning Inspectorate website at the following address:

https://national-infrastructure-consenting.planninginspectorate.gov.uk/projects/EN010122

These notes are provided for guidance only. A person who thinks they may have grounds for challenging the decision to make the Order referred to in this letter is advised to seek legal advice before taking any action. If you require advice on the process for making any challenge you should contact the Administrative Court Office at the Royal Courts of Justice, Strand, London, WC2A 2LL (0207 947 6655).

ANNEX B: LIST OF ABBREVIATIONS

Abbreviation	Reference
ALC	Agricultural Land Classification
BESS	Battery Energy Storage System
BMV	Best and Most Versatile
CA	Compulsory Acquisition
CEMP	Construction Environmental Management Plan
CNP	Critical National Priority
DCC	Derbyshire County Council
DEMP	Decommissioning Environmental Management Plan
DCO	Development Consent Order
dDCO	Draft Development Consent Order
EA	Environment Agency
EIA	Environmental Impact Assessment
EIA Regulations	The Infrastructure Planning (Environmental Impact Assessment) Regulations 2017
ES	Environmental Statement
ExA	The Examining Authority
HRA	Habitats Regulations Assessment
IP	Interested Party
ISH	Issue Specific Hearing
LPA	Local Planning Authority
LDP	Local Development Plan
LEMP	Landscape and Ecological Management Plan
LIR	Local Impact Report
LCC	Leicestershire County Council
LSE	Likely Significant Effect
MW	Megawatt
NaFRA	National Flood Risk Assessment
NE	Natural England
NPPF	National Planning Policy Framework
NPS	National Policy Statement
NSIP	Nationally Significant Infrastructure Project
OLEMP	Outline Landscape and Ecological Management Plan
PP	Protective Provisions
PPG	Planning Policy Guidance
PSED	Public Sector Equality Duty
PV	Photovoltaic
rDCO	Recommended Development Consent Order
RIES	Report on the Implications for European Sites
RR	Relevant Representation
SAC	Special Area of Conservation
SDDC	South Derbyshire District Council
SoCG	Statement of Common Ground

SMP	Soil Management Plan
The 2008 Act	The Planning Act 2008
The TCPA 1990	The Town and Country Planning Act 1990
TP	Temporary Possession
WMS	Written Ministerial Statement
WR	Written Representations

Appendix C:

Oaklands Farm Solar Park

Made DCO

STATUTORY INSTRUMENTS

2025 No.

INFRASTRUCTURE PLANNING

The Oaklands Farm Solar Park Order 2025

Made - - - - *19th June 2025*

Coming into force *11th July 2025*

CONTENTS

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

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

The Examining Authority having considered the representations made and not withdrawn and the application together with the accompanying documents, in accordance with section 83 of the 2008 Act, has submitted a report and recommendation to the Secretary of State.

The Secretary of State, having considered the representations made and not withdrawn, and the recommendations and report of the Examining Authority, and taken into account the environmental

(**a**) 2008 c. 29. Parts 1 to 7 were amended by Chapter 6 of Part 6 of the Localism Act 2011 (c. 20).
(**b**) S.I. 2009/2264, amended by S.I. 2010/602, S.I. 2010/602, S.I. 2012/2732, S.I. 2013/522, S.I. 2013/755, S.I. 2015/377, S.I. 2017/572; modified by S.I. 2012/1659.
(**c**) S.I. 2010/103, amended by S.I. 2012/635.

information in accordance with regulation 4 of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017(**a**) has decided to make an Order granting development consent for the development described in the application with modifications which in the opinion of the Secretary of State do not make any substantial changes to the proposals comprised in the application.

The Secretary of State, in exercise of the powers conferred by sections 114, 115, 120, 122, 123 and 140 of the 2008 Act, makes the following Order—

PART 1
PRELIMINARY

Citation and commencement

1. This Order may be cited as the Oaklands Farm Solar Park Order 2025 and comes into force on 11th July 2025.

Interpretation

2.—(1) In this Order except where provided otherwise—

"the 1961 Act" means the Land Compensation Act 1961(**b**);

"the 1965 Act" means the Compulsory Purchase Act 1965(**c**);

"the 1980 Act" means the Highways Act 1980(**d**);

"the 1981 Act" means the Compulsory Purchase (Vesting Declarations) Act 1981(**e**);

"the 1984 Act" means the Road Traffic Regulation Act 1984**(f)**;

"the 1989 Act" means the Electricity Act 1989(**g**);

"the 1990 Act" means the Town and Country Planning Act 1990(**h**);

"the 1991 Act" means the New Roads and Street Works Act 1991(**i**);

"the 2008 Act" means the Planning Act 2008(**j**);

"address" includes any number or address 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 protective test posts, field boundary markers, transformer rectifier kiosks, electrical cables, telecommunications equipment and electricity cabinets;

"authorised development" means the development and associated development described in Schedule 1 (authorised development) which is development within the meaning of section 32 of the 2008 Act;

"balance of solar plant" means string inverters attached either to mounting structures or a ground mounted frame, and transformers on a concrete foundation slab;

"battery energy storage" means equipment used for the storage of electrical energy by battery;

(**a**) S.I. 2017/572.
(**b**) 1961 c. 33.
(**c**) 1965 c. 56.
(**d**) 1980 c. 66.
(**e**) 1981 c. 66.
(**f**) 1984 c. 27.
(**g**) 1989 c. 29.
(**h**) 1990 c. 8.
(**i**) 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).
(**j**) 2008 c. 29.

"book of reference" means the book of reference certified by the Secretary of State as the book of reference for the purposes of the Order in accordance with article 34 (certification of plans, etc);

"building" includes any structure or erection or any part of a building, structure or erection;

"cable circuit" means an electrical conductor necessary to transmit electricity between two points within the authorised development and may include one or more auxiliary cables for the purpose of gathering monitoring data;

"CCTV" means a closed circuit television security system;

"commence" means to carry out any material operation (as defined in section 155 of the 2008 Act) forming part of the authorised development other than the site preparation works (except where stated to the contrary), and "commencement", "commenced" and "commencing" are to be construed accordingly;

"commissioning" means the process of testing all systems and components of Work No. 1 in order to ensure that they, and the authorised development as a whole, function in accordance with plant design specifications and the undertaker's operational and safety requirement;

"construction compound" means a compound including central offices, welfare facilities, accommodation facilities, storage and parking for construction of the authorised development and other associated facilities;

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

"design parameters" means the principles and assessments set out in the environmental statement and table 4.2 of the environmental statement (design parameters used in the EIA);

"design statement" means the document certified by the Secretary of State as the design statement for the purposes of this Order in accordance with article 34 (certification of plans, etc);

"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 certified by the Secretary of State as the environmental statement for the purposes of this Order in accordance with article 34 (certification of plans, etc);

"generating station" has the same meaning as in Part 1 of the Electricity Act 1989 (see section 64(1) of that Act);(**a**);

"highway" and "highway authority" have the same meaning as in the 1980 Act(**b**);

"Important Hedgerows Plan" means the plan identifying hedgerows and important hedgerows and certified by the Secretary of State for the purposes of this Order in accordance with article 34 (certification of plans, etc);

"inverter" means electrical equipment required to convert direct current power generated by the solar panels to alternating current power;

"land plans" means the plans certified by the Secretary of State as the land plans for the purposes of this Order in accordance with article 34 (certification of plans, etc);

"local planning authority" means the local planning authority (as defined in section 336 of the 1990 Act) for the area to which the provision relates;

"maintain" includes inspect, repair, adjust, alter, remove, refurbish, reconstruct, replace and improve any part of, but not remove, reconstruct or replace the whole of, the authorised development, provided these do not give rise to any materially new or materially different

(**a**) "footpath" and "footway" are defined in section 329(1).
(**b**) "highway" is defined in section 328 (1). For "highway authority" see section 1.

environmental effects compared to those identified in the environmental statement, and "maintenance" and "maintaining" are to be construed accordingly;

"mounting structure" means a frame or rack with posts made of galvanised steel or other material pushed into the ground to support the solar panels;

"Order land" means the land which is required for, or is required to facilitate, or is incidental to, the authorised development as shown on the land plans which is within the limits of land to be acquired or used and described in the book of reference;

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

"outline BSMP" means the plan certified by the Secretary of State as the outline battery safety management plan for the purposes of this Order in accordance with article 34 (certification of plans, etc);

"outline CEMP" means the document certified by the Secretary of State as the outline construction environmental management plan for the purposes of this Order in accordance with article 34 (certification of plans, etc);

"outline CTMP" means the document certified by the Secretary of State as the outline construction traffic management plan for the purposes of the Order in accordance with article 34 (certification of plans, etc);

"outline decommissioning environmental management plan" means the document certified by the Secretary of State as the decommissioning environmental management plan for the purposes of this Order in accordance with article 34 (certification of plans, etc);

"outline LEMP" means the document certified by the Secretary of State as the outline landscape and ecological management plan for the purposes of this Order in accordance with article 34 (certification of plans, etc);

"outline OEMP" means the document certified by the Secretary of State as the outline operational environmental management plan for the purposes of this Order in accordance with article 34 (certification of plans, etc);

"outline skills, supply chain and employment plan" means the document certified by the Secretary of State as the outline skills, supply chain and employment plan for the purposes of this Order in accordance with article 34 (certification of plans, etc);

"owner", in relation to land, has the same meaning as in section 7 (interpretation) of the Acquisition of Land Act 1981(**a**);

"permissive path" means the new access track providing restricted public access within Work No. 10 as 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 plans;

"requirements" means those matters set out in Part 2 of Schedule 1 (requirements) and any reference to a numbered requirement is to be construed accordingly;

"site preparation works" means all or any of—

(c) environmental surveys, geotechnical surveys, intrusive archaeological surveys and other investigations for the purpose of assessing ground conditions;

(d) demolition of buildings and removal of plant and machinery;

(e) above ground site preparation for temporary facilities for the use of contractors;

(f) remedial work in respect of any contamination or other adverse ground conditions;

(g) diversion and laying of services;

(h) the provision of temporary means of enclosure and site security for construction;

(i) the temporary display of site notices or advertisements; or

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(**a**) 1981 c. 67.

(j) site clearance (including vegetation removal, demolition of existing buildings and structures);

"solar panel" means a solar photovoltaic panel designed to convert solar irradiance to direct current electrical energy fitted to a mounted structure;

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

"street authority" in relation to a street, has the same meaning as in Part 3 of the 1991 Act(**b**);

"street" means a street within the meaning of section 48 of the 1991 Act, together with land on the verge of a street or between two carriageways, and includes any footpath or part of a street;

"streets, access and rights of way plan" means the plan certified as the streets, access and rights of way plan by the Secretary of State for the purposes of this Order in accordance with article 34 (certification of plans, etc);

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

"substation" means a compound containing electrical equipment required to switch, transform, convert electricity and provide reactive power compensation with welfare facilities, means of access and other associated facilities;

"traffic authority" has the same meaning as in section 121A (traffic authorities) of the Road Traffic Regulation Act 1984(**d**);

"transformer" means a structure containing electrical switch gear serving to transform electricity generated by the solar panels and imported and exported by the batteries to a higher voltage;

"undertaker" means Oaklands Farm Solar Limited (company number 12915335) whose registered office is at 22 Chancery Lane, London WC2A 1LS;

"Upper Tribunal" means the Lands Chamber of the Upper Tribunal;

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

"work" means a work set out in Part 1 of Schedule 1 (authorised development);

"working day" means any day other a Saturday, Sunday or English bank or public holiday; and

"works plans" means the plans certified by the Secretary of State as the works plans for the purposes of this Order in accordance with article 34 (certification of plans, etc).

(2) 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 plan and streets, access and rights of way plan are to be taken to be measured along that work.

(3) Any reference in this Order to a work identified by the number of the work is to be construed as a reference to the work of that number authorised by this Order.

(4) In this Order "includes" must be construed without limitation unless the contrary intention appears.

(5) References in this Order to any statutory body include that body's successor bodies.

(6) 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.

(**a**) 2003 c. 21.
(**b**) "street authority" is defined in section 49, which was amended by paragraph 117 of Schedule 1 to the Infrastructure Act 2015 (c. 7).
(**c**) 2006 c. 46.
(**d**) 1984 c. 27.

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

PART 2

PRINCIPAL POWERS

Development consent etc. granted by this Order

3.—(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 within the Order limits.

(2) Each numbered work must be situated within the corresponding numbered area shown on the works plans and must not exceed the design parameters assessed in the environmental statement.

(3) This Order does not authorise the carrying out of any works which are likely to give rise to any materially new or materially different environmental effects compared to those identified in the environmental statement.

Power to maintain the authorised development

4.—(1) The undertaker may at any time maintain the authorised development, except to the extent that this Order, or an agreement made under this Order, provides otherwise.

(2) This article only authorises the carrying out of maintenance works within the Order limits.

(3) This article does not authorise the carrying out of any works which are likely to give rise to any materially new or materially different environmental effects compared to those identified in the environmental statement.

Consent to transfer benefit of Order

5.—(1) Subject to the powers of this Order, 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; or

(b) the time limits for claims for compensation in respect of the acquisition of land or effects upon land under this Order have elapsed and—

(i) no such claims have been made;

(ii) any such claim has been made and has been compromised or withdrawn;

(iii) compensation has been paid in full and final settlement of any such claim;

(iv) payment of compensation into court has taken place in lieu of settlement of any such claim; or

(v) it has been determined by a tribunal or court of competent jurisdiction in respect of any such claim that no compensation is payable.

(4) Where the consent of the Secretary of State is not required, the undertaker must notify the Secretary of State in writing before transferring or granting a benefit referred to in paragraph (1).

(5) The notification referred to in paragraph (4) must state—

(a) the name and contact details the person to whom the benefit of the powers will be transferred or granted;

(b) subject to paragraph (6), the date on which the transfer will take effect;

(c) the powers to be transferred or granted;

(d) pursuant to paragraph (8), the restrictions, liabilities and obligations that will apply to the person exercising the powers transferred or granted; and

(e) where relevant, a plan showing the works or areas to which the transfer or grant relates.

(6) The date specified under paragraph (5)(b) must not be earlier than the expiry of ten 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.

Disapplication and modification of legislative provisions

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

(a) section 23 (prohibition on obstructions etc. in watercourses) of the Land Drainage Act 1991(**a**);

(b) section 32 (variation of awards)(**b**) of the Land Drainage Act 1991;

(c) the provisions of any byelaws made under section 66 (powers to make byelaws)(**c**) of the Land Drainage Act 1991; and

(d) in so far as they relate to the temporary possession of land, the provisions of the Neighbourhood Planning Act 2017(**d**).

(2) Regulation 6 of the Hedgerows Regulations 1997(**e**) 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 the Oaklands Farm Solar Park Order 2025."

Defence to proceedings in respect of statutory nuisance

7.—(1) Where proceedings are brought under section 82(1) (summary proceedings by a person aggrieved by statutory nuisance) of the Environmental Protection Act 1990(**f**) in relation to a nuisance falling within paragraph (g) of section 79(1) of that Act (noise emitted from premises so

(**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 31 was amended by S.I. 2013/755.
(**c**) Section 66 was amended by paragraphs 25 and 38 of Schedule 2 to the Flood and Water Management Act 2010 and section 86 of the Water Act 2014 (c. 21).
(**d**) 2017 c. 20.
(**e**) S.I. 97/1160.
(**f**) 1990 c. 43

as to be prejudicial to health or a nuisance) no order is to be made, and no fine is to be imposed, under section 82(2) of that Act if the defendant shows that the nuisance—

(a) relates to premises used by the undertaker for the purposes of or in connection with the construction or maintenance of the authorised development and that the nuisance is attributable to the carrying out of the authorised development in accordance with a notice served under section 60 (control of noise on construction sites), or a consent given under section 61 (prior consent for work on construction sites) of the Control of Pollution Act 1974(**a**); or—

(b) is a consequence of the construction, maintenance or decommissioning of the authorised development and cannot reasonably be avoided; or

(c) is a consequence of the use of the authorised development and cannot reasonably be avoided.

(2) Section 61(9) (prior consent for work on construction sites) or of the Control of Pollution Act 1974 does not apply where the consent relates to the use of premises by the undertaker for the purposes of or in connection with the construction or maintenance of the authorised development.

PART 3

STREETS

Street works

8.—(1) The undertaker may for the purposes of the authorised development, enter on so much of any of the streets specified in Schedule 2 (streets subject to street works) as is within the order limits 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 under the street;

(d) maintain apparatus in the street, change its position or remove it;

(e) repair, replace or otherwise alter the surface or structure of it; 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 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 Part 3 of the 1991 Act.

(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

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

(a) in the case of the streets specified in column 2 of the table in Part 1 (permanent alteration of layout) of Schedule 3 (alteration of streets) permanently in the manner specified in relation to that street in column 3; and

(b) in the case of the streets as specified in column 2 of the table in Part 2 (temporary alteration of layout) of Schedule 3 (alteration of streets) temporarily in the manner specified in relation to that street in column 3.

(**a**) S.I. 2016/362.

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

(a) alter the level or increase the width of any kerb, footway, cycle track or verge;

(b) make and maintain passing places; and

(c) alter, remove, replace and relocate any street furniture, including bollards, lighting columns, road signs and chevron signs.

(3) The undertaker must restore any street that has been temporarily altered under this Order to the reasonable satisfaction of the street authority.

(4) The powers conferred by paragraph (2) may not be exercised without the consent of the street authority.

(5) Paragraphs (3) and (4) do not apply where the undertaker is the street authority for a street in which the works are being carried out.

Access to works

10.—(1) The undertaker may, for the purposes of the authorised development—

(a) form and lay out the permanent means of access, or improve existing means of access, in the locations specified in Part 1 (permanent private means of access to works) of Schedule 4 (access to works);

(b) form and lay out the temporary means of access in the location specified in Part 2 (temporary private means of access) of Schedule 4; and

(c) with the prior approval of the local planning authority after consultation with the highway authority, form and lay out such other means of access or improve existing means of access, at such locations within the Order limits as the undertaker reasonably requires for the purposes of the authorised development.

(2) The undertaker must restore any access that has been temporarily created under this Order to the reasonable satisfaction of the street authority.

Temporary closure of public rights of way

11.—(1) The undertaker, during and for the purposes of constructing or maintaining the authorised development, may temporarily close, alter or divert any public rights of way and may for any reasonable time—

(a) divert the traffic or a class of traffic from the public rights of way; and

(b) subject to paragraph (3), prevent all persons from passing along the public rights of way.

(2) Without limiting paragraph (1), the undertaker may use any public rights of way temporarily closed under the powers conferred by this article within the Order limits as a temporary working site.

(3) The undertaker must provide reasonable access for pedestrians going to or from premises abutting a public rights of way affected by the temporary stopping up, alteration or diversion of a street under this article if there would be otherwise be no such access.

(4) Without limiting paragraph (1), the undertaker may temporarily close, alter or divert the public rights of way specified in column (2) of Schedule 5 (public rights of way to be temporarily closed) to the extent specified, by reference to the streets, access and rights of way plan, in column (3) of that Schedule.

(5) The undertaker must not temporarily close, alter, divert or use as a temporary working site—

(a) any public rights of way referred to in paragraph (4) without first consulting the street authority; and

(b) any other street or public rights of way without the consent of the street authority, which may attach reasonable conditions to the consent.

(6) Any person who suffers loss by the suspension of any 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.

(7) If a street authority fails to notify the undertaker of its decision within 28 days of receiving an application for consent under paragraph (5)(b), or such longer period that is agreed in writing between the undertaker and that street authority, that street authority is deemed to have granted consent.

(8) In this article expressions used have the same meaning as in the 1984 Act.

(9) The undertaker must restore any public right of way that has been temporarily closed under this Order to the reasonable satisfaction of the street authority.

Agreements with street authorities

12.—(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 stopping up, restriction, alteration or diversion of a street authorised by this Order;

(c) the carrying out in the street of any of the works referred to in article 8(1) (street works) and article 10 (access to works); or

(d) the adoption by a street authority which is the highway authority of works—

(i) undertaken on a street which is existing public maintainable highway; or

(ii) which the undertaker and highway authority agree to be adopted as public maintainable highway.

(2) If such agreement provides that the street authority must undertake works on behalf of the undertaker the agreement may, without prejudice to the generality of paragraph (1)—

(a) make provision for the street authority to carry out any function under this Order which relates to the street in question;

(b) specify a reasonable time for the completion of the works; and

(c) contain such terms as to payment and otherwise as the parties consider appropriate.

Traffic regulation measures

13.—(1) Subject to the provisions of this article the undertaker may at any time, in the interests of safety and for the purposes of, or in connection with, the construction of the authorised development, temporarily place traffic signs and signals in the extents of the road specified in column (2) of each table in each Part of Schedule 3 (alteration of streets) and the placing of those traffic signs and signals is deemed to have been permitted by the traffic authority for the purposes of section 65 of the 1984 Act and the Traffic Signs Regulations and General Directions 2016(**a**).

(2) Subject to the provisions of this article and without limitation to the exercise of the powers conferred by paragraph (1), the undertaker may make temporary provision for the purposes of the construction or decommissioning 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;

(**a**) S.I. 2016/362.

(d) permitting, prohibiting or restricting the use by vehicular traffic or non-vehicular traffic of any road; and

(e) suspending or amending in whole or in part any order made, or having effect as if made, under the 1984 Act.

(3) No speed limit imposed by or under this Order applies to vehicles falling within regulation 3(4) of the Road Traffic Exemptions (Special Forces) (Variation and Amendments) Regulations 2011(**a**) when used in accordance with regulation 3(5) of those regulations.

(4) Before exercising the power conferred by paragraph (2) the undertaker must—

(a) consult with the chief officer of police in whose area the road is situated; and

(b) obtain the written consent of the traffic authority.

(5) The undertaker must not exercise the powers in paragraphs (1) or (2) unless it has—

(a) given not less than 4 weeks' notice in writing of its intention so to do to the chief officer of police and to the traffic authority in whose area the road is situated;

(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;

(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 10 for a construction traffic management plan for the phase of the authorised development in relation to which the power conferred by paragraph (1) or (2) is sought to be utilised; or

(ii) in relation to the decommissioning of the authorised development only, have first obtained approval under requirement 22 for a decommissioning traffic management plan for the part of the authorised development in relation to which the power conferred by paragraph (1) or (2) is sought to be utilised.

(6) Any provision made under the powers conferred by paragraphs (1) or (2) of this article may be suspended, varied or revoked by the undertaker from time to time by subsequent exercise of the powers conferred in paragraph (1) or (2).

(7) Any provision made by the undertaker under paragraphs (1) or (2)—

(a) must be made by written instrument in such form as the undertaker considers appropriate;

(b) has effect as if duly made by the traffic authority in whose area the road is situated as a traffic regulation order under the 1984 Act and the instrument by which it is effected may specify specific savings and exemptions to which the provision is subject; and

(c) is deemed to be a traffic order for the purposes of Schedule 7 to the Traffic Management Act 2004(**b**) (road traffic contraventions subject to civil enforcement).

PART 4

SUPPLEMENTAL POWERS

Discharge of water

14.—(1) Subject to paragraphs (3), (4) and (8) the undertaker may use any watercourse or any public sewer or drain for the drainage of water in connection with the carrying out or maintenance of the authorised development and for that purpose may lay down, take up and alter pipes and may,

(**a**) S.I. 2011/935.
(**b**) 2004 c. 18.

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 pursuant to paragraph (1) is determined as if it were a dispute under section 106 (right to communicate with public sewers) of the Water Industry Act 1991(**a**).

(3) The undertaker must not discharge any water into any watercourse, public sewer or drain except with the consent of the person to whom it belongs; and such consent may be given subject to such terms and conditions as that person may reasonably impose.

