

The Planning Act 2008

Dean Moor Solar Farm

Examining Inspector's Report
of Findings and Conclusions

and

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

Examining Authority

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2 April 2026

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OVERVIEW

File Ref: EN010155

The application was made under section 37 of the Planning Act 2008 and was received by The Planning Inspectorate on 26 March 2025.

The applicant is FVS Dean Moor Limited.

The application was accepted for examination on 15 April 2025.

The examination of the application began on 22 July 2025 and was completed on 5 January 2026.

The proposed development comprises Development Consent Order Application for the construction, operation, and decommissioning of a solar photovoltaic (PV) energy generating station with a total capacity exceeding 50 megawatts (MW) which would allow for the generation and export of electricity.

Summary of Recommendation:

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

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1. INTRODUCTION

1.1. BACKGROUND TO THE EXAMINATION

- 1.1.1. An application (the application) for the Dean Moor Solar Farm (the proposed development), Planning Inspectorate (the Inspectorate) reference EN010155, was submitted by FVS Dean Moor Limited (the applicant) to the Inspectorate on 26 March 2025 under section 31 of the Planning Act 2008 (PA2008) and accepted for examination under s55 of the PA2008 on 15 April 2025 [[PD-001](#)]. This report sets out my findings, conclusions and recommendations to the Secretary of State for Energy Security and Net Zero (SoSESNZ).
- 1.1.2. The legislative tests for whether the proposed development is a Nationally Significant Infrastructure Project (NSIP) were considered by the SoS for Housing, Communities and Local Government in its decision to accept the application for examination in accordance with s55 of the PA2008 [[PD-001](#)].
- 1.1.3. The proposed development comprises the construction, operation, and decommissioning of a solar photovoltaic (PV) energy generating station with a total capacity of over 50 megawatts (MW) which would allow for the generation and export of electricity.
- 1.1.4. As the solar generating station would have a capacity of more than 50MW, the proposed development falls within s15(2) of PA2008 and meets the definition of an NSIP set out in s14(1)(a) of the PA2008.¹ As such, the proposed development requires development consent in accordance with s31 of PA2008.
- 1.1.5. The [Examination Library](#) (EL) provides a record of all application documents and submissions to the Examination, each of which is given a unique reference number, for example [APP-001]. The reference numbers are used throughout this report and hyperlinks are included to allow the reader to access them directly.
- 1.1.6. This report does not contain extensive summaries of the documents and representations received. Readers are referred to relevant material using linked EL references. Full regard has been had to all such material and to all important and relevant matters arising from it in all conclusions drawn and the recommendation made in this report.

¹ Infrastructure Planning (Onshore Wind and Solar Generation) Order 2025 changes the threshold to 100MW for solar. As this application was submitted before the Order came into force, the 50MW threshold applies.

1.2. APPOINTMENT OF THE EXAMINING AUTHORITY

1.2.1. On 28 April 2025, I, Matthew Woodward, was appointed as the Examining Authority (ExA) for the application under s61 and s79 of the PA2008 [PD-004].

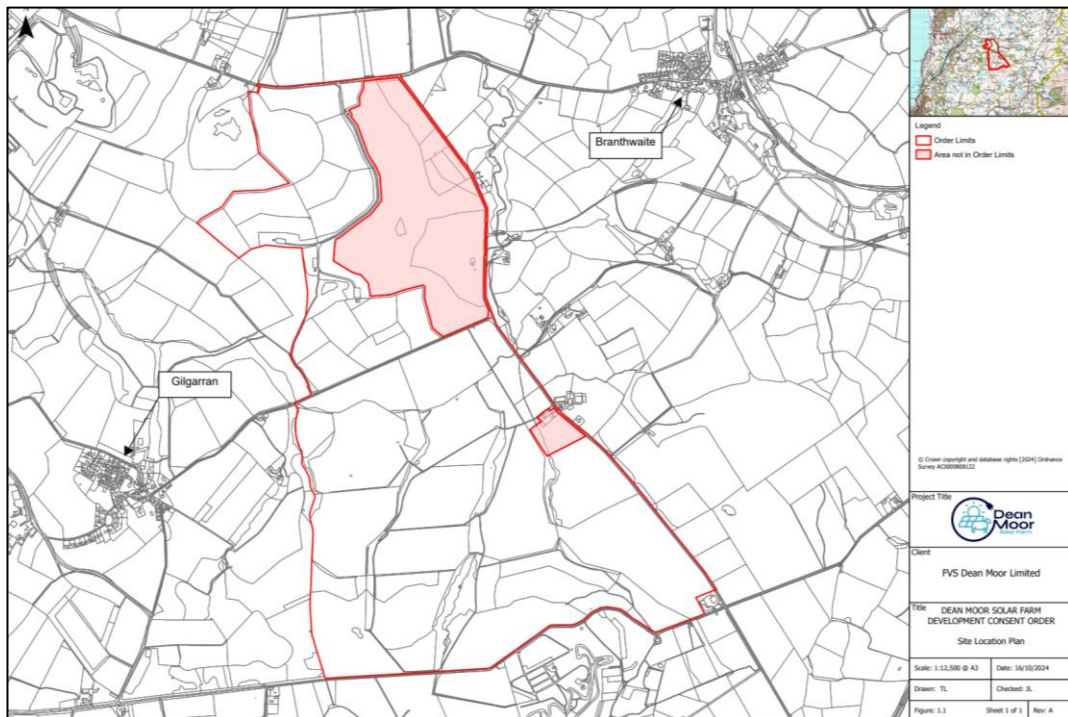
1.3. THE APPLICATION

LOCATION OF THE PROPOSED DEVELOPMENT

1.3.1. The location of the proposed development is shown on the site location plan [APP-043] as shown in Figure 1. The red line boundary shows the extent of the Order limits, which is the area where most of the works proposed, and powers sought under the development consent order (DCO), would take place.

1.3.2. The site lies within the Cumberland Council administrative area and is wholly in England. It lies within close proximity to the English administrative areas of Northumberland County Council, Northumberland National Park Authority, Westmorland and Furness Council and the Lake District National Park, and the Scottish administrative areas of Dumfries and Galloway Council and Scottish Borders Council.

Figure 1: Site Location Plan

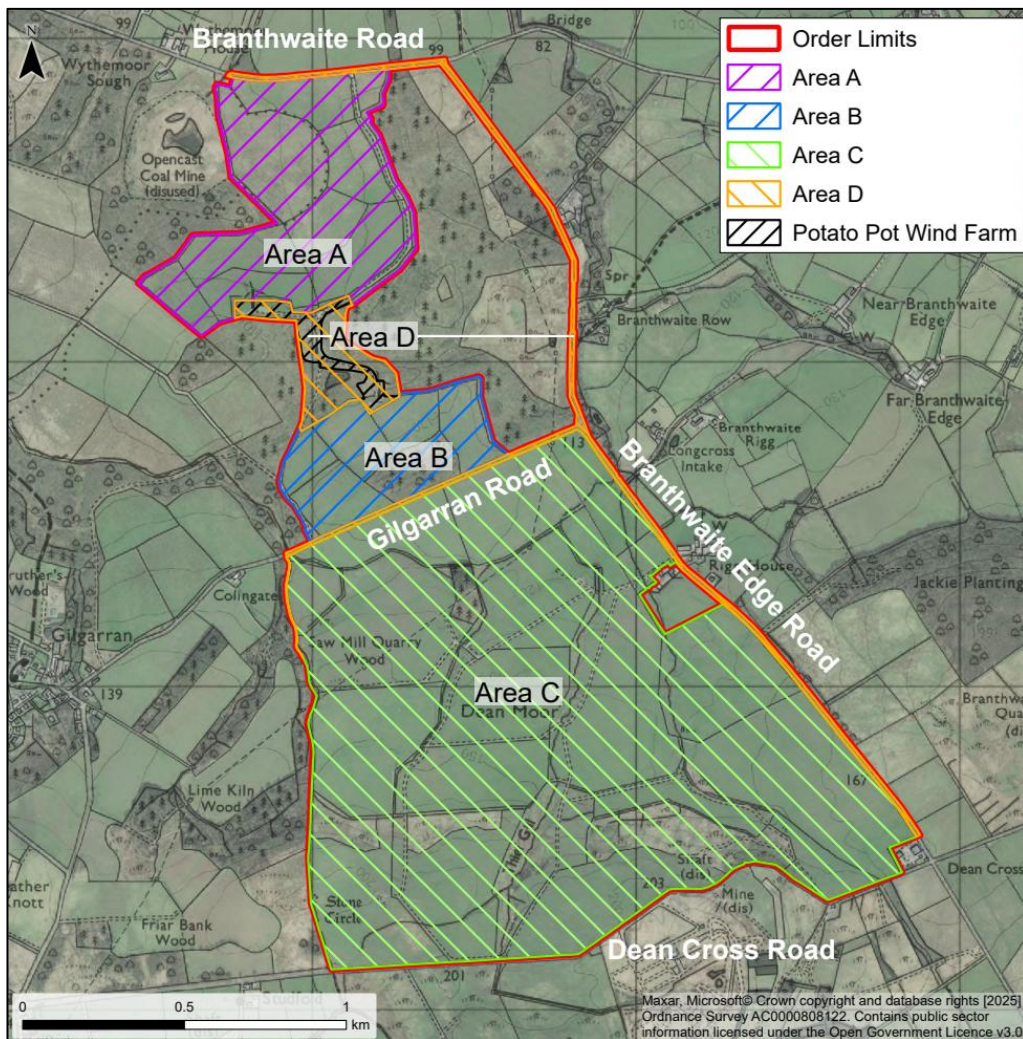


(Source: ES Figure 1.1 Site Location Plan [APP-043])

1.3.3. Environmental Statement (ES) Chapter 3 [APP-034] provides a detailed description of the surrounding area. In summary, the site covers an area of approximately 276.5

hectares (ha) and lies approximately 3.2 kilometres (km) to the west of the Lake District National Park (LDNP), which is also designated as The English Lake District World Heritage Site (WHS). Several designated heritage assets lie within 200 metres (m) of the site, including a scheduled monument (stone circle and cairn) located along its western boundary, partly within the site. The settlement of Gilgarran lies approximately 600m to the west, with Branthwaite to the north-east at a distance of approximately 1km. Further afield, Workington meets the coast at a distance of approximately 5km from the site. The rural surroundings contain a scattering of properties, a number of which are located close to the site boundary.

Figure 2: Plan showing site area and surrounding roads



(Source: ES Figure 3.1 (Solar Farm Area Plan) [APP-046])

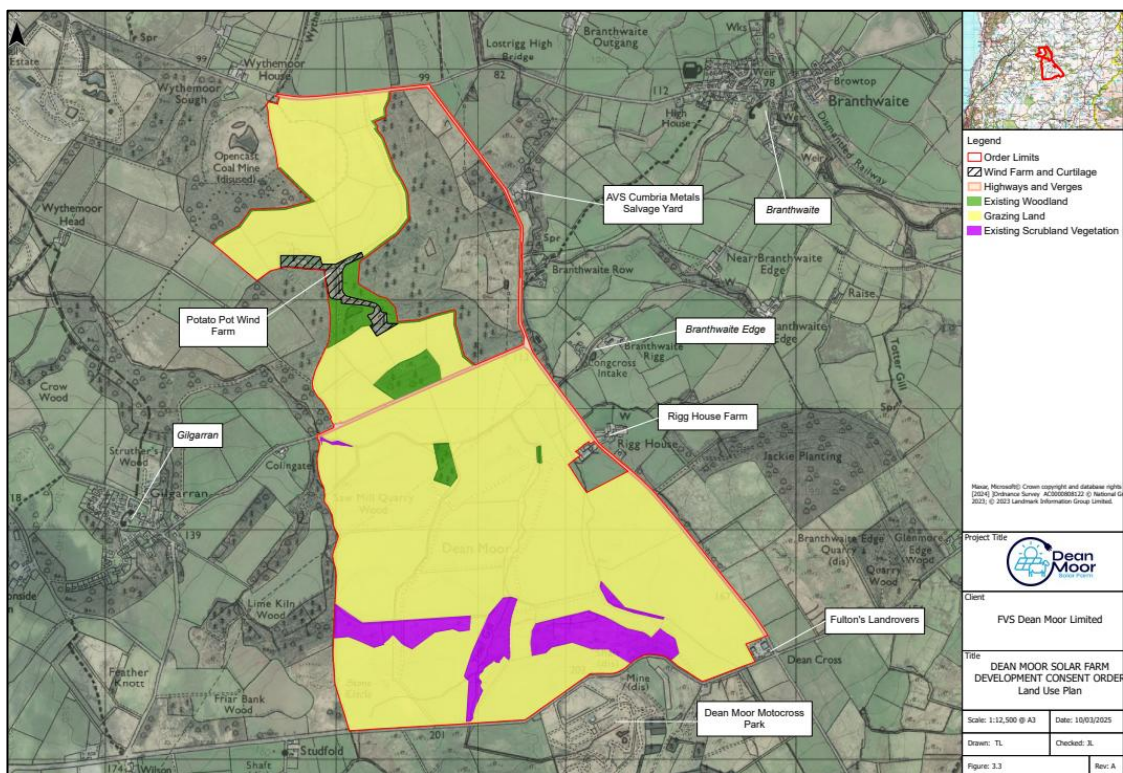
1.3.4. The surrounding area is eminently rural, comprising predominantly undulating pastoral land and moorland which generally falls from south to north, plateauing close to the site’s southern boundary. The site and its surroundings contain an assortment of boundary hedgerows, scrubland vegetation and pockets of woodland,

including an area of ancient woodland beyond the western boundary. Several watercourses are located within the site. Electricity lines and both wooden and lattice style pylons run across the site generally following two distinct lines.

1.3.5. As shown in Figure 2, the site is bounded on three sides by rural roads. Gilgarran Road bisects the site east to west. To the north of this, the land within the Order limits comprises largely restored opencast mine workings along with a wind farm (Potato Pot Wind Farm). To the south of Gilgarran Road the land within the Order limits is partly used for sheep grazing land. A motor sport facility (hereafter referred to as Dean Moor Motorcross Park) lies to the south of Dean Cross Road, outside the southern extent of the Order limits.

1.3.6. A land use plan showing the land uses within the Order limits along with the location of settlements, nearby properties and the motorcross park is shown in Figure 3.

Figure 3: Land use plan



(Source: ES Figure 3.3 (Land Use Plan) [APP-048])

DESCRIPTION OF THE PROPOSED DEVELOPMENT

1.3.7. The proposed development would be a low-carbon development which would generate renewable energy, comprising a ground-mounted solar PV energy

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generating station and associated development, including an on-site connection to the local distribution network operator in order to export electricity to the grid network. The operational lifespan of the proposed development would be up to 40 years.

- 1.3.8. The scheme has been designed to deliver a generating capacity of 150MW of electricity alternating current (AC) based on a grid connection agreement between the applicant and Electricity North West Limited (ENW) [[APP-176](#)]. However, the application is for a generating station of more than 50MW with no limit on the output.
- 1.3.9. The proposed development has been designed to accommodate the rapidly evolving solar PV technology, thus ensuring that the most advanced technology could be incorporated at the time of construction. As such, a parameter-based approach has been adopted which would allow the most suitable technology, design and layout to be realised at the time of construction.
- 1.3.10. Utilising the parameter-based approach, the ES sets out the maximum limits of the proposed development and worst-case potential environmental effects. Therefore, the applicant seeks approval for a consent envelope, where detailed design would require subsequent approval by the relevant planning authority as set out in Schedule 2, Requirement 3 of the draft development consent order (dDCO) [[REP6-006](#)].
- 1.3.11. The final iteration of the proposed development would also be shaped by various control documents, which would require final approval, along with a number of requirements, as set out in the Requirements in Schedule 2 of the dDCO [[REP6-006](#)]. Chapter 7 ([Table 9](#)) of this report includes the control documents, plans and other documents which would be submitted for approval under the Requirements in Schedule 2 of the DCO, and thus would contribute to the proposed development's final design particulars.
- 1.3.12. The applicant's parameter-based 'Rochdale envelope' approach to seeking consent supports the proposed development's requirement for flexibility in layout and design. ES Chapter 3 [[APP-034](#)] provides a full description of the proposed development, whilst the works are set out in Schedule 1 of the dDCO [[REP6-006](#)]. The main works are summarised below:

Work No. 1

- A ground mounted solar PV generating station with a gross electrical output capacity of over 50MW including solar PV panels, mounting structures and power conversions system.

Work No. 2

- Grid connection infrastructure comprising up to two substation buildings; a control building; Point of Connection ('POC') compound comprising external electrical equipment including transformers, relays, circuit breakers and harmonic filters and ancillary infrastructure; communication mast; security fencing; electrical cables.

Work No. 2A

- Up to two POC masts.

Work No. 3

- Electrical cables including connecting equipment within Work No. 1 and within Work No. 2 and connecting Works Nos. 1 and 2 to one another; fencing, gates, boundary treatment and other means of enclosure.
- Use of private tracks along with their maintenance and improvement; laying down of internal access tracks, ramps, means of access, permissive paths, crossing of watercourses, culverts, and roads, including the laying and construction of drainage infrastructure, temporary traffic management measures including traffic lights and signage and information boards.
- Security and monitoring works such as CCTV columns, lighting columns and lighting, cameras, communication infrastructure, and perimeter fencing; monitoring, communications and control systems; electrical vehicle charging points; operation and maintenance units including storage, welfare and site management.
- Works, improvements or extensions to the existing drainage and irrigation system and works to alter the position and extent of such irrigation system; landscaping and biodiversity mitigation and enhancement measures including planting; site drainage and waste management infrastructure including underground pipework, watercourse outfalls, sub-bases, filter drains, swales and attenuation tanks.

- Working sites in connection with the construction, maintenance and decommissioning of the authorised development, lay down areas and compounds, storage compounds and their restoration.
- Noise attenuation works including acoustic barrier.

Work No. 4

- Up to five temporary construction compounds including site entry security stations, areas of hardstanding and material storage areas, parking, safety and security infrastructure, site management offices, welfare facilities, canteens and workshops.

Work No. 5

- Works to facilitate vehicular access, including enhancement of accesses from the street, visibility splays, works to widen and surface public and private access, temporary traffic management measures including traffic lights and signs.

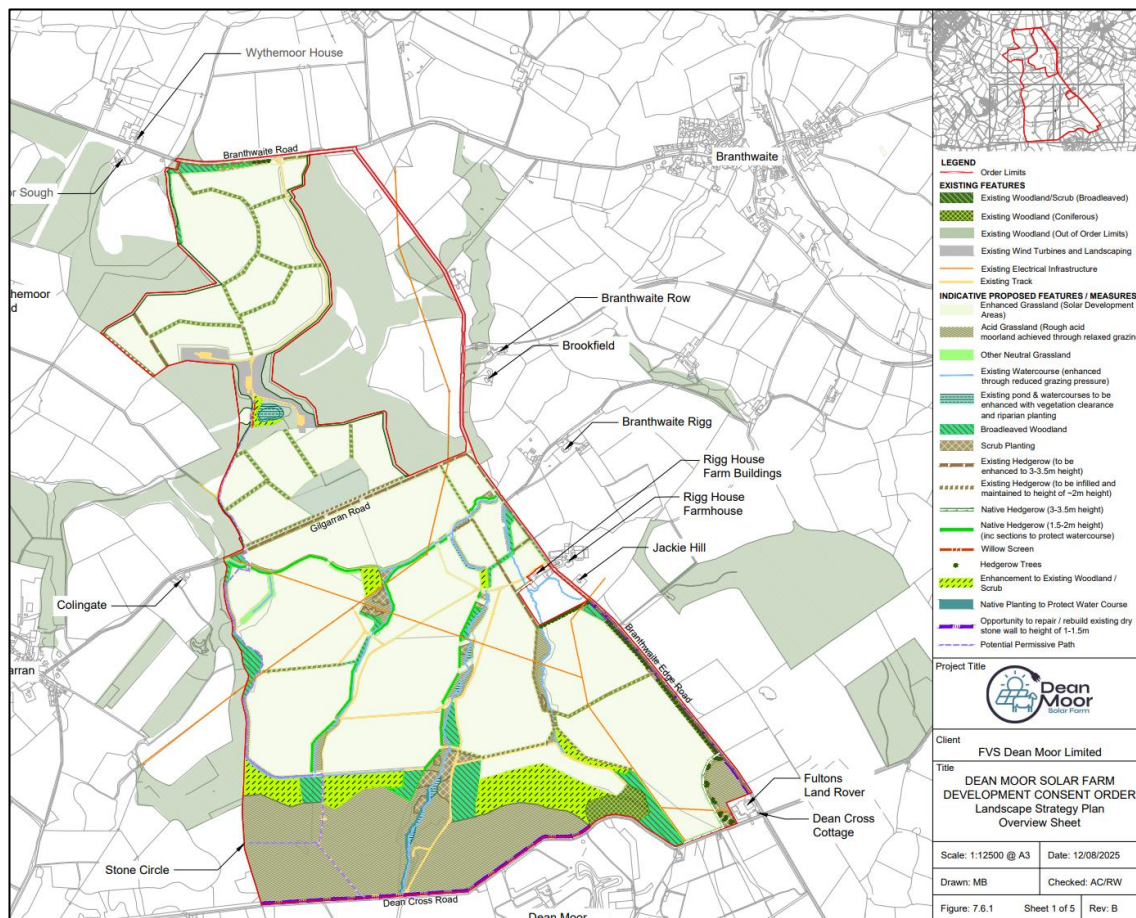
Work No. 6

- Works to create, enhance and maintain green infrastructure, including landscape and biodiversity mitigation and enhancement measures including planting and improvement of existing features; habitat creation and management including, earth works including embankments, landscaping; construction of drainage infrastructure; watercourse enhancements; maintenance of existing access routes and laying down of permissive paths, signage and information boards; fencing, gates, boundary treatment and other means of enclosure.

1.3.13. Further associated development in connection with, and in addition to, Work Nos. 1-6 is set out in Schedule 1 of the dDCO [[REP6-006](#)].

1.3.14. The above works include a range of environmental mitigation proposals and enhancement measures based on an overarching landscape strategy plan (LSP) [[REP2-046](#)], as shown in Figure 4 below. These would include landscape and ecological measures which would be managed in accordance with the details set out in the Outline Landscape and Ecological Management Plan (oLEMP) [[APP-145](#)].

Figure 4: Illustrative landscape strategy



(Source: extract from ES Figure 7.6 (Landscape Strategy Plan) [REP2-046])

RELEVANT PLANNING HISTORY

- 1.3.15. Section 2.3 of the Planning Statement [AS-010] summarises the planning history. The most relevant case is Potato Pot Wind Farm, a scheme comprising three wind turbines with a maximum blade tip height of 100m and associated infrastructure, which was allowed on appeal in 2013. It is located within the Order limits as shown in Figure 5 below.
- 1.3.16. The wind farm is currently operational and was commissioned in 2016. Condition 2 of the planning permission requires decommissioning and site restoration to be completed in accordance with a scheme to be submitted to Cumberland Council not less than 9 months before the end of the 25-year period, with a period of 18 months to complete the decommissioning process ([REP2-011] - Appendix F). The ES assumes, therefore, that the wind farm would be decommissioned, removed, and the wind farm site restored by around February 2043.

Figure 5: Plan showing location of Potato Pot Wind Farm within Order limits



(Source: extract from ES Figure 3.4 (Parameter Plan) [APP-049])

- 1.3.17. A large area of land within the Order limits has also been subject to open cast coal mining and clay extraction. These activities have ceased, and the site has since been restored.

1.4. THE EXAMINATION AND PROCEDURAL DECISIONS

RELEVANT REPRESENTATIONS

- 1.4.1. A total of 17 relevant representations (RR) were received. All persons who made RRs received a letter under rule 6 [PD-005] of the Infrastructure Planning (Examination Procedure) Rules 2010 (EPR) explaining the opportunity to become involved in the examination as interested parties (IP). I have considered all RRs and the issues raised are considered in the relevant sections of this report.

START OF THE EXAMINATION

- 1.4.2. The examination began on 22 July 2025 and concluded on 5 January 2026. The principal components of, and events around, the examination can be seen in the [examination timetable](#) and are summarised below.

1.4.3. Cumbria Wildlife Trust requested to participate in the examination as an ‘other person’, and at my discretion, they were permitted to make written and oral submissions to the examination.

PROCEDURAL DECISIONS

1.4.4. The procedural decisions (PDs) taken by me as ExA are recorded in the [examination library](#) under ([[PD-001](#)] to [[PD-019](#)]). They detail my decisions relating to the procedure of the examination and had no bearing on my consideration of the planning merits of the proposed development. All were broadly discharged as intended and no further reference is made to them in this report.

STATEMENTS OF COMMON GROUND

1.4.5. By the end of the examination, the following bodies had concluded and signed Statements of Common Ground (SoCGs) with the applicant:

- Cumberland Council [[REP5-020](#)]
- Cumbria Wildlife Trust [[REP5-025](#)]
- the Environment Agency [[AS-032](#)]
- Historic England [[REP5-022](#)]
- the Lake District National Park Authority [[AS-037](#)]
- the Mining Remediation Authority [[AS-036](#)]
- National Highways [[AS-034](#)]
- Natural England [[AS-030](#)]

1.4.6. No SoCGs remained unsigned at the end of the examination.

1.4.7. The SoCGs have been taken fully into account in all relevant sections of this report.

WRITTEN QUESTIONS

1.4.8. I asked two rounds of written questions:

- ExQ1 [[PD-007](#)]
- ExQ2 [[PD-012](#)]

SITE INSPECTIONS

1.4.9. I carried out the following Unaccompanied Site Inspections (USIs):

- Note of USI – 18 June 2025 [[EV1-001](#)]
- Note of USI – 4 and 5 November 2025 [[EV8-001](#)]
- Note of USI – 3 and 4 December 2025 [[EV13-001](#)]

1.4.10. I carried out the following Accompanied Site Inspections (ASI):

- Itinerary for ASI – 4 December 2025 [[EV12-001](#)]

HEARINGS

1.4.11. Hearings were held under s91 of PA2008 into specific issues (ISH), under s92 PA2008 into the compulsory acquisition of land and rights (CAH) and under s93 PA2008 providing for open floor hearings (OFH).

1.4.12. The following ISHs were held:

- ISH to discuss the draft DCO, environmental impact assessment (EIA), design, climate change, cultural heritage/historic environment, landscape and visual, and biodiversity on 11 and 12 November 2025 [[EV6-001](#)]. Recordings can be found at ([\[EV9-001\]](#), [\[EV9-003\]](#), [\[EV9-005\]](#), [\[EV9-007\]](#), [\[EV9-009\]](#)). Written transcripts can be found at ([\[EV9-002\]](#), [\[EV9-004\]](#), [\[EV9-006\]](#), [\[EV9-008\]](#), [\[EV9-010\]](#)).

1.4.13. The following CAH was held:

- CAH on 13 November 2025 [[EV7-001](#)]. Recordings can be found in ([\[EV10-001\]](#) and [\[EV10-003\]](#)) and written transcripts can be found at ([\[EV10-002\]](#) and [\[EV10-004\]](#)).

1.4.14. The following OFH was held:

- OFH on 13 November 2025. There was no agenda for this hearing. A recording of this event can be found at [\[EV11-001\]](#) and a written transcript at [\[EV11-002\]](#).

1.4.15. As set out in the rule 8(3) letter [\[PD-006\]](#), due to unforeseen circumstances I took the decision to cancel the hearings and site inspection which were scheduled to take place during week commencing 15 September 2025. To address the cancellations, I issued a rule 17 request for further information in order to allow the applicant and IPs the opportunity to respond to the detailed agendas for the cancelled ISH and CAH [\[PD-010\]](#).

1.4.16. As a result of the above, I made variations to the examination timetable and notifications were subsequently published advising of hearings during week commencing 10 November 2025 [\[PD-011\]](#) and an ASI [\[PD-014\]](#). Therefore, despite the cancelled events, I am satisfied that adequate provision was made throughout the entirety of the examination, using a combination of written questions and further hearings, to enable me to properly examine the application.

Requests for further information

1.4.17. I made the following requests for further information and comments under rule 17 of the Infrastructure Planning (Examination Procedure) Rules 2010:

- Request for further information [[PD-010](#)] where responses were sought to my ISH agenda [[EV3-001](#)] and compulsory acquisition hearing CAH agenda [[EV4-001](#)]. This request covered a range of different topic areas and was made due to the unforeseen circumstances set out above. This request was principally aimed at the applicant, Cumberland Council and the Lake District National Park Authority (LDNPA), with responses to be submitted by deadline 3.
- Request for further information [[PD-015](#)], principally from the LDNPA, on their interpretation of the landscape and visual impact assessment methodology, to be submitted by deadline 5.
- Request for further information [[PD-017](#)], principally from the applicant, in relation to the content of the dDCO and explanatory memorandum (EM), to be submitted by deadline 6.

1.5. CHANGES TO THE APPLICATION

1.5.1. Changes to the key application documents, including the wording of the dDCO, were submitted and updated during the examination. The changes principally sought to address points raised by myself and IPs and to update or provide additional information resulting from discussions that had occurred during the examination.

1.5.2. The applicant's changes to the application documents, together with any additional information submitted, are detailed in the Final Application Guide submitted at deadline 6 [[REP6-002](#)]. This provides a guide to all documents submitted as part of the application and was updated throughout the examination. It provides a full record of all documentation submitted to the examination.

1.6. UNDERTAKINGS, AGREEMENTS AND CONSENTS

1.6.1. During the examination, some parties confirmed that they had reached private agreements with the applicant regarding protection of their assets and/or interests. These relate to land rights, dealt with in Chapter 6 of this report. However, no IP or affected person withdrew their objection or representation during the course of the examination.

1.6.2. In addition to the consents required under the PA2008, the applicant would require other consents to construct, operate and maintain the proposed development. These are identified in the [Consents and Agreements Position Statement](#).

1.7. STRUCTURE OF THIS REPORT

1.7.1. The structure of the remainder of this report is as follows:

- [Chapter 2](#) identifies how the application is to be determined and summaries the key legislation and policy context that applies to the decision.
- [Chapter 3](#) sets out the findings and conclusions in relation to the individual planning issues that arose from the application and during the examination.
- [Chapter 4](#) summarises considerations arising from Habitats Regulations Assessment (HRA).
- [Chapter 5](#) sets out the balance of planning considerations arising from Chapters 2, 3 and 4 in the light of important and relevant factual, legal and policy considerations.
- [Chapter 6](#) sets out the examination of land rights and related matters.
- [Chapter 7](#) considers the implications of the matters arising from the preceding chapters for the Development Consent Order (DCO).
- [Chapter 8](#) summarises all relevant considerations and sets out my recommendation to the SoSESNZ.

1.7.2. This report is supported by the following appendices:

[Appendix A](#) – Relevant legislation and policy

[Appendix B](#) – Key abbreviations

[Appendix C](#) – Summary of ExA's HRA conclusions

[Appendix D](#) – Recommended Development Consent Order

2. HOW THE APPLICATION IS DETERMINED

2.1. INTRODUCTION

2.1.1. This chapter identifies the key legislation, policy and local impact report (LIR) for the application and outlines relevant documents that I consider to be important and relevant to my findings and recommendations to the SoSESNZ.

2.2. LEGISLATION AND POLICY

2.2.1. Key legislation and policy are outlined below.

PLANNING ACT 2008

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

2.2.3. I consider that this is an application to which s104 is applicable because it is subject to policy in a designated NPS.

2.2.4. Section 104(3) of the PA2008 requires the Secretary of State (SoS) to decide the application in accordance with any relevant NPS that has effect in relation to this application, subject to the following exceptions set out in s104(4) to (8):

- where deciding the application in accordance with any relevant NPS would lead to the UK being in breach of any of its international obligations
- where deciding the application in accordance with any relevant NPS would lead to the SoS being in breach of any duty imposed on her or him by or under any enactment
- where deciding the application in accordance with any relevant NPS would be unlawful by virtue of any enactment
- where the adverse impact of the proposed development would outweigh its benefits
- where any condition prescribed for deciding an application otherwise than in accordance with a NPS is met

2.2.5. S104(2) of the PA2008 sets out the matters to which the SoS must have regard in deciding the application. In summary, these matters include:

- any NPS which has effect
- any duly submitted LIRs
- any matters prescribed in relation to development of the description to which the application relates

- any other matters the SoS considers are both important and relevant to the decision

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

2.2.7. A full list of relevant primary and secondary legislation, including but not limited to duties arising under the Equality Act 2010, Human Rights Act 1998 and the Climate Change Act 2008 (as amended), can be found in [Appendix A](#) of this report. I have considered all applicable legislation as required and the findings and recommendations in this report are framed so as to identify and enable the SoSES NZ to discharge all applicable statutory considerations or duties.

2.3. NATIONAL POLICY STATEMENTS

2.3.1. NPSs set out government policy on different types of national infrastructure development. Having regard to the purposes of s104(2)(a) of the PA2008, I consider that the Overarching National Policy Statement for Energy (NPS EN-1), National Policy Statement for Renewable Energy Infrastructure (NPS EN-3) and National Policy Statement for Electricity Networks Infrastructure (NPS EN-5) are relevant to the application, as designated on 17 January 2024.

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

2.3.2. NPS EN-1 sets out general principles and the generic impacts to be taken into account in considering applications for energy NSIPs. All other energy NPSs sit within the policy framework provided by NPS EN-1.

2.3.3. Paragraph 1.3.4 sets out that for onshore electricity generating stations (but not onshore wind or electricity storage, except hydroelectric storage) generating more than 50MW in England, the NPS EN-1 in conjunction with the relevant technology-specific NPS will be the primary basis for decision making.

2.3.4. Paragraph 3.3.24 of NPS EN-1 further confirms that applications for solar energy generating stations above 50MW will continue to be defined as NSIPs, therefore requiring consent from the SoS.

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

2.3.5. NPS EN-3 is a technology-specific NPS which is relevant to the proposed development, focusing on renewable energy generation projects including the technology specific considerations to be taken into account in addition to the impacts in relation to environmental and other issues.

- 2.3.6. Section 2.10 of NPS EN-3 relates specifically to solar photovoltaic energy generation and provides guidance on matters and impacts that should be considered.

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

- 2.3.7. NPS EN-5 focuses on infrastructure for electricity networks, and it includes assessment criteria specific to electricity networks development. Paragraph 1.6.4 confirms that other kinds of electricity infrastructure including lower voltage overhead lines and underground cables at any voltage are covered by this NPS if it constitutes associated development for which consent is sought.
- 2.3.8. The NPSs formed the primary policy context for this examination. This report sets out my findings, conclusions and recommendations taking these matters into account and applying the approach set out in s104 of the PA2008.

Updated NPSs

- 2.3.9. The government carried out a consultation exercise between 24 April 2025 to 29 May 2025 on proposed updates to NPS EN-1, NPS EN-3 and NPS EN-5. Of relevance was a proposed update to NPS EN-1 which embeds the government's Clean Power 2030 Action Plan and gives Critical National Priority status to low-carbon infrastructure, with updated NPS EN-3 and NPS EN-5 aligned accordingly. Updated NPS EN-1, NPS EN-3 and NPS EN-5 were subsequently published and came into effect on 6 January 2026.
- 2.3.10. The updated NPS EN-1 confirms at paragraph 1.6.2 that, for any application accepted for examination before the final publication of the approved 2026 amendments, the 2024 suite of NPSs should have effect in accordance with the terms of those NPSs. However, paragraph 1.6.3 notes that “[...] any emerging draft NPSs (or those designated but not yet having effect) are potentially capable of being important and relevant considerations in the decision-making process.”
- 2.3.11. All references to NPSs in this report relate to the 2024 NPSs as set out in paragraph 2.3.1 of this report, unless otherwise stated.

2.4. OTHER RELEVANT NATIONAL POLICIES

- 2.4.1. I have taken into account other relevant government policy which is considered to be both important and relevant to the SoSESNZ's decision in accordance with s104(2)(d) of the PA2008. This includes the following national policies:

- British Energy Security Strategy (2022)

- Clean Power 2030 Action Plan (2024)
- UK Solar Roadmap (2025)
- Energy White Paper: Powering our Net Zero Future (2020)
- Net Zero Strategy: Opportunities for the Power Sector (2020)
- Noise Policy Statement for England (2010)
- The Paris Agreement (2015)
- Powering Up Britain (2023)
- The National Planning Policy Framework (December 2024) (Framework) and associated Planning Practice Guidance (PPG)

2.4.2. The applicant provides further detail on the relevance of each of the above policies to the proposed development in the policy compliance document [[APP-027](#)]. These policies are also discussed in more detail in Chapter 3 of this report within ‘The Principle of Development’.

2.5. LOCAL IMPACT REPORT

2.5.1. One LIR was submitted into the examination at deadline 2 by Cumberland Council [[REP2-058](#)]. The LIR sets out Cumberland Council’s planning policy position and identifies a range of matters and considerations relating to the following issues:

- Principle of development and climate change
- Land use and soils
- Cultural heritage
- Landscape and visual
- Biodiversity
- Water environment and flood risk
- Transport and access
- Socio-economics
- Human health and amenity
- Draft Development Consent Order

2.5.2. The issues raised are considered in further detail in relation to relevant planning issues in Chapter 3 of this report. The applicant provided a response to Cumberland Council’s LIR at deadline 3 [[REP3-008](#)], which I have considered where necessary and relevant in this report.

2.5.3. [Appendix A](#) sets out the local development plan policies that are relevant to the proposed development. Individual policies are also referred to as necessary throughout this report.

2.6. ENVIRONMENTAL IMPACT ASSESSMENT

- 2.6.1. The applicant provided a notification under Regulation 8(1)(b) of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 (EIA Regulations) of its intention to provide an Environmental Statement (ES). Therefore, in accordance with Regulation 6(2)(a) of the EIA Regulations, the proposed development is EIA development.
- 2.6.2. The applicant submitted a Scoping Report to the SoS under Regulation 10 of the EIA Regulations, dated August 2023, in order to request an opinion about the scope of the ES to be prepared (a Scoping Opinion) [[APP-096](#)]. On 14 September 2023, the Planning Inspectorate provided a Scoping Opinion [[APP-097](#)].
- 2.6.3. Overall, I consider that the ES, as supplemented with additional information during the examination, is sufficient to enable the SoSESNZ to take a decision in compliance with the EIA Regulations.

2.7. HABITATS REGULATIONS ASSESSMENT

- 2.7.1. The SoS is the competent authority for the purposes of the Conservation of Habitats and Species Regulations 2017 (as amended) (Habitats Regulations). The Habitats Regulations were amended by the Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019.
- 2.7.2. The proposed development is one that has been identified as giving rise to the potential for likely significant effects (LSE) on European sites and hence is subject to a Habitats Regulations Assessment (HRA). A summary of considerations relevant to the HRA can be found in Chapter 4 of this report. A summary table is also included in [Appendix C](#) of this report.

2.8. TRANSBOUNDARY EFFECTS

- 2.8.1. A transboundary screening under Regulation 32 of the EIA Regulations was undertaken on behalf of the SoS following the applicant's request for an EIA Scoping Opinion. No significant effects were identified on the environment in a European Economic Area (EEA) member state. Therefore, no EEA states were identified as being likely to have significant effects on their environment in terms of extent, magnitude, probability, duration, frequency or reversibility.
- 2.8.2. The Regulation 32 duty is an ongoing duty, and on that basis, I have considered whether any facts have emerged to change these screening conclusions up to the point of closure of the examination. I am satisfied there is no change to the screening conclusions.

3. THE PLANNING ISSUES

3.1. INTRODUCTION

3.1.1. This chapter sets out my findings and conclusions on the planning issues. The chapter is structured to firstly consider the initial assessment of principal issues (IAP). It also examines matters of principle, including need, climate change and alternatives. It then addresses individual planning issues, set out in individual sections. The order in which these section headings are presented should not be taken to imply any order of merit.

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

- neutral weight,
- a little weight,
- moderate weight,
- great weight, or
- very great weight/substantial weight.

3.1.3. NPSs use the term ‘substantial weight’ and this is the same as ‘very great weight’ used elsewhere in my report. Neutral weight means that weight attributed acts neither for or against making the Order.

3.1.4. I make regular reference to the following documents in this section and provide abbreviations and links as follows, for ease of reference:

- Outline Construction Environmental Management Plan (oCEMP) [[AS-026](#)]
- Outline Construction Traffic Management Plan (oCTMP) [[REP2-025](#)]
- Landscape and Ecology Plan (LEP)
- Landscape Strategy Plan (LSP) [[REP2-046](#)]
- Outline Landscape and Ecological Management Plan (oLEMP) [[REP5-016](#)]
- Outline Operational Management Plan (oOMP) [[AS-024](#)]
- Outline Soil Management Plan (oSMP) [[REP4-023](#)]
- Framework Decommissioning Management Plan (FDMP) [[APP-111](#)]
- Final Draft Development Consent Order (dDCO) [[REP6-006](#)]

3.1.5. I also make reference to ‘Requirements’ in my report. These are the Requirements set out in Schedule 2, Part 1 of the dDCO [[REP6-006](#)] which are conditions attached to the dDCO to control the construction, commissioning, operation and decommissioning.

INITIAL ASSESSMENT OF PRINCIPAL ISSUES (IAPI)

3.1.6. As required by s88 of the Planning Act 2008 (PA2008) and rule 5 of the Infrastructure Planning (Examination Procedure) Rules 2010 (EPR), I made an IAPI in advance of the preliminary meeting (PM). This formed an initial assessment of the issues based on the application documents and submitted RRs. The list of issues relates to all phases of the proposed development. The IAPI was raised at the PM and no other key topics were identified during the examination. The IAPI can be found in Annex C of the rule 6 letter [[PD-005](#)]. The issues identified in the IAPI are as follows:

- Biodiversity, ecology and natural environment
- Environmental Impact Assessment
- Historic environment and cultural heritage
- Landscape and visual effects
- Highways and transportation
- Noise

THE PLANNING ISSUES IN THIS REPORT

3.1.7. I consider that the issues raised by IPs were broadly in line with the IAPI and were subject to written and oral questioning during the examination. A number of concerns were raised by IPs in relation to the principle of development, including need, alternatives and climate change, and I deal with these in the report as set out below. Other matters raised, such as drainage and flood risk, are covered under 'Other planning matters' in Chapter 3 of this report.

3.1.8. The planning issues considered in this report are as follows:

- Chapter 3.2: The principle of the proposed development
- Chapter 3.3: Design, including alternatives and site selection
- Chapter 3.4: Landscape and visual effects
- Chapter 3.5: Biodiversity and ecology
- Chapter 3.6: Historic environment
- Chapter 3.7: Noise
- Chapter 3.8: Highways, transportation and access
- Chapter 3.9: Other planning matters

3.1.9. The ES reports on environmental effects having regard to the mitigation hierarchy, whereby significant effects are identified first, followed by the proposed mitigation and the residual effects (the effect after mitigation is applied) and these are summarised in [[AS-017](#)]. The same terminology is used in my report.

3.1.10. Unless otherwise stated in this report, I agree with the conclusions reached in the applicant’s ES on residual environmental effects as set out in the ES ([[APP-042](#)] - Table 11.2 -11.4) and [[AS-017](#)].

3.2. THE PRINCIPLE OF THE DEVELOPMENT

INTRODUCTION

3.2.1. This section covers the need for the proposed development, including greenhouse gas emissions considerations.

POLICY CONSIDERATIONS

NPS EN-1

3.2.1 – 3.2.5	SoS consideration of need matters.
3.2.6	Urgent need for the types of infrastructure covered by this NPS.
3.2.7	Substantial weight to be given to the need.
3.2.8	No requirement for scheme to consider specific contribution to need.
3.3.13 – 3.3.19	Delivering affordable decarbonisation.
3.3.20	The role of wind and solar.
3.3.57	All electricity to come from low carbon sources by 2035.
3.3.59	All renewable technologies urgently needed and will meet government energy objectives.
3.3.62	Critical national priority for low carbon infrastructure.
4.2.2	Delivery of energy security, net zero, low carbon sources.
4.2.5	Definition of low carbon infrastructure.
4.2.7	Critical National Priority considerations.
4.2.15	Critical National Priority residual impacts and the presumption.
4.10.2 – 4.10.4	Climate change adaptation considerations.
5.3.3	Climate change impacts and residual emissions.
5.3.4	Greenhouse gas assessment (GHG) matters.
5.3.5	GHG assessment to drive down emissions at every stage.

5.3.6	GHG emissions mitigation.
5.3.8	SoS should be satisfied with GHG emissions assessment.
5.3.9	SoS should be satisfied with steps to reduce GHG emissions.
5.3.10	Mitigate or offset emissions and residual emissions.

NPS EN-3

2.10.17	General land-take of solar farms.
2.10.22	Capacity of local grid network.
2.10.55	Generating capacity over time.
2.10.56	Export capacity should not be seen as a tool to constrain.
2.10.65	Applicants should consider design life of solar panel efficiency.
2.10.67	Solar panel efficiency and replacement.
2.10.147	Setting the time limit.
2.10.151	Consideration of time limit.

Other national and local policies and guidance

National Planning Policy Framework – paragraphs 161-169 (planning for climate change).

Planning Practice Guidance – Renewable and low carbon energy chapter.

Policies S19 and S20 - Allerdale Local Plan Part 1 (2014).

THE APPLICATION

3.2.2. The applicant’s case is set out in ES Chapter 3 [[APP-034](#)] and Chapter 5 of the planning statement [[AS-010](#)].

Need case

3.2.3. The planning statement [[AS-010](#)], in summary, states that large-scale solar developments are not just necessary, but central to meeting the urgent need for low carbon electricity generation set out in NPS EN-1. Furthermore, it highlights that the proposed development would align with national objectives, contributing to the government’s target of achieving 78% reduction in greenhouse gas emissions by 2035 and net zero by 2050. It would do this by providing a total generating capacity exceeding 50MW and the potential to export up to 150MW of electricity at

any one time based on the connection agreement [APP-176], which would be up to 134 gigawatt-hours (GWh) per year [APP-161].

- 3.2.4. The planning statement also notes that other objectives would be met in terms of increased energy supply security and energy affordability, with solar comprising a reliable and proven technology. The applicant notes that solar is a low-cost type of energy generation that would decrease reliance on more expensive forms of energy generation. The applicant points to other solar DCO cases which support its case that substantial weight should be attributed to the need case.

Climate change and greenhouse gas emissions

- 3.2.5. ES Chapter 9 sets out the findings in relation to climate change effects. Greenhouse gas emissions (GHG) have been assessed having regard to IEMA guidance.² The baseline position is that the climatic conditions are set to evolve over the lifetime of the proposed development, with temperature and precipitation both increasing ([APP-040] – Table 9.8).
- 3.2.6. Climate change effects have been assessed in relation to construction vehicle emissions using a construction emissions factor toolkit [APP-160] and anticipated projected increases in traffic on local roads due to the proposed development. The oCTMP [REP2-025] includes measures to reduce carbon emissions, including a commitment to managing deliveries to reduce trips and the implementation of a travel plan to encourage sustainable travel for workers.
- 3.2.7. The oCEMP [AS-026] includes a commitment to ensuring no idling vehicles, that non-road mobile machinery meets the required emissions standards, and that diesel or petrol-powered generators should be avoided and battery or solar used where practicable. Final versions of these documents would be agreed as part of the DCO Requirements. The ES states that the residual construction effects on climate change would be minor adverse (not significant).
- 3.2.8. In relation to the operational phase, the ES calculates carbon savings of approximately 8,900 tonnes of carbon dioxide equivalent (tCO₂e) per annum, and 359,441.2 tCO₂e over the 40-year operational phase. If compared with the displacement of fossil fuels alone, according to the ES the total carbon saving would be 1,340,902 tCO₂e.

² IEMA Environmental Impact Assessment Guide to: Assessing Greenhouse Gas Emissions and Evaluating their Significance

- 3.2.9. The calculations are based on a load factor of 10.2%, which comprises the average actual energy output as a proportion of maximum possible output, taken from a government publication.³ The ES sets out the projected carbon reductions as a proportion of local emissions and local, regional and national carbon budgets in Tables 9.10 and 9.11 of ES Chapter 9. During operation the applicant anticipates a major beneficial local level effect due to the positive climate change mitigation effects of the proposal. All of the above climate change effects are summarised in Table 9.13 of ES Chapter 9 [APP-040].
- 3.2.10. In respect of climate change resilience, which is the vulnerability of the proposed development to climate change, ES Chapter 9 sets out the design measures proposed which would increase resilience and adaptation to climate hazards. This includes a range of measures including use of appropriate materials, sustainable drainage features, implementation and appropriate management of landscaping. According to the ES, the residual effects would not be significant.

ISSUES CONSIDERED DURING THE EXAMINATION

- 3.2.11. Paragraph 6.16 of Cumberland Council's LIR [REP2-058] sets out the strategic objectives policies, which includes the promotion of renewable and low carbon energy production. The SoCG ([REP5-020] – CC.LPA.8) confirms that the proposed development would contribute positively to their climate change and net zero ambitions. Cumberland Council did not raise any substantive issues in relation to the principle of development and climate change effects during the examination.
- 3.2.12. I sought clarification from the applicant on a range of climate change related matters during the examination. The applicant provided responses to these in Table 3.1 of [REP2-010], Table 7.1 of [REP3-015] and Table 3.1 of [REP4-004]. I consider the most relevant matters below.

Climate change and greenhouse gas emissions

- 3.2.13. In response to my request for a life cycle approach to calculating GHG emissions, as advocated by paragraph 5.3.4 of NPS EN-1, the applicant submitted a Carbon Emissions Lifecycle Assessment Technical Note (CELA) [REP5-028] during the examination, to be read alongside ES Chapter 9 [APP-040].
- 3.2.14. The CELA makes evidenced assumptions relating to the materials to be used in the construction of the project and the relevant emissions factor for each, along with anticipated emissions from transportation and consideration of other construction

³ See [APP-161] Table 1.1 'Site Specific (UK) Load Factor

impacts, which are benchmarked against other solar projects set out in paragraph 2.1.7 of the CELA. For the solar farm’s operational phase, panel degradation has been considered along with maintenance activities. A summary of the inputs and overall calculations used to determine the GHG emissions over the lifetime of the project is set out in Appendix A of the CELA [[REPS-028](#)].

- 3.2.15. Overall, the CELA calculates that emissions savings over the lifetime of the project would be between 31,991 tCO₂e and 800,943 tCO₂e. The lower figure assumes that emissions avoided by the proposed development would be reduced year on year as the electricity grid decarbonises over the same period, whereas the higher figure is based on current grid-average avoided emissions.
- 3.2.16. The applicant acknowledges that, in comparison with the CELA, the figures contained in ES Chapter 9 represent a higher carbon emissions saving, as they did not consider the detailed lifecycle aspects as set out in the CELA. However, even assuming the lower savings figure of 31,991 tCO₂e as set out in the CELA, the applicant maintains that this would represent a major beneficial (significant) effect in respect of climate change mitigation.

Overplanting and land take

- 3.2.17. Turning to the site’s capacity relative to land-take, it would occupy approximately 4.5 acres per MW, which is at the higher end of figure indicated in paragraph 2.10.17 of NPS EN-3. However, paragraph 2.10.9 of updated NPS EN-3 indicates that solar farms currently require between 4 and 5.6 acres per MW, in line with the land-take proposed. The applicant justifies the anticipated land-take on the basis that 32% of the site would comprise green infrastructure, public highway, and retained land around the existing Potato Pot Wind Farm. When these are factored in, the proposed development would occupy approximately 2.7 acres per MW, below the median range set out in NPS EN-3. In any event, paragraph 2.10.17 of NPS EN-3 and paragraph 2.10.9 of updated NPS EN-3 make it clear that land-take can vary significantly across different sites.
- 3.2.18. The applicant states that, in terms of ‘overplanting’, ratios in other solar cases have typically been between 1.2 and 1.5 depending on site and project specific factors. The applicant anticipates that the proposed development would comprise an overplanting ratio of between 1.2 and 1.4, which would mean an installed capacity of around 180 – 210MW⁴ of panels ([\[REP4-004\]](#) – Q2.2.2).

⁴ Installed capacity based on direct current (DC)

- 3.2.19. The final overplanting ratio and requirement would be subject to detailed design. The reason for overplanting relates to likely system losses and sub-optimal generating conditions throughout operation, including hours of daylight and weather, as well as expected solar panel degradation. Therefore, overplanting would be necessary to maximise export capacity potential.

CONCLUSIONS

- 3.2.20. The proposed development would comprise a renewable energy generating scheme of over 50MW which has been designed to maximise the grid connection capacity of 150MW. The potential carbon savings have been calculated having regard to GHG emissions generated during construction and operation, including embodied carbon. Therefore, the proposed development's benefits have been calibrated on a project specific basis and are anticipated to reduce emissions associated with the national grid by at least 31,000tCO₂e over the 40-year lifetime of the project.
- 3.2.21. In my view, the renewable energy generated as a result of the proposed development would comprise a very significant output, even taking into account emissions mainly associated with embodied carbon and the construction phase. Overall, there would be a significant reduction in carbon emissions when compared to fossil fuel-based forms of electricity generation.
- 3.2.22. There is an urgent need to decarbonise the grid, and the proposed development would make a meaningful contribution to addressing that need, as well as promoting energy security, reliability, and affordability of supply. In accordance with paragraph 3.2.7 of NPS EN-1, this need is afforded substantial (very great) positive weight.

3.3. DESIGN INCLUDING ALTERNATIVES AND SITE SELECTION

INTRODUCTION

- 3.3.1. This section of the report deals with design, including consideration of alternatives and the site selection process.
- 3.3.2. The applicant’s approach to design, alternatives and site selection is mainly set out in ES Chapter 4 [[APP-035](#)], the Design Parameters Document [DPD] [[APP-028](#)] and the Design Approach Document (DAD) [[APP-029](#)].

POLICY CONSIDERATIONS

NPS EN-1

4.3.9	Consideration of alternatives.
4.3.15	Inclusion in ES of reasonable alternatives studied.
4.3.17	Describe alternatives where a policy or legal requirement.
4.3.23	SoS and consideration of alternatives.
4.7.1	High quality and inclusive design.
4.7.2	Nature of energy infrastructure and design considerations.
4.7.3 – 4.7.5	Good design to be embedded with regard to sustainable materials and design principles.
4.7.6	Design and sensitive use of materials.
4.7.7 – 4.7.8	Applicants must detail the design process and evolution and take account guidance and professional advice.
4.7.11	SoS to consider functionality and aesthetics.
4.7.12	SoS to consider purpose including safety and security.

NPS EN-3

2.10.22	Local grid network capacity.
2.10.23	Connection to transmission network – larger developments.
2.10.24	Availability of network capacity and distance from site.
2.10.25	Applicants may choose site based on available grid export capacity.
2.10.60 – 2.10.62	Factors to consider in respect of layout and design.

2.10.63	Underground and overhead cabling design considerations.
– 2.10.64	
2.10.70	Flexibility in relation to design and project
–	
2.10.72	

NPS EN-5

2.21 – 2.2.12	Site selection and design factors
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Other national and local policies and guidance

National Planning Policy Framework – paragraph 135 includes a range of considerations in order to achieve well-designed places.

Planning Practice Guidance – planning for well-designed places.

Policies S4 and DM14 of the Allerdale Local Plan Part 1 (2014).

THE APPLICATION

Site Selection methodology

3.3.3. According to the applicant, as set out in paragraph 4.4.2 of ES Chapter 4 [\[APP-035\]](#), site selection involved a four-stage process:

- identification of a viable point of connection (POC) to the grid network
- review of land availability and suitability
- constraints review of land
- identification of additional land

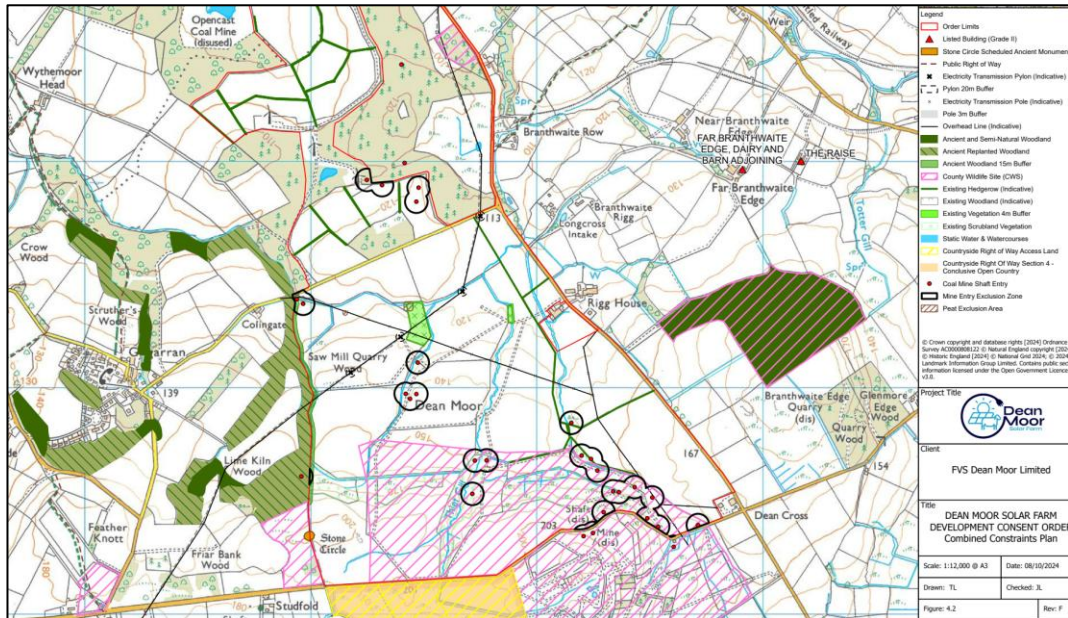
3.3.4. According to the applicant, the site was chosen due to the proximity of existing 132kV overhead lines which run generally east to west across part of the site, as shown on [\[APP-007\]](#). This local distribution network connects to the wider grid and is operated and managed by Electricity North West Limited (ENW). Connection would take the form of a line drop, with no new cable route or infrastructure required beyond the Order limits to connect to the grid. A grid connection agreement is in place between the applicant and ENW [\[APP-176\]](#).

