Planning Inspectorate

The Planning Act 2008

One Earth Solar Project

Examining Authority's Report

of Findings and Conclusions

and

Recommendation to the Secretary of State for

Energy Security and Net Zero

Examining Authority

Edwin Maund MSc, BA(Hons), Dip UP, MRTPI, Lead Panel Member

Alex Jack BSc, MCIHT

8 April 2026

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OVERVIEW

File Ref: EN010159

The application, dated 26 February 2025, was made under section 37 of the Planning Act 2008 and was received by The Planning Inspectorate on 27 February 2025.

The applicant is One Earth Solar Farm Limited.

The application was accepted for examination on 27 March 2025.

The examination of the application began on 8 July 2025 and was completed on 8 January 2026.

The proposed development comprises the construction, operation, maintenance, and decommissioning of a solar photovoltaic (PV) array electricity generating facility, battery energy storage systems (BESS), onsite substations and supporting infrastructure including a below ground electrical connection to the proposed National Grid substation at High Marnham.

Summary of recommendation:

The Examining Authority recommends that the Secretary of State should withhold consent for the reasons set out. If the Secretary of State decides to give consent, then the Examining Authority recommends that the Order should be in the form attached at Appendix C.

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Planning Inspectorate

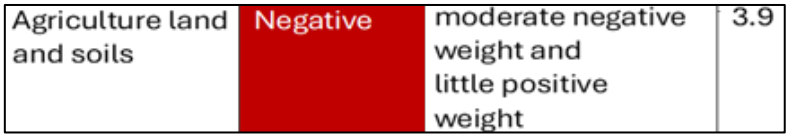
ERRATA SHEET – One Earth Solar Farm – Ref. EN010159

Examining Authority's Report of Findings and Conclusions and Recommendation to the Secretary of State for the Department for Energy Security and Net Zero, dated 8 April 2026.

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

Page No.	Paragraph	Error	Correction
42	3.4.89	We note that paragraph 3.4.89 of the report states that the ExA conclude that the Sequential Test must carry very great weight against the making of the Development Consent Order. However, Table 13 'Planning Balance', paragraph 5.2.87 and 8.2.12 conclude the ExA assign the Sequential Test great negative weight. Please could the ExA clarify the weighting for the Sequential Test? Specifically, could the ExA confirm whether the weighting given in paragraph 3.4.89 is correct or an error?	In respect of paragraph 3.4.89 the ExA would wish to confirm this is correct, however the wording within Table 13 'Planning Balance', and paragraphs 5.2.87 and 8.2.12 should be consistent with this conclusion and should be corrected to 'very great weight against' in each case.
209 210 294 295	5.2.83 5.2.87 8.2.6 8.2.12	We note that Table 13 'Planning Balance', paragraph 5.2.87 and paragraph 8.2.12 conclude the ExA assign Historic Environment moderate negative weight. However, this weighting is not provided or explained in the 'Heritage Balance' sub-section of Section 5 of the report. Paragraphs 5.2.83 and 8.2.6 state that the ExA afford great weight to each asset's conservation, in accordance with EN-1. Please could the ExA clarify the weighting assigned to Historic Environment.	With regard to heritage EN-1 makes clear that where harm has been identified to heritage assets, as in this case, this should be weighed in the overall planning balance. As the ExA set out in section 3.7 this position is not disputed by the applicant, the only difference being in the harm identified by Historic England with regard to the setting of the scheduled monument. The harm identified in each case the ExA conclude is less than substantial, however this harm arises in respect of a series of heritage assets as discussed in Section 3.7, and over different timelines.

Page No.	Paragraph	Error	Correction
			In seeking to assess the degree of effect the ExA determined the overall balance in respect of heritage assets overall should be regarded as moderate in light of the fact there were a series of less than substantial effects for different heritage assets. The ExA recognise this should be more clearly set out and therefore propose an 'errata' Para 5.2.83 to be changed to the following 'The proposed development would cause less than substantial harm to the designated heritage assets identified above. . We afford great weight to each asset's conservation, in accordance with EN-1. EN-1 explains that this harm should be weighed against the public benefits of the proposal. **Which the ExA regard as having moderate weight in the overall balance due to the number of assets affected, and the time frame over which this would occur.'** Para 8.2.6 to be changed to the following 'In undertaking the heritage balance the ExA has considered the great weight that must be given to the conservation of heritage assets. **Which the ExA regard as having moderate weight in the overall balance due to the number of assets affected, and the time frame over which this would occur.** Set against this is the timely contribution the proposed development would make towards renewable energy generation. In this context, the ExA's view is that, in

Page No.	Paragraph	Error	Correction
			principle, the harms caused to these heritage assets could, when considered both individually and cumulatively, be outweighed by such benefits.'
209 210	Table 13 5.2.87	We note that not all topics discussed in Section 3 are included in Table 13 'Planning Balance' and are not discussed in the 'Overall Planning Balance' sub-section of Section 5 or mentioned in paragraph 8.2.12 of the report, for example the weightings for Agriculture and Soils. Can the ExA please clarify why this is or confirm if this is an error within the report.	Agriculture and Soils should have been included within the planning balance Table 13 as per the following, please accept this as confirmation of an additional erratum  In light of this, para 5.2.87 should be changed to read: 'With **very** great negative weight in respect of hydrology and the sequential test, moderate negative weight in respect of landscape and the historic environment, **agriculture and soils** in addition to little negative weight from transport and human health. On the positive side substantial positive weight in respect of need, moderate positive weight in terms of ecology **and little positive weight in respect of agriculture and soils**.'
17	2.6.3	As is the convention and to inform SoS decisions prepared under the PA2008, a separate record of considerations relevant to HRA has been set out in Appendix C of this report, a summary of which can be found in chapter 4.	As is the convention and to inform SoS decisions prepared under the PA2008, a record of considerations relevant to HRA has been set in chapter 4.

Page No.	Paragraph	Error	Correction
37	3.4.51	The way in which has been done is explained in Appendix 1 of the Planning Statement (Site Selection Report) [APP-168] and this is summarised below.	The way in which this has been done is explained in Appendix 1 of the Planning Statement (Site Selection Report) [APP-168] and this is summarised below.
56	3.5.114	WLDC final SoCG [REP8-008] had no outstanding matters in respect of ecology and biodiversity.	**The** WLDC **LIR** [**REP1-098**] did not identify specific matters of concern in respect of ecology and biodiversity **regarding the overall effect as neutral**.
60	3.6.9	Section 210 of EN-3	Section 2.10 of EN-3
78	3.6.140	The approach to consideration of visual impacts on residential receptors has been agreed by the Councils (SoCGs) [REP7-026, REP7-028, REP7-030, REP8-008 and REP9-019] and they agree the LVIA fully and accurately reports the visual impact of the proposed development on residential receptors. It is also agreed that sufficient evidence has been provided by the applicant to support these findings and the RVAA threshold has not been met.	The approach to consideration of visual impacts on residential receptors has been agreed by the Councils (**bar WLDC**) (SoCGs) [REP7-026, REP7-028, REP7-030, and REP9-019] and they agree the LVIA fully and accurately reports the visual impact of the proposed development on residential receptors. It is also agreed that sufficient evidence has been provided by the applicant to support these findings and the RVAA threshold has not been met. **WLDC expressed concern over the effect on the landscape more broadly which is dealt with elsewhere**
90	3.7.50	HE made a series of suggestions in respect of dDCO requirement 12 to ensure to worked appropriately.	HE made a series of suggestions in respect of dDCO requirement 12 to ensure it worked appropriately.
120	3.9.83	In response to issues raised by parties the applicant in [REP3-066] provided a breakdown of BMV by district council area and included the impact of other NSIPS in the relevant districts.	In response to issues raised by parties the applicant in [REP3-065] provided a breakdown of BMV by district council area and included the impact of other NSIPS in the relevant districts.

Page No.	Paragraph	Error	Correction
126	3.9.131	WLDC [REP1-099] sought additional clarification on the consequences of retaining the cables in the ground WLDC requests further information on the assessment of the environmental effects of cable retention in perpetuity, including the deposition and migration of microplastics.	WLDC [REP1-099] sought additional clarification on the consequences of retaining the cables in the ground and requested further information on the assessment of the environmental effects of cable retention in perpetuity, including the deposition and migration of microplastics.
129	3.9.159	The proposed development would take out of use for 60 years 660 ha of grades 1 and 2 agricultural land	The proposed development would take out of use for 60 years 660 ha of grades 2 and 3a agricultural land
137	3.10.37	The Fire and Rescue Services for Lincolnshire [REP7-026] and Nottinghamshire [REP7-034] both signed of SOCG and agreed a set of Protective Provisions included within the dDCO.	The Fire and Rescue Services for Lincolnshire [REP7-026] and Nottinghamshire [REP7-034] both signed a SOCG and agreed a set of Protective Provisions included within the dDCO.
175	3.13.8	The summary of other developments included within the cumulative BMV assessment (Appendix 18.2) [APP-146] updated to [REP2-041] and (Appendix 18.3) [APP-147 updated to [REP4-020]	The link to REP2-041 is incorrect as goes to Appendix 18.3, and should be linked to Appendix 18.2 updated at Deadline 2
241	7.4.2	At the end of the examination, NCC [REP6-037]. NSDC [REP7-030], Bassetlaw District Council (BDC) [REP9-019], WLDC [REP8-008] all maintained an objection to the provisions in the dDCO that in the event that the relevant planning authority does not determine an application within the 12 week period, consent will be deemed to be granted.	At the end of the examination, NCC [REP8-006], NSDC [REP7-030], Bassetlaw District Council (BDC) [REP9-019], WLDC [REP8-008] all maintained an objection to the provisions in the dDCO that in the event that the relevant planning authority does not determine an application within the 12 week period, consent will be deemed to be granted.
150	3.11.43	As such, the ExA doubts requirement 22 of the dDCO satisfies the reasonable test set out in paragraph 55 of the NPPF.	As such, the ExA doubts requirement 22 of the dDCO satisfies the reasonable test set out in paragraph 57 of the NPPF.

Page No.	Paragraph	Error	Correction
154	3.11.67	The applicant has not explained if the proposed power converter stations could be quickly brought back into operation without significant refurbishment, as set out in paragraph 81 of the NPPF, or if large areas of the proposed development would be unable to transfer usable energy until such time.	The applicant has not explained if the proposed power converter stations could be quickly brought back into operation without significant refurbishment, as set out in paragraph 181 of the NPPF, or if large areas of the proposed development would be unable to transfer usable energy until such time.
155	3.11.68	In the absence of an agreed emergency plan in context of the identified risk from flooding, the ExA is not persuaded that safe access and egress routes are achievable as required by paragraphs 5.8.36 of NPS EN-1 and 81 of the NPPF.	In the absence of an agreed emergency plan in context of the identified risk from flooding, the ExA is not persuaded that safe access and egress routes are achievable as required by paragraphs 5.8.36 of NPS EN-1 and 181 of the NPPF.

1. INTRODUCTION

1.1. BACKGROUND TO THE EXAMINATION

1.1.1. An application (the application) for an Order granting Development Consent for the One Earth Solar Farm (the proposed development), was submitted by One Earth Solar Farm Ltd (the applicant) to the Planning Inspectorate (the Inspectorate) reference EN010159 on 27 February 2025 under section 31 of the Planning Act 2008 (PA2008) and accepted for examination under s55 of the PA2008 on 27 March 2025 [PD-006]. This report sets out the Examining Authority's (ExA) findings, conclusions and recommendations to the Secretary of State for Energy Security and Net Zero (SoS).

1.1.2. The legislative tests for whether the proposed development is a Nationally Significant Infrastructure Project (NSIP) were considered by the Secretary of State for Housing, Communities and Local Government (SoSHCLG) in its decision to accept the application for examination in accordance with s55 of the PA2008 [PD-006].

1.1.3. The proposed development is an onshore generating station. The proposed development falls within s14(1)(a) of PA2008 and meets the definition of an NSIP set out in s15(2) of the PA2008. As such, the proposed development requires development consent in accordance with s31 of PA2008.

1.1.4. 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 eg [APP-001]. The reference numbers are used throughout this report, and hyperlinks are included to allow the reader to access them directly.

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

1.2. APPOINTMENT OF THE EXAMINING AUTHORITY

1.2.1. On 25 April 2025, Edwin Maund, and Alex Jack were appointed as the ExA for the application under s61 and s65 of PA2008 [PD-001]. Edwin Maund was appointed as the Lead Member.

1.3. THE APPLICATION

LOCATION OF THE PROPOSED DEVELOPMENT

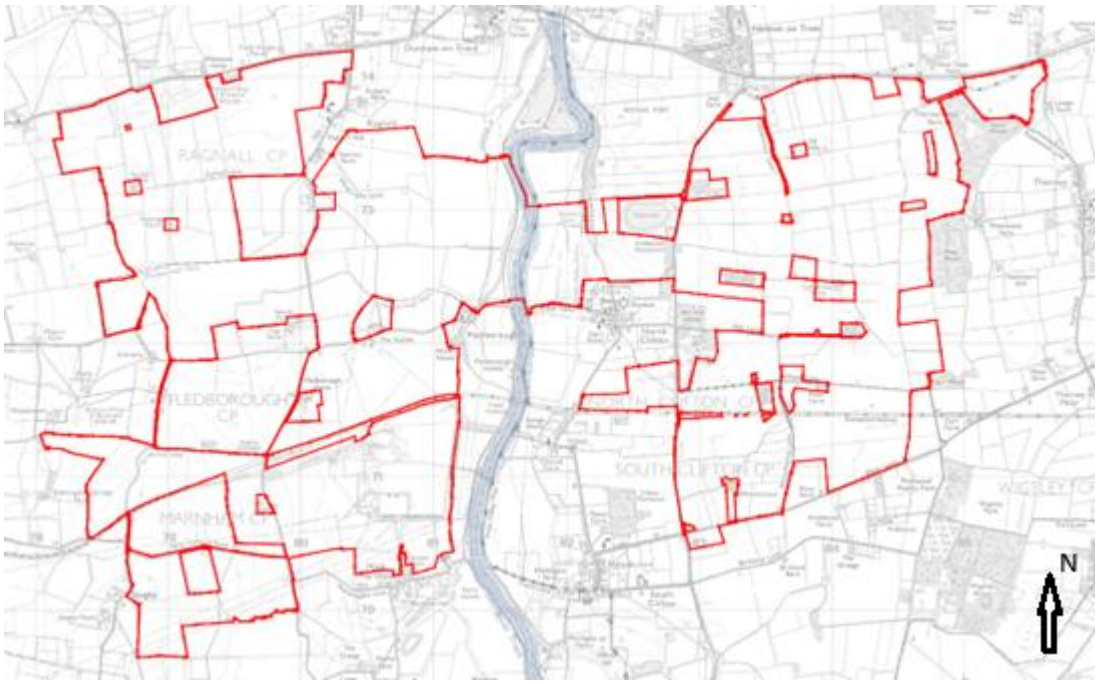
1.3.1. The Order limits cover an area of approximately 1,409 hectares of land, located in Nottinghamshire and Lincolnshire. The River Trent dissects the site in a north-south alignment. Some of the nearest villages include:

- Fledborough, located within 50m to the east of the nearest boundary of the Order limits
- Ragnall, located within 50m to the west of the nearest boundary of the Order limits
- Newton on Trent, located within 200m of the nearest boundary of the Order limits to the north
- North Clifton and South Clifton, located within 500m of the nearest boundary of the Order limits to the east
- Dunham, located within 800m to the north of the nearest boundary of the Order limits
- Thorney, located within 500m to the south and east of the nearest boundary of the Order limits

1.3.2. Within the Order limits to the southwest is the site of the former High Marnham power station and the proposed location for the High Marnham National Grid substation, required to provide the connection to the National Grid.

1.3.3. The location of the proposed development is shown in the Location Plan [APP-012] (extract shown in Figure 1 below) and the final versions of the Land Plans [REP9-004]. The site lies within Nottinghamshire County Council, Lincolnshire County Council, Bassetlaw District Council, Newark and Sherwood District Council and West Lindsey District Council administrative areas and is wholly in England.

Figure 1 Location Plan



Source: [APP-012]

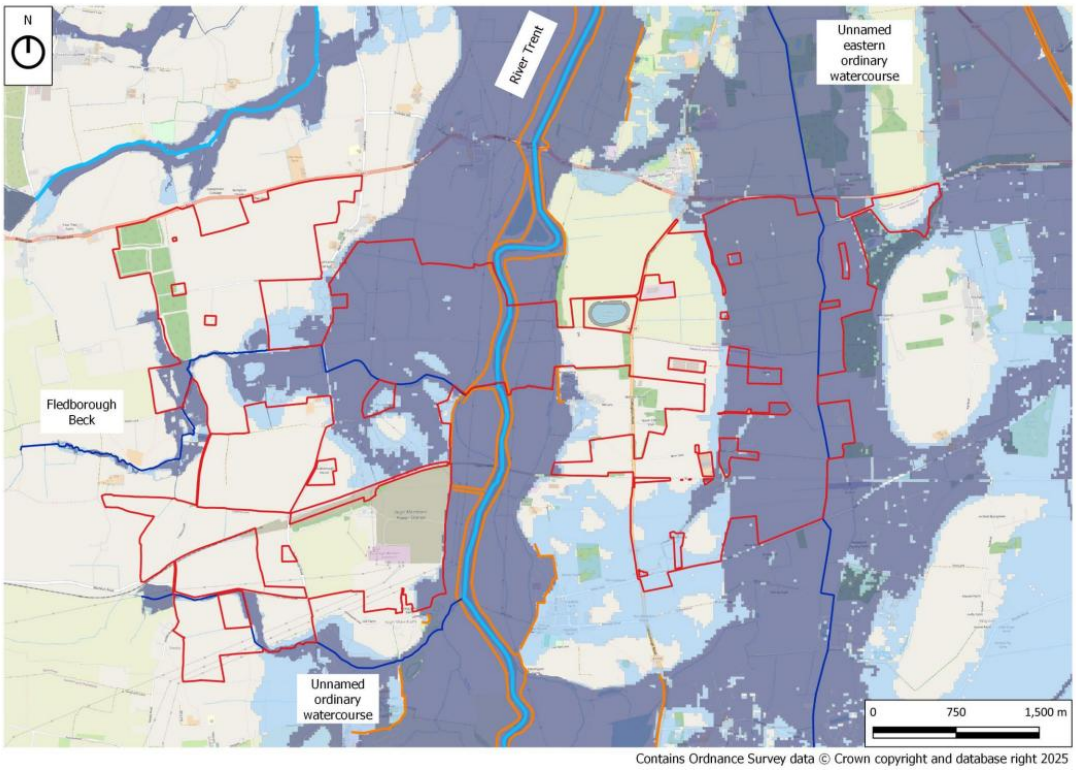
1.3.4. Chapter 3 “Description of the Site and Surrounding Area” of the Environmental Statement (ES) [APP-032] provides a detailed description of

the surrounding area. In summary, the characteristics of the surrounding area are:

- The land use is predominantly agricultural divided by a network of hedgerows, ditches and drains, interspersed with small areas of woodland
- The River Trent runs through the site in a north/south direction and is tidal in this area, with around 56% of the Order limits within Flood Zones 2 and 3 (FZ)

The flood map is included in Fig 7.3 of [AS-055] an extract is included below for ease of reference.

Figure 2: Flood Map



Source: [AS-055]

DESCRIPTION OF THE PROPOSED DEVELOPMENT

1.3.5. The proposed development is the construction, operation and maintenance, and decommissioning of a solar photovoltaic (PV) array electricity generating facility. The project includes solar PV panels, battery energy storage systems (BESS), onsite substations and associated grid connection infrastructure which will allow for the generation and export of electricity to the proposed National Grid High Marnham Substation. There is a connection agreement [APP-174] with National Grid that will allow for the export and import of up to 740 megawatts (MW) of electricity to the National Grid High Marnham Substation.

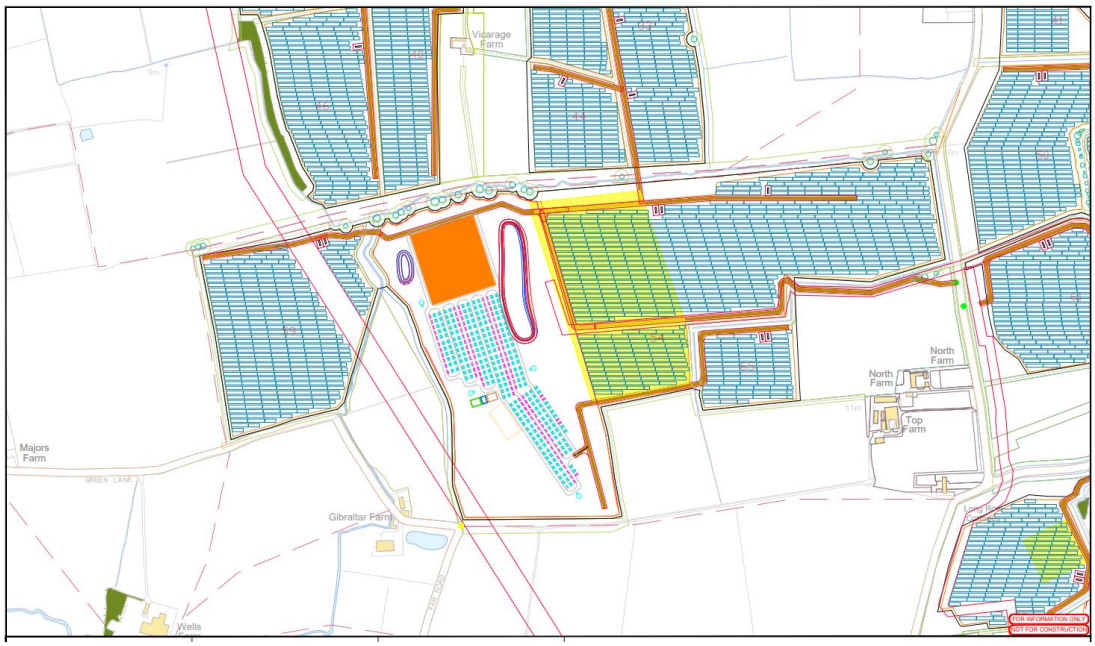
1.3.6. The proposed development works comprise:

- Work No. 1 – a ground mounted solar photovoltaic generating station with a gross electrical output capacity of over 50 megawatts, including solar panels fitted to mounting structures and power conversion stations
- Work No. 2 – energy storage facilities comprising battery energy storage system compounds including battery energy storage system (BESS) units, transformers and associated bunding, various ancillary electrical equipment, containers or enclosures housing some or all elements of the BESS compound either together or separately, monitoring and control systems, heating, ventilation and air conditioning (HVAC) systems, fire safety infrastructure containers or similar structures to house spare parts and materials acoustic fencing and ancillary buildings
- Work No. 3 – works in connection with two on-site substation compounds including the substations and works associated with the substations including switch room buildings and ancillary equipment, control buildings, metering equipment, offices, welfare and storage facilities
- Work No. 4 – works to lay high voltage electrical cables and access for the electrical cables, including works to lay electrical cables including 400 kilovolt cables connecting the authorised development to the National Grid High Marnham Substation and electrical engineering works in an around the National Grid High Marnham Substation
- Work No. 5 – works including laying of electrical cables up to 132 kilovolt, fencing, security measures, landscape and biodiversity mitigation and enhancement, vegetation removal, infrastructure connections and diversions, access works, earthworks and drainage works
- Work No. 6 – temporary construction and decommissioning compounds including up to two primary temporary construction and decommissioning areas (Work No. 6A) and up to ten secondary temporary construction and decommissioning areas (Work No. 6B)
- Works No. 7 – works to facilitate access to Work Nos. 1 to 6 and 8, including the creation of accesses from the public highway and streets, visibility splays, works to alter the layout of any street or highway and to widen and surface the streets and to make and maintain passing places
- Works No. 8 - works to create, enhance and maintain green infrastructure and mitigation, including landscape and biodiversity mitigation and enhancement areas, habitat creation and management, laying down of permissive paths, signage and information boards, improvements to existing and laying down of new public rights of way, signage and information boards
- Associated development – works to facilitate the proposed development, including, but not limited to, fencing, utilities works, drainage and road improvements.

1.3.7. Further details of the proposal for each Work No. can be found in schedule 1 of the draft Development Consent Order (dDCO) in [REP9-006]. This schedule also specifies further authorised development in connection with Work Nos 1 to 8.

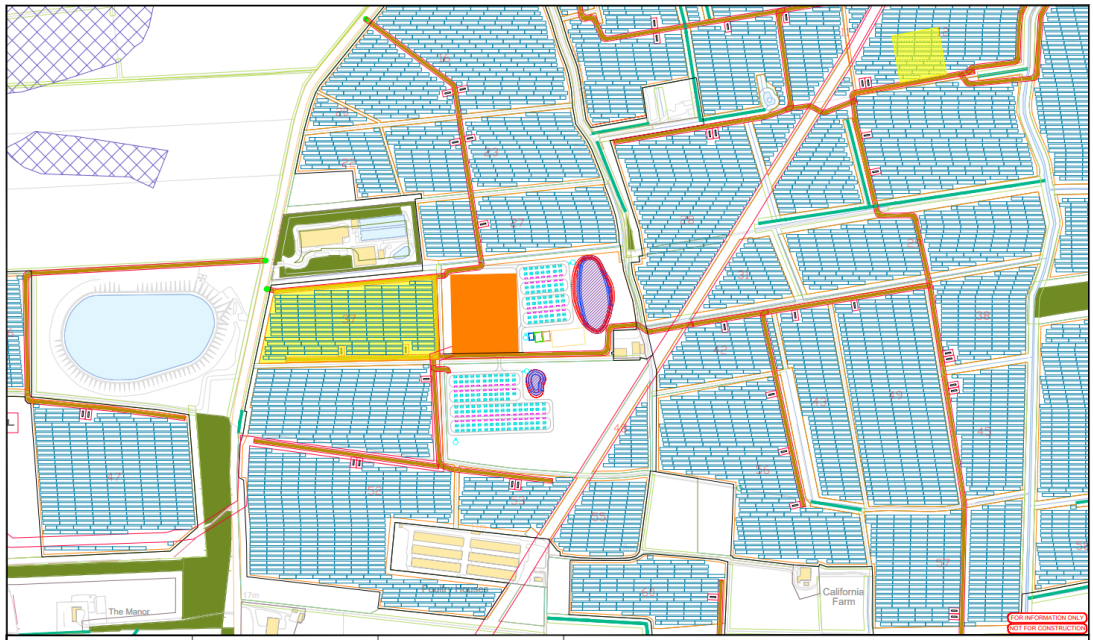
1.3.8. An illustrative layout of parts of the site are shown below in Figure 3 and Figure 4 (extract from the Outline Battery Safety Management Plan [APP-183]).

Figure 3: Illustrative plan of the battery storage area west of the River Trent



Source: Outline Battery Safety Management Plan [APP-183]

Figure 4: Illustrative plan of battery storage area east of the River Trent

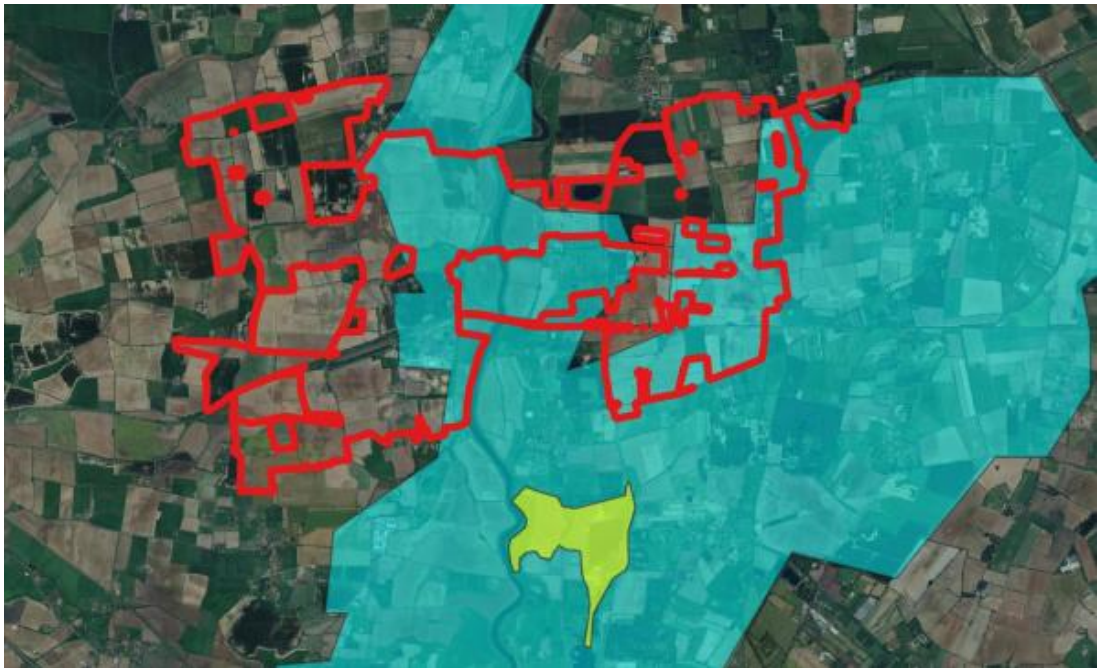


Source: Outline Battery Safety Management Plan [APP-183]

RELEVANT PLANNING HISTORY

1.3.9. The site is predominantly agricultural land and as such, there is a limited planning history. The history is set out in the Planning Statement [APP-168] Appendix 2. There are no allocations for residential or employment development, however, part of the land within the Order limits is located within a Mineral Safeguarding Area, this is shown in the Mineral Safeguarding Assessment [APP-175]. Which identifies much of the Order limits being identified as a safeguarded area for sand and gravel extraction. The area affected relative to the Order limits is detailed in the extract below.

Figure 5: Minerals Safeguarding Area



Source: [APP-175]

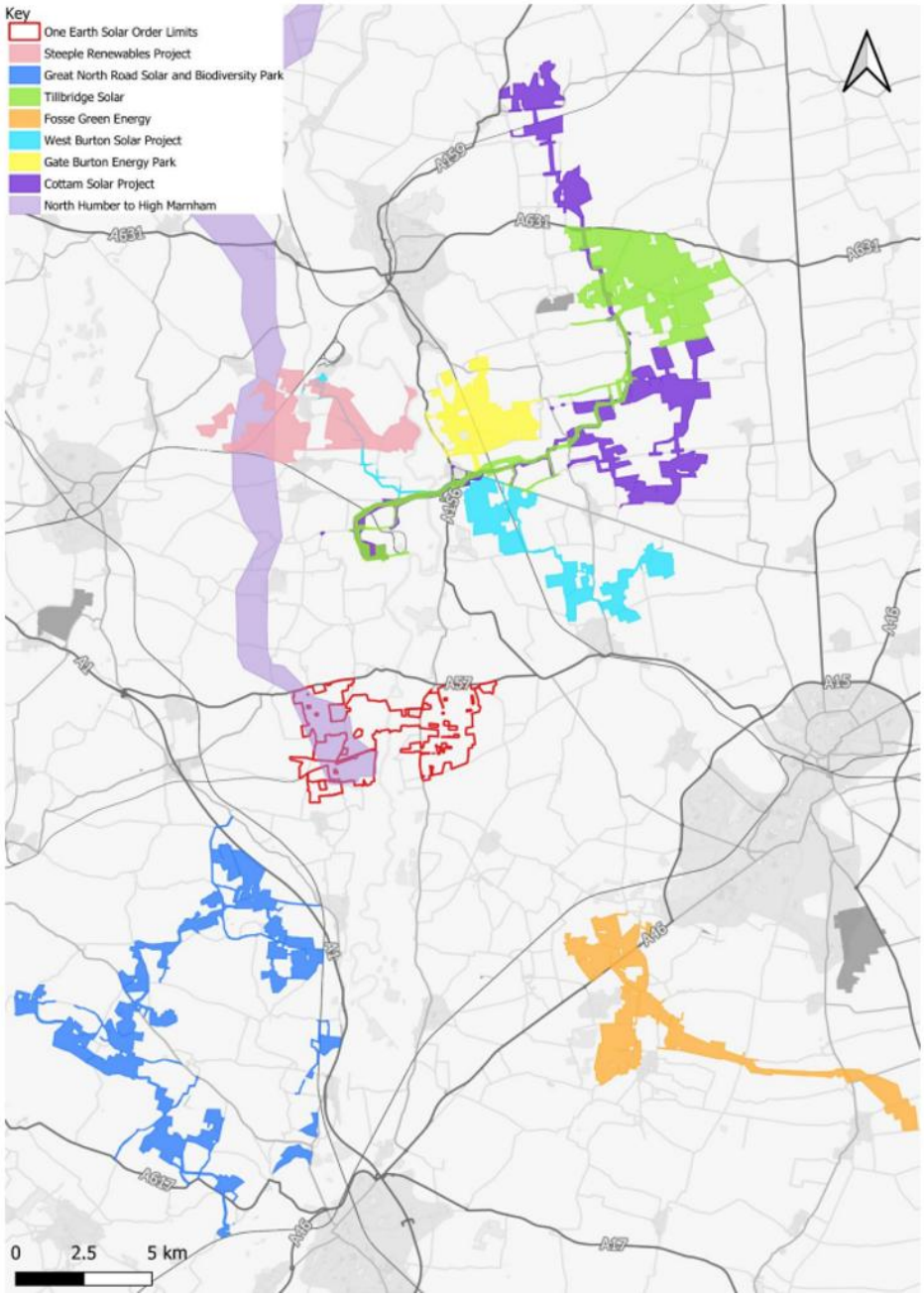
CUMULATIVE CONTEXT

1.3.10. The One Earth Solar project is located in relatively close proximity to a series of other solar NSIPs which have either been granted consent or are in the process of going through examination. These include

- Tillbridge Solar (to connect to Cottam Power Station) (Granted 14 October 2025)
- Great North Road Solar Park, (Commenced examination 26 November 2025)
- Fosse Green Energy (Accepted for examination 15 August 2025)
- Steeple Renewables, (Commenced examination 11 November 2025)
- Springwell Solar Farm (Report to SoS due 7 February 2026)
- West Burton Solar Project, (to connect to West Burton Power Station) (Granted 24 January 2025)
- Cottam Solar Project (to connect to Cottam Power Station) (Granted 5 September 2024)
- Gate Burton (to connect to Cottam Power Station) (Granted 15 July 2024).

1.3.11. A plan identifying the nearby solar NSIPs was submitted at D2 [REP2-074] identifying 7 solar NSIPs near the proposed development. Figure 2 from page 11 of that document is included below. These include those listed above but also the proposed North Humber to High Marnham grid connection. At the time of writing the application for this NSIP was anticipated to be submitted in the spring of 2026.

Figure 6: Map showing other solar NSIPs in close proximity to the One Earth proposal



Source: [REP2-074]

1.4. THE EXAMINATION

LOCAL AUTHORITIES

1.4.1. The Order limits encompass land within the boundaries of Nottinghamshire and Lincolnshire County Councils, Bassetlaw, Newark and Sherwood and West Lindsey District Councils being the host authorities.

START OF THE EXAMINATION

1.4.2. The preliminary meeting (PM) took place on 8 July 2025 [EV2-001, EV2-002, and EV2-003] The ExA's procedural decisions (PD) and the Examination

Timetable took full account of matters raised at the PM. They were provided in the Rule 8 Letter [PD-008].

1.4.3. The examination began on 8 July 2025 and concluded on 8 January 2026. The principal components of and events around the examination can be seen in the Examination Timetable and are summarised below.

1.4.4. Collingham Parish Council requested to be an IP on 17 June 2025. The ExA decided to accept them as an Other Person on the 26 June 2025.

PROCEDURAL DECISIONS

1.4.5. The PDs taken by the ExA are recorded in the EL referenced [PD-]. They detail the ExA's decisions relating to the procedure of the examination and did not bear on the ExA's consideration of the planning merits of the proposed development. The ExA is of the view that all were broadly discharged as intended however this was disputed by South Clifton Parish Council [REP8-011] and Mr Fox [REP3-107], [REP4-072, REP4-073, REP4-083, REP4-085, REP4-086, REP4-087, REP4-089], [REP6-095], [REP7-076, REP7-078], [REP8-018], [AS-069].

1.4.6. Mr Fox consistently referenced his frustration through the examination on the approach taken both by the applicant but also the ExA. He considered that the applicant consistently chose not to approach the examination in a way that showed full candour, as such in his view he considered the examination of the proposal lacked rigour. He consistently considered the applicant's responses to either ExQs, Action Points following Hearings or the fact the ExA did not issue further Procedural Decisions requiring more precise and detailed responses failed to allow the proper examination of the application.

1.4.7. As such Mr Fox considers that the approach to examination was neither fair to IPs, nor did it meet the requirements of the PA2008 as it was not an open or transparent process.

1.4.8. He remained of the view that this meant the SoS could not reasonably make a positive decision in favour of the application.

1.4.9. The ExA are of the view that the process undertaken followed well established practice. That the examination and enquiry undertaken by the ExA fully considered the evidence and questioned the approach of the applicant to those matters which the ExA regarded as important and relevant. The responses from all parties have allowed us to understand the issues at hand, and for us to prepare a report to the SoS which has given us the capacity to make a recommendation based on the evidence before us.

1.4.10. It is our view that all parties were fully included in the process and that all parties had the opportunity to be heard.

STATEMENTS OF COMMON GROUND

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

- Lincolnshire County Council [REP7-026]
- Nottinghamshire Fire and Rescue Service [REP7-034]
- Nottinghamshire County Council [REP8-006]
- Newark and Sherwood District Council [REP7-030]
- West Lindsey District Council [REP8-008]
- The Environment Agency [REP7-039]
- Anglian Water [REP7-040]
- National Highways [REP5-064]
- Natural England [REP7-036]

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

- Bassetlaw District Council [REP9-019]
- National Grid Electricity Transmission [REP9-021]

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

WRITTEN QUESTIONS

1.4.14. The ExA asked three rounds of written questions:

- ExQ1 were issued on 7 August 2025 [PD-010]
- ExQ2 were issued on 30 September 2025 [PD-014]
- ExQ3 were issued on 19 November 2025 [PD-017]

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

- The ExA sought clarification on landscape visualisations submitted by the applicant on 7 May 2025 [PD-002]
- The ExA invited the applicant without prejudice to consider the alterations the would be required to the Order limits the Development Consent Order, the Land Plan, the Works Plan and any other necessary alterations to accommodate removing solar panels and associated infrastructure from FZs 2 and 3 [PD-015]
- The ExA in conjunction with the issuing of the ExQ3 referred to above, amended the timetable to accommodate the additional questions in addition to requiring parties to provide closing submissions [PD-016]
- The ExA issued a further [PD-018] on 8 December 2025 seeking clarification from all parties on the use of artificial intelligence (AI) in their submissions
- The final [PD-019] issued on the 19 December revised the examination timetable to accommodate final submissions taking into account the Christmas period.

SITE INSPECTIONS

1.4.16. The ExA carried out the following Unaccompanied Site Inspections (USIs):

- A USI was carried out from 19 May to 22 May 2025 [EV1-001]
- A further USI was undertaken on 8 July 2025 [EV1-002]

1.4.17. The ExA carried out an Accompanied Site Inspection (ASI) with notice [PD-009 and PD-011] and in the company of parties on Tuesday 2 September 2025. This followed the draft itinerary prepared by the applicant [REP11-080].

HEARINGS

1.4.18. Hearings were held under s 91 PA2008 into specific issues (ISHs), under s 92 PA2008 into the compulsory acquisition of land and rights (CAHs) and under s 93 PA2008 providing for open floor hearings (OFHs).

1.4.19. The following ISHs were held:

- ISH1 on 9 and 10 July to consider the Draft Development Consent Order (dDCO), and a series of environmental matters [EV5-001]
- ISH2 on 3 and 4 September 2025 [EV6-001, EV6-002] covering a range of environmental matters
- ISH3 on Thursday 6 November 2025 [EV8-001]

1.4.20. We held 1 Compulsory Acquisition Hearing (CAH) CAH1 on 3 September 2025 [EV7-001].

1.4.21. The following OFHs were held:

- OFH1 on Tuesday 9 July [EV3-001]
- OFH2 on Wednesday 10 July [EV3-002]
- OFH3 on Thursday 6 November 2025 [EV9-001].

1.5. CHANGES TO THE APPLICATION

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

1.5.2. The applicant's changes to the application documents, together with any additional information submitted, are detailed in the Guide to the Application submitted at D9 [REP9-002]. This provides a guide to all documents submitted as part of the application and was updated at each deadline when new or revised documents were submitted. It provides a full record of all documentation submitted into the examination by the applicant.

1.5.3. No formal change requests were made during the examination, although the applicant did reduce the area of land subject to compulsory acquisition. This is discussed in more detail in chapter 6 of this report on Land Rights.

1.6. UNDERTAKINGS, OBLIGATIONS AND AGREEMENTS

1.6.1. There are no relevant s106 agreements that have been proposed or entered into in connection with the proposed development.

1.6.2. By the end of the examination, the applicant had entered into commercial agreements in respect of land interests as set out in the final Land and Rights Negotiation Tracker [REP9-014] and the Book of Reference [REP9-012].

1.6.3. The applicant confirmed they had a connection agreement for 2029 with National Energy System Operator (NESO) as set out in the Grid Connection Statement [APP-174].

COMMERCIAL AGREEMENTS

1.6.4. The applicant confirmed in their Closing Statement [REP9-028], they hope to reach private agreements with Exolum and National Grid Electricity Distribution (East Midlands) Plc regarding protection of their assets and/ or interests which would include a side agreement. These were not completed prior to the close of the examination, nor were they submitted into the examination, the ExA has not therefore given them weight in subsequent sections of this report.

1.7. OTHER CONSENTS

1.7.1. In addition to the consents required under the PA2008, the applicant would require other consents to construct, operate and maintain the proposed development. These are identified in the schedule of other consents and licences [APP-167].

1.7.2. At Deadline 9 the applicant confirmed in [REP9-001] at Appendix B that consent had been received from the SoS for Transport pursuant to s135 (1) and s135(2) of the Act and Article 48 of the DCO as drafted to the inclusion of provisions within the DCO which would apply to the Crown Land in respect of plots 14-017, 14-018, 14-019, 15-012, 15-013, 15-015, 15-015b, 15-016.

1.7.3. In the applicant's Closing Statement [REP9-028] they confirmed that they had not received consent from the Trent Valley Internal Drainage Board (IDB) for disapplication of drainage consents. As such their alternative wording for the DCO in this respect is set out in Appendix A of [REP5-071]. This is addressed in more detail on Section 7 of this recommendation.

1.7.4. The Marine Management Organisation (MMO) at D6 reiterated that [REP6-065] without formal advice from them, the applicant may be at risk if work commenced in advance of any deemed marine licence being in place. The applicant confirmed that should a marine licence be required, it will seek and obtain these prior to commencement of the relevant works. However, the applicant maintains its position, consistent with previous submissions and the approach taken for comparable NSIP projects, that any works in the marine area below the River Trent (bored tunnels) would be an exempt activity

under Article 35 of the Marine Licensing (Exempted Activities) Order 2011. As such, these works do not require a marine licence.

1.8. STRUCTURE OF THIS REPORT

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

- **Chapter 2** identifies how the application is to be determined and 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 ExA's examination of land rights and related matters.
- **Chapter 7** considers the implications of the matters arising from the preceding chapters for the Development Consent Order (DCO).
- **Chapter 8** summarises all relevant considerations and sets out the ExA's recommendation to the SoS.

1.8.2. This report is supported by the following appendices:

- **Appendix A** – Reference Tables.
    - A1: Statements of Common Ground
    - A2: Summary of Legislation relevant to the proposed development
    - A3: Summary of other National Policies relevant to the proposed development
    - A4: Made and Draft Development Consent Orders referred to
    - A5: Issues raised in LIRs
    - A6: Relevant Local Plan Policies
    - A7: Local Plan Policies relevant to specific planning matters
- **Appendix B** – List of Abbreviations.
- **Appendix C** – The Recommended DCO

2. HOW THE APPLICATION IS DETERMINED

2.1. INTRODUCTION

2.1.1. This chapter identifies the key legislation, policy and Local Impact Reports (LIRs) that the Examining Authority's (ExA) recommendations have taken into account. It includes our consideration of the overall adequacy of the applicant's Environmental Impact Assessment, the Habitats Regulations Assessment (HRA), and transboundary effects.

2.2. LEGISLATION AND POLICY

2.2.1. This section identifies the key legislation and policy that the ExA considers to be important and relevant to its findings and recommendations to the SoS. More detail is provided in Appendix A sections A2 and A3 to this report.

PLANNING ACT 2008

2.2.2. The Planning Act 2008 (PA2008) provides a different basis for decision-making for Nationally Significant Infrastructure Project (NSIP) applications where a relevant National Policy Statement (NPS) (s 104) has effect from that where no NPS has effect (s105).

2.2.3. The proposed development is a solar photovoltaic electricity generating station with Associated Development, it needs to be considered against s104 of the PA2008 because it is within scope of the following NPSs each of which were designated on 17 January 2024.

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

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

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

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

- any relevant NPS
- any duly submitted Local Impact Report (LIR)
- any matters prescribed in relation to the development of the description to which the application relates
- any other matters the SoS thinks are both important and relevant to the decision

2.2.7. Section 104(3) of the PA2008 requires the SoS to decide the application in accordance with any relevant NPS that has effect in relation to this application, subject to the exceptions in s104(4) to (8) as follows:

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

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

OTHER LEGISLATION

2.2.9. A full list of relevant primary and secondary legislation, including but not limited to duties arising under the Equality Act 2010, Human Rights Act 1998 and the Climate Change Act 2008 (as amended), can be found in Table A2 of Appendix A of this report. All applicable legislation has been considered by the ExA as required and the findings and recommendations in this report are framed so as to identify and enable the SoS to discharge all applicable statutory considerations or duties.

2.3. NATIONAL POLICY STATEMENTS

2.3.1. NPSs EN-1, EN-3 and EN-5 are relevant NPS for the proposed development and provide the primary basis for determining whether consent should be granted.

2.3.2. The NPSs include policies for the principle of development (including the need case) and for the planning issues (including the assessment of potential benefits, adverse impacts, and mitigation). These are addressed in chapter 3.

2.3.3. The NPSs also set out general policies and considerations in relation to the planning balance and the case for development. These are addressed in chapter 5.

2.3.4. During the examination the Government concluded the consultation on further iterations of each of the NPSs referred to above and these formally came into effect on 6 January 2026.

2.3.5. The changes introduced by the designation of these NPs have not been considered in depth during this examination in light of the fact the previous iteration are required to be the policy against which this application is to be determined.

2.3.6. The changes introduced to EN-1 by formally incorporating the Clean Power 2030 Action Plan (CP2030AP), the Centralised Strategic Network Plans (CSNP) and the Strategic Spatial Energy Plan (SSEP) into the NPSs, further reinforce the importance of renewable energy in policy terms.

OTHER RELEVANT NATIONAL POLICY AND GUIDANCE

2.3.7. Other relevant Government policy which has been taken into account includes:

2.3.8. National Planning Policy Framework (December 2024) and associated Planning Practice Guidance (2025):

- National Infrastructure Strategy (2020)
- Energy White Paper: Powering our Net Zero Future (2020)
- Net Zero Strategy: Build Back Greener (2021)
- British Energy Security Strategy (2022)
- Powering up Britain (2023)
- Clean Power Action Plan (2024)
- Solar Roadmap (2025)

2.3.9. The NPPF, and the accompanying Planning Practice Guidance, set out the planning policies for England and how these are to be applied. Paragraph 5 of the NPPF states that it does not contain specific policies for NSIPs as these are determined in accordance with the decision-making framework in the PA2008 and relevant NPSs. Other key national policies and guidance are listed in Appendix A Table A3.

2.3.10. In accordance with s104(2) of the PA2008, the ExA address compliance with other national policies and guidance that we consider to be important and relevant to the decision, but only to the extent that they are relevant to the proposed development.

2.4. LOCAL IMPACT REPORTS

2.4.1. Five LIRs were submitted into the examination at D1 by the following local authorities:

- Lincolnshire County Council [REP1-089]

- Nottinghamshire County Council [REP1-096]
- Bassetlaw District Council [REP1-087]
- Newark and Sherwood District Council [REP1-094]
- West Lindsey District Council [REP1-098]

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

2.4.3. The issues raised are considered in further detail in relation to relevant planning issues in Section 3 of this report. Table A5 of Appendix A sets out a list of the issues raised in each LIR.

2.4.4. Amongst other matters, LIRs identify local policies (including those from the Development Plan) which are capable of being important and relevant considerations under s104(2)(d) of the PA2008. Table A6 of Appendix A lists the individual local policies that are relevant to the proposed development.

2.4.5. For an application proceeding under s104 PA2008, subsection (3) requires that the SoS must decide the application in accordance with any relevant NPS, except to the extent that one or more of the exceptions set out in subsections (4) to (8) applies. Where a relevant local policy and designated NPS policy are in conflict, the effect of this duty (subject to any applicable exception) is to establish a presumption in favour of NPS policy in the SoS' decision-making.

2.5. ENVIRONMENTAL IMPACT ASSESSMENT

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

2.5.2. On 13 November 2023, the applicant submitted a Scoping Report to the SoS under Regulation 10 of the EIA Regulations in order to request an opinion about the scope of the ES to be prepared (a Scoping Opinion).

2.5.3. On 22 December 2023 the Planning Inspectorate provided a Scoping Opinion [APP-150].

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

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

2.6. HABITATS REGULATIONS ASSESSMENT

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

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

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

2.7. TRANSBOUNDARY EFFECTS

2.7.1. A transboundary screening under Regulation 32 of the EIA Regulations [OD-008] was undertaken on behalf of the SoS on 22 December 2023 following the applicant's request for an EIA Scoping Opinion. No significant effects were identified on the environment in a European Economic Area (EEA) member state.

2.7.2. A second screening was published on 15 July 2025. Again, 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.

2.7.3. The Regulation 32 duty is an ongoing duty, and on that basis, the ExA has considered whether any facts have emerged to change these screening conclusions, up to the point of closure of the examination. The ExA is satisfied, based on the information provided by the applicant and Natural England's agreement that the correct sites had been considered in the HRA [APP-165], that the proposed development would not have an LSE on European sites in any EEA States.

3. THE PLANNING ISSUES

3.1. INTRODUCTION

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

3.1.2. In addition to the issues arising from the IAPI, the ExA has also given consideration on an overarching basis to the principle of the development in terms of:

- Need
- Conformity with designated NPS policy
- Applicability of other NPS policy
- Applicability of other policy
- Applicability of legislation

3.1.3. In each section, the ExA identifies the policy background, followed by a summary of the application as made, then reports on the main issues for each topic. Findings and conclusions are drawn for each topic. These in turn identify whether the effects carry:

- little weight
- moderate weight
- great weight or
- very great weight

for or against the making of the Development Consent Order (DCO).

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

3.1.5. References to mitigation secured by management or mitigation plans are based on provisions in the recommended Development Consent Order (rDCO) in Appendix C.

INITIAL ASSESSMENT OF PRINCIPAL ISSUES (IAPI)

3.1.6. As required by section (s) 88 of the Planning Act 2008 (PA2008) and Rule 5 of the Infrastructure Planning (Examination Procedure) Rules 2010 (EPR), the ExA made an IAPI arising from the application in advance of the preliminary meeting (PM). This formed an initial assessment of the issues based on the application documents and submitted relevant representations (RR). 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.

3.1.7. Lincolnshire County Council confirmed that they intended to provide evidence in respect of waste and the cumulative effects. There was no request to identify additional principal issues. The IAPI can be found in Annex C of the Rule 6 letter [PD-003]. The issues identified in the IAPI are as follows:

- Assessment of alternatives
- Cultural heritage
- Ecology and HRA,
- Flood risk, hydrology and water resources
- Geology and land use
- Landscape and visual amenity
- Human health
- Traffic and transport

THE PLANNING ISSUES IN THIS REPORT

3.1.8. The ExA considers that the issues raised by interested parties (IP) were broadly in line with the IAPI with the additional issues of waste and cumulative effects and were subject to written and oral questioning during the examination. These are the issues that the ExA has used to structure most of the following sections in this report.

3.1.9. While the IAPI was not challenged at the PM or later during the examination, it quickly became apparent that air quality, carbon and climate and socio economics were not areas of substantive dispute as such we have covered these in the 'Other Planning Matters' section of chapter 3.

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

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

- Section 3.2: The need case, alternatives including sequential test electricity generation, and decommissioning
- Section 3.3: Individual planning merits topics
- Section 4: HRA
- Section 5: Conclusion on the case for development consent
- Section 6: Land rights and related matters
- Section 7: The draft DCO and related matters
- Section 8: Summary of findings and conclusions.

3.2. THE NEED CASE

INTRODUCTION

3.2.1. This section addresses the overall need for the proposed development.

LEGISLATION

CLIMATE CHANGE ACT 2008

3.2.2. The Climate Change Act 2008 (2050 Target Amendment) Order 2019 introduced a revised target of achieving net zero GHG emissions by 2050. This legislated for a 100% reduction in GHG emissions instead of the 80% reduction that had originally been stated in the Act.

POLICY BACKGROUND

3.2.3. The National Policy Statement - Overarching National Policy Statement for Energy (EN-1) sets out in paragraph 3.2.6 that in deciding such applications the Secretary of State (SoS) should assess all applications for development consent for the types of infrastructure covered by this NPS on the basis that the government has demonstrated that there is a need for those types of infrastructure, which is urgent.

3.2.4. The NPS makes clear in Paragraph 3.2.7 that substantial weight should be given to this need when considering applications for development consent under the Planning Act 2008.

3.2.5. The SoS is not required to consider separately the specific contribution of any individual project to satisfying the need established in this NPS.

3.2.6. Section 4.2 further identifies the critical national priority for low carbon infrastructure with the definition of such infrastructure set out at paragraph 4.2.5

"Low carbon infrastructure for the purposes of this policy means:

• for electricity generation, all onshore and offshore generation that does not involve fossil fuel combustion."

3.2.7. National Policy Statement for Renewable Energy Infrastructure (EN-3) further states at paragraph 1.1.1 "*There is an urgent need for new electricity generating capacity to meet our energy objectives."*

3.2.8. Local Policy referred to by each of the local authorities in their respective Local Impact Reports covering Need is set out in Table A6 of Appendix A to this recommendation.

THE APPLICATION

3.2.9. The applicant's case is set out in documents including the Planning Statement [APP-168], and chapter 5 - Description of the Proposed Development [APP-034] and the Statement of Need [APP-173], which was updated during the examination the final iteration being [REP2-047].

3.2.10. The applicant argues that the Statement of Need demonstrates why the proposed development is urgently needed at the scale proposed, the location being highly suitable, and how the proposed development addresses all relevant aspects of established government policy.

3.2.11. The applicant goes on to say that delivering clean power by 2030 is a clear government ambition set out in the manifesto and further developing from the previous government approach to decarbonise the energy sector. This need is further emphasised as the delivery of net zero will require electricity demand to grow as transport, energy and industrial demand is decarbonised.

3.2.12. Decarbonisation is a legally binding climate change target for the UK and has global significance.

3.2.13. NPS EN-1 states at paragraph 4.1.7 that "For projects which qualify as critical national priority (CNP) Infrastructure, it is likely that the need case will outweigh the residual effects in all but the most exceptional cases". The proposed development qualifies as CNP; therefore, it aligns with the urgent need identified in the NPS.

3.2.14. Solar power is a crucial part of the government strategy, and the proposed development would contribute towards this ambition.

3.2.15. The Statement of Need [REP2-047] explains:

- that urgent and unprecedented actions are required on a global scale to halt climate change
- the NPSs provide that there is a CNP for nationally significant low carbon infrastructure, including solar development
- decarbonisation will increase demand for electricity
- provides an overview of progress in the development of different technologies with potential to play a role in the delivery of a net zero energy system
- evidence on technical considerations associated with the development of solar in the UK
- the benefits of the location of the proposed development in relation to decarbonisation, security of supply, and delivering against the urgency of need
- provides evidence that solar generation contributes to security of supply as part of multi-technology aggregated generation which with co-located energy storage provides flexibility
- solar facilities are already among the cheapest form of electricity generation in the UK and the development of more solar schemes would help to reduce the cost of wholesale electricity
- concluding that a significant capacity of low-carbon solar generation is urgently needed in the UK.

ISSUES CONSIDERED DURING THE EXAMINATION

THE NEED CASE

3.2.16. A number of Interested Parties (IPs) do not agree there is a need for the proposed development in this location including [RR-129] David Sanders, [RR-025] Christopher Gwynne Jones, and [RR-150] Trevor Noble.

3.2.17. In addition, several IPs including [RR-007, RR-106, RR-069, RR-020, RR-072, RR-151] express concern that the proposed development is too large for this location.

3.2.18. IPs including [RR-087, RR-073, RR-129, RR-080, RR-124] also expressed support for other forms of renewable energy which would not result in the extensive loss of agricultural land.

COUNCILS LOCAL IMPACT REPORTS

3.2.19. West Lindsey District Council (WLDC) LIR [REP1-098] recognises the delivery of low carbon electricity generation as a positive impact is in line with policy in NPS EN-1 and acknowledges the urgent need to deploy infrastructure for the generation of electricity from renewable sources as set out in NPSs EN-1 and EN-3.

3.2.20. The principle of deploying renewable energy generation infrastructure is also supported by policy S14 of the Central Lincolnshire Local Plan (CLLP) 2023.

3.2.21. WLDC recognises the One Earth Solar Farm (OESF) as a 'Critical National Priority' (CNP) under NPS EN-1.

3.2.22. Neither Bassetlaw District Council (BDC) LIR [REP1-087] or Nottinghamshire County Council (NCC) LIR [REP1-096] makes reference to the need case.

3.2.23. Newark and Sherwood District Council (NSDC) LIR [REP1-094] do not dispute the need for the proposed development, however reference local policy in support of renewable energy subject to where the benefits are not outweighed by any impacts to landscape, heritage, amenity, ecology, highway safety, aviation interests of national importance.

3.2.24. Lincolnshire County Council (LCC) LIR [REP1-089] recognises the need identified in Section 3.2 EN-1 "*that the government has demonstrated that there is a need for those types of development which is urgent"* and paragraph 152 of the NPPF which states that the planning system should support the transition to a low carbon future and support renewable energy and associated infrastructure.

3.2.25. In referencing the CLLP Policy S16: recognises and supports, in principle, the need for significant investment in new and upgraded energy infrastructure, while CLLP Policy S14 proposals for renewable energy schemes, including ancillary development, will be supported where the direct, indirect, individual, and cumulative impacts of development on a number of considerations are, or will be made, acceptable.

3.2.26. The Statements of Common Ground (SoCG) provide at the end of the examination confirm that need was not an issue of concern for any of the five local authorities.

APPLICANT'S RESPONSE

3.2.27. Responding to the Relevant Representations, the applicant [REP1-075] maintains that the case presented in the Statement of Need [REP2-047] is robust, that there is an urgent need for renewable energy projects to deliver the Government's legally binding commitment to net zero, which cannot be reached with the delivery of small sites alone, emphasising that projects such as this are needed to deliver energy at scale.

3.2.28. The applicant emphasises what they regard as significant benefits of the proposal by bringing forward large scale solar which would respond specifically to the UK's critical strategic need.

3.2.29. The scheme would contribute to the decarbonisation, security of supply, while also providing affordability benefits and should be accorded substantial weight.

3.2.30. The Government Clean Power 2030 Action Plan reinforces the urgent need for low carbon generation schemes both for now and the future, this combined with utilising the existing grid infrastructure will be necessary to achieve the government's ambitions.

CONCLUSIONS ON THE NEED CASE

3.2.31. The ExA are satisfied that the applicant's assessment of need aligns with the statements set out in national policy and there was nothing substantive presented during the examination that argue against this.

3.2.32. The policy support identifies solar generation of this scale as one of the mechanisms that will support the government's policy objectives and legal requirements for decarbonisation to be met.

3.2.33. The ExA therefore conclude in respect of need that in line with national policy substantial positive weight should be afforded to the need case in the planning balance.

3.3. CONSIDERATION OF ALTERNATIVES

INTRODUCTION

3.3.1. This section covers the consideration of alternative locations and the process of site selection for the proposed development, including the use of the best and most versatile (BMV) agricultural land, and the sequential test in respect of flood risk.

3.3.2. The detailed consideration of the impact on BMV agricultural land, including cumulative effects, of the proposed development is covered in section 3.9 on soils and agriculture, while the assessment of flood risk and hydrological matters is covered in section 3.11 on Hydrology, Flooding and the Water Environment.

POLICY BACKGROUND

3.3.3. NPS EN-1 does not contain any general requirement to consider alternatives or to establish whether the proposed project represents the best option. applicants are however required to include in their ES information about the main alternatives studied and include an indication of the main reasons for the choice made, taking into account the environmental, social and economic effects including technical and commercial feasibility.

3.3.4. EN-1 advises that given the need for new energy infrastructure, the consideration of alternatives should be carried out in a proportionate manner. and that the SoS should only consider those alternatives that can meet the objectives of the proposed development and have a realistic prospect of delivering the same infrastructure capacity in the same timescale.

3.3.5. Furthermore, it advises that the SoS should not refuse an application because there would be fewer adverse impacts from developing similar infrastructure on another suitable site. In addition, it makes clear that alternatives not considered by the applicant should only be considered to the extent that the SoS considers them to be both important and relevant to the decision (paragraphs 4.3.22 to 4.3.29).

THE APPLICATION

3.3.6. The applicant set out their case on alternatives in chapter 4 Alternatives and Design Evolution [APP-033] which is supplemented by Appendix 1 to the Planning Statement [APP-168] and the Design Approach Document [APP-171].

3.3.7. The applicant sets out that in determining a suitable location for the proposed development they sought to develop a scheme which could generate 250-500MW. In doing so a series of principles were established drawing from the principles established in EN-3, including:

- would contribute to meeting the UK's urgent need for low carbon energy generation
- would be as close as possible to an available grid connection or part of the transmission network in which capacity exists
- would avoid impacts on sensitive landscapes and environments as far as practicable
- would be situated away from densely populated residential receptors and communities
- would as far as possible be located outside of Best and Most Versatile BMV) Agricultural Land based on the information known at the time taken from Provisional Agricultural Land Classification (ALC) (England) Map produced by Natural England, noting that this could not always be avoided depending on the overall land quality in the area
- would not be located wholly within the FZs, to ensure that more sensitive electrical infrastructure could be located outside of areas at risk of flooding

- would be readily accessible from existing strategic road network to facilitate construction access; and
- would be delivered on land which could be acquired voluntarily thereby avoiding or minimising the need for large scale compulsory acquisition (and, in the case of BMV Agricultural Land, could potentially help identify the least productive areas of land using local knowledge from farmers).

3.3.8. EN-3 recognises that there are three core attributes for large scale solar these being:

- Sufficient land to deliver at scale
- Availability and capacity of a suitable point of connection
- Solar irradiation levels to produce an efficient and economic energy yield

3.3.9. Having gained an agreement to a connection at High Marnham from National Grid Electricity System Operator (NESO) the applicant undertook a search covering a 10km area beyond the point of connection.

3.3.10. This was chosen according to the applicant by "the desire to be as close to the point of connection as possible, in order to minimise the risk of environmental impacts, disruption to multiple landowners, challenges with crossings and process losses, and the cost and delay of a longer cable route." (Paragraph 4.5.3) of APP-033].

3.3.11. The applicant notes there is no consistent approach to the extent of search area for solar NSIPs, citing other examples:

- Longfield Solar – 5km
- Cottam Solar - 5km
- Gate Burton – 8km (with constraints mapped to 15km)
- West Burton – 15km

3.3.12. The applicant commenced conversations with landowners and undertook a review of brownfield sites.

AGRICULTURAL LAND CLASSIFICATION

3.3.13. The applicant explains that across Nottinghamshire and Lincolnshire the provisional ALC mapping shows that area has a mixture of largely Grade 3 with small pockets of Grade 2 and Grade 4, making complete avoidance of BMV impossible for development of the scale proposed.

3.3.14. The applicant also notes that EN-3 at paragraph 2.10.29 land type should not be a predominating factor in determining the suitability of the site location, but applicants should where possible avoid the use of BMV agricultural land.

3.3.15. The applicant however, sought to minimise the impact upon BMV and avoid Grade 2 land which is located to the west and south. During the site selection process, the applicant sought to avoid ALC Grade 2 (based on Defra mapping) areas further west and south. In addition, the Natural England Likelihood of BMV Agricultural Land map showed that all of the land to the west beyond the Order Limits was predicted to have a moderate to high

likelihood of BMV, with the greater likelihood as you move further west beyond East Markham, and so a greater impact on BMV was anticipated further west.

3.3.16. In undertaking the review, the applicant concluded that the site was favourable as it was predominantly Grade 3 with some Grade 4 and in their judgement would represent a "better than characteristic snapshot of the predominating land mix and certainly less BMV than the county wide mix of ALC grades."

ISSUES CONSIDERED DURING EXAMINATION

3.3.17. NSDC [RR-135] expresses concern how the assessment of alternatives was presented, with greater clarity coming if it was presented in a single document with supporting plans.

3.3.18. South Clifton Parish Council (SCPC) [RR-050] expresses concern over the extent of the loss of BMV and does not consider the justification required by national policy has been provided.

3.3.19. While other IPs including [RR-084, RR-064, RR-020, RR-109, RR-111, RR-120, RR-122, RR-123] express more general concerns in respect of site selection, the loss of agricultural land and the consideration of alternatives.

3.3.20. WLDC LIR [REP1-098], LCC LIR [REP1-089] NCC LIR [REP1-096] BDC [REP1-086] and NSDC [REP1-094] do not raise the assessment of alternatives as an area of concern, although WLDC, LCC and BDC emphasise their objection to the loss of BMV while NSDC express concern about the impacts on BMV. This is dealt with in the Agriculture and Soils section of this report.

3.3.21. LCC [RR-077] note that a Minerals Safeguarding Assessment is included in the DCO application [APP-175] and includes an assessment of the Minerals Safeguarding Area (MSA) for sand and gravel identified in the Lincolnshire Mineral and Waste Local Plan (LMWLP), and the Newton on Trent Oil Well which is within the study area but outside the Order limits.

3.3.22. LCC LIR [REP1-089] identified concern in respect of the potential sterilisation of large swathes of land safeguarded for future minerals extraction, and that the safeguarding of such sites had not formed part of the rationale for discounting sites from selection. The plan showing the area of mineral safeguarding is included in this report at Figure 5. The potential for mineral sterilisation is therefore significant, albeit temporary in nature. The council would stress that although the development is considered to be temporary, 60 years is a significant duration, and further applications could come forward to extend this timeframe.

3.3.23. The proposed 60-year operational life of the proposed development would extend significantly beyond the proposed plan period for the updated Lincolnshire Minerals and Waste Local Plan (LMWLP) and further sand and gravel resources are therefore likely to be required in Lincolnshire during the life of the proposals, beyond any that may be identified in the new plan. The

council therefore does not agree with the statement at paragraph 4.8.2. of the Minerals Assessment that “There is no need for any additional permitted provision to be made for the foreseeable future.”

APPLICANT’S RESPONSE

3.3.24. The applicant discounted sites to the west due to adverse effects on BMV, and greater landscape harm due to land being on higher ground, while land to the southeast was excluded due to the location of ancient woodland. Further west the applicant considered there would be harm due to the proximity of clustered and denser settlement patterns. In addition, the applicant did not receive a positive response from landowners. The applicant concluded therefore that these sites were not available and, in such circumstances, NPS EN-1 at paragraph 5.8.9 allowed for the application of the exception test.

3.3.25. The applicant reiterates that in line with paragraph 4.3.22 of NPS EN-1 “The consideration of alternatives in order to comply with policy requirements should be carried out in a proportionate manner; and only alternatives that can meet the objectives of the proposed development need to be considered.”

3.3.26. Appendix 1 to the Planning Statement [APP-168] refers the reader to NPS EN-1 at paragraph 4.3.15 which states that: "Applicants are obliged to include in their ES, information about the reasonable alternatives they have studied. This should include an indication of the main reasons for the applicant's choice, taking into account the environmental, social and economic effects and including, where relevant, technical and commercial feasibility."

3.3.27. Paragraph 4.2.25 states that alternatives "not among the main alternatives studied by the applicant (as reflected in the ES) should only be considered to the extent that the Secretary of State thinks they are both important and relevant to the decision".

3.3.28. The applicant’s response [REP1-075] The Site Selection Assessment appended to the Planning Statement [APP-168] sets out the methodology and the site selection principles, which concludes that this site is preferred on balance considering the site selection principles and environmental considerations.

3.3.29. In respect of the MSA this forms part of a much larger designation, and while the applicant has not undertaken a detailed assessment of the mineral resource this is not considered necessary as the proposed development would not result in the permanent sterilisation of the site. The minerals would remain available as an underlying resource.

3.3.30. The applicant acknowledges that the 60-year operational period of the proposed development extends beyond the new plan period which ends in 2041. However, the LMWLP Preferred Approach Document confirms that the

allocations would amount to the provision of 44.27 million tonnes of sand and gravel, which is in excess of the identified shortfall for the plan period.

3.3.31. The MSA as shown in Appendix 2 of the Mineral Safeguarding Assessment [APP-175] covers a significant area across Lincolnshire, and the part that is included within the Order Limits is very small in comparison. EN-3 does not list MSA as a formal site selection criterion.

3.3.32. The SoS has accepted in other recent DCO decisions for solar schemes that a 60-year operational period can be regarded as temporary and there are no plans at this point to seek to extend the operational life of the project so this comment should not be given weight in the consideration of the proposal that is under consideration.

CONCLUSIONS ON ALTERNATIVES

3.3.33. The ExA are satisfied that the applicant has met the policy requirements of the NPS in undertaking a proportionate assessment of the alternatives subject to the sequential test which we deal with below.

3.3.34. Chapter 4 Alternatives and Design Evolution [APP-033] set out clearly the approach the applicant has taken, and the ExA consider the rationale that this follows is aligned with advice in EN-3.

3.3.35. The objections identified by IPs and the local councils reflects the importance of agriculture. Both in terms of the landscape setting as well as the economic and social benefits this provides for the area and the communities concerned. Despite this the ExA are content that the consideration of alternatives in this respect has been undertaken robustly and the conclusions reached are policy compliant.

3.3.36. In addressing the concern in respect of the MSA identified in the LCC Minerals and Waste Local Plan. The ExA are satisfied that despite the 60-year life of the proposed development being extensive there is nothing that distinguishes this scheme from others where the SoS has determined this can be regarded as temporary.

3.3.37. The minerals that are in place would remain in place and with appropriate decommissioning allow for future access to this resource. In this respect while the ExA recognise that access to this resource would be restricted for the operational period of the proposed development, this would not result in sterilisation as suggested. There is also no suggestion that the loss of this land for a 60-year period would cause a shortfall in overall provision of sand and gravel in the county, and in this respect the ExA are content that the assessment undertaken by the applicant and the site selection would not result in a fundamental problem in this respect.

3.3.38. The ExA recognise that there will always be a possibility of an extension being sought to a proposal, and there are mechanisms in place that would allow that to happen. That, however, is not before us and should it occur would need to be assessed under the appropriate regulations that apply at

the time. The ExA do not therefore give this concern weight in coming to our conclusions.

3.3.39. EN-1 paragraph 4.3.9 makes clear that it does not have a general requirement to consider alternatives or to establish whether the proposed project represents the best option from a policy perspective.

3.3.40. Paragraph 4.3.16 of EN-1 goes on to explain that applicants should include within their ES information about the reasonable alternatives assessed and the reasons for that choice, including environmental effects and technical and commercial feasibility. The ExA are satisfied that the applicant has undertaken the assessment in this form.

3.3.41. Paragraphs 4.3.22 to 4.3.29 provide guidance on Secretary of State decision making including:

- only alternatives that can meet infrastructure capacity (including energy security, climate change, and other environmental benefits) in the same timescale as the proposed development need to be considered
- alternative proposals which mean the necessary development could not proceed, for example because the alternative proposals are not commercially viable or alternative proposals for sites would not be physically suitable, can be excluded
- alternative proposals which are vague, or immature can be excluded

3.3.42. Paragraph 2.3.5 of EN-3 says that it is for applicants to decide what applications to bring forward and generally government does not seek to direct applicants to particular sites for renewable energy infrastructure.

3.3.43. As such in assessing the broad approach of the applicant to the consideration of alternatives, the ExA are satisfied that there are no matters relating to the consideration of alternatives bar the sequential test dealt with in the next section which would weigh for or against the Order being made.

3.4. THE SEQUENTIAL TEST

INTRODUCTION

3.4.1. This section examines the approach of the applicant to the sequential test in respect of flood risk. The wider assessment of hydrology and the water environment is included in Section 3.11 of this report.

POLICY BACKGROUND

NATIONAL POLICY STATEMENTS (NPS)

3.4.2. Paragraph 5.8.21 of EN-1 sets out the approach to applying the sequential test with the aim of steering development to areas with the lowest risk of flooding. With the consideration of alternatives set out in Section 4.3.

3.4.3. Section 4.3 explains the duty on applicants to undertake an environmental assessment in line with the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 (the EIA Regulations).

3.4.4. Paragraph 5.8.9 of EN-1 states “If, following application of the Sequential Test, it is not possible, (taking into account wider sustainable development objectives), for the project to be located in areas of lower flood risk the Exception Test can be applied.”

3.4.5. Paragraph 5.8.10 of EN-1 goes on to say that “when the Sequential Test has identified reasonably available, lower risk sites appropriate for the proposed development where, accounting for wider sustainable development objectives, application of relevant policies would provide a clear reason for refusing development in any alternative locations identified.

3.4.6. NPS EN-3 refers applicants and the SoS back to the principles in EN-1, however, recognises that applicants will need to consider flood risk as one of the factors that influence design and layout.

THE NPPF

3.4.7. Paragraph 174 of the NPPF reaffirms the approach in EN-1 paragraph 5.8.6 that the purpose of the sequential test is to direct development away from the areas at greatest risk of flooding and that development should not be permitted if there are reasonably available sites at lower risk of flooding.

3.4.8. Annex 3 of the NPPF confirms that solar farms are classed as essential infrastructure.

NATIONAL PLANNING PRACTICE GUIDANCE: FLOOD RISK AND COASTAL CHANGE (NPPG)

3.4.9. The NPPG outlines how the sequential and exception test are to be applied.

3.4.10. The purpose is made clear in paragraph 023 that areas at little or no risk of flooding from any source should be developed in preference to areas at higher risk. applicants are advised to apply the sequential approach to locating development to make sure resources are not wasted in promoting developments that fail to meet the Sequential Test.

3.4.11. In undertaking the Sequential Test, consideration is to be given to ‘reasonably available’ sites, particularly where these are in areas of lowest flood risk. Paragraph 028 defines ‘reasonably available’ sites as being “those in a suitable location for the type of development with a reasonable prospect that the site is available to be developed at the point in time envisaged for the development.”

3.4.12. Paragraph 028 also makes clear that these sites could include a series of smaller sites which together could accommodate the proposed development.

3.4.13. Paragraph 031 reiterates the advice in EN-1 paragraph 5.8.11 but clarifies that it is not the role of the exception test to justify development in an area of flood risk when the sequential test has shown there are reasonably available lower risk sites appropriate for the proposed development.

THE APPLICATION

3.4.14. The Planning Statement [APP-168], sets out the applicant's case in relation to the sequential test, including the Site Selection Report contained in Appendix 1.

3.4.15. The applicant states that the starting point for selecting the location of the Order limits for the proposed development was the grid connection agreement that was secured at High Marnham Substation. Having secured this agreement, the applicant undertook a search extending to 10km from the connection point for suitable areas of land that could facilitate solar development on the necessary scale.

3.4.16. Land to the south and east of the proposed Order limits was located primarily in Flood Zone 3 (FZ) so was not considered suitable. To the north, pockets of land are within FZ 1, however, the applicant considered them too small to accommodate the scale of solar of development that is being proposed alone or in combination with other land parcels.

3.4.17. The applicant states that land further east, northeast and southeast beyond FZs 1 and 2 are already to be utilised for other NSIP solar farms. These are sites at Cottam, West Burton and Gate Burton, which have all received development consent. Another NSIP solar farm at Fosse Green, submitted an application for development consent on 18 July 2025.

3.4.18. The location of these other solar schemes is shown in Figure 6 of this report.

3.4.19. The applicant notes that larger areas of land to the west of the High Marnham substation and within the 10km search radius (land up to Egmanton, Tuxford, East Markham, and East Drayton) are located in FZ 1. The applicant has discounted this land as not being suitable for the proposed development for the following reasons:

- the landowners were not willing to put their land forward for the proposed development and the applicant's aim is to secure the land parcels by voluntary agreement where possible
- large areas to the west of the High Marnham Substation are at higher ground where the land rises steeply to form a ridge, in proximity to the settlements of Tuxford and East Markham and therefore would have greater effects on the landscape and visual impacts and as such is less suitable for large scale solar development
- towards the south west around Egmanton, there are areas of ancient woodland that would discount large parcels within these areas due to the protected nature of the woodland
- further west the settlement pattern becomes more clustered and denser (around the larger settlements of Tuxford and East Markham for example) and was considered less suitable than the land closer to the point of connection because the landscape, visual and amenity impacts would be greater.

3.4.20. The applicant states that while this land to the west in FZ 1 has been identified by the sequential test, it has been identified as not meeting the applicant's wider sustainable development objectives and therefore has been ruled out of the site selection process.

3.4.21. Appendix 1 to the Planning Statement states that "Where a scheme would be located within, or partially within, FZ 2 or FZ 3 (EN-1 section 5.8). In this case the Sequential Test should be undertaken. If following application of the Sequential Test, it is not possible for the project to be located in areas of lower flood risk the Exception Test can be applied." (Paragraph 2.1.7) of Appendix 1 to the Planning Statement [APP-168].

3.4.22. The applicant also explains that the sequential approach to the proposed development layout has been taken and it is proposed that sensitive equipment (such as sub-stations and battery storage) would be located outside of the design flood extent, to ensure they remain operational even in times of flood. Due to the scale of the proposed development, a higher number of inverters has been incorporated. There are some locations where inverters would need to be located within the flood extents, but they would be raised above the design flood level on raised platforms, providing a freeboard of 300mm to ensure protection.

ISSUES CONSIDERED DURING THE EXAMINATION

3.4.23. The ExA raised issues in first written questions [PD-010] and at ISH1 [EV5-001] with regard to the approach the applicant had taken in undertaking the sequential test. Consequently, the applicant provided two further reports explaining further their approach, and providing more detailed justification for the conclusions reached. These are set out in:

- The Sequential and Exception Test Assessment [REP2-080]
- The Sequential Test Addendum [REP3-069]

3.4.24. The sequential test was further considered at ISH 3 [EV8-001], the applicant provides a summary of their submissions at the hearing in [REP5-071].

3.4.25. The ExA issued a Rule 17 letter [PD-015] asking the applicant without prejudice to consider the exclusion of the areas of the proposed development which are included in FZs 2 and 3. The applicant's response is set out in [REP6-058].

3.4.26. In summary, the applicant maintains it has 'clearly and demonstrably' undertaken the sequential test in line with policy and guidance which is set out in [REP2-080] and [REP3-069]. The applicant considers there are no alternatives available which could provide the same energy at the same time, and there is no realistic suggestion of an available alternative before the examination.

3.4.27. The applicant then states even if the SoS were to disagree this would not outweigh the need for the proposed development which is a Critical National Priority. That s104(3) of PA2008 requires the SoS to decide the application in accordance with the NPS. That if the SoS were to disagree, any perceived

failure of the *"sequential test would be policy non compliance only, there would be no real world harm and no unacceptable flood risk associated with the Proposed Development. The presumption of consent referred to in paragraph 4.2.15 of NPS EN-1 therefore remains intact."*

3.4.28. The applicant goes on to state that in light of the conclusions reached a change to the proposed development would result in a fundamentally different NSIP from that applied for.

3.4.29. WLDC express concern in their LIR [REP1-068] that the 10km area of search is not justified beyond the desire to be close to the High Marnham point of connection.

3.4.30. WLDC and LCC [REP1-089] identify that The Planning Act provides powers of compulsory acquisition, in these circumstances neither council consider that the sequential test should be restricted to sites which the applicant considers to be reasonably available by virtue of willingness to sell.

3.4.31. WLDC at D4 [REP4-059] in response to ExQ2 [PD-014] confirmed they do not consider the sequential test has been adequately demonstrated This view has been underlined by the update to Planning Practice Guidance on Flood Risk and Coastal Change paragraph 27a. In particular the applicant has not sufficiently demonstrated that an adequate review has been undertaken of whether the scheme can be split across a number of alternative sites, as was the case with the Cottam NSIP scheme.

3.4.32. WLDC also noted in oral submissions to ISH2 that there is inconsistency in the way the reviewed sites have been presented (see representations under point 6(vi) in [REP3- 097]). WLDC note that paragraph 5.2.6 of the Sequential Test Assessment [REP2-080] says 10 sites were discounted because they were "primarily in FZs 2 and 3".

3.4.33. WLDC went on to say that the assessment tables in Appendix A indicate whether sites are "partially" within FZs 2 and 3, for example AP1. AP4 is presented as being partly in FZ 1, but this is also discounted as a whole due to some elements being in FZs 2 and 3. AP7 is presented as being partially within FZs 2 and 3, but a visual review would appear to indicate all but the central north to south strip is outside FZs 2 and 3, which would appear to be similar or better than the current NSIP boundary.

3.4.34. AP9, AP11 and AP12 are presented as being in an area of high probability of flooding but a visual review would indicate that a significant proportion of each site is in FZ 1. This has been perpetuated in the Sequential Test Addendum [REP3-069]. In particular AP16 has been identified as "predominantly within FZs 2 and 3" (paragraph 4.2.4) whereas the plans in Appendix B would appear to indicate only around half of the site area is in such zones. Likewise in Appendix A, site Alternative AP17 is identified as being "wholly within FZ 1", when the accompanying mapping would appear to indicate the site is partially within FZs 2 and 3.

3.4.35. WLDC requested the applicant provide, for all sites considered in the sequential test, a table setting out, for each of the AP sites considered, the area (in hectares) located within each of FZs 1, 2 and 3. WLDC also request a similar table setting out agricultural land classification per AP site. This will provide clear comparable data for each of the alternative sites.

3.4.36. Finally in relation to policy, WLDC noted paragraph 27a (Reference ID 7-027a-20220825) in the Planning Practice Guidance on Flood Risk and Coastal Change, particularly the final sub-paragraph states "For infrastructure proposals of regional or national importance the area of search may reasonably extend beyond the local planning authority boundary. It may also, in some cases, be relevant to consider whether large scale development could be split across a number of alternative sites at lower risk of flooding, but only where those alternative sites would be capable of accommodating the development in a way which would still serve its intended market(s) as effectively".

3.4.37. Nottinghamshire County Council (NCC) at D4 [REP4-057] shares the concerns raised by other parties regarding the approach to the sequential test. Stating it is apparent that the applicant undertook a retrospective exercise to consider alternative sites, which undermines confidence that a robust approach has been taken to identifying the least environmentally harmful option at the early stage of the project and directing development to areas of lowest flood risk during the site selection process. (This point is also made by NSDC in [REP4-056]). That said, NCC acknowledge the approach in the submitted document would appear to be satisfactory in principle, notwithstanding reservations about its authenticity.

3.4.38. NCC go on to say that the applicant has considered two smaller sites (within 6km of each other) in their submission on the application of the sequential test [REP3-069] and the applicant should be responsible for demonstrating specifically how this guidance has been satisfied and this should be considered by the ExA in conjunction with the EA.

3.4.39. NCC note that the applicant does not believe that a project which would constitute more than two smaller sites would represent a realistic alternative, but the ExA may wish to examine this claim further considering the updated PPG which refers to splitting development across several alternative sites at lower risk of flooding.

3.4.40. Lincolnshire County Council (LCC) in response to ExQ2 [REP4-055] state that prior to deadline 3 LCC's main points of concern relating to the sequential test were whether the applicant had given due consideration to smaller land parcels that could be combined (the approach taken by Cottam) to form the proposed development and whether the applicant had only considered land where there were willing landowners to reduce the potential need to exercise compulsory acquisition powers. LCC notes the applicant's explanation regarding land ownership and voluntary agreements for acquiring land within paragraphs 5.2.10 to 5.2.14 [REP2-080] and further explanation that land that did not have a willing landowner was not the only factor to discount land as detailed in Table 2 of [REP2-080] and further with

REP3-069. LCC also notes the applicant's position regarding reasonably available land which states that having a willing landowner is an important consideration for deliverability as set out within paragraph 5.2.14 REP2-080 and paragraph 028 of the PPG.

3.4.41. Paragraph 028 of the PPG states that "Sites should be considered 'reasonably available' for the purposes of the sequential test if their location is suitable for the type of development proposed, they are able to meet the same development needs and they have a reasonable prospect of being developed at the same time as the proposal". Unwilling landowners could potentially delay the development process (through the requirement of compulsory acquisition) and therefore this land would be unlikely to be able to be developed at the same time as the proposed development.

3.4.42. EN-1, paragraph 5.8.6 states that "The aims of planning policy on development and flood risk are to ensure that flood risk from all sources of flooding is taken into account at all stages in the planning process to avoid inappropriate development in areas at risk of flooding, and to steer new development to areas with the lowest risk of flooding".

3.4.43. LCC dispute the conclusions in [REP2-080] and [REP3-069]. In particular the sites identified with large areas within FZ 1 which have then been discounted. LCC draw specific attention to AP5, AP6 and AP7 in [REP2-080] and AP15, AP16 and AP17 in [REP3-069]. The applicant ran through the discounted sites in [REP2-080] within ISH2 and LCC notes the reasoning provided. However, it appears that these sites have only been considered in their entirety and then discounted.

3.4.44. Have the lower constrained areas in FZ 1 from each of the discounted sites (including the lower FZ areas within the existing DCO redline boundary) been considered collectively as a separate scenario. LCC notes the applicant's preference for one contiguous site as stated within paragraph 4.2.2 of [REP3-069]. The applicant has now considered smaller parcels of land that could form part of a larger site. As concluded within paragraphs 4.2.5 to 4.2.10 this exercise did not identify a preferable site of lower flood risk.

3.4.45. LCC notes that there is no set approach within policy nor guidance for the size of smaller sites that could create a series of plots to create the wider development order limits. The lower limit of 250ha assessed by the applicant could be called into question as other NSIPs within Lincolnshire have smaller land parcels making up their Order limits.

3.4.46. Cottam for example consists of 4 land parcels, 3 of these are below 250ha (168ha, 132ha and 73ha).

3.4.47. However, as stated above neither guidance nor policy states a fixed land size to be included within searches for reasonably available land. As such LCC cannot identify any policy basis for why the sequential test has not been met.

3.4.48. NSCD in [REP4-056] reference paragraph 5.8.36 of NPS – EN1 (referencing bullets 2 and 3) which makes clear that in deciding applications the SoS should be satisfied that:

- *"the application is supported by an appropriate FRA*
- *the Sequential Test has been applied and satisfied as part of site selection.*
- *a sequential approach has been applied at the site level to minimise risk by directing the most vulnerable uses to areas of lowest flood risk."*

3.4.49. The Environment Agency (EA) in [REP4-062] confirm that they would defer to the Local Planning Authority's view as to whether the sequential test has been passed or not.

3.4.50. Mr Fox set out in a series of submissions including [REP3-100, REP3-101, REP3-105, REP4-075, REP6-084, REP6-087, REP6-095, REP7-078 AS-057] his case as to why in his judgment the applicant had not applied or passed the sequential test for the following reasons:

- Insufficient evidence to conclude the test has been passed citing the LCC LIR
- The methodology used is flawed in not assessing land where owners were not conducive to the proposal and limiting the search area to 10km with only a limited rationale to support the spatial constraint. While grid connection, land availability, and scale are relevant, there is insufficient transparent evidence as to why a broader or different configuration of sites (such as a constellation of smaller, lower-risk sites) would not be "reasonably available"
- The sequential test must be applied prior to site selection, as established by *Substation Action Save East Suffolk Ltd v Secretary of State for Energy Security and Net Zero (2024) EWCA Civ 12 and R (Mead and Redrow) v Secretary of State for LUHC (2024) EWHC 279 (Admin).*
- There is inadequate justification for the in site sequential assessment
- The applicant relies upon mitigation rather than avoidance
- Alternative sites at lower risk of flooding are available
- Granting development consent despite this failure would set a dangerous precedent, undermining the very purpose of the Sequential Test and indicating that a major project can be approved in a high-risk area even when safer sites exist
- The applicant's sequential test addendum reverse engineers the approach contrary to case law and excludes a combination of smaller sites without proper justification. Sites AP11, AP12, CL1–CL4, LAX1–LAX3, NWT1–NWT3 are at lower risk of flooding and could in combination deliver the project
- Evidence of availability and deliverability in a timely manner is not justified

APPLICANT'S RESPONSE

3.4.51. The applicant response to RRs [REP1-075] explains that the applicant has applied the sequential test for flood risk as part of site selection as required by paragraph 5.8.36 of the Overarching National Policy Statement for Energy

(NPS EN-1). The way in which has been done is explained in Appendix 1 of the Planning Statement (Site Selection Report) [APP-168] and this is summarised below.

3.4.52. In applying the sequential test, the applicant has had regard to the relevant policy on alternatives in NPS EN-1. This includes that alternative sites should:

- be identified in a proportionate manner (paragraph 4.3.22 of NPS EN1); and
- deliver the same energy capacity in the same timescale (paragraph 4.3.23 of NPS EN1).

3.4.53. Paragraph 5.8.10 of NPS EN1 states that the sequential test should consider reasonably available, lower risk sites appropriate for the proposed development. If it does find these, it then needs to be justified why they are not proposed, where accounting for wider sustainable development objectives, application of relevant policies would provide a clear reason for refusing development in any alternative locations identified.

3.4.54. The applicant's starting point was the grid connection at High Marnham substation which had available capacity to deliver a utility scale solar development. The applicant then identified a 10km area of search from the point of connection (POC), with sites as close as possible to the proposed substation preferred, in order to minimise the risk of environmental impacts, disruption to multiple landowners, challenges with crossings and process losses, and the cost and delay of a longer cable route.

3.4.55. At ISH1 the ExA questioned the position of the applicant and whether the statement that 10km as a distance from POC was justified, reasonable and proportionate and how the sequential test had influenced the site choice. The applicant set out their response at ISH1 [REP1-077] stating:

"the 10 kilometre search area has very significant parts of it within Flood Zones 2 and 3.Therefore, the Applicant first considered lower risk areas within the ten kilometre search area and initially started their search to the southwest of that search area around the settlement of Ossington, where there were reasonable areas to accommodate a utility scale solar farm in Flood Zone 1. The discussions with landowners within this area didn't prove fruitful, and there weren't any landowners within this part of the Area of Search that wanted to promote a solar farm on their land. In addition, this area was not considered suitable for solar panels for a variety of reasons, including proximity to settlements and people's homes, Conservation Areas and listed buildings and landscape and visual impact."

3.4.56. The applicant asserted that following the application of the Sequential Test, the applicant has also demonstrated that the proposed development complies with the Exception Test. The proposed development would provide the following and is therefore considered to have passed the Exception Test:

- Wider sustainability benefits to the community by delivering a new source of sustainable energy and supporting the energy sector with the provision of battery storage,
- Biodiversity benefits through biodiversity net gain and environmental enhancements.
- Flood risk mitigation measures within the design which demonstrate it would remain safe for its lifetime (including climate change) and will not increase flood risk. The FRA (REP7- 010) sets this out in further detail.

3.4.57. Furthermore, the Sequential Test has been applied within the site as part of the design iteration process, and more vulnerable elements of the development have been sequentially located within the Order limits, in areas of lower flood risk.

3.4.58. The Planning Statement [APP-168] sets this out in further detail. The applicant responded to these concerns during both hearings and in a number of submissions throughout the examination including [REP4- 052] by stating in paragraph 2.1.4 of the Sequential Test Addendum that the requirement to meet the sequential test should be set against the context of the identified critical national priority (CNP) for renewable energy infrastructure in NPS EN-1 (paragraphs 4.2.4 to 4.2.9 of NPS EN-1).

3.4.59. Further information on this urgent need is set out in the Statement of Need [REP2-047]. The applicant concludes that there are no reasonably available alternative sites, but if there were, then these would be needed as well as the proposed development, not instead of it.

3.4.60. The applicant reiterates that as there are no alternative sites identified, this does not form part of the applicant's case for the selection of the site, but the applicant feels it is important to reiterate that the Government has concluded that there is a CNP for the provision of nationally significant low carbon infrastructure (EN-1 Paragraph 4.2.4) and as many suitable sites as possible should be used for low carbon infrastructure, including solar.

3.4.61. The applicant maintains [REP5-072] that in relation to the application of the sequential test for flood risk, it's response to ExA Written Questions 2 [REP4-052] ref: Q12.0.6 provides a full and detailed explanation of the approach taken. In summary, the applicant considers that the approach taken is in accordance with and complete compliance with National Policy, the advice on the approach set out in the NPPF and NPPG, but also in line with case law.

THE EXA CONCLUSIONS ON THE APPLICATION OF THE SEQUENTIAL TEST

3.4.62. In accordance with Annex 3 of the NPPF the proposed development is classed as 'Essential Infrastructure' and development within FZ 3 requires both the sequential test to be undertaken, then the exception test to be applied. This approach is reflected at paragraph 5.8.9 of EN-1.

3.4.63. The applicant has undertaken a sequential test however this was limited to a search area of 10km beyond the connection point to the national grid at High Marnham and restricted to a minimum site size of 250ha.

3.4.64. The ExA have no concerns that the search area was centred around the connection point as it is quite clear that new energy generation requires a connection to the national grid network for it to function and to deliver the power that would be generated.

3.4.65. Where the ExA have concern however, is whether the applicant's choice of a 10km search area was fully justified. When asked at ISH1 for an explanation. The response given relied upon there being no specific guidance in the NPS, NPPF, or NPPG. The applicant referred the ExA to other DCO schemes where the search area had been different in each case. This does not in the ExA's view provide a detailed explanation as to why in this case the search area was limited to 10km.

3.4.66. Nor does it the view of the ExA demonstrate that the search area was proportionate. The scale of the proposed development exceeds each of the cases cited by the applicant, yet the search area chosen is smaller than the West Burton case.

Table 1 Other DCO applications referred to by the applicant in explanation of the search area

DCO	Search Area	Energy Generation
Longfield Solar	5km	500MW
Cottam Solar	5km	600MW
Gate Burton	8km	531MW
West Burton	15km	480MW

3.4.67. What this appears to show, is that there is in fact no consistency to searches undertaken, or how the scale of a scheme might influence the extent of search. The applicant's approach and evidence provided does not explain the size of area chosen or give a justification why this should be regarded as reasonable and proportionate in this specific case in the context of the sequential test,

3.4.68. The applicant in recognising the concerns raised undertook a retrospective assessment of a 15km search area. Which the applicant argues confirms that the approach taken was both justified and that despite the extended search area did not result in an alternative site or series of sites that could facilitate the development of the scale proposed in a similar timeframe that would achieve the delivery of much needed energy in line with the CNP and the connection agreement.

3.4.69. This back checking exercise the applicant maintains was entirely appropriate and in line with the process that was undertaken during the examination of the Heckington Fen DCO which was granted consent by the SoS.

3.4.70. The ExA has some sympathy with the concerns expressed by NCC and NSDC that by doing a retrospective exercise it places doubt on the integrity of the process. It is however a reasonable practice to follow in our view, when questions are being raised over the suitability of the original exercise.

3.4.71. This additional work provides greater clarity on the approach the applicant has taken and more detail in the consideration of the alternative sites that came forward as a consequence of the larger search area. It is, nevertheless, in the ExA's judgment unrealistic to expect that an alternative site would have been identified in undertaking this additional process after a site has been selected and progressed to this point.

3.4.72. In setting out the approach to this additional assessment the applicant additionally defined that they had limited the search to sites of a minimum size of 250ha. This in their judgement was a proportionate site size when seeking to deliver a scheme of this scale.

3.4.73. As LCC/NCC note this is larger than the approach taken on previous DCO cases which did not limit themselves in this way. Again, the ExA is mindful that there is no specific guidance to applicant's that influence the size of site relative to the scale of the development being proposed.

3.4.74. The test set out in the NPS, NPPF and NPPG all reference a sequential assessment that is reasonable and proportionate. It is therefore a matter of judgement for the applicant in the first instance. Ultimately the SoS needs to decide if they agree that the assessment undertaken meets these tests of reasonableness and proportionality.

3.4.75. The ExA having considered the evidence presented by the applicant and the IPs as well as the councils are not persuaded the approach taken by the applicant is fully justified given the importance of flood risk assessments across planning policy.

3.4.76. While an initial 10km search area appears reasonable, the applicant imposed a limitation of 250ha as a minimum site size. This has no obvious basis and in the ExA's judgement was arbitrary. While it must be recognised that a cut off must be drawn somewhere to achieve the test of proportionality and reasonableness, we can find no logical explanation for a 250ha limit.

3.4.77. The view of the ExA is supported by paragraph 7-027a-20220825 in the PPG which states:

"For infrastructure proposals of regional or national importance the area of search may reasonably extend beyond the local planning authority boundary. It may also, in some cases, be relevant to consider whether large scale development could be split across a number of alternative sites at lower risk of flooding, but only where those alternative sites would be capable of accommodating the development in a way which would still serve its intended market(s) as effectively."

3.4.78. Evidence from other DCOs shows that site areas of considerably smaller size can achieve the delivery of large scale solar developments. Nor does

the ExA consider that the approach the applicant took gives confidence that the importance of the sequential test was sufficiently prioritised in the initial site selection process as might be expected from the very clear approach EN-1, the NPPF and NPPG identify.

3.4.79. This can be seen most clearly in the Appendix to the Planning Statement [APP-168] where the applicant set out its approach. In considering the flood risk element the applicant states:

3.4.80. *"would not be located wholly within the Flood Zones, to ensure that more sensitive electrical infrastructure could be located outside of areas at risk of flooding"*

3.4.81. It is the EXA's view that by misapplying what the clear direction of policy is to avoiding areas of flood risk in the first instance, the sequential approach which was undertaken does not align with the terms of national policy.

3.4.82. The purpose of the policy test is to avoid sites at the greatest risk of flooding, and this should have been the primary focus of the sequential site selection process. It has not achieved this but has resulted in a scheme where 622ha of the site lies within FZ 3 (44.1% of the site).

3.4.83. Of this 445.4ha is detailed to accommodate 49% of the solar panels within FZ 3 which equates to approximately 362.6MW of generation capacity. Approximately 56% of the land within the Order limits is located within FZs 2 and 3.

3.4.84. The ExA are mindful of the case law referenced by the applicant in support of their submissions (R (Mead and Redrow) v SoS LUHC [2024] EWHC 279 (Admin)).and the approach that has been formulated in how the sequential test should be approached.

3.4.85. The ExA are not satisfied from the evidence presented that the approach taken by the applicant was reasonable and proportionate. The ExA conclude that the proposal fails to accord with the sequential test in relation to development in areas at risk of flooding.

3.4.86. Paragraph 5.8.10 of EN-1 states "It would only be appropriate to move onto the Exception Test when the Sequential Test has identified reasonably available, lower risk sites appropriate for the proposed development where, accounting for wider sustainable development objectives, application of relevant policies would provide a clear reason for refusing development in any alternative locations identified."

3.4.87. The ExA is of the view that the applicant has not demonstrated that there would have been clear overriding reasons for refusal of other sites or justified the scale of the initial search area, or the limitation on the minimum site size.

3.4.88. In these circumstances the ExA finds that the proposed development is not in accordance with paragraph 5.8. 36 of EN-1, which directs the decision maker to be satisfied that the sequential test has been satisfied as part of the

site selection. For these reasons the ExA consider this is contrary to national policy in EN-1, the NPPF and the PPG.

3.4.89. As such the ExA conclude this must carry very great weight against the making of the Development Consent Order.

3.5. BIODIVERSITY AND ECOLOGY

INTRODUCTION

3.5.1. This Section considers the effects of the proposed development on biodiversity and ecology. This is distinct from the ExA's consideration of matters relevant to Habitats Regulations Assessment which is contained in chapter 4 of this Recommendation.

POLICY BACKGROUND

3.5.2. The EIA Regulations specify that an EIA must identify, describe and assess the direct and indirect significant effects of the proposed development on (amongst other things) biodiversity, with particular attention to species and habitats protected under the Habitats Directive. In deciding whether to make an Order granting development consent, the SoS must take account of the environmental information and consider whether it is appropriate to impose monitoring measures.

NATIONAL POLICY

3.5.3. The assessment for biodiversity as set out in NPS EN-1, requires that the applicant needs:

- To clearly set out any effects on internationally, nationally and locally designated sites of ecological or geological conservation importance, on protected species and on habitats and other species identified as being of principal importance for the conservation of biodiversity.
- To show how the project has taken advantage of opportunities to conserve and enhance biodiversity and geological conservation interests, and maximise opportunities for building-in beneficial biodiversity or geological features, using requirements or planning obligations where appropriate

3.5.4. Section 5.4 of NPS EN-1 also highlights the government's 25-year Environment Plan and other policies including the Environmental Improvement Plan 2023, which aim to halt overall biodiversity loss in England by 2030 and then reverse loss by 2042, support healthy well-functioning ecosystems and establish coherent ecological networks. Inclusion of appropriate avoidance, mitigation, compensation and enhancement measures as an integral part of the proposed development is set out in paragraph 5.4.35.

3.5.5. Paragraph 5.4.41 recognises that nationally significant low carbon energy infrastructure may include benefits for biodiversity which may outweigh harm.

It advises that the SoS may take account of any such net benefit where this can be demonstrated.

3.5.6. In respect of Biodiversity Net Gain (BNG) this can be considered important as set out in section 4.6 of EN-1. Applicants are advised that their proposals should seek opportunities to contribute to and enhance the natural environment by providing net gains for biodiversity and the wider environment where possible. Paragraph 4.6.1 advises that the SoS should give appropriate weight to environmental and biodiversity net gain.

NPPF

3.5.7. The NPPF supports opportunities for improving biodiversity at paragraph 186 and encourages applicants to integrate this into their design, particularly where this can secure measurable net gains for biodiversity.

THE APPLICATION

3.5.8. The applicant's assessment of potential effects on biodiversity and ecology is presented in ES Chapter 6 [APP-035] this was accompanied by a series of appendices listed below and the updates that occurred during the examination:

- Summary of Legislation Policy and Technical Guidance relevant to Biodiversity [APP-084]
- Ecology Desk Study [APP-085] updated by [REP3-039]
- Extended Habitat Survey [APP-086] updated by [REP1-032]
- Bat Baseline [APP-087]
- Breeding Bird Baseline [APP-088] updated by [REP1-034]
- Great-Crested Newt Baseline [APP-089] updated by [REP1-036]
- Badger Otter and Water Vole Baseline [APP-090] updated by [AS-049]
- Wintering Bird Baseline [APP-091] updated by [REP1-038]
- Reptile Baseline [APP-092]
- Biodiversity Net Gain Assessment [APP-093] updated by [REP6-016]
- Fish Habitat Baseline [REP1-042].

3.5.9. Chapter 6 was updated during the examination with the final iteration being [REP6-008].

3.5.10. The potential effects of the proposed development on designated sites of international importance are assessed in the applicant's Shadow Habitat Regulations Assessment [APP-165] and reported in chapter 4 of this recommendation.

3.5.11. Chapter 6 [APP-035] identifies that there is one site of national nature conservation importance around 2 km from the Order limits: Spalford Warren SSSI.

3.5.12. While SSSI impact risk zones have been identified across the Order limits these do not directly relate to solar farm development.

3.5.13. Within 2km of the Order limits there are 34 Local Wildlife Sites (LWS), Fledborough to Harby Dismantled Railway and Marnham Railway Yard LWS are located within the site itself, with 8 in addition adjacent to the site. These are summarised in Table 6.3 of [REP3-039].

3.5.14. Three Priority Habitats are identified within the Order limits:

- Coastal and Floodplain Grazing Marsh, associated with the River Trent (3.0 ha – all to west of the river).
- Deciduous Woodland (3.61 ha)
- Open mosaic habitat associated with the High Marnham Power Station site (22.13 ha).

3.5.15. Other priority habitats not shown in the Priority Habitats Inventory were also identified within the Order limits, these being rivers, ponds and hedgerows.

3.5.16. Thirteen veteran trees are identified within the Order limits and shown within the Arboricultural Report [APP-134] while 5 ponds were identified shown in the Ecology Desk Study [REP3-039]. Agricultural ditches holding water are evident throughout the area.

3.5.17. In determining the study area professional judgement was used to define the extent of the Zone of Influence (ZoI) which beyond land take would vary between ecological features and be dependent upon their sensitivity to change and the nature of the change.

3.5.18. As such noise was considered up to 500m beyond construction works while increased lighting was considered up to 450m from areas which would require temporary lighting. The full extent of the variance on ZoI is set out in paragraph 6.4.8 of [REP6-008].

3.5.19. Table 6.4 of [REP6-039] provides a summary of the extent of habitats identified, the predominant land type being arable which is in excess of 1,115ha of the 1,409ha of land within the Order limits.

3.5.20. Notable species were identified within the surveys including the following:

- 8 species of bat
- Badger
- 284 records of legally protected and/or notable bird species
- Breeding birds including three within Schedule 1 of the Wildlife and Countryside Act 1981, nine Red-listed on the Birds of Conservation Concern 5 (BoCC5), a further eleven amber listed.
- Wintering bird survey identified large flocks of greylag goose, lapwing, black headed gull, wigeon and common gull
- Otter
- Water vole
- Reptiles
- Fish
- Hedgehog
- Eel

ENVIRONMENTAL MEASURES

3.5.21. The applicant considers that in utilising careful site selection they have been able to employ the mitigation hierarchy (paragraph 6.8.2 of [REP6-008]) as required by EN-1 and the Infrastructure Planning Environmental Impact Assessment) Regulations 2017.

3.5.22. Table 6.6 of [REP6-008] summarises the mitigation measures that would be secured through the Outline Landscape and Ecology Management Plan (oLEMP) [REP7-018] Outline Construction Environmental Management Plan (oCEMP) [REP7-014] and the Outline Decommissioning Environmental Management Plan (oDEMP) [REP7-016].

3.5.23. The applicant considers that this approach would deliver both extensive BNG but also positively contribute towards local conservation priorities. The calculation of BNG based on the masterplan included within the oLEMP provides for a net change of:

- 3,393.05 habitat units, an increase of 111.37%
- 363.34 hedgerow units, an increase of 92.64%
- 77.60 watercourse units, an increase of 63.61%.

3.5.24. The full details for BNG are included in [REP6-019].

HUMBER ESTUARY RAMSAR SITE AND SAC

3.5.25. The assessment of Likely Significant Effects for the Humber Estuary Ramsar Site and SAC are covered in Chapter 4 of this Report.

CONSTRUCTION

Fledborough to Harby Dismantled Railway LWS

3.5.26. Likely Significant Effects (LSE) are identified in [REP6-008] at the Fledborough to Harby Dismantled Railway LWS during construction due to potential changes to ground water levels and surface water patterns of movement, however the ES identifies that in the medium term the LWS would be buffered by the creation and enhancement of semi natural habitats. Similar findings are identified for Dunham Dubs, Dunham Oxbow, Darnsyke Marsh, and Fledborough Holme LWS.

3.5.27. The ES states [REP6-008] that the habitats within the LWS would not be directly impacted by construction activities, and would be protected by good management, physical separation and buffers secured in the Construction Environmental Management Plan (CEMP) and set out in the Commitments Register [APP-187]. The ES considers that effects during decommissioning would be similar to those during construction.

Road Wood, Dunham Dubs, Dunham Oxbow, Darnsyke Marsh, and Fledborough Holme LWS

3.5.28. All LSE, both negative and positive, would be indirect but could include changes to ground water levels and surface water movement patterns,

accidental spread of invasive non-native species and pollution of freshwater habitats.

3.5.29. Habitats within the LWSs would not be directly impacted by construction activities and would be protected from indirect impacts through the implementation of buffers (minimum of 10 m), and good housekeeping as detailed within the CEMP.

3.5.30. The applicant concludes that indirect effects of construction would be negative and short term however, the environmental measures would reduce the scale of effect to Very Low to Negligible. The overall effect is regarded as not significant.

Coastal and Floodplain Grazing Marsh HPI

3.5.31. LSE would be indirect but could include changes to ground water levels and surface water movement patterns, accidental spread of invasive non-native species and pollution of freshwater habitats.

3.5.32. Habitats within the coastal and floodplain grazing marsh would not be directly impacted by construction activities and would be protected from indirect impacts through the implementation of buffers (minimum 5 m on the land side), and good housekeeping as detailed within the CEMP.

3.5.33. The indirect effects of construction would be negative and short term, however, the environmental measures would reduce the scale of effect to Very Low to Negligible.

Hedgerow HPI

3.5.34. The assessment of hedgerows covers a variety of types as detailed in Table 6.9 of [REP6-030]. It covers more than 50km of different types across the Order limits.

3.5.35. LSE include losses of hedgerow of up to 0.34km and tree line to enable for new and widened accesses and for the installation of fencing additional hedges would be lost and degradation of hedgerow due to direct land take.

3.5.36. 14.06km of new hedgerows would be created and 58.88km of existing hedges enhanced. The breakdown of quantity and type is summarised in Table 6.10 of [REP6-030].

3.5.37. The direct effect of construction is concluded by the applicant to be negative.

Ponds

3.5.38. LSE effects on ponds the applicant concludes to be negative, very low to negligible in magnitude and short term.

River Trent HPI

3.5.39. The applicant concludes in [REP6-008] the River Trent will not be directly impacted by construction activities and will be protected from indirect impacts

through the implementation of buffers (minimum 16 m), and good housekeeping as detailed within the CEMP.

Permanently Wet Ditch

3.5.40. The permanently wet ditches and watercourses would be impacted by construction activities and would be protected from indirect effects through the implementation of buffers, and good housekeeping as detailed within the CEMP.

3.5.41. The indirect effects of construction would be negative, low to very low in magnitude and short term. The delivery and maintenance of clear span bridges would also be of low magnitude, although the effects would be long term.

Other Neutral Grassland

3.5.42. Approximately 1.23 ha of other neutral grassland would be lost to the proposed development. The loss of this ecological feature to development and indirect effects of construction would be negative, low in magnitude and short term.

Badgers

3.5.43. Based on current knowledge of badger sett location no derogation licence is considered necessary as the design is flexible enough to enable avoidance.

3.5.44. During construction and decommissioning badgers would be excluded from active working areas which would reduce the area available for foraging the general area provides large areas with foraging potential, temporary displacement would be unlikely to reduce foraging efficiency. Habitat creation prior to and during early construction good quality foraging would be likely to increase.

3.5.45. The effects of construction would be negative, low to very low in magnitude and short term.

Bats

3.5.46. LSE on bats include temporary and permanent land-take, and habitat fragmentation, increases in noise, vibration and human presence and increases in temporary lighting.

3.5.47. Effects of construction would be avoided and mitigated through best practice measures, would include limited working hours and minimal use of security and other lighting secured through the CEMP.

3.5.48. The effects of construction would be negative, low in magnitude and short term.

Skylark

3.5.49. A total of 165 pairs were located across the 1,035 ha of land surveyed within the Order Limits. a total of 144 pairs (0.16 x 900) could be displaced by the proposed development.

3.5.50. The effects of construction would be negative, low in magnitude and short term.

Other Breeding Birds and Wintering birds

3.5.51. The effects of construction would be negative, low in magnitude and short term.

Otter and Water Vole and Reptiles

3.5.52. The indirect effects of construction (i.e. disturbance) would be negative, low to very low in magnitude and short term.

Fish

3.5.53. The effects of noise and vibration during construction would be negative and short-term, however the environmental measures would reduce the scale of effect to Very Low to Negligible.

Hedgehog and Brown Hare

3.5.54. The effects of construction would be negative, low in magnitude and short term.

OPERATION

Fledborough to Harby Dismantled Railway LWS

3.5.55. During operation the LSE are considered to be positive with the number of biodiverse habitats in the locality of the LWS providing resilience to it and connecting it to wider areas of complimentary habitats. The ES concludes [REP6-008] that the overall effects are assessed as not significant.

3.5.56. The assessment also considers potential effects on habitats, including Habitats of Principal Importance (HPIs), Coastal and Floodplain Grazing Marsh, hedgerows, ponds, the River Trent, permanently wet ditches, and other neutral grassland [APP-035].

3.5.57. Section 6.10 assesses effects on protected species, Species of Principal Importance (SPIs) and other conservation-notable species. This includes otter, water vole, brown hare, hedgehog, badgers, reptiles, bats, skylarks, other breeding birds, wintering birds [APP-035]. The LSE for each of these species is set out in Table 6.11.

3.5.58. None of the predicted effects upon ecological features are found to be significant, other than in beneficial terms, due in part to the embedded environmental mitigation measures and habitat- or species-specific

measures secured as part of the proposed development. The mitigation is set out in the Commitments Register [REP3-059].

3.5.59. Overall, while some temporary negative effects would occur during construction and decommissioning, the applicant concludes the effects would be managed through the oCEMP [REP6-022] and oDEMP [REP6-027].

3.5.60. Habitat creation and enhancement measures secured by the oLEMP [REP5-038] would the applicant concludes result in significant long-term ecological benefits to many habitats including coastal and floodplain grazing marsh, hedgerows, ponds and permanently wet ditches and grasslands. There would be significant beneficial effects to species including water vole, breeding birds, reptiles, brown hare and hedgehog.

Road Wood, Dunham Dubs, Dunham Oxbow, Darnsyke Marsh, and Fledborough Holme LWS

3.5.61. During the operational phase the likely significant effects are positive, with the number of biodiverse habitats in the locality of the LWSs providing resilience to the LWS network and connecting it to wider areas of complimentary habitats.

Coastal and Floodplain Grazing Marsh HPI

3.5.62. The likely significant effects are positive, with the current area of coastal and floodplain grazing marsh within the Order Limits becoming subject to positive management to enhance its biodiversity value, whilst arable land to the east of the River Trent would have this habitat created.

3.5.63. The creation and management of coastal and floodplain grazing marsh would be a positive benefit in the medium to long term, with a scale of effect of medium. The proposed development is therefore assessed as significant beneficial on this receptor.

Hedgerow HPI

3.5.64. The creation and enhancement of large lengths of hedgerow the applicant concludes would have a positive effect with a high magnitude in the medium to long term. The habitat created would bring new HPI (that is also a local conservation priority) and help to increase the level of habitat connectivity at a landscape scale. The overall effect on hedgerows and tree lines of the proposed development is therefore regarded as significant beneficial.

Ponds

3.5.65. Enhancement of existing ponds, the creation of new ponds and the creation of complimentary habitats (i.e. temporary ponds and scrapes) would have a positive effect with a medium magnitude in the medium to long term.

River Trent HPI

3.5.66. The applicant concludes that there would be a positive effect on the River Trent, with connected habitats being subject to creation and enhancement works although this is not regarded as significant.

Permanently Wet Ditches

3.5.67. The habitat created and enhanced would contribute towards meeting local conservation priorities and help to increase the level of habitat connectivity at a landscape level which would bring about significant benefits.

Other neutral grassland

3.5.68. 205.37 ha other neutral grassland would be created and managed positively to deliver BNG. The habitat created and enhanced would markedly contribute towards meeting local conservation priorities and help to increase the level of habitat connectivity at a landscape scale. The overall effect on other neutral grassland of the proposed development is therefore regarded to be significant beneficial.

Badgers

3.5.69. The delivery and management of large areas of semi-natural habitat during the operational phase would be positive of low to medium magnitude and long term. Although the habitat created and enhanced would be beneficial for badgers as it will likely create better foraging opportunities, it is uncertain as to whether it would influence the number or distribution of animals and therefore the overall effect on badgers of the proposed development is not significant.

Bats

3.5.70. During the operational phase, bats may be displaced from fields by the presence of solar arrays.

3.5.71. The addition of extra hedgerow and enhanced hedgerow increased number of ponds and field margins suggests the level of bat activity is likely to be retained or potentially increased.

3.5.72. The delivery and management of large areas of semi-natural habitat during the operational phase would be positive, long-term, but given uncertainty about the potential for solar farms to reduce bat activity, considered to be of low magnitude. Therefore, the overall effect on bats of the proposed development is assessed as not significant.

Skylark

3.5.73. The greatest effect is from displacement of nesting pairs during operation of the solar array, with this first beginning during construction.

3.5.74. Overall, the extent and quality of the habitat creation and enhancement would, as a minimum, be expected to maintain the local skylark population albeit altering its distribution.

3.5.75. The delivery and management of large areas of semi-natural habitat during the operational phase would be positive, long-term, but given uncertainty on whether this would maintain or increase numbers, considered to be of low magnitude. Therefore, the overall effect on skylark of the proposed development is assessed as not significant.

Other breeding birds

3.5.76. The delivery and management of large areas of semi-natural habitat during the operational phase would be positive, long-term, and of high magnitude. Therefore, the overall effect on other breeding birds of the proposed development is assessed as Significant Beneficial.