(4) The undertaker must not carry out any works to or make any opening into any public sewer or drain pursuant to paragraph (1) 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 not, in carrying out or maintaining works pursuant to this article damage or interfere with the bed or banks of any watercourse forming part of a main river.

(6) The undertaker must take such steps as are reasonably practicable to secure that any water discharged into a watercourse or public sewer or drain pursuant to this article is as free as may be practicable from gravel, soil or other solid substance, oil or matter in suspension.

(7) This article does not authorise the entry into controlled waters of any matter whose entry or discharge into controlled waters is prohibited by regulation 12 (requirement for environmental permit) of the Environmental Permitting (England and Wales) Regulations 2016(**b**).

(8) In this article—

(a) "public sewer or drain" means a sewer or drain which belongs to Homes England, the Environment Agency, an internal drainage board, a joint planning board, a local authority, a National Park Authority, a sewerage undertaker or an urban development corporation; and

(b) other expressions, excluding watercourse, used both in this article and in the Water Resources Act 1991 have the same meaning as in that Act.

Protective works to buildings

15.—(1) Subject to the following provisions of this article, the undertaker may at its own expense carry out such protective works to any building located 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.

(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 purposes 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

(**a**) 1991 c. 56. Section 106 was amended by section 35(8)(a) of the Competition and Service (Utilities) Act 1992 (c. 43) and sections 36(2) and 99 of the Water Act 2003 (c. 37). There are other amendments to this section which are not relevant to this Order.

(**b**) S.I. 2016/1154.

(b) where the works cannot be carried out reasonably conveniently without entering land that is adjacent to the building but outside its curtilage, enter the adjacent land (but not any building erected on it) within the Order limits.

(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), (c) or (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 of 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 38 (arbitration).

(7) The undertaker must compensate the owners and occupiers of any building or land in relation to which powers under this article have been exercised for any loss or damage arising to them by reason of the exercise of the powers.

(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 that the protective works are inadequate to protect the building against damage caused by the construction, operation or maintenance of that part of the authorised development,

the undertaker must compensate the owners and occupiers of the building for any loss or damage sustained by them.

(9) Nothing in this article relieves the undertaker from any liability to pay compensation under section 10(2) (compensation for injurious affection) of the 1965 Act.

(10) Any compensation payable under paragraph (7) or (8) must be determined, in case of dispute, under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

(11) In this article "protective works", in relation to a building, means—

(a) underpinning, strengthening and any other works the purpose of which is to prevent damage that may be caused to the building by the construction, operation, maintenance or use of the authorised development; and

(b) any works the purpose of which is to remedy any damage that has been caused to the building by the construction, operation, maintenance or use of the authorised development.

Authority to survey and investigate the land

16.—(1) The undertaker may for the purposes of this Order enter on any land shown within the Order limits or which may be affected by the authorised development or 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 in such positions on the land as the undertaker thinks fit to investigate the nature of the surface layer and subsoil and remove soil samples;

(c) without prejudice to the generality of sub-paragraph (a), carry out ecological or archaeological investigations on such land; and

(d) place on, leave on and remove from the land apparatus for use in connection with the survey and investigation of land and making of trial holes.

(2) No land may be entered or equipment placed or left on or removed from the land under paragraph (1) unless at least 14 days' notice has been served on every owner and occupier of the land.

(3) Any person entering land under this article on behalf of the undertaker—

(a) must, if so required 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) If either a highway authority or a street authority which receives an application for consent fails to notify the undertaker of its decision within 28 days of receiving the application for consent—

(a) under paragraph (4)(a) in the case of a highway authority; or

(b) under paragraph (4)(b) in the case of a street authority,

or such longer period that is agreed in writing between the undertaker and that authority, that authority is deemed to have granted consent.

(7) Section 13 (refusal to give possession to acquiring authority) of the 1965 Act applies to the entry onto, or possession of lad under this article to the same extent as it applies to the compulsory acquisition of land under this Order by virtue of section 125 (application of compulsory acquisition provisions) of the 2008 Act.

PART 5

POWERS OF ACQUISITION

Compulsory acquisition of land

17. Subject to the provisions of this Part, the undertaker may acquire compulsorily so much of the Order land as is required for the authorised development or to facilitate, or is incidental, to it.

Time limit for exercise of authority to acquire land compulsorily

18.—(1) After the end of the period of 5 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 21 (application of the 1981 Act).

(2) The authority conferred by article 26 (temporary use of land for carrying out 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.

(3) The applicable period for the purposes of section 4 of the 1965 Act (time limit for giving notice to treat) and section 5A of the 1981 Act (time limit for general vesting declaration) (as modified by this Order) is the period of five years beginning on the day on which this Order is made.

Compulsory acquisition of rights

19.—(1) Subject to paragraph (2), 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 17 (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 20 (private rights) and article 28 (statutory undertakers), in the case of the Order land specified in column (1) of Schedule 6 (land in which only new rights etc. may be acquired) the undertaker's powers of compulsory acquisition are limited to the acquisition of such new rights and the imposition of restrictive covenants for the purpose specified in relation to that land in column (3) of that Schedule.

(3) Subject to section 8 (other provisions as to divided land) and Schedule 2A (counter-notice requiring purchase of land) of the 1965 Act (as substituted by paragraph 11 of Schedule 7 (modification of compensation and compulsory purchase enactments for the creation of new rights and imposition of new restrictive covenants), where the undertaker creates or acquires an existing right over land or the benefit of a restrictive covenant under paragraph (1) or (2), the undertaker is not required to acquire a greater interest in that land.

(4) Schedule 7 (modification of compensation and compulsory purchase enactments for 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.

(5) In any case where the acquisition of new rights or imposition of a restriction under paragraph (1) or (2) is required for the purpose of diverting, replacing or protecting apparatus of a statutory undertaker, the undertaker may, with the consent of the Secretary of State, transfer the power to acquire such rights to the statutory undertaker in question.

(6) The exercise by a statutory undertaker of any power in accordance with a transfer under paragraph (5) is subject to the same restrictions, liabilities and obligations as would apply under this Order if that power were exercised by the undertaker.

Private rights

20.—(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) as from the date of acquisition of the land, or of the right, or of the benefit of the restrictive covenants by the undertaker, whether compulsorily or by agreement; or

(b) on the date of entry on the land by the undertaker under section 11(1) (power of entry) of the 1965 Act,

whichever is the earliest.

(2) Subject to the provisions of this article, all private rights or restrictive covenants over land subject to the compulsory acquisition of rights or the imposition of restrictive covenants under article 19 (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 28 (statutory undertakers) applies.

(6) Paragraphs (1) to (3) have effect subject to—

(a) any notice given by the undertaker before—

(i) the completion of the acquisition of the land or the acquisition of rights or the imposition of restrictive covenants over or affecting the land;

(ii) the undertaker's appropriation of the land;

(iii) the undertaker's entry onto the land; or

(iv) the undertaker's taking temporary possession of the land,

that any or all of those paragraphs do not apply to any right specified in the notice; or

(b) any agreement made at any time between the undertaker and the person in or to whom the right in question is vested or belongs.

(7) If an agreement referred to in paragraph (6)(b)—

(a) is made with a person in or to whom the right is vested or belongs; and

(b) is expressed to have effect also for the benefit of those deriving title from or under that person,

the agreement is effective in respect of the persons so deriving title, whether that title was derived before or after the making of the agreement.

(8) References in this article to private rights over land include any right of way, trust, incident, restrictive covenant, easement, liberty, privilege, right or advantage annexed to land and adversely affecting other land, including any natural right to support; and include restrictions as to the user of land arising by virtue of a contract, agreement or undertaking having that effect.

Application of the 1981 Act

21.—(1) The 1981 Act applies as if this Order were a compulsory purchase order.

(2) The 1981 Act, as applied by paragraph (1), has effect with the following modifications.

(3) In section 1 (application of the Act), for subsection 2 substitute—

"(2) This section applies to any Minister, any local or other public authority or any other body or person authorised to acquire land by means of a compulsory purchase order.".

(4) In section 5(2) (earliest date for execution of declaration) omit the words from "and this subsection" to the end.

(5) In section 5B(1) (extension of time limit during challenge) for "section 23 of the Acquisition of Land Act 1981 (application to High Court in respect of compulsory purchase order), the 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 18 (time limit for exercise of authority to acquire land compulsorily) of the Oaklands Farm Solar Park Order 2025.".

(6) In section 6 (notices after execution of declaration), in subsection (1)(b) for "section 15 of, or paragraph 6 of Schedule 1 to, the Acquisition of Land Act 1981" substitute "section 134 (notice of authorisation of compulsory acquisition) of the Planning Act 2008".

(7) In section 7 (constructive notice to treat), in subsection (1)(a), omit the words "(as modified by section 4 of the Acquisition of Land Act 1981)".

(8) In Schedule A1 (counter-notice requiring purchase of land not in general vesting declaration), for paragraph 1(2) substitute—

"(2) But see article 22(3) (acquisition of subsoil only) of the Oaklands Farm Solar Park Order 2025, which excludes the acquisition of subsoil only from this Schedule.".

(9) References to the 1965 Act in the 1981 Act must be construed as references to the 1965 Act as applied by section 125 (application of compulsory acquisition provisions) of the 2008 Act (and as modified by article 24 (modification of Part 1 of the Compulsory Purchase Act 1965) to the compulsory acquisition of land under this Order.

Acquisition of subsoil only

22.—(1) The undertaker may acquire compulsorily so much of, or such rights in, the subsoil of the land referred to in paragraph (1) of article 17 (compulsory acquisition of land) or article 19 (compulsory acquisition of rights) as may be required for any purpose for which that land may be acquired under that provision instead of acquiring the whole of the land.

(2) Where the undertaker acquires any part of, or rights in, the subsoil of land, the undertaker is not required to acquire an interest in any other part of the land.

(3) The following do not apply in connection with the exercise of the power under paragraph (1) in relation to subsoil only—

(a) Schedule 2A (counter-notice requiring purchase of land not in notice to treat) to the 1965 Act;

(b) Schedule A1 (counter-notice requiring purchase of land not in general vesting declaration) to the 1981 Act; and

(c) Section 153(4A) (blighted land: proposed acquisition of part interest; material detriment test) of the 1990 Act.

(4) Paragraphs (2) and (3) are to be disregarded where the undertaker acquires a cellar, vault, arch or other construction forming part of a house, building or manufactory.

Power to override easements and other rights

23.—(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

(b) a breach of a restriction as to the user of land arising by virtue of a contract.

(2) In this article "authorised activity" means—

(a) the erection, construction or maintenance of any part of the authorised development;

(b) the exercise of any power authorised by the Order; or

(c) the use of any land within the Order 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 the virtue of a contract.

(4) Where an interest, right or restriction is overridden by paragraph (1), compensation—

(a) is payable under section 7 (measure of compensation in case of severance) or 10 (further provision as to compensation for injurious affection) of the 1965 Act; and

(b) is to be assessed in the same manner and subject to the same rules as in the case of other compensation under those sections where—

(i) the compensation is to be estimated in connection with a purchase under that Act; or

(ii) the injury arises from the execution of works on or use of land acquired under that Act.

(5) Where a person deriving title under the undertaker by whom the land in question was acquired—

(a) is liable to pay compensation by virtue of paragraph (4); and

(b) fails to discharge that liability,

the liability is enforceable against the undertaker.

(6) Nothing in this article is to be construed as authorising any act or omission on the part of any person which is actionable at the suit of any person on any grounds other than such an interference or breach as is mentioned in paragraph (1).

Modification of Part 1 of the Compulsory Purchase Act 1965

24.—(1) Part 1 (compulsory acquisition under Acquisition of Land Act 1946) of the 1965 Act, as applied to this Order by section 125 (application of compulsory acquisition provisions) of the 2008 Act, is modified as follows.

(2) In section 4A(1) (extension of time limit during challenge) for "section 23 of the Acquisition of Land Act 1981 (application to the High Court in respect of compulsory purchase order" substitute "section 118 (legal challenges relating to applications for orders granting development consent) of the 2008 Act,".

(3) In section 11A (powers of entry: further notice of entry)—

(a) in subsection (1)(a), after "land" insert "under that provision"; and

(b) in subsection (2), after "land" insert "under that provision".

(4) In Schedule 2A (counter-notice requiring purchase of land not in notice to treat)—

(a) for paragraphs 1(2) and 14(2) substitute—

"(2) But see article 22(3) (acquisition of subsoil only) of the Oaklands Farm Solar Park Order 2025, 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 15 (protective works to buildings), article 26 (temporary use of land for carrying out the authorised development) or article 27 (temporary use of land for maintaining the authorised development) of the Oaklands Farm Solar Park Order 2025.".

Rights under or over streets

25.—(1) The undertaker may enter on, appropriate and use so much of the subsoil of or air-space over any street within the Order limits as may be required for the purposes of the authorised development and may use the subsoil or air-space 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 carrying out the authorised development

26.—(1) The undertaker may, in connection with the carrying out of the authorised development—

(a) for the purpose of carrying out of the site preparation works, construction and decommissioning of the authorised development, enter on and take temporary possession of—

(i) so much of the land specified in column (1) of the table in Schedule 8 (land of which temporary possession may be taken) for the purpose specified in relation to the land in column (2) of that table; and

(ii) any other Order land in respect of which no notice of entry has been served under section 11 (powers of entry) of the 1965 Act and no declaration has been made under section 4 (execution of declaration) of the 1981 Act;

(b) remove any buildings, agricultural plant and apparatus, drainage, fences, debris and vegetation from that land;

(c) construct temporary works, 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 Part 1 of Schedule 1 (authorised development); and

(f) carry out mitigation works required pursuant to the requirements in Part 2 of Schedule 1 (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, 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 2 (streets subject to street works); or

(d) restore the land on which any works have been carried out under paragraph (1)(f) insofar as the works relate to mitigation works identified in the environmental statement or required pursuant to the requirements in Part 2 of Schedule 1 (requirements).

(6) The undertaker must pay compensation to the owners and occupiers of land 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) The undertaker must not compulsorily acquire, acquire new rights over or impose restrictive covenants over, the land referred to in paragraph (1)(a)(i) under this Order.

(11) Nothing in this article precludes the undertaker from—

(a) creating and acquiring new rights or imposing restrictions over any part of the Order land identified in Schedule 6 (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 22 (acquisition of subsoil only) or any part of the subsoil or air-space over that land under article 25 (rights under or over streets).

(12) Section 13 (refusal to give possession to acquiring authority) of the 1965 Act applies to the temporary use of land pursuant to this article to the same extent as it applies to the compulsory acquisition of land under this Order by virtue of section 125 (application of compulsory acquisition provisions) of the 2008 Act.

(13) Nothing in this article prevents the taking of temporary possession more than once in relation to any land that the undertaker takes temporary possession of under this article.

Temporary use of land for maintaining authorised development

27.—(1) Subject to paragraph (2), at any time during the maintenance period (as defined in paragraph (11)) relating to any part of the authorised development, the undertaker may—

(a) enter on and take temporary possession of any land within the Order land if such possession is reasonably required for the purpose of maintaining the authorised development;

(b) enter on any land within the Order land for the purpose of gaining such access as is reasonably required for the purpose of maintaining the authorised development; and

(c) construct such temporary works (including the provision of means of access) and buildings on the land as may be reasonably necessary for that purpose.

(2) Paragraph (1) does not authorise the undertaker to take temporary possession of—

(a) any house or garden belonging to a house; or

(b) any building (other than a house) if it is for the time being occupied.

(3) Not less than 28 days before entering on and taking temporary possession of land under this article the undertaker must serve notice of the intended entry on the owners and occupiers of the land.

(4) The undertaker may only remain in possession of land under this article for so long as may be reasonably necessary to carry out the maintenance of the part of the authorised development for which possession of the land was taken.

(5) Before giving up possession of land of which temporary possession has been taken under this article, the undertaker must remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land.

(6) The undertaker must pay compensation to the owners and occupiers of land of which temporary possession is taken under this article for any loss or damage arising from the exercise in relation to the land of the provisions of this article.

(7) Any dispute as to a person's entitlement to compensation under paragraph (6), or as to the amount of 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 pursuant to this article to the same extent as it applies to the compulsory acquisition of land under this Order by virtue of section 125 (application of compulsory acquisition provisions) of the 2008 Act.

(11) In this article "the maintenance period" means the period of 5 years beginning with the date of final commissioning of the part of the authorised development for which temporary possession is required under this article, except in relation to landscaping where "the maintenance period" means such period as set out in the landscape and ecological management plan which is approved by the relevant planning authority pursuant to requirement 8 beginning with the date on which that part of the landscaping is completed.

Statutory undertakers

28. Subject to the provisions of Schedule 10 (protective provisions) the undertaker may—

(a) acquire compulsorily, or acquire new rights or impose restrictive covenants over, the land belonging to statutory undertakers shown on the land plans within the Order land; and

(b) extinguish the rights of, remove, relocate the rights of or reposition the apparatus belonging to statutory undertakers over or within the Order land.

Apparatus and rights of statutory undertakers in temporarily closed streets

29. Where a street is altered or diverted or its use is temporarily prohibited or restricted under article 8 (street works), article 9 (power to alter layout, etc., of streets) or article 11 (temporary closure of public rights of way) any statutory undertaker whose apparatus is under, in, on, along or across the street has the same powers and rights in respect of that apparatus, subject to Schedule 10 (protective provisions), as if this Order had not been made.

Recovery of costs of new connections

30.—(1) Where any apparatus of a public utility undertaker or of a public communications provider is removed under article 28 (statutory undertakers) any person who is the owner or occupier of premises to which a supply was given from that apparatus is entitled to recover from the undertaker compensation in respect of expenditure reasonably incurred by that person, in consequence of the removal, for the purpose of effecting a connection between the premises and any other apparatus from which a supply is given.

(2) Paragraph (1) does not apply in the case of the removal of a public sewer but where such a sewer is removed under article 28 (statutory undertakers), any person who is—

(a) the owner or occupier of premises the drains of which communicated with that sewer; or

(b) the owner of a private sewer which communicated with that sewer,

is entitled to recover from the undertaker compensation in respect of expenditure reasonably incurred by that person, in consequence of the removal, for the purpose of making the drain or sewer belonging to that person communicate with any other public sewer or with a private 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.

Compulsory acquisition of land – incorporation of the mineral code

31. Parts 2 and 3 of Schedule 2 (minerals) to the Acquisition of Land Act 1981 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.

PART 6

OPERATIONS

Operation of generating station

32.—(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.

PART 7

MISCELLANEOUS AND GENERAL

Operational land for the purposes of the 1990 Act

33. Development consent granted by this Order is to be treated as specific planning permission for the purposes of section 264(3)(a) (cases in which land is to be treated as not being operational land) of the 1990 Act.

Certification of plans, etc.

34.—(1) The undertaker must, as soon as practicable after the making of this Order, submit to the Secretary of State copies of all documents and plans listed in the table at Schedule 12 (documents and plans to be certified) for certification that they are true copies of the documents referred to in this Order.

(2) A plan or document so certified is admissible in any proceedings as evidence of the contents of the document of which it is a copy.

(**a**) 2003 c. 21.

Service of notices

35.—(1) A notice or other document required or authorised to be served for the purposes of this Order may be served—

(a) by post;

(b) by delivering it to the person on whom it is to be served or to whom it is to be given or supplied; or

(c) with the consent of the recipient and subject to paragraphs (5) to (8) by electronic transmission.

(2) Where the person on whom a notice or other document to be served for the purposes of this Order is a body corporate, the notice or document is duly served if it is served on the secretary or clerk of that body.

(3) For the purposes of section 7 (references to service by post) of the Interpretation Act 1978(**a**) as it applies for the purposes of this article, the proper address of any person in relation to the service on that person of a notice or document under paragraph (1) is, if that person has given an address for service, that address, and otherwise—

(a) in the case of the secretary or clerk of a body corporate, the registered or principal office of that body; and

(b) in any other case, the last known address of that person at the time of service.

(4) Where for the purposes of this Order a notice or other document is required or authorised to be served on a person as having an interest in, or as the occupier of, land and the name or address of that person cannot be ascertained after reasonable enquiry, the notice may be served by—

(a) addressing it to that person by name or by the description of "owner", or as the case may be "occupier", of the land (describing it); and

(b) either leaving it in the hands of a person who is or appears to be resident or employed on the land or leaving is conspicuously affixed to some building or object on or near the land.

(5) Where a notice or other document required to be served or sent for the purposes of this Order is served or sent by electronic transmission the requirement is to be taken to be fulfilled only where—

(a) the recipient of the notice or other document to be transmitted has given consent to the use of electronic transmission in writing or by electronic transmission;

(b) the notice or document is capable of being accessed by the recipient;

(c) the notice or document is legible in all material respects; and

(d) the notice or document is in a form sufficiently permanent to be used for subsequent reference.

(6) Where the recipient of a notice or other document served or sent by electronic transmission notifies the sender within 7 days of receipt that the recipient requires a paper copy of all or part of that notice or other document the sender must provider such a copy as soon as reasonably practicable.

(7) Any consent to the use of electronic communication given by a person may be revoked by that person in accordance with paragraph (8).

(8) Where a person is no longer willing to accept the use of electronic transmission for any of the purposes of this Order—

(a) that person must give notice in writing or by electronic transmission revoking any consent given by that person for that purpose; and

(b) such revocation is final and takes effect on a date specified by the person in the notice but that date must not be less than 7 days after the date on which the notice is given.

(9) This article does not exclude the employment of any method of service not expressly provided for by it.

(**a**) 1978 c. 30.

(10) In this article "legible in all material respects" means that the information contained in the notice or document is available to that person to no lesser extent that it would be if served, given or supplied by means of a notice or document in printed form.

Felling or lopping of trees or removal of hedgerows

36.—(1) Subject to Article 37 (trees subject to preservation orders) the undertaker may fell or lop any tree, or shrub near any part of the authorised development, or cut back its roots, if it reasonably believes it to be necessary to do so to prevent the tree, or shrub from—

(a) obstructing or interfering with the construction, maintenance, operation or decommissioning of the authorised development or any apparatus used in connection with the authorised development;

(b) constituting a danger to persons using the authorised development; or

(c) obstructing or interfering with the passage of construction vehicles to the extent necessary for the purposes of construction of the authorised development.

(2) In carrying out any activity authorised by paragraph (1) or (4), the undertaker must—

(a) do no unnecessary damage to any tree, or shrub;

(b) ensure all works are carried out to a reasonable standard in accordance with the relevant recommendations of appropriate British Standards or other more suitable recognised codes of good practice provided these meet or exceed the appropriate British Standards; and

(c) pay compensation to any person for any loss or damage arising from such activity.

(3) Any dispute as to a person's entitlement to compensation under paragraph (2), or as to the amount of compensation, must be determined under Part 1 of the 1961 Act.

(4) The undertaker may, for the purposes of the authorised development—

(a) remove those parts of the important hedgerows within the Order limits and specified in Schedule 9 Part 1 (removal of important hedgerows); and

(b) remove those parts of the hedgerows as are within the Order limits and specified in Schedule 9 Part 2 (removal of hedgerows).

(5) The undertaker may not pursuant to paragraph (1) fell or lop a tree or remove hedgerows within the extent of the publicly maintainable highway without the prior consent of the highway authority.

(6) In this article "hedgerow" and "important hedgerow" have the same meaning as in the Hedgerow Regulations 1997(**a**).

Trees subject to tree preservation orders

37.—(1) The undertaker may fell or lop any tree described in Schedule 13 (trees subject to tree preservation orders) within or overhanging land within the Order limits or cut back its roots, as it relates to the relevant part of the authorised development described in column (3) of that Schedule, if it reasonably believes it to be necessary to do so in order to prevent the tree from obstructing or interfering with the construction, operation or maintenance of the authorised development or any apparatus used in connection with the authorised development in accordance with the landscape and ecological management plan.