3.3.5. None of the land is classified as best and most versatile agricultural land (BMV), with the majority of the Order limit land being grade 4 (poor) [\[APP-105\]](#).

3.3.6. A number of constraints were identified by the applicant. These included potential visual impacts due to site topography, features within the Order limits including watercourses, hedgerows, historic mining, and potential effects in respect of

ecology and biodiversity. According to the applicant, the extent of the land take within the Order limits is that which would be necessary to reach the export capacity, taking into account the constraints (see Figure 6 below).

Figure 6: Constraints plan



(Source: extract from ES Figure 4.2 (Combined Constraints Plan) [APP-072])

Alternatives

- 3.3.7. Various parcels of land were considered based on a theoretical visibility analysis. The suitability of these parcels was determined based on visual impact, agricultural land classification, heritage impacts, and access and footpath impacts, leading to the Order limits which form the proposed development.
- 3.3.8. In relation to alternative layouts and design evolution, the scheme presented at pre-application and scoping stage included a battery energy storage system (BESS) [APP-096]. Following the statutory consultation period, the BESS was removed and therefore, does not form part of the submitted proposed development. A number of other alterations were made to the layout and design during the pre-application phase, having regard to potential environmental effects ([APP-035] – Table 4.1).
- 3.3.9. The land take has also been minimised through the choice of static solar PV panels, as opposed to tracking solar PV panels, which the applicant states would require a larger land-take.

Design

3.3.10. The proposed design and layout are based on design principles under the main topics of Climate, People, Places and Value ([\[APP-029\]](#) – Table 4.1), aligned with the NIC design principles.⁵ The applicant sets out that the design has also been influenced particularly by:

- existing overhead lines including 132kV pylons and 11kV wooden poles
- watercourses and topography
- cultural heritage including potential for adverse impacts on the setting of The English Lake District World Heritage Site and other designated heritage assets and archaeological remains
- landscape features such as woodland and hedgerows
- ecological constraints and opportunities
- the site's mining history

3.3.11. The DAD elaborates on the design evolution and summarises the approach to good design having regard to the main design principles. These are set out in Table 7.1 of the DAD [\[APP-029\]](#). These design principles include measures to avoid or mitigate environmental effects, matters which are covered in more detail in each of the topics of this report. Moreover, Chapter 6 of the DAD also reviews the design in relation to each of the key topics in the ES.

3.3.12. The proposed design is secured by the Works Plans [\[APP-007\]](#) and DPD [\[APP-028\]](#). Requirement 3 of the dDCO requires the submission of, and subsequent approval by, Cumberland Council of detailed design matters concerning layout, scale, finished ground levels, external appearance and vehicular access, parking and circulation areas, which must be in accordance with the DPD. Moreover, outline management plans relating to construction, operation, decommissioning as well as landscape and ecological management and design, set the outline parameters at this stage. Final versions of these documents would be submitted and agreed as part of the DCO Requirements.

ISSUES CONSIDERED DURING THE EXAMINATION

3.3.13. The SoCG ([\[REPS-020\]](#) – CC.LPA.9) confirms agreement between Cumberland Council and the applicant that the proposed development positively responds to good design and complies with policies S4 and DM14 of the Allerdale Local Plan (Local Plan). It also confirms that Cumberland Council would review the detailed design against local policies through the discharge of relevant DCO Requirements.

⁵ Design Principles for National Infrastructure published by the National Infrastructure Commission

3.3.14. Cumberland Council did not raise any concerns during the examination nor in their LIR [\[REP2-058\]](#) regarding the applicant's consideration of design or alternatives.

Consideration of other sites

3.3.15. I examined the extent to which other sites had been considered as alternatives to the proposed development site. The applicant's response is set out in Point 20 of [\[REP5-013\]](#) which, in summary, states that securing the POC was crucial in determining site location. It goes on to explain that there are no National Grid Transmission Network Operator (TNO) substations within 60 miles of the site, these typically being associated with larger scale solar farms. The proposed development would instead connect to a local Distribution Network Operator (DNO) and would rely on existing available grid connection infrastructure. As such, the POC is crucial and the proposed infrastructure would be concentrated around the POC and would generally comprise a smaller solar development than one typically associated with a TNO connection.

3.3.16. Factors including landscape, ecology, agricultural land classification, transport, flood risk and proximity to sensitive receptors have supported the selection of this site. As such, the applicant considers that the overall limited residual effects in relation to all environmental matters indicate that this site would be suitable.

Design

3.3.17. NPS EN-1 paragraphs 4.7.1 and 4.7.2 refer to aesthetics. The focus of my questions during the examination was to establish whether the applicant had considered aesthetics and local context in sufficient detail and, if so, whether these considerations had been properly integrated into the scheme and secured.

3.3.18. In response to my questions and in support of the project design principles set out in Table 7.1 [\[APP-029\]](#), the applicant made several points as set out in No. 3(a) of [\[REP5-010\]](#) and No. 26 of [\[REP5-013\]](#). In summary, the applicant's position in relation to aesthetics and local context is:

- Works No. 1 – most of the scheme concerns solar arrays with no possibility to alter their external appearance. Limited scope for aesthetic considerations, with potential mainly limited to fence posts or the colour of some buildings and containers
- Works No. 2 – the Distribution Network Operator (DNO) would determine the requirements for infrastructure such as substation buildings according to function, design, and safety standards

- detailed design would be subject to Cumberland Council’s approval and the DPD includes flexibility to provide appropriate materials as part of DCO Requirements submissions
- overall, good design would mainly be achieved through layout and landscaping in this case

CONCLUSIONS

- 3.3.19. The site has been selected based on its proximity to the grid POC and available capacity, an approach advocated by paragraph 2.10.25 of NPS EN-3. The applicant has set out the iterative design process and explains the reasons for their choice, taking into account environmental, economic, and social effects and technical feasibility, in accordance with paragraph 4.3.15 of NPS EN-1.
- 3.3.20. NPSs do not contain any requirement to consider alternatives and in this case the alternative configurations explored are proportionate and meet the requirements of NPS EN-1, NPS EN-3, and NPS EN-5.
- 3.3.21. In respect of design, section 4.7 of NPS EN-1 and relevant paragraphs of NPS EN-3, promote a holistic approach to design where aesthetic considerations should be balanced with operational and environmental factors. In this case, the landscape and layout-led approach and the design choices set out in the DAD [[APP-029](#)] and DPD [[APP-028](#)] are justified and proportionate in light of environmental and operational constraints.
- 3.3.22. There remains the opportunity for design refinement, in relation to the materials and appearance of the buildings and infrastructure, through DCO Requirement 3 submissions.
- 3.3.23. Overall, the proposed development would achieve good design, informed by consideration of alternatives and the site selection process. I attribute neutral weight to this matter in the planning balance.

3.4. LANDSCAPE AND VISUAL

INTRODUCTION

- 3.4.1. This chapter considers the landscape and visual effects of the proposed development and sets out the applicant's case at the start of the examination, the issues considered during the examination, and my overall conclusions in relation to landscape and visual (LV) matters.

POLICY CONSIDERATIONS

NPS EN-1

5.10.7	National Parks highest status of protection.
5.10.8	Duty to seek to further purposes of designated landscapes.
5.10.12	Local landscapes.
5.10.13	Visual effects for receptors.
5.10.17	Landscape and visual assessment methodology.
5.10.20	National Park natural beauty and special qualities.
5.10.21– 5.10.22	Matters to consider in assessing landscape and visual effects.
5.10.24	Consider how landscapes could be enhanced.
5.10.25	Visual effects matters to consider.
5.10.27	Minimisation of effects through colours, materials and landscaping.
5.10.30	Ensure design content will meet landscape and visual objectives.
5.10.34	Duty to seek considerations outside of designated landscapes.
5.10.35	Balancing visual impacts and benefits.
5.10.36	Consideration of temporary nature of adverse impacts.
5.10.37	Design considerations.
5.10.38	Design considerations.

NPS EN-3

2.10.27	Proximity to dwellings.
2.10.43	Visual impact on users of public rights of way to be minimised where possible.
2.10.48	Landscape and visual impact of security measures.

2.10.94	Cumulative effects considerations.
2.10.95	Cumulative effects considerations.
2.10.97	Landscape and visual assessment effects considerations.
2.10.98	Good design.
2.10.99	Security and fencing impacts.
2.10.100	Vegetation, hedgerows and trees considerations.
2.10.102	Glint and glare definitions.
2.10.104	Applicants should consider geometric possibility of glint and glare and
2.10.131	Mitigating effects through appropriate planting.
2.10.132	Mitigating impact of securing fencing.
2.10.135	Glint and glare effects and use of screening.
2.10.157	SoS to consider impacts considering visual receptors and character.
2.10.158	SoS should assess impact of glint and glare on a range of receptors.
2.10.159	SoS weight given to aviation interference due to glint and glare.

Legislation

- 3.4.2. Section 245 of the Levelling-up and Regeneration Act 2023 (LURA Act) requires that relevant authorities seek to further the statutory purposes of protected landscapes. This applies to National Parks (NP) and enhances the duty contained within section 11a of the National Parks and Access to the Countryside Act 1949 (NPA) and the purposes for which NPs are designated.

Other national and local policies and guidance

National Planning Policy Framework – paragraph 189.

Planning Practice Guidance – Natural environment (landscape) section.

Policies S24, S32, S33, DM5, DM14 and DM17 of the Allerdale Local Plan Part 1 (2014).

THE APPLICATION

Methodology

- 3.4.3. A landscape and visual impact assessment (LVIA) is contained within ES Chapter 7 [[REP2-032](#)]. It reports on the assessment of likely significant effects relating to LV matters, including the landscape as a resource, and on people's views and visual

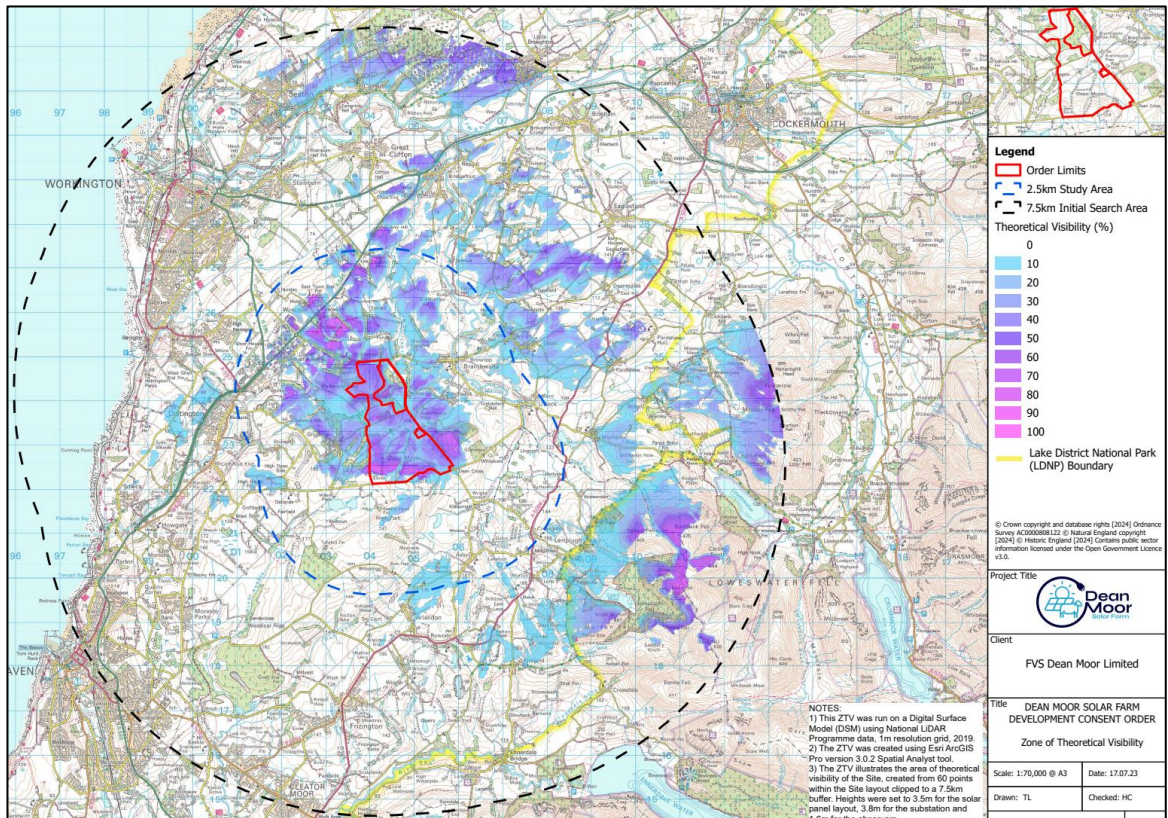
amenity. The LVIA is based on Landscape Institute guidance and technical notes,⁶ as set out in the methodology [\[APP-119\]](#).

- 3.4.4. The site does not lie within a protected landscape. However, the Lake District National Park (LDNP), which is also designated by UNESCO⁷ as the English Lake District World Heritage Site (WHS), lies approximately 3.2 km to the east of the site at its closest point as shown in [\[APP-079\]](#).
- 3.4.5. The ES assesses the effects of the proposed development during the construction, operation and 15 years after the completion of development to take into account mitigation landscaping and planting. It is based on a worst-case scenario, whereby the maximum parameters of the proposed development – in terms of land-take and the dimensions of structures and buildings - are assumed (based on the DPD [\[APP-028\]](#) and associated Works Plans [\[APP-007\]](#)).
- 3.4.6. The proposed development would be reversible and, in that sense, temporary, but would be long-term, and the land may not be restored for around 40 years. The ES criteria identify that effects are generally assessed as partially permanent/reversible, indicative of a change to the landscape that would be moderately difficult to reverse (as per [\[REP2-034\]](#) – Table 3.9).
- 3.4.7. Utilising the maximum worst-case parameters, zones of theoretical visibility (ZTV) plans were produced as a bare-earth scenario (only considering topography and not buildings or landscape features). These demonstrate the theoretical visibility of the proposed development up to 7.5km away from the site, as set out in Figure 7 below.

⁶ Including: Landscape Institute and Institute of Environmental Management and Assessment: Guidelines for Landscape and Visual Impact Assessment (3rd edition)

⁷ The United Nations Educational, Scientific and Cultural Organisation

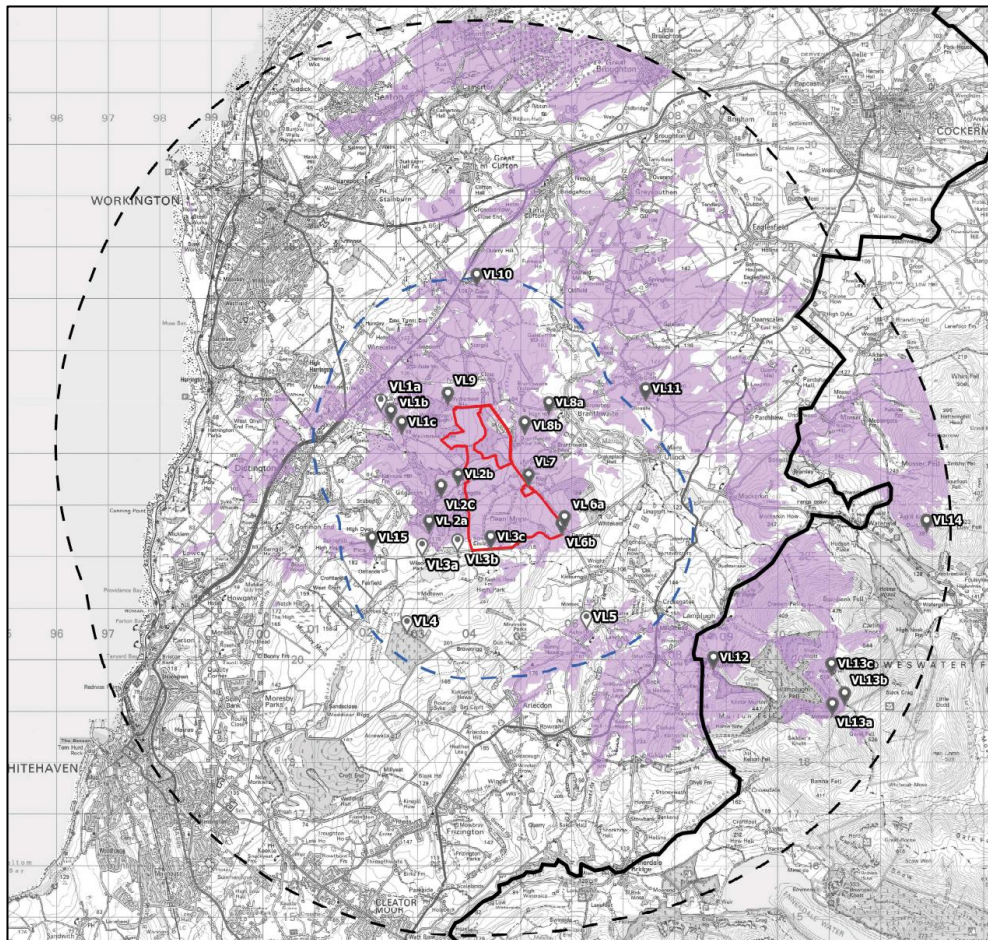
Figure 7: Plan showing theoretical visibility of proposed development as a %



(Source: ES Figure 6.3 (Zone of Theoretical Visibility) [APP-078])

- 3.4.8. In addition, and in order to assess the potential effects on landscape character, the applicant selected landscape receptors within the study area which were judged to be sensitive to the proposed development, or likely to experience significant landscape effects, as set out in paragraph 2.4.2 of the LVIA methodology [REP-034].
- 3.4.9. In respect of visual effects, view locations (VL) within the study area were selected in order to represent potential views of the proposed development for residents, visitors to the LDNP/WHS, users of public rights of way (PROWs), or those travelling through the local area by car or on foot, including along local roads.
- 3.4.10. The landscape receptors were agreed following engagement with Cumberland Council and the Lake District National Park Authority (LDNPA). Additional VLs were identified to assess the visual effects and potential views into and out of the LDNP. The final VLs used to inform the LVIA are shown in Figure 8.

Figure 8: View locations and theoretical visibility of proposed development



(Source: extract from ES Figure 7.4b (Zone of Theoretical Visibility of DTM with View Locations) [[APP-084](#)])

- 3.4.11. ES Chapter 7 [[REP2-032](#)] outlines the likely significant LV effects during the construction, operation, and decommissioning phases of the proposed development. These are summarised below, first in relation to landscape effects, followed by visual effects.

Landscape effects

- 3.4.12. To understand the landscape character, published landscape character assessments, distinguishing between different landscape types based on their distinctive elements or characteristics, were reviewed in the ES. The assessments most relevant to the proposed development and its likely effects are those published by Cumberland Council and the LDNPA, with the relevant character areas highlighted in [[APP-080](#)] and [[APP-081](#)]. The ES summarises the anticipated landscape effects in the schedule of landscape effects [[AS-028](#)].

- 3.4.13. The LCTs within Cumberland Council area are showing in Figure 9. The ES anticipates significant adverse effects on the character of the site. According to the ES, these effects would result from the loss or change of a large area of open agricultural land to accommodate solar panels and associated infrastructure such as substations, buildings/containers, security measures and fencing. The effects arising during the construction and decommissioning phases would be short-term and reversible, although additional harm would result from the presence of construction compounds and increased traffic.
- 3.4.14. During operation, the solar infrastructure and associated works would remain in situ and be perceptible for a longer period of time, but the effects would be less (due to the absence of construction activity and associated impacts). Therefore, moderate adverse (significant) effects are anticipated during all phases of the proposed development in relation to the site's landscape character, reducing to residual minor adverse as a result of landscaping and the measures set out in the oLEMP [[REP5-016](#)] and LSP [[REP2-046](#)].
- 3.4.15. In relation to the wider landscape, the ES identifies that moderate adverse (significant) effects on the open moorlands⁸ landscape character type (LCT) 9a would arise, which covers part of the southern portion of the site within the Cumberland Council administrative area. However, these effects would only occur during the construction phase and would be short term and reversible. The ES reports that effects would reduce to minor adverse (not significant) during operation at year 1 and negligible by year 15.
- 3.4.16. The southernmost part of the site also falls within LCT9d.⁹ There would be no significant effects during any phase, primarily due to embedded mitigation, whereby works and activities associated with the proposed development would largely avoid the most elevated parts of the escarpment and the defining characteristics of the LCT. In addition, the scale of the proposed development relative to the wider LCT would be limited.
- 3.4.17. The northern part of the site falls within LCT5a.¹⁰ The retention of existing vegetation, combined with the scale and characteristics of the proposed development relative to the key attributes of the LCT, would not result in significant effects. Any minor harmful effects would reduce further once proposed landscaping had properly established. There would be no

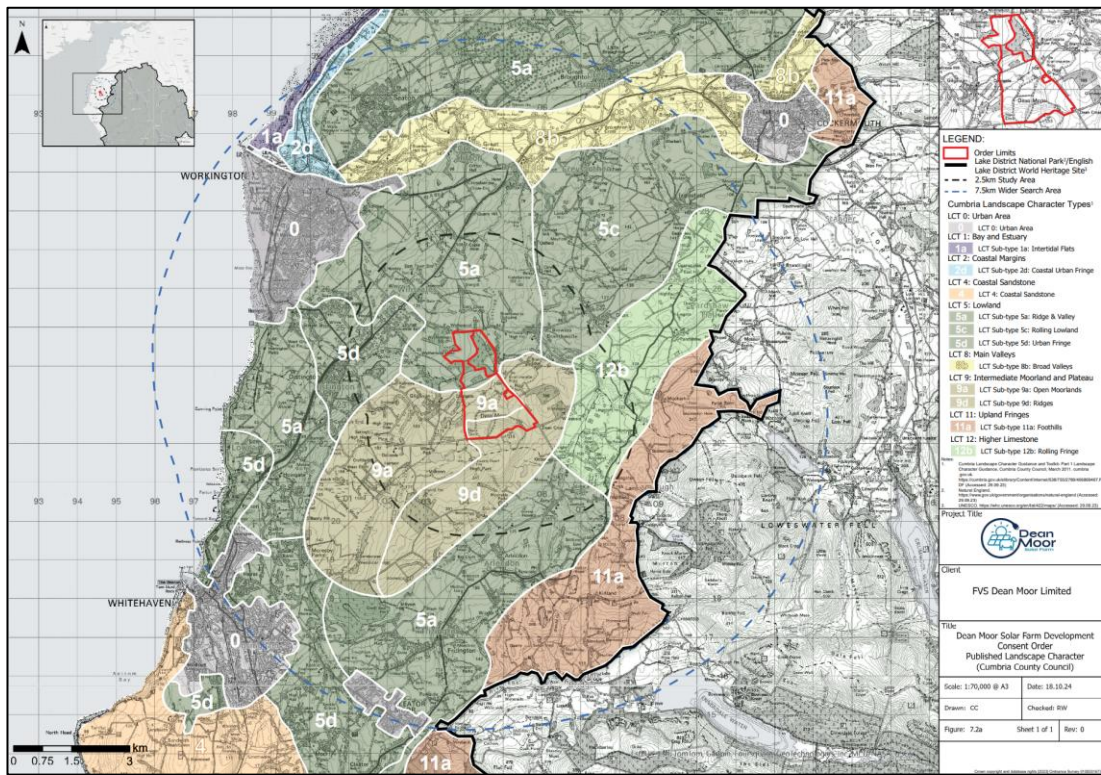
⁸ Type 9 - Intermediate moorland and plateau. Sub type 9a: Open moorlands

⁹ Sub type 9b: Ridges

¹⁰ Type 5 – Lowlands. Sub type 5a: Ridge and valley

significant direct or indirect effects on the character of any other LCTs within the Cumberland Council area.

Figure 9: Landscape character types in Cumberland Council area



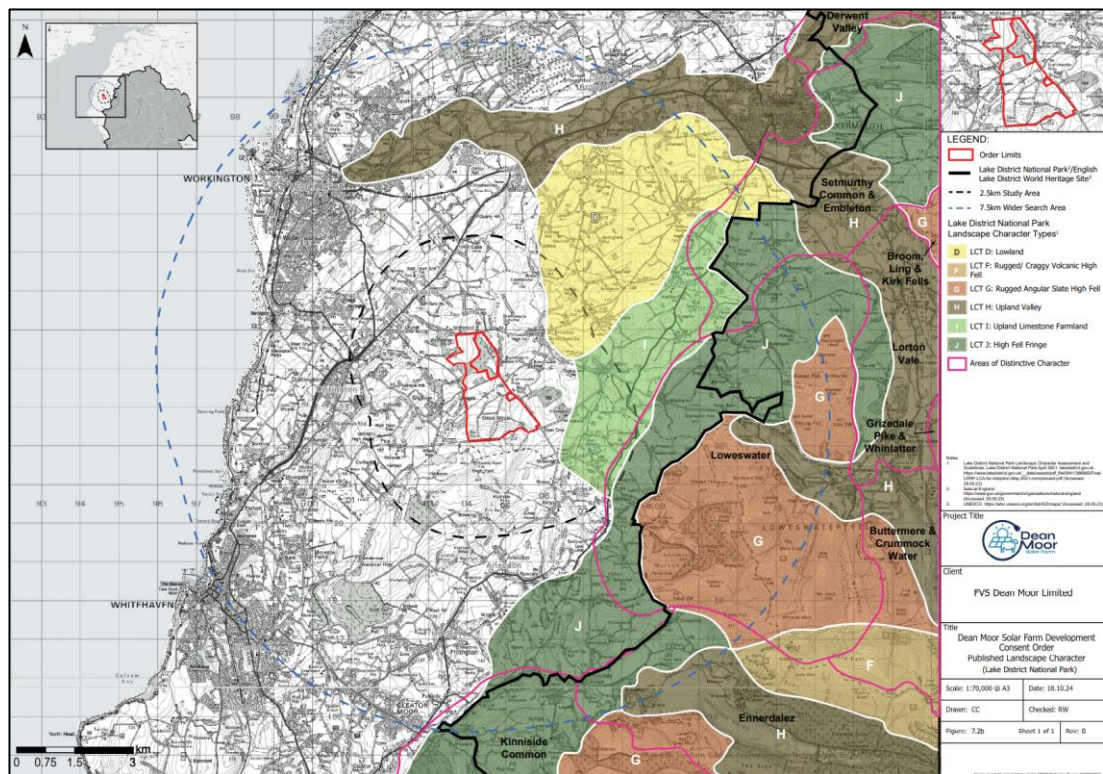
(Source: ES Figure 7.2a (Published Landscape Character (Cumbria CC) [APP-080]))

3.4.18. Landscape effects relating to the LDNP, including effects on its special qualities and relevant character areas adjacent to or within the LDNP, are considered in the ES. This includes an appraisal of potential effects on LCTs and on an area of distinctive character (ADC).¹¹ These are illustrated in Figure 10.

3.4.19. In summary, due to the site’s distance, limited visibility of the proposed development, and its nature and scale, there would be no significant effects on LCTs, the ADC, or the overall landscape character of the LDNP.

¹¹ ADC Area 8:Loweswater

Figure 10: Landscape character types within part of the Lake District National Park



(Source: ES Figure 7.2b (Published Landscape Character (Lake District National Park)) [APP-081])

Visual effects

- 3.4.20. During the construction and decommissioning phases, visual effects would be most pronounced at several properties and view locations located close to the site, particularly Wythemoor House, Rigg House, and Dean Cross Road and Cottage. The temporary construction and decommissioning works, which would also involve machinery and ground disturbance, would result in moderate to major adverse (significant) effects on visual amenity at these receptors [REP2-036]. According to the ES, the VLs listed below in Table 1 would experience significant adverse visual effects during construction and decommissioning, along with VL3c and VL10.
- 3.4.21. During the operational phase, the presence of solar panels, substations and associated infrastructure would continue to result in moderate adverse (significant) visual effects at these same receptors, as well as for users of nearby PRoWs and local roads, including Branthwaite Road and Branthwaite Edge Road. Proposed mitigation planting and landscaping would reduce visibility of the proposed development over time, with the adverse effects anticipated to gradually diminish as planting matures. Some receptors would retain partial views of the proposed solar infrastructure in the long term.

3.4.22. Table 1 below lists the VLs that would experience significant adverse visual effects during the operational phase of the proposed development. This includes visual effects at year 1 of operation and residual effects at year 15. The level of significance is informed by a combination of the receptor sensitivity and the magnitude of effects (as set out in Table 3.17 of [APP-119]).

Table 1: View locations where ES reports significant visual effects during the operational phase

Receptor	View Location	Distance from site (approximate)	Level of significance
Residential and road users – Dean Cross Cottage and Dean Cross Road	VL6a/VL6b	Adjacent	Major (year 1) Moderate (year 15)
Residential and road users – Rigg House, Jackie Hill, and Branthwaite Edge Road	VL7	Adjacent	Major (year 1) Major (year 15)
Residential and road users – Wythemoor House and Branthwaite Road	VL9	175m	Major (year 1) Moderate (year 15)
Recreational users – Lake District National Park and World Heritage Site from Blake Fell	VL13	5.8km	Moderate (year 1) Moderate (year 15)
Recreational users – Lake District National Park and World Heritage Site from Darling Fell	VL14	7km	Moderate (year 1) Moderate (year 15)

(Source: extract from ES Appendix 7.3 (Schedule of Visual Effects) [REP2-036])

3.4.23. The ES records that visual effects in respect of other receptors, including PRowWs, residential, and road users, would not be significant. These are also summarised in the ES [REP2-036].

Mitigation

3.4.24. LV effects would be mitigated during the construction phase through the implementation of final versions of the oCEMP [AS-026], oCTMP [REP2-025] and

oSMP [[REP4-023](#)] which would, amongst other measures, reduce potential ecological and environmental harms, manage construction traffic, and ensure soil resources would be handled appropriately so that the landscape strategy could be effectively implemented.

- 3.4.25. During the operational phase, the principal mitigation method would be landscaping and the implementation of the LSP. As set out in Requirement 6 of the dDCO, the LSP must be in accordance with the principles set out in the submitted LEP [[REP2-046](#)]. The implementation of the LSP, along with management of landscape and ecological features within the Order limits, would be achieved by implementing a LEMP, which would be based on the outline version (oLEMP) [[REP5-016](#)]. These documents would work together to secure new broadleaved woodland, areas of scrubland, native hedgerows, and enhancement to existing features such as trees, hedgerows and vegetation. There would be a requirement for ongoing maintenance and monitoring as clarified within the oLEMP, including a five-year establishment period, with habitat management objectives, targets and prescriptions for the full operational period.
- 3.4.26. LV effects would be mitigated at the decommissioning stage through the implementation of a DMP, the framework version of which is contained in [[APP-111](#)].

Cumulative effects

- 3.4.27. In relation to cumulative visual effects, visual receptors and view locations were selected based on potential visibility of schemes cumulatively ([REP2-034](#)) – Table 2.3). These cumulative view locations (VLC) were selected as representative of PRoW users, local residential receptors, road users and recreational users of the LDNP as mapped in Appendix A of [[REP3-010](#)]. Table 1.1 of the same document clarifies that the selected VLCs generally correspond with VLs contained in the LVIA which were used to assess LVIA for the proposed development in isolation.
- 3.4.28. VLC1 lies over 3km to the north of the Order limits along a PRoW¹² (and generally corresponds with VL10), VLC2 is representative of residents at the southern edge of Dean Village (and generally corresponds with VL11), VLC3 is representative of road users of Dean Cross Road (and generally corresponds with VL3c), VLC4 is representative of nearby residents at Wythemoor Sough and Wythemoor House and users of Branthwaite Road (and generally corresponds with VL9) and VLC5 is

¹² PRoW reference – 20010

representative of recreational users within the LDNP (and generally corresponds with VL13c).

- 3.4.29. Sequential visual receptors, typically used to capture effects when travelling along local roads or footpaths, were also considered ([\[REP3-010\]](#) – Table 1.2).
- 3.4.30. The ES considers cumulative LV effects with regard to the following schemes:
- Lostrigg Solar Farm
 - Land at Lillyhall North – hybrid application for highway and pedestrian infrastructure, with outline permission for a variety of industrial, storage, research and development, and industrial process use buildings.
- 3.4.31. Lostrigg Solar Farm was submitted as a pre-application National Infrastructure Project to the Planning Inspectorate under the PA2008, but was subsequently withdrawn. It is now anticipated to be determined under the Town and Country Planning Act 1990 but, at the time of this report, had not been submitted. It is expected that Lostrigg Solar would be located directly to the north/northwest of the proposed Order limits, on the opposite side of Branthwaite Road, covering approximately 480ha of land.
- 3.4.32. Table 1.4 of [\[REP3-010\]](#) summarises the cumulative effects for all receptors. The ES finds moderate adverse (significant) effects during the construction and operational phases in respect of LCT 5a, within which both schemes would be located. There would be no significant indirect cumulative effects on the wider landscape.
- 3.4.33. Across the cumulative viewpoints (VLC1, VLC3, VLC4 and VLC5), the assessed effects generally align with the corresponding standalone LVIA viewpoints, with significant adverse effects during construction and, in most cases, no greater level of effect during operation. The only notable variation occurs at VLC1, where the cumulative assessment identifies significant adverse effects during operation compared with the minor (not significant) effect recorded at VL10, but for all other locations the cumulative and standalone assessments reach the same overall conclusions.
- 3.4.34. One significant sequential cumulative effect, comprising a local PRoW,¹³ was identified; all other sequential receptors would experience non-significant effects.

¹³ PRoW reference – 260003. See figure 7.7b of outline landscape and ecology management plan [\[REP5-016\]](#)

- 3.4.35. In respect of potential cumulative effects associated with the proposed development and Land at Lillyhall North, there would be no significant cumulative landscape effects or visual effects during any phase.
- 3.4.36. When considering the potential effects of Lillyhall North and Lostrigg Solar along with the proposed development, no significant landscape effects would arise. There would be significant adverse visual effects, mainly confined to users of Branthwaite Road, who may experience views of all three developments when travelling along the route, and to residential receptors in proximity to this road.

ISSUES CONSIDERED DURING THE EXAMINATION

Assessment of effects

- 3.4.37. Cumberland Council's LIR defers to its commissioned independent Landscape and Visual Impact Assessment Review (CCLR) [[AS-005](#)]. This raised a few discrepancies and points of clarification in respect of the applicant's LVIA, which were responded to by the applicant ([\[REP1-002\]](#) – Table 2.3), with the ES being revised accordingly.
- 3.4.38. The remaining areas of disagreement between Cumberland Council and the applicant mainly reflect differences in professional judgment by different landscape specialists. I summarise these as follows.
- 3.4.39. Cumberland Council raised concerns that two of the VLs would not depict the worst-case scenario or experience. To address these concerns, I visited each VL during my site inspections ([\[EV1-001\]](#), [\[EV8-001\]](#), [\[EV12-001\]](#), [\[EV13-001\]](#)), allowing me to experience the landscape dynamically and sequentially.
- 3.4.40. VL3c is located close to the south-western edge of the Order limits along Dean Cross Road. The ES indicates that operational visual effects at VL3c would not be significant. VL6b is also located along Dean Cross Road, but close to the south-eastern edge of the Order limits. It is also representative of users of Dean Cross Road (and residential receptors), and according to the ES, the receptors at this VL would experience significant adverse effects.
- 3.4.41. Cumberland Council argues that VL3c does not adequately represent the experience of users of Dean Cross Road. During my site inspections, I travelled along Dean Cross Road between VL3c and VL6b and noted that the proposed development would be prominent from several points on the ascent to the plateau (before reaching Dean Moor Motorcross Park) due to the elevated nature of the road and the obtainable panoramic views. Although no fixed VL in the LVIA is provided between VL3c and VL6b, the ZTV [[APP-078](#)] illustrates extensive theoretical visibility along this section of the road, consistent with my own on-site observations.

- 3.4.42. However, the extent and prominence of obtainable views would generally diminish when travelling away from the high point towards VL3c. Whilst I agree with Cumberland Council that a VL towards the high point of Dean Cross Road would represent a worst-case for users of this road, VLs are intended to be representative (as opposed to exhaustive) and significant adverse effects have been recorded in the LVIA in relation to VL6b, capturing views experienced by users of this road. Therefore, taking into account the entire LVIA, including ZTVs, along with my site inspections, I conclude that the proposed development would give rise to significant adverse visual effects for users of Dean Cross Road throughout the operational phase.
- 3.4.43. Turning now to VL2b. The main issue here is that Cumberland Council does not consider that the chosen viewpoint is representative of users of Gilgarran Road. In comparison with VL2b, which is located close to a residential property, there are a number of locations along Gilgarran Road where the proposed development would be closer to road users and prominent in views, generally aligning with the anticipated effects illustrated on the ZTV [\[APP-078\]](#).
- 3.4.44. Be that as it may, and whilst there are sudden reveal points where part of the proposed infrastructure would be visible, much of Gilgarran Road is enclosed by hedgerow and vegetation. Moreover, the vertical scale, movement, and contrast of Potato Pot Wind Farm would be a prominent feature in a number of sequential views along the road, therefore reducing the relative prominence of the proposed solar infrastructure.
- 3.4.45. Overall, being a quiet rural lane of medium visual sensitivity, the intermittent visibility of the proposed development, existing screening, and the presence of the existing wind farm, would lead to a low magnitude of effect which would be slight adverse and not significant.
- 3.4.46. To conclude in relation to VL points of disagreement, and whilst I understand Cumberland Council's concerns about the choice of VLs, the static nature of viewpoint photography is an inherent limitation, particularly in a landscape where, due to topography and vegetation, views change continuously as one moves through it. In this case, despite the aforementioned differences between the parties concerning the VLs, there is agreement between them that any additional or alternative VLs would not alter the overall conclusions or effects reported in the ES, as set out in the SoCG ([\[REP5-020\]](#) - CC.L.9)
- 3.4.47. In addition, Cumberland Council ([\[REP5-020\]](#) – CC.L.1 – CC.L.4) and the LDNPA ([\[AS-037\]](#) – LDNPA.1 – LDNPA.3) do not raise any specific concerns with regards to the overall scope and methodology of the LV chapter of the ES. Despite other points of

concern raised by Cumberland Council, including in respect of the quality of some of the photography included in the ES, and that further ZTV plans and mitigation details (such as more landscaping details) would have been beneficial, it is agreed that the LVIA has been carried out in accordance with industry standards and guidance notes and by a competent specialist.

- 3.4.48. In relation to the existing Potato Pot Wind Farm which lies within the Order limits, the applicant clarified that the LVIA considered the effect of the proposed development with the Potato Pot Wind Farm present, and this was considered to represent a worst-case scenario. This is because, despite the wind farm's planned decommissioning by 2043, the ES reports that the removal of the wind farm would not alter the overall susceptibility or sensitivity of the landscape receptors, given the presence of other infrastructure including electricity pylons. In short, the future removal of the turbines and associated infrastructure would not alter the findings of the ES or lead to an increase in adverse LV effects.

Lake District National Park

- 3.4.49. Section 11A of the NPA imposes a duty on the SoS to seek to further the purposes of national parks. This is reiterated in paragraph 5.10.8 of NPS EN-1, which clarifies that this applies to projects such as the proposal, which lie outside nationally designated landscapes, that may have impacts within them.
- 3.4.50. The purposes of the LDNP are:¹⁴
- 1) To conserve and enhance the natural beauty, wildlife and cultural heritage of the area.
 - 2) To promote opportunities for the understanding and enjoyment of the special qualities of the National Park by the public.
- 3.4.51. The applicant, the LDNPA [[AS-037](#)] and Natural England (NE) [[AS-030](#)] agree in SoCGs that the proposed development would result in no significant adverse effects on the landscape character of the LDNP.
- 3.4.52. In terms of visual effects, there is agreement between the LDNPA and the applicant that VL13 and VL14 would be representative of the visual effects within the LDNP and WHS, being elevated fell locations with potential views of the proposed development.

¹⁴ As set out on page 8 of Lake District National Park Partnership's Management Plan 2020-2026 – [[REP2-011](#)] - Appendix H

- 3.4.53. However, their methodologies differ, for reasons set out in respective rule 17 responses ([\[REP5-027\]](#) and [\[REP5-032\]](#)). In summary, the applicant implemented a bespoke LVIA methodology to assess LV effects, based on GLVIA guidance ([\[REP2-034\]](#) – Table 3.17). The applicant judged that the sensitivity of the receptors was ‘very high’ due to their location within the LDNP, and that the magnitude of effect was ‘negligible’.
- 3.4.54. The LDNPA instead utilised the EIA methodology table ([\[APP-033\]](#) – Table 2.3), utilising the ‘high’ sensitivity combined with a ‘very low’ magnitude of effect, which leads to minor (not significant) adverse effects.
- 3.4.55. Having considered the different approaches, I have adopted the applicant’s methodology. It is more precise, incorporating a ‘very high’ sensitivity criterion in relation to the most sensitive receptors, which is particularly relevant in this case because of the UNESCO status of the WHS. Therefore, due to the sensitivity of the VLs and the matrix outcome of the methodology employed by the applicant, there would be moderate adverse (significant) visual effects in relation to VL13 and VL14.
- 3.4.56. Notwithstanding the variances identified above, overall, the LDNPA and the applicant agree that there would be minor adverse visual effects on the LDNP as a whole for the lifetime of the development. This is due to the distance of the site from the VLs (in excess of 7km) and the mitigation proposed in the form of landscaping and embedded mitigation, including avoiding development on the most exposed areas of the site. This would equate to minor harm to the appreciation of the natural beauty purpose of the LDNP.

Glint and glare

- 3.4.57. A Glint and Glare Assessment was submitted with the application ([\[REP3-011\]](#), [\[REP3-013\]](#)). It mainly considered possible effects in relation to road safety, residential amenity, and aviation activity associated with a temporary/seasonal aerodrome at Gilgarran.
- 3.4.58. Due to existing and proposed landscaping, there would be no glint and glare effects for road users. Glint and glare effects would be geometrically possible for pilots approaching Gilgarran airfield, but for a number of operational and contextual reasons concerning the ‘yellow’ type of glare which is likely to be experienced (as set out in Chapter 5.3 of [\[REP3-011\]](#)), effects would be low and not significant. Therefore, these effects would not adversely impact air safety.
- 3.4.59. Whilst solar reflections would be geometrically possible for more than three months of the year at three dwellings, this would be less than 60 minutes on any given day. Moreover, screening, including existing vegetation and buildings and proposed

landscaping, would likely partially obscure views of panels, reducing adverse effects. The applicant provides a detailed response to a specific RR on this matter in ([[REP1-002](#)] – Table 4.3).

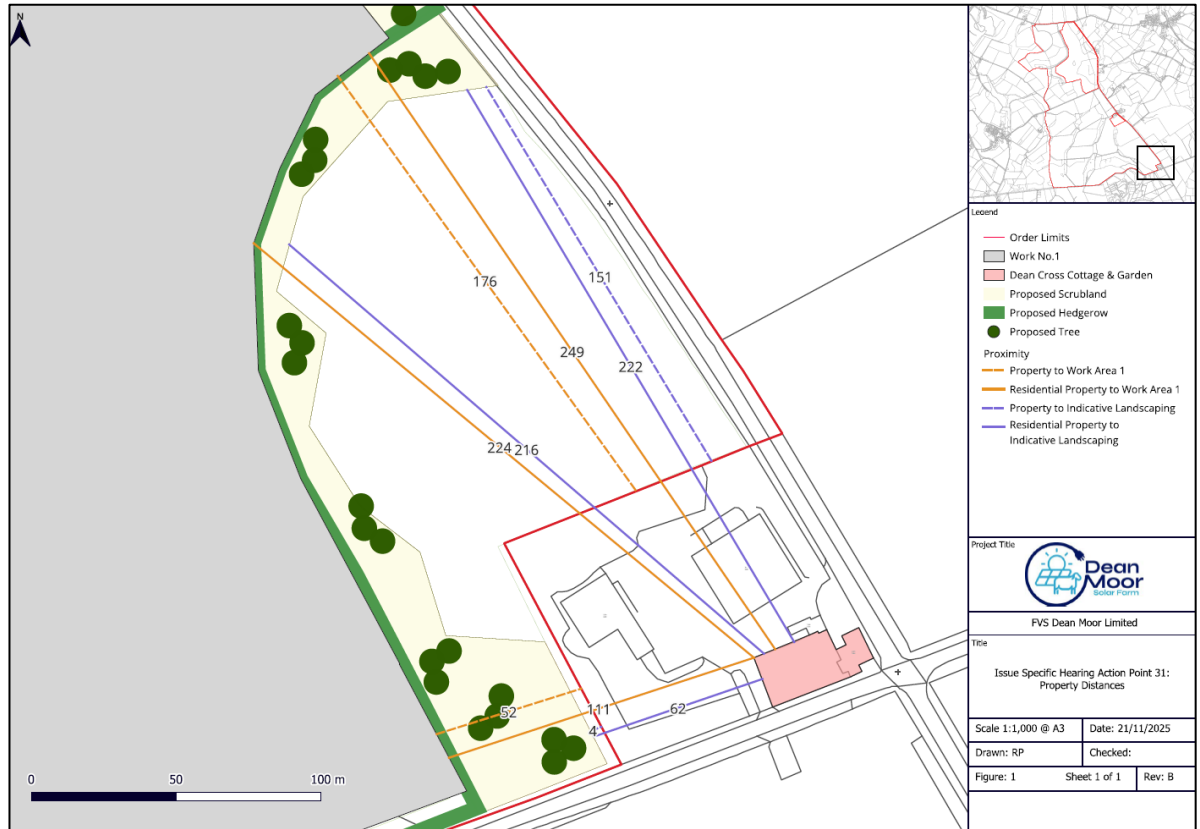
- 3.4.60. The oCEMP [[AS-026](#)] sets out that a further glint and glare model would be produced depending on the final layout and design of the proposed development. Where mitigation planting would be provided in order to reduce glint and glare effects at different receptors, and acknowledging that planting would take time to fully establish, the oCEMP includes a commitment to provide and detail any temporary screening to be used.
- 3.4.61. At the request of Cumberland Council, the applicant has secured a mechanism to deal with substantiated complaints about glint and glare effects ([[REP4-019](#)] – Table 4.1(H)). Cumberland Council agree that the applicant’s assessment and mitigation measures are acceptable in relation to glint and glare, as set out in CC.LPA.6 of [[REP5-020](#)].

Residential visual amenity

- 3.4.62. A number of the VLs included in the ES and LVIA are intended to represent potential views of the proposed development from residential properties near the site. However, the LVIA is concerned with changes to the landscape or visual environment, not with changes to the outlook and living conditions at individual properties. It is a well-established planning principle that there is no right to a view over third-party land. Therefore, whether any adverse visual effects would equate to harm to the living conditions of occupiers of individual properties, to the extent that it is a public interest matter, is a matter of planning judgment.
- 3.4.63. The applicant considers that none of the visual effects associated with the proposed development would be sufficient to adversely affect the living conditions of occupiers of any residential property. Their conclusion is supported by a detailed explanation in No. 6.0.3 of [[REP2-010](#)].
- 3.4.64. I turn now to consider the impact on the occupiers of Dean Cross Cottage, who object partly on the basis that the proposed development would be visually intrusive and would adversely affect their living conditions. Their concerns are outlined in ([[RR-003](#)], [[RR-004](#)], [[RR-008](#)], [[REP5-036](#)]). The applicant provided responses to their objections in ([[REP1-002](#)] - Tables 4.1-4.3), [[REP2-010](#)] - Q6.0.3, [[REP3-015](#)] No. 5b, [[REP5-013](#)] – No. 31).
- 3.4.65. In LV terms, the ES recognises that there would be significant adverse visual effects at VL6, which is representative of Dean Cross Cottage as a residential receptor. The

approximate location of the proposed development relative to Dean Cross Cottage is shown in Figure 11.

Figure 11: Plan showing approximate distance in metres of proposed solar infrastructure and proposed landscaping from Dean Cross Cottage and garden and associated private land



(Source: extract from Appendix B of applicant's response to ISH Action Points [\[REPS-013\]](#))

3.4.66. I visited the property during my ASI [\[EV12-001\]](#) and noted that the dwelling and its immediate private outdoor amenity space are located towards the south-east corner of a wider commercial site (used for motor vehicle sales and repairs) that includes some buildings and landscaping.

3.4.67. As shown in Figure 11 above, the proposed development would be sited broadly within a 90-degree arc orientated west to north beyond the commercial plot boundary. However, the solar infrastructure would not be particularly tall (solar panels no more than 3.3m in height) and would be located in excess of 100m from the dwelling and adjoining domestic garden. Commercial buildings also lie to the north/north-west, and a belt of evergreen trees lies beyond the western boundary of the domestic garden. These features partially screen the domestic property from the application site and would considerably reduce the visual prominence of the proposed infrastructure.

- 3.4.68. In addition, the proposal would include an extensive landscaping buffer as shown on the LSP [[REP2-046](#)], which would be located between the domestic property and the solar infrastructure. This would mature over time, progressively increasing the screening effect. Where elevated view across the Order limits land is obtainable from the upper-floor windows of the dwelling, the proposed landscaping would break-up views of the solar infrastructure, softening and reducing its visual prominence.
- 3.4.69. I recognise that there is a further area of amenity space containing picnic tables in the north-west corner of the wider commercial site. It is detached from the domestic property, although I was told by the occupants of the cottage during examination that it is used in connection with it, and also by customers connected with the commercial business. Whilst this land lies in a more exposed location and closer to the proposed development than the garden attached to Dean Moor Cottage, the proposed landscape buffer would be of sufficient depth, and there would be opportunity to provide appropriate planting so as to adequately mitigate against any visual intrusion that may otherwise occur through detailed design.
- 3.4.70. When considering the impact on the dwelling and outdoor amenity spaces in their entirety, I am satisfied that views of the proposed solar infrastructure would not dominate the outlook to the extent that living conditions for occupants of Dean Cross Cottage would be unacceptably compromised. This would be due to the distance between the property and the proposed development, existing screening, and the proposed landscaping. It is also worth noting that Dean Cross Cottage garden benefits from views of expansive countryside to the south which, due to the westerly location of the proposed development, would not be diminished.
- 3.4.71. I recognise that the proposed planting and landscaping in itself could provide some visual containment, in comparison with any open views across the Order limits land that currently exist. However, landscaping is a verdant, natural form of treatment which would be in keeping with the rural surroundings. In any event, flexibility exists to ensure that an appropriate landscape/planting treatment could be agreed as part of the LSP (Requirement 6) and LEMP (Requirement 7) of the DCO.
- 3.4.72. Cumberland Council raised no objections relating to the impact on residential amenity at any domestic property. I am also in general agreement with the applicant's assessment of residential visual amenity when viewed from the other closest properties ([\[REP2-010\]](#) pp. 49-55). I have taken into account the glint and glare effects as outlined earlier in this section of the report in reaching my conclusions.

3.4.73. Overall, I conclude that any adverse visual effects due to the proposed development would not result in a significant loss of outlook or be an overwhelming or unavoidable presence for occupiers of the nearest dwellings.

Cumulative effects

3.4.74. During the examination, Cumberland Council provided details of 31 potential sites to be considered as part of the cumulative effects assessment, which were subsequently mapped by the applicant [REP3-025]. Excluding the Lostrigg Solar and Lillyhall North schemes, which were already considered as part of the ES and are addressed further in this chapter, the applicant concluded that there would be no significant cumulative landscape or visual effects, given the overall distances involved and the intervening landform and vegetation ([REP3-008] – Appendix A). This is not disputed by Cumberland Council as set out in CC.LPA.7 of the SoCG [REP5-020].

CONCLUSIONS

Assessment of effects - conclusion

3.4.75. I am satisfied that the scope and methodology of the LVIA are robust. The concerns raised by Cumberland Council in relation to the LVs and the quality of some of the photographs and the ZTVs are noted, but they do not undermine the veracity of the findings contained in the LVIA and ES, a point agreed by Cumberland Council [REP5-020].

LV effects - conclusion

3.4.76. I now turn to report on my considerations and findings in relation to LV impacts.

3.4.77. The site generally reflects the LCTs, comprising rolling pasture of medium-to-large fields interspersed with trees, hedgerows, and vegetation, forming a working farmed landscape, where the presence of buildings, pylons and wind turbines reflect the extent of human influence. The southern area of the site feels more expansive and untamed, characterised by unfenced moorland, large fields, and a plateau that heightens the sense of drama and exposure to the elements. Overall, the site and its surroundings comprise a predominantly pastoral rural character with a generally peaceful and scenic quality, accurately described in the ES as an ‘undulating and complex landscape’.

3.4.78. Paragraph 5.10.5 of NPS EN-1 recognises that most proposals will have adverse landscape impacts, and this case is no different. The significant changes to the local landscape character would be due to the large-scale footprint and urbanising characteristics of the proposed development. However, landscape effects would be

relatively contained to within the immediate locality, with limited and therefore not significant effects on the wider landscape.

3.4.79. The extent of most of the adverse visual effects would be similarly localised. Moreover, visual effects would vary considerably when travelling through the local area, due to the inherently complex characteristics of the site and its immediate environs. As a result, in addition to the significant adverse visual effects relating to the VLs set out in [Table 1](#) of this report, I recognise that there would be other significant visual effects experienced from certain local roads and viewpoints.

3.4.80. However, when considered in the round, my findings align with the overall conclusions of the LVIA; that significant adverse visual effects would mainly be limited to users of surrounding roads and residents of some properties located along these roads.

The Lake District National Park - conclusion

3.4.81. There would be minor adverse visual effects for recreational users of Darling Fell (VL14) and Blake Fell (VLs 13a, 13b, 13c), where the proposed development would be visible at distance and as a relatively small part of a wider panoramic view that includes visual evidence of industrialisation in seaward views. Due to the distance, individual components of the scheme would be difficult to discern, so the change would mainly involve a general urbanising effect through a change in colour from predominantly 'green' countryside to 'grey' urban form.

3.4.82. As these VLs lie within the LDNP and WHS, they are highly sensitive. Consequently, I agree with the ES that the minor adverse visual effects would result in moderate (significant) adverse levels of effect at these receptors.

3.4.83. However, these VLs represent obtainable views from several elevated locations within a much larger area of LDNP. As such, I find that overall visual effects on the LDNP would not be significant. I also concur with the findings of the ES that there would be no significant adverse effects on the landscape character of the LDNP.

3.4.84. Paragraph 189 of the Framework states that great weight should be given to conserving and enhancing landscape and scenic beauty in protected areas such as NPs. Furthermore, it indicates that development within their setting should be sensitively designed and located to avoid or minimise adverse impacts on these designated areas.

3.4.85. The applicant has demonstrated that LV effects on the LDNP would be mitigated in part through design, whereby the more elevated southern part of the site would be avoided, thus reducing the development's prominence when viewed from the LDNP.

Landscaping would be included throughout the Order limits, which would break up obtainable views of built form. The LDNPA agrees that potential effects on the LDNP have been minimised ([\[AS-037\]](#) – LDNPA.5).

3.4.86. I recognise that NPS EN-1 paragraphs 5.10.33 and 5.10.34, in the context of the LURA, place a duty on decision makers to seek to further the purposes of the LDNP. In relation to the ‘natural beauty’ purpose of the LDNP, there would be limited conflict due to the visual effects as set out above.

3.4.87. Through embedded mitigation, the proposed development has sought to avoid harm to the LDNP through measures that have been embedded in the design of the proposed development, along with the additional mitigation set out, and the benefits associated with the provision of renewable energy. Therefore, conflict with the ‘natural beauty’ purpose has been addressed.

3.4.88. I deal with cultural heritage in relation to the LURA and the purposes of the LDNP in the historic environment chapter of this report.

Residential visual amenity - conclusion

3.4.89. There would be no oppressive or overwhelming visual impacts to the extent that the living conditions of individual occupiers would be unacceptably harmed, including through glint or glare effects.

Mitigation - conclusion

3.4.90. I am satisfied that the proposed mitigation measures would reasonably address adverse effects. These would primarily take the form of embedded mitigation, led by excluding significant development from the elevated moorland plateau area towards the south of the site, and the overarching LSP [\[REP2-046\]](#), which would include tree, woodland, and hedgerow planting.

3.4.91. The LSP would be supported by the oCEMP [\[AS-026\]](#), oLEMP [\[REP5-016\]](#), oOMP [\[AS-024\]](#) and fDMP [\[APP-111\]](#). Final versions of these documents as set out in the dDCO [\[REP6-006\]](#) would be secured by Requirement 4 (CEMP), Requirement 6 (LEP (the final version of the LSP)), Requirement 7 (LEMP), Requirement 11 (OMP) and Requirement 13 (DMP) along with Requirement 3 which relates to detailed design approval.

3.4.92. Where significant adverse visual effects have been identified, the LSP focuses additional planting in these areas to reduce effects, whilst retaining flexibility so that final form and details of landscaping could be agreed as necessary (including, for example, planting heights) through DCO Requirements with Cumberland

Council. Generally, identified adverse LV effects would reduce over time as landscaping became established.

- 3.4.93. There would be limited beneficial effects associated with the LSP in relation to green infrastructure and landscape features within the site, such as the establishment and improvement of trees, woodland, and hedgerows.

Glint and glare - conclusion

- 3.4.94. There would be a low impact due to glint and glare at three residential receptors, but this would not be significant. There would be a limited potential effect for pilots in aircraft approaching Gilgarran airfield, but this would not comprise a harmful impact on air safety and is consistent with the approach to assessment advocated in paragraph 2.10.159 of NPS EN-3.