3.5.77. Wintering birds

3.5.78. The delivery and management of large areas of semi natural habitat during the operational phase would be positive, long-term, but of low magnitude given the wide ranging nature of wintering birds overall it is assessed as not significant.

Otter

3.5.79. The delivery and maintenance of clear span bridges would be of low magnitude, although the effects would be long term (i.e. some or all of the bridges would remain in place until decommissioning).

3.5.80. The habitat created and enhanced (including artificial holts) would contribute towards meeting local conservation priorities and help to increase the level of habitat connectivity at a landscape scale. The overall effect is however, uncertain due to the unpredictable nature of this species. Therefore, although the overall effect would be beneficial it will be not significant.

Water Vole

3.5.81. The delivery and maintenance of clear span bridges would be of low magnitude, although the effects would be long term (i.e. some or all of the bridges would remain in place until decommissioning). The habitat created and enhanced (including mink control) would contribute towards meeting local conservation priorities and help to increase the level of habitat connectivity at a landscape scale. The overall effect is expected to be medium to high in the medium to long term. Therefore, the overall effect would be significant beneficial.

Reptiles

3.5.82. The delivery and management of large areas of semi-natural habitat during the operational phase will be positive, long-term, and of high magnitude. Therefore, the overall effect on reptiles of the proposed development is assessed as Significant beneficial.

Fish

3.5.83. The longer term effects of EMF and heating would be negated by the burial depths of the cables and therefore, the scale of effect would be negligible. The negative effects on these fish would be so small (or absent) that the overall effect of the proposed development on them is assessed as not significant.

Hedgehog and Brown Hare

3.5.84. The delivery and management of large areas of semi-natural habitat during the operational phase would be positive, long-term, and of high magnitude. Therefore, the overall effect on hedgehog and brown hare of the proposed development is assessed as significant beneficial.

DECOMMISSIONING

Fledborough to Harby Dismantled Railway LWS

3.5.85. The applicant concludes that no activity would be required within the Fledborough to Harby Dismantled Railway LWS or Marnham railway Yard LWS. Through the implementation of measures to control indirect effects of pollutants such as dust, silt and chemicals, no effects on these LWS' are expected during decommissioning.

Road Wood, Dunham Dubs, Dunham Oxbow, Darnsyke Marsh, and Fledborough Holme LWS

3.5.86. Likely significant effects, both negative and positive, would be indirect but could include changes to ground water levels and surface water movement patterns, accidental spread of invasive non-native species and pollution of freshwater habitats.

Coastal and Floodplain Grazing Marsh HPI

3.5.87. LSE would be indirect but could include changes to ground water levels and surface water movement patterns, accidental spread of invasive non-native species and pollution of freshwater habitats.

3.5.88. At the point of decommissioning the likely significant effects would be similar to construction, although would be less intrusive as cables and cable ducts (below 0.9m) are proposed to remain in place.

Hedgerow HPI

3.5.89. At the point of decommissioning the LSE would be similar to construction, although would be less intrusive as accesses would be in place. Upon decommissioning the land would be returned to the landowners. The effect on hedgerows at this point is unknown.

All other nature conservation sites and species

3.5.90. The applicant considers the LSE would be similar to construction, although would be less intrusive.

3.5.91. The ExA identified a series of inconsistencies within the ES and these in conjunction with responses to issues raised by IPs during the examination, led to ES Chapter 6 and supporting documents being updated. The final iteration of Chapter 6 being [REP6-008] (Clean), [REP6-009] (tracked).

3.5.92. Natural England (NE) Identified in their Relevant Representation [RR-085] the following issues.

Internationally designated sites

3.5.93. Humber Estuary Ramsar Site and Humber Estuary Special Area of Conservation (SAC) are both designated for River lamprey, Lampetra fluviatilis, and Sea lamprey, Petromyzon marinus (referred to collectively as "lamprey"). The applicant has reviewed impacts to lamprey via the functional linkage of the River Trent via the Environmental Impact Assessment (EIA) and Habitats Regulations Assessment (HRA). Natural England are satisfied that the design features and mitigation measures satisfactorily reduce impacts to the lamprey from the Project, including monitoring of the lamprey for five years after construction. Natural England are satisfied that 'green' issues are unlikely to result in adverse effects on the integrity of the following internationally designated sites, subject always to the appropriate mitigation as outlined in the application documents being secured adequately.

3.5.94. Impacts to lamprey have been avoided and mitigated through embedded design and environmental management plans (oLEMP [REP7-018]) and Commitment C2 in table 6.6 [REP6-008]. Natural England agree with the conclusions drawn through EIA and HRA that impacts will be negligible and not result in adverse effects to integrity of the internationally designated sites.

Nationally designated sites

3.5.95. NE agree that the Spalford Warren Site of Special Scientific Interest (SSSI) being scoped out of further assessment [RR-085] as there are no impact pathways from the Project to the designated features of the SSSI.

Protected Species

3.5.96. NE provided a Risks and Issues Log which was updated as matters were considered [REP1-107] [REP2-099] [REP6-074]. The final version [REP7-059] confirmed all matters were now agreed except in respect of compaction of soil.

3.5.97. The applicant also prepared a Statement of Common Ground (SoCG) with NE [REP2-071] (Rev 1), [REP5-060] (Rev 2), [REP7-036] (Rev 3). The final iteration confirmed agreement between the parties on all matters except the concern NE had with regard to the use of concrete bases increasing the impact on both agricultural land take and soil health through continued compaction. This issue is dealt with in the Land and Soils Section of this Report.

3.5.98. The Environment Agency (EA) [RR-063] identified a series of issues pertinent to their role within the environment, including:

- The EIA needs to cover all fish species not just river and sea lamprey, records within the River Trent show populations of Atlantic salmon (Salmo salar), brown/sea trout (Salmo trutta), European smelt (Osmerus eperlanus), allis shad (Allosa allosa), twaite shad (Allosa fallax), European eel (Anguilla anguilla) and notable coarse fish, including barbel (Barbus barbus). By not including all fish in the baseline, impact-pathways may cause damage to fish or habitat
- Fish species need to be identified throughout the ES documentation showing the baseline potential effects and any necessary mitigation.
- BNG is not sufficiently detailed with more information required on management and greater clarity for habitats to be created
- BNG for watercourses lacks clarity and the metric used needs to be defined
- Potential entrapment of water vole and otter, details are required to demonstrate how this would be avoided
- Use of study data for water vole should be used to provide opportunities for habitat improvement
- Outline Export Cable Route Construction Method Statement does not specify a commitment to producing a drilling fluid breakout plan to manage risk of 'frac-out'

3.5.99. The EA provided a Work Package Tracker [REP2-094] similar to the NE's Risk and Issues Log. This was updated through the examination. [REP3-076], [REP4-063], [REP5-082], [REP6-067]. The final iteration [REP7-052] confirmed all matters had been agreed except in respect of the ability of the EA to provide reassurance as delays to the delivery of the scheme could occur where consents and agreements are insufficiently comprehensive, to ensure the EA can effectively deal with permit applications.

3.5.100. The applicant prepared a SoCG with the EA [REP2-072] SoCG (Rev 1) the final iteration being [REP7-038] (Rev 4). This confirmed that at the close of the examination all matters were agreed between the parties.

3.5.101. The LIR of Nottinghamshire County Council (NCC) [REP1-096] identified a series of topics of concern in respect of ecology, these being:

- The potential impacts of the proposed development on local wildlife sites during construction, operation and subsequent decommissioning
- Adequacy of survey coverage for a range of sensitive species
- Adequacy of establishing a suitable baseline over wintering and breeding birds
- Adequacy and design of mitigation for identified species
- Adequacy of the buffer to the River Trent
- Suitability of design for the connection across the River Trent and the potential effects on lamprey
- Adequacy of length of monitoring period for lamprey to understand the potential for effects

- Security of delivery of BNG

3.5.102. Newark and Sherwood District Council (NSDC) identified the following areas of concern in their RR [RR-135]:

- Suitability of assessment of effect on Local Wildlife Sites (LWS)
- Failure to identify veteran trees adequately
- Baseline conditions are not adequately shown to show zones of influence for statutory and non statutory sites
- Inadequacy of survey work and absence of a full botanical survey, which fails to create and properly establish a clear baseline

3.5.103. The LIR of LCC [REP1-089] acknowledges there are no internationally important sites designated for biodiversity within 10km of the proposal although there is hydrological connection with the Humber Estuary SSI, SAC and Ramsar.

3.5.104. LCC considers that sufficient information has been gathered to inform the assessment. That the mitigation and management would need to be secured in the oCEMP, oLEMP, oOEMP and oDEMP. The Council agrees with the applicant's approach and considers that the proposed impact avoidance and mitigation measures for construction, operational and decommissioning phases of the development are appropriate.

3.5.105. Subject to the results of additional surveys proposed for 2025 and appropriate management, LCC agrees that the proposed mitigation measures are appropriate and should ensure significant negative effects on protected and priority species are avoided.

3.5.106. The Council considers that if BNG is to be given positive weight in the planning balance a specific commitment in the dDCO would be required.

3.5.107. LCC suggests that consideration is given to the establishment of an Ecological Steering Group or similar for the proposed development.

3.5.108. If the mitigation measures are secured and delivered as proposed LCC considers that the development would have a minor, temporary, negative impact on ecology during the construction phase.

3.5.109. The applicant has indicated an intention to deliver ecological enhancement measures and BNG as part of the proposal and the dDCO was revised to address commitment to the delivery of BNG in this respect [REP9-006]. Final details of these measures are subject to confirmation of final scheme designs, however, if currently predicted levels of BNG are delivered, LCC considers that overall, the development could have a positive impact on biodiversity and ecology.

3.5.110. Bassetlaw District Council (BDC) LIR [REP1-087] describe the survey effort, without raising concerns on its validity. On balance the Council consider the impact of the proposed development from an ecological perspective to be positive; local wildlife sites would be buffered, landscape connectivity improved, a variety of habitats enhanced, and new higher quality habitats

created, and the proposed development would deliver a Biodiversity Net Gain.

3.5.111. Mitigation measures should be put in place if cables are left in place to safeguard the residents and the environment.

3.5.112. WLDC LIR [REP1-098] recognise that biodiversity in the area is under pressure from factors including climate change, habitat fragmentation, development and large-scale intensive agriculture.

3.5.113. The final SoCG with BDC (unsigned) [REP9-019] confirmed agreement on all matters in respect of ecology and biodiversity.

3.5.114. WLDC final SoCG [REP8-008] had no outstanding matters in respect of ecology and biodiversity.

3.5.115. NCC final SoCG [REP8-006], LCC final SoCG [REP7-026] and NSDC final SoCG [REP7-030] had agreed all ecological and biodiversity matters.

3.5.116. In addition, a number of IPs expressed concern over the potential adverse effect on ecology and biodiversity, including [RR-030, RR-115, RR-139, RR-073]. They raised a number of general issues about how local wildlife would be adversely affected, mammals prevented from traversing the site interrupting access to habitat and foraging.

3.5.117. Concern was expressed by [RR-099 and RR-095] over the adverse effect upon the water environment and aquatic ecosystems, while [RR-0141, RR-011 and RR-059] were all concerned fencing off the site would prevent wildlife using the land to escape from flooding.

3.5.118. [RR-023, RR-028 and RR-059] did not consider the BNG claims made by the applicant were realistic.

3.5.119. The applicant set out their response to RRs [REP1-075] and response to LIRs [REP2-083]. This confirmed updated information had been provided into the examination to address the concerns raised. That any outstanding issues would be discussed further with the Councils and addressed through the SoCG.

3.5.120. The applicant also updated the Environmental Management Plans (oCTMP [REP7-020], oDEMP [REP7-016], oCEMP [REP7-014], oLEMP [REP7-018]) to respond to the concerns raised which resulted in a number of adjustments across the Order limits and in the way the development would be undertaken and controlled.

3.5.121. The dDCO was amended to respond to concerns over the delivery of BNG, with a commitment being set out to deliver a minimum 50% uplift in habitat and hedgerow units and a 10% uplift in watercourse units (Requirement 9). The applicant notes that the delivery of net gains at levels similar to those within the Biodiversity Net Gain Assessment [REP6-016] are still predicted as they are intrinsically linked to the habitat specified in the oLEMP [REP7-0118] secured through Requirement 8 of the dDCO [REP9-006].

3.5.122. The applicant maintains that the proposed development t would provide opportunities to enhance biodiversity in the area considerably over the current baseline situation of intensively managed arable farmland. Following construction and habitat creation, numbers and diversity of a range of species groups would be expected to increase.

THE EXA'S CONSIDERATIONS

THE EFFECTS ON INTERNATIONALLY, NATIONALLY AND LOCALLY DESIGNATED SITES

3.5.123. The effects on internationally designated sites are considered within Chapter 4 of this Report. ES chapter 6 sets out that there would be no likely residual effects on nationally or locally designated sites. The SoCG with NE agrees with the conclusions reached and with the report on HRA [REP2-019].

3.5.124. Each of the councils conclude that matters are agreed (SoCGs) and there is no dispute on the likely residual effects and conclusions for the effects to ecology, including methodology and baseline.

3.5.125. The ExA are satisfied with regards to nationally and locally designated sites, and that the methodology, baseline conditions, proposed mitigation and assessment of effects set out in the ES Chapter 6 [REP6-030] are acceptable, including the conclusions made.

EFFECTS ON PROTECTED SPECIES

3.5.126. BDC [AS-002], LCC [RR-077], NCC [RR-154] and NE [RR-085 at the outset of the examination expressed concern about the potential effect on bats and birds. During the examination the applicant responded as set out above providing explanations on the approach taken and the conclusions that protected species including birds and bats would benefit from the enhancements proposed.

3.5.127. The applicant highlighted the package of measures and embedded mitigation secured through the management plans and the parameters plans which provided buffers for field margins, hedgerows and to the LWS. These would be secured via the oLEMP [REP7-018] through dDCO Requirement 9.

3.5.128. The ExA agree that the applicant has appropriately assessed the LSE on protected species across the Order Limits and what would arise through the construction, operation and decommissioning of the proposed development. The ExA concur with the findings that there would be adverse effects during construction. These adverse effects would be temporary and would be managed through the environmental management plans to minimise those effects.

3.5.129. The ExA also agree that the operational period provides a long term opportunity for enhancement of habitats that would provide benefits for protected species.

3.5.130. The ExA also accept that the decommissioning would be likely to have similar effects to the construction period.

EFFECTS ON HABITATS

3.5.131. The applicant acknowledges that during construction there would be loss of hedgerows [REP6-008] and some trees within hedgerows, as well as negligible adverse effects on permanent wet ditches and coastal floodplain grazing marsh. In each respect the negative effect would be minimised and managed through the management plans secured in the dDCO and the adverse effects that arise while being negative would be temporary.

3.5.132. During operation these habitats are identified to benefit as a consequence of the proposed development and improve over the life time of the proposed development. The ExA agree with these conclusions.

CONCLUSIONS

3.5.133. The EA and NE as statutory regulators and the bodies with responsibilities in respect of ecology and biodiversity have confirmed they are satisfied with the approach the applicant has taken in assessing the effects of the proposed development.

3.5.134. The councils agree with the findings and the approach to secure the mitigation necessary through the management plans secured through the dDCO.

3.5.135. The change from predominately arable agricultural production with periodic ploughing, cultivation and harvesting, to an area predominately covered with solar panels provides the opportunity to increase field margins, increase hedgerows and mixed grassland planting improving the range of plants and biodiversity. This is secured through the commitment to significant BNG.

3.5.136. The ExA agree with the applicant that the proposed development would likely have significant beneficial residual effects on biodiversity and ecology during the operational phase of the proposed development. The ExA also consider that the BNG provisions and extent of habitat provision mean that this enhancement of the local biodiversity and ecology would be further enhanced.

3.5.137. The ExA is satisfied that the proposed development accords with the provisions of NPS EN-1 and EN-3. Given the above measures secured in the rDCO and the opinions of the statutory nature conservation bodies, the ExA conclude that the development is likely to result in a net improvement in the long-term biodiversity and ecology of the site and consequently should be ascribed moderate positive weight in favour of making the development consent order.

3.6. LANDSCAPE AND VISUAL

INTRODUCTION

3.6.1. This Section considers the landscape and visual effects that would arise from the proposed development.

POLICY BACKGROUND

LEGISLATION

- European Landscape Convention (2022)
- The Planning Act, 2008
- Planning (Listed Building and Conservation Areas) Act 1990
- The Town and Country Planning (Tree Preservation) (England) Regulations 2012
- The Hedgerow Regulations 1997

NATIONAL POLICY

NPS EN-1

3.6.2. What the applicant's assessment is required to consider is set out in paragraphs 5.10.16 to 5.10.25 of EN-1. Paragraph 5.10.19 requires the applicant to consider landscape and visual matters in the early stages where site choices and design principles are being established, allowing the applicant to demonstrate in the ES how negative effects have been minimised.

3.6.3. Paragraph 5.10.26 advises that the SoS "may decide that the benefits of the mitigation to reduce the landscape and/or visual effects outweigh the marginal loss of function."

3.6.4. Paragraph 5.10.37 goes on to say "The Secretary of State should consider whether the project has been designed carefully, taking account of environmental effects on the landscape and siting, operational and other relevant constraints, to minimise harm to the landscape, including by appropriate mitigation."

3.6.5. In decision making EN-1 at paragraph 5.10.14 advises "the SoS will have to judge whether the visual effects on sensitive receptors, such as local residents, and other receptors, such as visitors to the local area, outweigh the benefits of the project."

3.6.6. Paragraphs 5.10.29 and 30 advise that the SoS should take into consideration the level of detailed design provided by the applicant and be satisfied that the local authorities will have sufficient design content secured to ensure future consenting will meet landscape, visual and good design objectives.

3.6.7. Paragraph 5.10.36 states "In reaching a judgement, the Secretary of State should consider whether any adverse impact is temporary, such as during construction, and/or whether any adverse impact on the landscape will be

capable of being reversed in a timescale that the Secretary of State considers reasonable."

3.6.8. Paragraph 5.10.38 advises "The Secretary of State should consider whether requirements to the consent are needed requiring the incorporation of particular design details that are in keeping with the statutory and technical requirements for landscape and visual impacts."

NPS EN-3

3.6.9. Section 210 of EN-3 Landscape and Visual sets out the key government policy for solar photovoltaic generation.

3.6.10. This stipulates that where necessary a quantitative glint and glare assessment should be provided to show the potential impact (paragraph 2.10.104) and the SoS "should assess the potential impact of glint and glare on nearby homes, motorists, public rights of way, and aviation infrastructure" (paragraph 2.10.158)

NPPF (2024)

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

LOCAL PLAN POLICIES

3.6.12. The LIRs from each of the local authorities sets out the local policies these are set out in Tables A5 and A6 of Appendix A to this recommendation.

THE APPLICATION

3.6.13. The Landscape and Visual Chapter of the ES [APP-040] sets out the applicant's assessment of landscape and visual effects of the proposed development. The assessment is supported by a series of Appendices:

- [APP129] Summary of legislation and guidance
- [APP-130] Landscape and Visual Impact Assessment Methodology
- [APP-131] Landscape Baseline Assessment
- [APP-132] Visual Baseline Assessment
- [APP-133] Landscape and Visual Impact Assessment Consultation Summary
- [APP-134] Arboricultural Report
- [APP-179] Outline Landscape and Ecology Management Plan (oLEMP)

3.6.14. These documents were updated during the Examination, the final iteration being:

- [REP3-015] Landscape and Visual Chapter of the ES
- [AS-044] Landscape Baseline Assessment
- [AS-046] Visual Baseline Assessment
- oLEMP [REP7-018] (Clean) [REP7-019] (tracked)

3.6.15. The applicant, in undertaking its assessment undertook an analysis of the study area, an assessment of the local landscape character [REP3-015] and the current visual amenity [AS-046] of the area.

3.6.16. The applicant recognises that the proposed development is likely to have significant effects [REP3-015] during construction, operation and decommissioning, particularly with regard to:

- Changes to landscape character on published landscape character areas at a national scale, within the counties of Nottinghamshire and Lincolnshire, and the districts of Newark and Sherwood, Bassetlaw, and West Lindsey
- Changes to landscape character on site-specific landscape character areas within the LVIA study area
- Changes to views and visual amenity on residents of villages, farmsteads / individual houses, people travelling on the PRoW network, people travelling on the local road network, and people travelling along the River Trent.

3.6.17. The applicant undertook a study extending to 2km from the Order limits, [APP-056] following an initial 5km search which was first identified by desk-based review a Zone of Theoretical Visibility (ZTV) and fieldwork. Following analysis, professional judgment and consultation with the host authorities, the 2km radius from the Order limits was identified as proportionate and representative to identify the likely significant landscape and visual effects.

3.6.18. The applicant concludes that beyond 2km "there would not be significant adverse landscape and visual effects due to the intervening distance and vegetation patterns."

BASELINE

3.6.19. The baseline was established using desk-based review in accordance with relevant and local and national policies, these are set out in paragraph 11.3.10 of [REP1-025]. This developed a study area and extent of ZTV which extends to 5km from the outer boundary of the Order limits. These are shown in Figures 11.1-11.6 of [APP-056].

3.6.20. In addition, the following Figures show:

- Figure 11.1 Order Limits Location and Study Area [AS-019]
- Figure 11.2 Topography [AS-020]
- Figure 11.3 5km Zone of Theoretical Visibility –proposed substation without screening [AS-021]
- Figure 11.4 5km Zone of Theoretical Visibility –proposed solar panels without screening [AS-022]
- Figure 11.5 5km Zone of Theoretical Visibility –proposed substation with screening [AS-023]
- Figure 11.6 5km Zone of Theoretical Visibility –proposed solar panels with screening [AS-024]

- Figure 11.7a Regional Landscape Character Areas (Greater Nottingham) [AS-025]
- Figure 11.7b Regional Landscape Character Areas (East Midlands) [AS-026]
- Figure 11.8 District Landscape Character Areas and Policy Zones [AS-027]
- Figure 11.9 Local Village Character Areas [AS-028]
- Figure 11.10 Representative Viewpoint Locations [AS-029]
- Figure 11.11 Scoping Viewpoint Locations [AS-030]

3.6.21. Fieldwork was then undertaken from publicly available locations from June 2023 to October 2024 covering periods when trees and foliage were both in and out of leaf.

3.6.22. 20 residential properties were visited, 14 of which were revisited, and 3 properties were visited including from within to assess individual views. This combination of visits with the desk-based review informed the current baseline.

3.6.23. The future baseline was then determined where in the applicant's professional judgement there are no committed changes to this baseline in the absence of the proposed development. Although there is recognition that a number of large-scale solar schemes have consent in the area, none have currently commenced construction.

3.6.24. The applicant acknowledges (paragraph 11.4.148) [APP-040] "the current trajectory of national planning policy in support of renewable energy would suggest that similar projects may come forward in the future, which would change the wider landscape."

3.6.25. The applicant has not undertaken a Residential Visual Amenity Assessment (RVAA).

CONSTRUCTION PHASE

3.6.26. At the landscape character level, the applicant concludes [REP3-015] there would be a very high magnitude of impact across the Order limits, the significance of the effect would be major adverse which the applicant concludes is significant. This arises from the presence of construction activity, workers compounds and partially completed structures which would have direct effects on the landscape character.

3.6.27. The ongoing construction activity for the two-year timeframe would include topsoil stripping and storage, the gradual installation of solar arrays and associated equipment and structures, establishment of construction access and temporary haul roads, the removal of hedgerows and trees, as well as landscape and ecology work.

3.6.28. The applicant recognises that the construction works, and activity would represent a change of land use from predominantly agricultural to an active

construction site with the physical loss of landscape features such as hedgerows and vegetation.

3.6.29. For the landscape character areas significant adverse effects are predicted at:

- ENS PZ 01: North Clifton Village Farmlands, due to the medium magnitude of change, which in relation to the High sensitivity of the receptor would result in a Moderate adverse effect.
- TW PZ 20: Dunham on Trent Village Farmlands, due to the High magnitude of change, which in relation to the medium sensitivity of the receptor would result in a Major adverse effect.
- TW PZ 44: Fledborough Holme River Meadowlands, due to the Low magnitude of change, which in relation to the High sensitivity of the receptor would result in a Moderate adverse effect.
- MNF PZ 09: East Drayton, due to the medium magnitude of change, which in relation to the Medium sensitivity of the receptor would result in a Moderate adverse effect.
- MNF PZ 12: Normanton-On-Trent, due to the High magnitude of change, which in relation to the medium sensitivity of the receptor would result in a Major adverse effect.

3.6.30. Elsewhere the applicant concludes [REP3-015] that the 12 other landscape character areas included within the initial assessment, that the predicted effects are not regarded as significant due to the lack of physical changes, the intervening distance or the geographic extent of the areas assessed.

3.6.31. Within the local village character areas, the applicant states the conclusions reached would mirror those found for the landscape character areas, and therefore significant adverse effects are predicted at:

- Fledborough, due to the High magnitude of change, which in relation to the High sensitivity of the receptor would result in a Major adverse effect.
- North Clifton, due to the medium magnitude of change, which in relation to the Medium sensitivity of the receptor would result in a Moderate adverse effect.
- Ragnall, due to the medium magnitude of change, which in relation to the Medium sensitivity of the receptor would result in a Moderate adverse effect.
- Skegby, due to the Low magnitude of change, which in relation to the Medium sensitivity of the receptor would result in a Moderate adverse effect.

LANDSCAPE CHARACTER EFFECTS DURING OPERATION (YEAR 1)

3.6.32. The applicant identifies [REP3-015] that significant adverse effects would remain for ENS PZ 01 North Clifton Village Farmlands, TW PZ 20 Dunham on Trent Village Farm, MNF PZ 09 East Drayton and MNF PZ 12 Normanton on Trent.

3.6.33. For local village character areas significant adverse effects are predicted at Fledborough and Ragnall.

LANDSCAPE CHARACTER EFFECTS DURING OPERATION (YEAR 15)

3.6.34. The applicant concludes [REP3-015] that at Year 15, the proposed development would result in a high magnitude of impact. In relation to the medium sensitivity of the Order limits, the effect would reduce to moderate adverse, which is significant. The effect is reduced from major adverse due to the improved vegetation cover in comparison to the existing fields along with the reversible nature of the proposed development.

3.6.35. Significant adverse effects are predicted to remain at TW PZ 20: Dunham on Trent Village Farm and MNF PZ 09: East Drayton

3.6.36. While at the local village character area level significant adverse effects are predicted to remain at Fledbourough and Ragnall.

LANDSCAPE CHARACTER EFFECTS DURING DECOMMISSIONING

3.6.37. The applicant considers that the decommissioning works and activity would result in a very high magnitude of impact across the Order limits. In relation to the medium sensitivity of the Order limits, the significance of effect during the decommissioning phase would be major adverse, which is significant.

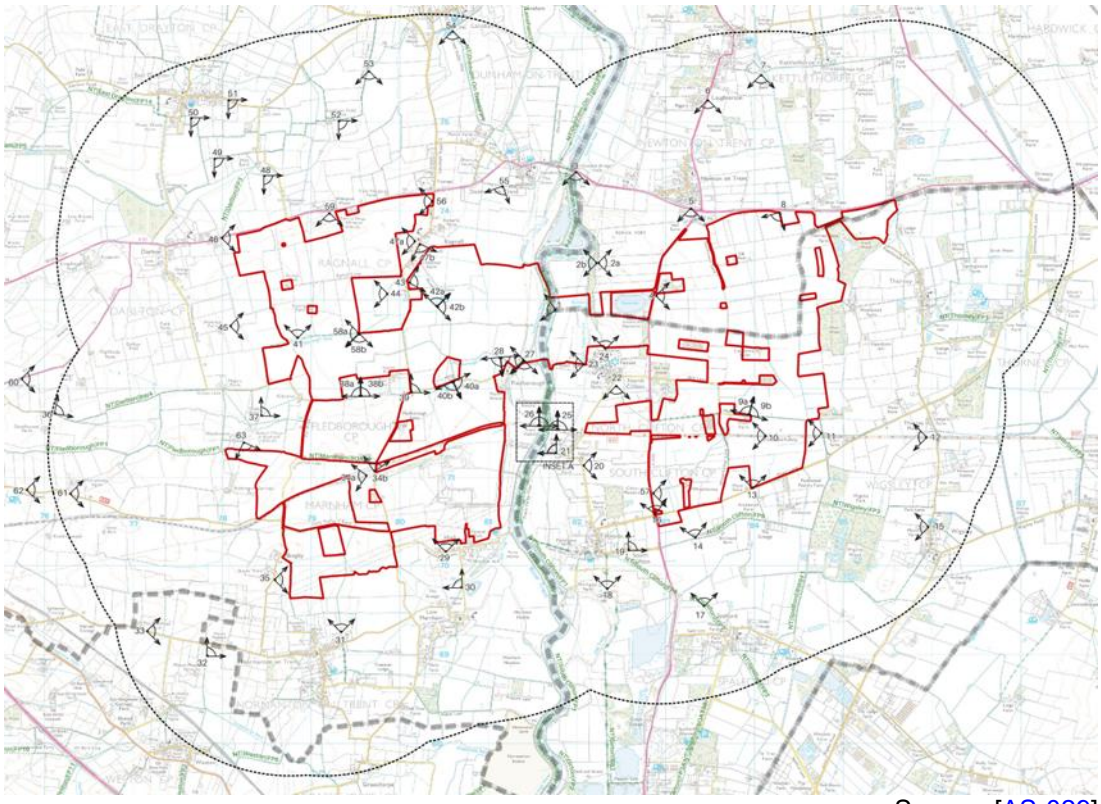
3.6.38. In respect of the Landscape Character areas moderate adverse effects are predicted at ENS PZ 01: North Clifton Village Farmlands, TW PZ 20: Dunham on Trent Village Farm, MNF PZ 09: East Drayton and MNF PZ 12: Normanton-on-Trent.

3.6.39. While for the village character area a moderate adverse effect is predicted at Fledborough.

CONSTRUCTION VISUAL EFFECTS

3.6.40. The location of the representative viewpoints as detailed in Figure 11.10 is included below for ease of reference. Showing the viewpoints relative to the Order limits and the 2km LVIA Study Area

Figure 7: Representative viewpoints relative to the Order limits and 2km LVIA study area



Source: [AS-029]

3.6.41. Significant effects would be experienced by people within close proximity to, or with clear intervisibility with the proposed construction works at the Order limits level. The applicant also sets out that they conclude there would be significant effects ranging from moderate to major adverse at a series of viewpoints identified on Figure 11.10 of [APP-057]. This is summarised in the table below.

Table 2 Likely Significant Effects at Identified Viewpoints

	Moderate Adverse	Major Adverse
Viewpoint	1, 4, 8, 9a, 9b, 11, 23, 24, 27b, 35, 38a, 38b, 39, 40b, 42a, 42b, 43, 45, 47b, 48, 49, 57	10, 13, 41, 44, 56, 58a, 58b

OPERATIONAL PHASE

3.6.42. At Year 1 of operation, the proposed development would result in an evident change in land use, from fields to solar modules and associated equipment and ancillary structures. The above changes would have direct effects on the character of the Order limits due to the change from a predominantly agricultural to an operational solar farm, resulting in equipment and structures within an otherwise open landscape. The applicant concludes [REP3-015] in relation to the medium sensitivity; the significance of effect would be major adverse which is significant.

3.6.43. In respect of landscape character areas according to the applicant there would be moderate adverse effects ENS PZ 01: North Clifton Village Farmlands, MNF PZ 09: East Drayton, MNF PZ 12: Normanton-on-Trent and major adverse effects at TW PZ 20: Dunham on Trent Village Farm.

3.6.44. In respect of local village character areas at year 1 the applicant concludes [REP3-015] that at Fledborough there would be a major adverse effect and at Ragnall a moderate adverse effect.

3.6.45. At year 15 the new trees and hedgerows would have matured integrating the proposed development into the landscape to a far greater extent, nevertheless the applicant acknowledges the proposed development would still have a high magnitude of effect. The applicant concludes this would now be classed as moderate rather than major adverse.

3.6.46. In respect of effect on landscape character areas at year 15 significant effects are predicted to remain at TW PZ 20: Dunham on Trent Village Farm and MNF PZ 09: East Drayton, with a moderate adverse effect.

3.6.47. While at the village character level significant effects would remain at Fledborough.and Ragnall, however, the applicant concludes [REP3-015] this would be regarded as a major and moderate neutral effect respectively.

OPERATIONAL VISUAL EFFECTS

3.6.48. The applicant considers [REP3-015] that significant effects would be mostly experienced by people within or immediately adjacent to the Order limits at year 1 or for those using the PRoW network or travelling along the A1133. In addition, the following viewpoints would be subject to a significant adverse effect.

Table 3 Likely Significant Visual Effects During Operation at Year 1

	Moderate Adverse	Major Adverse
Viewpoint	4, 8, 9b, 11, 38a, 40b, 41, 42a, 42b, 47b, 48, 49, 56, 57	10, 13, 58a, 58b

3.6.49. At year 15 visual effects would arise from views of above ground structures of the proposed development including the substation, BESS and solar arrays. However, mitigation planting would have established and matured so that the extent over which the proposed development would be experienced would be further reduced.

3.6.50. Significant effects at year 15 of the operation phase, would be limited to people travelling along the PRoW network adjacent to or through the Order Limits, short sections of the local road network, as well as residents of isolated farmsteads to the east of the A1133.

3.6.51. In respect of individual viewpoints significant adverse effects are predicted to remain at the following viewpoints.

Table 4 Likely Significant Effects During Operation at Year 15

	Moderate Adverse	Major Adverse
Viewpoint	4, 9b, 11, 41, 42a, 42b, 56, 57	10, 13, 58a, 58b

DECOMMISSIONING PHASE

3.6.52. In visual terms the decommissioning is predicted to have significant effects on people within close proximity to, or with clear intervisibility of the proposed works, such as those travelling along neighbouring roads and the PRoW network that pass adjacent to or through the Order limits, as well as residents of Ragnall, Skegby and nearby farmsteads such as Moor Farm.

3.6.53. With the exception of the public footpaths south-east of East Drayton where decommissioning works would be experienced on the rising land south of the A57, the applicant concludes there would be no significant visual effects on people beyond 200m of the Order limits.

3.6.54. In respect of individual viewpoints significant adverse effects are predicted at

Table 5 Likely Significant Visual Effects During Decommissioning

	Moderate Adverse	Major Adverse
Viewpoint	4, 9b, 10, 11, 13, 35, 41, 56	58a, 58b

ENVIRONMENTAL MEASURES

3.6.55. The extent of detailed design established through the Design Approach Document [APP-171] embedding good design principles from the outset has in the applicant's assessment established mitigation into the design of the proposal. Thus, avoiding more sensitive areas by excluding them from the Order limits including:

- land west of Thorney
- land between North and South Clifton
- having off sets of 130m from Fledborough
- 700m between residential properties and Fledborough viaduct
- Offsets west of Ragnall and south of the Medieval Scheduled Monument
- Exclusion of land west of the A1133 utilising the ridge line
- Siting the eastern substation on lower land.

3.6.56. Provision of new planting across the Order limits:

- New hedgerows including some evergreen species to mitigate glint and glare
- Offsets to protect the setting of heritage assets
- Reinstatement of coastal grazing marsh on the eastern bank of the River Trent
- Landscape enhancement including

Table 6 Extent of new planting by area

Planting	Area (ha)
Species-rich grassland and wildflower meadow	237.5
Species-rich grassland under solar modules	909.7
Hedgerow margin/species-rich grassland	81.4
Riparian zones/species-rich grassland	9.9
Native woodland and tree belts	4.2
Proposed native hedgerows	5.9 km
Proposed native hedgerows with trees	9.6 km

3.6.57. Protection of residential views is built into specific separation distances for individual properties identified in Table 11.10 of [APP-040] while for Public Rights of Way (PRoW):

- A minimum offset of 15 m to Work Area 1 for public rights of way
- For bridleways a minimum separation of 30m between solar modules with post and wire fencing and hedgerows
- Minimum off set for hedgerows, trees, woodlands, water bodies and watercourses.

ASSESSMENT OF GLINT AND GLARE

3.6.58. The applicant submitted a Glint and Glare assessment [APP-188] as part of its submission. This was updated during the examination [REP4-054]. This concludes that the topographical survey, and local vegetation, buildings and terrain serve to screen the majority of glint and glare effects resulting from the proposed development on the road and railway network.

3.6.59. Mitigation in the form of vegetation and temporary opaque screens would be required for 240m along the A1133 between Hall Water Treatment Works and no. 4 Collingham Road, for 315m along the A57 between The Grove and Field House Farm, and 482m along the northern side railway line east of Far Road Bridge.

ISSUES CONSIDERED DURING THE EXAMINATION

3.6.60. Landscape and visual amenity were identified in the ExA's initial assessment of principal issues (IAPI). At that stage of the examination four sub issues were identified:

- Opportunities and constraints in elements of design.

- Zone of Theoretical Influence - The impact of the proposed development on landscape and visual amenity.
- Impacts on recreational routes and views within the local landscape.
- Impacts on local communities.

3.6.61. LCC, NCC, NSDC and BDC worked together on landscape matters. This reflected the approach set out in the LIRs and was reaffirmed in the review undertaken on behalf of NCC in the Appendix within their LIR. In reporting matters raised in the LIRs the ExA have referenced specific Council's submissions, however the general themes were supported in each case by each of the four councils.

3.6.62. WLDC submitted their own evidence in respect of landscape matters and where relevant the ExA have referenced their submissions.

3.6.63. Following receipt of the Council LIRs and RRs issues which needed further consideration during the examination were:

- Landscape and Visual Impact Assessment (LVIA) Methodology
- Project Design
- Effect on landscape character
- Effect on landscape views
- Effect on residential properties
- Loss of veteran trees
- Glint and Glare

3.6.64. The Councils and a number of IPs also identified that cumulative effects on landscape were a significant concern, and this is dealt with in the Cumulative section of this report.

LVIA METHODOLOGY

3.6.65. NCC [RR-154] and the subsequent LIR [REP1-096] confirm that "The LVIA and the associated figures, appendices and documents provide a thorough analysis of the Development and is appropriate to the scale and context of the Site. The process of assessment is thorough and well explained in the volumes, which include a clear summary of findings and identification of significant effects on the landscape and visual baseline."

3.6.66. LCC LIR [REP1-089] agree the LVIA has provided a thorough analysis.

3.6.67. NCC also agree that the LVIA distinguishes between landscape and visual effects focussing on significant effects, with major and moderate effects considered to be significant in EIA terms. While WLDC confirmed at ISH1 they did not dispute the methodology in undertaking the LVIA.

3.6.68. WLDC LIR [REP1-098] raise no concerns with regard to the LVIA methodology per se although concern in respect of the cumulative effect on landscape character is raised. This is addressed later in this report.

3.6.69. NCC, NSDC and LCC however express concern that the lifetime of the project being 60 years should be regarded as permanent and that the

'temporary' nature of the application should be reassessed to reconsider the assumptions on reversibility and duration.

3.6.70. In response to the LIRs the applicant [REP1-075] acknowledges that the residual effects would be long term but disagrees that the project should be classed as a permanent project. GLVIA3 notes at paragraph 5.52 that developments that have a limited life are often argued to be reversible, in other words temporary. The application is for a time-limited consent thus following decommissioning and removal of all above ground infrastructure the associated landscape and visual effects would cease. The justification for partly reversible effects is based on the assumption that trees and hedgerows planted as part of the proposed development would be retained.

THE EXA'S CONSIDERATION

3.6.71. The ExA is satisfied that ES Chapter 11 [REP3-015], supporting figures and appendices and the additional information presented, is in sufficient detail to inform the baseline, to underpin the LVIA process and to identify the likely significant effects of the proposed development.

3.6.72. The dDCO is time limited and as submitted has mechanisms in place to ensure removal of above ground infrastructure, in these respects the adverse effects on landscape character and visual effects can be regarded as reversible, all be it they will be there for a substantial period.

3.6.73. The ExA does not consider that there is evidence that the approach the applicant has taken in assessing the application as temporary or the methodology downplays the degree of effect the proposed development would have in this regard, and the ExA is satisfied in this respect.

LANDSCAPE CHARACTER

3.6.74. The proposed development is not located within any nationally or locally designated landscapes

3.6.75. Concerns expressed by the host authorities and IPs including Mr Walker [RR-033] relate to the mass and scale of the proposed development and the impact this would have on the landscape character over a wide area.

3.6.76. Specifically, NCC in its LIR [REP1-096] note the potential to transform the local landscape by altering the character on a large scale having the potential to affect the wider landscape at a regional scale, replacing large areas of agricultural or rural land with solar development, affecting the current openness, tranquillity and agricultural character that are identified as defining characteristics of the area.

3.6.77. NSDC LIR [REP1-094] also considers that all landscape character areas directly affected by the development would have residual significant effects. The LIR identifies significant adverse effects are on the entire 1409-hectare site at year 1 and at year 15 and has been assessed as having a significant residual effect even when mitigation planting has established.

3.6.78. The landscape character areas of TW PZ 20: Dunham on Trent Village Farmlands, and MNF PZ 09: East Drayton, as well as LVCA Fledborough and LVCA Ragnall have also been judged by the applicant as having significant residual effects, even when mitigation planting has established.

3.6.79. This equates to a considerable change to landscape character across an extensive area, introducing a mass of development with industrial characteristics in an open agricultural landscape, affecting the sense of openness, seasonal rhythm of farming practices and rural tranquillity currently experienced.

3.6.80. The Council conclude [REP1-094] that all landscape character areas directly affected by the development would have residual significant effects primarily through a change of land-use.

3.6.81. Several RRs including [RR-030, RR-059, RR-105] submitted by IPs refer to the potential urbanising/ industrialising effects of large scale solar on a predominantly rural/ agricultural landscape and how this would adversely affect the local character of the villages within and adjacent to the Order limits.

3.6.82. The applicant does not agree that the proposal would affect the regional character. In its response to relevant representations [REP1-075] the applicant sets out how the assessment has followed guidance set out in the relevant landscape character assessments and the detailed assessment at Appendix 11.3 [AS-044] also explains how the proposed development responds to these where applicable.

3.6.83. The applicant is of the view that the site contributes to the character of different landscape character areas to varying degrees and a blanket approach, [REP2-083] as suggested, would overlook the fundamental characteristics of each area and the landscape mitigation that has been embedded into the proposed development.

3.6.84. The significance of landscape effects, as reported in Chapter 11 [REP1-025], has been determined by considering the relationship between the sensitivity of the landscape character areas and the magnitude of effect. The justification of each landscape character area is detailed in Appendix 11.3 [AS-044].

3.6.85. In WLDC Closing Statement [REP7-050] the council maintains the development would result in substantial and adverse effects on the district's landscape character and visual amenity, affecting both local communities and visitors. The Council do not consider the applicant has met the national policy objectives required by EN-1 and EN-2 which acknowledge that most nationally significant infrastructure projects will have some adverse landscape effects but stresses the importance of careful design to minimise harm. It requires developers to consider siting, operational constraints, and mitigation measures.

3.6.86. WLDC remain of the view that the introduction of solar panels, the substation, and BESS into large, open agricultural fields will erode the area's openness and rural identity.

3.6.87. By the close of the examination LCC [REP7-026] NCC [REP8-006] NSDC [REP7-030] SoCGs agree that some of the identified character areas would not have significant effects due to their being limited above ground development directly affecting these areas. This view is reiterated in the unsigned SoCG with BDC [REP9-020].

3.6.88. The applicant made no further submissions in respect of the position on landscape character in their Closing Statement [REP9-028].

THE EXA'S CONSIDERATION

3.6.89. The ExA agree that the assessment undertaken by the applicant has appropriately identified the effects of the proposed development and we are satisfied that the predictions of effects over time are reasonable.

3.6.90. The applicant recognises that the proposed development would continue to cause significant harm even after mitigation in specific locations and across the Order limits. In particular with significant harm remaining throughout the lifetime of the project at both the landscape character area and village character level.

3.6.91. By reason of its mass and scale, the proposed development would lead to significant adverse effects on landscape character. Through each phase of the development (construction, operation year 1, operation year 15 and subsequent decommissioning). The proposed development would change some of the local landscape by altering its character even after mitigation has taken effect.

3.6.92. The applicant acknowledges that even after mitigation a degree of significant harm remains, the ExA agree with this finding.

PROJECT DESIGN

3.6.93. WLDC maintained throughout the examination that the approach of the applicant to design did not meet the requirements of EN-1 in minimising visual and environmental effects. By placing the eastern BESS and substation in a highly visible location within a larger open field east of the A1133, these installations would be visually prominent and would not integrate into the landscape.

3.6.94. At 13.5m high they have the potential to stand significantly above any other building or structure in the local area and would be viewable from both West Lindsey but also Newark and Sherwood.

3.6.95. The only buildings of note in the vicinity are the Anglian Water facility approximately 10m in height and agricultural buildings at Hall Farm at approximately 7m in height.

3.6.96. WLDC go on to say that the design fails to show how national and local design policies (Policy S53) have been applied. By placing large infrastructure on open, high-quality agricultural land. Areas that policy suggests should be avoided. Reflects a flawed design strategy. The council believes [REP1-098] that better design choices could have reduced the visual and environmental impact, such as placing bulkier infrastructure in less exposed areas or using natural features for screening.

3.6.97. In addition, WLDC express the view that by placing solar panels up to the field edge would create a harsh visual edge and harm the landscape character.

3.6.98. WLDC maintain that the substation location should be restricted to be as far east as possible to reduce the risk of the structures breaching the ridge line, and woodland treeline in line with the plan provided [REP4-061]. The Council requested the dDCO be adjusted to reflect this.

3.6.99. The applicant set out its response [REP2-083] confirming that the height parameter plan identifies that the substation will be up to 13.5m above existing ground level, the Outline Design Parameters states that the footprint of the substation (located east of the River Trent) would occupy a maximum area of up to 23,800m2.

3.6.100. Ancillary buildings located within the substation compound would measure a maximum height of 8m, these would cover a maximum footprint of 1200m2, equating to less than 1% of Work Areas 2 and 3. The remaining area would be up to the height of 3.5m above existing ground level identified for the BESS, as also stated in the Outline Design Parameters.

3.6.101. The Outline Design Parameters [REP1-021] provides further details on how the visual impacts of Work No. 2 and 3 would be mitigated. This includes

- co-locating the substation and BESS together,
- siting these elements a minimum 300m from residential properties and 100m from PRoW
- providing soil storage in the form of bunds around the substation perimeter
- buildings and containers would also be finished in a muted colour sympathetic to the surrounding environment

THE EXA'S CONSIDERATION

3.6.102. The ExA are satisfied that the principles of good design have been followed and embedded into the proposed development from an early stage. The applicant provided a series of documents explaining their design approach and how this followed what is regarded as best practice.

3.6.103. In the view of the ExA these documents demonstrate that the applicant has sought to use good design to reduce the effects of the proposed development in accordance with EN-1 paragraph 4.7.3.

3.6.104. Nevertheless, the ExA acknowledge, that despite the applicant's best efforts in this respect there are elements of the proposal which would continue to have significant adverse effects well into the life of the project.

3.6.105. The ExA agree with the findings of WLDC [REP1-098] that the siting of the BESS and Substation to the east of the A1133 would be conspicuous and result in an adverse effect for a considerable time despite the location away from the highway and PRoW.

3.6.106. The ExA also acknowledge in considering its design the applicant has sought to retain existing features, including existing hedgerows, woodland, ditches, ponds and field margins, with the exception of small breaks or crossings required for new access tracks, security fencing, cable routes and new access junctions.

3.6.107. The ExA also acknowledge that the siting of this sensitive equipment is limited by a variety of constraints which the applicant considered when locating this infrastructure. In balancing the challenges of effect of flood risk, effect on best and most versatile agricultural land, the ExA are satisfied that despite the adverse landscape harms that WLDC identify the siting of the substation does not need to be further controlled through an amendment to the dDCO.

3.6.108. The ExA are also content that the applicant has followed the principles of good design as expected by EN-1.

EFFECT ON LANDSCAPE VIEWS

3.6.109. The Councils in their respective LIRs, consider that the guidance on visual assessment has not been properly followed in focusing on a static viewpoint. Frequent sequential views would create a change to the experience of visual receptors as well as change the perception of character of an entire area.

3.6.110. NSDC LIR [REP1-094] express concern that the scale and extent of development would also lead to Significant adverse effects on views from receptors, by altering from views within an agricultural or rural landscape to that of a landscape with large scale solar development. The Council consider the visual assessment does not fully align with the recent Landscape Institute Technical Guidance Note LITGN-2024-01. This position is reiterated by LCC and NCC in their LIRs [REP1-091 and REP1-096].

3.6.111. IPs including Mr Walker [RR-030], Mrs Walker [RR-115] are concerned that "beautiful walks, national cycle paths and bridleways which are surrounded by countryside and beautiful views will be no more and it will only be a view of solar panels, substations and security fencing".

3.6.112. WLDC remain concerned over the effect on landscape views particularly from the A1133. WLDC consider that the verified view copied below provides a helpful context to understanding the potential visual impacts associated with each of the two substation options the applicant identified to the east of the A1133. In particular the verified view demonstrates the horizon line below which the proposed substation would be less visible from the A1133.

Figure 8: Verified photograph looking east from the A1133



Source: WLDC Closing Statement [REP7-050]

3.6.113. WLDC maintain the level of effect on users of the A1133 as raised in the LIR is a significant concern.

3.6.114. It remains WLDC view that locating the substation at the eastern end of the Work 3 area, as set out in submission [REP4-061] would mitigate further effects of the substation on visual receptors, which would better reflect the policy of EN-1 in seeking to minimise adverse effects.

3.6.115. In this respect the applicant maintains that flexibility in the location of the substation should remain within the defined parameters of the dDCO, and WLDC would continue to have an influence on the detailed design under Requirement 5 of the DCO.

3.6.116. The applicant maintains [REP2-083] the locations and number of viewpoints was agreed during the pre-application process. Subsequently an additional viewpoint photograph was requested from the A1133 which was provided. The photomontage showing the proposed development from viewpoint 4 [REP2-031] was prepared to show views from the A1133 and is representative of people driving along this route.

3.6.117. The applicant also maintains that the approach taken in assessing individual viewpoints is compliant with GLVIA3 and that where sequential assessment is needed this has been undertaken using a series of individual viewpoints giving the reader an understanding of the effect of the development on the views of the area

3.6.118. Irrespective of the approach to be taken on landscape views overall, four of the Councils in the final SoCGs [REP7-026, REP7-028, REP7-030, REP9-019] confirmed that the level of effect on visual receptors is agreed.

3.6.119. WLDC [REP8-008] remained concerned about the visual impact from the A1133, hence the request for the supplementary drawing as set out above. WLDC agree that there would be a high magnitude of change, and that the nature of the effect would be moderate and therefore significant.

3.6.120. However, WLDC consider the extent of the change being assessed needs to factor in the proposed substation location and fence screening. The level of harm within the assessed level of moderate would depend on the location of the substation within the Work 3 area. WLDC maintain the view that locating the substation at the eastern end of the Work 3 area, as set out in [REP4-061] would mitigate further, effects of the substation on visual receptors.

THE EXA'S CONSIDERATION

3.6.121. WLDC maintain that the proposed development does not minimise the adverse effects as would be expected by EN-1. The ExA acknowledge these concerns, however Requirement 5 of the dDCO allows WLDC and the other Councils to influence the final siting of the infrastructure to be sited at the eastern BESS.

3.6.122. In doing so there remains the opportunity to minimise the adverse effects in line with EN-1 when taking into account the final design. The ExA therefore do not find that the approach the applicant has taken is contrary to EN-1 in this respect.

3.6.123. The applicant acknowledges that both major and moderate adverse effects would remain throughout the lifetime of the proposed development even after the mitigation offered through the environmental measures included within the dDCO.

3.6.124. The ExA agree with these findings and in this respect the adverse effects on landscape views must count against the granting of the dDCO.

EFFECT ON RESIDENTIAL PROPERTIES

3.6.125. RRs from several IPs including [RR-012, RR-038, RR-055, RR-069, RR-079, RR-124 and RR-115] outlined their concerns around the visual impacts from the proposed development to the outlook from and the amenity enjoyed from their properties. Mrs Walker [RR-115] "For us to escape the solar farm we will have to walk for over 2 miles from our house before we get to an area without panels and that is if we then don't go down the A57 in either direction."

3.6.126. In Mr Walker's WR [REP1-121] he identifies significant concern with regard to the close proximity of panels (40m) from the boundary and the panels being visible from every window. Mrs Walker [REP1-127] reiterates this concern and compares the separation distance offered to them as superficial relative to protection afforded to PRoW.

3.6.127. Rosalind Pickwell [REP3-077] considers the applicant did not properly assess the impact on her property failing to properly identify the principal views, failing to appreciate the distance that can be seen from these windows and the mitigation offered failing to deal with the concerns identified. This would leave the outlook from the property significantly affected by a "sea of panels 3.8m high interspersed with 6m high PCS units."

3.6.128. Within the same submission concerns are identified in respect of the approach at other properties which do not correctly reflect the outlook from those properties or even recognise in one instance it to be a residential property.

3.6.129. In LCC-SoCG [REP2-061] the Council states that the significant adverse visual effects are expected for the first 15 years of operation. However, these would be limited to the residential receptors and recreational receptors near

the Order limits, a minority of the Local Study Area. They consider that there would be no significant visual effects on residential receptors by Year 15 of operation given the establishment of mitigation planting. Recreational receptors walking across the Order limits would experience residual significant adverse effects for a short duration as they move through the Order limits.

3.6.130. The final SoCG from LCC [REP7-026] states "Several receptors are judged to have significant adverse effects which have been identified, and subsequently through the consideration of sequential effects is unlikely to increase the overall findings." The level of effects on visual receptors is therefore agreed.

3.6.131. During ISH1 [EV5-001] the ExA asked the applicant to explain the approach to residential visual amenity assessment and the need to consider residential properties near the proposed development (between 50 and 250 metres). The applicant was asked to expand on the justification provided within the ES chapter 11, given the absence of a focus on properties located closer to or within the Order limits.

3.6.132. In response, the applicant provided a more detailed explanation and assessment of the effect on residential properties [REP1-078] to provide a justification for the absence of a RVAA. The additional information confirms the applicant's position that due to embedded mitigation measures, existing planting and the proposed siting of more expansive infrastructure in locations away from these receptors the threshold for a RVAA is not reached and the effect on individual residential receptors they regarded as appropriate.

3.6.133. The Councils also agree that the approach to the consideration of visual impacts on residential receptors accurately reports the visual impacts and that a Residential Visual Amenity Assessment (RVAA) is not required.

3.6.134. In response to ExQ1 [REP2-084] the applicant sought to explain the approach to the assessment on residential receptors, following on from the questions raised at ISH1 [EV5-001], stating there is no plan that identifies residential receptors as the LVIA [REP1-025] assesses the impacts on residential receptors in particular views, which are shown on Figure 11.10 [AS-029]. This approach is in accordance with GLVIA3 paragraph 6.31.

3.6.135. Figure 11.10 [AS-029] should be read in combination with Table 11.9 of Chapter 11 [AS-017] acknowledges the different types of residential receptors, and the viewpoints identified to represent their particular views.

3.6.136. The Applicant provided further detail at Deadline 1 explaining the assessment and design approach to individual residential properties at Appendix F of the Written Summary of Applicant's Oral Submissions at ISH1 [REP1-077]. Section 1.3 of Appendix F explains how residential properties have been assessed.

3.6.137. Table 11.10 of [REP3-015] sets out a summary of residential receptors the applicant considers are affected by the proposed development

THE EXA'S CONSIDERATION OF RESIDENTIAL VISUAL AMENITY

3.6.138. GLVIA3 states that an assessment of visual effects should deal with the effects of change and development on the views available to people and their visual amenity.

3.6.139. The applicant's zone of theoretical visibility (ZTV) extends to 2km from the solar PV array and no viewpoints have been provided beyond 2km of the site. we are satisfied, taking account of the existing landform and features, as well as our observations on site including from locations beyond 2km, that this ZTV is appropriate and reasonable for the assessment in this case.

3.6.140. The approach to consideration of visual impacts on residential receptors has been agreed by the Councils (SoCGs) [REP7-026, REP7-028, REP7-030, REP8-008 and REP9-019] and they agree the LVIA fully and accurately reports the visual impact of the proposed development on residential receptors. It is also agreed that sufficient evidence has been provided by the applicant to support these findings and the RVAA threshold has not been met.

3.6.141. While we do not dispute this position the ExA agree with the concerns identified by IPs [RR-012, RR-055, RR-069, RR-079, RR-124]. That some residents will be significantly adversely affected by the proposed development and that adverse effect would continue for a significant period even when taking account of the proposed mitigation.

3.6.142. The ExA is of the view the level of effect on individuals is underplayed. That moving from living within a rural, agricultural landscape to one which would at best be interspersed with large areas of solar arrays or in some locations dominated, the adverse change on outlook and amenity would be significant.

3.6.143. This is particularly evident for properties within the Order limits where, not only would the outlook from properties be directly affected by the proposed development, but the approach to and away from those properties would be subject to significant change.

3.6.144. During the ASI [PD-009 and PD-011] a number of the affected properties were visited, and this enabled the ExA to see the specific relationships to these properties. This allowed a fuller understanding of the relationship, between the properties and the broader rural outlook and quality of the current environment. Giving a better appreciation of the enjoyment that residents gain from this relationship and how much this scenario would change, which in the ExA's judgement would be significant.

3.6.145. While the applicant has sought to provide mitigation by creating separation distances, and planting, this does not change the fact that the outlook from properties will be changed substantially. The amenity benefits that IPs who live in this rural location currently enjoy would undoubtedly be harmed.

3.6.146. The ExA are also of the view that whilst the applicant undertook assessments which have developed an understanding of the effects on residential properties. By not specifically identifying each property individually and visiting each one in turn the understanding gleaned has been less compelling even where it might be in line with guidance provided in GLVIA3.

3.6.147. It is also the view of the ExA that this in part has contributed to a reduction in the confidence the local community has on the approach from the applicant and the conclusions reached.

EFFECT ON VETERAN TREES

3.6.148. Bassetlaw District Council in their LIR [REP1-086] identify concern that the Arboricultural Report (Appendix 11.6) [APP-134] identifies that this could result in loss of veteran trees and those identified as Class A or B under British Standard which should be retained and harm avoided.

3.6.149. The ExA raised the issue at ISH1[EV5-001] where the applicant initially pointed out there were no veteran trees within the site. This was corrected in [REP1-077] where it was acknowledged 13 veteran trees lie within the Order limits.

3.6.150. The applicant confirmed [REP1-077] that none of these trees are in locations where the Vegetation Removal Plan shown in Appendix C of the Outline Landscape and Ecology Management Plan (oLEMP) [REP7-018] shows any losses to occur.

THE EXA'S CONSIDERATION

3.6.151. No further issues were raised in respect of veteran trees and the ExA are satisfied that the appropriate trees have been identified and that the oLEMP would ensure that they are appropriately safeguarded.

GLINT AND GLARE EFFECT

3.6.152. No parties disputed the findings of the Glint and Glare assessment [REP4-054] during the examination. Concern arose from the effect the applicant identified within the initial assessment [APP-188] that identified in order to avoid the potential adverse effect on road safety along the A1133 and A57 screen fencing up to 4m high would be required.

3.6.153. WLDC note [REP5-081] that the Supplementary Glint and Glare Assessment [REP4-054] indicated a reduction in glint and glare mitigation fencing from 1511m to 240m, with the reduction mostly along the A1133. However, this still leaves a 240m, 4m high fence, albeit set back 10m from the road. This the Council consider would be prominent, incongruous and discordant and WLDC question whether this is appropriate in such a location.

3.6.154. WLDC in its final SoCG [REP8-008] confirm that WLDC request the glint and glare mitigation fencing is added to the mitigation plan in Appendix A of the oLEMP. its extent, and anticipated duration before the adjacent vegetation

would be established such that the requirement for the fencing would be no longer than required.

3.6.155. The applicant maintained that the plan in Appendix A of the oLEMP shows the extent of existing and proposed habitats, rather than fencing. The extent of mitigation fencing had been reduced to 240m along the A1133, as secured in the oLEMP [REP5-038].

3.6.156. The applicant concludes that the introduction of a fence would result in a visual impact, [REP6-056] this would be experienced by people travelling on the A1133 who they consider would have a low sensitivity to change in comparison to people at home or walking on public rights of way, given the speed of travel and their attention on the road ahead. The reduction of the fence to 240m along the A1133 would reduce the duration for which views of the fence would be experienced.

3.6.157. Combining the low sensitivity and limited duration for which the fence would be visible results in the applicant's assessment [REP6-056] as a very low visual impact. Nonetheless, in recognition of the visual impact, new planting is proposed in front of the fence. Whilst the fence would be required until the planting provides an effective screen, the planting would soften the appearance of the fence sooner, as the planting establishes.

3.6.158. The final alignment and design of the glint and glare fencing would be subject to Requirement 5 'Detailed Design' and therefore would be part of discussion with West Lindsey District Council. This discussion would follow preparation of an updated Glint and Glare Assessment, based on the detailed layout, as confirmed in paragraph 1.3.4 of the oLEMP [REP5-038].

THE EXA'S CONSIDERATION

3.6.159. The solution to remedy the adverse effects of glint and glare are in the ExA's estimation far from ideal. A 4m high fence adjacent a public highway in such a rural location would inevitably be seen as an incongruous and harmful structure in this rural landscape.

3.6.160. The fact that the majority of people travelling on the highway would be doing so at speed may mitigate the effect on the individuals but does not overcome the fact that until such time as the planting has become established it would be harmful.

3.6.161. The ExA however, acknowledge that the current estimate of the scale of the fence is based upon the worst case scenario and it may after detailed design and further review of the glint and glare assessment reduce further. Its requirement would also be for a temporary, all be it substantial period; currently estimated to be for 15years.

3.6.162. The ExA also acknowledge that as the fence would be required to avoid a potential adverse safety issue on the adjacent highway this mitigation would be required. Nevertheless, the fence would add to the structures that are being brought into this agricultural landscape which would be alien and harmful.

EXA CONCLUSIONS ON LANDSCAPE AND VISUAL EFFECTS

3.6.163. The application site is reasonably reflective of the wider landscape being characterised by a relatively flat but undulating topography with fields divided by hedgerow and interspersed with woodland.

3.6.164. The land is predominantly put to agriculture with larger fields and more open vistas located to the east of the River Trent and east of the A1133.

3.6.165. The River Trent provides a significant feature through the middle of the Order limits and beyond where a more open floodplain is present either side of which the One Earth solar project would be located.

3.6.166. There is no dispute that the proposed development is of a substantial scale covering a significant area, and there would be a material change to both the character of the area and the views of it.

3.6.167. The scale of the project is so significant that, in conjunction with the local topography, and intervening foliage the whole of the project would not be viewable from one place.

3.6.168. It is, however, recognised that from the elevated PRoW that runs to the west of the River Trent large swathes of the eastern part of the solar farm would be visible. This, in addition, to the more immediate effects from other PRoW within the Order limits as well as the A1133 and local road network, would allow public views that would be materially changed both during construction and operation. Carrying on well into the 60 year life of the project.

3.6.169. The ExA agrees with the applicant's assessment of effects on landscape character as set out in the ES. The proposed development would result in significant adverse effects on landscape character during construction and operation and that these harms would continue in the specified locations through to year 15 and beyond, despite the provision of mitigation through planting.

3.6.170. The ES has assumed a reasonable growth for this planting over this period. For it to succeed it nevertheless will require monitoring and management. This would be facilitated through the oLEMP secured through the dDCO. The ExA are satisfied that the effects reasonably predict the worst case scenario.

Visual Effects

3.6.171. The overall harm would be further exacerbated by the proposed substations and BESS units. Even with careful siting, these would be more prominent features of the proposed development. Whilst we accept that the applicant has sited the eastern BESS and Substation site on lower ground away from the A1133, we do not consider that this would eliminate the harm to the landscape and agree with WLDC conclusions in this respect.

3.6.172. In addition, the scale and extent of the proposed development would lead to significant adverse visual effects and would change from views within an agricultural or rural landscape to a landscape containing a large solar

development. This would be particularly noticeable during construction and in the early years of operation in advance of the effect of the mitigating planting maturing sufficiently to take effect.

3.6.173. Visual harm would, however, also remain in the longer term, albeit to a reduced degree once that landscape planting had matured.

3.6.174. We also find that the fencing proposed to mitigate for the glint and glare effects of the solar arrays would be particularly evident and, in our judgement, would create significant visual harm. At 4m in height and in lengths of 240m along the A1133, 315m along the A57, and 482m along the northern side of the railway line east of Far Road Bridge these fences would be visually prominent features, both alien to the landscape and the character of the area.

3.6.175. While the applicant seeks to explain that people would in the majority of cases be passing them at speed as they travel along these routes, this is far from persuasive and does little to get away from the fact they will be an alien feature, be of a significant scale in terms of height and length, will be highly visible for up to 15 years in this otherwise rural landscape.

3.6.176. Despite this, no alternative has been promoted to avoid the effect of glint and glare from the panels, and these fences are required to avoid the potential adverse safety effect on traffic, the ExA accept that they would therefore be required.

3.6.177. One matter of specific concern to WLDC is the potential siting of the eastern BESS infrastructure, and substations in areas of the site which are more visually sensitive. It contends that such infrastructure should be constrained within the Work Area to further control the siting and minimise the adverse effect the development would have.

3.6.178. For the reasons set out above the ExA concludes that the applicant has presented a cogent argument why additional controls in advance of detailed design cannot be secured at this stage of the development. Nevertheless, controls remain in place though the rDCO which allows for the siting to be subject to discussion with the Councils prior to final approval. The ExA are satisfied that this provides sufficient control.

3.6.179. It does not, however fully overcome the harm that would materialise to the character of the area or the views that would remain. This harm is recognised by the applicant and the ExA agree with the significance of the harm which is forecast in this situation.

3.6.180. When comparing the proposed development with the nearby buildings they would exceed them in height and introduce an industrial appearance. This would be within an area of extensive solar arrays, which would harm the locality.

3.6.181. In light of the explanation the applicant has given to the constraints of in sight development the ExA are persuaded that alternate locations which may have

been less prominent are not appropriate and the ExA are therefore satisfied the applicant's approach in this respect has minimised the adverse effects in line with EN-1.

Effect on Residential Properties

3.6.182. At a maximum parameter of 3.8m in height, the proposed solar arrays would be conspicuous features, particularly in views in close proximity to them. This in conjunction with the interspersed power converter stations which could be up to 6m in height would also be potentially conspicuous.

3.6.183. Generally, existing hedgerows and other planting would help to soften views however moderate adverse visual effects would remain and the degree of effect varies. Nevertheless, the ExA consider the applicant's approach to minimising effects on residential living conditions to be reasonable and proportionate.

3.6.184. Overall, notwithstanding the adverse visual effects reported above the ExA conclude that the harm generated to individuals within the Order limits should not count against the granting of the Order.

Loss of veteran trees

3.6.185. The ExA are satisfied that with the clarification provided following ISH1 and the subsequent adjustments to the dDCO that veteran trees are properly identified and protected through the oCEMP, oLEMP, and oDEMP. Consequently, that appropriate recognition of these trees has been made and the proposed development accords with the expectations of EN-1 in this respect.

Glint and Glare

3.6.186. EN-1 notes solar panels are designed to absorb rather than reflect light, nevertheless panels can still reflect sunlight at certain angles causing glint and glare.

3.6.187. The applicant's assessment [APP-188] and subsequent supplementary assessment [REP4-054] found that, due to potential significant effects from the panels that, additional mitigation in the form of screening would be required for the A1133 and A57.

3.6.188. The ExA are satisfied that this screening is required to avoid the potential adverse effects on road users, but the screen fencing would of itself introduce a degree of harm into the landscape.

3.6.189. The EXA conclude that no significant effects would result in relation to glint and glare from the proposed development which would be satisfactorily in accordance with EN-3. The ExA therefore considers that matters relating to glint and glare are a neutral consideration in the overall planning balance.

3.6.190. Many interested parties, including SCPC objected to the proposed development on the grounds of its visual impact. EN-1 recognises that harm is likely to arise in the development of national infrastructure.

3.6.191. The ExA are satisfied that appropriate mitigation can be secured in the relevant control documents and therefore be relied upon to address the landscape and visual effects identified in chapter [REP3-015] as far as possible.

3.6.192. NPS EN-1 recognises that virtually all nationally significant energy infrastructure will have adverse effects on the landscape (paragraph 5.10.5). Nevertheless, the ExA ascribe moderate negative weight to the landscape and visual harm which would be caused by the proposed development.

3.7. HISTORIC ENVIRONMENT

INTRODUCTION

3.7.1. This Section considers the effects of the proposed development in relation to the historic environment, including both designated and non-designated heritage assets.

POLICY BACKGROUND

3.7.2. Regulation 3 of the Infrastructure Planning (Decisions) Regulations 2010 requires when deciding an application which affects a Listed Building or its setting, or a Scheduled Monument (SM) or its setting, the SoS must have regard to the desirability of preserving the listed building or its setting or any features of special architectural or historic interest which it possesses, and the desirability of preserving an affected SM or its setting.

NATIONAL POLICY

3.7.3. Paragraph 5.9.9 of EN-1 states that an assessment of any likely significant heritage impacts of the proposed development should be undertaken by the applicant as part of the EIA and should describe these impacts along with how the mitigation hierarchy has been applied. This should include consideration of heritage assets above, at and below the surface of the ground alongside consideration of the possible impacts, including cumulative, on the wider historic environment. It should also include reference to any historic landscape character assessments and associated studies as a means of assessing impacts relevant to the proposed development.

3.7.4. With regards to archaeological assets, to ensure work is undertaken in a timely manner in accordance with a written scheme of investigation and to ensure appropriate procedures are in place for the identification and treatment of undiscovered heritage assets with archaeological interest, the inclusion of requirements in the DCO may be considered (paragraphs 5.9.18 and 5.9.21 EN-1).

3.7.5. Where heritage assets may be affected by a proposed development, paragraph 5.9.22 requires identification and assessment of the particular significance of those assets, including the setting. This should take account of information provided with the application, submitted during the examination, any historic landscape character records and relevant historic

environment records (HER), representations made by interested parties and expert advice.

3.7.6. Paragraph 5.9.24 states that in considering the impact of a proposed development on any heritage assets, the SoS should consider the nature of the significance of the heritage assets and the value they hold for this and future generations.

3.7.7. When considering the impact of a proposed development on the significance of a designated heritage asset, paragraph 5.9.27 also states the SoS should give great weight to the asset's conservation. The more important the asset, the greater the weight should be irrespective of whether any potential harm amounts to substantial harm, total loss, or less than substantial harm to its significance. Paragraph 5.9.28 states that the SoS should give considerable importance and weight to the desirability of preserving all heritage assets and any harm or loss of significance of a designated heritage asset should require clear and convincing justification.

3.7.8. Where a proposal would lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal (paragraph 5.9.32). Appropriate weight should be attributed to the desirability of preserving the setting of heritage assets with proposals treated favourably where they preserve those elements of the setting that make a positive contribution or better reveal the significance of the asset (paragraph 5.9.35). When considering applications that do not do this, the SoS should give great weight to any negative effects when weighing them against the wider benefits of the application.

3.7.9. Paragraph 2.10.113 of EN-3 states that where a site on which development is proposed includes or has the potential to include, heritage assets with archaeological interest, a desk-based assessment and where necessary, a field evaluation, should be submitted.

3.7.10. More broadly, paragraph 2.10.118 recognises that the significance of a heritage asset derives not only from its physical presence but also from its setting and that careful consideration should be given to the impact of large-scale solar farms which depending on their scale, design and prominence, may cause substantial harm to the significance of the asset.

3.7.11. The ability to microsite specific elements of a proposed development during the construction phase should be an important consideration when assessing the risk of damage to archaeology, as required by paragraph 2.10.137.

NPPF

3.7.12. Similar advice on the preservation and enhancement of heritage assets and the requirement to balance the effects of a proposal on designated assets and non-designated heritage assets (NDHA) against a proposal's benefits can be found in the NPPF.

LOCAL POLICIES

3.7.13. The five local authorities set out the pertinent local policies for each of their respective administrative areas in the Local Impact Reports. These are set out in Tables A5 and A6 of Appendix A to this recommendation.

THE APPLICATION

3.7.14. The applicant's assessment of the historic environment is set out within ES chapter 9 Buried Heritage [APP-038] and chapter 10 Cultural Heritage [APP-039] These are supported by a series of Appendices:

- Appendix 9.1 Summary of Relevant Legislation Policy and Technical Guidance [APP-108]
- Appendix 9.2 Assessment Methodology [APP-109]
- Appendix 9.3 Part 1 – 6 Archaeological Desk-Based Assessment - Part 1 -6 [APP-110 – APP-115]
- Appendix 9.4 Part 1-8 Geophysical Survey Report – Part 1-8 [APP-116-APP-123]
- Appendix 9.5 Preliminary Trial Trenching Evaluation Reports [APP-124]
- Appendix 9.6 List of Buried Heritage Assets Scoped Out [APP-125]
- Appendix 10.1 Summary of Legislation, Policy and Technical Guidance APP-126]
- Appendix 10.2 Cultural Heritage Desk-Based Assessment - Part 1 [APP-127]
- Appendix 10.2 Cultural Heritage Desk-Based Assessment - Part 2 [APP-128]

And a series of Figures [APP-054]:

- Figure 9.1 – Study area
- Figure 9.2 – Prehistoric receptors
- Figure 9.3 – Roman receptors
- Figure 9.4 – Saxon and medieval receptors
- Figure 9.5 – Post medieval and undated receptors.

And [APP-055]:

- Figure 10.1: Designated Heritage Asset Mapping in 1km and 2km Radius of the Order limits.
- Figure 10.2: Non-Designated Heritage Asset Mapping in 1km and 2 km Radius of the Order limits.
- Figure 10.3: Designated Heritage Asset ZTV Mapping with 1km and 2km Radius.
- Figure 10.4: Non-Designated Heritage Asset ZTV Mapping with 1km and 2km Radius
- Figure 10.5: Topographically illustrated OS Map with Order limits outline, and 1km and 2km Radius
- Figure 10.6: Illustrative masterplan with contour lines
- Figure 10.7: View from Royal Observer Corps Hatch, Roman Fort Scheduled Monument (requested by Historic England)

3.7.15. The ES defines the study area for cultural heritage assets as 1km from the Order limits for designated assets, selected designated heritage assets between 1km and 2km and 1km for non-designated heritage assets.

3.7.16. In considering buried heritage, the study area was defined in agreement with the councils as 2km from the Order limits and grid connection cable route for non designated heritage assets (NDHA) and 5km for designated heritage assets.

3.7.17. The assessment considers the effects on the historic environment and the heritage assets within the study areas. The potential effects that would arise from physical changes during the construction and decommissioning stages, and subsequent changes to setting during operation.

3.7.18. The applicant sets out within the ES [APP-038 and APP-039] its:

- understanding of the heritage value of identified designated and NDHA and their setting
- understanding the nature and extent of likely significant effects to heritage value and settings of identified heritage assets
- judgement on the impact that the proposed development may have on heritage value and setting

3.7.19. In this instance while there are no listed buildings or NDHA within the Order limits. 3 Grade I, 6 Grade II* and 61 Grade II listed buildings are located within 1km of the Order limits, and 81 NDHA are within 1km of the Order limits.

3.7.20. Two scheduled monuments are in close proximity or partially within the Order limits and the village of South Clifton is also a designated conservation area.

3.7.21. Each of these asset's location is identified in [APP-127] and a summary of the heritage assets within the study area is set out in paragraph 10.4.2 of Chapter 10 [APP-039], with a full list in Table 10.6.

CONSTRUCTION PHASE

3.7.22. The construction of the proposed development is anticipated to commence in 2027 and would take 24 months to be completed. The assessment assumes work would be undertaken across the whole site simultaneously, although highly unlikely, to ensure a conservative approach and the worst case scenario is properly considered.

3.7.23. The applicant identifies [APP-039] likely significant adverse effects during construction and decommissioning at the following heritage assets:

- Pigeoncote and Attached Stable Blocks and Outbuilding at Hall Farm
- Whimpton Moor medieval village and moated site
- Church of St Gregory (grouping)
- Roman Vexillation Fortress
- Church of St Leonard (grouping)

- Ragnall House, Barn at Ragnall Stables
- Ragnall Hall And Attached Outbuildings
- Skegby Manor and Pigeoncote

3.7.24. Whilst significant, the applicant concludes these effects would be temporary and reversible.

3.7.25. In respect of buried heritage [APP-038], the applicant states that Areas of Archaeological Constraint (AAC) would be identified prior to construction in consultation with the Archaeological Advisory Teams to the Local Planning Authorities (LPAs) and Historic England (HE).

3.7.26. In those areas, where necessary and practicable, the mounting structures for solar arrays would involve micrositing of piles in order to avoid specific archaeological features and/or it would be supported by concrete footings rather than piles, avoiding ground intrusive impact.

3.7.27. The archaeological mitigation strategy is secured in the dDCO through Requirement 12.

OPERATIONAL PHASE

3.7.28. In considering the operational scenario the applicant has used year 1 (2030) and again at year 15 where the effects of the proposed development may change subject to landscape mitigation.

3.7.29. The applicant identifies likely significant adverse effects during operation at the following designated heritage assets:

- Whimpton Moor Medieval Village
- Church of St Leonard (grouping)
- Ragnall House Barn at Ragnall Stables
- Ragnall Hall and Attached Outbuildings

3.7.30. The applicant identifies that there would be likely significant adverse effects in the short and medium-term to designated assets in Ragnall, however these would be mitigated in the long term as the proposed planting becomes established.

3.7.31. The long-term significant effects would arise to Whimpton Moor Medieval Village (Scheduled Monument) Attempts have been made to further mitigate these effects through design changes including further setbacks, strengthening of hedgerow planting, and assessment of topography.

3.7.32. As identified within the assessment, it is considered that due to the nature of the asset and the effect on this asset, additional mitigation to manage visual impact (i.e. further planting or slight increases to setbacks) would not materially change the nature of effects. The identified likely significant adverse effects are considered to equate to less than substantial harm (middle of the spectrum) to the contribution of setting to value and would need to be weighed against the public benefits of the proposed development.

3.7.33. No effects on buried heritage [APP-038] are recorded during the operational phase as it is not expected that the operation (including maintenance) of the proposed development would result in any further intrusive ground activities.

DECOMMISSIONING

3.7.34. The applicant concludes that the effects during decommissioning are likely to be similar to those during construction, would be temporary and reversible.

3.7.35. An Outline Decommissioning Environmental Management (oDEMP) [REP7-016] has been prepared to mitigate the adverse effects during decommissioning. The measures to reduce likely significant effects are included within the oDEMP, secured through dDCO Requirement 12.

ENVIRONMENTAL MEASURES

3.7.36. The applicant has provided a Commitments Register [REP3-059] setting out the mitigation to be secured as part of the dDCO. This includes an Outline Construction Environmental Management Plan (oCEMP) [REP7-014] Outline Construction Traffic Plan (oCTMP) [REP7-020] and Outline Landscape and Ecology Management Plan (oLEMP) [REP7-018].

3.7.37. Setbacks have been identified to safeguard heritage assets including around the villages of North and South Clifton, Whimpton Moor Scheduled Monument in Fledborough to the north, south and west of the Church of St Gregory (Grade I listed), land to east and west of Ragnall.

3.7.38. A full list of the setbacks is provided in Chapter 10 [APP-039] at section 10.5.

3.7.39. For works that would occur during decommissioning the applicant has provided an Outline Decommissioning Environmental Management Plan (oDEMP) [REP7-017] to mitigate likely significant effects during decommissioning.

APPLICANT'S CONCLUSIONS

3.7.40. During construction and decommissioning phases, there would be likely significant adverse effects [APP-038 and APP-039] to Whimpton Moor Medieval Village (Scheduled Monument), Ragnall House (Grade II), Barn at Ragnall Stables (Grade II), Ragnall Hall and Attached Outbuildings (Grade II), Church of St Leonard, Ragnall (Grade II*), Church of St Gregory, Fledborough (Grade I), Manor House (Grade II), Roman Vexillation Fortress (Scheduled Monument), Skegby Manor and Pigeoncote (both Grade II) and Pigeoncote at Hall Farm (Grade II).

3.7.41. The applicant regards these effects as significant but temporary and reversible.

3.7.42. During operation likely significant adverse effects would remain the short to medium term in Ragnall. Long term significant adverse effects would arise to Whimpton Moor Medieval Village (Scheduled Monument). The applicant concludes that these adverse effects would amount to less than substantial

harm to the setting and this would need to be weighed against the public benefit.

3.7.43. There would be some minor and negligible adverse effects to designated assets (Church of St Gregory, Manor House and Skegby Manor and Pigeoncote) which, whilst not significant, would equate to a low level of less than substantial harm to the contribution of setting to significance of these heritage assets. This would need to be weighed against the public benefits of the proposed development.

3.7.44. There would also be adverse effects (not significant) arising to several NDHAs which would require a balanced judgement to be taken, having regard for their significance.

3.7.45. In respect of buried heritage, the applicant concludes that the investigations demonstrate any effect arising from the construction of the proposed development on buried heritage deposits can be successfully mitigated to a non-significant level by a combination of embedded environmental measures and a proportionate and targeted archaeological mitigation.

3.7.46. It is however, acknowledged that further archaeological evaluation may be required, and the applicant believes this should be undertaken and controlled through a pre commencement requirement.

ISSUES CONSIDERED DURING THE EXAMINATION

SCHEDULED MONUMENTS

3.7.47. HE's relevant representation (RR) [RR-056] identifies several points that they sought clarification on in respect of the setting of heritage assets, including the need for a viewpoint from the Roman Fort Scheduled Monument from the observer corps. post (which is part of the scheduling). HE considers this is a designed viewpoint, which utilises the same topography as the fort, thus contributing to its significance.

3.7.48. In respect of buried remains HE were concerned regarding the proximity of the solar panels to the south of the Whimpton Moor Scheduled Monument and suggested that a larger buffer would be more appropriate mitigation in this location, possibly by removing the triangular area of panels to the brown line indicated on the masterplan.

3.7.49. HE were also concerned regarding the proximity of the panels to the west and south of the reservoir, due to the potential for archaeological deposits in this area associated with the Roman Fort Scheduled Monument.

3.7.50. HE made a series of suggestions in respect of dDCO requirement 12 to ensure to worked appropriately.

3.7.51. The draft for HE's SoCG [REP1-071] outlines that the applicant and HE have engaged both prior to and during the examination. The final SoCG [REP7-032] with HE confirmed all matters were agreed except the magnitude of

effects on the scheduled monument at the Roman Vexillation Fortress in line with the views expressed in the RR.

3.7.52. In the LIR LCC [REP1-089] advise the Council is satisfied that the proposals are acceptable in terms of their approach to built heritage and the historic landscape. Subject to the development being carried out as proposed within the dDCO and the outlined mitigation measures the Council is of the view that impacts of this proposal would be neutral.

3.7.53. The WLDC LIR [REP1-098] states that the proposed development would be readily visible from the Scheduled Monument from views eastwards looking out and down onto the wider large-scale landscape. WLDC notes the Relevant Representation submitted by Historic England, suggesting that the viewpoint from the Scheduled Monument should be from the observer corps. post. WLDC support HE's position.

3.7.54. WLDC remain opposed to the development on the basis of the adverse effect on the Roman Vexillation Fortress, and a Royal Observer Corps Monitoring Post (Scheduled Monument) WLDC note the advice of Historic England and that harm has been identified by the government's heritage advisor. On that basis WLDC consider that the ExA and the SoS will need to have due regard to Regulation 3(3) of the Infrastructure Planning (Decisions) Regulations 2010: "(3) When deciding an application for development consent which affects or is likely to affect a scheduled monument or its setting, the decision-maker must have regard to the desirability of preserving the scheduled monument or its setting".

3.7.55. The applicant responded explaining that the additional view requested from the Roman Fort Scheduled Monument has been provided at Figure 10.7 [APP-055]. As per the assessment at Table 10.5 and paragraphs 10.6.15 and 10.6.81 –85 of [APP-039], this view is not considered to be a designed viewpoint as the Observation Post was built in 1961 after the Royal Observer Corps remit had changed in 1957 to monitoring nuclear explosions and fall out and so it was designed for all tasks to be undertaken from within the bunker itself, rather than from the surface.

3.7.56. Even if it were to be considered a designed view, its importance lies in the expanse and range of the view, not the character which is already a mix of built development, energy infrastructure and agricultural landscape. The proposed development would only add to this varied character and would not affect the key characteristics of this view (extent and range). Therefore, there are not considered to be long term or permanent harmful effects to this asset during operation.

3.7.57. HE remains concerned that the magnitude of effect on the Royal Observer Corp scheduled monument has been underestimated irrespective of the additional work and explanation provided by the applicant during examination.

3.7.58. HE maintains that the Observation Post derives significance from its setting, comprising a designed view from the Observation Post. Regardless that the

view has changed since the Observation Post was built, HE believes that any change in this view would amount to harm due to the loss of legibility of the way it would have once been experienced. This would amount to less-than-substantial harm at the lower end of the spectrum.

3.7.59. HE goes on to acknowledge that because this would result from any change to the view, there are no measures that could be incorporated within the proposed development that could mitigate this impact.

THE EXA'S CONSIDERATION

3.7.60. The ExA acknowledge the argument made by the applicant that this was not a designed view, this though does not affect the conclusions of HE. HE maintains that the Observation Post still derives significance from its setting, comprising a designed view from the Observation Post. Regardless that the view has changed since the Observation Post was built, Historic England believe that any change in this view would amount to harm due to the loss of legibility of the way it would have once been experienced. This would amount to less than-substantial harm at the lower end of the spectrum.

3.7.61. The difference comes in the interpretation of the importance of the view and the consequential effects this has on setting.

3.7.62. While the expanse and range of the view, currently sits within a mix of built development, including energy infrastructure. It is within a broadly agricultural landscape, which does not include a large scale solar farm. The ExA do not agree with the applicant that by adding a large scale solar farm you are merely adding to the mix of built development or energy infrastructure in this location. It is materially different to the current environment and setting both in terms of scale and appearance.

3.7.63. As such the proposed development would change the character and would affect the characteristics of this view from that which currently exists

EXTENT OF ASSESSMENT OF ARCHAEOLOGY AND WHETHER THERE HAD BEEN SUFFICIENT ANALYSIS TO PROVIDE SUFFICIENT INFORMATION TO MAKE AN INFORMED DECISION ON THE IMPORTANCE OF THE BELOW GROUND ARCHAEOLOGY TO FULLY UNDERSTAND ITS SIGNIFICANCE.

3.7.64. The NCC LIR [REP1-096] express concern over the adequacy of trial trenching referencing that the applicant had identified 29 sites with potential however only undertaking assessments on 9 of these. NCC and LCC are deeply concerned regarding the outstanding work, and the Council's would expect the applicant to provide further details for completion of an acceptable programme of evaluation trenching.

3.7.65. In respect of archaeology the LCC LIR [REP1-089] reiterates the concerns identified by NCC in its LIR. The Council also raise significant concern over the adequacy of assessment of effects on buried heritage, the assumptions made on the significance of effect without full evaluation and the Council

consider reducing the magnitude of effect to negligible as the applicant has would require field evaluation to be almost total.

3.7.66. Several IPs reiterate these concerns including [RR-030, RR-115, RR-016, RR-112].

IMPACTS ON ARCHAEOLOGY OF THE PROPOSED DEVELOPMENT NOT FULLY ASSESSED.

3.7.67. NCC express concern [REP1-096] the assessment would normally include groundworks for temporary compounds and haul roads, compaction/vibration from vehicle/plant tracking and other related construction activity. Where these occur and archaeology is present, NCC maintain that the impact is likely to be significant, adverse and negative, especially in areas of poor or shallow ground conditions.

3.7.68. The applicant's position [REP2-083] confirms that while agreement was not reached on the assessment results of the impacts arising from construction activities used to inform the Archaeology ES Chapter and DCO application, following consultation with the LPAs, an agreed position has been reached regarding the approach to future review. As the detailed design for the proposed development has not yet been finalised, the exact location, extent, and potential impacts are yet to be fully defined. Accordingly, it has been agreed with the LPAs that the requirements for reviewing such effects would be confirmed as additional design details become available through ongoing design refinement.

3.7.69. The Outline Written Scheme of Investigation (WSI) sets out the methodologies and control measures that would define the conditions under which these reviews would be undertaken, as well as the timing and approach for consultation with the Archaeological Advisory Teams to the LPAs and Historic England, to ensure that appropriate mitigation is identified and implemented in a timely manner.

3.7.70. NCC also expressed concern with regard to the impacts from maintenance and decommissioning activities not being properly considered as part of the ES Chapter [APP-038].

3.7.71. The applicant's position is [APP-038] that a list of the work packages proposed as part of the Description of the Proposed Development [REP3-011] and the Impact Assessment refers to the work packages rather than to the individual activities.

3.7.72. The applicant's assessment applies maximum (and where relevant, minimum) parameters across the Order limits to represent a reasonable worst-case scenario, assuming construction could occur anywhere within those limits. Archaeological impacts are evaluated based on the largest possible areas of ground disturbance within individual work packages, ensuring that all potential effects on buried heritage assets are captured even though precise construction locations are not yet fixed. As detailed

design progresses, activities and their impacts can be refined through continued consultation to ensure suitable mitigation.

3.7.73. The Outline Written Scheme of Investigation (oWSI) would include provisions for reviewing the assessment (as presented in [APP-038]) and set out the mechanisms for such reviews. It would also provide for an Archaeological Clerk of Works (ACoW) to oversee activities during construction, maintenance, and decommissioning.

3.7.74. An Archaeological Mitigation Strategy (AMS) would be submitted for approval and secured through Requirement 12 of the dDCO. The suitability of different mitigation approaches—such as avoidance zones, no-dig methods, and archaeological interventions—would be guided by evaluation results and detailed project design and would be agreed with local authority archaeology advisors and Historic England.

3.7.75. The final SoCGs with NCC [REP8-006] and LCC [REP7-026] state that while agreement was not reached on the scope and extent of pre-determination archaeological evaluation to inform the Archaeology ES chapter and DCO application.

3.7.76. Following consultation with the LPAs, an agreed position has been reached regarding future commitments for additional trial trenching to be undertaken as a pre-commencement condition. This would inform the requirement, scope, and timing of archaeological mitigation, as necessary. The information collected from the additional trial trenching would be provided in a timely manner to enable the required consultation and implementation of the agreed mitigation strategies.

3.7.77. The final SoCG [REP7-032] with HE agrees the approach.

THE EXA'S CONSIDERATION

3.7.78. While there were detailed concerns that continued to be developed during the examination, the final position of the main parties was one of agreement, with measures in place secured through the dDCO that give the LPAs and HE the opportunity to agree future mitigation once more detailed work has been undertaken.

EFFECT ON LINCOLN CATHEDRAL

3.7.79. IPs [RR-059 and RR-057] expressed concern over the effect on the distant view of Lincoln Cathedral.

3.7.80. In [REP1-075] the applicant's response to RRs – they confirmed that within Viewpoint 2a [Figure 11.13.3B [AS-037], the distant visibility of Lincoln Cathedral would not be affected by the proposed development due to its low-lying character. Lincoln Cathedral (Grade I listed) was reviewed during the scoping stage, and it was agreed as part of the PEIR (Table 11-2) to scope out this asset from further assessment. Historic England confirmed agreement to this approach during the first round of hearings for the examination.

3.7.81. In addition to the above [RR-065 and RR-086] expressed concern with regard to adverse effects on the historic built environment. The applicant acknowledges there would be some limited harm the adverse effects have largely been removed by mitigation. Where harm remains this needs to be assessed against the public benefits that arise from the proposed development.

THE EXA'S CONSIDERATION

3.7.82. The ExA agree with the approach taken by the applicant as informed by advice given during the PIER that any effect on the long distance view of the cathedral could be scoped out of the assessment. The separation distance is far too large for there to be any material harm to the setting of this asset.

LISTED BUILDINGS

3.7.83. The NSDC LIR [REP1-094] identifies concern in respect of the following listed buildings and what might be done to mitigate harm.

- Church of St George (1046053) Grade II* (Near North Clifton) a view of this asset is visible from the viaduct and recommends that consideration should be afforded to how the proposed development impacts on the setting of this important heritage asset
- Church of St Helen (1302452) Grade II* (Thorney) (Note: This was not identified on map as Grade II*) The Council identify that the setting would benefit from additional tree planting, however the Council recognise that the distance from the proposed development to the site and the intervening fields and foliage lessen the effect on the setting relative to that at the Church of St George
- Ruins of Old Church in Churchyard (1178446) – Grade II. The Council identifies that the setting would benefit from increased hedging and tree coverage to further protect any views
- the Lychgate at Church of St George (1068081)– Grade II (Near North Clifton) the Council are content there would not be an impact.
- Fledborough Viaduct (Fledborough and North Clifton) Victorian to late 20th Century (Monument). Panels on land to the north of the viaduct should be removed
- Firs Farmhouse (1302430) – Grade II the Council identify concern in respect of the potential encroachment towards the heritage asset

3.7.84. With regard to

- Hall Farmhouse (1302529) – Grade II (North Clifton)
- Trent Lane Farmhouse (1369937) – Grade II (North Clifton)
- The Old Manor House (1046018) – Grade II (Thorney)
- Thorney War Memorial (Gates) (1462827) – Grade II (Thorney)
- Cottage at Thorney Hall (1369961) – Grade II (Thorney)
- House at Thorney Hall (10460170) – Grade II (Thorney)

recommend increased hedging to reduce the views of the proposed development from these sites.

3.7.85. In the applicant's response [REP1-075] and agreed in the final SoCG with NSDC [REP7-030] they confirm the effect on these individual buildings is fully assessed and that with regard to each individual asset listed the position is now agreed.

THE EXA'S CONSIDERATION

3.7.86. The ExA are content that the applicant has properly assessed both the significance of these assets, the harm (where identified) and the mitigation to minimise harm.

3.7.87. Notwithstanding the mitigation measures proposed, the proposed development would result in some harm to a number of listed buildings albeit that both individually and cumulatively this harm would be less than substantial.

3.7.88. Having considered all of the evidence available and taking into account our observations during our site inspections, in the judgement of the ExA the effect of the proposed development on identified listed buildings has been appropriately assessed by the applicant and where harm is identified it has been accorded the appropriate degree of significance.

SETTING OF HERITAGE ASSETS

3.7.89. The final SoCG with NCC [REP7-028] recognises the concerns that there would be an overall harmful impact on the setting and hinterlands of some heritage assets and that the cumulative impacts alongside other nationally significant projects in the Trent Valley and immediate area are likely to be considerable.

3.7.90. The applicant, in explaining the approach set out in [APP-039], only found a single long term significant adverse effect would arise to the Whimpton Moor (Scheduled Monument) which they consider difficult to mitigate against as harm arising would be from perceptual changes in the setting, rather than visual changes.

3.7.91. The applicant concludes that the harm would be at the mid – lower end of less than substantial harm [REP7-028] and this needs to be balanced. against the public benefits of the scheme in line with EN-1, paragraph 5.9.32 and EN-3, paragraph 2.3.8.

3.7.92. NCC and the applicant agreed the cumulative assessment found no additive or synergistic harm [REP7-028].

THE EXA'S CONSIDERATION

3.7.93. The ExA find no reason to dispute the conclusions reached by the applicant in respect of the adverse effect on setting of Whimpton Moor Scheduled Monument.

CONSERVATION AREAS

3.7.94. NSDC LIR [REP1-094] recognises that there is one Conservation Area, within close proximity of the Order limits (South Clifton Conservation Area). The Council does not however, identify any conflict with the applicant's conclusions in this respect, and conclude that overall, in heritage terms the effect of the proposed development would be neutral.

3.7.95. No further issues were raised with regard to the conservation areas in proximity to the proposed development, the applicant's conclusions were not questioned and the ExA have no reason to dispute these findings.

THE EXA'S CONSIDERATION

3.7.96. The ExA find no reason to dispute the conclusions reached by the applicant in respect of the effect on Conservation Areas.

NON DESIGNATED HERITAGE ASSETS

3.7.97. Say No to One Earth (SNOE) provided at D6 [REP6-083] a document containing crop shading images from an area that may lie within, or be affected by, the One Earth Solar Farm application. The IP considered these images, to appear remarkably similar to cropmark patterns recorded in Cambridgeshire. The IP confirmed that a respected local archaeologist had reviewed the images and considers them highly likely to indicate buried archaeological features.

3.7.98. On the advice of this archaeologist and given that the site lies immediately adjacent to a known and significant heritage asset (the Whimpton Moor Medieval Village at Ragnall), SNOE believe that HE and the county archaeology team should investigate this location before any development work that could disturb this potential heritage site is considered.

3.7.99. The applicant's response [REP7-042] states that an approach to archaeological investigation has been agreed with Historic England [REP6-044], LCC [REP6-034] and NCC [REP6-036] as outlined in the respective Statement of Common Grounds. The applicant has committed to further trial trenching which would be agreed between the applicant, the Archaeological Contractor, the LPAs and Historic England prior to commencement of development.

3.7.100. Requirement 12 of the dDCO [REP9-006] secures the approach to archaeological mitigation. This requirement ensures that:

- No part of the authorised development may commence until an archaeological mitigation strategy has been submitted to and approved by the relevant planning authority in consultation with HE
- Any additional trial trenching required must be carried out in accordance with the approved strategy
- The strategy must be updated to reflect the results of any further investigations and re-approved as necessary

- The approved archaeological mitigation strategy must be implemented and maintained throughout the construction, operation, and decommissioning of the development

3.7.101. The land included within [REP6-083] has been identified within the remaining areas with archaeological potential. A map of these areas can be found in the Outline Written Scheme of Investigation [REP3-070].

THE EXA'S CONSIDERATIONS

3.7.102. The ExA are satisfied that the work undertaken by the applicant has properly identified the NDHA within or in close proximity to the Order Limits. That the rDCO secures mitigation that would allow for further investigation where appropriate and this requires the approval of the LPAs.

DECOMMISSIONING

3.7.103. NCC expressed concern about how decommissioning might harm below ground assets. NCC sought details on how this would be undertaken in order to understand the ground impacts. If the site would revert to agricultural land for example, would the hundreds of thousands of piles be removed, what ground impacts would occur for cabling, would tree planting for ecological mitigation and landscaping be retained or pulled out.

3.7.104. The applicant explains that the specific method of decommissioning is uncertain at present as the engineering approaches to decommissioning would evolve over the operational life of the proposed development.

3.7.105. Any potential harm to buried archaeological assets unknown at the time of writing would be discussed with the relevant stakeholders and assessed prior to the commencement of the decommissioning phase. The controls to ensure suitable mitigation for potential impacts upon built heritage assets are secured through the Outline Decommissioning Environmental Plan (oDEMP) [REP7-016].

3.7.106. The Outline Written Scheme of Investigation (oWSI) would include allowances for an Archaeological Clerk of Works (AcoW) to oversee construction, maintenance, and decommissioning activities.

3.7.107. Allowances for the ACoW are included in the oCEMP, oOEMP and oDEMP. An oAMP would be submitted within the oWSI for approval and secured through Requirement 12 of the dDCO, if consent is granted.

3.7.108. The AMP would be agreed with the Archaeological Advisory Teams to the LPAs and Historic England to ensure that protective measures presented in the oWSI stay in place and are adhered to throughout the development.

THE EXA'S CONSIDERATION

3.7.109. The ExA are satisfied that the work undertaken by the applicant has properly considered the effect of decommissioning at this stage of development. That the rDCO secures mitigation that would allow for appropriate assessment in

advance of the decommissioning and this requires the approval of the LPAs at the appropriate time.

CONCLUSIONS

3.7.110. The ExA agree with the applicant's assessment of the significance of designated heritage assets and NDHA and their settings.

3.7.111. In respect of the Scheduled monuments the ExA agree with the conclusions of HE that the proposed development would have significant adverse effect upon the Royal Observation Corps Observation Post and this harm should count against the development in the planning balance. This harm is regarded as less than substantial.

3.7.112. Despite the explanation from the applicant as to why it diverges from the view expressed by HE the ExA are not persuaded that the explanation fully understands the position developed by HE or provides a justification as to why the advice of HE should not be followed.

3.7.113. The ExA consider that the change to the landscape character and view in proximity to the scheduled monument would be materially different from the current baseline, and the introduction of a large expanse of solar arrays would be materially different from the current energy infrastructure and consequently the ExA conclude this would result in less than substantial harm to this asset, in line with the conclusions drawn by HE.

3.7.114. In respect of archaeology the ExA find that the rDCO would secure methods of further investigation and consequent mitigation which would safeguard these assets. In leaving further work to the detailed design stage the applicant acknowledges that this could have an effect on the timing of future development in the event that anything of significance were to be found.

3.7.115. In respect of Listed Buildings, the ExA are satisfied that the approach the applicant has taken in assessing these assets and the conclusions reached. The applicant acknowledges there would be harm to a number of these individual assets and that harm should be considered in the planning balance.

3.7.116. In respect of Conservation Areas, the ExA agree with the applicant and other parties' conclusions that the proposed development would not adversely affect any Conservation Area. The ExA regard this as having a neutral effect.

3.7.117. In respect of NDHA, the ExA are satisfied that the approach the applicant has taken has paid due regard to the extent and nature of the NDHA within or in close proximity to the Order limits.

3.7.118. The ExA are satisfied that the mitigation measures embedded into the rDCO through the supporting environmental management plans and secured through Requirement 12 would ensure that the heritage assets within the Order limits would be appropriately safeguarded, nevertheless there would remain some harm to these assets which must be considered in the planning balance.

3.7.119. Given the requirement to undertake a separate balancing exercise for heritage harm, our consideration of the weight to be attached to the cultural heritage effects of the proposed development is deferred to section 5 of this report.

3.8. TRANSPORT AND ACCESS

INTRODUCTION

3.8.1. This section considers the traffic and transport effects of the proposed development.

POLICY BACKGROUND

National Policy Statements

3.8.2. NPS EN-1 contains the following policy objectives:

- Paragraph 5.11.30 – Public rights of way
- Paragraph 5.14.5 – Transport assessment
- Paragraph 5.14.14 – Requirements where there is likely to be substantial HGV traffic
- Paragraph 5.14.20 – Impacts on transport infrastructure and mitigation measures
- Paragraph 5.14.21 – Refusal on highways grounds.

3.8.3. NPS EN-3 states:

- Paragraph 2.10.40 to 2.10.45 – Public rights of way
- Paragraph 2.10.123 - Routes for delivery of materials and components
- Paragraph 2.10.125 - Capacity of roads and bridges on the proposed delivery route
- Paragraph 2.10.139 - Vehicle movements during the construction stage
- Paragraph 2.10.140 - Requirements to control vehicle movements.

Local Planning Policy

3.8.4. Local policies relevant to the application are set out in the following local impact reports (LIR):

- Bassetlaw DC [REP1-087]
- Newark and Sherwood DC [REP1-094]
- West Lindsey DC [REP1-098]
- Lincolnshire CC [REP1-089]
- Nottinghamshire CC [REP1-096]

THE APPLICATION

3.8.5. For clarity and ease of reference in this section the final examination library reference is given for any documents mentioned.

3.8.6. The applicant's case regarding the environmental effects of transport and access matters is primarily contained in ES Chapter 12: Transport and Access [REP1-027]. It is supported by the following documents and plans:

- ES Chapter 12, Appendix 12.2 Transport Assessment (TA) [REP7-008]
- Outline Construction Traffic Management Plan (oCTMP) [REP7-020]
- Outline Decommissioning Environmental Management Plan (oDEMP) [REP7-016]

TRANSPORT ASSESSMENT

3.8.7. The TA [REP7-008] describes details of the likely impact of transport to and from the site. The TA also provides the data that was used to inform the assessment of the environmental effects of traffic and transport set out in Chapter 12 of the ES [REP1-027].

3.8.8. The TA considers three phases of development:

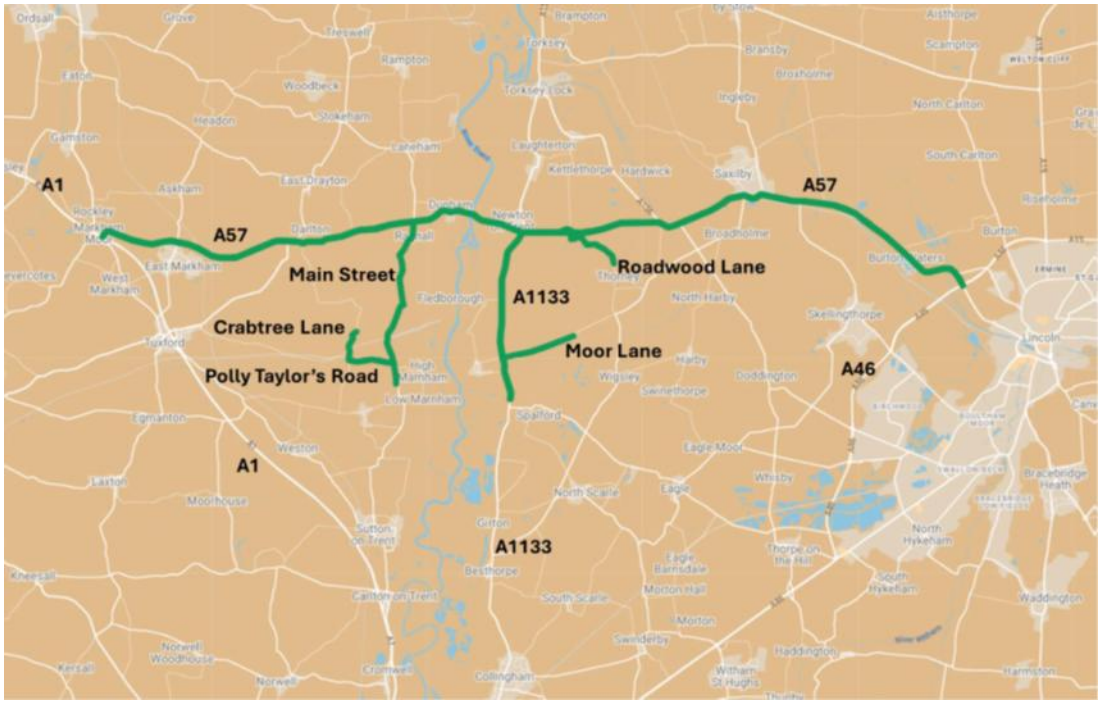
- Construction
- Operation
- Decommissioning

Construction

3.8.9. The TA states that the largest effects would be during the construction stage for the scheme, when equipment and materials, including a number of abnormal indivisible loads (AIL), would be taken to the site, along with the construction workforce.

The TA builds the development traffic analysis by first deriving trip generation and defining the study area. The study area includes routes that are expected to experience increased traffic flows associated with the construction phase. The study area focuses on the east-west A57, with links heading south towards the site accesses. The study area is shown in Figure 9 below.

Figure 9: Traffic study area



Source: [REP7-008]

3.8.10. The TA predicts that the construction traffic would result in a temporary increase in traffic flows on the road network surrounding the scheme. The peak of construction in terms of vehicular movements would be 614 daily journeys (110 car/ light goods vehicles (LGV) and 504 heavy goods vehicles (HGV) journeys). Over the course of a typical 12 hour working day on the proposed development, this would equate to approximately 18 two-way HGV movements per hour for the eastern side of the River Trent and approximately 24 two-way HGV movements per hour for the western side.

3.8.11. The majority of construction vehicles for the east development area would access the site via a new access point located on the A1133, with the remainder using a new access point on Moor Lane. All construction traffic for the west development area would access the development site via the A57, west of Dunham. In total there would be 11 access gates to the development site and these would remain during the operation stage of the proposed development.

3.8.12. The TA concludes that with the additional peak construction traffic all of the roads in the study area would be operating well within their design capacity.

3.8.13. The TA also defined the potentially affected public rights of way (PRoW) network. This consists of 12 PRoW within the site area, along with the Sustrans National Cycle Route 647, that runs east west and crosses the Trent on the Fledborough viaduct.

3.8.14. The TA also provided a review of recorded road accidents for a five year period between 2019 and 2023. Most of the 39 accidents recorded over that period occurred on the A57 and A1133. There was only one accident on more minor roads within the study area over that period.

3.8.15. In terms of AIL, Appendix A of the TA [REP7-008] refers to an AIL Route Survey Report that considered the delivery to the proposed development site of special oversized loads such as electrical grid transformers. This study proposes two routes from ports on the Humber. These are:

- Route 1 – ABP Immingham to the main eastern site access on the A1133.
- Route 2 – Goole docks to the main western site access on the A57.

OPERATIONAL PHASE

3.8.16. The TA states that a maximum of 10 LGV trips per day and 12 HGV trips per day would be generated by the operation of the proposed development. As a result, the assessment of the effect of operational traffic has not been undertaken as this is significantly less than the construction phase traffic generation.

DECOMMISSIONING

The applicant states that potential traffic associated with the decommissioning stage of the proposed development would be lower than that generated by the construction stage. Some elements of the proposed development are likely to be left in-situ, meaning fewer vehicles would be used. As such, no assessment of the potential traffic impact of the decommissioning stage has been undertaken, with the construction stage providing the worst-case scenario for traffic impact.

ES CHAPTER 12 – TRANSPORT AND ACCESS

3.8.17. The derived data from the TA has been used to assess the likely significant effects of the proposed development. The applicant's assessment utilised recent guidance published by the Institute of Environmental Management and Assessment (IEMA), Environmental Assessment of Traffic and Movement (2023) to characterise the environmental traffic and transport effects.

3.8.18. The assessment receptors included both the users and adjacent residents along the study area highway network and additionally PRoW users.

3.8.19. The construction phase was assessed for likely significant environmental effects. For the reasons stated above no assessment was made of the lesser impacts that may be created by the operation and decommissioning phases of development.

Proposed mitigation

3.8.20. Embedded mitigation for the construction stage of the proposed development is outlined in the oCTMP [REP7-020]. This would be a certified document listed in Schedule 12 of the dDCO and be secured by Requirement (R) 15.

3.8.21. No mitigation is proposed for the operational stage of the development.

3.8.22. For the decommissioning stage it is proposed to create a Decommissioning Traffic Management Plan, which is required as part of the oDEMP [REP7-016], which would be a certified document listed in Schedule 12 of the dDCO and be secured by R20.

Applicant's conclusion on transport and access effects

3.8.23. The applicant concluded that no likely significant effects would be created by construction related traffic.

ISSUES CONSIDERED DURING THE EXAMINATION

3.8.24. Following our consideration of the application documents and the relevant representations submitted we included traffic and transport in our initial assessment of principal issues (IAPI). At that stage there were two sub issues listed:

- Effect on local road network from construction traffic
- Effect on residents from noise from traffic

3.8.25. Noise is included within the Other Planning Matters section 3.12 of this report.

3.8.26. Following the submission of the LIR and the written representations (WR) the following issues needed further consideration during the examination. These were:

- Coverage and scope of the TA
- Construction traffic
- PRoW and non-motorised user (NMU) issues
- Road safety at access points

Coverage and scope of the TA

3.8.27. West Lindsey DC [RR-032] expressed concern that the applicant did not fully address the potential impact of the cumulative construction traffic relating to other proposed developments in the area. The applicant responded [REP1-045] with a revised TA that included a cumulative construction traffic assessment.

3.8.28. South Clifton PC [REP6-063] also expressed some concern that the applicant's traffic assessments did not include full assessment of overlapping major construction programmes in the area. The applicant [REP7-042] set out that the TA includes an assessment of cumulative traffic impact in Appendix E.

3.8.29. Nottinghamshire CC LIR [REP1-096] set out a number of concerns relating to the extent of the study area, the extent of prohibited construction vehicle (barred) routes, verification of the percentage traffic increase on route and possible duplication of traffic count data. The applicant [REP2-083] confirmed that amendments had been made to the TA and the oCTMP to reflect the subsequent discussion between these parties. Further discussions continued throughout the examination and the final signed Statement of

Common Ground (SoCG) [REP8-006] shows agreement on these matters between these parties.

3.8.30. Lincolnshire CC LIR [REP1-089] concluded in paragraph 11.6 that the applicant's assessments were appropriate and provided a reasonable estimate of HGV and car traffic that would be associated with the development.

ExA's consideration on coverage and scope of the TA

3.8.31. We consider that the applicant has undertaken a satisfactory assessment of the transport impacts of the proposed development in accordance with paragraph 5.14.5 of EN-1.

Construction Traffic

3.8.32. Nineteen relevant representations expressed a general concern about the impact of construction traffic, including ones from South Clifton Parish Council [RR-050] and Dunham and District Parish Council [RR-017].

3.8.33. IPs including Mrs Walker [REP5- 108] continued to raise concerns in respect of which routes were the barred routes, and whether the information provided by the applicant was sufficiently clear. Referring to her previous comments in [REP3-038] Mrs Walker indicated that there remained discrepancies between the road description in [REP4-026] and the road signage.

3.8.34. The applicant responded confirming that NCC as the relevant highway authority had confirmed they were content with the revised information included in the oCTMP [REP5-040]. Should any further updates to the list of barred routes be required, these can be accommodated in the final CTMP, which would be secured under the DCO and agreed with NCC prior to commencement of construction

3.8.35. National Highways (NH) [REP1-106] in its written representation asked for more detail about the potential impact on the strategic highway network (SRN) it manages. In particular, concerning the potential impact on the A1/ A57 and A1/ A46 junctions. It also requested more details about staff travel. The applicant [REP2-082] responded that the development is not predicted to impact on the A1/A46 junction and the worst case impact on the A1/ A57 junction would be 0.88% of the A1 traffic flow at this point. The discussion concerning impact on the SRN continued between the parties but the signed SoCG [REP5-064] records that the impacts described above had been agreed and that there would not be a detriment to the operation of the A1.

3.8.36. Nottinghamshire CC throughout the examination continued discussions with the applicant about traffic routeing and the routes which would be prohibited (barred) for construction traffic. The final signed SoCG [REP8-006] records that this matter was agreed. The applicant confirmed that the oCTMP [REP7-020] listed the barred routes.

3.8.37. Lincolnshire CC in their LIR [REP1-089] indicated they considered the applicant's assessment of the traffic and transport effects of construction to

be reasonable subject to the mitigation proposed. It concluded that traffic and transport impacts during the construction phase would be negative but not severe in the context of NPS EN-1. This matter is recorded as agreed in the SoCG [REP7-026].

3.8.38. The final CTMP, that would manage construction traffic, would be secured by R15 of the dDCO and would be in accordance with the oCTMP. The oCTMP would also be a certified document as listed in Schedule 12 of the dDCO.

ExA's consideration on construction traffic

3.8.39. We consider that the construction traffic associated with the proposed development would have an impact on the local road network. We also accept that there would be no residual significant effects as a result of the mitigation provided by the oCTMP secured within the rDCO.

PRoW and non-motorised user (NMU) issues

3.8.40. Nottinghamshire CC LIR [REP1-096] set out In the Relevant Planning History section it's concern that the proposed scheme should not create unnecessary impact on pedestrians and cyclists using National Cycle Route (NCR) 647, that runs east west and crosses the river Trent on the Fledborough viaduct.

3.8.41. Nottinghamshire CC [REP2-088] responded to ExQ Q18.0.7 of ExQ1 [PD-010] confirming, that following discussions with the applicant, that it was satisfied that there were no impacts on NCR 647 where it passes through/ adjacent to the DCO area. It also accepted that the offroad section of the NCR is not to be crossed by construction traffic, which was its primary concern.

3.8.42. Lincolnshire CC in its LIR [REP1-089] welcomed the creation of a new permissive path connecting to the southern end of Southmoor Lane. It accepted that there would be a potentially negative impact on the amenity of users of the PRoW from a visual amenity perspective, walking through open fields in contrast to walking through a solar farm. Notwithstanding this potential negative impact, it considered that the longer term enhancement of the network created by the new proposed permissive path would mean the impact on the PRoW network would be positive.

3.8.43. Kay Oates [RR-080] and Sarah Armstrong [RR-133] both expressed concerns about horse riding being negatively affected during construction. The applicant [REP-075] responded that the iterative design process had taken account of the British Horse Society (BHS) "Advice on Solar farms near routes used by equestrians" (April 2024). The oCTMP [REP7-020] also includes measures for site training for HGV drivers in safe interactions with horse riders on roads.

ExA's consideration PRoW and non-motorised user issues

3.8.44. We consider that the applicant has had due regard for paragraph 5.11.30 of EN-1 and paragraphs 2.10.40 to 2.10.45 of EN-3, in that the proposed

oPRoWMP and the oCTMP adequately mitigate the adverse effects on public rights of way users.

Road safety and access points

3.8.45. Nottinghamshire CC LIR [REP1-096] requested further details of the site accesses within Nottinghamshire should be submitted in order to establish the principal of their acceptability. This matter was under discussion throughout the examination for all of the site accesses in Nottinghamshire. The road safety matters under discussion included the following:

- Stage 1 road safety audits (RSA)
- Visibility splays
- Swept path analyses
- Forward visibility splays

3.8.46. Nottinghamshire CC [REP3-085] stated that its "policy within the Nottinghamshire Highway Design Guide is that new accesses for vehicles and the increased use of existing accesses on other classified and unclassified roads will normally be supported where there is not a road safety problem or where a road safety problem can be removed." Thus, it stated that the appropriate mechanism to determine this is considered to be through the RSA process."