(2) In carrying out any activity authorised by paragraph (1)—

(a) the undertaker must do no unnecessary damage to any tree and must pay compensation to any person for any loss or damage arising from such activity; and

(b) the duty contained in section 206(1) (replacement of trees) of the 1990 Act does not apply.

(3) The authority given by paragraph (1) constitutes a deemed consent under the relevant tree preservation order.

(**a**) S.I. 1997/1160.

(4) 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.

(5) The undertaker may not pursuant to paragraph (1) fell or lop a veteran or ancient tree without the prior approval of the local planning authority.

Arbitration

38.—(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 at 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.

Requirements, appeals, etc.

39.—(1) Where an application is made to, or a request is made of, a consenting authority or any other relevant person for any consent, agreement or approval required or contemplated by any of the provisions of this Order, such consent, agreement or approval must, to be validly given, be given in writing and must not be unreasonably withheld or delayed.

(2) Part 3 (procedure for discharge of requirements) of Schedule 1 (authorised development) has effect in relation to all agreements or approvals granted, refused or withheld in relation to requirements in Part 2 (requirements) of that Schedule.

Application of landlord and tenant law

40.—(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 to which paragraph (2) applies in relation to the rights and obligations of the parties to any lease granted by or under any such agreement so as to—

(a) exclude or in any respect modify any of the rights and obligations of those parties under the terms of the lease, whether with respect to the termination of the tenancy or any other matter;

(b) confer or impose on any such party any right or obligation arising out of or connected with anything done or omitted on or in relation to land which is the subject of the lease, in addition to any such right or obligation provided for by the terms of the lease; or

(c) restrict the enforcement (whether by action for damages or otherwise) by any party to the lease of any obligation of any other party under the lease.

Protective provisions

41. Schedule 10 (protective provisions) has effect.

Funding

42.—(1) The undertaker must not exercise the powers conferred by the provisions referred to in paragraph (2) in relation to any Order land unless it has first put in place either—

(a) a guarantee, the form and the amount of which has been approved by the Secretary of State in respect of the liabilities of the undertaker to pay compensation pursuant to the provisions referred to in paragraph (2); or

(b) an alternative form of security, the form and the amount of which has been approved by the Secretary of State in respect of the liabilities of the undertaker to pay compensation pursuant to the provisions referred to in paragraph (2).

(2) The provisions are—

(a) article 17 (compulsory acquisition of land);

(b) article 19 (compulsory acquisition of rights);

(c) article 20 (private rights);

(d) article 22 (acquisition of subsoil only);

(e) article 25 (rights under or over streets);

(f) article 26 (temporary use of land for carrying out the authorised development);

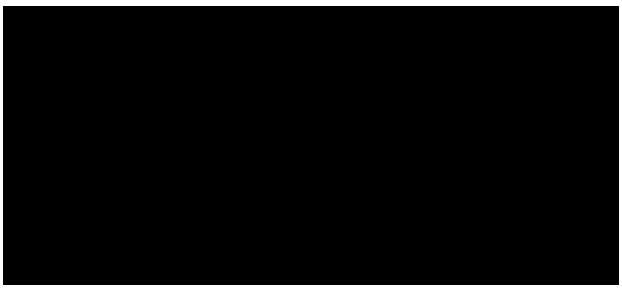
(g) article 27 (temporary use of land for maintaining the authorised development); and

(h) article 28 (statutory undertakers).

(3) A guarantee or alternative form of security given in respect of any liability of the undertaker to pay compensation pursuant to the provisions referred to in paragraph (2) 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.

Signed by authority of the Secretary of State for Energy Security and Net Zero



David Wagstaff
Deputy Director Energy Infrastructure Planning
Department for Energy Security and Net Zero

19th June 2025

SCHEDULE 1

Article 2

PART 1

AUTHORISED DEVELOPMENT

43. In the administrative area of Derbyshire the construction, operation, maintenance and decommissioning of a nationally significant infrastructure project as defined in sections 14(1) and 15 of the 2008 Act with associated development under section 115(1)(b) of the 2008 Act.

44. The nationally significant infrastructure project authorised by this Order comprises a generating station with a gross electrical output capacity of over 50 megawatts comprising all or any of the work numbers in this Schedule or any part of any work number in this Schedule—

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

(a) solar panels fitted to mounting structures; and

(b) balance of solar plant,

and associated development within the meaning of Section 115(2) (for which development consent may be granted) of the 2008 Act including—

Work No. 2 – a battery energy storage system compound comprising—

(c) battery energy storage system units;

(d) auxiliary transformers and associated bunding;

(e) power conversion system units including inverters, switch gear, transformers and ancillary equipment;

(f) containers or enclosures housing all or any of Work Nos. 2(b) and (c) and ancillary equipment;

(g) monitoring and control systems;

(h) heating, ventilation and air conditioning systems;

(i) underground electrical cabling;

(j) fire safety infrastructure including water storage in tanks or other containers, and drainage and water containment features and associated infrastructure;

(k) containers or similar structures to house control room, office and welfare facilities, and storage; and

(l) security fencing, access gates and tracks, car parking and hardstanding areas.

Work No. 3 – works in connection with a new 132/33kV onsite substation comprising—

(m) substation, switch room buildings, concrete foundations and ancillary equipment including reactive power units;

(n) control building housing offices, storage containers and space, welfare facilities, waste storage within a fenced compound, car parking;

(o) monitoring and control systems for Work Nos. 1 to 3;

(p) 132 kilovolt harmonic filter compound;

(q) electrical cables;

(r) deluge system including water tanks and fire suppression, and drainage and water containment features and associated infrastructure; and

(s) access gates and tracks, security palisade fencing and bunding.

Work No. 4 – works to trench and lay 132 kilovolt electrical cables connecting Work No. 3 to Work No. 5 including—

(t) excavations to install trenching, including storage of excavated material;

(u) provision of ducting or alternative means of conducting media;

(v) laying down of internal access tracks, ramps, means of access, footpaths, roads, including the laying and construction of drainage infrastructure, signage and information boards; works required for crossing, moving re-routing or over/undergrounding of existing utility assets (including water, gas, sewer pipes, electricity distribution/transmission cabling, telecommunications etc.); and

(w) temporary construction compounds within the working area.

Work No. 4A – crossing Rosliston Road with electrical cabling including—

(x) trenching through, or directionally drilling beneath, Rosliston Road;

(y) preparation of temporary drilling launch and emergence pads;

(z) associated civils investigations and works; and

(aa) drilling boreholes and laying cable, and associated activities required to facilitate trenching or directional drilling process.

Work No. 4B – temporary stopping up of watercourses to trench and lay cables, installation of culverts, drainage and other features to cross watercourses.

Work No. 4C – crossing Walton Road with electrical cabling including—

(bb) trenching through, or directionally drilling beneath, Walton Road;

(cc) preparation of temporary drilling launch and emergence pads;

(dd) associated civils investigations and works; and

(ee) drilling boreholes and laying cable, and associated activities required to facilitate trenching or directional drilling processes.

Work No. 4D – crossing Coton Road with electrical cabling including—

(ff) trenching through, or directionally drilling beneath, Coton Road;

(gg) preparation of temporary drilling launch and emergence pads;

(hh) associated civils investigations and works; and

(ii) drilling boreholes and laying cable, and associated activities required to facilitate trenching or directional drilling processes.

Work No. 5 – connection and installation works to the existing transmission network substation, including works to trench and lay 132 kilovolt electrical cables connecting to Work No. 4C including—

(jj) excavations to install trenching, including storage of excavated material;

(kk) provision of ducting or alternative means of conducting media;

(ll) permanent removal of trees and vegetation to provide construction laydown and working areas, and provide permanent operations and maintenance access to cabling;

(mm) laying down of access tracks, ramps, means of access; and

(nn) works required for crossing, moving, re-routing or over/undergrounding of existing utility assets (including electricity distribution/transmission cabling, telecommunications etc.).

Work No. 5A –construction, operation, maintenance and decommissioning access for Work No. 5—

(oo) works to create permanent access from public highway, and install temporary or permanent traffic lights, visibility splays, banksmen or other measures to manage traffic;

(pp) works to widen and surface the public highway; and

(qq) works to excavate and store soil, clear vegetation and obstacles, level, shape and prepare surface for construction track and permanent operational track to be installed.

Work No. 5B – access to National Grid operational land for the construction, operation, maintenance and decommissioning for Work No. 5—

(rr) works to create permanent access from public highway, and install temporary or permanent traffic lights, visibility splays, banksmen or other measures to manage traffic;

(ss) works to widen and surface the public highway; and

(tt) works to excavate and store soil, clear vegetation and obstacles, level, shape and prepare surface for construction track and permanent operational track to be installed.

Work No. 6 – temporary construction and decommissioning of access tracks and compounds comprising—

(uu) works to improve existing farm access from public highway, and install temporary traffic lights, banksmen or other measures to manage traffic;

(vv) works to excavate and store soil, clear vegetation and obstacles, level, shape and prepare surface for construction track to be installed;

(ww) storage of equipment and materials;

(xx) civils investigations and works to reinforce ground with weight-bearing support infrastructure, maintain integrity of structures beneath road surface;

(yy) creation of temporary construction access tracks, laydown and working areas;

(zz) works required for crossing, moving, re-routing or over/undergrounding of existing utility assets (including water, gas, sewer pipes, electricity distribution/transmission cabling, telecommunications etc.);

(aaa) temporary stopping up of watercourses for installation of culverts, drainage and other features to cross water courses;

(bbb) areas of hardstanding;

(ccc) car parking;

(ddd) site and welfare offices, canteens and workshops;

(eee) area to store materials and equipment;

(fff) storage and waste skips;

(ggg) area for download and turning;

(hhh) security infrastructure;

(iii) site drainage and waste management infrastructure; and

(jjj) electricity, water, waste water and telecommunications connections.

Work No. 7 – General works comprising—

(kkk) trenching and laying electrical cables connecting Work Nos. 1 and 2 to Work No. 3;

(lll) fencing, gates, boundary treatment and other means of enclosure;

(mmm) works for the provision of security and monitoring measures including CCTV columns, lighting columns and lighting, cameras, weather stations, communication infrastructure and perimeter fencing;

(nnn) use of existing private tracks;

(ooo) laying down of internal means of access;

(ppp) earthworks and foundations;

(qqq) drainage and irrigation infrastructure;

(rrr) storage containers including welfare facilities; and

(sss) temporary construction compounds within the permanent working area.

Work No. 8 – works to facilitate access for all works excluding Work No. 5 comprising—

(ttt) creation of accesses from or across the public highway;

(uuu) visibility splays;

(vvv) works to widen and surface the public highway; and

(www) installation of temporary traffic lights or facilities for manned traffic management.

Work No. 9 – works for areas of habitat management comprising—

(xxx) landscape and biodiversity enhancement measures; and

(yyy) habitat creation and management including earthworks, landscaping, means of enclosure and the laying and construction of drainage infrastructure.

Work No. 10 – works to implement new permissive path through Order limits comprising—

(zzz) temporary route clear of obstacles and laying down of permissive path; and

(aaaa) signage and information boards.

and in connection with the construction of Work Nos. 1-10 above and to the extent that they do not form any part of any such work, further associated development comprising such other works as may be necessary or expedient for the purpose of or in connection with the relevant part of the authorised development and which fall within the scope of work assessed by the environmental statement within the Order limits including—

(bbbb) boundary treatments, including means of enclosure;

(cccc) bunds, embankments, trenching and swales;

(dddd) works to the existing irrigation system and works to alter the position and extent of such irrigation system;

(eeee) surface water drainage systems, storm water attenuation systems including storage basins, oil water separators, including channelling and culverting and works to existing drainage networks;

(ffff) electrical, gas, water, foul water drainage and telecommunications infrastructure connections, diversions and works to alter the position of such services and utilities connections;

(gggg) works to alter the course of or otherwise interfere with non-navigable rivers, streams or watercourses;

(hhhh) site establishments and preparation works including site clearance (including vegetation removal, demolition of existing buildings and structure), earthworks (including soil stripping and storage and site levelling) and excavations, the alteration of the position of services and utilities and works for the protection of buildings and land;

(iiii) works to maintain and repair streets and access roads;

(jjjj) tunnelling, boring and drilling works; and

(kkkk) landscaping and biodiversity mitigation and enhancement measures including planting.

PART 2

REQUIREMENTS

Time limits

45. The authorised development must commence no later than the expiration of five years beginning with the date this Order comes into force.

Phases of authorised development and date of final commissioning

46.—(1) The authorised development must not be commenced until a written scheme setting out the phases of construction of the authorised development has been submitted to and approved by the local planning authority.

(2) The scheme submitted pursuant to sub-paragraph (1) must include a timetable for the construction of the 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 for the first phase of Work No. 1 to complete commissioning must be given to the local planning authority within 15 working days of the date of final commissioning for that phase.

Detailed design approval

47.—(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;

(h) drainage, water, power and communications cables and pipelines;

(i) programme for landscaping works;

(j) fencing; and

(k) the anti-reflective coating to be used on the solar modules in Work No. 1,

relating to that phase have been submitted to and approved in writing by the local planning authority.

(2) The details submitted must accord with—

(a) the site location plan;

(b) the works plan;

(c) the design parameters; and

(d) the outline design principles as set out in the design statement, or such variation thereof as may be approved by the local planning authority pursuant to requirement 25.

(3) The authorised development must be carried out in accordance with the approved details.

Implementation and maintenance of landscaping

48.—(1) All landscaping works must be carried out in accordance with the LEMP approved under requirement 8 (landscape and ecological management plan), and in accordance with the relevant recommendations of appropriate British Standards.

(2) Any tree or shrub planted as part of an approved landscaping management scheme that, within a period of five years after planting, is removed, dies or becomes, in the opinion of the local planning authority, seriously damaged or diseased must be replaced in the first available planting season with a specimen of the same species and size as that originally planted.

Arboricultural method statement (AMS)

49. No phase of the authorised development may commence until an arboricultural method statement (AMS) for that phase has been submitted to and approved by the local planning authority. Any AMS submitted for approval must be in accordance with the Tree Retention and Removal Plan and Tree Protection Plan contained within appendix 6.14 of the environmental statement and the development of any phase of the development to which the AMS relates must be carried out in accordance with the approved AMS.

Landscape and ecological management plan (LEMP)

50.—(1) No phase of the authorised development may commence until a landscape and ecological management plan (LEMP) covering that phase which accords with the outline LEMP has been submitted to and approved by the local planning authority in consultation with Natural England.

(2) The LEMP must include—

(a) details of the method of protection of existing landscape features and habitats during the construction, operation and decommissioning stage of the authorised development;

(b) details of habitat creation, including new native hedgerow planting adjacent to the proposed security fencing along the line of the existing footpath, replanting of any breaks (gaps) in excess of 1 metre in existing native hedgerows within the Order limits adjacent to the footpath and sowing of wildflower seed along the margins between the footpath and the hedgerow/security fence boundaries;

(c) details of ongoing management including seasonal grazing regime and other measures including the annual review of the need for any additional mitigation planting work, during the lifetime of the authorised development;

(d) a timetable for the landscape management of the land within the Order limits during the lifetime of the authorised development;

(e) details of how the plan will secure a minimum of 20% biodiversity net gain in habitat units, a minimum of 10% biodiversity net gain in hedgerow units, and a minimum of 10% biodiversity net gain in river units during the operation of the authorised development, and the metric that has been used to calculate that those percentages will be reached; and

(f) landscaping details.

(3) The LEMP must be implemented as approved and maintained throughout the operation of the relevant part of the authorised development to which the plan relates.

(4) No site preparation works are to be commenced until a LEMP covering the site preparation works which accords with the outline LEMP has been submitted to and approved by the local planning authority in consultation with Natural England. Such LEMP must be implemented as approved.

Construction environmental management plans (CEMP)

51.—(1) No phase of the authorised development may commence until a construction environmental management plan (CEMP) for that phase has been submitted to and approved by the local planning authority in consultation with the Environment Agency and Natural England. Any CEMP submitted for approval must be in accordance with the outline CEMP and the construction of any phase of the authorised development to which the CEMP relates must be carried out in accordance with the approved CEMP.

(2) The CEMP for each phase of the authorised development must provide details of—

(a) community liaison;

(b) complaints procedures;

(c) nuisance management including measures to avoid or minimise the impacts of construction works (covering dust, noise and vibration);

(d) a soil management plan;

(e) site waste and materials management measures;

(f) pollution control measures to prevent the introduction of any hazardous substances;

(g) a water quality and silt management plan;

(h) security measures and use of artificial lighting;

(i) a protocol requiring consultation with the Environment Agency in the event that unexpected contaminated land is identified during ground investigation or construction;

(j) details of out of hours working procedures;

(k) details of measures to be adopted including pre-construction surveys to protect species defined as a European Protected Species in regulation 42 (European protected species of animals) and regulation 46 (European protected species of plants) of the Conservation of Habitats and Species Regulations 2017(**a**) or any species to which Part I (wildlife) and Schedule 5 (animals which are protected) of the Wildlife and Countryside Act 1981(**b**) applies;

(**a**) S.I. 2017/1012.
(**b**) 1981 c. 69.

(l) environmental monitoring plan;

(m) flood risk management measures including surface water management; and

(n) a habitats constraints plan.

(3) Pre-commencement establishment of construction compounds, preparation of land for construction, construction area fencing and installation of site drainage must only take place in accordance with a specific plan for such works which accords with the outline CEMP and which has been submitted to and approved by the local planning authority in consultation with the Environment Agency.

(4) No site preparation works are to be commenced until a soil management plan covering the site preparation works which accords with the outline CEMP has been submitted to and approved by the local planning authority. Such soil management plan must be implemented as approved.

(5) For the purposes of requirement 9(1) "commence" includes any site preparation works comprising site clearance (including vegetation removal, demolition of existing buildings and structures).

Construction traffic management plan (CTMP)

52.—(1) No phase of the authorised development may commence until a construction traffic management plan (CTMP) covering that phase and in accordance with the outline CTMP has been submitted to and approved by the local planning authority in consultation with the highway authority for the highway(s) to which the CTMP for that phase relates.

(2) The CTMP must include details of—

(a) associated traffic movements; including delivery vehicles and staff construction/vehicle movements;

(b) traffic management requirements on the adjoining public highway; and

(c) a condition survey for any road which will be affected by undertaking that phase of the authorised development and a further condition survey following that phase of the construction works. In the event that any defects are identified in that condition survey that are directly attributable to that phase of the construction works of the authorised development, details of how those defects are to be remediated by the undertaker.

(3) The CTMP must be implemented as approved.

(4) For the purposes of requirement 10(1) "commence" includes any site preparation works comprising site clearance (including vegetation removal and demolition of existing buildings and structures).

Operational environmental management plan (OEMP)

53.—(1) No phase of the authorised development may commence until an operational environmental management plan (OEMP) which accords with the outline OEMP for that phase has been submitted to and approved by the local planning authority.

(2) The OEMP must include details of—

(a) nuisance management including measures to avoid or minimise the impacts of operational works (covering dust, noise and vibration);

(b) associated traffic movements; including delivery vehicles and staff operation/vehicle movements;

(c) detailed operational drainage design;

(d) measures for the replacement of damaged solar panels; and

(e) a soil management plan.

(3) The OEMP must be implemented as approved and maintained throughout the operation of the relevant part of the authorised development to which the plan relates.

Battery safety management plan (BSMP)

54.—(1) Prior to the commencement of Work No. 2 a battery safety management plan (BSMP) must be submitted to and approved by the local planning authority.

(2) The submitted BSMP must either accord with the outline BSMP or detail such changes as the undertaker considers are required.

(3) In the event that the submitted BSMP proposes changes to the outline BSMP the local planning authority must not approve the BSMP until it has consulted with Derbyshire Fire and Rescue Service.

(4) The BSMP must be implemented as approved and maintained throughout the construction, maintenance, operation and decommissioning of the authorised development.

Land contamination

55.—(1) No phase of the authorised development, and no part of the site preparation works for that phase comprising remedial work in respect of any contamination, may commence until a contamination risk assessment in respect of soils has been produced which is to include details of—

(a) any existing sources of contamination within the Order limits that may be affected by the carrying out of the authorised development;

(b) any reasonably required protective measures to ensure that the carrying out of the authorised development does not make worse any adverse conditions or risks associated with such existing sources of contamination;

(c) appropriate remediation strategies and mitigation measures to address any historic contamination which is shown to be having significant, unacceptable effects on the environment within the context of the proposed works; and

(d) appropriate remediation strategies and mitigation measures to address any contaminated material that may be found at any time when carrying out the authorised development, which was not previously identified in the environmental statement,

and has been submitted to and approved by the local planning authority in consultation with the Environment Agency.

(2) The steps and measures that are identified as necessary for the purposes of carrying out the authorised development in the assessment referred to in sub-paragraph (1) must be implemented as part of the authorised development.

(3) Where the undertaker determines that remediation is necessary, a written scheme and programme for the remedial measures to be taken to render the land fit for its intended purpose must be prepared, submitted to and approved in writing by the local planning authority in consultation with the Environment Agency.

(4) Remedial measures must be carried out in accordance with the approved scheme, and a verification report following completion of those remedial measures must be submitted to the local planning authority.

Public rights of way diversions

56.—(1) No phase of the authorised development may commence and no decommissioning may be undertaken until a public rights of way management plan for any sections of public rights of way shown to be temporarily closed on the streets, access and rights of way plans for that phase has been submitted to and approved by the local planning authority in consultation with the relevant highway authority.

(2) The plan must include details of—

(a) measures to minimise the length of any sections of public rights of way to be temporarily closed;

(b) advance publicity and signage in respect of any sections of public rights of way to be temporarily closed;

(c) personnel responsible for safeguarding users of the Cross Britain Way and public safety;

(d) the locations of any public rights of way to be temporarily closed;

(e) the hours of proposed works affecting public rights of way; and

(f) measures to safeguard users of public rights of way during construction of the authorised development.

(3) The plan must be implemented as approved unless otherwise agreed with the local planning authority in consultation with the highway authority.

Operational noise

57.—(1) No phase of the authorised development may commence until an operational noise assessment containing details of how the design of the authorised development has incorporated mitigation to ensure the operational noise rating levels as set out in the outline operational environmental management plan are to be complied with for that phase has been submitted to and approved by the local planning authority.

(2) The design as described in the operational noise assessment must be implemented as approved and maintained throughout the operation of the relevant part of the authorised development to which the plan relates.

Fencing and other means of enclosure

58.—(1) No phase of the authorised development may commence until written details of all proposed permanent and temporary fences, walls or other means of enclosure of the connection works for that phase have been submitted to and approved by the local planning authority as part of the detailed design approval required by requirement 5(1).

(2) For the purposes of requirement 16(1), "commence" includes any site preparation works.

(3) Any construction site must remain securely fenced in accordance with the approved details at all times during construction of the authorised development.

(4) Any temporary fencing must be removed on completion of the phase of construction of the authorised development for which it was used.

(5) Any approved permanent fencing must be completed before completion of the authorised development.

(6) No site preparation works are to be commenced until written details of all proposed temporary fences, walls or other means of enclosure for the site preparation works have been submitted to and approved by the local planning authority.

(7) Any proposed permanent or temporary fences, walls or other means of enclosure must be carried out in accordance with the approved details.

Surface and foul water drainage

59.—(1) No phase of the authorised development may commence until written details of the surface and foul water drainage system for that phase have been submitted to and approved by the local planning authority.