Cumulative effects - conclusion

- 3.4.95. The cumulative assessment exhibits a high degree of consistency with the standalone LVIA findings. Adverse effects at cumulative viewpoints generally show no greater level of effect than those identified for the proposed development in isolation. One exception involves VLC1, where there would be significant adverse effects during operation in comparison with the proposed development in isolation. There would also be significant adverse sequential effects at one footpath receptor (VLSC5).
- 3.4.96. Significant adverse cumulative visual effects relating to the proposed development along with Lostrigg Solar and Lillyhall North would be mainly limited to users of Branthwaite Road.
- 3.4.97. The overall approach to considering cumulative effects is in line with NPS EN-3 paragraphs 2.10.94 and 2.10.95.
- 3.4.98. However, significant uncertainty remains around the status and final form of the Lostrigg Solar scheme. Whilst I accept that it is a credible scheme and the evidence indicates it is likely to be submitted for consideration to Cumberland Council, no planning application has yet been submitted. Final or advanced details of its likely form, layout, and appearance cannot therefore be considered cumulatively. In this regard, the ES remains a speculative assessment based on inherent uncertainty. I therefore attribute little negative weight to the cumulative LV effects due to this uncertainty.
- 3.4.99. Even if the worst-case scenario as set out in the ES was assumed, the overall localised significant cumulative effects would not alter my overall conclusions, as set out below.

Landscape and visual overall conclusion

- 3.4.100. The applicant has satisfactorily assessed potential LV impacts, including cumulative effects, and the proposed development would address the requirements of NPS EN-1, NPS EN-3 and NPS EN-5.
- 3.4.101. There would be significant adverse effects on the local landscape character, but limited effects on the wider landscape character. There would be significant adverse, mainly local, visual effects for road users and residential receptors, but limited significant adverse visual effects beyond this.
- 3.4.102. Several recreational receptors within the LDNP would experience moderate (significant) effects, but there would be limited visual effects across the entire LDNP. Overall, there would be no significant landscape effects on the LDNP as a whole.
- 3.4.103. I attribute little negative weight associated with the cumulative effects of the proposed development due to the lack of certainty regarding Lostrigg Solar. In any event, even assuming Lostrigg Solar was progressed, significant cumulative visual effects would be limited and mainly localised in comparison with the proposed development when considered in isolation.
- 3.4.104. My overall conclusion is that LV effects (including cumulative effects) should carry moderate negative weight in the planning balance.

3.5. BIODIVERSITY AND ECOLOGY

INTRODUCTION

- 3.5.1. This chapter considers the effects of the proposed development on biodiversity and ecology. I deal with considerations relevant to the Habitats Regulations Assessment (HRA) separately in Chapter 4.

POLICY BACKGROUND

NPS EN-1

5.4.1 – 5.4.8	25 Year Environment Plan, legislative provisions and Habitats Regulations.
5.4.12	Local wildlife sites can make an important ecological contribution.
5.4.15	Ancient woodland is a valuable biodiversity resource.
5.4.17	Effects on designated sites, protected species, habitats, other species
5.4.19	Projects should demonstrate opportunities to conserve and enhance.
5.4.21	Potential for benefits beyond biodiversity net gain (BNG).
5.4.22	Need to consider mobile/migratory species and terrestrial mammals.
5.4.32	Applicants should include measures to mitigate effects on irreplaceable habitats.
5.4.33	Consider reasonable opportunities to maximise restoration, creation and enhancement of wider biodiversity.
5.4.34	Wider ecosystem and natural capital benefits.
5.4.35	Avoidance, mitigation, compensation and enhancement measures should be integral.
5.4.36	Applicants should implement a Biodiversity Management Strategy.
5.4.39	SoS should have regard to aims and goals of government’s Environment Improvement Plan 2023.
5.4.42	Mitigation hierarchy should be applied.
5.4.43	If significant harm cannot be avoided SoS through mitigation hierarchy, SoS should give significant weight to residual harm.
5.4.44	SoS should consider appropriate requirements to attach to consent.
5.4.45	SoS will need to consider agreed mitigation measures with SNCB.
5.4.48	SoS should ensure appropriate weight attached to sites of international, national and local importance.

5.4.55	SoS should refuse consent where harm to protected species or relevant habitat unless overriding public interest.
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NPS EN-3

2.10.77	Issues that may need to be assessed.
2.10.78	Mitigation hierarchy should be applied.
2.10.81	Topsoil and subsoil should be stored separately.
2.10.82	Security and lighting ecological considerations.
2.10.83	Management of site boundaries.
2.10.84	Drainage impacts.
2.10.87	Culverting of watercourses should be avoided.
2.10.89	Potential to increase biodiversity value over and above BNG.
2.10.90	Applicants should consider enhancement, management and monitoring of biodiversity.
2.10.130	Ecological monitoring plan should be developed.

Other national and local policies and guidance

National Planning Policy Framework – Chapter 15 (conserving and enhancing the natural environment).

Planning Practice Guidance – Natural Environment chapter.

Policies S24, S35, S36 and DM17 of the Allerdale Local Plan Part 1 (2014).

THE APPLICATION

3.5.2.

The study area included a 10km radius for internationally designated sites, extended beyond this where impact pathways were known to occur. For all other statutory and non-statutory locally designated sites and notable habitats (including ancient woodland and Habitats of Principal Importance) a 2km radius was adopted. The applicant's assessment is set out in ES Chapter 8 – Biodiversity [REP2-053], including the following supporting appendices:

- Preliminary ecological appraisal (ES Appendix 8.1) [APP-150]
- National vegetation classification survey (ES Appendix 8.2) [APP-151]
- Badger survey (ES Appendix 8.1) [APP-150]
- Great crested newt survey (ES Appendix 8.1) [APP-150]
- Bat survey report (ES Appendix 8.3) [APP-152]
- Otter and water vole survey (ES Appendix 8.4) [APP-153]
- Breeding bird survey (ES Appendix 8.5) [APP-154]

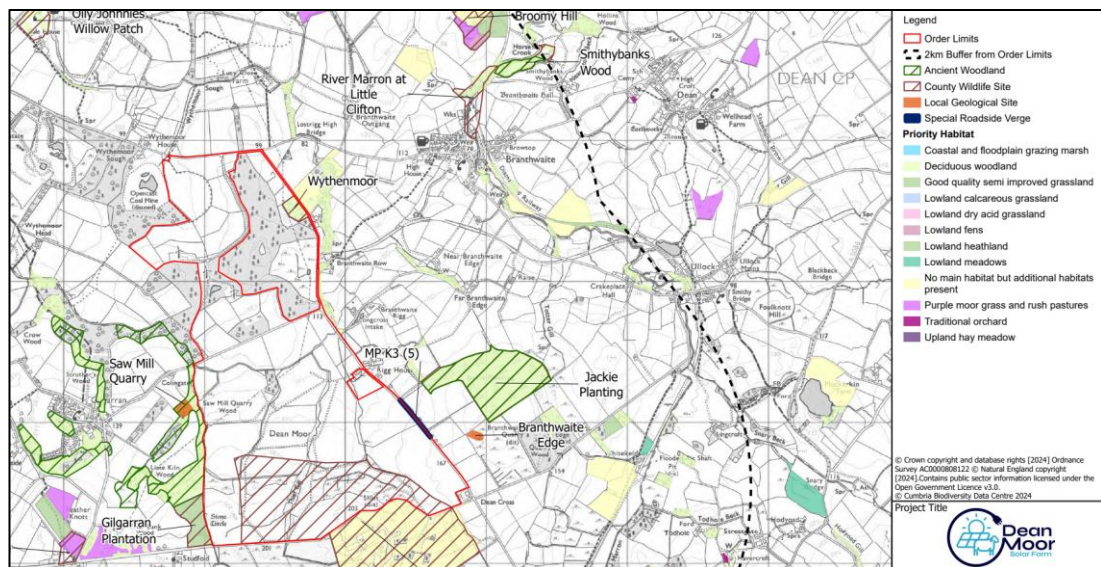
- Hen harrier survey (ES Appendix 8.6) [APP-155]
- Wintering bird survey (ES Appendix 8.6) [APP-155]

3.5.3. The full assessment methodology is included in Section 8.3 of ES Chapter 8 [REP2-053].

3.5.4. The ES recorded that five sites within 10km of the site are designated for their international importance, the closest being the River Derwent and Bassenthwaite Lake Special Area of Conservation (SAC) and River Derwent and Tributaries Site of Special Scientific Interest (SSSI) which lies from 1.2km to the east of the site [AS-012]. Solway Firth Special Protection Area (SPA) lies approximately 5km to the west of the site.

3.5.5. Within the southern part of the Order limits lies part of Dean Moor County Wildlife Site (CWS), a non-statutory and locally important county wildlife site. An area of ancient woodland lies just beyond the western boundary of the site. The CWS and ancient woodland are shown in Figure 12.

Figure 12: Plan of non-statutory sites and priority habitats



(Source: ES Figure 8.2 (Non-Statutory and Notable Habitats) [APP-090])

3.5.6. According to the ES, priority habitat comprising purple moor grass and rush pasture are located within discreet areas of the site. The remainder of the site supports a range of habitats including lowland dry acid grassland on the slopes of a gorge containing Thief Gill watercourse, extensive areas of modified grassland used for sheep grazing, broadleaf woodland, watercourses and ponds.

3.5.7. The applicant states that a hierarchical approach to mitigation has been adopted through the design process. Details of embedded mitigation are included in paragraph 8.5.3 with additional mitigation included in Section 8.6 of ES Chapter 8 [REP2-053]. The proposed avoidance, minimisation and mitigation measures include:

- siting solar infrastructure away from sensitive habitats within the CWS and employing appropriate construction management methods to protect the remainder of the CWS from significant effects
- retaining all sensitive habitats such as ponds, watercourses, woodland, hedgerows and scrub, swamp and mire. Removal of woodland, trees and hedges to be avoided, other than limited clearance to enable access
- buffers to be included between sensitive habitats and the proposed development (15m to ancient woodland and 8m to watercourses)
- proposed infrastructure to be sited on grassland of low ecological value
- no permanent lighting to be installed apart from lighting associated with buildings, where it would be pointed downwards and be switch or motion detected to reduce impacts on wildlife
- incorporation of gaps around perimeter fencing to facilitate dispersal of some small terrestrial species across the site

3.5.8. The additional mitigation would mainly be secured by the detailed design requirements of the dDCO ([REP6-006] - Requirement 3), the CEMP (Requirement 4), the CTMP (Requirement 5), the LEP (Requirement 6), the LEMP (Requirement 7), the SMP (Requirement 10), the OMP (Requirement 11) and the DMP (Requirement 13).

Construction effects

3.5.9. The ES reports that there would be potential for indirect significant effects on otter due to construction related traffic and activities, which could disturb their foraging or commuting along watercourses. The loss of extensive areas of grassland due to the proposed infrastructure could also have negative effects on wintering and breeding birds.

3.5.10. To address potential effects on otter, mitigation included in the oCEMP [AS-026] would comprise pre-construction surveys of banks of watercourses for signs of otter, with appropriate licensing and avoidance measures formulated should otter be present. Appropriate screening or gaps in fencing would be adopted to promote uptake and use by species where necessary.

3.5.11. For wintering and breeding birds, the oCEMP ([[AS-026](#)] - paragraphs 5.4.19-5.4.21) sets out a range of measures to check for their presence and, if necessary, provide additional protection measures.

3.5.12. Overall, the applicant sets out that the measures included in the oCEMP [[AS-026](#)] would minimise impacts on protected habitats and species as well as avoiding surface water run-off which could impact the SAC and SSSI downstream. The oSMP [[REP4-023](#)] would assist by ensuring suitable stockpiling during construction to minimise harmful effects. As such, no adverse significant residual effects are anticipated in respect of these matters.

Operational effects

3.5.13. According to the ES, no significant adverse effects are anticipated during the operational phase. A LEP would be required under Requirement 6 of the dDCO, which must be substantially in accordance with the landscape strategy set out in the LSP [[REP2-046](#)]. This would be delivered in conjunction with the LEMP which itself would be substantially in accordance with the oLEMP [[REPS-016](#)], secured by Requirement 7 of the dDCO.

3.5.14. Taken together, these plans would deliver the following:

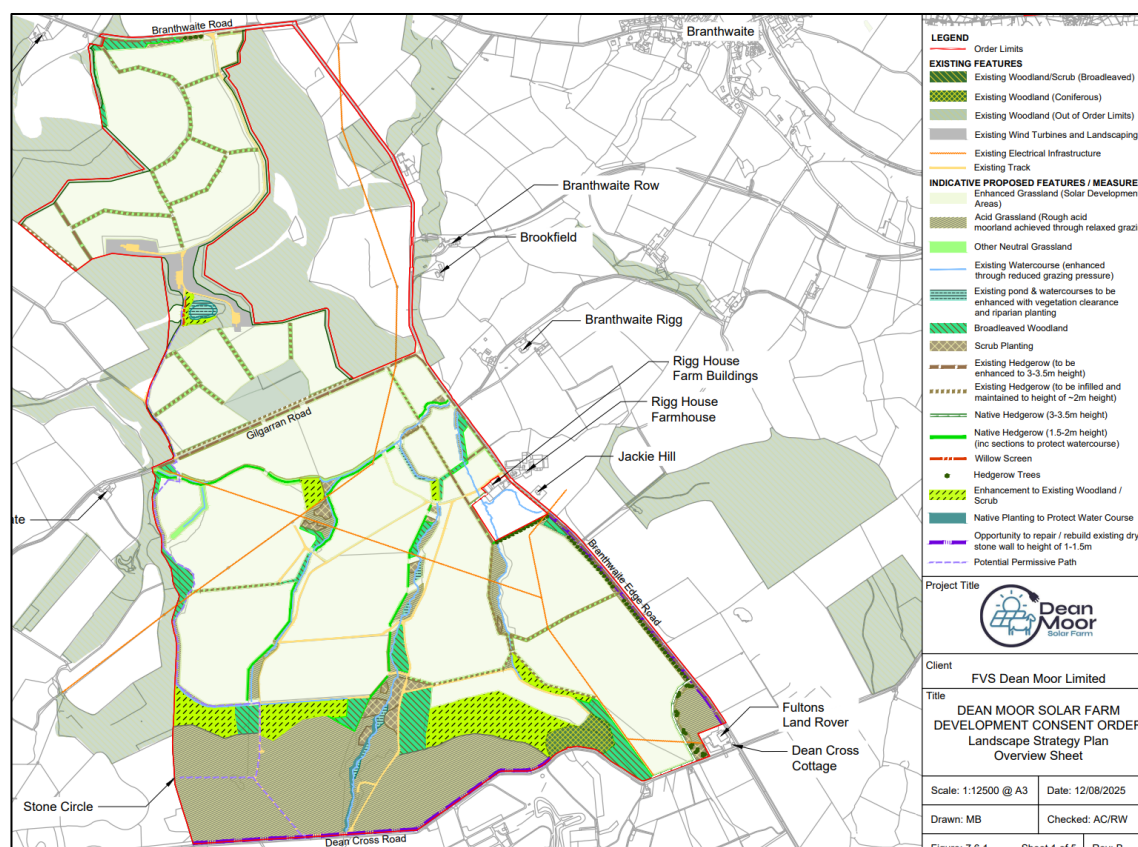
- areas of proposed broadleaved woodland and scrubland
- native hedgerow planting to enhance connectivity and protect watercourses along with hedgerow trees
- infilling of existing gaps in hedgerows and underplanting with new species
- willow screen adjacent to ponds to provide sheltered habitat
- enhancement of grassland within areas of solar infrastructure including species-rich mix
- enhancement to an existing pond through vegetation clearance and new riparian planting
- enhancement to existing woodland through additional planting and future maintenance
- opportunities to repair and enhance the existing dry stone wall along the southern and eastern boundaries of the southern portion of the site
- improved access through the site including permissive paths
- provision of bird and bat boxes
- inclusion of features such as log and brash pile to encourage hedgehogs and reptiles
- the implementation of a grazing management plan (GMP) which would set out how stock (sheep) would be controlled, including measures to prevent

overgrazing and to facilitate re-establishment of semi-natural habitats, including those formerly present in the Dean Moor CWS

- details of planting and seeding mixes to enhance hedgerow boundaries and riparian corridors
- details of measures to improve watercourses and ponds in order to benefit riparian plant species, invertebrates, birds, and aquatic species including European eel and brown trout
- the appointment of qualified ecologists to undertake tasks including monitoring visits and report on progress
- a biosecurity management plan (BMP) to prevent the spread of invasive non-native species

3.5.15. The indicative landscaping and ecological mitigation and enhancement proposals are shown on the LSP, as detailed in Figure 13 below.

Figure 13: Illustrative landscape strategy plan



(Source: ES Figure 7.6 (Landscape Strategy Plan) [REP2-046])

3.5.16. Any planting that was to fail during the initial five-year establishment period would be replaced at the next available planting season after the failure had occurred. Paragraphs 6.1.1 – 6.1.7 of the oLEMP [REP5-016] set out the proposed monitoring

regime, which would be updated every five years and would include annual monitoring, providing relevant stakeholder oversight of progress in relation to the BNG outcomes that would be established via the LEP and LEMP DCO Requirements.

- 3.5.17. In terms of potential residual effects on breeding and wintering birds, the ES reports that the site supports several species of breeding bird mainly within field margins and woodland, and wintering birds, including those listed as qualifying species in relation to the Solway Firth SPA. However, the proposed infrastructure would be sited mainly on habitat of low quality which is extensively grazed by sheep such that the availability of undisturbed nest sites is already limited. The ES sets out that due to the proposed grazing management measures to be implemented across the site and other mitigation measures, there would be no significant residual effects on breeding or wintering birds.

Decommissioning effects

- 3.5.18. The ES reports that potential decommissioning effects would be similar in nature to the construction effects. The implementation of a DMP, which would be substantially in accordance with the fDMP [\[APP-111\]](#), would include details as to how potential pollution and habitat disturbance and fragmentation would be avoided taking into account the likelihood that, at the time of decommissioning the proposed development, the Order limits would contain greater species diversity due to the LEMP. The DMP would be secured by Requirement 13 of the dDCO. Overall, no significant adverse residual effects are anticipated.

Cumulative effects

- 3.5.19. The ES reports no significant cumulative effects in respect of ecology during any phase of the proposed development, as summarised in Appendix A, section 2.3 of [\[REP3-008\]](#).

Biodiversity net gain

- 3.5.20. The applicant commits to providing BNG. A BNG report was submitted with the application which set out the applicant's position at that time [\[APP-157\]](#).
- 3.5.21. The oLEMP was updated during examination to include a section on BNG ([\[REP5-016\]](#) – Chapter 7). This includes a commitment to, amongst other things, ensuring that BNG figures are re-calculated utilising the most suitable metric and methodology taking into account the final design of the scheme, and the final LEP, to be secured under Requirements 3 and 6 of the DCO respectively. The BNG calculation would take into account Dean Moor CWS and adjacent habitats, including the type of habitats to be delivered as part of the LEP and LEMP.

3.5.22. The applicant's position is that the minimum BNG figures are set out in the oLEMP [REP5-016] and they commit to delivering the minimum BNG figures of 60% for habitats, 20% for hedgerows, 5% for watercourses. However, the applicant states that they aim to deliver a figure in excess of this.

Dean Moor CWS

3.5.23. Part of the proposed infrastructure would be located within the northern part of Dean Moor CWS. The maximum parameters of the proposed development are overlaid onto the Dean Moor CWS boundary as shown in Figure 14 below.

Figure 14: Plan of proposed infrastructure parameters and boundary of part of Dean Moor CWS



(Source: applicant responses to ExA's written questions (Appendix D) [REP2-011])

3.5.24. The applicant sets out that Dean Moor CWS has a total area of 104ha, 56% of which is within the Order limits. Of this, 11.84ha would include proposed Work Nos. 1 and 3 (mainly solar PV and associated works and cabling). The remaining 46.8ha of Dean Moor CWS that lies within the Order limits would be subject to Work No. 6 (landscape and biodiversity mitigation and enhancement works).

3.5.25. The applicant's explanation as to how mitigation hierarchy principles have been applied to Dean Moor CWS can be found in Appendix E of [REP2-011]. In summary, the applicant sets out that Dean Moor CWS is designated for acidic moorland habitats, in particular purple moor-grass communities. According to their assessment, the proposed infrastructure would occupy areas of the CWS which have been intensively grazed and lack any of the features for which the CWS was designated. They also state that there would be a limited extent of solar infrastructure within the CWS.

DEAN MOOR SOLAR FARM EN010155

- 3.5.26. According to the applicant, a ‘do-nothing’ scenario, whereby Dean Moor CWS was omitted from the Order limits, would mean that the ecologically important characteristics of the CWS would continue to diminish due to overgrazing by sheep ([[REP5-013](#)] – No. 33).
- 3.5.27. Further justification for encroachment into Dean Moor CWS is set out in ([[REP5-013](#)] – No. 33). This is based on the benefits associated with delivering renewable energy and contributing to net zero, and the other environmental and technical constraints which exist. These constraints include:
- restrictions within the site on locating solar arrays around/under the 11kv overhead lines
 - commitments in the oCEMP [[AS-026](#)] to avoid root protection areas for trees following an update tree survey
 - exclusion of areas of peat within the site, as set out in the outline soil management plan (oSMP) [[REP4-023](#)]
 - archaeological constraints as set out in Archaeological Mitigation Strategy [[APP-117](#)] which may require exclusion areas
 - exclusion areas around former mine entries in accordance with the oCEMP [[AS-026](#)]
 - other survey requirements contained within the oCEMP [[AS-026](#)], such as tree surveys and species-specific surveys, which will determine the necessity and extent of buffers or exclusion zones
- 3.5.28. In terms of mitigation and enhancement, there would be protective measures during construction as included within the oCEMP [[AS-026](#)], and the implementation of the oLEMP [[REP5-016](#)] which would include a Grazing Management Plan (GMP) in order to benefit the CWS through sheep grazing management and overgrazing prevention measures.
- 3.5.29. The oLEMP [[REP5-016](#)] also includes, amongst other things, commitments to restoring grassland diversity and sward heterogeneity, creating acid grassland and promoting the establishment of purple moor grass and rush pastures. These would principally be delivered through Work No. 6 (landscaping and biodiversity mitigation and enhancement), which would make up most of the Order limits land within Dean Moor CWS. These measures would, according to the applicant, facilitate the re-establishment of semi-natural habitats including those formerly present in the CWS, and associated benefits to flora, fauna, and water quality.
- 3.5.30. The applicant emphasises that, due to the above and despite physical encroachment into the CWS by infrastructure associated with Work Nos. 1 and 3,

there would be no harm to the CWS. They accept that the potential for enhancement within it would be lessened because solar infrastructure (Work Nos. 1 and 3) would be located in areas where enhancement (Work No. 6) could otherwise take place. Nevertheless, they state that this would still be net enhancement in comparison with the 'do-nothing' scenario.

- 3.5.31. Overall, the applicant concludes that the proposed development would enable positive benefits and nature recovery for Dean Moor CWS. The ES reports that these benefits would be significant.

Other biodiversity and ecology effects

- 3.5.32. The ES reports no residual significant adverse effects on other species or habitats.
- 3.5.33. The ES considered in-combination effects relating to Potato Pot Wind Farm and concludes that there would be no significant effects, taking into account the wind farm's current operation and anticipated decommissioning.

ISSUES CONSIDERED DURING THE EXAMINATION

- 3.5.34. I deal with the issue of peat protection and management in Chapter 3.9 of this report (other planning matters). However, insofar as it relates to biodiversity and ecology, and according to the SoCG with NE ([[AS-030](#)] – NE17-NE19) there are no peat related concerns. This aligns with the overall findings contained in ES Chapter 8 [[REP2-053](#)], where no significant effects in relation to peat disturbance are reported.
- 3.5.35. Cumberland Council's LIR [[REP2-058](#)] raised a number of issues relating to protected species and BNG. In respect of protected species, Cumberland Council resolved with the applicant that an updated preliminary ecological assessment would be provided post-consent which would inform the need for further species-specific surveys, as set out in sections 5.4 and 5.8 of the oCEMP [[AS-026](#)], which would be secured by Requirement 4 of the dDCO. CC.EC.2 of the SoCG confirms agreement between the parties on this matter [[REP5-020](#)]. I deal with BNG below.
- 3.5.36. Whilst no areas of disagreement remain between the applicant and Cumbria Wildlife Trust (CWT), CWT expressed a clear preference that the solar infrastructure be located away from Dean Moor CWS ([[REP5-025](#)] – CWT9).

Biodiversity net gain

- 3.5.37. Cumberland Council raised several concerns about the approach to BNG in sections 12.8 and 12.9 of the LIR [[REP2-058](#)]. The applicant's response is provided in Q2.1.2 of [[REP4-004](#)].

3.5.38. Cumberland Council's concerns regarding the BNG calculations have largely been addressed by the applicant acknowledging that the figures included in the BNG report [APP-157] are indicative, as opposed to minimum. This is because the figures rely on the maximum parameters proposed, and the LSP [REP2-046] and oLEMP [REP5-016], which are not final versions of the respective documents.

3.5.39. The final BNG calculation would be informed by the final detailed design and any additional technical and environmental surveys required, all of which could increase the final BNG figure.

Dean Moor CWS

3.5.40. During the examination I asked the applicant to explain how the mitigation hierarchy had been applied. The main responses are contained within Q1.0.13 of [REP2-010] and No. 33 of [REP5-013].

3.5.41. Paragraph 2.10.78 of NPS EN-3 states that adverse impacts should be avoided, minimised, or mitigated in line with the mitigation hierarchy, and biodiversity enhancements maximised.

3.5.42. Based on a worst-case scenario involving the maximum proposed parameters, up to 11.84ha of solar infrastructure would be located in the CWS, representing a clear and significant encroachment as identified in the ES. The scheme therefore fails to avoid this sensitive habitat at the first stage of the mitigation hierarchy.

3.5.43. The applicant has demonstrated that removing solar infrastructure from the CWS would materially reduce the scheme's ability to achieve the potential 150MW export capacity. Given the environmental and technical constraints associated with the proposed development, no reasonable alternative layout exists which would avoid the CWS. As such, encroachment into the CWS is justified.

3.5.44. In line with the mitigation hierarchy, harm minimisation and mitigation have been demonstrated. The design process has confined the proposed solar infrastructure to areas of the CWS that do not contain its qualifying habitats or species, thereby minimising impacts. Adverse construction effects would be mitigated to some extent by fencing to demark the remainder of Dean Moor CWS from the area where solar infrastructure would be constructed, and the employment of an ecological clerk of works to monitor and check compliance. These measures are set out in the oCEMP [AS-026].

3.5.45. The remainder of Dean Moor CWS within the Order limits would be subject to enhancement measures. These would include restoration and expansion of acid grassland areas, and reinstatement of historic botanical communities such as purple

moor grass and rush pasture. CWT acknowledge that Dean Moor CWS is under pressure from overgrazing which in a 'no change' scenario would be unlikely to cease ([[REP5-025](#)] – CWT10). The proposed enhancement measures include a grazing management plan (GMP) which, along with other enhancements, would be secured through the LEMP and Requirement 7 of the dDCO.

- 3.5.46. It is acknowledged by the applicant that establishing lowland acid grassland habitat, in particular purple moor grass and rush pasture, may be challenging due to historic grazing pressures which may have affected soil nutrients, along with legacy drainage issues. However, the oLEMP would require ongoing engagement with CWT to maximise success ([[REP5-016](#)] – paragraphs 3.4.12 and 3.11.13). Should suitable establishment be unsuccessful then future iterations of the LEMP would be revised accordingly to provide suitable alternatives. All the above matters are agreed between the applicant and CWT in the SoCG [[REP5-025](#)].
- 3.5.47. The proposed habitat improvements and grazing management, to be secured by final LEP and LEMP Requirements within the DCO, are supported by NE ([[AS-030](#)] – NE6), Cumberland Council ([[REP5-020](#)] – CC.EC.5 and CC.EC.8) and CWT ([[REP5-025](#)] – CWT10).
- 3.5.48. Overall, there would be significant adverse effects during the construction phase due to encroachment into Dean Moor CWS. Whilst encroachment would remain throughout the operational phase of the development, there would be significant operational-phase benefits due to the enhancement measures set out. Overall, the proposed development would deliver a net ecological benefit to Dean Moor CWS, and I am satisfied that the mitigation hierarchy has been properly applied.

Biodiversity net gain

- 3.5.49. The minimum BNG figures are 60% for habitats, 20% for hedgerows, 5% for watercourses. These are set out in the oLEMP [[REP5-016](#)]. The figures contained in the BNG report [[APP-157](#)] are aspirational but indicate that BNG of 114% for habitats, 44% for hedgerows, and 12% for watercourses could be achieved. In the event that the DCO is made, the BNG assessment would be re-run based on the statutory BNG metric taking into account the final detailed design and landscaping, and the findings of updated surveys. This commitment is included in the oLEMP [[REP5-016](#)] which would be secured by DCO Requirement 7.
- 3.5.50. Cumberland Council, CWT and NE are all supportive of the proposed minimum BNG, as set out in respective SoCGs ([[REP5-020](#)] – CC.EC.6, [[REP5-025](#)] – CWT7, [[AS-030](#)] – NE7).

CONCLUSIONS

- 3.5.51. In relation to Dean Moor CWS, a non-statutory designated area, there would be significant adverse effects during the construction phase due to encroachment of infrastructure. During the operational phase there would be significant positive effects due to enhancements, including grazing management and the other deliverable enhancement measures included in the oLEMP [[REP5-016](#)]. These benefits would outweigh the harmful encroachment during the lifetime of the development such that there would be a net benefit to biodiversity within the CWS.
- 3.5.52. The proposed development would provide BNG across the site, with two of the net gain types (habitats and hedgerows) contributing significantly to BNG. There would also be compliance with NPS EN-1 and NPS EN-3.
- 3.5.53. In relation to wider biodiversity and ecology effects, mitigation and enhancement measures would be secured by Requirement 3 (detailed design approval), Requirement 4 (CEMP), Requirement 6 (LEP) and Requirement 7 (LEMP) of the dDCO [[REP6-006](#)].
- 3.5.54. Overall, I find that the ecology and biodiversity matters have been adequately assessed in the ES, that existing surveys are adequate and there are commitments to provide suitable future ecological surveys if required. The proposed development would accord with the ecology and biodiversity requirements of NPSs EN-1 and EN-3, the Framework and relevant development plan policies. There are no areas of disagreement between the applicant, NE [[AS-030](#)], Cumberland Council [[REP5-020](#)], CWT [[REP5-025](#)] and the Environment Agency (EA) [[AS-032](#)].
- 3.5.55. There would be no significant adverse residual effects on statutory designated areas, habitats or species during any phase, and no significant adverse cumulative effects are anticipated.
- 3.5.56. On balance, due to overall BNG and targeted enhancements within Dean Moor CWS, there would be a net residual positive effect on biodiversity and ecology which I afford moderate positive weight.

3.6. HISTORIC ENVIRONMENT

INTRODUCTION

- 3.6.1. This chapter considers the effects of the proposed development on the historic environment, also referred to as cultural heritage. It includes the Lake District National Park UNESCO World Heritage Site (WHS), scheduled monuments (SM), listed buildings (LB), conservation areas (CoA), registered parks and gardens as well as non-designated assets including locally listed buildings and buildings of local merit, monuments¹⁵ and archaeological remains.

POLICY CONSIDERATIONS

NPS EN-1

5.9.9	Assessment methodology and requirements.
5.9.10	Assessing significant and contribution made by setting - methodology.
5.9.11	Appropriate assessment of archaeological interests.
5.9.13	Seek opportunities to make positive contribution to historic
5.9.15	Seek opportunities to better reveal significance of CoA and WHS.
5.9.16	Emphasis on retention of assets over documentary recording.
5.9.17	Any heritage asset loss should be recorded and evidence published.
5.9.18	Where appropriate, written scheme of investigation.
5.9.19 – 5.9.20	Where loss of significant justified, SoS should consider ways to prevent loss until development has commenced.
5.9.21	Undiscovered archaeology considerations.
5.9.23	SoS must comply with Regulation 3 of IPDR2010 ¹⁶ .
5.9.24	Avoid or minimise conflicts based on nature of significance.
5.9.25 – 5.9.26	SoS should consider desirability of sustaining and where appropriate enhancing assets.
5.9.27	Great weight given to any harm to the significance of heritage assets.
5.9.28	Considerable importance and weight to desirability of preserving assets.
5.9.32	Less than substantial harm to be weighed against public benefits.

¹⁵ Those listed in the local Historic Environment Record (HER)

¹⁶ Infrastructure Planning (Decisions) Regulations 2010

5.9.33	Affected non-designated assets – balanced judgment will be required.
5.9.34	Context considerations for impacts on CoA and WHS.
5.9.36	Appropriate weight to preserving settings of assets.

NPS EN-3

2.10.113	Appropriate archaeological evaluation necessary.
2.10.117	Conserve appropriate to significance, including impact on views.
2.10.118	Careful consideration to be given to setting impacts of solar farms.
2.10.119	Applicants may need to include visualisations to demonstrate effects.
2.10.160	SoS should consider length of time for which consent sought.

Legislation

- 3.6.2. Regulation 3 of the Infrastructure Planning (Decisions) Regulations 2010 requires that the SoS in deciding an application must have regard to preserving listed buildings (including their setting and any features of special architectural or historic interest they possess), preserving or enhancing any CoA, and preserving a SM or its setting.

Other national and local policies and guidance

National Planning Policy Framework – paragraphs 202 – 221. Annex 2 sets out the definition of ‘setting of a heritage asset’ and ‘significance’.

Planning Practice Guidance – Historic Environment section.

Policy S27 of the Allerdale Local Plan Part 1 (2014).

The Lake District National Park Partnership’s Management Plan 2020-2026 ([\[REP2-011\]](#) - Appendix H).

THE APPLICATION

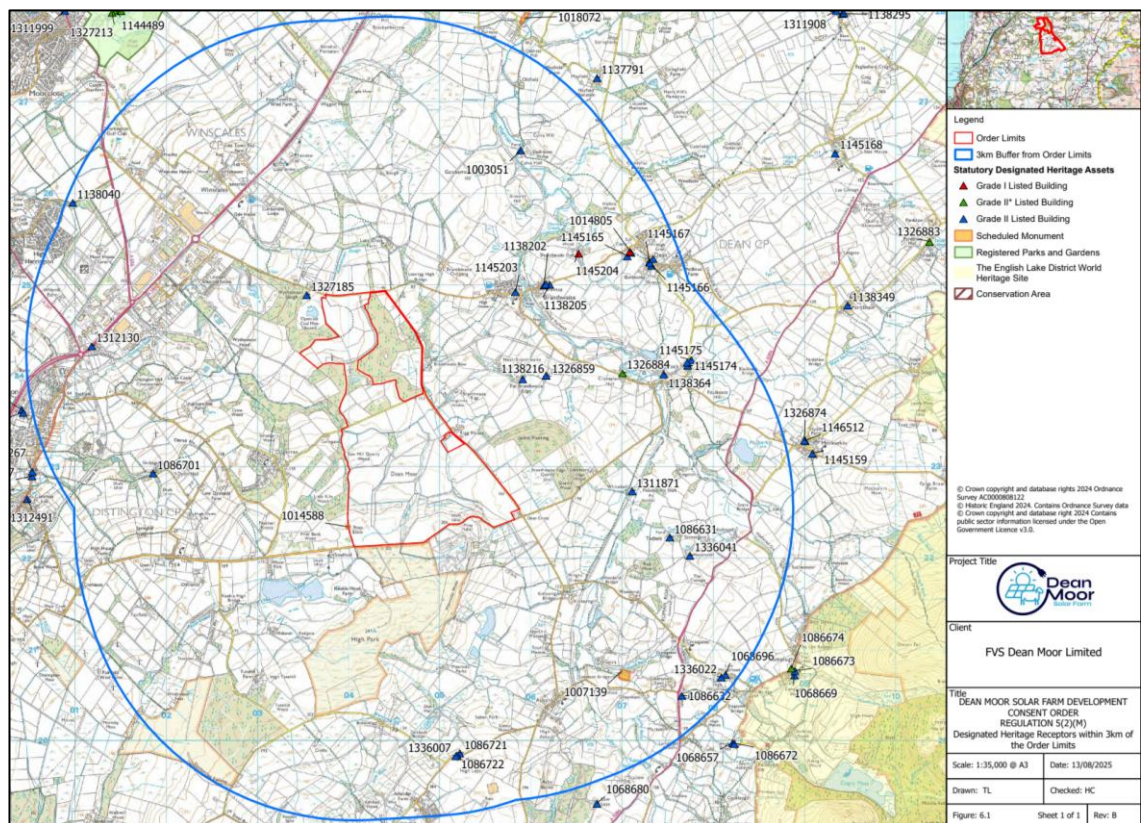
- 3.6.3. ES Chapter 6 [\[REP2-027\]](#) sets out the applicant’s case, supported by the following documents:

- Historic Environment Desk-Based Assessment (HEDBA) [\[REP2-031\]](#)
- The Historic Environment Record [\[REP2-031\]](#) – Appendix A]
- Archaeological Geophysical Survey Report [\[APP-116\]](#)
- Archaeological Mitigation Strategy [\[APP-117\]](#)
- Stakeholder Engagement [\[APP-106\]](#)
- Cultural Heritage Technical Note [\[REP2-057\]](#)

- Designated Heritage Receptors within 3km of the Order limits [[APP-076](#)].
- Non-Designated Heritage Receptors within 1km of the Order limits [[APP-077](#)]
- Zone of Theoretical Visibility [[APP-078](#)]
- Stone Circle and proposed development [[REP2-055](#)]
- Stone Circle with Landscape Strategy Plan [[REP2-056](#)]

3.6.4. Figure 15 shows the location of heritage receptors relative to the site:

Figure 15: Plan showing location of heritage receptors



(Source: ES Figure 6.1 (Designated Heritage Receptors) [[REP2-029](#)])

Methodology and baseline

3.6.5. The applicant's methodology is set out in section 6.3 of ES Chapter 6 [[REP2-027](#)]. In summary, it identifies two grade I LBs, one grade II* LB, 25 grade II LBs and three SMs within 3km of the site. Just beyond, at a distance of 3.2km, lies The English Lake District WHS.¹⁷ Within the site itself near the western boundary is the stone

¹⁷ National Heritage List for England reference - 1452615

circle and cairn SM.¹⁸ (hereafter referred to as Stone Circle SM). A number of non-designated heritage receptors lie within 1km, or within the site boundary.

3.6.6. Appendix A of the HEDBA identifies all the heritage assets within the study area [REP2-030]. Assets with potential to be affected by the proposed development were scoped into the HEDBA (Table 4.2 of HEDBA) and subject to further analysis (Table 5.1 of HEDBA). The assets where harm was considered likely were taken forward for detailed assessment in the ES ([REP2-027] – Table 6.7).

Assessment of effects

3.6.7. Following the HEDBA filtering process, the ES assessed effects on designated heritage assets. The anticipated effects are highlighted in Table 2 below:

Table 2: ES assessment of effects on heritage assets and residual harm in relation to NPS EN-1

Heritage Asset	Significance	Approximate Distance	Residual effect in EIA terms	Residual harm in NPS terms
The English Lake District	World Heritage Site	3.2km to the east	Minor adverse (all phases)	Less than substantial
Stone Circle	Scheduled Monument	Within south-west corner of the site	Moderate adverse (construction and operational phases).	Less than substantial
Wythemoor Sough	Grade II listed	160m to the northwest.	Moderate adverse (construction and operational phases).	Less than substantial

(Source: extract from ES Chapter 6 (Cultural Heritage) Table 6.8 [REP2-027])

The English Lake District World Heritage Site

3.6.8. The ES explains that the Outstanding Universal Value (OUV) is a UNESCO defined level of significance specific to WHSs. The WHS was inscribed for its OUV, which derives from the harmonious interaction between traditional agrarian and pastoral

¹⁸ Official list entry – Large irregular stone circle and a round cairn on Dean Moor. National Heritage List for England reference - 1014588

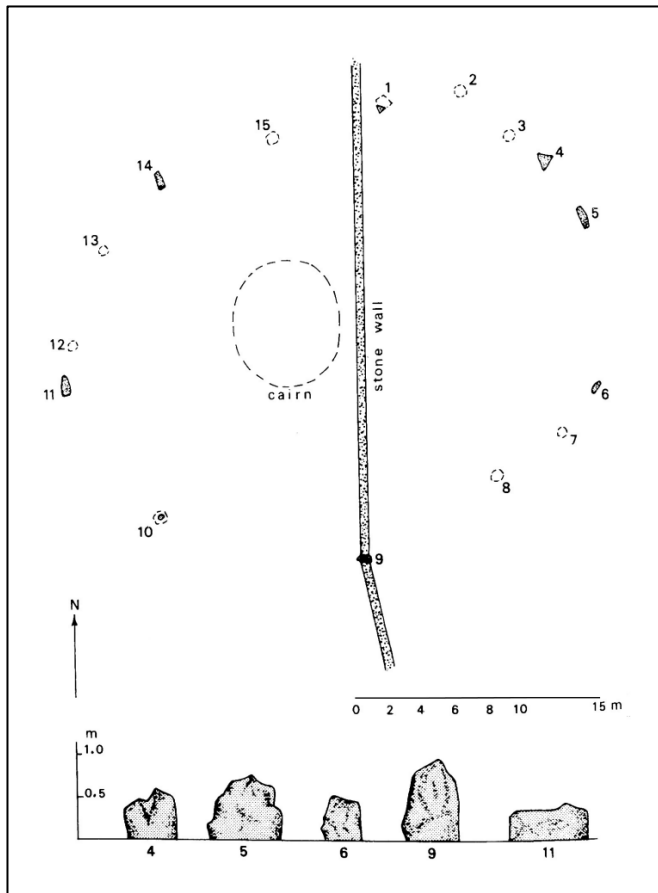
land uses and the area's dramatic natural landscape. The full UNESCO statement of OUV is provided in Annex 2 of the Lake District National Park Partnership's Management Plan 2020-2026 ([\[REP2-011\]](#) – Appendix H).

- 3.6.9. The site lies more than 3km from the boundary of the WHS. Given this separation, the presence of industrial influences in the wider landscape (for example, Lillyhall and Workington), and the limited scale of the site in relation to the WHS's broader rural setting, the applicant considers that it makes a low contribution to the OUV of the WHS.
- 3.6.10. As set out in the landscape and visual section 3.4 of this report, there is agreement between the LDNPA and the applicant that view locations (VL) 13 and 14 are representative of elevated views of the proposed development from within the WHS. The applicant considers that the proposed development would be visible at distance but would appear within an expansive countryside setting that already exhibits industrial and renewable energy features. This would result in a marginal change, translating into a minor adverse visual effect.
- 3.6.11. According to the applicant, the proposed development has been designed to avoid significant adverse effects, mainly through embedded mitigation which would avoid the most elevated parts of the site. The LSP and LEMP, to be secured under dDCO Requirements, would secure long-term landscaping to further reduce visibility from the WHS.
- 3.6.12. Overall, due to a change in the WHS wider rural setting, the applicant states that residual harm during all phases would be minor adverse, not significant in EIA terms which would be a less than substantial harm in relation to NPSs ([\[REP5-013\]](#) – No. 28).

Stone Circle and Cairn

- 3.6.13. The ES explains that the SM lies on the south-western boundary of the site in an elevated position. As set out in the HEDBA [\[REP2-030\]](#), the monument was designed to be visually permeable and has an intrinsic association with the surrounding landscape, being a visual and historic focal point contributing to a sense of community and place. Figure 16 below illustrates the general arrangement of the Stone Circle SM layout.

Figure 16: Plan illustrating general layout of Stone Circle SM



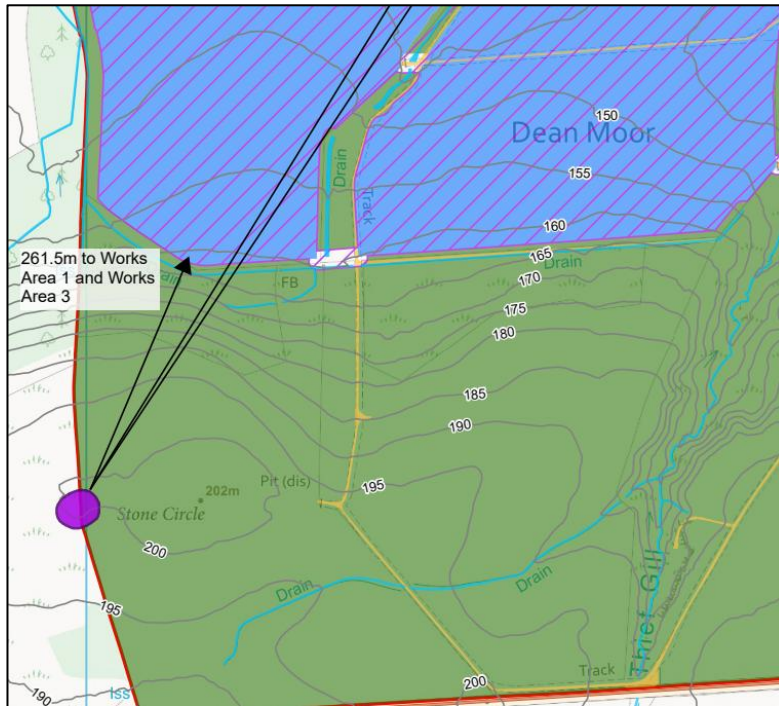
(Source: extract from Figure 19c of ES Appendix 6.1 (HEDBA) [REP2-030])

3.6.14. According to the applicant, the SM's setting has been altered and eroded by the presence of various built elements within the wider landscape, particularly wind turbines generally located to the north. A later stone wall has also been built which bisects the site. Photographs of the Stone Circle SM and its surroundings can be found in [REP3-026].

3.6.15. The ES concludes that the proposed development would change the rural character of the SM's setting to the north due to the introduction of solar PV infrastructure and associated works. However, the built form would lie on lower ground and at a distance from the SM, affecting only a limited portion of the overall panorama. This embedded mitigation, achieved by excluding built features in elevated locations

near the SM, would ensure a notable degree of separation from the asset. Nevertheless, the ES concludes that there would be a moderate adverse (significant) effect on the asset.

Figure 17: Plan showing distance between Stone Circle SM and proposed solar infrastructure



(Source: extract from Figure 6.4 (Stone Circle and Proposed Development) [REP2-055])

- 3.6.16. Figure 17 above shows the approximate distance between the SM and the proposed solar infrastructure.
- 3.6.17. To minimise harm, additional planting would be provided, designed to break up and filter obtainable views of the proposed infrastructure from the SM, as shown in [REP2-056]. This would be maintained in accordance with the principles set out in the oLEMP [REP5-016]. Nevertheless, the applicant acknowledges that visibility of the proposed infrastructure would be unavoidable due to the SM's elevated position.
- 3.6.18. According to the applicant, they have also explored ways of enhancing the asset and better revealing its significance, particularly as the SM is currently inaccessible for members of the public. The propose a permissive path which would run partly through the site, linking in with the SM, thus allowing access to the boundary of it [REP2-056]. This path is included on the LSP, secured by Requirement 6 of the dDCO. There would also be an opportunity to provide signage and information boards, details of which are included in section 3.2 of the oOMP [AS-024] to be secured by Requirement 11 of the dDCO.

- 3.6.19. According to the applicant, the residual impact on this asset would be moderate (significant) adverse during the construction and operational phase, equating to less than substantial harm in NPS terms.

Wythemoor Sough

- 3.6.20. Wythemoor Sough and Adjoining Barn and Stable¹⁹ (Wythemoor Sough) is a grade II LB. The applicant notes that previous mining and the current Potato Pot Wind Farm have altered the rural character of its setting and that the site does not make a substantial contribution to the significance of the receptor, which is best appreciated from within its immediate setting.

- 3.6.21. Given the location of the proposed development within the wider, as opposed to immediate setting, occupying part of lower land to the south and east, the magnitude of impact would be moderate adverse (significant) during the construction and operational phases. The applicant sets out that VL9 is representative of the visual impact on the receptor from a heritage perspective, as shown here [[REP2-052](#)].

- 3.6.22. The LSP includes retention of existing landscaping along with additional landscaping which would reduce the prominence of the built form by year 15 [[REP2-046](#)]. The Order limits include a strip of land between the proposed infrastructure and the asset to secure landscaping. These are secured by the parameters plans and the LSP, which would itself be secured by Requirement 6 of the dDCO.

- 3.6.23. Nevertheless, even with mitigation, the applicant considers that the residual effect would remain moderate (significant) adverse due to the change in the character of the asset's setting. They conclude that the proposal would result in less than substantial harm to the listed building in NPS terms.

Archaeological remains

- 3.6.24. The ES reports that the impact of the proposed development on archaeological remains during the construction phase would be major (significant) adverse. Following mitigation, the residual effects are reported as moderate (significant) beneficial.

Cumulative effects

- 3.6.25. At its nearest point, the Lostrigg Solar site lies immediately to the north of the site and Wythemoor Sough would sit between it and the proposed development. If

¹⁹ List entry number - 1327185

Lostrigg Solar was consented, there is a possibility that construction activities for the two projects could overlap but adverse cumulative construction/decommissioning effects arising from Lostrigg Solar and the proposed development could be managed effectively through appropriate CEMP and CTMP measures.

- 3.6.26.** During the construction and operational phases, and due to the proximity of Lostrigg Solar and the proposed development to the heritage asset, the ES anticipates moderate (significant) adverse effects. However, this would be the same adverse effect level on this receptor as the proposed development when considered in isolation.
- 3.6.27.** No other significant cumulative effects are anticipated in respect of any other heritage assets or projects.

ISSUES CONSIDERED DURING THE EXAMINATION

- 3.6.28. Cumberland Council's LIR [\[REP2-058\]](#) reaches the same conclusions as the ES in relation to designated heritage assets. Overall, they consider that the requirements of local plan policies in relation to heritage assets would be satisfied.
- 3.6.29. I deal with archaeology matters and Cumberland Council's comments in respect of this in more detail below.

Methodology

- 3.6.30. Various matters were initially raised by Historic England and subsequently addressed by the applicant [\[REP1-002\]](#). As a result, Historic England's technical recommendations on the approach to ES Chapter 6 have been suitably resolved, as confirmed by the SoCG [\[REP5-022\]](#). Therefore, I deal with only the main points considered during the examination.
- 3.6.31. In accordance with the EIA methodology set out in ES Chapter 3, heritage receptors were assigned a sensitivity value based on a four-point scale ([\[REP2-030\]](#) - Table 2.1). The highest sensitivity was attributed to grade I and II* LBs and SMs, whilst grade II LBs were assigned 'medium' sensitivity. Historic England raised concerns that this approach underrepresented the sensitivity of grade II LBs in light of relevant guidance.
- 3.6.32. To address this, the applicant produced a technical note [\[REP2-057\]](#) adopting a five-point scale, thereby placing all grade I, II*, and II LBs in the 'high' sensitivity category. This adjustment only affects the grade II listed Wythemoor Sough, which as a result of this methodological alteration would fall within the 'high' sensitivity

category. However, the overall significance of effect would be moderate adverse, so the change in methodology would not alter the overall ES outcome.

- 3.6.33. Historic England also raised concerns with the HEDBA's reliance on hedgerows outside the Order limits to constrain views of the proposed development when viewed from Far Branthwaite Edge, Dairy and Barn (a grade II LB) and Crakeplace Hall (a grade II* LB). However, the applicant states that it is reasonable to assume that these established landscaping features would remain intact. Moreover, irrespective of the existing landscaping, the ZTV indicates limited visibility of the proposed infrastructure from either asset [REP1-002]. The HEDBA concludes that the magnitude of change and overall impact on Far Branthwaite Edge would be negligible and would be non-existent at Crakeplace Hall ([REP2-030] - Table 5.1).

Viewpoints

- 3.6.34. The applicant clarified that several of the VLS utilised to support the LVIA and ES Chapter 7 were also used to inform and support the judgments on the effects on setting in relation to the WHS,²⁰ Stone Circle SM²¹ and Wythemoor Sough.²² The applicant confirmed that its landscape and heritage experts worked collaboratively, and that suitable VLS were also informed by ZTV analysis to identify views which were demonstrative of the landscape setting of the receptors allowing for an appreciation of their heritage sensitivity [REP2-010 – No. 5.0.2]. None of these matters were disputed by Historic England or Cumberland Council.
- 3.6.35. At my request, the applicant also produced further detailed photographs and visualisations from Stone Circle SM [REP3-026]. Historic England have agreed that the further photographs of Stone Circle SM demonstrate its relationship with its landscape setting and the site ([REP5-022] – HE.5).

Mitigation - alternatives

- 3.6.36. The ES anticipates moderate (significant) effects in relation to the Stone Circle SM and Wythemoor Sough grade II LB. The applicant set out the embedded and additional mitigation in writing in response to the ISH ([REP5-013] – No. 29). Mitigation for each of these assets is summarised earlier in this chapter.
- 3.6.37. The applicant also set out the extent to which further mitigation was considered but ultimately ruled out. In relation to Wythemoor Sough, reducing the harm to a non-

²⁰ View Location 13, 13a, 13b and 14 [REP2-044]

²¹ View Location 3c [REP2-040]

²² View Location 9 [REP2-044]

significant level would require the removal of part of the solar infrastructure, but this would compromise the potential to deliver 150MW capacity of renewable energy. The applicant states that proposed landscaping has already been maximised, and due to the prevailing topography, increasing the landscaping depth further would not significantly reduce the visual and heritage effects.

- 3.6.38. Regarding the Stone Circle SM, the applicant considers that its elevated position means that reducing the effects to a non-significant level would require removing a large area of solar infrastructure, rendering the development unviable. Additional screening would necessitate extensive landscaping, which could undermine the relative openness of the surroundings, to the detriment of the asset's significance.

Archaeological remains

- 3.6.39. Paragraphs 6.5.17 and 6.5.18 of ES Chapter 6 [REP2-027] states that the sensitivity/value of any remains would depend largely on the nature, value and condition of them when they are discovered and it is on the basis that a 'worst-case' scenario has been considered.
- 3.6.40. The nature of the archaeological potential of the site is considered low, as evidenced by the HEDBA [REP2-030] and Geophysical Survey Report [APP-116]. In part, this is due to the mining legacy of the site. Whilst the survey revealed some evidence of archaeological anomalies, none are considered to be of clear archaeological potential. It is understood that Stone Circle SM is of archaeological significance, but the HEDBA states that the associated cairn was excavated previously in 1878 and 1924 and there is little evidence to suggest significant other Bronze Age remains within the site. No significant works are proposed within the SM boundary or its immediate vicinity.
- 3.6.41. The low probability of significant archaeological remains being present across the site is agreed between the applicant and Cumberland Council and Historic England in respective SoCGs.²³ The geophysical survey also states that no anomalies of clear archaeological potential have been recorded.²⁴
- 3.6.42. Table 6.1 of Chapter 6 of the ES [REP2-027] indicates that archaeological assets of limited value but with potential to have local level interest should be attributed a 'low' sensitivity/value. Paragraphs 6.6.4 – 6.6.8 of ES Chapter 6 [REP2-027] set out the mitigation measures, which would include a final version of the archaeological

²³ Ref – HE.2 of Historic England SoCG [REP5-022] and CC.AH.3 of Cumberland Council SoCG [REP5-020]

²⁴ Para 5.1.1 of [APP-116]

mitigation strategy (AMS) [APP-117], alongside a commitment to provide a written scheme of investigation which would set out a programme of investigation (WSI). The AMS would inform the final design and layout of the scheme along with a range of mitigation options. This includes a commitment to providing an archaeological evaluation report, to be deposited with the Cumbria Historic Environment Record and made publicly available.

- 3.6.43. As a result of the additional mitigation, paragraph 6.7.4 of ES Chapter 6 [REP2-027] reports that there would be a moderate beneficial (significant) effect on below ground archaeological remains.

CONCLUSIONS

Methodology - conclusion

- 3.6.44. There are no outstanding areas of disagreement between Historic England and Cumberland Council as set out in respective SoCGs ([REP5-022] and [REP5-020]). I am also satisfied that the applicant's methodology in assessing the impact on heritage assets is robust.
- 3.6.45. I concur with the findings of the HEDBA [REP2-030] that adverse effects on designated heritage assets would be limited to The English Lake District WHS, Stone Circle SM and Wythemoor Sough. In my view, the HEDBA was correct to assume that existing hedgerows and landscaping that have been present in the wider landscape for some time would remain in situ and assist in screening the proposal from the LBs of Far Branthwaite Edge, Dairy and Barn and Crakeplace Hall.
- 3.6.46. Whilst the HEDBA concludes that there would be a negligible impact on Far Branthwaite Edge, Dairy and Barn, Table 6.2 of ES Chapter 6 [REP2-027] sets out that this can equate to a little change to the setting, approximating to a 'no change' situation. That is the case here. Therefore, there would be no harm to this asset, nor to Crakeplace Hall where the HEDBA records 'no impact'.

The English Lake District WHS - conclusion

- 3.6.47. The WHS boundary reflects the LDNP boundary. The landscape's exceptional beauty is shaped not only by dramatic natural physical features such as lakes and mountains, but also by historic human influences including traditional farming practices, and philosophically rich literary and artistic associations. Together, they have contributed to an exceptional cultural landscape, defined by archaeological, artistic and historic interest, which contribute to its OUV and designation as a UNESCO WHS.