3.8.47. As part of the applicant's responses, it submitted the A57 Access Note [REP5-073] that provided a Stage 1 RSA and a consideration of an alternative access provision. This site access is the main access point to the section of the development site to the west of the river Trent.

3.8.48. In response to our question Q18.0.3 [PD-017], Nottinghamshire CC [REP6-068] stated that there were still outstanding concerns with the A57 junction and other junctions. NCC also raised an additional concern that had arisen from the applicant undertaking a speed survey. This survey recorded that the 85th percentile speed of traffic on the A57 was nearer to 60 miles per hour (mph) than the speed limit for the road of 50mph. This would potentially affect the required visibility splays at the proposed junction. Nottinghamshire in response to Q18.0.2 also stated that it did not consider that the correct visibility splays at other junctions had been adequately evidenced.

3.8.49. Nottinghamshire CC final position is recorded in the final signed SoCG [REP8-006] (Ref 06/02 and 06/03). This states that it did not consider the access junction plans adequate and that the applicant had not undertaken a Stage 1 RSA on all junctions.

3.8.50. Lincolnshire CC in its final agreed SoCG [REP7-026] (Ref 05-02) accepted that the proposals would not cause a severe impact nor an unacceptable safety impact on the Lincolnshire CC road network.

3.8.51. In its closing statement [REP9-028] the applicant summarised its position as, "*the provision of Road Safety Audits is secured via the Outline Construction Traffic Management Plan (paragraph 3.2.7) and Requirement 15 of Schedule 2 of the draft DCO. Where necessary additional speed survey data will be*

collected (paragraph 3.2.7 of the Outline CTMP) to inform the final access design. If the measured road speeds indicate that a visibility splay is required outside of the Order limits at Access 9 (the only access location where the maximum visibility splay distance extends outside of the Order limits), the undertaker would rely on Article 16 to temporarily limit the road speeds to ensure the access point can be utilised safely. No works are proposed outside of the red line boundary. Additional measures including the use of temporary traffic signals and banksman monitoring may also be provided. The final highway design will be subject to the consultation and approval of the local highway authorities via Requirement 5 and Requirement 15 of Schedule 2 of the draft DCO."

ExA's consideration on road safety and access points

3.8.52. Nottinghamshire CC set out that paragraph 1.2.3 of its Highway Design Guide stated that "new or existing accesses with intensified use will normally be supported where there is not a road safety problem or where a road safety problem can be removed." It did not provide any evidence to suggest there was a pre-existing road safety problem at any of the access locations but instead asked for Stage 1 RSA at all access points to prove the acceptability of the proposed junctions.

3.8.53. The applicant's closing statement reiterated that approval of the detailed design of junction would be subject to consultation and approval of the local highway authorities through R5 and R15 of the dDCO. In addition, if the detailed design required a different access position, then Article 14(b) allows for other necessary means of access should they be required and Article 16 allows for traffic management measures such as temporary speed restrictions be provided.

EXA'S OVERALL CONCLUSIONS ON TRAFFIC AND TRANSPORT.

3.8.54. We conclude that no evidence has been put before us to suggest any of the access points are at locations where there is an existing road safety problem. We further consider that the powers and requirements proposed in the rDCO would ensure that the detailed design process would deliver safe access points for the proposed development. On this basis we consider that in terms of paragraph 5.14.21 of EN1 the proposed development would be acceptable in terms of its impact on highway safety.

3.8.55. The ExA conclude on traffic and transport that the applicant has had due consideration of the requirements of EN-1 and EN-3 as set out above. We also conclude that there are no significant residual transport effects as a result of the development, whereas construction traffic is likely to have a temporary negative impact on the local network. On that basis we consider that traffic and transport should have a little weight against making the order.

3.9. AGRICULTURE (LAND) AND SOILS

INTRODUCTION

3.9.1. This section considers the effects of the proposed development on best and most versatile (BMV) agricultural land, as well as consideration of future uses of land and soil management practices.

POLICY BACKGROUND

NPS EN-1

3.9.2. NPS EN-1 notes that applicants should seek to minimise impacts on BMV agricultural land and preferably use land in areas of poorer quality (paragraph 5.11.12), and that schemes should not be sited on BMV land without justification. Where schemes are to be sited on BMV land, the economic and other benefits of that land should be taken account of (paragraph 5.11.34).

3.9.3. In relation to solar energy generation, section 2.10 of NPS EN-3 makes it clear that land type should not be a predominating factor in determining the suitability of the site location. However, it also seeks for ground mounted solar PV projects wherever possible to utilise previously developed land, contaminated land or industrial land. Where the proposed use of any agricultural land has been shown to be necessary, poorer quality land should be preferred to higher quality land avoiding the use of BMV agricultural land where possible (paragraph 2.10.29).

NPS EN-3

3.9.4. NPS EN-3 makes it clear that whilst the development of ground mounted solar arrays is not prohibited on BMV land, the impacts of such are expected to be considered and the choice of site should be explained by the applicant. Consideration of continued agricultural use and/or co-location with other functions (including storage) to maximise the efficiency of land use should also be considered. Sustainable management of soils is also encouraged via a suitable management plan.

WRITTEN MINISTERIAL STATEMENT (WMS)

3.9.5. The Written Ministerial Statement dated 25 March 2015 (2015 WMS) is also an important and relevant matter. It makes clear that where solar energy proposals involve the loss of BMV land, they need to be justified by the most compelling evidence. This WMS has as far as the ExA understands it not been withdrawn; however, a more recent WMS has been issued.

3.9.6. On 15th May 2024, the WMS ‘Solar and protecting our Food Security and BMV Land’ was published (2024 WMS). This WMS emphasises elements of the 2024 NPSs and refers specifically to Lincolnshire with regard to clustering of solar farms and the need to give consideration to the cumulative impacts on agricultural land due to the number of solar farms in this geographical area.

3.9.7. Within the 2024WMS the then SoS for Energy Security and Net Zero stated, "When considering whether planning consent should be granted for solar development it is important to consider not just the impacts of individual proposals, but also whether there are cumulative impacts where several proposals come forward in the same locality".

NPPF (2024)

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

PLANNING PRACTICE GUIDANCE (PPG)

3.9.9. The PPG on renewable and low carbon energy also provides guidance in relation to large scale ground mounted solar farms. This includes whether (i) the proposed use of any agricultural land has been shown to be necessary and poorer quality land has been used in preference to higher quality land; and (ii) the proposal allows for continued agricultural use where applicable and/or encourages biodiversity improvements around arrays.

3.9.10. The PPG also refers to the Written Ministerial Statement (WMS) dated 25 March 2015. The WMS indicates (amongst numerous other issues) that any proposal involving BMV agricultural land would need to be justified by the most compelling evidence. It also notes that every application needs to be considered on its individual merits, with due process, in the light of relevant material considerations.

LOCAL PLAN POLICIES

3.9.11. The LIRs from each of the local authorities sets out the local policies these are set out in Tables A5 and A6 of Appendix A to this recommendation.

THE APPLICATION

3.9.12. The applicant's case in relation to land use, agriculture and soils is set out in ES Chapter 8 Land and Soils [APP-037] which is supplemented by a series of Appendices [APP-098 – APP-107]. The application includes an outline Soil Management Plan (oSMP) [APP-182] which provides a framework for a detailed SMP through Requirement 19 of the dDCO.

3.9.13. These documents were updated during the examination, the final iteration being:

- Chapter 8 Revision 3 [REP5-022] (clean) and [REP5-023] (tracked)
- Appendix 8.1 [REP1-043] (clean), [REP1-044] (tracked)
- Appendix 8.2 Preliminary Risk Assessment Parts 1-7 [REP3-023 - REP3-029] (clean) [REP3-030 - REP3-036] (tracked)
- oSMP Revision 4 [REP5-042] (clean), [REP5-043] (tracked)

BASELINE

3.9.14. The Order limits plus a buffer of 250m was set as the study area for land, soils and groundwater related receptors.

3.9.15. The baseline was established using a series of sources including:

- Geological maps from the British Geological Survey
- Hydrogeological and groundwater vulnerability maps
- Soil survey maps
- Site specific data and historical mapping; and
- Mineral resource information from Nottinghamshire and Lincolnshire Minerals Local Plans

3.9.16. The future baseline as a comparator considers the conditions that are likely to occur if the proposed development were not to be constructed. The applicant considers it unlikely that in the absence of the proposed development there would be change to the baseline position with respect to the land, groundwater or Agricultural Land Classification (ALC).

SOILS

3.9.17. This was supported by a project specific soil sampling survey, and reference to the Provisional ALC map of England. The ALC land surveyed represents a total area of 1240ha across the whole development area.

3.9.18. The surveys of the agricultural land undertaken by the applicant identify that ALC soil surveys were undertaken between June 2023 and April 2024 following Natural England Guidance (TIN049) surveying a total of 1240 hectares. Land classed as BMV forms 53.3% (660.9ha) of land within the Order limits.

3.9.19. 42 % of the sites identified for ecological enhancement and mitigation are identified as BMV, while the sites identified for the substations and Battery Energy Storage Systems (BESS) 81% is identified as BMV. 57% of the land for the proposed solar arrays is identified as BMV.

3.9.20. A breakdown of the land classification by type and quantity is provided in the table below.

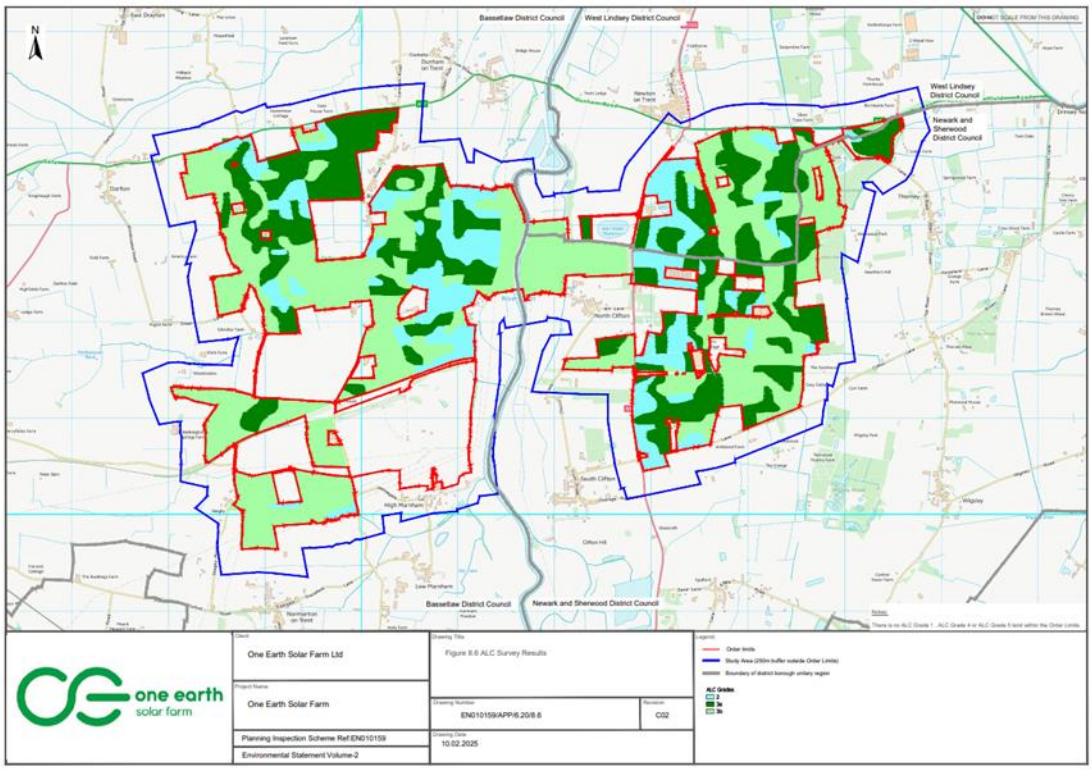
Table 7 Agricultural Land Classification

Land Grade	Quantity **(ha) within the Order limits**	Area%
1	0	0
2	244.8	19.7
3a	416.1	33.5
3b	579.5	46.7
4	0	0

5	0	0
Total	1240.4	100

3.9.21. The relative spread of the land classification grades across the site is set out in Figure 8.6 of [APP-053] copied below.

Figure 10: Agricultural Land classification



Source: Figure 8.6 of [APP-053]

MINERALS

3.9.22. The applicant also undertook a Minerals Safeguarding Assessment [APP-175] to demonstrate how minerals safeguarding areas have been addressed.

3.9.23. The Nottinghamshire Minerals Local Plan and Lincolnshire County Council Minerals and Waste Plan includes a mineral safeguarding and preservation area for sand and gravel running either side of the River Trent, extending eastwards over much of the central and southeastern areas, and extending westwards towards the north west, as shown on Figure 8.5 [APP-175] and included earlier in Section 1.3.9 of this report.

3.9.24. In addition, within Lincolnshire a large area of the Order limits is within a petroleum exploration and development licence area. The applicant considers that as these resources are located below ground, they would not be affected by the proposed development.

CONTAMINATION RISK

3.9.25. The applicant additionally undertook a preliminary risk assessment (PRA) [APP-099-APP104] to provide a baseline for land, soil and groundwater

factors. This PRA covers the Order limits history, geology, hydrogeology, hydrology, and other issues. It was updated during examination the final iteration being [REP3-023- REP3-036].

3.9.26. These separate elements informed the assessment of effects for each phase of the development alongside an assessment of potential risks relating to human receptors, controlled waters and other sensitive receptors.

3.9.27. Where a potential effect was considered to exist, this was assessed alongside the environmental measures that form part of the proposed development for each phase.

3.9.28. The applicant identifies that there is the potential from contamination associated with existing features, a historic landfill site, a household waste transfer station, sewage discharge consents and a historic mineral site.

CONSTRUCTION PHASE

3.9.29. The applicant identifies that during construction the likely significant effects relate to all the various elements of ground works that could reasonably be foreseen to be undertaken, a full list is set out in section 8.3.14 of [REP5-022].

3.9.30. Contamination could occur from spills during refuelling for example. The applicant considers that through the implementation of the outline Construction Environmental Management Plan (oCEMP) [REP7-014] significant contamination events should not occur, and the magnitude of effect would be negligible.

3.9.31. The sensitivity of the geological units (in terms of effects due to excavation or piling) is categorised as low, because the units do not support any noticeable geodiversity. The magnitude of impact is considered to be minor, as there would be a permanent, irreversible change to less than 5 ha.

3.9.32. The significance of effect is considered to be neutral or slight adverse. Therefore, the effect on geological units (superficial and bedrock) during construction is considered by the applicant to be not significant.

3.9.33. A Preliminary Risk Assessment (PRA) is also provided [Appendix 8.2 Parts 1-6 APP-099- APP105 [REP3-023 – REP3-029].] showing the historic site usage that could result in contamination being present. Potential linkage was identified at the former High Marnham Power Station including a historic landfill site. The PRA recommends intrusive site investigation which is secured via Requirement 21 ‘Ground Conditions’ of the dDCO.

3.9.34. Mineral safeguarding areas could be affected during construction, but this is scheduled to be concluded in less than 3 years and has therefore been considered as an operational effect.

3.9.35. With the implementation of the oCEMP effects on groundwater would be appropriately controlled including in the event of any emergency event and

the applicant concludes any effects on groundwater quality or flow would be minor adverse and not significant.

3.9.36. In respect of soils the applicant recognises the volume of BMV across the site but concludes with the Outline Soil Management Plan (oSMP) [REP5-042] and oCEMP in place soil would be protected in terms of both physical and chemical characteristics and a change to ALC grades should not occur. With these environmental measures in place the applicant concludes that there would not be a significant effect on soil or agricultural land.

OPERATIONAL PHASE

3.9.37. The assessment within this chapter has assumed the operational phase of the proposed development is temporary and the project is not considered permanent.

3.9.38. Onsite activities would be minimal and would principally relate to vegetation management, equipment maintenance and servicing, replacement and renewal of any components that fail, and monitoring and inspection, while replacement of solar panels would be undertaken.

3.9.39. Cleaning of panels has been assumed to be on a two year cycle, using a tractor mounted cleaning system, utilising water only.

3.9.40. Management of the vegetation alongside proposed mitigation and enhancement areas would be undertaken in accordance with the Outline Landscape and Ecology Management Plan (oLEMP) [REP7-018].

3.9.41. The applicant recognises the proposed development would temporarily impact the availability of soil and agricultural land during the 60 year operation of the proposed development. That this would also continue for some areas used for environmental improvement or enhancement.

3.9.42. The increased field margins for ecological mitigation along with reduced use of herbicides and planting proposed should reduce soil degradation and erosion and affected surface water run off. The applicant concludes there would be a slight beneficial effect for soil quality and for high sensitivity (Grade 2) soil this could be regarded as significant.

3.9.43. In respect of availability of agricultural land, the applicant concludes that for the Grade 2 ALC (19.7%) of the Order limits or 123.5ha, this could be regarded as significant although temporary, with the lack of availability of the other land being not significant.

3.9.44. In respect of minerals safeguarding the applicant concludes that whilst it could be regarded as slight adverse the effect would not be significant as the effect is temporary.

3.9.45. In respect of groundwater the applicant concludes the nature of effect would be slight adverse and not significant.

DECOMMISSIONING

3.9.46. Decommissioning would include the removal of all above ground infrastructure, including the BESS and substations foundations. Permissive paths would also be removed. Underground cables and cable ducts (below 0.9m) are proposed to remain in situ, with their retention to be reviewed at decommissioning in line with future policy and industry practice.

3.9.47. The applicant identifies similar effects on the soil resource during decommissioning as those which would arise during construction. The applicant also confirms that the land would be expected to be used for arable production similar to the current situation following the decommissioning of the solar farm.

3.9.48. Trees and hedgerows planted as part of the proposed development are assumed to remain in situ when the land is returned to the landowners. It is also expected any clear span bridges used during the operational period would remain in place.

3.9.49. The applicant concludes:

- the effect on geological units (superficial and bedrock) during the decommissioning phase with respect to potential contamination issues.
- the effect on medium importance groundwater resources (including off-site abstraction points) from earthworks
- the effect on very high, high and medium sensitivity soil and agricultural land from the works associated with the decommissioning phase of the proposed development

are all considered to be not significant.

ENVIRONMENTAL MEASURES

3.9.50. Within the Description of Development [REP5-018] the applicant sets out the environmental measures that would be undertaken during construction, operation and maintenance and decommissioning. This is supported by the design and management plans required to control these activities.

3.9.51. These include during construction:

- Site investigation prior to construction commencing as secured in Requirement 21 of the dDCO
- Measures to minimise damage to land, soil and ground water set out in the outline Construction Environmental Management Plan (Revision 8) (oCEMP) [REP7-014]
- A piling risk assessment to minimise impacts on groundwater as set out in the outline Construction Environmental Management Plan (Revision 8) (oCEMP) [REP7-014]
- Measures to manage impacts on soil and agricultural land detailed in the outline Soil Management Plan (Revision 4) (oSMP) [REP5-042]
- Measures to avoid inappropriate trafficking of soil and the control of construction routes through the outline Construction Traffic Management

Plan (Revision 6) (oCTMP) [REP7-020] identifies mitigation during the construction phase

During operation and maintenance:

- Measures to avoid, minimise or mitigate effects on the environment during operation and maintenance are detailed in the Outline Operational Environmental Management Plan (Revision 6) (oOEMP) [REP6-024]
- procedures for managing firewater associated with any incidents at the location of the BESS detailed in the Outline Battery Safety Management Plan (Revision 7) [REP7-022]
- The oSMP would continue to be used throughout operation, which would also be utilised to manage the storage of soils which remain in situ until decommissioning

During decommissioning:

- Measures to avoid, minimise or mitigate effects on the environment during decommissioning works are detailed in the outline Decommissioning Environmental Management Plan (oDEMP)
- The oSMP also measures for soil management and details the practices that would be adhered to in order to maintain the physical properties of the soil, with the aim of restoring the land to its pre-construction condition at the end of the lifetime of the proposed development

ISSUES CONSIDERED DURING THE EXAMINATION

3.9.52. In respect of the approach to assessing the effect on land and soils and the methodology the applicant followed. LCC LIR [REP1-089] confirmed in (paragraph 15.16) that the results contained within the ALC reports are considered as reliable, they have been undertaken by qualified professionals and Natural England (NE) have been consulted in relation to the methodology.

3.9.53. NE confirmed that overall [RR-085], they welcome the approach taken by the applicant and are satisfied with the survey methodology, assessment and Soil Management Plan (SMP).

3.9.54. NSDC in their RR [RR-135] refer to the approach undertaken for assessing the soil type and quality, and do not question the methodology of the approach. They do however note further work would be needed in the future particularly along cable routes to ensure that drainage issues are understood.

3.9.55. No further submissions were made in respect of the methodology and the ExA are satisfied with the approach undertaken by the applicant.

EFFECT ON AGRICULTURAL LAND AND IMPLICATIONS FOR FOOD SECURITY

3.9.56. Many IPs including [RR-027, RR-030, RR-035, RR-015, RR-069 and RR-132] raised concerns relating to the loss of agricultural land and the potential effect on food security. These concerns were expanded on by other IPs

including [RR-003, RR-013, RR-051] in respect of the suitability of the land to return to agriculture once the decommissioning had been undertaken.

3.9.57. Loss of food production is referenced in [RR-077] from LCC advising the county has the largest combinable crop output of any UK county, with about 12% of England's arable crop area. Its combination of climate, soil type and topography make the county ideal for a variety of crops with 437,591 ha of land given over to agriculture and horticulture in Lincolnshire, and producing by value circa 10% percent of England's cereal, 25% of vegetables and 14% of industrial crops (sugar beet, oil seed rape and protein crops).This has led to the area having the UK's leading concentration of fresh produce processors, traders and technology suppliers. This high level of production is vital to the county's economy, with a total crop output of over £1.5 billion and a total livestock output of £555 million in 2023.

3.9.58. All five Councils in their LIRs expressed concern over the adverse effects of the proposed development on agricultural land LCC, WLDC and NSDC additionally maintained throughout the examination that a 60 year period could not reasonably be considered temporary. This was confirmed in the final SoCGs for LCC, WLDC and NSDC.

3.9.59. This view was also expressed by IPs including [RR-030, RR-115, RR-059 and RR-132] that a 60 year operational life could not reasonably be considered temporary.

3.9.60. The LCC LIR [REP1-089] further explained the importance of the agricultural sector to Lincolnshire, and it regarded the loss of this quantity of land to agricultural production as significant.

3.9.61. The applicant responded in [REP1-075] and [REP2-083] stating that EN-3 acknowledges that solar development is not prohibited on BMV land, and it is recognised that at scale, developments may use some agricultural land.

3.9.62. [REP1-075] also states that the SoS in deciding a number of NSIP cases has confirmed that a 60 year consent was regarded as temporary and that the installation of solar infrastructure could be regarded as reversible. (Gate Burton SoS decision paragraph 4.167). This was further explained at ISH3 and in the applicant's subsequent summary [REP5-071].

3.9.63. In supporting their argument, the applicant referred the ExA to the Tillbridge DCO decision and the Tillbridge ExA Recommendation Report, where the ExA concluded that even taking other schemes into account (including One Earth Solar Farm), the loss of BMV would not be significant. In Tillbridge, the ExA concluded that over the lifetime of the scheme, there is likely to be a moderate beneficial effect on soil resource but a slight loss of BMV land, and ascribed neutral weight in the planning balance for temporary loss of BMV. The Secretary of State similarly ascribed neutral weight to the matter of soils and agriculture in the overall planning balance (paragraphs 4.28 and 7.6 of the decision letter).

3.9.64. The applicant also explained at OFH3 [REP5-070] in respect of the threat to food security, there was no tangible evidence to support this concern. This approach was also supported by the recent Tillbridge decision where the recommendation report referred to there being 'no robust evidence' that there is a 'material impact' from the temporary loss of BMV on the UK's food security.

The ExA's Considerations

3.9.65. The ExA recognise the degree of concern identified by the Councils and the local community in respect of the loss of large areas of agricultural land and the consequent reduction in food production. This loss from UK farming production however in the view of the ExA was not evidenced to be significant in the UK national food security context.

3.9.66. The ExA have also considered the comparison with the Tillbridge recommendation which the applicant referred to. The quote from paragraph 5.2.10 of the Tillbridge Recommendation Report which is set out below puts the Tillbridge ExA's conclusions in context

> *"Overall, we consider there is no robust evidence that the temporary loss of around 60 ha of BMV land or 1218 ha of grade 3 agricultural land would have any material impact on the UKs food security. Indeed, we note that even in the most ambitious scenarios, the total area of agricultural land used for solar would occupy less than 1% if the UKs agricultural land."*

3.9.67. The SoS agreed with these conclusions.

3.9.68. The scale of project has some similarities with the One Earth proposal, and in this regard the ExA find this comparison of some assistance, however the effect on BMV is materially different which we consider further in the next section of this report.

3.9.69. In respect of the length of the operation of the proposed development at 60 years, the use would be restricted by the requirement to decommission at the end of that period, and in this respect, it could be regarded as temporary. This aligns with previous DCO decisions made by the SoS. The ExA are however, mindful this does not align with the approach taken in the broader planning environment and 60 years could be considered to be two generations in length.

3.9.70. Nevertheless, the decommissioning requirement is clear and would allow the land to be returned to agriculture; albeit there would be a loss in total area available due to the likely retention of the ecological mitigation incorporated into the proposed development.

3.9.71. The ExA also recognise that the applicant has made no commitment to use the land for agriculture in conjunction with the solar farm, as set out in paragraph 11.1.43 of the Planning Statement [APP-168] which notes that "while the conditions which would allow for grazing …, the applicant is unable to make a commitment that grazing will occur as the usual process would be

for a farmer with animals to graze to approach a landowner to seek agreement to graze animals on their land, not the other way around."

3.9.72. The loss to the agricultural sector therefore must be considered to be the total land take for the whole life of the proposed development.

BEST AND MOST VERSATILE (BMV) AGRICULTURAL LAND

3.9.73. The LIRs for BDC [REP1-087] LCC [REP1-089] NSDC [REP1-094] and WLDC [REP1-098] all express concern that the proposal would see a total loss of 660.9ha of land classified as BMV agricultural land.

3.9.74. LCC [REP7-046] remain of the view that even a temporary loss of 660.9ha of BMV land should be regarded as significant and this should be regarded as significant in EIA terms.

3.9.75. In the LCC SoCG [REP7-026] it states the whole area is productive farmland, which would be removed from mainly arable farming for 60+ years and at best, a lower intensity grass-based system would replace it. The loss of arable production is considered locally significant and in view of other projects in the wider District and County potentially cumulatively significant. For context, the total arable crops and uncropped arable land in Lincolnshire is 385,930ha according to figures published by DEFRA, the total land proposed to be covered by solar farms, NSIP (order limits) and TCPA applications, is approximately 13,620 ha. On the assumption that the majority of land proposed for solar farms is arable land (solar land take being around 3.5% of the arable total) and based on the total crop output figure of £1,564 million for 2023, the potential loss of crop output could be in the region of £50 million.

3.9.76. LCC go on to say that some infrastructure, for example cabling, would be permanent and remain in place after the decommissioning period, as such this with the additional environmental mitigation would inevitably lead to some loss of BMV being permanent.

3.9.77. LCC in its closing submission [REP7-046] confirmed the council view that there is a clear conflict with National and Local Policy in this respect. With the NPPF making clear that the use of poorer quality land should be used in preference to higher quality land.

3.9.78. NSDC LIR [REP1-094] notes that across the site a total of 53% of the site would be BMV land and be adversely impacted by the proposed development, of which 20% is classified as Grade 2 (Very Good Agricultural Land) land and its loss should be avoided.

3.9.79. South Clifton Parish Council (SCPC) [REP1-097 and REP2-089] share the concerns of LCC and NSDC about the loss of over 53% Best and Most Versatile (BMV) land. SCPC additionally supports the recent ministerial letter signed by 30 MPs' and Peers, sent to the Prime Minister calling for prioritisation of rooftop and brownfield developments.

3.9.80. SCPC also question the 10km search area arguing that by expanding the range this could have identified less BMV land and reduce proximity to villages.

3.9.81. The loss of BMV was also reflected in a significant number of the RRs received including [RR-030, RR-027, RR-071, RR-115, RR-146, RR-064, RR-035, RR-141, RR-006, RR-139, RR-055, RR-007].

3.9.82. In response to issues raised by parties the applicant in [REP3-066] provided a breakdown of BMV by district council area and included the impact of other NSIPS in the relevant districts.

3.9.83. The applicant explained the approach to site selection which sought to minimise the extent of BMV within the Order limits, however within Lincolnshire and Nottinghamshire significantly high proportions of BMV land are present compared to the rest of the country. Nevertheless, the quantity of land used for the proposed development remained a very small percentage of the agricultural land area within each county.

3.9.84. The applicant referred back to the selection methodology set out in the consideration of alternatives [APP-033] and paragraph 2.10.29 of EN-3 which states that land type should not be the predominant factor in determining site suitability. However, where possible, applicants should utilise previously developed, brownfield, contaminated, or industrial land, and poorer quality land should be preferred over higher quality land.

3.9.85. The applicant confirmed at ISH2 [REP3-065] that this principle had guided the applicant's approach. The survey which had been undertaken and the quality of land across the survey area meant that the complete avoidance of BMV land was not possible.

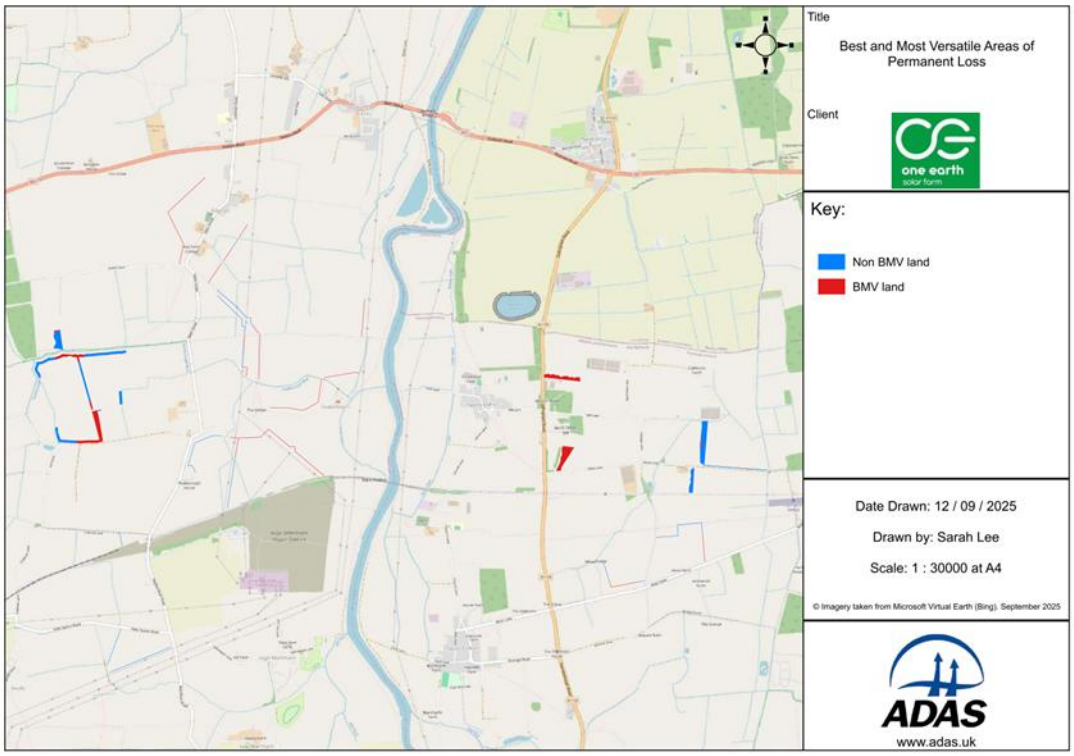
3.9.86. The applicant calculates that the change in land use in Lincolnshire would be 0.26% and Nottinghamshire 0.14% by area. The applicant considered a change in land use of 0.05% -5% would be considered normal, and on this basis the effect on BMV would not be significant.

3.9.87. The applicant also confirmed in response to ISH 3 [REP3-066] that 123 hectares of BMV was identified as permanently removed for ecological enhancement which includes both:

- 11.6 hectares of land that would be permanently lost due to hedgerows, woodlands, and trees—typically located at field edges and
- Additional areas designated as wildflower meadows, which are mitigation features for heritage or visual impacts and have also been ecologically enhanced

3.9.88. A plan showing the distribution of the areas affected is included in Appendix B of [REP3-065]. Copied below

Figure 11: Extent of permanent loss of BMV land



Source: [REP3-065] Appendix B

3.9.89. In [REP4-051] the applicant responded again reaffirming its position that the consideration of alternatives as set out in [APP-033] and the Planning Statement [APP-168] the approach to minimising BMV land was both proportionate and appropriate, its consideration of alternatives had been reasonable.

3.9.90. The applicant in responding to concerns identified by parties in referencing the WMS 2024 consider the weight to be attributed to it had been properly set out in the Planning Statement [APP-168] and a number of other NSIP decisions. West Burton Solar Farm made in January 2025, the WMS 2024 is referred to as having "emphasised certain aspects of the policy in the 2024 NPSs" (West Burton para 4.227 – a description that is adopted in many decisions for made solar DCOs) and the decisions are clear that the WMS 2024 does not introduce new policy over and above that contained in the NPS.

3.9.91. EN-1 and EN-3 require that applicants should not site their scheme on BMV agricultural land without justification:

- applicants should demonstrate that they have prioritised the use of previously developed, contaminated and industrial land and lower grade land first; and
- where schemes are located on BMV agricultural land, the Secretary of State should take into account the economic and other benefits of the land.

3.9.92. The applicant maintains that it had followed the advice in the NPS by reducing the extent of BMV land affected by the proposed development both before statutory consultation and before submission.

CUMULATIVE LOSS OF BMV LAND ACROSS LINCOLNSHIRE AND NOTTINGHAMSHIRE

3.9.93. According to LCC regionally the loss of BMV within Lincolnshire from large scale solar schemes would now be 6,915.77 ha (comprising 436.91 ha Grade 1; 3,161.27 ha Grade 2; and 3,317.59 ha Grade 3a).

3.9.94. LCC consider this to be a significant figure and one that continues to increase as project after project comes forward with no threshold set by the Government or Secretary of State as where the cumulative amount of BMV being lost reaches a tipping point beyond which no further loss of BMV should be permitted.

3.9.95. LCC do not consider the loss of over 6000ha of BMV to be acceptable emphasising that unless the SoS creates a threshold the tipping point at which the loss of BMV would be cumulatively regarded as having been passed would never arise.

3.9.96. SCPC also express concern over the adequacy of the assessment of cumulative loss of BMV at D6 [REP6-059] applicant response in REP7-042.

3.9.97. WLDC also note in response to ExQ1 13.0.1 [REP2-093] that the WMS emphasises consideration for solar development of the cumulative impacts on BMV agricultural land where several proposals come forward in the same locality, with the WMS specifically referencing these issues in Lincolnshire "we are increasingly seeing geographical clustering of proposed solar developments in some rural areas, such as in Lincolnshire".

3.9.98. WLDC make clear that the potential impacts on BMV agricultural land of both the One Earth proposal and cumulatively with other NSIP projects in WLDC are of significant concern to the Council.

3.9.99. In the final SoCG with WLDC [REP8-008] it states, "while the other NSIPs in Lincolnshire would result in a BMV loss of 257.64ha, One Earth Solar Farm on its own would result in a loss of BMV of 128ha BMV, which is half as much again as the NSIPs in Lincolnshire."

3.9.100. SCPC [REP1-097] share the concerns of LCC and Newark & Sherwood District Council about the loss of over 53% Best and Most Versatile (BMV) land. SCPC supports the recent ministerial letter signed by 30 MPs' and Peers, sent to the Prime Minister calling for prioritisation of rooftop and brownfield developments.

3.9.101. The applicant produced a technical note at Deadline 4 – Inter-project Effects with other NSIP and Major Development Schemes [REP4-050] – which set out the approach that was taken to assess the cumulative applications to create the short-list taken forward within the Environmental Statement for the One Earth Solar Farm.

3.9.102. The applicant has set out its justification for this in the application documents. It is explained within Environmental Statement Alternatives and Design Evolution [APP-033] that other potential Order limit locations were not of significantly better BMV profile in comparison to the Order limits, resulting from detailed ALC survey. As the Order limits evolved, some land parcels of ALC Grade 2 were removed in seeking to avoid and minimise impacts to BMV land.

3.9.103. As noted within the Applicant's Written Summary of Oral Submissions at Issue Specific Hearing 2 [REP3-065], the applicant set out the breakdown of agricultural loss at a District Level in terms of both the proposed development and other NSIP applications in the area.

3.9.104. The applicant's position in respect of the cumulative effects assessment concluded that if all the 'reasonably foreseeable' schemes within Lincolnshire proceed, the change in land use would be 1.75% (including both temporary and permanent schemes). The change in land use in Nottinghamshire (for both temporary and permanent schemes) would be 2.57%.

3.9.105. The applicant referenced the recent Tillbridge DCO where the EXA concluded that even taking into account the other schemes in their cumulative assessment (and One Earth was included on their cumulative map), the loss of BMV would not be significant. The ExA concluded that over the lifetime of the development, there is likely to be a moderate beneficial effect on the soil resource at the site but that there would be a loss of use of BMV. Therefore, on balance, they ascribed neutral weight to soils and land use in the planning balance. This was agreed by the SoS in the decision published on 14 October 2025.

3.9.106. The applicant also pointed towards the Gate Burton decision (paragraph 4.167) where the impact upon productive farmland was concluded to be for a temporary period and reversible as supported by the SoS in the final decision letter.

The ExA's Considerations

3.9.107. In considering the effect of the proposed development on BMV, the ExA are mindful of the position of NE and the Councils as confirmed in the signed SoCGs that the approach to the identification of BMV land across the site is agreed.

3.9.108. Overall, the proposed development would affect 660ha of BMV. Of this the applicant indicates that 123ha would be permanently lost as it has been assumed that the land used for ecological mitigation would remain.

3.9.109. NE have confirmed that it is content with the approach set out in the oSMP for the safeguarding of soils through the operational period and upon decommissioning the land could be returned to agricultural use, with the ALC being unaffected.

3.9.110. The ExA agree with the position of LCC that the loss of 660ha should be regarded as significant, the justification in this respect is reinforced by the

loss of the Grade 2 land for the lifetime of the proposed development. The value of this asset should not be underestimated.

3.9.111. The policy test makes clear that loss of BMV needs to be justified and the applicant has demonstrated that it has had regard in terms of scheme design, alternative selections and embedded mitigation that it has sought to avoid the most productive agricultural land as is required by policy.

3.9.112. The applicant has sought to minimise the use of BMV and shown through the changes made how it has sought to reduce the quantity of BMV affected. Nevertheless, the permanent loss of 123ha of BMV and the temporary loss of 537ha for up to 60 years is a significant adverse effect of the proposed development.

3.9.113. That the proposed development is temporary and reversible for most of the land within the Order limits would, however, mitigate this adverse effect to some extent.

3.9.114. In respect of the cumulative loss of BMV the WMS identifies the concern with regard to the accumulation of large scale solar schemes in Lincolnshire, it does not however override national policy set out in EN-1 or EN-3.

3.9.115. What the WMS and the policy expect is for applicants to demonstrate how they have minimised the impact on BMV (paragraph 5.11.12) and "preferably use land of poorer quality". While the SoS should ensure that applications are not sited on BMV without justification.

SOIL HEALTH

Soil contamination

3.9.116. IPs including [RR-134, RR-003, RR-076] expressed concern with regard to the potential adverse effect on soil health through compaction or contamination.

3.9.117. Say No to One Earth (SNOE) [RR-095] raised concerns over the potential adverse effect on soil health from the introduction of cables being laid into the ground. SNOE consider this could introduce harmful materials into the environment such as Cross-Linked Polyethylene (XPLE), PVC and other plastics as well as heavy metals which would eventually degrade and harm the water and soil environment.

3.9.118. This concern was expanded upon by Mrs Fox in [REP1-122] where evidence was presented that micro plastics could impact soil health and plant growth.

3.9.119. SNOE also detailed concerns over leaching of heavy metals into the soil and chemicals adversely affecting flora and fauna with increased toxicity adversely affecting the ability of the soil to function as expected.

3.9.120. The applicant responded in [REP1-075] setting out how based on the proposed and anticipated changes to soil use, soil health was expected to improve due to the reduction in intensive agricultural use, which would

provide an opportunity for soil nutrient levels to improve, and reduce stress on soil physical properties.

3.9.121. The soil would be managed throughout the construction, operation and decommissioning phase in accordance with the measures detailed in the oSMP [REP5-042].

3.9.122. In respect of the concerns over microplastics the applicant confirmed the site would be reinstated in accordance with the Outline Decommissioning Environmental Management Plan (oDEMP) [REP7-016]. This confirms cables left in situ would not affect agricultural use of the land provided they were buried at 0.9m below the surface. Cables below 1m in depth were expected to remain in place. This approach would minimise soil disturbance, avoid unnecessary soil handling and reduce the impacts of disruption.

3.9.123. Recognising that industry standards might change over time the oDEMP makes clear the final approach would be confirmed at the time of decommissioning based on government policy and best practice at that time.

3.9.124. The applicant considers that as the majority of cables would be buried below 0.9m in depth the concerns with regard to microplastics in the topsoil would be significantly less.

3.9.125. The applicant maintains that the majority of the soil biota are densely populated within the top 30cm of the soil and there is reduced biota population below 60cm. Below this depth there is limited nutrient and water capacity. Effects on porosity, nutrient cycling and fertility, gas exchange, crop yield and biota would not be relevant due to the cable depth.

3.9.126. The applicant states in [REP2-082] Mycorrhiza is a microscopic root like network of mycelium that interconnects roots within the soil. Recent research on mycorrhizal fungi has shown an increased importance of this network to establish a healthy soil through water and nutrient retention. This network is established over time and is easily broken up through soil disturbance. From a soil health and agriculture perspective it is strongly recognised that leaving the cables in situ is the best option to prevent any further potential damage and disturbance.

3.9.127. In addition, the applicant considers that due to the depth of the cable, reduced cation exchange capacity is not a major impact as again the risk of microplastic on cation exchange capacity are mainly exhibited within the topsoil.

3.9.128. The applicant states that there is no current UK guidance specifically related to the assessment of potential contaminant release from buried cables of the type likely to be used, or any regulation preventing their use in any environment. Electricity cables of the type likely to be used are not currently considered to represent a potential source of contamination to soil or groundwater in the land contamination risk management process.

3.9.129. At ISH 1 the applicant explained [REP1-077] in relation to soil health specifically (rather than in relation to risks to groundwater and degradation of plastics), that plastics are used as a matter of formality and these are designed to a certain standard to remain in situ for years. The cables would be buried in the mineral soil and not the topsoil so they would not be contaminating the soil that gets cultivated for human consumption and therefore would not have an effect on human health.

3.9.130. The applicant confirmed there is some research to suggest that microplastics might affect plant's ability to uptake nutrients and absorb rainfall however the scale of the cables across the area would only be in very narrow trenches across the farmland and therefore the integrity of the whole unit of the field or farmland is unlikely to be affected from a land quality perspective.

3.9.131. WLDC [REP1-099] sought additional clarification on the consequences of retaining the cables in the ground WLDC requests further information on the assessment of the environmental effects of cable retention in perpetuity, including the deposition and migration of microplastics.

3.9.132. The applicant in [REP2-082] referred back to the answer previously given in [REP1-075].

Soil compaction

3.9.133. NE recognise that [RR-085] there is potential for compaction to occur underneath panels that cannot be ameliorated utilizing traditional farm operations and that care needs to be employed to protect soil structure. Soils should only be handled in a dry and friable condition, and it is expected that soil handling would be confined to the drier summer period (April through September) to minimise risk of soil damage.

3.9.134. The storage of soil was also raised by NE in [RR-085] where clarity on how soil storage bunds are proposed to be managed over periods of >6 months and this should be included in the oSMP.

3.9.135. Overall Natural England welcomed the approach taken by the applicant and were satisfied with the survey methodology, assessment and Soil Management Plan (SMP). NE confirmed impacts to agricultural land and soil function have been adequately reviewed and mitigated. NE however sought further clarity on the longer term storage of soils and the approach if and when any concrete shoes may be required for solar panel installation.

3.9.136. NSDC in their RR [RR-135] refer to the approach undertaken for assessing the soil type and quality, and do not question the methodology of the approach. They do however note further work would be needed in the future particularly along cable routes to ensure that drainage issues are understood.

3.9.137. D4 [REP4-074] from Mr Fox expresses concern over the adverse effect on soils through compaction. The applicant responded at D5 [REP5-072] setting out how it considered the potential for significant effects from soil compaction

during construction, operation, maintenance, and decommissioning would be addressed.

3.9.138. That mitigation measures are set out in the outline Soil Management Plan [REP3-051] (oSMP). These measures have been discussed in detail with Natural England to ensure they align with best practice, and a Statement of Common Ground is currently being finalised for agreement. This was ultimately completed and a position agreed with NE [REP7-036].

The ExA's Considerations

3.9.139. In acknowledging the significant concerns of IPs in respect of both the potential for contamination and compaction the ExA sought evidence from both Natural England and the Environment Agency as statutory advisors.

3.9.140. In response to ExQ 12.0.11 The EA advise at D4 [REP4-062] it does not currently have a regulatory position statement on microplastics, and no regulatory standards currently exist to define unacceptable concentrations of microplastics in groundwater.

3.9.141. The UK has adopted an annual average Environmental Quality Standard (AA-EQS) for PFOS in surface freshwater at 0.65 ng/l, based on the potential for secondary poisoning in humans due to fish consumption. No EQS currently exist for other PFAS compounds. PFAS contamination in water is routinely monitored by the Environment Agency at over 500 sites targeting 48 different types of PFAS in England.

3.9.142. Microplastics are not currently subject to routine monitoring (Poly- and perfluoroalkyl substances (PFAS): sources, pathways and environmental data: summary - GOV.UK).

3.9.143. The EA expect the applicant to use underground cable construction materials and installation methods in accordance with industry standards and best practice, which the EA would expect not to degrade significantly or release contaminants during the lifetime of the proposed development. This should provide adequate protection to controlled waters (and soils) during the construction and operation phases.

3.9.144. As outlined in the EA relevant representation [RR-063] and response to documents Submitted at Deadline 2 [REP3-076], the EA have requested that the applicant must demonstrate that the retention of buried cables in-situ post-decommissioning would not pose a significant risk to controlled waters. The EA have also requested that where possible the applicant avoid the use of PFAS compounds in construction materials.

3.9.145. Requirement 20(5) of the dDCO, makes clear that no decommissioning works would be permitted to take place until the Decommissioning Environmental Management Plan (DEMP), which must be substantially in accordance with the oDEMP, has been approved by the relevant planning authority in consultation with the Environment Agency.

3.9.146. The EA further advised at D5 [REP5-082] Chapter 5 of the ES (Section 5.6.2) had been amended to state that buried cables are proposed to be retained in-situ below 0.9m following decommissioning. This is contradicted in part by Section 8.3.18 of Chapter 8 and the oDEMP [REP7-016], which both state that the decommissioning approach for underground cables would be subject to review prior to decommissioning, in accordance with the legislation and best practice guidance at that time.

3.9.147. The resulting assessment may conclude that retention of cabling is the least environmentally impactful method, or that removal is required. This should remain a commitment for the proposed development, and the EA recommended that the developer consider the potential future need for removal as part of the detailed design process for underground cabling.

3.9.148. The EA also noted that Chapter 5 also does not refer to the proposed sealing and burial of cable ends, which is mentioned in Chapter 8.

3.9.149. The ExA recognise this discrepancy remained at the end of the examination, however the oDEMP which sets out the basis for the future assessment of the DEMP had been changed to reflect that the applicant would be required to comply with best practice at the time of decommissioning was to take place. It is this document which provides the necessary information that the applicant would need to provide and the security that would be needed.

3.9.150. Buried cables should be designed and installed in accordance with industry best practice and should have a design lifespan commensurate with that of the proposed development.

3.9.151. In respect of the concerns identified with regard to the potential for soil erosion the EA advised in response to ExQ 12.0.1[REP6-067] that the risk of flooding from surface water with climate change speed dataset also indicates low velocities across the study area (Environment Agency, 2025a). The EA appreciate that this is a qualitative assessment rather than a quantitative assessment based on detailed direct rainfall (rain on grid) hydraulic modelling with the solar panels in place, but in the context of runoff and soil erosion, such modelling is not typically undertaken in planning applications for solar farms within England.

3.9.152. The EA confirmed in its final SoCG [REP7-038] that they had no outstanding issues of concern as did NE [REP7-036] with one exception.

3.9.153. NE stated that the use of concrete bases as foundations for the solar array frames would increase the impact on both agricultural land take and soil health through continued compaction.

3.9.154. The applicant confirmed the use of pre-moulded concrete blocks (concrete shoes) would only be used in areas of sensitive archaeology. This is detailed in Table 3.2 of the outline Construction Environmental Management Plan [REP3-041] and is specific to areas of archaeology only. The applicant proposes to continue negotiation with NE on this particular matter post consent to try to reach an agreed position.

3.9.155. NE confirmed if cables are installed deep enough, it would be satisfied for them to remain in situ, as they would be avoiding soil disturbance all together at decommissioning.

3.9.156. This in conjunction with the recognition that there is no current UK guidance specifically related to the assessment of potential contaminant release from buried cables of the type likely to be used in conjunction with the satisfaction of NE and the EA in these respects lead the ExA to conclude that it would not be reasonable under the circumstances to either resist the proposal on this basis, or to include a different requirement within the DCO.

Mineral Safeguarded Sites

3.9.157. LCC identified concern in their LIR [REP1-089] and at ISH1 that the Order Limits overlies land allocated as a Minerals Safeguarded site in the Local Plan. NCC also expressed concern over the potential effect of the scheme on this sand and gravel resource, with the site potentially being sterilised for 60 years.

3.9.158. The ExA have received no substantive evidence that would contradict the conclusions reached by the applicant and are satisfied that there would be no material harm from the proposed development and as such the ExA do not regard this as a matter that influence the final planning balance.

CONCLUSIONS

BMV and agricultural land

3.9.159. The proposed development would take out of use for 60 years 660 ha of grades 1 and 2 agricultural land

3.9.160. EN-1 section 5.11 including at paragraph 5.11.12 states that applicants should seek to minimise impacts on the best and most versatile agricultural land and preferably use land in areas of poorer quality with matters of soil management dealt with in paragraphs 5.11.13 and 5.11.14.

3.9.161. EN-3 provides further detailed guidance in paragraphs 2.10.29 to 2.10.34 in support of EN-1 including at 2.10.30 that “development of ground mounted solar arrays is not prohibited on BMV agricultural land”.

3.9.162. There remains significant concern that the application to operate a solar farm for 60 years should be regarded as temporary, and the effect on the environment including BMV should be considered a temporary loss. LCC in their closing submission [REP7-046] reiterate this by saying “The Council’s position is that the ‘temporary’ loss of 660.9ha of BMV land is significant in its own right and that 60 years represents a ‘generational’ change of land use.”

3.9.163. “The permanent loss of 660ha of BMV land would be considered a major (significant) effect in EIA terms.”

3.9.164. It is clear from the evidence presented to the examination that the area of Lincolnshire and Nottinghamshire contains large swathes of BMV, and that

consequently siting large scale solar farms would inevitably affect BMV to a degree.

3.9.165. Projects of this scale seeking to produce 740MW of electricity and utilise 1660ha of land are land hungry. The adverse effect on agricultural land and BMV in particular in this case is in our view significant.

3.9.166. The ExA come to this conclusion because of the quantity of BMV land affected at 660ha, the proportion of the site it covers being some 53% and the proposed development would adversely affect Grade 2 land.

3.9.167. While the ExA accept the arguments presented that for the majority of the land affected would be temporary. This 'temporary' period is nevertheless the equivalent of two generations and would remove arable production from this land for what must be regarded as a significant period.

3.9.168. In respect of the cumulative loss of BMV the ExA are of the view that whilst the area of the development is significant and cumulatively the land taken along with other solar NSIPs in Lincolnshire can also be regarded as significant, in the context of the overall area of Lincolnshire it is not.

Soil Quality

3.9.169. The mitigation proposed and secured through the DCO and supporting documents in particular the oSMP, oCEMP, oOEMP and oDEMP would in the ExA's view ensure that the quality of the soil would be maintained through the construction and operation of the proposed development and the subsequent decommissioning process.

3.9.170. The applicant would be required to manage the site and this important resource to achieve a quality of soil comparable to the current land condition. While there is some uncertainty upon the long term storage of soils over a 60 year period, Natural England have confirmed they are satisfied with what is proposed, and that the oSMP is following what is regarded as current best practice.

3.9.171. The Government remains clear in that food security is important for our national security, and where the significant development of agricultural land is necessary, poorer quality land should be used in preference to land of a higher quality

3.9.172. WLDC Closing Submission [REP7-050] loss of BMV state WLDC concludes that the scheme does not adequately mitigate or justify the loss of BMV land and therefore does not align with established planning principles.

3.9.173. The ExA regards the risk of contamination, from on site sources, galvanising of support frameworks used in foundation structures or through use of and potential retention of on site cables as appropriately safeguarded by the measures addressed through the management plans secured through the DCO. In particular the obligation on the applicant to submit an assessment at the time as to the method of either retention or removal of cables buried at 0.9m or more subject to the best practice at that time.

3.9.174. It should be noted that with this in mind and the recognised importance of minimising damage to soils, the principle argument given and accepted by NE for not committing to removing all cables now, designing for their removal now in the event that this is seen as the most appropriate solution in due course should be addressed by the applicant prior to the development commencing.

3.9.175. The use of plastics within the environment is an evolving science, and it may well be the case that our understanding of the long term effects of them within the environment is not fully understood. However, the Examination of this case cannot reasonably require a single applicant to explore this. It is for the regulatory bodies such as the Environment Agency to ensure that systems and materials used in the environment are safe to do so.

3.9.176. It is reasonable for the SoS to expect these control methods to be operating appropriately, and this is highlighted in the NPS at Section 4.12.10.

3.9.177. In these circumstances despite the grave concerns identified by IPs in this respect and the detailed evidence they presented, we find that the approach taken by the applicant and the mitigation secured through the oDEMP, oOEMP and OCEMP to be satisfactory.

3.9.178. The oSMP which has been provided by the applicant sets out clearly the approach to be taken in the event consent is granted. This would then lead on to a SMP at the point of detailed design. This would need to be approved by the relevant planning authority in consultation with NE. This SMP must be undertaken substantially in accordance with the oSMP. NE have confirmed that they are content the oSMP has followed recognised good practice

3.9.179. We therefore conclude that the risks of contamination or compaction to the soil environment do not weigh against the order being made.

3.9.180. The ExA have had regard to the agreement with the councils and NE of the methodology on how the ALC surveys were undertaken and consider that the approach set out in the ES at Chapter 8[REP5-022] and supporting documents to be appropriate.

3.9.181. The oSMP [REP5-042] and construction methodology controlled through the cCEMP [REP7-014] are secured through Requirements 19 and 13 of the rDCO. The ExA is satisfied that the installation of the solar arrays would not result in a significant adverse effect on soils and would not result in a change to the ALC grade.

3.9.182. The effect, however, would be long term (60 years) but for the majority of the site reversible. There would be some benefit for the quality of soil during operation as a result of the cessation of intensive cropping (and use of chemical fertilisers) and replacement with grassland.

3.9.183. The ExA recognises the concerns of LCC and WLDC and other IPs, who have highlighted Government statements, including the WMS, which discourage the use of BMV agricultural land.

3.9.184. The ExA however, consider that a balance needs to be made between the policy tension which seeks to safeguard land for agricultural use and protect BMV, and the urgent need for renewable energy. The categorisation of solar PV development as a Critical National Priority within EN-1 and the presumption in favour of this form of development as set out within the NPS supports the argument that the weight to be given in favour of the land being used for the proposed development should outweigh the harm that would arise in environmental terms.

3.9.185. Overall taking all the above matters into account, the ExA find that the applicant has taken a reasonable approach to considering the land use impacts of the proposed development, including in respect of BMV. The evidence indicates a significant adverse effect on BMV, but no significant adverse effect on mineral resource. There would also be the potential benefit arising from the reduced use of herbicides and increased soil health that could arise over the operational period.

3.9.186. Accordingly, the ExA are satisfied that the application accords the policy tests in EN-1 and EN-3.

3.9.187. The ExA do not consider there to be a conflict with the NPPF as the applicant has in our judgement sought to minimise the quantity of BMV land effected, which aligns with policy despite the significant adverse effect identified above.

3.9.188. The ExA ascribe a moderate adverse amount of weight to the adverse effect on BMV and a little positive weight to the potential for the improvement of soil health to land use matters in the planning balance.

3.10. HUMAN HEALTH

INTRODUCTION

3.10.1. This section considers the potential effects of the proposed development on human health.

POLICY BACKGROUND

3.10.2. EN-1 paragraph 4.4.1 states that energy infrastructure has the potential to impact on the health and well-being (‘health’) of the population. Access to energy is clearly beneficial to society and to our health as a whole. However, the construction of energy infrastructure and the production, distribution and use of energy may have negative impacts on some people’s health.

3.10.3. EN-1 paragraph 4.4.2 outlines that direct impacts on health may include:

- increased traffic
- air or water pollution
- dust, odour
- hazardous waste and substances
- noise

- exposure to radiation
- increases in pests.

3.10.4. Where relevant, these effects are considered in the respective planning issues sections of this report.

3.10.5. EN-1 paragraph 4.4.5 explains that the impacts of more than one development may affect people simultaneously. In such instances, it states that the applicant should consider the cumulative impact on health in the ES where appropriate.

3.10.6. EN-1 paragraph 4.4.7 outlines that, generally, those aspects of energy infrastructure which are most likely to have a significantly detrimental impact on health are subject to separate regulation (for example for air pollution) which will constitute effective mitigation of them, so that it is unlikely that health concerns will constitute a reason to refuse consent or require specific mitigation under the PA2008.

3.10.7. Notwithstanding this, EN-1 paragraph 4.4.8 states that not all potential sources of health impacts will be mitigated in this way and the SoS may want to take account of health concerns when setting requirements relating to a range of impacts such as noise.

3.10.8. Section 4.11 of EN-1 relates to health and safety legislation and the Control of Major Accident Hazards Regulations 1999 and includes reference to potential generic mitigation measures for environmental impacts for aspects which must be addressed by the ES.

3.10.9. No specific risks or impacts to consider are identified within EN-3 or EN-5 and the proposed development itself is not subject to the Control of Major Accident Hazards (COMAH) Regulations 2015. As such, it would not be subject to controls put in place by the Health and Safety Executive.

3.10.10. The National Fire Chiefs Council have produced guidance on Grid Scale Battery Energy Storage System planning and Guidance for Fire and Rescue Services.

THE APPLICATION

3.10.11. The applicant's case relating to the effect of the proposed development on human health is set out in ES Chapter 16: Human Health [APP-045], updated during examination, the final iteration being [REP3-017] supported by:

- Figures 16.1 – 16.4 [APP-077]
- Appendix 16.1 [APP-143]

3.10.12. ES Chapter 16 [APP-045] and appendix 16.1[APP-143] include an assessment of the likely significant effects of the proposed development during construction, operation and maintenance, and during decommissioning. Specific environmental measures relevant to human

health have been identified and have been considered as part of the assessment.

3.10.13. The applicant has considered the following potential effects:

- Physical activity (during all phases)
- Community identity, culture, resilience and influence (during all phases)
- Employment and income for vulnerable groups (during all phases)
- Climate change mitigation and adaption (during all phases)
- Electro-magnetic fields (during all phases)
- Wider societal infrastructure and resource (during all phases)
- Health and social care services (during construction phase)

3.10.14. An Outline Battery Safety Management Plan [APP-183] explains how the measures to avoid, mitigate and compensate for impacts and effects arising from the battery energy storage systems (BESS) proposed at the site. This was updated during examination, the final iteration being [REP7-022].

BASELINE

3.10.15. The applicant undertook a desktop study to identify baseline health conditions by referencing demographic and public health data for the study areas from the Office for Health Improvement and Disparities (OHID), Census 2021 and NHS Digital. Reference is also made to the joint health and wellbeing strategies for Nottinghamshire (Bassetlaw and Newark and Sherwood) and for Lincolnshire (West Lindsey).

3.10.16. For the future baseline conditions, the applicant states that predicting the future health of a population is complex and dependent upon numerous factors such as advances in medical technology, lifestyle trends, socio-economic factors, and public health policies. Due to a lack of future projections for community health and the high levels of uncertainty for all parts of the country, for the purposes of the assessment, it is assumed the future baseline for the study areas would be unchanged from the current baseline.

3.10.17. The applicant confirmed in the policy compliance document [APP-169] that the proposed development would not be subject to the Control of Major Accident Hazards (COMAH) Regulations 2015.

3.10.18. The proposed development is therefore not subject to the policy tests contained within Paragraphs 4.13.3 and 4.13.4 of NPS EN-1.

Receptors

3.10.19. The applicant has identified receptors and receptor sensitivity in accordance with Institute of Environmental Management and Assessment (IEMA) guidance. For each determinant of health, the likely significant effects are considered on the populations that occur within the study areas. Receptor sensitivity is based on the baseline conditions and the population or sub-population's capacity to adapt to change.

Environmental Measures

3.10.20. The applicant states that following consultation, a number of alterations to the design have been made to provide mitigation for impacts on human health, such as:

- A break in the arrays at the northeastern boundary, allowing The Woodland Trust access to Road Wood and to retain ecological connectivity
- Removal of arrays to maintain visual connectivity between the Fledborough Viaduct and Fledborough village
- Setbacks to the south of Ragnall Village and offsets of up to 50 metres from Main Street
- Land between North Clifton and South Clifton removed from the proposed development to maintain perceived connectivity between the villages
- Bespoke buffers and setbacks to individual properties based on the home visits and consultation responses
- Solar arrays offset by at least 15 metres and up to 180 metres from PRoW

3.10.21. For each phase of the proposed development the applicant identifies a series of factors which influence human health. These include:

- Physical activity
- Community identity, culture, resilience and influence
- Employment and income (for vulnerable groups)
- Climate change mitigation and adaptation
- Electromagnetic fields
- Wider societal infrastructure and resource
- Health and social care

CONSTRUCTION PHASE

3.10.22. During construction the applicant concludes that the oCEMP [REP7-014] and oCTMP [REP7-020] would establish working conditions to minimise the risks of pollution or disruption from the construction works.

3.10.23. While the Outline Skills, Supply Chain and Employment Plan (oSSCEP) [APP-180] (updated to [REP2-057] would aim to maximise local employment and skills benefits.

3.10.24. The applicant states that the management plans include good design and best practice measures to ensure that adverse impacts to air quality, noise and traffic would be avoided, reduced or mitigated.

3.10.25. The applicant concludes that during the construction phase there would be no significant adverse effects on human health in any of the categories identified.

OPERATIONAL PHASE

3.10.26. The applicant maintains that the proposed development has been designed to account for human health by placing the BESS, substations and other infrastructure away from residential property, PRoW as well as by providing new landscape and environmental mitigation. Which in combination would also aid biodiversity.

3.10.27. The addition of permissive paths would enhance the PRoW network and be designed for horse riding, walking and recreation. To the east of the River Trent the permissive path would connect to Newton on Trent, (which is currently separated from the PRoW network) to the Sustrans route and Trent Valley Way. To the west of the River Trent a new circular route around Ragnall and Fledborough would be introduced.

3.10.28. The applicant also advises it remains committed to the One Earth Community Fund to support local projects.

3.10.29. The applicant concludes that during the operational phase there would be a significant (moderate beneficial) effect in respect of climate change, a significant (major-moderate beneficial) effect in respect of the wider societal infrastructure and resource.

DECOMMISSIONING PHASE

3.10.30. The oDEMP would establish appropriate working practices and control methods to ensure working conditions to minimise the risks of pollution or disruption from the decommissioning works.

3.10.31. Each of the management plans are referenced in the commitments register [REP3-059].

3.10.32. The applicant concludes that these measures would help to maintain healthy environments, improve overall wellbeing and reduce the risk of chronic disease.

3.10.33. The applicant concludes that during the decommissioning phase there would be no significant adverse effects on human health in any of the categories identified.

ISSUES CONSIDERED DURING THE EXAMINATION

3.10.34. The issues that arose during examination in respect of human health are:

- Potential adverse health effects from a fire at a BESS
- the potential for the proposed development to have a harmful impact on the physical and mental health of the local residents
- potential harmful effects from electro magnetic fields
- potential contamination as a result of the breakdown of microplastics

BESS FIRES

3.10.35. IPs including [RR-050, RR-101, RR-115, RR-125] expressed concern with regard to the potential adverse health effect of a fire at a Battery Energy Storage System (BESS) either through the deposition of dust from smoke, or through the generation of toxic gases which could affect the local community directly or via soil or water contamination.

3.10.36. The applicant explained that Appendix C of the Outline Battery Safety Management Plan (oBSMP) [APP-183] sets out an 'Unplanned Emissions Assessment' of the potential air quality impacts associated with a fire at the BESS. This assessment used dispersion modelling and concluded that it is unlikely that there would be any significant adverse health effects in the event of a fire.

3.10.37. The Fire and Rescue Services for Lincolnshire [REP7-026] and Nottinghamshire [REP7-034] both signed of SOCG and agreed a set of Protective Provisions included within the dDCO. Both were content that the approach the applicant had taken, and the oBSMP [REP7-022] secured through the dDCO would meet the current best standards adopted by the National Fire Chiefs Council.

3.10.38. The Environment Agency confirmed in [REP7-038] that it was content that the applicant had ensured that potential firewater run off from the BESS was contained adequately.

3.10.39. The ExA sought additional advice from the UK Health Security Agency (UKHSA) following further concerns raised at OFH on the 6 November. The UKHSA in response to ExQ14.04 [REP6-076] confirmed it was satisfied with the approach of the applicant in preparing the application and conclude that "given the limited residential receptors nearby, and within the modelled hydrogen fluoride (HF) plume area, we anticipate that the public health impacts from a controlled burn approach would probably be low."

POTENTIAL FOR THE PROPOSED DEVELOPMENT TO HAVE A HARMFUL IMPACT ON THE PHYSICAL AND MENTAL HEALTH OF THE LOCAL RESIDENTS

3.10.40. Bassetlaw District Council (BDC) [AS-002] expressed concern with regard to the adverse effect the proposed development could have on health and in particular mental wellbeing.

3.10.41. While [RR-077] from Lincolnshire County Council (LCC) recognised the ES had brought together all potential positive and adverse health effects successfully. "The application had evolved through ongoing public engagement with the intention of alleviating anxiety. Offsets from individual properties and community assets are welcomed". The scheme however was still close to the village of North Carlton (the ExA consider LCC meant North Clifton) and the scheme still encircles some small hamlets and individual properties which may leave residents feeling enclosed.

3.10.42. Newark and Sherwood District Council (NSDC) [RR-135] in reviewing Chapter 8 on land and soils stated that given the proposed use of the site is very low sensitivity in relation to human health risk, NSDC have no significant concerns with the findings of the report in respect of receptors within the Newark and Sherwood area.

3.10.43. Several IPs including [RR-017 and RR-050] express concern over the adverse effect on mental health in the local community and refence a survey of 90% of villagers (400 people) undertaken reporting adverse mental health impacts directly linked to the proposal. Reference is made to the conflict with EN-1 where the presumption in favour of NSIPs does not apply where there is an unacceptable risk to human health.

3.10.44. Mr Fox in [REP4-086] referenced the absence of the survey considering that the omission meant that the ExA would not have sufficient information to understand the position of the local community and the strength of feeling expressed in this regard.

3.10.45. At OFH1 and OFH3, local residents expressed their views robustly on the proposed development and the impacts that the application, the examination process and the potential changes for the future had had on their lives, and the mental health implications that had arisen as a consequence.

3.10.46. The ExA raised issues of human health at ISH1 to better understand the approach the applicant had taken. As set out in [REP1-077] the applicant further explained the approach to the assessment and the importance the applicant placed on the appointment of the community liaison officer to provide a direct communication route to the local community.

3.10.47. The applicant responded to RRs in [REP1-075] advising that it considered the likely significant effects on human health as set out in chapter 16 [REP3-017]. It acknowledges the proposed development has the potential to affect the way people feel through changes to the physical, economic, cultural or social landscape and that during all three phases of the development there is the potential for minor adverse effects.

3.10.48. In addressing the mental health impacts the applicant referred to the ES that had been prepared which had considered a full range of impacts and effects that may have a consequential direct or indirect knock-on effect on the mental health of local residents.

3.10.49. The applicant also considered the design of the proposed development had evolved to ensure mitigation was embedded in order to avoid where possible visual changes to the landscape. This includes various setbacks to preserve key views and assets considered important by local communities, as well as offsets from individual properties.

3.10.50. The applicant also acknowledges that adverse effects on mental health are likely to be at their greatest at the beginning of the project prior to the local population becoming accustomed to the changes.

3.10.51. The effects would also be expected to reduce over time as mitigation planting became established.

3.10.52. The applicant does not agree that there is a conflict with EN-1 which states at paragraph 4.1.7 “for projects which qualify as CNP Infrastructure, it is likely that the need case will outweigh the residual effects in all but the most exceptional cases. This presumption, however, does not apply to residual impacts which present an unacceptable risk to, or interference with, human health and public safety.”

3.10.53. The applicant also confirmed that, to aid with the potential in respect of anxiety a Community Liaison Officer would be appointed to lead discussions with local communities, and act as the primary point of contact should there be any queries or complaints.

3.10.54. The applicant sought to reassure IPs and the ExA that best practice had been followed, that they were aware of the genuine concern expressed by the local community and they would continue to engage to try to provide reassurance.

ELECTRO MAGNETIC FIELDS

3.10.55. Electromagnetic fields (EMF) were referenced by [RR-115, RR-041. RR-098] raising concern over the effect on the health of the local population. Additionally [RR-139, RR-039, RR-115, RR-066 and RR-121] expressed concern that noise during construction would adversely affect residents.

3.10.56. With regard to EMFs the applicant confirmed [APP-083] that no significant effects were anticipated as consideration of EMFs did not identify any significant adverse effect. That EMF from the operation would be below exposure levels specified in health protection guidelines from the International Commission on Non-Ionizing Radiation Protection (ICNIRP).

MICRO PLASTICS

3.10.57. Say No to One Earth (SNOE) [RR-095] expressed concern that there were the potential adverse health effects from exposure to microplastics and these corroding over time and feeding into the local soil and water environment. These issues are generally dealt with in the Hydrology and Land and Soils sections of this report.

3.10.58. This issue has been addressed in the hydrology and land and soils section of this report.

ExA considerations

3.10.59. The applicant set out at the outset an oBSMP in recognition of the need to ensure appropriate management was in place in the event a fire occurred at either of the BESS locations. This included an assessment of the outputs in the event this occurred showing where a plume might occur.

3.10.60. As set out in the hydrology section of this recommendation drainage strategies would also be put in place in line with the current standard

required by the Chief Fire Officers Council to ensure that any accident could be managed in line with current standards, and this approach has been agreed with both the Lincolnshire and Nottinghamshire Fire and Rescue Services.

3.10.61. Anglian Water whose reservoir is in close proximity to the Order limits have raised no concerns about any possible contamination to their water supply either in the event of a fire or through any other possible contamination risk.

3.10.62. Each party has confirmed this position in their final SOCGs and have also agreed protective provisions set out within the final dDCO.

3.10.63. The mental health of local residents remained a particular concern throughout the examination, with IPs consistently referring to the survey undertaken locally which indicated a significant degree of harm to local residents as a consequence of the proposed development.

3.10.64. The absence of this survey from the Consultation Report provided by the applicant caused continued annoyance and additional frustration for IPs throughout. This could have been avoided had it been provided as requested by the ExA at the outset.

3.10.65. The survey was finally received and submitted into the examination both by the applicant [REP6-057] and several other parties including SCPC.

3.10.66. The ExA acknowledges the anxiety that a scheme of this scale must have for a local community and the importance of good quality communication. The applicant has also recognised the importance of ongoing communication and has committed to employ a Community Liaison Officer to act as a primary point of contact. This is included within the oCEMP [REP7-015].

3.10.67. The applicant undertook an assessment of EMFs and has confirmed compliance with the necessary regulatory standards set by ICNIRP. No parties presented evidence that contradicted this assessment and the ExA is of the view that there is nothing before the examination that could lead to a different conclusion being reached.

3.10.68. With regard to micro plastics and the concerns that they may have adverse effects on human health, the ExA recognise that this has become the topic of much debate and research and by placing plastics and other man made substances in contact with soils, or water there may well be instances where over time these can breakdown and appear elsewhere in the environment.

3.10.69. The Environment Agency confirmed that at the present time there are no measures in place to monitor such occurrences, and the applicant would not be in breach of any regulation by placing cables, pipes and other structures in the ground as long as they had done so in a competent and professional manner using best practice and materials that complied with industry standards.

3.10.70. The applicant has confirmed cables would in many cases be buried below 0.9m below ground to minimise the interrelationship with the most sensitive topsoil where much of the ecological activity takes place and would therefore reduce as far as practicable the risks which may arise.

3.10.71. Ultimately, the ExA is of the view that the role of the ExA is to consider the application for a DCO, and to assess it against current national policy. The ExA cannot require a developer to devise a new way of working to avoid a perceived risk which to date has not been identified and is not subject to a form of regulation to protect the environment.

3.10.72. EN-1 at paragraph 4.12.2 reminds us of the distinction between the role of the planning system and the pollution control regime stating "Pollution control is concerned with preventing pollution through the use of measures to prohibit or limit the releases of substances to the environment from different sources to the lowest practicable level. It also ensures that ambient air, water, and land quality meet standards that guard against impacts to the environment or human health."

CONCLUSIONS

3.10.73. The ExA notes that the proposed development, particularly during its construction and decommissioning phases, would entail activities that could give rise to increased noise, dust and traffic, particularly near the proposed work compounds.

3.10.74. The ExA is content that due to the location of the temporary construction compounds, proposed substations and BESS away from most receptors, the nature of the proposed development and the mitigation measures in the management documents secured in the dDCO the overall effects would be acceptable.

3.10.75. The applicant has demonstrated in [APP-083] that the proposed development would be in accordance with the specific requirements on EMFs and would comply with the ICNIRP 1998 guidelines.

3.10.76. The ExA concludes that the applicant has provided an adequate assessment of human health impacts, including EMFs, and that the proposed development would not give rise to any substantial changes in human health.

3.10.77. The harms that have been identified would be adequately addressed through the control measures that are secured in the applicant's final dDCO. Furthermore, the ExA agrees with the applicant's findings and that the policy tests of NPS EN-1 and NPS EN-3 have been met in regard to human health.

3.10.78. The ExA acknowledges that the proposed development, particularly during the construction phase, and in the early years prior to mitigation planting achieving the desired effect for the longer term would give rise to some localised effects on people's appreciation of the area.

3.10.79. The effects and impacts of a range of issues arising from the proposed development including changes to landscape, noise, socio-economics, and transport has the potential to impact on local residents' health and wellbeing.

3.10.80. The ExA agree with the applicant that there would be adverse effects on health as set out in ES Chapter 16 and that some of these effects would include adverse effects on mental health and wellbeing. Nevertheless, these effects would not be significant in EIA terms and despite the very real concerns expressed by IPs there is no substantive evidence that could indicate a different conclusion could be reached.

3.10.81. There remains a minor residual risk presented by the proposed development overall and this could have an adverse effect on the mental health and wellbeing of local residents, The ExA therefore ascribe a little negative weight against the making of the DCO.

3.11. HYDROLOGY AND HYDROGEOLOGY

INTRODUCTION

3.11.1. This section looks at the effects of the proposed development on water resources, water quality, flood risk, hydrology and hydrogeology. For conciseness these will be collectively referred to as the water environment in this section.

3.11.2. In its consideration of the effect on the water environment, the Examining Authority (ExA) has had regard to:

- the Overarching National Policy Statement for Energy (NPS EN-1) as set out in sections 5.8 and 5.16
- the National Policy Statement for Renewable Energy (NPS EN-3), as set out in sections 2.4 and 2.10
- the National Policy Statement for Electricity Networks Infrastructure (NPS EN-5), as set out in section 2.3
- the National Planning Policy Framework (NPPF)
- the Local Impact Reports (LIR)
- any matters prescribed in relation to the development

THE APPLICATION

3.11.3. The applicant's assessment of the water environment was first set out in the Environmental Statement (ES) Chapter 7 [APP-036] and ES Figures 7.1 to 7.17 [APP-052].

3.11.4. The applicant submitted updated versions of ES Chapter 7 [REP7-012], ES Figures 7.1 to 7.17 [REP5-026] and other supporting documents during the examination. For the sake of brevity, only the final versions of these are listed here but previous iterations are set out in the Guide to the Application [REP9-002] and will be referred to in this recommendation as appropriate.

3.11.5. Other relevant application documents included:

- Appendix 7.1 Summary of Legislation and Technical Guidance [APP-094]
- Appendix 7.2 Flood Risk Assessment and Outline Drainage Strategy [REP7-010]
- Appendix 7.3 Full Details of Consultation Comments – Meeting Minutes [APP-096]
- Appendix 7.4 Stage 1 Water Framework Directive Screening Assessment [REP7-006]

BASELINE

3.11.6. The applicant defined the study area in paragraph 7.3.1 of ES Chapter 7 using a 1 kilometre (km)buffer around the Order limits to encompass relevant water catchments and assess the potential deposition of silts in overland flows and dilution of any concentrated pollutants.

3.11.7. The study area was reported to be within the catchment of the River Trent and several other watercourses as identified in ES table 7.4 [REP7-012] and ES figure 7.2 [REP5-026]. Paragraph 7.4.2 of Chapter 7 noted the River Trent being tidally influenced up to Newark-on-Trent although water levels remain dictated by the rainfall in the river catchment rather than tidal fluctuations.

3.11.8. The proposed development was identified in ES figure 7.3 to be in Flood Zones 2 and 3. Sections 3.1.3 and 3.1.4 of the Flood Risk Assessment and Outline Drainage Strategy (FRA) [REP7-010] explained these flood zones are predominantly associated with the River Trent and that Flood Zone 3a and 3b cover 622 hectares (ha) and 51ha of the Order limits respectively.

3.11.9. ES figure 7.4 identified flood defences in the study area, the majority of which were designed to provide a 1 in 5 year standard of protection, however others ranged from 1 in 1 year to 1 in 100 year. The effect of these defences on the extent of flooding in the Order limits was identified in ES figure 7.5.

3.11.10. Eight instances of historic flooding recorded by the Environment Agency were acknowledged in section 3.1.2 of the FRA to affect the study area, with the most recent in January 2024. The flood extents associated with these events relevant to the study area were identified in ES figure 7.8.

3.11.11. Paragraph 7.4.26 of ES Chapter 7 explained the risk of groundwater flooding susceptibility ranged from 75% to 25% in the Order limits due to localised geology, with the highest risk nearest to the River Trent's west bank. The risk of flooding from pluvial and artificial sources in the Order limits was reported to be low in paragraphs 7.4.24 and 7.4.29 of ES Chapter 7 respectively.

3.11.12. Paragraph 7.4.11 of Chapter 7 explained that Secondary A, B and undifferentiated aquifers were identified in the Order Limits and 5 groundwater abstraction points in the study area, with 3 of them licenced to Anglian Water. Furthermore, the bedrock and superficial geology in the study area was reported to have high and medium vulnerability to pollution from surface activities. However, no groundwater source protection zones were identified in the study area.

3.11.13. The proposed development was reported in paragraph 7.4.32 of Chapter 7 to be partially located in the surface water drinking water protected area associated with the 'Trent from Carlton-on-Trent to Laughton Drain' waterbody, which was classified as currently not at risk. Furthermore, paragraphs 7.4.33 and 7.4.34 of Chapter 7 explained drinking water safeguard zones for surface and ground waters were not identified in the Order limits or nearby.

CONSTRUCTION AND OPERATION PHASES

3.11.14. For the purposes of the assessment, the applicant considered the design parameters for the proposed development as identified in ES Chapter 5 [REP5-018] and the Outline Design Parameters [REP5-017].

3.11.15. To inform the assessment of likely effects, the applicant considered the need for other consents or licenses, and the protected provisions secured by schedule 14 of the draft Development Consent Order (dDCO) [REP9-006]. In addition, the applicant considered the mitigation measures stated in the Outline Construction Environmental Management Plan (oCEMP) [REP7-014], Outline Operational Environmental Management Plan (oOEMP) [REP6-024], Outline Decommissioning Environmental Management Plan (oDEMP) [REP7-016], the Outline Battery Safety Management Plan (oBSMP) [REP7-022], and the FRA and Outline Drainage Strategy [REP7-010] which would be secured in schedule 12 of the rDCO. This included mitigation and working practices for:

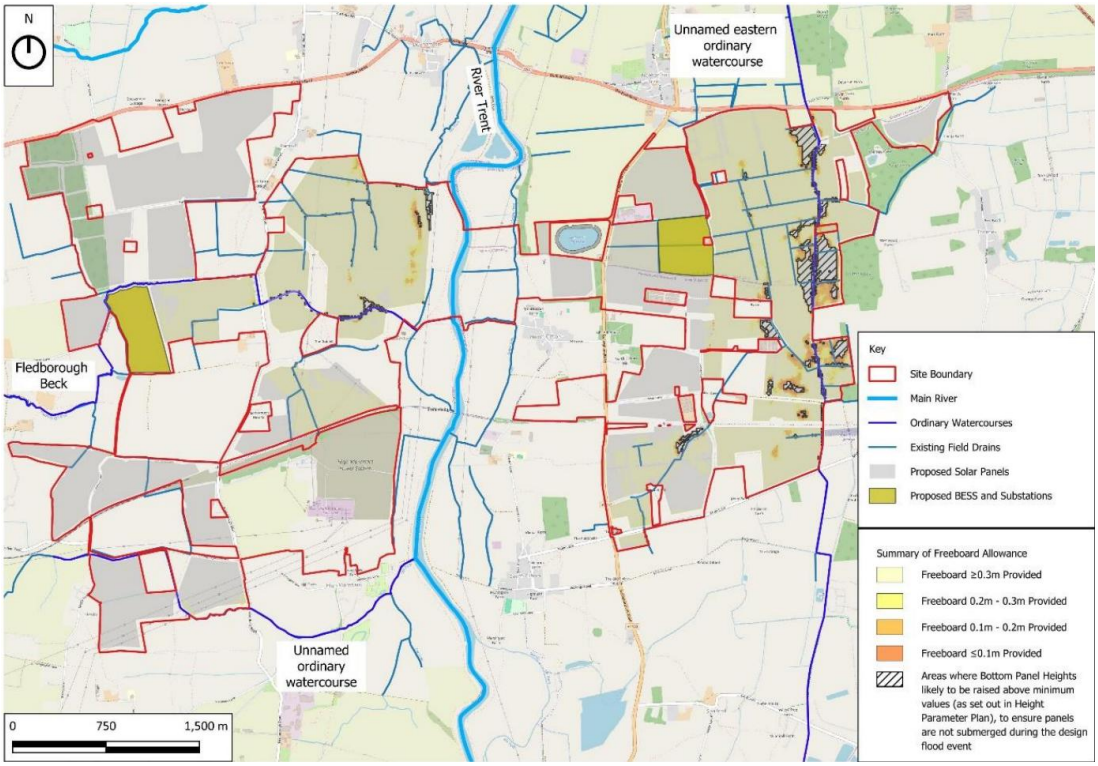
- soil management
- pollution prevention
- surface and foul water, groundwater and land drainage management
- cable and access crossings of surface water bodies
- management of fire water and drilling fluid breakout
- piling and contaminated land
- a sequential approach to the development layout
- flood risk management including emergency response and evacuation

3.11.16. The Water Framework Directive (WFD) Screening Assessment [REP7-006] reported that, following the implementation of the control measures during the construction and operation phases and considering the embedded mitigation measures, there would be no activities that had the potential to cause or contribute to deterioration of the watercourse and groundwater bodies assessed. Furthermore, that these activities would not prevent the achievement of waterbody status objectives in the future.

3.11.17. Paragraphs 7.6.27 and 7.6.56 of ES Chapter 7 report that following the submission of a water resources assessment, Anglian Water have confirmed there is capacity to supply water to the proposed development during the construction and operation phases. The applicant explained that non-potable or private sources of water, will however be explored during the detailed design phase to reduce the supply demand on water company resources.

3.11.18. The FRA reported that no built development was proposed in Flood Zone 3b. Furthermore, that the majority of the proposed development would be located outside or raised above the design flood event extent and level with a 300 millimetre (mm) freeboard as shown in Figure 12 below. The design flood level was defined as the 1 in 100 year probability fluvial flood event including a 39% allowance for climate change. Where the proposed development would be raised above the design flood level, the FRA assessed the associated mounting and platform structures to have a negligible effect on the risk of flooding elsewhere.

Figure 12: Summary of freeboard allowance for the design fluvial event



Source: Figure 3-11 of the FRA [REP7-010]

3.11.19. To further consider the resilience of the proposed development, the credible maximum climate change scenario was assessed. Figures 3-17 and 3-18 of the FRA [REP7-010] respectively identified the flood extent for this event and a depth difference of over 0.5 metres (m) in some areas when compared to the design flood event. Figure 3-19 identified large areas where the proposed solar panels would be flooded in the credible maximum climate change scenario. However, the applicant concluded that the majority of the panels would achieve a 300mm freeboard during the credible maximum climate change scenario and the proposed development design was appropriate. Specific reference of the risk to the proposed inverters in the credible maximum climate change scenario was not provided.

3.11.20. For watercourses which didn't have a detailed hydraulic model available, the 1 in 1,000 year probability pluvial flood event mapping was reported and agreed with the Environment Agency to be a suitable proxy for the design flood event, including an allowance for climate change. Accordingly, the FRA

concluded that the proposed solar panels and inverters would be raised above the flood depths identified in ES Figure 7.13 [REP5-026].

3.11.21. The applicant assessed the risk to the proposed development from a flood defence breach using the Environment Agency's existing hydraulic modelling data. Section 3.1.6 of the FRA concluded that the majority of the proposed solar panels would achieve a 300mm freeboard above the flood level during a defence breach scenario. Furthermore, that the proposed battery energy storage systems (BESS) and substation equipment would be set a minimum of 300mm above the same flood level. Specific reference of the risk to the proposed inverters from a flood defence breach was not provided.

3.11.22. Section 3.2 of the FRA explained the risk of pluvial flooding in the Order limits to be generally very low. Furthermore, that the proposed measures to mitigate the risk of fluvial flooding would also provide mitigation for the areas of higher risk from pluvial flooding. Sections 3.3 to 3.5 of the FRA concluded the risk of flooding from sewers, groundwater and artificial sources were assessed as low.

3.11.23. A surface water drainage strategy was set out in section 4 and appendices A8 and A9 of the FRA. This reported on the sustainable drainage features which would be used for the solar arrays, BESS and sub-station areas, how the drainage hierarchy would be followed, and a maintenance regime.

3.11.24. Table 7-4 of ES Chapter 7.6 [REP7-012] concluded that the residual effects of the proposed development on the water environment would be neutral to minor adverse for the construction and operation phases.

DECOMMISSIONING PHASE

3.11.25. Table 3.5 of the Outline Decommissioning Environmental Management Plan (oDEMP) [REP7-016] summarised the likely decommissioning activities and associated mitigation measures that would be followed. Furthermore, that secondary permissions would be sought from the relevant authorities where required. Table 3.17 of the oDEMP explained proposed cables deeper than 0.9m would be left in-situ and any that are shallower removed, subject to government policy and best practice at that time.

3.11.26. The applicant concluded that residual effects on the water environment during decommissioning would be similar as the construction phase. The conclusion in section 6.2 on the WFD Screening Assessment [REP7-006] agreed that the decommissioning would not cause or contribute to deterioration of the existing watercourses or groundwater bodies or jeopardise their potential to achieve good status.

OTHER CONSIDERATIONS

3.11.27. The assessment of cumulative effects resulting from the proposed development were set out in ES Chapter 18 [REP6-012]. The ExA's considerations of these have been provided in section 3.13 of this recommendation.

ISSUES CONSIDERED DURING THE EXAMINATION

3.11.28. The main issues for the water environment in the examination were:

- Exception Test
- Water Quality

EXCEPTION TEST

3.11.29. The applicant set out the two elements of the exception test in the submitted Sequential and Exception Test Assessment (SETA) [REP2-080], as described in paragraph 5.8.11 of NPS EN-1:

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

3.11.30. In relation to bullet point a. above, the applicant set out the benefits that the proposed development would deliver in the Statement of Need [REP2-048] and the Planning Statement [APP-168]. Further details of the ExA's considerations of the proposed development need have been provided in section 3.2 of this recommendation.

3.11.31. In relation to bullet point b. above, interested parties raised concerns during the examination that the proposed development would be located in an area at high risk of flooding and it could increase the risk to neighbouring land and property. The applicant responded to the concerns [REP1-075, REP2-082, REP3-066, REP4-051, REP6-056], the ExA's questions [REP3-067, REP4-052] and submitted several iterations of ES Chapter 7, the FRA and other supporting documents to address these matters.

3.11.32. The 2 main issues in relation to the exception test through the examination can be summarised as:

- the risk of fluvial flooding to the proposed development
- the effect of the proposed development on the risk of flooding elsewhere

The risk of fluvial flooding to the proposed development

3.11.33. Paragraph 5.2.6 of the SETA reported that 54% of the proposed development area was identified in Flood Zones 2 or 3. In response to concerns regarding the risk of flooding to the proposed development, the final FRA [REP7-010] explained the sequential approach to the proposed layout had been taken to locate above ground equipment outside of areas at risk of flooding where possible, including the BESS and substation compounds.

3.11.34. In response to concerns raised by Mr Fox, the applicant explained [REP8-010] that the BESS and substation compounds access roads would also be located outside of the design flood event. Furthermore, due to the limited occupancy of the site, the temporary nature of the construction and

maintenance activities, and the adoption of emergency procedures secured by environmental management plans, paragraphs 7.6.4 and 7.6.36 of ES Chapter 7 [REP7-012] had concluded a neutral effect on the flood risk to users of the proposed development.

3.11.35. Where the proposed solar panels couldn't be located outside of areas at risk of flooding, these would be raised up to 1.8m above the ground level. Figure 3-11 of the final FRA [REP7-010] identified:

- the amount of freeboard solar panels would have above the design flood level
- areas where the first row of panels would be removed or their angle adjusted to be above the design flood level

3.11.36. The FRA explained proposed inverters would be raised 300mm above the design flood level using voided structures, rather than land raising due to the difficulty of providing flood storage compensation.

3.11.37. The applicant responded to a representation by Mrs Fox [REP9-001] that whilst the proposed inverters were considered sensitive equipment, they must be regularly distributed close to solar arrays for operational reasons. As such, a sequential approach to locate the proposed inverters outside of areas at risk of flooding was not possible but strict design parameters [REP5-016] and flood mitigation in requirement 22 of the dDCO [REP9-006] would be secured. Table 3-7 of the FRA estimated 61 inverters were proposed within the design flood event extent.

3.11.38. Table 2.1 of the Outline Design Parameters [REP5-016] explained that proposed power converter stations (which include inverters, transformers and switchgear) located outside of the design flood event extent would not exceed a height of 4.5m above ground level. For the proposed power converter stations within the design flood event extent, these would be raised on stilts although the height would not exceed 6m. These heights were the worst-case scenario used in the ES, including the assessment of landscape and visual effects in ES Chapter 11 [REP3-015].

ExA's considerations

3.11.39. The ExA has considered the proposed BESS and substation access roads as described in section 4.3 on the oBSMP [REP7-022] and identified in the Illustrative Masterplan [REP2-008], in context of the FRA [REP7-010]. The ExA understands that access roads for both proposed BESS and substation compounds would be at risk of flooding for the design flood event from:

- the River Trent as identified in figures 3-9, 3-15 and 3-16 and appendix A8 of the FRA and Outline Drainage Strategy [REP7-010]
- ordinary watercourses as identified in figure 3-12 and appendix A8 of the FRA and Outline Drainage Strategy [REP7-010]

3.11.40. The ExA accepts the limited occupancy of the site during operation, and the adoption of environmental management plans for all phases of the proposed development would help mitigate the risk to users of the site. Furthermore,

the preparation of an emergency plan and receipt of the Environment Agency's flood warnings could enable site users to evacuate prior to a flood. However, the ExA finds the applicant has not demonstrated the sensitive BESS and substation compounds would have safe access and egress routes during the design flood event.

3.11.41. The ExA notes that the Outline Design Parameters [REP5-016] provides flexibility of 1.5m to raise the 61 proposed power converter stations located in the design flood event extent. Whilst it is difficult to determine an accurate depth from the information provided, figure 3-9 of the FRA identifies areas of the solar arrays which could flood to depths up to 2m. Furthermore, Figure 13 below identifies where proposed solar panels would need to be raised 1.3m and 1.8m to avoid being submerged, therefore the ExA infers that the proposed power converter stations may need to be raised to a similar height.

3.11.42. To achieve the 300mm freeboard as stated in the FRA [REP7-010], Commitments Register [REP3-059] and Statement of Common Ground (SoCG) with the Environment Agency [REP7-038], the ExA deduces, in the absence of assessment from the applicant, the proposed power converter stations may need to be raised in excess of the 1.5m that the dDCO would allow.

Figure 13: Summary of bottom of panel height parameters

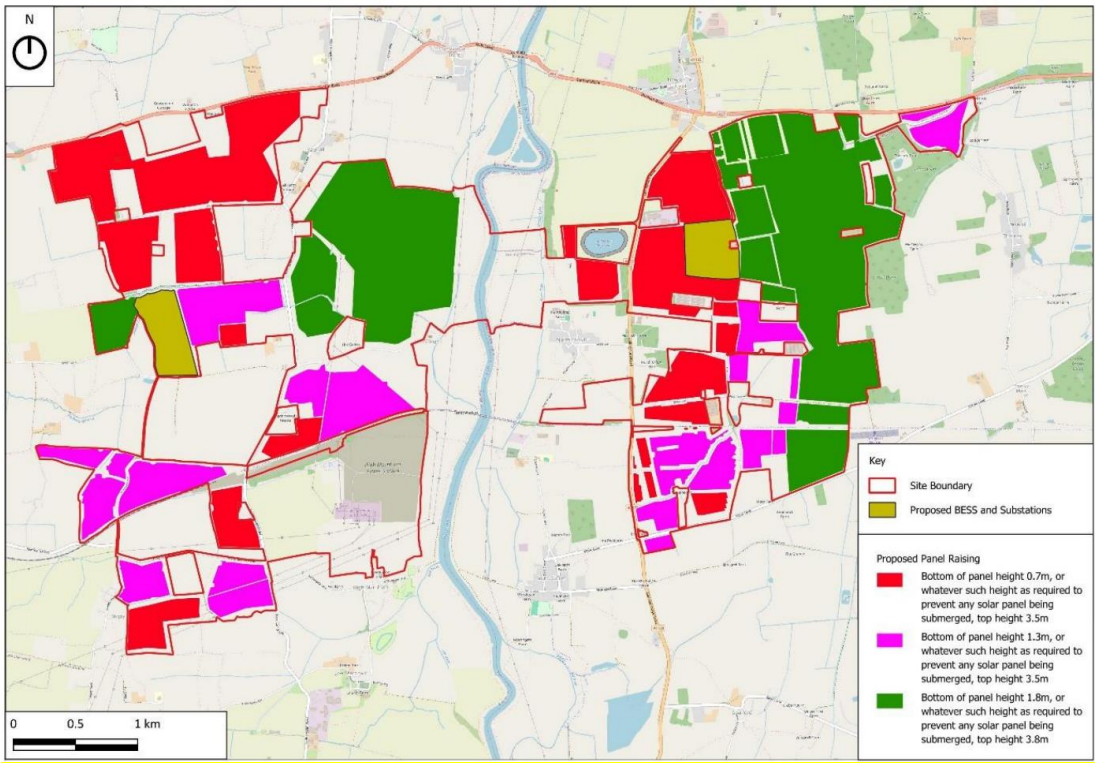


Figure 3-10 of the FRA [REP7-010]

3.11.43. The ExA recognises that it may be possible to apply the sequential approach in siting the proposed power converter stations during the detailed design to avoid the deepest flooded areas. However, given the extent of land in the Order limits which could require raising (Figure 13) and the operational need for the equipment at regular intervals in the solar arrays [REP9-001], the ExA

considers this would likely be a significant challenge. Whilst requirement 22 of the dDCO [REP9-006] would control the proposed development until detailed flood mitigation was approved, it has not been substantiated that this would be achievable. As such, the ExA doubts requirement 22 of the dDCO satisfies the reasonable test set out in paragraph 55 of the NPPF.

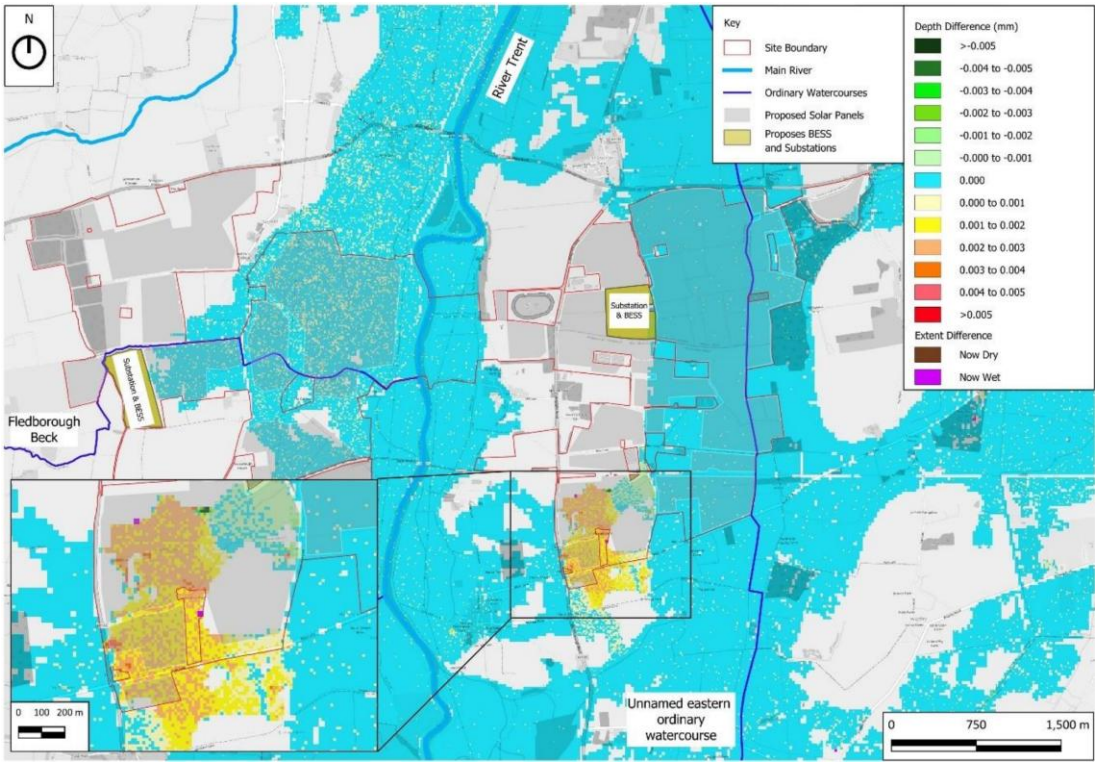
3.11.44. For the reasons given above and based on the evidence submitted into the examination, the ExA cannot be confident that all of the proposed power converter stations would be resilient to the design flood event and remain operational, and the provision of a requirement does not overcome this. Furthermore, following the above rationale and considering the risk of flooding for the credible maximum climate change scenario as discussed in paragraph 3.11.19 of this recommendation, the ExA finds that some of the proposed power converter stations could also flood in this scenario.

Effect on the risk of fluvial flooding

3.11.45. Concerns were raised by Mr Fox [AS-061 and AS-062] and questions asked by the ExA [EXQ3] in relation to the impact of the proposed development on the River Trent floodplain. A particular concern was the effect of the solar panel and inverter support columns on the design flood event level and extent, and whether this would result in a net loss of flood storage.

3.11.46. Figure 3-14 of the final FRA [REP7-010] identified areas with increased flood depths up to 5mm, and 2 locations where the fluvial flood extent would increase due to the proposed development, one of which is outside of the Order limits. This location was reported as an access track adjacent to the existing flood extent with flood depths identified up to 5mm. The applicant explained in the assessment that other sections of the access track flood (see Figure 14 below) and have a significant hazard rating, therefore the change of one small area would not increase the overall hazard for users of the access track, when compared to the baseline scenario. The applicant concluded that the proposed development would not cause a tangible increase in risk to sensitive receptors.

Figure 14: Flood depth difference with the proposed development



Source: Figure 3-16 of the FRA [REP7-010]
(The ExA notes the key should refer to metres not millimetres)

3.11.47. The Environment Agency explained [REP6-078, REP7-052] that it supported the assessment methods adopted by the applicant and the results identified a negligible effect. Moreover, the variation in flood level of 1mm to 3mm in the study area identified by the hydraulic modelling assessment was "arguably beyond the precision limitations" that could be expected.

3.11.48. Based on the parameters of the assessment and model limitations, the Environment Agency agreed that results within a tolerance of 5mm were perceived as no change. The Environment Agency concluded that due to the marginal effect identified, it would be difficult to demonstrate that compensatory storage would deliver an observable hydraulic benefit, and that the panel frames did not present a significant debris blockage or flood flow risk.

ExA's considerations

3.11.49. In relation to the hydraulic modelling outputs, the ExA accepts that flood depth differences up to 5mm could be considered within the tolerances of achievable accuracy specific to the parameters of the assessment. As such, and following the aforementioned advice from the Environment Agency, the ExA finds that changes in flood depths up to 5mm may not be realised and can be considered as negligible. For the same reasons, where the flood extent is identified to extend into areas that do not flood in the baseline scenario and the depths are reported to be 5mm or less, the ExA accepts this does not represent a tangible risk.

3.11.50. However, the applicant's assessment, which the Environment Agency's advice reasonably relied on, assumed "structural beams forming the inverter structure will be raised such that they are 300mm above the design flood level and will therefore not impact upon the design flood storage capacity" (page 32, [REP7-010]). Following the ExA's finding in paragraph 3.11.44 of this recommendation, it is possible the effect of the proposed power converter stations on fluvial flood storage has not been fully assessed in the FRA. For this reason, the ExA conservatively concludes that the applicant has not demonstrated the proposed development would not increase the risk of flooding elsewhere.

WATER QUALITY

3.11.51. During the course of the examination, interested parties raised several concerns related to water quality and contamination matters. The applicant responded to the concerns [REP1-075, REP2-082, REP3-066, REP4-051, REP6-056], the ExA's questions [REP3-067, REP4-052] and submitted several iterations of ES Chapter 7, the FRA and Outline Drainage Strategy, the WFD Screening Assessment and other supporting documents to address these matters, including:

- minimum crossing depths below watercourses
- effects of concrete foundations
- equipment and plant washout areas
- management of a bentonite fluid breakout
- safe storage of materials
- effects of leaving cables in-situ during decommissioning
- a water resources assessment

3.11.52. In response to concerns related to the containment of water used in the suppression of a BESS fire and the potential for contamination of water bodies, the applicant explained [REP8-010] that agreement on the proposed mitigation had been reached with Nottinghamshire and Lincolnshire lead local flood authorities (LLFA). Furthermore, that the National Fire Chiefs Council (NFCC) guidance had been followed and agreement also reached with Lincolnshire and Nottinghamshire fire rescue services [REP6-034].

3.11.53. Section 4.1 of the final WFD Screening Assessment [REP7-006] explained the proposed mitigation would include automated penstock valves to store contaminated fire water in detention basins and enable offsite disposal via a tanker. Table 4-7 of the FRA and the appended hydraulic calculations [REP7-010] demonstrated the detention basins could be sized to accommodate at least 2 hours of firefighting water in addition to a 1 in 10 year rainfall event for the relevant compound drainage areas.

3.11.54. In response to concerns from Mr Fox that access roads to the BESS and substation compounds would be impassable for tankers during the design flood event, the applicant explained [REP8-010] that access tracks were outside the area of flood extent. Furthermore, Table 4-2 of the FRA [REP7-010] explained permeable sustainable drainage features in the BESS and substation compounds would be lined to prevent infiltration to ground and the

potential for contamination. Section 4.2.2 of the FRA explained sampling, cleaning and replacement of contaminated substrate material would occur following a fire and prior to reoperation of the site. These collective measures were reflected in the final oBSMP [REP7-022] and would be secured by schedule 2 of the dDCO [REP9-006].

3.11.55. In response to concerns from interested parties related to airborne emissions from a BESS fire, the applicant explained [REP7-042] that an independent review of research concluded that this wasn't considered a pathway for pollutants to enter water bodies.

3.11.56. In response to concerns related to the concentration of rainfall runoff from solar panels and the potential for associated soil erosion leading to sediment deposition in local water bodies, the applicant explained [REP4-051] that industry research suggested solar projects did not result in significant increases in runoff. Moreover, the risk would be further minimised by reestablishing vegetation and providing sustainable drainage features across the proposed solar arrays. Section 4.2.1 of the FRA identified features such as filter drains, swales, basins and scrapes could be incorporated in the solar array areas, and this approach was supported by the LLFAs.

3.11.57. The Environment Agency noted in its response to ExQ3 [REP6-078] that maintenance of healthy vegetation was important in managing rainfall runoff from solar panels. Furthermore, the relatively shallow gradient of land where the solar panels were proposed would likely mean surface water runoff velocities, and any associated soil erosion and sediment load, would be low. The Environment Agency further noted the proposed sustainable drainage features in the array areas secured by the oOEMP and the measures to prevent the deposition of fine sediment, such as silt fencing, secured in the oCEMP and oDEMP. It concluded that any increased runoff and soil erosion could be feasibly mitigated.

3.11.58. The final SoCGs with LCC [REP7-027], NCC [REP8-006], the Environment Agency [REP7-038] and Anglian Water [REP7-040] did not identify any outstanding matters related to water quality.

ExA's considerations

3.11.59. The ExA finds the risk of contamination of ground and surface water bodies due to discharge of water used in BESS fire suppression has been addressed by the applicant in agreement with the LLFAs, Environment Agency and Lincolnshire and Nottinghamshire Fire Rescue Services. Similarly, the risk of water quality degradation due to soil erosion has been appropriately assessed and mitigation measures agreed.

3.11.60. The ExA finds the final ES Chapter 7 and supportive documents have appropriately considered the concerns raised during the examination related to water quality and is satisfied with the applicant's assessment of likely effects presented. Furthermore, the advice from the aforementioned organisations is clear that the conclusions of the WFD Screening Assessment are appropriate.

3.11.61. However, as discussed is section 3.11.39 of this recommendation, the access roads to the BESS and substation compounds could become flooded during the design flood event. The ExA considers this could inhibit tanker disposal of contaminated water until flood waters have regressed therefore presenting a risk to immediate water bodies. It is not clear to the ExA whether this was apparent to the aforementioned interested parties when reviewing the oBSMP and agreeing their SoCG.

3.11.62. From the evidence before the examination, despite the assurance given by the applicant with regard to safe access during a flood event as referenced at paragraph 3.11.54 above, the ExA have not been able to glean with certainty this is correct. The assertion made by the applicant in REP8-010 does not provide clear evidence that this is the case, by showing the relative levels of the access routes and potential flood waters under different scenarios.

3.11.63. Requirement 7, with a proposed amendment in the recommended DCO (rDCO), provides the most suitable solution available at the current time to adequately control the proposed development until a final BSMP is approved by the planning authority. The proposed amendment would secure certainty that access routes to the BESS and substation compounds must be usable in a concurrent fire and flood event.

3.11.64. For the above reasons, the ExA is satisfied that all matters in relation to water quality have been addressed.

CONCLUSIONS

3.11.65. The ExA is satisfied that the applicant's assessment considers all relevant potential environmental impacts in respect of the water environment, during the construction, operation and decommissioning phases of the proposed development, in accordance with sections 5.8 and 5.16 of NPS EN-1.

3.11.66. As set out in section 3.4 of this recommendation, the ExA is not content that the proposed development has satisfied the Sequential Test required by 5.8.9 of NPS EN-1, although the ExA is generally satisfied that the applicant has applied the sequential approach in the layout of the proposed development.

3.11.67. The ExA finds that several of the proposed power converter stations could flood during the design flood event and appropriate mitigation to ensure they would remain operational has not been detailed in the FRA, contrary to the requirement of 5.8.15 of NPS EN-1. Similarly, the same sensitive equipment is identified at risk of flooding in a credible maximum climate change scenario which conflicts with paragraph 4.10.11 of NPS EN-1. The applicant has not explained if the proposed power converter stations could be quickly brought back into operation without significant refurbishment, as set out in paragraph 81 of the NPPF, or if large areas of the proposed development would be unable to transfer usable energy until such time.

3.11.68. Access roads to the proposed BESS and substation compounds are identified at risk of flooding during the design flood event, as discussed in

paragraph 3.11.39 of this recommendation. The ExA considers this is a significant concern for the safe management of BESS fires if access by the fire and rescue service and tankering vehicles were to be inhibited. In the absence of an agreed emergency plan in context of the identified risk from flooding, the ExA is not persuaded that safe access and egress routes are achievable as required by paragraphs 5.8.36 of NPS EN-1 and 81 of the NPPF.

3.11.69. Requirement 22 of the dDCO [REP9-006] would control the proposed development until detailed flood mitigation was approved, however the ExA finds the applicant has not substantiated that the necessary mitigation for the proposed power converter stations would be achievable within the design parameters that would be secured by the rDCO (Appendix C). As such, the ExA is not satisfied the application is supported by an appropriate FRA that could reasonably be relied on for requirement 22 of the rDCO.

3.11.70. For the above reasons, the ExA is not satisfied the proposed development would remain safe and operational during its lifetime as set out in paragraph 5.8.36 of NPS EN-1 and notes to table 2 of the Planning Practice Guidance. Accordingly, the ExA concludes the exception test has not been passed.

3.11.71. In all other matters, the ExA finds the proposed development's potential impacts on the water environment, would be satisfactorily mitigated and managed through the measures and commitments in ES Chapter 7 [REP7-012], the FRA and Outline Drainage Strategy [REP7-010] and the Commitments Register [REP3-059], secured by relevant articles of the dDCO [REP9-006]. Furthermore, the ExA is content that the proposed development would not have an adverse effect on the achievement of the objectives under the Water Framework Directive in relation to relevant waterbodies, with the amendment to requirement 7 of the rDCO (Appendix C).

3.11.72. The ExA notes the residual likely effects on the water environment are identified between neutral and minor adverse in table 7-4 of ES Chapter 7.6 [REP7-012]. While these are reported as not significant in environmental impact assessment terms, they nonetheless carry a degree of harm.

3.11.73. Other than those identified above, the ExA finds that the proposed development satisfies the relevant policies and requirements concerning the water environment as set out in NPS EN-1, NPS EN-3, NPS EN-5, the NPPF and the Local Plans. The ExA further considers that the proposed development generally aligns with other applicable national and local policies and strategies, as well as all other relevant legislation in relation to the water environment, and that there are no other important or relevant considerations.

3.11.74. As the exception test has not been satisfied, in accordance with paragraph 5.8.11 of NPS EN-1, the ExA recommends the proposed development should not be consented in its current form. Should the Secretary of State conclude differently, the ExA considers the risk of flooding to the proposed development, identified policy non-compliance and presence of residual

impacts, bear a great negative weight against making the Order with regards to effects on the water environment.

3.12. OTHER PLANNING MATTERS

INTRODUCTION

3.12.1. This section covers other matters which were considered by the ExA during the Examination, relating to:

- Air Quality
- Carbon and climate
- Noise and vibration
- Socio-economics

3.12.2. These sections differ from the others in that matters are addressed separately, with specific conclusions reached on each, where appropriate, rather than having an overall conclusion at the end.

AIR QUALITY

POLICY BACKGROUND

NPS EN-1

- Paragraphs 4.12.15 and 4.12.1 6 discusses the Regulation of releases under the pollution control framework and the grounds for refusal based on pollution
- Paragraph 5.2.2 outlines the Legal limits, national objectives and targets
- Paragraph 5.2.9 sets out matters that the ES should describe
- Paragraph 5.2.13 describes mitigation measures for operational and construction emissions
- Paragraphs 5,2.16 -5.2.19 discusses the weight given to deterioration and grounds for refusal on air quality if the proposed development is near a sensitive receptor.

Local Planning Policy

3.12.3. Policy ST42 of the Bassetlaw Local Plan requires developments to ensure that current air quality in the district is maintained and, where possible, improved. Potential harm from risks such as pollution and other environmental hazards and climate change should be minimised and mitigated.

3.12.4. Policy DM10 of the Newark and Sherwood Amended Allocations and Development Management DPD Submission (2024) states that development proposals involving the potential for pollution should take account of and address their potential impacts in terms of health, the natural environment and general amenity on air quality.

3.12.5. Policy S15 of the Central Lincolnshire Local Plan (April 2023) states that renewable energy schemes will be supported where the impacts of the

development are deemed acceptable on the amenity of sensitive neighbouring uses, including matters such as air quality.

Guidance

3.12.6. The Environmental Protection UK (EPUK) / Institute of Air Quality Management (IAQM) guidance outlines specific traffic generation thresholds. When these thresholds are exceeded, a detailed assessment of road traffic impacts is required. This may include:

- Air quality dispersion modelling
- Evaluation of pollutant concentrations near affected road.

3.12.7. The aim of this guidance is to ensure that increased traffic does not lead to unacceptable air quality impacts.

3.12.8. If traffic generation is within the criteria, in line with EPUK/IAQM guidance, the impact to air quality can be considered insignificant. These criteria are where the proposed development will lead to changes in AADT flows of more than: 25 Heavy Duty Vehicles (HDVs) or 100 Light Duty Vehicles ('LDV's) inside an AQMA; or 100 HDVs or 500 LDVs outside an AQMA.

THE APPLICATION

3.12.9. The applicant's case is set out in documents including ES Chapter 13: Air Quality [APP-042], and is supported by:

- figures 13.1 to 13.5 [APP-075]
- appendices 13.1 to 13.5 [APP-137]
- the Outline Construction Environmental Plan (oCEMP) [APP-177]
- Outline Battery Safety Management Plan (oBSMP) [APP-183].

3.12.10. ES Chapter 13 [APP-042] and appendices 13.1 to 13.5 [APP-137] include an assessment of construction phase dust and other on-site activities. The sensitivity of receptors during the construction phase ranges from high to low.

3.12.11. The applicant states that the total peak vehicle trips during the construction phase will be 614 daily two-way vehicle trips, made up of 110 car/LGV trips, and 504 HGV trips. For the operational phase, the number of vehicle trips is anticipated to be up to 10 LGV trips per day on average, and 12 HGV trips per day on average. The level of traffic generated by the operational phase falls below the overall IAQM guidance thresholds, so no further assessment of these operational impacts has taken place.

3.12.12. Included within the oBSMP [APP-183] is an assessment of the impact on air quality of unplanned BESS emissions due to a fire.

BASELINE

3.12.13. The applicant's ES chapter on Air Quality [APP-042] and appendices 13.1 to 13.5 [APP-075] provide details of the likely impact of the proposed development on air quality. These documents establish the study areas

defined by the applicant for construction dust (within 250m of the Order limits, or within 50m of roads used by construction vehicles where these occur within 200m of the Order limits) and for construction traffic (within 200m of roads used by construction vehicles within the Order limits). The applicant also sets out its reasoning [APP-042] for defining these study areas in the way that it has.

3.12.14. The applicant has noted [APP-042] that no air quality management areas (AQMAs) are located in the study area, with the nearest being in Lincoln city centre 11.1km away.

3.12.15. Current and future baseline conditions and sources used to define these are also set out by the applicant in [APP-042].

3.12.16. The applicant has scoped out impacts on ecological receptors from construction traffic [APP-042] after assessing that the relevant criteria, as set out in paragraph 3.12.13, for their inclusion had not been met.

CONSTRUCTION PHASE

3.12.17. For construction dust, earthworks, construction and track out have been identified by the applicant [APP-042] as being activities that will give risk of dust impacts. For all three activities, the applicant says the dust emission magnitude is likely to be classed as ‘large’.

3.12.18. The applicant also cites IAQM guidance, which states that residential properties, are ‘high’ sensitivity receptors to dust soiling. Further, the IAQM guidance explains that there is a risk of material being tracked 250m from the site exit, therefore, the construction traffic routes from the northwest along the A57 and also from the south along the A1133 have been considered.

3.12.19. The applicant has combined [APP-042] dust emission magnitudes with the sensitivities within the study area, in order to assign a risk category to each activity’s potential impact on ecological and human health. For earthworks, construction and trackout, the risk on ecology and human health is considered by the applicant to be ‘low risk’.