(2) The details submitted under sub-paragraph (1) must be in accordance with and include the plans and strategies referred to in the flood risk assessment and outline drainage strategy forming appendix 8.1 of the environmental statement.

(3) The surface and foul water drainage system for the relevant part of the authorised development must be implemented in accordance with the approved details and maintained throughout the operation of the relevant part of the authorised development to which the plan relates.

Archaeology

60.—(1) No phase within the authorised development, and no part of the site preparation works for that phase, may commence until an archaeological written scheme of investigation (WSI) for that phase has been submitted to and approved by the local planning authority in consultation with the county archaeologist.

(2) Any archaeological works or programme of archaeological investigation carried out under the approved WSI must be carried out by an organisation registered with the Chartered Institute for Archaeologists or by a member of that Institute, and the nominated organisation and its relevant specialists will be identified and agreed within the WSI.

(3) Any archaeological works must be carried out in accordance with the approved WSI, including post-excavation analysis, reporting, publication and archiving.

Permissive path

61.—(1) Where a phase of the authorised development includes the provision of a permissive path, the permissive path must be provided and open to the public within 12 months of the date of final commissioning in respect of that phase.

(2) No phase of the authorised development which includes a permissive path may commence until written details of the route and maintenance provisions have been submitted to and approved by the local planning authority as part of the detailed design approval required by requirement 5(1).

(3) The permissive path must be maintained and access by the public permitted for 264 days a year (subject to closures for maintenance or emergencies) until commencement of decommissioning of the authorised development pursuant to requirement 22 (decommissioning and restoration).

Construction hours

62.—(1) Subject to sub-paragraph (2), no construction works are to take place except between the hours of—

(a) 07:00 to 19:00 Monday to Friday; and

(b) 07:00 to 13:30 on Saturday.

(2) The following works are permitted outside the hours referred to in sub-paragraph (1)—

(a) emergency works; and

(b) works which do not cause noise that is audible at the boundary of the Order limits and do not give rise to any materially new or materially different environmental effects compared to those identified in the environmental statement.

(3) Any emergency works carried out under sub-paragraph (2)(a) must be notified to the local planning authority within 72 hours of their commencement.

(4) Save for emergency works, works under sub-paragraph (2) must be carried out in accordance with the approved scheme.

Protected species

63.—(1) No phase of the authorised development may commence until protected species surveys have been carried out by a suitably qualified person. The surveys shall inform the mitigation measures required for the protection of such species, which shall be incorporated into a species protection plan (SPP) that shall include a scheme of protection and mitigation.

(2) The SPP must be agreed with the local planning authority in consultation with Natural England and implemented as approved.

(3) In this requirement, "protected species" refers to any species defined as a European Protected Species in regulations 42 (European protected species of animals) and 46 (European protected species of plants) of the Conservation of Habitats and Species Regulations 2017 or any species to

which Part I (wildlife) and Schedule 5 (animals which are protected) of the Wildlife and Countryside Act 1981(**a**) applies.

Decommissioning and restoration

64.—(1) Within 3 months of the date that the undertaker decides to decommission any part of the solar farm works and grid connection works, or no later than 6 months before the 40th anniversary of the date of final commissioning of the first phase of Work No. 1 as notified by the undertaker pursuant to requirement 4 (phasing of the authorised development and date of final commissioning), the undertaker must submit a decommissioning environmental management plan and a decommissioning traffic management plan for that part.

(2) The plans must be submitted to the local planning authority for that part (or both local planning authorities where that part falls within the administrative areas of both South Derbyshire District Council and Derbyshire County Council) for approval.

(3) Decommissioning must commence no later than 40 years following the date of final commissioning of the first phase of Work No. 1.

(4) The undertaker must provide notice to the local planning authority once any part of the authorised development stops generating electricity for more than 6 months. If, by expiry of the period of 12 continuous months beginning with the date of the notice, and unless otherwise agreed in writing by the undertaker and the relevant local planning authority, that part of the authorised development does not re-generate electricity, then within 3 months the undertaker must submit to the local planning authority for that part (or both local planning authorities where that part falls within the administrative areas of both South Derbyshire District Council and Derbyshire County Council) for approval a decommissioning environmental management plan and a decommissioning traffic management plan for that part.

(5) The plans submitted and approved must be substantially in accordance with the relevant part of the outline decommissioning environmental management plan.

(6) The decommissioning environmental management plan submitted and approved must include—

(a) a resource management plan that includes details of proposals to minimise the use of natural resources and unnecessary materials; and

(b) details of measures to be adopted including pre-decommissioning surveys to protect species defined as a European Protected Species in regulation 42 (European protected species of animals) and 46 (European protected species of plants) of the Conservation of Habitats and Species Regulations 2017 or any species to which Part I (wildlife) and Schedule 5 (animals which are protected) of the Wildlife and Countryside Act 1981(**b**) applies.

(7) No decommissioning works may be carried out until the local planning authority or both relevant local planning authorities (as applicable) has/have approved the plans submitted in relation to such works in consultation with the Environment Agency and Natural England.

(8) The plans must be implemented as approved, and decommissioning of that part of the authorised development to which a plan relates must be completed within 2 years of such approval, or such other time period as is agreed in writing between the undertaker and the local planning authority.

(9) This requirement is without prejudice to any other consents or permissions which may be required to decommission any part of the authorised development.

Skills, supply chain and employment

65.—(1) No part of the authorised development may commence until a skills, supply chain and employment plan in relation to that part has been submitted to and approved by the local planning authority.

(**a**) 1981 c. 69.
(**b**) 1981 c. 69.

(2) The skills, supply chain and employment plan must be substantially in accordance with the outline skills, supply chain and employment plan.

(3) Any plan under this paragraph must identify opportunities for individuals and businesses to access employment and supply chain opportunities associated with that part of the authorised development and the means for publicising such opportunities.

(4) The skills, supply chain and employment plan must be implemented as approved and maintained throughout the operation of the relevant part of the authorised development to which the plan relates.

Requirement for written approval

66. Where the approval, agreement or confirmation of the Secretary of State, local planning authority or another person is required under a requirement that approval, agreement or confirmation must be given in writing.

Amendments to approved details

67.—(1) With respect to any requirement which requires the authorised development to be carried out in accordance with the details approved by the local planning authority, the approved details must be carried out as approved unless an amendment or variation has previously been approved in writing by the local planning authority in accordance with sub-paragraph (2).

(2) Any amendments to or variations from the approved details must be in accordance with the principles and assessments set out in the environmental statement. Such agreement may only be given in relation to immaterial changes where it has been demonstrated to the local planning authority that the subject matter of the agreement sought is unlikely to give rise to any materially new or materially different environmental effects compared to those identified in the environmental statement.

(3) The approved details must be taken to include any amendments that may subsequently be approved in writing by the local planning authority.

Consultation

68. Where the local planning authority is required by this Order or other statute to consult with another person or body prior to discharging a requirement, the undertaker must consult with such person or body prior to making an application to discharge the requirement.

PART 3

PROCEDURE FOR DISCHARGE OF REQUIREMENTS

Interpretation

69. In this Part of this Schedule, "relevant authority" means—

(a) any body, other than the Secretary of State, responsible for giving any consent, agreement or approval required by a requirement included in Part 2 of this Schedule, or for giving any consent, agreement or approval further to any document referred to in any such requirement; or

(b) the local authority in the exercise of its functions set out in sections 60 (control of noise on construction sites) and 61 (prior consent for work on construction sites) of the Control of Pollution Act 1974 subsequently referred to as "the 1974 Act"(**a**).

(**a**) 1974 c. 40. Section 61 was amended by Schedule 7 to the Building Act 1984 (c. 55), Schedule 15 to the Environmental Protection Act 1990 (c. 43) and Schedule 24 to the Environment Act 1995 (c. 25).

Applications made under requirements

70.—(1) Where an application has been made to the relevant authority for any consent, agreement or approval required by a requirement, or for any consent, agreement or approval further to any document referred to in any such requirement, the relevant 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 relevant authority; or

(b) where further information is requested under paragraph 30, the day immediately following that on which the further information has been supplied by the undertaker,

or such longer period that is agreed in writing between the undertaker and the relevant authority.

(2) In determining any application made to the relevant authority for any consent, agreement or approval required by a requirement contained in Part 2 of this Schedule, the relevant authority may—

(a) give or refuse its consent, agreement or approval; or

(b) give its consent, agreement or approval subject to reasonable conditions,

and where consent, agreement or approval is refused or granted subject to conditions the relevant authority must provide its reasons for that decision with the notice of the decision.

(3) In the event the relevant authority does not determine an application within the period set out in sub-paragraph (1), the relevant authority is to be taken to have granted all parts of the application (without any condition or qualification) at the end of that period.

Further information regarding requirements

71.—(1) In relation to any application referred to in paragraph 28, the relevant authority may request such further information from the undertaker as it considers necessary to enable it to consider the application.

(2) If the relevant authority considers that further information is necessary and the requirement concerned does not specify that consultation with a consultee is required, the relevant authority must, within ten business days of receipt of the application, notify the undertaker in writing specifying the further information required.

(3) If the requirement concerned specifies that consultation with a consultee is required, the relevant authority must issue the application to the consultee within five business days of receipt of the application, and notify the undertaker in writing specifying any further information requested by the consultee within five business days of receipt of such a request.

(4) If the relevant authority does not give the notification within the period specified in sub-paragraph (2) or (3) it (and the consultee, as the case may be) is deemed to have sufficient information to consider the application and is not entitled to request further information without the prior agreement of the undertaker.

Appeals

72.—(1) Where a person ("the applicant") makes an application to a relevant authority, the applicant may appeal to the Secretary of State in the event that—

(a) the relevant authority refuses an application for any consent, agreement or approval required by—

(i) a requirement contained in Part 2 of this Schedule; or

(ii) a document referred to in any requirement contained in Part 2 of this Schedule;

(b) the relevant authority grants such an application subject to conditions;

(c) the relevant authority issues a notice further to sections 60 (control of noise on construction sites) or 61 (prior consent for work on construction sites) of the 1974 Act;

(d) on receipt of a request for further information pursuant to paragraph 29 of this Schedule, the applicant considers that either the whole or part of the specified information requested by the relevant authority is not necessary for consideration of the application; or

(e) on receipt of any further information requested, the relevant authority notifies the applicant that the information provided is inadequate and requests additional information which the applicant considers is not necessary for consideration of the application.

(2) The appeal process is as follows—

(a) any appeal by the applicant must be made within 42 days of the date of the notice of the decision or determination, or (where no determination has been made) the expiry of the time period set out in paragraph 28(1), giving rise to the appeal referred to in sub-paragraph (1);

(b) the applicant 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 authority and any consultee specified under the relevant requirement;

(c) as soon as is practicable after receiving the appeal documentation, the Secretary of State must appoint a person to consider the appeal ("the appointed person") and must notify the appeal parties of the identity of the appointed person and the address to which all correspondence for the attention of the appointed person should be sent;

(d) the relevant authority and any consultee (if applicable) must submit their written representations together with any other representations to the appointed person in respect of the appeal within ten business days of the start date specified by the appointed person and must ensure that copies of their written representations and any other representations as sent to the appointed person are sent to each other and to the applicant on the day on which they are submitted to the appointed person;

(e) the applicant must make any counter-submissions to the appointed person within ten business days of receipt of written representations pursuant to sub-paragraph (d) above; and

(f) the appointed person must make a decision and notify it to the appeal parties, with reasons, as soon as reasonably practicable after the end of the ten day period for counter-submissions under sub-paragraph (e).

(3) The appointment of the appointed person pursuant to sub-paragraph (2)(c) may be undertaken by a person appointed by the Secretary of State for this purpose instead of by the Secretary of State.

(4) In the event that the appointed person considers that further information is necessary to enable the appointed person to consider the appeal the appointed person must as soon as practicable 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.

(5) Any further information required pursuant to sub-paragraph (4) must be provided by the party from whom the information is sought to the appointed person and to the other appeal parties by the date specified by the appointed person. 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 ten business days of the date specified by the appointed person, but must otherwise be in accordance with the process and time limits set out in sub-paragraphs (2)(d) to (f).

(6) On an appeal under this paragraph, the appointed person may—

(a) allow or dismiss the appeal; or

(b) reverse or vary any part of the decision of the relevant 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 the appointed person in the first instance.

(7) The appointed person may proceed to a decision on an appeal taking into account such written representations as have been sent within the relevant time limits and in the sole discretion of the appointed person such written representations as have been sent outside of the relevant time limits.

(8) 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 the appointed person that there is sufficient material to enable a decision to be made on the merits of the case.

(9) The decision of the appointed person on an appeal is final and binding on the parties, and a court may entertain proceedings for questioning the decision only if the proceedings are brought by a claim for a judicial review.

(10) If an approval is given by the appointed person pursuant to this Part of this Schedule, it is deemed to be an approval for the purpose of Part 2 of this Schedule as if it had been given by the relevant authority. The relevant 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.

(11) Save where a direction is given pursuant to sub-paragraph (12) requiring the costs of the appointed person to be paid by the relevant authority, the reasonable costs of the appointed person are to be met by the applicant.

(12) On application by the relevant authority or the applicant, the appointed person may give directions as to the costs of the appeal and as to the parties by whom the costs of the appeal are to be paid. In considering whether to make any such direction and the terms on which it is to be made, the appointed person must have regard to relevant guidance on the Planning Practice Guidance website or any official circular or guidance which may from time to time replace it.

Fees

73.—(1) Where an application is made to the local planning authority for written consent, agreement or approval in respect of a requirement, 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 and must be paid to the local 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 local planning authority failing to determine the application within eight weeks from the relevant date in paragraph 28(1) unless—

(i) within that period the undertaker agrees, in writing, that the fee is to be retained by the local planning authority and credited in respect of a future application; or

(ii) a longer period of time for determining the application has been agreed pursuant to paragraph 28(1) of this Schedule.

SCHEDULE 2

Article 8

STREETS SUBJECT TO STREET WORKS

(1) Area	*(2) Street subject to street works*	*(3) Description of works*
Derbyshire	Walton Road	Cable works at the point marked SW-B1 on sheet 1 of the streets, access and rights of way plan
Derbyshire	Rosliston Road	Cable works at the point marked SW-C1 on sheet 2 of the streets, access and rights of way plan

(**a**) S.I. 2012/2920, amended by S.I. 2013/2153, S.I. 2014/357, S.I. 2014/643, S.I. 2017/1314, S.I. 2019/1154 and S.I. 2023/1197.

Derbyshire	Coton Road	Cable works at the point marked SW-D1 on sheets 3 and 4 of the streets, access and rights of way plan

SCHEDULE 3

Article 9

ALTERATION OF STREETS

PART 1

PERMANENT ALTERATION TO LAYOUT

(1) Area	*(2) Street Subject to alteration*	*(3) Extent of alterations*
Derbyshire	Walton Road	Works for provision of a permanent private means of access (Drakelow Access) at the point marked AS-B1 on sheet 1 of the streets, access and rights of way plan
Derbyshire	Rosliston Road (south)	Works for the provision of a permanent private means of access (Rosliston emergency access) at the point marked AS-C1 on sheet 2 of the streets, access and rights of way plan
Derbyshire	Coton Road	Works for the provision of a permanent private means of access (Southern Crossroad) at the point marked AS-D1 on sheet 4 of the streets, access and rights of way plan
Derbyshire	Coton Road	Works for the provision of a permanent private means of access (Southern Crossroad) at the point marked AS-D2 on sheet 4 of the streets, access and rights of way plan
Derbyshire	Coton Road	Vegetation clearance for the creation of visibility splays at the point marked AS-D3 on sheet 4 of the streets, access and rights of way plan
Derbyshire	Coton Road	Vegetation clearance for the creation of visibility splays at the point marked AS-D4 on sheet 4 of the streets, access and rights of way plan
Derbyshire	Coton Road	Works for the provision of a permanent means of access at the point marked AS-F1 on sheet 4 of the streets, access and rights of way plan

PART 2

TEMPORARY ALTERATION TO LAYOUT

(1) Area	*(2) Street subject to alteration*	*(3) Extent of alterations*
Derbyshire	Walton Road	Works for the provision of a temporary means of access (Park Farm Eastern Access) at the point marked AS-A1 on sheet 1 of the streets, access and rights of way plan
Derbyshire	Track at Park Farm	Works for the provision of a temporary means of access at the point marked AS-C1 on sheet 2 of the streets, access and rights of way plan
Derbyshire	Walton Road	Works for the provision of a temporary means of access at the point marked AS-A3 on sheet 1 of the streets, access and rights of way plan
Derbyshire	Rosliston Road (north)	Works for the provision of a temporary means of access at the point marked AS-C1 on sheet 2 of the streets, access and rights of way plan

SCHEDULE 4

Article 10

ACCESS TO WORKS

PART 1

PERMANENT PRIVATE MEANS OF ACCESS TO WORKS

(1) Area	*(2) Reference as shown on the streets, access and rights of way plan*	*(3) Description of access*
Derbyshire	AC-D1 to AC-D2	Improved permanent construction and decommissioning access, as shown on sheet 4 of the streets, access and rights of way plan
Derbyshire	AC-D3 to AC-D4	Improved permanent construction and decommissioning access, as shown on sheet 4 of the streets, access and rights of way plan

PART 2

TEMPORARY PRIVATE MEANS OF ACCESS

(1) Area	*(2) Reference as shown on the streets, access and rights of way plan*	*(3) Description of access*
Derbyshire	AC-A1 to AC-A2	New temporary construction and decommissioning access, as shown on sheet 1 of the streets, access and rights of way plan
Derbyshire	AC-A3 to AC-A4	Improved temporary construction and decommissioning access, as shown on sheet 1 of the streets, access and rights of way plan
Derbyshire	AC-A5 to AC-A6	Improved temporary construction and decommissioning access, as shown on sheet 1 of the streets, access and rights of way plan
Derbyshire	AC-C1 to AC-C2	New temporary construction and decommissioning access, as shown on sheet 2 of the streets, access and rights of way plan
Derbyshire	AC-C3 to AC-C4	New temporary construction and decommissioning access, and permanent emergency access, as shown on sheet 2 of the streets, access and rights of way plan
Derbyshire	AS-A2	Improved temporary construction and decommissioning access, as shown on sheet 1 of the streets, access and rights of way plan

SCHEDULE 5

Article 11

PUBLIC RIGHTS OF WAY TO BE TEMPORARILY CLOSED

(1) *Area*	*(2)* *Public right of way to be temporarily closed*	*(3)* *Extent of temporary stopping up*
Derbyshire	SD48/9/1	499m as shown on sheets 2 and 3 of the streets, access and rights of way plan

SCHEDULE 6

Article 19

LAND IN WHICH ONLY NEW RIGHTS ETC. MAY BE ACQUIRED

In this Schedule—

"access rights" means rights over land to—

(c) alter, improve, form, maintain, retain, use (with or without vehicles, plant and machinery), remove, reinstate means of access to the authorised development including visibility splays and road widening and to remove impediments (including vegetation) to such access;

(d) 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

(e) restrict and remove the erection of buildings or structures, restrict the altering of ground levels, restrict and remove vegetation and restrict the planting of trees or carrying out operations or actions (including but not limited to blasting and piling) which may obstruct, interrupt or interfere with the exercise of the rights or damage the authorised development;

"cable rights" means rights over land to—

(f) install, use, support, protect, inspect, alter, remove, replace, retain, renew, improve and maintain electrical underground cables, earthing cables, optical fibre cables, data cables, telecommunications cables and other services, works associated with such cables including bays, ducts, protection and safety measures and equipment, and other apparatus and structures;

(g) 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

(h) restrict and remove the erection of buildings or structures, restrict the altering of ground levels, restrict and remove vegetation and restrict the planting of trees or carrying out operations or actions (including but not limited to blasting and piling) which may obstruct, interrupt or interfere with the exercise of the rights or damage the authorised development;

"substation connection rights" means rights over land to—

(i) install, use, support, protect, inspect, alter, remove, replace, retain, renew, improve and maintain electrical cables, earthing cables, optical fibre cables, data cables, telecommunications cables and other services, works associated with such cables including bays, ducts, protection and safety measures and equipment, and other apparatus and structures and to connect such cables and services to the National Grid Drakelow substation;

(j) 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;

(k) 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

(l) install, use, support, protect, inspect, alter, remove, replace, retain, renew, improve and maintain soft landscaping measures.

(1) Plot numbers(s)	*(2) Work No.*	*(3) Purpose for which rights may be acquired and restrictive covenants imposed*
01-012, 01-013, 01-014, 01-015, 01-016, 01-017, 01-018, 01-019, 01-020, 01-021, 01-022, 01-023, 01-024, 01-025,	6	Access rights

01-026, 01-027, 01-028, 01-029, 01-030, 02-034, 02-035, 02-038, 02-039, 02-040, 02-041, 02-042, 02-044, 02-046, 02-049		
02-043, 02-047, 02-050, 03-058, 03-059 01-015, 01-019, 01-020, 01-021, 01-022, 02-040, 02-041, 02-042, 02-043, 02-044, 02-046, 02-047, 02-049, 02-050, 03-059	7	Access rights and cable rights
01-012, 01-013, 01-014, 01-015, 01-016, 01-017, 01-018, 01-019, 01-020, 01-024, 01-028, 01-030, 02-031, 02-032, 02-033, 02-035, 02-036, 02-037, 02-038, 02-040, 02-041, 02-042, 02-043, 02-046, 02-047	8	Access rights
02-040, 02-041, 02-042, 02-043, 02-046, 02-047	4	Cable rights
01-030, 02-031, 02-032, 02-033, 02-035, 02-038, 02-040, 02-043, 02-046, 02-047	4a	Cable rights
01-012, 01-013, 01-014	4b	Cable rights
01-001, 01-002, 01-003, 01-004, 01-007, 01-008, 01-009, 01-010, 01-011	4c	Cable rights
01-004, 01-010, 01-011	5	Substation connection rights
01-001, 01-002, 01-004, 01-007, 01-008, 01-009	5a, 5b	Access rights

SCHEDULE 7

Article 19

MODIFICATION OF COMPENSATION AND COMPULSORY PURCHASE ENACTMENTS FOR THE CREATION OF NEW RIGHTS AND IMPOSITION OF NEW RESTRICTIVE COVENANTS

74. The enactments for the time being in force with respect to compensation for the compulsory purchase of land apply, with the necessary modifications as respects compensation, in the case of a compulsory acquisition under this Order of a right by the creation of a new right or the imposition of a restrictive covenant as they apply as respects compensation on the compulsory purchase of land and interests in land.

75.—(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

(**a**) 1973 c. 26.

(b) for the words "acquired or taken from him" substitute "over which the right is exercisable or the restrictive covenant enforceable".

76.—(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) For section 5A(5A) (relevant valuation date) of the 1961 Act, substitute—

"(5A) If—

(a) the acquiring authority enters on land for the purpose of exercising a right in pursuance of a notice of entry under section 11(1) of the 1965 Act (as modified by paragraph 8 of Schedule 7 to the Oaklands Farm Solar Park Order 2025);

(b) the acquiring authority is subsequently required by a determination under paragraph 12 of Schedule 2A to the 1965 Act (as substituted by paragraph 11 of Schedule 7 to the Oaklands Farm Solar Park Order 2025) 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 sub-section (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

77.—(1) 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 17 (compulsory acquisition of land) and as modified by article 24 (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 19 (compulsory acquisition of rights)—

(a) with the modifications specified in paragraph 5; and

(b) with such other modifications as may be necessary.

78.—(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.

79. For section 7 of the 1965 Act (measure of compensation in the 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.".

80. 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 (persons without power to sell their interests);

(c) paragraph 2(3) of Schedule 2 (absent and untraced owners); and

(d) paragraphs 2(3) and 7(2) of Schedule 4 (common land),

are so modified as 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.