- 3.6.48. Whilst the site lies within the setting of the WHS, it is over 3km from it at its closest point. It occupies a relatively small proportion of the expansive panorama when viewed from the WHS. Whilst much of the surrounding landscape is rural, urban form and infrastructure also form part of the backdrop, visible generally beyond the site in seaward views. As such, the site makes a limited contribution to the WHS's significance and OUV.
- 3.6.49. The proposed development would have a substantial footprint, though it would be perceived within an expansive and open rural landscape, shaped in part by historic and contemporary human activity.
- 3.6.50. The effects on the WHS would be mainly limited to westward views from high points within the WHS, where the effects would be negligible in terms of scale and severity of change. This is best evidenced by VL13c [\[REP2-052\]](#).
- 3.6.51. Embedded mitigation would be incorporated by avoiding built form on the most elevated parts of the site, thus reducing the prominence of infrastructure. Additional landscaping would be incorporated. Overall, there would be minor adverse effects over the duration of the development, not significant in EIA terms.
- 3.6.52. Like the LDNPA, I conclude that minor adverse visual effects and changes to the setting would result in minor conflict with the WHS's extraordinary beauty and harmony, one of the attributes which is embedded in the OUV ([\[REP4-031\]](#) – paragraph 1.12).
- 3.6.53. In the terms of NPS EN-1, I find that there would be a low level of less than substantial harm due to a change in the WHS's wider rural setting. Given this is a heritage asset of the highest significance, in accordance with paragraph 5.9.27 of NPS EN-1, I give very great weight to this harm.

Stone Circle and Cairn - conclusion

- 3.6.54. Stone Circle SM comprises an irregular circle of sandstone monoliths. It is one of only 45 known large irregular circles in England and holds historical significance as a feature in the landscape which visibly and physically represented the rituals and values of prehistoric communities.
- 3.6.55. It occupies an elevated position that provides extensive long-distance views, which reinforces its role as a historic visual focal point and archaeological interest as a Bronze age monument. The surrounding rural character, particularly the open and exposed Dean Moor, makes an important contribution to the monument's significance, despite some degradation of setting from existing built features such as

wind turbines and other built form. A later dry-stone wall also traverses the asset, creating a physical interruption which disrupts the asset's coherence.

- 3.6.56. The proposed development would introduce solar PV infrastructure to the north, altering part of the rural setting. The infrastructure would be located on lower ground and at a distance of over 250m, affecting only a limited portion of the wider panorama. Embedded mitigation, principally the avoidance of elevated areas close to the SM, would maintain separation and reduce visual intrusion. Additional landscaping within the Order limits would screen and channel views towards the hills of the LDNP beyond.
- 3.6.57. Nevertheless, the footprint of the proposed infrastructure would be sufficiently expansive and close to the asset to be intrusive in some northward views, exacerbated by its synthetic appearance and contrast with the prevailing backdrop of open countryside. This would, to some extent, undermine the historical significance that comes from the SM's deliberate placement in the rural landscape and its intrinsic association with its exposed and undeveloped surroundings. As such, there would be a moderate adverse (significant) effect.
- 3.6.58. The applicant has explored ways of further minimising the harm. Having visited the SM [\[EV12-001\]](#), I agree with the applicant that additional landscaping positioned close to the SM itself, in order to reduce the visibility of the solar infrastructure, would erode its open moorland setting, which underpins the asset's significance. Moreover, and given the elevated position of the asset which would allow views of an extended area of solar infrastructure, removal of sufficient solar infrastructure from the Order limits would likely either render the scheme unviable or significantly reduce its generating capacity.
- 3.6.59. The proposal would include permissive paths which would route through part of the site and provide access to the SM. Additional signage and information boards would be secured through the final LSP and LEMP as DCO Requirements. However, for the reasons set out in Chapter 3.9 of this report, whilst the laying of the paths and provision of information boards can be secured as part of the LEMP, I cannot be certain that the permissive paths would be publicly accessible throughout the operation of the solar farm. Therefore, the permissive paths would provide no long-term enhancement and cannot be taken forwards as public benefits.
- 3.6.60. Even in the absence of this proposed enhancement, I concur with the overall findings of the ES that there would be moderate (significant) adverse effects which would equate to a moderate level of less than substantial harm. This aligns with the conclusions drawn by the applicant, Historic England and Cumberland Council in

respective SoCGs.²⁵ As an asset of national importance, and in accordance with paragraph 5.9.27 of NPS EN-1, I attribute great weight to this harm.

Wythemoor Sough - conclusion

- 3.6.61. Wythemoor Sough, a grade II listed late-18th-century farmhouse with an adjoining barn and stable, is significant for its vernacular architecture and historic agricultural function. Its position within surrounding pasture reflects this farming history and contributes positively to its rural setting, although previous mining and the Potato Pot Wind Farm have altered aspects of the wider landscape setting.
- 3.6.62. The site lies downslope from the asset, allowing clear views across it. The introduction of solar panels and associated infrastructure to the south and east would change part of the open rural setting. This would leave a wide arc of the surrounding panorama as open countryside, ensuring the retention of the historic and integral relationship between the farm and the surrounding land.
- 3.6.63. However, given the relatively close distance, and scale and characteristics of the proposed development, infrastructure would be clearly visible from the asset. The mechanical aesthetic and extensive spread of the panels would be out of step with the open rural character of the surroundings (see [\[REP2-052\]](#) – VL9). Embedded and additional mitigation would include a proposed landscaping buffer between the asset and the panels which would help to reduce effects over time. However, the topography means that obtainable views would be unavoidable. Omitting a sufficient proportion of solar infrastructure from this area, in order to reduce the adverse effects, would likely compromise the renewable energy generating potential of the proposed development.
- 3.6.64. Overall, I conclude that the effect would be moderate (significant) adverse. There would be a moderate level of less than substantial harm and, given the grade II status of the building, this harm should be given great weight.

Archaeological remains - conclusion

- 3.6.65. The ES [\[REP2-027\]](#) reports that the effects of the proposed development on archaeological remains during the construction phase would be major adverse and significant. Following mitigation, the effects are reported as moderate beneficial and significant. In my view, the ES overstates the significant beneficial effects of the proposed development.

²⁵ Note – Historic England and Cumberland Council agree ‘less than substantial harm’ and ‘moderate adverse effects’ in EIA terms.

- 3.6.66. This is because, when considering the entirety of the evidence before me, the probability of significant archaeological remains being present across the site appears to be low, a point agreed between the applicant, Cumberland Council and Historic England in SoCGs. As such, the archaeological receptors are likely to be of local level interest as a worst-case, indicative of low sensitivity/value assets. Moreover, there is no credible evidence that high value or nationally important remains would likely be discovered.
- 3.6.67. As high value remains are unlikely, any knowledge gained through analysis and standard archaeological recording and public dissemination as proposed in the AMS [\[APP-117\]](#) would be limited. Neither would any of the other potential mitigation measures set out in the AMS have greatly beneficial effects.
- 3.6.68. Therefore, I conclude that a reasonable worst-case, grounded in the available evidence, would indicate low value receptors. Mitigation would, therefore, offer only limited benefits. I find that the residual effects during construction, which would primarily involve the public dissemination of discovered assets and contribution to the local historic environment record, would be minor (not significant) beneficial.²⁶
- 3.6.69. In relation to the wider archaeological assessment undertaken, including the methodology relating to future investigation, this is agreed between the applicant and Cumberland Council ([\[REP5-020\]](#) – CC.AH.1 – CC.AH.6). Requirement 9 of the dDCO deals with archaeology related submission requirements. I am satisfied that robust mitigation measures would be secured by the DCO.
- 3.6.70. Overall, there would be no significant effects in relation to archaeological remains. In terms of paragraph 5.9.33 of NPS EN-1, I find that there would be a little harm to non-designated archaeological assets, but this would be outweighed by the minor beneficial effects of recording and public dissemination of the resource.

Historic Environment overall conclusion

- 3.6.71. There would be residual significant adverse effects during all phases in respect of Stone Circle SM and Wythemoor Sough grade II LB. This would equate to a moderate level of less than substantial harm in relation to NPSs. I reach the same conclusions as Cumberland Council and Historic England ([\[REP5-020\]](#) – CC.HE.2, [\[REP5-022\]](#) – HE.5).

²⁶ Applying moderate magnitude of effect and low sensitivity value as per Table 6.3 of ES Chapter 6 [\[REP2-027\]](#)

- 3.6.72. There would be no significant adverse effects on The English Lake District WHS, although there would be a low level of less than substantial harm in NPS terms. I reach the same conclusions as Historic England and the LDNPA in this respect ([[REP5-022](#)] – HE.6, [[AS-037](#)] – LDNPA.5]).
- 3.6.73. There would be no significant adverse effects on any other designated asset or non-designated assets including archaeological remains. I reach a different conclusion to the ES on this matter as I find that the archaeological benefits would not be significant.
- 3.6.74. The conclusions above would not be altered by cumulative effects with other proposals.
- 3.6.75. My overall conclusion is that cultural heritage effects (including cumulative effects) should carry moderate negative weight in the planning balance.
- 3.6.76. In Chapter 5 of this report, I undertake a separate heritage balancing exercise weighing heritage harm against the public benefits as required by paragraph 5.9.32 of NPS EN-1.

3.7. NOISE

INTRODUCTION

- 3.7.1. This chapter relates to the potential noise effects of the proposed development. The topic of noise and vibration was scoped out of the ES [APP-097] because significant environmental effects were not anticipated. However, the applicant submitted a stand-alone noise and vibration impact assessment (NIA) with the application [REP4-017].

POLICY CONSIDERATIONS

NPS EN-1

4.4.2	Direct impacts on health may include noise.
4.4.8	SoS consideration of health concerns relating to noise.
4.12.10	SoS should assume relevant pollution control regime properly applied.
5.11.15	Development to prevent unacceptable noise pollution.
5.12.1	Excessive noise can impact quality of life.
5.12.2	Noise Policy Statement for England is government policy on noise.
5.12.5	Factors that may determine likely noise impacts.
5.12.6 – 5.12.12	How applicants should assess noise impacts.
5.12.13 - 5.12.16	Mitigation measures relating to noise impacts.
5.12.17	SoS should ensure development avoids significant adverse impacts from noise, mitigates and minimises other adverse noise effects and where possible contributes to improvements to health and quality of life.
5.12.18	SoS should consider measurable requirements in relation to noise limits in preparing a DCO.

NPS EN-3

2.10.162	Usually limited weight to be given to traffic and transport noise operational noise.
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Other national and local policies and guidance

Noise policy statement for England 2010.

National Planning Policy Framework - paragraph 198.

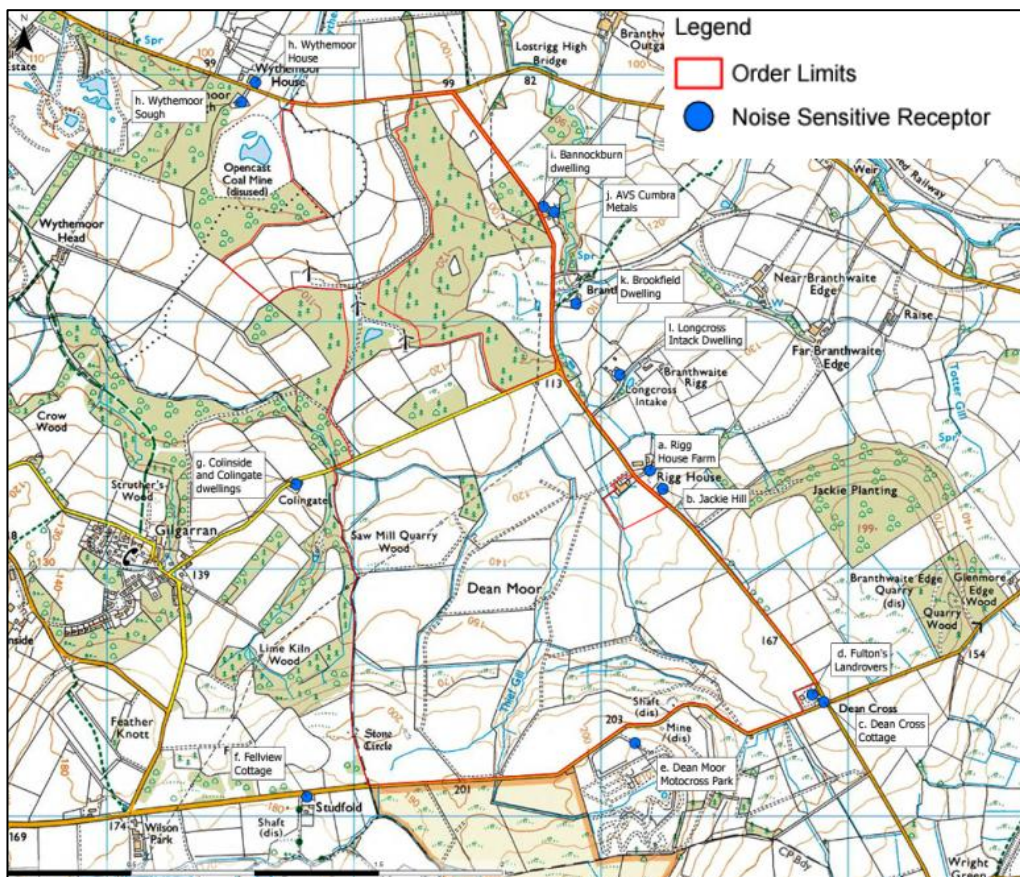
Planning Practice Guidance - Noise section.

Policy S19 of the Allerdale Local Plan Part 1 (2014).

THE APPLICATION

- 3.7.2. The NIA sets out that noise during operation would mainly be generated by power conversion system units (PCS units) and grid connection infrastructure. The PCS units would be located within the Work No. 1 parameters. There would be a single transformer unit within a compound, which would form the grid connection infrastructure associated with Work No. 2.
- 3.7.3. The NIA considered the impact on a range of noise sensitive receptors (NSR), mainly comprising residential properties located close to the site. The assessment identified minimum stand-off distances required between noise emitting plant and NSRs to ensure noise levels would not exceed significant observed adverse effects levels (SOAEL). The location of NSRs is shown in Figure 18.

Figure 18: Plan showing location of noise sensitive receptors



(Source: extract from Figure 5.1 of ES Appendix 2.6 (Noise and Vibration Impact Assessment) [\[REP4-017\]](#))

- 3.7.4. The NIA, in relation to proposed Work No. 2, indicates that any emanating noise would be sufficient distance so as not to result in SOAEL at the nearest properties. In relation to Work No. 1, Requirement 12 of the dDCO [REP6-006] requires the submission of a noise assessment demonstrating that Work No. 1 would have no significant operational noise effect.
- 3.7.5. Noise and vibration associated with construction traffic was scoped out of the ES and so significant adverse effects are not anticipated. However, the Chapter 7 of the oCMP [AS-026] sets out construction related noise and vibration controls. This includes core working hours of 08:00 – 18:00 Monday to Friday, 08:00 – 13:00 on Saturdays and not working on Sundays or public holidays. This would be secured by Requirement 4 of the DCO.

ISSUES CONSIDERED DURING THE EXAMINATION

- 3.7.6. Cumberland Council's LIR [REP2-058] confirmed their satisfaction that measures to address noise effects and provide suitable mitigation would be suitably controlled through various control documents and DCO Requirements.
- 3.7.7. Notwithstanding this, RRs raised concerns about potential noise at Dean Cross Cottage and the applicant provided responses in [REP1-002]. Further responses were provided to concerns raised by residents of Dean Cross Cottage at the open floor hearing in AP1 of [REP5-015].
- 3.7.8. Having regard to the above, the questions I asked during the examination were to better understand the extent to which the applicant had considered SOAEL, LOAEL and mitigation. The applicant provided responses in Q9.0.1 of [REP2-010].
- 3.7.9. During the course of the examination the applicant provided an updated NIA [REP4-017] which included additional information and clarification, taking into account the matters raised throughout the examination in respect of noise levels and mitigation.
- 3.7.10. NPS EN-1 paragraph 5.12.7 states that the SoS should be satisfied that proposals avoid significant adverse noise impacts and mitigate and minimise other adverse noise impacts, in relation to health and quality of life. Paragraph 5.12.2 states that government policy is contained within the Noise Policy Statement for England (NPSE).

3.7.11. The NPSE includes information about broad noise effect levels. This is reiterated in PPG²⁷ and is included in a noise exposure hierarchy table as shown in Table 3 below.

Table 3: Noise exposure hierarchy table

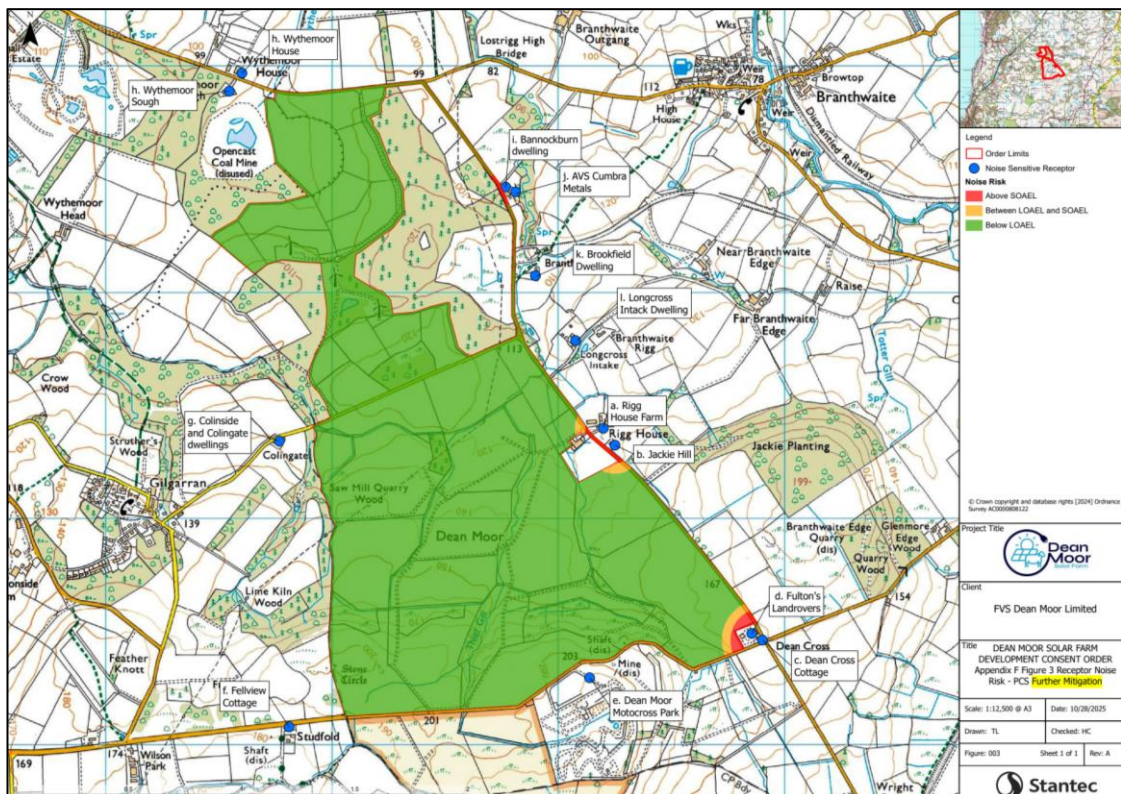
Response	Examples of outcomes	Increasing effect level	Action
No Observed Effect Level			
Not present	No Effect	No Observed Effect	No specific measures required
No Observed Adverse Effect Level			
Present and not intrusive	Noise can be heard, but does not cause any change in behaviour, attitude or other physiological response. Can slightly affect the acoustic character of the area but not such that there is a change in the quality of life.	No Observed Adverse Effect	No specific measures required
Lowest Observed Adverse Effect Level			
Present and intrusive	Noise can be heard and causes small changes in behaviour, attitude or other physiological response, e.g. turning up volume of television; speaking more loudly; where there is no alternative ventilation, having to close windows for some of the time because of the noise. Potential for some reported sleep disturbance. Affects the acoustic character of the area such that there is a small actual or perceived change in the quality of life.	Observed Adverse Effect	Mitigate and reduce to a minimum
Significant Observed Adverse Effect Level			
Present and disruptive	The noise causes a material change in behaviour, attitude or other physiological response, e.g. avoiding certain activities during periods of intrusion; where there is no alternative ventilation, having to keep windows closed most of the time because of the noise. Potential for sleep disturbance resulting in difficulty in getting to sleep, premature awakening and difficulty in getting back to sleep. Quality of life diminished due to change in acoustic character of the area.	Significant Observed Adverse Effect	Avoid
Present and very disruptive	Extensive and regular changes in behaviour, attitude or other physiological response and/or an inability to mitigate effect of noise leading to psychological stress, e.g. regular sleep deprivation/awakening; loss of appetite, significant, medically definable harm, e.g. auditory and non-auditory.	Unacceptable Adverse Effect	Prevent

(Source: paragraph 5 of Planning Practice Guidance (Noise) Reference ID: 30-005-20190722)

²⁷ Planning Practice Guidance - Noise exposure hierarchy table - https://assets.publishing.service.gov.uk/media/5d39a87ce5274a4010e33fef/noise_exposure_hierarchy.pdf

- 3.7.12. The noise exposure hierarchy table (Table 3) states that SOAEL is the level above which significant adverse effects on health and quality of life can occur and indicates that this effect level should be avoided. The lowest observed adverse effect level (LOAEL) is the level above which adverse effects on health and quality of life can occur. LOAEL should be reduced and mitigated to a minimum.
- 3.7.13. Appendix F of the NIA [[REP4-017](#)] maps approximate zones which illustrate the extent of potential noise effects relating to PCS units associated with Work No. 1 and grid connection infrastructure associated with Work No. 2. This illustrates that, in respect of Work No. 2, NSRs would fall outside the potential SOAEL and LOAEL areas. Therefore, according to the noise exposure hierarchy table (Table 3 above), no further mitigating action would be necessary as Work No. 2 would not lead to noise effects which would cause disturbance or diminish quality of life.
- 3.7.14. In respect of Work No. 1, as shown in Figure 19 below, the maximum proposed parameters would mean that PCS units could theoretically be sited in areas where noise levels above SOAEL and LOAEL could be experienced at some NSRs.
- 3.7.15. To address the potential for SOAEL at NSRs, Requirement 12 of the dDCO [[REP6-006](#)] requires that a further noise assessment be submitted, based on the final detailed design of the proposed development, demonstrating that Work No. 1 would not give rise to significant operational noise effects, including a requirement to maintain any mitigation employed throughout the operation of the solar farm.
- 3.7.16. In terms of ensuring levels below the LOAEL, further mitigation would be necessary depending on the detailed design and final location of the PCS units. This could include measures such as incorporating cowls or louvres to the PCS ventilation, or increasing the extent of enclosure, full details of which are set out in section 5.9 of the NIA [[REP4-017](#)].

Figure 19: Areas within Order limits where noise levels would be below LOAEL, between LOAEL and SOAEL, and above SOAEL - Works No. 1



(Source: extract from Appendix F of ES Appendix 2.6 (Noise and Vibration Impact Assessment) [APP4-017])

3.7.17. The oOMP [AS-024] was updated by the applicant to include additional noise mitigation and safeguards in order to ensure noise levels below LOAEL at NSRs would be achieved. Paragraphs 3.2.17 – 3.2.21 of the oOMP require, amongst other things, that the noise assessment submitted under Requirement 12, and the final OMP (Requirement 11), establish acceptable noise level parameters for operational equipment to prevent unacceptable significant effects and reduce to a minimum adverse effect in accordance with the NPSE. The oOMP goes on to detail that a noise verification report should be submitted within 12 months of final commissioning to verify that operational effects are in accordance with the approved sound levels. A noise complaint procedure is also included.

3.7.18. In relation to the applicant’s assessment of noise impacts and residential amenity, Cumberland Council confirmed that they had considered the NIA and potential noise effects and, in response to my written question, confirmed that operational noise effects would be acceptable and would ensure the adequate protection of residential amenity ([REP4-030] – Q2.3.4). A detailed agreement on assessment and mitigation of noise effects during operation is provided in CC.EHO.14 of the SoCG [REP5-020].

Conclusion

- 3.7.19. Construction noise would be adequately mitigated through control measures, including the CEMP (Requirement 4) and CTMP (Requirement 5) of the dDCO [[REP6-006](#)]. There would be no significant noise effects.
- 3.7.20. During operation, due to the proposed parameters relating to Work No. 2, noise generating equipment would not result in significant noise effects, nor noise effects that would be intrusive and disruptive for occupiers of nearby properties. No additional mitigation would be necessary.
- 3.7.21. Operational noise associated with Work No.1 would be controlled through detailed design and siting so that SOAEL would not be experienced at any NSR, including nearby residential properties. This would be secured by a noise assessment (Requirement 12) with additional mitigation ensuring no present and intrusive LOAEL for occupiers of the nearest properties, secured by the OMP (Requirement 11) of the dDCO.
- 3.7.22. These matters are agreed between the applicant and Cumberland Council in the SoCG ([\[REP5-020\]](#) – CC.EHO.6 and CC.EHO.14).
- 3.7.23. In conclusion, there would be no significant adverse noise effects associated with the proposed development (including cumulatively), during any phase. The proposed development would satisfy paragraph 5.12.17 of NPS EN-1 insofar as significant adverse effects on health and quality of life from noise would be avoided and other potential adverse noise effects would be mitigated and minimised in accordance with the mitigation hierarchy contained within the NPSE.
- 3.7.24. This matter should be attributed neutral weight in the planning balance.

3.8. HIGHWAYS, TRANSPORTATION AND ACCESS

INTRODUCTION

3.8.1. This section deals with highways and transportation matters. No significant effects are anticipated in relation to traffic and access for the reasons set out in 3.1.7 of the Scoping Opinion [[APP-097](#)]. Therefore, the ES does not contain a separate highways and transportation chapter.

3.8.2. Nevertheless, National Highways raised initial concerns regarding potential construction traffic impacts and I recognise that paragraph 5.14.21 of NPS EN-1 states that development should be refused if there would be an unacceptable impact on highway safety or if residual cumulative impacts would be severe.

POLICY CONSIDERATIONS

NPS EN-1

5.14.1 – 5.14.4	Outlines the potential impacts associated with transportation whilst recognising mitigation as an essential consideration.
5.14.6	National Highways and local highway authority statutory consultees.
5.14.7	Travel plan requirements.
5.14.11	Identifies mitigation opportunities.
5.14.14	SoS may attach requirements to consent if substantial HGV traffic.
5.14.18	SoS should ensure mitigates would be mitigated.
5.14.21	SoS should only consider refusal if, amongst other things, there would be an unacceptable impact on highway safety, residual cumulative effects would be severe.

NPS EN-3

2.10.120 – 2.10.126	Advises on construction traffic noise and vibration matters in relation to solar farms.
2.10.139	May be necessary to impose controls on number or routing of vehicles during construction.
2.10.141	Cumulative effects considerations.
2.10.161	Operational traffic movements are generally very light.

Other national and local policies and guidance

National Planning Policy Framework - Chapter 9 – Promoting Sustainable Transport.

Planning Practice Guidance – Travel Plans, Transport Assessments and Statements section.

Policies S22 of the Allerdale Local Plan Part 1 (2014).

THE APPLICATION

- 3.8.3. The application is accompanied by a Transport Statement (TS) [\[REP4-027\]](#) which states that daily maximum movements during the peak construction phase would be 40 heavy goods vehicle (HGV) movements and 16 light goods vehicle (LGV) movements. This is based on an 18-month construction period. If a longer period for construction was necessary, HGV and LGV daily movements would likely be reduced.
- 3.8.4. There would be up to 150 construction staff accessing the site during peak construction per day, although an average of up to 80 staff per day across the construction period is anticipated. The TS states that most staff would be staying in local accommodation and minibuses would be used to transport a number of staff to and from the site. The oCTMP [\[REP2-025\]](#) includes a Framework Construction Workforce Travel Plan (fCWTP).
- 3.8.5. Details of vehicle routing and site access are included in section 5 of the oCTMP [\[REP2-025\]](#). Figure 20 below shows the nine site accesses proposed along with sections of the highway which would be subject to potential highway works. All accesses but would require additional upgrading works.

Figure 20: Plan showing site accesses and areas of potential highway works



(Source: Figure 5.1 of ES Appendix 5.2 (oCTMP) [REP2-025])

- 3.8.6. The submitted Works Plans [APP-007], including Work No. 5, show more details of vehicular accesses, including enhancement of accesses from the public highway.
- 3.8.7. Section 5.3 of the oCTMP [REP2-025] sets out the access and routeing proposed from the strategic road network (SRN). Construction traffic would route to/from Lillyhall roundabout along Branthwaite Road which forms part of the local road network (LRN). Depending on site access requirements, construction traffic may also travel further along the LRN, including Branthwaite Edge Road and Gilgarran Road. Any traffic routeing from the wider vicinity and the SRN would travel along the A595 and/or A66 before reaching Lillyhall roundabout ([REP2-025] – Figure 5.2 and Figure 5.3).
- 3.8.8. The applicant notes that there are no notable safety concerns relating to the highways within the study area, including Lillyhall roundabout, Branthwaite Road, Branthwaite Edge Road and Gilgarran Road. Further analysis of road safety is contained in section 4.5 of the TS [REP4-027].
- 3.8.9. In relation to the operational phase, a minimal number of vehicular movements are anticipated (2-4 movements per week), so no adverse effects would arise.

- 3.8.10. In relation to cumulative effects, with particular regard to Lostrigg Solar, the applicant concludes that there would be no significant effects on either the SRN or LRN, including Lillyhall roundabout and A595 as set out in paragraph 11.3.18 of ES Chapter 11 [\[APP-042\]](#).
- 3.8.11. Overall, the applicant anticipates no significant highway effects in respect of safety or capacity during any phase of the proposed development.

ISSUES CONSIDERED DURING THE EXAMINATION

- 3.8.12. Matters are agreed between the applicant and National Highways in relation to the baseline accident data contained in the TS, vehicle routing, the approach to minimising abnormal indivisible loads, measures to control traffic flows to and from the site along the SRN, construction worker travel plan arrangements and traffic management during decommissioning ([\[AS-034\]](#) – NH1 - NH6).
- 3.8.13. Section 14 of Cumberland Council's LIR considers transport and access [\[REP2-058\]](#) and confirms that the local highway authority is satisfied that matters relating to transport during all phases of the development could be suitably controlled by DCO Requirements so as to accord with the local policies.
- 3.8.14. Whilst National Highways raised no in-principle objection to the proposed development, their RR set out a number of concerns relating to construction traffic impacts on the SRN, including the capacity of Lillyhall roundabout. They also set out concerns in relation to cumulative traffic impacts [\[RR-010\]](#). The applicant provided an initial response to each point raised in Table 3.3 of [\[REP1-002\]](#).
- 3.8.15. To fully address National Highways' concerns, the applicant carried out further traffic surveys focused on Lillyhall roundabout, the findings of which are presented in a Technical Note (TN) [\[REP4-028\]](#) and an updated TS [\[REP4-027\]](#). The TN reported that the baseline traffic flows at the various arms connecting to Lillyhall roundabout were significantly below theoretical capacity. The increase in traffic volumes associated with the proposed development's construction phase, when considered alone or cumulatively with Lostrigg Solar, would be low.
- 3.8.16. At the close of the examination National Highways agreed that the proposed development would not materially affect the performance of Lillyhall roundabout during the construction and operational phases and found the TN robust, as set out in the SoCG [\[AS-034\]](#). The SoCG with National Highways also recognised that the oCTMP [\[REP2-025\]](#) would require the applicant to collaborate with other developers where it is expected that construction traffic movement could cumulatively interact on the network ([\[AS-034\]](#) – NH7).

- 3.8.17. In addition, Cumberland Council agree with the applicant that the traffic flows and safe access/egress via the LRN could be adequately controlled during construction, principally by the CTMP ([[REP5-020](#)] – CC.LHA.2, CC.LHA.3, CC.LHA.5, CC.LHA.9). This would include the routing of construction traffic in order to avoid local settlements and sensitive areas. It would require the applicant to carry out pre and post road condition surveys in order to ensure that any damage caused by construction traffic was rectified.
- 3.8.18. Cumberland Council are satisfied that the fCWTP (secured by the CTMP) would provide a strong commitment to ensuring sustainable modes of travel are pursued ([[REP5-020](#)] – CC.LHA.11).
- 3.8.19. Whilst the status of Lostrigg Solar and its associated construction timelines are uncertain at this stage, the oCTMP [[REP2-025](#)] includes a commitment for the applicant to collaborate with the respective developer to ensure traffic management measures could be incorporated in the final CTMP if necessary. Section 2.7 of Appendix A (cumulative assessment note) [[REP3-008](#)] reaffirms that there would be no significant highways related cumulative effects.

CONCLUSION

- 3.8.20. National Highways and Cumberland Council agree with the scope and conclusions of the TS and raise no objections to the proposed development on highway safety or capacity grounds. There are no outstanding matters of concern between the applicant and Cumberland Council and National Highways as confirmed by respective SoCGs ([[REP5-020](#)] and [[AS-034](#)]).
- 3.8.21. I am satisfied that adverse effects would be adequately mitigated through the CTMP, which would include a travel plan to maximise sustainable travel options for workers during the construction phase. The CTMP would be secured by Requirement 5 of the dDCO [[REP6-006](#)]. National Highways and Cumberland Council as local highway authority are included as consultees in relation to Requirement 5 and the CTMP.
- 3.8.22. I find that there would be no significant adverse highways and transportation effects (including cumulatively) associated with the proposed development. Mitigation would be secured through control documents including the CTMP and DCO Requirements. Therefore, in accordance with paragraph 5.14.21 of NPS EN-1, there would be no unacceptable impact on highway safety and residual cumulative effects would not be severe.
- 3.8.23. Overall, this matter carries neutral weight in the planning balance.

3.9. OTHER PLANNING MATTERS

INTRODUCTION

3.9.1. This section considers other planning matters which I did not include as separate topics in my IAPI. These topics are ground conditions, soils, minerals, flood risk and the water environment, socio-economics and other issues.

Policy summary

NPS EN-1

5.8.5	Climate change and flood risk.
5.8.6	Avoid inappropriate development in areas at risk of flooding.
5.8.13 – 5.8.15	Flood risk assessment requirements.
5.8.17	Development will need to consider existing watercourses.
5.8.20	If EA or other management authority raises concerns, applicant should take reasonable steps to satisfy concerns.
5.8.21	Sequential test in relation to flood risk.
5.8.24 – 5.8.35	Flood risk mitigation considerations.
5.8.36 – 5.8.42	SoS considerations in relation to decision making include ensuring submission of suitable flood risk assessment, sequential test, sustainable drainage, safe and suitable access, ensuring no increase in flood risk elsewhere.
5.11.5	Sites and pre-existing land contamination.
5.11.14	Encourage implementation of a soil management plan.
5.11.17	Applicants should consider safety having regard to ground conditions, land stability and contamination.
5.11.18	Applicants should consider risks posed by contamination on previously developed sites.
5.14.19	Mineral resource should be safeguarded.
5.11.28	Appropriate mitigation for mineral safeguarding areas.
5.13.3	Applicant should engage with stakeholder to understand local issues.
5.13.9	SoS should have regard to potential socio-economic impacts.
5.13.10	Socio-economic impacts should be supported by evidence.

5.13.12	Requirement for employment and skills plan.
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NPS EN-3

2.10.34	Soil resources and management plans.
2.10.84	Flood risk assessment to consider impact of drainage.
2.10.87 – 2.10.88	Culverting of watercourses and drainage ditches should be avoided unless no reasonable alternatives exist.
2.10.92	Applicant may need to identify presence of peat on site.
2.10.156	Mitigate impacts on peat resource.

Other national and local policies and guidance

National Planning Policy Framework – Chapter 17 (facilitating the sustainable use of minerals), paragraphs 87, 88, 170-182, 187.

Planning Practice Guidance – chapters on Flood risk and coastal change, Minerals and Natural environment.

Policies S2, S3, S5, S6, S12, S13, S14, S15, S19, S20, S22, S25, S36, and objective SO3g of the Allerdale Local Plan Part 1 (2014).

Policies SP8, DC15 of the Cumbria Minerals and Waste Local Plan (2017).

Ground conditions, minerals and soils

Application

- 3.9.2. ES Chapter 10 [\[APP-041\]](#) identifies that the northern part of the site was formerly an opencast mine restored in the 1990s, whilst the southern area has mainly been agricultural with limited quarrying. A suite of assessments including a Ground Conditions Assessment ([\[APP-169\]](#) and [\[APP-170\]](#)), Coal Mining Hazard Assessment [\[APP-171\]](#), Peat Survey Report (PSR) [\[APP-173\]](#), and Agricultural Land Classification (ALC) report [\[APP-105\]](#) were submitted with the application. These confirm, amongst other things, that peat is present only in two small areas within the Order limits, which have been excluded from the proposed development parameters, and that none of the land is classified as best and most versatile agricultural land (as shown in Table 4 below).

Table 4: Agricultural land classification within Order limits

Agricultural Land Class	Total Area (Ha)	Percentage of Solar PV Site Total (%)
Grade 1	0	0
Grade 2	0	0
Subgrade 3a	0	0
Subgrade 3b	49	17.5
Grade 4	178.8	64
Grade 5	35.1	12.6
Non agricultural	16.6	5.9
Total	279.5	100

(Source: extract from Table 3.2 of ES Appendix 2.5 (Agricultural Land Classification) [[APP-105](#)])

3.9.3. The ES identifies potential significant adverse effects during all phases due to:

- potential human exposure to contaminated land, coal mine gases and mine entries
- potential for contaminated surface water run-off relating to the stockpiling of excavations to facilitate construction
- permanent loss of soil functions and soil volumes, including peat, due to the impacts of construction activities (vehicles movements, excavations, siting of compounds etc)

3.9.4. The above adverse effects would be mitigated by a range of measures including intrusive ground investigation, which would inform the CEMP and the detailed design of the proposed development. This commitment is included in the oCEMP [[AS-026](#)], and would be secured by Requirement 4 of the dDCO. The intrusive ground investigation would include measures and procedures in order to mitigate

potential ground contamination and, where required, provide details of necessary remedial works.

- 3.9.5. Further mitigation is included in the oSMP [\[REP4-023\]](#), including details of soil management measures to be employed throughout the lifetime of the proposed development. As per Requirement 10 of the dDCO, a final SMP must be substantially in accordance with the oSMP.
- 3.9.6. In respect of peat deposits, the PSR [\[APP-173\]](#) identified areas of peat within the Order limits. The proposed parameters, along with the oCEMP [\[AS-026\]](#) and oSMP [\[REP4-023\]](#), would ensure the exclusion of identified peat deposit areas from the final design, where such works would have the potential to harm peat deposits (particularly where excavation, compaction or drainage would be involved).
- 3.9.7. Section 3.3 of the oSMP [\[REP4-023\]](#) provides for the supervision of soils throughout the construction phase by a suitably experienced soil advisor and a procedure for updating the SMP in response to the discovery of peat deposits (paragraph 3.5.5 of oSMP [\[REP4-023\]](#)). Paragraph 11.3.21 of the oCEMP [\[AS-026\]](#) includes mitigation measures in relation to peat deposits for less intrusive works, such as landscape and ecological enhancement.
- 3.9.8. The ES reports that embedded and proposed mitigation measures would address ground stability, contamination, and sensitive receptors such as groundwater, surface water, the soil resource and peat, archaeology, and human health. This would involve the implementation of control documents including the CEMP, OMP, SMP and DMP which would be secured by respective dDCO Requirements. This would ensure no significant adverse residual effects.

Issues considered during the examination

- 3.9.9. During examination, NE raised concerns regarding potential peat disturbance due to the proposed development, emphasising the need to avoid impacts on deep peat due to carbon and climate change implications.
- 3.9.10. Following engagement during examination, the applicant provided an updated oSMP [\[REP4-023\]](#) with additional measures and more comprehensive baseline information derived from the ALC report [\[APP-105\]](#) and the PSR [\[APP-173\]](#). NE confirmed that the information submitted overall provides a sound basis for design, with exclusion zones and stop-work procedures ensuring protection of any known or newly discovered peat.
- 3.9.11. In terms of minerals, whilst the Order limits include a mineral safeguarding area (MSA) and minerals consultation area (MCA) in respect of brick clay, the scale of the

proposed development and its potential impact, relative to the capacity and supply of brick clay in Cumbria, means that no adverse effects have been identified. A small part of the Order limits also lies within the MSA for sand and gravel. However, due to the small scale of this area and the location of deposits under the public highway, it does not need to be considered further.

- 3.9.12. Legacy mining risks have been addressed through exclusion zones around historic mine entries which have been incorporated into the proposed works parameters, along with further mining investigation commitments included in the oCEMP [\[AS-026\]](#).

Conclusions

- 3.9.13. Peat is an important resource which would be protected through the Work Plans [\[APP-007\]](#) and/or otherwise protected through management plans, secured as part of DCO Requirements. NE conclude that peat would be appropriately managed and protected during all phases of the proposed development ([\[AS-030\]](#) – NE14 - NE20). No areas of disagreement remain. CWT ([\[REP5-025\]](#) – CWT6), Cumberland Council ([\[REP5-020\]](#) – CC.EC.5) and the EA ([\[AS-032\]](#) – EA7) are also satisfied with the proposed peat exclusion areas and protection measures as outlined in respective SoCGs.
- 3.9.14. The Mining Remediation Authority are satisfied that, having regard to legacy coal mining and geoenvironmental hazards within the site, additional ground investigation and mitigation would be adequately secured by the CEMP and DCO Requirements so as to inform detailed design, which would avoid significant adverse effects ([\[AS-036\]](#) – MRA1 – MRA6). This is reflected in Cumberland Council’s SoCG agreement concerning ground conditions and minerals ([\[REP5-020\]](#) – CC.MW.1 – CC.MW.9).
- 3.9.15. The oCEMP includes various commitments to deal with potential pollution and ground contamination in Chapter 10 of the oCEMP [\[AS-026\]](#). This was updated during the examination to address the EA’s concerns relating to the discovery of unexpected contamination. The EA confirm in the SoCG that management of pollution and contamination through all phases has been adequately addressed ([\[AS-032\]](#) – EA9, EA13 and EA18).
- 3.9.16. Overall, I agree with the ES that no significant residual effects would arise in relation to ground conditions, soils (including peat), contamination, human health, or mineral resources. Soil quality would be safeguarded throughout construction, operation, and decommissioning. Mitigation would be secured by DCO Requirements including the OMP (Requirement 11), DMP (Requirement 13), the

CEMP (Requirement 4) and SMP (Requirement 10), the latter two would include a requirement to consult NE, and there would be a requirement to consult the EA on the CEMP.

- 3.9.17. The proposed development would comply with NPS EN-1 and EN-3. No significant adverse effects have been identified, and I conclude that ground conditions, minerals, and soils matters carry neutral weight in the planning balance.

Flood risk and water environment

Application

- 3.9.18. The site lies wholly within flood zone 1 which is indicative of low annual probability of flooding from rivers or the sea. The ES excluded flood risk as it was scoped out, but a Flood Risk Assessment (FRA) and outline Drainage Strategy (oDS) were provided ([[REP4-025](#)], [[AS-015](#)], [[APP-101](#)]).
- 3.9.19. In terms of potential surface water flooding, most of the site is at very low risk, with some localised high-risk areas denoting the presence of ordinary watercourses. A sequential approach would be applied in order to steer the proposed infrastructure to those areas at lowest flood risk, with any encroachment into higher risk areas limited to elements which would have no impact on flood risk or on surface runoff, or where there would be a reasonable prospect of appropriate mitigation being available.
- 3.9.20. The proposed development would also retain an 8-metre buffer around all watercourses, solar arrays would not alter overland water flows, and permeable access tracks plus SuDS features would be utilised. No new culverts would be required and crossing of existing watercourses within the site would mainly utilise existing crossings associated with agricultural use. A landscape-led approach to drainage would preserve greenfield run-off rates and support BNG. These measures are set out in the oCEMP [[AS-026](#)].
- 3.9.21. A Water Framework Directive assessment (WFD) [[APP-098](#)] confirmed that the proposed development would not worsen the condition of any water bodies or hinder them from reaching good status.

Issues considered during the examination

- 3.9.22. The EA questioned the robustness of the applicant's assessment of flood risk relating to the confluence of site watercourses with the Lostrigg Beck main river, seeking reassurance that fluvial flood risks had been adequately assessed [[RR-017](#)].

3.9.23. To address this, the applicant provided further flood risk and hydraulic analysis during the examination [[REP2-024](#)]. The results were consistent with the EA's own Risk of Flooding from Surface Water mapping, thus reaffirming the applicant's conclusions set out in the FRA [[REP4-025](#)]. The EA confirmed that the applicant's further hydraulic analysis was robust and reasonable, that no further modelling would be necessary ([[AS-032](#)] – EA11 and EA 12), and that this could be relied on to inform the final design in respect of the sequential siting of proposed infrastructure ([[AS-032](#)] – EA12 and EA16).

3.9.24. By the close of the examination the applicant had responded to other points raised by the EA in their RR [[RR-017](#)], to the extent that no outstanding areas of disagreement or concern remained between the applicant and EA as confirmed in the SoCG [[AS-032](#)].

Conclusions

3.9.25. I am satisfied that embedded mitigation has been incorporated in the proposed parameters and/or a sequential approach to layout and suitable mitigation would be implemented through the FRA and oDS to mitigate against flood risk and significant adverse effects. The would be secured by Requirement 8 (surface water drainage strategy) and Requirement 4 (CEMP) of the dDCO respectively. The EA agree with the applicant's assessment of flood risk, along with the mitigation and control mechanisms as set out in the SoCG [[AS-032](#)].

3.9.26. Flood risk and water environment matters are also agreed between the applicant and Cumberland Council ([[REP5-020](#)] - CC.LLFA.1-CC.LLFA.10), CWT ([[REP5-025](#)] – CWT3) and NE ([[AS-030](#)] – NE8).

3.9.27. I am satisfied that water quality would not be adversely affected as per the WFD [[APP-098](#)].

3.9.28. I am satisfied that flooding from all sources has been taken into account and that inappropriate development in areas at risk of flooding would be avoided. The requirements of NPS EN-1 are satisfied. Overall, I find no significant adverse effects would arise and this matter is afforded neutral weight in the planning balance.

Socio-economics

Application

3.9.29. A socio-economics chapter was included as a Preliminary Environmental Information Report (PEIR) [[APP-104](#)] and was subsequently scoped out of the ES as no significant effects were identified that related directly to socio-economics.

3.9.30. Whilst the PEIR [\[APP-104\]](#) identifies likely adverse effects on the local amenity, these effects have already been considered separately in the landscape and visual, noise, and highways and traffic sections of my report.

Issues considered during the examination

3.9.31. Cumberland Council's LIR [\[REP2-058\]](#) recognised that the proposed development would represent an opportunity to utilise the existing local workforce, supply chain, and education and training. In addition, paragraph 15.3 of the LIR acknowledges that, whilst construction jobs created would be temporary, they would represent a positive economic effect for a period of time.

3.9.32. According to the PEIR [\[APP-104\]](#) 150 construction jobs would be created. In addition, no existing employment would be lost as a result of the proposed development, mainly due to the assertion that existing sheep farming would be able to continue during the operation of the solar farm.

3.9.33. Whilst the PEIR [\[APP-104\]](#) assumes a worst-case scenario, that all construction jobs would be sourced from outside the local area, it is anticipated that spending by construction staff would support local services and businesses at least for a temporary period.

3.9.34. The oCEMP [\[AS-026\]](#) was amended during the examination to include a commitment to maximise the local supply chain, education and employment and skills opportunities. These are detailed in section 4.8 of the oCEMP [\[AS-026\]](#) and section 3.10 of the oOMP [\[AS-024\]](#).

Conclusions

3.9.35. Overall, there would be no significant adverse effects in relation to socio-economics. Moreover, the proposed development would address paragraph 5.13.12 of NPS EN-1 by securing an employment and skills plan and would comply with policies S15 and SO3g of the Allerdale Local Plan. The application meets the requirements of NPS EN-1 in respect of wider socio-economic impacts.

3.9.36. Cumberland Council are also satisfied that the oCEMP [\[AS-026\]](#) and oOMP [\[AS-024\]](#) would provide a suitable framework in order to promote employment, skills, supply chain and education opportunities ([\[REP5-020\]](#) – CC.LPA.11). This would be secured as part of DCO Requirement 4 and Requirement 11 respectively.

3.9.37. The applicant's commitment to implementing an employment and skills plan and engage with the local stakeholders is considered to be positive step, although it does leave a degree of uncertainty regarding the extent to which the local labour market and supply chain would benefit directly.

- 3.9.38. Even so, as a minimum, the proposed development would generate employment opportunities, particularly during the construction phase. Even if the construction jobs did not utilise the local employment market, they would still deliver wider, geographically dispersed employment benefits. In addition, the proposed development would support local businesses and services through increased expenditure by construction workers, albeit on a temporary basis.
- 3.9.39. Therefore, I attach a little positive weight to the economic and socio-economic benefits.

OTHER ISSUES

Permissive paths

- 3.9.40. The application includes two permissive path routes as shown on the LSP [[REP2-046](#)]. They propose multifunctional benefits including:
- improved connectivity, opportunities for outdoor recreation and health and wellbeing benefits
 - improved accessibility to nature and features of interest across the site
 - facilitating access to, and increasing the knowledge and appreciation of, Stone Circle SM
- 3.9.41. These benefits have been agreed as part of SoCGs with Cumberland Council ([\[REP5-020\]](#) – CC.LPA.2), Historic England ([\[REP5-020\]](#) – HE.4) and CWT ([\[REP5-025\]](#) – CWT5).
- 3.9.42. I recognise that the permissive paths form part of the overarching green infrastructure strategy. They are included in the LSP, and their routeing would be secured as part of the LEP (Requirement 6), with construction and maintenance secured by the LEMP (Requirement 7), based on the commitments outlined in the oLEMP [[REP5-016](#)].
- 3.9.43. However, in response to my examination question on the status of the permissive paths, the applicant explained that they expect them to be accessible throughout the operational phase of the proposed development [[REP3-015](#)].
- 3.9.44. Section 4.1(D) of Table 4.1 of the oOMP [[AS-024](#)] also sets out the proposed ongoing management of the permissive paths. Whilst I appreciate that this demonstrates evidence of intent, reinforced by positive stakeholder engagement, and that construction and maintenance of the permissive paths would be secured by the LEMP through DCO Requirements, there would be no requirement for the

permissive paths to be open to the public throughout the solar farm's operational life. Therefore, long-term public access cannot be guaranteed.

- 3.9.45. Consequently, long-term benefits associated with publicly accessible permissive paths would not be secured through a Requirement in the DCO and so I attribute them no weight. I do not carry this forward into the planning balance explicitly as permissive paths have been considered within the relevant topics within this report.

Community fund

- 3.9.46. The applicant has provided details of a potential community benefit/fund package in response to Dean Parish Council and Distington Parish Council's RRs. The applicant's responses can be found in Table 2.5 and 2.6 of [\[REP1-002\]](#). However, this would be a voluntary benefit fund and would not form part of the proposed mitigation, and it falls outside of the examination process. Therefore, it is not an important and relevant matter and carries no weight in my recommendation.

4. HRA SUMMARY

4.1. INTRODUCTION

4.1.1. This chapter sets out my conclusions relevant to Habitats Regulations Assessment (HRA). This will assist the SoSESNZ as the Competent Authority, in performing their duties under the Conservation of Habitats and Species Regulations 2017 ('the Habitats Regulations').

4.1.2. For the purposes of this report, in line with the Habitats Regulations and relevant government policy, the term 'European sites', includes:

- Special areas of conservation (SACs), candidate, and proposed SACs
- Special protection areas (SPAs) and potential SPAs
- listed and proposed Ramsar sites
- any sites identified or required as compensatory measures for adverse effects on any of these sites.

4.1.3. I have been mindful throughout the examination of the need to ensure that the SoSESNZ has the information reasonably required to carry out their duties as the competent authority. I have sought evidence from the applicant and relevant interested parties (IPs), including from Natural England (NE) as the appropriate nature conservation body (ANCB), through written questions and ISHs.

4.1.4. In accordance with the precautionary principle embedded in the Habitats Regulations, consent for this proposed development may be granted only after having ascertained that it will not adversely affect the integrity of European site(s) and no reasonable scientific doubt remains (CJEU Case C-127/02 Waddenzee 7 September 2004).

4.1.5. Where it relates to a European site, a likely significant effect is referred to as a LSE and an adverse effect on integrity is referred to as an AEol in this chapter.

Report on the Implications for European sites and consultation

4.1.6. I produced a Report on the Implications for European sites (RIES) [[PD-016](#)] which compiled, documented, and signposted HRA-relevant information provided in the DCO application and examination representations up to deadline 4. The RIES was issued to set out my understanding on HRA-relevant information and the position of the IPs in relation to the effects of the proposed development on European sites at that point in time. Consultation on the RIES took place between 18 November 2025 and 22 December 2025. Comments were received from the applicant [[REP6-016](#)]

and NE [[REP6-023](#)] at deadline 6 (22 December 2025). These comments have been taken into account in the drafting of this chapter.

- 4.1.7. My recommendation is that the RIES, and consultation on it, may be relied upon as an appropriate body of information to enable the SoSESNZ to fulfil their duties of consultation under regulation 63(3) of the Habitats Regulations, should the SoSESNZ wish to do so.

INFORMATION AND EVIDENCE

- 4.1.8. The spatial relationship between the Order limits of the proposed development and European sites is presented in Figure 3.1 of the Shadow HRA report [[APP-156](#)]. The nearest European site is 1.2km away.
- 4.1.9. The proposed development is not directly connected with, or necessary to, the management of a European site, and therefore the implications of the project with respect to adverse effects on potentially affected European sites must be assessed by the SoSESNZ.
- 4.1.10. The applicant's assessment of effects is presented in ES Appendix 8.7: Shadow Habitats Regulations Assessment [[APP-156](#)], revised at deadline 5 [[REP5-018](#)] (hereafter referred to as the sHRA). It is underpinned by ES Chapter 8 [[REP2-053](#)], associated Figures (ES Figures 8.1 [[AS-012](#)] and 8.2 [[APP-090](#)]) and Appendices (8.1 to 8.6).

4.2. SCOPE OF EUROPEAN SITES

- 4.2.1. The applicant used a 10km search area to identify relevant European sites. It identified the following 5 sites within the 10km zone of influence:
- River Derwent and Bassenthwaite Lake (RD&BL) SAC (1.2km away)
 - Solway Firth SPA (5km away)
 - River Ehen SAC (6.1km away)
 - Lake District High Fells SAC (8km away)
 - North Pennine and Dales Meadows SAC (8.9km away)
- 4.2.2. Following the initial identification of sites, the applicant carried out a scoping exercise which considered whether there were any potential impact pathways by which the proposed development could give rise to threats/ pressures for which the European sites are identified to be at risk. This concluded that for the following sites there were no scenarios identified by which the proposed development could lead to any of the recognised threats to the sites arising (Table 3.3 and paragraph 4.1.2 of the sHRA [[REP5-018](#)]):

- River Ehen SAC – designated for the presence of freshwater pearl mussel and Atlantic salmon, ruled out due to no hydrological linkage to the proposed development.
- Lake District High Fells SAC - designated for a range of upland habitats including heathland, tarns (waterbodies), grassland, bogs, scree, woodland, and tall herb communities; scoped out on the basis of distance.
- North Pennine Dales Meadows SAC - designated due to the presence of mountain hay meadows and Molinia meadows, scoped out on the basis of distance.

4.2.3. By contrast, the applicant did identify possible pathways for effect for the RD&BL SAC and the Solway Firth SPA (see Table 5 below).

Table 5: Pathways for LSE as assessed by applicant

European site	Feature	LSE pathway
RD&BL SAC	Otter, Atlantic salmon, river lamprey, sea lamprey, brook lamprey, marsh fritillary and floating water-plantain	Pollution to groundwater Siltation Change in species distribution
Solway Firth SPA	Article 4.1 qualifying species Article 4.2 qualifying species Article 4.2 non-breeding assemblage	Other ecosystem modifications (impacts to functionally linked land)

(Source: extract from of ES Appendix 8.7 (shadow Habitats Regulation Assessment) [\[REP5-018\]](#))

ISSUES CONSIDERED DURING THE EXAMINATION

Morecambe Bay & Duddon Estuary SPA

- 4.2.4. I questioned ([[PD-007](#)] – Q1.0.15) the appropriateness of the 10km search area applied to identify European sites for inclusion within the assessment, noting specifically that at several points in the HRA Report (including paragraph 4.3.14 and Appendix C Screening Matrix for Solway Firth SPA), the applicant made reference to consultation advice from NE which appeared to suggest that the site of the proposed development could be functionally linked to the Morecambe Bay and Duddon Estuary SPA (which was not scoped into the assessment). This point was also raised by Cumberland Council in its LIR [[REP2-058](#)].
- 4.2.5. NE [[REP2-060](#)] confirmed that in its view, the 10km zone of influence adequately addresses the potential impacts of the development on European sites and their qualifying interest features, including areas of functionally linked land used by mobile species, and is suitably precautionary. Specifically, regarding Morecambe Bay & Duddon Estuary SPA, NE [[REP2-060](#)] advised that as herring gull are a highly mobile species with a large foraging range up to 50km from their roosting colonies, inclusion of SPAs within a radius greater than 10km to assess impacts on this species is not reasonable. NE agreed [[REP2-060](#)] that all relevant European sites and or European site features that could be affected by the project had been identified by the applicant.
- 4.2.6. Although Cumberland Council [[REP2-058](#)] shared my concerns about Morecambe Bay & Duddon Estuary SPA, it confirmed (response to Q2.3.3 [[REP4-030](#)], [[REP3-019](#)]) that it was satisfied that the sHRA [[REP5-018](#)] is sound and that Cumberland Council would adopt the position of NE.
- 4.2.7. No further additional UK European sites were identified by IPs for inclusion within the assessment.
- 4.2.8. On the basis of the information set out above, I am satisfied that all relevant European sites have been identified.