3.12.20. For construction traffic, predicted annual mean concentrations of NO_2 in 2027 have been forecast [APP-042], for both with and without the proposed development scenarios. For all receptors, the impact would be negligible. The applicant states that the annual mean NO_2 concentrations would be well below the objective at all receptors and the predicted changes in concentrations all result in negligible impacts.

3.12.21. The applicant goes on to assess the predicted mean concentrations of PM_{10} and $PM_{2.5}$ for the same two 2027 scenarios [APP-042]. Again, the applicant states for both particulates, that the impact would be negligible, with the annual mean PM_{10} and $PM_{2.5}$ concentrations falling well below the objective at all receptors, with or without the proposed development.

OPERATIONAL PHASE

3.12.22. The applicant has not identified air quality impacts which would result from the operation of the proposed development itself [APP-042].

DECOMMISSIONING PHASE

3.12.23. The applicant states [APP-042] that for decommissioning, the potential sources of air quality impacts associated with the decommissioning phase of the proposed development would be broadly similar to those during construction. However, given the 60-year operational life of the proposed development, decommissioning is not expected to occur until 2090, by which time the impacts of emissions from vehicles are expected to be much lower. The applicant has, therefore, concluded that there would be no significant air quality effects associated with the decommissioning works.

MITIGATION

3.12.24. The applicant outlines [APP-042] the site-specific mitigation measures which would be determined through the construction phase dust assessment and included within the oCEMP [REP7-014], secured through DCO requirement 13. Site-specific construction dust mitigation is detailed in qualitative dust assessments and Construction Dust Mitigation, within appendices 13.1 to 13.5 [APP-137].

3.12.25. The outline Battery Safety Management Plan (oBSMP) [APP-183] details mitigation and actions that would be undertaken in the event of a fire. Actions to be taken would include informing any potentially affected residents and advising the public about health effects of smoke. The applicant concludes that, following embedded mitigation, the potential risk of fire and the effects from such an incident would be reduced as far as possible. The BSMP would be secured through DCO requirement 7 (battery safety management).

3.12.26. For the decommissioning phase, the applicant has included measures within the oDEMP [APP-178] to minimise sources of pollution during the decommissioning phase.

Applicant's Conclusion

3.12.27. The applicant has concluded, based on its assessment within the ES [APP-042], that air quality effects of emissions from construction traffic are judged to be ‘not significant’, as pollutant concentrations at all worst-case existing receptors will be well below the relevant objectives and the impacts are all predicted to be negligible.

ISSUES CONSIDERED DURING THE EXAMINATION

3.12.28. In their LIRs, both BDC [REP1-087] and NSDC [REP1-094] noted that a fully developed Dust Management Plan (DMP) had not been submitted to the Examination by the applicant. The applicant responded [REP2-083] that the measures outlined in the oCEMP would constitute the DMP, also explaining how the DMP was secured in the dDCO.

3.12.29. The Environment Agency expressed concern in its RR [RR-063] in respect of potential emissions from Non-Road Going Mobile Machinery (NRMM). In response the applicant [REP1-075] confirmed this would be managed through the CEMP which would be secured through Requirement 13 of the dDCO. The oCEMP [REP7-014] includes the controls ensuring that such machinery would operate in line with the latest emissions standards for such machinery.

3.12.30. The final, signed SoCGs with BDC [REP9-019], NSDC [REP7-030] and WLDC [REP8-008] confirm that the councils were content with the applicant's air quality assessment and mitigation proposals, as does the SoCG with the Environment Agency [REP7-038].

3.12.31. While [RR-139, RR-136, and RR-121] raised general concerns in respect of the potential adverse effect on air quality, these comments were not further supported by any substantive evidence. No other IPs raised any significant concerns relating to air quality during the examination.

CONCLUSIONS

3.12.32. The ExA notes that it is likely for there to be the potential for construction and decommissioning activities to have an impact on air quality. These impacts would be short-term, and the ExA is satisfied that mitigation measures set out above and secured in the dDCO [REP9-006] would be sufficient to mitigate the adverse effects of the proposed development to an acceptable level.

3.12.33. The applicant's assessment of the air quality impacts of BESS fire [APP-183] provides further assurance that air quality impacts on health would not be significant.

3.12.34. The ExA is satisfied that the scope of the applicant's air quality assessment is appropriate. The finding of no significant effects from dust requires the implementation of mitigation measures that would be delivered through the CEMP and DEMP which would be secured through dDCO requirements 13 and 20.

3.12.35. The ExA therefore concludes that the air quality assessment accords with the provisions of NPS EN-1 and the development plans. With that in mind, air quality matters carry a neutral weight in the planning balance.

CARBON AND CLIMATE

3.12.36. This section deals primarily with the carbon emissions that would arise from the construction, operation and decommissioning of the proposed development. The consideration of the implications of policy provisions relating to decarbonisation are set out in Section 3.2 addressing the principle of development.

3.12.37. The consideration of the impacts of climate change on other topics addressed during the course of the Examination are covered in those topics' planning merits sections of this recommendation, where appropriate.

POLICY AND LEGISLATIVE BACKGROUND

Legislation

3.12.38. Legislation of relevance to carbon and climate is as follows:

- The Climate Change Act 2008
- The Climate Change Act 2008 (2050 Target Amendment) Order 2019
- 4th Carbon Budget Order 4
- 5th Carbon Budget Order 5
- 6th Carbon Budget Order 6

Policy Considerations

National Planning Policy

3.12.39. National Policy of relevance to carbon and climate is set out in the following:

- NPS EN-1
- NPS EN-3
- NPS EN-5
- National Planning Policy Framework ('NPPF')

Local Plan Policies

3.12.40. The LIRs from each of the local authorities sets out the local policies these are set out in Tables A5 and A6 of Appendix A to this recommendation.

Guidance

3.12.41. The following guidance is relevant to the GHG assessment of the Project:

- Institute of Environmental Management and Assessment (IEMA). Guidance on Assessing Greenhouse Gas Emissions and Evaluating their Significance (2022) ('IEMA Guidance')
- The Greenhouse Gas Protocol Corporate Accounting and Reporting Standard ('GHG Protocol')
- Publicly Available Standard ('PAS') 2080: 2023 – Carbon Management in Buildings and Infrastructure
- Climate Change Committee ('CCC'), Net Zero Technical Report (2019)
- CCC, Sixth Carbon Budget (2021)
- HM Government, Net Zero Strategy: Build Back Greener (2021)
- HM Government, Carbon Budget Delivery Plan (2023)
- Royal Institution of Chartered Surveyors: Whole life carbon assessment for the built environment (2017)
- British Standard EN15978:2011 - Sustainability of Construction Works (2011)
- Newark and Sherwood Amended Core Strategy13, specifically 'Core Policy 9 Sustainable Design' and 'Core Policy 10 Climate Change'
- Central Lincolnshire Local Plan 2018-204014, specifically 'Policy S14 Renewable Energy', 'Policy S16 Wider Energy Infrastructure' and 'Policy S17 Carbon Sinks'

- Bassetlaw Local Plan 2020-203815, specifically 'Policy ST50 Reducing Carbon Emissions, Climate Change Mitigation and Adaptation and 'Policy ST51 Renewable Energy Generation'.

3.12.42. The following guidance is relevant to resilience of the proposed development to climate change:

- IEMA Environmental Impact Assessment Guide to Climate Change Resilience and Adaptation (2020)
- The UK Climate Projections 2018
- Met Office UK (2022) UK Climate Projections: Headline Findings and associated spreadsheet
- The National Adaptation Programme and the Third Strategy for Climate Adaptation Reporting (2018)
- UK Climate Change Risk Assessment (2022

THE APPLICATION

3.12.43. The applicant's assessment of climate change impacts from the proposed development is set out in its ES [APP-043], supported by Climate Change Appendices 14.1 and 14.2 [APP-138].

BASELINE

3.12.44. The applicant [APP-043] has assessed the land within the Order limits as consisting of a mixture of agricultural land and both natural and semi-natural habitats, such as woodland, grassland, scrub and hedgerows.

3.12.45. Agricultural land makes up the majority of the land use within the Order limits and the applicant notes [APP-043] that agriculture is a net emitter of greenhouse gases (GHGs). The other land uses identified by the applicant are identified as sequestering carbon by absorbing CO_2 from the atmosphere which is then stored in the soil.

3.12.46. The applicant has calculated [APP-138] current GHG emissions from the Site resulting from the existing agricultural land uses and natural and semi natural habitats to be around an estimated 450 tonnes CO_2e per year.

3.12.47. The applicant has assessed [APP-043] future baseline GHG emissions for the proposed development as being the same as the current baseline, assuming existing land use continues. For the purposes of its assessment, the applicant has also considered two further baseline scenarios, which assume alternative types of power generating technology to the proposed development.

CONSTRUCTION PHASE

3.12.48. The applicant's proposed measures to reduce GHG emissions during the construction phase are set out in its outline Construction Environmental Management Plan (oCEMP) [REP7-014] and outline Construction Traffic Management Plan (oCTMP) [REP7-020], which also sets out proposed measures to consolidate delivery of materials to the construction site and

ways of promoting the most sustainable methods for construction workers to use in order to get to the site.

OPERATIONAL PHASE

3.12.49. The applicant has set out management procedures which would reduce GHG emissions associated with the operation and ongoing maintenance of the proposed development in its outline Operational Environmental Management Plan (oOEMP) [REP6-024].

DECOMMISSIONING PHASE

3.12.50. The applicant's outline Decommissioning Environmental Management Plan (oDEMP) [REP7-016] sets out proposals for management procedures for the removal and treatment of materials on site during decommissioning and to minimise traffic movements during decommissioning.

OTHER CONSIDERATIONS

3.12.51. The applicant's GHG assessment [APP-043] finds that effects would be indirect, long term, UK wide and of beneficial significance, based on the balance of effects from the proposed development but applying considerable weight to the proposed development resulting in a net reduction in GHG emissions from power generation compared to electricity generated from fossil fuels.

ISSUES CONSIDERED DURING THE EXAMINATION

3.12.52. The applicant's response to RRs [REP1-075] acknowledged that it had made assumptions relating to the manufacture and shipping of solar panels and related components from China for the purposes of assessing greenhouse gas emissions in its ES [APP-043].

3.12.53. The applicant noted that these assumptions represented a conservative approach, which reflected the reality that shipping emissions would be higher than from closer European-based suppliers, but that they did not amount to a commitment to procure relevant supplies and equipment from China.

3.12.54. In its response to the ExA's first written questions (ExQ1) [REP2-084], the applicant confirmed that the proposed development would not result in extraction and use of fossil fuels and that it would have very limited direct emissions during construction, operation and decommissioning.

3.12.55. The applicant further acknowledged that the proposed development would, nevertheless, indirectly result in GHG emissions, mainly through the supply chain for solar panels and other components. The applicant explained that these GHG emissions would occur in the mining and processing of metals and minerals, energy used in the manufacture of components and fuel and energy used to transport materials and components to the installation site.

3.12.56. WLDC acknowledge in its LIR [REP1-098] the delivery of low carbon electricity would be a positive impact as a consequence of the proposed development. While LCC [REP1-089] record that overall in adopting a 'whole

life' approach to GHG emissions, that significant positive impacts would arise.

3.12.57. No further issues related to the subject of the carbon emissions that would arise from the construction, operation and decommissioning of the proposed development were raised during the course of the Examination.

CONCLUSIONS

3.12.58. The applicant has concluded [APP-043] that the proposed development would have a significant beneficial effect in relation to climate change as a result of indirect GHG emissions avoided by the proposed development and its role in the transition to net zero, that the proposed development would not result in likely significant effects on climate change during the construction, operation or decommissioning stages and that there would be no likely significant in-combination climate change impacts.

3.12.59. The ES [APP-043] also concludes that there would be no significant effects on the proposed development due to future climate change and that therefore, no additional mitigation would be required. The ExA has addressed the potential effects of climate change-related events on individual topic areas, where relevant, in the respective planning merits sections of this recommendation.

3.12.60. The ExA concurs with the assessment of the proposed development's effects on climate change, as well as the effects of climate change on the proposed development, as set out in the ES [APP-043]. The applicant's assessment applies appropriate emissions factors, considers worst-case scenarios, and includes sensitivity testing. It demonstrates that the proposed development would achieve carbon payback within approximately three years of operation, with a significantly lower carbon intensity than conventional fossil fuel generation.

3.12.61. The ExA concludes that the proposed development would contribute positively to climate change mitigation, both in isolation and cumulatively with other similar developments. However, these benefits are considered to be inherently captured within the substantial positive weight already attributed to the need for energy, as set out in NPS EN-1. Accordingly, the ExA does not assign additional weight to climate change effects separately in the overall planning balance in order to avoid double counting.

NOISE AND VIBRATION

INTRODUCTION

3.12.62. The main issues raised in the examination, relating to noise and vibration related to noise, in terms of both volume and frequency, generated by power conversion systems (PCS) - also referred to as inverters.

POLICY BACKGROUND

3.12.63. Legislation of relevance to noise and vibration is as follows:

- The Environmental Protection Act 1990 (as amended by the Noise and Statutory Nuisance Act 1993) (particularly Section 79) ('EPA')
- The Control of Pollution Act 1974 (particularly Sections 60 and 61)

National Planning Policy

3.12.64. National Policy of relevance to noise and vibration is set out in the following:

- NPS EN-1
- NPS EN-3
- NPS EN-5
- National Planning Policy Framework (NPPF)
- Noise Policy Statement for England (NPSE)

Local Planning Policy

3.12.65. Local Policies of relevance to noise and vibration are set out in the following:

- Bassetlaw Local Plan 2020-2038 (Adopted May 2024)
- Bassetlaw District Council 2010 Local Development Framework, Publication Core Strategy and Development Management Policies
- Draft Bassetlaw Local Plan 2023 2020-2038: Main Modifications Version (BLP)

THE APPLICATION

3.12.66. The applicant's assessment of noise and vibration impacts from the proposed development is set out in its ES [APP-044], which is supported by:

- Appendix 15.2 [APP-140]
- Appendix 15.3 [APP-141]
- Appendix 15.4 [APP-142]

Baseline

3.12.67. These documents establish the study areas defined based on the type of noise and vibration generated by the proposed development during the construction, operation (including maintenance) and decommission phases and the distances from sensitive receptors at which noise and vibration would have the potential to cause impacts.

3.12.68. The applicant has considered a study distance of 300m from onsite construction activities, noting that beyond this distance construction noise impacts would be unlikely. Further to this, the applicant has defined a study distance for vibration from construction and decommissioning activities of 100m from high-energy construction works such as piling. The applicant has assessed that beyond this distance vibration effects would be unlikely.

3.12.69. A study distance for properties within 50m of identified roads within the immediate vicinity of the proposed development which considered for both noise and vibration from construction and decommissioning traffic.

3.12.70. The applicant has considered a study distance of 500m from electrical equipment such as inverters, transformers, other substation equipment and battery storage equipment.

3.12.71. The applicant has also set out its reasoning [APP-044] for defining these study areas in the way that it has.

3.12.72. The applicant's methodology for establishing existing and future baselines, for identifying receptors and for its impact assessment have been provided in [APP-044] and the associated appendices.

3.12.73. The applicant has identified [APP-044] dominant contributors to the existing baseline acoustic environment as the following:

- Road traffic noise from A57
- Road traffic noise from A1
- Road traffic noise from A1133

3.12.74. Sensitive receptors to noise and vibration have been identified by the applicant in the following areas:

- Properties at the eastern edge of Darlton
- Properties along the A57 between Darlton and Dunham on Trent, including Goosemoor Cottage, Whimpton House and Field House Farm
- The village of Ragnall
- Farms between Darlton and Ragnall, including America Farm, Farr Hill Farm and Vicarage Farm
- The village of Fledborough and nearby properties, including North Farm, Fledborough House Farm and Station House
- The village of Skegby and farms to the north of Skegby, including Babbington Springs Farm, Woodcoates, and Gibraltar Farm
- The village of High Marnham
- The villages of North and South Clifton
- Properties along Moor Lane, including Wheatholme, Birkland Barn, Amblerod Farm, The Grange, Woodstock, The Gatehouse, Cosy Cottage and Carr Farm
- Properties along the A57 between Newton on Trent and Drinsey Nook, including Silver Trees Farm, Birchlands Farm (including the residential properties to the north of Birchlands Farm) and Woodside Farm.

CONSTRUCTION PHASE

3.12.75. The applicant has set out in [APP-044] the measures that it proposes to undertake during the construction phase to minimise disruption and manage the adverse effects from noise as a result of construction activites.in its outline Construction Environmental Management Plan (oCEMP) and outline Construction Traffic Management Plan (oCTMP).

OPERATIONAL PHASE

3.12.76. During the operational phase of the proposed development, the applicant has identified [APP-044] the battery energy storage system (BESS), substation equipment and inverter units as sources of noise.

3.12.77. The ES [APP-044] notes that the BESS and substation equipment would be located at least 300m from residential properties, in order to reduce the likelihood of disturbance from noise generated by fixed plant relating to these elements of the proposed development.

3.12.78. In addition, the applicant has noted that in most cases it is likely that inverter units would be located at 200m from residential properties. Nevertheless, it is noted that the ES [APP-044] concedes that the precise location of inverter units would be determined during the detailed design phase, if the Order is consented.

3.12.79. The applicant has confirmed [APP-044] that noise from inverter units would not exceed the limits defined in the ES and is committed to providing noise mitigation measures to ensure that noise limits are not exceeded.

3.12.80. The applicant has assessed [APP-044] operational activities during the operational phase of the proposed development as consisting of planting management, general maintenance and servicing, replacement and renewal of failed components, monitoring and inspection. The applicant has not identified a requirement for any specific measures to limit noise during such activities.

DECOMMISSIONING

3.12.81. The applicant [APP-044] has not identified specific decommissioning activities within the ES but has noted that any such activities would be similar in nature to construction activities and has assessed environmental impacts as unlikely to be worse than those identified for construction activities. Further measures to control noise during the decommissioning phase have been identified in the outline Decommissioning Environmental Management Plan (oDEMP) [REP7-016].

ISSUES CONSIDERED DURING THE EXAMINATION

3.12.82. The applicant acknowledged issues raised in relation to the subject of noise and vibration in its responses to RRs [REP1-075] and responses to written representations (WRs) [REP2-082].

3.12.83. In response to Mrs Fox [REP1-122], Mr Burnett [REP1-125] and Mrs Walker [REP1-127] the applicant acknowledged [REP2-082] that inverters situated in proximity to the proposed solar arrays will generate some noise.

3.12.84. Further to this, the applicant also confirmed that the location of PCS units (which house the inverters) would be determined during the detailed design stage and that, in most cases, PCS units would be at least 200m from residential properties. Where this would not be feasible, the applicant

confirmed that noise levels from the PCS would not exceed the limits outlined in the ES [APP-044], and additional noise mitigation would be provided to ensure that this would be the case.

3.12.85. In addition, the applicant sought to clarify its position in relation to the potential impacts from noise which would originate from PCS units in its written summary of oral submissions at Open Floor Hearing 1 [REP1-076]. It noted that whilst noise from substation and batteries was anticipated to travel 300m from the source and that therefore such infrastructure would be placed at least 300m from residential properties, noise from inverters would not be anticipated to travel as far.

3.12.86. The applicant further clarified that, where practicable, the PCS units would not be located within 100m of residential dwellings and not within 50m of existing public rights of way. Additionally, the applicant noted that in all cases PCS units would be designed so that they would not result in a nighttime noise level at residential receptors of greater than 35dB(A). The applicant proposes to achieve this through a combination of careful siting of the PCS units, through the selection of the equipment to be used and, where necessary, additional mitigation such as attenuators on ventilation inlets and outlets and localised noise screening in the form of a solid barrier around individual PCS units.

3.12.87. The applicant reiterated this clarification at D4 [REP4-051] and set out that the control and mitigation of noise levels during the operational phase of the proposed development would be secured by Requirement (R) 16 of the dDCO [REP9-006].

3.12.88. Noise was a topic discussed at ISH3 and the applicant confirmed in its post hearing note [REP5-071] that Requirement 16 of the dDCO was amended to clarify the noise limits that would be applied and linked back to the applicant's outline design parameters.

CONCLUSIONS

3.12.89. The ExA considers that the applicant has adequately assessed the noise and vibration effects of the proposed development and has provided sufficient evidence to support the conclusions on those effects.

3.12.90. The ExA concludes that the mitigation measures secured within the dDCO [REP9-006] would avoid any significant adverse impacts on health and quality of life from noise and vibration.

3.12.91. The ExA is satisfied that embedded mitigation measures, as defined by the applicant, as well the control and management measures set out in the dDCO [REP9-006] would be sufficient to mitigate the adverse effects of the proposed development to an acceptable level.

3.12.92. The noise from the construction, operation and decommissioning phases of the proposed development, both on its own and cumulatively, would remain below the significance thresholds as set out in the NPSE and NPPF.

3.12.93. Overall, the ExA finds that the information provided in terms of noise and vibration meets the requirements of NPS EN-1, NPS EN-3 and NPS EN-5. It would also accord with the NPPF. As such, noise is a matter which the ExA weighs as neutral in the planning balance.

SOCIO-ECONOMIC MATTERS

3.12.94. The main issue in respect of socio-economic effects arising from the proposed development related to:

- the loss of agricultural jobs directly and indirectly related to the current farming activity
- the knock on effect on tourism from the change in the area brought about by the proposed development
- the potential effect on tourism from the pressure brought about from construction staff requiring accommodation

3.12.95. POLICY BACKGROUND

3.12.96. EN-1 contains policy objectives:

- Paragraph 5.13.4 – Matters that may be included in the socio-economic impact assessment
- Paragraph 5.13.5 – Existing socio-economic conditions and local planning policies
- Paragraph 5.13.8 – Mitigation of adverse impacts
- Paragraph 5.13.10 – Weight given to assertions that are not supported by evidence
- Paragraph 5.14.21 – Employment and skills plan

THE APPLICATION

3.12.97. The applicant's case in relation to socio-economic effects of the proposed development is set out in ES Chapter 17: Socio-economics [APP-046], supported by the following documents:

- Figures 17.1 – 17.10 [APP-078]
- Appendices 17.1 – 17.2 [APP-144]
- The Planning Statement [APP-168]
- Outline Skills, Supply Chain and Employment Plan [APP-180]
- Outline Public Rights of Way Management Plan [APP-186]

3.12.98. The study area used by the applicant includes the Order limits, district level, lower-layer super output area (LSOA), and regional level, depending on the topic being assessed. The Order limits and LSOA boundaries are shown below in figure 17.1, with the district and East Midlands regional level shown in figure 17.2 [APP-144].

BASELINE

3.12.99. To inform the baseline conditions the applicant used publicly available information such as census data, annual population survey, and English

indices of deprivation. In addition to this, the applicant undertook a project specific landowner survey, of owners of agricultural land and property within the Order limits. The applicant used future population projections from the Office of National Statistics to inform the future baseline.

CONSTRUCTION PHASE

3.12.100. The applicant estimates that at the peak construction time, there will be a creation of approximately 750 construction jobs, with an average of 554 full time jobs over the two-year construction phase, which represents 140% of the 2022 total construction employment in the local area. The applicant expects construction labour will be drawn from the existing labour catchment area, likely comprising the three districts, as well as others based on transport connections and the degree of specialism necessary to undertake specific construction work. This number of additional jobs will provide an increase of 2.9% of construction employment in the local area. The applicant has assessed this to be a moderate beneficial significance overall.

3.12.101. In addition to the direct construction jobs created, the applicant estimates there could be 737FTE indirect temporary jobs created which the applicant assesses to be of minor beneficial significance.

3.12.102. An outline Skills Supply Chain and, Employment Plan (SCES) [REP2-057] has been submitted by the applicant and requirement 17 of the draft DCO secures its implementation. It aims to maximise local employment opportunities and develop opportunities for apprenticeships. It also sets out intentions to partner with local educational institutions and job centres to develop local skills and raise awareness of solar and energy storage technologies.

3.12.103. The applicant states that the construction of the proposed development has the potential to temporarily affect local amenity, and consequently tourism. The applicant has identified five potentially sensitive receptors, these being Hall Farm Campsite, Wildwood Caravan Park, Woodlands Holiday Homes, Marnham Meadows Caravan Park, and Sparrow Lane Holiday Homes.

3.12.104. Of these, the applicant states that the sites at Marnham Meadow, Sparrow Lane, and Hall Farm are all close to the Order limits and therefore, have increased potential to be affected by the construction of the proposed development.

3.12.105. The applicant goes on to confirm that there would be no significant effects from a visual amenity perspective, due to the distance from the works.

3.12.106. Considering the above conclusions on amenity from other technical chapters, overall, the potential for significant knock-on effects on tourism is considered to be relatively low and limited to a small number of specific locations.

3.12.107. The applicant considers, it is possible that the temporary visual amenity effects at Hall Farm may have some impact on visitor numbers during construction, at a wider level increased demand for accommodation from construction workers (554 full-time average and a peak of 750 workers over

two years) is likely to offset this. The applicant concludes that this would be indirect, short-term effects at the local level would likely be of negligible significance

OPERATIONAL PHASE

3.12.108. The applicant uses the results of the landowner questionnaire to estimate there are around 20 existing jobs that would be affected by the construction of the proposed development on land that they are currently employed on. These 20 jobs equate to approximately 7.75FTE. The proposed development is expected to employ 15FTE once it is operational, with additional indirect employment. The applicant assess that the net job increases during the operational phase to be 17FTE. On this basis, the applicant concludes that these direct, long-term effects at the local level would be of negligible significance.

3.12.109. Once operational, the proposed development would include various enhancement measures including permissive paths to create new routes connecting the villages in and around the Order limits. Approximately 6km of permissive paths are proposed within the Order limits. The applicant assesses the direct, long-term effects of the operation of the proposed development on PRoW at the local level are expected to be of negligible significance.

3.12.110. The applicant relies on a 2013 study of the 'Impact of Renewable Energy Farms on Visitors to Cornwall' for evidence where effects of solar and wind farms have not had a negative impact on local visitor numbers and may even have positively impacted visitor numbers. As the only identified receptor located close to a part of the Order limits that would be occupied by solar modules is the Hall Farm campsite, the applicant concludes that the indirect, long-term effects of the operation of the proposed development on tourism at the local level are likely to be of negligible significance.

DECOMMISSIONING

3.12.111. The applicant states further construction jobs would be created at the decommissioning stage; however, it is not possible to currently provide a quantitative estimate of employment. The applicant assumes that the quantum of labour required would be a similar order of magnitude, but lower than at the construction stage with fewer indirect jobs supported.

3.12.112. The existing operational jobs would then be lost, or moved to another site, although new jobs may be supported. The applicant concludes that during decommissioning the likely direct, short-term effects at the local level are of minor beneficial significance.

3.12.113. For local amenity and tourism, the applicant expects the impact of decommissioning to be similar to those during construction. The applicant concludes that the likely direct, short-term effects at the local level are considered to be of negligible significance.

3.12.114. Overall, the applicant concludes the effects of the proposed development to be negligible and not significant, with the exception of the effect on employment, which is concluded to be a moderate beneficial significant effect.

ISSUES CONSIDERED DURING THE EXAMINATION

3.12.115. The applicant acknowledged issues raised in relation to the subject of socio economics in its responses to RRs [REP1-075] and responses to written representations (WRs) [REP2-082].

3.12.116. In response to Bassetlaw District Council [AS-002] the applicant refers back to the assessment in [APP-046] which indicates that the average direct Full-Time Equivalent (FTE) jobs created by the construction of the project, across the two-year construction period, is 554, with a peak of 750. These are estimated to generate an additional 737 FTE indirectly, through indirect and induced effects along supply chains.

3.12.117. The applicant considers during the operation of the project 15 direct FTE jobs would be created, compared to the 7.75FTE currently employed on the order land. The applicant also stated it has made a commitment through the outline Skills, Supply Chain and Employment Plan (SSCEP) [APP-180] to promote opportunities for local people and businesses.

3.12.118. SCPC [RR-050] expressed concern over how the industrialization of the landscape would deter tourists and impact local businesses, including Airbnb's and hospitality providers diminishing the areas appeal and reduce local incomes.

3.12.119. Specific concerns were raised in [RR-044] due to the potential adverse impact on the stud at Manor Farm Darlton, while during the ASI owners of two holiday businesses expressed concern over the adverse effect the change in landscape and amenity could have on the holiday businesses.

3.12.120. In addition, several IPs including [RR-012, RR-030, RR-061 and RR-065] consider the change in the landscape would adversely affect local tourism businesses many of which are small firms running B and B, holiday lets, or guest accommodation.

3.12.121. Negative impact on tourism and local business is identified in [RR-065, RR-113, RR-021] amongst others citing that North & South Clifton attracts visitors looking for peace, countryside walks, and easy access to Lincoln, and Newark. The changes proposed could turn people away and hurt local businesses such as Airbnb's and hospitality providers that rely on tourism.

3.12.122. WLDC LIR [REP1-099] also considered there could be a negative effect on the tourism economy through reduction in available accommodation and this could be compounded by cumulative projects occurring at the same time.

3.12.123. The applicant considers the effect on tourism had been fully explored in [APP-046] taking account of the potential significant effects on tourism arising from the construction, operation and decommissioning of the

proposed development. It acknowledges potential effects on tourism would be expected to arise primarily because of impacts on amenity; through visual, noise and dust/air quality impacts.

3.12.124. In considering these effects the applicant has concluded that there would be no significant effect with regard to air quality or noise. In landscape and visual terms while some significant effects would occur the applicant considers that many are mitigated.

3.12.125. The applicant does however, acknowledge there could be some negative effects and that any reduction in visitor numbers could have knock-on effects on local businesses, such as accommodation and hospitality providers, however the various mitigation measures set out in the ES alongside the potential temporary demand for services from construction workers would be expected to mitigate these impacts in the short-term.

3.12.126. With regard to the potential effect on accommodation from construction workers, the applicant indicates that the data suggests a relatively large pool of potential workers locally and that some hotel capacity exists to accommodate workers. The evidence indicated that the potential effect both in isolation and cumulatively would not be significant and was therefore scoped out of the ES assessment.

CONCLUSIONS

3.12.127. The ExA agree with the applicant's assessment that there are likely to be economic benefits associated with the jobs created during the construction period.

3.12.128. The ExA are mindful of the concerns expressed by IPs in RRs and subsequent WRs with respect of concerns over potential adverse effects on local business, whether it be tourism related or in one case a stud farm. No definitive evidence was provided, however that could be given weight in the deliberations the ExA need to make in assessing the likely socio-economic effects of the proposed development.

3.12.129. The ExA acknowledge the concerns raised by IPs and the host authorities with regard to the effect of the proposal on indirect jobs, particularly within the agricultural sector. However, the applicant has directed us to evidence to indicate that whilst a small number of jobs would be lost, a greater number would be created both during the construction period and subsequent operation of the proposed development. While the loss of any job is regrettable, the loss of 7.75FTE jobs is not considered to be significant.

3.12.130. The ExA also consider that the creation of the 15FTE during operation would not be significant and in this respect the ExA would regard this as having a neutral weighting in the planning balance.

3.13. CUMULATIVE EFFECTS

INTRODUCTION

3.13.1. This Section considers the potential cumulative effects of the proposed development. Cumulative effects in this context covers both:

- the accumulation of, and interrelationship between, effects arising from the proposed development; and
- interactions between the effects of the proposed development and the effects of other existing and approved projects.

Policy Background

3.13.2. The EIA Regulations, schedule 4, para 5 require that an ES should include "a description of the likely significant effects on the environment resulting from, inter alia, (e) the cumulation of effects with other existing and/or approved projects, taking into account any existing environmental problems relating to areas of particular environmental importance likely to be affected or the use of natural resources".

3.13.3. The assessment of cumulative effects as set out in EN-1 at paragraph 4.3.3 requires the applicant to set out what cumulative effects are likely to arise from the development "an assessment of the likely significant effects of the proposed project on the environment, covering the direct effects and any indirect, secondary, cumulative, transboundary, short, medium, and long-term, permanent and temporary, positive and negative effects at all stages of the project, and also of the measures envisaged for avoiding or mitigating significant adverse effects."

3.13.4. EN-3 states that applicants may choose to site development based on nearby available grid export capacity (paragraph 2.10.25). Paragraph 2.10.26 outlines that, where this is the case, applicants should consider the cumulative impacts of situating a solar farm in proximity to other energy generating stations and infrastructure.

3.13.5. EN-3 outlines that the approach to assessing cumulative landscape and visual impact of large-scale solar farms is likely to be the same as assessing other onshore energy infrastructure (paragraph 2.10.94).

3.13.6. The NPPF sets out that cumulative impacts should be considered in relation to various environmental impacts of development.

THE APPLICATION

3.13.7. The applicant summarises the legislation and policy that it considers to be relevant to the consideration of cumulative effects in the Cumulative Effects Assessment [APP-047] updated during the examination, the final iteration being [REP6-012].

3.13.8. This is supported by:

- The summary of other developments included within the cumulative BMV assessment (Appendix 18.2) [APP-146] updated to [REP2-041] and (Appendix 18.3) [APP-147 updated to [REP4-020]
- The High Marnham cumulative carbon assessment [APP-148]
- Other development long list stages 1 and 2 [APP-145] updated to [REP2-039]

3.13.9. The assessment considers the cumulative effects under two main headings

- Intra-project Effects - i.e. two or more likely significant effects resulting from the proposed development combining to have effects on the same receptor (also referred to as interactive effects); and
- Inter-project Effects – i.e. the cumulative effects on the environment resulting from the proposed development in combination with existing and, or approved projects in an area (other developments).

3.13.10. The assessment relies upon information within the other ES chapters and the supporting figures detailed therein.

3.13.11. The assessment takes account of the embedded mitigation measures secured as part of the proposed development and where relevant, any mitigation forming part of the other developments.

Intra project effects

CONSTRUCTION AND DECOMMISSIONING PHASES

3.13.12. Chapter 18 identifies that during construction and decommissioning there is the potential for significant environmental effects for the proposed development in isolation in respect of cultural heritage and landscape and visual matters.

3.13.13. These are summarised as indirect temporary local effects at:

Table 8 Significant adverse effects on heritage assets

Significant adverse effects on heritage assets	Moderate to major significance	Moderate significance	Minor significance
Location	the setting of Whimpton Moor medieval village and moated site, the setting of Church of St Gregory (grouping), the setting of Church of St Leonard (grouping)	The setting of Pigeoncote and Attached Stable Blocks and Outbuilding at Hall Farm, the setting of Roman Vexillation Fortress	the setting of Manor House,

	the setting of Ragnall House, Barn at Ragnall Stables the setting of Ragnall Hall and Attached Outbuildings	the setting of Skegby Manor and Pigeoncote	

In respect of landscape and visual direct short term effects:

Table 9 Significant adverse effects on landscape and visual

Significant adverse effect on landscape and visual	Major significance	Moderate to major significance	Moderate significance
Construction	The site's landscape character	The landscape character of character areas (ENS PZ 01: North Clifton Village Farmlands; TW PZ 20: Dunham on Trent Village Farmlands; TW PZ 44: Fledborough Holme River Meadowlands; MNF PZ 09: East Drayton; MNF PZ 12: Normanton On-Trent) to the local village character areas (Fledborough; North Clifton; Ragnall; Skegby) Selected viewpoints	
Decommissioning	The site's landscape character	to the local village character areas (Fledborough)	the landscape character of published landscape

		Selected viewpoints	character areas (ENS PZ 01: North Clifton Village Farmlands; TW PZ 20: Dunham on Trent Village Farmlands; TW PZ 44: Fledborough Holme River Meadowlands; MNF PZ 09: East Drayton; MNF PZ 12: Normanton On-Trent)

OPERATIONAL PHASE

3.13.14. The in-combination effects are identified only where the individual aspect assessments have identified an adverse effect that is significant in respect of landscape and visual this is set out below.

Table 10 In combination effects during operation at Year 1

	Major adverse effects	Moderate to major significance
Year 1	people travelling along the PRoW network, sections of the local network, residents east of A1133	landscape character of published landscape character areas (ENS PZ 01: North Clifton Village Farmlands; TW PZ 20: Dunham on Trent Village Farmlands; MNF PZ 09: East Drayton; MNF PZ 12: Normanton-On-Trent) Selected view points

Table 11 In combination effects during operation at Year 15

	Moderate to major significance	Moderate significance
Year 15	local village character areas (Fledborough) Selected viewpoints	people travelling along the PRoW network, sections of the local network, residents east of A1133 landscape character of published landscape character areas (ENS PZ 01: North Clifton Village Farmlands; TW PZ 20: Dunham on Trent Village Farmlands)

3.13.15. With regard to cultural heritage the applicant identifies indirect long term, local adverse effect of moderate significance to the setting of Whimpton Moor Medieval Village, and indirect long term, local adverse effect of moderate significance in the medium term to the setting of

- the Church of St Leonard
- Ragnall House Barn at Ragnall Stables
- Ragnall Hall and Attached Outbuildings

INTER PROJECT EFFECTS

3.13.16. The other developments identified at the shortlisting stage were considered in respect of:

- Temporal scope
- the scale and nature of development
- the potential effects of the proposed development along with embedded environmental measures

3.13.17. The applicant identifies two other developments where it is considered significant landscape and cumulative effects could arise cumulatively with the proposed development

Table 12 Inter project effects

Other development	Cumulative effect
21/01577/FULM Installation of a solar farm and battery storage facility with associated infrastructure.	A moderate to major adverse cumulative effect interaction (significant) would arise for construction and operation respectively to the landscape character of MNF PZ 12.
EN020034 North Humber to High Marnham	A moderate to major adverse cumulative effect interaction (significant) would arise for construction and operation respectively to the visual amenity of users of PRoW to the south of East Drayton.

3.13.18. In respect of BMV the inter project effects an extract of the regional plan of Agricultural Land Classification was used to map the Order limits/ Red Line Boundaries for each (Figure 18.9) [REP2-030] of the Other Developments, where available.

3.13.19. From the ALC mapping of BMV, Natural England estimates that around 42% of agricultural land within England is of BMV quality, while for Lincolnshire it is estimated to be 71.2 % and Nottinghamshire 49%.

3.13.20. The applicant confirms BMV within the Order limits to be 660.9ha with 123.48ha to be permanently lost with the remaining to be used temporarily and potentially returned to agriculture at the end of operation.

3.13.21. The applicant calculates that for Nottinghamshire total loss of BMV (including permanent and temporary periods) would be 2,186.09 ha (0 ha Grade 1, 35.3 ha Grade 2 and 2,150.79 ha Grade 3a) rising to 2,718 with the proposed development, 2.57% of BM 2,186.09 ha (0 ha Grade 1, 35.3 ha Grade 2 and 2,150.79 ha Grade 3a) in the County.

3.13.22. For Lincolnshire the applicant calculates the total loss of BMV (including permanent and temporary periods) would be 6,915.77 ha (436.91 ha Grade 1, 3,161.27 ha Grade 2 and 3,317.59 ha Grade 3a) rising to 7,044.00 ha with the proposed development.

3.13.23. The IEMA land and soil guidance identifies a permanent loss of 20ha of BMV has a high magnitude and BMV is regarded as of very high or high sensitivity. As large proportions of the land effected would be for a temporary period, and there is a high quantity of BMV in the area, the applicant concludes the cumulative effect would not be significant.

ISSUES CONSIDERED DURING THE EXAMINATION

3.13.24. During the examination the cumulative effect of the proposed development in conjunction with other solar schemes either already approved or going through the planning process was a substantial concern for IPs and the host authorities.

3.13.25. WLDC in its LIR [REP1-098] identified significant concern in respect of the adverse cumulative effects it considered would arise and that a simple 'staggering' of development periods within the 5-year periods for each DCO could lead to construction activity occurring up to 2033.

3.13.26. WLDC goes on to say that the assessment does not adequately include all the necessary projects, as it excludes Tillbridge. Yet the CTMP for Tillbridge appears to overlap in relation to traffic routes.

3.13.27. In its closing statement WLDC [REP7-050] reiterated this position in particular with regard to the potential effect on transport matters, and that the assessment undertaken did not account for the slippage in progress on other NSIP projects which could now add further cumulative effects which the Council did not consider had been properly assessed.

3.13.28. The issues focused on the following areas:

- Landscape and visual effects
- Cumulative loss of BMV
- Transport and traffic
- Extent of flooding in the River Trent catchment
- Cumulative waste

3.13.29. To aid greater understanding and in response to issues raised by IPs through RRs and host authorities, the applicant prepared a joint interrelationship report [REP1-074] updated to [REP2-074]. This aimed to provide detail of the interaction between the proposed development and 9 other NSIPs located within 16km of the Order limits.

3.13.30. Figure 2 within that document showing the Order limits relative to the other NSIPs included in the assessment. This is replicated at Figure 6 of this report after paragraph 1.3.11.

3.13.31. This additional study found that given the scale of the High Marnham substation proposals relative to the proposed development and that the High Marnham substation proposals are within the Order limits of the proposed development, there would be no cumulative landscape and visual effects of the proposed development with the High Marnham substation.

3.13.32. However, a moderate to major adverse cumulative effect (significant) is anticipated in relation to the North Humber to High Marnham scheme, affecting the visual amenity of PRoW users south of East Drayton during both construction and operation.

3.13.33. The applicant confirmed that there is a commitment to work with other developers and this is detailed within the oCEMP [APP-176]. In addition, the oCTMP [APP-181] confirms to avoid the need for repetition and delay to existing road users, the applicant would liaise with other significant developments in the area with a view to coordinating works and deliveries.

LANDSCAPE AND VISUAL EFFECTS

3.13.34. The cumulative effect on landscape character and visual amenity remained a point of contention throughout the examination and was unresolved by the close.

3.13.35. WLDC in its LIR [REP1-098] objected to the scheme due to the cumulative landscape impact alongside other solar NSIPs both in respect of landscape character and visual amenity.

3.13.36. BDC (in the unsigned SoCG) [REP9-019] confirm agreement to the LVIA methodology but maintain objection to the approach to assessing cumulative landscape and visual impacts and the LVIA methodology with regard to visual assessment.

3.13.37. The NSDC LIR [REP1-094] also have concerns regarding cumulative effects on the national, county, and regional landscape character areas from multiple solar projects both approved and also in the system, having the potential to be constructed across the Nottinghamshire and Lincolnshire regions.

3.13.38. NSDC in its final SoCG maintain that the visual assessment does not fully align with guidance provided within LI Technical Guidance Note LITGN-2024-01, but judges that the consideration of sequential effects is unlikely to increase the overall findings.

3.13.39. This is a common thread from each of the host authorities who all express concern that by selecting a 2km study area, all the other solar NSIPs are excluded from assessment. In addition, that by assessing the proposed development from a series of fixed points, it does not properly engage with how a receptor moving through the area would experience the changes that

would arise both within the Order limits, but also further afield when travelling across the area and encountering a series of solar projects.

3.13.40. WLDC state that the site would be the first project people would see when travelling from the south east into West Lindsey, after which solar farm developments extend as far as Gainsborough 24km away, this would create "solar farm fatigue"

3.13.41. WLDC consider these visual effects to be unacceptable when assessed against policy, it considers that there must be a tipping point at which the landscape character is unable to reasonably accommodate further change and that the One Earth project breaches this tipping point.

3.13.42. WLDC maintain in their Closing Statement that the cumulative effects of other NSIP projects have not been fully assessed in light of the timeline that other projects are now likely to follow. [REP7-050]

3.13.43. WLDC's closing position is that the cumulative construction period has not been fully considered, particularly the likely traffic impacts in respect of the delayed timetables for other projects.

3.13.44. The impacts of all of the NSIPs against the baseline of a rural agricultural environment will be significant and harmful, including the construction phase. From the parameters for the 5 NSIPs either consented, or in examination a simple 'staggering' of development within the 5 year validity period for each consent could lead to construction activity occurring up to 2033.

3.13.45. During the examination, the landscape and visual impact of the proposed development on its surroundings was a matter of concern for a number of IPs including [RR-030, RR-071, RR-053, RR-136, RR-152]

3.13.46. A number of local residents including [RR-089, RR-053, RR-094, RR-122] drew attention to the perceived impact the proposed development would have on their daily lives. In particular, the loss of the areas rural setting and the industrialisation of the countryside, which in combination with the large number of other solar schemes in the vicinity would lead to a fundamental change in character, living conditions and would adversely affect amenity and enjoyment of people's homes.

Applicants Response

3.13.47. The applicant explains that the assessment of cumulative effects considers the cumulative effects of the proposed development alongside other cumulative developments identified within the study area. It identifies, for each receptor, the areas where the predicted effects of the proposed development could interact with effects arising from other cumulative developments on the same landscape receptor on a spatial and/ or temporal basis.

3.13.48. The applicant concludes in summary, due to the intervening vegetation and the distance between the One Earth site and the other developments identified, the effects on landscape receptors do not increase as a result of

the introduction of the proposed development alongside the short list of cumulative developments set out in the ES

3.13.49. The applicant explained during the examination how its approach to visual assessment aligns with industry guidance in ensuring the most important issues including how the sequential and varying experiences are reported. The approach to visual assessment is provided within the Applicant Response to Local Impact Reports [REP2-083] at LIR121.

3.13.50. The applicant maintains the LVIA [REP1-025] focuses on visual receptors that are likely to be affected at a specific viewpoint in line with GLVIA3 (paragraph 6.31). The viewpoints have been selected following consultation with the local authorities. In recognition of the sequential and varying views that visual receptors may experience of the proposed development when travelling through the landscape, more than one representative viewpoint has been provided for some of the receptors. As such the visual experience can be understood.

3.13.51. The applicant response [REP6-056] to WLDC submission at D5 [REP5-024]. The applicant states it has considered the cumulative landscape and visual impacts at ES Chapter 18 This focusses on the potential for significant cumulative impacts on the landscape and visual receptors within a 2km radius of the Order limits (including users of the A1133) as this was considered to be the extent over which significant landscape and visual cumulative effects could arise based on the standalone effects of the proposed development, available evidence from other nearby solar NSIPs and the professional judgement of the LVIA author.

The ExA's Consideration

3.13.52. The applicant has explained during the Examination how its approach to cumulative assessment aligns with the related PINS Advice, and the approach adopted by other solar DCO schemes that have been consented in the wider area. Further information regarding the applicant's position on the approach to cumulative assessment is provided within the applicant's response to Local Impact Reports [REP2-083] at LIR122.

3.13.53. There are a large number of solar farms in Lincolnshire in particular, but in the vicinity of this site more generally. This issue is specifically identified by the WMS as referenced by the Councils in their LIRs and subsequent submissions.

3.13.54. It is clear in our judgement that if all the schemes now consented go ahead there will be a step change in the character of the area. From one which is predominantly agricultural and rural in nature to that of a mixed agricultural solar landscape.

3.13.55. The ExA are also of the view that the assessment undertaken on behalf of the Councils in undertaking a review of the effects has been done in a way which recognises how people move through a landscape. This is more reflective of the actual appreciation that people have and as a consequence

better reveals the consequential effects than the typical approach adopted by the applicant and which has been accepted as normal practice for previous DCOs.

3.13.56. This is not to criticise the approach of the applicant which in the ExA's judgement has followed the guidance from the landscape institute in undertaking the assessment in the way it has. In our judgement the approach adopted by the Councils goes a step further in developing an understanding of the effect as people would experience it.

3.13.57. Having said that, despite the difference in approach the conclusions of both parties are broadly similar, and the applicant has concluded that during construction, and operation there would be significant adverse effects in a variety of locations both on landscape character and visual amenity.

3.13.58. During construction and up to the point where landscape mitigation has matured (approximately year 15) the ExA consider there would be significant change from a rural agricultural landscape to that of a solar and agricultural landscape, with large arrays of solar panels interspersed with power conversion stations. As with the Tillbridge case referred to during the examination, the ExA agree that the focus on individual viewpoints downplays the sequential cumulative effects which would be experienced.

3.13.59. This harm would be particularly harmful in the first 15 years.

Cumulative loss of BMV

3.13.60. The ExA has set out in section 3.9 agriculture and soils of this report an assessment of the cumulative effects on BMV. This section is here for completeness and should be read in conjunction with section 3.9.

3.13.61. Four of the host authorities WLDC [RR-032] BDC [AS-002] NSDC[RR-135] NCC [RR-154] raised concern in respect of the cumulative loss of BMV in RRs. This was followed up in the LIR from LCC [REP1-089].

3.13.62. LCC note that over the full development site 170.81ha of BMV land would be permanently removed from use due to construction of the BESS and substation facilities and ecological enhancement measures. Of the land, which is defined as ecological enhancement areas and mitigation, 42% of this is identified as BMV.

3.13.63. LCC go on to say that according to the Institute of Environmental Management & Assessment (IEMA) Guide 'A New Perspective on Land and Soil in Environmental Impact Assessment' (February 2022) 'the permanent loss, or reduction in quality, of more than 20ha of agricultural land due to development is of very high magnitude' which is acknowledged as 'major' in Table 11.7 of [APP-047].

Applicant's Response

3.13.64. A detailed assessment of possible cumulative impacts relating to soil and agricultural land has been completed in Chapter 8: Land and Soils [APP-

037], with consideration of cumulative effects provided in Chapter 18: Cumulative Effects [APP-047]. This assesses the quantities of BMV land that would be taken out of use due to other developments (both permanently and temporarily) in Lincolnshire and Nottinghamshire. The applicant concludes that the inter-project cumulative effects are considered minimal due to their temporary nature.

3.13.65. EN-3 confirms that land type should not be a predominating factor in determining the suitability of the site location. Other potential locations were not of significantly better BMV profile in comparison to the Order limits, resulting from detailed ALC survey. As the Order limits have evolved, some land parcels of ALC Grade 2 have been removed in seeking to avoid and minimise impacts to BMV land.

3.13.66. The area of BMV agricultural land within Lincolnshire is estimated to be in the region of 402,900 ha, as such there is only a very small percentage of this BMV that would be affected (based on the areas of BMV land within the Order limits, the temporary change in land use as a result of the proposed development will affect 0.03% of BMV land within Lincolnshire and 0.5% of BMV land within Nottinghamshire).

3.13.67. Loss of BMV has in the applicant's view been minimised.

ExA's Consideration

3.13.68. In respect of BMV the ExA recognise that this is a large scale proposal and in combination with other projects in both Lincolnshire and Nottinghamshire the scale of loss of BMV should be regarded as significant.

3.13.69. This cumulative loss does not in our judgement meet a trigger point as suggested by WLDC, this is not the test that EN-1, EN-3 or the NPPF sets. The ExA are content the applicant has undertaken a reasonable and proportionate assessment of sites in the area in an attempt to avoid and minimise the effect on or loss of BMV land.

3.13.70. In an area such as this where the proportion of BMV land is so high, it is in the EXA's judgement inevitable BMV would be affected. The approach the applicant took has met with the policy tests in these circumstances. The ExA note that even when taken with the loss of other areas of BMV which have been permitted as part of the other nearby NSIPs, the impact in a regional and national context would not be significant.

Transport and traffic

3.13.71. In the WLDC final SoCG [REP8-008] WLDC maintain that the application assesses and proposes two construction traffic route options. As both options have been demonstrated to be viable by the applicant, WLDC considers that there is no compelling reason to propose both routes, and that the 'Proposed Access Route 2', using the M18 to access the site from the west, should be the only option used. This would avoid potential significant cumulative construction traffic impacts along the A15, the A46 Lincoln bypass and the A57 from Lincoln to the site.

3.13.72. The avoidance of 'Proposed Access Route 1' would minimise the impacts upon communities in terms of disruption, noise and air quality impacts, and additional traffic management that could extend for a period of 5-10 years should all five NSIP projects overlap/stagger their construction phases.

Applicant's response

3.13.73. The construction access routes are described in the Transport Assessment [REP5-030]. This indicates access primarily from the south and east, with no access proposed from the A15.

3.13.74. Cumulative traffic matters have been considered, and the assessment is based upon the published dates of construction, as per standard transport planning guidance. As such, no further assessment is considered reasonable or necessary.

3.13.75. A Joint Interrelationship Report [REP1-074] considers the cumulative effects of the nearest NSIP solar schemes located within 16km of the Order limits. and an update to the Transport Assessment [REP1-045] incorporating committed developments was provided. The findings from both these assessments confirm there are no inter-project cumulative significant effects on any environmental matter.

The ExA's Consideration

3.13.76. The applicant's stated intention to pursue joint construction traffic measures cannot be given weight as it is not secured in combination with a commitment from other parties. Nevertheless, given that both highway authorities raised no objection to either the assessment, or the conclusions reached, the ExA can find no reason to disagree with the conclusions reached in the ES, despite the ongoing concerns of WLDC.

3.13.77. With the CTMP secured through the rDCO the applicant will need to secure approval from the relevant planning authority in advance of construction commencing. In this way the highway authorities, who would be cognisant of the positions of other schemes at the time this is submitted would have an appropriate method to manage transport matters.

3.13.78. The ExA are therefore satisfied that the proposed development would not lead to any significant cumulative transport or access issues during any phase of the proposed development.

Extent of flooding in the River Trent catchment

3.13.79. Mr Fox [REP3-100] raised concerns with regard to the cumulative effect of flood risk on the area, with the assessment being undertaken in isolation. The absence of a wider regional assessment which should consider the collective effect of these schemes Mr Fox argued was a significant oversight. This in conjunction with his criticism on methodology presented a significant increase of flooding risk in the River Trent catchment.

3.13.80. This concern is further expanded upon in [REP3-101] which indicates further shortcomings in the approach by not following PINS Advice Note 7 in fully assessing the likely cumulative effects of the projects expected.

3.13.81. This Mr Fox argues [REP3-103] would be exacerbated by the deficiencies in local authorities' resources and capabilities to provide appropriate governance and oversight.

3.13.82. These arguments are expanded upon in [REP4-074] and [REP4-077] which further argue the submission precludes an assessment of other projects giving a deficit of information such that the overall cumulative effects of the projects in this area that could affect the water environment cannot be fully understood, and consequently cannot provide evidence that there would not be a cumulative adverse effect.

3.13.83. Mr Fox made further submissions [AS-061 and AS-062] which additionally raised concerns with regard to the cumulative assessment and the deficiency he considered exists in this respect.

3.13.84. SCPC [REP6-060] consider the hydrological assessment to be at a superficial level and that the applicant has not demonstrated the mitigation hierarchy has been appropriately followed by avoiding areas at risk in the first instance.

3.13.85. SCPC go on to state in [REP6-063] that in the absence of a meaningful cumulative FRA the applicant has failed to comply with EN-1 or EN-3 which require the cumulative effects to be assessed quantitatively where they may materially alter risk. This position was maintained at the end of the examination in the SCPC closing statement [REP8-011].

3.13.86. In light of these concerns the ExA sought the views of the Environment Agency as part of ExQ3 [PD-017] who provided a detailed explanation with regard to the criticisms made to the cumulative effects in the Trent catchment [REP6-078] and why it did not agree the criticisms were valid.

3.13.87. The EA SOCG [REP7-038] went on to confirm there were no cumulative flood risk effects anticipated. This assumes that all nearby developments implement appropriate drainage strategies for surface water run-off in line with the NPS or NPPF, ensuring flood risk is not worsened for adjacent sites. Additionally, other developments must ensure their proposals do not exacerbate fluvial flood risk. This approach is consistent with the SoS Decision Letter for Tillbridge Solar Project (October 2025) [EN010142].

3.13.88. The final SoCG with NSDC [REP7-030] confirmed agreement with the applicant technical note at Deadline 4 – Inter-project Effects with other NSIP and Major Development Schemes [REP4-050] – which set out the approach that was taken to assess the cumulative applications to create the short-list taken forward within the Environmental Statement for the One Earth Solar Farm.

3.13.89. NCC [REP7-028] confirmed [REP4-050] considers relevant NSIPs within the area and this is a suitable basis for assessing cumulative impacts and NCC accept that the management measures prescribed in the management plans, together with the applicant's commitment to work collaboratively with other developers, will control potential cumulative impacts in the majority of cases.

3.13.90. In the WLDC final SoCG [REP8-008] also agree the technical note submitted by the applicant at Deadline 4 [REP4-050] was an appropriate basis for the cumulative assessment.

Applicant's Response

3.13.91. In [REP5-072] the applicant states the proposed development alongside other relevant development proposals have been considered in [REP4-016]. At Issue-Specific Hearing 2, it was agreed with the Host Authorities that the approach to the assessment was appropriate, which includes the assessment of likely significant cumulative flood effects.

3.13.92. This approach is consistent with the decision for the Tillbridge Solar Project in October 25 [EN010142], in which the SoS stated that no cumulative effects were likely "there is an assumption that all other development in proximity to the proposed development will have an appropriate drainage strategy to accommodate surface water run-off in accordance with either the NPS or the NPPF. The ExA stated that this should make flood risk no worse for any adjacent development. In addition, the ExA stated that the other developments will have to ensure that their sites will not exacerbate fluvial flood risk to other developments".

The ExA's Considerations

3.13.93. The applicant provided detailed responses to submissions in respect of flood risk throughout the examination, and in direct response to the ExA's requests to give detailed responses in respect of the extensive concerns from IPs on these matters.

3.13.94. This in conjunction with detailed responses from the Environment Agency give the ExA confidence that the advice received has carefully assessed the submissions made.

3.13.95. Other developments proposed within the vicinity of the proposed development and within the River Trent catchment would each need to have a drainage strategy to manage surface water run off in line with either the NPS or NPPF.

3.13.96. At the close of the examination the SoCG submitted by each of the host authorities and the EA had agreed the position in respect of the cumulative position with regard to the assessment of and risk associated with the proposed development and other relevant projects.

Cumulative Waste

3.13.97. LCC final SoCG [REP7-026] LCC request further consideration of cumulative impacts alongside other similar projects in the area, particularly in terms of PV panel waste. The applicant stated that the Cumulative Impact Assessment in terms of waste was set out in Table 1-6 of the Materials and Waste Impact Assessment [REP6-014].

3.13.98. The table considers the waste generated from other Solar PV schemes in Lincolnshire and Nottinghamshire. The assessment shows that under the realistic worst case (with 70% waste recovery), cumulative impacts would not be significant.

3.13.99. NCC also expressed concern [REP3-085] with regard to the ongoing capacity of waste NCC recognises that the assessment determined the waste receptor sensitivity, landfill capacity, was very high and there was recognition that non-hazardous capacity could be reduced in the future. However, in paragraph B 2.2.4 of [APP-082] this states that new landfill capacity will be consented to replace what has been used up and so it is assumed that non-hazardous capacity will remain the same as the current baseline. NCC wished to raise that any new landfill capacity in Nottinghamshire would be difficult to obtain due to geological and ecology constraints, with this a similar issue across many Waste Planning Authorities. The most likely scenario therefore would be that some landfill capacity may exist, but at a much limited capacity therefore demonstrating the need to develop recycling facilities for solar panels.

Applicant's Response

3.13.100. The applicant has updated the outline OEMP to insert a new section which includes a commitment to provide an annual planning maintenance schedule. This would require the applicant to report to the relevant planning authorities on its expected activities in the upcoming twelve months, including waste generation.

3.13.101. The Outline Site Waste Management Plan (oSWMP) [REP6-030] summarises the anticipated waste streams from construction. Paragraph 4.1.2 states that this table will be updated by the Principal Contractor during the development of the SWMP.

3.13.102. Details of expected waste arisings, and of their proposed fate, from operation and decommissioning will be included in the OEMP and DEMP and outlined below.

3.13.103. The Outline Operational Environmental Management Plan (REP1-049] updated at Deadline 1 states in paragraph 2.9.5:

3.13.104. "To ensure the cumulative generation of waste is managed appropriately, the applicant commits to working collaboratively to:

- Share data and reporting on waste types and volumes to support regional waste planning and avoid overburdening local waste infrastructure;

- Engage with the host authorities and waste planning bodies to ensure consistency with regional waste management strategies and capacity constraints; and
- Review and update waste mitigation measures regularly through continued dialogue with other developers post consent."

3.13.105. These commitments are also set out in the Outline Decommissioning Environmental Management Plan (oDEMP).

ExA's Considerations

3.13.106. The ExA are satisfied the applicant has appropriately assessed the likely waste arisings from the proposed development in conjunction with other relevant projects in line with the requirements of EN-1.

3.13.107. The applicant has also set out the commitments to recovery and recycling in the oDEMP [REP7-016] oSWMP [REP6-030] and oOEMP [REP6-024] where it is committed to 100% reuse and recycling of solar panels during decommissioning.

3.13.108. In order to ensure cumulative waste generation is managed appropriately the applicant has also committed to

- Share data and reporting on waste types and volumes to support regional waste planning and avoid overburdening local waste infrastructure
- Engage with the host authorities and waste planning bodies to ensure consistency with regional waste management strategies and capacity
- constraints
- Review and update waste mitigation measures regularly through continued dialogue with other developers post-consent.

3.13.109. In addition, the ExA recognise that each of these outline management plans prepare the framework for the preparation of detailed management plans which require approval of the appropriate local planning authority. This is secured through requirements 13, 14 and 20 of the dDCO.

CONCLUSIONS

3.13.110. The ExA is satisfied that the potential intra-project effects arising from the accumulation of various effects of the proposed development have been adequately assessed.

3.13.111. The ExA is satisfied that the applicant's inter-project assessment, as set out in ES Chapter 18 [REP6-012] together with the Inter-project effects report [REP6-054] provides sufficient information to understand how the effects of the proposed development would combine and interact with the effects of other development, as required by the EIA Regulations and NPS EN-1.

3.13.112. Even though significant adverse effects would not be avoided entirely the ExA have found that reasonable steps have been taken to avoid and minimise the magnitude of those effects where opportunities to do so exist. All other duties upon the applicant to consider cumulative effects in respect

of specific topics, as set out in EN-1 and EN-3 have been undertaken appropriately.

3.13.113. The ExA find that overall, the applicant's cumulative effects assessment (as amended during the examination) fulfils the requirements of the EIA Regulations and meets the tests set out in EN-1 and EN-3. As some residual significant adverse cumulative effects remain after mitigation and having particular regard to the cumulative loss of agricultural land including BMV land, the ExA considers that matters relating to cumulative effects attract moderate weight against the making of the Order.

4. FINDINGS AND CONCLUSIONS IN RELATION TO HABITATS REGULATIONS ASSESSMENT

4.1. INTRODUCTION

4.1.1. This Chapter sets out the Examining Authority's (ExA's) analysis and conclusions relevant to the Habitats Regulations Assessment (HRA). This will assist the SoS, as the competent authority, in performing their duties under The Conservation of Habitats and Species Regulations 2017 ('The Habitats Regulations').

4.1.2. This Chapter is structured as follows:

- Section 1.2: Findings in relation to Likely Significant Effects on the UK National Site Network and other European sites
- Section 1.3: Examination Matters
- Section 1.4: Summary of findings in relation to adverse effects on integrity
- Section 1.5: HRA conclusions

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

4.1.4. For the purpose of this report, in line with The Habitats Regulations and relevant Government policy, the term 'European sites' includes Special Areas of Conservation (SAC), candidate SACs, proposed SACs, Special Protection Areas (SPA), potential SPAs, listed and proposed Ramsar sites and sites identified or required as compensatory measures for adverse effects on any of these sites.

4.1.5. Policy considerations and the legal obligations under The Habitats Regulations are described in Chapter 4 of this Report.

4.1.6. The ExA has been mindful throughout the examination of the need to ensure that the SoS has such information as may reasonably be required to carry out their duties as the competent authority. We have sought evidence from the applicant and the relevant Interested Parties (IPs), including Natural England (NE) as the Appropriate Nature Conservation Body (ANCB), through written questions and ISHs.

4.2. RIES AND CONSULTATION

4.2.1. The ExA produced a Report on the Implications for European Sites (RIES) [PD-012] which compiled, documented, and signposted HRA-relevant information provided in the DCO application and examination representations up to Deadline 3 (16 September 2025). The RIES was issued to set out the ExA's 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 30 September 2025 and 14 October 2025.

4.2.2. Natural England [REP4-067] stated that, following its review of the RIES, it considered the document to be consistent with previous comments provided by Natural England and therefore had no further comments to make.

4.2.3. The ExA's recommendation is that the RIES, and consultation on it, may be relied upon as an appropriate body of information to enable the Secretary of State to fulfil their duties of consultation under regulation 63(3) of The Habitats Regulations, should the SoS wish to do so.

PROPOSED DEVELOPMENT DESCRIPTION AND HRA IMPLICATIONS

4.2.4. The proposed development is described in Chapter 2 of this Report.

4.2.5. The spatial relationship between the Order Limits of the proposed development and European sites is shown in figure A1 of the Shadow Habitat Regulations Assessment [APP-165].

4.2.6. The proposed development is not directly connected with, or necessary to, the management of a European site. Therefore, the SoS must make an 'appropriate assessment' of the implications of the proposed development on potentially affected European sites in light of their Conservation Objectives.

4.2.7. The applicant's assessment of effects is presented in the following application document(s):

- Shadow Habitat Regulations Assessment [APP-165], updated at DL1 [REP1-019] and DL2 [REP2-019] referred to hereafter as the applicant's HRA Report.

4.2.8. The applicant's submitted HRA report [APP-165] did not contain a figure to identify the European sites considered in the assessment. At ExQ1, the ExA requested information to show the proposed development in relation to European sites [PD-010, Q8.0.1]. The locations of these sites relative to the proposed development were subsequently provided by the applicant as figure A.1 of the HRA Report [REP1-019].

4.2.9. The applicant did not identify any Likely Significant Effects (LSE) on non-UK European sites in European Economic Area States in its HRA Report [APP-165] and there were no potential LSE identified by any IP during the examination. As such, only UK European sites are addressed in this report

4.3. SUMMARY OF HRA MATTERS CONSIDERED DURING THE EXAMINATION

4.3.1. The main HRA matters raised by the ExA, Natural England (NE) and other IPs and discussed during the examination were:

- impacts to sea lamprey and river lamprey qualifying features of the Humber Estuary SAC and Humber Estuary Ramsar Site from construction pollutants
- impacts to sea lamprey and river lamprey qualifying features of the Humber Estuary SAC and Humber Estuary Ramsar Site from electro-magnetic fields (EMF) during operation

4.3.2. These matters are discussed in the RIES [PD-012] and in the sections below.

4.4. FINDINGS IN RELATION TO LIKELY SIGNIFICANT EFFECTS (LSE)

4.4.1. Under regulation 63 of The Habitats Regulations, the competent authority must consider whether a development would have Likely Significant Effects (LSE) on a European site, either alone or in combination with other plans or projects. The purpose of the LSE test is to identify the need for an 'appropriate assessment' (AA) and the activities, sites or plans and projects to be included for further consideration in the AA.

4.4.2. The European sites and qualifying features that were considered in the applicant's assessment of LSE are presented in section 3 of the HRA Report [APP-165]. The applicant's HRA Report sets out the methodology applied to determining what would constitute a 'significant effect' within its HRA Report [APP-165].

4.4.3. The HRA Report identified two European Sites within the UK National Site Network for inclusion within the assessment:

- Humber Estuary SAC; and
- Humber Estuary Ramsar Site

4.4.4. No further matters have been raised in the examination in relation to the applicant's approach to identification of European sites.

LSE FROM THE PROPOSED DEVELOPMENT ALONE

4.4.5. The applicant identified potential impacts of the proposed development considered to have the potential to result in likely significant effects (LSE) alone in section 3 of the HRA Report [APP-165].

4.4.6. The impact pathways considered by the applicant to have the potential to result in LSE are:

- Noise and vibration during construction
- Pollutant loss from dust, runoff and hydrocarbons during construction
- Barrier impacts from EMF during operation

4.4.7. The applicant's HRA Report concluded potential LSE from the proposed development alone on the river lamprey and sea lamprey qualifying features of:

- Humber Estuary SAC
- Humber Estuary Ramsar Site

4.4.8. Natural England [RR-085] confirmed agreement with the conclusion of LSE on the river lamprey and sea lamprey qualifying features of the Humber Estuary SAC and Ramsar Site.

LSE FROM THE PROPOSED DEVELOPMENT IN COMBINATION

4.4.9. The applicant addressed potential in-combination effects arising from the proposed development within section 4 of the HRA report [APP-165] which sets out the methodology applied.

4.4.10. The applicant's HRA report [APP-165] did not include a list of other projects or plans considered in the HRA assessment of in-combination effects. In ExQ1 [PD-010, Q8.0.4], the ExA requested clarification on which projects or plans were assessed. These were subsequently detailed in section 4.1.11 of the updated HRA Report [REP1-019], with their locations illustrated in ES Figure 18.9 [APP-079] updated by Revisi0n 2 [REP2-030].

4.4.11. The applicant concluded potential for in-combination effects associated with plans or projects using trenchless drilling under the River Trent as this river is functionally linked for lamprey travelling to and from the Humber Estuary SAC and Ramsar Site.

4.5. EXAMINATION MATTERS

WATER QUALITY IMPACTS FROM CONSTRUCTION POLLUTANTS

4.5.1. Nottinghamshire County Council (NCC) [RR-154] questioned whether a 16m buffer from the River Trent would be adequate to prevent impacts on species supported by the river. In ExQ1 [PD-010, Q8.0.7] the ExA asked the applicant and NE to respond to NCC's concerns and justify why a 16m buffer from the River Trent is considered sufficient to prevent impacts on migratory lamprey from construction runoff and drilling breakout fluid.

4.5.2. The applicant [REP2-084] responded that construction activities near the River Trent would involve a trenchless crossing, and surface works would be situated at a sufficient distance from the river to enable effective control of construction runoff. The applicant acknowledged the risk of drilling fluid breakout associated with horizontal directional drilling but noted that this would be mitigated by measures including a drill path at least 5 m below the riverbed and management and monitoring protocols set out in the outline CEMP [REP1-047].

4.5.3. NE [REP2-099] confirmed they are satisfied that the set off distance of 16m combined with measures in the outline CEMP [REP1-047] are sufficiently precautionary to avoid impacts to functionally linked habitat of migratory lamprey species using the River Trent. NCC [REP8-006] agreed with this conclusion.

EMF BARRIER IMPACTS TO MIGRATORY FISH (DEPTH OF CABLES)

4.5.4. In ExQ1 [PD-010, Q8.0.3], the ExA requested the applicant provide evidence that burying transmission cables at a depth of 5 metres would prevent electromagnetic fields (EMF) and heat from affecting adult or juvenile lamprey.

4.5.5. In response [REP2-084], the applicant cited the Risk Assessment of EMF Impacts on Fish submitted during the West Burton Solar Project examination. The assessment concluded that electric fields from the proposed cable were unlikely to be detectable beyond the cable's armouring and certainly not at a 5-metre burial depth beneath the riverbed. Consequently, EMF effects on fish are considered unlikely.

OPERATIONAL MONITORING OF EMF IMPACTS TO MIGRATORY FISH

4.5.6. NCC [RR-154] expressed concern that a five-year monitoring period may be inadequate given the lamprey's life cycle. In ExQ1 [PD-010, Q8.0.8], the ExA requested the applicant and NE to address these concerns and explain the rationale for the proposed five-year monitoring period to assess potential EMF-related barrier impacts on lamprey populations in the River Trent.

4.5.7. The applicant [REP2-084] responded that the five-year monitoring period was established based on agreements reached with NE, the Environment Agency, and other Nationally Significant Infrastructure Projects involving transmission cables beneath the River Trent. This approach aligns with projects such as the West Burton Solar Project, where similar conclusions were accepted.

4.5.8. NE [REP2-099] confirmed that the five-year timeframe for monitoring is consistent with the approach taken by other projects involving trenchless cable crossings under the River Trent and expressed satisfaction with the proposed duration. This position was further confirmed in the SoCG with NE Item 02-01 [REP7-036]. NCC [REP8-006] agreed with this conclusion.

SUMMARY OF FINDINGS IN RELATION TO ADVERSE EFFECTS ON INTEGRITY (AEOI)

4.5.9. The Humber Estuary SAC and Ramsar Site and qualifying features identified in section 1.2 above were further assessed by the applicant to determine if they could be subject to AEoI from the proposed development, either alone or in-combination. The assessment of AEoI was made in light of the conservation objectives for the European site.

NOISE AND VIBRATION (CONSTRUCTION)

4.5.10. The applicant's HRA Report [APP-165] states that construction activities may disturb adult and juvenile lamprey, particularly due to noise and vibration from trenchless crossings used to install transmission cables beneath the River Trent and minor watercourses. Additional disturbance could result from installing bridges across minor watercourses and wet ditches to facilitate access. While construction would generate noise and vibration,

setbacks from bank tops would help minimize impacts and each crossing would be completed quickly, typically within 24–48 hours.

4.5.11. Bridge installations would also be brief, with footings installed within one to three days. The short duration of these works is expected to limit disturbance to river or sea lamprey to the point where it would not result in a reduction in fitness of the local population or any individuals.

POLLUTANT LOSS FROM DUST, RUNOFF AND HYDROCARBONS (CONSTRUCTION)

4.5.12. The applicant's HRA Report [APP-165] (updated during examination) [REP2-019] states that construction activities could introduce fine materials and other pollutants into freshwater habitats, both from land-based runoff and potential drilling fluid breakout during trenchless crossings. Construction site management measures would prevent chemicals (including hydrocarbons), dust and fines from causing detectable changes in water quality. Appropriate design and management of trenchless crossings mean that the risk of drilling fluids reaching the surface is very low. Environmental measures to manage these risks are described within the Commitments Register and secured through the outline CEMP [REP1-047] included as part of the DCO submission.

EMF PRODUCTION (OPERATION)

4.5.13. The applicant's HRA Report [APP-165] states that transmission cables would emit electromagnetic fields (EMF) and heat during operation, which could influence lamprey behaviour and movement. Cables would be installed via trenchless crossing at least 5 m below the River Trent bed and 2.5 m below the bed of smaller water features. EMF and heat effects diminish rapidly with distance and would be unlikely to be detectable beyond approximately 1.5 m from each cable. At the specified depths, no significant impacts would be expected. To support future assessment of lamprey and EMF, monitoring would be undertaken in coordination with the Environment Agency and Natural England, consistent with requests made of other solar developers in the area.

4.6. HRA CONCLUSIONS

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

4.6.2. The applicant's HRA Report [APP-165] identified two European site for inclusion in the assessment:

- Humber Estuary SAC
- Humber Estuary Ramsar Site

4.6.3. The applicant determined that a Likely Significant Effect could not be excluded in relation to the river and sea lamprey qualifying features of the

Humber Estuary SAC and Ramsar Site. Consequently, these features were subject to an Appropriate Assessment.

4.6.4. Following the application of avoidance measures and further analysis, the applicant ruled out adverse effects on the integrity of the Humber Estuary SAC and Ramsar Site.

4.6.5. Subject to the applicant's commitment to a five-year monitoring programme to assess the effects of EMF on lamprey, NE agreed [REP7-036] that it is likely that there would be no adverse effect on the integrity of the Humber Estuary SAC and Ramsar Site.

4.6.6. The ExA is satisfied that the correct European sites and qualifying features have been identified for the purposes of assessment, and that all potential impacts which could give rise to significant effects have been identified.

4.6.7. The ExA's findings are that adverse effects on integrity on all the European sites considered in the HRA Report can be excluded from the proposed development when considered alone or in-combination with other plans or projects from the impact-effect pathways assessed, subject to the mitigation measures to be secured in the Recommended DCO.

4.6.8. The ExA therefore considers that there is sufficient information before the SoS to enable them to undertake an appropriate assessment in order to fulfil their duty under the requirements of The Habitats Regulations.

5. CONCLUSION ON THE CASE FOR DEVELOPMENT CONSENT

5.1. INTRODUCTION

5.1.1. This chapter provides an evaluation of the planning merits of the proposed development. It does so in the light of the legal and policy context set out in Chapter 2 and individual applicable legal and policy requirements identified in Chapters 3 and 4.

5.1.2. In addition to the examination of the application as submitted, the ExA gave consideration to the implications of removing that part of the proposed development on land identified within FZs 2 and 3. As such we wrote to the applicant [PD-017] asking

"Should the Secretary of State conclude that the Sequential Test has not been passed and the consequential failure of not passing this test outweighs the need for the proposed development, the applicant is asked to consider whether an amendment to exclude panels and associated infrastructure from Flood Zones 2 and 3 would represent the same Nationally Significant Infrastructure Project as originally applied for.
If it would, then the applicant is asked to consider, on a without prejudice basis, the alterations that would be required to the order limits, the Development Consent Order, the Land Plan, the Works Plan, and any other necessary alterations, to accommodate the changes that would be required to the application."

5.1.3. The applicant responded in [REP6-058] maintaining that in its view the sequential test had clearly been passed, that no reasonable alternatives existed that could deliver the same energy as effectively or in the same time frame.

5.1.4. The applicant then indicated that even in the event the SoS were to disagree with the applicant's conclusion on the sequential test, the proposal was designated as a critical national priority (CNP) where s104(3) of PA2008 requires the SoS to decide the application in line with national policy.

5.1.5. The applicant contends that the removal of the panels from FZ2 and FZ3 would lead to a fundamentally different proposal from that applied for.

5.1.6. It would remove 537.7ha of land and 420MW of generating capacity from the development. In these circumstances, no alternative was presented for the SoS to consider.

5.1.7. EN-1 states that the Government has concluded that there is a CNP for the provision of nationally significant low carbon infrastructure. The proposed development is CNP infrastructure as defined in EN-1.

5.1.8. Within this context, this section considers the overall case for development consent, taking into consideration the conclusions reached in relation to the main planning issues.

5.1.9. The Examining Authority (ExA) has taken into account all Relevant Representations, Written Representations and responses to the Examining Written Questions and Rule 17 requests for further information as well as all other representations made during the course of the Examination including the Local Impact Reports (LIRs) from Lincolnshire and Nottinghamshire County Councils, West Lindsey, Bassetlaw and Newark and Sherwood District Councils.

5.2. SUMMARY OF THE MAIN PLANNING ISSUES

THE PRINCIPLE OF DEVELOPMENT

5.2.1. The urgent need for renewable energy generation of all types is established by the NPS EN-1. Large scale solar generation is part of the mix of infrastructure and technology that it is anticipated will deliver this, in line with wider energy and climate objectives. The proposed development would make a meaningful contribution to meeting this need. In this regard the ExA's position is that the proposed development would be in general accordance with the provisions of 2024 NPS EN-1 relating to need.

5.2.2. The ExA is satisfied that there is a compelling and urgent need for the proposed development, supporting the UK's transition towards a low carbon economy and its Net Zero strategy. The need has been demonstrated by the applicant in accordance with the provisions of NPS EN-1, which are important and relevant considerations.

5.2.3. The electricity expected to be generated by the proposed development would make a significant contribution to this overarching need and towards the UK Government's legally binding commitments in achieving Net Zero, commensurate with the size and scale of the proposed development.

5.2.4. The ExA is satisfied that the applicant has considered potential alternatives, in EIA terms, however as referenced in the sequential test section the ExA are not satisfied the applicant has appropriately assed alternatives sequentially in assessing the suitability of sites within flood risk areas, that could be regarded as reasonable and proportionate in line with the policy tests in the NPS and NPPF and NPPG.

5.2.5. This shortcoming has resulted in the selection of a site which is predominantly in FZ 2 and FZ 3, where the ExA are not satisfied the applicant has demonstrated with clear unequivocal evidence that the proposed development would not result in the increase in flood risk elsewhere, be able to continue to operate during all predicted flood events or that safe access to the BESS and substation would remain during a flood event.

5.2.6. Solar photovoltaic (PV) development is identified within EN-1 as a Critical National Priority (CNP). The approach to CNP in policy terms, however, should be applied once an assessment of the full planning balance has been undertaken. This the ExA goes on to set out below.

5.2.7. Should the SoS agree with the ExA in these respects, then in line with the NPS the application should not be approved and the DCO not granted.

THE NEED CASE

5.2.8. The ExA concludes that the applicant has demonstrated that the overarching need argument for the proposed development is robust in terms of meeting the urgent need for renewable and low carbon energy infrastructure.

5.2.9. EN-1 makes clear at paragraph 4.2.6 this need must be given substantial weight in assessing energy infrastructure applications.

5.2.10. The ExA conclude in respect of need that in line with national policy substantial positive weight should be afforded to the need case in the planning balance

THE ENVIRONMENTAL STATEMENT

5.2.11. The ExA considers that the Environmental Statement (ES), as supplemented and amended during the Examination, is sufficient to enable the Secretary of State (SoS) to take a decision in compliance with the EIA Regulations.

5.2.12. The ES is sufficient to describe the Rochdale Envelope for the proposed development and to secure its delivery within that envelope through the provisions of a made DCO.

5.2.13. The ExA has taken full account of all environmental information in its consideration of the application.

HRA CONSIDERATIONS

5.2.14. The proposed development is development for which an HRA Report has been provided, and the ExA has considered this and all relevant documentation in reaching the overall conclusions and recommendations.

5.2.15. The SoS is the competent authority under the Habitats and Species Regulations 2017 (as amended) (Habitats Regulations) and will make the definitive assessment. The ExA considers that there is sufficient information before the SoS to enable them to undertake an appropriate assessment in order to fulfil its duty under the requirements of the Habitats Regulations.

BIODIVERSITY AND ECOLOGY

5.2.16. The EA and NE as statutory regulators and the bodies with responsibilities in respect of ecology and biodiversity have confirmed they are satisfied with the approach the applicant has taken in assessing the effects of the proposed development.

5.2.17. The councils agree with the findings and the approach to secure the mitigation necessary through the management plans secured through the dDCO.

5.2.18. The change from predominately arable agricultural production with periodic ploughing, cultivation and harvesting, to an area predominately covered with solar panels provides the opportunity to increase field margins, increase hedgerows and mixed grassland planting improving the range of plants and biodiversity. This is secured through the commitment to significant BNG.

5.2.19. The ExA agree with the applicant that the proposed development would likely have significant beneficial residual effects on biodiversity and ecology during the operational phase of the proposed development. The ExA also consider that the BNG provisions and extent of habitat provision mean that this enhancement of the local biodiversity and ecology would be further enhanced.

5.2.20. The ExA is satisfied that the proposed development accords with the provisions of NPS EN-1 and EN-3. Given the above measures secured in the rDCO and the opinions of the statutory nature conservation bodies, the ExA conclude that the development is likely to result in a net improvement in the long-term biodiversity and ecology of the site and consequently should be ascribed moderate positive weight in favour of making the development consent order.

LANDSCAPE AND VISUAL

5.2.21. The ExA agrees with the applicant's assessment of effects on landscape character as set out in the ES. The proposed development would result in significant adverse effects on landscape character during construction and operation and that these harms would continue in the specified locations through to year 15 and beyond, despite the provision of mitigation through planting.

5.2.22. The ES has assumed a reasonable growth for this planting over this period. For it to succeed it nevertheless will require monitoring and management. This will be facilitated through the oLEMP secured through the dDCO. The ExA are satisfied that the effects reasonably predict the worst case scenario.

5.2.23. In addition, the scale and extent of the proposed development would lead to significant adverse visual effects and would change from views within an agricultural or rural landscape to a landscape containing a large solar development. This would be particularly noticeable during construction and in the early years of operation in advance of the effect of the mitigating planting maturing sufficiently to take effect.

5.2.24. Visual harm would, however, also remain in the longer term, albeit to a reduced degree once that landscape planting had matured.

5.2.25. We also find that the fencing proposed to mitigate for the glint and glare effects of the solar arrays would be particularly evident and, in our judgement, would create significant visual harm. At 4m in height and in lengths of 240m along the A1133, 315m along the A57, and 482m along the northern side of the railway line east of Far Road Bridge these fences would

be visually prominent features, both alien to the landscape and the character of the area.

5.2.26. The ExA are satisfied that appropriate mitigation can be secured in the relevant control documents and therefore be relied upon to address the landscape and visual effects identified in chapter [REP3-015] as far as possible.

5.2.27. NPS EN-1 recognises that virtually all nationally significant energy infrastructure will have adverse effects on the landscape (paragraph 5.10.5). Nevertheless, the ExA ascribe moderate negative weight to the landscape and visual harm which would be caused by the proposed development.

HISTORIC ENVIRONMENT

5.2.28. As required by Regulation 3 of the Infrastructure Planning (Decisions) Regulations 2010, the ExA has had regard to the desirability of preserving designated heritage assets, including listed buildings and their settings, the character and/or appearance of conservation areas and SAM or their settings.

5.2.29. The ExA agree with the applicant's assessment of the significance of designated heritage assets and NDHA and their settings

5.2.30. In respect of the Scheduled monuments the ExA agree with the conclusions of HE that the proposed development would have significant adverse effect upon the Royal Observation Corps Observation Post and this harm should count against the development in the planning balance.

5.2.31. In respect of archaeology the ExA find that the rDCO would secure methods of further investigation and consequent mitigation which would safeguard these assets. In leaving further work to the detailed design stage the applicant acknowledges that this could have an effect on the timing of future development in the event that anything of significance were to be found.

5.2.32. In respect of Listed Buildings, the ExA are satisfied that the approach the applicant has taken in assessing these assets and the conclusions reached. The applicant acknowledges there would be harm to a number of these individual assets and that harm should be considered in the planning balance.

5.2.33. In respect of Conservation Areas, the ExA agree with the applicant and other parties' conclusions that the proposed development would not adversely affect any Conservation Area. The ExA regard this as having a neutral effect

5.2.34. In respect of NDHA, the ExA are satisfied that the approach the applicant has taken has paid due regard to the extent and nature of the NDHA within or in close proximity to the Order limits.

5.2.35. The ExA are satisfied that the mitigation measures embedded into the rDCO through the supporting environmental management plans and secured

through Requirement 12 would ensure that the heritage assets within the Order limits would be appropriately safeguarded.

5.2.36. Given the requirement to undertake a separate balancing exercise for heritage harm, our consideration of the weight to be attached to the cultural heritage effects of the proposed development is deferred to the final balancing exercise.

TRANSPORT AND ACCESS

5.2.37. We conclude that no evidence has been put before us to suggest any of the access points are at locations where there is an existing road safety problem. We further consider that the powers and requirements proposed in the rDCO would ensure that the detailed design process would deliver safe access points for the proposed development. On this basis we consider that in terms of paragraph 5.14.21 of EN1 the proposed development would be acceptable in terms of its impact on highway safety.

5.2.38. The ExA conclude on traffic and transport that the applicant has had due consideration of the requirements of EN-1 and EN-3 as set out above. We also conclude that there are no significant residual transport effects as a result of the development, whereas construction traffic is likely to have a temporary negative impact on the local network. On that basis we consider that traffic and transport should have a little weight against making the order

AGRICULTURE AND SOILS

5.2.39. Overall taking all the above matters into account, the ExA find that the applicant has taken a reasonable approach to considering the land use impacts of the proposed development, including in respect of BMV. The evidence indicates a significant adverse effect on BMV, but no significant adverse effect on mineral resource. There would also be the potential benefit arising from the reduced use of herbicides and increased soil health that could arise over the operational period.

5.2.40. Accordingly, the ExA are satisfied that the application accords the policy tests in EN-1 and EN-3.

5.2.41. Nor do the ExA consider there to be a conflict with the NPPF as the applicant has in our judgement sought to minimise the quantity of BMV land effected, which aligns with policy despite the significant adverse effect identified above.

5.2.42. The ExA ascribe a moderate negative amount of weight to the adverse effect on BMV and a little positive weight to the potential for the improvement of soil health to land use matters in the planning balance.

HUMAN HEALTH

5.2.43. The ExA notes that the proposed development, particularly during its construction and decommissioning phases, would entail activities that could

give rise to increased noise, dust and traffic, particularly near the proposed work compounds.

5.2.44. The ExA is content that due to the location of the temporary construction compounds, proposed substations and BESS away from most receptors, the nature of the proposed development and the mitigation measures in the management documents secured in the dDCO the overall effects would be acceptable.

5.2.45. The Applicant has demonstrated in [APP-083] that the proposed development would be in accordance with the specific requirements on EMFs and would comply with the ICNIRP 1998 guidelines.

5.2.46. The ExA concludes that the applicant has provided an adequate assessment of human health impacts, including EMFs, and that the proposed development would not give rise to any substantial changes in human health.

5.2.47. The harms that have been identified would be adequately addressed through the control measures that are secured in the applicant's final dDCO. Furthermore, the ExA agrees with the applicant's findings and that the policy tests of NPS EN-1 and NPS EN-3 have been met in regard to human health.

5.2.48. The ExA acknowledges that the proposed development, particularly during the construction phase, and in the early years prior to mitigation planting achieving the desired effect for the longer term would give rise to some localised effects on people's appreciation of the area.

5.2.49. The effects and impacts of a range of issues arising from the proposed development including changes to landscape, noise, socio-economics, and transport has the potential to impact on local residents' health and wellbeing.

5.2.50. The ExA agree with the applicant that there would be adverse effects on health as set out in ES Chapter 16 and that some of these effects would include adverse effects on mental health and wellbeing. Nevertheless, these effects would not be significant and despite the very real concerns expressed by IPs there is no substantive evidence that could indicate a different conclusion could be reached.

5.2.51. There remains a minor residual risk presented by the proposed development overall and this could have an adverse effect on the mental health and wellbeing of local residents, The ExA therefore ascribe a little negative weight against the making of the DCO.

HYDROLOGY, FLOODING AND WATER ENVIRONMENT

5.2.52. The ExA is not satisfied the proposed development would remain safe and operational during its lifetime as set out in paragraph 5.8.36 of NPS EN-1 and notes to table 2 of the Planning Practice Guidance. Accordingly, the ExA concludes the exception test has not been passed.

5.2.53. In all other matters, the ExA finds the proposed development's potential impacts on the water environment, would be satisfactorily mitigated and

managed through the measures and commitments in ES Chapter 7 [REP7-012], the FRA and Outline Drainage Strategy [REP7-010] and the Commitments Register [REP3-059], secured by relevant articles of the dDCO [REP9-006]. Furthermore, the ExA is content that the proposed development would not have an adverse effect on the achievement of the objectives under the Water Framework Directive in relation to relevant waterbodies, with the amendment to requirement 7 of the rDCO (Appendix C).

5.2.54. The ExA notes the residual likely effects on the water environment are identified between neutral and minor adverse in table 7-4 of ES Chapter 7.6 [REP7-012]. While these are reported as not significant in environmental impact assessment terms, they nonetheless carry a degree of harm.

5.2.55. Other than those identified above, the ExA finds that the proposed development satisfies the relevant policies and requirements concerning the water environment as set out in NPS EN-1, NPS EN-3, NPS EN-5, the NPPF and the Local Plans. The ExA further considers that the proposed development generally aligns with other applicable national and local policies and strategies, as well as all other relevant legislation in relation to the water environment, and that there are no other important or relevant considerations.

5.2.56. As the exception test has not been satisfied, in accordance with paragraph 5.8.11 of NPS EN-1, the ExA recommends the proposed development should not be consented in its current form. Should the Secretary of State conclude differently, the ExA considers the risk of flooding to the proposed development, identified policy non-compliance and presence of residual impacts, bear a great negative weight against making the Order with regards to effects on the water environment.

OTHER PLANNING MATTERS

Air Quality

5.2.57. In consideration of the air quality, the ExA has found that the applicant has provided an adequate assessment of air quality. Taking account of the secured mitigation, the proposed development would not give rise to any significant adverse effects in these regards. Accordingly, we have found that the policy tests of NPS EN-1 and NPS EN-3 have been met in regard to air quality.

5.2.58. For these reasons, we conclude that there are no matters relating to air quality effects which would weigh for or against the Order being made and this therefore is classed as neutral in the planning balance.

Carbon and Climate

5.2.59. The ExA concurs with the assessment of the proposed development's effects on climate change as set out in the ES [APP-043]. The applicant's assessment applies appropriate emissions factors, considers worst-case scenarios, and includes sensitivity testing. It demonstrates that the proposed

development would achieve carbon payback within approximately three years of operation, with a significantly lower carbon intensity than conventional fossil fuel generation.

5.2.60. The ExA concludes that the proposed development would contribute positively to climate change mitigation, both in isolation and cumulatively with other similar developments. However, these benefits are considered to be inherently captured within the substantial positive weight already attributed to the need for energy, as set out in NPS EN-1. Accordingly, the ExA does not assign additional weight to climate change effects separately in the overall planning balance, in order to avoid double counting.

Noise and vibration

5.2.61. The ExA considers that the applicant has adequately assessed the noise and vibration effects of the proposed development and has provided sufficient evidence to support the conclusions on those effects.

5.2.62. The ExA concludes that the mitigation measures secured within the dDCO [REP9-006] would avoid any significant adverse impacts on health and quality of life from noise and vibration.

5.2.63. The ExA is satisfied that embedded mitigation measures, as defined by the applicant, as well as the control and management measures set out in the dDCO [REP9-006] would be sufficient to mitigate the adverse effects of the proposed development to an acceptable level.

5.2.64. The noise from the construction, operation and decommissioning phases of the proposed development, both on its own and cumulatively, would remain below the significance thresholds as set out in the NPSE and NPPF.

5.2.65. Overall, the ExA finds that the information provided in terms of noise and vibration meets the requirements of NPS EN-1, NPS EN-3 and NPS EN-5. It would also accord with the NPPF. As such, noise is a matter which the ExA weighs as neutral in the planning balance.

Socio-economics

5.2.66. The ExA agree with the applicant's assessment that there are likely to be economic benefits associated with the jobs created during the construction period.

5.2.67. The ExA are mindful of the concerns expressed by IPs in RRs and subsequent WRs with respect of concerns over potential adverse effects on local business, whether it be tourism related or in one case a stud farm. No definitive evidence was provided, however that could be given weight in the deliberations the ExA need to make in assessing the likely socio-economic effects of the proposed development.

5.2.68. The ExA acknowledge the concerns raised by IPs and the host authorities with regard to the effect of the proposal on indirect jobs, particularly within the agricultural sector. However, the applicant has directed us to evidence to

indicate that whilst a small number of jobs would be lost, a greater number would be created both during the construction period and subsequent operation of the proposed development. While the loss of any job is regrettable, the loss of 7.75FTE jobs is not considered to be significant.

5.2.69. The ExA also consider that the creation of the 15FTE during operation would not be significant and in this respect the ExA would regard this as having a neutral weighting in the planning balance.

CUMULATIVE AND COMBINED EFFECTS

5.2.70. The ExA is satisfied that the potential intra-project effects arising from the accumulation of various effects of the proposed development have been adequately assessed.

5.2.71. The ExA is satisfied that the applicant's inter-project assessment, as set out in ES Chapter 18 [REP6-012] together with the Inter-project effects report [REP6-054] provides sufficient information to understand how the effects of the proposed development would combine and interact with the effects of other development, as required by the EIA Regulations and NPS EN-1.

5.2.72. Even though significant adverse effects would not be avoided entirely the ExA have found that reasonable steps have been taken to avoid and minimise the magnitude of those effects where opportunities to do so exist. All other duties upon the applicant to consider cumulative effects in respect of specific topics, as set out in EN-1 and EN-3 have been undertaken appropriately.

5.2.73. The ExA find that overall, the applicant's cumulative effects assessment (as amended during the examination) fulfils the requirements of the EIA Regulations and meets the tests set out in EN-1 and EN-3. As some residual significant adverse cumulative effects remain after mitigation and having particular regard to the cumulative loss of agricultural land including BMV land, the ExA considers that matters relating to cumulative effects attract moderate weight against the making of the Order.

HERITAGE BALANCE

5.2.74. EN-1 paragraph 5.9.23 states that the SoS must comply with the requirements set out in the Infrastructure Planning (Decisions) Regulations 2010. Regulation 3 requires the SoS to have regard to desirability of: preserving a listed building or its setting or any features of special architectural or historic interest which it possesses; preserving or enhancing the character or appearance of a conservation area; and preserving an affected scheduled monument or its setting.

5.2.75. When considering the impact of a proposed development on the significance of a designated heritage asset, the SoS should give great weight to the asset's conservation. The more important the asset, the greater the weight should be. This is irrespective of whether any potential harm amounts to

substantial harm, total loss, or less than substantial harm to its significance (paragraph 5.9.27).

5.2.76. The SoS should give considerable importance and weight to the desirability of preserving all heritage assets, with any harm or loss requiring clear and convincing justification (paragraph 5.9.28).

5.2.77. EN-1 paragraph 5.9.6 outlines that non-designated heritage assets (NDHA) of archaeological interest, that are demonstrably of equivalent significance to Scheduled Monuments, should be considered subject to the policies for designated heritage assets.

5.2.78. EN-1 paragraph 5.9.32 states that where the proposed development will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of a proposal, including, where appropriate securing its optimum viable use.

5.2.79. EN-1 paragraph 5.9.36 states that, when considering applications for development affecting the setting of a designated heritage asset, the SoS should give appropriate weight to the desirability of preserving the setting of such assets and treat favourably applications that preserve those elements of the setting that make a positive contribution to, or better reveal the significance of, the asset. When considering applications that do not do this, the SoS should give great weight to any negative effects, when weighing them against the wider benefits of the application. The greater the negative impact on the significance of the designated heritage asset, the greater the benefits that will be needed to justify approval.

5.2.80. EN-3, the NPPF and the relevant development plan policies generally reflect the requirements in EN-1 with regard to designated and NDHA.

5.2.81. In section 3.7 the ExA concluded that there would be less than substantial harm to the following designated heritage assets during construction:

- setting of the Whimpton Moor Scheduled Monument
- setting of the Royal Observer Corp Scheduled Monument
- Ragnall House (Grade II)
- Barn at Ragnall Stables (Grade II)
- Ragnall Hall and Attached Outbuildings (Grade II)
- Church of St Leonard, Ragnall (Grade II*)
- Church of St Gregory, Fledborough (Grade I)
- Manor House (Grade II)
- Roman Vexillation Fortress (Scheduled Monument)
- Skegby Manor and Pigeoncote (both Grade II)
- Pigeoncote at Hall Farm (Grade II)

5.2.82. During operation less than substantial harm to:

- setting of the Royal Observer Corp Scheduled Monument
- setting of the Whimpton Moor Medieval Village Scheduled Monument
- Church of St Gregory Fledborough

- Manor House
- Skegby Manor and Pigeoncote

Balance

5.2.83. The proposed development would cause less than substantial harm to the designated heritage assets identified above. We afford great weight to each asset's conservation, in accordance with EN-1. EN-1 explains that this harm should be weighed against the public benefits of the proposal.

5.2.84. In undertaking the heritage balance the ExA has considered the great weight that must be given to the conservation of heritage assets. Set against this is the timely contribution the proposed development would make towards renewable energy generation. In this context, the ExA's view is that, in principle, the harms caused to these heritage assets could, when considered both individually and cumulatively, be outweighed by such benefits.

OVERALL PLANNING BALANCE

5.2.85. In accordance with NPS EN-1 paragraph 4.1.5 the ExA have considered the benefits and adverse effects of the proposed development. In doing so weight has been afforded to the positive and negative effects that would arise.

Table 13 Planning Balance

Issue	Finding	Weighting	Section of the Report
Need	Positive	Substantial (Very Great)	3.2
Biodiversity and ecology	Positive	Moderate	3.5
Climate and carbon	Positive	Not ascribed to avoid double counting with need	3.12
Air Quality	Neutral		3.12
Noise and vibration	Neutral		3.12
Socio economics	Neutral		3.12
Landscape and visual	Negative	Moderate	3.6
Historic environment	Negative	Moderate	3.7
Transport and access	Negative	Little	3.8

Human health	Negative	Little	3.10
Hydrology and hydrogeology	Negative	Great	3.11
Sequential test	Negative	Great	3.4

5.2.86. EN-1 at paragraph 4.1.7 advises the SoS should weigh those effects against the benefits where after mitigation residual harm would continue to occur after the application of the mitigation hierarchy. It is the view of the ExA that in this instance the negative effects outweigh the positive in the overall planning balance.

5.2.87. With great negative weight in respect of hydrology and the sequential test, moderate negative weight in respect of landscape and the historic environment in addition to little negative weight from transport and human health. On the positive side substantial positive weight in respect of need, moderate positive weight in terms of ecology.

5.2.88. Other matters the ExA regard as neutral.

5.2.89. EN-1 goes on to state that for CNP infrastructure it is likely that the need case would outweigh the residual effects in all but the most exceptional cases.

Critical National Priority

5.2.90. While the ExA acknowledge there must be substantial weight in favour of the need argument as prescribed in the NPS, the conflict with national policy in respect of the failure to undertake a sequential test that was both reasonable and proportionate, and the absence of unequivocal evidence that the proposed development would remain safe and operational during its lifetime the ExA regard this as an exceptional circumstance.

5.2.91. There is in the ExA's judgement a clear conflict with paragraph 5.8.36 of NPS EN-1 and the notes to table 2 of the Planning Practice Guidance. Accordingly, the ExA concludes neither the sequential nor the exception test has been passed. As the sequential test has not been satisfied in accordance with paragraph 5.8.10 of NPS EN-1, and the exception test has not been satisfied, in accordance with paragraph 5.8.11 of NPS EN-1, the ExA recommends the proposed development should not be consented in its current form.

5.2.92. EN-1 states at paragraph 3.3.62 "Government has concluded that there is a critical national priority (CNP) for the provision of nationally significant low carbon infrastructure. Section 4.2 states which energy generating technologies are low carbon and are therefore CNP infrastructure."

5.2.93. Paragraph 3.3.63 goes on to say "Subject to any legal requirements, the urgent need for CNP Infrastructure to achieving our energy objectives, together with the national security, economic, commercial, and net zero benefits, will in general outweigh any other residual impacts not capable of

being addressed by application of the mitigation hierarchy. Government strongly supports the delivery of CNP Infrastructure, and it should be progressed as quickly as possible."

5.2.94. Paragraph 4.2.8 states that during decision making, the CNP policy will influence how non-HRA and non -MCZ residual impacts are considered in the planning balance. This is then further developed at paragraphs 4.2.15 - 4.2.17.

5.2.95. In such cases where the impacts remain after mitigation, EN-1 makes clear that these residual impacts are unlikely to outweigh the urgent need for the infrastructure proposed in all but the most exceptional circumstances. It is the ExA's view that the evidence presented falls within what must be regarded as a most exceptional circumstance for a proposal to be presented where the evidence has not been presented that clearly demonstrates that both the sequential and exception tests have been passed.

5.2.96. This the ExA regard as a policy conflict which when applying s104 of PA2008 requires the SoS to reject the application.

5.2.97. In this regard the great negative weight applied to hydrology and the sequential test, the moderate negative weight applied to the landscape, historic environment, and the little negative weight applied to human health and transport results in a planning balance falling on the negative side despite the substantial weight in favour of the need case covered by EN-1 and EN-3, and the fact that such proposals should be regarded as CNP.

5.2.98. EN-1 makes clear that in the event that the planning balance falls on the negative side, then the CNP presumption set out in paragraphs 4.2.15-4.2.17 apply. It is the ExA's view that in the circumstances of this case the applicant has not demonstrated that there would not be unacceptable risks in respect of onshore flood risk.

5.2.99. As such we conclude that the mitigation hierarchy has not been complied with (EN-1 paragraph 4.2.24) in respect of the sequential and exception tests (EN-1 paragraph 5.8.36 et al) and hence it does not meet the requirements for CNP to apply.

5.2.100. If the SoS disagrees with this consideration, then the ExA advise that in the case of CNP there remains an unacceptable risk of inland flooding (EN-1 paragraph 4.2.28) which therefore does not meet the requirements for CNP to apply. There are no other grounds of exception under CNP which are relevant.

5.2.101. Accordingly, the ExA advise that the SoS should not consent the DCO as applied for.

5.3. CONCLUSIONS

5.3.1. Taking the above factors into account and having had regard to all important and relevant matters, the ExA conclude that there is a conflict with national

policy and as such in line with s104 of the PA2008 the DCO should not be granted.

6. LAND RIGHTS AND RELATED MATTERS

6.1. INTRODUCTION

6.1.1. This Section sets out the relevant legislative requirements relating to Compulsory Acquisition (CA) and Temporary Possession (TP), describes the request by the applicant for CA and TP powers, explains the purposes for which land would be required, sets out the examination of the CA and TP case and gives the Examining Authority's (ExA's) conclusions and recommendations.

6.1.2. The case for compulsory acquisition (CA) and temporary possession (TP) has been examined in accordance with the tests in the Planning Act 2008 (PA2008). The Examining Authority (ExA) examined matters relating to:

- the need for the amount of land proposed to be subject to CA and TP
- alternatives in relation to individual plots
- whether the intended use for the plots was clear
- whether funding would be available for CA
- whether the applicant's case for the proposed development would be in the public interest and justify interference with human rights and would accord with the Equality Act 2010
- interference with Statutory Undertakers' (SU) land and apparatus,
- interference with common land, and
- interference with Crown Land.

6.2. LEGISLATIVE REQUIREMENTS

PA2008

6.2.1. CA powers can only be granted if the conditions set out in s122 and s123 of the Planning Act 2008 (PA2008) are met. The relevant guidance should also be taken into account, which is:

- Guidance related to Procedures for the Compulsory Acquisition of Land, DCLG (former Department for Communities and Local Government), September 2013 (the CA Guidance); and
- Infrastructure Planning (Compulsory Acquisition) Regulations 2010 (the CA Regulations).

6.2.2. S122(2) requires that the land must be required for the proposed development to which the development consent relates or is required to facilitate or is incidental to the development or under s122(2)(c) is for replacement land for the Order land under s131 or s132 (a common, open space or fuel or field garden allotment). In respect of land required for the development, the land to be taken must be no more than is reasonably required and be proportionate, as set out in the CA Guidance.

6.2.3. S122(3) requires that there must be a compelling case in the public interest which means that the public benefit derived from the CA must outweigh the private loss that would be suffered by those whose land is affected. In

balancing public interest against private loss, CA must be justified in its own right. That does not mean that the CA proposal can be considered in isolation from the wider consideration of the merits of the project. There must be a need for the project to be carried out and there must be consistency and coherency in the decision-making process.

6.2.4. In balancing public interest against private loss, CA must be justified in its own right. This does not mean, however, that the CA proposal can be considered in isolation from the wider consideration of the merits of the proposed development. There must be a need for the proposed development to be carried out and there must be consistency and coherency in the decision-making process. A conclusion on this matter is reached later in this Section.

6.2.5. S123 requires that one of three conditions in s123(2) to (4) must be met namely that:

- the application for the Order includes a request for CA of the land to be authorised
- that all persons with an interest in the land consent to the inclusion of the provision, or
- that the prescribed procedure has been followed in relation to the land.

6.2.6. A number of general considerations also have to be addressed in accordance with legal duties on decision-makers:

- all reasonable alternatives to CA must have been explored;
- the applicant must have a clear idea of how it intends to use the land and to demonstrate that funds are available to meet the compensation liabilities which might flow from the exercise of CA powers; and
- the decision-maker must be satisfied that the purposes stated for the acquisition are legitimate and sufficiently justify the inevitable interference with the human rights of those affected.

STATUTORY UNDERTAKERS

6.2.7. Section 127 applies to statutory undertakers' land. Section 127(2) and (3) state that an order granting development consent may include provisions authorising the CA of such land only to the extent that the Secretary of State (SoS) is satisfied that it can be purchased and not replaced without serious detriment to the carrying on of the undertaking or if purchased it can be replaced by other land belonging to, or available for acquisition by, the undertakers without serious detriment to the undertaking.

6.2.8. Similarly, s127(5) and (6) of PA2008 provide that an order granting development consent may only include provision authorising the CA of rights belonging to statutory undertakers to the extent that the SoS is satisfied that the right can be taken without serious detriment to the carrying out of the undertaking, or that any detriment can be made good.

6.2.9. Section 138 of PA2008 relates to the extinguishment of rights on statutory undertakers' land. It states that an order may include a provision for the

extinguishment of the relevant rights, or the removal of the relevant apparatus only if the SoS is satisfied that the extinguishment or removal is necessary for the purposes of carrying out the development to which it relates.

TEMPORARY POSSESSION (TP)

6.2.10. TP powers are capable of being within the scope of a DCO under Part 1 of Schedule 5 to PA2008 which allows for the suspension of interests in or rights over land compulsorily or by agreement. PA2008 and the CA Guidance do not contain the same level of specification and tests to be met in relation to the granting of TP powers, as by definition such powers do not seek to deprive or amend a person's interest in land permanently. However, TP is an interference with human rights of Affected Persons (AP) and so there must be adequate justification of the scope of the powers and the degree of interference for them to be justified.

COMPENSATION

6.2.11. S120(5)(a) PA2008 provides that a DCO may apply, modify or exclude a statutory provision which relates to any matter for which provision may be made in the DCO and s117(4) PA2008 provides that, if the DCO includes such provisions, it must be in the form of a statutory instrument. Since in certain instances the applicant's final draft Development Consent Order (dDCO) seeks to apply s120(5)(a), it is in the form of a statutory instrument. Additionally, no provision would contravene the provisions of s126 PA2008 which relates to the modification or exclusion of a compensation provision.

CROWN LAND

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

COMMON LAND

6.2.13. Section 131 and section132 of the PA2008 requires that the SoS be satisfied that common land subject to CA is precluded unless replacement land is provided, the area of land affected is less than 200m2, or it is required for the drainage of a highway, and that land in exchange is unnecessary. If the SoS is not satisfied in each of these respects, then Special Parliamentary Procedure would be required to be undertaken.

NEIGHBOURHOOD PLANNING ACT 2017

6.2.14. The Neighbourhood Planning Act 2017 has been enacted and contains provisions which amount to a codification of new TP practice. In recognition of the greater extent to which TP is being sought by scheme promoters and of the extended durations for which TP can be sought, the provisions of the Act seek to ensure that persons subject to TP have equivalent or proportionate rights to notice and to relevant compensation to those already

available to APs subject to CA. However, at the time of submission of this Recommendation to the SoS, the relevant provisions of the Neighbourhood Planning Act 2017 had not commenced.

6.2.15. The ExA has taken all relevant legislation and guidance into account when considering this matter and relevant conclusions are drawn at the end of this Section of this Report.

6.3. THE REQUEST FOR CA AND TP POWERS

POWERS SOUGHT

6.3.1. The powers being sought by the applicant and how they relate to the principal articles in the dDCO, and colours on the Land Plan are set out in the final SoR [REP9-010] while explanation of the articles is set out in the final Explanatory Memorandum (EM) [REP9-008].

6.3.2. The applicant's final preferred DCO was submitted at D9 [REP9-006].

6.3.3. At the close of the examination, the application was supported by the following:

- Statement of Reasons (SoR) [REP9-010]
- Book of Reference (BoR) [REP9-012]
- Land Plans [REP9-004]
- Works Plans [REP5-005]
- Streets rights of way and access plans [APP-015]
- Crown Land Plan [REP9-005]
- Funding Statement [REP3-005]
- Explanatory Memorandum [REP9-008]

6.3.4. The ExA was kept updated by the applicant during the examination on the progress of negotiations with Affected Persons (AP) and SUs by means of a land and rights negotiations tracker. This set out the progress made in responding to objections and agreements in relation to Compulsory Acquisition, Temporary Possession, other land rights. The final version of the tracker setting out the position at the close of the examination was submitted at D9 [REP9-014].

6.3.5. These documents, along with representations made by all parties, form the basis of the analysis in this chapter. References to the BoR and the Land Plans should be read as references to the latest revisions cited above.

6.3.6. Land over which CA and/ or TP powers are sought is referred to in this chapter as the Order land.

6.3.7. The powers sought within the dDCO are:

- Compulsory acquisition of land, Article 21
- Compulsory acquisition of rights, Article 23
- Extinguishment of private rights over land, Article 24

- Acquisition of subsoil only, Article 26
- Power to override easements and other rights, Article 27
- Temporary use of land for constructing the authorised development, Article 30
- Temporary use of land for maintaining the authorised development. Article 31.

6.3.8. Additional Articles would confer rights and powers to the undertaker which may interfere with property rights and private interests, these being:

- Article 8: Street works
- Article 12: Temporary prohibition or restriction of use of streets and public rights of way
- Article 13: Use of private roads
- Article 14: Access to works
- Article 17: Discharge of water
- Article 18: Protective works to buildings
- Article 19: Authority to survey and investigate the land
- Article 32: Statutory undertakers (SUs)
- Article 33: Apparatus and rights of SUs in stopped up streets
- Article 39: Felling or lopping of trees and removal of hedgerows
- Article 40: Trees subject to tree preservation orders, and
- Article 47: Incorporation of the minerals code.

CHANGES DURING THE EXAMINATION

6.3.9. No change requests were made during the examination, however following objections to CA by the J.G.Pears Group [REP3-099] the applicant reviewed the land subject to CA and TP. This resulted in a reduction in land subject to CA at D5 explained in the applicant's covering letter [REP5-001].

6.3.10. This resulted in the reduction of the extent of plots 05-011, 06-003 and 08-011. These plots are now coloured white and fall outside of the definition of Order land in Article 2 of the dDCO and therefore fall outside of the powers of acquisition (Part 5 of the dDCO).

6.3.11. The applicant states that if the DCO is granted, the applicant would be able to rely upon the DCO as planning permission for works in the white area (if required) but would rely upon voluntary negotiations to secure any necessary land rights in that area.

6.3.12. This approach follows what the applicant regards as a well precedented approach citing other DCOs where this has occurred. (The Longfield Solar Farm Order 2023, The Cottam Solar Project Order 2024 and the West Burton Solar Project Order 2025).

6.3.13. The BoR [REP5-012], Land Plans [REP5-004] and SoR [REP5-010] were all updated at this deadline to reflect these changes.

STATUTORY UNDERTAKER'S LAND

6.3.14. The land affected by the proposed development includes land, rights or other interests owned by several SUs, set out in the SoR [REP9-010] and BoR [REP9-012].

6.3.15. SU objections which were not withdrawn at the end of the Examination were from:

- Network Rail
- Exolum Pipe System Limited
- Northern Powergrid (Yorkshire) plc
- E.ON UK plc

National Highways

6.3.16. At the commencement of the examination, National Highways in their RR [RR-078] advised they would require details of any land acquisition relating to National Highways' land, but subsequently confirmed in [REP1-106] that the three plots identified in the BoR [REP9-012] 01-002, 01-004 and 01-005 had been transferred to Nottinghamshire CC by virtue of s265 of the Highways Act following a detrunking order.

Anglian Water Services Limited

6.3.17. In Anglian Water's RR [RR-097] advised of concerns in respect of its land interests. The applicant provided protective provisions within the dDCO and following negotiations these were agreed. This is confirmed in the final iteration of the Land and rights negotiation tracker [REP9-014].

The Canal and River Trust

6.3.18. The Canal and River Trust RR [RR-119] advised of concerns in respect of its land interests. The applicant provided protective provisions set out in the dDCO and confirmed that these had been agreed in the final iteration of the land and negotiations tracker [REP9-014].

CROWN LAND

6.3.19. The applicant has identified that Crown interests exist within the Order limits and the plots identified are shown on the Crown Land Plans [REP9-005]. The final BoR [REP9-012] shows these interests are held by:

Table 14 Land plots identified as Crown Land

Plot No.	Owner of Crown Interest
04-009	The King's Most Excellent Majesty In Right Of His Crown
14-017, 14-018, 14-019, 15-012, 15-013, 15-015, 15-015b, 15-016	The Secretary of State for Transport

SPECIAL CATEGORY LAND

6.3.20. The applicant has identified that special category land exists within the Order limits and the plots identified are shown on the special category land plans [REP1-006]. The final BoR [REP9-012] shows this land interests are held in common.

Table 15 Land plots identified as Special Category Land

Plot No.	Owner Interest
08-006, 08-007 and 08-010	Common Land

6.4. THE PURPOSES FOR WHICH LAND IS REQUIRED

6.4.1. The application seeks development consent for the construction, operation, and maintenance of a ground mounted solar farm with a capacity of over 50MW together with BESS and other associated works to construct and operate the development.

6.4.2. The applicant's case is that the powers sought in its final dDCO as set out in the SoR [REP9-010] are reasonable, proportionate and necessary to deliver and thereafter maintain the proposed development.

6.4.3. The Order land covers 1630ha of largely agricultural land, located either side of the River Trent. With a cable route crossing under the River Trent to connect the two solar array areas, which then would connect into the former High Marnham power station site where a sub-station the subject of a separate planning application is proposed to be sited. This then would facilitate the connection to the national grid.

6.4.4. In its SoR [REP9-010] the applicant states that it requires powers of CA to ensure that the proposed development could be built, maintained and operated. So that government policy in relation to the timely provision of new generating capacity is met within a reasonable timescale. It goes on to say that in the absence of these powers, the Order land may not be assembled, uncertainty would continue to prevail, and its objectives and government policy objectives would not be achieved.

6.4.5. The applicant explained it had entered into voluntary agreements with landowners which cover the majority of the land required and has been seeking to acquire new rights and temporary use of land by private agreement. At the close of examination, however these agreements were not in place with all affected persons (AP).

6.4.6. A land and rights negotiations tracker was provided by the applicant the final iteration being [REP9-014]. This details the progress the applicant has made during the process, setting out the position at the end of the examination.

6.4.7. The applicant also requires certain rights to be suspended, overridden or extinguished within the Order land to ensure that there are no impediments

for the construction, operation and maintenance of the proposed development.