81. Section 11 (powers of entry)(**a**) of the 1965 Act is so modified as 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 17 (compulsory acquisition of land), it has power, exercisable in equivalent circumstances and subject to equivalent conditions, to enter for the purpose of exercising that right or enforcing that restrictive covenant (which is deemed for this purpose to have been created on the date of service of the notice); and sections 11A (powers of entry: further notices of entry)(**b**), 11B (counter-notice requiring possession to be taken on specified date)(**c**), 12 (penalty for unauthorised entry)(**d**) and 13 (refusal to give possession to acquiring authority)(**e**) of the 1965 Act is modified correspondingly.

82. Section 20 (tenants at will, etc.)(**f**) of the 1965 Act applies with the modifications necessary to secure that persons with such interests in land as are mentioned in that section are compensated in a manner corresponding to that in which they would be compensated on a compulsory acquisition under this Order of that land, but taking into account only the extent (if any) of such interference with such an interest as is actually caused, or likely to be caused, by the exercise of the right or the enforcement of the restrictive covenant in question.

83. Section 22 (interests omitted from purchase) of the 1965 Act 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.

84. For Schedule 2A (counter notice requiring purchase of land not in notice to treat) to the 1965 Act substitute—

"SCHEDULE 2A

COUNTER-NOTICE REQUIRING PURCHASE OF LAND

Introduction

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 21 (application of the 1981 Act) of the Oaklands Farm Solar Park Order 2025 in respect of the land to which the notice to treat relates.

(2) But see article 22(3) (acquisition of subsoil only) Oaklands Farm Solar Park Order 2025 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.

(**a**) Section 11 was amended by section 34(1) of, and Schedule 4 to, the Acquisition of Land Act 1981 (c. 67), 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 4 and paragraph 3 of Schedule 16 to, the Housing and Planning Act 2016 (c. 22) and S.I. 2009/1307.

(**b**) Section 11A was inserted by section 186(3) of the Housing and Planning Act 2016.

(**c**) Section 11B was inserted by section 187(3) of the Housing and Planning Act 2016.

(**d**) Section 12 was amended by paragraph (4) of Schedule 16 to the Housing and Planning Act 2016 (c. 22).

(**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.

4. A counter-notice under paragraph 3 must be served within the period of 28 days beginning with the day on which the notice to treat was served.

Response to counter-notice

5. On receiving a counter-notice, the acquiring authority must decide whether to—

(a) withdraw the notice to treat,

(b) accept the counter-notice, or

(c) refer the counter-notice to the Upper Tribunal.

6. The authority must serve notice of their decision on the owner within the period of 3 months beginning with the day on which the counter-notice is served ("the decision period").

7. If the authority decides to refer the counter-notice to the Upper Tribunal they must do so within the decision period.

8. If the authority does not serve notice of a decision within the decision period they are to be treated as if they had served notice of a decision to withdraw the notice to treat at the end of that period.

9. If the authority serves notice of a decision to accept the counter-notice, the compulsory purchase order and the notice to treat are to have effect as if they included the owner's interest in the house, building or factory.

Determination by the Upper Tribunal

10. On a referral under paragraph 7, the Upper Tribunal must determine whether the acquisition of the right or the imposition of the restrictive covenant would—

(a) in the case of a house, building or factory, cause material detriment to the house, building or factory, or

(b) in the case of a park or garden, seriously affect the amenity or convenience of the house to which the park or garden belongs.

11. In making its determination, the Upper Tribunal must take into account—

(a) the effect of the acquisition of the right or the imposition of the covenant,

(b) the use to be made of the right or covenant proposed to be acquired or imposed, and

(c) if the right or covenant is proposed to be acquired or imposed for works or other purposes extending to other land, the effect of the whole of the works and the use of the other land.

12. If the Upper Tribunal determines that the acquisition of the right or the imposition of the covenant would have either of the consequences described in paragraph 10, it must determine how much of the house, building or factory the authority ought to be required to take.

13. If the Upper Tribunal determines that the authority ought to be required to take some or all of the house, building or factory, the compulsory purchase order and the notice to treat are to have effect as if they included the owner's interest in that land.

14.—(1) If the Upper Tribunal determines that the authority ought to be required to take some or all of the house, building or factory, the authority may at any time within the period of 6 weeks beginning with the day on which the Upper Tribunal makes its determination withdraw the notice to treat in relation to that land.

(2) If the acquiring authority withdraws the notice to treat under this paragraph they must pay the person on whom the notice was served compensation for any loss or expense caused by the giving and withdrawal of the notice.

(3) Any dispute as to the compensation is to be determined by the Upper Tribunal.".

SCHEDULE 8

Article 26

LAND OF WHICH TEMPORARY POSSESSION MAY BE TAKEN

(1) Plot reference number shown on the Land Plans	*(2) Purpose for which temporary possession may be taken*
01-021	Works for the provision of a temporary means of access at the point marked AS-A3 on sheet 1 of the streets, access and rights of way plan and improved temporary construction and decommissioning access between the points marked AC-A5 to AC-A6 shown on sheet 1 of the streets, access and rights of way plan
03-058	Works pursuant to Article 9 (power to alter layout, etc., of streets) and Article 10 (access to works)at the plot marked 03-058 on sheet 3 of the land plans

SCHEDULE 9

Article 36

HEDGEROWS

PART 1

REMOVAL OF IMPORTANT HEDGEROWS

(1) Plan	*(2) Important Hedgerow*	*(3) Work*
Figure 2.09b of the Important Hedgerows Plan	H25	Removal of 5m of hedgerow H25 at the north of field F1 within the underground cable corridor
Figure 2.09b of the Important Hedgerows Plan	H28	Removal of 5m of hedgerow H28 along Rosliston Road for the temporary access track
Figure 2.09b of the Important Hedgerows Plan	H89 north	Removal of 5m of hedgerow H28 along Rosliston Road for the temporary access track
Figure 2.09b of the Important Hedgerows Plan	H87	Removal of 5m of hedgerow H87 within field O24 for the underground cable corridor
Figure 2.09c of the Important Hedgerows Plan	H66	Removal of 10 linear meters of hedgerow in the north east of field O19 may be necessary to widen the existing field access
Figure 2.09c of the Important Hedgerows Plan	H45	Removal of 5m section of hedgerow H45 to the east of field O12 within the underground cable corridor
Figure 2.09c of the Important Hedgerows Plan	H44 east	Removal of 6m of hedgerow for a construction access track
Figure 2.09c of the Important Hedgerows Plan	H70	Removal of 3.5m section of hedgerow H70 to the south of field O9, for a temporary access track

Figure 2.09c of the Important Hedgerows Plan	H89 south	Removal of 3.5m section of hedgerow H89 south in the south west of field O9, to accommodate a minor track realignment
Figure 2.09c of the Important Hedgerows Plan	H79	Removal of 3.5m Existing gap in hedgerow to be utilised with some widening being required
Figure 2.09c of the Important Hedgerows Plan	H53	Removal of 3.5m Existing gap in hedgerow to be utilised with some widening being required
Figure 2.09c of the Important Hedgerows Plan	H41 north	Removal of 60m of H41 along Coton Road within the required visibility splay
Figure 2.09c of the Important Hedgerows Plan	H50 north	Removal of 120m of H50 along Coton Road within the required visibility splay

PART 2

REMOVAL OF HEDGEROWS

(1) Plan	*(2) Hedgerow*	*(3) Work*
Figure 2.09a of the Important Hedgerows Plan	H2	Removal of 3m of hedgerow H2 where the underground cable route turns north to cross Walton Road

SCHEDULE 10

Article 41

PROTECTIVE PROVISIONS

PART 1

FOR THE PROTECTION OF ELECTRICITY, GAS, WATER AND SEWERAGE UNDERTAKERS

85. For the protection of the utility undertakers referred to in this Part of this Schedule, the following provisions have effect, unless specific provision to the contrary is made in this Schedule 10 or otherwise agreed in writing between the undertaker and the utility undertakers concerned.

86. In this Part of this Schedule—

"alternative apparatus" means alternative apparatus adequate to enable the utility undertaker in question to fulfil its statutory functions in a manner not less efficient than previously;

"apparatus" means—

(a) in the case of an electricity undertaker, electric lines or electrical plant (as defined in the 1989 Act), 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(**a**);

(d) in the case of a sewerage undertaker—

(i) any drain or works vested in the utility undertaker under the Water Industry Act 1991; 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—

(e) any licence holder within the meaning of Part 1 (electricity supply) of the 1989 Act;

(f) a gas transporter within the meaning of Part 1 (gas supply) of the Gas Act 1986(**b**);

(g) a water undertaker within the meaning of the Water Industry Act 1991; or

(h) a sewerage undertaker within the meaning of Part 1 (preliminary) 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.

87. This Part of this Schedule does not apply to apparatus in respect of which the relations between the undertaker and the utility undertaker are regulated by the provisions of Part 3 of the 1991 Act.

88. Regardless of any provision in this Order or anything shown on the land plans, the undertaker must not acquire any apparatus otherwise than by agreement.

89.—(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 may not be removed under this Part of this Schedule and any right of ,a utility undertaker to maintain that apparatus in that land and to gain access to it may 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.

(**a**) 1991 c. 56.

(**b**) 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) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of the undertaker, or the undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraph (2), in the land in which the alternative apparatus or part of such apparatus is to be constructed, the utility undertaker in question must, on receipt of a written notice to that effect from the undertaker, as soon as reasonably possible use reasonable endeavours to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed.

(4) Any alternative apparatus to be constructed in land of the undertaker under this Part of this Schedule must be constructed in such manner and in such line or situation as may be agreed between the utility undertaker in question and the undertaker or in default of agreement settled by arbitration in accordance with article 38 (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 38 (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 Part of this Schedule.

(6) Regardless of anything in sub-paragraph (5), if the undertaker gives notice in writing to the utility undertaker in question that it desires itself to execute any work, or part of any work, in connection with the construction or removal of apparatus in any land controlled by the undertaker, that work, instead of being executed by the utility undertaker, must be executed by the undertaker without unnecessary delay under the superintendence, if given, and to the reasonable satisfaction of the utility undertaker.

(7) Nothing in sub-paragraph (6) authorises the undertaker to execute the placing, installation, bedding, packing, removal, connection or disconnection of any apparatus, or execute any filling around the apparatus (where the apparatus is laid in a trench) within 300 millimetres of the apparatus.

90.—(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to a utility undertaker facilities and rights for the construction and maintenance in land of the undertaker of alternative apparatus in substitution for apparatus to be removed, those facilities and rights must be granted upon such terms and conditions as may be agreed between the undertaker and the utility undertaker in question or in default of agreement settled by arbitration in accordance with article 38 (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.

91.—(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 5(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 6 apply as if the removal of the apparatus had been required by the undertaker under paragraph 5(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.

92.—(1) Subject to the following provisions of this paragraph, the undertaker must repay to an affected 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 5(2).

(2) There is to be deducted from any sum payable under sub-paragraph (1) the value of any apparatus removed under the provisions of this Part of this Schedule, that value being calculated after removal.

(3) If in accordance with the provisions of this Part of this Schedule—

(a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions; or

(b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was,

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or, in default of agreement, is not determined by arbitration in accordance with article 38 (arbitration) to be necessary, then, if such placing involves cost in the construction of works under this Part of this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to the utility undertaker in question by virtue of sub-paragraph (1) is to be reduced by the amount of that excess.

(4) For the purposes of sub-paragraph (3)—

(a) an extension of apparatus to a length greater than the length of existing apparatus is not to be treated as a placing of apparatus of greater dimensions than those of the existing apparatus where such extension is required in consequence of the execution of any such works as are referred to in paragraph 5(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.

93.—(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 5(2), any damage is caused to any apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the

purposes of those works) or property of a utility undertaker, or there is any interruption in any service provided, or in the supply of any goods, by any utility undertaker, the undertaker must—

(a) bear and pay the cost reasonably incurred by that utility undertaker in making good such damage or restoring the supply; and

(b) make reasonable compensation to that utility undertaker for any other expenses, loss, damages, penalty or costs incurred by the utility undertaker,

by reason or in consequence of any such damage or interruption.

(2) Nothing in sub-paragraph (1) imposes any liability on the undertaker with respect to any damage or interruption to the extent that it is attributable to the act, neglect or default of a utility undertaker, its officers, servants, contractors or agents.

(3) A utility undertaker must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise is to be made without the consent of the undertaker which, if it withholds such consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

94. Nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and a utility undertaking in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

PART 2

FOR THE PROTECTION OF NATIONAL GRID ELECTRICITY TRANSMISSION PLC AS ELECTRICITY UNDERTAKER

Application

95.—(1) For the protection of National Grid Electricity Transmission Plc as referred to in this Part of this Schedule the following provisions have effect, unless otherwise agreed in writing between the undertaker and National Grid Electricity Transmission Plc.

(2) Subject to sub-paragraph (3) or to the extent otherwise agreed in writing between the undertaker and National Grid Electricity Transmission Plc, where the benefit of this Order is transferred or granted to another person under article 5 (consent to transfer 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 Electricity Transmission Plc and the transferee or grantee (as the case may be); and

(b) written notice of the transfer or grant must be given to National Grid Electricity Transmission Plc on or before the date of that transfer or grant.

(3) Sub-paragraph (2) does not apply where the benefit of the Order is transferred or granted to National Grid Electricity Transmission Plc (but without prejudice to article 5(3)b).

Interpretation

96. In this Part of this Schedule—

"acceptable credit provider" means a bank or financial institution with a credit rating that is not lower than: (i) "A-" if the rating is assigned by Standard & Poor's Ratings Group or Fitch Ratings; and (ii) "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 Grid Electricity Transmission Plc

(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:

(c) a parent company guarantee from a parent company in favour of National Grid Electricity Transmission Plc to cover the undertaker's liability to National Grid Electricity Transmission Plc to a total liability cap of £50,000,000.00 (fifty million pounds) (in a form reasonably satisfactory to National Grid Electricity Transmission Plc and where required by National Grid Electricity Transmission Plc, accompanied with a legal opinion confirming the due capacity and authorisation of the parent company to enter into and be bound by the terms of such guarantee); or

(d) a bank bond or letter of credit from an acceptable credit provider in favour of National Grid Electricity Transmission Plc to cover the undertaker's liability to National Grid Electricity Transmission Plc for an amount of not less than £10,000,000.00 (ten million pounds) per asset per event up to a total liability cap of £50,000,000.00 (fifty million pounds) (in a form reasonably satisfactory to National Grid Electricity Transmission Plc);

"alternative apparatus" means appropriate alternative apparatus to the satisfaction of National Grid Electricity Transmission Plc to enable National Grid Electricity Transmission Plc to fulfil its statutory functions in a manner no less efficient than previously;

"apparatus" means any electric lines or electrical plant as defined in the 1989 Act, belonging to or maintained by National Grid Electricity Transmission Plc together with any replacement apparatus and such other apparatus constructed pursuant to the Order that becomes operational apparatus of National Grid Electricity Transmission Plc for the purposes of transmission, distribution and/or supply and includes any structure in which apparatus is or will be lodged or which gives or will give access to apparatus;

"commence" and "commencement" in this Part of this Schedule shall include any below ground surveys, monitoring, ground work operations or the receipt and erection of construction plant and equipment;

"deed of consent" means a deed of consent, crossing agreement, deed of variation or new deed of grant agreed between the parties acting reasonably in order to vary or replace existing easements, agreements, enactments and other such interests so as to secure land rights and interests as are necessary to carry out, maintain, operate and use the apparatus in a manner consistent with the terms of this Part of this Schedule;

"functions" includes powers and duties;

"ground mitigation scheme" means a scheme approved by National Grid Electricity Transmission Plc (such approval not to be unreasonably withheld or delayed) setting out the necessary measures (if any) for a ground subsidence event;

"ground monitoring scheme" means a scheme for monitoring ground subsidence which sets out the apparatus which is to be subject to such monitoring, the extent of land to be monitored, the manner in which ground levels are to be monitored, the timescales of any monitoring activities and the extent of ground subsidence which, if exceeded, shall require the undertaker to submit for National Grid Electricity Transmission Plc's approval a ground mitigation scheme;

"ground subsidence event" means any ground subsidence identified by the monitoring activities set out in the ground monitoring scheme that has exceeded the level described in the ground monitoring scheme as requiring a ground mitigation scheme;

"in" in a context referring to apparatus or alternative apparatus in land includes a reference to apparatus or alternative apparatus under, over, across, along or upon such land;

"incentive deduction" means any incentive deduction National Grid Electricity Transmission Plc receives under its electricity transmission licence which is caused by an event on its transmission system that causes electricity not to be supplied to a demand customer and which arises as a result of the authorised works;

"maintain" and "maintenance" shall include the ability and right to do any of the following in relation to any apparatus or alternative apparatus of National Grid Electricity Transmission Plc: construct, use, repair, alter, inspect, renew or remove the apparatus;

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

"NGESO" 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 Electricity Transmission Plc 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:

(e) will or may be situated over, or within 15 metres measured in any direction of any apparatus the removal of which has not been required by the undertaker under paragraph 17(2) or otherwise; and/or

(f) may in any way adversely affect any apparatus the removal of which has not been required by the undertaker under paragraph 17(2) or otherwise; and/or

(g) includes any of the activities that are referred to in development near overhead lines EN43-8 and HSE's guidance note 6 "Avoidance of Danger from Overhead Lines".

"STC" means the System Operator Transmission Owner Code prepared by the electricity Transmission Owners and NGESO as modified from time to time;

"STC Claims" means any claim made under the STC against National Grid Electricity Transmission Plc arising out of or in connection with the de-energisation (whereby no electricity can flow to or from the relevant system through the generator or interconnector's equipment) of a generator or interconnector party solely as a result of the de-energisation of plant and apparatus forming part of National Grid Electricity Transmission Plc's transmission system which arises as a result of the authorised works; and

"Transmission Owner" means as defined in the STC.

On Street Apparatus

97. Except for paragraphs 14 (apparatus in temporarily closed streets), 19 (retained apparatus: protection), 20 (expenses) and 21 (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 Electricity Transmission Plc, the other provisions of this Schedule do not apply to apparatus in respect of which the relations between the undertaker and National Grid Electricity Transmission Plc are regulated by the provisions of Part 3 of the 1991 Act.

Apparatus of National Grid Electricity Transmission Plc in temporarily closed streets

98. Notwithstanding the temporary stopping up or diversion of any highway under the powers of article 11 (temporary closure of public rights of way), National Grid Electricity Transmission Plc is at liberty at all times to take all necessary access across any such temporarily closed 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 closure or diversion was in that highway.

Protective works to buildings

99. The undertaker, in the case of the powers conferred by article 15 (protective works to buildings), must exercise those powers so as not to obstruct or render less convenient the access to any apparatus without the written consent of National Grid Electricity Transmission Plc.

Acquisition of land

100.—(1) Regardless of any provision in this Order or anything shown on the land plans or contained in the book of reference to the Order, the undertaker may not (a) appropriate or acquire or take temporary possession of any land or apparatus or (b) appropriate, acquire, extinguish, interfere with or override any easement, other interest or right and/or apparatus of National Grid Electricity Transmission Plc otherwise than by agreement.

(2) As a condition of an agreement between the parties in sub-paragraph (1), prior to the carrying out of any part of the authorised works (or in such other timeframe as otherwise agreed between National Grid Electricity Transmission Plc and the undertaker) that is subject to the requirements of this Part of this Schedule that will cause any conflict with or breach the terms of any easement or other legal or land interest of National Grid Electricity Transmission Plc or affect the provisions of any enactment or agreement regulating the relations between National Grid Electricity Transmission Plc and the undertaker in respect of any apparatus laid or erected in land belonging to or secured by the undertaker, the undertaker must as National Grid Electricity Transmission Plc reasonably requires enter into such deeds of consent upon such terms and conditions as may be agreed between National Grid Electricity Transmission Plc and the undertaker acting reasonably and which must be no less favourable on the whole to National Grid Electricity Transmission Plc unless otherwise agreed by National Grid Electricity Transmission Plc, and it will be the responsibility of the undertaker to procure and/or secure the consent and entering into of such deeds and variations by all other third parties with an interest in the land at that time who are affected by such authorised works.

(3) Save where otherwise agreed in writing between National Grid Electricity Transmission Plc and the undertaker, the undertaker and National Grid Electricity Transmission Plc agree that where there is any inconsistency or duplication between the provisions set out in this Part of this Schedule relating to the relocation and/or removal of apparatus/including but not limited to the payment of costs and expenses relating to such relocation and/or removal of apparatus) and the provisions of any existing easement, rights, agreements and licences granted, used, enjoyed or exercised by National Grid Electricity Transmission Plc and/or other enactments relied upon by National Grid Electricity Transmission Plc as of right or other use in relation to the apparatus, then the provisions in this Schedule shall prevail.

(4) Any agreement or consent granted by National Grid Electricity Transmission Plc under paragraph 19 or any other paragraph of this Part of this Schedule, shall not be taken to constitute agreement under sub-paragraph (1).

Removal of apparatus

101.—(1) If, in the exercise of the powers conferred by this Order, the undertaker acquires any interest in or possesses temporarily any Order land in which any apparatus is placed, that apparatus must not be removed under this Part of this Schedule and any right of National Grid Electricity Transmission Plc to maintain that apparatus in that land must not be extinguished until alternative apparatus has been constructed, and is in operation to the reasonable satisfaction of National Grid Electricity Transmission Plc in accordance with sub-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 Electricity Transmission Plc advance written notice of that requirement, together with a plan of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order National Grid Electricity Transmission Plc reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph (3),

secure any necessary consents for the alternative apparatus and afford to National Grid Electricity Transmission Plc to its satisfaction (taking into account paragraph 18(1) below) the necessary facilities and rights–

(a) for the construction of alternative apparatus in other land of or land secured by the undertaker; and

(b) subsequently for the maintenance of that apparatus.

(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of or land secured by the undertaker, or the undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraph (2) in the land in which the alternative apparatus or part of such apparatus is to be constructed, National Grid Electricity Transmission Plc may in its sole discretion, on receipt of a written notice to that effect from the undertaker, take such steps as are reasonable in the circumstances to assist the undertaker to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed save that this obligation shall not extend to the requirement for National Grid Electricity Transmission Plc to use its compulsory purchase powers to this end unless it elects to so do.

(4) Any alternative apparatus to be constructed in land of or land secured by the undertaker under this Part of this Schedule must be constructed in such manner and in such line or situation as may be agreed between National Grid Electricity Transmission Plc and the undertaker.

(5) National Grid Electricity Transmission Plc must, after the alternative apparatus to be provided or constructed has been agreed, and subject to a written diversion agreement having been entered into between the parties and the grant to National Grid Electricity Transmission Plc of any such facilities and rights as are referred to in sub-paragraph (2) or (3), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by the undertaker to be removed under the provisions of this Part of this Schedule.

Facilities and rights for alternative apparatus

102.—(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to or secures for National Grid Electricity Transmission Plc facilities and rights in land for the construction, use, maintenance and protection of alternative apparatus in substitution for apparatus to be removed, those facilities and rights must be granted upon such terms and conditions as may be agreed between the undertaker and National Grid Electricity Transmission Plc and must be no less favourable on the whole to National Grid Electricity Transmission Plc than the facilities and rights enjoyed by it in respect of the apparatus to be removed unless otherwise agreed by National Grid Electricity Transmission Plc.