Justification for scoping out various pathways

- 4.2.9. Cumberland Council raised a series of concerns with the HRA screening in its LIR [[REP2-058](#)]. These concerns related to:
- requesting further detail on the distances and any potential hydrological connections between the application site to Lake District High Fells SAC and North Pennine Dales Meadows SAC
 - seeking clarification over why various pathways had been scoped out, including:
 - pollution effects to RD&BL SAC, River Ehen SAC, Lake District High Fells SAC and North Pennine Dales Meadows SAC;

- human induced changes in hydraulic conditions to RD&BL SAC and River Ehen SAC;
- siltation impacts to River Ehen SAC, North Pennine Dales Meadows SAC and Lake District High Fells SAC;
- surface water pollution impacts to RD&BL SAC;
- marine water pollution to Solway Firth SPA;
- increase in problematic native species at the Lake District High Fells SAC; and
- modification of cultivation practices, mowing / cutting of grassland, fertilisation to North Pennine Dales Meadows SAC.

4.2.10. NE, however, agreed [REP2-060] that there would be no impacts to the River Ehen, Lake District High Fells and North Pennine and Dales Meadows SACs.

4.2.11. The applicant provided a response to Cumberland Council's issues at deadline 3 [REP3-008]. Subsequently, Cumberland Council [REP5-020] expressed satisfaction with the applicant's justification, and, following discussions with the applicant and a review of NE feedback on the sHRA, stated that it was satisfied that the sHRA was sound.

4.2.12. I also raised queries relating to various impact pathways in the RIES (namely, impacts from in-stream works, the spread of invasive non-native species (INNS), and impacts during the decommissioning phase). These matters are discussed below.

In-stream works

4.2.13. I questioned ([PD-016] – Q.2 (page 6)) why the applicant had assumed in the sHRA (paragraph 5.2.12 [REP5-018]) that there would be no risk to the aquatic features of the RD&BL SAC from in-stream or bankside works, given that the oCEMP [AS-026] included mitigation measures for managing in-stream works to minimise impacts to fish. The EA [RR-017] also noted that the construction activities associated with watercourses (including temporarily damming and over pumping of watercourses) could damage habitat, leave fish stranded and entrain fish into pumps (including Atlantic salmon and lamprey species).

4.2.14. The applicant [REP6-016] argued that fish survey data indicates that the fish assemblage on Thief Gill (tributary of River Marron) is very limited. They explained that the need for in-stream works is limited because the site has an established internal access track network and so no new culverts or other works would be required which would require in-stream works. The applicant further clarified that any in-stream works would be of a limited scale, involving repair/reinforcement and maintenance of existing culverts and would not be dissimilar to what would be required, over the years, in association with the existing agricultural use. Such works

would be limited to existing crossings and only be done in accordance with a secondary permit/consent from Cumberland Council as Lead Local Flood Authority and governed by the CEMP's ecological management requirements.

- 4.2.15. Regarding the location of any such works, the applicant states that they would be limited to existing crossings on site watercourses. The applicant concludes that should works be needed to facilitate water crossings, considering the distance from the SAC, along with the limited suitability of the section of Thief Gill within the site to support qualifying aquatic features of the SAC, that there is no potential for LSE to occur. The applicant also noted that it is not expected that such works would be required during decommissioning.
- 4.2.16. However, I conclude that there is a potential need for limited in-stream works and as such, I consider on a precautionary basis that this impact pathway should be scoped into the assessment of LSE at the construction phase, for the aquatic features of the RD&BL SAC.

Invasive non-native species

- 4.2.17. I questioned ([[PD-016](#)] – Q.3 (page7)) why the sHRA ([[REP5-018](#)] – Table 3.3) scoped out impacts from INNS to the RD&BL SAC, given the oCEMP [[AS-026](#)] secured the production of a Biosecurity Management Plan (BMP). The applicant [[REP6-016](#)] argued that no INNS had been identified on the site and the BMP was a precautionary measure designed to maintain that status. Furthermore, the applicant argued that the BMP is a best-practice measure for developments of this scale and is not specifically included to mitigate impacts on European sites.
- 4.2.18. In my view, the BMP which would be secured through the CEMP would be a form of additional mitigation. With this in mind, given the limited potential for the proposed development to increase the risk of spreading INNS, I consider that, on a precautionary basis, this impact pathway should be scoped into the assessment of LSE at the construction phase, for the aquatic features of the RD&BL SAC.

Decommissioning

- 4.2.19. The HRA Report did not assess impacts during the decommissioning phase and I queried this omission ([[PD-016](#)] – Q.1 (page 6)).
- 4.2.20. The applicant explained that generally, decommissioning phase impacts are expected to be similar to those during construction and so there is no potential for LSE to occur upon European sites [[REP6-016](#)]. The response further states that, due to the distance between the proposed development and River Ehen SAC, Lake

District High Fells SAC and the North Pennine Dales and Meadows SAC, impact pathways listed in Table 3.2 of the sHRA [\[REP5-018\]](#) would not be applicable.

- 4.2.21. Concerning the RD&BL SAC, the applicant states [\[REP6-016\]](#) that it is unlikely that pollution, mobilised soils and sediments would occur during decommissioning due to the fDMP [\[APP-111\]](#). The applicant also outlines the enhancements associated with the overarching landscape strategy, which may be retained post-works and would likely reduce any pollution event to the River Derwent system.
- 4.2.22. For the Solway Firth SPA, 'Other ecosystem modifications' were considered for the Solway Firth SPA as part of the Appropriate assessment due to the presence of herring gull and the potential for the site to be functionally linked land, but due to the absence of an adverse effect during construction and operation, and the reduced scope of works associated with decommissioning, the applicant argued that any impacts would be negligible [\[REP6-016\]](#).
- 4.2.23. I consider the applicant's rationale for scoping out decommissioning impacts to the River Ehen SAC, Lake District High Fells SAC and the North Pennine Dales and Meadows SAC to be robust.
- 4.2.24. However, in respect of the RD&BL SAC, given the proposed mitigation relies on the fDMP, I consider this phase should be scoped in on a precautionary basis, for the pathways scoped in during the construction and operation phases (see Table 5).
- 4.2.25. Regarding the Solway Firth SPA, I consider the works associated with decommissioning do have the potential to reduce the ability of the site to support the herring gull feature of the SPA, through for example, disturbance and displacement. For this reason, I recommend that the phase is considered in the assessment of 'Other ecosystem modifications' to the herring gull feature of the SPA.

In-combination effects

- 4.2.26. Section 2.4 of the sHRA [\[REP5-018\]](#) detailed the applicant's approach to assessing in-combination effects. The projects included in the in-combination assessment were detailed in sections 4 and 5 of the sHRA [\[REP5-018\]](#).
- 4.2.27. An additional 31 cumulative schemes were highlighted by Cumberland Council during the examination. The applicant provided a Cumulative Assessment Technical Note ([\[REP3-008\]](#) – Appendix A) which detailed the schemes, their locations, and an assessment of likely significant cumulative effects against the additional schemes for each environmental aspect, including biodiversity. Section 2.3 of the note [\[REP3-008\]](#) concludes that due to the nature of the projects and the distance between

them and the proposed development, significant cumulative effects on biodiversity are not anticipated and there would be no change to the sHRA.

- 4.2.28. Cumberland Council confirmed [\[REP5-020\]](#) that it considered the sHRA had appropriately accounted for in-combination impacts associated Lostrigg Solar scheme on the site's northern boundary.
- 4.2.29. NE raised no issue with the assessment of in-combination effects.
- 4.2.30. On the basis of the above, I am satisfied with the scope and methodology of the in-combination assessment.

4.3. FINDINGS IN RELATION TO LIKELY SIGNIFICANT EFFECTS

LSE from the proposed development alone

- 4.3.1. The applicant's conclusions in respect of screening are presented in sections 4.4 and 6.1 and summarised in the applicant's screening matrices in section 4.2 of the sHRA [\[REP5-018\]](#).
- 4.3.2. The applicant concluded that the proposed development would be likely to give rise to significant effects on one or more of the qualifying features of the RD&BL SAC and the Solway Firth SPA.

Solway Firth SPA

- 4.3.3. Of the Solway Firth designated features, most were absent on site or only present in low numbers and therefore screened out on this basis. The exception was herring gull, which is not a designated feature under article 4.1 or 4.2 but a contributing species of the non-breeding waterbird assemblage. Herring gull was screened in on the basis that it was present on site in numbers indicating a potential functional linkage.
- 4.3.4. NE raised no issues with the applicant's screening conclusions for the Solway Firth SPA [\[RR-009\]](#) [\[REP2-060\]](#).
- 4.3.5. I agree with the applicant's conclusions that there would be no LSE to the article 4.1 or 4.2 designated features of the Solway Firth SPA. I also agree with the applicant's positive screening conclusion for the waterbird assemblage (herring gull), in the construction and operation phases. Further, I consider there is an LSE during the decommissioning phase, given the effects would be similar to those during construction.

RD&BL SAC

- 4.3.6. For the RD&BL SAC, the applicant concluded that there would be no LSE to the marsh fritillary and floating water-plantain features from any pathway due to their absence on site. This conclusion was not disputed by any IP, and I agree with the applicant's rationale.
- 4.3.7. For the other features (otter, Atlantic salmon, and three lamprey species) the applicant concluded LSE could not be excluded for water pollution, siltation, and changes in species distribution during construction. For the operation phase, the applicant concluded no LSE to the above features for all pathways.
- 4.3.8. NE raised no issues with the applicant screening assessment [[RR-009](#)] [[REP2-060](#)].
- 4.3.9. I recognise ([[PD-007](#)] – Q1.0.16) that sHRA screening matrix for RD&BL SAC (Appendix C, footnotes a and b [[REP5-018](#)]) describes mitigation measures in the context of screening out LSE caused by pollution, siltation or changes in species distributions in the operational phase. These measures include protection of bank side habitats and management of grazing intensity secured through the oLEMP [[REP5-016](#)]. I sought clarification over whether the mitigation measures proposed were relied upon to reach the conclusion of no LSE and how this accorded with case law (CJEU People Over Wind and Sweetman v Coillte Teoranta (C-323/17)).
- 4.3.10. The applicant argued that the mitigation measures include embedded mitigation; best practice, standard measures that would be in place irrespective of the presence of a European site, to comply with health and safety and environmental legislation [[REP2-010](#)]. NE raised no concerns on this matter.
- 4.3.11. I agree with the applicant's conclusion to screen in effects from water pollution and siltation during construction, and in addition I consider there would be a LSE during the decommissioning phase given that mitigation is proposed in the DMP. I also agree with the applicant that there is a LSE to otter, Atlantic salmon, and lamprey from changes in species distribution, but I consider this should also account for the potential for instream works to alter fish habitat or lead to stranding or entrainment.
- 4.3.12. As noted above, I have recommended on a precautionary basis that the spread of INNS should also be scoped in during construction. On this matter, I also conclude that it should be screened in, given the provision of a BMP to mitigate for the risk.
- 4.3.13. For the operation phase, I agree with the applicant that siltation and changes in species distribution can be screened out. For operational water pollution, given the proposed measures to manage livestock intensity, I consider it precautionary to

screen in effects. For qualifying features and pathways screened in by me as ExA, see [Appendix C](#) to this report.

LSE from the proposed development in-combination

- 4.3.14. No in-combination LSE have been identified for the sites and qualifying features where LSE were excluded from the proposed development alone.
- 4.3.15. No IP raised any concerns with the assessment of in-combination effects at screening.
- 4.3.16. The effects that I have concluded as not significant alone have been excluded in light of species absence, and on this basis I agree with the applicant's conclusions of no LSE in-combination with other plans and projects to the marsh fritillary and floating water-plantain features of the RD&BL SAC and the article 4.1 and 4.2 bird features of the Solway Firth SPA.

4.4. FINDINGS IN RELATION TO ADVERSE EFFECTS ON INTEGRITY (AEoI)

Conservation objectives

- 4.4.1. The conservation objectives for both of the European sites for which a LSE was identified by the applicant were included within the sHRA [\[REP5-018\]](#). I requested the conservation statuses of the RD&BL SAC and Solway Firth SPA ([\[PD-007\]](#) – Q1.0.17).
- 4.4.2. The applicant [\[REP2-010\]](#) provided the statuses of the sites of special scientific interest (SSSIs) which underpin the European sites, however the statuses of numerous features were not recorded (Atlantic salmon, otter, river lamprey, sea lamprey and brook lamprey; and barnacle goose, curlew, dunlin, golden plover, knot, oystercatcher, pink-footed goose, redshank, sanderling, shelduck, turnstone, whooper swan, wigeon).

The applicant's findings

- 4.4.3. The European sites and qualifying features for which the applicant identified LSE were further assessed to determine if they could be subject to AEoI from the proposed development, either alone or in combination. The outcomes of the applicant's assessment of effects on integrity are summarised in section 5 of the sHRA [\[REP5-018\]](#).

River Derwent and Bassenthwaite Lake SAC

- 4.4.4. The applicant's sHRA provided an assessment which addressed the potential for AEoI resulting from:

- pollution to groundwater, water pollution and siltation during construction on otter, Atlantic salmon, and river, sea and brook lamprey; and
- changes in distribution during construction of otter, Atlantic salmon, and river, sea and brook lamprey.

4.4.5. The applicant's sHRA identified mitigation measures in section 5 [[REP5-018](#)] and these were taken into account in the applicant's assessment of effects on integrity. This comprised measures to protect watercourses during construction, to prevent spillages and the mobilisation of soil and sediments, and to safeguard otters and other aquatic species which occupy the SAC, secured through the oCEMP [[AS-026](#)] and oSMP [[AS-024](#)]. The applicant also included measures to minimise the potential effects of instream works on fish in the oCEMP.

4.4.6. On the basis of the mitigation proposed, the applicant concluded that the proposed development would not adversely affect the integrity of either the RD&BL SAC and features assessed, either alone or in combination with other projects or plans.

4.4.7. No IPs disputed the conclusions with respect to the RD&BL SAC. NE confirmed that it agreed with the applicant's conclusion of no AEoI in respect of the RD&BL SAC [[REP2-060](#)].

4.4.8. On the basis of the proposed mitigation measures, including those for instream works, I am satisfied that pollution to groundwater, water pollution and siltation, and changes in species distribution, will not result in AEoI to the European site from the proposed development alone and in combination with other plans and projects.

4.4.9. Further to this, I have recommended that the following be assessed at appropriate assessment:

- water pollution and siltation effects to otter, Atlantic salmon, and river, sea and brook lamprey during the decommissioning phase
- operational water pollution effects to otter, Atlantic salmon, and river, sea and brook lamprey
- spread of INNS during the construction phase on otter, Atlantic salmon, and river, sea and brook lamprey.

4.4.10. The applicant has included mitigation measures to address these effects, namely the fDMP (secured by Requirement 13 of the dDCO), measures to manage livestock intensity in the oLEMP (secured by Requirement 7 of the dDCO), and measures to minimise the spread of INNS in the BMP.

4.4.11. In light of the measures proposed, I am satisfied that the proposed development would not adversely affect the integrity of either the RD&BL SAC and features assessed, either alone or in combination with other projects or plans.

Solway Firth SPA

4.4.12. The applicant's sHRA provided an assessment which addressed the potential for AEoI resulting from 'other ecosystem modifications' comprising the loss of functionally linked open grassland habitat during construction and operation available for herring gull (component of the non-breeding waterbird assemblage).

4.4.13. The applicant concluded that given the wider availability of suitable alternative habitat; the low ecological dependence on the site for loafing, and the potential for birds to use the Morecambe Bay and Duddon Estuary SPA further south, the proposed development alone would not have an adverse effect on the integrity of the SPA.

4.4.14. On the basis of the above information, I am satisfied that loss of supporting habitat would not result in AEoI to the Solway Firth SPA non-breeding waterbird assemblage from the proposed development alone during the construction and operation phases.

4.4.15. As noted above, I recommended that an LSE from impacts to functionally linked land during the decommissioning phase should also be assessed. The applicant argued [[REP6-016](#)] that given the scope of works at decommissioning, the effects would be negligible. In light of this, and on the basis of the measures secured in the fDMP, I conclude that there would be no AEoI to the Solway Firth SPA non-breeding waterbird assemblage during the decommissioning phase as well.

4.4.16. Only the Lostrigg Solar development, contiguous with the northern boundary of the site, was considered for an in-combination effect. Based on their gregarious nature; large ranges; their ability to utilise a wide range of habitats, and opportunistic feeding habits, the applicant concluded that the proposed development would not have an adverse effect on the integrity of the Solway Firth SPA in-combination with Lostrigg Solar.

4.4.17. NE confirmed that it agreed with the applicant's conclusion of no AEoI in respect of the Solway Firth SPA [[REP2-060](#)].

4.4.18. Initially, Cumberland Council [[REP2-058](#)] argued that insufficient evidence had been provided on the usage of surrounding land by herring gulls to justify the conclusion that in-combination loss of foraging habitat would not adversely affect the herring

gull populations using the site and the neighbouring Lostrigg Solar, and that greater detail regarding herring gull presence at Lostrigg Solar was required. Cumberland Council also challenged the argument that the herring gull were favouring the fields as a loafing area, noting that the assessment (paragraph 5.3.6) suggested that fields on site were in use by herring gulls due to abundances in resources as a result of agricultural practices (slurry spraying) but also after periods of high rainfall. In light of this, Cumberland Council sought further justification that the site is only of value for loafing and not foraging.

- 4.4.19. The applicant [[REP3-008](#)] argued that it used professional judgement and experience to propose reasoning as to the pattern of flocks on the site. The applicant also noted that NE was satisfied that there are no issues from the proposed development in-itself, or cumulatively in combination with other developments.
- 4.4.20. Following further discussion with the applicant and review of NE's position, Cumberland Council confirmed that it considered the HRA Report was sound ([\[REP5-020\]](#) – CC.EC.4).
- 4.4.21. On the basis of the above information, I am satisfied that the change in species distribution (from loss/disturbance of supporting habitat) during all phases of the development will not result in AEoI to the Solway Firth SPA non-breeding waterbird assemblage from the proposed development in combination with other plans and projects.

4.5. HRA CONCLUSIONS

- 4.5.1. The proposed development is not directly connected with, or necessary to, the management of a European site, and therefore the implications of the project with respect to adverse effects on potentially affected sites must be assessed by the SoSESNZ.
- 4.5.2. Two European sites and their qualifying features were considered in the applicant's assessment of LSE: RD&BL SAC and Solway Firth SPA. LSE were identified from the proposed development alone and in-combination with other plans or projects for a both sites, for the features and pathways listed in [Appendix C](#) of this report.

- 4.5.3. The scope and methodology of the applicant’s screening for LSE was subject to some discussion and scrutiny. However, by the close of the examination the sites and features for which LSE were identified were not disputed by any IP. I am satisfied that the correct European sites and qualifying features have been identified for the purposes of assessment, and that all potential impacts which could give rise to significant effects have been identified.
- 4.5.4. My findings are that, subject to the mitigation measures secured in the dDCO, AEoI on the RD&BL SAC and Solway Firth SPA from the proposed development when considered alone or in-combination with other plans or projects can be excluded from the impact-effect pathways assessed.
- 4.5.5. I consider that there is sufficient information before the SoSESNZ to enable them to undertake an Appropriate Assessment in order to fulfil their duty under the requirements of the Habitats Regulations. My overall conclusions are summarised in [Appendix C](#) of this report.

5. CONCLUSION ON THE CASE FOR DEVELOPMENT CONSENT

INTRODUCTION

- 5.1.1. This chapter provides an evaluation of the planning merits of the proposed development in light of the legal and policy context set out in Chapter 2 and individual legal and policy requirements set out in Chapter 3 and Chapter 4 of this report. Further details of all legislation and policy taken into account can be found in [Appendix A](#).
- 5.1.2. In reaching my conclusions, I have taken into account the LIR from Cumberland Council [[REP2-058](#)], all RRs, written representations and responses to my written questions and rule 17 requests for further information, as well as all other representations made during the course of the examination.

5.2. REGULATORY MATTERS AND PLANNING CONSIDERATIONS

THE ENVIRONMENTAL STATEMENT

- 5.2.1. Changes to the documentation during the examination did not individually or cumulatively undermine the scope of, and assessments contained within, the ES. Consideration has been given to the adequacy of the ES generally and to matters arising from it. Chapter 3 of this report summarises the environmental effects, including the measures proposed to mitigate the likely significant effects identified by the applicant.
- 5.2.2. Overall, I am satisfied that the ES, as supplemented with additional information submitted during the examination, is sufficient to enable the SoSESNZ to take a decision in compliance with the EIA Regulations.

HRA CONSIDERATIONS

- 5.2.3. The proposed development is not connected with, or necessary for, the management of any European site. The applicant's screening identified two European sites - the River Derwent & Bassenthwaite Lake SAC and the Solway Firth SPA - as having potential LSE both alone and in-combination, for the qualifying features and pathways identified. No IP ultimately disputed the sites, features, or impact pathways requiring assessment, and I am satisfied that all relevant European sites, qualifying features, and potential significant effects have been correctly identified.

5.2.4. Subject to the mitigation measures secured through the dDCO, I find that adverse effects on the integrity of the SAC and SPA can be excluded for the pathways assessed, both alone and in-combination with other plans or projects. As such, the proposed development would not be likely to give rise to adverse effects on the integrity of European sites. I consider that the information before the SoSESNZ is sufficient to enable them to undertake an Appropriate Assessment and to discharge their duties under the Habitats Regulations.

THE HERITAGE BALANCE

5.2.5. The proposed development would result in less than substantial harm to the following assets due to impacts on their respective settings:

- The English Lake District (World Heritage Site, National Heritage List for England (NHLE) reference – 1452615)
- Wythemoor Sough (grade II listed building, NHLE reference – 1327185)
- Stone Circle (scheduled monument, NHLE reference – 1014588)

5.2.6. As set out in Chapter 3.6 of my report, I have not identified any substantial harm to, or loss of, any designated heritage assets.

5.2.7. I have identified that there would be a low level of less than substantial harm to the Lake District WHS and a moderate level of less than substantial harm to both Wythemoor Sough and Stone Circle SM. In accordance with paragraph 5.9.27 of NPS EN-1, I give very great weight to the harm to the WHS due to its status as an internationally important asset, and I give great weight individually to the harm to Wythemoor Sough and Stone Circle SM due to their national importance.

5.2.8. Paragraphs 5.9.32 and 5.9.36 of NPS EN-1 require that harm should be weighed against the public benefits of the proposal including, where appropriate, securing its (the asset's) optimum viable use, recognising that the greater the harm to the significance within the setting of a heritage asset, the greater the benefits that will be needed to justify the loss.

5.2.9. Turning to benefits, the proposed development would contribute to national energy affordability, security and reliability of supply. It would contribute to climate change mitigation by delivering a low carbon infrastructure and renewable energy project

with a significant energy generating capacity. These constitute public benefits of very great weight.²⁸

5.2.10. In reaching my conclusions, I have had regard to the duties under Regulation 3 of the Infrastructure Planning (Decisions) Regulations 2010. On balance, I consider that given the significance and importance of these public benefits, as emphasised in NPS EN-1, they would clearly outweigh, in each case, the harm I have identified in relation to the significance of designated heritage assets (and OUV of the WHS) and the weight I have attributed to those harms. Whilst I afford very great weight to the desirability of preserving the WHS and great weight to the desirability of preserving the other assets, I am mindful that the effects would be both temporary and reversible, albeit long term.

5.2.11. The public benefits satisfy the requirements of NPS-1 as they justify the harm. However, they do not mitigate the harm I have identified, which for the reasons set out in Chapter 3.6 of this report, should be afforded moderate negative weight in the overall planning balance.

LAKE DISTRICT NATIONAL PARK PURPOSES

5.2.12. Paragraphs 5.10.7 – 5.10.8 of NPS EN-1 state that, among other things, the SoS should be satisfied that measures seeking to further the purposes of National Parks are sufficient, appropriate and proportionate to the type and scale of development. This includes projects outside the National Park boundaries which may have impacts within them. This policy reflects the statutory duty.²⁹

5.2.13. The purposes of the LDNP are:³⁰

- to conserve and enhance the natural beauty, wildlife, and cultural heritage of the area
- to promote opportunities for the understanding and enjoyment of the special qualities of the National Park by the public

5.2.14. The ES reports that there would be adverse visual effects experienced at several viewpoints within the LDNP, but the overall landscape effects on the LDNP would be

²⁸ This equates to substantial weight in accordance with weightings set out in paragraph 3.1.2 of this report

²⁹ The Levelling-up and Regeneration Act 2023 amends the National Parks Act 1949 so that the SoS must seek to further the purposes of National Parks

³⁰ As set out on page 8 of Lake District National Park Partnership's Management Plan 2020-2026 – [\[REP2-011\]](#) - Appendix H

limited. In heritage terms, as a result of the visual effects on the OUV of the WHS, I have identified a low level of less than substantial harm to the WHS. There would be no significant LV effects on the LDNP as a whole, nor significant adverse effects on the WHS. Therefore, the identified adverse effects would not materially undermine the LDNP's special qualities.

5.2.15. I am satisfied that the proposed development would include landscape-led, embedded mitigation to minimise the effects on the LDNP and the cultural heritage elements relating to the WHS.

5.2.16. The proposal would also deliver meaningful climate-change mitigation, helping achieve net zero, which is recognised in the LDNP Management Plan³¹ as a key challenge facing the LDNP. The LDNPA also recognises the benefits associated with renewable energy provision as set out in the SoCG ([\[AS-037\]](#) – LDNPA.6).

5.2.17. I conclude that the proposed development would help counter the long-term risk that climate change poses to the LDNP's purposes. Therefore, the renewable energy benefits associated with the proposed development would further the purposes of the LDNP when balanced against the limited conflict. NPS EN-1 and the statutory duty have been satisfactorily addressed.

5.3. THE OVERALL PLANNING BALANCE

Principle of development

5.3.1. The proposed development would deliver in excess of 50MW of renewable energy, which would contribute to national energy affordability, would increase domestic energy production thus improving reliability of supply, as well as making an important contribution to meeting net zero GHG emissions by 2050 and the transition to a low carbon energy system. NPS EN-1 states that there is an urgent need for this type of infrastructure.

5.3.2. Over the whole life of the proposed development, taking into account the negative effects of emissions arising mainly during the construction phase, there would be a net significant beneficial effect due to the displacement of GHG emissions from other sources of fossil fuel generation.

5.3.3. Accordingly, the proposed development would meet the requirements of the NPSs, the Framework, and development plan policies in relation to the principle of development.

³¹ Lake District National Park Partnership's Management Plan 2020-2026 [\[REP2-011\]](#) – Appendix H - page 30

- 5.3.4. Taking into account the contribution the proposed development would make to meeting the urgent need for low carbon and renewable energy infrastructure, and the climate change mitigation and GHG emissions impacts, these are benefits which carry very great/substantial weight in the planning balance.

Landscape and visual effects

- 5.3.5. Paragraph 5.10.5 of NPS EN-1 states that virtually all nationally significant energy infrastructure projects will have adverse effects on the landscape, and that is the case here.
- 5.3.6. Significant adverse landscape effects would be limited to the landscape character that forms part of, or lies close to, the Order limits. There would be significant adverse visual effects for local road users and a number of residential receptors.
- 5.3.7. Significant adverse visual effects beyond the locality would be limited to several visual receptors within the LDNP and WHS. There would be no significant landscape effects on the LDNP as a whole.
- 5.3.8. Overall, LV effects (including cumulative effects) carry moderate negative weight against marking the Order.

Biodiversity and ecology

- 5.3.9. Significant adverse effects would be limited to Dean Moor CWS, a non-statutory designated area. This would be due to encroachment into this area by the proposed infrastructure. There would be significant positive enhancements to Dean Moor CWS during the operational phase due to targeted habitat improvements and species rejuvenation. The residual effects would be positive.
- 5.3.10. Minimum BNG comprising 60% for habitats, 20% for hedgerows, and 5% for watercourses would be included across the entire Order limits.
- 5.3.11. Overall, biodiversity and ecology effects are attributed moderate positive weight.

Historic environment

- 5.3.12. In respect of The Lake District WHS, there would be no significant adverse effects. In heritage policy terms, this equates to a low level of less than substantial harm due to limited obtainable and distant views of the proposed development from a few elevated vantage points within the WHS. I give very great weight to this harm.

- 5.3.13. There would be moderate (significant) adverse effects experienced at two assets. In heritage policy terms, this corresponds to a moderate level of less than substantial harm to Wythemoor Sough grade II LB and Stone Circle SM.
- 5.3.14. In relation to Wythemoor Sough, this harm would be due to the relatively close proximity of the proposed infrastructure, which would be discernible within the asset’s setting. In relation to Stone Circle SM, this harm would be due to its elevated position and the scale and mechanical appearance of the proposed infrastructure, which would diminish part of its open and exposed rural setting. I give great weight to each of these harms.
- 5.3.15. The public benefits associated with the provision of renewable energy would outweigh the heritage harms in each case, as set out earlier in this chapter, but the harms would remain moderate adverse. Overall, heritage/cultural heritage effects are attributed moderate negative weight.

Socio-economics

- 5.3.16. Construction jobs would be created benefitting the wider employment market. In addition, the proposed development, particularly during the construction phase, would generate economic activity that would benefit local businesses and services through an increase in spending locally. As these benefits would mainly be temporary, aligned with the construction phase, I attribute these benefits a little positive weight in the planning balance.

Other planning issues

- 5.3.17. No significant adverse residual effects have been identified in relation to other planning topics including design (including alternatives and site selection), noise, highways (including transportation and access), ground conditions (including minerals, soils and peat), and flood risk and the water environment. Therefore, I attribute these aspects neutral weight in the planning balance.

Overall conclusion

- 5.3.18. Using the weightings I assigned to each of the topics in Chapter 3, I summarise these in Table 6 below.

Table 6: Weightings applied to my conclusions on each topic area

Issue	Finding	Weighting	Chapter/Section
Principle of development including	Positive	Very great / Substantial	3.2

climate change and need			
Biodiversity and ecology	Positive	Moderate	3.5
Socio-economics	Positive	Little	3.9
Landscape and visual	Negative	Moderate	3.4
Historic environment/cultural heritage	Negative	Moderate	3.6
Design (including alternatives)	Neutral	Neutral	3.3
Highways, transportation and access	Neutral	Neutral	3.8
Noise	Neutral	Neutral	3.7
Ground conditions, minerals and soils	Neutral	Neutral	3.9
Flood risk and water environment	Neutral	Neutral	3.9

- 5.3.19. Table 6 above takes into account my rDCO at [Appendix D](#) and the associated mitigation measures and control documents as secured through the rDCO Requirements.
- 5.3.20. Taking the above factors into account and having had regard to all important and relevant matters, I conclude that there are no adverse effects of sufficient weight, either on their own or collectively, to indicate that the rDCO should not be made.
- 5.3.21. I am satisfied that the mitigation hierarchy has been properly implemented and the mitigation proposed has been secured by the requirements and other controls included in the rDCO ([Appendix D](#)). As my recommendation finds in favour of the proposed development, it has not been necessary for me to consider any further assessment set out in NPS EN-1 in relation to Critical National Priority (CNP).
- 5.3.22. In the event that the SoSESNZ disagrees with my CNP conclusions, then I do not consider that any of the CNP exceptions set out in paragraph 4.2.15 of NPS EN-1 would apply, so the SoSESNZ would be able to further consider the CNP test.
- 5.3.23. Overall, for the reasons set out in the preceding chapters and summarised above, I conclude that there is a convincing case for development consent to be granted. Compulsory acquisition and related matters are considered in Chapter 6 of this report, and matters relating to the drafting of the DCO in Chapter 7.

6. LAND RIGHTS AND RELATED MATTERS

INTRODUCTION

6.1.1. The application includes proposals for the Compulsory Acquisition (CA) and Temporary Possession (TP) of land and rights over land. The case for CA and TP is examined in accordance with the tests in the PA2008.

6.1.2. Land over which CA and TP powers are sought is hereafter referred to as 'Order land' in this chapter.

6.2. THE REQUEST FOR CA AND TP POWERS

6.2.1. All versions of the applicant's draft DCO's, including the final dDCO [[REP6-006](#)] include provision for CA of freehold interests and private rights, interference with third party rights, the creation of new rights over land and provisions for the TP of land.

6.2.2. None of the land for which CA powers are sought is Crown Land, National Trust Land, open space or common land.

6.2.3. The following documents were submitted and updated as necessary during the examination as negotiations progressed with affected persons (AP), and in response to questions and points of clarification raised during the process. The final versions of these documents are:

- Statement of Reasons (SoR) [[APP-014](#)]
- Book of Reference (BoR) [[REP6-017](#)]
- Funding Statement [[APP-015](#)]
- Land plans [[AS-007](#)]

6.2.4. The progress of negotiations with APs was continually updated throughout the examination, culminating in a final land and rights negotiations tracker [[REP6-004](#)].

6.2.5. With reference to the land plans [[AS-007](#)] powers are sought for the acquisition of:

- all land and interests including freehold of land shaded pink (Article 22)
- permanent acquisition of new rights over land shaded blue (Article 25)
- extinguishment of private rights and overriding easements and other rights (Articles 26 and 27)
- CA of only the subsoil or land, or rights in that subsoil, where necessary (Article 29)

- temporary use of land for carrying out and maintaining the development (Articles 33 and 34)
- acquisition of land or rights over land belonging to statutory undertakers (SU), subject to protective provisions (Article 35)

6.3. THE PURPOSES FOR WHICH LAND IS REQUIRED

6.3.1. The powers sought are stated as necessary to secure construction, operation, maintenance, and eventual decommissioning of the solar farm, as well as to mitigate its impacts. The applicant states that the proposed development would contribute to national energy security, reliability, affordability, and to the UK's legally binding net zero targets ([[APP-014](#)] – Section 10.8). The applicant states that the acquisition of land and rights is no more than is reasonably required to facilitate the proposed development, including mitigation.

6.3.2. The applicant has entered into voluntary agreements with landowners that cover most of the land required. Notwithstanding the voluntary agreements, the applicant states that it has demonstrated that all the land within the Order limits for which land and rights are sought would be required for the scheme and that there is a compelling case in the public interest for the grant of CA and TP powers.

6.3.3. Specifically, the applicant's CA case is predicated on the following:

- The proposed development would reduce the UK's vulnerability to international energy supply and price shocks by increasing domestic energy production.
- The proposed development would help diversify the electricity infrastructure mix, providing a reliable energy supply.
- The proposed solar infrastructure would represent a low-cost type of energy generation, decreasing reliance on more expensive forms of energy generation.
- The proposed development would help reduce the UK's emissions that contribute to climate change. It would minimise the effects on, and maximise the benefits for, the environment, society and the economy.
- CA would be necessary to construct, operate, maintain and decommission the proposed development and to mitigate the impacts.
- The proposal is compliant with NPS EN-1, EN-3 and EN-5.
- The implementation and operation of the proposed development would constitute a compelling case in the public interest for CA.

6.4. LEGISLATIVE REQUIREMENTS

PLANNING ACT 2008

- 6.4.1. Section 122(2) of the PA2008 provides that a DCO may include provision authorising CA only if the SoS is satisfied that any of the following conditions are met, and that the land is:
- required for the development to which the development consent relates
 - required to facilitate or is incidental to that development
 - replacement land which is to be given in exchange for the Order land under s131 or s132
- 6.4.2. In addition, s122(3) requires that there must be a compelling case in the public interest for the land to be acquired compulsorily. For this to be met, the 'Planning Act 2008: guidance related to procedures for the compulsory acquisition of land' 2013 (the CA Guidance - published by the former Department for Communities and Local Government) indicates that the SoS will need to be persuaded that there is compelling evidence that the public benefits which would be derived from the CA would outweigh the private loss which would be suffered by those whose land is to be acquired.
- 6.4.3. S123(1) requires the SoS to be satisfied that any of the following conditions set out in S123(2) to s123(4) are met, namely:
- a. that the application for the order land included a request for CA of the land to be authorised – s123(2); or
 - b. that all persons with an interest in the land consent to the inclusion of the provision – s123(3); or
 - c. that the prescribed procedure has been followed in relation to the land – s123(4).
- 6.4.4. As the application includes a request for CA of land to be authorised, I am satisfied that 'a' above and the condition set out in s123(2) of the PA2008 have been met.
- 6.4.5. S127(5) and s127(6) of the PA2008 provide that a DCO may only include provision authorising the CA of rights over land belonging to SUs to the extent that the SoS is satisfied that the right can be taken without serious detriment to the carrying out of the undertaking, or that any detriment can be made good by the SU by the use of other land belonging to or available for acquisition by them.
- 6.4.6. S138 of the PA2008 relates to the extinguishment of rights and the removal of apparatus on SU land. It states that an order may include a provision for the extinguishment of the relevant rights, or the removal of the relevant apparatus only if the SoS is satisfied that the extinguishment or removal is necessary for the purposes of carrying out the development to which the order relates.

- 6.4.7. S115(2) of the PA2008 provides that, in addition to the development for which consent is required under Part 3 of the PA2008 (the principal development), consent may also be granted for associated development. The PA2008 defines associated development as development that is associated with the principal development.
- 6.4.8. TP powers are also capable of being within the scope of a DCO by virtue of Paragraph 2, Part 1 of Schedule 5 to the PA2008. This allows for, amongst other things, the suspension of interests in or rights over land compulsorily or by agreement. The PA2008 and the associated CA Guidance do not contain the same level of specification and tests to be met in relation to the granting of TP powers, because by definition such powers do not seek to permanently deprive or amend a person's interests in land. Further, such powers tend to be ancillary and contingent on the application proposal as a whole, in the sense that they are only capable of proceeding if the primary development is justified.

Neighbourhood Planning Act 2017

- 6.4.9. The Neighbourhood Planning Act 2017 (2017 Act) includes several provisions related to the TP of land including notice requirements, the service of counter notices and compensation. These provisions are not yet in force and are described as technical changes in the explanatory notes which accompany the 2017 Act.
- 6.4.10. Article 9 of the dDCO [[REP6-006](#)] disapplies the provisions of the 2017 Act insofar as they relate to TP of land under Article 33 (temporary use of land for carrying out the authorised development) and Article 34 (temporary use of land for maintaining the authorised development).

The CA Guidance

- 6.4.11. In addition to the legislative requirements, the CA Guidance sets out a number of general considerations which also need to be addressed, including whether:
- a. all reasonable alternatives to CA have been explored;
 - b. the applicant has a clear idea of how it intends to use the land subject to CA powers;
 - c. the applicant can demonstrate that funds are available to meet the compensation liabilities that might flow from the exercise of CA powers; and
 - d. the SoS is satisfied that the purposes stated for the CA and TP are legitimate and sufficiently justify the inevitable interference with the human rights of those affected.

6.4.12. I have taken all relevant legislation and guidance into account in the reasoning below and in the relevant conclusions drawn at the end of this section.

6.5. EXAMINATION OF THE CA AND TP CASE

6.5.1. I have considered all written material in respect of CA and TP. I asked questions verbally during the hearing [[EV7-001](#)] and written responses were subsequently received from the applicant [[REP5-011](#), [REP5-014](#)]. The applicant also responded to my written questions ([[REP2-010](#)] – Table 13.1, [[REP4-004](#)] – Table 6.1).

6.5.2. By the close of the examination there were no outstanding objections from any SU. There was one outstanding objection from an AP which is covered later in this chapter. Therefore, the majority of the land within the Order limits for which CA powers are sought is subject to a voluntary agreement or heads of terms have been agreed.

The applicant's case

6.5.3. The SoR [[APP-014](#)] sets out the applicant's case under the following headings:

- Section 5 outlines the needs and benefits.
- Section 6 summarises the scope of the CA and other related powers sought.
- Section 7 describes the land over which CA is sought.
- Section 8 sets out the inquiry process and methodology.
- Section 9 sets out the purposes for which powers are sought.
- Section 10 sets out the justification for CA including alternatives.
- Section 11 outlines the approach to the acquisition of land and rights by agreement.
- Section 14 addresses Human Rights and equalities.

Alternatives

6.5.4. The applicant's consideration of alternatives is set out in section 10.2 of the SoR [[APP-014](#)]. In each case, the applicant considers that the acquisition or use of third-party land cannot be avoided and that the land or rights sought are proportionate to the degree of interference with the interests or rights affected. The alternative would be to not achieve the benefits stated, particularly in respect of the contribution this renewable energy generating proposal would make towards tackling climate change and bolstering domestic energy supply, because failure to acquire the land and rights set out in the DCO would mean that the site could not be assembled as planned. This would leave uncertainty as to the ability to fully construct, operate and maintain the proposed development.

- 6.5.5. The applicant has entered into voluntary agreements where possible to avoid the need for CA and has continued to negotiate with APs throughout the examination. In accordance with the CA guidance, the applicant would only seek to exercise CA if attempts to acquire by agreement fail, minimising the need for CA.
- 6.5.6. As I set out in Chapter 3.3 of this report, the applicant has outlined the reasons for its site selection taking into account proximity to the grid POC and available capacity, technical feasibility, avoidance of BMV land and constraints within the site including topography, watercourses, hedgerows, legacy mining issues and potential impacts relating to cultural heritage, landscape and visual, ecology and biodiversity.
- 6.5.7. I concluded earlier in my report that the applicant's consideration of alternatives and site selection was robust and in accordance with relevant paragraphs of NPS EN-1 and EN-3. I am also satisfied that reasonable alternatives to CA have been explored.

Availability and adequacy of funds

- 6.5.8. The applicant's funding statement [[APP-015](#)] sets out that the application involves a joint partnership between Firma Energy and IB Vogt (IBV). Firma Energy has projected capacity totalling over 1800MW in development, 300MW of which includes solar. IBV has over 40 gigawatts (GW) of projects in the pipeline globally. No concerns have been raised by APs and I have no reason to believe that the proposed development would not be viable based on the estimated capital costs, including any compensation payable in respect of CA.
- 6.5.9. Importantly, Article 48 of the dDCO requires a guarantee or alternative form of security for compensation that may be payable pursuant to the DCO before the provisions for CA can be exercised. This provides a clear mechanism whereby the necessary funding for CA would be guaranteed.

Statutory undertaker land, rights and apparatus

- 6.5.10. No SU land would be subject to CA, but a number of SUs have rights over land or apparatus on land, owned by other third parties, which is subject to CA. The dDCO would impact land on which SUs have a relevant right. This is land on which SUs retain apparatus, such as pipelines, cables, or water mains and is therefore land to which CA powers would apply.
- 6.5.11. Therefore, s138 of the PA2008 applies which, in summary, allows the extinguishment of relevant rights, or the removal of the relevant apparatus only if the SoS is satisfied that the extinguishment or removal is necessary for the purposes

of carrying out the development to which it relates. This provision is relevant to SUs with land and equipment interests within the Order limits.

6.5.12. Schedule 14 of the dDCO includes protective provisions for the protection of:

- electricity, gas, water and sewerage undertakers
- operators of electronic communications code networks
- drainage authorities
- United Utilities Water Limited

6.5.13. I deal with the EA and United Utilities Water Limited (UU) in the subsection below. In respect of the other SUs, I am satisfied that the relevant protective provisions would ensure that an appropriate degree of protection would be given to the affected SUs, such that the SUs ability to carry out their undertaking would not be impaired, in accordance with s138 of the PA2008.

6.6. MATTERS RAISED IN THE EXAMINATION – OBJECTIONS TO CA and TP

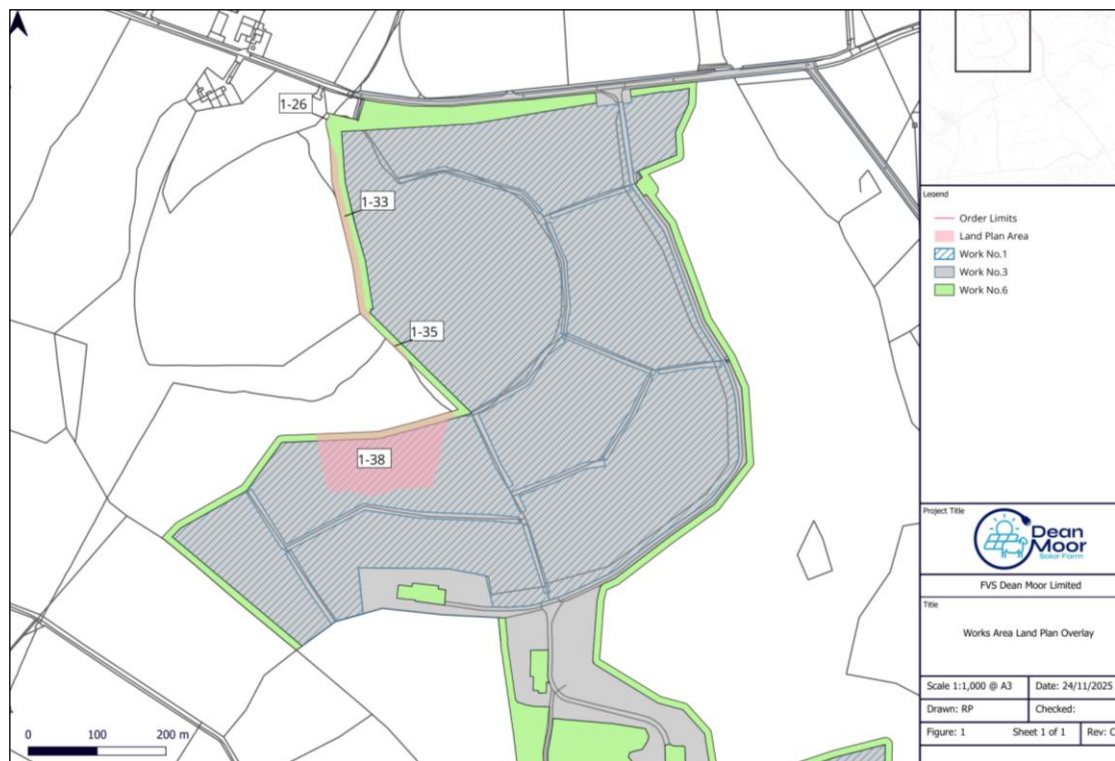
Freehold mines and minerals and mineral substances

Plots: 1-26, 1-33, 1-35 and 1-38

Compulsory acquisition

6.6.1. This matter relates to subsoil mines and minerals at plots 1-26, 1-33, 1-35, and 1-38 [\[AS-007\]](#). A detailed plan of the affected plots and the proposed works that relate to them is included in Figure 21 below.

Figure 21: Plan of subsoils mines and minerals interest at plots 1-26, 1-33, 1-35 and 1-38



(Source: applicant response to CAH Action Points – Appendix B [\[REP5-014\]](#))

- 6.6.2. The BoR [\[REP6-017\]](#) registers that 12 Property FE Limited's (12FE) have an unknown interest in mines and minerals at these plots. These interests were added during the examination [\[REP6-019\]](#). 12FE states that its interest is limited to mines and minerals below the surface [\[REP5-034\]](#).
- 6.6.3. The objections from 12FE to the CA of affected plots can be found in various representations ([\[RR-014\]](#), [\[REP3-027\]](#), [\[REP4-032\]](#), [\[REP5-034\]](#)). In summary, 12FE raises objections that the proposed development would affect its ability to exploit its mineral rights, if not prevent it entirely.
- 6.6.4. The applicant states that it has made reasonable and genuine attempts to acquire the interests through negotiation with 12FE, but no agreement has been reached ([\[REP6-015\]](#) – paragraph 5.2.3).
- 6.6.5. Conversely, 12FE's position is that the applicant has failed to provide sufficient information relating to the potential impact of the proposed development on the mineral interest, and that no ground investigations/survey work has been carried out in order to ascertain the extent of potential interference [\[REP6-022\]](#), and the applicant has not taken reasonable steps to negotiate. According to 12FE, the applicant is seeking the use of CA powers out of convenience rather than as a last resort, and such powers would not be justified in these circumstances [\[REP5-034\]](#).

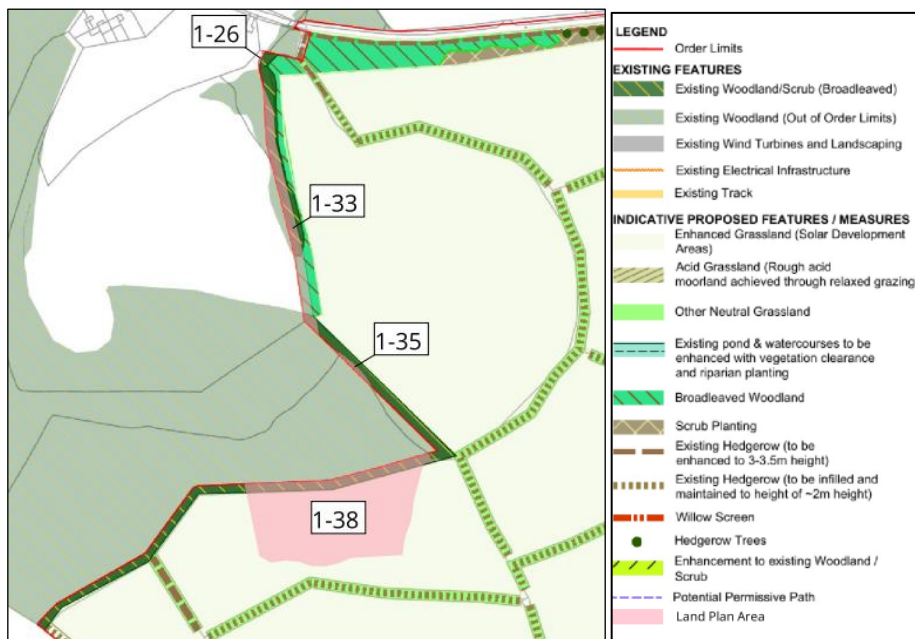
Conclusion on CA of plots 1-26, 1-33, 1-35 and 1-38 in respect of mines and minerals

- 6.6.6. I will start by dealing with the generally accepted position of both parties, that no survey work has been carried out specifically for the purposes of analysing remaining mineral reserves within the affected plots ([\[REP5-014\]](#) – No. 6). The interests are included in the BoR [\[REP6-017\]](#), and in the absence of substantive evidence to the contrary, it must be assumed that subsurface minerals and mines exist within those plots.
- 6.6.7. The works proposed at plot 1-38 include Work No.1 (generally comprising the solar PV generating station), Work No.3 (generally comprising electricity cabling and other works), and Work No.6 (generally comprising green infrastructure works including landscaping). The parameters set out in the design parameters document [\[APP-028\]](#) indicate that the deepest depth of any of the proposed works would be 4m, associated with Work No.1 and comprising the array mounting framework posts associated with the solar panel infrastructure.
- 6.6.8. In respect of the other plots (1-26, 1-33, 1-35) subject to Work No.6, the LSP in Figure 22 below illustrates the green infrastructure and landscaping works proposed within those plots, with additional details of the landscaping proposals for each provided in ([\[REP5-014\]](#) – No. 4 (page 7)), with the reasonable alternatives explored set out in No.5 of the same document. Whilst the applicant does not anticipate that proposed landscaping works would involve soil removal, and it may be possible to use no-dig techniques to mitigate below surface disturbance, this would depend on detailed design and cannot be guaranteed at this stage.
- 6.6.9. Overall, I am satisfied that the applicant has set out the reasonable worst-case scenario, which demonstrates the potential below surface impacts of the proposed development, adopting a parameter-based approach to account for project uncertainties, with specific subsurface impacts to be addressed as part of the detailed design and DCO Requirements.
- 6.6.10. Turning now to the justification for CA, the quantum of solar infrastructure proposed as part of the maximum parameters would be necessary to deliver the renewable energy generating potential of the proposed development and the benefits associated with climate change mitigation and energy security. Whilst the solar infrastructure works would relate to plot 1-38 only, landscaping works (Work No.6) are proposed in all the plots as illustrated in the Figure 22 below, and these works would contribute to the landscape strategy and BNG for the proposed development as a whole. In respect of landscaping in plots 1-26 and 1-33, this would contribute specifically to visual mitigation which would assist in reducing the

visual prominence of the proposed solar infrastructure when viewed from the grade II listed Wythemoor Sough.

6.6.11. Therefore, I consider that excluding these plots from the Order limits would mean that the proposed landscaping strategy could not be properly secured, to the detriment of BNG and heritage preservation. If the solar infrastructure was removed from plot 1-38, this would potentially reduce the overall solar footprint and the benefits associated with renewable energy production. Therefore, I find that there are no reasonable alternatives which would be able to deliver the renewable energy benefits along with BNG, landscaping and visual impact mitigation as proposed.

Figure 22: Plan showing plots 1-26, 1-33, 1-35 and 1-38 in relation to landscape strategy plan



(Source: extract from Appendix C of Applicant response to CAH Action Points [REP5-014])

6.6.12. In terms of ensuring that the powers sought are limited and proportionate, Article 23 of the dDCO [REP6-006] incorporates the mineral code.³² The effect of this provision is that any subsurface minerals within the plots would not be automatically acquired. Schedule 2 of the mineral code is set out in Table 7 below:

Table 7: Schedule 2 of the Acquisition of Land Act 1981 (the mineral code)

<p><u>Part 1</u></p> <p>(2) In this Schedule, unless the context otherwise requires—</p>
--

³² Parts 2 and 3 of Schedule 2 (minerals) of the Acquisition of Land Act 1981

- “mines” means mines of coal, ironstone, slate and other minerals,
- “owner”, in relation to mines or minerals, includes a lessee or occupier.

(3) In this Schedule “underlying”, in relation to mines or minerals, means mines or minerals lying under, or within the prescribed distance from, the undertaking, and in this sub-paragraph “prescribed distance” means the distance prescribed by the compulsory purchase order, or if no distance is so prescribed, 40 yards.

Part 2

2(1) The acquiring authority shall not be entitled to any mines under the land comprised in the compulsory purchase order unless they have been expressly purchased, and all mines under the land shall be deemed to be excepted out of the conveyance of that land unless expressly named and conveyed.

(2) Sub-paragraph (1) above shall not apply to minerals necessarily extracted or used in the construction of the undertaking.

Part 3

3(1) If the owner of any underlying mines or minerals desires to work them, he shall give the acquiring authority notice in writing of his intention to do so 30 days before the commencement of working.

(2) On receipt of the notice the acquiring authority may cause the mines to be inspected by a person appointed by them for the purpose.

(3) Subject to paragraph 4(1) below, if the acquiring authority consider that the working of the underlying mines or minerals is likely to damage the undertaking and is willing to compensate the owner for all or any part of the mines, the owner shall not work or get them.

(4) If the acquiring authority and the owner do not agree on the amount of compensation the question shall be referred to and determined by the Upper Tribunal.

6.6.13. The mineral code (Table 7) prevents the applicant from exercising CA powers over any mines and minerals within/under the Order limits unless it can bring itself within the exceptions in Schedule 2 Part 2 (2) of the code. These exceptions include ‘minerals necessarily extracted or used in the construction of the undertaking’. There is no evidence to suggest that any underground minerals would be ‘used in the construction of the undertaking’ (and it forms no part of the applicant’s case).

6.6.14. However, the first part ‘...shall not apply to minerals necessarily extracted’ comprises a necessity test. In this regard, and for the reasons set out above, I am satisfied that works required to construct the proposed development, based on the maximum parameters, would be necessary, and that any mineral extraction required in accordance with the proposed parameters would be necessary to facilitate construction, subject to detailed design.

- 6.6.15. Furthermore, I consider that the mineral code, when combined with the DCO Requirements, would operate as important and targeted mitigating control in the context of the current uncertainty regarding the extent and precise location of mineral resources within the plots, and the degree to which any such resources may be affected by the final design and landscaping of the proposed development through the lifetime of development. This is because the mineral code would provide a structured mechanism in the event that the owner of the underlying mines or minerals desired to work them, thereby ensuring the protection of 12FE's interests, whilst ensuring that any interference with mines and minerals would be limited to what is proportionate and necessary.
- 6.6.16. Part 3 of the mineral code includes compensation provisions, as inherited by Article 23 of the dDCO [\[REP6-006\]](#). This would ensure that landowners would be protected through statutory compensation provisions.
- 6.6.17. As such, I am satisfied that subsurface works proposed within the affected plots would be limited to those necessary, and for the legitimate purpose of, facilitating the delivery of the proposed solar infrastructure and landscaping.
- 6.6.18. Whilst no agreement has been reached between the parties on this matter, an audit trail of engagement between them has been provided and is included in the land and rights negotiation tracker [\[REP6-004\]](#). In section 5.2 of the applicant's closing submission, the applicant reiterates that it remains open to an agreement [\[REP6-015\]](#). I am satisfied that the applicant has made reasonable attempts to acquire the necessary land and rights by agreement.
- 6.6.19. Overall, I find there is a compelling case for the proposed development in the public interest for the rights to be compulsorily acquired.

UNITED UTILITIES

Plots: 2-07, 2-11, 4-01, 4-02

Temporary possession

- 6.6.20. UU is the statutory water and sewerage undertaker for the area. They made a representation during the examination confirming requesting that protective provisions were included in the dDCO [\[REP1-004\]](#).
- 6.6.21. The applicant seeks TP of several highway plots where UU retain apparatus. These plots are necessary to deliver Work No.3 (generally electric cabling and other works) and Work No.5 (generally works to facilitate vehicular access), required for a temporary period of up to five years, in accordance with Articles 24, 33, and 34.

- 6.6.22. As a result of engagement between the applicant and UU, Schedule 14 Part 4 of the dDCO applies specifically to UU. Whilst Schedule 14 Part 1 applies to all statutory undertakers relating to electricity, gas, water and sewerage, Part 4 focuses protection on the connections to UU's foul and surface water networks, requiring UU approval, whereas Part 1 focuses on protecting apparatus.
- 6.6.23. The final land and rights negotiations tracker [\[REP6-004\]](#) submitted by the applicant confirms that the dDCO reflects UU's requirements and that this protective provision is agreed.
- 6.6.24. Overall, in relation to these plots, TP is considered necessary to deliver the proposed development. These protective provisions would ensure that UU's assets are appropriately and proportionately safeguarded and that UU's ability to carry out its function would not be compromised.