6.4.8. The applicant argues that the use of powers of CA is justified as the proposed development:

- would help meet the urgent need for new, low carbon energy infrastructure and provide enhanced energy security
- would help support government priorities in relation to economic development and security of supply
- minimises or mitigates adverse impacts to an acceptable degree and is compliant with NPS EN-1, NPS EN-3 and NPS EN-5. All of which it considers are both important and relevant to the SoS's decision

6.4.9. The applicant maintained the approach to CA had been conducted in accordance with the CA Guidance.

6.5. EXAMINATION OF THE CA AND TP CASE

6.5.1. During the examination the ExA considered all written material in respect of CA and TP, the written evidence provided by the applicant and wrote a series of written questions for the applicant at ExQ1 [PD-010]

6.5.2. A Compulsory Acquisition Hearing (CAH1) was held [EV7-001] to hear the views of affected persons (APs) and to test the approach of the applicant relative to the CA Guidance. This was followed up at subsequent hearings where progress from the applicant was sought.

6.5.3. The ExA also wrote to SUs and APs inviting their views both in ExQ1 and ExQ2.

6.5.4. By the end of the examination agreements had not been reached with all SU, with a number of cases in which objections had not been withdrawn and differences remaining. Objections and concerns have also been raised by both APs and IPs regarding CA and TP matters. These are considered later in this chapter.

THE APPLICANT'S CASE

6.5.5. The applicant's general case for CA and TP is set out in its SoR [REP9-010] Specifically, the applicant's case for the CA and TP powers sought is set out in section 6 (Purpose of the powers) and section 7 (Justification for the compulsory acquisition powers). This sets out how the applicant considers that the proposals meet the tests set out in s122 and the general considerations set out in the CA Guidance.

6.5.6. The applicant explains that all the land included within the Order land is needed to achieve the identified purpose of delivering the proposed development. Appendix A of the SoR provides a summary of the purposes for each plot to facilitate the proposed development.

6.5.7. This applicant has included 'white land' as shown on the land plans [REP9-004] in the vicinity of the High Marnham substation. This land the applicant seeks development consent powers but no CA or TP powers as such this has been excluded from the definition of Order land in Article 2 of the dDCO.

6.5.8. The applicant also states that in the absence of powers of CA, it may not be possible to assemble all the land within the Order limits, that uncertainty would continue and the objectives of the applicant and those set out in Government policy would not be achieved.

GENERAL CONSIDERATION OF ALTERNATIVES

6.5.9. Issues have been raised in relation to the approach to alternatives, and the overall scale and extent of land required for the proposed development. The ExA has concluded that the applicant's approach to these matters could only be regarded as compliant with the CA Guidance in terms of being reasonable and proportionate, in the event the SoS were to be satisfied that the applicant had undertaken the sequential and exception tests appropriately.

6.5.10. With regards the specific issue of the flexibility sought within the Order land and the provisions for overplanting, the ExA agrees that the flexibility sought in this respect would be necessary to deliver the benefits of the proposed development.

6.5.11. The ExA also notes that there are a relatively modest number of landowners within the Order limits and that the applicant has entered into Option Agreements with the landowners relating to the areas for the solar arrays. The ongoing efforts to reach voluntary agreements with other APs during the examination indicate that reasonable alternatives to the use of CA/TP powers have been explored.

AVAILABILITY AND ADEQUACY OF FUNDS

6.5.12. The applicant's Funding Statement [REP3-005] and the responses provided following CAH1 [REP3-064] explain that the applicant has access to finance the works that would be authorised by the Order.

6.5.13. The applicant has confirmed the proposed development is expected to be project financed. The overall objective of the financing strategy for the proposed development is to provide full funding commitments prior to the commencement of construction and minimise the overall cost of funds to provide value for money on the cost of the delivered energy from this capital-intensive project.

6.5.14. The dDCO [REP9-006] includes at Article 46 a guarantee or alternative form of security to be approved by the SoS prior to the exercise of CA powers.

6.5.15. How the applicant intends to use the land whether it has demonstrated that funds are available to meet the compensation liabilities which might flow from the exercise of CA powers

6.5.16. Based on the evidence provided the ExA considers that the necessary funds are likely to be available to the applicant to cover the likely costs of CA.

CONCLUSION ON THE GENERAL CASE FOR CA AND TP

6.5.17. Having considered the applicant's case for CA and TP against the requirements of legislation and guidance, the ExA is satisfied with the generality of the applicant's conclusions. However, final conclusions on CA and TP cannot be reached until individual objections and all other important and relevant considerations have been addressed.

6.5.18. Specifically, in the circumstance that that SoS agrees with the ExA on the conclusion reached on the planning merits of the application as submitted and the broader suitability of the sequential and exceptions tests as set out in the hydrology section of this report.

CONSIDERATION OF INDIVIDUAL OBJECTIONS

6.5.19. As referenced earlier the applicant provided a Land and Rights Negotiations Tracker [REP9-014] This shows the progress of negotiations but lists the outstanding objections to CA and TP which remained at the end of the examination.

6.5.20. This includes a number of SUs. The consideration of protective provisions for these parties is dealt with in Chapter 7 of this report.

J.G PEARS PROPERTY LIMITED

Plot References

6.5.21. Acquisition of Rights:

05-011, 05-011a, 06-003, 06-003a, 07-011*, 07-015, 08-001, 08-002, 08-003, 08-004, 08-005, 08-006, 08-007, 08-008, 08-009, 08-010, 08-011

6.5.22. Interest: Category 1 Landowner

6.5.23. The rights sought relate to the grid connection cable route, ancillary works and highway works within Work Nos 4, 5, and 7 of the dDCO.

6.5.24. The [RR-060] from J G Pears Property Limited objected to the powers within the DCO affecting their land and reiterated this objection in their written representation [REP2-106].

6.5.25. Individual affected persons, members of the Pears ownership group are also referenced within the BoR and the applicant's land and rights negotiations tracker [REP9-014]. This includes the following APs Heather Morag Pears, High Marnham Power (Nottingham) Limited, High Marnham Power Limited, J G Pears (Newark) Limited, J G Pears Commodities Limited, J G Pears Power Limited, J G Pears Rendering Limited, Jeffrey Gordon Pears.

6.5.26. Specific individual objections were not raised by each party individually as the APs were represented together and consequently the issues are dealt with collectively. The ExA refers to these APs as J.G Pears.

6.5.27. JG Pears maintained their objection after the applicant reduced the area of land subject to CA [REP6-081] stating that the area over which compulsory acquisition powers is sought remains significant and remains an excessive use of the compulsory acquisition powers. This would result in the sterilisation of a significant proportion of the J G Pears Group High Marnham site in the short to medium term.

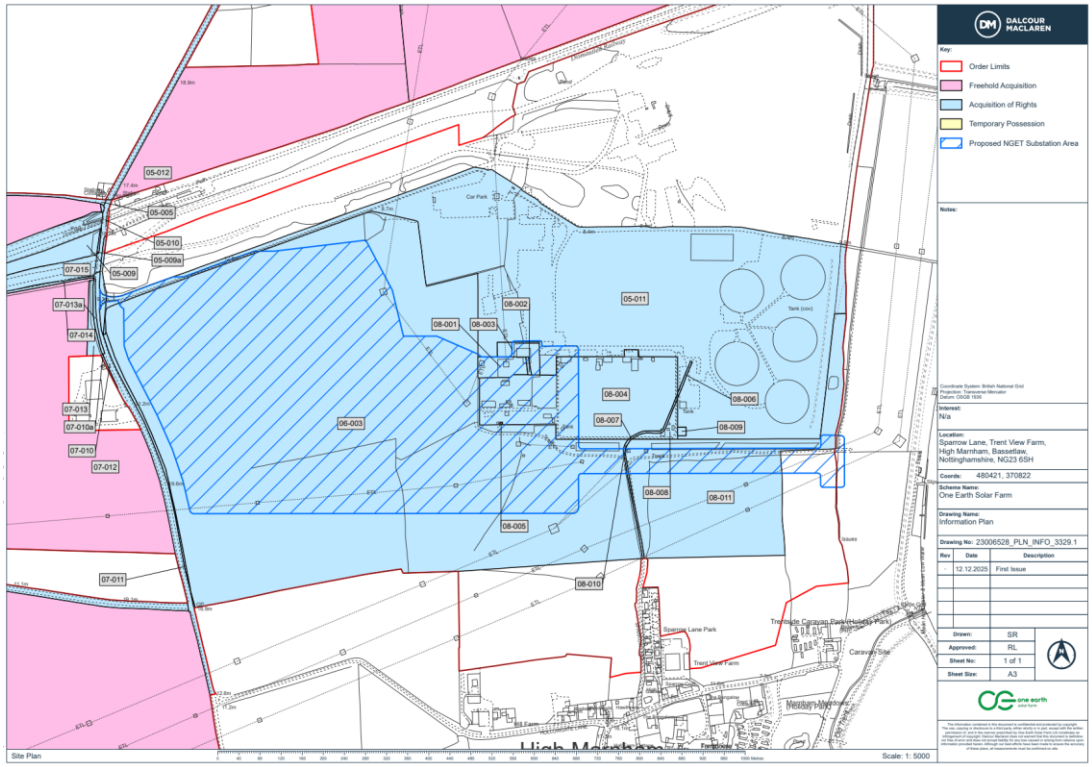
6.5.28. The representation went on to state that if the DCO were to be granted, the applicant would have up to 5 years to utilise the compulsory acquisition powers. This would significantly hinder the development plans J G Pears Group have for its land, leaving it incapable of bringing development forward in the short to medium term.

6.5.29. J G Pears understood that the planning application for the proposed NGET substation has been made and considers that a definitive area for the compulsory acquisition powers, given the applicant only requires a 20m easement corridor, should be set out in the DCO. This is the only way to avoid the excessive use of compulsory powers.

6.5.30. J G Pears Group remain of the view that the applicant should have engaged and negotiated in a more meaningful way to avoid the need to apply for such excessive compulsory acquisition powers and further engagement in this regard was encouraged but did not lead to a resolution prior to the close of the examination.

6.5.31. At D7 in response to the ExA's Rule 17 letter [REP7-001], the applicant provided an extract of the of the Land Plans overlaid with the High Marnham substation application boundary (Bassetlaw District Council planning reference: 25/01302/FUL). This is copied below.

Figure 15: Revised plan showing white land and relationship to site included in the planning application for the High Marnham Substation



Source [REP7-001] Applicant's response to Rule 17 letter

6.5.32. The applicant's position remained unchanged as set out in response to EXQ3 9.0.1 [REP6-057] with explanation for the reduction in land take provided in [REP5-001].

6.5.33. In [REP7-042] the applicant responded to J.G Pears submission referring to the response given to ExQ3.9.0.1. This explained the applicant continued to engage with J.G Pears however the commercial terms sought were not regarded as reasonable. In the absence of a voluntary agreement, the applicant maintains that CA powers are necessary to ensure that the development can achieve the objectives outlined.

6.5.34. The ExA understand the concerns and the applicant's explanation for requiring the rights over the extent of the land shown above.

6.5.35. The ExA accept until such time as the planning application is approved (assuming this to be the case), a degree of flexibility would be necessary to accommodate a range of options for the cable route and to ensure a connection could be made in due course.

6.5.36. The need for flexibility could be even greater in the event the planning application for the substation were to be rejected, and the location of the substation adjusted from that currently shown within the application.

6.5.37. Despite this uncertainty, the DCO could not be deferred until such time as a positive decision to grant is made upon the planning application, the urgent need for renewable energy which the scheme could deliver and the clear

presumption in favour of renewable energy of this scale is clearly set out in En-1 and EN-3. In this respect the applicant should be given a degree of flexibility.

6.5.38. Overall, the ExA is satisfied that this land is required for a legitimate purpose, that the powers sought are necessary and proportionate and that there is a compelling case in the public interest for the proposed acquisition of new rights affecting the J.G Pears' land.

6.5.39. In respect of options that J.G Pears are considering for future development this may need to be addressed through compensation provisions, however as these appear to be plans for future proposals rather than specific consents being in place. This would need to be a matter to be addressed at the appropriate time subject to the actual circumstances that pertained then.

HARWORTH ESTATES (AGRICULTURAL LAND) LIMITED

Plot References

6.5.40. Acquisition of Rights:

6.5.41. 03-005, 06-003, 06-003a, 08-001, 08-002, 08-010, 08-011

6.5.42. Interest: Category 2

6.5.43. At D6 [REP6-069] Harworth Estates identified they have an interest in the JG Pears land stating the land was subject to an overage agreement. They wished to ensure that their interest is protected if compulsory purchase rights are granted to the applicant.

6.5.44. The applicant reiterated in [REP7- 042] it is seeking permanent rights over plots 03-005, 06-003, 06-003a, 08-001, 08-002, 08-010, 08-011. These are the plots that BoR has identified that Harworth Estates have an interest in.

6.5.45. The applicant sought to explain that rights sought to extend to permanent rights in relation to construction, operation, maintenance and decommission of the underground cabling connecting the project to the National Grid Substation. The applicant is not seeking to compulsorily acquire any land over which Harworth Estate (Agricultural Land) Limited hold an interest and therefore it is the applicant's view that there would be no impact on the rights that they currently hold in relation to land within the Order limits.

6.5.46. No further response was received from Harworth Estates during the examination.

6.5.47. Overall, the ExA is satisfied that this land is required for a legitimate purpose, that the powers sought are necessary and proportionate and that there is a compelling case in the public interest for the proposed acquisition of new rights affecting the Harworth Estates land.

LINCOLNSHIRE COUNTY COUNCIL

Plot References

6.5.48. Acquisition of Rights

6.5.49. 10-005*

6.5.50. Interest: Category 1 landowner

6.5.51. Lincolnshire County Council have land interests within the Order limits affected by CA powers. While the council objected to the proposals in its RR [RR-077] it did not raise objection to the use of CA powers in the RR, subsequent WRs or during the CAH.

6.5.52. In these circumstances, the ExA are satisfied that there is no evidence contrary to the position adopted by the applicant, and the ExA is satisfied that this land is required for a legitimate purpose, that the powers sought are necessary and proportionate and that there is a compelling case in the public interest for the proposed acquisition of new rights

NOTTINGHAMSHIRE COUNTY COUNCIL

Plot References

6.5.53. Temporary possession and freehold acquisition

6.5.54. 01-002, 01-003, 01-004, 01-005, 01-013

6.5.55. Nottinghamshire County Council have land interests within the Order limits affected by CA powers. While NCC objected to the proposals in their RR [RR-154] it did not raise objection to the use of CA powers in the RR, subsequent WRs or during the CAH.

6.5.56. In these circumstances, the ExA is satisfied that this land is required for a legitimate purpose, that the powers sought are necessary and proportionate and that there is a compelling case in the public interest for the proposed temporary possession and CA.

RAILWAY PATHS LIMITED

Plot References

6.5.57. Acquisition of Rights

6.5.58. 14-017, 14-018, 14-019, 15-012, 15-013, 15-015*, 15-016*, 15-017*.

6.5.59. The applicant recently met with the Secretary of State for Transport, who confirmed that the project would not affect the existing covenant on the land. Following this confirmation, the applicant is now advancing discussions and negotiations with Railway Paths Ltd. The applicant continues to engage with the Affected Person and would continue to do so once the examination has closed, with the aim of reaching a voluntary agreement.

6.5.60. Railway Paths Limited did not object to the use of CA powers and with the confirmation from the applicant that the covenant over the land held by the Secretary of State for Transport has been resolved, the ExA are content that there are no outstanding issues in respect of CA for these plots.

6.5.61. The ExA is satisfied that this land is required for a legitimate purpose, that the powers sought are necessary and proportionate and that there is a compelling case in the public interest for the proposed temporary possession and CA.

THE KING'S MOST EXCELLENT MAJESTY IN RIGHT OF HIS CROWN.

Plot References

6.5.62. Acquisition of Rights

6.5.63. 04-009

6.5.64. The Crown Estate have made initial contact regarding S.135 consent however, further discussions regarding this would follow once Heads of Terms are negotiated. The applicant has reviewed the Heads of Terms and added further commentary on the comments and have sent these back to The Crown Estate on 15th December. The applicant still remains optimistic that Heads of Terms would be agreed promptly allowing legal representatives to be engaged in respect of the formal legal documents. This was, however not resolved prior to the end of the examination.

6.5.65. Section 135(1), article 43(1)(b) explicitly states that nothing in the dDCO authorises the undertaker to exercise any right under the Order compulsorily to acquire an interest in any land which is Crown Land (as defined in the PA2008) which is for the time being held otherwise than by or on behalf of the Crown without the consent in writing of the appropriate Crown authority (as defined in the PA2008). This ensures that notwithstanding the BoR and relevant schedules of the Order the applicant would be barred from including any Crown land which is otherwise held by or on behalf of the Crown without the Crown’s consent.

6.5.66. As the property agreement and s135 consent have not been obtained, he SoS will need to be assured that these are in place when determining the DCO Application.

6.5.67. The ExA therefore suggests the SoS may wish to consider if this needs to be reviewed during the decision process.

6.5.68. The ExA consider that without plot 04-009 the applicant would be unable to undertake the grid connection works and secure the cable route and the ExA consider therefore the interests in this plot are justified and that a lesser interest would not achieve what the scheme requires.

EXOLUM PIPELINE SYSTEMS LIMITED

Plot References

6.5.69. Freehold acquisition and acquisition of rights

6.5.70. 10-008, 10-009, 10-014, 10-015, 10-016, 10-017, 12-007, 12-008, 13-001, 14-004*, 14-005, 14-008*, 14-010, 14-011, 14-012*, 14-013, 14-019, 14-023, 14-025, 14-026, 14-027*, 16-001, 16-003, 16-004, 16-005*, 16-006*, 16-007, 16-008, 16-011

6.5.71. Exolum Pipeline Systems Limited in its [RR-042 and WR [REP1- 109 and REP1-110] advise that the proposed development has the potential to contravene Exolum's ability to safely access and maintain its assets. In doing so there would be the potential to breach the Health & Safety at Work Act 1974 with specific concerns around Regulation 15 of the Pipeline Safety Regulations 1996 and the potential for any subsequent work close to the High-Pressure Pipeline to impact both the Safety of the pipeline and those doing the work.

6.5.72. The applicant advises in the Closing Statement [REP9-028] that Exolum have agreed a final form of protective provisions, subject to the signing of a commercial agreement between the parties. That document is being prepared for signature, and an update will be provided directly to the Examining Authority or Secretary of State (as relevant). This was not concluded by the end of the examination.

6.5.73. As can be seen from the plan provide by Exolum in the written representation [REP1-110] the pipeline crosses the Order limits and there would need to be appropriate measures in place to ensure that the pipeline can be maintained and the staff doing so would be able to undertake those works in a safe manner.

6.5.74. The applicant has advised the ExA that the protective provisions included in the final dDCO [REP9-006] have been agreed with Exolum, but at the time the examination closed a commercial agreement had not been completed.

6.5.75. The ExA consider that without the plots identified the applicant would not be able to erect the solar arrays as identified and the proposed development would not deliver the energy expected.

6.5.76. The ExA is satisfied that this land is required for a legitimate purpose, that the powers sought are necessary and proportionate and that there is a compelling case in the public interest for the powers sought. The ExA have not been presented with an alternative set of protective provisions by Exolum and have no reason to doubt that they have been agreed as advised by the applicant at D9.

6.5.77. Nevertheless, in light of the importance of operating a high pressure pipeline safely, while the ExA do not propose any changes to the rDCO in this respect, the ExA consider it would be prudent for the SoS to assure

themselves that the commercial agreement that was outstanding at the end of the examination has been concluded.

NETWORK RAIL INFRASTRUCTURE LIMITED (NETWORK RAIL)

Plot References

6.5.78. Acquisition of Rights

6.5.79. 05-008, 05-010, 05-011, 07-002*, 07-015, 08-003, 08-004, 08-005, 08-006, 08-007, 08-008, 08-009, 14-019

6.5.80. Network Rail in its RR [RR-104] advised that it wished to ensure that the scheme would not have an adverse effect on the operation or safety of the railway during construction, operation or decommissioning of the proposed development.

6.5.81. As such Network Rail objected to the Order as the powers sought would interfere with the safe and efficient operation of the Railway and cause a serious detriment to the carrying on of Network Rail's statutory undertaking.

6.5.82. Network Rail included a set of its preferred protective provisions.

6.5.83. The applicant and Network Rail continued to discuss protective provisions and a side agreement (as noted in Network Rail's Deadline 7 response [REP7-061]).

6.5.84. The applicant advised in the final Closing Statement [REP9-028] that it would provide an update directly to the Examining Authority or Secretary of State (as relevant). The applicant has included a form of protective provisions for the benefit of Network Rail in the draft DCO at Deadline 9 [REP9-006].

6.5.85. A late submission from Network Rail was accepted by the ExA [AS-072] setting out Network Rail's final position, confirming their outstanding objection to the protective provisions as drafted in the dDCO [REP9-006]

6.5.86. These arrived at a point in the examination too late for the applicant to be able to respond.

6.5.87. As referenced later in section 7 in considering changes to the dDCO and preparing the recommended DCO, it is the ExA's position that the protective provisions preferred by Network Rail that should be included in the final DCO, and it is on this basis that the ExA would endorse the position in respect of land rights.

6.5.88. The ExA is satisfied that this land is required for a legitimate purpose, that the powers sought are necessary and proportionate and that there is a compelling case in the public interest for the powers sought. With the protective provisions in the rDCO the ExA considers that Network Rails position would be appropriately safeguarded.

6.5.89. The applicant had the opportunity to see the preferred protective provisions during the examination, however not the final submission from Network Rail. The ExA consider the SoS may wish to consult both parties in light of the conclusions reached, and to ensure procedural fairness.

NORTHERN POWERGRID (YORKSHIRE) PLC

Plot References

6.5.90. Acquisition of Rights

6.5.91. 10-005*

6.5.92. Northern Powergrid (Yorkshire) Plc in its RR [RR-043] and subsequent submission [AS-071] confirm that an objection remains. Northern Powergrid (Yorkshire) Plc do not consider the protective provisions drafted in the final dDCO [REP9-006] would appropriately protect its undertaking.

6.5.93. In setting out the objection Northern Powergrid stated that:

- the proposed scheme would have impacts on Northern Powergrid's existing assets and any required improvement works.
- The Order limits include Northern Powergrid infrastructure and thus the project has a direct impact on Northern Powergrid's existing critical national infrastructure which serves significant numbers of customers in the local and wider area
- The compulsory purchase powers incorporated into the DCO seeks to acquire land and interests which, if acquired, would adversely affect Northern Powergrid's ability to use, access, maintain and where necessary upgrade its existing equipment
- the technical impacts of the proposed development, Northern Powergrid has concerns over the proposed protective provisions contained within the draft Order as they do not take into account site specific issues and do not accord with Northern Powergrid's standard protective provision requirements

6.5.94. While the applicant and Northern Powergrid (Yorkshire) Plc continued to discuss protective provisions and a side agreement. The applicant advised it would provide an update directly to the Examining Authority or Secretary of State (as relevant). The applicant has included a form of protective provisions for the benefit of Northern Powergrid (Yorkshire) Plc in the draft DCO at Deadline 9. This though had not been agreed by the close of the examination.

6.5.95. A late submission from Northern Powergrid was accepted by the ExA [AS-071] setting out their final position, confirming their outstanding objection to the protective provisions as drafted in the dDCO [REP9-006]

6.5.96. These arrived at a point in the examination too late for the applicant to be able to respond.

6.5.97. Northern Powergrid did not provide to the ExA a copy of the preferred protective provisions or provide a detailed breakdown of how the dDCO provided by the applicant did not meet its requirements. No evidence was presented as to how the protective provisions proposed would fail to meet the terms of s127 or s138 of the PA2008.

6.5.98. Nor did Northern Powergrid respond to the ExA when at ExQ1 [PD-010] views were sought from all SUs as to their preferred protective provisions. As set out in more detail in section 7, in the absence of any detailed submissions from Northern Powergrid, the ExA has no evidence before it that the Protective Provisions as drafted would not appropriately safeguard the SUs interest.

6.5.99. The ExA is satisfied that the powers sought by the applicant are necessary for the proposed development and consistent with s138, and that the powers sought are necessary for the purpose of the carrying out the development to which the DCO relates and no evidence has been presented that there would be serious detriment to the carrying out of NGED's undertaking and in this respect are consistent with s127 on the basis of the PPs that are reported above and included in rDCO.

6.5.100. The ExA is satisfied that this land is required for a legitimate purpose, that the powers sought are necessary and proportionate and that there is a compelling case in the public interest for the proposed acquisition of rights.

6.5.101. In overall conclusion, with regards to those SUs whose rights and apparatus would be interfered with by delivery of the proposed development Schedule 14 of the applicant's dDCO includes provision for the protection of SUs assets. Where representations have not been made the provisions of s127 are not engaged.

6.5.102. In respect of the matters discussed above for Northern Powergrid the ExA has provided its reasoning and concluded its recommendations under their relevant headings above.

6.5.103. Based on the evidence before the ExA, we are satisfied that the relevant PPs contained within Schedule 14 of the rDCO would ensure that an appropriate degree of protection would be given to the affected SUs. That the powers sought comply with s127 and s138 of PA2008 in that the powers sought in each case are necessary for the purpose of carrying out the development to which the DCO relates and that there would be no serious detriment to the carrying out of the SU's undertakings. The ExA is satisfied that the interference with apparatus and extinguishment of rights would be necessary and proportionate for the purposes of carrying out the proposed development.

HUMAN RIGHTS ACT

6.5.104. The Human Rights Act 1998 incorporates 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 European Union (EU) institutions and are unaffected by the decision to leave the EU.

6.5.105. Relevant provisions of the ECHR that are normally engaged by CA and/ or TP proposals include:

- Protocol 1, Article 1: the right to peaceful enjoyment of possessions and not to be deprived of this 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, home and correspondence, relevant where property that is a home is affected

6.5.106. The applicant's Statement of Reasons (SoR) [REP9-010] at section 9 sets out how in the applicant's view the proposed development would infringe those rights of persons who hold interests in land within the Order Limits under Article 1 of the First Protocol, Article 6 and Article 8.Section 9 also includes consideration of compliance with the relevant provisions of the ECHR and fair compensation.

6.5.107. In respect of Article 1, the applicant explains they have sought to minimise the amount of land over which it requires powers of CA. The applicant also considers that there would be very significant public benefits arising from the grant of the DCO. The benefits would only be realised if the DCO is accompanied by the grant of powers of CA.

6.5.108. The consultation undertaken has allowed APs to be heard fully, fairly and in public. The applicant also sets out that all owners, lessees, tenants and occupiers within the Order limits and those with an interest in the Order limits have been consulted.

6.5.109. The conclusions of Chapter 5 set out the ExA's view that the planning merits case for the proposed development has not been made out. Should the SoS agree with that conclusion, the proposed interference with individuals' rights under Article 1 of the First Protocol would not be lawful, necessary, proportionate and justified in the public interest.

6.5.110. The Order limits do not include, and the proposed development does not require, the outright acquisition of any residential property. Consequently, as dwellinghouses would not be directly affected, it is not expected that rights protected by Article 8 would be infringed.

6.5.111. In terms of Article 6, IPs and APs have raised concerns regarding the adequacy of the pre-application consultation process for example [RR-057, RR-020]

6.5.112. The applicant has set out how the statutory requirements have been complied with, including providing communities, stakeholders and landowners a sufficient period of time, and sufficient environmental

information about the proposed development to provide meaningful feedback. Specifically, the Consultation Report [APP-151] sets out the issues raised and how the applicant has had regard to these in developing the proposals.

6.5.113. The ExA are content that the requirements of Article 6 have been satisfied.

6.5.114. The ExA conclude overall in light of our findings the proposed interference with the rights of those with an interest in the Order land would not be for a legitimate purpose and would not be necessary and proportionate to that purpose. The public benefits to be derived from the proposed CA would not outweigh the private loss that would be suffered by those whose land or interests would be acquired and therefore does not justify interfering with that land or those rights.

EQUALITY ACT 2010

6.5.115. The Equality Act 2010 established the PSED. This is a legal obligation to eliminate discrimination, advance equality of opportunity and foster good relations between persons who share a protected characteristic and persons who do not.

6.5.116. The ExA has had regard to the PSED throughout the Examination and in the consideration of the issues raised in this Report. Overall, the ExA finds that the proposed development would not harm the interests of persons who share a protected characteristic or have any adverse effect on the relationships between such persons and persons who do not share a protected characteristic. On that basis, the ExA has found no breach of the PSED.

6.6. CONCLUSIONS

6.6.1. The ExA has taken into account all the information, submissions and representations made, including the matters considered above, noting that agreements had not been reached with all APs and SUs by the end of the Examination, meaning that CA powers would be required.

6.6.2. The context for a decision on CA and TP matters overall is established and driven by the ExA's conclusion on the planning balance, as set out in chapter 5. In the circumstances of this application if the SoS concurs with the ExA's conclusions on the planning merits of the application as submitted and examined and therefore proposes not to make the Order, then the primary CA and TP recommendation is that the CA and TP request should not be granted.

6.6.3. The ExA has concluded on the planning balance that the proposed development would contravene relevant NPS policy (PA2008 s104(3)) and that its adverse impacts would outweigh its benefits (PA2008s104(7)).

6.6.4. In such circumstances, the CA tests set out in PA2008 s122 would not be met. If the SoS does not support the grant of development consent, it follows that:

- land and/ or rights are not required for the development to which the development consent relates (s122(2)(a))
- land and/ or rights are not required to facilitate or be incidental to the development because the development will not proceed (s122(2)(b)) and
- in the absence of a case in policy and planning merits for the development to proceed, there is no compelling case in the public interest for land to be acquired compulsorily (s122(3)).

6.6.5. Similarly, and for the same reasons, there would then be no reason for the SoS to reach any conclusions on Crown land, funding arising from PA2008 or on human rights considerations.

6.6.6. While TP does not have the same legal status as CA, it is worth recognising that the TP sought in the application supports the principal objective of developing, operating and maintaining the proposed development.

6.6.7. If development consent including CA powers is not to be granted for that purpose, then there is no remaining justification for any TP powers. Similarly, no human rights considerations would arise.

6.6.8. In the event the SoS disagrees with the conclusions of the ExA and that the case for the proposed development is made, the ExA considers that:

- The need to secure the land and rights required to construct the proposed development within a reasonable timeframe, and to ensure the development would remain operational would represent a substantial public benefit to weigh in the planning balance
- The private loss to those affected has been mitigated through the selection of the application land; the undergrounding of the cables and the extent of the rights and interests proposed to be acquired
- the applicant has explored all reasonable alternatives to the compulsory acquisition of the rights and interests sought
- There are no alternatives which ought to be preferred where compulsory acquisition powers remain
- adequate and secure funding would be available to enable the compulsory acquisition within the statutory period following the Order being made
- that an appropriate framework for compensation exists, and the proposed interference with the human rights of individuals would be for legitimate purposes that would justify such interference in the public interest and to a proportionate extent.

6.6.9. If the Secretary of State is minded to accept the proposed development on the basis of its compliance with national policy, there would be a compelling case for the compulsory acquisition powers sought in the Order. The proposal would comply with s122(3) of the PA2008 and that other land related powers in the Order would be necessary and justified for the Proposed development to proceed.

7. DRAFT DEVELOPMENT CONSENT ORDER AND RELATED MATTERS

7.1. INTRODUCTION

7.1.1. This chapter provides an overview of the Development Consent Order (DCO), the applicant's updates to the draft DCO (dDCO) during the Examination, and the changes to the applicant's final dDCO [REP9-006] to conclude with the recommended DCO (rDCO) included at Appendix C.

7.1.2. A dDCO [APP- 007] and Explanatory Memorandum (EM) [APP- 008] were submitted with the application. The EM describes the purpose of the dDCO and its articles and submissions. Both were updated during the examination, with the final iterations being [REP9-006] and [REP9-008] respectively. [REP9-023] provides the final schedule of changes to the DCO that occurred during examination.

7.2. THE ORDER AS APPLIED FOR

7.2.1. The Application draft DCO was based on the Infrastructure Planning (Model Provisions) (England and Wales) Order 2009 but departs from those clauses to draw upon drafting used in made Orders for similar development under the PA2008.

7.2.2. Previous cases have been cited where appropriate, a full list of the DCO referred to during the examination is included in Appendix A4 to this report.

7.2.3. The dDCO is structured as follows:

- Part 1 (Preliminary): Articles 1 and 2 deal with preliminary matters including the name of the order, when the order will come into force and the meaning of various terms used in the order
- Part 2 (Principal Powers): Articles 3 to 7 provide the principal powers to construct, operate and maintain the proposed development. Article 6 relates to legislative provisions and Article 7 sets out provisions relating to statutory nuisance
- Part 3 (Streets): Articles 8 to 16 provide powers in relation to street works
- Part 4 (Supplemental Powers): Articles 17 to 20 set out supplemental powers relating to discharge of water, protective works to buildings, authority to survey land and the removal of human remains
- Part 5 (Powers of Acquisition): Articles 21 to 34 provide for the undertaker to be able to compulsorily acquire land and rights over land, to acquire temporary possession of land for the construction, operation and maintenance of the proposed development. The provisions provide for the undertaker to extinguish certain private rights and to acquire or acquire and create rights in the subsoil below land. The provisions provide for the compensation of Affected Persons (AP) in respect of the exercise of these powers, where that is not already secured elsewhere. Powers in relation to apparatus and rights of statutory undertakers are included

- Part 6 (Miscellaneous and General):
    - Article 35 sets out who has the benefit of the order
    - Article 36 provides for the transfer of the benefit of the order
    - Article 37 relates to the application of landlord and tenant law
    - Article 38 provides for the order land to be classed as operational land and have the same planning rights as if planning permissions had been granted
    - Articles 39 and 40 provide powers in relation to trees including those subject to tree preservation orders and for the removal of hedgerows
    - Articles 41 and 42 provide for the certification of plans and documents and the rules of arbitration
    - Article 43 provides for the application of the protective provisions set out in Schedule 14
    - Article 44 provides for the service of notices
    - Articles 45 relates to the discharge of requirements and approvals
    - Articles 46 provides for a restriction on the undertaker from exercising powers in Articles 21, 23, 24, 29, 30, 31 and 32 until the SoS has a satisfactory form of guarantee of security in place in respect of compensation payments
    - Article 47 provides for the incorporation of the mineral code and the undertaker would not acquire mineral rights on the compulsory acquisition under the order
    - Article 48 provides protection for Crown Estate land; and
    - Article 49 ensures that compensation is not payable by both the order and by way of another compensation regime.

7.2.4. There are 15 Schedules to the Order as follows:

- Schedule 1 provides a description of the proposed development
- Schedule 2 sets out the requirements (R) that apply to the proposed development
- Schedule 3 sets out the legislation to be disapplied relating railways, river navigation and water (so far as such legislation is in force and is incompatible with the powers contained in the order)
- Schedules 4 to 7 set out matters in relation to streets, public rights of way and access to works
- Schedule 8 sets out the details of land in which only new rights may be acquired
- Schedule 9 relates to amendments to statutes to provide for appropriate compensation in respect of the acquisition of land or new rights
- Schedule 10 relates to temporary possession land
- Schedule 11 sets out the list of hedgerows to be removed
- Schedule 12 provides a list of documents and plans to be certified
- Schedule 13 provides for an arbitration process
- Schedule 14 provides the protective provisions and
- Schedule 15 sets out the procedures for the discharge of requirements

7.3. CHANGES DURING EXAMINATION

7.3.1. During the examination the applicant sought to make changes to the dDCO. The changes made were in response to issues raised by the ExA in their written questions, issues raised at hearing and in written submissions. The ExA issued a DCO [PD-013] and the applicant submitted their response to the ExA's changes to the DCO at [REP4-053]. At each revision of the dDCO the applicant provided a clean and tracked copy of the updated dDCO and an updated and tracked copy of the EM.

7.3.2. The changes to the dDCO are detailed in the schedule of changes which was submitted by the applicant at the procedural deadlines, D1, D2, D4, D5, D6, D7 and D9. These changes include minor alterations, typographical errors and corrections. The notable changes made to the dDCO during the examination are summarised in Table 16.

Table 16 Changes made to the draft DCO during the examination

Deadline	Version	Examination Library Reference	Notable Changes Made
Application		APP-007	
1	2	REP1-007	• Article 2 amended for clarification purposes • Article 3 amended to take account of the ExA request to consider drafting of the Oaklands Solar Farm DCO at ISH 1 [REP1-077] • Article 6 corrected in respect of 2009 Act and clarification that the development authorised by Schedule 1 cannot be amended under the 1990 Act • Article 15 amended to clarify that the permanent closure of roads will not be required • Articles 18, 21 and 31 amended in line with the West Burton Solar Project Order • Article 39 amended to incorporate wording sought by the ExA at ISH1 [REP1-077]; • Schedule 2(1) amended following matters raised in ISH 1 [REP1-077] to include Councils as consultees in respect of requirements and addition of new definitions for clarification purposes • Schedule 2(3) and 2(4) amended to provide for approval by the Councils • Schedule 2(5) amended to provide consistency and clarity • Schedule 2(7) amended to provide for the battery safety management plan to be maintained throughout the operational life of the Prosed Development and to align with other DCOs • Schedule 2(9) amended in respect of BNG percentages and to reflect recent made DCOs together with error corrections • Schedule 2(10) amended to provide distinction between construction fencing and operational fencing • Schedule 2(11) amended to provide consistency and clarity • Schedule 2(15) amended to provide for the relevant district authority to be a consulted • Schedule 2(17) amended to ensure the skills, supply chain and employment plans remain in effect throughout the operation and to be in accordance with other made DCOs

			• Deletion of plots required temporarily from Schedules 8 and 10 • Schedule 15(1) definitions amended to provide clarity • Schedule 15(5) updated with revised fees, with inflationary increases and aligning with the West Burton Solar Project DCO
2	3	REP2-009	• Amendment to Article 45 and Schedule 15(2) to increase period for discharge of requirements from ten to twelve weeks • Schedule 2(5), (6) and (7) amended in response to submissions made by the Councils in respect of consultation • Schedule 2(20) amended to provide for consultation with the local highway and waste planning authorities • Addition of plots in Schedule 8 reflecting amendments to Land Plans • Schedule 15(3) amended to increase notification period for requirement consultees from 10 to 15 working days
3	4	REP3-002	• Article 2-new definition added to align with changes made at Schedule 2(12) (archaeology); • Schedule 2(8) amended in response to submissions at ISH1 [REP1-077] to clarify that the landscape and ecology measures will be maintained • Schedule 2(13) and (20) amended to include Anglian Water as a consultee in relation to water resources • Schedule 2(21) amended in response to the EA submission [REP2-094]; • Schedule 8(1) amended to provide more specific wording for the required cable width following CAH1 [REP3-064]
4	5	REP4-004	• Amendment to Article 36 to clarify that the notification to be given to SoS and the relevant planning authorities • Schedule 1 (2) Work No 2 amended at request of the ExA • Schedule 2(1) amended in accordance with request of ExA to ensure that the approval of the Councils is required where appropriate and to reflect the addition of R22 • Schedule 2(4) amended in accordance with request of ExA to ensure that the approval of the Councils is required where appropriate

			• Schedule 2(21) amended in response to the ExA request to add EA as a consultee • Schedule 2(22) amended to align with the updated FRA • Inclusion of further protective provisions at Schedule 14 as requested by the ExA
5	6	REP5-006	• Schedule 1(2) amended to include reference to fencing and acoustic barriers and to align with the wording in Work No2 as raised in ISH 3 [REP5-071] • Schedule 2(22) amended to align with the updated FRA to secure that detailed design delivers specific outcomes in relation to flood risk and impact on flood plain storage • Protective provisions for the benefit of the Fire and Rescue Services added to Schedule 14
6	7	REP6-004	• Amendments to Schedule 12 to reflect updates on plans and documents to be certified • Amendments to Schedule 14, Part 5 to reflect agreed protective provisions with the EA
7	8	REP7-004	• Amendments to Schedule 2(11) (drainage) to reflect discussions with the EA • Amendments to Schedule 12 to reflect updates on plans and documents to be certified
9	9	REP9-006	• Inclusion of protective provisions for the benefit of Northern Powergrid (Yorkshire)PLC and Network Rail added to Schedule 14

7.4. DCO PROVISIONS WITH OBJECTIONS OUTSTANDING

ARTICLE 45 AND SCHEDULE 15

7.4.1. Article 45 and Schedule 15 of the dDCO set out the procedure for the approval of matters under the requirements and any related appeals. Following the NCC LIR [REP1-096] wherein NCC requested an increase from 10 to16 weeks for the period for determination of an application for consent under the requirements. The applicant responded at ISH1 [REP1-077] to the ExA's questioning as to whether a 10 week period for the discharge of requirements as set out in Article 45 was appropriate. NSDC at [RR-135] requested a 16 week period and WLDC at [REP1-099] requested a 13 week period. The applicant confirmed that they would continue to engage with the local authorities on this timing and in [REP2-009], the applicant amended Article 45(4) and Schedule 15 (2) (i) to 12 weeks.

7.4.2. At the end of the examination, NCC [REP6-037]. NSDC [REP7-030], Bassetlaw District Council (BDC) [REP9-019], WLDC [REP8-008] all maintained an objection to the provisions in the dDCO that in the event that the relevant planning authority does not determine an application within the 12 week period, consent will be deemed to be granted. The Councils cited the DCO made for Cottam Solar Project where the SoS considered that a 13 week period was appropriate.

7.4.3. The concerns of the Councils in respect of the time period for determination of applications relate to the number of applications that the Councils expect to receive in relation to the concentration of NSIPs within their administrative areas, putting the Councils under pressure, together with resourcing implications and the need for the Councils to be able to carry out consultation.

7.4.4. Having considered the submissions made by the Councils, the ExA considers that given the number of NSIP projects in the areas covered by the Councils, there is a potential for Councils to have numerous applications made for discharge of requirements within a similar timeframe. The ExA acknowledges the position of the Councils and the limitations of their resources. The ExA further acknowledges that the applicant has amended the dDCO [REP9-006] to provide for a 12 week period following the applicant's consideration of the submissions made by the Councils. Nevertheless, the ExA considers that the 13 week approval period would not be unreasonable and would be in accordance with the Cottam Solar Project DCO. The additional week would provide additional time for the Councils to consider and determine applications without imposing unnecessary delays on the progress of the proposed development.

7.4.5. Therefore, the ExA recommends that the 12 week period set out in Article 45 and paragraph 2(1) of Schedule 15 of the dDCO be amended to 13 weeks.

ARTICLE 6-DISAPPLICATION AND MODIFICATION OF STATUTORY PROVISIONS

Permitted Development Rights

7.4.6. The extent of the permitted development rights over the whole of the order limits was raised by the ExA during the examination as the ExA were concerned over the extent of operational land as defined by the dDCO and the consequent allowance or permitted development rights over the whole area. The applicant's submissions made at ISH1 [REP1-077] sought to explain the justification and need for the permitted development rights for the whole of the order limits.

7.4.7. The ExA remain concerned that the application includes significant areas of land provided for mitigation purposes or excluded from having structures on them and not being required for operational purposes. Such areas would be afforded the same permitted development rights as the operational land and that there was no justifiable reason to allow the permitted development rights to extend to the whole of the Order limits.

7.4.8. The ExA has considered the submissions made by the applicant, though it does not consider that the definition of 'materially new or different' [REP4-053] would provide sufficient certainty to the restriction of development on the non-operational land whilst the specific removal of the permitted development rights would provide such certainty.

7.4.9. WLDC in its response to the ExA's proposed changes to the dDCO [REP4-060] set out its concerns relating to the restrictions on buildings and that it did not restrict the permitted development rights relating to other potential development such as substation, plant and machinery. WLDC requested that the restriction also apply to plant and machinery.

7.4.10. The applicant provided a detailed response at [REP5-072] and maintained their strong opposition to the imposition of an article or requirement as proposed by the ExA, maintaining their position as set out in ISH1 [EV5-007] and in their response to the ExA Schedule of Changes to the dDCO [REP4-053].

7.4.11. The applicant's position was that the extent of the permitted development rights was appropriate and that they would align with the rights that would be available to statutory undertakers for the generation of electricity and to generation licence holders for sub-50MW solar farms. They stated that it would be appropriate for the applicant to benefit from the availability of such rights for the proposed development to ensure the efficient, effective and safe operation of the proposed development over its 60 year lifetime.

7.4.12. The applicant further explained that the permitted development rights would be limited to class B1 and would only relate to minor works so that the applicant would not be permitted to undertake works which would result in a breach of the dDCO. Furthermore, if the works undertaken resulted in any significant effects in environmental terms, the permitted development rights would not apply.

7.4.13. The applicant stated in [REP4-053] that they would require the permitted development rights to be retained to ensure the effective and safe operation of the proposed development and that the permitted development rights would be controlled by the dDCO and the General Permitted Development Order, which would serve to restrict what further development could be undertaken.

7.4.14. Whilst the applicant maintained their position that the permitted development rights should remain, the applicant provided a without prejudice article, suggested to be added as a sub paragraph of article 6, in [REP4-053] and as Annexe A of [REP5-071]:

"The undertaker must not exercise the permitted development rights in Schedule 2, Part 15, Class B, sub-paragraphs (d) or (e) of the Town and Country Planning (General Permitted Development) Order 2015 for above ground development on the areas labelled on the works plans as: -

(1) Work No.8 only; or

(2) Work Nos. 5 and 8 only."

7.4.15. In the applicant's Closing Statement [REP9-028], the applicant maintained its opposition to the restriction of the permitted development rights and the restriction on the extent of the operational land which they considered unnecessary and unjustified.

7.4.16. The ExA has given careful consideration to the question of the permitted development rights and noted the opposition raised by the applicant. The ExA notes that the inclusion of a new sub-paragraph to Article 6 to provide a restriction on the use of permitted development rights over land that is not operational land has been provided by the applicant though on a without prejudice basis.

7.4.17. Whilst the ExA agrees with the applicant that there are means of controlling the use of permitted development rights through the DCO and the GDPO itself, the inclusion of the wording proposed by the applicant would serve to provide certainty as to the extent of the permitted development rights. The addition of the new sub paragraph at article 6 would clarify what permitted development rights exist without curtailing the applicant's ability to efficiently, effectively and safely operate the proposed development. The inclusion of the wording would also satisfactorily address the concerns raised by WLDC in [REP4-060].

7.4.18. This would also provide greater clarity for all parties and give greater confidence that the ES in support of the application has assessed the extent of the worst case scenario as expected by the EIA Regulations.

7.4.19. Consequently, the ExA has included within the rDCO additional wording (as set out in Annexe A of [REP5-071]) at Article 6 (9).

Trent Valley Internal Drainage Board (TVIDB)

7.4.20. The EM [REP9-008] explains that Article 6(1) of the dDCO [REP9-006] disapplies a number of statutory provisions. Under section 120 of PA2008, a DCO may include provisions which have the power to apply, modify or exclude a statutory provision. Section 150 PA2008 limits this power by preventing certain prescribed consents from being included in a DCO unless the relevant body consents to it.

7.4.21. The relevant body would be the body which would otherwise be required to grant the prescribed consent or authorisation. The details of the consents which are prescribed in England for the purposes of Section 150 PA2008 are set out in Regulation 5 and Part 1 of Schedule 2 of the Infrastructure Planning (Interested Parties and Miscellaneous Prescribed Provisions) Regulations 2015

7.4.22. Article 6(1) (a) of the dDCO [REP9-006] seeks to disapply Section 23 (prohibition of obstruction, etc. in watercourses) of the Land Drainage Act 1991. For the purposes of Section 150 of PA2008, the relevant body would be TVIDB and the applicant requires the consent of TVIDB in order to disapply section 23 of the Land Drainage Act 1991.

7.4.23. The applicant had included Articles 6(1)(a) in the dDCO [REP9-006] and PPs for the benefit of the drainage authority at Schedule 14 of the dDCO [REP9-006], which would operate to protect the interests of TVIDB. The PPs are discussed later in this chapter.

7.4.24. The applicant stated that they were engaging with TVIDB and provided the relevant drafting implications of the consent to the disapplication not being received at Appendix A of the written summary of ISH3 [REP5-071].

7.4.25. At D6, TVIDB [REP6-066] submitted a further response though they did not offer any comment on the draft protective provisions or provide the necessary consent to the disapplication. The applicant updated at D7 [REP7-042] that they continued to try to engage with TVIDB though they had not received anything further.

7.4.26. In the applicant's closing statement [REP9-028], the applicant reiterated that they had not been able to engage further with TVIDB in respect of the proposed protective provisions set out at part 6 of Schedule 14 of the dDCO [REP9-006] or the consent to the disapplication of the legislation.

7.4.27. At the close of the examination, the ExA had not received confirmation that TVIDB had agreed to give its consent to the disapplication as the relevant body. The ExA is therefore unable to include the provision in the rDCO in this effect and the ExA recommends the removal of Article 6(1)(a) from the dDCO [REP9-006].

PART 6, ARTICLE 40-MISCELLANEOUS AND GENERAL

7.4.28. LCC in the SoCG [REP6-034] set out their concerns relating to Article 40 of the dDCO [REP9-006], requesting amendments to the article so that

consultation must be undertaken with the relevant planning authority prior to the removal of any trees that may become the subject of a TPO in the future. LCC suggest wording that was used in the A38 Derby Junctions DCO 2023 to provide for consultation and the replacement of felled trees.

7.4.29. In the SoCG [REP6-034], the applicant responded that the oOEMP had been updated [REP6-024] and that they had included a commitment to provide an annual planned maintenance schedule. The applicant would be required to report to the relevant planning authority on their expected activities for the following 12 month period, including the removal of trees and replacement proposals.

7.4.30. The applicant further stated that paragraph 4.1.15 of the oLEMP [REP7-018] sets out that the applicant would need to agree the replacement of trees before a tree subject to a TPO can be removed. The relevant planning authority, would as a result of the oOEMP [REP6-024] and the oLEMP [REP7-018], have notice and be made aware of proposed tree removal.

7.4.31. The concerns raised by LCC [REP6-034] relate to the potential that the applicant does not propose to replace a tree, and the planning authority has no recourse to ensure that there is consultation regarding the proposals or powers for the planning authority to require the tree replacement. In respect of paragraph 4.1.15 of the oLEMP [REP7-018], LCC stated that this would offer protection to trees that may become subject to a TPO during the lifetime of the proposed development. The final LCC SOCG [REP7026] maintained the disagreement in respect of Article 40 and LCC in its final statement [REP7-046] confirmed this an outstanding point that had not been agreed.

7.4.32. The ExA has noted the comments made by both LCC and the applicant. The wording proposed by LCC provides clarification as to the consultation to be carried out by the undertaker and the protection of trees that become subject to a TPO. The ExA considers that the additional wording at Article 40, as set out below is reasonable and the ExA recommends that Article 40 be amended in the rDCO [Appendix C].

“Article 40 (2) In carrying out any activity authorised by paragraph (1)—

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

(b) the duty contained in section 206(1)(a) (replacement of trees) of the 1990 Act is not to apply although where possible the undertaker is to seek to replace any trees which are removed; and

(c) the undertaker must consult the relevant planning authority prior to that activity taking place.”

REQUIREMENT 22

7.4.33. At Deadline 4, the applicant offered to include a new Requirement 22 within the dDCO [REP4-005] and subsequently refined this Requirement at

Deadline 6 in agreement with the Environment Agency [REP6-004]. The EA agreed the wording of the new R 22 in respect of flood risk as follows:

"22.—(1) No part of the authorised development shall commence until, for that part, the flood risk mitigation detailed design has been submitted to and approved by the relevant planning authority, in consultation with the Environment Agency.

(2) The flood risk mitigation detailed design pursuant to sub-paragraph (1) to include:

(a) the layout of the proposed development and any proposed flood risk mitigation

(b) the layout of solar panel areas and associated updated volumetric loss calculations based on the flood mitigation detailed design; and

(c) details of the lowest leading edge of solar panels and confirmation that solar panels are above the design flood event (as defined in the flood risk assessment and outline drainage strategy).

(3) The flood risk mitigation detailed design must accord with the flood risk assessment and outline drainage strategy unless it can be demonstrated to the satisfaction of the relevant planning authority, in consultation with the Environment Agency, that the approval sought would not give rise to any additional flood risk effects in comparison to those reported in the flood risk assessment and outline drainage strategy unless evidence of a flood risk betterment can be provided"

7.4.34. The ExA have considered the wording of the new R22 and note that the purpose is that the requirement would operate so that the FRA would be secured, in particular to address the impact of the proposed development on flood risk and floodplain storage. The applicant would be required to review the FRA based on the detailed design, to provide certainty that in terms of the detailed design, the same outcomes in relation to flood risk and floodplain storage would be achieved. The ExA further note that the EA agreed the wording as submitted in the dDCO at D6 [REP6-004].

7.4.35. Whilst the ExA considers the agreement between the applicant and the EA on the flood risk mitigation measures and the additional R22 to reflect this is reasonable, the ExA considers that the drafting can be amended to provide greater clarity in light of the concerns raised as set out in the hydrology section of this Report at section 3.11. The rDCO includes an amendment to R22 to this effect.

Flood risk mitigation

22.—(1) No part of the authorised development shall commence until, for that part, the flood risk mitigation detailed design has been submitted to and approved by the relevant planning authority, in consultation with the Environment Agency.

(2) The flood risk mitigation detailed design pursuant to sub-paragraph (1) to include:

(a) the layout of the proposed development and any proposed flood risk mitigation

(b) the layout of solar panel areas and **all infrastructure proposed in Work No. 1 to be sited within areas at risk of flooding** and associated updated volumetric loss calculations based on the flood mitigation detailed design; and

(c) details of the lowest leading edge of solar panels **and lowest base of infrastructure referenced in (b)** and confirmation that solar panels **and infrastructure** are above the design flood event (as defined in the flood risk assessment and outline drainage strategy).

(3) The flood risk mitigation detailed design must accord with the flood risk assessment and outline drainage strategy ~~unless it can be demonstrated to the satisfaction of the relevant planning authority, in consultation with the Environment Agency, that the approval sought would not give rise to any additional flood risk effects in comparison to those reported in the flood risk assessment and outline drainage strategy unless evidence of a flood risk betterment can be provided.~~

OTHER PARTICULAR CONSIDERATIONS

Crown Land-Article 48

7.4.36. Section 135(2) of the PA2008 provides that an order may include the provision for CA of an interest in Crown land or rights only if the appropriate Crown authority has given consent to the acquisition.

7.4.37. Crown land has been identified at plot 04-009 as shown on the Crown Land Plans [REP9-005] being the riverbed of the River Trent. At the close of the examination, the consent from the Crown Estate had not been obtained. The applicant's closing statement [REP9-028] states that the applicant is engaged with the solicitors for the Crown Estate in relation to obtaining the necessary consents for the proposed development and the applicant was confident the consent would be obtained.

7.4.38. The absence of the consent from the Crown Estate under section 135 of the PA2008 has the implications that the proposed development is unable to proceed until the consent is granted. Whilst this is not a satisfactory position, the ExA notes that the applicant has continued to engage with the Crown Estate. Nonetheless, the position at the close of the examination was that a voluntary property agreement with the Crown Estate had not been reached. In these circumstances the applicant set out that negotiations would continue, and evidence of consent would be submitted to the SoS. As the s135 consent had not been obtained by the close of the examination.

7.4.39. The SoS will need to be assured that these are in place when determining the application and may wish to verify the position with the parties during the decision stage.

7.4.40. The Secretary of State for Transport has issued a section 135 letter of consent in respect of the consent required [REP9-001].

PROTECTIVE PROVISIONS

7.4.41. Schedule 14 of the dDCO [REP9-006] includes Protective Provisions. The applicant's closing statement [REP9-028] set out which of the PPs had been agreed and those which were not agreed in a final form at the close of the examination. The PPs that were agreed were as follows:

- Anglian Water Services Limited
- The Environment Agency
- The Canal and River Trust
- Lincolnshire Fire and Rescue Service
- Nottinghamshire Fire and Rescue Service

7.4.42. At the close of the examination, the following PPs were not in an agreed final form:

- Trent Valley IDB
- Exolum Pipeline System Ltd
- Network Rail
- National Grid Electricity Distribution (East Midlands) Plc
- National Grid Electricity Transmission Plc
- Northern Powergrid (Yorkshire) Plc

Schedule 14, Part 6-for the Protection of the Trent Valley Internal Drainage Board as Drainage Authority

7.4.43. In the TVIDB written representation [REP1-116], they set out their requirements and suggested that these could be addressed with protective provisions in the DCO. In the responses to ExQ1 [REP2-084], the applicant indicated that the addition of protective provisions for the benefit of TVIDB would be linked to the disapplication of section 23 of the Land Drainage Act 1971 set out in Article 6(1) of the dDCO [REP9-006]. The applicant stated that they had provided draft protective provisions for review by TVIDB.

7.4.44. The applicant provided the relevant drafting implications at Appendix A of the written summary of ISH3 [REP5-071].

7.4.45. At D6, TVIDB [REP6-066] submitted a further response though they did not offer any comment on the draft protective provisions. The applicant updated at D7 [REP7-042] that they continued to try to engage with TVIDB though they had not received any comments on the draft protective provisions or an indication that they were in an agreed form.

7.4.46. In the applicant's closing statement [REP9-028], the applicant reiterated that they had not been able to engage with TVIDB in respect of the proposed protective provisions set out at part 6 of Schedule 14 of the dDCO [REP9-006] or the consent to the disapplication of the legislation.

7.4.47. The ExA has considered the submissions made by the applicant with the draft of the protective provisions in the dDCO [REP9-006]. As TVIDB has not made any further submissions in respect of the amendments proposed by the applicant, the ExA does not recommend that further amendments be made to Part 6 of Schedule 14 of the dDCO [REP9-006].

7.4.48. The ExA is satisfied that as worded, the protective provisions provide sufficient protection to ensure that there would not be serious detriment to TVIDBs undertakings.

Schedule14, Part 8- for the Protection of Exolum Pipeline System Ltd

7.4.49. The applicant confirmed in its closing statement [REP9-028] that the PPs had been agreed and were in a final form. However, the finalisation of the PPs is subject to a commercial agreement between the applicant and Exolum which was not concluded at the close of the examination. The applicant stated that they would update the SoS following the completion of the agreement.

7.4.50. The SoS may therefore wish to verify the position with the parties during the decision period and receive correspondence on these PPs from either the applicant or Exolum during the decision stage.

7.4.51. The ExA are content with the wording as drafted and do not propose to make any changes in the rDCO.

Schedule 14, Part 10- for the Protection of National Grid Electricity Distribution (East Midlands) Plc

7.4.52. The applicant confirmed in its closing statement [REP9-028] that the PPs had been agreed and were in a final form. However, the finalisation of the PPs is subject to a commercial agreement between the applicant and National Grid Electricity Distribution (East Midlands) Plc which was not concluded at the close of the examination. The applicant stated that they would update the SoS following the completion of the agreement. The SoS may therefore receive correspondence on these PPs from either the applicant or National Grid Electricity Distribution (East Midlands) Plc during the decision stage.

7.4.53. The SoS may therefore wish to verify the position with the parties during the decision period.

7.4.54. The ExA are however content with the wording as drafted and do not propose to make any changes in the rDCO.

Schedule 14, Part 9- for the Protection of National Grid Electricity Transmission Plc

7.4.55. The applicant confirmed in its closing statement [REP9-028] that they continue to negotiate the PPs and refer specifically to the provisions seeking reciprocity on the cooperation provisions. The SoCG [REP9-021] indicates that the final PPs are still under review at the close of the examination. The applicant expects an agreement to be reached and would update the SoS accordingly. The SoS may therefore receive correspondence on this point from either NGET or the applicant during the decision stage.

7.4.56. During the examination the ExA sought from all SUs their views on protective provisions [PD-010]. NGET set out their concerns in [REP1-111] however did not provide their preferred provisions but referred the ExA to decisions made at Awel Y Mor Development Consent Order ("AYM DCO") and Mona Offshore Wind Development Consent Order ("Mona DCO").

7.4.57. NGET argue that in both these cases the PPs set out provided appropriate protection for existing and future NGET infrastructure as plans were in place to extend substations and facilitate the strengthening of the network. The same circumstances apply here.

7.4.58. NGET have submitted a planning application for a new substation at High Marnham and also have plans well advanced for the North Humber to High Marnham project. These proposals form part of the wider 'Great Grid upgrade'.

7.4.59. The applicant in [REP3-067] confirmed discussions were ongoing but provided no further breakdown of the difference between the parties. This remained the case at the end of the examination as confirmed in the SoCG [REP9-021].

7.4.60. Whilst the ExA have not received a detailed breakdown of the differences between the parties, having compared the DCO for Mona with the final preferred dDCO from the applicant there are several material differences. The main ones are summarised below, with the full typographical changes proposed set out in Table 17.

7.4.61. Article 95 does not refer to the New Roads and Street Works Act 1991, the ExA consider it would be prudent to add this to aid in clarification.

7.4.62. In the Mona DCO NGET are required to notify the undertaker of what they regard a suitable sum of insurance to be and that evidence of that insurance to be provided to NGET on request.

7.4.63. This is further supplemented by a definition of what should be regarded as acceptable security. The ExA consider that NGET would be the most appropriate party to determine the likely insurance needs in these circumstances and having the security backed by the parent company or a bond would be sensible in light of the potential consequences of failure.

7.4.64. NGET Plc should be specifically defined within the DCO so there is no doubt which company the protective provisions apply to.

7.4.65. Clarification of and limitation on the commencement of the One Earth works and the approval process required to be undertaken with NGET, appears to the ExA to be a sensible precaution in ensuring the statutory duties of NGET as an electricity undertaker are appropriately protected.

7.4.66. The ExA therefore propose a series of changes set out below in Table 17 which the ExA consider would appropriately safeguard NGET's position whilst allowing the applicant to undertake the works necessary to deliver the proposed development in a reasonable timeframe.

7.4.67. The SoS may therefore wish to verify the position with the parties during the decision period.

Schedule 14, Part 14- for the Protection of Railway Interests

7.4.68. Network Rail Infrastructure Limited submitted a representation [RR-104] and responses to ExQ1 [REP2-101], setting out their requirements for PP for their protection. A form of PPs that were requested by Network Rail were submitted [REP2-101].

7.4.69. The applicant confirmed in its closing statement [REP9-0028] that they continue to negotiate the PPs with Network Rail Infrastructure Limited and seek to negotiate a side agreement. The D7 response from Network Rail [RE7-061] reiterated the request for the PPs to be included and referred to the ongoing discussions between the applicant and Network Rail.

7.4.70. The applicant included PPs for Network Rail in the dDCO at D9 [REP9-006]. The PPs added by the applicant to the dDCO [REP9-006] are largely in the form requested by Network Rail though the applicant had not provided a detailed justification as to why they have not included the PPs in the form requested by Network Rail.

7.4.71. Due to the inclusion being at D9, the ExA accepted an additional submission from Network Rail [AS-072] which stated that the applicant had accepted a substantial proportion of the PPs proposed by Network Rail. However, the dDCO [REP9-006] omitted the restriction on the use of compulsory powers without Network Rail's consent and a requirement for the undertaker to provide an indemnity to Network Rail for any losses incurred by them.

7.4.72. Network Rail requested that the provisions 4 and 15 of the draft PPs they had proposed [REP2-101] be included on the basis that Network Rail would not be able to agree to their omission as they could not agree the exercise of compulsory purchase powers over Network Rail's land without the consent of Network Rail. They further explained that if Network Rail were not required to give consent, there would be a risk of the applicant acquiring an easement over Network Rail's land that did not meet the requirements of Network Rail to ensure the safe and efficient operation of the railway.

7.4.73. With regards to the indemnity provision, Network Rail stated that it would need to ensure that it would not be put at risk of any costs arising from the proposed development. Network Rail also referred to its Network Licence and the need for it to comply with this in terms of standards, which could be affected by the compulsory acquisition of rights without the consent of Network Rail. Network Rail set out examples of the restriction of the use of compulsory purchase powers over railway land the provision of an indemnity in numerous DCOs where these provisions have been accepted by the SoS.

7.4.74. The ExA has considered the submissions made by Network Rail, in particular [AS-072] and the preferred wording of Network Rail that has been used in other DCOs. The ExA considers that the wording of the PPs for Network Rail should be amended to align with the PPs proposed by Network Rail. Details of the proposed amendments are set out in Table 17 below.

7.4.75. The applicant in their closing statement [REP9-028] stated that they continue to negotiate with Network Rail to agree the PPs following the close of the examination and will provide updates to the SoS. At the close of the examination, the applicant had not had the opportunity to respond to the Network Rail submission [AS-072].

7.4.76. The SoS may wish to give such an opportunity to the applicant during the decision period and the SoS may therefore receive correspondence on this point from either the applicant or Network Rail.

7.4.77. The ExA however are of the view that the PPs proposed by Network Rail are justified and have been used in other DCOs and the rDCO is amended to include the PPs as proposed by Network Rail.

Schedule 14, Part 13- for the Protection of Northern Powergrid (Yorkshire) Plc

7.4.78. Northern Powergrid (Yorkshire) Plc submitted a representation [RR-043] setting out their concerns that the PPs in the dDCO [APP-007] did not accord with their standard PP requirements. In the applicant's response to RRs [REP1-075], the applicant stated that they were engaging with Northern Powergrid on the PPs.

7.4.79. The ExA issued first written questions [PD-010] where the views of statutory undertakers were sought in respect of the protective provisions drafted by the applicant in the dDCO. Northern Powergrid did not respond.

7.4.80. At D9, the applicant submitted the dDCO [REP9-006] with PPs for the protection of Northern Powergrid at Schedule 14, Part 13. The ExA accepted an additional submission from Northern Powergrid [AS-071] which confirmed that the applicant and Northern Powergrid had been unable to reach agreement on the PPs before the close of the examination and that Northern Powergrid considered that the version of the PPs submitted at [REP9-006] did not protect their interests.

7.4.81. In the applicant's closing statement [REP9-0028], the applicant stated that they would continue to engage with Northern Powergrid to agree the PPs and would update the SoS as appropriate.

7.4.82. The ExA has not received alternative wording for the PPs from Northern Powergrid or specific provisions which Northern Powergrid would want to be amended. The ExA has considered the wording of the PPs for the protection of Northern Powergrid and also reviewed the PPs for Northern Powergrid in other DCOs.

7.4.83. The ExA has noted that the PPs for Northern Powergrid in the dDCO [REP9-006] do differ in some respects to those in other DCOs, though without any explanation from Northern Powergrid, the ExA is unable to assess in what respects the draft provided by the applicant might be regarded as deficient.

7.4.84. The SoS may wish to seek confirmation from the parties as to the wording of the PPs.

7.4.85. In the absence of an alternative form of wording from Northern Powergrid, the ExA considers the PPs included are sufficient to ensure that the Northern Powergrid land, interests and apparatus is protected. The ExA therefore recommends the inclusion of the applicant's preferred form of PPs set out in Schedule 14, Part 13 of the dDCO [REP9-006].

7.5. EXA'S PROPOSED CHANGES

7.5.1. The ExA recommend that the changes set out in Table 17 below should be made to the applicants final dDCO [REP9-006]. These changes are incorporated into the ExAs rDCO at [Appendix C].

Table 17 Recommended changes to the applicant's final dDCO

Provision	Recommended change	**Reasoning**
Article 6(1)(a)	Delete Article 6(1)(a) and renumber the remaining clauses of the article accordingly The corresponding foot notes on page 10 to be realtered (a) to (g)	The relevant body has not agreed to the disapplication of this provision. To ensure continuity of lettering of footnotes
Article 6	Add **(8)** before In paragraph (3), "enforcement action" means Add a further subparagraph (9) to Article 6: **"The undertaker must not exercise the permitted development rights in Schedule 2, Part 15, Class B,**	To ensure correct numbering within the Article The ExA considers it reasonable and in accordance with conclusions in

	sub-paragraphs (d) or (e) of the Town and Country Planning (General Permitted Development) Order 2015 for above ground development on the areas labelled on the works plans as:- **(1) Work No.8 only; or** **(2) Work Nos. 5 and 8 only."**	section 7.4 of this report
Article 40	Article 40 (2)- In carrying out any activity authorised by paragraph (1)— Delete the wording: "(a) the undertaker must do no unnecessary damage to any tree and must pay compensation to any person for any loss or damage arising from such activity; and (b) the duty contained in section 206(1) (replacement of trees) of the 1990 Act does not apply." And replace with : **"(a) the undertaker must do no unnecessary damage to any tree or shrub and must pay compensation to any person for any loss or damage arising from such activity;** **(b) the duty contained in section 206(1)(a) (replacement of trees) of the 1990 Act is not to apply although where possible the undertaker is to seek to replace any trees which are removed; and** **(c) the undertaker must consult the relevant planning authority prior to that activity taking place.**	In line with the ExA's conclusions in section 7.4 of this report
Article 45 (4) and Schedule 15,	Delete the words '...twelve weeks' and substitute with '...**thirteen** weeks'	In line with the ExA's conclusions in section 7.4 of this report, the ExA considers it

paragraph 2(1)		reasonable to provide for a 13 week decision period.
Schedule 2, Requirement 7	Battery safety management plan To add the highlighted text to (2) (2) The battery safety management plan must be substantially in accordance with the outline battery safety management plan **and demonstrate access to the BESS and substation compounds is achievable during the design flood event (as defined in the flood risk assessment and outline drainage strategy)**.	To ensure that the BESS are accessible in the event of a flood event in line with the ExA conclusions in section 3.11 of this report
Schedule 2, Requirement 22	Flood risk mitigation To add the highlighted text to (2) (b) and (c) (b) the layout of **all infrastructure proposed in Work No. 1 to be sited in areas at risk of flooding** and associated updated volumetric loss calculations based on the flood mitigation detailed design; and (c) details of the lowest leading edge of solar panels **and lowest base of infrastructure referenced in (b)** and confirmation that solar panels **and infrastructure** are above the design flood event (as defined in the flood risk assessment and outline drainage strategy). To delete from (3) the highlighted text (3) The flood risk mitigation detailed design must accord with the flood risk assessment and outline drainage strategy unless ~~**it can be demonstrated to the satisfaction of the relevant planning authority, in consultation with the Environment Agency, that the approval sought would not give rise to any additional flood risk effects in comparison to those reported in**~~	To ensure that all infrastructure which may affect the assessment of flood volume calculations are properly taken into account and fully understood by all parties to ensure compliance with EN-1. Due to the degree of importance placed upon assessing flood risk matters in advance of granting consent, the SoS needs to be assured that the FRA provided by the applicant during the application is appropriate. This then must form the basis of any future submission at the detailed design stage.

	~~**the flood risk assessment and outline drainage strategy unless evidence of a flood risk betterment can be provided**~~.	
Schedule 12, Flood risk assessment and outline drainage strategy	Removal of the reference to the revision number as "3" and the date as "August 2025" and replace with revision number "**6**" and the date "**December 2025**"	To ensure that the latest revision is referred to
Schedule 14, Part 9	To add the highlighted text FOR THE PROTECTION OF NATIONAL GRID ELECTRICITY TRANSMISSION **PLC** AS ELECTRICITY Plc UNDERTAKER Application 94.—(1) For the protection of NGET **Plc** as referred to in this Part of this Schedule the following provisions have effect, unless otherwise agreed in writing between the undertaker and NGET **Plc**. (2) Subject to sub-paragraph (3) or to the extent otherwise agreed in writing between the undertaker and NGET **Plc**, where the benefit of this Order is transferred or granted to another person under article 36 (consent to transfer the benefit of the Order) – (a) any agreement of the type mentioned in sub-paragraph (1) has effect as if it had been made between NGET **Plc** and the transferee or grantee (as the case may be); and (b) written notice of the transfer or grant must be given to NGET **Plc** on or before the date of that transfer or grant. (3) Sub-paragraph (2) does not apply where the benefit of the Order is	To ensure there would be no serious detriment to the NGET Plc interests as a result of the exercise of CA powers by the applicant.

	transferred or granted to NGET **Plc** (but without prejudice to 105(3)(b). Interpretation 95. In this Part of this Schedule— **"1991 Act" means the New Roads and Street Works Act 1991;** "acceptable credit provider" means a bank or financial institution with a credit rating that is not lower than: (i) "A-" if the rating is assigned by Standard & Poor's Ratings Group or Fitch Ratings; and "A3" if the rating is assigned by Moody's Investors Services Inc.; "acceptable insurance" means general third party liability insurance effected and maintained by the undertaker with a combined property damage and bodily injury limit of indemnity of not less than **a sum to be notified to the undertaker by NGET Plc and agreed in writing** between the parties. **Evidence of that insurance must be provided to NGET Plc on request** Such insurance shall be maintained (a) during the construction period of the specified works, **and (b) after the construction period of the authorised works in respect of any use and maintenance of the authorised development by or on behalf of the undertaker which constitute specified works and arranged with an insurer whose security/credit rating meets the same requirements as an "acceptable credit provider",** such insurance shall include (without limitation): (a) a waiver of subrogation and an indemnity to principal clause in favour of NGET **Plc**	

	(b) pollution liability for third party property damage and third party bodily damage arising from any pollution/contamination event with a (sub)limit of indemnity of not less than **a sum to be notified to the undertaker by NGET Plc and** agreed **in writing** between the parties **"acceptable security" means either:** **(a) a parent company guarantee from a parent company in favour of National Grid Electricity Transmission Plc to cover the undertaker's liability to National Grid Electricity Transmission Plc to a total liability cap in an amount to be notified to the undertaker by National Grid Electricity Transmission Plc and agreed in writing between the parties (in a form reasonably satisfactory to National Grid Electricity Transmission Plc and where required by National Grid Electricity Transmission Plc, accompanied with a legal opinion confirming the due capacity and authorisation of the parent company to enter into and be bound by the terms of such guarantee); or** **(b) a bank bond or letter of credit from an acceptable credit provider in favour of National Grid Electricity Transmission Plc to cover the undertaker's liability to National Grid Electricity Transmission Plc for an amount to be notified to the undertaker by National Grid Electricity Transmission Plc and agreed in**	

	writing between the parties (in a form reasonably satisfactory to National Grid Electricity Transmission Plc); "alternative apparatus" means appropriate alternative apparatus to the satisfaction of NGET Plc to enable NGET Plc to fulfil its statutory functions in a manner no less efficient than previously; "apparatus" **means** (a) **any** electric lines or electrical plant as defined in the **Electricity Act** 1989 , belonging to or maintained by NGET **Plc** together with any replacement apparatus; and such other apparatus constructed pursuant to the Order that becomes operational apparatus of NGET Plc for the purposes of transmission, distribution and/or supply and includes any structure in which apparatus is or must be lodged or which gives or will give access to apparatus; and (**b**) any electrical lines or electrical plant as defined in the 1989 Act, any mains, pipes, plant or other apparatus belonging to, operated or maintained by NGET Plc for the purposes of the construction, operation and maintenance of the North Humber to High Marnham Project or whether temporary or permanent, and includes, where the context so requires, apparatus constructed as part of the authorised development and intended for the beneficial use by NGET **Plc** ("North Humber to High Marnham apparatus"); (**c**) any electrical lines or electrical plant as defined in the 1989 Act, any mains, pipes, plant or other	

	apparatus belonging to, operated or maintained by NGET **Plc** for the purposes of the construction, operation and maintenance of the Brinsworth to High Marnham Project or whether temporary or permanent, and includes, where the context so requires, apparatus constructed as part of the authorised development and intended for the beneficial use by NGET **Plc** ("Brinsworth to High Marnham Project apparatus"); "authorised works" has the same meaning as is given to the term "authorised development" in article 2 (interpretation) of this Order and includes any associated development authorised by the Order and for the purposes of this Part of this Schedule includes the use and maintenance of the authorised works and construction of any works authorised by this Part of this Schedule; "North Humber to High Marnham Project" means the proposed new high voltage electricity transmission line and associated works between a new substation at Creyke Beck in the East Riding of Yorkshire and a new substation at High Marnham in Nottinghamshire to be undertaken by NGET **Plc**; " North Humber to High Marnham Site" includes – (a) land on which any North Humber to High Marnham apparatus is situated; and (b) land on which North Humber to High Marnham apparatus is anticipated to be situated which is necessary for the construction, use or maintenance of the North Humber to High Marnham Project (in so far as the same has been notified by NGET **Plc** in writing to the undertaker)	

	"Brinsworth to High Marnham Project" means the proposed new high voltage electricity transmission line and associated works between a new substation at Brinsworth, Chesterfield and High Marnham to be undertaken by NGET **Plc**; " Brinsworth to High Marnham Site" includes – (a) land on which any Brinsworth to High Marnham apparatus is situated; and (b) land on which Brinsworth to High Marnham apparatus is anticipated to be situated which is necessary for the construction, use or maintenance of the Brinsworth to High Marnham (in so far as the same has been notified by NGET Plc in writing to the undertaker) "commence" and "commencement" in this Part of this Schedule **shall** include any below ground surveys, monitoring, ground work operations or the receipt and erection of construction plant and equipment; "deed of consent" means a deed of consent, crossing agreement, deed of variation or new deed of grant agreed between the parties acting reasonably in order to vary or replace existing easements, agreements, enactments and other such interests so as to secure land rights and interests as are necessary to carry out, maintain, operate and use the apparatus in a manner consistent with the terms of this Part of this Schedule; "functions" includes powers and duties; "ground mitigation scheme" means a scheme approved by NGET **Plc** (such approval not to be	

	unreasonably withheld or delayed) setting out the necessary measures (if any) for a ground subsidence event; "ground monitoring scheme" means a scheme for monitoring ground subsidence which sets out the apparatus which is to be subject to such monitoring, the extent of land to be monitored, the manner in which ground levels are to be monitored, the timescales of any monitoring activities and the extent of ground subsidence which, if exceeded, must require the undertaker to submit for NGET Plc's approval a ground mitigation scheme; "ground subsidence event" means any ground subsidence identified by the monitoring activities set out in the ground monitoring scheme that has exceeded the level described in the ground monitoring scheme as requiring a ground mitigation scheme; "in" in a context referring to apparatus or alternative apparatus in land includes a reference to apparatus or alternative apparatus under, over, across, along or upon such land; "incentive deduction" means any incentive deduction NGET Plc receives under its electricity transmission licence which is caused by an event on its transmission system that causes electricity not to be supplied to a demand customer and which arises as a result of the authorised works; "maintain" and "maintenance" will include the ability and right to do any of the following in relation to any apparatus or alternative apparatus of NGET Plc: construct, use, repair,	

	alter, inspect, renew or remove the apparatus; "**National Grid Electricity Transmission Plc" means National Grid Electricity Transmission Plc (Company Number. 2366977) whose registered office is at 1-3 Strand, London, WC2N 5EH or any successor as a licence holder within the meaning of Part 1 of the Electricity Act 1989;** "NGESO" means as defined in the STC; "plan" or "plans" include all designs, drawings, specifications, method statements, soil reports, programmes, calculations, risk assessments and other documents that are reasonably necessary properly and sufficiently to describe and assess the works to be executed; **"parent company" means a parent company of the undertaker acceptable to and which shall have been approved by National Grid Electricity Transmission Plc acting reasonably;** "specified works" means any of the authorised works or activities undertaken in association with the authorised development which: (a) will or may be situated over, or within 15 metres measured in any direction of any apparatus the removal of which has not been required by the undertaker under paragraph 8(2) or otherwise; and/or (b) may in any way adversely affect any apparatus the removal of which has not been required by the undertaker under paragraph 8(2) or otherwise; and/or	

	(c) includes any of the activities that are referred to in development near overhead lines EN43-8 and HSE's guidance note 6 "Avoidance of Danger from Overhead Lines". "STC" means the System Operator Transmission Owner Code prepared by the electricity transmission owners and NGESO as modified from time to time; "STC claims" means any claim made under the STC against NGET **Plc** arising out of or in connection with the de-energisation (whereby no electricity can flow to or from the relevant system through the generator or interconnector's equipment) of a generator or interconnector party solely as a result of the de-energisation of plant and apparatus forming part of NGET **Plc's** transmission system which arises as a result of the authorised works; "transmission owner" means as defined in the STC; Interaction with the Brinsworth to High Marnham Project and North Humber to High Marnham Project 96.—(1) Without limiting any other provision of this Part of this Schedule, the undertaker must use reasonable endeavours to avoid any conflict arising between the construction, maintenance and operation of the authorised development, and the Brinsworth to High Marnham Project and North Humber to High Marnham Project. For the purposes of this paragraph, "reasonable endeavours" means— (a) undertaking consultation on the detailed design and programming	

	of the NGET **Plc** connection works and all works associated with or ancillary to the National Grid connection works to ensure that the design and programme for the NGET **Plc** connection works does not unreasonably impede or interfere with the Brinsworth to High Marnham Project and North Humber to High Marnham Project; (b) having regard to the proposed programme of works for the Brinsworth to High Marnham and North Humber to High Marnham Projects as may be made available to the undertaker by NGET **Plc** and facilitating a co-ordinated approach to the programme, land assembly, and the carrying out of the NGET **Plc** connection works and the Brinsworth to High Marnham Project and North Humber to High Marnham Project; (c) providing a point of contact for continuing liaison and co-ordination throughout the construction and operation of the authorised development; and (d) keeping NGET **Plc** informed on the programme of works for the authorised development. **On Earth project works** **97. The undertaker must not except with the agreement of NGET Plc carry out the One Earth project works, or any part of it.** **98. (1) Before beginning to construct any One Earth project works, or any part of it, the undertaker must submit to National Grid plans of the relevant One Earth project works (or part of it) and such further particulars available to it as National Grid may**	

	request within 21 days of receipt of the plans reasonably requested. **(2) Any One Earth project works must not be constructed except in accordance with such plans as may be approved in writing by National Grid.** **99. (1) Any approval of National Grid required under this Schedule—** **(a) must not be unreasonably withheld or delayed;** **(b) in the case of a refusal must be accompanied by a statement of grounds or refusal; and** **(c) may be given subject to such reasonable requirements as National Grid may have in connection with the safe, economic and efficient construction, commissioning, operation, maintenance and future decommissioning of the Brinsworth to High Marnham Project and North Humber to High Marnham Project or otherwise for the protection of the High Marnham Project and North Humber to High Marnham Project, provided always that in relation to a refusal under sub-paragraph (b) or any requirements requested pursuant to sub-paragraph (c) the undertaker shall be permitted to refer such matters to dispute resolution pursuant to paragraph 113.** **(2) National Grid must employ reasonable endeavours to respond to the submission of any plans within a period of 56 days from the date of submission of the plans. If National Grid require further**	

	particulars, such particulars must be requested by National Grid no later than 21 days from the submission of plans and thereafter National Grid must employ reasonable endeavours to respond to the submission within 56 days from receipt of the further particulars. **100. —(1) The undertaker must give to National Grid not less than 14 days' notice in writing of its intention to commence construction of any One Earth project works and notice in writing of its completion not later than 7 days after the date on which it is completed and National Grid will be entitled by its officer to watch and inspect the construction of such works.** **(2) If any part of the One Earth project works is constructed otherwise than in accordance with paragraph 99(2) above National Grid may by notice in writing identify the extent to which the One Earth project works do not comply with the approved details and request the undertaker at the undertaker's own expense carry out remedial works so as to comply with the requirements of paragraph 99 (2) of this Schedule or such alternative works as may be agreed with National Grid or as otherwise may be agreed between the parties.** **(3) Subject to sub-paragraph (4), if within a reasonable period, being not less than 28 days beginning with the date when a notice under sub-paragraph (2) is served upon the undertaker, the undertaker has failed to begin taking steps to**	

	comply with the requirements of the notice and has not subsequently made reasonably expeditious progress towards their implementation, National Grid may execute the works specified in the notice and any reasonable expenditure incurred by National Grid in so doing will be recoverable from the undertaker. **(4) In the event of any dispute as to whether sub-paragraph (2) is properly applicable to any work in respect of which notice has been served under that sub-paragraph, or as to the reasonableness of any requirement of such a notice, National Grid will not, except in the case of an emergency, exercise the powers conferred by sub-paragraph (3) until the dispute has been finally determined in accordance with paragraph 113.** On Street Apparatus **101**. Except for paragraphs **102** (apparatus of NGET **Plc** in stopped up streets), 1**07** (retained apparatus: protection of NGET Plc), **108** (expenses) and **109** (indemnity) of this Schedule which will apply in respect of the exercise of all or any powers under the Order affecting the rights and apparatus of NGET **Plc**, the other provisions of this Schedule do not apply to apparatus in respect of which the relations between the undertaker and NGET **Plc** are regulated by the provisions of Part 3 of the 1991 Act. Apparatus of NGET Plc in stopped up streets **102**. Notwithstanding the prohibition or restriction on use or diversion of any highway under the powers of	

	article 12 (temporary prohibition or restriction on use of streets and public rights of way), NGET **Plc** is at liberty at all times to take all necessary access across any such street or public right of way and to execute and do all such works and things in, upon or under any such street or public right of way as may be reasonably necessary or desirable to enable it to maintain any apparatus which at the time of the prohibition or restriction on use or diversion was in that street or public right of way. Protective works to buildings **103**. The undertaker, in the case of the powers conferred by article 18 (protective work to buildings), must exercise those powers so as not to obstruct or render less convenient the access to any apparatus or to the Brinsworth to High Marnham Project or to the North Humber to High Marnham Project without the written consent of NGET Plc. Acquisition of land **104**.—(1) Regardless of any provision in this Order or anything shown on the land plans or contained in the book of reference to the Order, the undertaker may not (a) appropriate or acquire or take temporary possession of any land or apparatus or (b) appropriate, acquire, extinguish, interfere with or override any easement, other interest or right and/or apparatus of NGET **Plc** otherwise than by agreement **(such agreement not to be unreasonably withheld or delayed).** **(2) Regardless of any provision in this Order or anything shown on the land plans, the undertaker must not unless otherwise agreed**	

	in writing with National Grid acquire any land forming part of the Brinsworth to High Marnham Project or to the North Humber to High Marnham Project (such agreement not to be unreasonably withheld or delayed). (**3**) As a condition of an agreement between the parties in sub-paragraph (1), prior to the carrying out of any part of the authorised works (or in such other timeframe as may be agreed between NGET Plc and the undertaker) that is subject to the requirements of this Part of this Schedule that will cause any conflict with or breach the terms of any easement or other legal or land interest of NGET Plc or affect the provisions of any enactment or agreement regulating the relations between NGET Plc and the undertaker in respect of any apparatus laid or erected in land belonging to or secured by the undertaker, the undertaker must as NGET Plc reasonably requires enter into such deeds of consent upon such terms and conditions as may be agreed between NGET Plc and the undertaker acting reasonably and which must be no less favourable on the whole to NGET Plc unless otherwise agreed by NGET Plc, and it will be the responsibility of the undertaker to procure and/or secure the consent and entering into of such deeds and variations by all other third parties with an interest in the land at that time who are affected by such authorised works. (**4**) Save where otherwise agreed in writing between NGET Plc and the undertaker, the undertaker and NGET Plc agree that where there is any	

	inconsistency or duplication between the provisions set out in this Part of this Schedule relating to the relocation and/or removal of apparatus/including but not limited to the payment of costs and expenses relating to such relocation and/or removal of apparatus) and the provisions of any existing easement, rights, agreements and licences granted, used, enjoyed or exercised by NGET Plc and/or other enactments relied upon by NGET Plc as of right or other use in relation to the apparatus, then the provisions in this Part of this Schedule will prevail. (**5**) Any agreement or consent granted by NGET Plc under paragraph 107 or any other paragraph of this Part of this Schedule, must not be taken to constitute agreement under sub-paragraph (1). Removal of apparatus **105**.—(1) If, in the exercise of the powers conferred by this Order, the undertaker acquires any interest in or possesses temporarily any land in which any apparatus is placed, that apparatus must not be removed under this Part of this Schedule and any right of NGET Plc to maintain that apparatus in that land must not be extinguished until alternative apparatus has been constructed, and is in operation to the reasonable satisfaction of NGET Plc in accordance with sub-paragraph (2) to (5). (2) If, for the purpose of executing any works in, on, under or over any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any	

	apparatus placed in that land, it must give to NGET Plc advance written notice of that requirement, together with a plan of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order NGET Plc reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph (3), secure any necessary consents for the alternative apparatus and afford to NGET Plc to its satisfaction (taking into account paragraph **106**(1) below) the necessary facilities and rights (a) for the construction of alternative apparatus in other land of or land secured by the undertaker; and (b) subsequently for the maintenance of that apparatus. (3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of or land secured by the undertaker, or the undertaker is unable to afford such consents, 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, NGET Plc must, on receipt of a written notice to that effect from the undertaker, take such steps as are reasonable in the circumstances to assist the undertaker to obtain the necessary consents, facilities and rights in the land in which the alternative apparatus is to be constructed save that this obligation will not extend to the requirement for NGET Plc to use	

	its compulsory purchase powers to this end unless it elects to do so. (4) Any alternative apparatus to be constructed in land of or land secured by the undertaker under this Part of this Schedule must be constructed in such manner and in such line or situation as may be agreed between NGET Plc and the undertaker. (5) NGET Plc must, after the alternative apparatus to be provided or constructed has been agreed, and subject to a written diversion agreement having been entered into between the parties and the grant to NGET Plc of any such facilities and rights as are referred to in sub-paragraphs (2) or (3), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by the undertaker to be removed under the provisions of this Part of this Schedule. Facilities and rights for alternative apparatus **106**.—(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to or secures for NGET Plc facilities and rights in land for the construction, use, maintenance and protection of alternative apparatus in substitution for apparatus to be removed, those facilities and rights must be granted upon such terms and conditions as may be agreed between the undertaker and National and must be no less favourable on the whole to NGET Plc than the facilities and rights enjoyed by it in respect of the apparatus to be removed unless otherwise agreed by NGET Plc.	

	(2) If the facilities and rights to be afforded by the undertaker in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are less favourable on the whole to NGET Plc than the facilities and rights enjoyed by it in respect of the apparatus to be removed and the terms and conditions to which those facilities and rights are subject the matter may be referred to arbitration in accordance with paragraph 113 (arbitration) of this Part of this Schedule and the arbitrator must make such provision for the payment of compensation by the undertaker to NGET Plc as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case. Retained apparatus: protection of NGET Plc **as Electricity Undertaker** **107**.—(1) Not less than 56 days before the commencement of any specified works the undertaker must submit to NGET Plc a plan of the works to be executed and seek from NGET Plc details of the underground extent of their electricity assets. (2) In relation to specified works the plan to be submitted to NGET Plc under sub-paragraph (1) must include a method statement and describe— (a) the exact position of the works; (b) the level at which these are proposed to be constructed or renewed; (c) the manner of their construction or renewal including details of excavation, positioning of plant;	

	(d) the position of all apparatus; (e) by way of detailed drawings, every alteration proposed to be made to or close to any such apparatus; (f) any intended maintenance regimes; and (g) an assessment of risks of rise of earth issues. (h) a ground monitoring scheme, where required. (3) In relation to any works which will or may be situated on, over, under or within 10 metres of any part of the foundations of an electricity tower or between any two or more electricity towers, the plan to be submitted under sub-paragraph (1) must, in addition to the matters set out in sub-paragraph (2), include a method statement describing; - (a) details of any cable trench design including route, dimensions, clearance to pylon foundations; (b) demonstration that pylon foundations will not be affected prior to, during and post construction; (c) details of load bearing capacities of trenches; (d) details of any cable installation methodology including access arrangements, jointing bays and backfill methodology; (e) a written management plan for high voltage hazard during construction and ongoing maintenance of any cable route; (f) written details of the operations and maintenance regime for any cable, including frequency and method of access;	

	(g) assessment of earth rise potential if reasonably required by NGET Plc's engineers; and (h) evidence that trench bearing capacity is to be designed to support overhead line construction traffic of up to and including 26 tonnes in weight. (4) The undertaker must not commence any works to which sub-paragraphs (2) or (3) apply until NGET Plc has given written approval of the plan so submitted. (5) Any approval of NGET Plc required under sub-paragraphs (4)— (a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraphs (6) or (8); and, (b) may be given subject to such reasonable requirements as National Grid may have in connection with the safe and efficient construction, commissioning, operation and maintenance of the Brinsworth to High Marnham and North Humber to High Marnham Projects (c) and must not be unreasonably withheld. (6) In relation to any work to which sub-paragraphs (2) or (3) apply, NGET Plc may require such modifications to be made to the plans as may be reasonably necessary for the purpose of securing its apparatus against interference or risk of damage, for the provision of protective works or for the purpose of providing or securing proper and convenient means of access to any apparatus.	

	(7) Works executed under sub-paragraphs (2) or (3) must be executed in accordance with the plan, submitted under sub-paragraph (1) or as relevant sub-paragraph (6), as approved or as amended from time to time by agreement between the undertaker and NGET Plc and in accordance with such reasonable requirements as may be made in accordance with sub-paragraphs (6) or (8) by NGET Plc for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and NGET Plc will be entitled to watch and inspect the execution of those works. (8) Where NGET Plc requires any protective works to be carried out by itself or by the undertaker (whether of a temporary or permanent nature) such protective works, inclusive of any measures or schemes required and approved as part of the plan approved pursuant to this paragraph, must be carried out to NGET Plc's satisfaction prior to the commencement of any authorised development (or any relevant part thereof) for which protective works are required and NGET Plc must **give 56 days' notice of its requirement for such works from the date of submission of a plan pursuant to this paragraph (except in an emergency).** (9) If NGET Plc in accordance with sub-paragraphs (6) or (8) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraphs 94, 95, **104** and **107** to **109** apply as if the removal of the	

	apparatus had been required by the undertaker under paragraph **105**(2). (10) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 56 days before commencing the execution of the specified works, a new plan, instead of the plan previously submitted, and having done so the provisions of this paragraph shall apply to and in respect of the new plan. (11) The undertaker will not be required to comply with sub-paragraph (1) where it needs to carry out emergency works as defined in the 1991 Act but in that case it must give to NGET Plc notice as soon as is reasonably practicable and a plan of those works and must comply with sub-paragraphs (6), (7) and (8) insofar as is reasonably practicable in the circumstances and comply with sub-paragraph (11) at all times. (12) At all times when carrying out any works authorised under the Order, the undertaker must comply with NGET Plc's policies for development near overhead lines EN43-8 and HSE's guidance note 6 "Avoidance of Danger from Overhead Lines". Expenses **108**.—(1) Save where otherwise agreed in writing between NGET Plc and the undertaker and subject to the following provisions of this paragraph, the undertaker must pay to NGET Plc within **30** days of receipt of an itemised invoice or claim from NGET Plc all charges, costs and expenses reasonably anticipated within the following three months or reasonably	

	and properly incurred by NGET Plc in, or in connection with, the inspection, removal, relaying or replacing, alteration or protection of any apparatus or the construction of any new or alternative apparatus which may be required in consequence of the execution of any authorised works as are referred to in this Part of this Schedule including without limitation— (a) any costs reasonably incurred by or compensation properly paid by NGET Plc in connection with the acquisition of rights or the exercise of statutory powers for such apparatus including without limitation all costs incurred by NGET Plc as a consequence of NGET Plc; (i) using its own compulsory purchase powers to acquire any necessary rights under paragraph 105(3); or (ii) exercising any compulsory purchase powers in the Order transferred to or benefitting NGET Plc; (b) in connection with the cost of the carrying out of any diversion work or the provision of any alternative apparatus, where no written diversion agreement is otherwise in place; (c) the cutting off of any apparatus from any other apparatus or the making safe of redundant apparatus; (d) the approval of plans; (e) the carrying out of protective works, plus a capitalised sum to cover the cost of maintaining and renewing permanent protective works; and	

	(f) the survey of any land, apparatus or works, the inspection and monitoring of works or the installation or removal of any temporary works reasonably necessary in direct consequence of the execution of any such works referred to in this Part of this Schedule. (2) There will be deducted from any sum payable under sub-paragraph (1) the value of any apparatus removed under the provisions of this Part of this Schedule and which is not re-used as part of the alternative apparatus, that value being calculated after removal. (3) If in accordance with the provisions of this Part of this Schedule— (a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions; or (b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was situated, and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or, in default of agreement, is not determined by arbitration in accordance with paragraph **113** (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 NGET Plc by virtue of sub-paragraph (1) will be reduced by the amount of that excess save to the extent that it is not possible in the circumstances to obtain the existing type of apparatus at the same capacity and dimensions or place at the existing depth in which case full costs will be borne by the undertaker. (4) For the purposes of sub-paragraph (3)— (a) an extension of apparatus to a length greater than the length of existing apparatus will not be treated as a placing of apparatus of greater dimensions than those of the existing apparatus; and (b) where the provision of a joint in a pipe or cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole will be treated as if it also had been agreed or had been so determined. (5) Any amount which apart from this sub-paragraph would be payable to NGET Plc in respect of works by virtue of sub-paragraph (1) will, if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on NGET Plc any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, be reduced by the amount which represents that benefit.	

	(6) Where anticipated charges, costs or expenses have been paid by the undertaker pursuant to sub-paragraph (1), if the actual charges, costs or expenses incurred by NGET Plc are less than the amount already paid by the undertaker, NGET Plc will repay the difference to the undertaker as soon as reasonably practicable. Indemnity **109**.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any works authorised by this Part of this Schedule or in consequence of the construction, use maintenance or failure of any of the authorised works by or on behalf of the undertaker or in consequence of any act or default of the undertaker (or any person employed or authorised by him) in the course of carrying out such works, including without limitation works carried out by the undertaker under this Part of this Schedule or any subsidence resulting from any of these works, any damage is caused to any apparatus or alternative apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of the authorised works) or property of NGET Plc, or there is any interruption in any service provided, or in the supply of any goods, by NGET Plc, or NGET Plc becomes liable to pay any amount to any third party, the undertaker will— (a) bear and pay on demand accompanied by an invoice or claim from NGET Plc the cost reasonably and properly incurred by NGET Plc in	

	making good such damage or restoring the supply; and (b) indemnify NGET Plc for any other expenses, loss, demands, proceedings, damages, claims, penalty or costs incurred by or recovered from NGET Plc, by reason or in consequence of any such damage or interruption or NGET Plc becoming liable to any third party and including STC claims or an incentive deduction other than arising from any act, neglect or default of NGET Plc. (2) The fact that any act or thing may have been done by NGET Plc on behalf of the undertaker or in accordance with a plan approved by NGET Plc or in accordance with any requirement of NGET Plc or under its supervision will not (unless sub-paragraph (3) applies), excuse the undertaker from liability under the provisions of paragraph (1) unless NGET Plc fails to carry out and execute the works properly with due care and attention and in a skilful and workman like manner or in a manner that does not accord with the approved plan. (3) Nothing in sub-paragraph (1) imposes any liability on the undertaker in respect of- (a) any damage or interruption to the extent that it is attributable to the neglect or default of NGET Plc, its officers, servants, contractors or agents; (b) any authorised works and/or any other works authorised by this Part of this Schedule carried out by NGET Plc as an assignee, transferee or lessee of the undertaker with the benefit of the Order pursuant to section 156 of the 2008 Act or article	

	36 (consent to transfer the benefit the of Order) subject to the proviso that once such works become apparatus ("new apparatus"), any specified works yet to be executed and not falling within this sub-section 3(b) will be subject to the full terms of this Part of this Schedule including this paragraph **109**; and/or (c) any indirect or consequential loss (including but not limited to loss of use, revenue, profit, contract, production, increased cost of working or business interruption) or damage which may be suffered by NGET Plc or any third party under or in connection with the Order; (4) NGET Plc must give the undertaker reasonable notice of any such third party claim or demand and no settlement, admission of liability or compromise must, unless payment is required in connection with a statutory compensation scheme, be made without the consent of the undertaker, which if it withholds such consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand. (5) NGET Plc must, in respect of any matter covered by the indemnity given by the undertaker in this paragraph, at all times act reasonably and in the same manner as it would as if settling third party claims on its own behalf from its own funds. (6) NGET Plc must use its reasonable endeavours to mitigate and to minimise any costs, expenses, loss, demands, and penalties to which the indemnity under this paragraph applies where it is within NGET Plc's reasonable ability and	

	control to do so and which expressly excludes any obligation to mitigate liability arising from third parties which is outside of NGET Plc's control and if reasonably requested to do so by the undertaker NGET Plc must provide an explanation of how the claim has been minimised, where relevant. (7) Not to commence construction (and not to permit the commencement of such construction) of the specified works on any land owned by NGET Plc or in respect of which NGET Plc has an easement or wayleave for its apparatus or any other interest or to carry out any works within 15 metres of NGET Plc's apparatus until the following conditions are satisfied: (a) unless and until NGET Plc is satisfied acting reasonably (but subject to all necessary regulatory constraints) that the undertaker has first provided the acceptable security (and unless otherwise agreed with NGET Plc, acting reasonably, provided evidence that it shall maintain such acceptable security for the construction period of the part of the specified works referred to in sub-paragraph (7) above from the proposed date of commencement of construction of the authorised works) and NGET Plc has confirmed the same to the undertaker in writing; and (b) unless and until NGET Plc is satisfied acting reasonably (but subject to all necessary regulatory constraints) that the undertaker has procured acceptable insurance (and unless otherwise agreed with NGET Plc, acting reasonably, provided evidence to NGET Plc that it shall maintain such acceptable insurance	

	for the construction period of the part of the authorised works referred to in sub-paragraph (7) above from the proposed date of commencement of construction of the authorised works) and NGET Plc has confirmed the same in writing to the undertaker. (8) In the event that the undertaker fails to comply with 105(7) of this Part of this Schedule, nothing in this Part of this Schedule shall prevent NGET Plc from seeking injunctive relief (or any other equitable remedy) in any court of competent jurisdiction. Enactments and agreements **110**. Save to the extent provided for to the contrary elsewhere in this Part of this Schedule or by agreement in writing between NGET Plc and the undertaker, nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and NGET Plc in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made. Co-operation **111**.—(1) Where in consequence of the proposed construction of any part of the authorised works, the undertaker or NGET Plc requires the removal of apparatus under paragraph 101(2) or NGET Plc makes requirements for the protection or alteration of apparatus under paragraph 103, the undertaker shall use its best endeavours to co-ordinate the execution of the works in the interests of safety and the efficient and economic execution of the authorised works and taking into account the need to ensure the safe and efficient operation of NGET Plc's	

	undertaking and NGET Plc will use its best endeavours to co-operate with the undertaker for that purpose. (2) For the avoidance of doubt whenever NGET Plc's consent, agreement or approval is required in relation to plans, documents or other information submitted by the undertaker or the taking of action by the undertaker, it must not be unreasonably withheld or delayed. Access **112**. If in consequence of the agreement reached in accordance with paragraph 100(1) or the powers granted under this Order the access to any apparatus or the Brinsworth to High Marnham Project and North Humber to High Marnham Project is materially obstructed, the undertaker must provide such alternative means of access to such apparatus or to the Brinsworth to High Marnham Project and North Humber to High Marnham Project as will enable NGET Plc to maintain or use the apparatus no less effectively than was possible before such obstruction. Arbitration **113**. Save for differences or disputes arising under paragraph **105**(2), **105**(4), **106**(1) and **107** any difference or dispute arising between the undertaker and NGET Plc under this Part of this Schedule must, unless otherwise agreed in writing between the undertaker and NGET Plc, be determined by arbitration in accordance with article 42 (arbitration). Notices **114**. Notwithstanding article 44 (service of notices), any plans	

	submitted to NGET Plc by the undertaker pursuant to paragraph **107** must be submitted using the LSBUD system (https://lsbud.co.uk/) or to such other address as NGET Plc may from time to time appoint instead for that purpose and notify to the undertaker in writing.	
Schedule 14, Part 14, paragraph 148	Removal in its entirety and replacement with: **"(1) The undertaker must not exercise the powers conferred by— (a) article 3 (development consent granted by the Order);** **(b) article 5 (maintenance of authorised development);** **(c) article 17 (discharge of water);** **(d) article 19 (authority to survey and investigate the land);** **(e) article 21 (compulsory acquisition of land);** **(f) article 23 (compulsory acquisition of rights);** **(g) article 24 (private rights);** **(h) article 26 (acquisition of subsoil only);** **(i) article 27 (power to override easements and other rights);** **(j) article 30 (temporary use of land for constructing the authorised development);** **(k) article 31 (temporary use of land for maintaining the authorised development);** **(l) article 32 (statutory undertakers);** **(m) article 39 (felling or lopping of trees and removal of hedgerows);**	To ensure that there would be no serious detriment to the railway interests as a result of the exercise of CA powers by the applicant.

	(n) article 40 (trees subject to tree preservation orders); **(o) the powers conferred by section 11(3) (power of entry) of the 1965 Act;** **(p) the powers conferred by section 203 (power to override easements and rights) of the Housing and Planning Act 2016;** **(q) the powers conferred by section 172 (right to enter and survey land) of the Housing and Planning Act 2016;** **(r) any powers under in respect of the temporary possession of land under the Neighbourhood Planning Act 2017;** **in respect of any railway property unless the exercise of such powers is with the consent of Network Rail.** **(2) The undertaker must not in the exercise of the powers conferred by this Order prevent pedestrian or vehicular access to any railway property, unless preventing such access is with the consent of Network Rail.** **(3) The undertaker must not exercise the powers conferred by sections 271 or 272 of the 1990 Act, article 32 (statutory undertakers), article 27 (power to override easements and other rights) or article 24 (private rights), in relation to any right of access of Network Rail to railway property, but such right of access may be diverted with the consent of Network Rail.** **(4) The undertaker must not under the powers of this Order acquire or use or acquire new rights over, or seek to impose any restrictive covenants over, any railway**	

	property, or extinguish any existing rights of Network Rail in respect of any third party property, except with the consent of Network Rail. **(5) The undertaker must not under the powers of this Order do anything which would result in railway property being incapable of being used or maintained or which would affect the safe running of trains on the railway.** **(6) Where Network Rail is asked to give its consent pursuant to this paragraph, such consent must not be unreasonably withheld but may be given subject to reasonable conditions but it shall never be unreasonable to withhold consent for reasons of operational or railway safety (such matters to be in Network Rail's absolute discretion).** **(7) The undertaker must enter into an asset protection agreement prior to the carrying out of any specified work."**	
Schedule 14, Part 14, paragraph	Addition of a sub paragraph "**(1) The undertaker must pay to Network Rail all reasonable costs, charges, damages and expenses not otherwise provided for in this Part of this Schedule (subject to article 49 (no double recovery)) which may be occasioned to or reasonably incurred by Network Rail— (a) by reason of the construction, maintenance or operation of a specified work or the failure thereof; or (b) by reason of any act or omission of the undertaker or of any person in its employ or of its contractors or others whilst engaged upon a specified work; (c) by reason of**	To ensure there would be no adverse effect on the railway interests and be consistent with the approach taken on other recent DCOs.

	any act or omission of the undertaker or any person in its employ or of its contractors or others whilst accessing to or egressing from the authorised development; (d) in respect of any damage caused to or additional maintenance required to, railway property or any such interference or obstruction or delay to the operation of the railway as a result of access to or egress from the authorised development by the undertaker or any person in its employ or of its contractors or others; (e) in respect of costs incurred by Network Rail in complying with any railway operational procedures or obtaining any regulatory consents which procedures are required to be followed or consents obtained to facilitate the carrying out or operation of the authorised development; and the undertaker must indemnify and keep indemnified Network Rail from and against all claims and demands arising out of or in connection with a specified work or any such failure, act or omission: and the fact that any act or thing may have been done by Network Rail on behalf of the undertaker or in accordance with plans approved by the engineer or in accordance with any requirement of the engineer or under the engineer's supervision shall not (if it was done without negligence on the part of Network Rail or of any person in its employ or of its contractors or agents) excuse the undertaker from any liability under the provisions of this sub-paragraph. (2) Network Rail must – (a) give the undertaker reasonable written notice of any such claims or demands (b) not make any settlement or compromise of such	

	a claim or demand without the prior consent of the undertaker; and (c) take such steps as are within its control and are reasonable in the circumstances to mitigate any liabilities relating to such claims or demands. (3) The sums payable by the undertaker under sub-paragraph (1) shall if relevant include a sum equivalent to the relevant costs. (4) Subject to the terms of any agreement between Network Rail and a train operator regarding the timing or method of payment of the relevant costs in respect of that train operator, Network Rail must promptly pay to each train operator the amount of any sums which Network Rail receives under sub-paragraph (3) which relates to the relevant costs of that train operator. (5) The obligation under sub-paragraph (3) to pay Network Rail the relevant costs shall, in the event of default, be enforceable directly by any train operator concerned to the extent that such sums would be payable to that operator pursuant to sub-paragraph (4). (6) In this paragraph— "the relevant costs" means the costs, losses and expenses (including loss of revenue) reasonably incurred by each train operator as a consequence of any specified work including but not limited to any restriction of the use of Network Rail's railway network as a result of the construction, maintenance or failure of a specified work or any such act or omission as mentioned in subparagraph (1); and "train operator" means any person who is authorised to act as the operator of a train by a licence under section 8 of the Railways Act 1993."	

7.6. CONCLUSIONS

7.6.1. The SoS can be satisfied that the ExA has considered all versions of the draft DCO as provided by the applicant and considered the degree to which the final version [REP9-006] has addressed outstanding matters.

7.6.2. Considering the evidence submitted and heard, the ExA have recommended several additional changes to the applicant's final version of the dDCO submitted at D9 [REP9-006]. These are set out in Table 17 and incorporated into the rDCO set out in Appendix C of this report.

7.6.3. The ExA are satisfied that the rDCO adequately deals with the scope of the consent being granted and that it secures the necessary controls and mitigation measures that are consistent with the assessments provided in the Environmental Statement.

7.6.4. The ExA consider that the rDCO (Appendix C) only includes requirements that are necessary, relevant to planning, relevant to the development to be consented, enforceable, precise, and reasonable in all other respects. On that basis the ExA is of the view that the NPS and NPPF advice is satisfied.

7.6.5. If the SoSESNZ is minded to make the DCO, the ExA recommends that the SoS should make the Order in the form set out in Appendix C, subject to the SoS being satisfied that the proposed development should be consented.

8. SUMMARY OF FINDINGS AND CONCLUSIONS

8.1. INTRODUCTION

8.1.1. This Chapter summarises the Examining Authority's (ExA) conclusions and sets out its recommendation to the Secretary of State (SoS) for Energy Security and Net Zero (ESNZ).

8.2. CONSIDERATION OF FINDINGS AND CONCLUSIONS

8.2.1. As the ExA has noted in Chapter 3 above, the urgent need for low carbon energy is established through the National Policy Statements (NPS).

8.2.2. In relation to section 104 of the Planning Act 2008, The ExA conclude that making the recommended Development Consent Order (rDCO) would not be in accordance with National Policy Statements (NPSs) EN-1 and EN-3. The ExA have had regard to the Local Impact Reports produced by Nottinghamshire County Council, Lincolnshire County Council, Bassetlaw District Council, Newark and Sherwood District Council and West Lindsey District Council in reaching this conclusion.

8.2.3. Whilst the SoS for ESNZ is the competent authority under the Conservation of Habitats and Species Regulations 2017, and will make the definitive assessment, the ExA's findings are that adverse effects on integrity on all the European sites considered in the HRA Report can be excluded from the proposed development when considered alone or in-combination with other plans or projects from the impact-effect pathways assessed, subject to the mitigation measures to be secured in the rDCO.

8.2.4. The ExA considers that there is sufficient information before the SoS to enable them to undertake an appropriate assessment in order to fulfil their duty under the requirements of The Habitats Regulations.

8.2.5. Regarding designated heritage assets and in consideration of Regulation 3 of the Infrastructure Planning (Decisions) Regulations 2010 (Decisions Regulations), the ExA has found the proposed development would result in less than substantial harm to designated heritage assets.

8.2.6. In undertaking the heritage balance the ExA has considered the great weight that must be given to the conservation of heritage assets. Set against this is the timely contribution the proposed development would make towards renewable energy generation. In this context, the ExA's view is that, in principle, the harms caused to these heritage assets could, when considered both individually and cumulatively, be outweighed by such benefits.

8.2.7. In terms of biodiversity and bearing in mind Regulation 7 of the Decisions Regulations, the ExA is satisfied that biodiversity, ecological and nature conservation issues have been adequately assessed and that the requirements of EN-1 are met.

8.2.8. The ExA has had regard to the Public Sector Equality Duty (PSED) throughout the Examination and in producing this report. The proposed development would not harm the interests of persons who share a protected characteristic or have any adverse effect on the relationships between such persons and persons who do not share a protected characteristic. On that basis, there would be no breach of the PSED.

8.2.9. In the event the SoS disagrees with the conclusions reached by the ExA and the Secretary of State is minded to grant consent for the proposed development on the basis of its compliance with national policy, there would be a compelling case for the compulsory acquisition powers sought in the Order. The proposal would comply with s122(3) of the PA2008 and that other land related powers in the Order would be necessary and justified for the proposed development to proceed.

8.2.10. The ExA would however still advise that in these circumstances in light of the need for natural justice the applicant's view be sought in respect of the proposed protective provisions, and the Crown Estates confirmation is sought that consent will be forthcoming. A summary of the relevant references is set out below.

Section	Topic Area	Paragraph
Land Rights	Crown Estates	6.5.67
	Crown Land	7.4.39
Draft DCO	Exolum Pipeline Systems Ltd. PPs	7.4.50
Draft DCO	National Grid Electricity Distribution (East Midlands) Plc PPs	7.4.53
Draft DCO	NGET PPs	7.4.67
Draft DCO	Network Rail PPs	7.4.75
Draft DCO	Northern Powergrid (Yorkshire) Plc PPs	7.4.83

RECOMMENDATION

8.2.11. For all the above reasons the ExA considers the proposed development is contrary to EN-1 in that the applicant has not demonstrated that the approach to site selection was done sequentially as would be expected and has not passed the exception test the ExA is not satisfied the proposed development would remain safe and operational during its lifetime as expected by paragraph 5.8.36 of NPS EN-1 and notes to table 2 of the Planning Practice Guidance.

8.2.12. With great negative weight in respect of hydrology and the sequential test, moderate negative weight in respect of landscape and the historic environment in addition to little negative weight from transport and human health. On the positive side substantial positive weight in respect of need, moderate positive weight in terms of ecology.

8.2.13. Other matters the ExA regard as neutral.

8.2.14. EN-1 makes clear that in the event that the planning balance falls on the negative side, then the CNP presumption set out in paragraphs 4.2.15-4.2.17 apply. It is the ExA's view that in the circumstances of this case the applicant has not demonstrated that there would not be unacceptable risks in respect of onshore flood risk.

8.2.15. As such we conclude that the mitigation hierarchy has not been complied with (EN-1 paragraph 4.2.24) in respect of the sequential and exception tests (EN-1 paragraph 5.8.36 et al) and hence it does not meet the requirements for CNP to apply.

8.2.16. If the SoS disagrees with this consideration, then the ExA advise that in the case of CNP there remains an unacceptable risk of inland flooding (EN-1 paragraph 4.2.28) which therefore does not meet the requirements for CNP to apply. There are no other grounds of exception under CNP which are relevant.

8.2.17. Accordingly, the ExA concludes the sequential and exception tests have not been passed in these circumstances taking the above factors into account and having had regard to all important and relevant matters, the ExA conclude that there is a conflict with national policy and as such in line with s104 of the PA2008 the DCO should not be granted.

8.2.18. In the event the SoS disagrees with the conclusions of the ExA and that the case for the proposed development is made, the ExA considers that:

- the need to secure the land and rights required to construct the proposed development within a reasonable timeframe, and to ensure the development would remain operational would represent a substantial public benefit to weigh in the planning balance
- the private loss to those affected has been mitigated through the selection of the application land; the undergrounding of the cables and the extent of the rights and interests proposed to be acquired
- the applicant has explored all reasonable alternatives to the compulsory acquisition of the rights and interests sought
- There are no alternatives which ought to be preferred where compulsory acquisition powers remain
- adequate and secure funding would be available to enable the compulsory acquisition within the statutory period following the Order being made
- that an appropriate framework for compensation exists, and the proposed interference with the human rights of individuals would be for legitimate purposes that would justify such interference in the public interest and to a proportionate extent.

8.2.19. If the Secretary of State is minded to accept the proposed development on the basis of its compliance with national policy, there would be a compelling case for the compulsory acquisition powers sought in the Order. The proposal would comply with s122(3) of the PA2008 and that other land

related powers in the Order would be necessary and justified for the proposed development to proceed.

APPENDIX A: REFERENCE TABLES

APPENDIX A: REFERENCE TABLES

A1 Statements of Common Ground

A2 Summary of Legislation Relevant to the Proposed Development

A3 Summary of other National Policies Relevant to the Proposed Development

A4 Made Orders referred to during the Examination

A5 Relevant Local Plan and Supplementary Planning Document Policies

A6 Local Plan Policy Relevant to Specific Planning Matters considered in this Recommendation

A1 Statements of Common Ground

The table below is an alphabetical list of final Statements of Common Ground between the Applicant and Interested Parties at the end of the Examination with Examination Library references.