(2) Subject to sub-paragraph (1), if the facilities and rights to be afforded by the undertaker in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are less favourable on the whole to National Grid Electricity Transmission Plc than the facilities and rights enjoyed by it in respect of the apparatus to be removed and the terms and conditions to which those facilities and rights are subject the matter may be referred to arbitration in accordance with paragraph 25 (arbitration) of this Part of this Schedule and the arbitrator must make such provision for the payment of compensation by the undertaker to National Grid Electricity Transmission Plc as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

Retained apparatus: protection

103.—(1) Not less than 56 days before the commencement of any specified works the undertaker must submit to National Grid Electricity Transmission Plc a plan of the works to be executed and seek from National Grid Electricity Transmission Plc details of the underground extent of their electricity assets.

(2) In relation to specified works the plan to be submitted to National Grid Electricity Transmission Plc under sub-paragraph (1) must include a method statement and describe—

(a) the exact position of the works;

(b) the level at which these are proposed to be constructed or renewed;

(c) the manner of their construction or renewal including details of excavation, positioning of plant;

(d) the position of all apparatus;

(e) by way of detailed drawings, every alteration proposed to be made to or close to any such apparatus;

(f) any intended maintenance regimes;

(g) an assessment of risks of rise of earth issues; and

(h) a ground monitoring scheme, where required.

(3) In relation to any works which will or may be situated on, over, under or within 10 metres of any part of the foundations of an electricity tower or between any two or more electricity towers, the plan to be submitted under sub-paragraph (1) must, in addition to the matters set out in sub-paragraph (2), include a method statement describing—

(a) details of any cable trench design including route, dimensions, clearance to pylon foundations;

(b) demonstration that pylon foundations will not be affected prior to, during and post construction;

(c) details of load bearing capacities of trenches;

(d) details of any cable installation methodology including access arrangements, jointing bays and backfill methodology;

(e) a written management plan for high voltage hazard during construction and ongoing maintenance of any cable route;

(f) written details of the operations and maintenance regime for any cable, including frequency and method of access;

(g) assessment of earth rise potential if reasonably required by National Grid Electricity Transmission Plc's engineers; and

(h) evidence that trench bearing capacity is to be designed to support overhead line construction traffic of up to and including 26 tonnes in weight.

(4) The undertaker must not commence any works to which sub-paragraphs (2) or (3) apply until National Grid Electricity Transmission Plc has given written approval of the plan so submitted.

(5) Any approval of National Grid Electricity Transmission Plc required under sub-paragraph (4)—

(a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraphs (6) or (8); and,

(b) must not be unreasonably withheld.

(6) In relation to any work to which sub-paragraphs (2) or (3) apply, National Grid Electricity Transmission Plc may require such modifications to be made to the plans as may be reasonably necessary for the purpose of securing its apparatus against interference or risk of damage, for the provision of protective works or for the purpose of providing or securing proper and convenient means of access to any apparatus.

(7) Works executed under sub-paragraphs (2) or (3) must be executed in accordance with the plan, submitted under sub-paragraph (1) or as relevant sub-paragraph (6), as approved or as amended from time to time by agreement between the undertaker and National Grid Electricity Transmission Plc and in accordance with such reasonable requirements as may be made in accordance with sub-paragraphs (6) or (8) by National Grid Electricity Transmission Plc for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and National Grid Electricity Transmission Plc will be entitled to watch and inspect the execution of those works.

(8) Where National Grid Electricity Transmission Plc requires any protective works to be carried out by itself or by the undertaker (whether of a temporary or permanent nature) such protective works, inclusive of any measures or schemes required and approved as part of the plan approved

pursuant to this paragraph, must be carried out to National Grid Electricity Transmission Plc's satisfaction prior to the commencement of any authorised development (or any relevant part thereof) for which protective works are required and National Grid Electricity Transmission Plc shall give notice its requirement for such works within 42 days of the date of submission of a plan pursuant to this paragraph (except in an emergency).

(9) If National Grid Electricity Transmission Plc in accordance with sub-paragraphs (6) or (8) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraphs 11 to 13 and 16 to 18 apply as if the removal of the apparatus had been required by the undertaker under paragraph 17(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 authorised development, a new plan, instead of the plan previously submitted, and having done so the provisions of this paragraph shall apply to and in respect of the new plan.

(11) The undertaker will not be required to comply with sub-paragraph (1) where it needs to carry out emergency works as defined in the 1991 Act but in that case it must give to National Grid Electricity Transmission Plc notice as soon as is reasonably practicable and a plan of those works and must comply with sub-paragraphs (6), (7) and (8) insofar as is reasonably practicable in the circumstances and comply with sub-paragraph (11) at all times.

(12) At all times when carrying out any works authorised under the Order, the undertaker must comply with National Grid Electricity Transmission Plc's policies for development near overhead lines EN43-8 and HSE's guidance note 6 "Avoidance of Danger from Overhead Lines".

Expenses

104.—(1) Save where otherwise agreed in writing between National Grid Electricity Transmission Plc and the undertaker and subject to the following provisions of this paragraph, the undertaker must pay to National Grid Electricity Transmission Plc within 30 days of receipt of an itemised invoice or claim from National Grid Electricity Transmission Plc all charges, costs and expenses reasonably and properly incurred by National Grid Electricity Transmission Plc in, or in connection with, the inspection, removal, relaying or replacing, alteration or protection of any apparatus or the construction of any new or alternative apparatus which may be required in consequence of the execution of any authorised works including without limitation—

(a) any costs reasonably incurred by or compensation properly paid by National Grid Electricity Transmission Plc in connection with the acquisition of rights or the exercise of statutory powers for such apparatus including without limitation all costs incurred by National Grid Electricity Transmission Plc as a consequence of National Grid Electricity Transmission Plc;

  (i) using its own compulsory purchase powers to acquire any necessary rights under paragraph 17(3); or

  (ii) exercising any compulsory purchase powers in the Order transferred to or benefitting National Grid Electricity Transmission Plc;

(b) in connection with the cost of the carrying out of any diversion work or the provision of any alternative apparatus, where no written diversion agreement is otherwise in place;

(c) the cutting off of any apparatus from any other apparatus or the making safe of redundant apparatus;

(d) the approval of plans;

(e) the carrying out of protective works, plus a capitalised sum to cover the cost of maintaining and renewing permanent protective works;

(f) the survey of any land, apparatus or works, the inspection and monitoring of works or the installation or removal of any temporary works reasonably necessary in consequence of the execution of any such works referred to in this Part of this Schedule.

(2) There will be deducted from any sum payable under sub-paragraph (1) the value of any apparatus removed under the provisions of this Part of this Schedule and which is not re-used as part of the alternative apparatus, that value being calculated after removal.

(3) If in accordance with the provisions of this Part of this Schedule—

(a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions; or

(b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was situated,

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or, in default of agreement, is not determined by arbitration in accordance with paragraph 25 (arbitration) to be necessary, then, if such placing involves cost in the construction of works under this Part of this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to National Grid Electricity Transmission Plc by virtue of sub-paragraph (1) will be reduced by the amount of that excess save to the extent that it is not possible in the circumstances to obtain the existing type of apparatus at the same capacity and dimensions or place at the existing depth in which case full costs will be borne by the undertaker.

(4) For the purposes of sub-paragraph (3)—

(a) an extension of apparatus to a length greater than the length of existing apparatus will not be treated as a placing of apparatus of greater dimensions than those of the existing apparatus; and

(b) where the provision of a joint in a pipe or cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole will be treated as if it also had been agreed or had been so determined.

(5) Any amount which apart from this sub-paragraph would be payable to National Grid Electricity Transmission Plc in respect of works by virtue of sub-paragraph (1) will, if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on National Grid Electricity Transmission Plc any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, be reduced by the amount which represents that benefit.

(6) Only costs, charges and expenses actually incurred by National Grid Electricity Transmission Plc may be sought under sub-paragraph (1). The undertaker shall be under no obligation to pay to National Grid Electricity Transmission Plc any anticipated charges, costs and expenses.

Indemnity

105.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any works authorised by this Part of this Schedule or in consequence of the construction, use maintenance or failure of any of the authorised works by or on behalf of the undertaker or in consequence of any act or default of the undertaker (or any person employed or authorised by him) in the course of carrying out such works, including without limitation works carried out by the undertaker under this Part of this Schedule or any subsidence resulting from any of these works, any damage is caused to any apparatus or alternative apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of the authorised works) or property of National Grid Electricity Transmission Plc, or there is any interruption in any service provided, or in the supply of any goods, by National Grid Electricity Transmission Plc, or National Grid Electricity Transmission Plc becomes liable to pay any amount to any third party, the undertaker will—

(a) bear and pay on demand accompanied by an invoice or claim from National Grid Electricity Transmission Plc the cost reasonably and properly incurred by National Grid Electricity Transmission Plc in making good such damage or restoring the supply; and

(b) indemnify National Grid Electricity Transmission Plc for any other expenses, loss, demands, proceedings, damages, claims, penalty or costs incurred by or recovered from National Grid Electricity Transmission Plc, by reason or in consequence of any such damage or interruption or National Grid Electricity Transmission Plc becoming liable to any third party and including STC Claims or an incentive deduction other than arising from any default of National Grid Electricity Transmission Plc.

(2) The fact that any act or thing may have been done by National Grid Electricity Transmission Plc on behalf of the undertaker or in accordance with a plan approved by National Grid Electricity Transmission Plc or in accordance with any requirement of National Grid Electricity Transmission Plc or under its supervision will not (unless sub-paragraph (3) applies), excuse the undertaker from liability under the provisions of this sub-paragraph (1) unless National Grid Electricity Transmission Plc fails to carry out and execute the works properly with due care and attention and in a skilful and workman like manner or in a manner that does not accord with the approved plan.

(3) Nothing in sub-paragraph (1) imposes any liability on the undertaker in respect of—

(a) any damage or interruption to the extent that it is attributable to the neglect or default of National Grid Electricity Transmission Plc, its officers, servants, contractors or agents;

(b) any authorised works and/or any other works authorised by this Part of this Schedule carried out by National Grid Electricity Transmission Plc as an assignee, transferee or lessee of the undertaker with the benefit of the Order pursuant to section 156 of the Planning Act 2008 or article 5 (consent to transfer benefit of Order) subject to the proviso that once such works become apparatus ("new apparatus"), any authorised works yet to be executed and not falling within this sub-section 3(b) will be subject to the full terms of this Part of this Schedule including this paragraph 21; and/or

(c) any indirect or consequential loss of any third party (including but not limited to loss of use, revenue, profit, contract, production, increased cost of working or business interruption) arising from any such damage or interruption, which is not reasonably foreseeable.

(4) National Grid Electricity Transmission Plc must give the undertaker reasonable notice of any such third party claim or demand and no settlement, admission of liability or compromise must, unless payment is required in connection with a statutory compensation scheme, be made without first consulting the undertaker and considering their representations.

(5) National Grid Electricity Transmission Plc must, in respect of any matter covered by the indemnity given by the undertaker in this paragraph, at all times act reasonably and in the same manner as it would as if settling third party claims on its own behalf from its own funds.

(6) National Grid Electricity Transmission Plc must use its reasonable endeavours to mitigate and to minimise any costs, expenses, loss, demands, and penalties to which the indemnity under this paragraph applies where it is within National Grid Electricity Transmission Plc's reasonable ability and control to do so and which expressly excludes any obligation to mitigate liability arising from third parties which is outside of National Grid Electricity Transmission Plc's control and if reasonably requested to do so by the undertaker National Grid Electricity Transmission Plc must provide an explanation of how the claim has been minimised, where relevant.

(7) The undertaker is not to commence construction (and not to permit the commencement of such construction) of the authorised works on any land owned by National Grid Electricity Transmission Plc or in respect of which National Grid Electricity Transmission Plc has an easement or wayleave for its apparatus or any other interest or to carry out any works within 15 metres of National Grid Electricity Transmission Plc's apparatus until the following conditions are satisfied:

(a) unless and until National Grid Electricity Transmission Plc is satisfied acting reasonably (but subject to all necessary regulatory constraints) that the undertaker has first provided the acceptable security (and provided evidence that it shall maintain such acceptable security for the construction period of the authorised works from the proposed date of commencement of construction of the authorised works) and National Grid Electricity Transmission Plc has confirmed the same to the undertaker in writing; and

(b) unless and until National Grid Electricity Transmission Plc is satisfied acting reasonably (but subject to all necessary regulatory constraints) that the undertaker has procured

acceptable insurance (and provided evidence to National Grid Electricity Transmission Plc that it shall maintain such acceptable insurance for the construction period of the authorised works from the proposed date of commencement of construction of the authorised works) and National Grid Electricity Transmission Plc has confirmed the same in writing to the undertaker.

(8) In the event that the undertaker fails to comply with paragraph 21(7) of this Part of this Schedule, nothing in this Part of this Schedule shall prevent National Grid Electricity Transmission Plc from seeking injunctive relief (or any other equitable remedy) in any court of competent jurisdiction.

Enactments and agreements

106. Save to the extent provided for to the contrary elsewhere in this Part of this Schedule or by agreement in writing between National Grid Electricity Transmission Plc and the undertaker, nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and National Grid Electricity Transmission Plc in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

Co-operation

107.—(1) Where in consequence of the proposed construction of any part of the authorised works, the undertaker or National Grid Electricity Transmission Plc requires the removal of apparatus under paragraph 17(2) or National Grid Electricity Transmission Plc makes requirements for the protection or alteration of apparatus under paragraph 19, the undertaker shall use its best endeavours to co-ordinate the execution of the works in the interests of safety and the efficient and economic execution of the authorised works and taking into account the need to ensure the safe and efficient operation of National Grid Electricity Transmission Plc's undertaking and National Grid Electricity Transmission Plc shall use its best endeavours to co-operate with the undertaker for that purpose.

(2) For the avoidance of doubt whenever National Grid Electricity Transmission Plc's consent, agreement or approval is required in relation to plans, documents or other information submitted by the undertaker or the taking of action or exercise of powers by the undertaker, it must not be unreasonably withheld or delayed.

Access

108. If in consequence of the agreement reached in accordance with paragraph 16(1) or the powers granted under this Order the access to any apparatus is materially obstructed, the undertaker must provide such alternative means of access to such apparatus as will enable National Grid Electricity Transmission Plc to maintain or use the apparatus no less effectively than was possible before such obstruction.

Arbitration

109. Save for differences or disputes arising under paragraph 17(2), 17(4) 18(1) and 19 any difference or dispute arising between the undertaker and National Grid Electricity Transmission Plc under this Part of this Schedule must, unless otherwise agreed in writing between the undertaker and National Grid Electricity Transmission Plc, be determined by arbitration in accordance with article 38 (arbitration).

Notices

110. Notwithstanding article 35 (service of notices), any plans submitted to National Grid Electricity Transmission Plc by the undertaker pursuant to paragraph 19 must be submitted using the LSBUD system (https://lsbud.co.uk/) or to such other address as National Grid Electricity Transmission Plc may from time to time appoint instead for that purpose and notify to the undertaker in writing.

PART 3

FOR THE PROTECTION OF NATIONAL GRID ELECTRICITY DISTRIBUTION (EAST MIDLANDS) PLC

Application

111. For the protection of NGED the following provisions, unless otherwise agreed in writing between the undertaker and NGED, have effect.

Interpretation

112. In this Part of this Schedule—

"alternative apparatus" means alternative apparatus adequate to enable NGED to fulfil its statutory functions in a manner not less efficient than previously and where the context requires includes any part of such alternative apparatus;

"alternative rights" means all and any necessary legal easements, leases, consents, or permissions required by NGED in order to permit or authorise a diversion and to permit or authorise NGED to lay, keep, operate, maintain, adjust, repair, alter, relay, renew, supplement, inspect, examine, test and remove the alternative apparatus;

"apparatus" means electric lines or electrical plant as defined in the 1989 Act, belonging to or maintained by NGED;

"diversion" means an alteration to the NGED Network in order to enable or facilitate the authorised development;

"functions" includes powers and duties;

"in" in a context referring to apparatus or alternative apparatus in land includes a reference to apparatus or alternative apparatus under, over or upon land;

"plan" or "plans" includes all designs, drawings, specifications, method statements, programmes, calculations, risk assessments and other documents that are reasonably necessary to properly and sufficiently describe and assess the works to be executed;

"specified work" means so much of any of the authorised development that is carried out within 6 metres of any apparatus;

"NGED" means National Grid Electricity Distribution (East Midlands) plc (company number 02366923) whose registered office is at Avonbank, Feeder Road, Bristol, BS2 0TB; and

"NGED Network" means NGED's distribution network operated pursuant to its distribution licence issued pursuant to section 6 of the 1989 Act.

Precedence of 1991 Act in respect of apparatus in streets

113. This Part of this Schedule does not apply to apparatus in respect of which the relations between the undertaker and NGED are regulated by the provisions of Part 3 (street works in England and Wales) of the 1991 Act.

No acquisition except by agreement

114. Regardless of any provision in this Order, the undertaker must not acquire any apparatus otherwise than by agreement.

Removal of apparatus

115.—(1) If, in the exercise of the powers conferred by this Order, the undertaker requires that apparatus is relocated or diverted, that apparatus must not be removed under this Part of this Schedule and any right of NGED to maintain that apparatus in that land must not be extinguished until alternative apparatus has been constructed, alternative rights acquired or granted for the

alternative apparatus and the alternative apparatus is in operation and access to it has been provided if necessary to the reasonable satisfaction of NGED in accordance with sub-paragraphs (2) to (10) or with such alternative or supplementary provisions as the undertaker and NGED may agree between them.

(2) If, for the purpose of executing any works comprised in the authorised development in, on or under any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, it must give to NGED written notice of that requirement, together with a plan of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed.

(3) If as a direct consequence of the exercise of any of the powers conferred by this Order NGED reasonably needs to remove or divert any of its apparatus and the removal of that apparatus has not been required by the undertaker under sub-paragraph (2) then NGED must give to the undertaker written notice of that requirement, together with a plan of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and this Part has effect as if the removal or diversion of such apparatus had been required by the undertaker under sub-paragraph (2).

(4) If as a direct consequence of the removal or diversion of apparatus under sub-paragraph (2) or (3) alternative apparatus is to be constructed in land owned or controlled by the undertaker then the undertaker must afford to NGED the necessary facilities alternative rights and any necessary third party consent or approvals for the construction of alternative apparatus in the other land owned or controlled by the undertaker.

(5) If the undertaker or NGED requires to remove or divert any apparatus placed within the Order land and alternative apparatus is to be constructed in land not owned or controlled by the undertaker as a consequence of the removal or diversion of apparatus then NGED shall use its reasonable endeavours to obtain alternative rights in the land in which the alternative apparatus is to be constructed.

(6) If alternative apparatus is to be constructed in land not owned or controlled by the undertaker and NGED is unable to obtain such alternative rights as are mentioned in sub-paragraph (5), the undertaker and NGED shall consider whether there is an alternative engineering solution that can achieve the diversion without the need for the use of compulsory powers. Should such an alternative engineering solution not be practicable and deliverable in a reasonable timescale and at a reasonable cost (which shall be determined by the undertaker acting reasonably), NGED may but shall not be compelled to use the powers of compulsory acquisition set out in this Order or the 1989 Act to obtain the necessary facilities and rights in the land outside the Order limits in which the alternative apparatus is to be constructed in accordance with a timetable agreed between NGED and the undertaker.

(7) Any alternative apparatus required pursuant to sub-paragraphs (2) or (3) must be constructed in such manner and in such line or situation as may be agreed between NGED and the undertaker or in default of agreement settled in accordance with paragraph 36.

(8) NGED must, after the alternative apparatus to be provided or constructed has been agreed or settled pursuant to paragraph 36, and after the acquisition by or grant to NGED of any such facilities and alternative rights as are referred to in sub-paragraphs (2) to (6), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required to be removed under the provisions of this Part of this Schedule.

(9) Regardless of anything in sub-paragraph (8), if the undertaker gives notice in writing to NGED that it desires itself to execute any work, or part of any work in connection with the construction or removal of apparatus in any land of the undertaker, that work, instead of being executed by NGED, must be executed by the undertaker—

(a) in accordance with plans and specifications and in such line or situation agreed between the undertaker and NGED, or, in default of agreement, determined in accordance with paragraph 36; and

(b) without unnecessary delay under the superintendence, if given, and to the reasonable satisfaction of NGED.

(10) Nothing in sub-paragraph (9) authorises the undertaker to execute the placing, installation, bedding, packing, removal, connection or disconnection of any apparatus or alternative apparatus, or execute any filling around the apparatus or alternative apparatus (where the apparatus or alternative apparatus is laid in a trench) within 600 millimetres of the point of connection or disconnection.

Facilities and rights for alternative apparatus

116.—(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to NGED facilities and alternative rights for the construction and maintenance in land of the undertaker of alternative apparatus in substitution for apparatus to be removed, those facilities and alternative rights are to be granted upon such terms and conditions as shall be agreed between the undertaker and NGED or in default of agreement settled in accordance with paragraph 36.

(2) In settling those terms and conditions in respect of alternative apparatus to be constructed in the land of the undertaker, the expert must—

(a) give effect to all reasonable requirements of the undertaker for ensuring the safety and efficient operation of the authorised development and for securing any subsequent alterations or adaptations of the alternative apparatus which may be required to prevent interference with any proposed works of the undertaker;

(b) have regard to the terms and conditions, if any, applicable to the apparatus for which the alternative apparatus is to be substituted;

(c) have regard to NGED's ability to fulfil its service obligations and comply with its licence conditions; and

(d) have regard to the standard form rights NGED ordinarily secures for the type of alternative apparatus to be constructed in the circumstances similar to the authorised development.

(3) If the facilities and alternative rights to be afforded by the undertaker in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and alternative rights are to be granted, are in the opinion of the expert less favourable on the whole to NGED than the facilities and rights enjoyed by it in respect of the apparatus to be removed and the terms and conditions to which those facilities and rights are subject, the expert must make such provision for the payment of compensation by the undertaker to NGED as appears to the expert to be reasonable having regard to all the circumstances of the particular case.

Retained apparatus

117.—(1) Not less than 60 days before the undertaker intends to start the execution of any specified work where the removal of the apparatus in question has not been required under paragraph 31, the undertaker shall submit to NGED a plan of the works to be executed. Any submission must note the time limits imposed on NGED under sub-paragraph (3) below.

(2) Subject to sub-paragraph (3) below the undertaker shall not commence any works to which sub-paragraph (1) applies until NGED has identified any reasonable requirements it has for the alteration or protection of the apparatus, or for securing access to it.

(3) If by the expiry of 60 days beginning with the date on which a plan under sub-paragraph (1) of any reasonable requirements for the alteration or protection of the apparatus, or for securing access to it, it shall be deemed not to have any such requirements and the undertaker shall be at liberty to proceed with the works.

(4) The works referred to in sub-paragraph (1) must be executed only in accordance with the plan submitted under sub-paragraph (1) and in accordance with any reasonable requirements as may be notified in accordance with sub-paragraph (2) by NGED and NGED shall be entitled to watch and inspect the execution of those works.

(5) At all times when carrying out the authorised development the undertaker shall comply with NGED's *Avoidance of Danger from Electricity Overhead Lines and Underground Cables* (2014), the Energy Network Association's *A Guide to the Safe Use of Mechanical Plant in the Vicinity of Electricity Overhead Lines* (undated), the Health and Safety Executive's *GS6 Avoiding Danger from*

Overhead Power Lines and the Health and Safety Executive's *HSG47 Avoiding Danger from Underground Services (Third Addition)* (2014) as the same may be replaced from time to time.

(6) If NGED, in accordance with sub–paragraph (2) and in consequence of the works proposed by the undertaker, reasonably requires the removal or diversion of any apparatus and gives written notice to the undertaker of that requirement, this Part of this Schedule applies as if the removal or diversion of the apparatus had been required by the undertaker under paragraph 31(2).