ENVIRONMENT AGENCY

Plots: 1-65, 4-01

Temporary possession

- 6.6.25. There are two plots subject to TP relating to a culvert underneath the highway associated with Lostrigg Beck. However, the applicant has confirmed that no works affecting the culvert are proposed, with any relevant works likely to focus on signage or landscaping and highway works. Nevertheless, given the maximum parameters and the scope of works included in the design parameters document [\[APP-028\]](#) relating to Work No. 3 and Work No.5, direct or indirect impacts on Lostrigg Beck cannot be ruled out.
- 6.6.26. The applicant and Environment Agency (EA) SoCG ([\[AS-032\]](#) – EA15) agree that the EA would be consulted if, through detailed design, works to Lostrigg Beck were included. Moreover, the EA are named as a consultee prior to the submission of the CEMP, as reflected by Requirement 4 of the dDCO [\[REP6-006\]](#). Any construction related impacts could be addressed through this Requirement.
- 6.6.27. As a result, and due to the limited level of potential interference, I am satisfied that protection of the EA infrastructure would be properly secured through the DCO.
- 6.6.28. It is further noted that the EA did not raise any concerns in this regard through the examination and no protective provisions were requested by the EA. No outstanding areas of concern are highlighted in the SoCG.

Conclusions on outstanding objections/representations

- 6.6.29. I am satisfied that the CA powers sought over all of the land identified in the Land Plans and BoR are required for the proposed development, to facilitate it, or are incidental to it. Therefore, the powers sought meet the condition set out in s122(2) of the PA2008.
- 6.6.30. The CA and TP powers sought may result in some adverse impacts to the private interests of the owners of the land affected. In view of the established need for energy generation and the need to provide certainty in terms of project delivery, I consider there is a compelling case in the public interest for the land to be acquired compulsorily. I am therefore satisfied that it meets the tests in s122(3) of the PA2008. The granting of CA powers over 12FE's plots would not prevent a voluntary agreement being reached.
- 6.6.31. I am satisfied that the protective provisions proposed, and other control mechanisms including the CEMP, would ensure that there would be no serious detriment to affected SUs. Effects on apparatus belonging to SUs are proportionate and necessary.
- 6.6.32. Therefore, the powers sought meet the requirements of s122 and s138 of the PA2008.

6.7. Human Rights Act 1998 and Equality Act 2010 Considerations

- 6.7.1. The Human Rights Act 1998 places the European Convention on Human Rights (ECHR) into UK statute. The ECHR is subscribed to by member states of the Council of Europe. ECHR rights are enforceable in the domestic courts, but with final recourse to the European Court of Human Rights. The ECHR, the Council of Europe, and the European Court of Human Rights are not EU institutions and are unaffected by the decision to leave the EU.
- 6.7.2. Relevant provisions of the ECHR that are normally engaged by CA or TP proposals include:
- Article 1 – the first protocol – the right to the peaceful enjoyment of possessions, including property, except in the public interest
 - Article 6 - the right to due process in civil proceedings, including a public hearing before an independent and impartial tribunal
 - Article 8 - the right to respect for private and family life and the home is relevant where property that is a home is affected

- 6.7.3. The applicant sets out the approach to this issue in section 14 of the SoR [[APP-014](#)]. In relation to Article 8, the Order limits do not include CA of any residential

dwellings or their outdoor amenity space/garden. Therefore, as dwellings would not be directly affected, it is not anticipated that the Convention rights protected by Article 8 would be infringed.

6.7.4. In respect of Article 6, appropriate consultation took place before and during the course of the examination, and there has been opportunity to make representations and engage in the process. At the CAH, the AP who wished to be heard had an opportunity to be heard fully and fairly. During the ISH and OFH, IPs were given an opportunity to speak but have also had an opportunity to make representations in writing throughout the examination.

6.7.5. In relation to Article 1, the proposed development has the potential to interfere with the rights of APs. However, CA has been limited to the minimum required, with TP used as an alternative to ensure proportionate interference. In respect of minerals, subsurface land would be needed to ensure full construction and the mineral code is included in the dDCO to ensure no unnecessary mineral loss. Overall, the land affected has been minimised, and suitable provisions are included in the dDCO for the payment of compensation.

6.7.6. I conclude that there is a compelling case in the public interest for the CA of the land identified. The proposed interference with any rights of individuals would be necessary, lawful, proportionate and justified in the public interest. I consider the CA and TP powers sought are compatible with ECHR.

6.7.7. The Equalities Act 2010 requires public bodies, when exercising their functions, to have due regard to eliminating discrimination, equality of opportunity and fostering good relations between people who share protected characteristics and those who do not. I have had regard to this duty throughout the examination and this report and I am satisfied that it has been properly considered and discharged.

6.8. CONCLUSIONS

6.8.1. Having considered the material submitted to the examination, I reach the following conclusions:

- The application site has been appropriately selected.
- Reasonable alternatives to CA have been explored.
- The applicant has provided evidence of necessary funds and the dDCO provides a mechanism whereby necessary funding can be guaranteed.
- There is a need for all land included in the BoR [[REP6-017](#)] to be subject to CA or TP.

- There is a need to secure the land and rights required to construct, operate and maintain the proposed development within a reasonable timeframe, and the proposed development represents a significant public benefit to weigh in the balance.
- The private loss to those affected would be mitigated through the selection of land, the minimisation of the extent of the rights and interests proposed to be acquired, the DCO Requirements and the inclusion of the mineral code where relevant, and the inclusion of protective provisions where relevant.
- Voluntary agreements have been secured with most landowners.
- Individual objections and issues raised insofar as interference with land and rights is concerned would be justified and required to enable the proposed development.
- The powers sought would satisfy the conditions set out in s122 and s123 of the PA2008, as well as the CA guidance.
- The powers sought in relation to SUs meet the conditions set out in s138 of the PA2008 and CA guidance.

7. DRAFT DEVELOPMENT CONSENT ORDER AND RELATED MATTERS

INTRODUCTION

- 7.1.1. The application dDCO [[APP-012](#)] and the EM [[APP-013](#)] were submitted by the applicant as part of the application for development consent. Both the dDCO and EM were updated throughout the examination, with the latest versions of the dDCO and EM being [[REP6-006](#)] and [[REP6-011](#)] respectively. The EM explains the purpose and effect of each article of, and schedules to, the Order and why they are required.
- 7.1.2. This chapter considers the dDCO as applied for, the changes made during the examination, the dDCO provisions with matters and objections outstanding, and then sets out my overall recommendations and conclusions.

7.2. THE ORDER AS APPLIED FOR

- 7.2.1. The dDCO includes a number of provisions to enable the construction, operation, maintenance and decommissioning of the proposed development. The general structure of the dDCO is set out in Table 8:

Table 8: dDCO Article and Schedules contents

Article	Detail
Part 1	Preliminary
Part 2	Principal powers
Part 3	Streets
Part 4	Supplementary powers
Part 5	Powers of acquisition
Part 6	Miscellaneous and general
Schedule	Detail
Schedule 1	Authorised development
Schedule 2	Requirements
Schedule 3	Legislation to be disapplied
Schedule 4	Streets subject to street works
Schedule 5	Alterations of streets
Schedule 6	Streets to be temporarily closed or restricted

Schedule 7	Access to works
Schedule 8	Traffic regulation measures
Schedule 9	Land in which only new rights etc. may be acquired
Schedule 10	Modification of compensation and compulsory purchase enactments for the creation of new rights and imposition of new restrictive covenants
Schedule 11	Land of which temporary possession may be taken
Schedule 12	Acquisition of wayleaves, easements and other rights
Schedule 13	Documents to be certified
Schedule 14	Protective provisions

(Source: extract of draft Development Consent Order based on Articles and Schedules [\[REP6-006\]](#))

Parameters of the Order

- 7.2.2. The dDCO adopts a ‘Rochdale envelope’ approach whereby the ‘authorised development’ is defined by the description of works set out in Schedule 1, with the Order limits largely included in the Works Plans [\[APP-007\]](#).
- 7.2.3. The outline design parameters are set out in the DPD [\[APP-028\]](#), which provide flexibility, as the Order limits and Works Plans together would allow the authorised development to deviate within the defined tolerances (limits of deviation). The final detailed design would be based on the DPD parameters, secured by Requirement 3 of the dDCO [\[REP6-006\]](#). The ES considers the maximum or minimum parameters/limits of deviation to determine the reasonable worst-case scenario, with each chapter of the ES construed accordingly.
- 7.2.4. Schedule 2 of the dDCO sets out the Requirements which control how the detailed design would be finalised and implemented. This includes various control documents. Each would require submission to Cumberland Council as local planning authority, who would consider the details and determine whether the submissions were acceptable. Details of the main Requirements are set out in Table 9:

Table 9: Summary of dDCO Requirements as set out in Schedule 2 Article 3

Requirement number	Requirement	Detail
3	Detailed design approval.	Layout, scale, proposed finished ground levels, external appearance

	<p>To be submitted to and approved in writing by local planning authority before development commences.</p>	<p>and vehicular access, parking and circulation areas.</p> <p>To be in accordance with the design parameters document [APP-028].</p>
4	<p>Construction environmental management plan (CEMP).</p> <p>To be submitted to and approved in writing by local planning authority before development commences, following consultation with Environment Agency and Natural England.</p>	<p>To be substantially in accordance with the oCEMP [AS-026].</p>
5	<p>Construction traffic management plan (CTMP).</p> <p>To be submitted to and approved in writing by local planning authority before development commences, following consultation with the local highway authority and National Highways.</p>	<p>To be substantially in accordance with the oCTMP [REP2-025].</p>
6	<p>Landscape design.</p> <p>To be submitted to and approved in writing by local planning authority before that part of the landscaping mitigation commences. Must be</p>	<p>Landscape mitigation in the form of a landscape and ecology plan (LEP).</p> <p>Must be in accordance with the principles set out in the landscape strategy plan (LSP)</p>

	constructed in accordance with the approved details and maintained in accordance with the landscape and ecological management plan (LEMP) approved under Requirement 7.	<p>[REP2-046] and must include details of:</p> <ul style="list-style-type: none"> - Location, number, species mix, size and planting density of proposed planting. - Existing vegetation to be retained.
7	<p>Landscape and ecological management plan (LEMP).</p> <p>To be submitted to and approved in writing by local planning authority before development commences, following consultation with Natural England.</p>	To be substantially in accordance with the oLEMP [REP5-016] .
8	<p>Surface water drainage strategy.</p> <p>To be submitted to and approved in writing by the local planning authority before development commences, following consultation with the lead local flood authority and the Environment Agency.</p>	<p>To be substantially in accordance with the outline drainage strategy [REP4-025].</p> <p>Must include written details of the surface water strategy including means of pollution control.</p>
9	<p>Archaeology.</p> <p>Written scheme of investigation to be submitted to and approved in writing by</p>	Written scheme of investigation must be substantially in accordance with the archaeological mitigation strategy [APP-117] .

	the local planning authority before development commences within that part.	
10	Soil management plan (SMP). To be submitted to and approved in writing by the local planning authority before development commences, following consultation with Natural England.	To be substantially in accordance with the oSMP [REP4-023].
11	Operational management plan (OMP). To be submitted to and approved in writing by the local planning authority prior to the final commissioning of any part of the development.	Must be substantially in accordance with the oOMP [AS-024]
12	Operational noise. No part of Work No.1 may be operational until a noise assessment demonstrating that it will not have significant operational noise effect has been submitted and	

	approved by the local planning authority.	
13	Decommissioning and restoration. Unless otherwise agreed in writing with the local planning authority, no later than 6 months prior to the intended date of decommissioning and no later than 40 years following the date of final commissioning.	Must be substantially in accordance with the fDMP [APP-111].

(Source: extract of draft Development Consent Order Schedule 2 Article 3 (Requirements) [[REP6-006](#)])

7.3. CHANGES DURING EXAMINATION

- 7.3.1. The dDCO content was addressed at various points during the examination, and the applicant responded to my written and verbal questions in ([[REP2-010](#)] – Table 12.1, [[REP3-015](#)] – Table 2.1, [[REP3-016](#)] – Table 2.1, [[REP5-010](#)] – Table 2.1, [[REP5-011](#)], [[REP5-013](#)] – Tables 2.1, [[REP5-014](#)] – Table 2.1).
- 7.3.2. The applicant provided a response to my Schedule of Change to the dDCO [[PD-018](#)] and accompanying rule 17 letter [[PD-017](#)] at the final examination deadline [[REP6-013](#)].
- 7.3.3. Updated versions of the dDCO were submitted during the examination in order to remove unnecessary Articles, address inconsistencies, or in response to examination questions. Details of changes made can be found in the applicant’s Final Schedule of Changes to the draft DCO [[REP6-009](#)] along with a final dDCO [[REP6-006](#)] and final EM [[REP6-011](#)].
- 7.3.4. A number of minor changes were made to the dDCO, including typographical and editorial changes to ensure consistency, clarity and soundness, and I see no reason to report on each of those individually. A complete tracked comparison between the first and final versions of the dDCO can be found in [[REP6-008](#)]. The main changes are outlined below. I find all of these changes made and incorporated into the dDCO to be acceptable.

- Article 7 – limits of deviation – removed from the first version of the dDCO [[APP-012](#)]. The applicant agreed that it was not necessary. The flexibility sought by this power is already contained within the dDCO. The applicant outlines the flexibility in the parameters of the Order and consent envelope in Chapter 3 of the EM [[REP6-011](#)].
- Article 44 (as per first dDCO [[APP-012](#)]) – human remains – the applicant removed this provision at my request. The justification for its removal is that Stone Circle SM (which includes a cairn) was previously excavated, and no human remains were found. In any event, no significant development works would be carried out in this area. Overall, the ES does not find any credible evidence of potential human remains across the site. If human remains were to be discovered, there is separate legislation and licensing requirements to deal with such removal.
- Consultation requirements updated – in relation to dDCO Requirement 4 involving the submission of a CEMP, a requirement to consult with the Environment Agency and Natural England was added. National Highways was added as a consultee in relation to dDCO Requirement 5 involving the submission of a CTMP. Natural England was added as a consultee in relation to dDCO Requirement 7 involving the submission of a LEMP and Requirement 10 involving a SMP. The Environment Agency were added as a consultee in relation to Requirement 8 involving the submission of a drainage strategy.
- Protective provisions – United Utilities (UU) – UU is the statutory water and sewerage undertaker for the area. They engaged with the applicant during the examination to agree suitable protections for their apparatus [[REP1-004](#)]. The applicant confirmed that agreement had been reached with UU as set out on pages 13 and 14 of the land and rights negotiation tracker [[REP6-004](#)]. I deal with this in more detail in Chapter 6 of this report.

7.4. DCO PROVISIONS WITH OBJECTIONS OUTSTANDING OR UNRESOLVED

Article 3 – Development consent granted by Order

- 7.4.1. Article 3 seeks to set out that development consent is granted for the ‘authorised development’, which is a defined term in Part 1(2) of the dDCO relating to the schedule of works proposed as set out in Schedule 1.
- 7.4.2. The applicant explains in paragraph 4.3.1 of the EM [[REP6-011](#)] and Q11.0.3 of [[REP2-010](#)] why the Article is drafted in its current form, referring to other

precedents.³³ However, it is well precedented that development consent would ordinarily be granted ‘within the Order limits’. Other made solar DCOs which include this restriction are Fenwick Solar Farm, Tillbridge Solar³⁴, Stonestreet Green Solar³⁵ (Stonestreet Solar), and Byers Gill Solar³⁶, amongst others.

7.4.3. The applicant’s justification for the approach is that the dDCO would enable certain activities to be undertaken outside the Order limits, including potential protective works to buildings (Article 20), the authority to survey and investigate land (Article 21) and potential felling or lopping of trees and hedgerow removal (Article 42). However, each of the powers sought within those Articles would be limited in scope and nature to works and activities which would support the delivery of the authorised development.

7.4.4. Therefore, I conclude that it is necessary to include the words ‘within the Order limits’ in Article 3, as this contains a clear geographical scope, which would reflect the proposed works and parameters which lie within the Order limits. This would be compatible with the remainder of the dDCO and powers sought and is well precedented.

7.4.5. Therefore, I recommend that Article 3 is amended as per the rDCO in [Appendix D](#).

Article 5 – Maintenance of the authorised development

7.4.6. For the same reasons set out above in relation to Article 3, in the interests of certainty, it is also necessary to ensure that maintenance of the authorised development relates specifically to the authorised development ‘within the Order limits’.

7.4.7. I recommend that Article 5 is amended as set out in the rDCO in [Appendix D](#).

Article 8 – Consent to transfer benefit of Order

7.4.8. Under this Article, the written consent of the SoSESNZ would be needed before the undertaker could transfer the benefit of the Order, subject to exceptions which are

³³ The Applicant states that ‘the Secretary of State has explicitly endorsed the removal of the phrase “within the Order limits” in the A303 Amesbury to Berwick Down Correction Order “in recognition that the Order provides powers to carry out limited activities beyond the Order limits”’. They also refer to ‘Article 3 of the LTC Order and Article 3 of the Luton Airport Order’.

³⁴ SI 2025/1105

³⁵ SI 2025/1175

³⁶ SI 2025/934

summarised in paragraph 4.3.11 of the EM [[REP6-011](#)]. Where the written consent of the SoSESNZ would not be required due to the exceptions set out, the SoSESNZ must be notified in writing, giving a notice period of at least 10 business days.

7.4.9. I questioned whether the 10-day notification period would be reasonable. The applicant provided examples of other made DCOs where 10 business days have been included, along with some recent examples where 14 days (in effect, the same as 10 business days) and 14 business days have been used (([REP5-013](#)) – No. 9).

7.4.10. I am satisfied with the justification provided and that the notification period included in the dDCO is well precedented and would be reasonable. Therefore, I do not consider it necessary to change the notification period in the rDCO.

Article 17 – Use of private roads

7.4.11. The private roads within the Order limits are labelled as ‘tracks’ on the location plan [[APP-005](#)]. The applicant seeks use of them by persons or vehicles in connection with the construction or maintenance of the development (([REP5-013](#)) – No.12).

7.4.12. The applicant explains in paragraph 4.4.32 of the EM [[REP6-011](#)] that the purpose of the power sought would be to use private roads rather than interfering with the private rights of a landowner. The corresponding land plans [[AS-007](#)] show that the plots within which tracks are located would be subject to CA, and so these powers would run alongside CA.

7.4.13. The applicant would be liable to compensate in relation to road repairs to those who have suffered loss or damage due to the exercise of this power.

7.4.14. However, Article 17 as drafted relates to any private roads within the Order limits. Therefore, I consider it necessary to ensure that Article 17 and the use of private roads powers sought relates only to the tracks marked on the location plan. Without this, there could be uncertainty over the identification of other routes and whether or not they constitute private roads for the purposes of the DCO.

7.4.15. On balance, the powers sought are necessary and proportionate and may avoid unnecessary CA. Compensation provisions have been provided. I recommend that Article 17 is amended so that it refers specifically to the tracks marked on the submitted location plan, in the interests of clarity and certainty, as set out in the rDCO in [Appendix D](#).

Article 33 – Temporary use of land for carrying out the authorised development

7.4.16. This Article refers to land listed in Schedule 11, which is land of which TP may be taken. It is drafted to prevent the CA of land, but it does not explicitly prevent the

acquisition of new rights or the imposition of restrictive covenants (which are powers under Article 25).

- 7.4.17. The provision of additional wording to exclude acquisition of new rights or the imposition of restrictive covenants would ensure that the land listed in Schedule 11 is for TP only. As such, I recommend additional wording as set out in Table 10 and the rDCO in [Appendix D](#).

Article 41 – Planning permission

- 7.4.18. Article 41 establishes that works done pursuant to a planning permission granted within the Order limits would not constitute a breach of the Order and works done pursuant to the Order would not constitute a breach of planning permission. It also deals specifically with the Potato Pot Wind Farm planning permission.
- 7.4.19. Reference to Potato Pot Wind Farm (ref. 2/2012/0594) was added in later versions of the dDCO in response to my written question during examination, where I raised concerns over potential ambiguity of Article 41 (which was then Article 42) in relation to other planning permissions ([[REP2-010](#)] – Q11.0.20). The EM [[REP6-011](#)] sets out the justification for the inclusion of this Article, including the Potato Pot Wind Farm specifics.
- 7.4.20. Whilst Potato Pot Wind Farm comprises an extant planning permission within the Order limits as shown in Appendix F of [[REP2-011](#)], it has been constructed and is operating, and has been properly considered as part of the ES. Q4.0.8 of [[REP2-010](#)] reaffirms this. Moreover, I have seen no evidence to suggest that the proposed development would hinder decommissioning of the wind farm, and note that any issues concerning land rights and ownership have been resolved by agreement [[REP6-004](#)]. Article 41, therefore, implies that there is a potential conflict that does not appear to exist.
- 7.4.21. In respect of the complete ambit of Article 41, it would relate to any planning permission granted after a DCO or any existing planning permission. It would have the power to potentially override planning conditions or prevent enforcement action, potentially allowing development incompatible with the DCO to proceed. Whilst I recognise that Article 41(5) would require the local planning authority to be notified of any inconsistency, this does not justify the far-reaching powers sought by this provision.
- 7.4.22. The applicant states that if another planning permission was granted before the DCO was made then this could lead to a situation where both the applicant and relevant landowner could be the subject of enforcement action and liabilities for the applicant in terms of compensation. However, there is no evidence before me to

indicate that any other planning application has been submitted, or a planning permission is likely, that would conflict with the Order limits to the extent that there would be genuine incompatibility issues that would require the scope of powers sought by Article 41. Whilst the applicant refers to the ‘Hillside’ decision,³⁷ there is no substantive evidence to suggest that there would be inconsistencies between different planning permissions which would undermine lawful implementation.

7.4.23. As such, I conclude that Article 41 should be deleted from the rDCO as it is disproportionate to the scale and nature of the scheme. There is a lack of evidence to indicate likely interference with existing or future planning permissions. It is, therefore, unnecessary.

Biodiversity Net Gain (BNG)

7.4.24. The dDCO [[REP6-006](#)] does not include a minimum biodiversity net gain (BNG) figure. I made a formal request for minimum figures to be included in the dDCO in my published Schedule of Changes to dDCO [[PD-018](#)]. The applicant’s response [[REP6-013](#)] highlighted that minimum BNG figures are included in the oLEMP [[REP5-016](#)], a final version of which would be secured under Requirement 7 of the dDCO.

7.4.25. However, as the proposed BNG figure is relied upon as a benefit of the scheme and is material to the acceptability of the DCO, I consider that it warrants a clear and legible BNG figure within the DCO in the interests of transparency and certainty.

7.4.26. Nevertheless, I have adopted the applicant’s alternate suggestion that, instead of being a standalone requirement, BNG minimum figures could be embedded within the DCO LEMP Requirement.³⁸ This approach would follow other solar DCO schemes, including, but not limited to, Helios and Byers Gill Solar.³⁹

7.4.27. Therefore, in the interests of certainty, I recommend that the minimum BNG figures are inserted into the LEMP Requirement, as set out in the rDCO in [Appendix D](#).

Schedule 2, Requirement 2 and general

7.4.28. Requirement 2 of Schedule 2 of the final dDCO [[REP6-006](#)] uses the term ‘begin’ to set the five-year implementation period. It provides that the authorised development must begin no later than five years after the Order comes into force.

³⁷ Hillside Parks Ltd v Snowdonia National Park Authority [2022] UKSC 30

³⁸ Note - this is without prejudice to the applicant’s overall position that it is not necessary to explicitly set out any BNG requirement within the DCO

³⁹ The Helios Renewable Energy Project Order 2025

- 7.4.29. I queried the use of the term ‘begin’, given that the equivalent phraseology used throughout the dDCO is ‘commence’, which is also a term of established convention in most other made DCOs. The applicant has inserted a definition of ‘begin’ in the final dDCO [\[REP6-006\]](#) which ties the term to the carrying out of any material operation under s155 of the PA2008 and expressly includes permitted preliminary works (also defined in the dDCO). In contrast, ‘commence’ is defined in Part 1(2) of the dDCO and excludes permitted preliminary works. The applicant’s explanation for the use of ‘begin’ is also set out in ([\[REP5-013\]](#) – No. 3).
- 7.4.30. It is worth noting that Requirements 3 – 10 of the dDCO, which would secure the detailed design and suite of control documents, all require submission and approval before the development ‘commences’ (therefore, not ‘beginning’).
- 7.4.31. The effect of the applicant’s drafting is that the five-year time limit could be satisfied by carrying out any of the permitted preliminary works, because they fall within the definition of ‘begin’. In effect, this would broaden the range of actions capable of preserving the DCO. I recognise that the applicant refers to several precedents⁴⁰ ([\[REP5-006\]](#) – paragraph 5.1.2), but none are directly comparable in scale and nature to the proposed development. Conversely, other recently made solar DCOs, including Stonestreet Solar, include the term ‘commence’ in this context.
- 7.4.32. If, alternatively, the time limit requirement was redrafted including the term ‘commence’, the implementation trigger would align with established DCO practice. The applicant would need to carry out a material operation under s155 of the PA2008 in order to ‘commence’ development and would need to have addressed the relevant Requirements in Schedule 2. This would provide a coherent relationship between the time limit and control documents.
- 7.4.33. Therefore, I conclude that Requirement 2 of Schedule 2 of the rDCO should include the term ‘commence’ in place of ‘begin’ so that there is a clear, precise and unambiguous trigger in respect of the five-year time limit. This is reflected in the rDCO in [Appendix D](#).

7.5. EXA’S PROPOSED CHANGES

- 7.5.1. I set out the main reasons for the following proposed changes in the previous section. I have included these changes in Table 10 below, along with other relatively minor changes. Overall, I recommend that the changes set out in Table 10 are made

⁴⁰ Gatwick Airport (Northern Runway Project) Development Consent Order 2025 (SI 2025/1054), the London Luton Airport Expansion Development Consent Order 2025 (SI 2025/463) and the A122 (Lower Thames Crossing) Development Consent Order 2025 (SI 2025/462).

to the applicant’s final dDCO [\[REP6-006\]](#). The ExA’s recommended DCO (rDCO), incorporating these amendments, can be found in [Appendix D](#) of this report.

Table 10: Proposed changes to the dDCO to be reflected in the rDCO in Appendix D of this report

Provision	Recommendation	ExA Reasoning
Article 3	<p>Add ‘within the Order limits’ so that Article 3(1) reads:</p> <p>Subject to the provisions of this Order and the requirements in Schedule 2 (requirements) the undertaker is granted development consent for the authorised development to be carried out within the Order</p>	<p>In the interests of necessity and certainty and preceded by other recently made DCOs.</p>
Article 5	<p>Add the following to Article 5:</p> <p>(2) This article only authorises the carrying out of maintenance works within the Order limits.</p>	<p>In the interests of necessity and certainty and preceded by other recently made DCOs.</p>
Article 17	<p>Add: ‘(4) for the purposes of this article, the only private roads with the Order limits are those shown as ‘tracks’ on the location</p>	<p>This aligns with the private road routes identified by the applicant.</p>

Article 27(3)	Replace the word 'beached' with 'breached'	Typographical error
Article 33	Change (10) to...'The undertaker may not compulsorily acquire, acquire new rights over, or impose restrictive covenants over, the land referred to in paragraph (1)(a)(i) under this Order'.	This is necessary so that CA of rights and the imposition of restrictive covenants are also prevented in respect of land listed in
Article 41	To remove this Article in its entirety.	Not necessary as powers sought do not reflect the likelihood of interference due to the effects of existing or future planning permissions
Schedule 2, Part 1, Requirement 2	To remove the definition in its entirety: "begin" means to carry out any material operation (as defined in section 155 (when development begins) of the 2008 Act) forming part, or carried out for the purposes, of the authorised development including permitted preliminary works (as defined in article 2 this Order).	In the interests of clarity and so that it is consistent with other recently made DCOs.

Schedule 2, Part 2, Requirement 2	Replace 'begin' with 'commence' so that it reads as follows: '2.—(1) The authorised development must <u>commence</u> (my emphasis) no later than the expiration of five years beginning with the date that this Order comes into force'.	In the interests of clarity and so that it is consistent with other recently made DCOs.
Schedule 2, Part 2, Requirement 7(2) Biodiversity net gain	To insert the following wording...'and must demonstrate how a minimum biodiversity net gain of 60% for area habitat units, 20% for hedgerow units and 5% for watercourse units, calculated using the Department of Environment Food and Rural Affairs' Statutory Biodiversity Metric (February 2024), or if this is withdrawn or replaced, a biodiversity metric approved by the relevant planning authority in consultation with the relevant	It is necessary to include the minimum BNG figures the applicant has applied for in the interests of certainty.
Schedule 2, Part 2, Requirement 10(2)	Remove the anomalous digit '4'	Typographical error.

Schedule 13	<p>Changes made to documents to be certified to reflect submissions versions and correct document titles.</p> <p>The above includes the following change, with 'ecology' replaced by 'ecological' so that references to the LEMP throughout the rDCO are consistent:</p> <p>'ES Appendix 7.7 Outline Landscape and Ecology Ecological'</p>	<p>In the interests of clarity and so that document references are consistent and up-to-date.</p>
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7.6. CONCLUSIONS

- 7.6.1. I have considered the degree to which the final dDCO has addressed matters arising during the examination. I am satisfied that the requirements set out in revision 4, the final dDCO [[REP6-006](#)], provide mitigation for potential adverse effects identified in the ES and sufficiently address the issues raised during the course of the examination. This is subject to recommended changes set out in Table 10 above (and some minor changes to formatting and punctuation which do not affect meaning), as set out in the rDCO at [Appendix D](#), which is otherwise identical to the dDCO submitted by the applicant at deadline 6 [[REP6-006](#)].
- 7.6.2. Taking all matters raised in this chapter and all matters relevant to the DCO raised in the examination, if the SoSESNZ is minded to make the Order, I recommend it be made in the form set out in [Appendix D](#).

8. SUMMARY OF FINDINGS AND CONCLUSIONS

8.1. INTRODUCTION

8.1.1. This section summarises my conclusions and sets out my recommendation to the SoSESNZ.

8.2. CONSIDERATION OF FINDINGS AND CONCLUSIONS

8.2.1. As set out in Chapter 5 of my report, the NPSs establish the urgent need for low carbon energy generation of all types. I have concluded that the proposed development would make an important contribution to meeting the identified need and would contribute to ensuring security of energy supply and climate change mitigation. In reaching these conclusions I have had regard to the NPSs, Cumberland Council's LIR and other important and relevant matters.

8.2.2. In relation to designated heritage assets, I have concluded that, due to the effects on their respective settings, the proposed development would result in less than substantial harm to several heritage assets. I have had regard to the desirability of preserving listed buildings and scheduled monuments and their respective settings, in accordance with Regulation 3 of the Infrastructure Planning (Decisions) Regulations 2010 (Decisions Regulations). I have concluded those harms would be outweighed by the very great/substantial benefit associated with the low carbon infrastructure proposed and the contribution it would make to meeting the need identified in NPS EN-1, along with the other benefits set out in Chapter 3.

8.2.3. I have considered biodiversity, ecology and nature conservation issues⁴¹ and I am satisfied that these issues have been adequately assessed and that the proposed development would meet the requirements of NPS EN-1.

8.2.4. In relation to s104 of the PA2008, I conclude:

- making the rDCO would be in accordance with NPS EN-1, NPS EN-3 and NPS EN-5
- the proposed development would be in accordance with the Framework and development plan policies, and with other relevant policies considered in this report
- the proposed development would not result in any significant adverse effects that would outweigh its benefits and there is nothing to indicate that the

⁴¹ Having regard to Regulation 7 of the Decisions Regulations

application should be decided other than in accordance with the relevant NPSs

- having considered all other matters and representations received, I have found no relevant matters that would individually or collectively lead to a different recommendation from that set out below

8.2.5. I have had regard to the applicant's Habitats Regulations Assessment Screening Report (the sHRA [[REP5-018](#)]) and NE's comments. Whilst the SoSESNZ is the Competent Authority under the Habitat Regulations and will make the definitive assessment, I conclude that, subject to mitigation measures secured by the rDCO, adverse effects on the integrity of European sites can be excluded from the impact-effect pathways assessed. Therefore, the proposed development would not be likely to give rise to adverse effects on the integrity of European sites.

8.2.6. I conclude that there is sufficient information for the SoSESNZ to enable him to undertake an appropriate assessment and to fulfil his duty under the Habitat Regulations. I see no reason for HRA matters to prevent the making of the DCO.

8.2.7. In respect of the application for CA and TP powers, I conclude:

- the application site has been appropriately selected and all reasonable alternatives to CA have been explored
- the applicant has demonstrated that it has necessary funds and the rDCO provides a funding guarantee mechanism
- there is a clear need for all the land in the BoR to be subject to CA or TP
- there is a need to secure the land and rights in order to construct, operate and maintain the proposed development
- the proposed development would constitute a significant public benefit
- the private losses of those affected by CA and TP has been mitigated through land assembly, minimisation of the extent and rights of interests sought, the incorporation of the mineral code and DCO Requirements in respect of the relevant affected plots, and protective provisions in order to protect the interests of infrastructure and rights associated with affected statutory undertakers
- in all cases the CA and TP are justified to enable implementation of the proposed development
- the powers sought satisfy the conditions set out in s122 and s123 of the PA2008 as well as the CA Guidance; there is a compelling case in the public interest for the CA and TP powers sought

- the powers sought in relation to SUs meet the conditions set out in s138 of the PA2008 and the CA Guidance
- the case for CA and TP powers has been made out and that the proposed interference with the human rights of individuals would be for legitimate purposes and would justify such interference in the public interest and to a proportionate degree

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

8.2.9. In respect of the Public Sector Equality Duty (PSED)⁴², I have had regard to this throughout the examination, including the method by which hearings and site inspections were undertaken, and in producing this report and my recommendation. The proposed development would not harm the interests of persons who share a protected characteristic, nor would it have any adverse effect on relationships between such persons and persons who do not share a protected characteristic.

8.2.10. I have considered the cumulative effects of the proposed development with other committed and planned development throughout this report, as referenced in relevant chapters.

8.2.11. The mitigation hierarchy has been fully explored as set out in Chapter 3 of this report and the mitigation proposed, where relied upon, has been secured by the requirements and other controls included in the rDCO. As my recommendation is already in favour of the proposed development, it is not necessary to apply the further tests set out in NPS EN-1 in relation to CNP.

8.3. RECOMMENDATION

⁴² Equality Act 2010

8.3.1. I conclude that the case for the proposed development has been made having regard to NPSs, Cumberland Council's LIR and other important and relevant matters as set out in this report. It therefore meets the tests in s104 of the PA2008 and I recommend that development consent should be granted through the DCO in the form recommended in [Appendix D](#) of this report.

APPENDIX A: RELEVANT LEGISLATION AND POLICY

Legislation

Climate Change Act 2008 (as amended) (CCA2008)

The CCA2008 as amended by the CCA2008 (2050 Target Amendment) Order 2019 establishes the legally binding framework to tackle climate change. It sets statutory climate change projections and carbon budgets. A key provision is the setting of legally binding targets greenhouse gas emission reductions in the UK from at least 80% to 100% by 2050.

Conservation of Habitats and Species Regulations 2017 as amended by the Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019 (Habitats Regulations)

The Habitats Regulations give effect to the Habitats Directive (92/43/EEC) and Wild Birds Directive (2009/147/EC). Following the UK's departure from the EU, these were amended by the Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019 in order to ensure they continue to operate effectively.

Countryside and Rights of Way Act 2000 (CRoW Act)

The CRoW Act includes provisions regarding public rights of way (PRoW) and access to land.

Environment Act 2021

This Act provides targets, plans and policies for improving the natural environment. Schedule 15 makes provision for biodiversity net gain (BNG) in Nationally Significant Infrastructure Projects (NSIP). Whilst not yet in force, it contains a future target for 10% BNG.

Environmental Protection Act 1990

This identifies a number of matters which are considered to be statutory nuisance.

Equality Act 2010

This establishes a duty (the Public Sector Equality Duty) to eliminate discrimination, advance equality of opportunity and foster good relations between persons who share a protected characteristic and persons who do not.

Human Rights Act 1998

This places the European Convention on Human Rights (ECHR) into UK statute. The compulsory acquisition of land can engage various relevant articles under the Act.

Natural Environment and Rural Communities Act 2006

This makes provisions for bodies concerned with the natural environment and rural communities. It includes a duty that public bodies must have regard to the conservation

of biodiversity in exercising functions insofar as is consistent with the proper exercising of those functions.

Water Environment (Water Framework Directive) (England and Wales) Regulations 2017 (WFD Regulations)

The WFD Regulations give effect to the Water Framework Directive (WFD) which establishes a framework for water policy and water quality. The WFD seeks to prevent the deterioration of surface water bodies, groundwater bodies and their ecosystems.

Wildlife and Countryside Act 1981 (as amended)

This is the primary legislation that protects animals, plants and certain habitats. It provides for the notification and confirmation of sites of special scientific interest. The Act provides for and protects wildlife, nature conservation, countryside protection, national parks, and PRoW. If a species protected under the Act is likely to be affected by development, a protected species licence will be required from Natural England.

Other relevant legislation

- Acquisition of Land Act 1981
- Ancient Monuments and Archaeological Areas Act 1979
- Arbitration Act 1996
- Building Act 1984 and the Building Regulations 2010
- Communications Act 2003
- Community Infrastructure Levy Regulations 2010
- Compulsory Purchase (Vesting Declarations) Act 1981
- Compulsory Purchase Act 1965
- Construction (Design and Management) Regulations 2015
- Control of Major Accidents Hazard (COMAH) Regulations 2015
- Control of Pollution Act 1974
- Electricity Act 1989
- Energy Act 2023
- Environment Act 1995
- Environmental Damage (Prevention and Remediation) Regulations 2015
- Environmental Permitting (England and Wales) Regulations 2016
- Environmental Permitting Regulations 2010
- European Landscape Convention 2006
- Forestry Act 1967
- Gas Act 1986
- Groundwater (England and Wales) Regulations 2009
- Groundwater (Water Framework Directive) (England) Direction 2016
- Hazardous Waste Regulations (England and Wales) 2005
- Hedgerows Regulations 1997

- Highways Act 1980
- Historic Buildings and Ancient Monuments Act 1953
- Housing and Planning Act 2016
- Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009
- Infrastructure Planning (Decisions) Regulations 2010
- Infrastructure Planning (Examination Procedure) Rules 2010
- Infrastructure Planning (Compulsory Acquisition) Regulations 2010
- Infrastructure Planning (Environmental Impact Assessment) Regulations 2017
- Land Compensation Act 1961
- Land Compensation Act 1973
- Land Drainage Act 1991
- Levelling Up and Regeneration Act 2023
- Localism Act 2011
- Mine (Working Facilities and Support) Act 1966
- National Parks and Access to the Countryside Act 1949
- Natural Environment and Communities Act 2006
- Neighbourhood Planning Act 2017
- New Roads and Street Works Act 1991
- Planning Act 2008
- Planning and Infrastructure Act 2025
- Planning (Listed Buildings and Conservation Areas) Act 1990
- Protection of Badgers Act 1992
- Road Traffic Regulation Act 1984
- Road Traffic Exemptions (Special Forces) (Variation and Amendments) Regulations 2011
- Salmon and Freshwater Fisheries Act 1975
- Town and Country Planning (Tree Preservation) (England) Regulations 2012
- Town and Country Planning Act 1990
- Traffic Management Act 2004
- Traffic Signs Regulations and General Directions 2016
- Tribunals, Courts and Enforcement Act 2007
- Utilities Act 2000
- Water Act 2003
- Water Industry Act 1991
- Water Framework Environment (Water Framework Directive) Regulations 2017
- Water Resources Act 1991
- Wild Mammals (Protection) Act 1996

National policy and guidance

- **Overarching National Policy Statement for Energy (NPS EN-1) (dated November 2023, designated on 17 January 2024)**
 - This sets out the need for new nationally significant electricity infrastructure and the Critical National Priority for low carbon infrastructure, including solar photovoltaic electricity generating stations. It sets out general principles and generic impacts to be considered in considering applications for energy NSIPs. All other energy NPSs sit under this overarching policy framework.
- **National Policy Statement for Renewable Energy (NPS EN-3) (dated November 2023, designated on 17 January 2024)**
 - It details assessment criteria specific to different types of renewable energy infrastructure, including energy from solar photovoltaic electricity generating stations. The assessment criteria for energy from solar photovoltaic generation proposals includes, amongst other things, matters relating to site selection and design, climate change, biodiversity, landscape and visual, residential amenity, glint and glare, the water environment, cultural heritage, traffic, and noise and vibration.
- **National Policy Statement for Electricity Networks Infrastructure (NPS EN-5) (dated November 2023, designated on 17 January 2024)**
 - Amongst other things, this NPS provides policy for underground electricity distribution systems that constitute associated development to a solar photovoltaic NSIP.
- **Other national policy and guidance**
 - 10 Year Infrastructure Strategy Working Paper (2025)
 - Allendale Borough Council Climate Change Action Plan 2022/23 (2022)
 - British Energy Security Strategy (2022)
 - Chartered Institute of Ecology and Environmental Management (CIEEM) Guidelines for Ecological Impact Assessment in the UK and Ireland: Terrestrial, Freshwater, Coastal and Marine (2018)
 - Clean Power 2030 Action Plan (2024)
 - DEFRA Statutory Biodiversity Metric Tool (2024)

- DEFRA Guidance on Sustainable Drainage Systems: non-statutory technical standards (2015)
- The Department for Transport (DfT) Circular 01/2022 (Strategic Road network and the delivery of sustainable development)
- Energy White Paper: Powering our Net Zero Future (2020)
- Institute of Environmental Management and Assessment (IEMA): Assessing Greenhouse Gas Emissions and Evaluating their Significance (2022)
- IEMA: EIA Guide to Climate Change Resilience and Adaptation (2020)
- Lake District National Park Partnership’s Management Plan 2020-2025 (2020)
- National Infrastructure Strategy (2020)
- Nationally Significant Infrastructure Projects: Advice on Good Design (2024)
- National Planning Policy Framework (December 2024) and associated Planning Practice Guidance
- Net Zero Strategy: Opportunities for the Power Sector (2020)
- Noise Policy Statement for England (2010)
- Transport for the North – Strategic Transport Plan (2024)
- The Paris Agreement (2015)
- Powering Up Britain (2023)

Development plan policies

Allerdale Local Plan Part 1 (2024) (Local Plan)

- Policy S1: Sustainable development
- Policy S2: Sustainable development principles
- Policy S3: Spatial Strategy and Growth
- Policy S4: Design principles
- Policy S6: Area based
- Policy S12: Land and premises
- Policy S13: Energy Coast Innovation Zone
- Policy S14: Rural economy
- Policy S15: Education and skills
- Policy S19: Renewable energy and low carbon technologies
- Policy S20: Nationally significant infrastructure projects
- Policy S22: Transport principles
- Policy S24: Green infrastructure
- Policy S27: Heritage assets
- Policy S29: Flood risk and surface water drainage
- Policy S30: Reuse of land

- Policy S32: Safeguarding amenity
- Policy S33: Landscape
- Policy S35: Protecting and enhancing biodiversity and geodiversity
- Policy S36: Air, water and soil quality
- Policy DM5: Farm diversification
- Policy DM12: Sustainable construction
- Policy DM14: Standards of good design
- Policy DM17: Tree, hedgerows and woodland

Strategic objectives – SO1a – SO1g, SO3a – SO3j, SO5a – SO5f, SO6a – SO6e.

Cumbria Minerals and Waste Local Plan (2017)

- Policy SP8: Minerals safeguarding
- Policy DC15: Minerals safeguarding

Other local policy and guidance

Lake District National Park Plan (2020 – 2035) – Policies 01, 02, 05, 06, 07, 20.

Cumberland Council Climate and Nature Strategy 2024-2027 (2024)

Cumberland Council Delivery Plan 2024-2025 (2024)

Cumbria Transport Infrastructure Plan (2022-2037)

APPENDIX B: LIST OF ABBREVIATIONS

12FE	12 Property FE Limited
2017 Act	Neighbourhood Planning Act 2017
AA	Appropriate Assessment
AC	Alternating Current
ADC	Area of Distinctive Character
ALC	Agricultural Land Classification
AMS	Archaeology Mitigation Strategy
APs	Affected Person
ASI	Accompanied Site Inspection
BESS	Battery Energy Storage System
BMV	Best and Most Versatile
BNG	Biodiversity Net Gain
BMP	Biosecurity Management Plan
BoR	Book of Reference
CA	Compulsory Acquisition
CAH	Compulsory Acquisition Hearing
CELA	Carbon Emissions Lifecycle Assessment
CEMP	Construction Environmental Management Plan
CCLR	Cumberland Council Landscape and Visual Impact Assessment Review
CIEEM	Chartered Institute of Ecology and Environmental Management
CoA	Conservation Area
CNP	Critical National Priority
CTMP	Construction Traffic Management Plan
Cumbria CC	Cumbria County Council

CWS	County Wildlife Site
CWT	Cumbria Wildlife Trust
DAD	Design Approach Document
DCO	Development Consent Order
dDCO	draft Development Consent Order
DESNZ	Department for Energy Security and Net Zero
DMP	Decommissioning Management Plan
DNO	Distribution Network Operator
DPD	Design Parameters Document
DTM	Digital Terrain Model
EA	Environment Agency
ECHR	European Convention on Human Rights
EEA	European Economic Area
EIA	Environmental Impact Assessment
EM	Explanatory Memorandum
ENW	Electricity North West
EPR	Infrastructure Planning (Examination Procedure) Rules 2010
ES	Environmental Statement
ExA	Examining Authority
ExQ	Examination Written Questions
fCWTP	Framework Construction Workforce Travel Plan
fDMP	Framework Decommissioning Management Plan
FRA	Flood Risk Assessment
Framework	National Planning Policy Framework
GHG	Greenhouse Gas
GLVIA	Guideline for Landscape and Visual Impact Assessment
GMP	Grazing Management Plan

APPENDIX B: LIST OF ABBREVIATIONS

GWh	Gigawatt-hours
Ha	Hectares
HEDBA	Historic Environment Desk-Based Assessment
HER	Historic Environment Record
HGV	Heavy Goods Vehicle
HRA	Habitats Regulations Assessment
IAPI	Initial Assessment of Principal Issues
IBV	Firma Energy and IB Vogt
IEMA	Institute of Environmental Management and Assessment
INNS	Invasive non-native species
IP	Interested Party
ISH	Issue Specific Hearing
Km	Kilometres
kV	Kilovolt
LCA	Landscape Character Area
LB	Listed Building
LCT	Landscape Character Type
LDNP	Lake District National Park
LDNPA	Lake District National Park Authority
LEMP	Landscape and Ecological Management Plan
LEP	Landscape and Ecology Plan
LGV	Light goods vehicle
LIR	Local Impact Report
LOAEL	Lowest Observed Adverse Effect Level
LP	Local Plan
LRN	Local Road Network
LSE	Likely Significant Effects

APPENDIX B: LIST OF ABBREVIATIONS

LSP	Landscape Strategy Plan
LV	View Locations
LVIA	Landscape and Visual Impact Assessment
m	metre
MSA	Minerals Safeguarding Area
MW	Megawatts
MWh	Megawatt Hour
NDHA	Non-designated Heritage Assets
NE	Natural England
NIA	Noise Impact Assessment
NIC	National Infrastructure Commission
NP	National Park
NPA	National Parks and Access to the Countryside Act 1949
NPPF	National Planning Policy Framework
NPS	National Policy Statement
NPS EN-1	Overarching National Policy Statement for Energy (2024)
NPS EN-3	National Policy Statement for Renewable Energy Infrastructure (2024)
NPS EN-5	National Policy Statement for Electricity Networks Infrastructure (2024)
NPSE	Noise Policy Statement for England 2010
NSIP	Nationally Significant Infrastructure Project
NSR	Noise Sensitive Receptor
oCEMP	Outline Construction Environmental Management Plan
oCTMP	Outline Construction Traffic Management Plan
oDS	Outline Drainage Strategy
OFH	Open Floor Hearing

APPENDIX B: LIST OF ABBREVIATIONS

oLEMP	Outline Landscape Ecological Management Plan
OMP	Operational Management Plan
oOMP	Outline Operational Management Plan
oSMP	Outline Soil Management Plan
OUV	Outstanding Universal Value
PA2008	Planning Act 2008
PCS	Power Conversion System
PDL	Previously Developed Land
PEIR	Preliminary Environmental Information Report
PM	Preliminary Meeting
POC	Point of Connection
PPG	Planning Practice Guidance
PRoW	Public Right of Way
PSR	Peat Survey Report
PSED	Public Sector Equality Duty
PV	Photovoltaic
rDCO	Recommended Development Consent Order
RD&BL	River Derwent and Bassenthwaite Lake
RIES	Report on the Implications for European sites
RR	Relevant Representation
s	section
SAC	Special Area of Conservation
SM	Scheduled Monument
SMP	Soil Management Plan
SOAEL	Significant Observed Adverse Effect Level
SoCG	Statement of Common Ground
SoR	Statement of Reasons

APPENDIX B: LIST OF ABBREVIATIONS

SoS	Secretary of State
SoSESNZ	Secretary of State for Energy Security and Net Zero
SPA	Special Protection Area
SRN	Strategic Road Network
SSSI	Site of Special Scientific Interest
SU	Statutory Undertaker
tCO ₂ e	Tonnes Carbon Dioxide Equivalent
TN	Technical Note
TNO	Transmission Network Operator
TP	Temporary Possession
TS	Transport Statement
UU	United Utilities
UNESCO	United Nations Educational, Scientific and Cultural Organisation
USI	Unaccompanied Site Inspection
VL	View Location
VLC	Cumulative View Location
WFD	Water Framework Directive
WHS	World Heritage Site
WR	Written Representation
WSI	Written Scheme of Investigation
ZTV	Zone of Theoretical Visibility

APPENDIX C: SUMMARY OF EXA'S HRA CONCLUSIONS

European site	Feature	Pathway for effect	Stage 1 effect alone	Stage 1 effect in-combination	Stage 2 effect alone	Stage 2 effect in-combination
RD&BL SAC	otter	Pollution to groundwater (construction, operation and decommissioning)	LSE (construction, operation and decommissioning)	No LSE	No AEOI	No AEOI
	Atlantic salmon		LSE (construction and decommissioning)	No LSE	No AEOI	No AEOI
	river lamprey		LSE (construction and decommissioning)	No LSE	No AEOI	No AEOI
	sea lamprey		LSE (construction)	No LSE	No AEOI	No AEOI
	brook lamprey	Change in species distribution (including from instream works) (construction, operation and decommissioning)	LSE (construction)	No LSE	No AEOI	No AEOI
		Spread of INNS (construction)	LSE (construction)	No LSE	No AEOI	No AEOI

	marsh fritillary floating water-plantain	Pollution to groundwater (construction, operation and decommissioning) Siltation (construction, operation and decommissioning) Change in species distribution (construction, operation and decommissioning)	No LSE	No LSE	N/A	N/A
Solway Firth SPA	Article 4.1 qualifying species: barnacle goose whooper swan bar-tailed godwit golden plover red-throated diver	Other ecosystem modifications (impacts to functionally linked land) (construction, operation and decommissioning)	No LSE	No LSE	N/A	N/A

<p>Article 4.2 qualifying species:</p> <p>northern pintail</p> <p>pink-footed goose</p> <p>greater scaup</p> <p>knot</p> <p>oystercatcher</p> <p>curlew</p> <p>redshank</p> <p>ringed plover</p>	<p>Other ecosystem modifications (impacts to functionally linked land) (construction, operation and decommissioning)</p>	<p>No LSE</p>	<p>No LSE</p>	<p>N/A</p>	<p>N/A</p>
<p>Article 4.2 non-breeding assemblage (herring gull)</p>	<p>Other ecosystem modifications (impacts to functionally linked land) (construction, operation and decommissioning)</p>	<p>LSE (construction, operation and decommissioning)</p>	<p>LSE (construction, operation and decommissioning)</p>	<p>No AEOI</p>	<p>No AEOI</p>

APPENDIX D: THE RECOMMENDED DCO

2021 No.

INFRASTRUCTURE PLANNING

The Dean Moor Solar Farm Order 2021[]

Made - - - - - ***

Laid before Parliament ***

Coming into force ***

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

The application was examined by the Examining Authority appointed by the Secretary of State in accordance with the 2008 Act and carried out in accordance with the Infrastructure Planning (Examination Procedure) Rules 2010(c).

The Examining Authority, having considered the application together with the documents that accompanied it, and the representations made and not withdrawn, has, in accordance with section 83(1) of the 2008 Act made a report and recommendation to the Secretary of State.

The Secretary of State has considered the report and recommendation of the Examining Authority, has taken into account the environmental information in accordance with regulation 4 of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017(d) and has had regard to the documents and matters referred to in section 105(2) of the 2008 Act.

The Secretary of State, having decided the application, has determined to make an Order granting development consent for the development described in the application on terms that in the opinion of the Secretary of State are not materially different from those proposed in the application.

The Secretary of State, in exercise of the powers conferred by sections 114, 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 Dean Moor Solar Farm Order 202[] and comes into force on [] 202[].

Interpretation

2.—(1) In this Order—

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

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

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

(a) 2008 c. 29. Section 37 was amended by section 137(5) of, and paragraph 5 of Schedule 13 to, the Localism Act 2011 (c. 20). Section 74(2) was amended by paragraph 29(3) of that Schedule. Section 105(2) was amended by paragraph 50 of that Schedule. Section 114 was amended by paragraph 55 of Schedule 13 to the Localism Act 2011. Section 120 was amended by section 140 of, and paragraph 60 of Schedule 13 to, that Act.

(b) S.I. 2009/2264.

(c) S.I. 2010/103 as amended by the Infrastructure Planning (Examination Procedure) (Amendment) Rules 2024 (S.I. 2024/317).

(d) S.I. 2017/572.

(e) 1961 c. 33.

(f) 1965 c. 56.

(g) 1980 c. 66.

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

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

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

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

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

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

“apparatus” has the same meaning as in section 105(1) of the 1991 Act;

“authorised development” means the development described in Schedule 1 (authorised development) and any other development authorised by this Order, or any part of it, which is development within the meaning of section 32 (meaning of development) of the 2008 Act;

“the book of reference” means the document of that description referenced in Schedule 13 (documents to be certified) and certified by the Secretary of State;

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

“business day” means a day other than Saturday or Sunday, which is not Christmas Day, Good Friday or a bank holiday under section 1 (bank holidays) of the Banking and Financial Dealings Act 1971(g);

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

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

“electronic transmission” means a communication transmitted—

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

“environmental statement” means the document of that description referenced in Schedule 13 (documents to be certified) and certified by the Secretary of State;

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

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

“land plan” means the document of that description referenced in Schedule 13 (documents to be certified) and certified by the Secretary of State;

“local planning authority” means Cumberland Council;

“the location plan” means the document of that description referenced in Schedule 13 (documents to be certified) and certified by the Secretary of State;

“maintain” includes to inspect, repair, adjust, alter, remove, refurbish, replace, improve or reconstruct any part of, but not remove, reconstruct or replace the whole of the authorised development provided that such works do not give rise to any materially new or materially

(a) 1981 c. 66.

(b) 1984 c.27.

(c) 1989 c. 29.

(d) 1990 c. 8.

(e) 1991 c. 22. Section 48(sA) was inserted by section 124 of the Local Transport Act 2008 (c. 26). Sections 78(4), 80(4), and 83(4) were amended by section 40 of, and Schedule 1 to, the Traffic Management Act 2004 (c. 18).

(f) 2008 c. 29.

(g) 1971 c. 80.

(h) “highway” is defined in section 238(1) for “highway authority” see section 1, “local highway authority” as defined in section 329(1).

different environmental effects in comparison to those reported in the environmental statement; and any derivative of “maintain” is to be construed accordingly;

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

“the Order limits” means the limits shown on the works plan;

“the permit scheme” means the Cumberland Council Permit Scheme for Road & Street Works Activities made in accordance with Part 3 of the Traffic Management Act 2004(a)

“permitted preliminary works” means all or any of—

- (c) pre-construction ecological mitigation (including advanced planting or the erection of temporary barriers to protect ecological interests);
- (d) environmental surveys and monitoring, geotechnical surveys, intrusive archaeological surveys (including trenching) and other investigations for the purpose of assessing ground conditions (including the making of boreholes);
- (e) removal of plant and machinery;
- (f) above ground site preparation for temporary facilities for the use of contractors;
- (g) remedial work in respect of any contamination or other adverse ground conditions;
- (h) diversion and laying of apparatus;
- (i) receipt and erection of construction plant and equipment;
- (j) the provision of temporary means of enclosure and site security for construction;
- (k) the temporary display of site notices or advertisements;
- (l) site clearance (including vegetation removal, demolition of existing structures);

“requirements” means those matters set out in Part 1 of Schedule 2 (requirements) to this Order;

“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 and road is to be construed accordingly;

“streets and access plan” means the document of that description referenced in Schedule 13 (documents to be certified) and certified by the Secretary of State;

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

“undertaker” means FVS Dean Moor Ltd (company number 14712545) whose registered office is 127 Cheapside, London, EC2V 6BT;

“watercourse” has the meaning given in the Land Drainage Act 1991(c); and

“works plan” means the document of that description referenced in Schedule 13 (documents to be certified) and certified by the Secretary of State.

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

(3) In this Order, references to the purposes of the authorised development includes the construction, maintenance, operation, use and decommissioning of the authorised development.

(a) 2004 c. 18.

(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) 1991 c. 59, section 72(1).

(4) All distances, directions, capacities and lengths referred to in this Order are approximate and distances between points on a work comprised in the authorised development are to be taken to be measured along that work.

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

(6) References in this Order to points identified by letters or numbers are to be construed as references to points so lettered or numbered on the plans to which the reference applies.

(7) References in this Order to numbered works are references to the works numbered in Schedule 1 (authorised development).

(8) References to “Schedule” are, unless otherwise stated, references to Schedules to this Order.

(9) The expression “includes” is to be construed without limitation.

(10) References to any statutory body in this Order or any registered company listed in article 8 (consent to transfer benefit of Order) includes that body’s or that company’s successor bodies from time to time.