Interested Party	Examination Library Reference	
	Original Submission	Final Submission
Bassetlaw District Council	REP1-069	REP9-019
Newark and Sherwood District Council	REP1-070	REP7-030
West Lindsey District Council	REP1-068	REP8-008
Lincolnshire County Council including Lincolnshire Fire and Rescue Service	REP1-066	REP7-026
Nottinghamshire County Council	REP1-067	REP8-006
Nottinghamshire Fire and Rescue Service	REP1-072	REP7-034
Anglian Water Services Limited	REP4-046	REP7-040
National Grid Electricity Transmission Plc	REP1-073	REP9-021
Historic England	REP1-071	REP7-032
Natural England	REP2-071	REP7-036
The Environment Agency	REP2-072	REP7-038
National Highways	REP2-073	REP5-064

A2 Summary of Legislation Relevant to the Proposed Development

The Climate Change Act 2008

The Climate Change Act 2008 (2050 Target Amendment) Order 2019

The Conservation of Habitats and Species Regulations 2017

The Countryside and Rights of Way Act 2000

The Environment Act 1995

The Environment Act 2021

The Environmental Protection Act 1990 (as amended)

The Equality Act 2010

The EU Floods Directive (2007/60/EC)

The Flood and Water Management Act 2010

The Flood Risk Regulations 2009

The Hedgerow Regulations 1997

The Highways Act 1980

The Human Rights Act 1998

The Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 (as amended) (EIA Regulations)

The Natural Environmental and Rural Communities Act 2006 (NERC) (as amended)

The Planning (Listed Buildings and Conservation Areas) Act 1990

The Planning Act 2008

The Protection of Badgers Act 1992

The Water Act 2003

The Water Environment (Water Framework Directive) (England and Wales) (Amendment) Regulations 2015

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

The Water Resources Act 1991

The Wildlife and Countryside Act 1981 (as amended)

Water Framework Directive (2000/60/EC)

A3 Summary of other National Policies Relevant to the Proposed Development

UK Gov, A Green Future: Our 25-year Plan to Improve the Environment 2018

Net Zero: The UK's Contribution to Stopping Global Warming, May 2019

The Committee on Climate Change produced Net Zero: The UK's contribution to Stopping Global Warming. This recommended a new emissions target for the UK of net-zero greenhouse gases by the year 2050.

UK Gov, Energy White Paper: Powering our Net-Zero Future, 2020

UK Gov, The National Infrastructure Strategy 2020

UK Gov, Net Zero Strategy, 2021

UK Gov, British Energy Security Strategy, 2022

UK Gov, Powering Up Britain, 2023

HM Government. The Ten Point Plan for a Green Industrial Revolution, 2020

UK Gov, UK Infrastructure: A 10 Year Strategy 2025

UK Gov, Solar Roadmap: United Kingdom Powered by Solar 2025

UK Gov, Clean Power Action Plan 2030, 2024

A4 Made Orders referred to during the Examination

The following made Development Consent Orders have been referred to by the applicant during the course of the Examination.

A30 Chiverton to Carland Cross Development Consent Order 2020

A38 Derby Junction DCO 2023

A47/A11 Thickthorn Junction Development Consent Order 2022

A47 Wansford to Sutton Development Consent Order 2023

Cleve Hill Solar Park Order 2020

Cottam Solar Project Order 2024

Drax Power Station Bioenergy with Carbon Capture and Storage Extension Order 2024

East Yorkshire Solar Park Order 2025

Gate Burton Energy Park Order 2024

Great Yarmouth Third River Crossing Development Consent Order 2020

Heckington Fen Solar Park Order 2025

Hornsea Four Offshore Wind Farm Order 2023

Little Crow Solar Park Order 2022

Lake Lothing (Lowestoft) Third Crossing Order 2020

Longfield Solar Farm Order 2023

M20 Junction 10a Development Consent Order 2017

Mallard Pass Solar Farm Order 2024

National Grid (Bramford to Twinstead Reinforcement) Order 2024

Norfolk Vanguard Offshore Wind Farm Order 2022

Oaklands Farm Solar Park Order 2025

Riverside Energy Park Order 2020

Sheringham Shoal and Dudgeon Extensions Offshore Wind Farm Order 2024

Silvertown Tunnel Order 2018

Southampton to London Pipeline Development Consent Order 2020

Sunnica Energy Farm Order 2024

West Burton Solar Project Order 2025

Wrexham Gas Fired Generating Station Order 2017

A5 Relevant Local Plan and Supplementary Planning Document Policies

Adopted Local Plan Policies

The Local Impact Reports identify the following adopted Local Plan policies as being of relevance to the decision in respect of the Proposed Development.

Plan Title	Relevant Policies
Central Lincolnshire Local Plan (April 2023)	The Vision for Central Lincolnshire S10: Supporting a Circular Economy S11: Embodied Carbon S12: Water Efficiency and Sustainable Water Management S14: Renewable energy S15: Protecting Renewable Energy Infrastructure S16: Wider Energy Infrastructure S17: Carbon Sinks S21: Flood Risk and Water Resources S43: Sustainable Rural Tourism S47: Accessibility and Transport S53: Design and Amenity S54: Health and Wellbeing S57: The Historic Environment S60: Protecting Biodiversity and Geodiversity S61: Biodiversity Opportunity and Delivering Measurable Net Gains S67: Best and Most Versatile Agricultural Land
Lincolnshire Minerals and Waste Local Plan Core Strategy and Development Management Policies (2016)	DM1: Presumption in favour of sustainable development DM4: Historic Environment DM12: Best and Most Versatile Agricultural Land M11: Safeguarding of Minerals Resources M12: Safeguarding of existing Minerals Sites and Associated Minerals W1: Future requirements for waste facilities W8: Safeguarding Waste Management Sites
Nottinghamshire and Nottingham Replacement Waste Local Plan (December 2013)	SP1 – Waste Prevention and Re-Use
Nottinghamshire Minerals Local Plan (March 2021)	
Bassetlaw Local Plan 2020-2038	ST1: Bassetlaw's Spatial Strategy ST9: Large Rural Brownfield Sites ST33: Design Quality

	ST35: Landscape Character ST37: Green and Blue Infrastructure ST38: Biodiversity and Geodiversity ST39: Trees Woodlands and Hedgerows ST49: Renewable Energy Generation ST40: The Historic Environment 41: Designated and Non-Designated Heritage Assets ST42: Promoting Healthy, Active Lifestyles 46: Protecting Amenity 47: Contaminated and Unstable Land ST49: Renewable Energy Generation ST50: Flood Risk and Drainage ST51: Protecting Water Quality and Management ST52: Transport Infrastructure
Newark and Sherwood Amended Core Strategy (2019)	Spatial Policy 1: Settlement Hierarchy Spatial Policy 2: Spatial Distribution of Growth Spatial Policy 3: Rural Areas Spatial Policy 5: Delivering the Strategy Spatial Policy 6: Infrastructure for Growth Spatial Policy 7: Sustainable Transport Core Policy 6: Shaping our Employment Profile Core Policy 9: Sustainable Design Core Policy 10: Climate Change Core Policy 12: Biodiversity and Green Infrastructure Core Policy 13: Landscape Character Core Policy 14: Historic Environment
Newark and Sherwood Allocations and Development Management DPD (2013)	DM4: Renewable and Low Carbon Energy Generation DM5: Design DM7: Biodiversity and Green Infrastructure DM8: Development in the Open Countryside DM9: Protecting and Enhancing the Historic Environment DM10: Pollution and Hazardous Materials DM12: Presumption in Favour of Sustainable Development
Newark and Sherwood Amended Allocations and Development Management DPD Submission (2024)	DM4: Renewable and Low Carbon Energy Generation DM5(b): Design DM7: Biodiversity and Green Infrastructure DM8: Development in the Open Countryside DM9: Protecting and Enhancing the Historic Environment Policy DM10: Pollution and Hazardous Materials DM12: Presumption in Favour of Sustainable Development

A6 Local Plan Policy Relevant to Specific Planning Matters considered in this Recommendation

Planning Issue	Local Planning Policy				
	Bassetlaw	Newark and Sherwood	West Lindsey	Lincolnshire	Nottinghamshire
Air Quality	ST42: Promoting Healthy Active Lifestyles				
Biodiversity	ST38: Biodiversity and Geodiversity ST39: Trees, Woodlands and Hedgerows	Core Policy 12: Biodiversity and Green Infrastructure	S60: Protecting Biodiversity and Geodiversity S61: Biodiversity Opportunity and Delivering Measurable Net Gains S66: Trees, Woodland and Hedgerows	Policy S60: Protecting Biodiversity and Geodiversity Policy S61: Biodiversity Opportunity and Delivering Measurable Net gains Policy S66: Trees, Woodland and Hedgerows	Bassetlaw Local Plan ST38: Biodiversity and Geodiversity ST39: Trees, Woodlands and Hedgerows Newark and Sherwood Amended Core Strategy Core Policy 12: Biodiversity and Green Infrastructure
Climate Change	ST37: Green and Blue Infrastructure ST48: Reducing Carbon Emissions, Climate Change Mitigation and Adaptation ST49: Renewable Energy Generation			Policy S16: Wider Energy Infrastructure Policy S59: Green and Blue Infrastructure Network	

Design	ST33: Design Quality 46: Protecting Amenity		S53: Design and Amenity	Policy S1: The Spatial Strategy and Settlement Hierarchy Policy S5: Development in the Countryside Policy S14: Renewable Energy Policy S53: Design and Amenity	
Historic Environment	ST40: The Historic Environment 41: Designated and Non-Designated Heritage Assets ST49: Renewable Energy generation	Core Policy 14: Historic Environment	S57: The Historic Environment	Policy S57: The Historic Environment Policy DM4: Historic Environment	Bassetlaw Local Plan Policy ST40: The Historic Environment Policy 41: Designated and Non-Designated Heritage Assets Newark and Sherwood Amended Core Strategy Core Policy 14: Historic Environment
Human Health	ST42: Promoting Healthy, Active Lifestyles 46: Protecting Amenity		S54: Health and Wellbeing	Policy S54: Health and Wellbeing	
Land and Soils	47: Contaminated and Unstable Land		S14: Renewable energy S67: Best and Most Versatile	Policy S67: Best and Most Versatile Agricultural Land	

			Agricultural Land	Policy DM12: Best and Most Versatile Agricultural Land Policy M11: Safeguarding of Mineral Resources Policy M12: Safeguarding of Existing Mineral Sites and Associated Minerals Infrastructure	
Landscape and Visual	ST35: Landscape Character ST39: Trees Woodlands and Hedgerows 46: Protecting Amenity	Core Policy 13: Landscape Character	S53: Design and Amenity S66: Trees, Woodland and Hedgerows	Policy S1: The Spatial Strategy and Settlement Hierarchy Policy S5: Development in the Countryside Policy S14: Renewable Energy Policy S53: Design and Amenity Policy S62: Area of Outstanding Natural Beauty and Areas of great Landscape Value Policy S66: Trees, Woodland and Hedgerows	Bassetlaw Local Plan Policy ST35: Landscape Character Newark and Sherwood Amended Core Strategy Core Policy 13: Landscape Character

Need	ST49: Renewable Energy Generation		S14: Renewable energy		
Noise and Vibration		Policy DM4 – Renewable and Low Carbon Energy Generation	S15: Protecting Renewable Energy Infrastructure		
Socio economics	ST29:		S10: Supporting a Circular Economy S43: Sustainable Rural Tourism		
Transport	ST52: Transport Infrastructure	Spatial Policy 7: Suitable Transport	S47: Accessibility and Transport	Policy S47: Accessibility and transport Policy S48: Walking and Cycling Infrastructure	Bassetlaw Local Plan Policy ST52: Transport Infrastructure Newark and Sherwood Amended Core Strategy Spatial Policy 7: Suitable Transport
Waste				W1: Future Requirements for New waste Facilities W8: Safeguarding Waste Management sites	Nottinghamshire and Nottingham Waste Local Plan SP1 – Waste Prevention and Re-Use
Water	ST50: Flood Risk and Drainage ST51: Protecting	Core Policy 10: Climate Change	S21: Flood Risk and Water Resources	Policy S12: Water Efficiency and Sustainable	Bassetlaw Local Plan Policy ST50: Flood Risk and Drainage

	Water Quality and Management			Water Management Policy S21: Flood Risk and Water Resources	Newark and Sherwood Amended Core Strategy Core Policy 10: Climate Change
Cumulative				Policy S62: Area of Outstanding Natural Beauty and Areas of great Landscape Value	

APPENDIX B: LIST OF ABBREVIATIONS

APPENDIX B: TABLE OF ABBREVIATIONS

Abbreviation	Definition
AAC	Areas of Archaeological Constraint
AD	Associated Development
AIL	Abnormal Indivisible Loads
ALC	Agricultural Land Classification
AMS	Archaeological Mitigation Strategy
AP	Affected Person
AQMA	Air Quality Management Area
BDC	Bassetlaw District Council
BESS	Battery Energy Storage System
BoR	Book of Reference
BMV	Best and Most Versatile
BNG	Biodiversity Net Gain
CA	Compulsory Acquisition
CAH	Compulsory Acquisition Hearing
CA Regs	The Infrastructure Planning (Compulsory Acquisition) Regulations 2010
CIEMM	Chartered Institute of Ecology and Environmental Management
CNP	Critical National Priority
D	Deadline
DCO	Development Consent Order
dDCO	Draft Development Consent Order
DEMP	Decommissioning Environmental Management Plan
DfT	Department for Transport
DMRB	Design Manual for Roads and Bridges
EA	The Environment Agency
EIA	Environmental Impact Assessment
EIA Regulations	Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 (SI 2017/572)
EL	Examination Library
EM	Explanatory Memorandum

EMP	Environmental Management Plan
ES	Environmental Statement
ExA	Examining Authority
ExQ1	First Written Questions [PD-010]
ExQ2	Second Written Questions [PD-014]
ExQ3	Third Written Questions [PD-017]
FRA	Flood Risk Assessment
ha	Hectare
HE	Historic England
Habitats Regulations	Conservation of Habitats and Species Regulations 2017
HGV	Heavy Goods Vehicle
HLC	Historic Landscape Characterisation
HoTs	Heads of Terms
HRA	Habitats Regulations Assessment
HSE	Health and Safety Executive
IAPI	Initial Assessment of Principal Issues
IAQM	Institute of Air Quality Management
IDB	Trent Valley Internal Drainage Board
IEMA	Institute of Environmental Management and Assessment
IP	Interested Party
ISH	Issue Specific Hearing
km	Kilometre
LEMP	Landscape and Ecology Management Plan
LCC	Lincolnshire County Council
LGV	Light Goods Vehicle
LIR	Local Impact Report
LLFA	Lead Local Flood Authority
LoD	Limits of Deviation
LPA	Local Planning Authority
LRN	Local Road Network
LSE	Likely Significant Effects
LTP	Local Transport Plan
LVIA	Landscape and Visual Impact Assessment

m	Metre
MSA	Minerals Safeguarding Area
MW	Megawatt
MWLP	Minerals and Waste Local Plan
NCC	Nottinghamshire County Council
NDHA	Non Designated Heritage Asset
NE	Natural England
NESO	National Energy System Operator
NETS	National Electricity Transmission System
NFCC	National Fire Chiefs Council
NGET	National Grid Electricity Transmission
NH	National Highways
NMU	Non Motorised User
NSDC	Newark and Sherwood District Council
NPPF	National Planning Policy Framework
NPPG	National Planning Practice Guidance
NPS	National Policy Statement
NPS EN -1	Overarching National Policy Statement for Energy
NPS EN - 3	National Policy Statement for Renewable Energy Infrastructure
NPS EN - 5	National Policy Statement for Electricity Networks Infrastructure
NPSE	Noise Policy Statement for England
NSIP	Nationally Significant Infrastructure Project
OFH	Open Floor Hearing
oBSMP	Outline Battery Safety Management Plan
oCEMP	Outline Construction Environmental Management Plan
oCTMP	Outline Construction Traffic Management Plan
oDEMP	Outline Decommissioning Environmental Management Plan
oOEMP	Outline Operational Environmental Management Plan
oPRoWMP	Outline Public Right of Way Management Plan
oSMP	Outline Soil Management Plan
oSWDT	Outline Surface Water Drainage Strategy
oWSI	Outline Written Scheme of Investigation

PA2008	Planning Act 2008
PC	Parish Council
PD	Procedural Decision
PM	Preliminary Meeting
PP	Protective Provision
PPG	Planning Policy Guidance
PRA	Preliminary Risk Assessment
PRoW	Public Right of Way
PSED	Public Sector Equality Duty
PV	Photovoltaic
R	Requirement
rDCO	Recommended Development Consent Order
RIES	Report on the Implications for European Sites
RR	Relevant Representation
RSA	Road Safety Audit
Rule 17	Request for further information under Rule 17 of the Infrastructure Planning (Examination Procedure) Rules 2010
s	Section
SAC	Special Area of Conservation
SCPC	South Clifton Parish Council
SETA	
SNOE	Say No to One Earth
SoCG	Statement of Common Ground
SoR	Statement of Reasons
SoS	Secretary of State for Energy Security and Net Zero
SoSHCLG	Secretary of State for Housing Communities and Local Government
SoST	Secretary of State for Transport
SPA	Special Protection Area
SPD	Supplementary Planning Document
SPZ	Source Protection Zone
SRN	Strategic Road Network
SSSI	Site of Special Scientific Interest

SU	Statutory Undertaker
TA	Transport Assessment
TMP	Traffic Management Plan
TP	Temporary Possession
TVIDB	Trent Valley Internal Drainage Board
UK	United Kingdom
USI	Unaccompanied Site Inspection
WFD	Water Framework Directive
WLDC	West Lindsey District Council
WR	Written Representation
WSI	Written Scheme of Investigation
XPLE	Cross Linked Polyethelene
ZoI	Zone of Influence

APPENDIX C: THE RECOMMENDED DCO

S T A T U T O R Y I N S T R U M E N T S

202* No. ****

INFRASTRUCTURE PLANNING

The One Earth Solar Farm Order 202*

Made - - - - ***

Coming into force - - ***

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SCHEDULE 15 — PROCEDURE FOR DISCHARGE OF REQUIREMENTS

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

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

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

The Secretary of State is satisfied that common land comprised within the Order land, when burdened with the new rights authorised for compulsory acquisition under the terms of this Order, will be no less advantageous than it was before such acquisition, to the persons in whom it is vested, other persons, if any, entitled to rights of common or other rights, and the public and that, accordingly, section 132(3)(**g**) of the 2008 Act applies.

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(**h**), 115(**i**), 117(**j**), 120(**k**), 122(**l**), 123(**m**) and 140 of the 2008 Act, makes the following Order—

(**a**) 2008 c. 29. Section 37 was amended by section 137(5) of, and paragraph 5 of Schedule 13 to the Localism Act 2011 (c. 20).
(**b**) S.I. 2009/2264.
(**c**) S.I. 2010/103.
(**d**) As amended by paragraph 29(1) and (3) of Part 1 of Schedule 13 to the Localism Act 2011 (c. 20).
(**e**) S.I. 2017/572.
(**f**) Section 104 was amended by section 58(5) of the Marine and Coastal Access Act 2009 (c. 23) and by paragraph 49 of Part 1 of Schedule 13 to the Localism Act 2011 (c. 20).
(**g**) 2008 c. 29.
(**h**) As amended by paragraph 55 of Part 1 of Schedule 13 to the Localism Act 2011 (c. 20).
(**i**) As amended by section 160 of the Housing and Planning Act 2016 (c. 22) and section 43 of the Wales Act 2017 (c. 4).
(**j**) As amended by paragraph 58 of Part 1 of Schedule 13 and paragraph 1 of Part 20 of Schedule 25 to the Localism Act 2011 (c. 20).
(**k**) As amended by section 140 and paragraph 60 of Part 1 of Schedule 13 to the Localism Act 2011 (c. 20).
(**l**) As amended by paragraph 62 of Part 1 of Schedule 13 to the Localism Act 2011 (c. 20).
(**m**) Ibid.

PART 1

PRELIMINARY

Citation and commencement

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

Interpretation

2.—(1) In this Order—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"carriageway" has the same meaning as in the 1980 Act;

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

"crown land plan" means sheets 1 – 6 of the plan of that name identified in the table in Schedule 12 and which are certified by the Secretary of State as the crown land plan for the purposes of this Order;

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

"date of decommissioning" means in respect of each part of the authorised development, the date that that part of the authorised development has permanently ceased to generate electricity on a commercial basis;

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

"electronic transmission" means a communication transmitted—

(a) by means of an electronic communications network; or

(b) by other means but while in electronic form;

"environmental statement" means the document of that name identified in the table in Schedule 12 and which is certified by the Secretary of State as the environmental statement for the purposes of this Order;

"flood risk assessment and outline drainage strategy" means the document of that name identified in the table at Schedule 12 and which is certified by the Secretary of State as the flood risk assessment and outline drainage strategy for the purposes of this Order;

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

"grid connection works" means that part of the authorised development identified in work numbers 4 and 5, 6, 7 and 8 (to the extent work numbers 5, 6, 7 and 8 are necessary in connection with work number 4);

"height parameter plan" means the document of that name identified in the table at Schedule 12 and which is certified by the Secretary of State as the height parameter plan for the purposes of this Order;

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

"land plan" means sheets 1 – 16 of the plan of that name identified in the table in Schedule 12 and which are certified by the Secretary of State as the land plan for the purposes of this Order;

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

"NGET" means National Grid Electricity Transmission Plc (company number 2366977) whose registered office is at 1 to 3 Strand, London WC2N 5EH;

"Order land" means the land shown coloured pink, blue or yellow on the land plan which is within the limits of land to be acquired or used and described in the book of reference;

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

"outline battery safety management plan" means the plan of that name identified in the table at Schedule 12 and which is certified by the Secretary of State as the outline battery safety management plan for the purposes of this Order;

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

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

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

(**a**) "highway" is defined in section 328(1). For "highway authority" see section 1.

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

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

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

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

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

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

"outline written scheme of investigation" means the document of that name identified in the table at Schedule 12 and which is certified by the Secretary of State as the outline written scheme of investigation for the purposes of this Order;

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

"the permit scheme" means either the Lincolnshire Permit Scheme for Road Works and Street Works Order 2016 or the Nottinghamshire County Council Permit Scheme Order 2020, as applicable for the location of the relevant street works, which schemes are made under Part 3 of the Traffic Management Act 2004;

"permitted preliminary works" means all or any of—

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

(b) removal of plant and machinery;

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

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

(e) diversion of existing services and the laying of temporary services;

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

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

(h) site clearance (including vegetation removal, demolition of existing structures or buildings);

(i) Work No. 7 (works to facilitate access to Work Nos. 1 to 6 and 8); or

(j) advanced planting to allow for early establishment of mitigation including for sky lark;

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

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

"requirements" means those matters set out in Schedule 2 and "requirement" means any one of the requirements;

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

"special category land" means the land shown shaded green on the special category land plan;

"special category land plan" means the document of that description listed in Schedule 12 and certified by the Secretary of State as the special category land plan for the purposes of this Order;

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

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

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

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

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

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

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

"undertaker" means One Earth Solar Farm Limited (company number 13078087) and any other person who for the time being has the benefit of this Order in accordance with article 35 (benefit of the Order) or article 36 (consent to transfer the benefit of the Order);

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

"vegetation removal plan" means the plans of that name identified in the table at Schedule 12 and which are certified by the Secretary of State as the vegetation removal plan for the purposes of this Order;

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

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

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

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

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

(4) References in this Order to numbered works are references to the works comprising the authorised development as numbered in Schedule 1 and shown on the works plans and a reference

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

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

(**c**) 2006 c. 46.

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

in this Order to a work designated by a number, or by a combination of letters and numbers, is a reference to the work so designated in that Schedule and a reference to "Work No. 2" or "numbered work 2" means numbered works 2A and 2B inclusive and the same principle applies to such numbered works that contain letters.

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

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

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

(8) In this Order, references to materially new or materially different environmental effects in comparison with those reported in the environmental statement are not to be construed so as to include the avoidance, removal or reduction of an assessed adverse environmental effect or a positive environmental effect, or the increase of an assessed positive environmental effect or creation of a new positive environmental effect. A matter will be within scope of the environmental statement if it does not give rise to materially new or materially different environmental effects to those reported in the environmental statement.

PART 2

PRINCIPAL POWERS

Development consent etc. granted by this Order

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

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

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

Operation of generating station

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

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

Power to maintain authorised development

5.—(1) The undertaker may at any time maintain the authorised development.

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

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

Disapplication and modification of statutory provisions

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

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

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

(c) the provisions of any byelaws made under, or having effect as if made under, paragraphs 5, 6 or 6A of Schedule 25 (byelaw making powers of the authority) to the Water Resources Act 1991(**c**);

(d) section 118 (consent request for discharge of trade effluent into public sewer) of the Water Industry Act 1991;

(e) regulation 12 (requirement for environmental permit) of the Environmental Permitting (England and Wales) Regulations 2016(**d**) in respect of a flood risk activity only;

(f) the legislation listed in Schedule 3 (legislation to be disapplied) in so far as the provisions still in force are incompatible with the powers contained within this Order and do not impact on the operation or maintenance of the River Trent as a navigable river; and

(g) the provisions of the Neighbourhood Planning Act 2017(**e**) insofar as they relate to the temporary possession of land under articles 30 (temporary use of land for constructing the authorised development) and 31 (temporary use of land for maintaining the authorised development) of this Order.

(2) For the purposes of section 9 (requirement of licence for felling) of the Forestry Act 1967(**f**) 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.

(3) Regulation 6(1) of the Hedgerows Regulations 1997 has effect as though after sub-paragraph (e) there were added—

"(ea) for carrying out any development or in the exercise of any functions that are authorised by the One Earth Solar Farm Order 202[ ];"

(4) Notwithstanding the provisions of section 208 (liability) of the 2008 Act, for the purposes of regulation 6 (meaning of "development") of the Community Infrastructure Levy Regulations 2010(**g**) any building comprised in the authorised development is deemed to be—

(a) a building into which people do not normally go; or

(b) a building into which people go only intermittently for the purpose of inspecting or maintaining fixed plant or machinery.

(5) If planning permission is granted under the powers conferred by the 1990 Act for development any part of which is within the Order limits following the coming into force of this Order that is—

(a) not itself a development for which development consent is required under the 2008 Act or part of such a development; or

(b) not for development authorised by Schedule 1 of this Order; or

(c) required to complete or enable the maintenance, use or operation of any part of the development authorised by this Order,

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(**a**) Section 32 was amended by S.I. 2013/755.
(**b**) Section 66 was amended by paragraphs 25 and 38 of Schedule 2 to the Flood and Water Management Act 2010 and section 86 of the Water Act 2014 (c. 21).
(**c**) 1991 c. 57. Paragraph 5 was amended by section 100 of the Natural Environment and Rural Communities Act 2006 (c. 16), and S.I. 2013/755. Paragraph 6 was amended by section 105 of, and paragraph 26 of Schedule 15 to, the Environment Act 1995, and S.I 2013/755. Paragraph 6A was inserted by section 103(3) of the Environment Act 1995.
(**d**) S.I. 2016/1154. Regulation 12 was amended by S.I. 2018/110.
(**e**) 2017 c. 20.
(**f**) Section 9 was amended by section 4 of, and paragraph 141 of, Schedule 2 to, the Planning (Consequential Provisions) Act 1990 (c. 11) and S.I. 2013/755. There are other amendments to section 9 that are not relevant to this Order.
(**g**) S.I. 2010/948, amended by S.I. 2011/987; there are other amending instruments but none are relevant to this Order.

then the construction, maintenance, use or operation of that development under the terms of the planning permission does not constitute a breach of the terms of this Order.

(6) To the extent that any development carried out or used—

(a) pursuant to a planning permission granted under section 57 (requirement of planning permission) or section 73 (determination of applications to develop land without compliance with conditions previously attached) of the 1990 Act, including if changed by a determination by the local planning authority under section 96A (power to make non-material changes to planning permission or permission in principles) of the 1990 Act, or compliance with any conditions of that permission; or

(b) pursuant to any development consent order granted under section 114 (grant or refusal of development consent) of the 2008 Act, including any corrections or amendments to that development order made under section 119 (correction of errors in development consent decisions) or section 153 (changes to, and revocation of, orders granting development consent) of the 2008 Act, or compliance with the terms of that development consent order; or

(c) pursuant to a consent granted by the Secretary of State pursuant to section 36 (consent required for construction of etc. generating stations) of the 1989 Act, including any variation to that consent made under section 36C (variation of consents under section 36) of that Act,

is inconsistent with the exercise of any power, right or obligation under this Order or the authorised development—

(d) that inconsistency is to be disregarded for the purposes of establishing whether any development which is the subject matter of that planning permission or development consent order is capable of physical implementation; and

(e) in respect of that inconsistency, no enforcement action under the 1989 Act, 1990 Act or the 2008 Act may be taken, whether that inconsistency relates to land inside or outside the Order limits.

(7) Any development or any part of a development within the Order limits which is constructed or used under the authority of any permission falling under paragraphs (5) or (6) is deemed not to be a breach of, or inconsistent with, this Order and does not prevent the authorised development being carried out or used or any other power or right under this Order being exercised.

(8) In paragraph (3), "enforcement action" means any enforcing action under Part 7 (enforcement) of the 1990 Act or Part 8 of the 2008 Act, as relevant.

(9) The undertaker must not exercise the permitted development rights in Schedule 2, Part 15, Class B, sub-paragraphs (d) or (e) of the Town and Country Planning (General Permitted Development) Order 2015 for above ground development on the areas labelled on the works plans as:-

(1) Work No.8 only; or

(2) Work Nos. 5 and 8 only

Defence to proceedings in respect of statutory nuisance

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

(a) relates to premises used by the undertaker for the purposes of or in connection with the authorised development and that the nuisance is attributable to the construction,

(**a**) 1990 c. 43.

maintenance or decommissioning 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, or any document approved under the provisions of Schedule 2 of the Order; or

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

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

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

PART 3

STREETS

Street works

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

(a) break up or open the street, or any sewer, drain or tunnel under it;

(b) drill, tunnel or bore under the street;

(c) place and keep apparatus under the street;

(d) maintain apparatus under 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) Where the undertaker is not the street authority, the provisions of sections 54 (notice of certain works) to 106 (index of defined expressions) of the 1991 Act apply to any street works carried out under paragraph (1).

Application of the permit scheme

9.—(1) The permit scheme applies with the modifications set out in this article to street works carried out under the power conferred by article 8 (street works) of this Order.

(2) For the purposes of this Order—

(a) a permit may not be refused or granted subject to conditions which relate to the imposition of moratoria; and

(b) a permit may not be granted subject to conditions where compliance with those conditions would constitute a breach of this Order or where the undertaker would be unable to comply with those conditions pursuant to the powers conferred by this Order.

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

(4) Without restricting the undertaker's recourse to any alternative appeal mechanism which may be available under the permit scheme or otherwise, the undertaker may appeal any decision to

refuse to grant a permit or to grant a permit subject to conditions pursuant to the permit scheme in accordance with the mechanism set out in Schedule 15 (procedure for discharge of requirements) of this Order.

Power to alter layout, etc., of streets

10.—(1) The undertaker may for the purposes of the authorised development alter the layout of or carry out any works in the street in the case of the streets specified in column 2 of the table in Schedule 5 (alteration of streets) permanently in the manner specified in relation to that street in column 3.

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

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

(b) make and maintain passing places; and

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

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

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

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

Construction and maintenance of new and altered streets

11.—(1) Each of the streets constructed, improved or altered by the undertaker under the powers conferred by article 10 (power to alter layout, etc., of streets) of this Order must—

(a) be completed to the reasonable satisfaction of the highway authority; and

(b) unless otherwise agreed with the highway authority, be maintained by and at the expense of:

(i) the undertaker, for a period of 12 months from the date the construction, improvement or alteration of that street is completed; and

(ii) by the highway authority, from the expiry of that 12 month period.

(2) In any action against the undertaker in respect of loss or damage resulting from any failure by it to maintain a street under this article, it is a defence (without prejudice to any other defence or the application of the law relating to contributory negligence) to prove that the undertaker had taken such care as in all the circumstances was reasonably required to secure that the part of the street to which the action relates was not dangerous to traffic.

(3) For the purposes of a defence under paragraph (2), a court must in particular have regard to the following matters—

(a) the character of the street including the traffic which was reasonably to be expected to use it;

(b) the standard of maintenance appropriate for a street of that character and used by such traffic;

(c) the state of repair in which a reasonable person would have expected to find the street;

(d) whether the undertaker knew, or could reasonably have been expected to know, that the condition of the part of the street to which the action relates was likely to cause danger to users of the street; and

(e) where the undertaker could not reasonably have been expected to repair that part of the street before the cause of action arose, what warning notices of its condition had been displayed,

but for the purposes of such a defence it is not relevant that the undertaker had arranged for a competent person to carry out or supervise the maintenance of that part of the street to which the action relates unless it is also proved that the undertaker had given that person proper instructions with regard to the maintenance of the street and that those instructions had been carried out.

Temporary prohibition or restriction on use of streets and public rights of way

12.—(1) The undertaker, during and for the purposes of constructing or maintaining the authorised development, may temporarily close, prohibit the use of, restrict the use of, authorise the use of, alter or divert any street or public right of way and may for any reasonable time—

(a) divert the traffic or a class of traffic from the street or public right of way;

(b) authorise the use of motor vehicles on classes of public rights of way where, notwithstanding the provisions of this article, there is otherwise no public right to use motor vehicles; and

(c) subject to paragraph (2), prevent all persons from passing along the street or public right of way.

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

(3) Without prejudice to the generality of paragraph (1), the undertaker may temporarily close, prohibit the use of, authorise the use of, restrict the use of, alter or divert—

(a) the streets specified in column 2 of the table in Part 1 (temporary prohibition or restriction of the use of streets) of Schedule 6 (streets and public rights of way) to the extent specified in column 3 of that table;

(b) the public rights of way specified in column 2 of the table in Part 2 (temporary prohibition or restriction of public rights of way with diversion) of Schedule 6 (streets and public rights of way) to the extent specified in column 3 of that table;

(c) the public rights of way specified in column 2 of the table in Part 3 (permanent use of motor vehicles on public rights of way) of Schedule 6 (streets and public rights of way) to the extent specified in column 3 of that table;

(d) the public rights of way specified in column 2 of the table in Part 4 (temporary management of public rights of way) of Schedule 6 (streets and public rights of way) to the extent specified in column 3 of that table; and

(e) the public rights of way specified in column 2 of the table in Part 5 (temporary use of motor vehicles on public rights of way) of Schedule 6 (streets and public rights of way) to the extent specified in column 3 of that table.

(4) The undertaker must not temporarily close, prohibit the use of, authorise the use of, restrict the use of, alter or divert—

(a) any public right of way specified in paragraph (3) without first consulting the street authority; and

(b) any other public right of way without the consent of the street authority, and the street authority may attach reasonable conditions to any such consent.

(5) Any person who suffers loss by the suspension of any private right of way under this article is entitled to compensation to be determined, in case of dispute, under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

(6) Without prejudice to the scope of paragraph (1), the undertaker may use any public right of way which has been temporarily closed under the powers conferred by this article and within the Order limits as a temporary working site.

(7) The undertaker, during and for the purposes of carrying out the authorised development, may close, prohibit the use of, restrict the use of, alter or divert any public right of way within the Order limits which is added to the definitive map and statement (within the meaning of the Wildlife and Countryside Act 1981) on or after February 2025.

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

(9) Nothing in this article prevents the undertaker from temporarily closing, prohibiting the use of, authorising the use of, restricting the use of, altering or diverting a public right of way under this article more than once.

Use of private roads

13.—(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 the authorised development, or in connection with the authorised development.

(2) The undertaker must compensate the person liable for the repair of a road to which paragraph (1) applies for any loss or damage which that person may suffer by reason of the exercise of the power conferred by paragraph (1).

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

Access to works

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

(a) form and lay out the permanent means of access, or improve existing means of access, in the locations specified in Schedule 7 (access to works); and

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

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

Agreements with street authorities

15.—(1) A street authority and the undertaker may enter into agreements with respect to—

(a) the strengthening, improvement, repair or reconstruction of any street under the powers conferred by this Order;

(b) any prohibition, restriction, alteration or diversion of a street authorised by this Order;

(c) the undertaking in the street of any of the works referred to in article 8 (street works), article 11 (construction and maintenance of new and altered streets) and article 14 (access to works); or

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

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

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

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

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

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

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

Traffic regulation measures

16.—(1) Subject to the provisions of this article, the undertaker may make temporary provision for the purposes of the authorised development—

(a) as to the speed at which vehicles may proceed along any road;

(b) permitting, prohibiting or restricting the stopping, waiting, loading or unloading of vehicles on any road;

(c) as to the prescribed routes for vehicular traffic or the direction or priority of vehicular traffic on any road;

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

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

(2) 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 or decommissioning of the authorised development, temporarily place traffic signs and signals in the extents of road over which temporary provision has been made under paragraph (1) and the placing of those traffic signs and signals is deemed to have been permitted by the traffic authority for the purposes of section 65 of the 1984 Act and the Traffic Signs Regulations and General Directions 2016.

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

(4) Before exercising the power conferred by paragraph (1) the undertaker must—

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

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

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

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

(b) not less than 7 days before the provision is to take effect published the undertaker's intention to make the provision in one or more newspapers circulating in the area in which any road to which the provision relates is situated.

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

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

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

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

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

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

PART 4

SUPPLEMENTAL POWERS

Discharge of water

17.—(1) Subject to paragraphs (3), (4) and (8) the undertaker may use any watercourse or any public sewer or drain for the drainage of water in connection with the construction, 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.

(2) Any dispute arising from the making of connections to or the use of a public sewer or drain by the undertaker under paragraph (1) is to be determined as if it were a dispute under section 106 (right to communicate with public sewers) of the Water Industry Act 1991(**a**).

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

(4) The undertaker must not make any opening into any public sewer or drain except—

(a) in accordance with plans approved by the person to whom the sewer or drain belongs; and

(b) where that person has been given the opportunity to supervise the making of the opening.

(5) Where the undertaker discharges water into, or makes any opening into, a watercourse, public sewer or drain belonging to or under the control of a drainage authority (as defined in Part 3 of Schedule 14 (protective provisions)), the provisions of Part 3 of Schedule 14 (protective provisions) apply in substitution for the provisions of paragraphs (3) and (4).

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

(7) This article does not authorise the entry into controlled waters of any matter whose entry or discharge into controlled waters requires a licence pursuant to the Environmental Permitting (England and Wales) Regulations 2016(**b**).

(8) In this article—

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

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

Protective works to buildings

18.—(1) Subject to the following provisions of this article, the undertaker may at its own expense carry out such protective works to any building lying within the Order land as the undertaker considers necessary or expedient.

(2) Protective works may be carried out—

(a) at any time before or during the construction of any part of the authorised development in the vicinity of the building; or

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(**a**) 1991 c. 56.
(**b**) S.I. 2016/1154.
(**c**) 1991 c. 57.

(b) after the completion of that part of the authorised development in the vicinity of the building at any time up to the end of the period of five years beginning with the date of final commissioning.

(3) For the purpose of determining how the powers under this article are to be exercised, the undertaker may enter and survey any building falling within paragraph (1) and any land within its curtilage.

(4) For the purpose of carrying out protective works under this article to a building, the undertaker may (subject to paragraphs (5) and (6))—

(a) enter the building and any land within its curtilage; and

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

(5) Before exercising—

(a) a right under paragraph (1) to carry out protective works to a building;

(b) a right under paragraph (3) to enter a building and land within its curtilage;

(c) a right under paragraph (4)(a) to enter a building and land within its curtilage; or

(d) a right under paragraph (4)(b) to enter land,

the undertaker must, except in the case of emergency, serve on the owners and occupiers of the building or land not less than 14 days' notice of its intention to exercise that right and, in a case falling within sub-paragraph (a), (c) or (d), specifying the protective works proposed to be carried out.

(6) Where a notice is served under paragraph (5)(a), (5)(c) or (5)(d), the owner or occupier of the building or land concerned may, by serving a counter-notice within the period of 10 days beginning with the day on which the notice was served, require the question whether it is necessary or expedient to carry out the protective works or to enter the building or land to be referred to arbitration under article 42 (arbitration).

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

(8) Where—

(a) protective works are carried out under this article to a building; and

(b) within the period of five years beginning with the date of final commissioning of the relevant part of the authorised development it appears protective works are inadequate to protect the building against damage caused by the construction or use of that part of the authorised development, the undertaker must compensate the owners and occupiers of the building for any loss or damage sustained by them.

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

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

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

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

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

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

Authority to survey and investigate the land

19.—(1) The undertaker may for the purposes of this Order enter on any land shown within the Order land or enter on any land which may be affected by the authorised development or enter on any land upon which entry is required in order to carry out monitoring or surveys in respect of the authorised development and—

(a) survey or investigate the land;

(b) without prejudice to the generality of sub-paragraph (a), make trial holes or bore holes in such positions on the land as the undertaker thinks fit to investigate the nature of the surface layer and subsoil and remove soil samples;

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

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

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

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

(a) must, if so required before entering the land, produce written evidence of their authority to do so; and

(b) may take with them such vehicles and equipment as are necessary to carry out the survey or investigation or to make the trial holes.

(4) No trial holes are to be made under this article—

(a) in land located within the highway boundary without the consent of the highway authority; or

(b) in a private street without the consent of the street authority.

(5) The undertaker must compensate the owners and occupiers of the land for any loss or damage arising by reason of the exercise of the authority conferred by this article, such compensation to be determined, in case of dispute, under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

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

Removal of human remains

20.—(1) Before the undertaker constructs any part of the authorised development or carries out works which will or may disturb any human remains in the Order limits it must remove those human remains from the Order limits, or cause them to be removed, in accordance with the following provisions of this article.

(2) Before any such remains are removed from the Order limits the undertaker must give notice of the intended removal, describing the Order limits and stating the general effect of the following provisions of this article, by—

(a) publishing a notice once in each of two successive weeks in a newspaper circulating in the area of the authorised development; and

(b) displaying a notice in a conspicuous place on or near the Order limits.

(3) As soon as reasonably practicable after the first publication of a notice under paragraph (2) the undertaker must send a copy of the notice to the relevant planning authority.

(4) At any time within 56 days after the first publication of a notice under paragraph (2) any person who is a personal representative or relative of any deceased person whose remains are

interred in the Order limits may give notice in writing to the undertaker of that person's intention to undertake the removal of the remains.

(5) Where a person has given notice under paragraph (4), and the remains in question can be identified, that person may cause such remains to be—

(a) removed and reinterred in any burial ground or cemetery in which burials may legally take place; or

(b) removed to, and cremated in, any crematorium, and that person must, as soon as reasonably practicable after such reinterment or cremation, provide to the undertaker a certificate for the purpose of enabling compliance with paragraph (10).

(6) If the undertaker is not satisfied that any person giving notice under paragraph (4) is the personal representative or relative as that person claims to be, or that the remains in question cannot be identified, the question is to be determined on the application of either party in a summary manner by the county court, and the court may make an order specifying who is to remove the remains and as to the payment of the costs of the application.

(7) The undertaker must pay the reasonable expenses of removing and reinterring or cremating the remains of any deceased person under this article.

(8) If—

(a) within the period of 56 days referred to in paragraph (4) no notice under that paragraph has been given to the undertaker in respect of any remains in the Order limits; or

(b) such notice is given and no application is made under paragraph (6) within 56 days after the giving of the notice but the person who gave the notice fails to remove the remains within a further period of 56 days; or

(c) within 56 days after any order is made by the county court under paragraph (6) any person, other than the undertaker, specified in the order fails to remove the remains; or

(d) it is determined that the remains to which any such notice relates cannot be identified,

subject to paragraph (10) the undertaker must remove the remains and cause them to be reinterred in such burial ground or cemetery in which burials may legally take place as the undertaker thinks suitable for the purpose; and, so far as possible, remains from individual graves must be reinterred in individual containers which must be identifiable by a record prepared with reference to the original position of burial of the remains that they contain.

(9) If the undertaker is satisfied that any person giving notice under paragraph (4) is the personal representative or relative as that person claims to be and that the remains in question can be identified, but that person does not remove the remains, the undertaker must comply with any reasonable request that person may make in relation to the removal and reinterment or cremation of the remains.

(10) On the reinterment or cremation of any remains under this article—

(a) a certificate of reinterment or cremation must be sent by the undertaker to the Registrar General by the undertaker giving the date of reinterment or cremation and identifying the place from which the remains were removed and the place in which they were reinterred or cremated; and

(b) a copy of the certificate of reinterment or cremation and the record mentioned in paragraph (8) must be sent by the undertaker to the relevant planning authority mentioned in paragraph (3).

(11) The removal of the remains of any deceased person under this article must be carried out in accordance with any directions which may be given by the Secretary of State.

(12) Any jurisdiction or function conferred on the county court by this article may be exercised by the district judge of the court.

(13) Section 25 (offence of removal of body from burial ground) of the Burial Act 1857(**a**) is not to apply to a removal carried out in accordance with this article.

PART 5

POWERS OF ACQUISITION

Compulsory acquisition of land

21.—(1) The undertaker may acquire compulsorily so much of the Order land as is required for the authorised development or to facilitate, or as is incidental, to it.

(2) This article is subject to article 22 (time limit for exercise of authority to acquire land compulsorily), article 23 (compulsory acquisition of rights), article 30 (temporary use of land for constructing the authorised development) and article 48 (crown rights).

Time limit for exercise of authority to possess land temporarily or to acquire land compulsorily

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

(2) No notice to treat is to be served under Part 1 (compulsory purchase under Acquisition of Land Act 1981) of the 1965 Act and no declaration is to be executed under section 4 (execution of declaration) of the 1981 Act as applied by article 25 (application of the 1981 Act) after the end of the applicable period, including any extension to the applicable period pursuant to those Acts.

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

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

(b) if shorter, one year.

(4) An application is not finally determined for the purposes of paragraph (3)(a) if an appeal in respect of the application—

(a) could be brought (ignoring any possibility of an appeal out of time with permission); or

(b) has been made and not withdrawn or finally determined.

(5) Nothing in paragraph (3) prevents the undertaker remaining in possession of land after the end of that period, if the land was entered and possession was taken before the end of that period.

Compulsory acquisition of rights

23.—(1) Subject to paragraph (2) and article 30 (temporary use of land for constructing the authorised development), the undertaker may acquire compulsorily such rights over the Order land or impose such restrictive covenants over the Order land as may be required for any purpose for which that land may be acquired under article 21 (compulsory acquisition of land), by creating them as well as by acquiring rights already in existence.

(2) Subject to the provisions of this paragraph, article 24 (private rights) and article 32 (statutory undertakers), in the case of the Order land specified in column 1 of the table in Schedule 8 (land in which only new rights etc. may be acquired) the undertaker's powers of compulsory acquisition

(**a**) 1857 c. 81. Substituted by Church of England (Miscellaneous Provisions) Measure 2014 No. 1, section 2 (January 1, 2015: substitution has effect subject to transitional and saving provisions specified in S.I. 2014/2077, Schedule 1, paragraphs 1 and 2).

are limited to the acquisition of existing rights and benefit of restrictive covenants over that land and the creation and acquisition of such new rights and the imposition of restrictive covenants for the purpose specified in relation to that land in column 2 of the table in that Schedule.

(3) Subject to section 8 (other provisions as to divided land) and Schedule 2A (counter-notice requiring purchase of land) of the 1965 Act (as substituted by paragraph 5(8) of Schedule 9 (modification of compensation and compulsory purchase enactments for the creation of new rights and imposition of new restrictive covenants)), where the undertaker creates or acquires an existing right over land or the benefit of a restrictive covenant under paragraph (1) or (2), the undertaker is not required to acquire a greater interest in that land.

(4) Schedule 9 (modification of compensation and compulsory purchase enactments for the creation of new rights and imposition of new restrictive covenants) has effect for the purpose of modifying the enactments relating to compensation and the provisions of the 1965 Act in their application in relation to the compulsory acquisition under this article of a right over land by the creation of a new right or the imposition of restrictive covenants.

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

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

(7) Nothing in this article prevents the undertaker from acquiring rights more than once in relation to any land that the undertaker acquires rights in under this article.

(8) This article is subject to article 48 (crown rights).

Private rights

24.—(1) Subject to the provisions of this article, all private rights and restrictive covenants over land subject to compulsory acquisition under this Order are extinguished on the earliest of—

(a) the date of acquisition of the land or of the right or of the benefit of the restrictive covenant by the undertaker, whether compulsorily or by agreement or through the grant of a lease of the land by agreement; or

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

(2) Subject to the provisions of this article, all private rights or restrictive covenants over land subject to the compulsory acquisition of rights or the imposition of restrictive covenants under article 23 (compulsory acquisition of rights) cease to have effect in so far as their continuance would be inconsistent with the exercise of the right or compliance with the restrictive covenant on the earliest of—

(a) the date of the acquisition of the right or imposition of the restrictive covenant by the undertaker (whether the right is acquired compulsorily, by agreement or through the grant of a lease of the land by agreement); or

(b) the date of entry on the land by the undertaker under section 11(1) (power of entry) of the 1965 Act in pursuance of the right.

(3) Subject to the provisions of this article, all private rights or restrictive covenants over land of which the undertaker takes temporary possession under article 30 (temporary use of land for constructing the authorised development) or article 31 (temporary use of land for maintaining the authorised development) are suspended and unenforceable, in so far as their continuance would be inconsistent with the purpose for which temporary possession is taken, for as long as the undertaker remains in lawful possession of the land.

(4) Any person who suffers loss by the extinguishment or suspension of any private right or restrictive covenant under this article is entitled to compensation in accordance with the terms of

section 152 (compensation in case where no right to claim in nuisance) of the 2008 Act to be determined, in case of dispute, under Part 1 of the 1961 Act.

(5) This article does not apply in relation to any right to which section 138 (extinguishment of rights, and removal of apparatus, of statutory undertakers etc.) of the 2008 Act or article 32 (statutory undertakers) applies.

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

(a) any notice given by the undertaker before—

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

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

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

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

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

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

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

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

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

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

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

Application of the 1981 Act

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

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

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

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

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

(5) In section 5B(1) (extension of time limit during challenge) for "section 23 of the Acquisition of Land Act 1981 (application to High Court in respect of compulsory purchase order)" substitute "section 118 of the 2008 Act (legal challenges relating to applications for orders granting development consent)".

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

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

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

"(2) But see article 26(3) (acquisition of subsoil only) of the One Earth Solar Farm Order 202*, which excludes the acquisition of subsoil only from this Schedule.".

(9) References to the 1965 Act in the 1981 Act must be construed as references to the 1965 Act as applied by section 125 (application of compulsory acquisition provisions) of the 2008 Act (and as modified by article 28 (modification of Part 1 of the Compulsory Purchase Act 1965)) to the compulsory acquisition of land under this Order.

Acquisition of subsoil only

26.—(1) The undertaker may acquire compulsorily so much of, or such rights in, the subsoil of the land referred to in paragraph (1) of article 21 (compulsory acquisition of land) as may be required for any purpose for which that land may be acquired under that provision instead of acquiring the whole of the land.

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

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

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

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

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

(4) Paragraphs (2) and (3) do not apply where the undertaker acquires a cellar, vault, arch or other construction forming part of a house, building or factory.

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 virtue of a contract.

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

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

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

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

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

(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 (3); and

(b) fails to discharge that liability,

the liability is enforceable against the undertaker.

(**a**) Section 153(4A) was inserted by section 200(1) and (2) of the Housing and Planning Act 2016.

(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).

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

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

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

(c) the use of any land within the Order land (including the temporary use of land).

Modification of Part 1 of the Compulsory Purchase Act 1965

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

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

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

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

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

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

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

"(2) But see article 26 (acquisition of subsoil only) of the One Earth Solar Farm Order 202*, which excludes the acquisition of subsoil only from this Schedule"; and

(b) after paragraph 29 insert—

"PART 4

INTERPRETATION

30. In this Schedule, references to entering on and taking possession of land do not include doing so under article 18 (protective works to buildings), article 30 (temporary use of land for constructing the authorised development) or article 31 (temporary use of land for maintaining the authorised development) of the One Earth Solar Farm Order 202*.".

Rights under or over streets

29.—(1) The undertaker may enter on, appropriate and use so much of the subsoil of or airspace over any street within the Order land as may be required for the purposes of the authorised development and may use the subsoil or airspace for those purposes or any other purpose ancillary to the authorised development.

(2) Subject to paragraph (3), the undertaker may exercise any power conferred by paragraph (1) in relation to a street without being required to acquire any part of the street or any easement or right in the street.

(3) Paragraph (2) does not apply in relation to—

(a) any subway or underground building; or

(b) any cellar, vault, arch or other construction in, on or under a street which forms part of a building fronting onto the street.

(4) Subject to paragraph (5), any person who is an owner or occupier of land appropriated under paragraph (1) without the undertaker acquiring any part of that person's interest in the land, and

who suffers loss as a result, is entitled to compensation to be determined, in case of dispute, under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

(5) Compensation is not payable under paragraph (4) to any person who is an undertaker to whom section 85 (sharing cost of necessary measures) of the 1991 Act applies in respect of measures of which the allowable costs are to be borne in accordance with that section.

Temporary use of land for constructing the authorised development

30.—(1) The undertaker may, in connection with the construction of the authorised development but subject to article 22 (time limit for exercise of authority to possess land temporarily or to acquire land compulsorily)—

(a) enter on and take temporary possession of—

(i) so much of the land specified in column 1 of the table in Schedule 10 (land of which temporary possession may be taken) for the purpose specified in relation to the land in column 2 of that table; and

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

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

(c) construct temporary works (including means of access), haul roads, security fencing, bridges, structures and buildings on that land;

(d) use the land for the purposes of a temporary working site with access to the working site in connection with the authorised development;

(e) construct any works on that land as are mentioned in Schedule 1 (authorised development); and

(f) carry out mitigation works on that land required under the requirements in Schedule 2 (requirements).

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

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

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

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

(4) The undertaker must not, without the agreement of the owners of the land, remain in possession of any land under this article—

(a) in the case of the land referred to in paragraph (1)(a)(i) after the end of the period of 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 a notice of entry under section 11 of the 1965 Act or made a declaration under section 4 of the 1981 Act in relation to that land.

(**a**) Section 11 was amended by section 34(1) of, and paragraph 14(3) of Schedule 4 to, the Acquisition of Land Act 1981 (c. 67), section 3 of, and Part 1 of Schedule 1 to, the Housing (Consequential Provisions) Act 1985 (c. 71), section 14 of, and paragraph 12(1) of Schedule 5 to, the Church of England (Miscellaneous Provisions) Measure 2006 (No. 1), sections 186, 187 and 188 of, and paragraph 6 of Schedule 14 and paragraph 3 of Schedule 16 to, the Housing and Planning Act 2016 and S.I. 2009/1307.

(**b**) Section 4 as amended by section 184 and 185 of, and paragraphs 1 and 2 of Schedule 18 to, the Housing and Planning Act 2016.

(5) Unless the undertaker has served notice of entry under section 11 of the 1965 Act or made a declaration under section 4 of the 1981 Act or otherwise acquired the land or rights over land subject to temporary possession the undertaker must, before giving up possession of land of which temporary possession has been taken under this article, remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land; but the undertaker is not required to—

(a) replace any building, structure, agricultural plant or apparatus, electric line, debris, drain or vegetation removed under this article;

(b) remove any drainage works installed by the undertaker under this article;

(c) remove any new road surface or other improvements carried out under this article to any street specified in Schedule 4 (streets subject to street works), Schedule 5 (alteration of streets) or Schedule 7 (access to works);

(d) remove any fencing or boundary treatments installed by the undertaker under this article to replace or enhance existing fencing or boundary treatments;

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

(f) remove any protective works which have been placed on the land under article 17 to buildings); or

(g) remove any measures installed over or around statutory undertakers' apparatus to protect that apparatus from the authorised development.

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

(7) Any dispute as to a person's entitlement to compensation under paragraph (6), or as to the amount of the compensation, must be determined under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

(8) Subject to article 49 (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).

(9) Where the undertaker takes possession of land under this article, the undertaker is not required to acquire the land or any interest in it.

(10) The undertaker must not compulsorily acquire, acquire new rights over or impose restrictive covenants over, the land referred to in paragraph (1)(a)(i) under this Order.

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

(a) creating and acquiring new rights or imposing restrictions over any part of the Order land identified in Schedule 8 (land in which only new rights etc. may be acquired); or

(b) acquiring any part of the subsoil of (or rights in the subsoil of) that land under article 26 (acquisition of subsoil only) or any part of the subsoil of or airspace over that land under article 29 (rights under or over streets).

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

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

Temporary use of land for maintaining the authorised development

31.—(1) The undertaker may, at any time during the maintenance period relating to any part of the authorised development—

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

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

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

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

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

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

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

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

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

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

(7) Any dispute as to a person's entitlement to compensation under paragraph (6), or as to the amount of compensation, must be determined under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

(8) Subject to article 49 (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 maintenance of the authorised development, other than loss or damage for which compensation is payable under paragraph (6).

(9) Where the undertaker takes possession of land under this article, the undertaker is not required to acquire the land or any interest in it.

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

(11) In this article "the maintenance period" means—

(a) the period of five years beginning with the date of final commissioning of the part of the authorised development for which temporary possession is required under this article; or

(b) except where maintenance relates to landscaping, such period as is set out in the landscape and ecology management plan which is approved by the relevant planning authority pursuant to requirement 8, beginning with the date on which that part of the landscaping is completed.

Statutory undertakers

32. Subject to the provisions of Schedule 14 (protective provisions) the undertaker may—

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

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

Apparatus and rights of statutory undertakers in closed or restricted streets

33. Where a street is closed, altered or diverted or its use is temporarily prohibited or restricted under article 8 (street works), article 10 (power to alter layout, etc., of streets), article 11 (construction and maintenance of new and altered streets) or article 12 (temporary prohibition or restriction on use of streets and public rights of way) any statutory undertaker whose apparatus is under, in, on, along or across the street has the same powers and rights in respect of that apparatus, subject to Schedule 14 (protective provisions), as if this Order had not been made.

Recovery of costs of new connections

34.—(1) Where any apparatus of a public utility undertaker or of a public communications provider is removed under article 32 (statutory undertakers) any person who is the owner or occupier of premises to which a supply was given from that apparatus is entitled to recover from the undertaker compensation in respect of expenditure reasonably incurred by that person, in consequence of the removal, for the purpose of effecting a connection between the premises and any other apparatus from which a supply is given.

(2) Paragraph (1) does not apply in the case of the removal of a public sewer but where such a sewer is removed under article 32, any person who is—

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

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

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

(3) This article does not have effect in relation to apparatus to which Part 3 (street works in England and Wales) of the 1991 Act applies.

(4) In this article—

"public communications provider" has the same meaning as in section 151(1) (interpretation of Chapter 1) of the Communications Act 2003(**a**); and

"public utility undertaker" has the same meaning as in the 1980 Act.

PART 6

MISCELLANEOUS AND GENERAL

Benefit of the Order

35. Subject to article 36 (consent to transfer the benefit of the Order), the provisions of this Order have effect solely for the benefit of the undertaker save for the grid connection works in relation to which the provisions of this Order have effect for the benefit of the undertaker and NGET.

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

Consent to transfer the benefit of the Order

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

(a) transfer to another person ("the transferee") any or all of the benefit of the provisions of this Order and such related statutory rights as may be agreed between the undertaker and the transferee; and

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

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

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

(a) the transferee or lessee is NGET;

(b) the transferee or lessee is the holder of a licence under section 6 (licences authorising supply etc.) of the 1989 Act; or

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

(i) no such claims have been made;

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

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

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

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

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

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

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

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

(c) the powers to be transferred or granted;

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

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

(6) The date specified under paragraph (5)(b) must not be earlier than the expiry of 14 working days from the date of the receipt of the notification.

(7) The notification given must be signed by the undertaker and the person to whom the benefit of the powers will be transferred or granted as specified in that notification.

(8) Where the undertaker has transferred any benefit, or for the duration of any period during which the undertaker has granted any benefit—

(a) the benefit transferred or granted ("the transferred benefit") must include any rights that are conferred, and any obligations that are imposed, by virtue of the provisions to which the benefit relates;

(b) the transferred benefit will reside exclusively with the transferee or, as the case may be, the lessee and the transferred benefit will not be enforceable against the undertaker; and

(c) the exercise by a person of any benefits or rights conferred in accordance with any transfer or grant is subject to the same restrictions, liabilities and obligations as would apply under this Order if those benefits or rights were exercised by the undertaker.

Application of landlord and tenant law

37.—(1) This article applies to—

(a) any agreement for leasing to any person the whole or any part of the authorised development or the right to operate the same; and

(b) any agreement entered into by the undertaker with any person for the construction, maintenance, use or operation of the authorised development, or any part of it,

so far as any such agreement relates to the terms on which any land which is the subject of a lease granted by or under that agreement is to be provided for that person's use.

(2) No enactment or rule of law regulating the rights and obligations of landlords and tenants prejudices the operation of any agreement to which this article applies.

(3) Accordingly, no such enactment or rule of law applies in relation to the rights and obligations of the parties to any lease granted by or under any such agreement, so as to—

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

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

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

Operational land for purposes of the 1990 Act

38. Development consent granted by this Order is to be treated as specific planning permission for the purposes of section 264(3)(a) (cases in which land is to be treated as operational land) of the 1990 Act.

Felling or lopping of trees and removal of hedgerows

39.—(1) Subject to paragraph (2) and article 40 (trees subject to tree preservation orders) the undertaker may fell or lop any tree or shrub within or overhanging land within the Order limits or cut back its roots, if it reasonably believes it to be necessary to do so to prevent the tree or shrub from—

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

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

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

(2) In carrying out any activity authorised by paragraph (1) the undertaker must do no unnecessary damage to any tree or shrub and must pay compensation to any person for any loss or damage arising from such activity.

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

(4) The undertaker may, for the purposes of the authorised development or in connection with the authorised development and subject to paragraph (2) remove the hedgerows specified in column 2 of the table in Part 1 (removal of hedgerows) and column 2 of the table in Part 2

(removal of important hedgerows) of Schedule 11 (hedgerows to be removed) to the extent set out in the landscape and ecology management plan approved pursuant to requirement 8 in Schedule 2 (requirements).

(5) The undertaker may not pursuant to paragraphs (1) and (4) fell or lop a tree or remove hedgerows within the extent of the publicly maintainable highway without the prior consent of the highway authority.

(6) In this article "hedgerow" has the same meaning as in the Hedgerows Regulations 1997(**a**).

Trees subject to tree preservation orders

40.—(1) The undertaker may, if it reasonably believes it to be necessary to do so in order to prevent the tree from obstructing or interfering with the construction, maintenance, operation or decommissioning of the authorised development or any apparatus used in connection with the authorised development, fell or lop or cut back the roots of any tree that is subject to a tree preservation order that is within or overhanging land within the Order limits and the relevant tree preservation order was made after February 2025.

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

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

(b) the duty contained in section 206(1)(a) (replacement of trees) of the 1990 Act is not to apply although where possible the undertaker is to seek to replace any trees which are removed; and

(3) (c) the undertaker must consult the relevant planning authority prior to that activity taking place. The authority given by paragraph (1) constitutes a deemed consent under the relevant tree preservation order.

(4) Any dispute as to a person's entitlement to compensation under paragraph (2), or as to the amount of compensation, is to be determined under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

Certification of plans and documents, etc.

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

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

Arbitration

42.—(1) Any difference under any provision of this Order, unless otherwise provided for, is to be referred to and settled in arbitration in accordance with the rules set out in Schedule 13 (arbitration rules) of this Order, by a single arbitrator to be agreed upon by the parties, within 14 days of receipt of the notice of arbitration, or if the parties fail to agree within the time period stipulated, to be appointed on application of either party (after giving written notice to the other) by the Secretary of State.

(2) Any matter for which the consent or approval of the Secretary of State is required under any provision of this Order is not subject to arbitration.

Protective Provisions

43. Schedule 14 (protective provisions) has effect.

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

Service of notices

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

(a) by post;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Procedure in relation to certain approvals etc.

45.—(1) Where an application is made to or request is made of, a consenting authority for any consent, agreement or approval required or contemplated by any of the provisions of the Order (not including the requirements), such consent, agreement or approval to be validly given, must be given in writing.

(2) Where paragraph (1) applies to any consent, agreement or approval, such consent, agreement or approval must not be unreasonably withheld or delayed.

(3) Schedule 15 (procedure for discharge of requirements) has effect in relation to all consents, agreements or approvals required, granted, refused or withheld in relation to the requirements.

(4) Save for applications made pursuant to Schedule 15 (procedure for discharge of requirements) and where stated to the contrary if, within thirteen weeks (or such longer period as may be agreed between the undertaker and the relevant consenting authority in writing) after the application or request has been submitted to a consenting authority it has not notified the undertaker of its disapproval and the grounds of disapproval, it is deemed to have approved the application or request.

(5) Where any application is made as described in paragraph (1), the undertaker must include a statement in such application that refers to the timeframe for consideration of the application and the consequences of failure to meet that timeframe as prescribed by paragraph (4).

(6) Schedule 15 does not apply in respect of any consents, agreements or approvals contemplated by the provisions of Schedule 14 (protective provisions) or any dispute under article 18(6) (protective works to buildings) to which paragraph (4) applies.

(7) In this article "consenting authority" means the relevant planning authority, highway authority, traffic authority, street authority, the owner of a watercourse, sewer or drain or the beneficiary of any of the protective provisions contained in Schedule 14 (protective provisions).

Guarantees in respect of payment of compensation

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

(a) a guarantee, the form and amount of which has been approved by the Secretary of State in respect of the liabilities of the undertaker to pay compensation pursuant to the provisions referred to in paragraph (2) in respect of the exercise of the relevant provision in relation to that part of the Order limits; or

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

(2) The provisions are—

(a) article 21 (compulsory acquisition of land);

(b) article 23 (compulsory acquisition of rights);

(c) article 24 (private rights);

(d) article 29 (rights under or over streets);

(e) article 30 (temporary use of land for constructing the authorised development);

(f) article 31 (temporary use of land for maintaining the authorised development); and

(g) article 32 (statutory undertakers).

(3) A guarantee or alternative form of security given in respect of any liability of the undertaker to pay compensation under this Order is to be treated as enforceable against the guarantor or

person providing the alternative form of security by any person to whom such compensation is payable and must be in such a form as to be capable of enforcement by such a person.

(4) Nothing in this article requires a guarantee or alternative form of security to be in place for more than 15 years after the date on which the relevant power is exercised.

Compulsory acquisition of land - incorporation of the mineral code

47. Parts 2 and 3 of Schedule 2 (minerals) to the Acquisition of Land Act 1981(**a**) are incorporated into this Order subject to the modifications that—

(a) for "the acquiring authority" substitute "the undertaker";

(b) for the "undertaking" substitute "authorised development"; and

(c) paragraph 8(3) is not incorporated.

Crown rights

48.—(1) Nothing in this Order affects prejudicially any estate, right, power, privilege, authority or exemption of the Crown and in particular, nothing in this Order authorises the undertaker or any lessee or licensee to take, use, enter upon or in any manner interfere with any land or rights of any description (including any portion of the shore or bed of the sea or any river, channel, creek, bay or estuary)—

(a) belonging to His Majesty in right of the Crown and forming part of The Crown Estate without the consent in writing of the Crown Estate Commissioners;

(b) belonging to His Majesty in right of the Crown and not forming part of The Crown Estate without the consent in writing of the government department having the management of that land; or

(c) belonging to a government department or held in trust for His Majesty for the purposes of a government department without the consent in writing of that government department.

(2) Paragraph (1) does not apply to the exercise of any right under this Order for the compulsory acquisition of an interest in land (as defined in the 2008 Act) which is for the time being held otherwise than by or on behalf of the Crown.

(3) A consent under paragraph (1) may be given unconditionally or subject to terms and conditions and is deemed to have been given in writing where it is sent electronically.

No double recovery

49. Compensation is not payable in respect of the same matter both under this Order and under any enactment, any contract or any rule of law, or under two or more different provisions of this Order.

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

Signature

Address

Title

Date

Department for Energy Security and Net Zero

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

SCHEDULES

SCHEDULE 1

Article 3

AUTHORISED DEVELOPMENT

1. In this Schedule—

"electrical cables" means—

(a) cables of differing types and voltages installed for the purposes of conducting electricity, auxiliary cables, cables connecting to direct current (DC) boxes, earthing cables and optical fibre cables; and

(b) works associated with cable laying including jointing pits, hardstanding adjoining the jointing pits, combiner boxes, fibre bays, cable ducts, cable protection, joint protection, manholes, kiosks, marker posts, underground cable marker, tiles and tape, send and receive pits for horizontal directional drilling, trenching, lighting, earthing rods, and a pit or container to capture fluids associated with drilling;

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

"inverter" means electrical equipment required to convert direct current power to alternating current;

"mounting structure" means a frame or rack made of galvanised steel, anodised aluminium or other material designed to support the solar panels and mounted on piles driven into the ground, helical piles or pillars fixed to a concrete foundation;

"National Grid High Marnham Substation" means the proposed substation at Fledborough Road, High Marnham, Nottinghamshire NG22 0UZ, owned and operated by NGET;

"permissive paths" means new paths providing restricted public access within the Order limits along the approximate routes shown on the outline landscape and ecology management plan;

"power conversion stations" means inverters, transformers and switch gear with monitoring and control systems housed in an enclosure or enclosures mounted on metal stilts pile driven into the ground or metal skids on concrete foundations;

"solar panel" means a solar photovoltaic panel or module designed to convert solar irradiance to electrical energy;

"substation" means a substation containing electrical equipment required to switch, transform, convert electricity and provide reactive power compensation on concrete slab foundations;

"switch gear" means a combination of electrical disconnect switches, fuses or circuit breakers used to control, protect and isolate electrical equipment; and

"transformer" means a structure serving to transform electricity to a higher voltage.

Authorised development

2. In the Districts of Newark and Sherwood, West Lindsey and Bassetlaw and in the Counties of Nottinghamshire and Lincolnshire a nationally significant infrastructure project as defined in sections 14 and 15 of the 2008 Act and associated development under section 115(1)(b) of the 2008 Act.

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

Work No. 1 – a ground mounted solar photovoltaic generating station with a gross electrical output capacity of over 50 megawatts, including—

(a) solar panels fitted to mounting structures; and

(b) power conversion stations,

and associated development within the meaning of s115(2) of the 2008 Act comprising—

Work No. 2 – energy storage facility comprising battery energy storage system compounds including—

(a) battery energy storage system (BESS) units each comprising an enclosure for BESS electro-chemical components and associated equipment, joined or close coupled to each other, mounted on a concrete foundation slab;

(b) transformers and associated bunding;

(c) inverters, switch gear, power conversion systems and ancillary equipment;

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

(e) monitoring and control systems housed within the containers or enclosures comprised in Work Nos. 2(a) or (d) or located separately in its own container or enclosure;

(f) heating, ventilation and air conditioning or liquid cooling systems either housed on or within each of the containers or enclosures comprised in Work Nos. 2(a), (d) and (e), integrated into or attached to the side or top of each of the containers or enclosures, or located separate to but near to each of the containers or enclosures;

(g) fire safety infrastructure including water storage units, aerosol systems, automatic sprinklers and a shut-off valve for containment of fire water and hard standing to accommodate emergency vehicles;

(h) containers or similar structures to house spare parts and materials required for the day to day operation of the BESS facility;

(i) acoustic fencing or acoustic barriers; and

(j) ancillary buildings including control room, office, welfare, storage, workshop and metering.

Work No. 3 – works in connection with onsite substation compounds including—

(a) substation including transformers, 400kV switchgear either housed within a building or gas insulated, 33kV switch room buildings and ancillary equipment including harmonic filters and reactive power units; and

(b) ancillary buildings and structures including control buildings, metering equipment, office, welfare, storage and workshop.

Work No. 4 – works to lay high voltage electrical cables and to facilitate the connection of the authorised development to the National Grid High Marnham Substation and access for the electrical cables, including—

(a) works to lay up to 400 kilovolt electrical cables connecting Work No. 3 into the National Grid High Marnham Substation;

(b) laying down of temporary construction areas and internal access tracks, ramps, means of access, footways, including the laying and construction of drainage infrastructure, signage and information boards; and

(c) electrical engineering works in and around the National Grid High Marnham Substation.

Work No. 5 – works including—

(a) electrical cables up to 132kV;

(b) fencing, gates, and other boundary treatments;

(c) security measures including CCTV columns, lighting columns, cameras, weather stations, and communication infrastructure;

(d) landscape and biodiversity mitigation and enhancement including planting of new vegetation and seeding;

(e) vegetation removal;

(f) 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;

(g) laying down and creation of internal access tracks, ramps, means of access and footpaths and improvement of access tracks;

(h) temporary footpath diversions;

(i) earthworks;

(j) tunnelling, boring and drilling works;

(k) sustainable drainage system ponds and general drainage; and

(l) laying down of permissive paths, signage and information boards.

Work No. 6 – temporary construction and decommissioning compounds including—

(a) **Work No. 6A** – up to two primary temporary construction and decommissioning areas—

(i) areas of hardstanding;

(ii) car parking;

(iii) site and welfare offices, canteens and workshops;

(iv) area to store materials and equipment;

(v) storage and waste skips;

(vi) area for download and turning;

(vii) security infrastructure, including cameras, perimeter fencing and lighting;

(viii) site drainage and waste management infrastructure; and

(ix) electricity, water, waste water and telecommunications connections; and

(b) **Work No. 6B** – up to ten secondary temporary construction and decommissioning areas—

(i) areas to store materials and equipment;

(ii) storage and waste skips;

(iii) area for download and turning;

(iv) security infrastructure including cameras, lighting and fencing; and

(v) site and welfare offices, canteens and workshops.

Work No. 7 – works to facilitate access to Work Nos. 1 to 6 and 8 including—

(a) creation of accesses from any street or highway;

(b) creation of visibility splays;

(c) works to alter the layout of any street or highway;

(d) works to widen and surface any streets; and

(e) making and maintaining passing places.

Work No. 8 – works to create, enhance and maintain green infrastructure and mitigation, including—

(a) landscape and biodiversity mitigation and enhancement areas;

(b) habitat creation and management, including earthworks, landscaping, means of enclosure, and the laying and construction of drainage infrastructure; and

(c) improvements to existing public rights of way, signage and information boards.

In connection with and in addition to Work Nos. 1 to 8 further associated development within the Order limits including—

(a) fencing, gates, boundary treatment and other means of enclosure;

(b) bunds, embankments, trenching and swales;

(c) works to the existing irrigation system and works to alter the position and extent of such irrigation system;

(d) surface water drainage systems, storm water attenuation systems including storage basins, oil water separators, including channelling and culverting and works to existing drainage networks;

(e) 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;

(f) works to alter the course of, or otherwise interfere with, non-navigable rivers, streams or watercourses;

(g) works for the provision of security and monitoring measures such as CCTV columns, security cabins, lighting columns and lighting, cameras, lightning protection masts and weather stations;

(h) improvement, maintenance, repair and use of existing streets, private tracks and access roads;

(i) laying down, maintenance and repair of new internal access tracks, ramps, means of access, footpaths, permissive paths, cycle routes and roads, crossings of drainage ditches and watercourses, including signage and information boards;

(j) temporary footpath diversions and closures;

(k) noise, landscaping and biodiversity mitigation and enhancement measures including planting and acoustic fencing or acoustic barriers;

(l) tunnelling, boring and drilling works;

(m) earthworks, site establishments and preparation works including site clearance (including vegetation removal, demolition of existing buildings and structures); earthworks (including soil stripping and storage and site levelling) and excavations; the alteration of the position of services and utilities; and works for the protection of buildings and land;

(n) other works to mitigate any adverse effects of the construction, maintenance, operation or decommissioning of the authorised development,

and further associated development comprising such other works or operations as may be necessary or expedient for the purposes of or in connection with the construction, operation and maintenance of the authorised development but only within the Order limits and insofar as they are unlikely to give rise to any materially new or materially different environmental effects from those assessed in the environmental statement.

SCHEDULE 2

Article 3

REQUIREMENTS

1. In this Schedule—

"part" includes a phase, part of a phase, multiple phases or multiple parts of phases;

"phase" means a phase of the authorised development as set out in the written scheme approved pursuant to requirement 3;

"relevant county authority" means Lincolnshire County Council and Nottinghamshire County Council in their capacity as the county council for their respective administrative areas, and "relevant county authorities" means both Lincolnshire County Council and Nottinghamshire County Council;

"relevant district authority" means Newark & Sherwood District Council, West Lindsey District Council and Bassetlaw District Council in their capacity as the district council for their respective administrative areas;

"relevant planning authority" means—

(a) Lincolnshire County Council and Nottinghamshire County Council in their capacity as the local planning authority for their respective administrative areas for the purposes of—

(i) Requirements 4 (requirement for written approval), where the County Council was the relevant planning authority for the Approved Documents, Plans, Details or Schemes sought to be amended;

(ii) Requirement 7 (battery safety management);

(iii) Requirement 11 (drainage);

(iv) Requirement 12 (archaeology);

(v) Requirement 15 (construction traffic management plan);

(vi) Requirement 18 (public rights of way management plan);

(vii) Requirement 19 (soil management plan);

(viii) Requirement 22 (flood risk mitigation); and

(b) Newark & Sherwood District Council, West Lindsey District Council and Bassetlaw District Council in their capacity as the local planning authority for their respective administrative areas for the purposes of—

(i) Requirement 3 (phasing of the authorised development and date of final commissioning);

(ii) Requirement 4 (requirement for written approval), where the District Council was the relevant planning authority for the Approved Documents, Plans, Details or Schemes sought to be amended;

(iii) Requirement 5 (detailed design approval);

(iv) Requirement 6 (community liaison group);

(v) Requirement 8 (landscape and ecology management plan);

(vi) Requirement 9 (biodiversity net gain);

(vii) Requirement 10 (fencing and other means of enclosure);

(viii) Requirement 13 (construction environmental management plan);

(ix) Requirement 14 (operational environmental management plan);

(x) Requirement 16 (operational noise);

(xi) Requirement 17 (skills, supply chain and employment);

(xii) Requirement 20 (decommissioning and restoration);

(xiii) Requirement 21 (ground conditions); and

"relevant planning authorities" and "relevant planning authority" means Lincolnshire County Council, Nottinghamshire County Council, Newark & Sherwood District Council, West Lindsey District Council and Bassetlaw District Council as applicable. Where for the above requirements the approval sought relates to a part of the authorised development that is within the administrative areas of multiple relevant planning authorities, the "relevant planning authority" shall mean each of those multiple authorities.

Commencement of the authorised development

2. The authorised development must not be commenced after the expiration of five years from the date this Order comes into force.

Phasing of the authorised development and date of final commissioning

3.—(1) The authorised development may not commence until a written scheme setting out the phases of construction of the authorised development has been submitted to and approved by the relevant planning authorities, such approval to be in consultation with the relevant county authorities.

(2) The scheme submitted and approved pursuant to sub-paragraph (1) must include a timetable for the construction of the phases of the authorised development and a plan identifying the phasing areas.

(3) The scheme submitted and approved pursuant to sub-paragraph (1) must be implemented as approved.

(4) Notice of the date of final commissioning with respect to each phase of Work No.1 must be given to the relevant planning authorities for each phase within 15 working days of the date of final commissioning for that phase.

Requirement for written approval

4.—(1) With respect to the documents certified under article 41 (certification of plans and documents, etc) and any plans, details or schemes which have been approved pursuant to any requirement (together the "Approved Documents, Plans, Details or Schemes"), the undertaker may submit to the relevant planning authority for approval any amendments to any of the Approved Documents, Plans, Details or Schemes and, following approval by the relevant planning authority, the relevant Approved Documents, Plans, Details or Schemes is to be taken to include the amendments as so approved pursuant to this paragraph.

(2) Approval under sub-paragraph (1) for the amendments to any of the Approved Documents, Plans, Details or Schemes must not be given except where it has been demonstrated to the satisfaction of the relevant planning authority that the subject matter of the approval sought is unlikely to give rise to any materially new or materially different environmental effects from those assessed in the environmental statement.

Detailed design approval

5.—(1) No part of Work Nos. 1 to 5 and 8 may commence until details of—

(a) the layout;

(b) scale;

(c) proposed finished ground levels;

(d) external appearance;

(e) hard surfacing materials;

(f) vehicular and pedestrian access, parking and circulation areas; and

(g) refuse or other storage units, signs and lighting,

relating to that part have been submitted to and approved by the relevant planning authority for that part, such approval to be in consultation with the relevant county authority for that part as local highway authority in relation to sub-paragraph (f).

(2) The details submitted must accord with—

(a) the outline design parameters and height parameter plan; and

(b) any details approved under requirements 7 (battery safety management), 8 (landscape and ecology management plan), 10 (fencing and other means of enclosure), 11 (drainage), 12 (archaeology), 16 (operational noise), 18 (public rights of way management plan) and 22 (flood risk mitigation).

(3) The authorised development must be carried out in accordance with the approved details.

Community liaison group

6.—(1) Prior to the commencement of the authorised development the undertaker must submit to the relevant planning authority for approval the terms of reference for a community liaison group whose aim is to facilitate liaison between representatives of people living in the vicinity of the Order limits and other relevant organisations in relation to the construction, operation and decommissioning (as relevant) of the authorised development.

(2) The community liaison group must be established prior to commencement of the authorised development and must be administered by the undertaker, and operated, in accordance with the approved terms of reference.

(3) The community liaison group is to continue to meet until decommissioning has been completed pursuant to the approved decommissioning environmental management plan for the final part of the authorised development to be decommissioned unless otherwise agreed with the relevant planning authority.

Battery safety management

7.—(1) Work No. 2 must not commence until a battery safety management plan has been submitted to and approved by the relevant planning authority for that part, such approval to be in consultation with the relevant district authority for that part.

(2) The battery safety management plan must be substantially in accordance with the outline battery safety management plan and demonstrate access to the BESS and substation compounds is achievable during the design flood event (as defined in the flood risk assessment and outline drainage strategy).

(3) The relevant planning authority must consult with the Lincolnshire Fire and Rescue Service, the Nottinghamshire Fire and Rescue Service and the Environment Agency before determining an application for approval of the battery safety management plan.

(4) The battery safety management plan must be implemented as approved and maintained throughout the operation of the relevant part of the authorised development to which the plan relates.

Landscape and ecology management plan

8.—(1) No part of the authorised development may commence until a written landscape and ecology management plan has been submitted to and approved by the relevant planning authority for that part, in consultation with the relevant county authority for that part, the Environment Agency and Natural England.

(2) The landscape and ecology management plan must be substantially in accordance with the outline landscape and ecology management plan.

(3) The landscape and ecology management plan must be implemented as approved and the measures contained within the plan maintained throughout the operation of the relevant part of the authorised development to which the plan relates.

(4) For the purposes of sub-paragraph (1), "commence" includes part (h) (site clearance (including vegetation removal, demolition of existing structures or buildings) and part (j) (advanced planting to allow for early establishment of mitigation including for sky lark) of the permitted preliminary works.

Biodiversity net gain

9.—(1) No part of the authorised development may commence until a biodiversity net gain strategy for that part has been submitted to and approved by the relevant planning authority, in consultation with the relevant statutory nature conservation body.

(2) The biodiversity net gain strategy must include details of how the strategy will secure a minimum of 50% biodiversity net gain in area-based habitat units, a minimum of 50% biodiversity net gain in hedgerow units, and a minimum of 10% biodiversity net gain in watercourse units for all of the authorised development during the operation of the authorised development, using the Department of Environment, Food and Rural Affairs' Statutory Biodiversity Metric to calculate those percentages (or such other biodiversity metric approved by the relevant planning authority in consultation with the relevant statutory nature conservation body).

(3) The biodiversity net gain strategy must be substantially in accordance with the outline landscape and ecology management plan and must be implemented as approved and maintained throughout the operation of the relevant part of the authorised development to which the plan relates.

Fencing and other means of enclosure

10.—(1) No part of the authorised development may commence until written details of all proposed fences, walls or other means of enclosure for the construction of that part, including those set out in the construction environmental management plan, have been submitted to and approved by the relevant planning authority for that part.

(2) Prior to the date of final commissioning for any part of the authorised development, written details of all fences, walls or other means of enclosure for the operation of that part have been submitted to and approved by the relevant planning authority.

(3) For the purposes of sub-paragraph (1), "commence" includes any permitted preliminary works except for parts (a) (environmental surveys, geotechnical surveys, intrusive archaeological surveys and other investigations for the purpose of assessing ground conditions) and (d) (remedial work in respect of any contamination or other adverse ground conditions) of the permitted preliminary works.

(4) The written details provided under sub-paragraph (2) must be substantially in accordance with the relevant outline design parameters.

(5) Any construction site must remain securely fenced in accordance with the approved details under sub-paragraph (1) at all times during construction of the authorised development.

(6) Any fencing approved under sub-paragraph (1) for the purposes of construction only must be removed on completion of the construction of the part of the authorised development for which it was used.

(7) Any fencing approved under sub-paragraph (2) for a part of the authorised development must be completed before the date of final commissioning of that part and must be properly maintained for the operational lifetime of the part of the authorised development.

Drainage

11.—(1) No part of the authorised development may commence until written details of the drainage management plan for that part have been submitted to and approved by the relevant planning authority for that part, such approval to be in consultation with Anglian Water and the Environment Agency.

(2) The written details under sub-paragraph (1) must be substantially in accordance with the flood risk assessment and outline drainage strategy.

(3) Any approved scheme must be implemented as approved and maintained throughout the construction and operation of the authorised development.

Archaeology

12.—(1) No part of the authorised development may commence until for that part:

(a) an archaeological mitigation strategy has been submitted to and approved by the relevant planning authority in consultation with Historic England;

(b) any additional trial trenching required pursuant to the approved archaeological mitigation strategy to inform the approach to mitigation has been carried out in accordance with the outline written scheme of investigation and the approved archaeological mitigation strategy; and

(c) where additional trial trenching to inform the approach to mitigation has been undertaken under sub-paragraph (b) updates are made to the archaeological mitigation strategy approved under sub-paragraph (b) to account for the results of the additional trial trenching carried out and such updated archaeological mitigation strategy has been submitted to and approved by the relevant planning authority in consultation with Historic England.

(2) The archaeological mitigation strategy under sub-paragraph (1)(a) must be substantially in accordance with the outline written scheme of investigation.

(3) For the purposes of sub-paragraph (1), "commence" includes any permitted preliminary works except that part (a) of the permitted preliminary works is only included with respect to intrusive archaeological surveys.

(4) Any approved archaeological mitigation strategy (whether pursuant to sub-paragraph (1)(a) or (1)(c)) must be implemented as approved and maintained throughout the construction, operation and decommissioning of the authorised development and any archaeological works or watching brief must be carried out in accordance with the approved strategy.

Construction environmental management plan

13.—(1) No part of the authorised development may commence until a construction environmental management plan for that part has been submitted to and approved by the relevant planning authority for that part, such approval to be in consultation with the relevant county authority for that part as the local highway authority and waste planning authority, the Environment Agency, and Anglian Water in relation to water resources.

(2) The construction environmental management plan must be substantially in accordance with the outline construction environmental management plan.

(3) All construction works associated with the authorised development must be carried out in accordance with the approved construction environmental management plan.

(4) For the purposes of sub-paragraph (1), "commence" includes part (d) (remedial works in respect of any contamination or other adverse ground conditions) and part (i) (Work No. 7 (works to facilitate access to Work Nos. 1 to 6 and 8)) of the permitted preliminary works.

Operational environmental management plan

14.—(1) Prior to the date of final commissioning for any part of the authorised development, an operational environmental management plan for that part must be submitted to and approved by the relevant planning authority for that part, such approval to be in consultation with the relevant county authority for that part, as the local highway authority and waste planning authority, the Environment Agency, and Anglian Water in relation to water resources.

(2) The operational environmental management plan must be substantially in accordance with the outline operational environmental management plan.

(3) The operational environmental management plan must be implemented as approved and maintained throughout the operation of the relevant part of the authorised development to which the plan relates.

Construction traffic management plan

15.—(1) No part of the authorised development may commence until a construction traffic management plan for that part has been submitted to and approved by the relevant planning authority, such approval to be in consultation with the relevant district authority for that part.

(2) The construction traffic management plan must be substantially in accordance with the outline construction traffic management plan.

(3) All construction works associated with the authorised development must be carried out in accordance with the approved construction traffic management plan.

(4) For the purposes of sub-paragraph (1), "commence" includes part (i) (Work No. 7 (works to facilitate access to Work Nos. 1 to 6 and 8)) of the permitted preliminary works.

Operational noise

16.—(1) No part of Work Nos. 1 to 3 may commence until an operational noise assessment containing details of how the design of that numbered work has incorporated mitigation to ensure the operational noise rating levels secured in the outline design parameters are complied with for that part has been submitted to and approved by the relevant planning authority for that part.

(2) The design as described in the operational noise assessment must be implemented as approved and maintained throughout the operation of the relevant part of the authorised development to which the plan relates.

Skills, supply chain and employment

17.—(1) No part of the authorised development may commence until a skills, supply chain and employment plan in relation to that part has been submitted to and approved by the relevant planning authority for that part, such approval to be in consultation with the relevant county authority for that part.

(2) The skills, supply chain and employment plan must be substantially in accordance with the outline skills, supply chain and employment plan.

(3) The skills, supply chain and employment plan must identify opportunities for individuals and businesses to access employment and supply chain opportunities associated with that part of the authorised development to which the plan relates and the means for publicising such opportunities.

(4) The skills, supply chain and employment plan must be implemented as approved and maintained throughout the construction and operation of the authorised development.

Public rights of way management plan

18.—(1) No part of the authorised development may commence until a public rights of way management plan for any sections of public rights of way shown to be temporarily closed, diverted or managed on the streets, rights of way and access plans for that part has been submitted to and approved by the relevant planning authority for that part.

(2) The public rights of way management plan must be substantially in accordance with the outline public rights of way management plan.

(3) The public rights of way management plan must be implemented as approved and maintained throughout the construction and operation of the relevant part of the authorised development to which the plan relates.

Soil management plan

19.—(1) No part of the authorised development may commence until a soil management plan for that part has been submitted to and approved by the relevant planning authority for that part.

(2) The soil management plan must be substantially in accordance with the outline soil management plan.

(3) The soil management plan must be implemented as approved and maintained throughout the construction, operation and decommissioning of the relevant part of the authorised development to which the plan relates.

Decommissioning and restoration

20.—(1) The date of decommissioning:

(a) with respect to each phase of Work No. 1 must be no later than 60 years following the date of final commissioning as notified to the relevant planning authority pursuant to requirement 3; and

(b) with respect to the associated development in Work Nos. 2 to 8 must be no later than the date of decommissioning for the phase of Work No. 1 to which such associated development relates, and where such associated development relates to more than one phase of Work No. 1 must be no later than the latest date of decommissioning of the phases of Work No. 1 to which such associated development relates.

(2) Unless otherwise agreed with the relevant planning authority, no later than 12 months prior to the date the undertaker intends to decommission any part of the authorised development, the undertaker must notify the relevant planning authority of the intended date of decommissioning for that part of the authorised development.

(3) Unless otherwise agreed with the relevant planning authority, no later than twelve weeks prior to the intended date of decommissioning of any part of the authorised development notified pursuant to sub-paragraph (2), the undertaker must submit to the relevant planning authority a decommissioning environmental management plan for approval.

(4) The decommissioning environmental management plan must be substantially in accordance with the outline decommissioning environmental management plan and must include a timetable for its implementation.

(5) No decommissioning works may be carried out until the relevant planning authority has approved the decommissioning environmental management plan submitted in relation to those works, in consultation with the relevant county authority for those works in its capacity as the local highway authority and waste planning authority, the Environment Agency, Natural England, and Anglian Water in relation to water resources.

(6) The decommissioning environmental management plan must be implemented as approved.

(7) This requirement is without prejudice to any other consents or permissions that may be required to decommission any part of the authorised development.

Ground conditions

21.—(1) No part of the authorised development is to commence in the area around the High Marnham power station as shown hatched blue on the land and soils constraints plan included in the preliminary risk assessment at appendix 8.2 to chapter 8 of the environmental statement ("the area for site investigation"), until:

(a) a Phase 2 site investigation and risk assessment methodology to assess the nature and extent of any contamination specifically located in the area for site investigation has been submitted to and approved by the relevant planning authority in consultation with the Environment Agency;

(b) unless otherwise agreed in writing with the relevant planning authority, any Phase 2 site investigation and risk assessment for the area for site investigation has been completed in accordance with the methodology approved pursuant to sub-paragraph (a) and a written

report including a remedial options appraisal, if required, has been submitted to and approved by the relevant planning authority in consultation with the Environment Agency;

(c) unless otherwise agreed in writing with the relevant planning authority, a detailed remediation strategy that includes proposals (including any phasing) for remedial works and verification for such works for the area for site investigation has been submitted to and approved by the relevant planning authority in consultation with the Environment Agency;

(2) If, during the carrying out of any part of the authorised development, contamination not previously identified is found to be present within such part, no further development (unless otherwise agreed in writing with the relevant planning authority) must be carried out on the part on which the contamination has been found until a remediation strategy detailing how such contamination must be dealt with has been submitted to and approved by the relevant planning authority in consultation with the Environment Agency.

(3) The authorised development must be carried out in accordance with the strategy approved pursuant to sub-paragraph (1)(c).

(4) For the purposes of sub-paragraph (1), "commence" includes part (d) (remedial work in respect of any contamination or other adverse ground conditions) and part (e) (diversion of existing services and the laying of temporary services) of the permitted preliminary works.

Flood risk mitigation

22.—(1) No part of the authorised development shall commence until, for that part, the flood risk mitigation detailed design has been submitted to and approved by the relevant planning authority, in consultation with the Environment Agency.

(2) The flood risk mitigation detailed design pursuant to sub-paragraph (1) to include:

(a) the layout of the proposed development and any proposed flood risk mitigation

(b) the layout of solar panel areas and all infrastructure proposed in Work No. 1 to be sited within areas at risk of flooding and associated updated volumetric loss calculations based on the flood mitigation detailed design; and

(c) details of the lowest leading edge of solar panels and lowest base of infrastructure referenced in (b) and confirmation that solar panels and infrastructure are above the design flood event (as defined in the flood risk assessment and outline drainage strategy).

(3) The flood risk mitigation detailed design must accord with the flood risk assessment and outline drainage strategy.

SCHEDULE 3

Article 6

LEGISLATION TO BE DISAPPLIED

1. The following provisions do not apply in so far as they relate to the construction of any numbered work or the carrying out of any operation required for the purpose of, or in connection with, the construction, operation, maintenance or decommissioning of the authorised development and so far as the provisions still in force are incompatible with the powers contained within this Order—

(a) Manchester and Lincoln Union Railway and Chesterfield and Gainsborough Canal Act 1846(**a**);

(b) Manchester, Sheffield and Lincolnshire Railway Act 1849(**b**);

(c) Trent Navigation Act 1884(**c**);

(d) Trent (Burton-upon-Trent and Humber) Navigation Act 1887(**d**);

(e) Canal Rates, Tolls, and Charges, No. 2 (Bridgewater, &c. Canals), O. Conf. Act 1894(**e**);

(f) Trent Navigation Act 1906(**f**);

(g) Lincoln Corporation (Water, &c.) Act 1908(**g**);

(h) Lincolnshire Rivers Fisheries Provisional Order Confirmation Act 1928(**h**);

(i) Trent Navigation Act 1932(**i**); and

(j) Trent and Lincolnshire Water Act 1971(**j**).

(**a**) 1846 c. ccclviii.
(**b**) 1849 c. lxxxi.
(**c**) 1884 c. xxxviii.
(**d**) 1887 c. cxv.
(**e**) 1894 c. cxcvii.
(**f**) 1906 c. lvii.
(**g**) 1908 c. xxxiii.
(**h**) 1928 c. lxvii
(**i**) 1932 c. lxxiv.
(**j**) 1971 c. xiii.

SCHEDULE 4

Article 8

STREETS SUBJECT TO STREET WORKS

(1) *Area*	*(2)* *Street*	*(3)* *Extent of the street works*
Nottinghamshire County Council	A57	Street works to facilitate cable installation works and carriageway surface repairs for the length shown in green patterned hatching near accesses 01/01 and 01/02 on Sheet 1 of the streets, rights of way and access plans.
Nottinghamshire County Council	Farhill Lane	Street works to facilitate cable installation works and carriageway surface repairs for the length shown in green patterned hatching near accesses 01/02 and 03/01 on Sheets 1 and 3 of the streets, rights of way and access plans.
Nottinghamshire County Council	Farhill Lane	Street works to facilitate cable installation works and carriageway surface repairs for the length shown in green patterned hatching near accesses 01/05, 02/02 and 03/02 on Sheets 1, 2 and 3 of the streets, rights of way and access plans.
Nottinghamshire County Council	Private Road adjacent to Farhill Lane	Street works to facilitate cable installation works and carriageway surface repairs for the length shown in green patterned hatching near accesses 03/11 to 03/12 on Sheet 3 of the streets, rights of way and access plans.
Nottinghamshire County Council	Marnham Road	Street works to facilitate cable installation works and carriageway surface repairs for the length shown in green patterned hatching near accesses 04/01 to 04/03 on Sheet 4 of the streets, rights of way and access plans.
Nottinghamshire County Council	Ragnall Road	Street works to facilitate cable installation works and carriageway surface repairs for the length shown in green patterned hatching near accesses 04/03, 05/06, 06/02 to

		07/20 on Sheets 4, 5, 6 and 7 of the streets, rights of way and access plans.
Nottinghamshire County Council	Far Road	Street works to facilitate cable installation works and carriageway surface repairs for the length shown in green patterned hatching near accesses 05/02 to 05/03 on Sheet 5 of the streets, rights of way and access plans.
Nottinghamshire County Council	Crabtree Lane	Street works to facilitate cable installation works and carriageway surface repairs for the length shown in green patterned hatching near accesses 05/03 to 07/03 on Sheets 5 and 7 of the streets, rights of way and access plans.
Nottinghamshire County Council	Hollowgate Lane	Street works to facilitate cable installation works and carriageway surface repairs for the length shown in green patterned hatching near accesses 06/07 to 06/17 on Sheet 6 of the streets, rights of way and access plans.
Nottinghamshire County Council	Power Station Access Road adjacent to Fledborough Road	Street works to facilitate cable installation works and carriageway surface repairs for the length shown in green patterned hatching near accesses 07/19 to 08/01 on Sheets 6, 7 and 8 of the streets, rights of way and access plans.
Nottinghamshire County Council	Skegby Road	Street works to facilitate cable installation works and carriageway surface repairs for the length shown in green patterned hatching near access 07/05 on Sheet 7 of the streets, rights of way and access plans.
Nottinghamshire County Council	Polly Taylor's Road	Street works to facilitate cable installation works and carriageway surface repairs for the length shown in green patterned hatching near accesses 07/05 to 07/14 on Sheet 7 of the streets, rights of way and access plans.
Nottinghamshire County Council	Fledborough Road	Street works to facilitate cable installation works and carriageway surface repairs for the length shown in green patterned hatching near accesses 07/13 to 07/20 on

		Sheet 7 of the streets, rights of way and access plans.
Nottinghamshire County Council	Private Road adjacent to Fledborough Road	Street works to facilitate cable installation works and carriageway surface repairs for the length shown in green patterned hatching near accesses 07/20 to 07/27 on Sheet 7 of the streets, rights of way and access plans.
Nottinghamshire County Council	Sparrow Lane	Street works to facilitate cable installation works and carriageway surface repairs for the length shown in green patterned hatching near accesses 08/02 to 08/03 on Sheet 8 of the streets, rights of way and access plans.
Nottinghamshire County Council and Lincolnshire County Council	A1133	Street works to facilitate cable installation works and carriageway surface repairs for the length shown in green patterned hatching near accesses 10/06 to 12/09 on Sheets 10 and 12 of the streets, rights of way and access plans.
Lincolnshire County Council	Private Road adjacent to Southmoor Lane	Street works to facilitate cable installation works and carriageway surface repairs for the length shown in green patterned hatching near accesses 10/20 to 10/23 inclusive on Sheet 10 of the streets, rights of way and access plans.
Lincolnshire County Council	Westmoor Lane	Street works to facilitate cable installation works and carriageway surface repairs for the length shown in green patterned hatching near accesses 11/01 to 11/08 inclusive on Sheet 11 of the streets, rights of way and access plans.
Lincolnshire County Council	Private Road to the West of Hall Water Reservoir	Street works to facilitate cable installation works and carriageway surface repairs for the length shown in green patterned hatching near PRoW 12/05 on Sheet 12 of the streets, rights of way and access plans.
Nottinghamshire County Council	Trent Lane	Street works to facilitate cable installation works and carriageway surface repairs for the length shown in green

		patterned hatching near accesses 12/11 and 12/13 on Sheet 12 of the streets, rights of way and access plans.
Lincolnshire County Council	Private Road to the North of Hall Water Reservoir and adjacent to A1133	Street works to facilitate cable installation works and carriageway surface repairs for the length shown in green patterned hatching near access 12/02 and extending westwards on Sheet 12 of the streets, rights of way and access plans.
Lincolnshire County Council	Southmoor Lane	Street works to facilitate cable installation works and carriageway surface repairs for the length shown in green patterned hatching near accesses 13/01 and 13/04 on Sheet 13 of the streets, rights of way and access plans.
Lincolnshire County Council	Southmoor Lane	Street works to facilitate cable installation works and carriageway surface repairs for the length shown in green patterned hatching near accesses 13/05 and 13/06 on Sheet 13 of the streets, rights of way and access plans.
Nottinghamshire County Council	Northfield Lane	Street works to facilitate cable installation works and carriageway surface repairs for the length shown in green patterned hatching near accesses 13/05 and 15/01 on Sheets 13 and 15 of the streets, rights of way and access plans.
Nottinghamshire County Council	A1133	Street works to facilitate cable installation works and carriageway surface repairs for the length shown in green patterned hatching near accesses 14/02 and 16/30 on Sheets 14 and 16 of the streets, rights of way and access plans.
Nottinghamshire County Council	Moor Lane	Street works to facilitate cable installation works and carriageway surface repairs for the length shown in green patterned hatching near accesses 14/03 and 15/10 on Sheets 14 and 15 of the streets, rights of way and access plans.
Nottinghamshire County Council	Mill Lane	Street works to facilitate cable installation works and carriageway surface repairs for

		the length shown in green patterned hatching near accesses 14/11 and 15/02 on Sheets 14 and 15 of the streets, rights of way and access plans.
Nottinghamshire County Council	Cottage Lane	Street works to facilitate cable installation works and carriageway surface repairs for the length shown in green patterned hatching near accesses 15/02 and 15/11 on Sheet 15 of the streets, rights of way and access plans.
Nottinghamshire County Council	Wheatholme Lane	Street works to facilitate cable installation works and carriageway surface repairs for the length shown in green patterned hatching within proximity of accesses 15/11 and 16/08 on Sheets 15 and 16 of the streets, rights of way and access plans.
Nottinghamshire County Council	Farm Track to Wheatholme Farm adjacent to A1133	Street works to facilitate cable installation works and carriageway surface repairs for the length shown in green patterned hatching near accesses 16/09 and 16/18 on Sheet 16 of the streets, rights of way and access plans.
Nottinghamshire County Council	Farm Track to Wheatholme Farm adjacent to Moor Lane	Street works to facilitate cable installation works and carriageway surface repairs for the length shown in green patterned hatching near accesses 16/15 and 16/25 on Sheet 16 of the streets, rights of way and access plans.
Nottinghamshire County Council	Moor Lane	Street works to facilitate cable installation works and carriageway surface repairs for the length shown in green patterned hatching near accesses 16/29 and 16/30 on Sheet 16 of the streets, rights of way and access plans.

SCHEDULE 5

Article 10

ALTERATION OF STREETS

(1) *Area*	*(2)* *Street*	*(3)* *Description of alteration*
Nottinghamshire County Council	A57	Alteration of layout of the A57 in the area depicted in solid green near the accesses marked 01/01 and 01/02 as shown on Sheet 1 of the streets, rights of way and access plans subsequent to improvements to adjoining field access.
Nottinghamshire County Council	Marnham Road	Alteration of layout of Marnham Road in the area depicted in solid green near access 04/02 as shown on Sheet 4 of the streets, rights of way and access plans subsequent to construction of adjoining new accesses.
Nottinghamshire County Council	Ragnall Road	Alteration of layout of Ragnall Road in the area depicted in solid green near accesses 04/04 and 06/05 as shown on Sheets 4 and 6 of the streets, rights of way and access plans subsequent to construction of adjoining new accesses.
Nottinghamshire County Council	Crabtree Lane	Alteration of layout of Crabtree Lane in the area depicted in solid green near accesses 05/03 and 07/01 as shown on Sheets 5 and 7 of the streets, rights of way and access plans subsequent to construction of adjoining new accesses.
Nottinghamshire County Council	Hollowgate Lane	Alteration of layout of Hollowgate Lane in the area depicted in solid green near accesses 06/06 and 06/13 as shown on Sheet 6 of the streets, rights of way and access plans subsequent to construction of adjoining new accesses.
Nottinghamshire County Council	Polly Taylor's Road	Alteration of layout of Polly Taylor's Road in the area depicted in solid green near accesses 07/08 and 07/12 as

		shown on Sheet 7 of the streets, rights of way and access plans subsequent to construction of adjoining new accesses.
Nottinghamshire County Council	Fledborough Road	Alteration of layout of Fledborough Road in the area depicted in solid green near accesses 07/16 to 07/20 inclusive as shown on Sheet 7 of the streets, rights of way and access plans subsequent to construction of adjoining new accesses.
Nottinghamshire County Council	Ragnall Road	Alteration of layout of Ragnall Road in the area depicted in solid green near accesses 07/20 to 07/24 inclusive as shown on Sheet 7 of the streets, rights of way and access plans subsequent to construction of adjoining new accesses.
Lincolnshire County Council	A1133	Alteration of layout of the A1133 in the area depicted in solid green near accesses 10/06 to 10/10 inclusive as shown on Sheet 10 of the streets, rights of way and access plans subsequent to construction of adjoining new access.
Lincolnshire County Council	A1133	Alteration of layout of the A1133 in the area depicted in solid green near accesses 10/14 and 12/07 as shown on Sheets 10 and 12 of the streets, rights of way and access plans subsequent to improvements to adjoining field accesses.
Nottinghamshire County Council and Lincolnshire County Council	Westmoor Lane	Alteration of layout of the access road adjacent to Westmoor Lane in the area depicted in solid green near access 11/06 as shown on Sheet 11 of the streets, rights of way and access plans subsequent to construction of adjoining new access.
Nottinghamshire County Council	Moor Lane	Alteration of layout of Moor Lane in the area depicted in solid green near accesses 14/04 and 14/05 as shown on Sheet 14 of the streets, rights of way and access plans subsequent to construction of

		adjoining new accesses.
Nottinghamshire County Council	Cottage Lane	Alteration of layout of Cottage Lane in the area depicted in solid green near accesses 15/04 and 15/05 as shown on Sheet 15 of the streets, rights of way and access plans subsequent to construction of adjoining new accesses.
Nottinghamshire County Council	Moor Lane	Alteration of layout of Moor Lane in the area depicted in solid green near accesses 16/08 and 16/30 as shown on Sheet 16 of the streets, rights of way and access plans subsequent to construction of adjoining new accesses.
Nottinghamshire County Council	Farm Track to Wheatholme Farm	Alteration of layout of the access road to Wheatholme Farm in the area depicted in solid green near accesses 16/16 and 16/31 as shown on Sheet 16 of the streets, rights of way and access plans subsequent to improvements to the adjoining field access.

SCHEDULE 6

Article 12

STREETS AND PUBLIC RIGHTS OF WAY

PART 1

TEMPORARY PROHIBITION OR RESTRICTION OF USE OF STREETS

(1) *Area*	*(2)* *Street*	*(3)* *Measure*
Nottinghamshire County Council	A57	Temporarily single lane closure to all traffic save for traffic under the direction of the undertaker for the width of the street to facilitate the alteration of layout and street works for the length coloured in solid green or patterned hatching on Sheet 1 of the streets, rights of way and access plans.
Nottinghamshire County Council	Farhill Lane (Farm Track)	Temporarily single lane closure to all traffic save for traffic under the direction of the undertaker for the width of the street to facilitate the street works for the length shown in green patterned hatching on Sheets 1 and 3 of the streets, rights of way and access plans.
Nottinghamshire County Council	Farhill Lane	Temporarily single lane closure to all traffic save for traffic under the direction of the undertaker for the width of the street to facilitate the street works for the length shown in green patterned hatching on Sheets 1, 2 and 3 of the streets, rights of way and access plans.
Nottinghamshire County Council	Marnham Road	Temporarily single lane closure to all traffic save for traffic under the direction of the undertaker for the width of the street to facilitate the alteration of layout and street works for the lengths shown coloured solid green or green patterned hatching on Sheet 4 of the streets, rights of way and access plans.
Nottinghamshire County Council	Ragnall Road	Temporarily single lane closure to all traffic save for traffic under the direction of

		the undertaker for the width of the street to facilitate the alteration of layout and street works for the lengths shown coloured solid green or green patterned hatching on Sheets 4, 5, 6 and 7 of the streets, rights of way and access plans.
Nottinghamshire County Council	Far Road	Temporarily single lane closure to all traffic save for traffic under the direction of the undertaker for the width of the street to facilitate the street works for the length shown green patterned hatching on Sheet 5 of the streets, rights of way and access plans.
Nottinghamshire County Council	Crabtree Lane	Temporarily single lane closure to all traffic save for traffic under the direction of the undertaker for the width of the street to facilitate the alteration of layout and street works for the lengths shown coloured solid green or green patterned hatching on Sheets 5 and 7 of the streets, rights of way and access plans.
Nottinghamshire County Council	Hollowgate Lane	Temporarily single lane closure to all traffic save for traffic under the direction of the undertaker for the width of the street to facilitate the alteration of layout and street works for the lengths shown coloured solid green or green patterned hatching on Sheet 6 of the streets, rights of way and access plans.
Nottinghamshire County Council	Power Station Access Road adjacent to Fledborough Road	Temporarily single lane closure to all traffic save for traffic under the direction of the undertaker for the width of the street to facilitate the street works for the length shown in green patterned hatching on Sheets 6, 7 and 8 of the streets, rights of way and access plans.
Nottinghamshire County Council	Skegby Road	Temporarily single lane closure to all traffic save for traffic under the direction of the undertaker for the width of the street to facilitate the street works for the length shown in green patterned hatching on Sheet 7 of the streets, rights of way and access plans.

Nottinghamshire County Council	Polly Taylor's Road	Temporarily single lane closure to all traffic save for traffic under the direction of the undertaker for the width of the street to facilitate the alteration of layout and street works for the lengths shown coloured solid green or green patterned hatching on Sheet 7 of the streets, rights of way and access plans.
Nottinghamshire County Council	Fledborough Road	Temporarily single lane closure to all traffic save for traffic under the direction of the undertaker for the width of the street to facilitate the alteration of layout and street works for the lengths shown coloured solid green or green patterned hatching on Sheet 7 of the streets, rights of way and access plans.
Nottinghamshire County Council	Private Road adjacent to Fledborough Road	Temporarily single lane closure to all traffic save for traffic under the direction of the undertaker for the width of the street to facilitate the street works for the length shown in green patterned hatching on Sheet 7 of the streets, rights of way and access plans.
Nottinghamshire County Council	Sparrow Lane	Temporarily single lane closure to all traffic save for traffic under the direction of the undertaker for the width of the street to facilitate the street works for the length shown in green patterned hatching on Sheet 8 of the streets, rights of way and access plans.
Lincolnshire County Council and Nottinghamshire County Council	A1133	Temporarily single lane closure to all traffic save for traffic under the direction of the undertaker for the width of the street to facilitate the alteration of layout and street works for the lengths shown coloured solid green or green patterned hatching on Sheets 10 and 12 of the streets, rights of way and access plans.
Lincolnshire County Council	Private Road adjacent to Southmoor Lane	Temporarily single lane closure to all traffic save for traffic under the direction of the undertaker for the width of the street to facilitate the street works for the length shown in

		green patterned hatching on Sheet 10 of the streets, rights of way and access plans.
Lincolnshire County Council	Westmoor Lane	Temporarily single lane closure to all traffic save for traffic under the direction of the undertaker for the width of the street to facilitate the alteration of layout and street works for the lengths shown coloured solid green or green patterned hatching on Sheet 11 of the streets, rights of way and access plans.
Lincolnshire County Council	Private Road to the North of Hall Water Reservoir and adjacent to A1133	Temporarily single lane closure to all traffic save for traffic under the direction of the undertaker for the width of the street to facilitate the street works for the length shown in green patterned hatching on Sheet 12 of the streets, rights of way and access plans.
Lincolnshire County Council	Private Road to the West of Hall Water Reservoir	Temporarily single lane closure to all traffic save for traffic under the direction of the undertaker for the width of the street to facilitate the street works for the length shown in green patterned hatching on Sheet 12 of the streets, rights of way and access plans.
Nottinghamshire County Council	Trent Lane	Temporarily single lane closure to all traffic save for traffic under the direction of the undertaker for the width of the street to facilitate the street works for the length shown in green patterned hatching on Sheet 12 of the streets, rights of way and access plans.
Lincolnshire County Council and Nottinghamshire County Council	Southmoor Lane	Temporarily single lane closure to all traffic save for traffic under the direction of the undertaker for the width of the street to facilitate the street works for the lengths shown in green patterned hatching on Sheet 13 of the streets, rights of way and access plans.
Nottinghamshire County Council	Northfield Lane	Temporarily single lane closure to all traffic save for traffic under the direction of the undertaker for the width of the street to facilitate the street works for the length shown in

		green patterned hatching on Sheets 13 and 15 of the streets, rights of way and access plans.
Nottinghamshire County Council	A1133	Temporarily single lane closure to all traffic save for traffic under the direction of the undertaker for the width of the street to facilitate the street works for the length shown in green patterned hatching on Sheets 14 and 16 of the streets, rights of way and access plans.
Nottinghamshire County Council	Moor Lane	Temporarily single lane closure to all traffic save for traffic under the direction of the undertaker for the width of the street to facilitate the alteration of layout and street works for the lengths shown coloured solid green or green patterned hatching on Sheets 14 and 15 of the streets, rights of way and access plans.
Nottinghamshire County Council	Mill Lane	Temporarily single lane closure to all traffic save for traffic under the direction of the undertaker for the width of the street to facilitate the street works for the length shown in green patterned hatching on Sheets 14 and 15 of the streets, rights of way and access plans.
Nottinghamshire County Council	Cottage Lane	Temporarily single lane closure to all traffic save for traffic under the direction of the undertaker for the width of the street to facilitate the alteration of layout and street works for the length shown coloured solid green or green patterned hatching on Sheet 15 of the streets, rights of way and access plans.
Nottinghamshire County Council	Wheatholme Lane	Temporarily single lane closure to all traffic save for traffic under the direction of the undertaker for the width of the street to facilitate the street works for the length shown in green patterned hatching on Sheets 15 and 16 of the streets, rights of way and access plans.
Nottinghamshire County Council	Farm Track to Wheatholme Farm adjacent to A1133	Temporarily single lane closure to all traffic save for traffic under the direction of the undertaker for the width of

		the street to facilitate the alteration of layout and street works for the lengths shown coloured solid green or green patterned hatching on Sheet 16 of the streets, rights of way and access plans.
Nottinghamshire County Council	Farm Track to Wheatholme Farm adjacent to Moor Lane	Temporarily single lane closure to all traffic save for traffic under the direction of the undertaker for the width of the street to facilitate the street works for the length shown in green patterned hatching on Sheet 16 of the streets, rights of way and access plans.
Nottinghamshire County Council	Moor Lane	Temporarily single lane closure to all traffic save for traffic under the direction of the undertaker for the width of the street to facilitate the alteration of layout and street works for the lengths shown coloured solid green or green patterned hatching on Sheet 16 of the streets, rights of way and access plans.

PART 2

TEMPORARY PROHIBITION OR RESTRICTION OF PUBLIC RIGHTS OF WAY WITH DIVERSION

(1) *Area*	*(2)* *Public right of way*	*(3)* *Measure*
Nottinghamshire County Council	NT|Ragnall|BW3	Public right of way to be temporarily closed and diverted between points PRoW 03/04 and PRoW 03/05 as shown on Sheet 3 of the streets, rights of way, and access plans to facilitate safe separation of pedestrians from construction traffic during the construction of the authorised development.
Nottinghamshire County Council	NT|Ragnall|FP2	Public right of way to be temporarily closed and diverted between points PRoW 04/06 and PRoW 04/07 as shown on Sheet 4 of the streets, rights of way, and access plans to facilitate safe separation of pedestrians from construction traffic during the

		construction of the authorised development.
Nottinghamshire County Council	NT|Fledborough|FP8	Public right of way to be temporarily closed and diverted between points PRoW 04/10 and PRoW 04/11 as shown on Sheet 4 of the streets, rights of way, and access plans to facilitate safe separation of pedestrians from construction traffic during the construction of the authorised development.
Nottinghamshire County Council	NT|Fledborough|FP9 and NT|Fledborough|FP10	Public right of way to be temporarily closed and diverted between points PRoW 04/14 and PRoW 04/15 as shown on Sheet 4 of the streets, rights of way, and access plans to facilitate safe separation of pedestrians from construction traffic during the construction of the authorised development.
Nottinghamshire County Council	NT|Marnham|FP4	Public right of way to be temporarily closed and diverted between points PRoW 09/01 and PRoW 09/03 as shown on Sheet 9 of the streets, rights of way, and access plans to facilitate safe separation of pedestrians from construction traffic during the construction of the authorised development.
Nottinghamshire County Council	NT|NorthClifton|FP4	Public right of way to be temporarily closed and diverted between points PRoW 12/09 and PRoW 12/16 as shown on Sheet 12 of the streets, rights of way, and access plans to facilitate safe separation of pedestrians from construction traffic during the construction of the authorised development.
Nottinghamshire County Council	NT|NorthClifton|FP3	Public right of way to be temporarily closed and diverted between points PRoW 12/14 and PRoW 12/15 as shown on Sheet 12 of the streets, rights of way, and access plans to facilitate safe separation of pedestrians from construction traffic during the construction of the authorised development.