(7) Nothing in this paragraph 33 precludes the undertaker from submitting at any time or from time to time, but in no case less than 60 days before commencing the execution of any works, a new plan instead of the plan previously submitted, and having done so the provisions of this paragraph apply to and in respect of the new plan.

(8) The undertaker is not required to comply with sub–paragraph (1) a case of emergency but in that case it must give to NGED notice as soon as is reasonably practicable and a plan of those works as soon as reasonably practicable subsequently and must comply with any reasonable requirements stipulated by NGED under sub-paragraph (2) and with sub–paragraphs (4) and (5) in so far as is reasonably practicable in the circumstances. Nothing in this sub-paragraph prevents NGED from exercising its rights under sub-paragraph (6).

Expenses and costs

118.—(1) Subject to the following provisions of this paragraph, the undertaker must pay to NGED the proper and reasonable expenses reasonably and actually incurred by NGED in, or in connection with, the inspection, removal, diversion, alteration or protection of any apparatus, the construction of any alternative apparatus and the acquisition or grant of alternative rights for the alternative apparatus, arising as a result of the powers conferred upon the undertaker pursuant to this Order.

(2) The value of any apparatus removed under the provisions of this Part of this Schedule must be deducted from any sum payable under sub-paragraph (1), that value being calculated after removal.

(3) If in accordance with the provisions of this Part of this Schedule NGED requires that alternative apparatus of better type, of greater capacity, of greater dimensions or at a greater depth is necessary in substitution for existing apparatus which for NGED's network requirements is over and above what is necessary as a consequence of and for the purpose of the authorised development, NGED shall reduce the cost of such additional requirements from the amount payable by the undertaker pursuant to sub-paragraph (1).

(4) For the purposes of sub–paragraph (3)—

(a) an extension of apparatus to a length greater than the length of existing apparatus is not to be treated as a placing of apparatus of greater dimensions than those of the existing apparatus; and

(b) where the provision of a joint in a cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole is to be treated as if it also had been agreed or had been so determined.

(5) An amount which apart from this sub-paragraph would be payable to 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.

119.—(1) Subject to sub-paragraph (2), if by reason or in consequence of the construction of any specified work or any subsidence resulting from any of those 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 NGED the undertaker is to—

(a) bear and pay the cost reasonably and properly incurred by NGED in making good such damage or restoring the supply; and

(b) reimburse NGED for any other expenses, loss, damages, penalty or costs reasonably and properly incurred by NGED, by reason or in consequence of any such damage or interruption.

(2) Nothing in sub-paragraph (1) imposes any liability on the undertaker with respect to any damage or interruption to the extent that it is attributable to the act, neglect or default of NGED, its officers, servants, contractors or agents.

(3) NGED must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise is to be made without the consent of the undertaker which, if it withholds such consent, is to have the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

(4) NGED must act reasonably in relation to any claim or demand served under sub-paragraph (1) and use its reasonable endeavours to mitigate and to minimise any costs, expenses, loss, demands and penalties to which a claim or demand under sub-paragraph (1) applies.

(5) NGED's liability to the undertaker in respect of each diversion, shall be limited to the value of that diversion and NGED shall not otherwise be liable to the undertaker for any losses or costs incurred by the undertaker resulting from delays to the authorised development as a result of its failure to undertake works to deliver any alternative apparatus.

Expert determination

120.—(1) Article 38 (arbitration) shall apply to any difference as to the legal interpretation of this Part of this Schedule and as provided for in sub–paragraph (7).

(2) Save as provided for in sub–paragraph (1) or sub–paragraph (7) any difference under this Part of this Schedule must be referred to and settled by a single independent and suitable person who holds appropriate professional qualifications and is a member of a professional body relevant to the matter in dispute acting as an expert, such person to be agreed by the differing parties or, in the absence of agreement, identified by the President of the Institution of Civil Engineers or the President of the Institution of RICS or the President of the Institution of Engineering and Technology (as relevant and agreed between NGED and the undertaker, both acting reasonably and without delay).

(3) All parties involved in settling any difference must use best endeavours to do so within 14 days from the date of a dispute first being notified in writing by one party to the other and in the absence of the difference being settled within that period the expert must be appointed within 21 days of the notification of the dispute.

(4) The costs and fees of the expert and the costs of NGED and the undertaker are payable by the parties in such proportions as the expert may determine. In the absence of such determination the costs and fees of the expert are payable equally by the parties who shall each bear their own costs.

(5) The expert must—

(a) invite the parties to make submission to the expert in writing and copied to the other party to be received by the expert within 14 days of the expert's appointment;

(b) permit a party to comment on the submissions made by the other party within 7 days of receipt of the submission;

(c) issue a decision within 14 days of receipt of the submissions under sub-paragraph (b); and

(d) give reasons for the decision.

(6) The expert must consider where relevant—

(a) the development outcome sought by the undertaker;

(b) the ability of the undertaker to achieve its outcome in a timely and cost-effective manner;

(c) the nature of the power sought to be exercised by the undertaker;

(d) the effectiveness, cost and reasonableness of proposals for mitigation arising from any party;

(e) NGED's service obligations and licence conditions; and

(f) any other important and relevant consideration.

(7) Any determination by the expert is final and binding, except in the case of manifest error in which case the difference that has been subject to expert determination may be referred to and settled by arbitration under article 38.

PART 4

FOR THE PROTECTION OF CADENT GAS LIMITED

Application

121. For the protection of Cadent the following provisions will, unless otherwise agreed in writing between the undertaker and Cadent, have effect.

Interpretation

122. In this Part of this Schedule—

"acceptable credit provider" means a bank or financial institution with a credit rating that is not lower than: (i) "A-" if the rating is assigned by Standard & Poor's Ratings Group or Fitch Ratings; and (ii) "A3" if the rating is assigned by Moody's Investors Services Inc.;

"acceptable insurance**"** means a third party liability insurance effected and maintained by the undertaker to a level of not less than £50,000,000 (fifty million pounds) per occurrence or series of occurrences arising out of one event. Such insurance must be maintained for the construction and use period of the authorised development which constitute specified works and arranged with an internationally recognised insurer of repute operating in the London and worldwide insurance market underwriters whose security/credit rating meets the same requirements as an "acceptable credit provider", such policy must include (but without limitation):

(a) Cadent as a Co-Insured;

(b) a cross liabilities clause;

(c) a waiver of subrogation in favour of Cadent; and

(d) contractors' pollution liability for third party property damage and third party bodily damage arising from a pollution/contamination event with cover of £10,000,000.00 (ten million pounds) per event or £20,000,000.00 (twenty million pounds) in aggregate;

"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 gas mains, pipelines, pipes, pressure governors, ventilators, cathodic protection (including transformed rectifiers and associated groundbeds or cables), cables, marker posts, block valves, hydrogen above ground installations or other apparatus belonging to, or maintained by, Cadent for the purposes of Cadent's undertaking together with any replacement apparatus and such other apparatus constructed pursuant to this Order that becomes operational apparatus of Cadent for the purposes of Cadent's undertaking and includes any structure in which apparatus is or will be lodged or which gives or will give access to apparatus;

"Cadent" means Cadent Gas Limited and includes its successors in title or any successor as a gas transporter within the meaning of Part 1 of the Gas Act 1986;

"Cadent's undertaking" means the rights, duties and obligations of Cadent Gas Limited as a public gas transporter within the meaning of Section 7 of the Gas Act 1986;

"commence" and "commencement" include 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 purpose of assessing ground conditions;

"deed of consent" means a deed of consent, crossing agreement, deed of variation or new deed of grant agreed between the parties acting reasonably in order to vary or replace existing easements, agreements, enactments and other such interests so as to secure land rights and interests as are necessary to carry out, maintain, operate and use the apparatus in a manner consistent with the terms of this Part of this Schedule;

"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;

"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;

"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;

"rights" includes 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 development or activities (including maintenance) undertaken in association with the authorised development which—

(e) will or may be situated over, or within 15 metres measured in any direction of any apparatus the removal of which has not been required by the undertaker under sub-paragraph 42(2) or otherwise;

(f) may in any way adversely affect any apparatus the removal of which has not been required by the undertaker under sub-paragraph 42(2) or otherwise; or

(g) include any of the activities that are referred to in T/SP/SSW/22 Cadent's policies for safe working in proximity to gas apparatus and (Specification for safe working in the vicinity of Cadent Assets) CAD//SP/SSW/22

On Street apparatus

123.—(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 40, 45, 46 and 47; and

(b) where sub-paragraph (2) applies, paragraphs 42 and 43.

(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) The provisions in this Part of this Schedule apply and take precedence over the provisions in Part 1 of this Schedule of the Order which do not apply to Cadent.

Apparatus of Cadent in temporarily closed public rights of way

124.—(1) Notwithstanding the temporary alteration, diversion or restriction of use of any public right of way under the powers of article 11 (temporary closure of public rights of way), Cadent will be at liberty at all times to take all reasonably necessary access across any such public right of way and to execute and execute and do all such works and things in, upon or under any such public right of way 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 temporary closure or diversion was in that public right of way.

Acquisition of land

125.—(1) Regardless of any provision in this Order or anything shown on the land plans or contained in the book of reference to the Order, the undertaker may not appropriate or acquire any 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 part of the authorised development (or in such other timeframe as may be agreed between Cadent and the undertaker) that is subject to the requirements of this Part of this Schedule that will cause any conflict with or breach the terms of any easement or other legal or land interest of 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 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 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.

(3) The undertaker and Cadent agree that where there is any inconsistency or duplication between the provisions set out in this Part of this Schedule relating to the relocation or removal of apparatus, including but not limited to the payment of costs and expenses relating to such relocation or removal of apparatus and the provisions of any existing easement, rights, agreements and licences granted, used, enjoyed or exercised by Cadent and other enactments relied upon by Cadent as of right or other use in relation to the apparatus, then the provisions in this Schedule prevail.

(4) Any agreement or consent granted by Cadent under paragraph 44 or any other paragraph of this Part of this Schedule, is not to 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 the undertaker must accept a surrender of any existing easement or other interest of Cadent in such decommissioned apparatus and release Cadent from all liabilities in respect of such de-commissioned apparatus from the date of such surrender.

(6) Where the 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 42 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

126.—(1) If, in the exercise of the powers conferred by this Order, including pursuant to any agreement reached in accordance with paragraph 41, 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 (which must be approved by Cadent in accordance with the standard SLA) 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 43(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 as soon as reasonably practicable save that this obligation must not extend to the requirement for Cadent to use its compulsory purchase powers to this end unless it (in its absolute discretion) elects to so do.

(4) Any alternative apparatus to be constructed in land of or land secured by the undertaker under this Part of this Schedule must be constructed in such manner and in such line or situation as may be agreed between Cadent and the undertaker.

(5) Cadent must, after the alternative apparatus to be provided or constructed has been agreed 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), then proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to decommission or remove any apparatus required by the undertaker to be decommissioned or removed under the provisions of this Part of this Schedule.

Facilities and rights for alternative apparatus

127.—(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to or secures for Cadent facilities and rights in land for the access to, construction and maintenance 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 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 may be referred to arbitration in accordance with paragraph 50 of this Part 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

128.—(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) such approval to not be unreasonably withheld or delayed and not less than 10 days before the commencement of any specified works.

(4) Any approval of Cadent given under sub-paragraph (3) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraph (6).

(5) For the purposes of sub-paragraph (3) it will be deemed to be reasonable for any approval to be refused if Cadent considers that the specified works would:

(a) cause damage to its apparatus; or

(b) prevent access to its apparatus at any time unless otherwise agreed in writing.

(6) In relation to any work to which sub-paragraphs (1) 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) 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 Cadent; and

(b) all conditions imposed under sub-paragraph (4), 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

37 to 39 and 41 to 43 apply as if the removal of the apparatus had been required by the undertaker under paragraph 42(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 development (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 45.

(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 the conditions imposed under sub-paragraph (4) insofar as is reasonably practicable in the circumstances.

(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 the 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" and any difference or dispute arising between the undertaker and Cadent in that regard shall not be determined by arbitration in accordance with article 38 (arbitration).

Expenses

129.—(1) Subject to the following provisions of this paragraph, the undertaker must pay to Cadent within 28 calendar days of receipt of an itemised invoice all charges, costs and expenses reasonably anticipated or reasonably incurred by Cadent in, or in connection with, the inspection, removal, relaying or replacing, alteration or protection of any apparatus or the construction of any new or alternative apparatus which may be required in consequence of the execution of any authorised works including without limitation—

(a) any costs reasonably 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 42(3) if it elects to do so; 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 Part of this Schedule;

(g) any watching brief pursuant to sub-paragraph 46(2).

(2) There will be deducted from any sum payable under sub-paragraph (1) the value of any apparatus removed under the provisions of this Part of this Schedule and which is not re-used as part of the alternative apparatus, that value being calculated after removal.

(3) If in accordance with the provisions of this Part of this Schedule—

(a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions; or

(b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was situated,

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or, in default of agreement, is not determined by arbitration in accordance with paragraph 50 (arbitration) to be necessary, then, if such placing involves cost in the construction of works under this Part of this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to Cadent by virtue of sub-paragraph (1) will be reduced by the amount of that excess save to the extent that it is not possible in the circumstances (or it would be unlawful due to a statutory or regulatory change) to obtain the existing type of apparatus at the same capacity and dimensions or place at the existing depth in which case full costs will be borne by the undertaker.

(4) For the purposes of sub-paragraph (3)—

(a) an extension of apparatus to a length greater than the length of existing apparatus will not be treated as a placing of apparatus of greater dimensions than those of the existing apparatus; and

(b) where the provision of a joint in a pipe or cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole will be treated as if it also had been agreed or had been so determined.

(5) An amount which apart from this sub-paragraph would be payable to Cadent in respect of works by virtue of sub-paragraph (1) will, if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on Cadent any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, be reduced by the amount which represents that benefit.

(6) Where Cadent demand payment for those charges, costs and expenses reasonably anticipated pursuant to sub-paragraph (1), Cadent must provide an itemised invoice or claim detailing all charges, costs and expenses reasonably anticipated within the following three months. The undertaker shall pay the reasonably anticipated costs set out in the itemised invoice to Cadent who shall hold the sum of those charges, costs and expenses in a bank account identified for those works. To the extent that this sum paid in advance has not been expended by Cadent before three months after payment by the undertaker of that sum, the undertaker may demand the unspent balance remaining to be repaid by Cadent together with any accrued interest.

Indemnity

130.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any such works authorised by this Part of this Schedule (including without limitation relocation, diversion, decommissioning, construction and maintenance of apparatus or alternative apparatus) or in consequence of the construction, use, maintenance or failure of any of the authorised works by or on behalf of the undertaker or in consequence of any act or default of the undertaker (or any person employed or authorised by the undertaker) in the course of carrying out such works,

including without limitation works carried out by the undertaker under this Part of this Schedule or any subsidence resulting from any of these works, any damage is caused to any apparatus or alternative apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of the authorised development) or property of Cadent, or there is any interruption in any service provided, or in the supply of any goods, by Cadent, or Cadent becomes liable to pay any amount to any third party, the undertaker will—

(a) bear and pay on demand accompanied by an invoice or claim from Cadent, the cost reasonably incurred by Cadent in making good such damage or restoring the supply, as evidenced by Cadent to the undertaker no less than 28 days prior to the issuing of any invoice or claim from Cadent to the undertaker; and

(b) indemnify Cadent for any other expenses, loss, demands, proceedings, damages, claims, penalty, compensation or costs properly 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;

(b) any indirect or consequential loss of any third party (including but not limited to loss of use, revenue, profit, contract, production, increased cost of working or business interruption) arising from any such damage of interruption, which is not reasonably foreseeable at the commencement of the relevant works referred to in sub-paragraph (1) that is attributable to the neglect or default of Cadent, its officers, servants, contractors or agents; and

(c) any part of the authorised works carried out by Cadent in the exercise of any functions conferred by this Order pursuant to a grant or transfer under article 5 (consent to transfer benefit of the Order) of the Order.

(4) Cadent 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 representation.

(5) The undertaker must not commence construction (and must not permit the commencement of such construction) of the authorised development on any land owned by Cadent or in respect of which Cadent has an easement or wayleave for its apparatus or any other interest or to carry out any works within 15 metres in any direction of Cadent's apparatus unless and until Cadent is satisfied acting reasonably (but subject to all necessary regulatory constraints) that the undertaker has procured acceptable insurance (and provided evidence to Cadent that it 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 Cadent has confirmed the same in writing to the undertaker.

(6) In the event that the undertaker fails to comply with 46(5) of this Part of this Schedule, nothing in this Part of this Schedule prevents Cadent from seeking injunctive relief (or any other equitable remedy) in any court of competent jurisdiction.

Enactments and agreements

131. Except where this Part of this Schedule provides otherwise, nothing in this Part of 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

132.—(1) Where in consequence of the proposed construction of any part of the authorised development, the undertaker or Cadent requires the removal of apparatus under paragraph 42(2) or Cadent makes requirements for the protection or alteration of apparatus under paragraph 44, 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 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 Cadent or the taking of action by Cadent, it must not be unreasonably withheld or delayed.

Access

133. If in consequence of any agreement reached in accordance with paragraph 41(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.

Arbitration

134. Save for differences or disputes arising under sub-paragraphs 42(2) and 42(4) any difference or dispute arising between the undertaker and Cadent under this Part of this Schedule must, unless otherwise agreed in writing between the undertaker and Cadent, be determined by arbitration in accordance with article 38 (arbitration).

Notices

135. Notwithstanding article 35 (service of notices) any plans and written notices submitted to Cadent by the undertaker pursuant to the provisions of this Part of this Schedule must be sent via email to Cadent Gas Limited Plant Protection at plantprotection@cadentgas.com copied by e-mail to [redacted]@cadentgas.com and sent to the General Counsel Department at Cadent's registered office or such other address as Cadent may from time to time appoint instead for that purpose and notify to the undertaker in writing.

PART 5

FOR THE PROTECTION OF SOUTH STAFFORDSHIRE WATER PLC

Application

136. For the protection of SSW the following provisions have effect unless otherwise agreed in writing between the undertaker and SSW.

137. The provisions of Part 1 of Schedule 10 (Protective Provisions for the Protection for Electricity, Gas, Water and Sewerage Undertakers), in so far as they relate to the removal of apparatus, do not apply in relation to apparatus to which this Part of this Schedule applies.

138. This Part of this Schedule does not apply to apparatus in respect of which the relations between the undertaker and SSW are regulated by the provisions of Part 3 of the 1991 Act.

Interpretation

139. In this Part of this Schedule—

"alternative apparatus" means alternative apparatus adequate to enable SSW to fulfil its statutory functions in a manner no less efficient than previously;

"apparatus" means—

(a) mains, pipes or other apparatus belonging to or maintained by SSW for the purposes of water supply;

(b) any drain or works vested in SSW under the Water Industry Act 1991; and

(c) any sewer which is so vested in SSW or is the subject of a notice of intention to adopt by SSW given under section 102(4) of that Act or an agreement to adopt by SSW 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 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;

"plans" includes sections, drawings, specifications and method statements; and

"SSW" means South Staffordshire Water Plc and includes its successors in function or any successor in respect of any land interests or any successor as a water undertaker within the meaning of the Water Industry Act 1991.

Acquisition of apparatus

140. Regardless of any provision in this Order or anything shown on the deposited plans, the undertaker must not acquire any apparatus otherwise than by written agreement.

Alternative apparatus

141.—(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, that apparatus must not be removed under this Part of this Schedule, and any right of SSW 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 SSW confirmation of which must not be unreasonably withheld or delayed.

(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 SSW 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.

(3) The proposed position of the alternative apparatus to be provided or constructed is subject to approval by SSW (such approval not to be unreasonably withheld or delayed). In the event that SSW (acting reasonably) considers the proposed position of the alternative apparatus to be unsuitable, SSW must (acting reasonably) propose an alternative position for the alternative apparatus and must give the undertaker written notice of such alternative position for the alternative apparatus within 28 days of the service of a notice under sub-paragraph (2). Any dispute regarding the alternative apparatus (including but not limited to the proposed position or the alternative proposed position) which cannot be agreed between the parties is to be determined in accordance with article 38 (arbitration).

(4) Any alternative apparatus to be constructed in the undertaker's land under this Part of this Schedule is to be constructed in such manner and in such line or situation as may be agreed in writing between SSW and the undertaker such agreement to be within 28 days of the service of a

notice under sub-paragraph (2) (or within 28 days of service of a notice under sub-paragraph (3) where SSW has proposed an alternative position for the alternative apparatus under sub-paragraph (3) which is acceptable to the undertaker), or in default of such agreement settled by arbitration in accordance with article 38 (arbitration).

(5) In any case where alternative apparatus is to be provided or constructed under sub-paragraphs (2) or (3), or if in consequence of the exercise of any of the powers conferred by this Order SSW reasonably needs to remove any of its apparatus, the undertaker must, subject to sub-paragraph (5), afford to SSW 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 and SSW is entitled to recover its reasonable and proper costs incurred in securing such necessary facilities and rights from the undertaker subject to paragraph 58(3) below.

(6) 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 (4), in the land in which the alternative apparatus or part of such apparatus is to be constructed, SSW 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.

(7) SSW must, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with article 38 (arbitration), and after the grant to SSW of any such facilities and rights as are referred to in sub-paragraph (4) or (5), proceed without unreasonable delay (having regard to the operational requirements of SSW) to construct and bring into operation the alternative apparatus and subsequently to allow the undertaker to remove any apparatus as required to be removed by the undertaker (acting reasonably) under the provisions of this Part of this Schedule, provided that to the extent that any reasonable and proper costs are incurred by SSW as a result of the removal of such apparatus then such reasonable and proper costs are recoverable in full from the undertaker.

(8) Regardless of anything in sub-paragraph (6), if the undertaker gives notice in writing to SSW 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 of the undertaker, that work, instead of being executed by SSW, must be executed by the undertaker without unreasonable delay under the superintendence, if given, and to the reasonable satisfaction of SSW.

(9) Nothing in sub-paragraph (7) 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 6 metres of the apparatus without the written consent of SSW (such consent not to be unreasonably withheld or denied).

(10) In relation to any works which will or may be situated on, over or within 6 metres measured in any direction of any apparatus, the plan to be submitted to SSW under sub-paragraph (1) must be detailed, include a method statement and describe—

(a) the exact position of the works;

(b) the level at which they are proposed to be constructed or renewed;

(c) the manner of their construction or renewal including details of excavation and positioning of plant;

(d) the position of all apparatus including existing apparatus and apparatus to be retained;

(e) by way of detailed drawings, every alteration proposed to be made to such apparatus; and

(f) any maintenance required.

142.—(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to SSW 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 SSW or in default of agreement settled by arbitration in accordance with article 38 (arbitration).

(2) In settling those terms and conditions in respect of alternative apparatus to be constructed within 6 metres of any existing apparatus of SSW, the arbitrator must—

(a) give effect to all reasonable requirements of SSW for ensuring the protection of the existing apparatus and for securing any subsequent alterations or adaptations of the alternative apparatus which may be required to prevent interference with the existing apparatus; and

(b) so far as it may be reasonable and practicable to do so in the circumstances of the particular case, give effect to the terms and conditions, if any, applicable to the existing apparatus for which the alternative apparatus is to be substituted.

(3) 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 SSW than the facilities and rights enjoyed by SSW 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 SSW as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

Existing apparatus: protection and access

143.—(1) Not less than 42 days before starting the execution of any of the authorised development that are near to, or will or may affect, any apparatus the removal of which has not been required by the undertaker under paragraph 57(2), the undertaker must submit to SSW a plan, section and description of the works to be executed.

(2) Those works are to 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 SSW for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and an officer of SSW is entitled to watch and inspect the execution of those works.