(11) References in this Order to “part of the authorised development” are to be construed as references to stages, phases or elements of the authorised development.

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

(13) References in this Order to the creation and acquisition of rights over land includes references to rights to oblige a party having an interest in land to grant those rights referenced in the Order, at the direction of the undertaker, to any statutory undertaker for the purposes of their undertaking.

PART 2

PRINCIPAL POWERS

Development consent etc. granted by this Order

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

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

Operation of generating station

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

(2) Other than as set out in this Order, 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.

Maintenance of authorised development

5.—(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.

Maintenance of drainage works

6.—(1) Nothing in this Order, or the construction, maintenance, operation or decommissioning of the authorised development under it, affects any responsibility for the maintenance of any works connected with the drainage of land, whether that responsibility is imposed or allocated by or under any enactment, or otherwise, unless otherwise agreed in writing between the undertaker and the person responsible.

(2) In this article “drainage” has the same meaning as in section 72 (interpretation) of the Land Drainage Act 1991(a).

Benefit of this Order

7. Subject to article 8 (consent to transfer benefit of the Order), the provisions of this Order have effect solely for the benefit of the undertaker.

Consent to transfer benefit of Order

8.—(1) Subject to paragraph (3) the undertaker may with the written consent of the Secretary of State—

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

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

(3) The consent of the Secretary of State is required for the exercise of the powers under paragraph (1) except where—

- (a) the transferee or lessee holds a licence under section 6 (licences authorising supply, etc.) of the 1989 Act(b); or
- (b) the transfer or grant is made to Electricity North West Limited (company registration number 02366949 whose registered office is at Borrton Street, Stockport, England, SK1 2JD for the purposes of undertaking Works Nos. 2 and 2A; or
- (c) the time limits for all 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 claims that have been made have all been compromised or withdrawn;
 - (iii) compensation has been paid in final settlement of any claims made;
 - (iv) payment of compensation into court in lieu of settlement of all such claims has taken place; or
 - (v) it has been determined by a tribunal or court of competent jurisdiction in respect of all claims that no compensation is payable.

(4) Where the consent of the Secretary of State is not required under paragraph (3), the undertaker must notify the Secretary of State in writing before transferring or granting all or any part of the benefit of the provisions of this Order and such related statutory rights referred to in paragraph (1).

(a) 1991 c. 59. The definition of “drainage” was substituted by paragraphs 191 and 194 of Schedule 22 to the Environment Act 1995 (c. 25).

(b) 1989 c. 29.

- (5) The notification referred to in paragraph (4) must—
- (a) state—
 - (i) the name and contact details of the person to whom the benefit of the powers will be transferred or granted;
 - (ii) subject to paragraph (6), the date on which the transfer will take effect;
 - (iii) the powers to be transferred or granted;
 - (iv) in accordance with paragraph (8), the restrictions, liabilities and obligations that will apply to the person exercising the powers transferred or granted; and
 - (b) where relevant, be accompanied by a plan showing the works or areas to which the transfer or grant relates.
- (6) The date specified under paragraph (5)(a)(ii) must not be earlier than the expiry of ten business days from the date of the receipt of the notice.
- (7) The notice given under paragraph (4) 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 notice.
- (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

9.—(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 32 (variation of awards) of the Land Drainage Act 1991(**a**); and
- (b) the provisions of any byelaws made under section 66 (powers to make byelaws) of the Land Drainage Act 1991; and
- (c) the provisions of the Neighbourhood Planning Act 2017(**b**), insofar as they relate to temporary possession of land under article 33 (temporary use of land for carrying out the authorised development) and article 34 (temporary use of land for maintaining the authorised development) of this Order.

(2) The local enactments and local byelaws listed in Schedule 3 (legislation to be disapplied), and any byelaws or other provisions made under any of those enactments or byelaws, are hereby excluded and do not apply insofar as inconsistent with a provision, of or a power conferred by, this Order.

(3) For the purpose of paragraph (2) a provision is inconsistent with the exercise of a power conferred by this Order if and insofar as (in particular)—

- (a) it would make it an offence to take action, or not to take action, in pursuance of a power conferred by this Order;

(a) 1991 c. 59.
 (b) 2017 c. 20.

- (b) action taken in pursuance of a power conferred by this Order would cause the provision to apply so as to enable a person to require the taking of remedial or other action or so as to enable remedial or other action to be taken; or
- (c) action taken in pursuance of a power or duty under the provisions would or might interfere with the exercise of any work authorised by this Order.

(4) For the purposes of section 9 (requirement of licence for felling) of the Forestry Act 1967^(a) any felling comprised in the carrying out of any work or operation required for the purposes of, or in connection with, the construction of the authorised development is deemed to be immediately required for the purpose of carrying out development authorised by planning permission granted under the 1990 Act.

(5) Despite the provisions of section 208 (liability) of the 2008 Act, for the purposes of regulation 6 of the Community Infrastructure Levy Regulations 2010^(b) any building comprised in the authorised development is deemed to be—

- (a) a building into which people do not normally go; or
- (b) a building into which people go only intermittently for the purpose of inspecting or maintaining fixed plant or machinery.

Defence to proceedings in respect of statutory nuisance

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

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

(2) For the purposes of paragraph (1), compliance with the controls and measures described in the construction environmental management plan, the operational management plan or decommissioning management plan approved under Schedule 2 (requirements) to this Order will be sufficient, but not necessary, to show that an alleged nuisance could not reasonably be avoided.

(3) Section 61(9) (consent for work on construction sites to include statement that it does not of itself constitute a defence to proceedings under section 82 of the Environmental Protection Act 1990) of the Control of Pollution Act 1974 does not apply where the consent relates to the use of premises by the undertaker for purposes of, or, in connection with, the construction, maintenance or decommissioning of the authorised development.

(a) 1967 c. 10.

(b) S.I. 2010/948, amended by S.I. 2011/987; there are other amending instruments but none are relevant to this Order.

(c) 1990 c. 43.

(d) 1974 c. 40. Section 61(9) and 65(8) were amended by section 162 of, and paragraph 15 of Schedule 3 to, the Environmental Protection Act 1990 (c. 25). There are other amendments to the 1974 act which are not relevant to the Order.

PART 3

STREETS

Street works

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

- (a) break up or open the street, or any sewer, drain or tunnel under it;
- (b) drill, tunnel or bore under the street;
- (c) place and keep apparatus 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 the street or any culvert under the street; and
- (f) execute any works required for or incidental to any works referred to in sub-paragraphs (a) to (e).

(2) The authority given by paragraph (1) is a statutory right 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) Subject to article 12 (application of the 1991 Act), the provisions of sections 54 (notice of certain works) to 106 (index of defined expressions) of the 1991 Act apply to any street works carried out under paragraph (1).

Application of the 1991 Act

12.—(1) Works executed under this Order in relation to a highway, which consists of or includes a carriageway are to be treated for the purposes of Part 3 (street works in England and Wales) of the 1991 Act as major highway works if—

- (a) they are of a description mentioned in any of paragraphs (a), (c) to (e), (g) and (h) of section 86(3) of that Act (which defines what highway authority works are major highway works); or
- (b) they are works which, had they been executed by the highway authority, might have been carried out in exercise of the powers conferred by section 64 (dual carriageways and roundabouts) of the 1980 Act or section 184 (vehicle crossings over footways and verges) of that Act.

(2) In Part 3 (street works in England and Wales) of the 1991 Act, in relation to works which are major highway works by virtue of paragraph (1), references to the highway authority concerned are to be construed as references to the undertaker.

(3) The following provisions of the 1991 Act (whether modified or not by the permit scheme) do not apply in relation to any works executed under the powers conferred by this Order —

- (a) section 56 (power to give directions as to timing)(a);
- (b) section 56A (power to give directions as to placing of apparatus)(b);
- (c) section 58 (restriction on works following substantial road works)(c);
- (d) section 58A (restriction on works following substantial street works)(d);
- (e) section 73A (power to require undertaker to re-surface street)(e);

(a) Section 56 was amended by section 43 of, and Schedule 1 to, the Traffic Management Act 2004 (c. 18).
(b) Section 56A was inserted by section 44 of the Traffic Management Act 2004.
(c) Section 58 was amended by section 51 of, and Schedule 1 to, the Traffic Management Act 2004 (c. 18).
(d) Section 58A was amended by section 52 of the Traffic Management Act 2004.
(e) Section 73A was inserted by section 55 of the Traffic Management Act 2004.

- (f) section 73B (power to specify timing etc. of re-surfacing)(a);
- (g) section 73C (materials, workmanship and standard of re-surfacing)(b);
- (h) section 78A (contributions to costs of re-surfacing by undertaker)(c); and
- (i) Schedule 3A (restriction on works following substantial street works)(d).

(4) The provisions of the 1991 Act(e) mentioned in paragraph (5) (which together with other provisions of that Act, apply in relation to the execution of street works) and any regulations made, or code of practice issued or approved under, those provisions apply (with the necessary modifications) in relation to any closure, alteration or diversion of a street of a temporary nature by the undertaker under the powers conferred by article 15 (temporary closure of streets), whether or not the closure, alteration or diversion constitutes street works within the meaning of that Act.

(5) The provisions of the 1991 Act(f) referred to in paragraph (4) are—

- (a) section 54 (advance notice of certain works) subject to paragraph (6);
- (b) section 55 (notice of starting date of works) subject to paragraph (6));
- (c) section 57 (notice of emergency works)(g);
- (d) section 59 (general duty of street authority to co-ordinate works)(h);
- (e) section 60 (general duty of undertakers to co-operate);
- (f) section 68 (facilities to be afforded to street authority);
- (g) section 69 (works likely to affect other apparatus in the street);
- (h) section 75 (inspection fees);
- (i) section 76 (liability for cost of temporary traffic regulation);
- (j) section 77 (liability for cost of use of alternative route),

and all such other provisions as apply for the purposes of the provisions mentioned above.

(6) Sections 54 and 55 of the 1991 Act as applied by paragraph (4) have effect as if references in section 57 of that Act to emergency works were a reference to a closure, alteration or diversion (as the case may be) required in a case of emergency.

(7) Nothing in article 14 (construction and maintenance of new, altered or diverted streets)—

- (a) affects the operation of section 87 (prospectively maintainable highways) of the 1991 Act;
- (b) means that the undertaker is not by reason of any duty under that article to maintain a street or to be taken to be the street authority in relation to that street for the purposes of Part 3 of that Act; or
- (c) has effect in relation to maintenance works which are street works within the meaning of the 1991 Act, as respects which the provisions of Part 3 (street works in England and Wales) of the 1991 Act apply.

(8) Subject to paragraph (3), the permit scheme applies to the construction, maintenance and decommissioning of the authorised development and will be used by the undertaker in connection with the exercise of any powers conferred by this Part.

(9) For the purposes of this Order—

- (a) a permit may not be refused or granted subject to conditions which relate to the imposition of moratoria; and

(a) Section 73B was inserted by section 55 of the Traffic Management Act 2004.
 (b) Section 73C was inserted by section 55 of the Traffic Management Act 2004.
 (c) Section 78A was inserted by section 57 of the Traffic Management Act 2004.
 (d) Schedule 3A was inserted by section 52(2) of, Schedule 4 to, the Traffic Management Act 2004.
 (e) Sections 55, 57, 60, 68 and 69 were amended by the Traffic Management Act 2004.
 (f) Sections 55, 57, 60, 68 and 69 were amended by the Traffic Management Act 2004.
 (g) As amended by section 49(1) of the Traffic Management Act 2004.
 (h) As amended by section 42 of the Traffic Management Act 2004.

- (b) a permit may not be granted under the permit scheme subject to conditions where compliance with those conditions would constitute a breach of this Order or where the undertaker would be unable to comply with those conditions in accordance with the powers conferred by this Order.

(10) References to moratoria in paragraph (9) mean restrictions imposed under section 58 (restrictions on works following substantial road works) or section 58A (restrictions on works following substantial street works) of the 1991 Act.

(11) Without restricting the undertaker's recourse to any appeal mechanism which may be available under a permit scheme the undertaker may appeal any decision to refuse to grant a permit or to grant a permit subject to conditions in accordance with the permit schemes in accordance with the mechanism set out in Part 2 of Schedule 2 (requirements) of this Order.

Power to alter layout, etc., of streets

13.—(1) The undertaker may for the purposes of the authorised development, or in connection with the authorised development, alter the layout of or carry out any works in the street specified in column (1) of the table in Schedule 5 (alteration of streets) in the manner specified in relation to that street in column (2).

(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 maintaining or decommissioning the authorised development, alter permanently or temporarily the layout of any street within the Order limits and, without limitation on the scope of this paragraph, the undertaker may—

- (a) alter the level or increase the width of the carriageway by reducing the width of any kerb or verge within the street;
- (b) alter the level or increase the width of any such kerb or verge;
- (c) reduce the width of the carriageway of the street;
- (d) make and maintain passing places; and
- (e) alter, remove, replace, install 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 article to the reasonable satisfaction of the street authority.

(4) The powers conferred by paragraph (2) must not be exercised without the written 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.

(6) If a street authority which receives an application for consent under paragraph (4) fails to notify the undertaker of its decision before the end of the period of 28 days beginning with the date on which the application was made, it is deemed to have granted consent.

(7) An application for consent under paragraph (4) is deemed advance notice under section 54 of the 1991 Act where advance notice is required.

Construction and maintenance of altered streets

14.—(1) The permanent alterations to each of the streets specified in column (1) of the table in Schedule 5 (alteration of streets) to this Order must be completed to the reasonable satisfaction of the street authority and, unless otherwise agreed by the street authority, the alterations must be maintained by and at the expense of the undertaker for a period of 12 months from their completion and from the expiry of that period by and at the expense of the street authority.

(2) Those restoration works carried out in accordance with article 13(3) (power to alter layout, etc., of streets) must be completed to the reasonable satisfaction of the street authority and must be maintained by the undertaker for a period of 12 months from their completion and from the expiry of that period by and at the expense of the street authority.

(3) In any action against the undertaker in respect of loss or damage resulting from any failure by it to maintain a street under this article, it is a defence (without prejudice to any other defence or the application of the law relating to contributory negligence) to prove that the undertaker had taken such care as in all the circumstances was reasonably required to secure that the part of the street to which the action relates was not dangerous to traffic.

(4) For the purposes of a defence under paragraph (3), a court must in particular have regard to the following matters—

- (a) the character of the street including the traffic which was reasonably to be expected to use it;
- (b) the standard of maintenance appropriate for a street of that character and used by such traffic;
- (c) the state of repair in which a reasonable person would have expected to find the street;
- (d) whether the undertaker knew, or could reasonably have been expected to know, that the condition of the part of the street to which the action relates was likely to cause danger to users of the street; and
- (e) where the undertaker could not reasonably have been expected to repair that part of the street before the cause of action arose, what warning notices of its condition had been displayed,

but for the purposes of such a defence it is not relevant that the undertaker had arranged for a competent person to carry out or supervise the maintenance of that part of the street to which the action relates unless it is also proved that the undertaker had given that person proper instructions with regard to the maintenance of the street and that those instructions had been carried out.

(5) Paragraphs (2) to (4) do not apply where the undertaker is the street authority for a street in which the works are being carried out.

Temporary closure or restriction of streets

15.—(1) The undertaker may temporarily close, alter, divert or restrict the use of the streets set out in column (1) of Schedule 6 (streets to be temporarily closed or restricted) to the extent specified, by reference to the letters and numbers shown on the traffic regulation measure plan, in column (2) of that Schedule.

(2) Without prejudice to the specific powers in paragraph (1) and subject to paragraph (5) the undertaker, during and for the purposes of carrying out the authorised development, may temporarily close, alter, divert, prohibit the use of, authorise the use of, or restrict the use of any street and may for any reasonable time—

- (a) divert the traffic or a class of traffic from the street; and
- (b) subject to paragraph (4), prevent all persons from passing along the street.

(3) The undertaker may use any street temporarily closed, altered, diverted, prohibited or restricted under the powers conferred by this article within the Order limits as a temporary working site.

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

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

- (a) any street referred to in paragraph (1) without first consulting the street authority; and
- (b) any other street without the consent of the street authority, such consent not to be unreasonably withheld or delayed.

(6) Any person who suffers loss by the suspension of any private right of way under this article is entitled to compensation to be determined, in case of dispute, under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

(7) The undertaker, during and for the purposes of carrying out the authorised development, may temporarily close, prohibit the use of, authorise the use of, restrict the use of, alter or divert any public right of way within the Order limits which is added to the definitive map and statement (within the meaning of the Wildlife and Countryside Act 1981(a)) on or after 22 December 2025.

(8) If a street authority which receives a valid application for consent under paragraph (5)(b) fails to notify the undertaker of its decision before the end of the period of 28 days beginning with the date on which the application was made, it is deemed to have granted consent.

Access to works

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

- (a) improve existing means of access in the locations specified in Schedule 7 (access to works); and
- (b) with the consent of the street authority form and lay out such other means of access, or improve existing means of access, at such locations within the Order limits.

(2) If the street authority which receives an application for consent under paragraph (1)(b) fails to notify the undertaker of its decision before the end of the period of 28 days beginning with the date on which the application was made, it is deemed to have granted consent.

Use of private roads

17.—(1) The undertaker may use any private road within the Order limits for the passage of persons or vehicles (with or without materials, plant and machinery) for the purposes of, or in connection with, the construction, maintenance or decommissioning of the authorised development.

(2) The undertaker must compensate the person liable for the repair of a road to which paragraph (1) applies for any loss or damage which that person may suffer by reason of the exercise of the power conferred by paragraph (1).

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

(4) For the purposes of this article, the only private roads with the Order limits are those shown as 'tracks' on the location plan.

Traffic regulation measures

18.—(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, maintenance or decommissioning of the authorised development temporarily make provision in respect of the lengths of road specified in column (2) of the table in Schedule 8 (traffic regulation measures) imposing the temporary measures mentioned in column (3).

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

- (a) as to the speed at which vehicles may proceed along any road;
- (b) permitting, prohibiting or restricting the closing, 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) 1981 c. 69.

- (d) permitting or 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 or made, or having effect as if made, under the 1984 Act,

either at all times or at times, on days or during such periods as may be specified by the undertaker.

(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 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, which consent must not be unreasonably withheld.

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

- (a) except in the case of an emergency given not less than 14 days' notice in writing of its intention to do so to the chief officer of police and to the traffic authority in whose area the road is situated; and
- (b) not less than 7 days before the provision is to take effect published the undertaker's intention to make the provision in one or more newspapers circulating in the area in which any road to which the provision relates is situated.

(6) Any provision made under the powers conferred by paragraphs (1) or (2) of this article may be suspended, varied or revoked by the undertaker from time to time by subsequent exercise of the powers conferred in paragraphs (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 (road traffic contraventions subject to civil enforcement) to the Traffic Management Act 2004(b).

(8) If the traffic authority fails to notify the undertaker of its decision within 28 days of receiving an application for consent under paragraph (1) the traffic authority is deemed to have granted consent.

PART 4

SUPPLEMENTAL POWERS

Discharge of water

19.—(1) Subject to sub-paragraphs (3), (4) and (8) the undertaker may use any watercourse, public sewer or drain for the drainage of water in connection with the construction, maintenance or decommissioning of the authorised development and for that purpose may lay down, take up and alter pipes and may, on any land within the Order limits, make openings into, and connections with, the watercourse, public sewer or drain.

(a) S.I. 2011/935.

(b) 2004 c. 18. There are amendments to this Act not relevant to this Order.

(2) Any dispute arising from the making of connections to or the use of a public sewer or drain by the undertaker under paragraph (1) is to be determined as if it were a dispute under section 106 (right to communicate with public sewers) of the Water Industry Act 1991(a).

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

(4) The undertaker must not make any opening into any public sewer or drain except—

- (a) in accordance with plans approved by the person to whom the sewer or drain belongs, but such approval must not be unreasonably withheld; and
- (b) where that person has been given the opportunity to supervise the making of the opening.

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

(6) This article does not authorise the entry into controlled waters of any matters whose entry or discharge into controlled waters requires a licence in accordance with the Environmental Permitting (England and Wales) Regulations 2016(b).

(7) This article does not authorise the entry into controlled waters of any matter whose entry or discharge into controlled waters requires a licence in accordance with the Environmental Permitting (England and Wales) Regulations 2016.

(8) In this article—

- (a) “public sewer or drain” means a sewer or drain which belongs to Homes England, the Environment Agency, a harbour authority within the meaning of section 57 (interpretation) of the Harbours Act 1964(c), an internal drainage board, a joint planning board, a local authority, a National Park Authority, a sewerage undertaker or an urban development corporation; and
- (b) other expressions, excluding watercourse, used both in this article and in the Water Resources Act 1991(d) have the same meaning as in that Act.

(9) If a person who receives an application for consent under paragraph (3) or approval under paragraph (4)(a) fails to notify the undertaker of a decision within 28 days of receiving an application that person will be deemed to have granted consent or given approval, as the case may be.

Protective work to buildings

20.—(1) Subject to the following provisions of this article, the undertaker may at its own expense carry out such protective works to any building or structure located within the Order limits or which may be affected by the authorised development as the undertaker considers necessary or expedient.

(2) Protective works may be carried out—

- (a) at any time before or during the construction or decommissioning 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.

(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.

(c) 1964 c. 40.

(d) 1991 c. 57.

(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 and place on, leave on and remove from the land and building any apparatus and equipment for use in connection with the survey.

(4) For the purpose of carrying out protective works under this article to a building, the undertaker may (subject to paragraphs (5) and (6)—

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

(5) Before exercising—

- (a) a power under paragraph (1) to carry out protective works to a building;
- (b) a power under paragraph (3) to enter a building and land within its curtilage;
- (c) a power under paragraph (4)(a) to enter a building and land within its curtilage; or
- (d) a power 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 the power and, in a case falling within sub-paragraph (a) or (c), specifying the protective works proposed to be carried out.

(6) Where a notice is served under paragraph (5)(a), 5(b), (5)(c) or (5)(d) the owner or occupier of the building, structure 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 44 (arbitration).

(7) The undertaker must compensate the owners and occupiers of any building, structure 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 to a building or structure under this article; and
- (b) within the period of five years beginning with the date of final commissioning for that part of the authorised development in the vicinity of the building or structure it appears that the protective works are inadequate to protect the building or structure against damage caused by the construction, operation, maintenance or decommissioning of that part of the authorised development,

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

(9) Subject to article 48 (no double recovery) nothing in this article relieves the undertaker from any liability to pay compensation under section 152 (compensation in case where no right to claim in nuisance) of the 2008 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, use or decommissioning 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, maintenance, use or decommissioning of the authorised development.

(12) Section 13 (refusal to give possession to acquiring authority) of the 1965 Act applies to the entry onto, or possession of land under this article, to the same extent as it applies to the

compulsory acquisition of land under this order by virtue of section 125 (application of compulsory acquisition provisions) of the 2008 Act.

Authority to survey and investigate the land

21.—(1) The undertaker may for the purposes of this Order enter on any land shown within the Order limits or which may be affected by the authorised development and—

- (a) survey or investigate the land (including any mine interest, watercourses, groundwater, static water bodies or vegetation on the land);
- (b) without limitations to the scope of sub-paragraph (a), make any excavation, trial holes, boreholes and other investigations in such positions on the land as the undertaker thinks fit to investigate the extent or the nature of the surface layer, subsoil, ground water underground structures, foundations, and plant or apparatus and remove soil and water samples and discharge water from sampling operations on to the land;
- (c) without limitation to the scope of sub-paragraph (a), carry out ecological or archaeological investigations on such land including making any excavations, trenches or trial holes on the land for such purposes; 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, boreholes and trenches.

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

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

- (a) must, if so required before or after entering the land, produce written evidence of their authority to do so; and
- (b) may take onto the land such vehicles and equipment as are necessary to carry out the survey or investigation or to make the trial holes.

(4) No trial holes may be made under this article—

- (a) in land located within the highway boundary without the consent of the highway authority; or
- (b) in a private street without the consent of the street authority,

but such consent must not be unreasonably withheld or delayed.

(5) The undertaker must compensate the owners and occupiers of the land for any loss or damage arising by reason of the exercise of the authority conferred by this article, such compensation to be determined, in case of dispute, under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

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

- (a) under paragraph (4)(a) in the case of a highway authority; or
- (b) under paragraph (4)(b) in the case of a street authority,

that authority will be deemed to have granted consent.

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

PART 5

POWERS OF ACQUISITION

Compulsory acquisition of land

22.—(1) 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.

(2) This article is subject to—

- (a) article 24 (time limit for exercise of authority to acquire land compulsorily);
- (b) article 25 (compulsory acquisition of rights and imposition of restrictive covenants);
- (c) article 29 (acquisition of subsoil only);
- (d) article 32 (rights under or over streets); and
- (e) article 33 (temporary use of land for carrying out the authorised development).

Compulsory acquisition of land – incorporation of the mineral code

23. Parts 2 and 3 of Schedule 2 (minerals) to the Acquisition of Land Act 1981^(a) is incorporated in this Order subject to the modification that—

- (a) paragraph 8(3) is not incorporated;
- (b) for the “acquiring authority” substitute “the undertaker”;
- (c) for “undertaking” substitute “authorised development”; and
- (d) for “compulsory purchase order” substitute “this Order”.

Time limit for exercise of authority to acquire land compulsorily

24.—(1) After the end of the period of 5 years beginning on the day on which this Order comes into force (and subject to article 30 (modification of Part 1 of the Compulsory Purchase Act 1965) and article 28 (application of the 1981 Act)—

- (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 28 (application of the 1981 Act).

(2) The authority conferred by article 33 (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.

Compulsory acquisition of rights and imposition of restrictive covenants

25.—(1) Subject to paragraphs (2) to (4), the undertaker may acquire such rights over the Order land, or impose restrictive covenants affecting the Order land, including such rights and restrictive covenants for the benefit of a statutory undertaker or any other person, as may be required for any purpose for which that land may be acquired under article 22 (compulsory acquisition of land), by creating them as well as by acquiring rights already in existence.

(2) In the case of the Order land specified in column (1) of Schedule 9 (land in which only new rights etc. may be acquired) the undertaker’s powers of compulsory acquisition are limited to the acquisition of such rights in the land and the imposition of restrictive covenants, as may be required for or in connection with the authorised development for the purposes specified in relation to that land in column (2) of that Schedule.

(a) 1981 c. 67.

(3) The power under paragraph (1) to acquire the rights and to impose the restrictive covenants described in Schedule 9 (land in which only new rights etc. may be acquired) for the benefit of statutory undertakers or for the benefit of any other person—

- (a) does not preclude the acquisition of such other rights and the imposition of such other restrictive covenants in respect of the same land in accordance with Schedule 9 as may be required for the benefit of any other statutory undertaker or any other person; and
- (b) must not be exercised by the undertaker in a way that precludes the acquisition of such other rights and the imposition of such other restrictive covenants in respect of the same land in accordance with Schedule 9 as are required for the benefit of any other statutory undertaker or any other person.

(4) Subject to Schedule 2A (counter-notice requiring purchase of land) of the 1965 Act, as modified by Schedule 10 (modification of compensation and compulsory purchase enactments for the creation of new rights and imposition of new restrictive covenants), where the undertaker acquires a right over land or the benefit of a restrictive covenant affecting land under paragraph (1) or (2), the undertaker is not required to acquire a greater interest in that land.

(5) Schedule 10 (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 a restrictive covenant.

Private rights over land

26.—(1) Subject to the provisions of this article, all private rights or restrictive covenants over land under article 22 (compulsory acquisition of land) are extinguished—

- (a) as from the date of acquisition of the land by the undertaker, whether compulsorily or by agreement; or
- (b) on the date of entry on the land by the undertaker under section 11(1) (powers of entry) of the 1965 Act,

whichever is the earliest.

(2) Subject to the provisions of this article, all private rights over land subject to the compulsory acquisition of rights or the imposition of restrictive covenants under article 25 (compulsory acquisition of rights and imposition of restrictive covenants) are extinguished in so far as their continuance would be inconsistent with the exercise of the right or burden of the restrictive covenant—

- (a) as from the date of the acquisition of the right or the benefit of the restrictive covenant by the undertaker whether compulsorily or by agreement; or
- (b) on the date of entry on the land by the undertaker under section 11(1) (power of entry) of the 1965 Act,

whichever is the earliest.

(3) Subject to the provisions of this article, all private rights and restrictions over land owned by the undertaker that are within the Order land are extinguished at the start of any activity authorised by this Order which interferes with or breaches those rights.

(4) Subject to the provisions of this article, all private rights and restrictions 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.

(5) Any person who suffers loss by the extinguishment or suspension of any private right 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 (determination of questions of disputed compensation) of the 1961 Act.

(6) 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 35 (statutory undertakers) applies.

(7) Paragraphs (1) to (4) 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 the rights over land 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.

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

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

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

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

(9) Reference in this article to private rights over land include any right of way, trust, incident, 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 use of land arising by virtue of a contract, agreement or undertaking having that effect.

Power to override easements and other rights

27.—(1) Any authorised activity which takes place on land within the Order land (whether the activity is undertaken by the undertaker or by any person deriving title from the undertaker or by any contractors, servants or agents of the undertaker) is authorised by this Order if it is done in accordance with the terms of this Order, notwithstanding that it involves—

(a) an interference with an interest or right to which this article applies; or

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

(2) 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.

(3) Subject to article 48 (no double recovery), where an interest, right or restriction to which this article applies is interfered with or breached under paragraph (1), unless otherwise agreed, 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 way 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.

(4) 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.

(5) 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) of this article.

(6) In this article “authorised activity” means—

- (a) the construction, operation, maintenance or decommissioning of any part of the authorised development;
- (b) the exercise of any power authorised by this Order; or
- (c) the use of any land within the Order limits (including the temporary use of land).

Application of the 1981 Act

28.—(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 Act), in subsection (1), omit the words “in themselves”.

(4) In section 1 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.”.

(5) In section 4 (execution of declaration), for subsection (1) substitute—

“(1) The acquiring authority may execute in respect of any of the land which they are authorised to acquire by the compulsory purchase order a declaration in the prescribed form vesting the land in themselves, or in the case of land or a right that they are authorised to acquire for the benefit of a third party in the third party in question, from the end of such period as may be specified in the declaration (not being less than 3 months from the date on which the service of notices required by section 6 is completed).”.

(6) In section 5 (earliest date for execution of declaration), in subsection (2), omit the words from “and this subsection” to the end.

(7) Section 5A (time limit for general vesting declaration) is omitted^(a).

(8) In section 5B (extension of time limit during challenge) for “section 23 (application to High Court in respect of compulsory purchase order) of the Acquisition of Land Act 1981, the three year period mentioned in section 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 24 (time limit for exercise of authority to acquire land compulsorily) of the Dean Moor Solar Farm Order 202[]”.

(9) 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”.

(10) 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)”.

(11) In section 8 (vesting, and right to enter and take possession), after subsection (3), insert—

“(4) In this section references to the acquiring authority include any third party referred to in section 4(1).”.

(12) In section 10 (acquiring authority’s liability arising on vesting of the land), in subsection (1), after “vested in an acquiring authority” insert “or a third party”.

(13) In section 11 (recovery of compensation overpaid), for subsection (1) substitute—

“(1) This section applies where after the execution of a general vesting declaration a person (“the claimant”) claims compensation in respect of the acquisition of an interest in

^(a) Section 5A to the 1981 Act was inserted by section 182(2) of the Housing and Planning Act 2016 (c. 22).

land by virtue of the declaration, and the acquiring authority pay compensation in respect of that interest.”.

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

“(2) But see article 29(3) (acquisition of subsoil only) of the Dean Moor Solar Farm Order 202[], which excludes the acquisition of subsoil only from this Schedule.”.

(15) 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 30 (modification of Part 1 of the Compulsory Purchase Act 1965) to the compulsory acquisition of land under this Order.

Acquisition of subsoil only

29.—(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 22 (compulsory acquisition of land) or article 25 (compulsory acquisition of rights and imposition of restrictive covenants) as may be required for any purpose for which that land may be acquired under that provision instead of acquiring the whole of the land.

(2) Where the undertaker acquires any part of, or rights in, the subsoil of land under paragraph (1), the undertaker is not required to acquire an interest in any other part of the land.

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

- (a) Schedule 2A (counter-notice requiring purchase of land not in notice to treat) to the 1965 Act as modified by article 31 (modification of Part 1 of the Compulsory Purchase Act 1965);
- (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.

Modification of Part 1 of the Compulsory Purchase Act 1965

30.—(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

- (a) “section 23 of the Acquisition of Land Act 1981 (application to High Court in respect of compulsory purchase order) substitute “section 118 of the 2008 Act (legal challenges relating to applications for orders granting development consent)”;
- (b) for the applicable period for the purpose of section 4” substitute “the five year period mentioned in article 24 (time limit for exercise of authority to acquire land compulsorily) of the Dean Moor Solar Farm Order 202[]”.

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

- (a) in subsection (1)(a), after “land” insert “under that provision”; and
- (b) in subsection (2), after “land” insert “under that provision”.

(4) In section 22(2) (expiry of time limit for exercise of compulsory purchase power not to affect acquisition of interests omitted from purchase), for “section 4 of this Act” substitute “article 25 (time limit for exercise of authority to acquire land compulsorily) of the Dean Moor Solar Farm Order 202[]”.

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

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

“(2) But see article 29(3) (acquisition of subsoil only) of the Dean Moor Solar Farm Order 202[], which excludes the acquisition of subsoil only from this Schedule”; and
- (b) after paragraph 29 insert—

“PART 4 INTERPRETATION

30. In this Schedule, references to entering on and taking possession of land do not include doing so under article 17 (use of private roads, article 20 (protective works to buildings), article 21 (authority to survey and investigate the land), article 34 (temporary use of land for carrying out the authorised development) or article 34 (temporary use of land for maintaining the authorised development) of the Dean Moor Solar Farm Order 202[].”.

Modification of the 2017 Regulations

31.—(1) Schedule 1 to the 2017 Regulations is modified as follows and without limitation to the other provisions of this article, Form 1 and Form 2 in those regulations will include such other further consequential modifications as are necessary to enable the compulsory acquisition of rights for identified third parties.

(2) In paragraph (3) of Form 1, after “from the date on which the service of notices required by section 6 of the Act is completed”, insert—

“(1A) The [insert land or rights or both] described in Part [] of the Schedule hereto as being for the benefit of third parties and more particularly delineated on the plan annexed hereto vests in the third parties in question as from the end of the period of [insert period of 3 months or longer] from the date on which the service of notices required by section 6 of the Act is completed.”.

(3) References in Form 2 to “in themselves” is substituted with “in themselves and any identified third parties”.

(4) In paragraph (b) of the notes on use of Form 2—

- (a) after “Insert the name of the authority” insert “and where the context requires insert a reference to third parties”; and
- (b) omit “Thereafter rely on that definition wherever “(b)” appears in the text.”.

Rights under or over streets

32.—(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 airspace for those purposes or any other purpose ancillary to the authorised development.

(2) Subject to paragraph (3), the undertaker may exercise any power conferred by paragraph (1) in relation to a street without being required to acquire any part of the street or any easement or right in the street.

(3) Paragraph (2) does not apply in relation to—

- (a) any subway or underground building; or
- (b) any cellar, vault, arch or other construction in, on or under a street which forms part of a building fronting onto the street.

(4) Subject to paragraph (5), any person who is an owner or occupier of land appropriated under paragraph (1) without the undertaker acquiring any part of that person’s interest in the land, and

who suffers loss as a result, is entitled to compensation to be determined, in case of dispute, under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

(5) Compensation is not payable under paragraph (4) to any person who is an undertaker to whom section 85 (sharing cost of necessary measures) of the 1991 Act applies in respect of measures of which the allowable costs are to be borne in accordance with that section.

Temporary use of land for carrying out the authorised development

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

- (a) enter on and take temporary possession of—
 - (i) the land specified in column (1) of the table in Schedule 11 (land of which temporary possession may be taken) for the purpose specified in relation to that land in column (2) of the table in that Schedule;
 - (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 (other than a notice of entry or a declaration in connection with the acquisition of rights and/or the imposition of restrictive covenants only);
- (b) remove any buildings, agricultural plant, apparatus, drainage, fences, landscaping, debris and vegetation from that land;
- (c) construct temporary works (including the provision of means of access), haul roads, security fencing, bridges, structures and buildings on that land;
- (d) use the land for the purposes of a temporary working site with access to the working site in connection with the authorised development;
- (e) construct any works, on that land as are mentioned in Schedule 1 (authorised development); and
- (f) carry out mitigation works required in accordance with the requirements in Schedule 2 (requirements).

(2) Not less than 14 days before entering on and taking temporary possession of land under this article the undertaker must serve notice of the intended entry on the owners and occupiers of the land.

(3) The undertaker is not required to serve notice under paragraph (2) where the undertaker has identified a potential risk to the safety of—

- (a) the authorised development or any of its parts;
- (b) the public; or
- (c) the surrounding environment,

and in such circumstances, the undertaker may enter the land under paragraph (1) subject to giving such period of notice as is reasonably practical in the circumstances.

(4) The undertaker may not, without the agreement of the owners of the land, remain in possession of any land under this article—

- (a) in the case of land specified in paragraph (1)(a)(i), 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; or
- (b) in the case of land referred to in paragraph (1)(a)(ii), 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 notice of entry under section 11 of the 1965 Act or made a declaration under section 4 of the 1981 Act or has otherwise acquired the land subject to temporary possession.

(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 unless otherwise agreed but the undertaker is not required to—

- (a) replace any building, structure, debris, drain or electric line removed under this article;
- (b) remove any drainage works installed by the undertaker under this article;
- (c) remove any new road surface or other improvements carried out under this article to any street;
- (d) remove any ground strengthening works which have been placed on the land to facilitate construction of the authorised development;
- (e) remove any fencing or boundary treatments installed by the undertaker under this article to replace or enhance existing fencing or boundary treatments; or
- (f) restore the land on which any works have been carried out under paragraph (1)(f) insofar as the works relate to mitigation, compensation or enhancement works identified in the environmental statement or required under the requirements in Schedule 2 (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) Any dispute as to the satisfactory removal of temporary works and restoration of land under paragraph (5) does not prevent the undertaker giving up possession of the land.

(9) Subject to article 48 (no double recovery) 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).

(10) The undertaker may 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) Where the undertaker takes possession of land under this article, the undertaker is not required to acquire the land or any interest in it.

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

(13) Nothing in this article prevents the taking of temporary possession more than once in relation to any land under paragraph (1).

Temporary use of land for maintaining the authorised development

34.—(1) Subject to paragraph (2), at any time during the maintenance period (as defined in paragraph (12)) 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 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 (or such period less than 28 days as may be requested by the undertaker and which is then approved by the owner of the land) before entering on and taking temporary possession of land under this article the undertaker must serve notice of the intended entry on the owners and occupiers of the land.

(4) The undertaker is not required to serve notice under paragraph (3) where the undertaker has identified a potential risk to the safety of—

- (a) the authorised development or any of its parts;
- (b) the public; or
- (c) the surrounding environment,

and in such circumstances, the undertaker may enter the land under paragraph (1) subject to giving such period of notice as is reasonably practical in the circumstances.

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

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

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

(8) Any dispute as to a person's entitlement to compensation under paragraph (7), or as to the amount of the compensation, must be determined under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

(9) Nothing in this article affects any liability to pay compensation under section 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 (7).

(10) Where the undertaker takes possession of land under this article, the undertaker is not required to acquire the land or any interest in it.

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

(12) In this article “the maintenance period” means the period of 5 years beginning with the date of final commissioning save that in relation to landscaping or ecological works where “the maintenance period” means such period as may be approved in a landscaping and ecological management plan in accordance with requirement 5 of Schedule 2 to this Order beginning with the date on which that part of the landscape or ecological works is completed.

Statutory undertakers

35. Subject to the provisions of Schedule 14 (protective provisions) the undertaker may—

- (a) acquire compulsorily, or acquire new rights or impose restrictive covenants over, the land belonging to statutory undertakers shown on the land plan within the Order land and described in the book of reference;
- (b) extinguish the rights of, remove, relocate the rights of or reposition the apparatus belonging to statutory undertakers over or within the Order land;
- (c) construct the authorised development in such a way as to cross underneath or over apparatus belonging to statutory undertakers and other like bodies within the Order land; and

- (d) construct over existing apparatus belonging to statutory undertakers any necessary track or roadway (whether temporary or permanent) together with the right to maintain or remove the same, and install such service media under or over the existing apparatus needed in connection with the authorised development.

Apparatus and rights of statutory undertakers in closed streets

36. Where a street is altered or diverted or its use is temporarily prohibited or restricted under article 11 (street works), article 13 (power to alter layout, etc., of streets), article 14 (construction and maintenance of new or altered means of access) or article 15 (temporary closure of streets) any statutory undertaker whose apparatus is under, in, on, along or across the street has the same powers and rights in respect of that apparatus, subject to Schedule 14 (protective provisions), as if this Order had not been made.

Acquisition of wayleaves, easements and other rights

37. Schedule 12 (acquisition of wayleaves, easements and other rights) has effect.

Recovery of costs of new connections

38.—(1) Where any apparatus of a public utility undertaker or of a public communications provider is removed under article 35 (statutory undertakers) any person who is the owner or occupier of premises to which a supply was given from that apparatus is entitled to recover from the undertaker compensation in respect of expenditure reasonably incurred by that person, in consequence of the removal, for the purpose of effecting a connection between the premises and any other apparatus from which a supply is given.

(2) Paragraph (1) does not apply in the case of the removal of a public sewer but where such a sewer is removed under article 35 (statutory undertakers), any person who is—

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

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

(3) This article does not have effect in relation to apparatus to which article 36 (apparatus and rights of statutory undertakers in closed streets) or Part 3 (street works in England and Wales) of the 1991 Act applies.

(4) In this article—

“public communications provider” has the same meaning as in section 151(1) (interpretation of Chapter 1) of the Communications Act 2003(a); and

“public utility undertaker” has the same meaning as in the 1980 Act.

PART 6

MISCELLANEOUS AND GENERAL

Application of landlord and tenant law

39.—(1) This article applies to—

(a) 2003 c. 21.

- (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, operation or decommissioning of the authorised development, or any part of it,

so far as any such agreement relates to the terms on which any land which is the subject of a lease granted by or under that agreement is to be provided for that person's use.

(2) No enactment or rule of law regulating the rights and obligations of landlords and tenants may prejudice the operation of any agreement to which this article applies.

(3) No enactment or rule of law applies in relation to the rights and obligations of the parties to any lease granted by or under any such agreement so as to—

- (a) exclude or in any respect modify any of the rights and obligations of those parties under the terms of the lease, whether with respect to the termination of the tenancy or any other matter;
- (b) confer or impose on any such party any right or obligation arising out of or connected with anything done or omitted on or in relation to land which is the subject of the lease, in addition to any such right or obligation provided for by the terms of the lease; or
- (c) restrict the enforcement (whether by action for damages or otherwise) by any party to the lease of any obligation of any other party under the lease.

Operational land for purposes of the 1990 Act

40. Development consent granted by this Order is 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 for the purposes of that Act) of the 1990 Act.

Felling or lopping of trees and removal of hedgerows

41.—(1) The undertaker may fell or lop any tree or shrub near the Order limits, or cut back its roots, if it reasonably believes it to be necessary to do so to prevent the tree or shrub from—

- (a) obstructing or interfering with the construction, maintenance, 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 vehicles to the extent necessary for the purposes of construction or decommissioning of the authorised development.

(2) In carrying out any activity authorised by paragraph (1), the undertaker must not do any unnecessary damage to any tree or shrub and must pay compensation to any person for any loss or damage arising from such activity.

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

(4) The undertaker may, for the purposes of the authorised development, or in connection with the authorised development, undertake works to or remove any hedgerows within the Order limits that may be required.

(5) The undertaker may not under paragraphs (1) and (4) fell or lop a tree or remove hedgerows within the extent of the publicly maintainable highway without the prior consent of the highway authority.

(6) In this article “hedgerow” has the same meaning as in the Hedgerows Regulations 1997(a) and includes important hedgerows.

Certification of documents, etc.

42.—(1) The undertaker must, as soon as practicable after the making of this Order, submit to the Secretary of State copies of all documents and plans referred to in Schedule 13 (documents to be certified) to this Order for certification that they are true copies of those documents.

(2) Where any plan or document set out in Schedule 13 requires to be amended to reflect the terms of the Secretary of State’s decision to make the Order, that plan or document in the form amended to the Secretary of State’s satisfaction is the version of the plan or document required to be certified under paragraph (1).

(3) 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.

Service of notices

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

- (a) by post;
- (b) by delivering it to the person on whom it is to be served or to whom it is to be given or supplied; or
- (c) with the consent of the recipient and subject to paragraphs (6) to (8), by electronic transmission.

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

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

- (a) in the case of the secretary or clerk of a body corporate, the registered or principal office of that body, and
- (b) in any other case, the last known address of that person at that time of service.

(4) Where for the 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 the description of “owner”, or as the case may be “occupier” of the land (describing it); and
- (b) either leaving it in the hands of the person who is or appears to be resident or employed on the land or leaving it conspicuously affixed to some building or object on or near the land.

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

- (a) the recipient of the notice or other document to be transmitted has given consent to the use of electronic transmission in writing or by electronic transmission;
- (b) the notice or document is capable of being accessed by the recipient;

(a) S.I. 1997/1160.

(b) 1978 c. 30.

- (c) the notice or document is legible in all material respects; and
- (d) in a form sufficiently permanent to be used for subsequent reference.

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

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

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

- (a) that person must give notice in writing or by electronic transmission revoking any consent given by that person for that purpose; and
- (b) such revocation is final and takes effect on a date specified by the person in the notice but that date must not be less than seven days after the date on which the notice is given.

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

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

Arbitration

44.—(1) Except where otherwise expressly provided for in this Order and unless otherwise agreed in writing between the parties, any difference under any provision of this Order (other than a difference which falls to be determined by the tribunal) or which falls to be determined under paragraph (20) (appeals) of Schedule 2 to this Order must be resolved in accordance with this article.

(2) The parties must use reasonable endeavours to settle any difference to which paragraph (1) applies through negotiations undertaken in good faith by senior representatives of the parties.

(3) Any difference which is not resolved to the satisfaction of the parties under paragraph (2) within ten business days of the dispute arising (or such longer period as may be agreed) must be referred to and settled by a single arbitrator to be agreed between the parties or, failing agreement, to be appointed on the application of either party (after giving notice in writing to the other) by the Secretary of State.

Requirements, appeals, etc.

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

(2) Part 2 (procedure for discharge of requirements) of Schedule 2 (requirements) has effect in relation to all agreements or approvals granted, refused or withheld in relation to requirements included in Part 1 of that Schedule, and any document referred to in any requirement in that Part 1.

(3) The procedure set out in Part 2 of Schedule 2 has effect in relation to any other consent, agreement or approval required under this Order where such consent, agreement or approval is granted subject to any condition to which the undertaker objects or is refused or is withheld.

Protective provisions

46. Schedule 14 (protective provisions) has effect.

Funding

47.—(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 and the amount of that guarantee approved by the Secretary of State in respect of the liabilities of the undertaker to pay compensation in accordance with the provisions referred to in paragraph (2) in relation to that land; or
- (b) an alternative form of security and the amount of that security for that purpose approved by the Secretary of State in respect of the liabilities of the undertaker to pay compensation in accordance with the provisions referred to in paragraph (2) in relation to that land.

(2) The provisions are—

- (a) article 22 (compulsory acquisition of land);
- (b) article 25 (compulsory acquisition of rights and imposition of restrictive covenants);
- (c) article 26 (private rights over land);
- (d) article 29 (acquisition of subsoil only);
- (e) article 32 (rights under or over streets); and
- (f) article 35 (statutory undertakers).

(3) A guarantee or alternative form of security given in respect of any liability of the undertaker to pay compensation in accordance with 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.

No double recovery

48. Compensation will not be payable in respect of the same matter both under this Order and under any other enactment, any contract or any rule of law, or under two or more articles of this Order.

Signed by Authority of the Secretary of State for Energy Security & Net Zero

Date

Name
Head of Energy Infrastructure Planning
Department for Energy Security & Net Zero

SCHEDULES

SCHEDULE 1

Article 3

AUTHORISED DEVELOPMENT

In this Schedule—

“electrical cables” means—

- (a) cables of differing types and voltages installed for the purposes of conducting electricity, auxiliary cables, cables connecting to direct current (DC) boxes, earthing cables and optical fibre cables; and
- (b) works connected with cable laying including excavations, storage of excavated material, jointing pits, hardstanding adjoining the jointing pits, combiner boxes, fibre bays, cable ducts, cable protections, joint protection, manholes, kiosks, marker posts, underground cable marker, tiles and tape, send and receive pits for horizontal directional drilling, trenching, lighting, and a pit or container to capture fluids associated with drilling;

“inverter” means electrical equipment required to convert direct current (DC) power generated by the solar pv panels to alternating current (AC);

“mounting structure” means a frame or rack designed to support the solar pv panels and inverters are affixed to the ground via posts;

“power conversion system” means inverters and transformers required to step up low voltage (LV) inverter AC output to medium voltage (MV) and would be either—

- (c) central inverter being a station comprising a combined inverter-transformer equipment with or without housing on a foundation; or
- (d) string inverters attached either to mounting structures or a frame and standalone transformers with or without housing on concrete foundation;

“solar pv panel” means a solar photovoltaic panel designed to convert solar irradiance to DC electrical energy; and

“transformer” means equipment required to transform electricity including inverter-transformers, auxiliary transformers, collector transformers, voltage regulators, and earthing transformers.

A nationally significant infrastructure project as defined in sections 14 and 15 of the 2008 Act and associated development under section 115 of the 2008 Act.

The nationally significant infrastructure project comprises all or part of the following works—

In the administrative area of Cumberland Council

Work No. 1 — a ground mounted solar photovoltaic generating station with a gross electrical output capacity of over 50 megawatts including—

- (e) solar pv panels;
- (f) mounting structures; and
- (g) power conversion system,

and associated development within the meaning of section 115(2) of the 2008 Act comprising—

Work No. 2 — grid connection infrastructure comprising—

- (h) up to two substation buildings;
- (i) a control building;

- (j) Point of Connection ('POC') compound comprising external electrical equipment including transformers, relays, circuit breakers and harmonic filters and ancillary infrastructure;
- (k) communication mast;
- (l) security fencing; and
- (m) electrical cables.

Work No. 2A — up to two POC masts.

Work No. 3 — works including—

- (n) electrical cables including connecting equipment within Work No. 1 and within Work No. 2 and connecting Works Nos. 1 and 2 to one another;
- (o) fencing, gates, boundary treatment and other means of enclosure;
- (p) improvement, maintenance and use of existing private tracks;
- (q) laying down of internal access tracks, ramps, means of access, permissive paths, crossing of watercourses, culverts, and roads, including the laying and construction of drainage infrastructure, temporary traffic management measures including traffic lights and signage and information boards;
- (r) works for the provision of security and monitoring measures such as CCTV columns, lighting columns and lighting, cameras, communication infrastructure, and perimeter fencing;
- (s) monitoring, communications and control systems;
- (t) electrical vehicle charging points;
- (u) operation and maintenance units including storage, welfare and site management;
- (v) works, improvements or extensions to the existing drainage and irrigation system and works to alter the position and extent of such irrigation system;
- (w) landscaping and biodiversity mitigation and enhancement measures including planting;
- (x) site drainage and waste management infrastructure including underground pipework, watercourse outfalls, sub-bases, filter drains, swales and attenuation tanks;
- (y) working sites in connection with the construction, maintenance and decommissioning of the authorised development, lay down areas and compounds, storage compounds and their restoration; and
- (z) noise attenuation works including acoustic barrier.

Work No. 4 — up to five temporary construction compounds including—

- (aa) site entry security stations;
- (bb) areas of hardstanding;
- (cc) parking;
- (dd) areas for vehicle loading, unloading and turning;
- (ee) site management offices, welfare facilities, canteens and workshops;
- (ff) safety and security infrastructure, including signage, cameras, fencing, gates and lighting; and
- (gg) areas to store materials, plant, machinery, equipment and waste.

Work No. 5 — works to facilitate vehicular access for all works, including—

- (hh) enhancement of accesses from the street;
- (ii) visibility splays;
- (jj) works to widen and surface the street and private means of access; and
- (kk) installation of temporary traffic management measures including traffic lights and signs

Work No. 6 — works to create, enhance and maintain green infrastructure, including—

- (ll) landscape and biodiversity mitigation and enhancement measures including planting and improvement of existing features;
- (mm) habitat creation and management including, earth works including embankments, landscaping;
- (nn) construction of drainage infrastructure;
- (oo) watercourse enhancements;
- (pp) maintenance of existing access routes and laying down of permissive paths, signage and information boards; and
- (qq) fencing, gates, boundary treatment and other means of enclosure.

In connection with, and in addition to Works Nos. 1 to 6 further associated development comprising—

- (rr) alteration of the layout of any street permanently or temporarily, including increasing or reducing the width of the carriageway;
- (ss) street works, including breaking up or opening a street, or any sewer, drain or tunnel under it, and tunnelling or boring under a street;
- (tt) relocation, removal or provision of new road traffic signs, signals, street lighting, road restraints and carriageway lane markings;
- (uu) works to place, alter, remove or maintain street furniture or apparatus (including statutory undertakers' apparatus) in, under or above a street, including mains, sewers, drains, pipes, cables, cofferdams, lights, fencing and other boundary treatments;
- (vv) works to facilitate traffic management and to deliver information relating to the authorised development;
- (ww) laying down, maintenance and repair of internal access tracks, ramps, means of access, footpaths and permissive paths including the laying and construction of drainage infrastructure, signage and information boards;
- (xx) bunds, embankments, trenching and swales;
- (yy) fencing, gates, boundary treatments and other means of enclosure;
- (zz) works, improvements or extensions to the existing drainage and irrigation system and works to alter the position and extent of such irrigation system;
- (aaa) surface water drainage systems, storm water attenuation systems including storage basins, oil water separators, including channelling and culverting and works to existing drainage networks;
- (bbb) electrical, gas, water, foul water drainage and telecommunications infrastructure connections, diversions and works to, and works to alter the position of, such services and utilities connections;
- (ccc) works for the provision of security and monitoring measures such as CCTV columns, lighting columns and lighting, cameras, weather stations, communication infrastructure, and perimeter fencing;
- (ddd) habitat creation and management, including earthworks, landscaping, means of enclosure, and the laying and construction of drainage infrastructure;
- (eee) jointing bays, cable ducts, cable protection, joint protection, manholes, kiosks, marker posts, underground cable marker, tiles and tape, and lighting and other works associated with cable laying;
- (fff) landscaping and biodiversity mitigation and other works to mitigate any adverse effects of the construction, maintenance or operation of the authorised development;
- (ggg) works for the benefit or protection of land affected by the authorised development;

- (hhh) working sites in connection with the construction, maintenance and decommissioning of the authorised development, construction lay down areas and compounds, storage compounds and their restoration, improvement, strengthening, reconstruction, maintenance and use of existing streets, private tracks and access roads;
- (iii) temporary footpath diversions and footpath enhancement;
- (jjj) site establishments and preparation works including site clearance (including vegetation removal, demolition of existing buildings and structures); coal mine remediation works; earthworks (including soil stripping and storage and site levelling) and excavations; the alteration of the position of services and utilities; and works for the protection of buildings and land;
- (kkk) tunnelling, boring and drilling works;
- (lll) 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
- (mmm) earthworks;

and further associated development comprising such other works or operations as may be necessary or expedient for the purposes of or in connection with the construction, operation, maintenance and decommissioning of the authorised development insofar as they are unlikely to give rise to any materially new or materially different environmental effects from those assessed in the environmental statement.

SCHEDULE 2
REQUIREMENTS

Article 3

PART 1
REQUIREMENTS

Interpretation

1. In this Schedule—

“archaeological mitigation strategy” means the document certified by the Secretary of State as the archaeological mitigation strategy for the purposes of this Order;

“CEMP” means the construction environmental management plan;

“CTMP” means the construction traffic management plan;

“design parameters document” means the document certified by the Secretary of State as the design parameters document for the purposes of this Order;

“DMP” means the decommissioning management plan;

“framework DMP” means the document certified by the Secretary of State as the framework decommissioning management plan for the purposes of this Order;

“LEMP” means the landscape and ecological management plan;

“LEP” means the landscape and ecology plan;

“LSP” means the document certified by the Secretary of State as the landscape strategy plan for the purposes of this Order;

“OMP” means the operational management plan;

“outline CEMP” means the document certified by the Secretary of State as the outline construction environmental management plan for the purposes of this Order;

“outline CTMP” means the document of that description certified by the Secretary of State as the outline construction traffic management plan for the purposes of this Order;

“outline drainage strategy” means section 8 of the flood risk assessment and outline drainage strategy which forms part of the document certified by the Secretary of State as the outline drainage strategy for the purposes of this Order;

“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;

“outline OMP” means the document certified by the Secretary of State as the outline operational management plan for the purposes of this Order; and

“outline soil management plan” means the document certified by the Secretary of State as the outline soil management plan for the purposes of this Order.

Time limits

2.—(1) The authorised development must commence no later than the expiration of five years beginning with the date that this Order comes into force.

(2) If any proceedings are begun to challenge the validity of this Order, the period specified in sub-paragraph (1) is extended by—

- (a) a period equivalent to the period beginning with the day the application is made and ending on the day it is withdrawn or finally determined, or
- (b) if shorter, one year.

(3) An application is not finally determined for the purposes of sub-paragraph (2)(a) if an appeal in respect of the application—

- (a) could be brought (ignoring any possibility of an appeal out of time with permission), or
- (b) has been made and not withdrawn or finally determined.

Detailed design approval

3.—(1) No part of the authorised development may commence until details of—

- (a) the layout;
- (b) scale;
- (c) proposed finished ground levels;
- (d) external appearance; and
- (e) vehicular access, parking and circulation areas,

relating to that part have been submitted to and approved in writing by the local planning authority.