Nottinghamshire County Council	NT|NorthClifton|BW10	Public right of way to be temporarily closed and diverted between points PRoW 15/06 and PRoW 15/07 as shown on Sheet 15 of the streets, rights of way, and access plans to facilitate safe separation of pedestrians from construction traffic during the construction of the authorised development.
Nottinghamshire County Council	NT|NorthClifton|BW11	Public right of way to be temporarily closed and diverted between points PRoW 15/08 and PRoW 15/09 as shown on Sheet 15 of the streets, rights of way, and access plans to facilitate safe separation of pedestrians from construction traffic during the construction of the authorised development.

PART 3

PERMANENT USE OF MOTOR VEHICLES ON PUBLIC RIGHTS OF WAY

(1) *Area*	*(2)* *Public right of way*	*(3)* *Measure*
Nottinghamshire County Council	NT|Darlton|BW1	Permanent use of motor vehicles under the direction of the undertaker at location PRoW 03/01 and PRoW 03/02 as shown on Sheet 3 of the streets, access and rights of way plans to facilitate the authorised development.
Nottinghamshire County Council	NT|Ragnall|BW3	Permanent use of motor vehicles under the direction of the undertaker at location PRoW 03/02 and PRoW 03/03 as shown on Sheet 3 of the streets, access and rights of way plans to facilitate the authorised development.
Nottinghamshire County Council	NT|Ragnall|FP2	Permanent use of motor vehicles under the direction of the undertaker at location PRoW 04/04 and PRoW 04/08 as shown on Sheet 4 of the streets, access and rights of way plans to facilitate the authorised development.
Nottinghamshire County Council	NT|Fledborough|FP8	Permanent use of motor vehicles under the direction of

		the undertaker at location PRoW 04/08 and PRoW 04/11 as shown on Sheet 4 of the streets, access and rights of way plans to facilitate the authorised development.
Nottinghamshire County Council	NT|Marnham|FP4	Permanent use of motor vehicles under the direction of the undertaker at location PRoW 09/01 and PRoW 09/02 as shown on Sheet 9 of the streets, access and rights of way plans to facilitate the authorised development.
Nottinghamshire County Council	NT|NorthClifton|FP3	Permanent use of motor vehicles under the direction of the undertaker at location PRoW 12/11 and PRoW 12/12 as shown on Sheet 12 of the streets, access and rights of way plans to facilitate the authorised development.
Nottinghamshire County Council	NT|NorthClifton|BW10	Permanent use of motor vehicles under the direction of the undertaker at location PRoW 15/04 and PRoW 15/05 as shown on Sheet 15 of the streets, access and rights of way plans to facilitate the authorised development.
Nottinghamshire County Council	NT|NorthClifton|BW11	Permanent use of motor vehicles under the direction of the undertaker at location PRoW 15/03 and PRoW 16/01 as shown on Sheets 15 and 16 of the streets, access and rights of way plans to facilitate the authorised development.

PART 4

TEMPORARY MANAGEMENT OF PUBLIC RIGHTS OF WAY

(1) *Area*	*(2)* *Public right of way*	*(3)* *Measure*
Nottinghamshire County Council	NT|Ragnall|FP1	Public Right of Way between points PRoW 02/01 and PRoW 04/18 as shown on Sheets 2 and 4 of the streets, access and rights of way plans to be managed during construction of the authorised development.
Nottinghamshire County Council	NT|Darlton|BW1	Public Right of Way between points PRoW 03/01 and PRoW 03/02 as shown on Sheet 3 of

		the streets, access and rights of way plans to be managed during construction of the authorised development.
Nottinghamshire County Council	NT|Ragnall|BW3	Public Right of Way between points PRoW 03/02 and PRoW 03/03 as shown on Sheet 3 of the streets, access and rights of way plans to be managed during construction of the authorised development.
Nottinghamshire County Council	NT|Ragnall|FP2	Public Right of Way between points PRoW 04/01 and PRoW 04/03 as shown on Sheet 4 of the streets, access and rights of way plans to be managed during construction of the authorised development.
Nottinghamshire County Council	NT|Ragnall|FP2	Public Right of Way between points PRoW 04/04 and PRoW 04/08 as shown on Sheet 4 of the streets, access and rights of way plans to be managed during construction of the authorised development.
Nottinghamshire County Council	NT|Fledborough|FP8	Public Right of Way between points PRoW 04/08 and PRoW 04/11 as shown on Sheet 4 of the streets, access and rights of way plans to be managed during construction of the authorised development.
Nottinghamshire County Council	NT|Fledborough|FP10	Public Right of Way between points PRoW 04/12 and PRoW 04/16 as shown on Sheet 4 of the streets, access and rights of way plans to be managed during construction of the authorised development.
Nottinghamshire County Council	NT|Fledborough|FP11	Public Right of Way between points PRoW 04/17 and PRoW 04/18 as shown on Sheet 4 of the streets, access and rights of way plans to be managed during construction of the authorised development.
Nottinghamshire County Council	NT|Fledborough|FP9	Public Right of Way between points PRoW 04/12 and PRoW 06/02 as shown on Sheets 4 and 6 of the streets, access and rights of way plans to be managed during construction of the authorised development.
Nottinghamshire County Council	NT|Marnham|FP4	Public Right of Way between points PRoW 07/01 and PRoW 07/02 as shown on Sheet 7 of

		the streets, access and rights of way plans to be managed during construction of the authorised development.
Nottinghamshire County Council	NT|Marnham|FP4	Public Right of Way between points PRoW 09/01 and PRoW 09/02 as shown on Sheet 9 of the streets, access and rights of way plans to be managed during construction of the authorised development.
Lincolnshire County Council	LL|NwOT|97/4	Public Right of Way between points PRoW 12/01 and PRoW 12/02 as shown on Sheet 12 of the streets, access and rights of way plans to be managed during construction of the authorised development.
Nottinghamshire County Council	NT|NorthClifton|FP5	Public Right of Way between points PRoW 12/02 and PRoW 12/04 as shown on Sheets 4 and 12 of the streets, access and rights of way plans to be managed during construction of the authorised development.
Nottinghamshire County Council	NT|NorthClifton|BOAT9	Public Right of Way between points PRoW 12/03 and PRoW 12/10 as shown on Sheet 12 of the streets, access and rights of way plans to be managed during construction of the authorised development.
Nottinghamshire County Council	NT|NorthClifton|FP4	Public Right of Way between points PRoW 12/06 and PRoW 12/09 as shown on Sheet 12 of the streets, access and rights of way plans to be managed during construction of the authorised development.
Nottinghamshire County Council	NT|NorthClifton|FP4A	Public Right of Way between points PRoW 12/07 and PRoW 12/08 as shown on Sheet 12 of the streets, access and rights of way plans to be managed during construction of the authorised development.
Nottinghamshire County Council	NT|NorthClifton|FP3	Public Right of Way between points PRoW 12/11 and PRoW 12/12 as shown on Sheet 12 of the streets, access and rights of way plans to be managed during construction of the authorised development.
Nottinghamshire County Council	NT|NorthClifton|FP1	Public Right of Way between points PRoW 14/01 and PRoW 14/02 as shown on Sheet 14 of

		the streets, access and rights of way plans to be managed during construction of the authorised development.
Nottinghamshire County Council	NT|NorthClifton|BOAT12	Public Right of Way between points PRoW 14/03 and PRoW 15/01 as shown on Sheets 14 and 15 of the streets, access and rights of way plans to be managed during construction of the authorised development.
Nottinghamshire County Council	NT|NorthClifton|BW10	Public Right of Way between points PRoW 15/04 and PRoW 15/05 as shown on Sheet 15 of the streets, access and rights of way plans to be managed during construction of the authorised development.
Nottinghamshire County Council	NT|NorthClifton|BW11	Public Right of Way between points PRoW 15/03 and PRoW 16/01 as shown on Sheets 15 and 16 of the streets, access and rights of way plans to be managed during construction of the authorised development.

PART 5

TEMPORARY USE OF MOTOR VEHICLES ON PUBLIC RIGHTS OF WAY

(1) *Area*	*(2)* *Public right of way*	*(3)* *Measure*
Nottinghamshire County Council	NT|Ragnall|FP2	Temporary use of motor vehicles under the direction of the undertaker at location PRoW 04/01 and PRoW 04/03 as shown on Sheet 4 of the streets, access and rights of way plans to facilitate the construction of the authorised development.
Nottinghamshire County Council	NT|Fledborough|FP10	Temporary use of motor vehicles under the direction of the undertaker at location PRoW 04/12 and PRoW 04/13 as shown on Sheet 4 of the streets, access and rights of way plans to facilitate the construction of the authorised development.
Nottinghamshire County Council	NT|Marnham|FP4	Temporary use of motor vehicles under the direction of the undertaker at location PRoW 07/01 and PRoW 07/02 as shown on Sheet 7 of the

		streets, access and rights of way plans to facilitate the construction of the authorised development.
Nottinghamshire County Council	NT|NorthClifton|FP4	Temporary use of motor vehicles under the direction of the undertaker at location PRoW 12/06 and PRoW 12/09 as shown on Sheet 12 of the streets, access and rights of way plans to facilitate the construction of the authorised development.
Nottinghamshire County Council	NT|NorthClifton|FP4A	Temporary use of motor vehicles under the direction of the undertaker at location PRoW 12/07 and PRoW 12/08 as shown on Sheet 12 of the streets, access and rights of way plans to facilitate the construction of the authorised development.
Nottinghamshire County Council	NT|NorthClifton|FP1	Permanent use of motor vehicles under the direction of the undertaker at location PRoW 14/01 and PRoW 14/02 as shown on Sheet 14 of the streets, access and rights of way plans to facilitate the construction of the authorised development.

SCHEDULE 7

Article 14

ACCESS TO WORKS

(1) *Area*	*(2)* *Street*	*(3)* *Description of means of access*
Nottinghamshire County Council	Existing Field Access off A57 Westbound	Existing field access to be improved at the point marked 01/02 on Sheet 1 of the streets, rights of way and access plans.
Nottinghamshire County Council	Proposed Access off Private Road Northbound adjacent to Farhill Lane	Proposed new access to be constructed at the point marked 03/12 on Sheet 3 of the streets, rights of way and access plans.
Nottinghamshire County Council	Proposed Access off Private Road Southbound adjacent to Farhill Lane	Proposed new access to be constructed at the point marked 03/13 on Sheet 3 of the streets, rights of way and access plans.
Nottinghamshire County Council	Proposed Access off Farhill Lane Eastbound	Proposed new access to be constructed at the point marked 03/14 on Sheet 3 of the streets, rights of way and access plans.
Nottinghamshire County Council	Proposed Access off western end of Farhill Lane (Northbound side)	Proposed new access to be constructed at the point marked 03/15 on Sheet 3 of the streets, rights of way and access plans.
Nottinghamshire County Council	Proposed Access off western end of Farhill Lane (Southbound side)	Proposed new access to be constructed at the point marked 03/16 on Sheet 3 of the streets, rights of way and access plans.
Nottinghamshire County Council	Proposed Access off Ragnall Road Northbound	Proposed new access to be constructed at the point marked 04/04 on Sheet 4 of the streets, rights of way and access plans.
Nottinghamshire County Council	Proposed Access off Ragnall Road Southbound	Proposed new access to be constructed at the point marked 04/05 on Sheet 4 of the streets, rights of way and access plans.
Nottinghamshire County Council	Proposed Access off Hollowgate Lane Eastbound	Proposed new access to be constructed at the point marked 06/07 on Sheet 6 of the streets, rights of way and access plans.
Nottinghamshire County Council	Proposed Access off Hollowgate Lane Westbound	Proposed new access to be constructed at the point marked 06/08 on Sheet 6 of

		the streets, rights of way and access plans.
Nottinghamshire County Council	Proposed Access off Crabtree Lane Northbound	Proposed new access to be constructed at the point marked 07/01 on Sheet 7 of the streets, rights of way and access plans.
Nottinghamshire County Council	Proposed Access off Crabtree Lane Southbound	Proposed new access to be constructed at the point marked 07/02 on Sheet 7 of the streets, rights of way and access plans.
Nottinghamshire County Council	Proposed Access off Polly Taylor's Road Westbound	Proposed new access to be constructed at the point marked 07/11 on Sheet 7 of the streets, rights of way and access plans.
Nottinghamshire County Council	Proposed Access off Fledborough Road Northbound	Proposed new access to be constructed at the point marked 07/18 on Sheet 7 of the streets, rights of way and access plans.
Lincolnshire County Council	Proposed Access off the A1133 Southbound	Proposed new access to be constructed at the point marked 10/09 on Sheet 10 of the streets, rights of way and access plans.
Lincolnshire County Council	Proposed Access off Westmoor Lane Westbound	Proposed new access to be constructed at the point marked 11/06 on Sheet 11 of the streets, rights of way and access plans.
Lincolnshire County Council	Existing Field Access off the A1133 Northbound	Existing field access to be improved at the point marked 12/02 on Sheet 12 of the streets, rights of way and access plans.
Lincolnshire County Council	Existing Field Access off the A1133 Southbound	Existing field access to be improved at the point marked 12/03 on Sheet 12 of the streets, rights of way and access plans.
Nottinghamshire County Council	Proposed Access off Moor Lane Eastbound	Proposed new access to be constructed at the point marked 14/04 on Sheet 14 of the streets, rights of way and access plans.
Nottinghamshire County Council	Proposed Access off Moor Lane Westbound	Proposed new access to be constructed at the point marked 14/05 on Sheet 14 of the streets, rights of way and access plans.
Nottinghamshire County Council	Proposed Access off Cottage Lane Northbound	Proposed new access to be constructed at the point marked 15/04 on Sheet 15 of the streets, rights of way and

		access plans.
Nottinghamshire County Council	Proposed Access off Cottage Lane Southbound	Proposed new access to be constructed at the point marked 15/05 on Sheet 15 of the streets, rights of way and access plans.
Nottinghamshire County Council	Proposed Access off bridleway NT|NorthClifton|BW10 Westbound	Proposed new access to be constructed at the point marked 15/16 on Sheet 15 of the streets, rights of way and access plans.
Nottinghamshire County Council	Proposed Access off bridleway NT|NorthClifton|BW10 Eastbound	Proposed new access to be constructed at the point marked 15/17 on Sheet 15 of the streets, rights of way and access plans.
Nottinghamshire County Council	Proposed Access off Wheatholme Lane Northbound	Proposed new access to be constructed at the point marked 15/18 on Sheet 15 of the streets, rights of way and access plans.
Nottinghamshire County Council	Proposed Access off Wheatholme Lane Southbound	Proposed new access to be constructed at the point marked 15/19 on Sheet 15 of the streets, rights of way and access plans.
Nottinghamshire County Council	Existing Field Access off Farm Track Westbound	Existing field access to be improved at the point marked 16/16 on Sheet 16 of the streets, rights of way and access plans.
Nottinghamshire County Council	Proposed Access off Moor Lane Westbound	Proposed new access to be constructed at the point marked 16/20 on Sheet 16 of the streets, rights of way and access plans.
Nottinghamshire County Council	Proposed Access off Moor Lane Eastbound	Proposed new access to be constructed at the point marked 16/28 on Sheet 16 of the streets, rights of way and access plans.
Nottinghamshire County Council	Proposed Access off Farm Track Eastbound	Proposed new access to be constructed at the point marked 16/31 on Sheet 16 of the streets, rights of way and access plans.

SCHEDULE 8

Article 23

LAND IN WHICH ONLY NEW RIGHTS ETC. MAY BE ACQUIRED

Interpretation

1. In this Schedule—

"access rights" means rights over land to—

(a) alter, improve, form, maintain, retain, use (with or without vehicles, plant and machinery), remove, reinstate means of access to the authorised development including visibility splays and road widening or improvements and to remove impediments (including vegetation) to such access; and

(b) pass and repass on foot, with or without vehicles, plant and machinery (including rights to lay and use any temporary surface) for all purposes in connection with the authorised development;

"cable rights" means rights over land to—

(a) install, use, support, protect, inspect, alter, remove, replace, retain, renew, improve and maintain electrical underground cables, earthing cables, optical fibre cables, data cables, telecommunications cables and other services, works associated with such cables including bays, ducts, protection and safety measures and equipment, and other apparatus and structures;

(b) remain, pass and repass on foot, with or without vehicles, plant and machinery (including rights to lay and use any temporary surface or form a temporary compound) for all purposes in connection with the authorised development; and

(c) restrict and remove the erection of buildings or structures, restrict the altering of ground levels, restrict and remove vegetation and restrict the planting of trees or carrying out operations or actions (including but not limited to blasting and piling) which may obstruct, interrupt or interfere with the exercise of the rights or damage the authorised development;

"rights for the purpose of Work No. 5" means—

(a) cable rights;

(b) vegetation maintenance rights;

(c) rights over land to install, use, support, protect, inspect, alter, remove, replace, refurbish, reconstruct, retain, renew, improve and maintain security fencing, gates, boundary treatment, public rights of way, access tracks and other means of access, and any other ancillary apparatus and any other works as necessary; and

(d) rights over land to install, use, support, protect, inspect, alter, remove, replace, refurbish, reconstruct, retain, renew, improve and maintain sewers, drains, pipes, ducts, mains, conduits, services, flues and to drain into and manage waterflows in any drains, watercourses and culverts;

"substation connection rights" means, within a corridor of up to 20 metres in width, rights over land to—

(a) install, use, support, protect, inspect, alter, remove, replace, retain, renew, improve and maintain electrical cables, earthing cables, optical fibre cables, data cables, telecommunications cables and other services, works associated with such cables including bays, ducts, protection and safety measures and equipment, and other apparatus and structures and to connect such cables and services to the National Grid High Marnham Substation;

(b) install, use, support, protect, inspect, alter, remove, replace, retain, renew, improve and maintain watercourses, public sewers and drains and drainage apparatus and equipment;

(c) remain, pass and repass on foot, with or without vehicles, plant and machinery (including rights to lay and use any temporary surface or form a temporary compound) for all purposes in connection with the National Grid High Marnham Substation works;

(d) restrict and remove the erection of buildings or structures, restrict the altering of ground levels, restrict and remove the planting of trees or carrying out operations or actions (including but not limited to blasting and piling) which may obstruct, interrupt or interfere with the exercise of the rights or damage the authorised development; and

(e) install, use, support, protect, inspect, alter, remove, replace, retain, renew, improve and maintain soft landscaping and biodiversity measures; and

"vegetation maintenance rights" means rights over land to install, use, support, protect, inspect, alter, remove, replace, retain, renew, improve and maintain vegetation and restrict or prevent the removal of vegetation for the purposes of the authorised development and in connection with the authorised development.

(1) *Plot reference number shown on the Land Plan*	*(2)* *Purposes for which rights over land may be required and restrictive covenants imposed*
01-014	rights for the purpose of Work No. 5
01-015	rights for the purpose of Work No. 5
03-001	rights for the purpose of Work No. 5
03-002	rights for the purpose of Work No. 5
03-004	substation connection rights, rights for the purpose of Work No. 5, access rights
04-002	substation connection rights, rights for the purpose of Work No. 5, access rights
04-005	substation connection rights, rights for the purpose of Work No. 5, access rights
04-009	substation connection rights, rights for the purpose of Work No. 5
04-011a	substation connection rights, rights for the purpose of Work No.5
04-011c	substation connection rights, rights for the purpose of Work No. 5
05-003	substation connection rights, rights for the purpose of Work No. 5, access rights
05-005	substation connection rights, rights for the purpose of Work No. 5, access rights
05-007	substation connection rights, rights for the purpose of Work No. 5, access rights
05-008	substation connection rights, rights for the purpose of Work No. 5
05-009	substation connection rights, rights for the purpose of Work No. 5, access rights
05-009a	substation connection rights, rights for the purpose of Work No. 5, access rights
05-010	substation connection rights, rights for the purpose of Work No. 5, access rights
05-011	substation connection rights, rights for the purpose of Work No. 5, access rights
05-011a	substation connection rights, rights for the purpose of Work No. 5, access rights
06-001	rights for the purpose of Work No. 5
06-002	substation connection rights, rights for the

	purpose of Work No. 5
06-003	substation connection rights, rights for the purpose of Work No. 5
06-003a	substation connection rights, rights for the purpose of Work No. 5, access rights
07-001	substation connection rights, rights for the purpose of Work No. 5, access rights
07-002	substation connection rights, rights for the purpose of Work No. 5
07-003	rights for the purpose of Work No. 5
07-004	rights for the purpose of Work No. 5
07-005	substation connection rights, rights for the purpose of Work No. 5, access rights
07-008	rights for the purpose of Work No. 5
07-010	substation connection rights, rights for the purpose of Work No. 5, access rights
07-010a	substation connection rights, rights for the purpose of Work No.5
07-011	substation connection rights, rights for the purpose of Work No. 5, access rights
07-013	substation connection rights, rights for the purpose of Work No. 5, access rights
07-013a	substation connection rights, rights for the purpose of Work No. 5, access rights
07-014	substation connection rights, rights for the purpose of Work No. 5
07-015	substation connection rights, rights for the purpose of Work No. 5, access rights
08-001	substation connection rights, rights for the purpose of Work No. 5
08-002	substation connection rights, rights for the purpose of Work No. 5
08-003	substation connection rights, rights for the purpose of Work No. 5
08-004	substation connection rights, rights for the purpose of Work No. 5
08-005	substation connection rights, rights for the purpose of Work No. 5
08-006	substation connection rights, rights for the purpose of Work No. 5
08-007	substation connection rights, rights for the purpose of Work No. 5
08-008	substation connection rights, rights for the purpose of Work No. 5
08-009	substation connection rights, rights for the purpose of Work No. 5
08-010	substation connection rights, rights for the purpose of Work No. 5
08-011	substation connection rights, rights for the purpose of Work No. 5
10-002	rights for the purpose of Work No. 5, access rights
10-005	substation connection rights, rights for the purpose of Work No. 5, access rights

11-007	rights for the purpose of Work No. 5
11-008	rights for the purpose of Work No. 5
11-009	rights for the purpose of Work No. 5
12-005	substation connection rights, rights for the purpose of Work No. 5
12-009	rights for the purpose of Work No. 5
14-004	rights for the purpose of Work No. 5
14-005	rights for the purpose of Work No. 5
14-006	rights for the purpose of Work No. 5
14-007	rights for the purpose of Work No. 5
14-008	rights for the purpose of Work No. 5
14-012	rights for the purpose of Work No. 5, access rights
14-015	rights for the purpose of Work No. 5
14-017	rights for the purpose of Work No. 5
14-018	rights for the purpose of Work No. 5
14-019	rights for the purpose of Work No. 5
14-027	rights for the purpose of Work No. 5
15-001	rights for the purpose of Work No. 5
15-006	rights for the purpose of Work No. 5
15-007	rights for the purpose of Work No. 5
15-008	rights for the purpose of Work No. 5
15-009	rights for the purpose of Work No. 5
15-012	rights for the purpose of Work No. 5
15-013	rights for the purpose of Work No. 5
15-014	rights for the purpose of Work No. 5
15-015	rights for the purpose of Work No. 5
15-016	rights for the purpose of Work No. 5
15-017	rights for the purpose of Work No. 5
15-018	rights for the purpose of Work No. 5
16-001	rights for the purpose of Work No. 5, access rights
16-002	rights for the purpose of Work No. 5
16-005	rights for the purpose of Work No. 5, access rights
16-006	rights for the purpose of Work No. 5, access rights
16-010	rights for the purpose of Work No. 5

SCHEDULE 9

Article 23

MODIFICATION OF COMPENSATION AND COMPULSORY PURCHASE ENACTMENTS FOR THE CREATION OF NEW RIGHTS AND IMPOSITION OF NEW RESTRICTIVE COVENANTS

Compensation enactments

1. The enactments for the time being in force with respect to compensation for the compulsory purchase of land are to apply, with the necessary modifications as respects compensation, in the case of a compulsory acquisition under this Order of a right by the creation of a new right or the imposition of a restrictive covenant as they apply as respects compensation on the compulsory purchase of land and interests in land.

2.—(1) Without limitation on the scope of paragraph 1, the Land Compensation Act 1973(**a**) has effect subject to the modifications set out in sub-paragraph (2).

(2) In section 44(1) (compensation for injurious affection), as it applies to compensation for injurious affection under section 7 (measure of compensation in case of severance) of the 1965 Act as substituted by paragraph 5—

(a) for the words "land is acquired or taken from" substitute "a right or restrictive covenant over land is purchased from or imposed on"; and

(b) for the words "acquired or taken from him" substitute "over which the right is exercisable or the restrictive covenant enforceable".

3.—(1) Without limitation to the scope of paragraph 1, the 1961 Act has effect subject to the modifications set out in sub-paragraph (2).

(2) In section 5A(5A) (relevant valuation date) of the 1961 Act, omit the words after "if—" and substitute—

"(a) the acquiring authority enters on land for the purpose of exercising a right in pursuant of a notice of entry under section 11(1) of the 1965 Act (as modified by paragraph 5(5) of Schedule 9 to the One Earth Solar Farm Order 202*);

(b) the acquiring authority is subsequently required by a determination under paragraph 12 of Schedule 2A to the 1965 Act (as substituted by paragraph 5(8) of Schedule 9 to the One Earth Solar Farm Order 202*) to acquire an interest in the land; and

(c) the acquiring authority enters on and takes possession of that land

the authority is deemed for the purposes of subsection (3)(a) to have entered on that land where it entered on that land for the purpose of exercising that right.".

Application of Part 1 of the 1965 Act

4. Part 1 (compulsory purchase under Acquisition of Land Act 1946) of the 1965 Act, as applied by section 125 (application of compulsory acquisition provisions) of the 2008 Act to the acquisition of land under article 21 (compulsory acquisition of land) and as modified by article 28 (modification of Part 1 of the Compulsory Purchase Act 1965), applies to the compulsory acquisition of a right by the creation of a new right under article 23 (compulsory acquisition of rights)—

(a) with the modifications specified in paragraph 5; and

(b) with such other modifications as may be necessary.

(**a**) 1973 c. 26.

5.—(1) The modifications referred to in paragraph 4(a) are as follows—

(2) References in the 1965 Act to land are, in the appropriate contexts, to be read (according to the requirements of the particular context) as referring to, or as including references to—

(a) the right acquired or to be acquired, or the restriction imposed or to be imposed; or

(b) the land over which the right is or is to be exercisable, or the restriction is to be enforceable.

(3) For section 7 of the 1965 Act (measure of compensation in case of severance) substitute—

"**7.** In assessing the compensation to be paid by the acquiring authority under this Act, regard must be had not only to the extent (if any) to which the value of the land over which the right is to be acquired or the restrictive covenant is to be imposed is depreciated by the acquisition of the right or the imposition of the covenant but also to the damage (if any) to be sustained by the owner of the land by reason of its severance from other land of the owner, or injuriously affecting that other land by the exercise of the powers conferred by this or the special Act.".

(4) The following provisions of the 1965 Act (which state the effect of a deed poll executed in various circumstances where there is no conveyance by persons with interests in the land), that is to say—

(a) section 9(4) (refusal to convey, failure to make title, etc.);

(b) paragraph 10(3) of Schedule 1 (conveyance of the land or interest);

(c) paragraph 2(3) of Schedule 2 (absent and untraced owners); and

(d) paragraphs 2(3) and 7(2) of Schedule 4 (common land),

are modified to secure that, as against persons with interests in the land which are expressed to be overridden by the deed, the right which is to be compulsorily acquired or the restrictive covenant which is to be imposed is vested absolutely in the acquiring authority.

(5) Section 11 (**a**) (powers of entry) of the 1965 Act is modified to secure that, as from the date on which the acquiring authority has served notice to treat in respect of any right or restrictive covenant, as well as the notice of entry required by subsection (1) of that section (as it applies to compulsory acquisition under article 21 (compulsory acquisition of land)), it has power, exercisable in equivalent circumstances and subject to equivalent conditions, to enter for the purpose of exercising that right or enforcing that restrictive covenant (which is deemed for this purpose to have been created on the date of service of the notice); and sections 11A(**b**) (powers of entry: further notices of entry), 11B(**c**) (counter-notice requiring possession to be taken on specified date), 12(**d**) (unauthorised entry) and 13(**e**) (refusal to give possession to acquiring authority) of the 1965 Act are modified correspondingly.

(6) Section 20(**f**) (tenants at will, etc.) of the 1965 Act applies with the modifications necessary to secure that persons with such interests in land as are mentioned in that section are compensated in a manner corresponding to that in which they would be compensated on a compulsory acquisition under this Order of that land, but taking into account only the extent (if any) of such interference with such an interest as is actually caused, or likely to be caused, by the exercise of the right or enforcement of the restrictive covenant in question.

(**a**) Section 11 was amended by section 34(1) of, and Schedule 4 to, the Acquisition of Land Act 1981 (c. 67), section 3 of, and Part 1 of Schedule 1 to, the Housing (Consequential Provisions) Act 1985 (c. 71), section 14 of, and paragraph 12(1) of Schedule 5 to, the Church of England (Miscellaneous Provisions) Measure 2006 (No. 1), sections 186(2), 187(2) and 188 of, and paragraph 6 of Schedule 14 and paragraph 3 of Schedule 16 to, the Housing and Planning Act 2016 (c. 22) and S.I. 2009/1307.

(**b**) Section 11A was inserted by section 186(3) of the Housing and Planning Act 2016.

(**c**) Section 11B was inserted by section 187(3) of the Housing and Planning Act 2016.

(**d**) Section 12 was amended by section 56(2) of, and Part 1 of Schedule 9 to, the Courts Act 1971 (c. 23) and paragraphs (2) and (4) of Schedule 16 to the Housing and Planning Act 2016.

(**e**) Section 13 was amended by sections 62(3), 139(4) to (9) and 146 of, and paragraphs 27 and 28 of Schedule 13 and Part 3 of Schedule 23 to the Tribunals, Courts and Enforcement Act 2007 (c. 15).

(**f**) Section 20 was amended by paragraph 4 of Schedule 15 to the Planning and Compensation Act 1991 (c. 34) and S.I. 2009/1307.

(7) Section 22 (interests omitted from purchase) of the 1965 Act as modified by article 28(4) (modification of Part 1 of the Compulsory Purchase Act 1965) is so modified as to enable the acquiring authority, in circumstances corresponding to those referred to in that section, to continue to be entitled to exercise the right acquired or restrictive covenant imposed, subject to compliance with that section as respects compensation.

(8) For Schedule 2A to the 1965 Act (counter notice requiring purchase of land not in notice to treat) substitute—

"SCHEDULE 2A

COUNTER-NOTICE REQUIRING PURCHASE OF LAND

1.—(1) This Schedule applies where an acquiring authority serves a notice to treat in respect of a right over, or restrictive covenant affecting, the whole or part of a house, building or factory and have not executed a general vesting declaration under section 4 of the 1981 Act as applied by article 25 (application of the 1981 Act) of the One Earth Solar Farm Order 202* in respect of the land to which the notice to treat relates.

(2) But see article 26(3) (acquisition of subsoil only) of the One Earth Solar Farm 202* which excludes the acquisition of subsoil only from this Schedule.

2. In this Schedule, "house" includes any park or garden belonging to a house.

Counter-notice requiring purchase of land

3. A person who is able to sell the house, building or factory ("the owner") may serve a counter-notice requiring the authority to purchase the owner's interest in the house, building or factory.

4. A counter-notice under paragraph 3 must be served within the period of 28 days beginning with the day on which the notice to treat was served.

Response to counter-notice

5. On receiving a counter-notice, the acquiring authority must decide whether to—

(a) withdraw the notice to treat,

(b) accept the counter notice, or

(c) refer the counter notice to the Upper Tribunal.

6. The authority must serve notice of their decision on the owner within the period of three months beginning with the day on which the counter-notice is served ("the decision period").

7. If the authority decides to refer the counter-notice to the Upper Tribunal they must do so within the decision period.

8. If the authority does not serve notice of a decision within the decision period they are to be treated as if they had served notice of a decision to withdraw the notice to treat at the end of that period.

9. If the authority serves notice of a decision to accept the counter-notice, the compulsory purchase order and the notice to treat are to have effect as if they included the owner's interest in the house, building or factory.

Determination by the Upper Tribunal

10. On a referral under paragraph 7, the Upper Tribunal must determine whether the acquisition of the right or the imposition of the restrictive covenant would—

(a) in the case of a house, building or factory; cause material detriment to the house, building or factory, or

(b) in the case of a park or garden, seriously affect the amenity or convenience of the house to which the park or garden belongs.

11. In making its determination, the Upper Tribunal must take into account—

(a) the effect of the acquisition of the right or the imposition of the covenant,

(b) the use to be made of the right or covenant proposed to be acquired or imposed, and

(c) if the right or covenant is proposed to be acquired or imposed for works or other purposes extending to other land, the effect of the whole of the works and the use of the other land.

12. If the Upper Tribunal determines that the acquisition of the right or the imposition of the covenant would have either of the consequences described in paragraph 10, it must determine how much of the house, building or factory the authority ought to be required to take.

13. If the Upper Tribunal determines that the authority ought to be required to take some or all of the house, building or factory, the compulsory purchase order and the notice to treat are to have effect as if they included the owner's interest in that land.

14.—(1) If the Upper Tribunal determines that the authority ought to be required to take some or all of the house, building or factory, the authority may at any time within the period of six weeks beginning with the day on which the Upper Tribunal makes its determination withdraw the notice to treat in relation to that land.

(2) If the acquiring authority withdraws the notice to treat under this paragraph they must pay the person on whom the notice was served compensation for any loss or expense cause by the giving and withdrawal of the notice.

(3) Any dispute as to the compensation is to be determined by the Upper Tribunal.".

SCHEDULE 10

Article 30

LAND OF WHICH TEMPORARY POSSESSION MAY BE TAKEN

(1) *Plot reference number shown on the Land Plan*	*(2)* *Purpose for which temporary possession may be taken*
01-002, 01-003, 01-004, 01-005, 10-003, 10-004	Temporary use (including access) to carry out Work Nos. 5 and 7.
12-006, 14-003	Temporary use (including access) to carry out Work No. 5.

SCHEDULE 11

Article 39

HEDGEROWS TO BE REMOVED

PART 1

REMOVAL OF HEDGEROWS

(1) *Area*	*(2)* *Hedgerow*
District of Bassetlaw	Removal of part(s) of the hedgerow as shown approximately within the area(s) identified by red hatching on the vegetation removal plan (Sheet 1), reference H254
District of Bassetlaw	Removal of part(s) of the hedgerow as shown approximately within the area(s) identified by red hatching on the vegetation removal plan (Sheet 1), reference H68
District of Bassetlaw	Removal of part(s) of the hedgerow as shown approximately within the area(s) identified by red hatching on the vegetation removal plan (Sheet 1), reference H259
District of Bassetlaw	Removal of part(s) of the hedgerow as shown approximately within the area(s) identified by red hatching on the vegetation removal plan (Sheet 1), reference H63
District of Bassetlaw	Removal of part(s) of the hedgerow as shown approximately within the area(s) identified by red hatching on the vegetation removal plan (Sheet 1), reference H65
District of Bassetlaw	Removal of part(s) of the hedgerow as shown approximately within the area(s) identified by red hatching on the vegetation removal plan (Sheet 3), reference H70
District of Bassetlaw	Removal of part(s) of the hedgerow as shown approximately within the area(s) identified by red hatching on the vegetation removal plan (Sheet 3), reference H72
District of Bassetlaw	Removal of part(s) of the hedgerow as shown approximately within the area(s) identified by red hatching on the vegetation removal plan (Sheet 3), reference H73
District of Bassetlaw	Removal of part(s) of the hedgerow as shown approximately within the area(s) identified by red hatching on the vegetation removal plan (Sheet 3), reference H76
District of Bassetlaw	Removal of part(s) of the hedgerow as shown approximately within the area(s) identified by red hatching on the vegetation removal plan (Sheet 3), reference H75
District of Bassetlaw	Removal of part(s) of the hedgerow as shown approximately within the area(s) identified by

	red hatching on the vegetation removal plan (Sheet 3), reference H78
District of Bassetlaw	Removal of part(s) of the hedgerow as shown approximately within the area(s) identified by red hatching on the vegetation removal plan (Sheet 3), reference H81
District of Bassetlaw	Removal of part(s) of the hedgerow as shown approximately within the area(s) identified by red hatching on the vegetation removal plan (Sheet 3), reference H74
District of Bassetlaw	Removal of part(s) of the hedgerow as shown approximately within the area(s) identified by red hatching on the vegetation removal plan (Sheet 4), reference H109
District of Bassetlaw	Removal of part(s) of the hedgerow as shown approximately within the area(s) identified by red hatching on the vegetation removal plan (Sheet 4), reference H156
District of Bassetlaw	Removal of part(s) of the hedgerow as shown approximately within the area(s) identified by red hatching on the vegetation removal plan (Sheet 5), reference H102
District of Bassetlaw	Removal of part(s) of the hedgerow as shown approximately within the area(s) identified by red hatching on the vegetation removal plan (Sheet 6), reference H203
District of Bassetlaw	Removal of part(s) of the hedgerow as shown approximately within the area(s) identified by red hatching on the vegetation removal plan (Sheet 6), reference H204
District of Bassetlaw	Removal of part(s) of the hedgerow as shown approximately within the area(s) identified by red hatching on the vegetation removal plan (Sheet 7), reference H131
District of West Lindsey	Removal of part(s) of the hedgerow as shown approximately within the area(s) identified by red hatching on the vegetation removal plan (Sheet 10), reference H12
District of West Lindsey	Removal of part(s) of the hedgerow as shown approximately within the area(s) identified by red hatching on the vegetation removal plan (Sheet 10), reference H13
District of West Lindsey	Removal of part(s) of the hedgerow as shown approximately within the area(s) identified by red hatching on the vegetation removal plan (Sheet 10), reference H44
District of West Lindsey	Removal of part(s) of the hedgerow as shown approximately within the area(s) identified by red hatching on the vegetation removal plan (Sheet 10), reference H45
District of West Lindsey	Removal of part(s) of the hedgerow as shown approximately within the area(s) identified by red hatching on the vegetation removal plan (Sheet 10), reference H49
District of West Lindsey	Removal of part(s) of the hedgerow as shown

	approximately within the area(s) identified by red hatching on the vegetation removal plan (Sheet 10), reference H52
District of West Lindsey	Removal of part(s) of the hedgerow as shown approximately within the area(s) identified by red hatching on the vegetation removal plan (Sheet 10), reference H268
District of West Lindsey	Removal of part(s) of the hedgerow as shown approximately within the area(s) identified by red hatching on the vegetation removal plan (Sheet 11), reference H49
District of Newark and Sherwood	Removal of part(s) of the hedgerow as shown approximately within the area(s) identified by red hatching on the vegetation removal plan (Sheet 11), reference H5
District of Newark and Sherwood	Removal of part(s) of the hedgerow as shown approximately within the area(s) identified by red hatching on the vegetation removal plan (Sheet 11), reference H4
District of West Lindsey	Removal of part(s) of the hedgerow as shown approximately within the area(s) identified by red hatching on the vegetation removal plan (Sheet 12), reference H15
District of West Lindsey	Removal of part(s) of the hedgerow as shown approximately within the area(s) identified by red hatching on the vegetation removal plan (Sheet 12), reference H16
District of Newark and Sherwood	Removal of part(s) of the hedgerow as shown approximately within the area(s) identified by red hatching on the vegetation removal plan (Sheet 12), reference H20
District of Newark and Sherwood	Removal of part(s) of the hedgerow as shown approximately within the area(s) identified by red hatching on the vegetation removal plan (Sheet 12), reference H244
District of West Lindsey	Removal of part(s) of the hedgerow as shown approximately within the area(s) identified by red hatching on the vegetation removal plan (Sheet 13), reference H22
District of West Lindsey	Removal of part(s) of the hedgerow as shown approximately within the area(s) identified by red hatching on the vegetation removal plan (Sheet 13), reference H25
District of West Lindsey	Removal of part(s) of the hedgerow as shown approximately within the area(s) identified by red hatching on the vegetation removal plan (Sheet 13), reference H27
District of West Lindsey	Removal of part(s) of the hedgerow as shown approximately within the area(s) identified by red hatching on the vegetation removal plan (Sheet 13), reference H54
District of West Lindsey	Removal of part(s) of the hedgerow as shown approximately within the area(s) identified by red hatching on the vegetation removal plan (Sheet 13), reference H56

District of Newark and Sherwood	Removal of part(s) of the hedgerow as shown approximately within the area(s) identified by red hatching on the vegetation removal plan (Sheet 13), reference H59
District of Newark and Sherwood	Removal of part(s) of the hedgerow as shown approximately within the area(s) identified by red hatching on the vegetation removal plan (Sheet 15), reference H282
District of Newark and Sherwood	Removal of part(s) of the hedgerow as shown approximately within the area(s) identified by red hatching on the vegetation removal plan (Sheet 15), reference H187
District of Newark and Sherwood	Removal of part(s) of the hedgerow as shown approximately within the area(s) identified by red hatching on the vegetation removal plan (Sheet 16), reference H159
District of Newark and Sherwood	Removal of part(s) of the hedgerow as shown approximately within the area(s) identified by red hatching on the vegetation removal plan (Sheet 16), reference H169
District of Newark and Sherwood	Removal of part(s) of the hedgerow as shown approximately within the area(s) identified by red hatching on the vegetation removal plan (Sheet 16), reference H174
District of Newark and Sherwood	Removal of part(s) of the hedgerow as shown approximately within the area(s) identified by red hatching on the vegetation removal plan (Sheet 16), reference H178

PART 2

REMOVAL OF IMPORTANT HEDGEROWS

(1) *Area*	*(2)* *Hedgerow*
District of Bassetlaw	Removal of part(s) of the important hedgerow as shown approximately within the area(s) identified by red hatching on the vegetation removal plan (Sheet 1), reference H67
District of Bassetlaw	Removal of part(s) of the important hedgerow as shown approximately within the area(s) identified by red hatching on the vegetation removal plan (Sheet 12), reference H17

SCHEDULE 12

Article 41

DOCUMENTS AND PLANS TO BE CERTIFIED

(1) *Document name*	*(2)* *Document reference*	*(3)* *Revision number*	*(4)* *Date*
book of reference	EN010159/APP/4.3.5	6	January 2026
crown land plan	EN010159/APP/2.8.2	3	January 2026
environmental statement (excluding chapters 5, 6, 7, 8, 11, 12, 16 and 18; figures 6.1-6.2, 7.1-7.17, 8.2, 8.7, 11.13-11.14, and 18.1-18.9; appendices 2.3, 6.2, 6.3, 6.5, 6.6, 6.8, 6.10, 6.11, 7.2, 8.1, 11.4, 12.2, 18.2, and 18.3)	EN010159/APP/6.0	1	February 2025
environmental statement chapter 5	EN010159/APP/6.5.2	3	November 2025
environmental statement chapter 6	EN010159/APP/6.6.4	5	December 2025
environmental statement chapter 7	EN010159/APP/6.7.5	6	December 2025
environmental statement chapter 8	EN010159/APP/6.8.2	3	November 2025
environmental statement chapter 11	EN010159/APP/6.11.3	4	August 2025
environmental statement chapter 12	EN010159/APP/6.12.1	2	July 2025
environmental statement chapter 16	EN010159/APP/6.16.1	2	September 2025
environmental statement chapter 18	EN010159/APP/6.18.4	5	December 2025
environmental statement figures 6.1-6.2	EN010159/APP/6.20.1	2	July 2025
environmental statement figures 7.1-7.17	EN010159/APP/6.20.1	2	November 2025
environmental statement figures 8.2, 8.7	EN010159/APP/6.20.1	2	September 2025
environmental statement figures 11.13-11.14	EN010159/APP/6.20.1	3	August 2025
environmental statement figures 18.1-18.9	EN010159/APP/6.20.1	2	August 2025
environmental statement appendix	EN010159/APP/6.21.1	2	December 2025

2.3			
environmental statement appendix 6.2	EN010159/APP/6.21.2	3	September 2025
environmental statement appendix 6.3	EN010159/APP/6.21.1	2	July 2025
environmental statement appendix 6.5	EN010159/APP/6.21.1	2	July 2025
environmental statement appendix 6.6	EN010159/APP/6.21.1	2	July 2025
environmental statement appendix 6.8	EN010159/APP/6.21.1	2	July 2025
environmental statement appendix 6.10	EN010159/APP/6.21.3	4	December 2025
environmental statement appendix 6.11	EN010159/APP/6.21	1	July 2025
environmental statement appendix 7.2	EN010159/APP/6.21.5	6	December 2025
environmental statement appendix 7.4	EN010159/APP/6.21.4	5	December 2025
environmental statement appendix 8.1	EN010159/APP/6.21.1	2	July 2025
environmental statement appendix 11.4	EN010159/APP/6.21.2	3	September 2025
environmental statement appendix 12.2	EN010159/APP/6.21.4	5	December 2025
environmental statement appendix 18.2	EN010159/APP/6.21.1	2	August 2025
environmental statement appendix 18.3	EN010159/APP/6.21.2	3	October 2025
flood risk assessment and outline drainage strategy	EN010159/APP/6.21.2 (Appendix 7.2)	6	December 2025
height parameter plan	EN010159/APP/2.5	1	February 2025
land plan	EN010159/APP/2.2.4	5	January 2026
outline battery safety management plan	EN010159/APP/7.11.6	7	December 2025
outline construction environmental management plan	EN010159/APP/7.4.7	8	December 2025
outline construction traffic management	EN010159/APP/7.9.5	6	December 2025

plan			
outline decommissioning environmental management plan	EN010159/APP/7.6.6	7	December 2025
outline design parameters	EN010159/APP/5.9.4	5	November 2025
outline landscape and ecology management plan	EN010159/APP/7.7.6	7	December 2025
outline operational environmental management plan	EN010159/APP/7.5.5	6	December 2025
outline public rights of way management plan	EN010159/APP/7.14.2	3	September 2025
outline skills, supply chain and employment plan	EN010159/APP/7.8.1	2	August 2025
outline soil management plan	EN010159/APP/7.10.3	4	November 2025
outline written scheme of investigation	EN010159/APP/9.27	1	September 2025
special category land plan	EN010159/APP/2.9	1	February 2025
streets, rights of way and access plans	EN010159/APP/2.4	1	February 2025
vegetation removal plan	EN010159/APP/7.7 (appendix C)	1	February 2025
works plans	EN010159/APP/2.3.2	3	November 2025

SCHEDULE 13

Article 42

ARBITRATION RULES

Commencing an arbitration

1. The arbitration is deemed to have commenced when a party ("the claimant") serves a written notice of arbitration on the other party ("the respondent").

Time periods

2.—(1) All time periods in these arbitration rules are measured in days and include weekends, but not bank or public holidays.

(2) Time periods are calculated from the day after the arbitrator is appointed which is either—

(a) the date the arbitrator notifies the parties in writing of their acceptance of an appointment by agreement of the parties; or

(b) the date the arbitrator is appointed by the Secretary of State.

Timetable

3.—(1) The timetable for the arbitration is that which is set out in sub-paragraphs (2) to (4) below unless amended in accordance with paragraph 5(3).

(2) Within 14 days of the arbitrator being appointed, the claimant must provide both the respondent and the arbitrator with—

(a) a written statement of claim which describes the nature of the difference between the parties, the legal and factual issues, the claimant's contentions as to those issues, the amount of its claim or the remedy it is seeking;

(b) all statements of evidence and copies of all documents on which it relies, including contractual documentation, correspondence (including electronic documents), legal precedents and expert witness reports.

(3) Within 14 days of receipt of the claimant's statements under sub-paragraph (2) by the arbitrator and respondent, the respondent must provide the claimant and the arbitrator with—

(a) a written statement of defence consisting of a response to the claimant's statement of claim, its statement in respect of the nature of the difference, the legal and factual issues in the claimant's claim, its acceptance of any elements of the claimant's claim and its contentions as to those elements of the claimant's claim it does not accept;

(b) all statements of evidence and copies of all documents on which it relies, including contractual documentation, correspondence (including electronic documents), legal precedents and expert witness reports;

(c) any objection it wishes to make to the claimant's statements, comments on the claimant's expert reports (if submitted by the claimant) and explanations of the objections.

(4) Within seven days of the respondent serving its statements under sub-paragraph (3), the claimant may make a statement of reply by providing both the respondent and the arbitrator with—

(a) a written statement responding to the respondent's submissions, including its reply in respect of the nature of the difference, the issues (both factual and legal) and its contentions in relation to the issues;

(b) all statements of evidence and copies of documents in response to the respondent's submissions;

(c) any expert report in response to the respondent's submissions;

(d) any objections to the statements of evidence, expert reports or other documents submitted by the respondent; and

(e) its written submissions in response to the legal and factual issues involved.

Procedure

4.—(1) The parties' pleadings, witness statements and expert reports (if any) must be concise. A single pleading must not exceed 30 single-sided A4 pages using 10pt Arial font.

(2) The arbitrator will make an award on the substantive differences based solely on the written material submitted by the parties unless the arbitrator decides that a hearing is necessary to explain or resolve any matters.

(3) Either party may, within two days of delivery of the last submission, request a hearing giving specific reasons why it considers a hearing is required.

(4) Within seven days of receiving the last submission, the arbitrator must notify the parties whether a hearing is to be held and the length of that hearing.

(5) Within ten days of the arbitrator advising the parties that a hearing is to be held, the date and venue for the hearing are to be fixed by agreement with the parties, save that if there is no agreement the arbitrator must direct a date and venue which the arbitrator considers is fair and reasonable in all the circumstances. The date for the hearing must not be less than 35 days from the date of the arbitrator's direction confirming the date and venue of the hearing.

(6) A decision must be made by the arbitrator on whether there is any need for expert evidence to be submitted orally at the hearing. If oral expert evidence is required by the arbitrator, then any experts attending the hearing may be asked questions by the arbitrator.

(7) There is to be no examination or cross-examination of experts, but the arbitrator must invite the parties to ask questions of the experts by way of clarification of any answers given by the experts in response to the arbitrator's questions. Prior to the hearing in relation to the experts—

(a) at least 28 days before a hearing, the arbitrator must provide a list of issues to be addressed by the experts;

(b) if more than one expert is called, they will jointly confer and produce a joint report or reports within 14 days of the issues being provided; and

(c) the form and content of a joint report must be as directed by the arbitrator and must be provided at least seven days before the hearing.

(8) Within 14 days of a hearing or a decision by the arbitrator that no hearing is to be held the parties may by way of exchange provide the arbitrator with a final submission in connection with the matters in dispute and any submissions on costs. The arbitrator must take these submissions into account in the award.

(9) The arbitrator may make other directions or rulings as considered appropriate in order to ensure that the parties comply with the timetable and procedures to achieve an award on the substantive difference within four months of the date on which the arbitrator is appointed, unless both parties otherwise agree to an extension to the date for the award.

(10) If a party fails to comply with the timetable, procedure or any other direction then the arbitrator may continue in the absence of a party or submission or document, and may make a decision on the information before the arbitrator attaching the appropriate weight to any evidence submitted beyond any timetable or in breach of any procedure or direction.

(11) The arbitrator's award must include reasons. The parties must accept that the extent to which reasons are given must be proportionate to the issues in dispute and the time available to the arbitrator to deliver the award.

Arbitrator's powers

5.—(1) The arbitrator has all the powers of the Arbitration Act 1996, save where modified in this Schedule.

(2) There must be no discovery or disclosure, except that the arbitrator is to have the power to order the parties to produce such documents as are reasonably requested by another party no later than the statement of reply, or by the arbitrator, where the documents are manifestly relevant, specifically identified and the burden of production is not excessive. Any application and orders should be made by way of a Redfern Schedule without any hearing.

(3) Any time limits fixed in accordance with this procedure or by the arbitrator may be varied by agreement between the parties, subject to any such variation being acceptable to and approved by the arbitrator. In the absence of agreement, the arbitrator may vary the timescales or procedure—

(a) if the arbitrator is satisfied that a variation of any fixed time limit is reasonably necessary to avoid a breach of the rules of natural justice and then;

(b) only for such a period that is necessary to achieve fairness between the parties.

(4) On the date the award is made, the arbitrator will notify the parties that the award is completed, signed and dated, and that it will be issued to the parties on receipt of cleared funds for the arbitrator's fees and expenses.

Costs

6.—(1) The costs of the arbitration must include the fees and expenses of the arbitrator, the reasonable fees and expenses of any experts and the reasonable legal and other costs incurred by the parties for the arbitration.

(2) Where the difference involves connected or interrelated issues, the arbitrator must consider the relevant costs collectively.

(3) The final award must fix the costs of the arbitration and decide which of the parties are to bear them or in what proportion they are to be borne by the parties.

(4) The arbitrator must award recoverable costs on the general principle that each party should bear its own costs, having regard to all material circumstances, including such matters as exaggerated claims or defences, the degree of success for different elements of the claims, claims that have incurred substantial costs, the conduct of the parties and the degree of success of a party.

Confidentiality

7.—(1) Hearings in this arbitration are to take place in private.

(2) Materials, documents, awards, expert reports and any matters relating to the arbitration are confidential and must not be disclosed to any third party without prior written consent of the other party, save for any application to the courts or where disclosure is required under any legislative or regulatory requirement.

SCHEDULE 14

Article 43

PROTECTIVE PROVISIONS

PART 1

FOR THE PROTECTION OF ELECTRICITY, GAS, WATER AND SEWERAGE UNDERTAKERS

1. For the protection of the utility undertakers referred to in this Part of this Schedule (save for any utility undertakers which are specifically protected by any other Part of this Schedule, which will take precedence), the following provisions have effect, unless otherwise agreed in writing between the undertaker and the utility undertakers concerned.

2. In this Part of this Schedule—

"alternative apparatus" means alternative apparatus adequate to enable the utility undertaker in question to fulfil its statutory functions in a manner not less efficient than previously;

"apparatus" means—

(a) in the case of an electricity undertaker, electric lines or electrical plant (as defined in the Electricity Act 1989(**a**)), belonging to or maintained by that utility undertaker;

(b) in the case of a gas undertaker, any mains, pipes or other apparatus belonging to or maintained by a gas transporter for the purposes of gas supply;

(c) in the case of a water undertaker—

(i) mains, pipes or other apparatus belonging to or maintained by that utility undertaker for the purposes of water supply; and

(ii) any water mains or service pipes (or part of a water main or service pipe) that is the subject of an agreement to adopt made under section 51A of the Water Industry Act 1991;

(d) in the case of a sewerage undertaker—

(i) any drain or works vested in the utility undertaker under the Water Industry Act 1991(**b**); and

(ii) any sewer which is so vested or is the subject of a notice of intention to adopt given under section 102(4) of that Act or an agreement to adopt made under section 104 of that Act,

and includes a sludge main, disposal main (within the meaning of section 219 of that Act) or sewer outfall and any manholes, ventilating shafts, pumps or other accessories forming part of any such sewer, drain or works, and includes any structure in which apparatus is or is to be lodged or which gives or will give access to apparatus; and

(e) any other mains, pipelines or cables that are not the subject of the protective provisions in Parts 2 to 6 of this Schedule;

"functions" includes powers and duties;

"in", in a context referring to apparatus or alternative apparatus in land, includes a reference to apparatus or alternative apparatus under, over or upon land; and

"utility undertaker" means—

(a) any licence holder within the meaning of Part 1 of the Electricity Act 1989;

(**a**) 1989 c. 29.
(**b**) 1991 c. 56.

(b) a gas transporter within the meaning of Part 1 of the Gas Act 1986(**a**);

(c) water undertaker within the meaning of the Water Industry Act 1991;

(d) a sewerage undertaker within the meaning of Part 1 of the Water Industry Act 1991, and

(e) an owner or operator of apparatus within paragraph (e) of the definition of that term,

for the area of the authorised development, and in relation to any apparatus, means the utility undertaker to whom it belongs or by whom it is maintained.

3. This Part of this Schedule does not apply to apparatus in respect of which the relations between the undertaker and the utility undertaker are regulated by the provisions of Part 3 of the 1991 Act.

4. Regardless of the temporary prohibition or restriction of use of streets under the powers conferred by article 12 (temporary prohibition or restriction on use of streets and public rights of way), a utility undertaker is at liberty at all times to take all necessary access across any such street and to execute and do all such works and things in, upon or under any such street as may be reasonably necessary or desirable to enable it to maintain any apparatus which at the time of the prohibition or restriction was in that street.

5. Regardless of any provision in this Order or anything shown on the land plans, the undertaker must not acquire any apparatus otherwise than by agreement.

6.—(1) If, in the exercise of the powers conferred by this Order, the undertaker acquires any interest in any land in which any apparatus is placed or over which access to any apparatus is enjoyed or requires that the utility undertaker's apparatus is relocated or diverted, that apparatus must not be removed under this Part of this Schedule, and any right of a utility undertaker to maintain that apparatus in that land and to gain access to it must not be extinguished, until alternative apparatus has been constructed and is in operation, and access to it has been provided, to the reasonable satisfaction of the utility undertaker in question in accordance with sub-paragraphs (2) to (7).

(2) If, for the purpose of executing any works in, on or under any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, the undertaker must give to the utility undertaker in question written notice of that requirement, together with a plan and section of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order a utility undertaker reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph (3), afford to the utility undertaker the necessary facilities and rights for the construction of alternative apparatus in other land of the undertaker and subsequently for the maintenance of that apparatus.

(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of the undertaker, or the undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraph (2), in the land in which the alternative apparatus or part of such apparatus is to be constructed, the utility undertaker in question must, on receipt of a written notice to that effect from the undertaker, as soon as reasonably possible use reasonable endeavours to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed.

(4) Any alternative apparatus to be constructed in land of the undertaker under this Part of this Schedule must be constructed in such manner and in such line or situation as may be agreed between the utility undertaker in question and the undertaker or in default of agreement settled by arbitration in accordance with article 42 (arbitration).

(5) The utility undertaker in question must, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with article 42 (arbitration), and after the grant to the utility undertaker of any such facilities and rights as are referred to in

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(**a**) 1986 c. 44. A new section 7 was substituted by section 5 of the Gas Act 1995 (c. 45), and was further amended by section 76 of the Utilities Act 2000 (c. 27).

sub-paragraph (2) or (3), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by the undertaker to be removed under the provisions of this Part of this Schedule.

(6) Regardless of anything in sub-paragraph (5), if the undertaker gives notice in writing to the utility undertaker in question that it desires itself to execute any work, or part of any work, in connection with the construction or removal of apparatus in any land controlled by the undertaker, that work, instead of being executed by the utility undertaker, must be executed by the undertaker without unnecessary delay under the superintendence, if given, and to the reasonable satisfaction of the utility undertaker.

(7) Nothing in sub-paragraph (6) authorises the undertaker to execute the placing, installation, bedding, packing, removal, connection or disconnection of any apparatus, or execute any filling around the apparatus (where the apparatus is laid in a trench) within 300 millimetres of the apparatus.

7.—(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to a utility undertaker facilities and rights for the construction and maintenance in land of the undertaker of alternative apparatus in substitution for apparatus to be removed, those facilities and rights must be granted upon such terms and conditions as may be agreed between the undertaker and the utility undertaker in question or in default of agreement settled by arbitration in accordance with article 42 (arbitration).

(2) If the facilities and rights to be afforded by the undertaker in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are in the opinion of the arbitrator less favourable on the whole to the utility undertaker in question than the facilities and rights enjoyed by it in respect of the apparatus to be removed and the terms and conditions to which those facilities and rights are subject, the arbitrator must make such provision for the payment of compensation by the undertaker to that utility undertaker as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

8.—(1) Not less than 28 days before starting the execution of any works in, on or under any land purchased, held, appropriated or used under this Order that are near to, or will or may affect, any apparatus the removal of which has not been required by the undertaker under paragraph 6(2), the undertaker must submit to the utility undertaker in question a plan, section and description of the works to be executed.

(2) Those works must be executed only in accordance with the plan, section and description submitted under sub-paragraph (1) and in accordance with such reasonable requirements as may be made in accordance with sub-paragraph (3) by the utility undertaker for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and the utility undertaker is entitled to watch and inspect the execution of those works.

(3) Any requirements made by a utility undertaker under sub-paragraph (2) must be made within a period of 21 days beginning with the date on which a plan, section and description under sub-paragraph (1) are submitted to it.

(4) If a utility undertaker in accordance with sub-paragraph (3) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraphs 1 to 7 apply as if the removal of the apparatus had been required by the undertaker under paragraph 6(2).

(5) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 28 days before commencing the execution of any works, a new plan, section and description instead of the plan, section and description previously submitted, and having done so the provisions of this paragraph apply to and in respect of the new plan, section and description.

(6) The undertaker is not required to comply with sub-paragraph (1) in a case of emergency but in that case it must give to the utility undertaker in question notice as soon as is reasonably practicable and a plan, section and description of those works as soon as reasonably practicable

subsequently and must comply with sub-paragraph (2) in so far as is reasonably practicable in the circumstances.

9.—(1) Subject to the following provisions of this paragraph, the undertaker must repay to a utility undertaker the reasonable expenses incurred by that utility undertaker in, or in connection with, the inspection, removal, alteration or protection of any apparatus or the construction of any new apparatus which may be required in consequence of the execution of any such works as are referred to in paragraph 6(2).

(2) There is to be deducted from any sum payable under sub-paragraph (1) the value of any apparatus removed under the provisions of this Part of this Schedule, that value being calculated after removal.

(3) If in accordance with the provisions of this Part of this Schedule—

(a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions; or

(b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was,

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or, in default of agreement, is not determined by arbitration in accordance with article 42 (arbitration) to be necessary, then, if such placing involves cost in the construction of works under this Part of this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to the utility undertaker in question by virtue of sub-paragraph (1) is to be reduced by the amount of that excess.

(4) For the purposes of sub-paragraph (3)—

(a) an extension of apparatus to a length greater than the length of existing apparatus is not to be treated as a placing of apparatus of greater dimensions than those of the existing apparatus where such extension is required in consequence of the execution of any such works as are referred to in paragraph 6(2); and

(b) where the provision of a joint in a cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole is to be treated as if it also had been agreed or had been so determined.

(5) An amount which apart from this sub-paragraph would be payable to a utility undertaker in respect of works by virtue of sub-paragraph (1), if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on the utility undertaker any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, is to be reduced by the amount which represents that benefit.

10.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any of the works referred to in paragraph 6(2), any damage is caused to any apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works) or property of a utility undertaker, or there is any interruption in any service provided, or in the supply of any goods, by any utility undertaker, the undertaker must—

(a) bear and pay the cost reasonably incurred by that utility undertaker in making good such damage or restoring the supply; and

(b) make reasonable compensation to that utility undertaker for any other expenses, loss, damages, penalty or costs incurred by the utility undertaker,

by reason or in consequence of any such damage or interruption.

(2) Nothing in sub-paragraph (1) imposes any liability on the undertaker with respect to any damage or interruption to the extent that it is attributable to the act, neglect or default of a utility undertaker, its officers, servants, contractors or agents.

(3) A utility undertaker must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise is to be made without the consent of the undertaker which, if it withholds such consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

11. Nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and a utility undertaking in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

PART 2

FOR THE PROTECTION OF OPERATORS OF ELECTRONIC COMMUNICATIONS CODE NETWORKS

12.—(1) For the protection of any operator, the following provisions have effect, unless otherwise agreed in writing between the undertaker and the operator.

(2) In this Part of this Schedule—

"the 2003 Act" means the Communications Act 2003(**a**);

"electronic communications apparatus" has the same meaning as in the electronic communications code;

"the electronic communications code" has the same meaning as in section 106 (application of the electronic communications code) of the 2003 Act;

"electronic communications code network" means—

(a) so much of an electronic communications network or conduit system provided by an electronic communications code operator as is not excluded from the application of the electronic communications code by a direction under section 106 of the 2003 Act; and

(b) an electronic communications network which the Secretary of State is providing or proposing to provide;

"electronic communications code operator" means a person in whose case the electronic communications code is applied by a direction under section 106 of the 2003 Act; and

"operator" means the operator of an electronic communications code network.

13. The exercise of the powers of article 32 (statutory undertakers) is subject to Part 10 (undertakers' works affecting electronic communications apparatus) of the electronic communications code.

14.—(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.

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

(3) The operator must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise of the claim or demand is to be made without the consent of the undertaker which, if it withholds such consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

(4) Any difference arising between the undertaker and the operator under this Part of this Schedule must be referred to and settled by arbitration under article 42 (arbitration).

15. This Part of this Schedule does not apply to—

(a) any apparatus in respect of which the relations between the undertaker and an operator are regulated by the provisions of Part 3 (street works in England and Wales) of the 1991 Act; or

(b) any damage, or any interruption, caused by electro-magnetic interference arising from the construction or use of the authorised development.

16. 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

17. The provisions of this Part of this Schedule have effect for the protection of the drainage authority unless otherwise agreed in writing between the undertaker and the drainage authority.

18. In this Part of this Schedule—

"authorised development" has the same meaning as in article 2 (interpretation) of this Order and (unless otherwise specified) for the purposes of this Part of this Schedule includes the operation and maintenance of the authorised development and the construction of any works authorised by this Part of this Schedule;

"construction" includes execution, placing, altering, replacing, relaying and removal, and "construct" and "constructed" must be construed accordingly;

"drainage authority" means in relation to an ordinary watercourse—

(a) the drainage board concerned within the meaning of section 23 (prohibition on obstructions etc. in watercourses) of the Land Drainage Act 1991; or

(b) in the case of any area for which there is no such drainage board, the lead local flood authority within the meaning of section 6 (other definitions) of the Flood and Water Management Act 2010;

"drainage work" means any ordinary watercourse and includes any bank, wall, embankment or other structure, or any appliance constructed for land drainage or flood defence which is the responsibility of the drainage authority;

"ordinary watercourse" has the meaning given by section 72 (interpretation) of the Land Drainage Act 1991;

"plans" includes sections, drawings, specifications and method statements;

"specified work" means so much of the authorised development as is in, on, under, over or within 8 metres of a drainage work or is otherwise likely to affect the flow of water in any watercourse.

19.—(1) Before commencing construction of a specified work, the undertaker must submit to the drainage authority plans of the specified work and such further particulars available to it as the drainage authority may reasonably require within 14 days of the submission of the plans.

(2) A specified work must not be constructed except in accordance with such plans as may be approved in writing by the drainage authority or determined under paragraph 9.

(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 28 days of the submission of the plans for approval, or submission of further particulars (where required by the drainage authority under sub-paragraph (1)) whichever is the later; and

(c) may be given subject to such reasonable requirements as the drainage authority may make for the protection of any drainage work taking into account the terms of this Order.

(4) Any refusal under this paragraph must be accompanied by a statement of the reasons for refusal.

20. Without limiting the scope of paragraph 3, the requirements which the drainage authority may make under that paragraph include conditions requiring the undertaker at its own expense to construct such protective works, whether temporary or permanent, during the construction of the specified work (including the provision of flood banks, walls or embankments or other new works and the strengthening, repair or renewal of existing banks, walls or embankments) as are reasonably necessary taking account of the terms of this Order—

(a) to safeguard any drainage work against damage by reason of any specified work; or

(b) to secure that the efficiency of any drainage work for flood defence and land drainage purposes is not impaired, and that the risk of flooding is not otherwise increased beyond the level of flood risk that was assessed in the environmental statement, by reason of any specified work.

21.—(1) Subject to sub-paragraph (2), any specified work, and all protective works required by the drainage authority under paragraph 4, must be constructed—

(a) without unreasonable delay in accordance with the plans approved or deemed to have been approved or settled under this Part of this Schedule; and

(b) to the reasonable satisfaction of the drainage authority,

and an officer of the drainage authority is entitled to watch and inspect the construction of such works.

(2) The undertaker must give to the drainage authority—

(a) not less than 14 days' notice in writing of its intention to commence construction of any specified work; and

(b) notice in writing of its completion not later than seven days after the date on which it is brought into use.

22. If by reason of the construction of a specified work or of the failure of any a specified work the efficiency of any drainage work for flood defence purposes or land drainage is impaired, or that drainage work is otherwise damaged, the impairment or damage must be made good by the undertaker as soon as reasonably practicable to the reasonable satisfaction of the drainage authority and, if the undertaker fails to do so, the drainage authority may make good the impairment or damage and recover from the undertaker the expense reasonably incurred by it in doing so.

23. The undertaker must make reasonable compensation for costs, charges and expenses which the drainage authority may reasonably incur—

(a) in the examination or approval of plans under this Part of this Schedule;

(b) in inspecting the construction of the specified work or any protective works required by the drainage authority under this Part of this Schedule; and

(c) in carrying out any surveys or tests by the drainage authority which are reasonably required in connection with the construction of the specified work.

24.—(1) The undertaker must make reasonable compensation for liabilities, costs and losses which may be reasonably incurred or suffered by reason of—

(a) the construction of any specified works comprised within the authorised development; or

(b) any act or omission of the undertaker, its employees, contractors or agents or others while engaged upon the construction of the authorised development.

(2) The drainage authority must give to the undertaker reasonable notice of any such claim or demand.

(3) The undertaker may at its own expense conduct all negotiations for the settlement of the same and any litigation that may arise therefrom.

(4) The drainage authority must not compromise or settle any such claim or make any admission which might be prejudicial to the claim without the agreement of the undertaker which agreement must not be unreasonably withheld or delayed.

(5) The drainage authority will, having regard to its statutory functions, at all times take reasonable steps to prevent and mitigate any such claims, demands, proceedings, costs, damages, expenses or loss.

(6) The drainage authority will, at the request of the undertaker and having regard to its statutory functions, afford all reasonable assistance for the purpose of contesting any such claim or action, and is entitled to be repaid its reasonable expenses reasonably incurred in so doing.

(7) The fact that any work or thing has been executed or done by the undertaker in accordance with a plan approved or deemed to be approved by the drainage authority, or to its satisfaction, or in accordance with any directions or award of an arbitrator, does not relieve the undertaker from any liability under this Part of this Schedule.

(8) Nothing in sub-paragraph (1) imposes any liability on the undertaker with respect to any damage to the extent that it is attributable to the act, neglect or default of the drainage authority or the breach of a statutory duty of the drainage authority, its officers, servants, contractors or agents.

25. Any dispute arising between the undertaker and the drainage authority under this Part of this Schedule, if the parties agree, is to be determined by arbitration under article 42 (arbitration).

PART 4

FOR THE PROTECTION OF CANAL & RIVER TRUST

Interpretation

26.—(1) For the protection of the Canal & River Trust the following provisions of this Part of this Schedule have effect, unless otherwise agreed in writing between the undertaker and the Canal & River Trust.

(2) In this Part of this Schedule—

"Canal & River Trust's network" means the Canal & River Trust's network of waterways;

"Code of Practice" means the Code of Practice for Works Affecting the Canal & River Trust (April 2025) or any updates or amendments thereto;

"construction" in relation to any specified work or protective work, includes—

(a) the execution and placing of that work; and

(b) any relaying, renewal, or maintenance of that work; and "construct" and "constructed" have corresponding meanings;

"detriment" means any damage to the waterway or any other property of the Canal & River Trust caused by the presence of the authorised development and, without prejudice to the generality of that meaning, includes—

(a) any obstruction of, or interference with, or hindrance or danger to, navigation or to any use of the waterway (including towing paths);

(b) the erosion of the bed or banks of the waterway, or the impairment of the stability of any works, lands or premises forming part of the waterway;

(c) the deposit of materials or the siltation of the waterway so as to damage the waterway;

(d) the pollution of the waterway;

(e) any significant alteration in the water level of the waterway, or significant interference with the supply of water thereto, or drainage of water therefrom;

(f) any harm to the ecology of the waterway; and

(g) any interference with the exercise by any person of any lawful rights over Canal & River Trust's network;

"the engineer" means an engineer appointed by the Canal & River Trust for the purpose in question;

"plans" includes navigational risk assessments, sections, designs, drawings, specifications, soil reports, calculations, descriptions (including descriptions of methods of construction) and programmes;

"practical completion" means practical completion of all of the specified work notwithstanding that items which would ordinarily be considered snagging items remain outstanding, and the expression "practically complete" and "practically completed" is to be construed accordingly;

"protective work" means a work constructed under paragraph 31(4)(a) below, (approval of plans etc.);

"specified work" means so much of the authorised development as is, may be, or takes place in, on, under or over the surface of land below the water level forming part of the waterway; or may affect the waterway or any function of the Canal & River Trust, including any projection over the waterway by any authorised work or any plant or machinery;

"the waterway" means each and every part of the River Trent within the order limits and includes any works, lands or premises belonging to the Canal & River Trust, or under its management or control, and held or used by the Canal & River Trust in connection with its statutory functions.

(3) Where the Code of Practice applies to any works or matter that are part of the authorised development or that form part of the protective works and there is an inconsistency between these protective provisions and the Code of Practice, the part of the Code of Practice that is inconsistent with these protective provisions will not apply and these protective provisions will apply. The undertaker will identify and agree with the Canal and River Trust those parts of the Code of Practice which are not applicable to the construction of the specified works and for the avoidance of doubt the undertaker will not be required to comply with those agreed parts of the Code of Practice.

Powers requiring the Canal & River Trust's consent

27.—(1) The undertaker must not in the exercise of the powers conferred by this Order obstruct or interfere with pedestrian or vehicular access to the waterway unless such obstruction or interference with such access is with the consent of the Canal & River Trust.

(2) The undertaker must not exercise any power conferred by this Order to discharge water into the waterway under article 17 (discharge of water) or in any way interfere with the supply of water to or the drainage of water from the waterway unless such exercise is with the consent of the Canal & River Trust, save as to surface water discharge which will not require the consent of the Canal & River Trust.

(3) The undertaker must not exercise the powers conferred by article 19 (authority to survey and investigate the land) or section 11(3) of the 1965 Act, in relation to the waterway unless such exercise is with the consent of the Canal & River Trust.

(4) The undertaker must not exercise any power conferred by article 30 (temporary use of land for constructing the authorised development) or article 31 (temporary use of land for maintaining the authorised development) in respect of the waterway unless such exercise is with the consent of the Canal & River Trust.

(5) The undertaker must not exercise any power conferred by article 21 (compulsory acquisition of land), article 23 (compulsory acquisition of rights), 26 (acquisition of subsoil) or 32 (statutory

undertakers) in respect of the Canal & River Trust's interests in the waterway unless such exercise is with the consent of the Canal & River Trust.

(6) The consent of the Canal & River Trust pursuant to sub-paragraphs (1) to (5) must not be unreasonably withheld or delayed but may be given subject to reasonable terms and conditions provided that it will not be reasonable for the Canal & River Trust to withhold or delay consent or impose terms and conditions that would prevent the undertaker from complying with the protective provisions in this Part of this Schedule or any condition contained in Schedule 2 (Requirements) to this Order.

Fencing

28. Where so required by the engineer acting reasonably the undertaker must, to the reasonable satisfaction of the engineer, fence off a specified work or a protective work or take such other steps as the engineer may require to be taken for the purpose of separating a specified work or a protective work from the waterway, whether on a temporary or permanent basis or both.

Lighting

29. The undertaker must provide and maintain at its own expense in the vicinity of the specified or protective works such temporary lighting and such signal lights for the control of navigation as the engineer may reasonably require during the construction or failure of the specified or protective works.

Survey of waterway

30.—(1) Before the commencement of the initial construction of any part of the specified works and again following practical completion of the specified works the undertaker must bear the reasonable and proper cost of the carrying out by a qualified engineer (the "surveyor"), to be approved by the Canal & River Trust and the undertaker, of a survey to measure the navigational depth of the waterway and profile of the riverbed ("the survey") of so much of the waterway and of any land which may provide support for the waterway as will or may be affected by the specified works.

(2) The design of, and methods proposed to be used for, the survey, to be approved by the Canal & River Trust and the undertaker.

(3) For the purposes of the survey the undertaker must—

(a) on being given reasonable notice (save in case of emergency, when immediate access must be afforded) afford reasonable facilities to the surveyor for access to the site of the specified works and to any land of the undertaker which may provide support for the waterway as will or may be affected by the specified works; and

(b) supply the surveyor as soon as reasonably practicable with all such information as they may reasonably require and which the undertaker holds with regard to the specified works or the method of their construction.

(4) Copies of the survey results must be provided to both the Canal & River Trust and the undertaker at no cost to the Canal & River Trust.

Approval of plans, protective works etc.

31.—(1) The undertaker must before commencing construction of any specified work including any temporary works supply to the Canal & River Trust proper and sufficient plans of that work, on the Canal & River Trust forms, having regard to the Canal & River Trust's Code of Practice and such further particulars available to it as the Canal & River Trust may within 14 working days of the submission of the plans reasonably require for the approval of the engineer and must not commence such construction of a specified work until plans of that work have been approved in writing by the engineer or settled by arbitration.

(2) The approval of the engineer under sub-paragraph (1) must not be unreasonably withheld or delayed, and if within 25 working days after such plans (including any other particulars reasonably required under sub-paragraph (1)) have been received by the Canal & River Trust the engineer has not intimated his disapproval of those plans and the grounds of his disapproval he is deemed to have approved the plans as submitted.

(3) An approval of the engineer under this paragraph 6 is not deemed to have been unreasonably withheld if approval within the time limited by sub-paragraph (2) has not been given pending the outcome of any consultation on the approval in question that the Canal & River Trust is obliged to carry out in the proper exercise of its functions, provided prior written notice of such consultation has been provided by the Canal & River Trust to the undertaker.

(4) When signifying approval of the plans the engineer may specify on land held or controlled by the Canal & River Trust or the undertaker and subject to such works being authorised by this Order or being development permitted by an Act of Parliament or general development order made under the 1990 Act—

(a) any protective work (whether temporary or permanent) which in the reasonable opinion of the engineer should be carried out before the commencement of a specified work to prevent detriment; and

(b) such other requirements as may be reasonably necessary to prevent detriment;

and such protective works must be constructed by the undertaker or by the Canal & River Trust at the undertaker's request with all reasonable dispatch and the undertaker must not commence the construction of a specified work until the engineer has notified the undertaker that the protective works have been completed to the engineer's reasonable satisfaction such consent not to be unreasonably withheld or delayed.

(5) The withholding of an approval of the engineer under this paragraph 31 will be deemed to be unreasonable if it would prevent the undertaker from complying with any condition contained in Schedule 2 (Requirements) to this Order.

(6) The undertaker must pay to the Canal & River Trust a capitalised sum representing any reasonably increased and additional cost of maintaining and, when necessary, renewing any works, including any permanent protective works provided under sub-paragraph (4) above, and of carrying out any additional dredging of the waterway reasonably necessitated by the exercise of any of the powers under this Order but if the cost of maintaining the waterway, or of works of renewal of the waterway, is reduced in consequence of any such works, a capitalised sum representing such reasonable saving is to be set off against any sum payable by the undertaker to the Canal & River Trust under this paragraph.

(7) In the event that the undertaker fails to complete the construction of, or part of, the specified works the Canal & River Trust may, if it is reasonably required in order to avoid detriment, serve on the undertaker a notice in writing requesting that construction be completed. Any notice served under this sub-paragraph must state the works that are to be completed by the undertaker and lay out a reasonable timetable for the works' completion. If the undertaker fails to comply with this notice within 35 working days, the Canal & River Trust may construct any of the specified works, or part of such works, (together with any adjoining works) in order to complete the construction of, or part of, the specified works or make such works and the undertaker must reimburse the Canal & River Trust all costs, fees, charges and expenses it has reasonably incurred in carrying out such works.

Design of works

32.—(1) Without prejudice to its obligations under the foregoing provisions of this Part of this Schedule the undertaker must consult, collaborate and respond constructively to any reasonable approach, suggestion, proposal or initiative made by the Canal & River Trust on —

(a) the design and appearance of the specified works;

(b) the environmental effects of those works; and must have regard to such views as may be expressed by the Canal & River Trust in response to such consultation pursuant in particular to the requirements imposed on the Canal & River Trust by section 22 (general

environmental and recreational duties) of the British Waterways Act 1995 and to the interest of the Canal & River Trust in preserving and enhancing the environment of its waterways; and

(c) amendments or alterations to the construction environmental management plan, landscape and ecological management plan, operational environmental management plan, decommissioning environmental management plan (as may be approved pursuant to Schedule 2) in respect of a specified work or a protective work or otherwise in connection with the waterway.

Notice of works

33. The undertaker must give to the engineer 30 days' notice of its intention to commence the construction of any of the specified works or protective works, or, in the case of repair carried out in an emergency, such notice as may be reasonably practicable so that, in particular, the Canal & River Trust may where appropriate arrange for the publication of notices bringing those works to the attention of users of the Canal & River Trust's network.

Construction of specified works

34.—(1) Any specified works or protective works must, when commenced, be constructed—

(a) with all reasonable dispatch in accordance with the plans approved or deemed to have been approved or settled as aforesaid and with any specifications made under paragraph 31 (approval of plans etc) and paragraph 32 (design of works) of this Part;

(b) under the supervision (if given) and to the reasonable satisfaction of the engineer;

(c) in such manner as to cause as little detriment to the waterway as is reasonably practicable;

(d) in such manner as to cause as little inconvenience as is reasonably practicable to the Canal & River Trust, its officers and agents and all other persons lawfully using the waterways, except to the extent that temporary obstruction has otherwise been agreed by the Canal & River Trust;

(e) in such a manner as to ensure that no materials are discharged or deposited into the waterway otherwise than in accordance with article 17 (discharge of water); and

(f) in compliance with the Code of Practice (where appropriate and where consistent with the exercise of powers pursuant to this Order and for the timely, safe, economic and efficient delivery of the authorised works);

(2) Nothing in this Order authorises the undertaker to make or maintain any permanent works in or over the waterway so as to impede or prevent (whether by reducing the width of the waterway or otherwise) the passage of any vessel which is of a kind (as to its dimensions) for which the Canal & River Trust is required by section 105(1)(b) and (2) of the Transport Act 1968 to maintain the waterway.

(3) Following the completion of the construction of the specified works the undertaker must restore the waterway to a condition no less satisfactory than its condition immediately prior to the commencement of those works unless otherwise agreed between the undertaker and the Canal & River Trust and save to the extent that any deterioration to the condition of the waterway is not caused by the construction of the specified works.

(4) In assessing whether the condition of the waterway is no less satisfactory than immediately prior to the works pursuant to sub-paragraph (3), the Canal & River Trust and the undertaker must take account of any survey issued pursuant to paragraph (5) (survey of waterway) and any other information agreed between them pursuant to this Part.

Prevention of pollution

35. The undertaker must not in the course of constructing a specified work or a protective work or otherwise in connection therewith do or permit anything which may result in the pollution of the waterway or the deposit of materials therein (unless otherwise permitted by the Order or the

protective provisions in this Part of this Schedule) and must take such steps as the engineer may reasonably require to avoid or make good any breach of its obligations under this paragraph.

Access to work – provision of information

36.—(1) The undertaker on being given reasonable notice must—

(a) at all reasonable times allow reasonable facilities to the engineer for access to a specified work during its construction; and

(b) supply the engineer with all such information as the engineer may reasonably require with regard to a specified work or the method of constructing it.

(2) The Canal & River Trust on being given reasonable notice must—

(a) (a) at all reasonable times afford reasonable facilities to the undertaker and its agents for access to any works carried out by the Canal & River Trust under this Part during their construction; and

(b) (b) supply the undertaker with such information as it may reasonably require with regard to such works or the method of constructing them and the undertaker must reimburse the Canal & River Trust's reasonable costs in relation to the supply of such information.

Alterations to the waterway

37.—(1) If during the construction of a specified work or a protective work or during a period of twenty four (24) months after the completion of those works any alterations or additions, either permanent or temporary, to the waterway are reasonably necessary in consequence of the construction of the specified work or the protective work in order to avoid detriment, and the Canal & River Trust gives to the undertaker reasonable notice of its intention to carry out such alterations or additions (which must be specified in the notice), the undertaker must pay to the Canal & River Trust the reasonable costs of those alterations or additions including, in respect of any such alterations or additions as are to be permanent, a capitalised sum representing the increase of the costs which may be expected to be reasonably incurred by the Canal & River Trust in maintaining, working and, when necessary, renewing any such alterations or additions.

(2) If the cost of maintaining, working or renewing the waterway is reduced in consequence of any such alterations or additions a capitalised sum representing such saving is to be set off against any sum payable by the undertaker to the Canal & River Trust under this paragraph.

Maintenance of Works

38. If at any time after the completion of a specified work or a protective work, not being a work vested in the Canal & River Trust, the Canal & River Trust gives notice to the undertaker informing it that it reasonably considers that the state of maintenance of the specified work or protective work appears to be such that the work is causing or likely to cause detriment, the undertaker must, on receipt of such notice, take such steps as may be reasonably necessary to put the work in such state of maintenance as not to cause such detriment.

Repayment of the Canal & River Trust's fees, etc.

39.—(1) The undertaker must repay to the Canal & River Trust in accordance with the Code of Practice all fees, costs, charges and expenses reasonably incurred by the Canal & River Trust—

(a) in constructing any protective works under the provisions of paragraph 31(4)(a) (approval of plans etc);

(b) in respect of the approval by the engineer of plans submitted by the undertaker and the supervision by the engineer of the construction or repair of a specified work and any protective works;

(c) in respect of the employment during the construction of the specified works or any protective works of any inspectors, watchmen and other persons whom it is reasonably

necessary to appoint for inspecting, watching and lighting any waterway and for preventing, so far as may be reasonably practicable, interference, obstruction, danger or accident arising from the construction or failure of the specified works or any protective works;

(d) in bringing the specified works or any protective works to the notice of users of the Canal & River Trust's network; and

(e) in constructing and/or carrying out any measures related to any specified works or protective works which are reasonably required by the Canal & River Trust to ensure the safe navigation of the waterway save that nothing is to require the Canal & River Trust to construct and/or carry out any measures.

(2) If the Canal and River Trust considers that a fee, charge, cost or expense will be payable by the undertaker pursuant to sub-paragraph (1), the Canal and River Trust will first provide an estimate of that fee, charge, cost or expense and supporting information in relation to the estimate to the undertaker along with a proposed timescale for payment for consideration and the undertaker may, within a period of 14 working days—

(a) provide confirmation to the Canal and River Trust that the estimate is agreed and pay to the Canal and River Trust, by the date stipulated, that fee, charge, cost or expense; or

(b) provide confirmation to the Canal and River Trust that the estimate is not accepted along with a revised estimate and a proposal as to how or why the undertaker considers that the estimate can be reduced and or paid at a later date.

(3) The Canal and River Trust must take in to account any representations made by the undertaker in accordance with this paragraph 39 and must, within 15 working days of receipt of the information pursuant to sub-paragraph (1), confirm the amount of the fee, charge, cost or expense to be paid by the undertaker (if any) and the date by which this is to be paid.

(4) The Canal and River Trust must, when estimating and incurring any charge, cost or expense pursuant this paragraph 39, do so with a view to being reasonably economic and acting as if the Canal and River Trust were itself to fund the relevant fee, charge, cost or expense.

Making good of detriment; compensation and indemnity, etc.

40.—(1) If any detriment is caused by the construction or failure of the specified works or the protective works if carried out by the undertaker, the undertaker (if so required by the Canal & River Trust) must make good such detriment and must pay to the Canal & River Trust all reasonable expenses incurred by the Canal & River Trust, and compensation for any loss sustained by the Canal & River Trust in making good or otherwise by reason of the detriment.

(2) The undertaker must be responsible for and make good to the Canal & River Trust all costs, charges, damages, expenses and losses not otherwise provided for in this Part which may be occasioned to and reasonably incurred by the Canal & River Trust —

(a) by reason of the construction of a specified work or a protective work or the failure of such a work; or

(b) by reason of any act or omission of the undertaker or of any person in its employ or of its contractors or others whilst engaged upon the construction of a specified work or protective work, and subject to sub-paragraph (4), the undertaker must effectively indemnify and hold harmless the Canal & River Trust from and against all claims and demands arising out of or in connection with any of the matters referred to in sub-paragraphs (a) and (b) (provided that the Canal & River Trust is not entitled to recover from the undertaker any consequential losses which are not reasonably foreseeable).

(3) The fact that any act or thing may have been done by the Canal & River Trust on behalf of the undertaker or in accordance with plans approved by the engineer or in accordance with any requirement of the engineer or under the engineer's supervision or in accordance with any directions or awards of an arbitrator is not to (if it was done without negligence on the part of the Canal & River Trust or of any person in its employ or of its contractors or agents) excuse the undertaker from any liability under the provisions of this paragraph.

(4) Nothing in sub-paragraph (2) imposes any liability on the undertaker with respect to any detriment, loss or interruption to the extent that it is attributable to the act, neglect or default of the Canal & River Trust, its officers, servants, contractors or agents.

(5) The Canal & River Trust must give the undertaker reasonable notice of any such claim or demand as aforesaid and no settlement or compromise of such a claim or demand is to be made without the prior consent of the undertaker.

(6) The Canal & River Trust must use its reasonable endeavours to mitigate in whole or in part and to minimise any costs, expenses, loss, demands, and penalties to which the indemnity under this paragraph 40 applies. If requested to do so by the undertaker, the Canal & River Trust must provide an explanation of how the claim has been minimised.

Arbitration

41. Any difference arising between the undertaker and the Canal & River Trust under this Part (other than a difference as to the meaning or construction of this Part) must be referred to and settled by arbitration in accordance with article 42 (arbitration) of this Order.

Capitalised sums

42.—(1) Any capitalised sum which is required to be paid under this Part must be calculated by multiplying the cost of the maintenance or renewal works to the waterway necessitated as a result of the operation of the authorised development by the number of times that the maintenance or renewal works will be required during the operation of the authorised development.

(2) The aggregate cap of the undertaker's gross liability to pay capitalised sums and any other payments or liabilities under the terms of this Part of this Schedule shall be limited to £5,000,000 (five million pounds) for any one occurrence or all occurrences of a series arising out of the one original cause.

As built drawings

43. As soon as reasonably practicable following the completion of the construction of the authorised development, the undertaker must provide to the Canal & River Trust as built drawings of any specified works in a form and scale to be agreed between the undertaker and the Canal & River Trust to show the position of those works in relation to the waterway.

Decommissioning

44. Where the decommissioning environmental management plan identifies activities which may impact the waterway, the protective provisions in this Part 4 of Schedule 14 will, so far as appropriate, apply to those activities as if they were a specified work.

PART 5

FOR THE PROTECTION OF THE ENVIRONMENT AGENCY

Interpretation

45.—(1) The following provisions apply for the protection of the Agency unless otherwise agreed in writing between the undertaker and the Agency.

(2) In this part of this Schedule—

"Agency" means the Environment Agency;

"construction" includes execution, placing, altering, replacing, relaying and removal and excavation and "construct" and "constructed" is construed accordingly;

"drainage work" means any main river and includes any land which provides flood storage capacity for any main river or any other land which is expected to provide flood storage capacity as a result of the authorised development and any bank, wall, embankment or other structure, or any appliance, constructed or used for land drainage, flood defence or tidal monitoring;

"emergency" means an occurrence which presents a risk of—

(a) serious flooding

(b) serious detrimental impact on drainage

(c) serious harm to the environment

"fishery" means any waters containing fish and fish in, or migrating to or from, such waters and the spawn, spawning ground, habitat or food of such fish;

"main river" has the same meaning given in section 113 of the Water Resources Act 1991;

"non-tidal main river" has the meaning given in paragraph 2(1) of Part 1 of Schedule 25 to the Environmental Permitting (England and Wales) Regulations 2016;

"plans" includes plans, sections, elevations, drawings, specifications, programmes, proposals, calculations, method statements and descriptions;

"remote defence" means any berm, wall or embankment that is constructed for the purposes of preventing or alleviating flooding from, or in connection with, any main river;

"specified work" means so much of any work or operation authorised by this Order as is in, on, under, over or within—

(a) 8 metres of the base of a remote defence which is likely to—

(i) endanger the stability of, cause damage or reduce the effectiveness of that remote defence, or

(ii) interfere with the Agency's access to or along that remote defence;

(b) 16 metres of a drainage work involving a tidal main river;

(c) 8 metres of a drainage work involving a non-tidal main river;

(d) any distance of a drainage work and is otherwise likely to—

(i) affect any drainage work or the volumetric rate of flow of water in or flowing to or from any drainage work;

(ii) affect the flow, purity or quality of water in any main river or other surface waters

(iii) cause obstruction to the free passage of fish or damage to any fishery;

(iv) affect the conservation, distribution or use of water resources; or

(v) affect the conservation value of the main river and habitats in its immediate vicinity;

or which involves—

(aa) an activity that includes dredging, raising or taking of any sand, silt, ballast, clay, gravel or other materials from or off the bed or banks of a drainage work (or causing such materials to be dredged, raised or taken), including hydrodynamic dredging or desilting; and

(bb) any quarrying or excavation within 16 metres of a drainage work which is likely to cause damage to or endanger the stability of the banks or structure of that drainage work;

"tidal main river" has the meaning given in paragraph 2(1) of Part 1 of Schedule 25 to the Environmental Permitting (England and Wales) Regulations 2016.

Submission and approval of plans

46.—(1) Before beginning to construct any specified work, the undertaker must submit to the Agency plans of the specified work and such further particulars available to it as the Agency may within 28 days of the receipt of the plans reasonably request.

(2) Any such specified work must not be constructed except in accordance with such plans as may be approved in writing by the Agency, or determined under paragraph 56.

(3) Any approval of the Agency required under this paragraph—

(a) must not be unreasonably withheld or delayed;

(b) subject to sub-paragraph (5), is deemed to have been refused if it is neither given nor refused within 2 months of the submission of the plans or such later date as is agreed between the Agency and the undertaker and if further particulars have been requested pursuant to sub paragraph (1) the period between the making of this request and the provision of further particulars in response to it shall not be taken into account in the calculation of the 2 months for the purposes of this sub-paragraph; and

(c) may be given subject to such reasonable requirements as the Agency may have for the protection of any drainage work or the fishery or for the protection of water resources, or for the prevention of flooding or pollution or for nature conservation or the prevention of environmental harm in the discharge of its environmental duties.

(4) The Agency must use its reasonable endeavours to respond to the submission of any plans before the expiration of the period mentioned in sub-paragraph (3)(b).

(5) In the case of a refusal, the Agency must provide reasons for the grounds of that refusal.

Construction of protective works

47. Without limiting paragraph 46 the requirements which the Agency may have under that paragraph include conditions requiring the undertaker, at its own expense, to construct such protective works, whether temporary or permanent, before or during the construction of the specified works (including the provision of flood banks, walls or embankments or other new works and the strengthening, repair or renewal of existing banks, walls or embankments) as are reasonably necessary—

(a) to safeguard any drainage work against damage; or

(b) to secure that its efficiency for flood defence purposes is not impaired and that the risk of flooding is not otherwise increased,

by reason of any specified work.

Timing of works and service of notices

48.—(1) Subject to sub-paragraph (2), any specified work, and all protective works required by the Agency under paragraph 47, must be constructed—

(a) without unreasonable delay in accordance with the plans approved under this Part of this Schedule; and

(b) to the reasonable satisfaction of the Agency,

and the Agency is entitled by its officer to watch and inspect the construction of such works.

(2) The undertaker must give to the Agency not less than 14 days' notice in writing of its intention to commence construction of any specified work and notice in writing of its completion not later than 7 days after the date on which it is completed.

(3) If the Agency reasonably requires, the undertaker must construct all or part of the protective works so that they are in place prior to the construction of any specified work to which the protective works relate.

Works not in accordance with this Schedule

49.—(1) If there is any failure by the undertaker to obtain consent or comply with conditions imposed by the Agency in accordance with these protective provisions and where the Agency acting reasonably considers it necessary to avoid any of the risks specified in sub-paragraph (2), the Agency may serve written notice requiring the undertaker to cease all or part of the specified works as may be specified within the notice within the period specified in the notice, and the

undertaker must cease constructing the specified works or part thereof until such time as it has obtained the consent or complied with the condition specified within the notice served.

(2) The risks specified in sub-paragraph (1) are—

(a) risk of flooding;

(b) risk of harm to the environment;

(c) risk of detrimental impact on drainage

(d) damage to the fishery.

(3) If any part of a specified work or any protective work required by the Agency is constructed otherwise than in accordance with the requirements of this Part of this Schedule, the Agency may by notice in writing require the undertaker at the undertaker's own expense to comply with the requirements of this Part of this Schedule or (if the undertaker so elects and the Agency in writing consents, such consent not to be unreasonably withheld or delayed) to remove, alter or pull down the work and, where removal is required, to restore the site to its former condition to such extent and within such limits as the Agency reasonably requires.

(4) Subject to sub-paragraph (4) if, within a reasonable period, being not less than 28 days beginning with the date when a notice under sub-paragraph (2) is served upon the undertaker, the undertaker has failed to begin taking steps to comply with the requirements of the notice and has not subsequently made reasonably expeditious progress towards their implementation, the Agency may execute the works specified in the notice and any reasonable expenditure incurred by the Agency in so doing is recoverable from the undertaker.

(5) In the event of any dispute as to whether sub-paragraph (2) is properly applicable to any work in respect of which notice has been served under that sub-paragraph, or as to the reasonableness of any requirement of such a notice, the Agency must not, except in the case of an emergency, exercise the powers conferred by sub-paragraph (3) until the dispute has been finally determined in accordance with paragraph 56.

Maintenance of works

50.—(1) Subject to sub-paragraph (5) the undertaker must from the commencement of the construction of the specified works maintain in good repair and condition and free from obstruction any drainage work which is situated within the Order limits and on land held by the undertaker for the purposes of or in connection with the specified works, whether or not the drainage work is constructed under the powers conferred by this Order or is already in existence.

(2) If any such drainage work which the undertaker is liable to maintain is not maintained to the reasonable satisfaction of the Agency, the Agency may by notice in writing require the undertaker to repair and restore the work, or any part of such work, or (if the undertaker so elects and the Agency in writing consents, such consent not to be unreasonably withheld or delayed), to remove the work and restore the site to its former condition, to such extent and within such limits as the Agency reasonably requires.

(3) Subject to sub-paragraph (4) if, within a reasonable period, being not less than 28 days beginning with the date on which a notice in respect of any drainage work is served under sub-paragraph (2) on the undertaker, the undertaker has failed to begin taking steps to comply with the requirements of the notice and has not subsequently made reasonably expeditious progress towards their implementation, the Agency may do what is necessary for such compliance and any reasonable expenditure incurred by the Agency in so doing is recoverable from the undertaker.

(4) In the event of any dispute as to the reasonableness of any requirement of a notice served under sub-paragraph (2), the Agency must not, except in the case of an emergency, exercise the powers conferred by sub-paragraph (3) until the dispute has been finally determined in accordance with paragraph 56.

(5) This paragraph does not apply to—

(a) drainage works which are vested in the Agency, or which the Agency or another person is liable to maintain and is not proscribed by the powers of the Order from doing so; and

(b) any obstruction of a drainage work expressly authorised in the approval of specified works plans and carried out in accordance with the provisions of this Part of this Schedule provided that any obstruction is removed as soon as reasonably practicable.

Remediating impaired drainage work

51. If by reason of the construction of any specified work or of the failure of any such work, the efficiency of any drainage work for flood defence purposes is impaired, or that drainage work is otherwise damaged, such impairment or damage must be made good by the undertaker to the reasonable satisfaction of the Agency and if the undertaker fails to do so, the Agency may make good the impairment or damage and recover any expenditure incurred by the Agency in so doing from the undertaker.

Agency access

52. If by reason of the construction of any specified work or the failure of any such work, the Agency's access to flood defences or equipment maintained for flood defence purposes is materially obstructed, the undertaker must notify the Agency immediately and provide suitable alternative means of access that will allow the Agency to maintain the flood defence or use the equipment no less effectively than was possible before the obstruction occurred and such alternative access must be made available as soon as reasonably practicable after the undertaker becomes aware of such obstruction, except in the case of an emergency in which case the undertaker must provide such alternative means of access on demand.

Free passage of fish

53.—(1) The undertaker must take all such measures as may be reasonably practicable to prevent any interruption of the free passage of fish in the fishery during the construction of any specified work.

(2) If by reason of—

(a) the construction of any specified work; or

(b) the failure of any such work,

damage to the fishery is caused, or the Agency has reason to expect that such damage may be caused, the Agency may serve notice on the undertaker requiring it to take such steps as may be reasonably practicable to make good the damage, or, as the case may be, to protect the fishery against such damage within the period specified in the notice.

(3) If, the undertaker fails to take such steps as are described in the notice served under sub-paragraph (2), the Agency may take those steps and any expenditure incurred by the Agency in so doing is recoverable from the undertaker.

(4) In any case where immediate action by the Agency is reasonably required in order to secure that the risk of damage to the fishery is avoided or reduced, the Agency may take such steps as are reasonable for the purpose, and may recover from the undertaker any expenditure incurred in so doing provided that notice specifying those steps is served on the undertaker as soon as reasonably practicable after the Agency has taken, or commenced to take, the steps specified in the notice.

Indemnity

54.—(1) The undertaker indemnifies the Agency in respect of all costs, charges and expenses which the Agency may reasonably incur—

(a) in the examination or approval of plans under this Part of this Schedule;

(b) in the inspection of the construction of the specified works or any protective works required by the Agency under this Part of this Schedule; and

(c) in the carrying out of any surveys or tests by the Agency which are reasonably required in connection with the construction of the specified works.

55. Subject to sub-paragraph (6), the undertaker is responsible for and indemnifies the Agency against all reasonably incurred and evidenced costs and losses, liabilities, claims and demands not otherwise provided for in this Schedule which may be reasonably incurred or suffered by the Agency by reason of, or arising out of—

(a) the construction, operation or maintenance of any specified works comprised within the authorised development or the failure of any such works comprised within them; or

(b) any act or omission of the undertaker, its employees, contractors or agents or others whilst engaged upon the construction, operation or maintenance of the authorised development or dealing with any failure of the authorised development.

(2) For the avoidance of doubt, in sub-paragraph (2)—

(a) "costs" includes—

(i) expenses and charges;

(ii) staff costs and overheads;

(iii) legal costs;

(b) "losses" includes physical damage.

(c) "claims" and "demands" include as applicable—

(i) costs (within the meaning of sub-paragraph (2(i)) incurred in connection with any claim or demand;

(ii) any interest element of sums claimed or demanded;

(d) "liabilities" includes—

(i) contractual liabilities;

(ii) tortious liabilities (including liabilities for negligence or nuisance);

(iii) liabilities to pay statutory compensation or for breach of statutory duty;

(iv) liabilities to pay statutory penalties imposed on the basis of strict liability (but does not include liabilities to pay other statutory penalties).

(3) The Agency must give to the undertaker reasonable notice of any such claim or demand and must not settle or compromise a claim without the agreement of the undertaker and that agreement must not be unreasonably withheld or delayed.

(4) The Agency must, at all times take reasonable steps to prevent and mitigate any such claims, demands, proceedings, costs, damages, expenses or loss. The Agency must act in the same manner as it would if settling third party claims on its own behalf from its own funds.

(5) The fact that any work or thing has been executed or done by the undertaker in accordance with a plan approved by the Agency, or to its satisfaction, or in accordance with any directions or award of an arbitrator, must not relieve the undertaker from any liability under the provisions of this Part of this Schedule.

(6) Nothing in this paragraph imposes any liability on the undertaker with respect to any costs, charges, expenses, damages, claims, demands or losses to the extent that they are attributable to the act, neglect or default of the Agency, its officers, servants, contractors or agents.

Disputes

56. Any dispute arising between the undertaker and the Agency under this Part of this Schedule must, if the parties agree, be determined by arbitration under article 42 (arbitration), but failing agreement be determined by the Secretary of State for Environment, Food and Rural Affairs or its successor and the Secretary of State for the department of Energy Security and Net Zero or its successor acting jointly on a reference to them by the undertaker or the Agency, after notice in writing by one to the other.

PART 6

FOR THE PROTECTION OF TRENT VALLEY INTERNAL DRAINAGE BOARD AS DRAINAGE AUTHORITY

57.—(1) The provisions of this Part have effect for the protection of the drainage authority unless otherwise agreed in writing between the undertaker and the drainage authority.

(2) In this Part—

"authorised development" has the same meaning as in article 2(1) (interpretation) of this Order and (unless otherwise specified) for the purposes of this Part of this Schedule includes the operation and maintenance of the authorised development and the construction of any works authorised by this Part of this Schedule

"construction" includes execution, placing, altering, replacing, relaying and removal; and

"construct" must be construed accordingly;

"drainage authority" means Trent Valley Internal Drainage Board, to the extent that in relation to an ordinary watercourse, Trent Valley Internal Drainage Board is the drainage board concerned within the meaning of section 23 (prohibition on obstructions etc. in watercourses) of the Land Drainage Act 1991; and

"drainage work" means any watercourse and includes any bank, wall, embankment or other structure, or any appliance, constructed or used for land drainage, flood defence, sea defence or tidal monitoring which is the responsibility of the drainage authority as identified in the crossings schedule subject to such changes as notified to the undertaker;

"ordinary watercourse" has the meaning given by section 72 of the Land Drainage Act 1991;

"plans" includes any information reasonably required by the drainage authority including location details, grid references, sections, drawings, specifications, assessments and method statements;

"specified work" means so much of the authorised development as is in, on, under, over or within 9 metres of a drainage work or is otherwise likely to—

a) affect any drainage work or the volumetric rate of flow of water in or flowing to or from any drainage work;

b) affect the flow, purity or quality of water in any watercourse; or

c) affect the conservation, distribution or use of water resources.

58.—(1) Before commencing construction of a specified work, the undertaker must submit to the drainage authority plans of the specified work and such further particulars available to it as the drainage authority may within 28 days of the submission of the plans reasonably require.

(2) The undertaker must not commence construction of the specified work until approval, unconditionally or conditionally, has been given as provided in this paragraph or approval has deemed to have been given or has otherwise been determined in accordance with this Part of this Schedule.

(3) A specified work must not be constructed except in accordance with such plans as may be approved in writing by the drainage authority or determined under paragraph 63.

(4) 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 28 days of the submission of the plans for approval, or submission of further particulars (where required by the drainage authority under sub-paragraph (1)) whichever is the later; and

(c) may be given subject to such reasonable requirements as the drainage authority may make for the protection of any drainage work,

(5) Any refusal under this paragraph must be accompanied by a statement of the reasons for refusal.

59.—(1) Without limiting paragraph 58, the requirements which the drainage authority may make under that paragraph include conditions requiring the undertaker at its own expense to construct such protective works, whether temporary or permanent, during the construction of the specified work (including the provision of flood banks, walls or embankments or other new works and the strengthening, repair or renewal of existing banks, walls or embankments) as are reasonably necessary taking account of the terms of this Order —

(a) to safeguard any drainage work against damage by reason of any specified work; or

(b) to secure that the efficiency of any drainage work for flood defence and land drainage purposes is not impaired, and that the risk of flooding is not otherwise increased, by reason of any specified work.

60.—(1) Subject to sub-paragraph (2), any specified work, and all protective works required by the drainage authority under paragraph 59, must be constructed—

(a) without unreasonable delay in accordance with the plans approved or deemed to have been approved or settled under this Part of this Schedule; and

(b) to the reasonable satisfaction of the drainage authority, and an officer of the drainage authority is entitled to watch and inspect the construction of such works.

(2) The undertaker must give to the drainage authority—

(a) not less than 14 days' notice in writing of its intention to commence construction of any specified work; and

(b) notice in writing of its completion not later than 7 days after the date of completion.

(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.

61. If by reason of the construction of a specified work or of the failure of any such work the efficiency of any drainage work for flood defence purposes or land drainage is impaired, or that drainage work is otherwise damaged, the impairment or damage must be made good by the undertaker as soon as reasonably practicable to the reasonable satisfaction of the drainage authority and, if the undertaker fails to do so, the drainage authority may make good the impairment or damage and recover from the undertaker the expense reasonably incurred by it in doing so.

62.—(1) The undertaker must indemnify the drainage authority in respect of all costs, charges and expenses which the drainage authority may reasonably incur, have to pay or sustain—

(a) in the examination or approval of plans under this Part of this Schedule; and

(b) in inspecting the construction of the specified work or any protective works required by the drainage authority under this Part of this Schedule; and

(c) in carrying out any surveys or tests by the drainage authority which are reasonably required in connection with the construction of the specified work.

63.—(1) Without limiting the other provisions of this Part of this Schedule, the undertaker must indemnify the drainage authority from all claims, demands, proceedings, costs, damages, expenses or loss, which may be made or taken against, recovered from, or incurred by, the drainage authority if by reason or in consequence of the construction of any specified works any of the following are caused—

(a) any damage to any drainage work;

(b) any interruption caused by the raising or lowering of the water table in land adjoining the authorised development or any sewers, drains and watercourses; or

(c) any flooding or increased flooding of any such lands.

(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 which agreement must not be unreasonably withheld or delayed.

(3) Nothing in subparagraph (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. 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.

64. Any dispute arising between the undertaker and the drainage authority under this Part of this Schedule is to be determined by arbitration under article 42 (arbitration)

PART 7

FOR THE PROTECTION OF ANGLIAN WATER SERVICES LIMITED

Application

65. For the protection of Anglian Water the following provisions have effect, unless otherwise agreed in writing between the undertaker and Anglian Water.

Interpretation

66. In this Part of this Schedule—

"1991 Act" means the New Roads and Street Works Act 1991;

"alternative apparatus" means alternative apparatus adequate to enable Anglian Water to fulfil its statutory functions in a manner no less efficient than previously;

"Anglian Water" means Anglian Water Services Limited;

"apparatus" means:

(a) works, mains, pipes or other apparatus belonging to or maintained by Anglian Water for the purposes of water supply and sewerage;

(b) any drain or works vested in Anglian Water under the Water Industry Act 1991;

(c) any sewer which is so vested or is the subject of a notice of intention to adopt given under section 102(4) of that Act or an agreement to adopt made under section 104 of that Act;

(d) any drainage system constructed for the purpose of reducing the volume of surface water entering any public sewer belonging to Anglian Water;and

(e) includes a sludge main, disposal main or sewer outfall and any manholes, ventilating shafts, pumps or other accessories forming part of any such sewer, drain or works, and includes any structure in which apparatus is or is to be lodged or which gives or will give access to apparatus;

and for the purpose of this definition, where words are defined by section 219 of that Act, they are taken to have the same meaning

"functions" includes powers and duties;

"in", in a context referring to apparatus or alternative apparatus in land, includes a reference to apparatus or alternative apparatus under, over or upon land;

"plan" includes all designs, drawings, specifications, method statements, soil reports, programmes, calculations, risk assessments and other documents that are reasonably necessary properly and sufficiently to describe the works to be executed;

On street apparatus

67. This Part of this Schedule does not apply to apparatus in respect of which the relations between the undertaker and Anglian Water are regulated by the provisions of Part 3 of the 1991 Act.

Apparatus in stopped up streets

68. Regardless of the temporary stopping up or diversion of any highway under the powers conferred by article 12 (temporary stopping up of public rights of way), Anglian Water is at liberty at all times to take all necessary access across any such stopped up highway and to execute and do all such works and things in, upon or under any such highway as may be reasonably necessary to enable it to maintain any apparatus which at the time of the stopping up or diversion was in that highway.

Protective works to buildings

69. The undertaker, in the case of the powers conferred by article 18 (protective work to buildings), may not exercise those powers so as to obstruct or render less convenient the access to any apparatus without written consent of Anglian Water (such consent not to be unreasonably withheld or delayed).

Acquisition of apparatus

70. Regardless of any provision in this Order or anything shown on the land plans, the undertaker must not acquire any apparatus otherwise than by agreement.

Removal of apparatus

71.—(1) If, in the exercise of the powers conferred by this Order, the undertaker acquires any interest in any land in which any apparatus is placed or requires that Anglian Water's apparatus is relocated or diverted, that apparatus must not be removed under this Part of this Schedule, and any right of Anglian Water to maintain that apparatus in that land must not be extinguished, until:

(a) alternative apparatus has been constructed and is in operation to the reasonable satisfaction of Anglian Water in accordance with sub-paragraphs (2) to (8); and

(b) facilities and rights have been secured for that alternative apparatus in accordance with paragraph 72.

(2) If, for the purpose of executing any works in, on or under any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, the undertaker must give to Anglian Water 28 days' written notice of that requirement, together with a plan of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order an undertaker reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph (3), afford to Anglian Water the necessary facilities and rights for the construction of alternative apparatus in other land of the undertaker and subsequently for the maintenance of that apparatus.

(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of the undertaker, or the undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraph (2) in the land in which the alternative apparatus or part of such apparatus is to be constructed Anglian Water must, on receipt of a written notice to that effect from the undertaker, as soon as reasonably possible use its best endeavours to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed.

(4) Any alternative apparatus to be constructed in land of the undertaker under this Part of this Schedule must be constructed in such manner and in such line or situation as may be agreed between Anglian Water and the undertaker or in default of agreement settled by arbitration in accordance with article 42 (arbitration).

(5) Anglian Water must, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with article 42, and after the grant to Anglian Water of any such facilities and rights as are referred to in sub-paragraphs (2) or (3), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by the undertaker to be removed under the provisions of this Part of this Schedule.

(6) Regardless of anything in sub-paragraph (5), if Anglian Water gives notice in writing to the undertaker that it desires the undertaker to execute any work, or part of any work in connection with the construction or removal of apparatus in any land of the undertaker or to the extent that Anglian Water fails to proceed with that work in accordance with sub-paragraph (5) or the undertaker and Anglian Water otherwise agree, that work, instead of being executed by Anglian Water, must be executed by the undertaker without unnecessary delay under the superintendence, if given, and to the reasonable satisfaction of Anglian Water.

(7) If Anglian Water fails either reasonably to approve, or to provide reasons for its failure to approve along with an indication of what would be required to make acceptable, any proposed details relating to required removal works under sub-paragraph (2) within 28 days of receiving a notice of the required works from the undertaker, then such details are deemed to have been approved. For the avoidance of doubt, any such "deemed consent" does not extend to the actual undertaking of the removal works, which must remain the sole responsibility of Anglian Water or its contractors unless these works are to be carried out by the undertaker in accordance with sub-paragraph (6).

(8) Whenever alternative apparatus is to be or is being substituted for existing apparatus, the undertaker must, before taking or requiring any further step in such substitution works, use reasonable endeavours to comply with Anglian Water's reasonable requests for a reasonable period of time to enable Anglian Water to:

(a) make network contingency arrangements; or

(b) bring such matters as it may consider reasonably necessary to the attention of end users of the utility in question.

Facilities and rights for alternative apparatus

72.—(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to Anglian Water facilities and rights for the construction and maintenance in land of the undertaker of alternative apparatus in substitution for apparatus to be removed, those facilities and rights are to be granted upon such terms and conditions as may be agreed between the undertaker and Anglian Water or in default of agreement settled by arbitration in accordance with article [54] (arbitration).

(2) If the facilities and rights to be afforded by the undertaker in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are in the opinion of the arbitrator less favourable on the whole to Anglian Water than the facilities and rights enjoyed by it in respect of the apparatus to be removed and the terms and conditions to which those facilities and rights are subject, the arbitrator must make such provision for the payment of compensation by the undertaker to Anglian Water as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

(3) Such facilities and rights as are set out in this paragraph are deemed to include any statutory permits granted to the undertaker in respect of the apparatus in question, whether under the Environmental Permitting (England and Wales) Regulations 2016 or other legislation.

Retained apparatus

73.—(1) Not less than 28 days before starting the execution of any works in, on or under any land purchased, held, appropriated or used under this Order that are near to, or will or may affect, any apparatus (or any means of access to it) the removal of which has not been required by the undertaker under paragraph 71(2), the undertaker must submit to Anglian Water a plan of the works to be executed.

(2) Those works must be executed only in accordance with the plan submitted under sub-paragraph (1) and in accordance with such reasonable requirements as may be made in accordance with sub-paragraph (3) by Anglian Water for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and Anglian Water is entitled to watch and inspect the execution of those works.

(3) Any requirements made by Anglian Water under sub-paragraph (2) must be made within a period of 21 days beginning with the date on which a plan under sub-paragraph (1) is submitted to it.

(4) If Anglian Water in accordance with sub-paragraph (3) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, sub-paragraphs 65 to 67 and 70 to 72 apply as if the removal of the apparatus had been required by the undertaker under paragraph 71(2).

(5) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 28 days before commencing the execution of any works, a new plan instead of the plan previously submitted, and having done so the provisions of this paragraph apply to and in respect of the new plan.

(6) The undertaker is not required to comply with sub-paragraph (1) in a case of emergency but in that case must give to Anglian Water notice and a plan of those works as soon as is reasonably practicable subsequently and must comply with sub-paragraph (3) in so far as is reasonably practicable in the circumstances, using its best endeavours to keep the impact of those emergency works on Anglian Water's apparatus, on the operation of its water and sewerage network and on end-users of the services Anglian Water provides to a minimum.