(3) Any requirements made by SSW under sub-paragraph (2) must be made within a period of 28 days beginning with the date on which a plan, section and description under sub-paragraph (1) are submitted to it.

(4) If SSW 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 52 to 58 apply as if the removal of the apparatus had been required by the undertaker under paragraph 56(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 42 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 SSW notice as soon as is reasonably practicable and a plan, section and description of those works as soon as reasonably practicable subsequently and must comply with sub-paragraph (2) in so far as is reasonably practicable in the circumstances.

Expenses

144.—(1) Subject to the following provisions of this paragraph, the undertaker must repay to SSW the actual reasonable and properly incurred costs and expenses incurred by SSW in, or in connection with, the inspection, removal, alteration or protection of any apparatus or the construction of any new apparatus (including reasonable costs or compensation payable in connection with the acquisition of land for that purpose) which may be required in consequence of the execution of any of the authorised development.

(2) The value of any apparatus removed under the provisions of this Part of this Schedule (other than apparatus that is re-used by SSW acting reasonably as alternative apparatus) is to be deducted from any sum payable under sub-paragraph (1), that value being calculated after removal.

(3) If in accordance with the provisions of this Part of this Schedule—

(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 except where this has been solely due to using the nearest currently available type; 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 38 (arbitration) to be necessary, then, if such placing involves cost in the construction of works under this Part of this Schedule exceeding that which would have been involved if the apparatus placed had been of the type, capacity, dimensions, or at the existing depth required to maintain the existing operational requirement, as the case may be, the amount which apart from this paragraph would be payable to SSW by virtue of sub-paragraph (1) is to be reduced by the amount of that excess (save to the extent that it is not possible in the circumstances (or it would be unlawful due to a statutory or regulatory change) to obtain the existing type of apparatus at the same capacity and dimensions or place at the existing depth).

(4) For the purposes of sub-paragraph (3)—

(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; 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 must 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 SSW in respect of works under 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 SSW 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) Any dispute as to whether a financial benefit is conferred in accordance with sub-paragraph (5) or as to the amount of such financial benefit which cannot be agreed is to be determined in accordance with article 38 (arbitration).

(7) For the purposes of sub-paragraph (1)—

(a) SSW shall wherever it is reasonably practicable give the undertaker reasonable notice of three months of any known and quantifiable costs to be incurred under paragraph 60(1) provided always that this shall not apply where any works are required as a matter of urgency in connection with SSW exercising its statutory functions; and

(b) in respect of any third party claim for compensation involving SSW apparatus, no settlement or compromise is to be made without the consent of the undertaker (such consent not to be unreasonably withheld or delayed) and in the event of any dispute this is to be settled by arbitration in accordance with article 38 (arbitration).

(8) Only costs, charges and expenses actually incurred by SSW may be sought under sub-paragraph (1). The undertaker shall be under no obligation to pay to SSW any anticipated charges, costs and expenses.

Damage to apparatus: costs, losses, etc.

145.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any of the authorised development 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 SSW or there is any interruption in any service provided or in the supply of any goods, by SSW the undertaker must—

(a) bear and pay the costs reasonably incurred by SSW in making good such damage or restoring the supply; and

(b) make reasonable compensation to SSW for any other expenses, loss, damages, penalty or costs incurred by SSW, 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 SSW, its officers, servants, contractors or agents.

(3) SSW must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise is to be made without the consent of the undertaker (such consent not to be unreasonably withheld or delayed) and in the event of any dispute to be settled by arbitration in accordance with article 38 (arbitration).

(4) Only costs, charges and expenses actually incurred by SSW may be sought under sub-paragraph (1). The undertaker shall be under no obligation to pay to SSW any anticipated charges, costs and expenses.

Enactments and agreements

146. Nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and SSW in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

Payments

147.—(1) In the event that any payment is not made by the undertaker to SSW within thirty (30) working days of the due date (which in the case of any costs, charges and expenses to be incurred by SSW shall be the date on which the undertaker is notified of such costs, charges and expenses actually being incurred), then SSW shall be entitled to interest on the outstanding balance (excluding any payments made by the undertaker to SSW on account) at a rate of 4% above the base rate for the time being of Barclays Bank Plc, from the due date until the date payment is actually made.

(2) All payments made by the undertaker under this this Part of this Schedule shall be made by direct bank transfer to an account in England nominated in advance by SSW for that purpose.

PART 6

FOR THE PROTECTION OF OPERATORS OF ELECTRONIC COMMUNICATIONS CODE NETWORKS

148. For the protection of any operator, the following provisions have effect, unless otherwise agreed in writing between the undertaker and the operator.

149. In this Part of this Schedule—

"the 2003 Act" means the Communications Act 2003(**a**);

"conduit system" has the same meaning as in the electronic communications code and references to providing a conduit system is construed in accordance with paragraph 1(3A) of that code;

"electronic communications apparatus" has the same meaning as in the electronic communications code;

"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**) 2003 c. 21.

(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.

150. The exercise of the powers of article 28 (statutory undertakers) is subject to Part 10 of Schedule 3A (undertaker's works affecting electronic communications apparatus) of the electronic communications code.

151.—(1) Subject to sub-paragraphs (2) to (4), if as the result of the authorised development or its construction, or of any subsidence resulting from any of those works—

(a) any damage is caused to any electronic communications apparatus belonging to an operator (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works, or other property of an operator); or

(b) there is any interruption in the supply of the service provided by an operator,

the undertaker must bear and pay the cost reasonably incurred by the operator in making good such damage or restoring the supply and make reasonable compensation to that operator for any other expenses, loss, damages, penalty or costs incurred by it, by reason, or in consequence of, any such damage or interruption.

(2) Nothing in sub-paragraph (1) imposes any liability on the undertaker with respect to any damage or interruption to the extent that it is attributable to the act, neglect or default of an operator, its officers, servants, contractors or agents.

(3) The operator must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise of the claim or demand is to be made without the consent of the undertaker which, if it withholds such consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

(4) Any difference arising between the undertaker and the operator under this paragraph must be referred to and settled by arbitration under article 38 (arbitration).

152. This Part of this Schedule does not apply to—

(a) any apparatus in respect of which the relations between the undertaker and an operator are regulated by the provisions of Part 3 (street works in England and Wales) of the 1991 Act; or

(b) any damage, or any interruption, caused by electro-magnetic interference arising from the construction or use of the authorised development.

153. Nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and an operator in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

PART 7

FOR THE PROTECTION OF THE DRAINAGE AUTHORITIES

154. The provisions of this Part have effect for the protection of a drainage authority unless otherwise agreed in writing between undertaker and the drainage authority.

155. In this Part—

"construction" includes execution, placing, altering, replacing, relaying and removal; and "construct" and "constructed" must be construed accordingly;

"drainage authority" means the drainage board concerned within the meaning of section 23 of the Land Drainage Act 1991;

"drainage work" means any watercourse including any land that provides or is expected to provide flood storage capacity for any watercourse and any bank, wall, embankment or other structure, or any appliance, constructed or used for land drainage, flood defence, sea defence or tidal monitoring excluding the existing flood defence;

"ordinary watercourse" has the meaning given in the Land Drainage Act 1991(**a**);

"plans" includes sections, drawings, specifications and method statements; and

"specified work" means so much of any work or operation authorised by this Order as is in, on, under, over or within 16 metres of a drainage work or is otherwise likely to—

(a) affect any drainage work or the volumetric rate of flow of water in or flowing to or from any drainage work;

(b) affect the flow, purity, or quality of water in any watercourse; or

(c) affect the conservation, distribution or use of water resources.

156.—(1) Before beginning to construct any specified work, the undertaker must submit to the drainage authority plans of the specified work and such further particulars available to it as the drainage authority may within 28 days of the 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 74.

(3) Any approval of the drainage authority required under this paragraph—

(a) must not be unreasonably withheld or delayed;

(b) is deemed to have been given if it is neither given nor refused within 2 months of the submission of the plans for approval (or submission of further particulars if required by the drainage authority under sub-paragraph (1)) or, in the case of a refusal, if it is not accompanied by a statement of the grounds of refusal; and

(c) may be given subject to such reasonable requirements as the drainage authority may make for the protection of any drainage work.

(4) The drainage authority must use its reasonable endeavours to respond to the submission of any plans before the expiration of the period mentioned in sub-paragraph (3)(b).

157. Without limiting paragraph 72, the requirements which the drainage authority may make under that paragraph include conditions requiring the undertaker at its own expense to construct such protective works, whether temporary or permanent, during the construction of the specified work (including the provision of flood banks, walls or embankments or other new works and the strengthening, repair or renewal of existing banks, walls or embankments) as are reasonably necessary—

(a) to safeguard any drainage work against damage; or

(b) to secure that its efficiency for flood defence purposes is not impaired and that the risk of flooding is not otherwise increased,

by reason of any specified work.

158.—(1) Subject to sub-paragraph (2), any specified work, and all protective works required by the drainage authority under paragraph 73, must be constructed—

(a) without unreasonable delay in accordance with the plans approved or deemed to have been approved or settled under this Part; and

(b) to the reasonable satisfaction of the drainage authority,

and an officer of the drainage authority is entitled to watch and inspect the construction of such works.

(2) The undertaker must give to the drainage authority—

(**a**) 1991 c. 59, section 72(1).

(a) not less than 14 days' notice in writing of its intention to commence construction of any specified work; and

(b) notice in writing of its completion not later than 7 days after the date on which it is brought into use.

(3) If the drainage authority reasonably requires, the undertaker must construct all or part of the protective works so that they are in place before the construction of the specified work.

(4) If any part of a specified work or any protective work required by the drainage authority is constructed otherwise than in accordance with the requirements of this Part, the drainage authority may by notice in writing require the undertaker at the undertaker's expense to comply with the requirements of this Part or (if the undertaker so elects and the drainage authority in writing consents, such consent not to be unreasonably withheld or delayed) to remove, alter or pull down the work and, where removal is required, to restore the site to its former condition to such extent and within such limits as the drainage authority reasonably requires.

(5) Subject to sub-paragraph (6), if within a reasonable period, being not less than 28 days from the date when a notice under sub-paragraph (4) is served on the undertaker, the undertaker has failed to begin taking steps to comply with the requirements of the notice and subsequently to make reasonably expeditious progress towards their implementation, the drainage authority may execute the works specified in the notice, and any expenditure incurred by it in so doing is recoverable from the undertaker.

(6) In the event of any dispute as to whether sub-paragraph (4) is properly applicable to any work in respect of which notice has been served under that sub-paragraph, or as to the reasonableness of any requirement of such a notice, the drainage authority must not except in emergency exercise the powers conferred by sub-paragraph (4) until the dispute has been finally determined.

159.—(1) Subject to sub-paragraph (5) the undertaker must from the commencement of the construction of any specified work maintain in good repair and condition and free from obstruction any drainage work that is situated within the order limits held by the undertaker for the purposes of or in connection with the specified work, whether or not the drainage work is constructed under the powers conferred by this Order or is already in existence.

(2) If any drainage work that the undertaker is liable to maintain is not maintained to the reasonable satisfaction of the drainage authority, the drainage authority may by notice in writing require the undertaker to repair and restore the work, or any part of such work, or (if the undertaker so elects and the drainage authority in writing consents, such consent not to be unreasonably withheld or delayed), to remove the work and restore the site to its former condition, to such extent and within such limits 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 and may recover any expenditure reasonably incurred by it in so doing 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 conferred by sub-paragraph (3) until the dispute has been finally determined.

(5) This paragraph does not apply to—

(a) drainage works that are vested in the drainage authority or that 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 Part.

160. If by reason of the construction of any specified work or of the failure of any such work the efficiency of any drainage works for flood defence purpose is impaired, or the drainage work is otherwise damaged, the impairment or damage must be made good by the undertaker to the reasonable satisfaction of the drainage authority and, if the undertaker fails to do so, the drainage

authority may make good the impairment or damage and recover from the undertaker the expense reasonably incurred by it in doing so.

161. The undertaker must indemnify the drainage authority in respect of all costs, charges and expenses that the drainage authority may reasonably incur, have to pay or may sustain—

(a) in the examination or approval of plans under this Part;

(b) in inspecting the construction of any specified work or any protective works required by the drainage authority under this Part; and

(c) in carrying out of any surveys or tests by the drainage authority that are reasonably required in connection with the construction of the specified work.

162.—(1) Without limiting the other provisions of this Part, the undertaker must indemnify the drainage authority in respect of all claims, demands, proceedings, costs, damages, expenses or loss that may be made or taken against, recovered from or incurred by, the drainage authority by reason of—

(a) any damage to any drainage work so as to impair its efficiency for the purposes of flood defence;

(b) any raising or lowering of the water table in land adjoining the authorised development or any sewers, drains and watercourses; or

(c) any flooding or increased flooding of any such land,

that is caused by the construction of any specified work or any act or omission of the undertaker, its contractors, agents or employees whilst engaged on the work.

(2) The drainage authority must give to the undertaker reasonable notice of any such claim or demand, and no settlement or compromise may be made without the agreement of the undertaker (such agreement not to be unreasonably withheld or delayed).

163. The fact that any work or thing has been executed or done by the undertaker in accordance with a plan approved or deemed to be approved by the drainage authority, or to its satisfaction, or in accordance with any directions or award of an arbitrator, does not relieve the undertaker from any liability under this Part.

164. Any dispute between the undertaker and the drainage authority under this Part, if the parties agree, must be determined by arbitration under article 38 (arbitration).

SCHEDULE 11

Article 38

ARBITRATION RULES

Primary objective

165.—(1) The primary objective of these arbitration rules is to achieve a fair, impartial, final and binding award on the substantive difference between the parties (save as to costs) within 4 months from the date the arbitrator is appointed pursuant to article 38 (arbitration) of this Order.

(2) The arbitration will be deemed to have commenced when a party ("the Claimant") serves a written notice of arbitration on the other party ("the Respondent").

Time periods

166.—(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

167.—(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 and/or the remedy it is seeking; and

(b) all statements of evidence and copies of all documents on which it relies, including contractual documentation, correspondence (including electronic documents), legal precedents and expert witness reports.

(3) Within 14 days of receipt of the Claimant's statements under sub-paragraph (2) by the arbitrator and Respondent, the Respondent must provide the Claimant and the arbitrator with—

(a) a written Statement of Defence responding to the Claimant's Statement of Claim, its statement in respect of the nature of the difference, the legal and factual issues in the Claimant's claim, its acceptance of any element(s) of the Claimant's claim, its contentions as to those elements of the Claimant's claim it does not accept;

(b) all statements of evidence and copies of all documents on which it relies, including contractual documentation, correspondence (including electronic documents), legal precedents and expert witness reports; and

(c) any objections it wishes to make to the Claimant's statements, comments on the Claimant's expert report(s) (if submitted by the Claimant) and explanations of the objections.

(4) Within 7 days of the Respondent serving its statements under sub-paragraph (3), the Claimant may make a Statement of Reply by providing both the Respondent and the arbitrator with—

(a) a written statement responding to the Respondent's submissions, including its reply in respect of the nature of the difference, the issues (both factual and legal) and its contentions in relation to the issues;

(b) all statements of evidence and copies of documents in response to the Respondent's submissions;

(c) any expert report in response to the Respondent's submissions;

(d) any objections to the statements of evidence, expert reports or other documents submitted by the Respondent; and

(e) its written submissions in response to the legal and factual issues involved.

Procedure

168.—(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 difference(s) based solely on the written material submitted by the parties unless the arbitrator decides that a hearing is necessary to explain or resolve any matters.

(3) Either party may, within 2 days of delivery of the last submission, request a hearing giving specific reasons why it considers a hearing is required.

(4) Within 7 days of receiving the last submission, the arbitrator must notify the parties whether a hearing is to be held and the length of that hearing.

(5) Within 10 days of the arbitrator advising the parties that 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 expert(s) 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 expert(s) in response to the arbitrator's questions. Prior to the hearing in relation to the expert(s)—

(a) at least 28 days before a hearing, the arbitrator must provide a list of issues to be addressed by the expert(s);

(b) if more than one expert is called, they must jointly confer and produce a joint report or reports within 14 days of the issues being provided; and

(c) the form and content of a joint report must be as directed by the arbitrator and must be provided at least 7 days before the hearing.

(8) Within 14 days of a hearing or a decision by the arbitrator that no hearing is to be held, the parties may by way of exchange provide the arbitrator with a final submission in connection with the matters in dispute and any submissions on costs. The arbitrator must take these submissions into account in the award.

(9) The arbitrator may make other directions or rulings as considered appropriate in order to ensure that the parties comply with the timetable and procedures to achieve an award on the substantive difference within 4 months of the date on which the arbitrator is appointed, unless both parties otherwise agree to an extension to the date for the award.

(10) If a party fails to comply with the timetable, procedure or any other direction then the arbitrator may continue in the absence of a party or submission or document, and may make a decision on the information before the arbitrator attaching the appropriate weight to any evidence submitted beyond any timetable or in breach of any procedure and/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

169.—(1) The arbitrator has all the powers of the Arbitration Act 1996, save where modified by these Rules 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 and/or procedure 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, but 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

170.—(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 and/or defences, the degree of success for different elements of the claims, claims that have incurred substantial costs, the conduct of the parties and the degree of success of a party.

Confidentiality

171.—(1) Hearings in any arbitration are to take place in public, unless agreed otherwise by the arbitrator on application from one or both of the parties.

(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

Articles 2 and 34

DOCUMENTS TO BE CERTIFIED

Documents	*Document Reference*	*Examination Library Reference*	*Date*
Book of reference	EN010122/D8/4.3	REP8-012	December 2024
Land plans	EN010122/D6/2.2	REP6-003	November 2024
Works plans	EN010122/S51/2.3	AS-003	May 2024
Streets, access and rights of way plan	EN010122/D4/2.4	REP4-003	October 2024
Important Hedgerows Plan	EN010122/APP/2.9	APP-014	January 2024
Design statement	EN010122/D6/7.2	REP6-035	November 2024
Environmental Statement Contents Chapter 1 Appendices 1.1 – 1.2 Figures 1.1 – 1.5 Chapter 2 Appendices 2.1 – 2.3 Figure 2.1 Chapter 3 Appendices 3.1a – 3.1b Figures 3.1 – 3.5 Appendices 4.1 – 4.2 Appendices 4.6 – 4.8	EN010122/APP/6.1	APP-071, APP-073 – APP-075, APP-077 –APP-089, APP-093 – APP-095, APP-097 – APP-103, APP-107 – APP-132, APP-134 – APP-136, APP-138, APP-140, APP-143 – APP-147, APP-149 – APP-155, APP-158 – APP-159, APP-161 – APP-164, APP-168 – APP-169, APP-171 – APP-180.	January 2024

Figures 4.1a – 4.15c Appendices 5.1 – 5.4 Figures 5.1 – 5.21a-d Chapter 6 Appendices 6.1 – 6.13 Appendix 6.15 Figures 6.1 – 6.4 Appendix 7.2 Figure 7.1 Chapter 8 Figures 8.1 – 8.3 Chapter 9 Appendix 9.1 Figure 9.1 Chapter 10 Appendices 10.2 – 10.7 Appendices 11.2 – 11.3 Figures 11.1 – 11.3 Chapter 12 Appendix 12.1 Figures 12.1 – 12.2 Chapter 15 Appendices 15.2 – 15.5 Figure 15.1 Chapter 16 Appendices 16.1 – 16.2 Figures 16.1a – 16.1b Chapter 17 Appendix 17.1			
Environmental Statement - Chapter 4 Project Description	EN010122/D6/6.1	REP6-031	November 2024
Environmental Statement – Appendix 4.3 Outline Construction Environmental Management Plan	EN010122/D6/6.1	REP6-018	November 2024
Environmental Statement – Appendix 4.4 Outline Operational Environmental Management Plan	EN010122/D6/6.1	REP6-020	November 2024
Environmental Statement – Appendix 4.5 Outline Decommissioning	EN010122/D6/6.1	REP6-022	November 2024

Environmental Management Plan			
Environmental Statement – Chapter 5 Landscape and Visual	EN010122/D4/6.1	AS-027	October 2024
Environmental Statement – Appendix 5.5 Residential Visual Amenity Assessment	EN010122/D6/6.1	REP6-024	November 2024
Environmental Statement – Appendix 5.6 Outline Landscape and Ecological Management Plan	EN010122/D4/6.1	REP4-040	October 2024
Environmental Statement – Appendix 6.14 Arboricultural Survey Report	EN010122/D6/6.1	REP6-026	November 2024
Environmental Statement – Chapter 7 Historic Environment	EN010122/D1/6.1	REP1-017	July 2024
Environmental Statement – Appendix 7.1 Historic Environment Assessment	EN010122/D1/6.1	REP1-019	July 2024
Environmental Statement – Appendix 8.1 Flood Risk Assessment and Outline Drainage Strategy	EN010122/D7/6.1	REP7-003	December 2024
Environmental Statement – Appendix 8.2 Water Framework Directive Assessment	EN010122/D4/6.1	REP4-043	October 2024
Environmental Statement – Appendix 10.1 Outline Construction Traffic Management Plan	EN010122/D6/6.1	REP6-028	November 2024
Environmental Statement – Figures 10.1 – 10.4, 10.6 – 10.9	EN010122/S51/6.1	AS-015	May 2024
Environmental Statement – Chapter 11 Noise	EN010122/D4/6.1	REP4-045	October 2024

Environmental Statement – Appendix 11.1 Baseline Noise Survey Report	EN010122/D4/6.1	REP4-051	October 2024
Environmental Statement – Chapter 13 Climate Change	EN010122/D3/6.1	REP3-021	August 2024
Environmental Statement – Chapter 14 Glint and Glare	EN010122/D4/6.1	REP4-047	October 2024
Environmental Statement – Appendix 14.1 Solar Photovoltaic Glint and Glare Study	EN010122/D4/6.1	REP4-034	October 2024
Environmental Statement – Appendix 15.1 Agricultural Land Classification Survey for Oaklands Farm	EN010122/D6/6.1	REP6-030	November 2024
Environmental Statement – Non-Technical Summary	EN010122/S51/6.2	AS-016	May 2024
Environmental Statement Addendum – Cumulative Effects Update	EN010122/D6/14.5	REP6-044	November 2024
Additional Land Classification Survey at Park Farm	EN010122/D5/13.14	REP5-036	October 2024
Outline Skills, Supply Chain and Employment Plan	EN010122/D6/14.4	REP6-043	November 2024
Sequential Assessment – Flood Risk	EN010122/D6/14.6	REP6-045	November 2024

SCHEDULE 13

Article 37

TREES SUBJECT TO TREE PRESERVATION ORDERS

(1) Type of tree	*(2) Work to be carried out*	*(3) Relevant part of the authorised development*	*(4) TPO reference*
Trees within the area identified as W4 in South Derbyshire District Council's Tree Preservation Order No. 122 (1994)	Potential felling or lopping of trees, or cutting back tree roots, to enable the construction of the authorised development	Work Nos. 5 and 5A	TPO No. 122 (1994)

EXPLANATORY NOTE

(This note is not part of the Order)

This Order grants development consent for, and authorises the construction, operation, maintenance and decommissioning of a solar generating station and battery energy storage facility together with associated development. This Order imposes requirements in connection with the development and authorises the compulsory purchase of land (including rights in land) and the right to use land and to override easements and other rights.

A copy of the plans and book of reference referred to in this Order and certified in accordance with article 34 (certification of plans, etc.) may be inspected free of charge during working hours at the South Derbyshire District Council, Civic Way, Swadlincote, Derbyshire DE11 0AH and at Derbyshire County Council, County Hall, 88 Smedley Street, Matlock DE4 3AG.