(2) The details submitted must accord with the design parameters document unless it can be demonstrated to the satisfaction of the local planning authority that the subject matter of the approval sought would not give rise to any materially new or materially different environmental effects in comparison with those reported in the environmental statement.

(3) The authorised development must be carried out in accordance with the approved details.

(4) Sub-paragraph (1) does not apply to the matters listed under sub-paragraph (1)(f) if consent has already been given to the details of those works in accordance with articles 13 (power to alter layout, etc. of streets), 14 (construction and maintenance of altered streets) or 16 (access to works).

Construction environmental management plan

4.—(1) No part of the authorised development may commence until a CEMP for that part has been submitted to and approved by the local planning authority following consultation by the undertaker with the Environment Agency and Natural England.

(2) Any CEMP submitted for approval under sub-paragraph (1) must be substantially in accordance with the outline CEMP.

(3) The construction of any part of the authorised development must be carried out in accordance with the approved CEMP for that part.

Construction traffic management plan

5.—(1) No part of the authorised development may commence until a CTMP for that part has been submitted to and approved by the local planning authority following consultation by the undertaker with the local highway authority and National Highways on matters relevant to their functions.

(2) Any CTMP submitted for approval under sub-paragraph (1) must be substantially in accordance with the outline CTMP.

(3) The construction of any part of the authorised development must be carried out in accordance with the CTMP approved for that part.

Landscaping design

6.—(1) No part of the authorised development containing landscaping mitigation may commence until for that part a LEP has been submitted to and approved in writing by the local planning authority.

(2) The LEP approved under sub-paragraph (1) must be in accordance with the principles set out in the LSP, and must include details of—

- (a) location, number, species mix, size and planting density of any proposed planting; and
- (b) existing vegetation to be retained.

(3) All landscaping works must be carried out to a reasonable standard in accordance with the relevant recommendations of appropriate British Standards, other recognised codes of good practice and in line with the requirements of any environmental permit applicable to the works.

(4) The authorised development must be constructed in accordance with the LEP approved under sub-paragraph (1) and thereafter maintained in accordance with the relevant LEMP for that part approved under paragraph 7.

Landscape and ecological management plan

7.—(1) No part of the authorised development may commence until a LEMP for that part has been submitted to and approved by the local planning authority following consultation by the undertaker with Natural England.

(2) Any LEMP submitted for approval under sub-paragraph (1) must be substantially in accordance with the outline LEMP and must demonstrate how a minimum biodiversity net gain of 60% for area habitat units, 20% for hedgerow units and 5% for watercourse units, calculated using the Department of Environment Food and Rural Affairs’ Statutory Biodiversity Metric (February 2024), or if this is withdrawn or replaced, a biodiversity metric approved by the relevant planning authority in consultation with the relevant statutory nature conservation body, would be delivered.

(3) Any LEMP approved under sub-paragraph (1) must be implemented as approved and maintained throughout the operation of the relevant part of the authorised development to which the LEMP relates.

Surface water drainage strategy

8.—(1) No part of the authorised development may commence until written details of the surface water drainage strategy (including means of pollution control) for that part have been submitted to and approved by the local planning authority following consultation by the undertaker with the lead local flood authority and the Environment Agency.

(2) The written details under sub-paragraph (1) must be substantially in accordance with the outline drainage strategy.

(3) Any approved strategy must be implemented as approved.

Archaeology

9.—(1) No part of the authorised development may commence until a written scheme of investigation for the investigation of areas of archaeological interest within that part has been submitted to and approved by the local planning authority.

(2) Any written scheme of investigation submitted for approval under sub-paragraph (1) must be substantially in accordance with the archaeological mitigation strategy

(3) Any archaeological works or programme of archaeological investigation must be carried out in accordance with the written scheme of investigation approved under paragraph (1) for the duration of the works in the part of the authorised development to which the written scheme of investigation relates.

(4) For the purposes of sub-paragraph (1) “commence” includes any intrusive archaeological surveys (including trenching).

Soil management plan

10.—(1) No part of the authorised development may commence until a soil management plan for that part has been submitted to and approved by the local planning authority following consultation by the undertaker with Natural England.

(2) Any soil management plan submitted for approval under sub-paragraph (1) must be substantially in accordance with the outline soil management plan.

(3) The construction of any part of the authorised development must be carried out in accordance with the approved soil management plan for that part.

Operational management plan

11.—(1) Prior to the date of final commissioning for any part of the authorised development, an OMP for that part must be submitted to and approved by the local planning authority.

(2) Any OMP submitted for approval under sub-paragraph (1) must be substantially in accordance with the outline OMP.

(3) The operation of the authorised development must be carried out in accordance with the approved OMP for that part.

Operational noise

12.—(1) No part of Work No. 1 may be operational until a noise assessment demonstrating that Work No. 1 will not have a significant operational noise effect for that part has been submitted to and approved by the local planning authority.

(2) The design as modelled in the 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.

Decommissioning and restoration

13.—(1) Unless otherwise agreed with the local planning authority no later than 6 months prior to the intended date of decommissioning of any part of the authorised development, the undertaker must submit to the local planning authority for approval a DMP for that part.

(2) Decommissioning must commence no later than 40 years following the date of final commissioning.

(3) Any DMP submitted and approved under sub-paragraph (1) must be substantially in accordance with the framework DMP.

(4) Any DMP submitted and approved under sub-paragraph (1) must be implemented as approved.

(5) This requirement is without prejudice to any other consents or permissions that may be required to decommission any part of the authorised development.

Requirement for written approval

14. Where under any of the requirements the approval, agreement or confirmation of the local planning authority is required, that approval, agreement or confirmation must be given in writing.

Amendments to approved details

15.—(1) The undertaker must submit any amendments to the Approved Documents to the local planning authority for approval and, following approval, the relevant Approved Document is to be taken to include the amendments as approved under this paragraph.

(2) Approval under sub-paragraph (1) for the amendments to any Approved Document, may not be given except where it has been demonstrated to the satisfaction of the local planning authority

that the subject matter of the approval sought is unlikely to give rise to any materially new or materially different environmental effects from those assessed in the environmental statement.

(3) In this paragraph, “Approved Document” means any document certified under article 42 (certification of plans and documents, etc) and any plans, details or schemes which have been approved pursuant to any requirement.

Anticipatory steps towards compliance with any requirement

16. If before the coming into force of this Order the undertaker or any other person has taken any steps that were intended to be steps towards compliance with any requirement in this Schedule, those steps may be taken into account for the purpose of determining compliance with that provision if they would have been valid steps for that purpose had they been taken after this Order came into force.

Consultation

17. In relation to any provision of this Schedule requiring details to be submitted to the local planning authority for approval following consultation by the undertaker with another party, the undertaker must provide such other party with not less than 21 business days for any response to the consultation and thereafter the details submitted to the Secretary of State for approval must be accompanied by a summary report setting out the consultation undertaken by the undertaker to inform the details submitted including copies of any representations made by a consultee about the proposed application and the undertaker’s response to those representations.

PART 2

PROCEDURE FOR DISCHARGE OF REQUIREMENTS

Applications made under Part 1

18.—(1) Where an application has been made to the local planning authority for any consent, agreement or approval required by a requirement (including consent, agreement or approval in respect of part of a requirement included in this Order), the local planning authority must give notice to the undertaker of its decision on the application within a period of eight weeks beginning with the later of—

- (a) the day immediately following that on which the application is received by the local planning authority;
- (b) the day immediately following that on which further information has been supplied by the undertaker under paragraph 18 (further information regarding requirements); or
- (c) such other period that is agreed in writing between the undertaker and the local planning authority.

(2) In determining any application made to the local planning authority for any consent, agreement or approval required by a requirement included in this Order, the local planning 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 discharging authority must provide its reasons for that decision with the notice of the decision.

(3) In the event that the local planning authority does not determine an application within the period set out in sub-paragraph (1), the local planning authority is deemed to have granted all parts of the application (without any condition or qualification) at the end of that period.

Further information regarding requirements

19.—(1) In relation to any application made under this Schedule 2, the local planning authority may request such further information from the undertaker as it considers necessary to enable it to consider the application.

(2) In the event the local planning authority considers such further information to be necessary the local planning authority must, within ten business days of receipt of the application, notify the undertaker in writing specifying the further information required and (if applicable) to which part of the application it relates.

(3) In the event that the local planning authority does not give such notification within the period specified in sub-paragraph (2) the local planning authority is deemed to have sufficient information to consider the application and is not subsequently entitled to request further information without the prior agreement of the undertaker.

(4) Where further information is requested under this paragraph in relation to part only of an application, that part is treated as separate from the remainder of the application for the purposes of calculating the time periods referred to in paragraph 18 (applications made under Part 1) and in sub-paragraph (2).

Appeals

20.—(1) The undertaker may appeal to the Secretary of State in the event that the local planning authority—

- (a) refuses an application for any consent, agreement or approval required under this Order or grants it subject to conditions;
- (b) 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;
- (c) on receipt of a request for further information under paragraph 19, the undertaker considers that either the whole or part of the specified information requested by the local planning authority is not necessary for consideration of the application; or
- (d) on receipt of any further information requested under paragraph 19, the local planning authority notifies the undertaker 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 applicable under sub-paragraph (1) is as follows—

- (a) any appeal by the undertaker must be made within 42 days of the date of the notice of the decision;
- (b) the undertaker must submit the appeal documentation to the Secretary of State and must on the same day provide copies of the appeal documentation to the local planning authority;
- (c) the Secretary of State must appoint a suitably qualified person to consider the appeal (“the appointed person”) as soon as is practicable after the submission under sub-paragraph (b) but in any event no longer than 21 days from submission under that sub-paragraph and must notify the appeal parties of the identity of the appointed person, a start date and the address to which all correspondence for their attention should be sent;
- (d) the local planning authority must submit their written representations to the appointed person in respect of the appeal within 10 business days of the start date and must ensure that copies of their written representations and any other representations as sent to the appointed person are sent to each other and to the undertaker 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 under sub-paragraph (d); and

(f) the appointed person must make a decision and notify it to the appeal parties, with reasons, as soon as reasonably practicable but in any event no longer than 10 business days from receipt of counter-submissions under sub-paragraph (e).

(3) The appointment of the appointed person under 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 under 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.

(6) The appointed person must notify the appeal parties of the revised timetable for the appeal on or before that day.

(7) The revised timetable for the appeal must require submission of written representations to the appointed person within 10 business days of the agreed date but must otherwise be in accordance with the process and time limits set out in sub-paragraphs (2)(c) to (f).

(8) 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 local planning authority (whether the appeal relates to that part of it or not),

and may deal with the application as if it had been made to the appointed person in the first instance.

(9) 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.

(10) 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.

(11) The decision of the appointed person on an appeal is final and binding on the parties unless proceedings are brought by a claim for a judicial review.

(12) Except where a direction is given under sub-paragraph (13) requiring some or all the costs of the appointed person to be paid by the local planning authority, the reasonable costs of the appointed person must be met by the undertaker.

(13) The appointed person may give directions as to the costs of the appeal and as to the parties by whom the costs are to be paid.

(14) 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 planning appeals and award costs published in Planning Practice Guidance: Appeals (March 2024) or any circular or guidance which may from time to time replace it.

Fees

21.—(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 the relevant period in paragraph 18(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 under paragraph 18 of this Schedule.

^(a) S.I. 2012/2920.

SCHEDULE 3

Article 9

LEGISLATION TO BE DISAPPLIED

1. The following provisions do not apply in so far as they relate to the construction of any numbered work or the carrying out of any operation required for the purpose of, or in connection with, the construction, operation, maintenance or decommissioning of the authorised development—

- (a) Cumbria Act 1982**(a)**;
- (b) Dean (Cumberland) Inclosure Act 1809**(b)**;
- (c) Whitehaven, Cleator and Egremont Railway Act 1854**(c)**;
- (d) Whitehaven, Cleator and Egremont Railway Act 1861**(d)**;
- (e) Whitehaven, Cleator and Egremont Railway Act 1863**(e)**;
- (f) Whitehaven, Cleator and Egremont Railway Act 1865**(f)**;
- (g) Whitehaven, Cleator and Egremont Railway Act 1875**(g)**;
- (h) Whitehaven, Cleator and Egremont Railway Act 1876**(h)**;
- (i) Whitehaven, Cleator and Egremont Railway Act 1877**(i)**;
- (j) Workington and Winscales Inclosures Act 1809**(j)**.

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- (a) 1982 c. xv.
 - (b) 1809 c. 13.
 - (c) 1854 c. lxiv.
 - (d) 1861 c. lxii.
 - (e) 1863 c. lxiv.
 - (f) 1865 c. lxxxvi.
 - (g) 1875 c. cxc.
 - (h) 1876 c. lviii.
 - (i) 1877 c. cexii.
 - (j) 1809 c. ix.

SCHEDULE 4

Article 11

STREETS SUBJECT TO STREET WORKS

<i>(1)</i> <i>Street</i>	<i>(2)</i> <i>Extent of street works</i>
(U2186 101) Gilgarran Road	Between points SW/1 and SW/2 hatched blue on sheet 2 of the streets and access plans
(U2186 101) Gilgarran Road	Between points SW/3 and SW/4 hatched blue on sheet 2 of the streets and access plans

SCHEDULE 5

Article 13

ALTERATION OF STREETS

<i>(1)</i> <i>Street subject to alteration of layout</i>	<i>(2)</i> <i>Description of alteration</i>
C2054 103 Branthwaite Road	Works to enhance the existing means of access to the authorised development within the area shown as AS/1 to AS/2 shaded purple on sheet 1 of the streets and access plans
C2054 102 Branthwaite Edge Road	Works for the provision of temporary signage within the area shown as AS/3 to AS/4 shaded purple on sheets 1 and 2 of the streets and access plans
U2186 101 Gilgarran Road	Works to enhance the existing means of access to the authorised development within the area shown as AS/5 to AS/6 shaded purple on sheet 2 of the streets and access plans
U2186 101 Gilgarran Road	Works to enhance the existing means of access to the authorised development within the area shown as AS/7 to AS/8 shaded purple on sheet 2 of the streets and access plans
U2186 101 Gilgarran Road	Works to enhance the existing means of access to the authorised development within the area shown as AS/9 to AS/10 shaded purple on sheet 2 of the streets and access plans
C2054 102 Branthwaite Edge Road	Works to enhance the existing means of access to the authorised development within the area shown as AS/11 to AS/12 shaded purple on sheet 2 of the streets and access plans
C2054 102 Branthwaite Edge Road	Works to enhance the existing means of access to the authorised development within the area shown as AS/13 to AS/14 shaded purple on sheets 2 and 3 of the streets and access plans
C2054 102 Branthwaite Edge Road	Works to enhance the existing means of access to the authorised development within the area shown as AS/15 to AS/16 shaded purple on sheet 3 of the streets and access plans

SCHEDULE 6

Article 15

STREETS TO BE TEMPORARILY CLOSED OR RESTRICTED

<i>(1)</i> <i>Street to be temporarily stopped up</i>	<i>(2)</i> <i>Extent of temporary closure</i>
U2186 101 Gilgarran Road	Temporarily closed or restricted for the length shown between point TSC/1 and TSC/2 hatched yellow on sheet 1 of the traffic regulation measures plan

SCHEDULE 7

Article 16

ACCESS TO WORKS

<i>(1)</i> <i>Street</i>	<i>(2)</i> <i>Description of means of access</i>
C2054 103 Branthwaite Road	Existing access to be improved within the area shown as A/1 shaded pink on sheet 1 of the streets and access plans
U2186 101 Gilgarran Road	Existing access to be improved within the area shown as A/2 shaded pink on sheet 2 of the streets and access plans
C2054 102 Branthwaite Edge Road	Existing access to be improved within the area shown as A/3 shaded pink on sheet 2 of the streets and access plans
U2186 101 Gilgarran Road	Existing access to be improved within the area shown as A/4 shaded pink on sheet 2 of the streets and access plans
U2186 101 Gilgarran Road	Existing access to be improved within the area shown as A/5 shaded pink on sheet 2 of the streets and access plans
C2054 102 Branthwaite Edge Road	Existing access to be improved within the area shown as A/6 shaded pink on sheet 3 of the streets and access plans
C2054 102 Branthwaite Edge Road	Existing access to be improved within the area shown as A/7 shaded pink on sheet 3 of the streets and access plans
U2186 101 Gilgarran Road	Existing access to be improved within the area shown as A/8 shaded pink on sheet 2 of the streets and access plans
U2186 101 Gilgarran Road	Existing access to be improved within the area shown as A/9 shaded pink on sheet 2 of the streets and access plans

SCHEDULE 8

Article 18

TRAFFIC REGULATION MEASURES

<i>(1)</i> <i>Street</i>	<i>(2)</i> <i>Extent of temporary measure</i>	<i>(3)</i> <i>Temporary traffic regulation measure</i>
U2186 101 Gilgarran Road	For the length shown between point TRO/01 and TRO/02 on sheet 1 of the traffic regulation measures plan	Temporary 30mph speed limit

SCHEDULE 9

Article 25

LAND IN WHICH ONLY NEW RIGHTS ETC. MAY BE ACQUIRED

<i>(1)</i> <i>Number of Plot number shown on land plan</i>	<i>(2)</i> <i>Purpose for which rights may be acquired or restrictive covenants may be imposed</i>
1-09, 1-17, 1-21, 1-31, 1-40, 1-43 and 4-12	Provision of access for authorised development
1-70, 1-71, 2-01 and 2-02	Installation of electricity cable underground and the rights and restrictive covenants to construct, protect, operate, access and maintain that cable

**MODIFICATION OF COMPENSATION AND COMPULSORY
PURCHASE ENACTMENTS FOR THE CREATION OF NEW
RIGHTS AND IMPOSITION OF NEW RESTRICTIVE COVENANTS**

Compensation enactments

1. The enactments for the time being in force with respect to compensation for the compulsory purchase of land apply, with the necessary modifications as respects compensation, in the case of a compulsory acquisition under this Order of a right by the creation of a new right or the imposition of a restrictive covenant as they apply as respects compensation on the compulsory purchase of land and interests in land.

2.—(1) Without limiting paragraph 1, the Land Compensation Act 1973^(a) has effect subject to the modifications set out in sub-paragraphs (2).

(2) In section 44(1) (compensation for injurious affection), as it applies to compensation for injurious affection under section 7 of the 1965 Act as substituted by paragraph 5—

- (a) for “land is acquired or taken from” substitute “a right or restrictive covenant over land is purchased from”; and
- (b) for “acquired or taken from him” substitute “over which the right is exercisable or the restrictive covenant enforceable”.

3.—(1) Without limiting paragraph 1, the 1961 Act has effect subject to the modification set out in sub-paragraph (2).

(2) For section 5A(5A) (relevant valuation date) of the 1961 Act, after “if” substitute—

- “(a) the acquiring authority enters on land for the purpose of exercising a right in accordance with a notice of entry under section 11(1) of the 1965 Act;
 - (b) the acquiring authority is subsequently required by a determination under paragraph 13 of Schedule 2A to the 1965 Act (as substituted by paragraph 10 of Schedule 7 (modification of compensation and compulsory purchase enactments for creation of new rights and imposition of restrictive covenants) to the Dean Moor Solar Farm Order 202[] to acquire an interest in the land; and
 - (c) the acquiring authority enters on and takes possession of that land,
- the authority is deemed for the purposes of subsection (3)(a) to have entered on that land where it entered on that land for the purpose of exercising that right.”.

Application of the 1965 Act

4. The 1965 Act has effect with the modifications necessary to make it apply to the compulsory acquisition under this Order of a right by the creation of a new right, or to the imposition under this Order of a restrictive covenant, as it applies to the compulsory acquisition under this Order of land, so that, in appropriate contexts, references in that Act to land are read (according to the requirements of the particular context) as referring to, or as including references—

- (a) the right acquired or to be acquired, or the restrictive covenant imposed or to be imposed; or
- (b) the land over which the right is or is to be exercisable, or the restrictive covenant is or is to be enforceable.

(a) 1973 c. 26.

(2) Without limiting sub-paragraph (1), Part 1 of the 1965 Act applies in relation to the compulsory acquisition under this Order of a right by the creation of a new right or, in relation to the imposition of a restrictive covenant, with the modifications specified in the following provisions of this Schedule.

5. For section 7 (measure of compensation) of the 1965 Act 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.”.

6. The following provisions of the 1965 Act (which state the effect of a deed poll executed in various circumstances where there is no conveyance by persons with interests in the land), that is to say—

- (a) section 9(4) (failure by owners to convey);
- (b) paragraph 10(3) of Schedule 1 (owners under incapacity);
- (c) paragraph 2(3) of Schedule 2 (absent and untraced owners); and
- (d) paragraphs 2(3) and 7(2) of Schedule 4 (common land),

are modified so 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.

7. Section 11(a) (powers of entry) of the 1965 Act is modified so as to secure that, as from the date on which the acquiring authority has served notice to treat in respect of any right 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 12(b) (penalty for unauthorised entry) and 13(c) (entry on warrant in the event of obstruction) of the 1965 Act are modified correspondingly.

8. Section 20(d) (protection for interests of tenants at will, etc.) of the 1965 Act applies with the modifications necessary to secure that persons with such interests in land as are mentioned in that section are compensated in a manner corresponding to that in which they would be compensated on a compulsory acquisition under this Order of that land, but taking into account only the extent (if any) of such interference with such an interest as is actually caused, or likely to be caused, by the exercise of the right or the enforcement of the restrictive covenant in question.

9. Section 22 (interests omitted from purchase) of the 1965 Act is modified so as to enable the acquiring authority in circumstances corresponding to those referred to in that section, to continue to be entitled to exercise the right acquired, subject to compliance with that section as respects compensation.

10. For Schedule 2A of the 1965 Act substitute—

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- (a) Section 11 was amended by section 34(1) of, and Schedule 4 to, the Acquisition of Land Act 1981 (c. 67), section 3 of, and Part 1 of Schedule 1 to, the Housing (Consequential Provisions) Act 1985 (c. 71), section 14 of, and paragraph 12(1) of Schedule 5 to, the Church of England (Miscellaneous Provisions) Measure 2006 (No.1) and S.I. 2009/1307.
 - (b) Section 12 was amended by section 56(2) of, and Part 1 of Schedule 9 to, the Courts Act 1971 (c. 23).
 - (c) 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).
 - (d) Section 20 was amended by paragraph 4 of Schedule 15 to the Planning and Compensation Act 1991 (c. 34) and S.I. 2009/1307.

“SCHEDULE 2A COUNTER-NOTICE REQUIRING PURCHASE OF LAND

Introduction

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 has not executed a general vesting declaration under section 4 of the Compulsory Purchase (Vesting Declarations) Act 1981^(a) as applied by article 28 (application of the 1981 Act) and article 31 (modification of the 2017 Regulations) in respect of the land to which the notice to treat relates.

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 acquiring authority to purchase the owner’s interest in the house, building or factory.

4. A counter-notice under paragraph 3 must be served within the period of 28 days beginning with the day on which the notice to treat was served.

Response to counter-notice

5. On receiving a counter-notice, the acquiring authority must decide whether to—

- (a) withdraw the notice to treat,
- (b) accept the counter-notice, or
- (c) refer the counter-notice to the Upper Tribunal.

6. The acquiring 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 acquiring authority decides to refer the counter-notice to the Upper Tribunal it must do so within the decision period.

8. If the acquiring authority does not serve notice of a decision within the decision period it is to be treated as if it had served notice of a decision to withdraw the notice to treat at the end of that period.

9. If the acquiring authority serves notice of a decision to accept the counter-notice, the compulsory purchase order and the notice to treat are to have effect as if they included the owner’s interest in the house, building or factory.

Determination by Upper Tribunal

10. On a referral under paragraph 7, the Upper Tribunal must determine whether the acquisition of the right or the imposition of the restrictive covenant would—

- (a) in the case of a house, building or factory, cause material detriment to the house, building or factory, or
- (b) in the case of a park or garden, seriously affect the amenity or convenience of the house to which the park or garden belongs.

11. In making its determination, the Upper Tribunal must take into account—

(a) 1981 c. 66, as amended by Part 7 of the Housing and Planning Act 2016 (c. 22).

- (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 acquiring authority ought to be required to take.

13. If the Upper Tribunal determines that the acquiring 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 acquiring authority ought to be required to take some or all of the house, building or factory, the acquiring 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 it 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.”.

Application of the 2017 Regulations

11. References in Schedule 1 to the 2017 Regulations to land are, in the appropriate contexts, to be read (according to the requirements of the context) as referring to, or as including references to—

- (a) the right acquired or to be acquired, or the restrictive covenant imposed or to be imposed; or
- (b) the land over which the right is to be exercisable, or the restrictive covenant is or is to be enforceable.

SCHEDULE 11

Article 33

LAND OF WHICH TEMPORARY POSSESSION MAY BE TAKEN

<i>(1)</i> <i>Number of plot shown on land plan</i>	<i>(2)</i> <i>Purpose for which temporary possession may be taken</i>
1-01, 1-02, 1-03, 1-10, 1-47, 1-48, 1-49, 1-50, 1-51, 1-52, 1-53, 1-54, 1-55, 1-56, 1-57, 1-58, 1-59, 1-60, 1-61, 1-62, 1-63, 1-64, 1-65, 1-66 and 4-04	Temporary use (including access) for the purposes of Work No. 3 and to facilitate the carrying out of Works Nos. 1 to 6
1-04, 1-05, 1-06, 1-07, 1-08, 1-68, 1-69, 1-72, 1-73, 2-03, 2-04, 2-05, 2-06, 2-07, 2-11, 4-01, 4-02, 4-03, 4-05 and 4-06	Temporary use (including access) for the purposes of Works Nos. 3 and 5 and to facilitate the carrying out of Works Nos. 1 to 6

ACQUISITION OF WAYLEAVES, EASEMENTS AND OTHER RIGHTS

PART 1

ON BEHALF OF LICENCE HOLDERS

Acquisition of necessary wayleaves

1.—(1) This paragraph applies where—

- (a) a licence holder has agreed in writing with the undertaker that it is necessary or expedient to remove an electric line within the Order limits and to install and keep installed an electric line in substitution for it on, under or over specified land;
- (b) the licence holder has agreed in writing that the undertaker may seek a necessary wayleave on behalf of the licence holder in respect of the specified land; and
- (c) the owner or occupier of the specified land, having been given a notice by the undertaker or the licence holder requiring him to give the necessary wayleave to the licence holder within a period (not being less than 21 days) specified in the notice—
 - (i) has failed to give the wayleave before the end of that period; or
 - (ii) has given the wayleave subject to terms and conditions to which the undertaker, following consultation with the licence holder, objects.

(2) Subject to sub-paragraphs (3) and (4), the Secretary of State may, on the application of the undertaker, himself grant the necessary wayleave to the licence holder subject to such terms and conditions as he thinks fit; and a necessary wayleave so granted shall, unless previously terminated in accordance with a term contained in the wayleave, continue in force for such period as may be specified in the wayleave.

(3) The Secretary of State must not entertain an application under sub-paragraph (2) in any case where—

- (a) the specified land is covered by a dwelling, or will be so covered on the assumption that any planning permission which is in force is acted on; and
- (b) the line is to be installed on or over the specified land.

(4) Before granting the necessary wayleave to the licence holder, the Secretary of State must afford—

- (a) the occupier of the specified land; and
- (b) where the occupier is not also the owner of the specified land, the owner, an opportunity of being heard by a person appointed by the Secretary of State.

(5) A necessary wayleave granted to the licence holder under this paragraph—

- (a) is not subject to the provisions of any enactment requiring the registration of interests in, charges over or other obligations affecting land; but
- (b) binds any person who is at any time the owner or occupier of the specified land.

(6) Where in pursuance of a necessary wayleave granted under this paragraph a licence holder has erected on any land supports for an electric line, the licence holder is deemed to have an interest in that land for the purposes of section 7 of the Mines (Working Facilities and Support) Act 1966^(a).

(a) 1966 c. 4.

(7) Where a wayleave is granted to a licence holder under this paragraph—

- (a) the occupier of the specified land; and
- (b) the owner (where the occupier is not also the owner of the specified land),

may recover from the undertaker compensation in respect of the grant.

(8) Where in the exercise of any right conferred by such a wayleave any damage is caused to the specified land or to movables, any person interested in the specified land or movables may recover from the undertaker compensation in respect of that damage, and where, in consequence of the exercise of such a right, a person is disturbed in their enjoyment of any land or movables he may recover from the undertaker compensation in respect of that disturbance.

(9) Compensation under this paragraph may be recovered as a lump sum or by periodical payments or partly in one way and partly in the other.

(10) Any question of disputed compensation under this paragraph will be determined by the Tribunal, and section 4 of the Land Compensation Act 1961^(a) applies to any such determination.

Compulsory acquisition of easements or other rights

2.—(1) This paragraph applies where—

- (a) a licence holder has agreed in writing with the undertaker that it is necessary or expedient to remove an electric line within the Order limits and to install and keep installed an electric line in substitution for it on, under or over specified land; and
- (b) the licence holder has agreed in writing that the undertaker may seek an easement or other right in land on behalf of the licence holder in respect of the specified land.

(2) Subject to sub-paragraph (3) and (4), where a compulsory purchase order is sought by the undertaker in accordance with sub-paragraph (1), the Secretary of State may authorise the relevant licence holder to purchase compulsorily an easement or right over the specified land where the Secretary of State is satisfied that it is required for any purpose connected with the carrying on of the activities which he is authorised by his licence to carry on.

(3) Part I (paragraphs 2 onwards) and Part II of Schedule 3 of the Electricity Act 1989^(b) applies in respect of powers of compulsory purchase sought in accordance with this paragraph.

(4) Unless otherwise agreed between the undertaker and the licence holder in writing, where the undertaker seeks a compulsory purchase order on behalf of a licence holder in accordance with this paragraph, the negotiation of consideration and compensation will be undertaken by the undertaker and any consideration or compensation agreed or determined is payable by the undertaker and Schedule 3 of the Electricity Act 1989 as applied by this paragraph is interpreted accordingly.

Interpretation

3. In this Part of this Schedule—

“dwelling” means a building or part of a building occupied, or (if not occupied) last occupied or intended to be occupied, as a private dwelling and includes any garden, yard, outhouses and appurtenances belonging to or usually enjoyed with that building or part;

“licence holder” means a person holding a licence under section 6 of the Electricity Act 1989;

“necessary wayleave” means consent for the licence holder to install and keep installed the electric line on, under or over the specified land and to have access to the specified land for the purpose of inspecting, maintaining, adjusting, repairing, altering, replacing or removing the electric line;

(a) 1961 c. 33.

(b) 1989 c. 29.

“specified land” means the land within or outside the Order limits on, under or over which a licence holder agrees, in accordance with paragraph 1 or 2, that an electric line should be relocated in substitution for an existing electric line; and

“Tribunal” means the Upper Tribunal in relation to England and Wales.

PART 2 ON BEHALF OF CODE OPERATORS

Court imposition of code rights

4.—(1) This paragraph applies where—

- (a) a code operator has agreed in writing with the undertaker that for the purpose of the authorised development it is necessary or expedient to remove electronic communications apparatus owned by the code operator within the Order limits and to install and keep installed electronic communications apparatus in substitution for it on, under or over specified land;
- (b) the code operator has agreed in writing that the undertaker may seek code rights on behalf of the code operator in respect of the specified land, including all of the other terms of the agreement sought; and
- (c) the code operator or the undertaker has given the relevant person a notice in writing—
 - (i) setting out the code rights, and all of the other terms of the agreement sought; and
 - (ii) (stating that the person’s agreement to those terms is sought.

(2) The undertaker may apply to the court for an order under this paragraph if the relevant person does not, before the end of 28 days beginning with the day on which the notice in sub-paragraph (1)(c) is given, agree to confer or be otherwise bound by the code rights.

(3) An order under this paragraph is one which imposes on the code operator and the relevant person an agreement between them which—

- (a) confers the code rights on the operator; or
- (b) provides for the code rights to bind the relevant person.

(4) Where the undertaker makes an application to the court under sub-paragraph (2), paragraph 21, 22, 23, 24 and 26 of Part 4 of Schedule 3A (The Electronic Communications Code) and Part 14 (Compensation under The Code) of the Communications Act 2003(a) applies as if—

- (a) reference to the making of an “order under paragraph 20” were substituted for the making of an “order under Schedule 12 of the Dean Moor Solar Farm Order 202[]”; and
- (b) (unless otherwise agreed on a case-by-case basis in writing between the undertaker and the code operator, all references to “consideration” or “compensation” provided for in any agreement or order or otherwise to be determined is to be read as being payable by the undertaker.

Compulsory acquisition of easements or other rights

5.—(1) The undertaker may seek a compulsory purchase order on behalf of a code operator where—

- (a) the code operator has agreed in writing with the undertaker that for the purpose of the authorised development it is necessary or expedient to remove electronic communications apparatus owned by the operator within the Order limits and to install and keep installed electronic communications apparatus in substitution for it on, under or over specified land;

(a) 2003 c. 21.

(b) the code operator has agreed in writing that the undertaker may seek an easement or other rights over land on behalf of the code operator in respect of the specified land.

(2) Subject to sub-paragraph (3) and (4), where a compulsory purchase order is sought by the undertaker in accordance with sub-paragraph (1), the Secretary of State may authorise the relevant code operator to purchase compulsorily the specified land or an easement or right over the specified land if the Secretary of State is satisfied that it is required by the code operator—

(a) for, or in connection with, the establishment or running of the code operator’s network; or

(b) as to which it can reasonably be foreseen that it will be so required.

(3) Subject to sub-paragraph (4), paragraphs 3(2) to 3(7) of Schedule 4 of the Communications Act 2003 apply in respect of powers of compulsory purchase sought pursuant to this paragraph.

(4) Unless otherwise agreed between the undertaker and the licence holder in writing, where the undertaker seeks a compulsory purchase order on behalf of a code operator pursuant to this paragraph, all negotiations of compensation will be undertaken by the undertaker and any consideration or compensation agreed or determined in respect of any easements or rights acquired will be payable by the undertaker and Schedule 4 of the Communications Act 2003 will be interpreted accordingly as it applies to this paragraph.

Interpretation

6. In this paragraph, the following terms have the following meaning—

“code operator” has the meaning given for an “operator” in paragraph 2 of Schedule 3A of the Communications Act 2003;

“code operator’s network” has the meaning given for “operator’s network” in paragraph 6 of Schedule 3A of the Communications Act 2003;

“code rights” has the meaning given in paragraph 3 of Schedule 3A of the Communications Act 2003;

“court” has the meaning given in paragraph 94 of Schedule 3A of the Communications Act 2003;

“electronic communications apparatus” has the meaning given in paragraph 5 of Schedule 3A of the Communications Act 2003;

“relevant person” means the person in respect of whose interest in land a code right is required;

“specified land” means the land within or outside the Order limits on, under or over which an operator agrees, in accordance with sub-paragraph (1), that electronic communications apparatus should be relocated in substitution for existing electronic communications apparatus.

PART 3

ON BEHALF OF WATER AND SEWERAGE UNDERTAKERS

Compulsory acquisition of easement or other rights

7.—(1) The undertaker may seek a compulsory purchase order on behalf of a water or sewerage undertaker where—

(a) the water or sewerage undertaker has agreed in writing with the undertaker that for the purpose of the authorised development it is necessary or expedient to remove water or sewerage apparatus owned by the water or sewerage undertaker within the Order limits and to install and keep installed alternative apparatus in substitution for it on, under or over specified land;

- (b) the water or sewerage undertaker has agreed in writing that the undertaker may seek an easement or other rights over land on behalf of the water or sewerage undertaker in respect of the specified land.

(2) Subject to sub-paragraph (3), where a compulsory purchase order is sought by the undertaker in accordance with sub-paragraph (1), the Secretary of State may authorise the relevant water or sewerage undertaker to purchase compulsorily the specified land or an easement or right over the specified land where the Secretary of State is satisfied that it is required by the water or sewerage undertaker for the purposes of, or in connection with, the carrying out of its functions.

(3) Section 155(3) to (6) of the Water Industry Act 1991(a) applies in respect of powers of compulsory purchase sought in accordance with this paragraph.

(4) Unless otherwise agreed between the undertaker and the water or sewerage undertaker in writing, where the undertaker seeks a compulsory purchase order on behalf of a water or sewerage undertaker in accordance with this paragraph, all negotiations of compensation will be undertaken by the undertaker and any consideration or compensation agreed or determined in respect of any easements or rights acquired is payable by the undertaker.

(5) In this paragraph—

“alternative apparatus” means alternative water or sewerage apparatus adequate to enable the water or sewerage undertaker in question to fulfil its statutory functions in a manner not less efficient than previously;

“specified land” means the land within or outside the Order limits on, under or over which a water or sewerage undertaker agrees, in accordance with sub-paragraph (1), that alternative apparatus should be relocated in substitution for existing relevant water or sewerage apparatus;

“water or sewerage undertaker” means “water undertaker” or “sewerage undertaker” as defined in the Water Industry Act 1991; and

“water or sewerage apparatus” means—

- (a) mains, pipes or other water apparatus belonging to or maintained by a water undertaker for the purposes of water supply; and
- (b) any drain or works vested in a sewerage undertaker, and any sewer which is so vested or is the subject of a notice of intention to adopt given under section 102(4) of the Water Industry Act 1991 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 in each case includes any structure in which apparatus is or is to be lodged or which gives or will give access to apparatus.

PART 4

ON BEHALF OF GAS TRANSPORTERS

Compulsory acquisition of easements or other rights

8.—(1) The undertaker may seek a compulsory purchase order on behalf of a gas transporter where—

- (a) the gas transporter has agreed in writing with the undertaker that for the purpose of the authorised development it is necessary or expedient to remove gas apparatus owned by the gas transporter within the Order limits and to install and keep installed gas apparatus in substitution for it on, under or over specified land;
- (b) the gas transporter has agreed in writing that the undertaker may seek an easement or other rights over land on behalf of the gas transporter in respect of the specified land.

(a) 1991 c. 56.

(2) Subject to sub-paragraph (3) and (4), where a compulsory purchase order is sought by the undertaker in accordance with sub-paragraph (1), the Secretary of State may authorise the relevant gas transporter to purchase compulsorily an easement or right over the specified land.

(3) Schedule 3 of the Gas Act 1986(a) applies in respect of powers of compulsory purchase sought in accordance with this paragraph.

(4) Where the undertaker seeks a compulsory purchase order on behalf of a gas transporter in accordance with this paragraph, all negotiations of compensation will be undertaken by the undertaker, unless otherwise agreed with the gas transporter, and any consideration or compensation agreed or determined in respect of any easements or rights acquired will be payable by the undertaker only (unless otherwise agreed with the operator).

(5) In this paragraph—

“alternative apparatus” means alternative gas apparatus adequate to enable the gas transporter in question to fulfil its statutory functions in a manner not less efficient than previously;

“gas apparatus” means any mains, pipes or other apparatus belonging to or maintained by a gas transporter for the purpose of gas supply;

“gas transporter” has the meaning given in Part 1 of the Gas Act 1986; and

“specified land” means land within or outside the Order limits on, under or over which a gas transporter agrees, in accordance with sub-paragraph (1), that alternative apparatus should be relocated in substitution for existing gas apparatus.

(a) 1986 c. 44.

SCHEDULE 13

Article 42

DOCUMENTS TO BE CERTIFIED

<i>(1)</i> Document	<i>(2)</i> Document Reference	<i>(3)</i> Examination Library Reference	<i>(4)</i> Version	<i>(5) Date</i>
Book of reference	4.3	REP6-017	2	December 2025
Land plan	2.2	AS-007	2	July 2025
Location plan	2.1	APP-005	1	March 2025
Design parameters document	5.7	APP-028	1	March 2025
Streets and access plan	2.4	AS-008	2	July 2025
Traffic regulation measures plan	2.5	AS-009	2	July 2025
Works plan	2.3	APP-007	1	March 2025
Environmental statement(other than those listed individually below)	6.2		1	
ES Figure 2.1 Cumulative Schemes within 10km of Order Limits	3.17	REP3-025	2	September 2025
ES Appendix 2.4 Flood Risk Assessment and Outline Drainage Strategy (1 of 3)	6.3	REP4-025	4	October 2025
ES Appendix 2.4 Flood Risk Assessment and Outline Drainage Strategy (2 of 3)	6.3	AS-015	2	July 2025
ES Appendix 2.5 Transport Statement	4.16	REP4-027	2	October 2025
ES Appendix 2.6 Noise and Vibration Impact Assessment	4.11	REP4-017	2	October 2025
ES Appendix 3.1 Outline Operational Management Plan	5.13	AS-024	3	November 2025
ES Appendix 5.1 Outline Construction Environmental Management Plan	5.14	AS-026	3	November 2025
ES Appendix 5.2 – Outline Construction Traffic Management Plan	2.20	REP2-025	2	August 2025
ES Appendix 5.3 Outline Soil Management Plan	4.14	REP4-023	2	October 2025
ES Appendix 5.4 Framework decommissioning management plan	6.3	APP-111	1	March 2025
ES Chapter 6 – Cultural	2.21	REP2-027	2	August

Heritage				2025
ES Chapter 6 - Figure 6.1 - Designated Heritage Receptors within 3km of the Order Limits	2.22	REP2-029	2	August 2025
ES Appendix 6.1 - Historic Environment Desk Based Assessment	2.23	REP2-030	2	August 2025
ES Appendix 6.3 - Archaeological Mitigation Strategy	6.3	APP-117	1	March 2025
ES Chapter 7 Landscape and Visual	2.24	REP2-032	2	August 2025
ES Appendix 7.1 Landscape & Visual Methodology	2.25	REP2-034	2	August 2025
ES Appendix 7.2 Schedule of Landscape Effects	5.15	AS-028	2	November 2025
ES Appendix 7.3 Schedule of Visual Effects	2.26	REP2-036	2	August 2025
ES Appendix 7.4 Cumulative Assessment (report & photosheets only) (1 of 4)	3.8	REP3-010	2	September 2025
ES Appendix 7.5 View Location Photosheets (8 documents)	2.27	REP2-038 to REP2-045	2	August 2025
ES Figure 7.6 1-5 Landscape Strategy Plan	2.28	REP2-046	2	August 2025
ES Appendix 7.6 Visualisations (6 documents)	2.29	REP2-047 to REP2-052	2	August 2025
ES Appendix 7.7 Outline Landscape and Ecological Management Plan	5.16	REP5-016	2	November 2025
ES Appendix 7.8 Arboricultural Impact Assessment	2.17	REP2-020	2	August 2025
ES Appendix 7.9 - Glint and Glare Assessment (1 of 2)	3.9	REP3-013	2	September 2025
ES Appendix 7.9 - Glint and Glare Assessment (2 of 2)	3.10	REP3-011	2	September 2025
ES Chapter 8 - Biodiversity	2.30	REP2-053	2	August 2025
ES Figure 8.1 Statutory Designated Sites	6.2	AS-012	2	July 2025
ES Appendix 8.7 Shadow Habitat Regulation Assessment	5.17	REP5-018	2	November 2025

PROTECTIVE PROVISIONS

PART 1

FOR THE PROTECTION OF ELECTRICITY, GAS, WATER AND SEWAGE UNDERTAKERS

1. For the protection of the utility undertakers referred to in this Part of this Schedule the following provisions have effect, unless otherwise agreed in writing between the undertaker and the utility undertaker concerned.

2. In this Part of this Schedule—

“alternative apparatus” means alternative apparatus adequate to enable the utility undertaker in question to fulfil its statutory functions in a manner no less efficient than previously;

“apparatus” means—

- (a) in the case of an electricity undertaker, electric lines or electrical plant (as defined in the Electricity Act 1989(a)), belonging to or maintained by that undertaker;
- (b) in the case of a gas undertaker, any mains, pipes or other apparatus belonging to or maintained by a gas transporter within the meaning of Part 1 of the Gas Act 1986(b) for the purposes of gas supply;
- (c) in the case of a water undertaker, mains, pipes or other apparatus belonging to or maintained by that undertaker for the purposes of water supply; and
- (d) in the case of a sewerage undertaker—
 - (i) any drain or works vested in the undertaker under the Water Industry Act 1991(c); and
 - (ii) any sewer which is so vested or is the subject of a notice of intention to adopt given under section 102(4) (adoption of sewers and disposal of works) of that Act or an agreement to adopt made under section 104 (agreements to adopt sewer, drain or sewage disposal works, at a future date) of that Act,

and includes a sludge main, disposal main (within the meaning of section 219 (general interpretation) of that Act) or sewer outfall and any inspection chambers, 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;

“plan” includes all designs, drawings, specifications, method statements, soil reports, programmes, calculations, risk assessments and other documents that are reasonably necessary properly and sufficiently to describe the works to be executed;

“utility undertaker” means—

- (e) any licence holder within the meaning of Part 1 of the Electricity Act 1989;

(a) 1989 c. 29.

(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).

(c) 1991 c. 56.

- (f) a gas transporter within the meaning of Part 1 of the Gas Act 1986;
 - (g) a water undertaker within the meaning of the Water Industry Act 1991; and
 - (h) a sewerage undertaker within the meaning of Part 1 of the Water Industry Act 1991,
- for the area of the authorised development, and in relation to any apparatus, means the undertaker to whom it belongs or by whom it is maintained.

On street apparatus

3. This Part of this Schedule does not apply to apparatus in respect of which the relations between the undertaker and the utility undertaker are regulated by the provisions of Part 3 (street works in England and Wales) of the 1991 Act.

Apparatus in closed streets

4. Regardless of the temporary prohibition or restriction of use of streets under the powers conferred by article 15 (temporary closure or restriction of streets), a utility undertaker is at liberty at all times to take all necessary access across any such street and to execute and do all such works and things in, upon or under any such street as may be reasonably necessary or desirable to enable it to maintain any apparatus which at the time of the prohibition or restriction was in that street.

Acquisition of land

5. Regardless of any provision in this Order or anything shown on the land plan, the undertaker must not acquire any apparatus otherwise than by agreement.

Removal of apparatus

6.—(1) If, in the exercise of the powers conferred by this Order, the undertaker acquires any interest in any land in which any apparatus is placed or requires that the utility undertaker's apparatus is relocated or diverted, that apparatus must not be removed under this Part of this Schedule, and any right of a utility undertaker to maintain that apparatus in that land must not be extinguished, until alternative apparatus has been constructed and is in operation to the reasonable satisfaction of the utility undertaker in question in accordance with sub-paragraphs (2) to (6).

(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 28 days' written notice of that requirement, together with a plan of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order a utility undertaker reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph (3), afford to the utility undertaker the necessary facilities and rights for the construction of alternative apparatus in other land of the undertaker and subsequently for the maintenance of that apparatus.

(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of the undertaker, or the undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraph (2) in the land in which the alternative apparatus or part of such apparatus is to be constructed the utility undertaker must, on receipt of a written notice to that effect from the undertaker, as soon as reasonably possible use its best endeavours to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed.

(4) Any alternative apparatus to be constructed in land of the undertaker under this Part of this Schedule must be constructed in such manner and in such line or situation as may be agreed between the utility undertaker in question and the undertaker or in default of agreement settled by arbitration in accordance with article 44 (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 44 (arbitration), and after the grant to the utility undertaker of any such facilities and rights as are referred to in

sub-paragraphs (2) or (3), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by the undertaker to be removed under the provisions of this Part of this Schedule.

(6) Regardless of anything in sub-paragraph (5), if the undertaker gives notice in writing to the utility undertaker in question that the undertaker 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 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.

(8) If the utility undertaker fails either reasonably to approve, or to provide reasons for its failure to approve along with an indication of what would be required to make acceptable, any proposed details relating to required removal works under sub-paragraph (2) within 28 days of receiving a notice of the required works from the undertaker, then such details are deemed to have been approved, provided that the undertaker has first taken all reasonable steps to contact the relevant representatives of the utility undertaker in order to elicit such a response.

(9) Any deemed approval under sub-paragraph (7) does not extend to the actual undertaking of the removal works, which remains the sole responsibility of the utility undertaker or its contractors.

Facilities and rights for alternative apparatus

7.—(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to a utility undertaker facilities and rights for the construction and maintenance of the utility 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 the utility undertaker in question or in default of agreement settled by arbitration in accordance with article 44 (arbitration).

(2) In settling those terms and conditions in respect of alternative apparatus to be constructed in the land of the undertaker, the arbitrator will—

- (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 the proposed works of the undertaker; 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 apparatus constructed in or on the land 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 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.

Retained apparatus

8.—(1) Not less than 28 days before starting the execution of any works in, on or under any land purchased, held, appropriated or used under this Order that are near to, or will or may affect, any apparatus the removal of which has not been required by the undertaker under paragraph 6(2), the undertaker must submit to the utility undertaker in question a plan of the works to be executed.

(2) Those works must be executed only in accordance with the plan submitted under sub-paragraph (1) and in accordance with such reasonable requirements as may be made in accordance with sub-paragraph (3) by 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 under sub-paragraph (1) is 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 3, 6 and 7 apply as if the removal of the apparatus had been required by the undertaker under paragraph 6(2).

(5) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 28 days before commencing the execution of any works unless otherwise agreed with the utility undertaker, a new plan instead of the plan previously submitted, and having done so the provisions of this paragraph apply to and in respect of the new plan.

(6) The undertaker is not required to comply with sub-paragraph (1) in a case of emergency but in that case must give to the utility undertaker in question notice as soon as is reasonably practicable and a plan of those works as soon as reasonably practicable subsequently and must comply with sub-paragraph (3) in so far as is reasonably practicable in the circumstances.

Expenses and costs

9.—(1) Subject to the following provisions of this paragraph, the undertaker must repay to a utility undertaker all expenses reasonably incurred by that utility undertaker in, or in connection with, the inspection, removal, alteration or protection of any apparatus or the construction of any new apparatus which may be required in consequence of the execution of any such works as are referred to in paragraph 6(2).

(2) There must be deducted from any sum payable under subparagraph (1) the value of any apparatus removed under the provisions of this Part of this Schedule that value being calculated after removal.

(3) If in accordance with the provisions of this Part of this Schedule—

- (a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions; or
- (b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was situated,

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or, in default of agreement, is not determined by arbitration in accordance with article 44 (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) must be reduced by the amount of that excess.

(4) For the purposes of sub-paragraph (3)—

- (a) an extension of apparatus to a length greater than the length of existing apparatus is not to be treated as a placing of apparatus of greater dimensions than those of the existing apparatus; and
- (b) where the provision of a joint in a pipe or cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of an inspection chamber is to be treated as if it also had been agreed or had been so determined.

(5) An amount which apart from this sub-paragraph would be payable to a utility undertaker in respect of works by virtue of sub-paragraph (1), if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on the utility undertaker any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, is to be reduced by the amount which represents that benefit.

10.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any such works referred to in paragraph 6(2), or by reason of any subsidence resulting from such development or works, any damage is caused to any apparatus or alternative apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of 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 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 who, if withholding such consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

Cooperation

11. Nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and a utility undertaker in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

PART 2

FOR THE PROTECTION OF OPERATORS OF ELECTRONIC COMMUNICATIONS CODE NETWORKS

12. For the protection of any operator, the following provisions have effect, unless otherwise agreed in writing between the undertaker and the operator.

13. In this Part of this Schedule—

“the 2003 Act” means the Communications Act 2003(a);

“electronic communications apparatus” has the same meaning as in the electronic communications code;

“the electronic communications code” has the same meaning as in Chapter 1 of Part 2 of the 2003 Act(b);

“electronic communications code network” means—

- (a) so much of an electronic communications network or infrastructure system provided by an electronic communications code operator as is not excluded from the application of the

(a) 2003 c. 21.

(b) See section 106.

electronic communications code by a direction under section 106 (application of the electronic communications code) of the 2003 Act; and

- (b) an electronic communications network which the undertaker is providing or proposing to provide;

“electronic communications code operator” means a person in whose case the electronic communications code is applied by a direction under section 106 (application of the electronic communications code) of the 2003 Act; and

“operator” means the operator of an electronic communications code network.

14. The exercise of the powers conferred by article 35 (statutory undertakers) is subject to Part 10 (undertaker’s works affecting electronic communications apparatus) of the electronic communications code.

15.—(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 who, if withholding such consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

(4) Any difference arising between the undertaker and the operator under this Part of this Schedule must be referred to and settled by arbitration under article 44 (arbitration).

(5) This Part of this Schedule does not apply to—

- (a) any apparatus in respect of which the relations between the undertaker and an operator are regulated by the provisions of Part 3 (street works in England and Wales) of the 1991 Act; or
- (b) any damages, or any interruptions, caused by electro-magnetic interference arising from the construction or use of the authorised development.

(6) In respect of the acquisition of rights under or over or use of the utility undertaker’s property, the utility undertaker must co-operate with the undertaker with a view to avoiding undue delay

(7) Nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and an operator in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

PART 3

FOR THE PROTECTION OF DRAINAGE AUTHORITIES

16. The provisions of this Part have effect for the protection of a drainage authority unless otherwise agreed in writing between the undertaker and the drainage authority.

17. In this Part—

“commence” has the same meaning as in article 2 (interpretation) of this Order and commencement shall be construed to have the same meaning;

“construction” includes execution, placing, altering, replacing, relaying and removal; and “construct” and “constructed” must be construed accordingly;

“drainage authority” means in relation to an ordinary watercourse—

- (a) the drainage board concerned within the meaning of section 23 of the Land Drainage Act 1991(a); and
- (b) in the case of any area for which there is no such drainage board, the lead local flood authority within the meaning of section 6 (other definitions) of the Flood and Water Management Act 2010(b);

“drainage work” means any ordinary watercourse and includes any land that provides or is expected to provide flood storage capacity for an ordinary watercourse and any bank, wall, embankment or other structure, or any appliance, constructed or used for land drainage or flood defence;

“ordinary watercourse” has the meaning given by section 72 (interpretation) of the Land Drainage Act 1991(b);

“plans” includes sections, drawings, specifications and method statements;

“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—

- (c) affect the total volume or the volumetric rate of flow of water in or flowing to or from any drainage work; or
- (d) affect the conservation, distribution or use of water resources.

18.—(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 sub-paragraph (1).

(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 taking into account the terms of this Order.

(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).

19. Without limiting paragraph 18, 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,

(a) 1991 c. 59

(b) 1991 c. 59, section 72(1).

by reason of any specified work.

20.—(1) Subject to sub-paragraph (2), any specified work, and all protective works required by the drainage authority under paragraph 19, 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) 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 reasonably 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.

21. If by reason of the construction of any specified work or of the failure of any such work the efficiency of any drainage work for flood defence purposes is impaired, or 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.

22. The undertaker must make reasonable compensation to the drainage authority in respect of all reasonable 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.

23.—(1) Without limiting the other provisions of this Part, the undertaker must make reasonable compensation to 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; or
- (b) 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).

(3) The drainage authority must use its reasonable endeavours to mitigate in whole or in part and to minimise any claims, demands, proceedings, costs, damages, expenses or loss to which this paragraph applies.

(4) If requested to do so by the undertaker, the drainage authority must provide an explanation of how the claim has been minimised.

(5) The undertaker is only liable under this paragraph for claims reasonably incurred by the drainage authority.

(6) Nothing in sub-paragraph (1) imposes any liability on the undertaker with respect to any damage to the extent that it is attributable to the act, neglect or default of the drainage authority or the breach of a statutory duty of the drainage authority, its officers, servants, contractors or agents.

24. 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.

25. Any dispute between the undertaker and the drainage authority under this Part, if the parties agree, must be determined by arbitration under article 44 (arbitration).

PART 4

FOR THE PROTECTION OF UNITED UTILITIES WATER LIMITED

26. The provisions of this Part have effect for the protection of UU Water unless otherwise agreed in writing between the undertaker and UU Water.

27. In this Part—

“UU Water” means United Utilities Water Limited (company number 02366678), registered office at Haweswater House, Lingley Mere Business Park, Lingley Green Avenue, Great Sankey, Warrington, WA5 3LP and includes its successors in title or any successor as a water and sewerage undertaker within the meaning of the Water Industry Act 1991;

Expenses and costs

28.—(1) If the undertaker proposes to connect foul water to a public sewer operated by UU Water, the undertaker shall give to UU Water notice of the proposal, and within 42 days of the receipt by them of the notice, UU Water may refuse permission for the connection but only if it has reasonable grounds for doing so, or it may grant permission for the connection or alteration, subject to such reasonable conditions as it thinks fit acting reasonably. Any such permission may in particular specify the mode and point of connection.

(2) If the undertaker proposes to connect surface water to a public sewer operated by UU Water, the undertaker shall give to UU Water notice of the proposal, and within 42 days of the receipt by them of the notice, UU Water may refuse permission for the connection, but only if it has reasonable grounds for doing so, or it may grant permission for the connection or alteration, subject to such reasonable conditions as it thinks fit acting reasonably. Any such permission may

in particular specify the mode, the point of connection, the rate of discharge and the size of any attenuation necessary. UU Water shall be entitled to refuse any connection where the sustainable drainage system hierarchy for managing surface water has not been reasonably investigated and / or sustainable drainage has not been incorporated within the proposed surface water drainage to the satisfaction of UU Water.

(3) UU Water may prohibit the discharge of foul water into the public sewer reserved for surface water, and prohibit the discharge of surface water into the public sewer reserved for foul water.

(4) Where UU Water has not granted or refused permission under this paragraph within 42 days from the receipt of notice of a proposal the permission shall be deemed to be granted.

(5) Nothing in this section entitles the undertaker to:

- (a) discharge into a public sewer (directly or indirectly), highway drainage, groundwater, trade effluent or any liquid or other matter, the discharge of which into a public sewer is prohibited by or under any enactment; or
- (b) have drains or sewers that communicate directly with a storm water overflow.

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 on land between the villages of Gilgarran and Branthwaite in West Cumbria 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 Schedule 13 to this Order and certified in accordance with article 42 (certification of documents, etc.) of this Order may be inspected free of charge during normal working hours at Cumberland Council, Allerdale House, New Bridge Road, Workington CA14 3Y