(7) For the purposes of sub-paragraph (1) and without prejudice to the generality of the principles set out in that sub-paragraph, works are deemed to be in land near Anglian Water's apparatus (where it is a pipe) if those works fall within the following distances measured from the medial line of such apparatus:

(a) 4 metres where the diameter of the pipe is less than 250 millimetres;

(b) 5 metres where the diameter of the pipe is between 250 and 400 millimetres, and

(c) a distance to be agreed on a case by case basis and before the submission of the Plan under sub-paragraph (1) is submitted where the diameter of the pipe exceeds 400 millimetres.

(8) For the purposes of sub-paragraph (7) where works are separated from Anglian Water's apparatus (where it is a pipe) by way of a road, fence, hedgerow or other such landmark the distance by which the works are deemed to be near Anglian Water's apparatus is to be agreed between the parties on a case by case basis.

Expenses and costs

74.—(1) Subject to the following provisions of this paragraph, the undertaker must repay to Anglian Water all expenses reasonably incurred by Anglian Water in, or in connection with, the inspection, removal, alteration or protection of any apparatus or the construction of any new apparatus which may be required in consequence of the execution of any such works as are referred to in this Part of this Schedule.

(2) There must be deducted from any sum payable under 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 42 (arbitration) to be necessary, then, if such placing involves cost in the construction of works under this Part of this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to Anglian Water by virtue of subparagraph (1) must be reduced by the amount of that excess.

(4) For the purposes of sub-paragraph (3)—

(a) an extension of apparatus to a length greater than the length of existing apparatus is not to be treated as a placing of apparatus of greater dimensions than those of the existing apparatus; and

(b) where the provision of a joint in a pipe or cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole is to be treated as if it also had been agreed or had been so determined.

75.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any such works referred to in paragraphs 69 or 71(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 Anglian Water, or there is any interruption in any service provided, or in the supply of any goods, by Anglian Water, the undertaker must—

(a) bear and pay the cost reasonably incurred by Anglian Water, accompanied by an invoice from Anglian Water that identifies how the cost has been calculated, in making good such damage or restoring the supply; and

(b) make reasonable compensation to Anglian Water for any other expenses, loss, damages, penalty or costs incurred by the undertaker,

by reason or in consequence of any such damage or interruption.

(2) The fact that any act or thing may have been done by Anglian Water on behalf of the undertaker or in accordance with a plan approved by Anglian Water or in accordance with any requirement of Anglian Water or under its supervision does not, subject to sub-paragraph (3), excuse the undertaker from liability under the provisions of sub-paragraph (1) unless Anglian Water fails to carry out and execute the works properly with due care and attention and in a skilful and professional like manner or in a manner that does not accord with the approved plan.

(3) Nothing in sub-paragraph (1) imposes any liability on the undertaker with respect to any damage or interruption to the extent that it is attributable to the unlawful or unreasonable act, neglect or default of Anglian Water, its officers, servants, contractors or agents.

(4) Anglian Water must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise is to be made, without the consent of the undertaker (such consent not to be unreasonably withheld or delayed) who, if withholding such consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

(5) Anglian Water must use reasonable endeavours to mitigate in whole or in part and to minimise any costs, expenses, loss, demands and penalties to which the undertaker must bear and pay the costs for.

Cooperation

76. Where in consequence of the proposed construction of any of the authorised development, the undertaker or Anglian Water requires the removal of apparatus under paragraph 71(2) or Anglian Water makes requirements for the protection or alteration of apparatus under paragraph 73(2), the undertaker must use all reasonable endeavours to co-ordinate the execution of the works in the interests of safety and the efficient and economic execution of the authorised development

and taking into account the need to ensure the safe and efficient operation of Anglian Water's undertaking, using existing processes where requested by Anglian Water, provided it is appropriate to do so, and Anglian Water must use all reasonable endeavours to co-operate with the undertaker for that purpose.

77. Where the undertaker identifies any apparatus which they have reason to believe may belong to or be maintainable by Anglian Water but which does not appear on any statutory map kept for the purpose by Anglian Water, it must inform Anglian Water of the existence and location of the apparatus as soon as reasonably practicable.

78. Nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and Anglian Water in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

79. The undertaker and Anglian Water may by written agreement substitute any period of time for those periods set out in this Part of this Schedule.

PART 8

FOR THE PROTECTION OF EXOLUM PIPELINE SYSTEM LTD

Application

80. For the protection of Exolum the following provisions, unless otherwise agreed in writing at any time between the undertaker and Exolum, have effect.

Interpretation

81. In this Part of this Schedule, the following terms have the following meanings—

"Additional Rights" means rights for the construction and for access to and for the use, protection, inspection, maintenance, repair and renewal of retained Apparatus including any restrictions on the landowner and occupiers for the protection of the retained Apparatus and to allow Exolum to perform its functions.

"Alternative Apparatus" means alternative apparatus adequate to enable Exolum to fulfil its functions as a pipeline operator in a manner no less efficient than previously.

"Alternative Rights" means rights for the construction and for access to and for the use, protection, inspection, maintenance, repair and renewal of Alternative Apparatus including any restrictions on the landowner and occupiers for the protection of the Alternative Apparatus and to allow Exolum to perform its functions.

"Apparatus" means the pipeline and storage system and any ancillary apparatus owned and/or operated by Exolum and includes:

(a) any structure in which apparatus is or is to be lodged or which gives or will give access to apparatus;

(b) any ancillary works, all protective wrappings, valves, sleeves and slabs, cathodic protection units, together with ancillary cables and markers;

(c) such legal interest, and benefit of property rights and covenants as are vested in in respect of these items;

and, where the context requires, includes Alternative Apparatus.

"Exolum" means Exolum Pipeline System Ltd (company number 09497223) whose registered office is 1st Floor 55 King William Street, London, England EC4R 9AD and for the purpose of enforcing the benefit of any provisions in this Schedule, any group company of Exolum Pipeline System Ltd and in all cases any successor in title.

"functions": includes powers, duties and commercial undertakings.

"in": in a context referring to Apparatus in land includes a reference to Apparatus under, over or upon land.

"parties": means the undertaker and Exolum and "party" shall be construed accordingly.

"Plan": includes all designs, drawings, sections, specifications, method statements, soil reports, programmes, calculations, risk assessments and other documents that are reasonably necessary to allow Exolum to assess the relevant works to be executed and in particular must describe:

(a) the exact position of the works as proposed to be constructed or renewed;

(b) the level at which the works are proposed to be constructed or renewed;

(c) the manner of the works' construction or renewal including details of excavation, positioning of plant etc.;

(d) the position of the affected Apparatus and any other apparatus belonging to another undertaker that may also be affected by the Restricted Works;

(e) by way of detailed drawings, every alteration proposed to be made to or close to any such Apparatus;

(f) any intended maintenance regime;

(g) details of the proposed method of working and timing of execution of works; and

(h) details of vehicle access routes for construction and operational traffic.

"Premises" means land that Exolum owns, occupies or otherwise has rights to use including but not limited to storage facilities, administrative buildings and jetties.

"Protective Works" means works for the inspection and protection of Apparatus.

"Restricted Works" means any works that are near to, or will or may affect any Apparatus including:

(a) all works within 15 metres measured in any direction of any Apparatus including embankment works and those that involve a physical connection or attachment to any Apparatus,

(b) the crossing of Apparatus by other utilities,

(c) the use of explosives within 400 metres of any Apparatus,

(a) piling, undertaking of a 3D seismic survey or the sinking boreholes within 30 metres of any Apparatus,

(e) all works that impose a load directly upon the Apparatus, wherever situated

whether carried out by the undertaker or any third party in connection with the Authorised Development.

Acquisition of Apparatus

82.—(1) Regardless of any other provision in the Order or anything shown on the land plans:

(a) the undertaker must not, otherwise than by agreement with Exolum, acquire any Apparatus, Exolum's rights in respect of Apparatus, or any of Exolum's interests in the Order land;

(b) where the undertaker acquires the freehold of any land in which Exolum holds an interest, the undertaker must afford to or secure for Exolum such rights in land in substitution for any right which would be extinguished by that acquisition (the replacement rights). These replacement rights must be granted upon substantially the same terms and conditions as the right to be extinguished, unless otherwise agreed between the undertaker and Exolum, must be no less favourable to Exolum than the right to be extinguished, and must be granted or put in place contemporaneously with the extinguishment of the right which they replace;

(c) the undertaker must not, otherwise than in accordance with this Part of this Schedule:

(i) obstruct or render less convenient the access to any Apparatus;

(ii) interfere with or affect Exolum's ability to carry out its functions as an oil pipeline operator;

(iii) require that Apparatus is relocated or diverted; or

(iv) remove or require to be removed any Apparatus;

(d) any right of Exolum to maintain, repair, renew, adjust, alter or inspect Apparatus must not be extinguished by the undertaker or otherwise pursuant to the Order until any necessary Alternative Apparatus has been constructed and it is in operation and the Alternative Rights have been granted, all to the reasonable satisfaction of Exolum; and

(e) any right of Exolum to access the Exolum operations must not be extinguished until necessary alternative access has been provided to Exolum's reasonable satisfaction.

(2) Prior to the carrying out of any Restricted Works or any works authorised by this Order that will affect the Apparatus, and if required by Exolum, the parties must use their reasonable endeavours to negotiate and enter into such deeds of consent and, if considered necessary, variations to the existing rights upon such terms and conditions as may be agreed between Exolum and the undertaker acting reasonably and which must be no less favourable on the whole to Exolum than this Part of this Schedule, and the undertaker will use reasonable endeavours to procure and secure the consent and entering into of such deeds and variations by all other third parties with an interest in the land at that time who are affected by such works.

(3) Where the undertaker acquires land which is subject to any existing rights and the provisions of paragraph 83(1) do not apply, the undertaker must:

(a) retain any notice of the existing rights of Exolum on the title to the relevant land when registering the undertaker's title to such acquired land; and

(b) (where no such notice of the existing rights or other interest exists in relation to such acquired land or any such notice is registered only on the Land Charges Register) include (with an application to register title to the undertaker's interest in such acquired land at the Land Registry) a notice of the existing rights or other interest in relation to such acquired land; and

(c) provide up to date official entry copies to Exolum within 20 working days of receipt of such up to date official entry copies.

(4) Where the undertaker takes temporary possession of any land or carries out survey works on land in respect of which Exolum has Apparatus or Premises:

(a) where reasonably necessary, Exolum may exercise its rights to access such land:

(i) in an emergency, without notice; and

(ii) in non-emergency circumstances, having first given not less than 14 days' written notice to the undertaker in order to allow the parties to agree the timing of their respective works during the period of temporary possession; and

(b) the undertaker must not remove or in any way alter Exolum's rights in such land, unless in accordance with the provisions of this Order.

Removal of Apparatus and Rights for Alternative Apparatus

83.—(1) If, having used all reasonable endeavours to implement the Authorised Development without the removal of any Apparatus:

(a) the undertaker reasonably requires the removal of any Apparatus; or

(b) Exolum reasonably requires the removal of any Apparatus;

then the relevant party must give written notice of that requirement to the other.

(2) The Parties must use their reasonable endeavours to produce a plan of the work proposed and a plan of the proposed position of the Alternative Apparatus to be provided or constructed.

(3) The undertaker must afford to Exolum the necessary facilities and rights for the construction of Alternative Apparatus and subsequently the grant of Alternative Rights in accordance with paragraph 84.

(4) Any Alternative Apparatus is to be constructed in land owned by the undertaker or in land in respect of which Alternative Rights have been or are guaranteed to be granted to Exolum. The Alternative Apparatus must be constructed in such manner and in such line or situation as may be agreed between Exolum and the undertaker or in default of agreement settled by arbitration in accordance with article 42 (arbitration).

(5) After the details for the works for Alternative Apparatus to be provided or constructed have been agreed or settled in accordance with article 42 (arbitration), and after the grant to Exolum of any such facilities and rights as are referred to in sub-paragraph 83(3), Exolum must proceed as soon as reasonably practicable using reasonable endeavours to construct and bring into operation the Alternative Apparatus and subsequently to remove (or if agreed between the parties to allow the undertaker to remove) any redundant Apparatus required by the undertaker to be removed under the provisions of this Part of this Schedule.

(6) The following sub-paragraphs (7) and (8) only apply if:

(a) Exolum fails to comply with its obligations under sub-paragraph (5) to remove any redundant Apparatus; and

(b) the undertaker has served notice on Exolum specifying the default; and

(c) Exolum has failed to remedy the default within 28 days.

(7) In the circumstances set out in paragraph (6), if the undertaker then gives notice in writing to Exolum that it desires itself to remove the redundant Apparatus, that work, instead of being executed by Exolum, must be executed by the undertaker without unnecessary delay under the superintendence, if given, and to the reasonable satisfaction of Exolum.

(8) Nothing in paragraph (7) authorises the undertaker to execute the placing, installation, bedding, packing, removal, connection or disconnection of any Apparatus, or execute any filling around the Apparatus (where the Apparatus is laid in a trench) within 3000 millimetres of the Apparatus unless that Apparatus is redundant and disconnected from Exolum's remaining system.

Facilities and Rights for Alternative Apparatus

84.—(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to Exolum facilities and rights for the construction of Alternative Apparatus and the grant of Alternative Rights, in substitution for Apparatus to be removed, those facilities and rights must be granted upon such terms and conditions as may be agreed between the undertaker and Exolum in accordance with this Part of this Schedule or in default of agreement settled by arbitration in accordance with article 42 (arbitration).

(2) Alternative Rights must be granted before any Alternative Apparatus is brought into use.

(3) The parties agree that the undertaker must use reasonable endeavours to procure the grant of the Alternative Rights by way of a 999 year sub-soil lease, substantially in the form of Exolum's precedent from time to time as amended by written agreement between the parties acting reasonably, or such other form of agreement as the parties otherwise agree acting reasonably.

(4) Nothing in this Schedule or contained in the Alternative Rights requires Exolum to divert or remove any Alternative Apparatus.

(5) If the facilities and rights to be afforded by the undertaker in respect of any Alternative Apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are in the opinion of Exolum less favourable on the whole to Exolum than the facilities and rights enjoyed by it in respect of the Apparatus to be removed and the terms and conditions to which those facilities and rights are subject, Exolum may refer the matter to arbitration in accordance with article 42 (arbitration).

Retained Apparatus and Alternative Apparatus: protection

85.—(1) Before commencing the execution of any Restricted Works, the undertaker must submit to Exolum a Plan of the works to be executed and any other information that Exolum may reasonably require to allow Exolum to assess the works.

(2) No Restricted Works are to be commenced until the Plan to be submitted to Exolum under sub-paragraph (1) has been approved by Exolum in writing (acting reasonably) and are to be carried out only in accordance with the details submitted under sub-paragraph (1) and in accordance with such reasonable requirements as may be notified to the undertaker in writing in accordance with paragraph (3) by Exolum.

(3) Any approval of Exolum in respect of Restricted Works may be given subject to such reasonable requirements as Exolum may require to be made for:

(a) the continuing safety and operational viability of any Apparatus; and

(b) the requirement for Exolum to have reasonable access with or without vehicles to inspect, repair, replace, maintain and ensure the continuing safety and operation or viability of any Apparatus; and

(c) the requirement for Exolum to be entitled to watch and inspect the execution of Restricted Works to ensure the continuing safety and operational viability of any Apparatus and ensure compliance with the agreed Plan;

providing such reasonable requirements will be notified to the undertaker in writing.

(4) Where reasonably required by either party, in view of the complexity of any proposed works, timescales, phasing or costs, the parties must with due diligence and good faith negotiate a works agreement for the carrying out of Protective Works or the installation of Alternative Apparatus.

(5) If in consequence of the works notified to Exolum by the undertaker under sub-paragraph (1), the circumstances in paragraph 83(1) apply, then the parties must follow the procedure in paragraph 83(1) onwards.

(6) Nothing in sub-paragraphs (1) to (5) precludes the undertaker from submitting prior to the commencement of works to protect retained Apparatus or to construct Alternative Apparatus (unless otherwise agreed in writing between the undertaker and Exolum) a new Plan, instead of the Plan previously submitted, in which case the parties must re-run the procedure from sub-paragraph (1) onwards.

(7) Where Exolum reasonably requires Protective Works, the parties must use their reasonable endeavours to produce a plan of the work proposed and a plan of the proposed position of any physical features to be provided or constructed.

(8) The undertaker must afford to Exolum the necessary facilities and rights for the construction of Protective Works and subsequently the grant of Alternative Rights in accordance with paragraphs 84.

(9) Any Protective Works are to be constructed in land owned by the undertaker or in land in respect of which Additional Rights have been or are guaranteed to be granted to Exolum. The Protective Works must be constructed in such manner and in such line or situation as may be agreed between Exolum and the undertaker or in default of agreement settled by arbitration in accordance with article 42 (arbitration).

(10) After the details for the Protective Works to be provided or constructed have been agreed or settled in accordance with article 42 (arbitration) and after the grant to Exolum of any such facilities and rights as are referred to in paragraph 83(3), Exolum must proceed as soon as reasonably practicable using reasonable endeavours to construct and bring into operation the Protective Works.

Cathodic protection testing

86.—(1) Where in the reasonable opinion of Exolum or the undertaker:

(a) the Authorised Development might interfere with the cathodic protection forming part of Apparatus; or

(b) any Apparatus might interfere with the proposed or existing cathodic protection forming part of the Authorised Development;

Exolum and the undertaker must co-operate in undertaking the tests which they consider reasonably necessary for ascertaining the nature and extent of such interference and measures for providing or preserving cathodic protection.

(2) The parties must carry out the works and enter into such agreements as are necessary to implement the measures for providing or preserving cathodic protection.

Expenses

87.—(1) Subject to the following provisions of this paragraph 87, the undertaker must pay to Exolum the reasonable and properly incurred costs and expenses (including reasonable staffing costs if work is carried out in-house) incurred by Exolum in, or in connection with:

(a) the negotiation of the provisions of this Schedule;

(b) undertaking its obligations under this Part of this Schedule including:

(i) the installation, inspection, removal, alteration, testing or protection of any Apparatus, Alternative Apparatus and/or Protective Works;

(ii) the execution of any other works under this Part of this Schedule; and

(iii) the review and assessment of Plans;

(c) the watching of and inspecting the execution of the Authorised Development, any Restricted Works and any works undertaken by third parties as a result of Authorised Development (including the assessment of Plans); and

(d) imposing reasonable requirements for the protection or alteration of Apparatus affected by the Authorised Development or works as a consequence of the Authorised Development in accordance with paragraph 85(3);

together with any administrative costs properly and reasonably incurred by Exolum.

(2) There will be no deduction from any sum payable under sub-paragraph (1) as a result of:

(a) the placing of apparatus of a better type, greater capacity or of greater dimensions, or at a greater depth than the existing Apparatus, to the extent Exolum has acted reasonably in procuring such apparatus;

(b) the placing of apparatus in substitution of the existing Apparatus that may defer the time for renewal of the existing Apparatus in the ordinary course; or

(c) the scrap value (if any) of any Apparatus removed.

(3) Upon the submission of proper and reasonable estimates of costs and expenses to be incurred by Exolum, the undertaker must pay Exolum sufficiently in advance to enable Exolum to undertake its obligations under this Part of this Schedule in a manner that is neutral to its cash flow provided that in the event that the costs incurred by Exolum are less than the amount paid by the undertaker pursuant to this sub-paragraph (3) then Exolum must within 35 days of payment being made by Exolum for the costs anticipated in the costs and expenses estimates, repay any overpayment to the undertaker.

Damage to property and other losses

88.—(1) Subject to paragraphs (4) to (7), the undertaker must:

(a) indemnify Exolum for all reasonably incurred loss, damage, liability, costs and expenses suffered or reasonably incurred by Exolum arising out of:

(i) the carrying out of works under this Part of this Schedule;

(ii) the carrying out of the Authorised Development;

(iii) the use or occupation of land over or in the vicinity of any Apparatus in connection with the carrying out of the Authorised Development;

(iv) any injury or damage whatsoever to any property, real or personal, including the property of Exolum; and

(v) any matters arising out of or in connection with this Order;

(b) indemnify Exolum against any claim made against, or loss suffered by, Exolum as a result of any act or omission committed by the undertaker's officers, employees, contractors or agents whilst on or in the vicinity of any Apparatus for the purposes of carrying out any activity authorised by this Order;

(c) pay to Exolum, in accordance with the terms of the provisions of this Part of this Schedule, the cost reasonably incurred by Exolum in making good any damage to the Apparatus (other than Apparatus the repair of which is not reasonably necessary in view of its intended removal or abandonment) arising out of the carrying out of works under this Part of this Schedule and arising out of the carrying out of the Authorised Development; and

(d) pay to Exolum the cost reasonably incurred by Exolum in stopping, suspending and restoring the supply though its Apparatus in consequence of the carrying out of works under this Part of this Schedule or the carrying out of the Authorised Development;

and make reasonable compensation to Exolum for any other expenses, losses, damages, penalty or costs incurred by Exolum by reason or in consequence of any such damage or interruption including all claims by third parties.

(2) Nothing in sub-paragraph (1) imposes any liability on the Undertaker with respect to any indirect or consequential loss of any third party (including but not limited to loss of use, revenue, profit, contract, production, increased cost of working or business interruption) arising from any such damage or interruption which is not reasonably foreseeable.

(3) The fact that any act or thing may have been done by Exolum on behalf of the undertaker or in accordance with a Plan approved by Exolum or in accordance with any requirement of Exolum or under its supervision shall not, subject to sub-paragraph (5), excuse the undertaker from liability under the provisions of sub-paragraph (1).

(4) 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 negligent act, neglect or default of Exolum, its officers, servants, contractors or agents.

(5) The undertaker and Exolum must at all times take reasonable steps to prevent and mitigate any loss, damage, liability, claim, cost or expense (whether indemnified or not) which either suffers in connection with this Part of this Schedule.

(6) The undertaker warrants that it must use reasonable endeavours to ensure:

(a) the information it or any of its employees, agents or contractors provide to Exolum about the Plans or the Authorised Development and on which Exolum relies in the design of and carrying out of any works is accurate; and

(b) the undertaker or any of its employees, agents or contractors have exercised all the reasonable skill, care and diligence to be expected of a qualified and experienced member of their respective profession.

(7) Exolum must give to the undertaker reasonable notice of any claim or demand to which sub-paragraph (2) applies and no settlement or compromise is to be made without the consent of the undertaker (such consent not to be unreasonably withheld or delayed) who, if withholding such consent, will have the joint conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

Insurance

89.—(1) The undertaker must not carry out any Restricted Works unless and until Exolum has confirmed to the undertaker in writing that it is satisfied acting reasonably (but subject to all necessary regulatory constraints) that the undertaker (or its contractor) has procured acceptable professional indemnity insurance and public liability insurance with minimum cover to be agreed between the parties, with respect to the carrying out of the works.

(2) The undertaker must maintain such insurance for the construction period of the Restricted Works from the proposed date of Commencement of the Restricted Works.

Co-operation and reasonableness

90.—(1) Where Apparatus is required to be protected, altered, diverted or removed under this Part of this Schedule, the undertaker must use all reasonable endeavours to co-ordinate the execution of any works under this Part of this Schedule:

(a) in the interests of safety;

(b) in the interest of the efficient and economic execution of both Exolum's works and the Authorised Development; and

(c) taking into account the need to ensure the safe and efficient operation of the Apparatus and carrying out of Exolum's functions.

(2) Exolum must use its reasonable endeavours to co-operate with the undertaker for the purposes outlined in sub-paragraph (1) .

(3) The undertaker and Exolum must act reasonably in respect of any given term of this Schedule and, in particular, (without prejudice to generality) where any approval, consent or expression of satisfaction is required by this Schedule it must not be unreasonably withheld or delayed.

Emergency circumstances

91.—(1) The undertaker acknowledges that Exolum provides services to His Majesty's Government, using the Apparatus, which may affect any works to be carried out under this Part of this Schedule and the Authorised Development.

(2) In the following circumstances, Exolum may on written notice to the undertaker immediately suspend all works that necessitate the stopping or suspending of the supply of product through any Apparatus under this Part of this Schedule and Exolum shall not be in breach of its obligations under this Part of this Schedule:

(a) circumstances in which, in the determination of His Majesty's Government, there subsists a material threat to national security, or a threat or state of hostility or war or other crisis or national emergency (whether or not involving hostility or war); or

(b) circumstances in which a request has been received, and a decision to act upon such request has been taken, by His Majesty's Government for assistance in relation to the occurrence or anticipated occurrence of a major accident, crisis or natural disaster; or

(c) circumstances in which a request has been received from or on behalf of NATO, the EU, the UN, the International Energy Agency (or any successor agency thereof) or the government of any other state for support or assistance pursuant to the United Kingdom's international obligations and a decision to act upon such request has been taken by His Majesty's Government; or

(d) any circumstances identified as such by the COBRA committee of His Majesty's Government (or any successor committee thereof); or

(e) any situation in connection with which His Majesty's Government requires fuel capacity, including where the United Kingdom is engaged in any planned or unplanned military operations within the United Kingdom or overseas.

(3) The parties agree to act in good faith and in all reasonableness to agree any revisions to any schedule, programme or costs estimate (which includes, where applicable, costs of demobilising and remobilising any workforce, and any costs to protect the Apparatus "mid-works") to account for the suspension.

(4) Exolum shall not be liable for any costs, expenses, losses or liabilities the undertaker incurs as a result of the suspension of any activities under sub-paragraphs (1) to (3) or delays caused by it.

Dispute Resolution

92.—(1) The undertaker and Exolum must use their reasonable endeavours to secure the amicable resolution of any dispute or difference arising between them out of or in connection with this Schedule in accordance with the following provisions.

(2) The undertaker and Exolum must each nominate a representative who must meet to try to resolve the matter. If the matter is not resolved at that level within ten working days of either the undertaker or Exolum requesting such a meeting (or such longer period as may be agreed between the undertaker and Exolum) the matter may at the request of either the undertaker or Exolum be referred for discussion at a meeting to be attended by a senior executive from each party.

(3) If the meeting between senior executives fails to result in a settlement within 20 working days of the date of the request for such a meeting (or if it is not possible to convene a meeting within this period) unless otherwise agreed in writing between the undertaker and Exolum the dispute or difference will be determined by arbitration in accordance with article 42 (arbitration).

Miscellaneous

93. No failure or delay by a party to exercise any right or remedy provided under this Part of this Schedule or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

PART 9

FOR THE PROTECTION OF NATIONAL GRID ELECTRICITY TRANSMISSION PLC AS ELECTRICITY UNDERTAKER

Application

94.—(1) For the protection of NGET Plc as referred to in this Part of this Schedule the following provisions have effect, unless otherwise agreed in writing between the undertaker and NGET.

(2) Subject to sub-paragraph (3) or to the extent otherwise agreed in writing between the undertaker and NGET Plc, where the benefit of this Order is transferred or granted to another person under article 36 (consent to transfer the benefit of the Order) –

(a) any agreement of the type mentioned in sub-paragraph (1) has effect as if it had been made between NGET Plc and the transferee or grantee (as the case may be); and

(b) written notice of the transfer or grant must be given to NGET Plc on or before the date of that transfer or grant.

(3) Sub-paragraph (2) does not apply where the benefit of the Order is transferred or granted to NGET (but without prejudice to 109(3)(b).

Interpretation

95. In this Part of this Schedule—

"1991 Act" means the New Roads and Street Works Act 1991;

"acceptable credit provider" means a bank or financial institution with a credit rating that is not lower than: (i) "A-" if the rating is assigned by Standard & Poor's Ratings Group or Fitch Ratings; and "A3" if the rating is assigned by Moody's Investors Services Inc.;

"acceptable insurance" means general third party liability insurance effected and maintained by the undertaker with a combined property damage and bodily injury limit of indemnity of not less than an a sum to be submitted to the undertaker by NGET and agreed in writing. Evidence of that insurance must be provided to NGET Plc on request Such insurance shall be maintained during the construction period of the specified works, and (b) after the

construction period of the authorised works in respect of any use and maintenance of the authorised development by or on behalf of the undertaker which constitute specified works and arranged with an insurer whose security/credit rating meets the same requirements as an "acceptable credit provider", such insurance shall include (without limitation):

(a) a waiver of subrogation and an indemnity to principal clause in favour of NGET

(b) pollution liability for third party property damage and third party bodily damage arising from any pollution/contamination event with a (sub)limit of indemnity of not less than a sum to be notified to the undertaker by NGET Plc and agreed in writing between the parties;

"acceptable security" means either:

(a) a parent company guarantee from a parent company in favour of National Grid Electricity Transmission Plc to cover the undertaker's liability to National Grid Electricity Transmission Plc to a total liability cap in an amount to be notified to the undertaker by National Grid Electricity Transmission Plc and agreed in writing between the parties (in a form reasonably satisfactory to National Grid Electricity Transmission Plc and where required by National Grid Electricity Transmission Plc, accompanied with a legal opinion confirming the due capacity and authorisation of the parent company to enter into and be bound by the terms of such guarantee); or

(b) a bank bond or letter of credit from an acceptable credit provider in favour of National Grid Electricity Transmission Plc to cover the undertaker's liability to National Grid Electricity Transmission Plc for an amount to be notified to the undertaker by National Grid Electricity Transmission Plc and agreed in writing between the parties (in a form reasonably satisfactory to National Grid Electricity Transmission Plc);

"alternative apparatus" means appropriate alternative apparatus to the satisfaction of NGET to enable NGET to fulfil its statutory functions in a manner no less efficient than previously;

"apparatus" means

(a) any electric lines or electrical plant as defined in the Electricity Act 1989, belonging to or maintained by NGET Plc together with any replacement apparatus; and

(b) such other apparatus constructed pursuant to the Order that becomes operational apparatus of the undertaker for the purposes of transmission, distribution and/or supply and includes any structure in which apparatus is or must be lodged or which gives or will give access to apparatus; and

(c) any electrical lines or electrical plant as defined in the 1989 Act, any mains, pipes, plant or other apparatus belonging to, operated or maintained by NGET Plc for the purposes of the construction, operation and maintenance of the North Humber to High Marnham Project or whether temporary or permanent, and includes, where the context so requires, apparatus constructed as part of the authorised development and intended for the beneficial use by NGET ("North Humber to High Marnham apparatus");

(d) any electrical lines or electrical plant as defined in the 1989 Act, any mains, pipes, plant or other apparatus belonging to, operated or maintained by NGET Plc for the purposes of the construction, operation and maintenance of the Brinsworth to High Marnham Project or whether temporary or permanent, and includes, where the context so requires, apparatus constructed as part of the authorised development and intended for the beneficial use by NGET ("Brinsworth to High Marnham Project apparatus");

"authorised works" has the same meaning as is given to the term "authorised development" in article 2 (interpretation) of this Order and includes any associated development authorised by the Order and for the purposes of this Part of this Schedule includes the use and maintenance of the authorised works and construction of any works authorised by this Part of this Schedule;

"North Humber to High Marnham Project" means the proposed new high voltage electricity transmission line and associated works between a new substation at Creyke Beck in the East Riding of Yorkshire and a new substation at High Marnham in Nottinghamshire to be undertaken by NGET; " North Humber to High Marnham Site" includes –

(a) land on which any North Humber to High Marnham apparatus is situated; and

(b) land on which North Humber to High Marnham apparatus is anticipated to be situated which is necessary for the construction, use or maintenance of the North Humber to High Marnham Project (in so far as the same has been notified by NGET in writing to the undertaker)

"Brinsworth to High Marnham Project" means the proposed new high voltage electricity transmission line and associated works between a new substation at Brinsworth, Chesterfield and High Marnham to be undertaken by NGET; " Brinsworth to High Marnham Site" includes –

(a) land on which any Brinsworth to High Marnham apparatus is situated; and

(b) land on which Brinsworth to High Marnham apparatus is anticipated to be situated which is necessary for the construction, use or maintenance of the Brinsworth to High Marnham (in so far as the same has been notified by NGET in writing to the undertaker)

"commence" and "commencement" in this Part of this Schedule shall include any below ground surveys, monitoring, ground work operations or the receipt and erection of construction plant and equipment;

"deed of consent" means a deed of consent, crossing agreement, deed of variation or new deed of grant agreed between the parties acting reasonably in order to vary or replace existing easements, agreements, enactments and other such interests so as to secure land rights and interests as are necessary to carry out, maintain, operate and use the apparatus in a manner consistent with the terms of this Part of this Schedule;

"functions" includes powers and duties;

"ground mitigation scheme" means a scheme approved by NGET (such approval not to be unreasonably withheld or delayed) setting out the necessary measures (if any) for a ground subsidence event;

"ground monitoring scheme" means a scheme for monitoring ground subsidence which sets out the apparatus which is to be subject to such monitoring, the extent of land to be monitored, the manner in which ground levels are to be monitored, the timescales of any monitoring activities and the extent of ground subsidence which, if exceeded, must require the undertaker to submit for NGET's approval a ground mitigation scheme;

"ground subsidence event" means any ground subsidence identified by the monitoring activities set out in the ground monitoring scheme that has exceeded the level described in the ground monitoring scheme as requiring a ground mitigation scheme;

"in" in a context referring to apparatus or alternative apparatus in land includes a reference to apparatus or alternative apparatus under, over, across, along or upon such land;

"incentive deduction" means any incentive deduction NGET Electricity Transmission plc receives under its electricity transmission licence which is caused by an event on its transmission system that causes electricity not to be supplied to a demand customer and which arises as a result of the authorised works;

"maintain" and "maintenance" will include the ability and right to do any of the following in relation to any apparatus or alternative apparatus of NGET: construct, use, repair, alter, inspect, renew or remove the apparatus;

"National Grid Electricity Transmission Plc" means National Grid Electricity Transmission Plc (Company Number. 2366977) whose registered office is at 1-3 Strand, London, WC2N 5EH or any successor as a licence holder within the meaning of Part 1 of the Electricity Act 1989;

"NGESO" means as defined in the STC;

"plan" or "plans" include all designs, drawings, specifications, method statements, soil reports, programmes, calculations, risk assessments and other documents that are reasonably necessary properly and sufficiently to describe and assess the works to be executed;

"parent company" means a parent company of the undertaker acceptable to and which shall have been approved by National Grid Electricity Transmission Plc acting reasonably;

"specified works" means any of the authorised works or activities undertaken in association with the authorised development which:

(a) will or may be situated over, or within 15 metres measured in any direction of any apparatus the removal of which has not been required by the undertaker under paragraph 8(2) or otherwise; and/or

(b) may in any way adversely affect any apparatus the removal of which has not been required by the undertaker under paragraph 8(2) or otherwise; and/or

(c) includes any of the activities that are referred to in development near overhead lines EN43-8 and HSE's guidance note 6 "Avoidance of Danger from Overhead Lines".

"STC" means the System Operator Transmission Owner Code prepared by the electricity transmission owners and NGESO as modified from time to time;

"STC claims" means any claim made under the STC against NGET arising out of or in connection with the de-energisation (whereby no electricity can flow to or from the relevant system through the generator or interconnector's equipment) of a generator or interconnector party solely as a result of the de-energisation of plant and apparatus forming part of NGET's transmission system which arises as a result of the authorised works;

"transmission owner" means as defined in the STC;

Interaction with the Brinsworth to High Marnham Project and North Humber to High Marnham Project

96.—(1) Without limiting any other provision of this Part of this Schedule, the undertaker must use reasonable endeavours to avoid any conflict arising between the construction, maintenance and operation of the authorised development, and the Brinsworth to High Marnham Project and North Humber to High Marnham Project. For the purposes of this paragraph, "reasonable endeavours" means—

(a) undertaking consultation on the detailed design and programming of the NGET connection works and all works associated with or ancillary to the National Grid connection works to ensure that the design and programme for the NGET connection works does not unreasonably impede or interfere with the Brinsworth to High Marnham Project and North Humber to High Marnham Project;

(b) having regard to the proposed programme of works for the Brinsworth to High Marnham and North Humber to High Marnham Projects as may be made available to the undertaker by NGET and facilitating a co-ordinated approach to the programme, land assembly, and the carrying out of the NGET connection works and the Brinsworth to High Marnham Project and North Humber to High Marnham Project;

(c) providing a point of contact for continuing liaison and co-ordination throughout the construction and operation of the authorised development; and

(d) keeping NGET informed on the programme of works for the authorised development.

On Earth project works

97. The undertaker must not except with the agreement of NGET Plc carry out the One Earth project works, or any part of it.

98. (1) Before beginning to construct any One Earth project works, or any part of it, the undertaker must submit to National Grid plans of the relevant One Earth project works (or part of it) and such further particulars available to it as National Grid may request within 21 days of receipt of the plans reasonably requested.

(2) Any One Earth project works must not be constructed except in accordance with such plans as may be approved in writing by National Grid.

99. (1) Any approval of National Grid required under this Schedule—

(a) must not be unreasonably withheld or delayed;

(b) in the case of a refusal must be accompanied by a statement of grounds or refusal; and

(c) may be given subject to such reasonable requirements as National Grid may have in connection with the safe, economic and efficient construction, commissioning, operation, maintenance and future decommissioning of the Brinsworth to High Marnham Project and North Humber to High Marnham Project or otherwise for the protection of the High Marnham Project and North Humber to High Marnham Project, provided always that in relation to a refusal under sub-paragraph (b) or any requirements requested pursuant to sub-paragraph (c) the undertaker shall be permitted to refer such matters to dispute resolution pursuant to paragraph 21.

(2) National Grid must employ reasonable endeavours to respond to the submission of any plans within a period of 56 days from the date of submission of the plans. If National Grid require further particulars, such particulars must be requested by National Grid no later than 21 days from the submission of plans and thereafter National Grid must employ reasonable endeavours to respond to the submission within 56 days from receipt of the further particulars.

100. —(1) The undertaker must give to National Grid not less than 14 days' notice in writing of its intention to commence construction of any One Earth project works and notice in writing of its completion not later than 7 days after the date on which it is completed and National Grid will be entitled by its officer to watch and inspect the construction of such works.

(2) If any part of the One Earth project works is constructed otherwise than in accordance with paragraph 99(2) above National Grid may by notice in writing identify the extent to which the One Earth project works do not comply with the approved details and request the undertaker at the undertaker's own expense carry out remedial works so as to comply with the requirements of paragraph 99 (2) of this Schedule or such alternative works as may be agreed with National Grid or as otherwise may be agreed between the parties.

(3) Subject to sub-paragraph (4), if within a reasonable period, being not less than 28 days beginning with the date when a notice under sub-paragraph (2) is served upon the undertaker, the undertaker has failed to begin taking steps to comply with the requirements of the notice and has not subsequently made reasonably expeditious progress towards their implementation, National Grid may execute the works specified in the notice and any reasonable expenditure incurred by National Grid in so doing will be recoverable from the undertaker.

(4) In the event of any dispute as to whether sub-paragraph (2) is properly applicable to any work in respect of which notice has been served under that sub-paragraph, or as to the reasonableness of any requirement of such a notice, National Grid will not, except in the case of an emergency, exercise the powers conferred by sub-paragraph (3) until the dispute has been finally determined in accordance with paragraph 99 **.**

On Street Apparatus

101. Except for paragraphs 102 (apparatus of NGET in stopped up streets), 107 (retained apparatus: protection of NGET), 108 (expenses) and 109 (indemnity) of this Schedule which will apply in respect of the exercise of all or any powers under the Order affecting the rights and apparatus of NGET, the other provisions of this Schedule do not apply to apparatus in respect of which the relations between the undertaker and NGET are regulated by the provisions of Part 3 of the 1991 Act.

Apparatus of NGET in stopped up streets

102. Notwithstanding the prohibition or restriction on use or diversion of any highway under the powers of article 12 (temporary prohibition or restriction on use of streets and public rights of way), NGET is at liberty at all times to take all necessary access across any such street or public right of way and to execute and do all such works and things in, upon or under any such street or public right of way as may be reasonably necessary or desirable to enable it to maintain any apparatus which at the time of the prohibition or restriction on use or diversion was in that street or public right of way.

Protective works to buildings

103. The undertaker, in the case of the powers conferred by article 18 (protective work to buildings), must exercise those powers so as not to obstruct or render less convenient the access to any apparatus or to the Brinsworth to High Marnham Project or to the North Humber to High Marnham Project without the written consent of NGET.

Acquisition of land

104.—(1) Regardless of any provision in this Order or anything shown on the land plans or contained in the book of reference to the Order, the undertaker may not (a) appropriate or acquire or take temporary possession of any land or apparatus or (b) appropriate, acquire, extinguish, interfere with or override any easement, other interest or right and/or apparatus of NGET Plc otherwise than by agreement (such agreement not to be unreasonably withheld or delayed).

(2) Regardless of any provision in this Order or anything shown on the land plans, the undertaker must not unless otherwise agreed in writing with National Grid acquire any land forming part of the Brinsworth to High Marnham Project or to the North Humber to High Marnham Project (such agreement not to be unreasonably withheld or delayed).

(3) As a condition of an agreement between the parties in sub-paragraph (1), prior to the carrying out of any part of the authorised works (or in such other timeframe as may be agreed between NGET Plc and the undertaker) that is subject to the requirements of this Part of this Schedule that will cause any conflict with or breach the terms of any easement or other legal or land interest of NGET Plc or affect the provisions of any enactment or agreement regulating the relations between NGET Plc and the undertaker in respect of any apparatus laid or erected in land belonging to or secured by the undertaker, the undertaker must as NGET Plc reasonably requires enter into such deeds of consent upon such terms and conditions as may be agreed between NGET Plc and the undertaker acting reasonably and which must be no less favourable on the whole to NGET Plc unless otherwise agreed by NGET Plc, and it will be the responsibility of the undertaker to procure and/or secure the consent and entering into of such deeds and variations by all other third parties with an interest in the land at that time who are affected by such authorised works.

(4) Save where otherwise agreed in writing between NGET Plc and the undertaker, the undertaker and NGET Plc agree that where there is any inconsistency or duplication between the provisions set out in this Part of this Schedule relating to the relocation and/or removal of apparatus/including but not limited to the payment of costs and expenses relating to such relocation and/or removal of apparatus) and the provisions of any existing easement, rights, agreements and licences granted, used, enjoyed or exercised by NGET Plc and/or other enactments relied upon by NGET Plc as of right or other use in relation to the apparatus, then the provisions in this Part of this Schedule will prevail.

(5) Any agreement or consent granted by NGET Plc under paragraph 107 or any other paragraph of this Part of this Schedule, must not be taken to constitute agreement under sub-paragraph (1).

Removal of apparatus

105.—(1) If, in the exercise of the powers conferred by this Order, the undertaker acquires any interest in or possesses temporarily any land in which any apparatus is placed, that apparatus must not be removed under this Part of this Schedule and any right of NGET Plc to maintain that apparatus in that land must not be extinguished until alternative apparatus has been constructed, and is in operation to the reasonable satisfaction of NGET Plc in accordance with sub-paragraph (2) to (5).

(2) If, for the purpose of executing any works in, on, under or over any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, it must give to NGET Plc advance written notice of that requirement, together with a plan of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order NGET Plc reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph (3), secure any necessary consents for the alternative apparatus and afford to NGET Plc to its satisfaction (taking into account paragraph 106(1) below) the necessary facilities and rights

(a) for the construction of alternative apparatus in other land of or land secured by the undertaker; and

(b) subsequently for the maintenance of that apparatus.

(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of or land secured by the undertaker, or the undertaker is unable to afford such consents, 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, NGET Plc must, on receipt of a written notice to that effect from the undertaker, take such steps as are reasonable in the circumstances to assist the undertaker to obtain the necessary consents, facilities and rights in the land in which the alternative apparatus is to be constructed save that this obligation will not extend to the requirement for NGET Plc to use its compulsory purchase powers to this end unless it elects to do so.

(4) Any alternative apparatus to be constructed in land of or land secured by the undertaker under this Part of this Schedule must be constructed in such manner and in such line or situation as may be agreed between NGET Plc and the undertaker.

(5) NGET Plc must, after the alternative apparatus to be provided or constructed has been agreed, and subject to a written diversion agreement having been entered into between the parties and the grant to NGET Plc of any such facilities and rights as are referred to in sub-paragraphs (2) or (3), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by the undertaker to be removed under the provisions of this Part of this Schedule.

Facilities and rights for alternative apparatus

106.—(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to or secures for NGET Plc facilities and rights in land for the construction, use, maintenance and protection of alternative apparatus in substitution for apparatus to be removed,

those facilities and rights must be granted upon such terms and conditions as may be agreed between the undertaker and National and must be no less favourable on the whole to NGET Plc than the facilities and rights enjoyed by it in respect of the apparatus to be removed unless otherwise agreed by NGET Plc.

(2) If the facilities and rights to be afforded by the undertaker in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are less favourable on the whole to NGET Plc than the facilities and rights enjoyed by it in respect of the apparatus to be removed and the terms and conditions to which those facilities and rights are subject the matter may be referred to arbitration in accordance with paragraph 113 (arbitration) of this Part of this Schedule and the arbitrator must make such provision for the payment of compensation by the undertaker to NGET Plc as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

Retained apparatus: protection of NGET Plc as Electricity Undertaker

107.—(1) Not less than 56 days before the commencement of any specified works the undertaker must submit to NGET Plc a plan of the works to be executed and seek from NGET Plc details of the underground extent of their electricity assets.

(2) In relation to specified works the plan to be submitted to NGET Plc under sub-paragraph (1) must include a method statement and describe—

(a) the exact position of the works;

(b) the level at which these are proposed to be constructed or renewed;

(c) the manner of their construction or renewal including details of excavation, positioning of plant;

(d) the position of all apparatus;

(e) by way of detailed drawings, every alteration proposed to be made to or close to any such apparatus;

(f) any intended maintenance regimes; and

(g) an assessment of risks of rise of earth issues.

(h) a ground monitoring scheme, where required.

(3) In relation to any works which will or may be situated on, over, under or within 10 metres of any part of the foundations of an electricity tower or between any two or more electricity towers, the plan to be submitted under sub-paragraph (1) must, in addition to the matters set out in sub-paragraph (2), include a method statement describing; -

(a) details of any cable trench design including route, dimensions, clearance to pylon foundations;

(b) demonstration that pylon foundations will not be affected prior to, during and post construction;

(c) details of load bearing capacities of trenches;

(d) details of any cable installation methodology including access arrangements, jointing bays and backfill methodology;

(e) a written management plan for high voltage hazard during construction and ongoing maintenance of any cable route;

(f) written details of the operations and maintenance regime for any cable, including frequency and method of access;

(g) assessment of earth rise potential if reasonably required by NGET Plc's engineers; and

(h) evidence that trench bearing capacity is to be designed to support overhead line construction traffic of up to and including 26 tonnes in weight.

(4) The undertaker must not commence any works to which sub-paragraphs (2) or (3) apply until NGET Plc has given written approval of the plan so submitted.

(5) Any approval of NGET Plc required under sub-paragraphs (4)—

(a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraphs (6) or (8); and,

(b) may be given subject to such reasonable requirements as National Grid may have in connection with the safe and efficient construction, commissioning, operation and maintenance of the Brinsworth to High Marnham and North Humber to High Marnham Projects

(c) and must not be unreasonably withheld.

(6) In relation to any work to which sub-paragraphs (2) or (3) apply, NGET Plc may require such modifications to be made to the plans as may be reasonably necessary for the purpose of securing its apparatus against interference or risk of damage, for the provision of protective works or for the purpose of providing or securing proper and convenient means of access to any apparatus.

(7) Works executed under sub-paragraphs (2) or (3) must be executed in accordance with the plan, submitted under sub-paragraph (1) or as relevant sub-paragraph (6), as approved or as amended from time to time by agreement between the undertaker and NGET Plc and in accordance with such reasonable requirements as may be made in accordance with sub-paragraphs (6) or (8) by NGET Plc for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and NGET Plc will be entitled to watch and inspect the execution of those works.

(8) Where NGET Plc requires any protective works to be carried out by itself or by the undertaker (whether of a temporary or permanent nature) such protective works, inclusive of any measures or schemes required and approved as part of the plan approved pursuant to this paragraph, must be carried out to NGET Plc's satisfaction prior to the commencement of any authorised development (or any relevant part thereof) for which protective works are required and NGET Plc must give 56 days' notice of its requirement for such works from the date of submission of a plan pursuant to this paragraph (except in an emergency).

(9) If NGET Plc in accordance with sub-paragraphs (6) or (8) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraphs 94, 95, 104 and 107 to 109 apply as if the removal of the apparatus had been required by the undertaker under paragraph 105(2).

(10) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 56 days before commencing the execution of the specified works, a new plan, instead of the plan previously submitted, and having done so the provisions of this paragraph shall apply to and in respect of the new plan.

(11) The undertaker will not be required to comply with sub-paragraph (1) where it needs to carry out emergency works as defined in the 1991 Act but in that case it must give to NGET Plc notice as soon as is reasonably practicable and a plan of those works and must comply with sub-paragraphs (6), (7) and (8) insofar as is reasonably practicable in the circumstances and comply with sub-paragraph (11) at all times.

(12) At all times when carrying out any works authorised under the Order, the undertaker must comply with NGET Plc's policies for development near overhead lines EN43-8 and HSE's guidance note 6 "Avoidance of Danger from Overhead Lines".

Expenses

108.—(1) Save where otherwise agreed in writing between NGET Plc and the undertaker and subject to the following provisions of this paragraph, the undertaker must pay to NGET Plc within 30 days of receipt of an itemised invoice or claim from NGET Plc all charges, costs and expenses reasonably anticipated within the following three months or reasonably and properly incurred by NGET Plc in, or in connection with, the inspection, removal, relaying or replacing, alteration or protection of any apparatus or the construction of any new or alternative apparatus which may be required in consequence of the execution of any authorised works as are referred to in this Part of this Schedule including without limitation—

(a) any costs reasonably incurred by or compensation properly paid by NGET Plc in connection with the acquisition of rights or the exercise of statutory powers for such apparatus including without limitation all costs incurred by NGET Plc as a consequence of NGET Plc;

(i) using its own compulsory purchase powers to acquire any necessary rights under paragraph 105(3); or

(ii) exercising any compulsory purchase powers in the Order transferred to or benefitting NGET Plc;

(b) in connection with the cost of the carrying out of any diversion work or the provision of any alternative apparatus, where no written diversion agreement is otherwise in place;

(c) the cutting off of any apparatus from any other apparatus or the making safe of redundant apparatus;

(d) the approval of plans;

(e) the carrying out of protective works, plus a capitalised sum to cover the cost of maintaining and renewing permanent protective works; and

(f) the survey of any land, apparatus or works, the inspection and monitoring of works or the installation or removal of any temporary works reasonably necessary in direct consequence of the execution of any such works referred to in this Part of this Schedule.

(2) There will be deducted from any sum payable under sub-paragraph (1) the value of any apparatus removed under the provisions of this Part of this Schedule and which is not re-used as part of the alternative apparatus, that value being calculated after removal.

(3) If in accordance with the provisions of this Part of this Schedule—

(a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions; or

(b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was situated,

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or, in default of agreement, is not determined by arbitration in accordance with paragraph 113 (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 NGET Plc by virtue of sub-paragraph (1) will be reduced by the amount of that excess save to the extent that it is not possible in the circumstances to obtain the existing type of apparatus at the same capacity and dimensions or place at the existing depth in which case full costs will be borne by the undertaker.

(4) For the purposes of sub-paragraph (3)—

(a) an extension of apparatus to a length greater than the length of existing apparatus will not be treated as a placing of apparatus of greater dimensions than those of the existing apparatus; and

(b) where the provision of a joint in a pipe or cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole will be treated as if it also had been agreed or had been so determined.

(5) Any amount which apart from this sub-paragraph would be payable to NGET Plc in respect of works by virtue of sub-paragraph (1) will, if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on NGET Plc any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, be reduced by the amount which represents that benefit.

(6) Where anticipated charges, costs or expenses have been paid by the undertaker pursuant to sub-paragraph (1), if the actual charges, costs or expenses incurred by NGET Plc are less than the

amount already paid by the undertaker, NGET Plc will repay the difference to the undertaker as soon as reasonably practicable.

Indemnity

109.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any works authorised by this Part of this Schedule or in consequence of the construction, use maintenance or failure of any of the authorised works by or on behalf of the undertaker or in consequence of any act or default of the undertaker (or any person employed or authorised by him) in the course of carrying out such works, including without limitation works carried out by the undertaker under this Part of this Schedule or any subsidence resulting from any of these works, any damage is caused to any apparatus or alternative apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of the authorised works) or property of NGET Plc, or there is any interruption in any service provided, or in the supply of any goods, by NGET Plc, or NGET Plc becomes liable to pay any amount to any third party, the undertaker will—

(a) bear and pay on demand accompanied by an invoice or claim from NGET Plc the cost reasonably and properly incurred by NGET Plc in making good such damage or restoring the supply; and

(b) indemnify NGET for any other expenses, loss, demands, proceedings, damages, claims, penalty or costs incurred by or recovered from NGET Plc, by reason or in consequence of any such damage or interruption or NGET Plc becoming liable to any third party and including STC claims or an incentive deduction other than arising from any act, neglect or default of NGET Plc.

(2) The fact that any act or thing may have been done by NGET Plc on behalf of the undertaker or in accordance with a plan approved by NGET Plc or in accordance with any requirement of NGET Plc or under its supervision will not (unless sub-paragraph (3) applies), excuse the undertaker from liability under the provisions of paragraph (1) unless NGET Plc fails to carry out and execute the works properly with due care and attention and in a skilful and workman like manner or in a manner that does not accord with the approved plan.

(3) Nothing in sub-paragraph (1) imposes any liability on the undertaker in respect of-

(a) any damage or interruption to the extent that it is attributable to the neglect or default of NGET Plc, its officers, servants, contractors or agents;

(b) any authorised works and/or any other works authorised by this Part of this Schedule carried out by NGET Plc as an assignee, transferee or lessee of the undertaker with the benefit of the Order pursuant to section 156 of the 2008 Act or article 36 (consent to transfer the benefit the of Order) subject to the proviso that once such works become apparatus ("new apparatus"), any specified works yet to be executed and not falling within this sub-section 3(b) will be subject to the full terms of this Part of this Schedule including this paragraph 109; and/or

(c) any indirect or consequential loss (including but not limited to loss of use, revenue, profit, contract, production, increased cost of working or business interruption) or damage which may be suffered by NGET or any third party under or in connection with the Order;

(4) NGET Plc must give the undertaker reasonable notice of any such third party claim or demand and no settlement, admission of liability or compromise must, unless payment is required in connection with a statutory compensation scheme, be made without the consent of the undertaker, which if it withholds such consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

(5) NGET Plc must, in respect of any matter covered by the indemnity given by the undertaker in this paragraph, at all times act reasonably and in the same manner as it would as if settling third party claims on its own behalf from its own funds.

(6) NGET Plc must use its reasonable endeavours to mitigate and to minimise any costs, expenses, loss, demands, and penalties to which the indemnity under this paragraph applies where it is within NGET Plc's reasonable ability and control to do so and which expressly excludes any

obligation to mitigate liability arising from third parties which is outside of NGET Plc's control and if reasonably requested to do so by the undertaker NGET Plc must provide an explanation of how the claim has been minimised, where relevant.

(7) Not to commence construction (and not to permit the commencement of such construction) of the specified works on any land owned by NGET Plc or in respect of which NGET Plc has an easement or wayleave for its apparatus or any other interest or to carry out any works within 15 metres of NGET Plc's apparatus until the following conditions are satisfied:

(a) unless and until NGET Plc is satisfied acting reasonably (but subject to all necessary regulatory constraints) that the undertaker has first provided the acceptable security (and unless otherwise agreed with NGET Plc, acting reasonably, provided evidence that it shall maintain such acceptable security for the construction period of the part of the specified works referred to in sub-paragraph (7) above from the proposed date of commencement of construction of the authorised works) and NGET Plc has confirmed the same to the undertaker in writing; and

(b) unless and until NGET Plc is satisfied acting reasonably (but subject to all necessary regulatory constraints) that the undertaker has procured acceptable insurance (and unless otherwise agreed with NGET Plc, acting reasonably, provided evidence to NGET Plc that it shall maintain such acceptable insurance for the construction period of the part of the authorised works referred to in sub-paragraph (7) above from the proposed date of commencement of construction of the authorised works) and NGET Plc has confirmed the same in writing to the undertaker.

(8) In the event that the undertaker fails to comply with 109(7) of this Part of this Schedule, nothing in this Part of this Schedule shall prevent NGET Plc from seeking injunctive relief (or any other equitable remedy) in any court of competent jurisdiction.

Enactments and agreements

110. Save to the extent provided for to the contrary elsewhere in this Part of this Schedule or by agreement in writing between NGET Plc and the undertaker, nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and NGET Plc in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

Co-operation

111.—(1) Where in consequence of the proposed construction of any part of the authorised works, the undertaker or NGET Plc requires the removal of apparatus under paragraph 105(2) or NGET Plc makes requirements for the protection or alteration of apparatus under paragraph 107, the undertaker shall use its best endeavours to co-ordinate the execution of the works in the interests of safety and the efficient and economic execution of the authorised works and taking into account the need to ensure the safe and efficient operation of NGET Plc's undertaking and NGET Plc will use its best endeavours to co-operate with the undertaker for that purpose.

(2) For the avoidance of doubt whenever NGET Plc's consent, agreement or approval is required in relation to plans, documents or other information submitted by the undertaker or the taking of action by the undertaker, it must not be unreasonably withheld or delayed.

Access

112. If in consequence of the agreement reached in accordance with paragraph 104(1) or the powers granted under this Order the access to any apparatus or the Brinsworth to High Marnham Project and North Humber to High Marnham Project is materially obstructed, the undertaker must provide such alternative means of access to such apparatus or to the Brinsworth to High Marnham Project and North Humber to High Marnham Project as will enable NGET Plc to maintain or use the apparatus no less effectively than was possible before such obstruction.

Arbitration

113. Save for differences or disputes arising under paragraph 105(2), 105(4), 106(1) and 107 any difference or dispute arising between the undertaker and NGET Plc under this Part of this Schedule must, unless otherwise agreed in writing between the undertaker and NGET Plc, be determined by arbitration in accordance with article 42 (arbitration).

Notices

114. Notwithstanding article 44 (service of notices), any plans submitted to NGET Plc by the undertaker pursuant to paragraph 107 must be submitted using the LSBUD system (https://lsbud.co.uk/) or to such other address as NGET Plc may from time to time appoint instead for that purpose and notify to the undertaker in writing.

PART 10

FOR THE PROTECTION OF NATIONAL GRID ELECTRICITY DISTRIBUTION (EAST MIDLANDS) PLC

Application

115. For the protection of NGED the following provisions, unless otherwise agreed in writing between the undertaker and NGED, have effect.

Interpretation

116. In this Part of this Schedule—

"alternative apparatus" means alternative apparatus adequate to enable NGED to fulfil its statutory functions in a manner not less efficient than previously and where the context requires includes any part of such alternative apparatus;

"alternative rights" means all and any necessary legal easements, leases, consents, or permissions required by NGED in order to permit or authorise a diversion and to permit or authorise NGED to lay, keep, operate, maintain, adjust, repair, alter, relay, renew, supplement, inspect, examine, test and remove the alternative apparatus;

"apparatus" means electric lines or electrical plant as defined in the 1989 Act, belonging to or maintained by NGED;

"diversion" means an alteration to the NGED Network in order to enable or facilitate the authorised development;

"functions" includes powers and duties;

"in" in a context referring to apparatus or alternative apparatus in land includes a reference to apparatus or alternative apparatus under, over or upon land;

"NGED" means National Grid Electricity Distribution (East Midlands) plc (Company No. 02366923) whose registered office is at Avonbank, Feeder Road, Bristol, BS2 0TB;

"NGED Network" means NGED's distribution network operated pursuant to its distribution licence issued pursuant to section 6 of the 1989 Act;

"plan" or "plans" includes all designs, drawings, specifications, method statements, programmes, calculations, risk assessments and other documents that are reasonably necessary to properly and sufficiently describe and assess the works to be executed;

"specified work" means so much of any of the authorised development that is carried out within 6 metres of any apparatus; and

other terms have the meaning given in article 2 (interpretation) of the Order.

Precedence of 1991 Act in respect of apparatus in streets

117. This Part of this Schedule does not apply to apparatus in respect of which the relations between the undertaker and NGED are regulated by the provisions of Part 3 (street works in England and Wales) of the 1991 Act.

No acquisition except by agreement

118. Regardless of any provision in this Order, the undertaker must not acquire any apparatus otherwise than by agreement.

Removal of apparatus

119.—(1) If, in the exercise of the powers conferred by this Order, the undertaker requires that apparatus is relocated or diverted, that apparatus must not be removed under this Part of this Schedule and any right of NGED to maintain that apparatus in that land must not be extinguished until alternative apparatus has been constructed, alternative rights acquired or granted for the alternative apparatus and the alternative apparatus is in operation and access to it has been provided if necessary to the reasonable satisfaction of NGED in accordance with sub-paragraphs (2) to (10) or with such alternative or supplementary provisions as the undertaker and NGED may agree between them.

(2) If, for the purpose of executing any works 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 NGED written notice of that requirement, together with a plan of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed.

(3) If as a direct consequence of the exercise of any of the powers conferred by this Order NGED reasonably needs to remove or divert any of its apparatus and the removal of that apparatus has not been required by the undertaker under sub-paragraph (2) then NGED must give to the undertaker written notice of that requirement, together with a plan of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and this Part has effect as if the removal or diversion of such apparatus had been required by the undertaker under sub-paragraph (2)

(4) If as a direct consequence of the removal or diversion of apparatus under sub-paragraph (2) or (3) alternative apparatus is to be constructed in land owned or controlled by the undertaker then the undertaker must afford to NGED the necessary facilities, alternative rights and any necessary third party consent or approvals for the construction of alternative apparatus in the other land owned or controlled by the undertaker as reasonably required by NGED.

(5) If the undertaker or NGED requires to remove or divert any apparatus placed within the Order land and alternative apparatus is to be constructed in land not owned or controlled by the undertaker as a consequence of the removal or diversion of apparatus then NGED shall use its reasonable endeavours to obtain alternative rights in the land in which the alternative apparatus is to be constructed.

(6) If alternative apparatus is to be constructed in land not owned or controlled by the undertaker and NGED is unable to obtain such alternative rights as are mentioned in sub-paragraph (5), the undertaker and NGED shall consider whether there is an alternative engineering solution that can achieve the diversion without the need for the use of compulsory powers. Should such an alternative engineering solution not be practicable and deliverable in a reasonable timescale and at a reasonable cost (which shall be determined by the undertaker acting reasonably), NGED may but shall not be compelled to use the powers of compulsory acquisition set out in this Order or the 1989 Act to obtain the necessary facilities and rights in the land outside the Order limits in which the alternative apparatus is to be constructed in accordance with a timetable agreed between NGED and the undertaker.

(7) Any alternative apparatus required pursuant to sub-paragraphs (2) or (3) must be constructed in such manner and in such line or situation as may be agreed between NGED and the undertaker or in default of agreement settled in accordance with paragraph 120.

(8) NGED must, after the alternative apparatus to be provided or constructed has been agreed or settled pursuant to paragraph 120, and after the acquisition by or grant to NGED of any such facilities and alternative rights as are referred to in sub-paragraphs (2) to (6), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required to be removed by the undertaker under the provisions of this Part of this Schedule.

(9) Regardless of anything in sub-paragraph (8), if the undertaker gives notice in writing to NGED that it desires itself to execute any work, or part of any work in connection with the construction or removal of apparatus in any land controlled by the undertaker, that work, instead of being executed by NGED, must be executed by the undertaker—

(a) in accordance with plans and specifications and in such line or situation agreed between the undertaker and NGED, or, in default of agreement, determined in accordance with paragraph (10); and

(b) without unnecessary delay under the superintendence, if given, and to the reasonable satisfaction of NGED.

(10) Nothing in sub-paragraph (9) authorises the undertaker to execute the placing, installation, bedding, packing, removal, connection or disconnection of any apparatus or alternative apparatus, or execute any filling around the apparatus or alternative apparatus (where the apparatus or alternative apparatus is laid in a trench) within 600 millimetres of the point of connection or disconnection of such apparatus or alternative apparatus.

Facilities and rights for alternative apparatus

120.—(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to NGED facilities and alternative rights for the construction and maintenance in land of the undertaker of alternative apparatus in substitution for apparatus to be removed, those facilities and alternative rights must be granted upon such terms and conditions as may be agreed between the undertaker and NGED or in default of agreement settled in accordance with paragraph 120.

(2) In settling those terms and conditions in respect of alternative apparatus to be constructed in the land of the undertaker, the expert must—

(a) give effect to all reasonable requirements of the undertaker for ensuring the safety and efficient operation of the authorised development and for securing any subsequent alterations or adaptations of the alternative apparatus which may be required to prevent interference with any proposed works of the undertaker;

(b) have regard to the terms and conditions, if any, applicable to the apparatus for which the alternative apparatus is to be substituted;

(c) have regard to NGED's ability to fulfil its service obligations and comply with its licence conditions; and

(d) have regard to the standard form rights NGED ordinarily secures for the type of alternative apparatus to be constructed in the circumstances similar to the authorised development.

(3) If the facilities and alternative rights to be afforded by the undertaker in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and alternative rights are to be granted, are in the opinion of the expert less favourable on the whole to NGED than the facilities and rights enjoyed by it in respect of the apparatus to be removed and the terms and conditions to which those facilities and rights are subject, the expert must make such provision for the payment of compensation by the undertaker to NGED as appears to the expert to be reasonable having regard to all the circumstances of the particular case.

Retained apparatus

121.—(1) Not less than 60 days before the undertaker intends to start the execution of any specified work where the removal of the apparatus in question has not been required under

paragraph 115, the undertaker shall submit to NGED a plan of the specified works to be executed. Any submission must note the time limits imposed on NGED under sub-paragraph (3) below.

(2) Subject to sub-paragraph (3) below the undertaker shall not commence any works to which sub-paragraph (1) applies until NGED has identified any reasonable requirements it has for the alteration or protection of the apparatus, or for securing access to it.

(3) If by the expiry of 60 days beginning with the date on which a plan under sub-paragraph (1) is submitted NGED has not advised the undertaker in writing of any reasonable requirements for the alteration or protection of the apparatus, or for securing access to it, it shall be deemed not to have any such requirements and the undertaker shall be at liberty to proceed with the specified works.

(4) The specified works referred to in sub-paragraph (1) must be executed only in accordance with the plan submitted under sub-paragraph (1) and in accordance with any reasonable requirements as may be notified in accordance with sub-paragraph (2) by NGED and NGED shall be entitled to watch and inspect the execution of those works.

(5) At all times when carrying out the authorised development the undertaker must comply with NGED's Avoidance of Danger from Electricity Overhead Lines and Underground Cables (2014), the Energy Network Association's A Guide to the Safe Use of Mechanical Plant in the Vicinity of Electricity Overhead Lines (undated), the Health and Safety Executive's GS6 Avoiding Danger from Overhead Power Lines and the Health and Safety Executive's HSG47 Avoiding Danger from Underground Services (Third Edition) (2014) as the same may be replaced from time to time.

(6) If NGED, in accordance with sub–paragraph (2) and in consequence of the specified works proposed by the undertaker, reasonably requires the removal or diversion of any apparatus and gives written notice to the undertaker of that requirement, this Part of this Schedule applies as if the removal or diversion of the apparatus had been required by the undertaker under paragraph 115(2).

(7) Nothing in this paragraph 117 precludes the undertaker from submitting at any time or from time to time, but in no case less than 60 days before commencing the execution of any specified works, a new plan instead of the plan previously submitted, and having done so the provisions of this paragraph apply to and in respect of the new plan.

(8) The undertaker is not required to comply with sub–paragraph (1) in a case of emergency but in that case it must give to NGED notice as soon as is reasonably practicable and a plan of those works as soon as reasonably practicable subsequently and must comply with any reasonable requirements stipulated by NGED under sub-paragraph (2) and with sub–paragraphs (4) and (5) in so far as is reasonably practicable in the circumstances. Nothing in this sub-paragraph prevents NGED from exercising its rights under sub-paragraph (6).

Expenses and costs

122.—(1) Subject to the following provisions of this paragraph, the undertaker must pay to NGED the reasonable expenses incurred by NGED in, or in connection with, the inspection, removal, diversion, alteration or protection of any apparatus, the construction of any alternative apparatus and the acquisition or grant of alternative rights for the alternative apparatus, arising as a result of the powers conferred upon the undertaker pursuant to this Order.

(2) The value of any apparatus removed under the provisions of this Part of this Schedule must be deducted from any sum payable under sub-paragraph (1), that value being calculated after removal.

(3) If in accordance with the provisions of this Part of this Schedule NGED requires that alternative apparatus of better type, of greater capacity, of greater dimensions or at a greater depth is necessary in substitution for existing apparatus which for NGED's network requirements is over and above what is necessary as a consequence of and for the purpose of the authorised development, NGED shall reduce the cost of such additional requirements from the amount payable by the undertaker pursuant to sub-paragraph (1).

(4) For the purposes of sub–paragraph (3)—

(a) an extension of apparatus to a length greater than the length of existing apparatus is not to be treated as a placing of apparatus of greater dimensions than those of the existing apparatus where such extension is required in consequence of the authorised development; and

(b) where the provision of a joint in a cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole is to be treated as if it also had been agreed or had been so determined.

(5) An amount which apart from this sub-paragraph would be payable to a utility undertaker in respect of works by virtue of sub-paragraph (1) if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on the utility undertaker any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, is to be reduced by the amount which represents that benefit.

Liability

123.—(1) Subject to sub-paragraph (2) and (3) if by reason or in consequence of the construction of any specified work or any subsidence resulting from any of those works any damage is caused to any apparatus or alternative apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works) or property of NGED the undertaker is to—

(a) bear and pay the cost reasonably and properly incurred by NGED in making good such damage or restoring the supply; and

(b) reimburse NGED for any other expenses, loss, damages, penalty or costs reasonably and properly incurred by NGED, by reason or in consequence of any such damage or interruption.

(2) Nothing in sub-paragraph (1) imposes any liability on the undertaker with respect to any damage or interruption to the extent that it is attributable to the act, neglect or default of NGED, its officers, servants, contractors or agents.

(3) NGED must give the undertaker reasonable notice of any such claim or demand and no settlement, or compromise, unless payment is required in connection with a statutory compensation scheme, is to be made without the consent of the undertaker which, if it withholds such consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

(4) NGED must act reasonably in relation to any claim or demand served under sub-paragraph (1) and use its reasonable endeavours to mitigate and to minimise any costs, expenses, loss, claims, demands, proceedings and penalties to which a claim or demand under sub-paragraph (1) applies.

(5) NGED's liability to the undertaker for negligence or breach of contract, in respect of each diversion, shall be limited to the value of that diversion and NGED shall not otherwise be liable to the undertaker for any losses or costs incurred by the undertaker resulting from delays to the authorised development as a result of its failure to undertake works to deliver any alternative apparatus.

(6) To the extent permitted by any applicable laws, the undertaker shall not be liable to NGED for any indirect or consequential loss or damage, or loss of profit, which may be suffered by NGED under or in connection with the Order.

Expert determination

124.—(1) Article 42 (arbitration) shall apply to any difference as to the legal interpretation of this Part of this Schedule and as provided for in sub–paragraph (7).

(2) Save as provided for in sub–paragraph (1) or sub–paragraph (7) any difference under this Part of this Schedule must be referred to and settled by a single independent and suitable person who holds appropriate professional qualifications and is a member of a professional body relevant to the matter in dispute acting as an expert, such person to be agreed by the differing parties or, in

the absence of agreement, identified by the President of the Institution of Civil Engineers or the President of the Institution of RICS or the President of the Institution of Engineering and Technology (as relevant and agreed between NGED and the undertaker, both acting reasonably and without delay).

(3) All parties involved in settling any difference must use best endeavours to do so within 14 days from the date of a dispute first being notified in writing by one party to the other and in the absence of the difference being settled within that period the expert must be appointed within 21 days of the notification of the dispute.

(4) The costs and fees of the expert and the costs of NGED and the undertaker are payable by the parties in such proportions as the expert may determine. In the absence of such determination the costs and fees of the expert are payable equally by the parties who shall each bear their own costs.

(5) The expert must—

(a) invite the parties to make submission to the expert in writing and copied to the other party to be received by the expert within 14 days of the expert's appointment;

(b) permit a party to comment on the submissions made by the other party within 7 days of receipt of the submission;

(c) issue a decision within 14 days of receipt of the submissions under sub-paragraph (b); and

(d) give reasons for the decision.

(6) The expert must consider where relevant—

(a) the development outcome sought by the undertaker;

(b) the ability of the undertaker to achieve its outcome in a timely and cost-effective manner;

(c) the nature of the power sought to be exercised by the undertaker;

(d) the effectiveness, cost and reasonableness of proposals for mitigation arising from any party;

(e) NGED's service obligations and licence conditions; and

(f) any other important and relevant consideration.

(7) Any determination by the expert is final and binding, except in the case of manifest error in which case the difference that has been subject to expert determination may be referred to and settled by arbitration under article 42 (arbitration).

PART 11

FOR THE PROTECTION OF LINCOLNSHIRE FIRE AND RESCUE SERVICES

Interpretation

125.—(1) For the protection of Lincolnshire Fire and Rescue as referred to in this Part of this Schedule the following provisions have effect, unless otherwise agreed in writing between the undertaker and Lincolnshire Fire and Rescue.

(2) In this Part of this Schedule—

"Index Linked" means an increase in the sums payable on an annual basis or pro rata per diem in accordance with the most recent published figure for the Consumer Price Index, or during any period when no such index exists the index which replaces it or is the nearest equivalent to it; and

"Lincolnshire Fire and Rescue" means Lincolnshire County Council in its capacity as a fire and rescue authority pursuant to section 1(2)(a) of the Fire and Rescue Services Act 2004.

Site visits

126.—(1) The undertaker must, prior to the date of final commissioning of Work No. 2, use reasonable endeavours to facilitate a site familiarisation exercise in connection with Work No. 2 of the authorised development for Lincolnshire Fire and Rescue for the purposes of providing the necessary assurance to Lincolnshire Fire and Rescue that all the required systems and measures are in place in accordance with the battery safety management plan.

(2) Following the first anniversary of the date of final commissioning of Work No. 2 of the authorised development, the undertaker must use reasonable endeavours to facilitate an annual review of Work No. 2 by Lincolnshire Fire and Rescue at the reasonable request of Lincolnshire Fire and Rescue, up until the year in which the undertaker commences decommissioning of Work No.2.

Costs

127.—(1) Pursuant to the provisions set out at paragraph 126, the undertaker must pay to Lincolnshire Fire and Rescue—

(i) £16,665 in the first year of operation of the authorised development for, or in connection with Lincolnshire Fire and Rescue's attendance at the site familiarisation exercise facilitated by the undertaker pursuant to paragraph 126(1), such sum to be paid within 30 days following the date of the site familiarisation exercise; and

(ii) £1,530 in each subsequent year of operation of the authorised development until the date of decommissioning of Work No. 2, such sums to be paid within 30 days of the date of the annual review for that year, if in that year an annual review has taken place pursuant to paragraph 126(2).

(2) The costs payable under sub-paragraph 127(1)(ii) are to be Index Linked.

Arbitration

128. Any difference or dispute arising between the undertaker and Lincolnshire Fire and Rescue under this Part of this Schedule must be determined by arbitration in accordance with article 42 (arbitration).

PART 12

FOR THE PROTECTION OF NOTTINGHAMSHIRE FIRE AND RESCUE SERVICES

Interpretation

129.—(1) For the protection of Nottinghamshire Fire and Rescue as referred to in this Part of this Schedule the following provisions have effect, unless otherwise agreed in writing between the undertaker and Nottinghamshire Fire and Rescue.

(2) In this Part of this Schedule—

"Index Linked" means an increase in the sums payable on an annual basis or pro rata per diem in accordance with the most recent published figure for the Consumer Price Index, or during any period when no such index exists the index which replaces it or is the nearest equivalent to it; and

"Nottinghamshire Fire and Rescue" means Nottinghamshire County Council in its capacity as a fire and rescue authority pursuant to section 1(2)(a) of the Fire and Rescue Services Act 2004.

Site visits

130.—(1) The undertaker must, prior to the date of final commissioning of Work No. 2, use reasonable endeavours to facilitate a site familiarisation exercise in connection with Work No. 2 of the authorised development for Nottinghamshire Fire and Rescue for the purposes of providing the necessary assurance to Nottinghamshire Fire and Rescue that all the required systems and measures are in place in accordance with the battery safety management plan.

(2) Following the first anniversary of the date of final commissioning of Work No. 2 of the authorised development, the undertaker must use reasonable endeavours to facilitate an annual review of Work No. 2 by Nottinghamshire Fire and Rescue at the reasonable request of Nottinghamshire Fire and Rescue, up until the year in which the undertaker commences decommissioning of Work No.2.

Costs

131.—(1) Pursuant to the provisions set out at paragraph 126, the undertaker must pay to Nottinghamshire Fire and Rescue—

(i) £16,665 in the first year of operation of the authorised development for, or in connection with Nottinghamshire Fire and Rescue's attendance at the site familiarisation exercise facilitated by the undertaker pursuant to paragraph 126(1), such sum to be paid within 30 days following the date of the site familiarisation exercise; and

(ii) £1,530 in each subsequent year of operation of the authorised development until the date of decommissioning of Work No. 2, such sums to be paid within 30 days of the date of the annual review for that year, if in that year an annual review has taken place pursuant to paragraph 126(2).

(2) The costs payable under sub-paragraph 127(1)(ii) are to be Index Linked.

Arbitration

132. Any difference or dispute arising between the undertaker and Nottinghamshire Fire and Rescue under this Part of this Schedule must be determined by arbitration in accordance with article 42 (arbitration).

PART 13

FOR THE PROTECTION OF NORTHERN POWERGRID (YORKSHIRE) PLC

133. For the protection of Northern Powergrid the following provisions have effect, unless otherwise agreed in writing between the undertaker and Northern Powergrid.

134. In this Part of this Schedule—

"1991 Act" means the New Roads and Street Works Act 1991;

"alternative apparatus" means alternative apparatus adequate to enable Northern Powergrid to fulfil its statutory functions in a manner not less efficient than previously;

"apparatus" means electric lines or electrical plant (as defined in the Electricity Act 1989) belonging to or maintained by Northern Powergrid and includes any structure in which apparatus is or is to be lodged or which gives or will give access to apparatus;

"authorised works" means so much of the works authorised by this Order which affect existing Northern Powergrid's apparatus within the Order limits;

"functions" includes powers and duties;

"in" in a context referring to apparatus or alternative apparatus in land, includes a reference to apparatus or alternative apparatus under, over or upon land;

"Northern Powergrid" means Northern Powergrid (Yorkshire) PLC (Company Number 04112320) whose registered address is Lloyds Court, 78 Grey Street, Newcastle upon Tyne

"Order" means the One Earth Solar Farm Order 202*

"Order limits" means as defined in article 2 of the Order

"plan" includes all designs, drawings, specifications, method statements, soil reports, programmes, calculations, risk assessments and other documents that are reasonably necessary properly and sufficiently to describe the works to be executed and shall include measures proposed by the undertaker to ensure the grant of sufficient land or rights in land necessary to mitigate the impacts of the works on Northern Powergrid's undertaking.

135. This Part of this Schedule does not apply to apparatus and / or alternative apparatus in respect of which the relations between the undertaker and Northern Powergrid are regulated by the provisions of Part 3 (street works in England and Wales) of the 1991 Act.

136. Regardless of the temporary prohibition or restriction of use of streets under the powers conferred by article 12 of the Order (temporary prohibition or restriction on use of streets and public rights of way) the undertaker must not prevent Northern Powergrid from taking all necessary access across any such street and to execute and do all such works and things in, upon or under any such street as may be reasonably necessary or desirable to enable it to maintain any apparatus which at the time of the prohibition or restriction was in that street.

137. Regardless of any provision in this Order or anything shown on the land plans, or contained in the book of reference, the undertaker shall not acquire any apparatus otherwise than by agreement with Northern Powergrid such agreement not to be unreasonably withheld or delayed.

138. Regardless of any provision in the Order or anything shown on the land plans or contained in the book of reference, the undertaker shall not interfere with any communications cables or equipment used by Northern Powergrid in relation to its apparatus or acquire or interfere with rights or interests supporting the use, maintenance or renewal of such equipment other than by agreement of Northern Powergrid, such agreement not to be unreasonably withheld or delayed.

139.—(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 in or over which access to any apparatus is enjoyed or requires that Northern Powergrid's apparatus is relocated or diverted, that apparatus must not be removed under this Part of this Schedule, and any right of Northern Powergrid to maintain that apparatus in that land and to gain access to it must not be extinguished, until alternative apparatus has been constructed and is in operation, and access to it has been provided pursuant to a completed easement or other form of written agreement in a form reasonably acceptable to Northern Powergrid which shall include rights to retain and subsequently maintain the apparatus being replaced or diverted for the lifetime of that alterative apparatus, all to the reasonable satisfaction of Northern Powergrid in accordance with sub-paragraphs (2) to (5).

(2) If, for the purpose of executing any works in, on or under any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, the undertaker must give to Northern Powergrid at least 42 days' advance written notice of that requirement, together with a plan and section of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order Northern Powergrid reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph (3), afford to Northern Powergrid the necessary facilities and rights for the construction of alternative apparatus in other land of the undertaker and subsequently for the maintenance of that apparatus.

(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of the undertaker, or the undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraph (2), in the land in which the alternative apparatus or part of such apparatus is to be constructed:

(a) the undertaker must in the first instance use reasonable endeavours to acquire through voluntary negotiations all necessary land interests or rights as Northern Powergrid may

reasonably require for the relocation and construction of alternative apparatus and must use reasonable endeavours to procure through voluntary negotiations all necessary rights to access and maintain Northern Powergrid's apparatus and alternative apparatus thereafter the terms of such access and maintenance to be agreed by Northern Powergrid (acting reasonably); and

(b) in the event that the undertaker is not able to procure the necessary land interest or rights referred to in the sub-paragraph (3)(a) Northern Powergrid must, on receipt of a written notice to that effect from the undertaker and subject to paragraph 142, as soon as reasonably practicable use reasonable endeavours to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed save that this obligation shall not extend to the requirement for Northern Powergrid to use its compulsory purchase powers to this end.

(4) Any alternative apparatus to be constructed in land of the undertaker under this Part of this Schedule must be constructed in such manner and in such line or situation as may be agreed between Northern Powergrid and the undertaker or in default of agreement settled by arbitration in accordance with article 42 (arbitration).

(5) Northern Powergrid must, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with article 42 (arbitration), and after the grant to Northern Powergrid of any such facilities and rights as are referred to in sub-paragraph (2) or (3), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by the undertaker to be removed under the provisions of this Part of this Schedule.

140.—(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to Northern Powergrid facilities and rights for the construction and maintenance in land of the undertaker of alternative apparatus in substitution for apparatus to be removed, those facilities and rights must be granted upon such terms and conditions as may be agreed between the undertaker and Northern Powergrid or in default of agreement settled by arbitration in accordance with article 42 (arbitration).

(2) If the facilities and rights to be afforded by the undertaker in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are in the opinion of the arbitrator less favourable on the whole to Northern Powergrid than the facilities and rights enjoyed by it in respect of the apparatus to be removed and the terms and conditions to which those facilities and rights are subject, the arbitrator must make such provision for the payment of compensation by the undertaker to Northern Powergrid as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

141.—(1) Not less than 48 days before starting the execution of any authorised 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 139(2), the undertaker must submit to Northern Powergrid a plan, section and description of the works to be executed, and any such information as Northern Powergrid reasonably requires relating to those works.

(2) Those authorised works must be executed only in accordance with the plan, section and description submitted under sub-paragraph (1) and in accordance with such reasonable requirements as may be made in accordance with sub-paragraph (3) by Northern Powergrid for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and Northern Powergrid is entitled to watch and inspect the execution of those works.

(3) Any requirements made by Northern Powergrid under sub-paragraph (2) must be made within a period of 35 days beginning with the date on which a plan, section and description under sub-paragraph (1) are submitted to it.

(4) If Northern Powergrid in accordance with sub-paragraph (3) and in consequence of the authorised works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraphs 133 to 138 apply as if the removal of the apparatus had been required by the undertaker under paragraph (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 14 days before commencing the execution of any authorised works, a new plan, section and description instead of the plan, section and description previously submitted, and having done so the provisions of this paragraph apply to and in respect of the new plan, section and description.

(6) The undertaker is not required to comply with sub-paragraph (1) in a case of emergency but in that case it must give to Northern Powergrid notice as soon as is reasonably practicable and a plan, section and description of those authorised works as soon as reasonably practicable subsequently and must comply with sub-paragraph (2) in so far as is reasonably practicable in the circumstances.

142.—(1) Subject to the following provisions of this paragraph, the undertaker must repay to Northern Powergrid within fifty (50) days of receipt of an itemised invoice or claim all reasonable and proper expenses costs or charges incurred by Northern Powergrid in, or in connection with, the inspection, removal, alteration or protection of any apparatus or the construction of any new apparatus which may be required in consequence of the execution of any such works as are referred to in paragraph 139(2) including without limitation:

(a) in connection with the cost of the carrying out of any diversion work or the provision of any alternative apparatus;

(b) the cutting off of any apparatus from any other apparatus or the making safe of redundant apparatus;

(c) the approval of plans which must include the review of any such plans and assessing and preparing a design for apparatus to address and accommodate the proposals of the undertaker where necessary pursuant to paragraph 141(4);

(d) the carrying out of protective works, plus a capitalised sum to cover the reasonable cost of adequately maintaining permanent protective works;

(e) the survey of any land, apparatus or works, the inspection and monitoring of works or the installation or removal of any temporary works reasonably necessary in consequence of the execution of any such works referred to in this Part of this Schedule); and

(2) Where any payment falls due pursuant to paragraph 142(1), Northern Powergrid must:

(a) provide an itemised invoice or reasonable expenses claim to the undertaker.

(b) provide 'reminder letters' to the undertaker for payment to be made within the fifty days on the following days after the invoice or reasonable expenses claim to the undertaker:

(i) 15 days ('reminder letter 1')

(ii) 29 days ('reminder letter 2')

(iii) 43 days ('reminder letter 3')

(c) be entitled to commence debt proceedings to recover any unpaid itemised invoice or reasonable expenses claim after fifty one days of receipt of the same where payment has not been made.

(3) If in accordance with the provisions of this Part of this Schedule—

(a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions; or

(b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was, and

the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or, in default of agreement, is not determined by arbitration in accordance with article 42 (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 Northern Powergrid by virtue of sub-paragraph (1) is to be reduced

by the amount of that excess save where it is not possible on account of reasonable project time limits communicated in a reasonable timeframe to the undertaker or supply issues to obtain the existing type of operations, capacity, dimensions or place at the existing depth.

(4) For the purposes of sub-paragraph (2)—

(a) an extension of apparatus to a length greater than the length of existing apparatus is not to be treated as a placing of apparatus of greater dimensions than those of the existing apparatus where such extension is required in consequence of the execution of any such works as are referred to in paragraph 139(2); and

(b) where the provision of a joint in a cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole is to be treated as if it also had been agreed or had been so determined.

143. Nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and Northern Powergrid in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

144. Any difference under the provisions of this Part of the Schedule, unless otherwise agreed, is to be referred to and settled by arbitration in accordance with Article 42 (Arbitration).

145. Where in consequence of the proposed construction of any of the authorised works, the undertaker or Northern Powergrid requires the removal of apparatus under paragraph 139 or otherwise or Northern Powergrid makes requirements for the protection or alteration of apparatus under paragraph 141, the undertaker shall use its reasonable endeavours to co-ordinate the execution of the works in the interests of safety and the need to ensure the safe and efficient operation of Northern Powergrid's undertaking taking into account the undertaker's desire for the efficient and economic execution of the authorised development and the undertaker and Northern Powergrid shall use reasonable endeavours to co-operate with each other for those purposes.

146. The plans submitted to Northern Powergrid by the undertaker pursuant to this Part of the Schedule must be sent to Northern Powergrid at property@northernpowergrid.com or such other address as Northern Powergrid may from time to time appoint instead for that purpose and notify to the undertaker in writing

147. Prior to carrying out any authorised works within the Order Limits Northern Powergrid must give written notice of the proposed works to the undertaker, such notice to include full details of the location of the proposed works, their anticipated duration, access arrangements, depths of the works, and any other information that may impact upon the works consented by the Order.

148. Where practicable, the undertaker and Northern Powergrid will make reasonable efforts to liaise and co-operate in respect of information that is relevant to the safe and efficient construction operation and maintenance of the authorised development. Such liaison shall be carried out where any authorised works are:

(a) within 15m of any above ground apparatus and / or

(b) within 15m of any apparatus and are to a depth of between 0 – 4m below ground level under any apparatus.

PART 14

FOR THE PROTECTION OF RAILWAY INTERESTS

149. The provisions of this Part of this Schedule have effect, unless otherwise agreed in writing between the undertaker and Network Rail.

150. In this Part of this Schedule—

"asset protection agreement" means an agreement to regulate the construction and maintenance of the specified work in a form prescribed from time to time by Network Rail;

"construction" includes execution, placing, alteration and reconstruction and "construct" and "constructed" have corresponding meanings;

"the engineer" means an engineer appointed by Network Rail for the purposes of this Order;

"network licence" means the network licence, as the same is amended from time to time, granted to Network Rail Infrastructure Limited by the Secretary of State in exercise of their powers under section 8 (licences) of the Railways Act 1993;

"Network Rail" means Network Rail Infrastructure Limited (company number 02904587, whose registered office is at Waterloo General Office, London SE1 8SW) and any associated company of Network Rail Infrastructure Limited which holds property for railway purposes, and for the purpose of this definition "associated company" means any company which is (within the meaning of section 1159 of the Companies Act 2006) the holding company of Network Rail Infrastructure Limited, a subsidiary of Network Rail Infrastructure Limited or another subsidiary of the holding company of Network Rail Infrastructure Limited and any successor to Network Rail Infrastructure Limited's railway undertaking;

"plans" includes sections, designs, design data, software, drawings, specifications, soil reports, calculations, descriptions (including descriptions of methods of construction), staging proposals, programmes and details of the extent, timing and duration of any proposed occupation of railway property;

"railway operational procedures" means procedures specified under any access agreement (as defined in the Railways Act 1993) or station lease;

"railway property" means any railway belonging to Network Rail and-

(a) any station, land, works, apparatus and equipment belonging to Network Rail or connected with any such railway; and

(b) any easement or other property interest held or used by Network Rail or a tenant or licencee of Network Rail for the purposes of such railway or works, apparatus or equipment;

"regulatory consents" means any consent or approval required under:

(a) the Railways Act 1993;

(b) the network licence; and/or

(c) any other relevant statutory or regulatory provisions;

by either the Office of Rail and Road or the Secretary of State for Transport or any other competent body including change procedures and any other consents, approvals of any access or beneficiary that may be required in relation to the authorised development;

"specified work" means so much of any of the authorised development as is situated upon, across, under, over or within 15 metres of, or may in any way adversely affect, railway property and, for the avoidance of doubt, includes the maintenance of such works under the powers conferred by article 5 (maintenance of authorised development) in respect of such works.

151.—(1) Where under this Part of this Schedule Network Rail is required to give its consent or approval in respect of any matter, that consent or approval is subject to the condition that Network Rail complies with any relevant railway operational procedures and any obligations under its network licence or under statute.

(2) In so far as any specified work or the acquisition or use of railway property is or may be subject to railway operational procedures, Network Rail must—

(a) co-operate with the undertaker with a view to avoiding undue delay and securing conformity as between any plans approved by the engineer and requirements emanating from those procedures; and

(b) use their reasonable endeavours to avoid any conflict arising between the application of those procedures and the proper implementation of the authorised development pursuant to this Order.

152.—(1) The undertaker must not in the exercise of the powers conferred by this Order prevent pedestrian or vehicular access to any railway property, unless preventing such access is with the consent of Network Rail.

(2) The undertaker must not under the powers of this Order do anything which would result in railway property being incapable of being used or maintained or which would affect the safe running of trains on the railway.

(3) Where Network Rail is asked to give its consent pursuant to this paragraph, such consent must not be unreasonably withheld but may be given subject to reasonable conditions but it shall never be unreasonable to withhold consent for reasons of operational or railway safety (such matters to be in Network Rail's absolute discretion).

(4) The undertaker must enter into an asset protection agreement prior to the carrying out of any specified work.

153.—(1) The undertaker must before commencing construction of any specified work supply to Network Rail proper and sufficient plans of that work for the reasonable approval of the engineer and the specified work must not be commenced except in accordance with such plans as have been approved in writing by the engineer or settled by arbitration.

(2) The approval of the engineer under sub-paragraph (1) must not be unreasonably withheld, and if by the end of the period of 28 days beginning with the date on which such plans have been supplied to Network Rail the engineer has not intimated their disapproval of those plans and the grounds of such disapproval the undertaker may serve upon the engineer written notice requiring the engineer to intimate approval or disapproval within a further period of 28 days beginning with the date upon which the engineer receives written notice from the undertaker. If by the expiry of the further 28 days the engineer has not intimated approval or disapproval, the engineer shall be deemed to have approved the plans as submitted.

(3) If by the end of the period of 28 days beginning with the date on which written notice was served upon the engineer under sub-paragraph (2), Network Rail gives notice to the undertaker that Network Rail desires itself to construct any part of a specified work which in the opinion of the engineer will or may affect the stability of railway property or the safe operation of traffic on the railways of Network Rail then, if the undertaker desires such part of the specified work to be constructed, Network Rail must construct it without unnecessary delay on behalf of and to the reasonable satisfaction of the undertaker in accordance with the plans approved or deemed to be approved or settled under this paragraph, and under the supervision (where appropriate and if given) of the undertaker.

(4) When signifying their approval of the plans the engineer may specify any protective works (whether temporary or permanent) which in the engineer's opinion should be carried out before the commencement of the construction of a specified work to ensure the safety or stability of railway property or the continuation of safe and efficient operation of the railways of Network Rail or the services of operators using the same (including any relocation de-commissioning and removal of works, apparatus and equipment necessitated by a specified work and the comfort and safety of passengers who may be affected by the specified works), and such protective works as may be reasonably necessary for those purposes must be constructed by Network Rail or by the undertaker, if Network Rail so desires, and such protective works must be carried out at the expense of the undertaker in either case without unnecessary delay and the undertaker must not commence the construction of the specified works until the engineer has notified the undertaker that the protective works have been completed to their reasonable satisfaction.

154.—(1) Any specified work and any protective works to be constructed by virtue of paragraph 153(4) must, when commenced, be constructed—

(a) without unnecessary delay in accordance with the plans approved or deemed to have been approved or settled under paragraph 153;

(b) under the supervision (where appropriate and if given) and to the reasonable satisfaction of the engineer;

(c) in such manner as to cause as little damage as is possible to railway property; and

(d) so far as is reasonably practicable, so as not to interfere with or obstruct the free, uninterrupted and safe use of any railway of Network Rail or the traffic thereon and the use by passengers of railway property.

(2) If any damage to railway property or any such interference or obstruction shall be caused by the carrying out of, or in consequence of the construction of a specified work, the undertaker must, notwithstanding any such approval, make good such damage and must pay to Network Rail all reasonable expenses to which Network Rail may be put and compensation for any loss which it may sustain by reason of any such damage, interference or obstruction.

(3) Nothing in this Part of this Schedule imposes any liability on the undertaker with respect to any damage, costs, expenses or loss attributable to the negligence of Network Rail or its servants, contractors or agents or any liability on Network Rail with respect of any damage, costs, expenses or loss attributable to the negligence of the undertaker or its servants, contractors or agents.

155.—(1) The undertaker must-

(a) at all times afford reasonable facilities to the engineer for access to a specified work during its construction; and

(b) supply the engineer with all such information as they may reasonably require with regard to a specified work or the method of constructing it.

156. Network Rail must at all times afford reasonable facilities to the undertaker and its agents for access to any works carried out by Network Rail under this Part of this Schedule during their construction and must supply the undertaker with such information as it may reasonably require with regard to such works or the method of constructing them.

157.—(1) If any permanent or temporary alterations or additions to railway property are reasonably necessary in consequence of the construction or completion of a specified work in order to ensure the safety of railway property or the continued safe operation of the railway of Network Rail, such alterations and additions may be carried out by Network Rail and if Network Rail gives to the undertaker 56 days' notice (or in the event of an emergency or safety critical issue such notice as is reasonable in the circumstances) of its intention to carry out such alterations or additions (which must be specified in the notice), the undertaker must pay to Network Rail the reasonable cost of those alterations or additions including, in respect of any such alterations and additions as are to be permanent, a capitalised sum representing the increase of the costs which may be expected to be reasonably incurred by Network Rail in maintaining, working and, when necessary, renewing any such alterations or additions.

(2) If during the construction of a specified work by the undertaker, Network Rail gives notice to the undertaker that Network Rail desires itself to construct that part of the specified work which in the opinion of the engineer is endangering the stability of railway property or the safe operation of traffic on the railways of Network Rail then, if the undertaker decides that part of the specified work is to be constructed, Network Rail must assume construction of that part of the specified work and the undertaker must, notwithstanding any such approval of a specified work under paragraph 153(3), pay to Network Rail all reasonable expenses to which Network Rail may be put and compensation for any loss which it may suffer by reason of the execution by Network Rail of that specified work.

(3) The engineer must, in respect of the capitalised sums referred to in this paragraph and paragraph 158(1)(a) provide such details of the formula by which those sums have been calculated as the undertaker may reasonably require.

(4) If the cost of maintaining, working or renewing railway property is reduced in consequence of any such alterations or additions a capitalised sum representing such saving must be set off against any sum payable by the undertaker to Network Rail under this paragraph.

158.—(1) The undertaker must repay to Network Rail all reasonable fees, costs, charges and expenses reasonably incurred by Network Rail—

(a) in constructing any part of a specified work on behalf of the undertaker as provided by paragraph 153(3) or in constructing any protective works under the provisions of

paragraph 153(4) including, in respect of any permanent protective works, a capitalised sum representing the cost of maintaining and renewing those works;

(b) in respect of the approval by the engineer of plans submitted by the undertaker and the supervision by the engineer of the construction of a specified work;

(c) in respect of the employment or procurement of the services of any inspectors, signallers, watch-persons and other persons whom it shall be reasonably necessary to appoint for inspecting, signalling, watching and lighting railway property and for preventing, so far as may be reasonably practicable, interference, obstruction, danger or accident arising from the construction or failure of a specified work;

(d) in respect of any special traffic working resulting from any speed restrictions which may in the opinion of the engineer, require to be imposed by reason or in consequence of the construction or failure of a specified work or from the substitution or diversion of services which may be reasonably necessary for the same reason; and

(e) in respect of any additional temporary lighting of railway property in the vicinity of the specified works, being lighting made reasonably necessary by reason or in consequence of the construction or failure of a specified work.

159.—(1) In this paragraph-

"EMI" means, subject to sub-paragraph (2), electromagnetic interference with Network Rail apparatus generated by the operation of the specified works where such interference is of a level which adversely affects the safe operation of Network Rail's apparatus; and

"Network Rail's apparatus" means any lines, circuits, wires, apparatus or equipment (whether or not modified or installed as part of the specified works) which are owned or used by Network Rail for the purpose of transmitting or receiving electrical energy or of radio, telegraphic, telephonic, electric, electronic or other like means of signalling or other communications.

(2) This paragraph applies to EMI only to the extent that such EMI is not attributable to any change to Network Rail's apparatus carried out after approval of plans under paragraph 153(1) for the relevant part of the specified works giving rise to EMI (unless the undertaker has been given notice in writing before the approval of those plans of the intention to make such change).

(3) Subject to sub-paragraph (5), the undertaker must in the design and construction of the specified works take all measures necessary to prevent EMI and must establish with Network Rail (both parties acting reasonably) appropriate arrangements to verify their effectiveness.

(4) In order to facilitate the undertaker's compliance with sub-paragraph (3)-

(a) the undertaker must consult with Network Rail as early as reasonably practicable to identify all Network Rail's apparatus which may be at risk of EMI, and thereafter must continue to consult with Network Rail (both before and after formal submission of plans under paragraph 153(1)) in order to identify all potential causes of EMI and the measures required to eliminate them;

(b) Network Rail must make available to the undertaker all information in the possession of Network Rail reasonably requested by the undertaker in respect of Network Rail's apparatus identified pursuant to sub-paragraph (a); and

(c) Network Rail must allow the undertaker reasonable facilities for the inspection of Network Rail's apparatus identified pursuant to sub-paragraph (a).

(5) In any case where it is established that EMI can only reasonably be prevented by modifications to Network Rail's apparatus, Network Rail must not withhold its consent unreasonably to modifications of Network Rail's apparatus, but the means of prevention and the method of their execution must be selected in the reasonable discretion of Network Rail, and in relation to such modifications paragraph 153(1) has effect subject to this sub-paragraph.

(6) Prior to the commencement of operation of the authorised development the undertaker shall test the use of the authorised development in a manner that shall first have been agreed with Network Rail and if, notwithstanding any measures adopted pursuant to sub-paragraph (3), the testing of the authorised development causes EMI then the undertaker must immediately upon

receipt of notification by Network Rail of such EMI either in writing or communicated orally (such oral communication to be confirmed in writing as soon as reasonably practicable after it has been issued) forthwith cease to use (or procure the cessation of use of) the undertaker's apparatus causing such EMI until all measures necessary have been taken to remedy such EMI by way of modification to the source of such EMI or (in the circumstances, and subject to the consent, specified in sub-paragraph (5)) to Network Rail's apparatus.

(7) In the event of EMI having occurred –

(a) the undertaker must afford reasonable facilities to Network Rail for access to the undertaker's apparatus in the investigation of such EMI;

(b) Network Rail must afford reasonable facilities to the undertaker for access to Network Rail's apparatus in the investigation of such EMI;

(c) Network Rail must make available to the undertaker any additional material information in its possession reasonably requested by the undertaker in respect of Network Rail's apparatus or such EMI; and

(d) the undertaker shall not allow the use or operation of the authorised development in a manner that has caused or will cause EMI until measures have been taken in accordance with this paragraph to prevent EMI occurring.

(8) Where Network Rail approves modifications to Network Rail's apparatus pursuant to sub-paragraphs (5) or (6) –

(a) Network Rail must allow the undertaker reasonable facilities for the inspection of the relevant part of Network Rail's apparatus;

(b) any modifications to Network Rail's apparatus approved pursuant to those sub-paragraphs must be carried out and completed by the undertaker in accordance with paragraph 154.

(9) For the purpose of paragraph 158(1)(a) any modifications to Network Rail's apparatus under this paragraph shall be deemed to be protective works referred to in that paragraph.

160. If at any time after the completion of a specified work, not being a work vested in Network Rail, Network Rail gives notice to the undertaker informing it that the state of maintenance of any part of the specified work appears to be such as adversely affects the operation of railway property, the undertaker must, on receipt of such notice, take such steps as may be reasonably necessary to put that specified work in such state of maintenance as not adversely to affect railway property.

161. The undertaker must not provide any illumination or illuminated sign or signal on or in connection with a specified work in the vicinity of any railway belonging to Network Rail unless it has first consulted Network Rail and it must comply with Network Rail's reasonable requirements for preventing confusion between such illumination or illuminated sign or signal and any railway signal or other light used for controlling, directing or securing the safety of traffic on the railway.

162. Any additional expenses which Network Rail may reasonably incur in altering, reconstructing or maintaining railway property under any powers existing at the making of this Order by reason of the existence of a specified work must, provided that 56 days' previous notice of the commencement of such alteration, reconstruction or maintenance has been given to the undertaker, be repaid by the undertaker to Network Rail.

163. Network Rail must, on receipt of a request from the undertaker, from time to time provide the undertaker free of charge with written estimates of the costs, charges, expenses and other liabilities for which the undertaker is or will become liable under this Part of this Schedule and with such information as may reasonably enable the undertaker to assess the reasonableness of any such estimate or claim made or to be made pursuant to this Part of this Schedule (including any claim relating to those relevant costs).

164. In the assessment of any sums payable to Network Rail under this Part of this Schedule there must not be taken into account any increase in the sums claimed that is attributable to any

action taken by or any agreement entered into by Network Rail if that action or agreement was not reasonably necessary and was taken or entered into with a view to obtaining the payment of those sums by the undertaker under this Part of this Schedule or increasing the sums so payable.

165.—(1) The undertaker and Network Rail may, subject in the case of Network Rail to compliance with the terms of its network licence, enter into, and carry into effect, agreements for the transfer to the undertaker of—

(a) any railway property shown on the works and land plans and described in the book of reference;

(b) any lands, works or other property held in connection with any such railway property; and

(c) any rights and obligations (whether or not statutory) of Network Rail relating to any railway property or any lands, works or other property referred to in this paragraph.

166. Nothing in this Order, or in any enactment incorporated with or applied by this Order, prejudices or affects the operation of Part I of the Railways Act 1993.

167.—(1) The undertaker must give written notice to Network Rail if any application is proposed to be made by the undertaker for the Secretary of State's consent, under article 36 (consent to transfer of benefit of the Order) of this Order and any such notice must be given no later than 28 days before any such application is made and must describe or give (as appropriate)—

(a) the nature of the application to be made;

(b) the extent of the geographical area to which the application relates; and

(c) the name and address of the person acting for the Secretary of State to whom the application is to be made.

168. The undertaker must no later than 28 days from the date that the plans submitted to and certified by the Secretary of State in accordance with article 41 (certification of plans and documents etc.) are certified by the Secretary of State, provide a set of those plans to Network Rail in a format specified by Network Rail.

Any dispute arising under this Part of this Schedule, unless otherwise provided for, must be referred to and settled by arbitration in accordance with article 42 (arbitration) and the Rules at Schedule 13 (Arbitration Rules).

SCHEDULE 15

Article 45

PROCEDURE FOR DISCHARGE OF REQUIREMENTS

Interpretation

1.—(1) In this Schedule—

"part" includes a phase, part of a phase, multiple phases or multiple parts of phases;

"phase" means a phase of the authorised development as set out in the written scheme approved pursuant to requirement 3;

"requirement consultee" means any body or authority named in a requirement as a body to be consulted by the relevant planning authority in discharging that requirement; and

"start date" means the date of the notification given by the Secretary of State under paragraph 4(2)(c).

(2) Where an application is made under this Schedule for any consent, agreement or approval required by a requirement, the application may be for all of the authorised development, or for a part of the authorised development.

Applications made under requirement

2.—(1) Where an application has been made to the relevant planning authority for any consent, agreement or approval required by a requirement, the relevant planning authority must give notice to the undertaker of its decision on the application within a period of thirteen weeks beginning with the later of—

(a) the day immediately following that on which the application is received by the authority;

(b) the day immediately following that on which further information has been supplied by the undertaker under paragraph 3; or

(c) such longer period that is agreed in writing by the undertaker and the relevant planning authority.

(2) Subject to paragraph 4, in the event that the relevant planning authority does not determine an application within the period set out in sub-paragraph (1), the relevant planning authority is to be taken to have granted all parts of the application (without any condition or qualification) at the end of that period.

(3) Any application made to the relevant planning authority pursuant to sub-paragraph (1) must include:

(a) a statement to confirm whether it is likely that the subject matter of the application will give rise to any materially new or materially different environmental effects compared to those in the environmental statement and if it will then it must be accompanied by information setting out what those effects are; and

(b) confirmation that the application has been notified and provided to the requirement consultees in accordance with sub-paragraph (5), if the provision governing or requiring the application specifies that consultation with a requirement consultee is required. Such confirmation to include contact details for the requirement consultees.

(4) Where an application has been made to the relevant planning authority for any consent, agreement or approval required by a requirement included in this Order and the relevant planning authority does not determine the application within the period set out in sub-paragraph (1) and is accompanied by a report pursuant to sub-paragraph (3)(a) which states that the subject matter of such application is likely to give rise to any materially new or materially different environmental effects compared to those in the environmental statement then the application is to be taken to have been refused by the relevant planning authority at the end of that period.

(5) At the same time as submitting an application to the relevant planning authority for any consent, agreement or approval required by a requirement, the undertaker must also give notice of such application, and provide a copy of the application, to any requirement consultee, if the provision governing or requiring the application specifies that consultation with a requirement consultee is required. As part of the notification to any requirement consultee, the undertaker must include a statement that refers to:

(a) the timeframes in which the requirement consultee can request any further information from the undertaker (via the relevant planning authority) as prescribed in paragraph 3(6)(a) and the consequences of the failure to meet those timescales as prescribed in paragraph 3(6)(b); and

(b) the timeframes in which the requirement consultee must give notice to the relevant planning authority of its comments on the application as prescribed in paragraph 3(6)(d) and the consequences of the failure to meet those timescales as prescribed in paragraph 3(6)(e).

Further information and consultation

3.—(1) In relation to any application made under paragraph 2, the relevant planning authority may request such reasonable further information from the undertaker as is necessary to enable it to consider the application.

(2) In the event that the relevant planning authority considers such further information to be necessary and the provision governing or requiring the application does not specify that consultation with a requirement consultee is required, the relevant planning authority must, within 20 working days of receipt of the application, notify the undertaker in writing specifying the further information required.

(3) If the provision governing or requiring the application specifies that consultation with a requirement consultee is required, the relevant planning authority must notify the undertaker in writing specifying any further information the relevant planning authority considers necessary or that is requested by the requirement consultee within 20 working days of receipt of the application (or such other period as is agreed in writing between the undertaker and the relevant planning authority).

(4) In the event that the relevant planning authority does not give notification as specified in sub-paragraph (2) or (3) it is deemed to have sufficient information to consider the application and is not thereafter entitled to request further information without the prior agreement of the undertaker.

(5) Where further information is requested under this paragraph in relation to part only of an application, that part is to be treated as separate from the remainder of the application for the purposes of calculating time periods in paragraph 2 and paragraph 3.

(6) If the provision governing or requiring the application specifies that consultation with a requirement consultee is required:

(a) A requirement consultee is required to notify the relevant planning authority in writing specifying any further information it considers necessary in order to comment on the application within 15 working days of receipt of the application pursuant to paragraph 2(5);

(b) If a requirement consultee does not give notification as specified in sub-paragraph (a) it is deemed to have sufficient information to comment on the application and is not thereafter entitled to request further information without the prior agreement of the undertaker and relevant planning authority;

(c) At the same time as providing any further information to the relevant planning authority pursuant to a request under paragraph (2), if the undertaker has been notified of further information requested by a requirement consultee, the undertaker must also give any further information to the requirement consultee;

(d) A requirement consultee is required to notify the relevant planning authority in writing of any comments on the application within 15 working days of receipt of the application

from the undertaker pursuant to paragraph 2(5), or the receipt of any further information pursuant to sub-paragraph (c) (where further information has been requested); and

(e) If a requirement consultee does not give notification as specified in sub-paragraph (d) it is deemed to have no comments on the application.

Appeals

4.—(1) The undertaker may appeal in the event that—

(a) the relevant planning authority refuses an application for any consent, agreement or approval required by a requirement included in this Order or grants it subject to conditions;

(b) the relevant planning authority is deemed to have refused an application pursuant to paragraph 2(4);

(c) on receipt of a request for further information pursuant to paragraph 3 the undertaker considers that either the whole or part of the specified information requested by the relevant planning authority is not necessary for consideration of the application; or

(d) on receipt of any further information requested, the relevant planning authority notifies the undertaker that the information provided is inadequate and requests additional information which the undertaker considers is not necessary for consideration of the application.

(2) The steps to be followed in the appeal process are as follows—

(a) any appeal by the undertaker must be made within 42 days of the date of the notice of the decision or the determination, or (where no determination has been made) the expiry of the time period set out in paragraph 2(1), giving rise to the appeal referred to in sub-paragraph (1);

(b) the undertaker must submit the appeal documentation to the Secretary of State and must on the same day provide copies of the appeal documentation to the relevant planning authority and any requirement consultee;

(c) the Secretary of State must appoint a person to determine the appeal as soon as reasonably practicable and must forthwith notify the appeal parties of the identity of the appointed person and the address to which all correspondence for the appointed person's attention should be sent;

(d) the relevant planning authority and any requirement consultee must submit written representations to the appointed person in respect of the appeal within 10 working days of the start date and must ensure that copies of their written representations are sent to each other and to the undertaker on the day on which they are submitted to the appointed person;

(e) the undertaker may make any counter-submissions to the appointed person within 10 working days of receipt of written representations pursuant to sub-paragraph (d);

(f) the appointed person must make their decision and notify it to the appeal parties, with reasons, as soon as reasonably practicable and in any event within 30 working days of the deadline for the receipt of counter-submissions pursuant to sub-paragraph (e); and

(g) the appointment of the person pursuant to sub-paragraph (c) may be undertaken by a person appointed by the Secretary of State for this purpose instead of by the Secretary of State.

(3) In the event that the appointed person considers that further information is necessary to enable the appointed person to consider the appeal they must, within five working days of the appointed person's appointment, notify the appeal parties in writing specifying the further information required.

(4) Any further information required pursuant to sub-paragraph (3) must be provided by the relevant party to the appointed person and the other appeal parties on the date specified by the appointed person (the "specified date"), and the appointed person must notify the appeal parties of

the revised timetable for the appeal on or before that day. The revised timetable for the appeal must require submission of written representations to the appointed person within 10 working days of the specified date, but otherwise the process and time limits set out in sub-paragraphs (d) to (f) of sub-paragraph (2) apply.

(5) The appointed person may—

(a) allow or dismiss the appeal; or

(b) reverse or vary any part of the decision of the relevant planning authority (whether the appeal relates to that part of it or not),

and may deal with the application as if it had been made to them in the first instance.

(6) The appointed person may proceed to a decision on an appeal taking into account only such written representations as have been sent within the relevant time limits and in the sole discretion of the appointed person such written representations as have been sent outside of the relevant time limits.

(7) The appointed person may proceed to a decision even though no written representations have been made within the relevant time limits, if it appears to them that there is sufficient material to enable a decision to be made on the merits of the case.

(8) The decision of the appointed person on an appeal is to be final and binding on the parties, unless proceedings are brought by a claim for judicial review.

(9) If an approval is given by the appointed person pursuant to this Schedule, it is to be deemed to be an approval for the purpose of Schedule 2 (requirements) as if it had been given by the relevant planning authority. The relevant planning authority may confirm any determination given by the appointed person in identical form in writing but a failure to give such confirmation (or a failure to give it in identical form) is not to be taken to affect or invalidate the effect of the appointed person's determination.

(10) Save where a direction is given pursuant to sub-paragraph (11) requiring the costs of the appointed person to be paid by the relevant planning authority, the reasonable costs of the appointed person must be met by the undertaker.

(11) On application by the relevant planning authority or the undertaker, the appointed person may give directions as to the costs of the appeal parties and as to the parties by whom the costs of the appeal are to be paid. In considering whether to make any such direction and the terms on which it is to be made, the appointed person must have regard to advice on planning appeals and award costs published in Planning Practice Guidance: Appeals (March 2014) or any circular or guidance which may from time to time replace it.

Fees

5.—(1) Where an application is made to the relevant planning authority for a discharge, a fee is to apply and must be paid to the relevant planning authority for each application.

(2) The fee payable for each application under sub-paragraph (1) is as follows—

(a) a fee of £2,578 for the first application for the discharge of each of the requirements in Schedule 2;

(b) a fee of £588 for each subsequent application for the discharge of each of the requirements listed in paragraph (a) and any application under requirement 5 in respect of the requirements listed in paragraph (a); and

(c) a fee of £298 for any application for the discharge of any approval required by a document referred to by any requirement or a document approved pursuant to any requirement.

(3) Where an application under sub- paragraph (1) is made and a fee payable on or after 1 April 2025, then section 18A of the Town and Country Planning (Fees for Applications, Deemed Applications, Requests and Site Visits) (England) Regulations 2012 (as amended by the Town and Country Planning (Fees for Applications, Deemed Applications, Requests and Site Visits

(England) Amendment Regulations 2023) will apply as modified by this Order, so that "the relevant amount" means the fee payable under sub-paragraph (2)(a), (2)(b) or (2)(c) above.

(4) Any fee paid under this Schedule must be refunded to the undertaker within four weeks of—

(a) the application being rejected as invalidly made; or

(b) the relevant planning authority failing to determine the application within the relevant period in paragraph 2(2) unless—

(i) within that period the undertaker agrees, in writing, that the fee is to be retained by the relevant planning authority and credited in respect of a future application; or

(ii) a longer period of time for determining the application has been agreed pursuant to paragraph 2(2) of this Schedule, as applicable.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order authorises One Earth Solar Farm Limited (referred to in this Order as the undertaker) to construct, operate, maintain and decommission a ground mounted solar photovoltaic generating station with a gross electrical output capacity over 50 megawatts and associated development. The Order would permit the undertaker to acquire, compulsorily or by agreement, land and rights in land and to use land for this purpose.

A copy of the Order plans and the book of reference mentioned in the Order and certified in accordance with article 41 (certification of plans and documents, etc) of this Order may be inspected free of charge during working hours at Newark & Sherwood District Council, Castle House, Great North Road, Newark, Nottinghamshire, NG24 1BY, West Lindsey District Council, Guildhall, Marshall's Yard, Gainsborough, Lincolnshire, DN21 2NA and Bassetlaw District Council, Queen's Buildings, Potter Street, Worksop, Nottinghamshire, S80 2AH as well as at Lincolnshire County Council, County Offices, Newland, Lincoln, LN1 1YL and at Nottinghamshire County Council, County Hall, Loughborough Road, West Bridgford, Nottingham NG2 7QP.